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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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IN THE MATTER OF THE PETITION FOR THE
COORDINATION OF INDIVIDUAL PLAINTIFFS MAUI FIRE CASES

SCAP-26-0000484

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CAAP-26-0000484; CASE NO. 2CSP-23-0000057)

SEPTEMBER 30, 2026

McKENNA, ACTING C.J., EDDINS, AND GINOZA, JJ., AND
CIRCUIT JUDGE MORIKONE, IN PLACE OF DEVENS, C.J., RECUSED,
AND CIRCUIT JUDGE TOMASA, ASSIGNED BY REASON OF VACANCY

OPINION OF THE COURT BY EDDINS, J.

I.

The 2023 Lahaina wildfires leveled one of the nation's most historic towns. Over one hundred people died.

The fires also brought the largest settlement in state history. And with it a predictable question. Who pays the lawyers, and how much?

Circuit Court of the Second Circuit Judge Peter Cahill faced billions in claims, thousands of victims, and hundreds of attorneys with overlapping and competing fee demands.

He answered with an attorney fee order (Order). It capped contingency fees on a tiered scale, set aside a \$222 million Common Benefit Fund (Fund) for lawyers whose common work advanced the recovery, and appointed a "Common Fee Review Board" (Board) to divide the Fund.

Three attorneys and a claimant appeal.

Their central attack is that the circuit court had no power to enter the fee order. That voids the Order from the start. Even with the power, they add, the exercise was an abuse of discretion.

There's more. The order is unconstitutional. It takes the victims' property for private use. It shuts out lawyers licensed elsewhere. And it offends due process, privileges and immunities, equal protection, and the separation of powers.

Appellants are wrong on the power. Judge Cahill had authority to act. Two overlapping grounds sustain that authority.

The first is the open special proceeding. The court created a special proceeding to coordinate the many wildfire claims. It never closed. The settlement remained in the court's hands. The court still supervises what it approved.

The second is equitable. The common fund doctrine gives a court equitable power to pay from a shared recovery for the common work that produced it. Here, that work built a multi-billion-dollar recovery. The court's equitable power authorizes the \$222 million set-aside.

The Order is not void.

Yet three provisions go too far. Each seals the Order's fee rulings from review. The Board's award is declared final and unappealable. Any appeal voids the lawyer's award. And a separate provision freezes payments to a lawyer who appeals an above-cap award, until judgment is beyond review. One provision forbids review outright. The other two punish anyone who seeks it.

Review is secured by statute and protected by due process. We vacate the three provisions and leave the rest of the Order intact.

Striking the anti-appeal conditions does not unravel the fee order. It opens the rulings to review. The Fund still exists, the fee schedule still stands, and the Board still does its job.

The remaining challenges do not merit relief. The Order is affirmed as modified.

II.

On August 8, 2023, wildfires swept through West Maui, and destroyed much of Lahaina, a former capital of the Hawaiian Kingdom.

Too many lives were lost. "Hundreds suffered physical and emotional injuries. Properties and historic sites were destroyed. Businesses and livelihoods impacted by the fires paused as Lahaina worked to rebuild. The lasting physical and mental health toll, and social, cultural, and economic impacts of this catastrophe continue to resonate in Hawai'i and beyond." Burnes v. Hawaiian Elec. Co., 158 Hawai'i 21, 25, 583 P.3d 794, 798 (2026).

Litigation followed. At once. Lots of it. Against Hawaiian Electric, the State, the County of Maui, large landowners, and others.

On October 16, 2023, the Circuit Court of the Second Circuit designated thirteen Maui fires cases as complex litigation under Rule 12 of the Rules of the Circuit Courts of the State of Hawai'i (RCCSH).

Ten days later, counsel designated to lead the coordination (Liaison Counsel) asked the court to open a special proceeding. The docket was growing. Hundreds more filings from Maui wildfire victims were expected.

The next day, Judge Cahill granted the request and opened a special proceeding, 2CSP-23-0000057. Through that proceeding, the court appointed liaison counsel and a plaintiffs' steering committee, and issued the governing case management orders. It coordinated discovery and motion practice, sequenced bellwether trials, engaged BrownGreer as claims administrator, and oversaw settlement and administration across the individual cases.

The work produced a \$4.037 billion global settlement.

One complication had loomed along the way - the insurers' subrogation claims. In March 2025, this court confined those claims to the statutory lien under Hawai'i Revised Statutes (HRS) § 663-10 (2016). See In re Maui Fire Cases, 155 Hawai'i 409, 565 P.3d 754 (2025). We reaffirmed that limit earlier this year and denied the insurers' bid to intervene. See Burnes, 158 Hawai'i 21, 583 P.3d 794.

In June 2025 the circuit court approved the Maui Wildfires Individual Settlement Agreement (ISA). Section 3.7.1 of the ISA left each claimant's attorney fee to the retainer between claimant and chosen counsel. Section 10.12 reserved the circuit court's jurisdiction over the ISA's administration and over fee disputes among counsel.

The ISA included claimants who retained counsel - the Individual Plaintiffs. Other categories of claimants had their own settlement tracks.

As the first installment to the victims was funded, the filed individual actions were dismissed with prejudice, one after another. Many victims had never filed suit at all. They pursued their claims through BrownGreer. None of the dismissal orders reserved the court's authority over the settlement.

The special proceeding remains open.

On February 4, 2026, the Department of the Attorney General (State) moved for orders on attorney fees. It asked the circuit court to hold that HRS § 662-12 (2016), which caps fees in tort actions against the State, applied. The State also invoked the court's equitable authority over the common fund.

Liaison Counsel agreed that HRS § 662-12 applied and left the rest to the court.

On June 5, 2026, the circuit court entered an Order Re: Attorney Fees, amended June 10, 2026 (Order).

The Order lays down three paths to a fee. Each with its own rules.

Path one is the scheduled contingency fee. Automatic. Every lawyer representing an Individual Plaintiff gets a fee under a tiered schedule keyed to when the client retained counsel and how far the case had progressed. Up to 1% for One 'Ohana Fund counsel - attorneys representing claimants who resolved through the State-administered pre-suit relief program. Up to 3% for clients retained on or after August 19, 2024. Up

to 8.33% for clients retained before then. Up to 10% for trial-set cases with pre-August 19 retention. For subrogating insurers' attorneys, up to 8.33%. For class counsel, 5%.

Payment comes from the client's own settlement recovery, through BrownGreer. No application. No hearing. No Board.

Path two is the Common Benefit Fund. Voluntary. The Order directs BrownGreer to set aside \$222 million from the global settlement, before distribution, to pay for common work that benefited all claimants.

A Common Fee Review Board reviews voluntary applications from Hawai'i-licensed attorneys who represented Individual Plaintiffs. The Board is chaired by retired Associate Justice James Duffy, includes retired Judges Jeffrey Crabtree and Dean Ochiai, and is administered by Dispute Prevention & Resolution, Inc. The Board meets confidentially, issues no findings of fact or conclusions of law, and its members enjoy absolute immunity.

The Board awards shares of the Fund by percentage, not by dollar amount. What the Board does not award returns to the claimants in proportion to their net recovery.

Path three is the above-cap fee. Judicial. An attorney who wants more than what the path one schedule allows may move in the special proceeding for an above-cap award. The circuit court sets the matter for hearing, counsel presents evidence, and the court enters an order and judgment. Path three has its

own ceilings: 3.5% for post-August 19 retention, 10% for pre-August 19 retention, and 12.5% for trial-set cases. Class counsel "may also seek additional fees capped at 7.25% of the class settlement amount of \$135,000,000." Payment comes from the client's own recovery, not the Fund.

Several features of the Order that limit review are on appeal here. The Order declares that the Fund's awards are "FINAL AND CANNOT BE APPEALED." Any appeal will "void the award." For the above-cap route, the Order directs that once an appeal is filed, BrownGreer withhold all of the appealing attorney's future fee payments until judgment is no longer appealable.

The Order also restricts eligibility. Only Hawai'i-licensed attorneys may request participation in the Fund. Participation is voluntary. Applications are filed in the special proceeding. The Board may consider the work of associated pro hac vice counsel in setting an award.

The Order recites that the Attorney General reviewed the awards and concurred that they are "fair and reasonable."

Claimant Michael Bates and attorneys Anthony Ranken, Alex Edrenkin, and John Thickstun (Appellants) sought review two ways. They petitioned this court for writs of mandamus and prohibition. They also appealed to the Intermediate Court of Appeals.

This court accepted transfer on August 5, 2026, and ordered briefing. Oral argument was held on September 15, 2026.

III. This Court has Authority to Hear the Appeal

Before the merits, jurisdiction.

The Individual Plaintiffs defending the Order argue this court has no jurisdiction to hear the appeal. They say the Order was entered in an open special proceeding that will end in no appealable final judgment.

Appellants offer two jurisdictional paths. The collateral order doctrine. And the older Forgay doctrine, tracing to Forgay v. Conrad, 47 U.S. 201 (1848). See Lambert v. Teisina, 131 Hawai'i 457, 319 P.3d 376 (2014).

Jurisdiction exists under the collateral order doctrine. After today, Forgay is no longer a separate jurisdictional route in Hawai'i.

A. Jurisdiction Exists Under the Collateral Order Doctrine

Statutory rights to appeal generally require a final disposition. The legal system creaks if a single case splinters into separate appeals.

HRS § 641-1(a) (2016) allows appeals from "final judgments, orders, or decrees." A post-judgment order is final and appealable under the statute if it ends the proceeding and leaves nothing further to be done. Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003).

Ordinarily an appeal from a circuit court awaits a separate judgment. An order resolving claims is appealable only after it is reduced to a judgment entered under Hawai'i Rules of Civil Procedure Rule 58. Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). No separate judgment was entered here.

The collateral order doctrine supplies the exception. An order is immediately appealable if it (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits, and (3) is effectively unreviewable on appeal from a final judgment. Greer v. Baker, 137 Hawai'i 249, 253, 369 P.3d 832, 836 (2016); Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998).

The Order meets each requirement.

The circuit court has resolved these questions. It set the fee caps, the \$222 million Fund, the review Board, and the above-cap process, and will not revisit them in the ordinary course of the proceeding. Conclusive determination.

The fee question is separate from the tort claims the special proceeding was designed to coordinate. Liability and damages in the individual cases are their own matter. The tiers, the Fund, and the Board turn on the equitable supervision of a settlement. The merits are elsewhere.

Review will never come if we wait for it. The coordination proceeding ends in no final judgment, and the Order's appeal provisions shut the ordinary appellate channels behind it. Effective unappealability.

The collateral order doctrine applies.

B. Forgay Is No Longer a Separate Route

In their jurisdiction statement, Appellants invoke Forgay v. Conrad.

Forgay is redundant. Each time this court has turned to it, the worry was that an order commanding the immediate transfer of property could not be undone once the property changed hands. See Lambert, 131 Hawai'i at 458, 319 P.3d at 377; Ciesla v. Reddish, 78 Hawai'i 18, 19-20, 889 P.2d 702, 703-04 (1995). The third element of the collateral order test captures the same concern.

The Seventh Circuit made the same point in Construction Industry Retirement Fund of Rockford, Illinois v. Kasper Trucking, Inc., 10 F.3d 465 (7th Cir. 1993). Judge Easterbrook applied Forgay to an order directing payment, then absorbed the doctrine into the collateral order framework, and treated Forgay's rule as one route to satisfy the third element, rather than a separate test. His court had, he explained, "generalized the approach under the banner of the collateral order doctrine,"

resting appealability on whether "the money, once disbursed, is effectively beyond recall." Id. at 468.

Forgay names what the collateral order test already does.

Modern Hawai'i cases have done the analysis Forgay called for. Ciesla and Lambert were rightly decided. Each order was appealable because it directed a transfer no later judgment could repair. Each satisfied the collateral order test.

From today, the appealability of an order for the immediate transfer of property falls under the collateral order doctrine. Forgay no longer has a place in Hawai'i law.

Look at what Forgay was. It involved a suit to void fraudulent conveyances. The property the decree ordered "delivered up" was, in its own words, "lands and slaves." 47 U.S. at 202.

The Supreme Court held the decree instantly appealable because the losing party should not have to hand over property (people!) and wait out the case for review. The irreparable harm behind the doctrine was the loss of human beings held as chattel. Forgay yokes people and parcels together, sorts them with the same verbs, and never flinches that one is a person.

Forget Forgay.

C. Statutory Reinforcement

Appellate jurisdiction finds further support in HRS § 602-5(a)(6) (2016).

The statute exists for the case that outruns the ordinary categories. It empowers this court to take "such other steps as may be necessary . . . for the promotion of justice in matters pending before it." Our rules of appellate practice cannot anticipate every proceeding. A fee order entered in an open special proceeding, reviewable under no standard appellate route, is the kind of matter it was written for.

The Order fits HRS § 602-5(a)(6). It emerged from a coordination proceeding of unprecedented scale in Hawai'i, governs a global settlement of \$4.037 billion, redirects \$222 million from it, and seals review over its own decisions.

Jurisdiction arises under the collateral order doctrine. HRS § 602-5(a)(6) is a second ground.

IV. The Circuit Court Had Authority to Enter the Order

Appellants' central position is that the circuit court lacked subject matter jurisdiction to enter the Order. In their view that makes the Order void from the start, reversible whatever it says.

Their argument goes this way. The individual actions were dismissed with prejudice, and none reserved jurisdiction. Many claimants never filed at all. The ISA, Appellants say, committed each fee to private contract, reserving to the court only enforcement and disputes among counsel. On their reading,

the court revisited fees a year after approving the settlement in cases that no longer existed.

Appellants rely on Amantiad v. Odum, 90 Hawai'i 152, 977 P.2d 160 (1999). There, this court held that a court loses jurisdiction to enforce a settlement in cases dismissed with prejudice.

Amantiad addressed a different posture. Jurisdiction exists here.

The Order stands on two interrelated grounds. Neither depends on the closed individual cases.

A. The Special Proceeding Remained Open

The court entered the Order in 2CSP-23-0000057. That proceeding was still open when it issued.

The circuit court created the special proceeding under RCCSH Rule 12 to coordinate the many claims arising from the Maui wildfires. Under that rule, a court may issue case management orders on any matter "conducive to the just, efficient, and economic determination of the case." RCCSH Rule 12(c)(3)(B)(iii).

A special proceeding outlives any single plaintiff's dismissal. Here, it is a vehicle the circuit court created to coordinate thousands of related claims and to supervise the settlement that resolved them. The court named settlement masters, oversaw the claims process, and scheduled the payment

installments. It still manages liens, disbursements, and the loose ends of a settlement paid out over years.

Strip the court of that continuing authority and it would be powerless over the very proceeding it opened. The one that produced \$4.037 billion for the victims.

Authority over collateral matters survives dismissal. Even after the merits close, a court keeps jurisdiction over those matters. TSA Int'l Ltd. v. Shimizu Corp., 92 Hawai'i 243, 265, 990 P.2d 713, 735 (1999). Attorney fees are collateral. Queen Emma Found. v. Tatibouet, 123 Hawai'i 500, 510, 236 P.3d 1236, 1246 (App. 2010) (Attorney fees "survive[] independently under the [c]ourt's equitable jurisdiction."). Dismissal does not end the court's fee authority.

The dismissals no more stripped the court of authority over fees drawn from the settlement than the entry of a judgment would strip a court of authority to award fees under it.

Appellants pair Amantiad with Kokkonen v. Guardian Life Insurance Company of America, 511 U.S. 375 (1994). Each addresses one situation: a court reopening a single dismissed case to enforce a private settlement never made part of the dismissal. Neither speaks to an order entered in a live proceeding that the court opened, and kept open, to supervise the coordination of claims and settlement. The dismissals ended

the individual actions. The court's authority over the settlement remained.

Coordination is procedure. And that's all, Appellants maintain. A court managing many cases cannot order parties in dismissed cases to pay into a fund. In federal court, Appellants would have a point. Aggregation under federal procedural rules may not by itself enlarge a federal district court's subject matter jurisdiction. Gibbs v. Buck, 307 U.S. 66, 89-90 (1939).

The matter before Judge Cahill is different. It is a freestanding special proceeding under Hawai'i law, opened to coordinate claims and supervise a settlement's administration. It's still open.

Appellants lodge a related challenge. It traces to Liaison Counsel's statements in a 2024 removal proceeding in federal court. Counsel represented that the special proceeding was no civil action, joined no parties, relied on no operative pleading, and served only to manage the coordinated cases. The United States District Court for the District of Hawai'i accepted the representation and remanded. See In re Maui Fire Cases, No. 24-00035 HG-BMK, 2024 WL 759707 (D. Haw. Feb. 7, 2024).

Now Appellants say that if the proceeding is what Liaison Counsel called it in federal court, it cannot support what the circuit court did here.

We disagree.

What Liaison Counsel told the federal court answered a federal question. Removal under 28 U.S.C. § 1441 asks whether a matter is a civil action within the original jurisdiction of the district court. A state coordination proceeding that pleads no federal claim and joins no diverse parties is not removable.

What Liaison Counsel said went to federal jurisdiction. A Hawai'i court's authority over an open special proceeding it created is unaffected. Federal removability and state authority are separate things.

Judicial estoppel stops a litigant from winning on one position and then flipping in a later proceeding. No flip here. Coordination is what Liaison Counsel described in federal court, and coordination is what the proceeding still does.

The power to set fees comes from the court's supervision of the Fund. A settlement this massive operates differently. No trial. No roster of named plaintiffs. That's how this proceeding rolls. Fee power follows the Fund.

When the proceeding remains open, the Second Circuit's authority stands.

B. The Common Fund Doctrine

Equity supplies the second ground for the court's authority.

When litigation produces a fund that others share, the fund pays for the work that made it possible. That's the common fund doctrine. A litigant or lawyer "who recovers a common fund for the benefit of persons other than [themselves] or [their] client is entitled to a reasonable attorney's fee from the fund as a whole." Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980).

The doctrine's logic is elementary. Those who share the fund without sharing the work that built it take a benefit they didn't earn. The remedy is a fee drawn from the whole fund, spread across all who benefit.

The doctrine is settled in Hawai'i. This court adopted it in Montalvo v. Chang, 64 Haw. 345, 641 P.2d 1321 (1982). A plaintiff or attorney "whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of [their] litigation, including attorneys' fees." Id. at 352, 641 P.2d at 1327 (cleaned up).

A reasonable fee is paid from the recovery and apportioned among those who share it, in amounts proportionate to each share. Id. at 361, 641 P.2d at 1332. The court sets that award. Private retainers between claimants and their own lawyers stay out of it. They are, in Montalvo's words, "simply irrelevant." Id. (cleaned up).

Montalvo's method has since changed. Montalvo required lodestar as the only method, borrowed from the Third Circuit. This court dropped that requirement in Chun v. Board of Trustees of Employees' Retirement System of State of Hawai'i. We held that a trial court may calculate a common fund fee by the lodestar method or by a straight percentage of the fund. 92 Hawai'i 432, 446, 992 P.2d 127, 141 (2000).

In a later opinion in the same case, we upheld a fee set at twenty-five percent of the fund, treating that figure as a permissible benchmark and finding no abuse of discretion. Chun v. Bd. of Trs. of Emps.' Ret. Sys. of State of Hawai'i, 106 Hawai'i 416, 435-36, 106 P.3d 339, 358-59 (2005).

Chun changed the method. The math moved. Hawai'i law lets a court set a common fund fee as a percentage of the fund, or by the lodestar, whichever fits the case.

Appellants counter with Montalvo itself. It was a class action, they point out, and its fee came from a fund the judgment created. This litigation is nothing like Montalvo. No class was certified. Consolidation under Rule 42(a) was sought and denied. The cases were coordinated and that was it. Coordination alone, Appellants add, does not weld thousands of separate recoveries into one fund.

Montalvo tied the common fund doctrine to a fact in the record. Rule 23 was how the case got there. Litigation efforts

created or enlarged a fund others share. Equity applies no matter how the fund emerges: by class judgment, a consolidated verdict, or coordinated global settlement.

Hawai'i law opens the doctrine to any procedure that yields a shared fund. The \$4.037 billion settlement is a single, identifiable fund, built by common work, shared by every claimant. The claimants arrived through a coordinated proceeding. A certified class would have too. The accounting changes. Equity's song remains the same.

The Order fits. The circuit court approved the global settlement and supervises its administration. It set aside \$222 million of that recovery, before distribution, to pay the lawyers whose common work built the settlement. That set-aside is about five and one-half percent of the recovery, far less than the figure we approved in Chun. What the Board does not award returns to the victims. "Any remainder shall be distributed to all claimants in proportion to their net recovery." The money stays inside the settlement and pays only for the effort behind it.

Appellants say the doctrine doesn't fit. The court's control ended at approval, when the settlement passed to an administrator. Approval closed the court's role, they argue.

Not here. The administration is ongoing. The court supervises the settlement it approved.

BrownGreer's custody is the court's custody. The qualified settlement fund exists by the court's order and operates under judicial supervision. Whether the money sits in the court's registry or in a fund the court created and controls is form, not substance.

Hawai'i's test is equitable control. This court long ago approved fees from a common fund "under the custody or control of the court." Von Holt v. Izumo Taisha Kyo Mission of Hawaii, 44 Haw. 147, 366, 355 P.2d 40, 45 (1960). Montalvo asks whether the litigant's efforts created, increased, or preserved a fund others share. See 64 Haw. at 352, 641 P.2d at 1327.

The circuit court approved and oversees the settlement pot. It created the Fund by its Order, directs the set-aside, governs the remainder, and supervises the settlement. Whatever the escrow account number, that's equitable control.

Appellants have more to say about the Fund.

Appellants find a supposed waiver right off the bat, in Case Management Order (CMO) No. 1. In that order, Liaison Counsel and members of the Steering Committee agreed that they "shall seek" no "common benefit attorney fees" in matters where they are not counsel of record for the specific client. Appellants believe that language forecloses the Fund altogether. They call it the law of the case. And, they add, some of the

very lawyers who advanced the order now line up to apply to the Fund.

Sure, the order says what it says. We take it at its word. But it doesn't doom the Fund.

Case Management Order No. 1 governs what its named lawyers may seek. It is guidance about the leadership's own compensation.

The Order under review does something beyond that guidance. It compensates the common work from a fund the court set aside from the global recovery. It also caps what every individual-plaintiff lawyer, leadership included, may charge an individual client.

The reliance point deserves attention. Leadership accepted CMO No. 1's disclaimer at the outset, Appellants say. Now they can't reverse course and be paid from a common source the disclaimer foreclosed. They anchor the argument in Martell v. Employees' Retirement System, 158 Hawai'i 139, 145, 588 P.3d 1152, 1158 (2026), which addresses the "undue hardship" that comes from changing rules on parties who relied on them.

Makes sense. But it undervalues what the court kept for itself.

CMO No. 1 directed lead counsel not to seek common-benefit fees. It left untouched the court's later exercise of equitable authority over a fund the settlement created. Martell governs

administrative reversals that upset settled expectations. This isn't one.

The Order is a court exercising equitable authority over a fund it approved and continues to supervise. Agency reversals of policy are different. Whether a lawyer who falls under CMO No. 1 may now share in the Fund is a question for the Board. And then for circuit court review. None of this undoes the court's power to establish the Fund.

Appellants also try law of the case. The label misfires. Under the doctrine, a prior ruling of law controls at later stages of the same case. Ditto v. McCurdy, 98 Hawai'i 123, 128, 44 P.3d 274, 279 (2002). CMO No. 1 is not a ruling of law.

Times change. Circumstances change. CMO No. 1 was entered in January 2024, when the coordination effort was new and no settlement architecture was in view. The \$4.037 billion recovery and the \$222 million fund carved from it were the work of years to come.

CMO No. 1 spoke to what was in front of the court then. It did not, and could not, resolve fee questions from a settlement not yet reached. The special proceeding stayed open. The court's authority stayed with it.

Appellants' equitable objection goes to the common fund doctrine's core. The doctrine exists to catch freeloaders, they say - those who take a benefit without paying for it. But here,

they argue, every claimant is a paying client under a contingency contract. No freeloaders. On Appellants' reading, the Fund takes from represented victims, some of whom never filed suit, to pay lawyers those claimants never hired.

Appellants serve up an image: an eleventh slice cut from a ten-slice pie. Every dollar in the settlement, they say, already belongs to a victim or that victim's lawyer. A Fund for common work, on their view, takes from someone else's slice.

They misread the common work.

Each claimant's own lawyer valued that claimant's case and carried it through the settlement program. But the common work is something else. It coordinated discovery across thousands of claims and sequenced the bellwether trials. It resolved the subrogation and lien problems that threatened every recovery. It assembled the global settlement that paid them all.

No private retainer bought that. Common work benefitted every claimant who recovered. Even the unfiled, because the unfiled recovered through the very program that common effort assembled. Spreading its cost across those it served is the common fund doctrine doing what it's supposed to do.

There's no eleventh slice. There's a cost to baking the pie. Spread among those who eat it.

Federal courts have gone the same way. They assess common benefit fees on a coordinated recovery. The doctrine covers

even claimants who were not part of the litigation before the court. See In re Bard IVC Filters Prod. Liab. Litig., 81 F.4th 897 (9th Cir. 2023); In re Vioxx Prods. Liab. Litig., 802 F. Supp. 2d 740 (E.D. La. 2011); In re Zyprexa Prods. Liab. Litig., 424 F. Supp. 2d 488 (E.D.N.Y. 2006) (Weinstein, J.); In re Air Crash Disaster at Florida Everglades on Dec. 29, 1972, 549 F.2d 1006 (5th Cir. 1977).

We cite these cases for the principle. Hawai'i's common fund doctrine needs no federal import.

C. Statutory Reinforcement

Two statutes track the equitable grounds.

HRS § 607-15.5 (2016) lets either party in a tort settlement request court approval of fees. The Maui Fires cases are tort actions. The parties settled. The State, one of the settling defendants, moved for court approval. Kamalu v. Paren, Inc. holds that HRS § 607-15.5 allows a court to limit tort-settlement fees at a reasonable amount. 110 Hawai'i 269, 275, 132 P.3d 378, 384 (2006). Every element is here. The statute reinforces the court's equitable authority.

HRS § 662-12 raises harder questions. The State led with it. Appellants dwell on it. We do not rely on it.

The statute allows the court or the Attorney General to fix reasonable fees, capped at twenty-five percent, out of a judgment, award, or settlement in a tort action against the

State. See O'Grady v. State, 141 Hawai'i 26, 29, 404 P.3d 292, 295 (2017).

Appellants set the text against the Order. No judgment or award was ever entered against the State. The State settled. The only settlement actor the statute names is the Attorney General, and her disposition power was spent when she settled in August 2024 without fixing a fee cap. As Appellants read it, the statute's cap runs on the amount recovered against the State. The \$222 million comes from elsewhere.

We do not need to sort through the HRS § 662-12 arguments. The Order does not depend on the statute. The open special proceeding, the equitable authority over the common fund, and HRS § 607-15.5 sustain the Order.

D. The ISA Did Not Forbid the Assessment

That leaves the contract.

Appellants say the ISA fixed each fee by private agreement. The modification clause kept the court from rewriting the fees.

The Order did something else. The ISA committed each fee to private agreement "consistent with . . . applicable law."

A common benefit assessment is part of that applicable law in aggregate litigation. A contract "is presumed to include all applicable statutes and settled law relating to its subject matter." Kawakami v. Kahala Hotels Invs., LLC, 142 Hawai'i 507, 514, 421 P.3d 1277, 1284 (2018) (citation omitted). The ISA's

"applicable law" hook absorbs Hawai'i's fee-supervision law into the contract.

The jurisdictional half of the contract argument fares no better. Section 10.12 of the ISA reserves the circuit court's jurisdiction over enforcement and over fee disputes. But parties cannot confer subject-matter jurisdiction by agreement. Miller v. Collins, 158 Hawai'i 435, 438, 593 P.3d 374, 377 (2026). Nor can they limit it. The court's authority sits outside § 10.12. It comes from the open proceeding and from equity.

E. We Reserve the Attorney General's Status

The Order recites that the Attorney General, "as Trustee of the Global Settlement funds," reviewed the awards and concurred that they are fair and reasonable.

The State's brief does not adopt that framing. It disclaims the trustee role and treats the Attorney General as administrator.

Appellants say the Attorney General is no trustee. The State now agrees. HRS § 28-13.5 (Supp. 2025) and Act 301 (2025) make her the administrator of the fund, without fiduciary or supervisory power over privately negotiated fees. She cannot serve as the fund's fiduciary, Appellants add, while she represents the State, an adverse party. The statute's text

supports them. It says the fund "shall be administered by the attorney general." HRS § 28-13.5(a). Administer. That's it.

Our holding relies on the court's own authority - the open proceeding and equity. The Attorney General's status is a different question. Whether she is trustee or administrator is one issue. Whether she can administer the Fund while representing the State as a defendant is another. We leave both for a case that requires them.

Back to the void argument that opened Part IV.

A court acting within an open proceeding, over a fund it approved and supervises, has all the jurisdiction it needs. The void-from-the-start argument applies where the court had no jurisdiction to begin with.

Judge Cahill's Order is not void.

V. The Anti-Appeal Provisions Are Vacated

Appellants prevail on part of the Order.

Three provisions condition the receipt or the retention of a fee on surrendering the right to appeal. The first two govern the Fund. The Order declares that the Board's award "shall be FINAL AND CANNOT BE APPEALED," and that "[a]ny appeal shall void the award." The third governs the above-cap route. Upon the filing of an appeal, the Order directs BrownGreer to withhold

all of the appealing attorney's future fee payments until a non-appealable judgment is entered.

HRS § 641-1(a) confers the right to appeal in civil matters. Article I, Section 5 of the Hawai'i Constitution secures the right of access to the courts, including the right to seek review.

Government may not condition a benefit on the surrender of a protected right. Frost v. R.R. Comm'n of State of Cal., 271 U.S. 583, 593-94 (1926). The principle extends to penalties that burden the choice to seek review or to stand on one's rights. United States v. Jackson, 390 U.S. 570, 581-83 (1968); North Carolina v. Pearce, 395 U.S. 711, 724 (1969).

The concern is familiar to our court. Hawai'i law does not let trades of appellate review for a benefit defeat this court's review of important public questions. In State v. Hewitt, the State offered to dismiss criminal charges if the defendant would abandon her pending cert petition. We retained jurisdiction and decided the merits under the public interest exception to mootness. 153 Hawai'i 33, 41, 526 P.3d 558, 566 (2023). Allowing the arrangement to preclude review, we explained, would "place the defense of the integrity of judicial decisions in the hands of litigants" Id. at 42, 526 P.3d at 567.

The problem here takes two forms. The Fund provisions eliminate appeal. The freeze punishes anyone who files one.

All three provisions go too far. A fee forfeited the instant its recipient files an appeal is a penalty for exercising the right. The payment freeze works the same coercion, just slower. It withholds all the lawyer's future fee payments, undisputed amounts included, until the appeal is abandoned or exhausted.

The circuit court's authority to design the Fund and set the schedule is broad. It stops at conditioning payment on waiving appeal.

The rest of the Order holds. Those who defend the Order may worry that vacating these three provisions unravels the whole. Our disposition touches three provisions only, and their removal changes nothing else.

The Fund exists by the court's equitable authority. The schedule sets the tiers by the court's discretion. The Board reviews applications by the court's appointment. None of these depends on the anti-appeal provisions.

The anti-appeal provisions sealed the fee decisions from review. Strike them, and the Fund, the schedule, the Board, and the above-cap route all remain. The circuit court shall direct release of any fee payments withheld under the vacated provisions and not already released. No undisputed payment may be withheld on the ground that an appeal was filed.

Our holding is narrower than it may first appear. It does not grant unlimited review. The supervising circuit court reviews Board awards. This is the only forum for review of Board awards.

The Board is a court-appointed aide. Its awards are administrative determinations. Circuit court review satisfies due process. A dissatisfied party has a forum to be heard and a ruling to receive. Supervision continues until the Fund is fully distributed to attorneys and victims.

The above-cap route operates differently. An attorney seeking more than the scheduled cap must move in the special proceeding, present evidence, and obtain an order and judgment. Under HRS § 641-1(a), that judgment is appealable in the ordinary course.

Above-cap fees come out of the client's own recovery. An increase for the attorney reduces the client's award. The client is entitled to notice of the request and an opportunity to be heard. The client may also appeal. The Order adjudicates a property interest the client owns. HRS § 641-1(a) gives the client the ordinary right to appellate review.

Interlocutory review is a different matter. It's available only for orders that satisfy the collateral order doctrine. Greer, 137 Hawai'i at 252, 369 P.3d at 835. The structural

challenges before us satisfy that standard, as Part III.A explains.

Path one, the scheduled contingency fee, needs no new review architecture. It is automatic and capped. Paths two and three each get review.

Board awards under path two are administrative determinations, reviewable by the supervising circuit court. Above-cap orders under path three are adjudications by the supervising court. The Order labels the outputs accordingly: awards on path two, judgments on path three.

Path two is voluntary. Attorneys apply for the Fund or they don't. Those who apply seek a discretionary share of a court-created equitable fund. Their work benefitted every claimant the settlement paid.

Zuffante sets the standard. Due process calls for "such procedural protections as the particular situation demands." State v. Zuffante, 157 Hawai'i 194, 207, 576 P.3d 243, 256 (2025) (cleaned up). Circuit court review of the Board's awards to these attorneys satisfies that standard.

What this situation demands is bounded by the Fund's nature. An open special proceeding. Billions in settlement funds. Voluntary administrative Fund awards. The Board applies the Order's criteria and the circuit court reviews. The lawyer receives the process the voluntary application requires.

Path three is a judgment. HRS § 641-1(a) provides the ordinary appellate route from path three judgments.

Removing the anti-appeal provisions answers Appellants' related complaint that the Board operates in the dark, without findings or reasons. That objection carried weight because the Board's decisions were both opaque and unreviewable.

An award open to review faces scrutiny. The reviewing court may require whatever explanation meaningful review demands. We do not decide today what the Board must disclose. Circuit court oversight will resolve that as it develops.

The three-path structure fits a settlement of this size. Each path carries the review it needs.

VI. The Remaining Challenges

What remains is the abuse of discretion challenge. Plus a cluster of constitutional theories.

We start with the discretion argument. Then take up and reject the three constitutional theories Appellants advance: takings, due process, and privileges and immunities. The rest we do not decide. The grounds already stated dispose of them.

A. Abuse of Discretion

Appellants say that even if the court had the power, it abused its discretion. The court acted without notice or briefing. It fixed the Fund and a schedule without findings. And it shielded its awards from review.

We addressed the anti-appeal provisions. The other arguments do not warrant reversal.

Designing a fund and setting a tiered schedule is a core part of managing an aggregate settlement. The court had context. It had the State's motion, the parties' position statements, and years-long immersion in the litigation that produced the recovery.

Appellants have more. The relief, they say, was a decree no one sought. No party moved for the tiered caps, the 1% One 'Ohana Fund rate, the \$222 million Fund, or the Board. And when affected counsel asked the court to set a briefing schedule before it ruled, the court denied the request two days before the Order issued.

Appellants' claim goes to notice. Notice measured by a motion's caption is one thing. Notice of the question the court will decide is another. Fair distinction.

On both measures, the notice was adequate. Especially the second. The State's motion put the court's authority over attorney fees in this settlement squarely in play and asked the court to establish procedures to determine them. The HRS § 662-12 and the common fund questions were before the court at the March 6 and March 27, 2026 hearings. Every lawyer in the coordinated cases was on notice that the court was deciding how

fees in this settlement would be set. The tiers and the Fund exercise the very authority the motion invoked.

The process continues past the Order. A lawyer requesting an above-cap fee moves in the special proceeding, presents evidence, and obtains a judgment. The client, whose recovery pays the increase, is entitled to notice of the motion and an opportunity to be heard.

For a Fund award, the applicant applies to the Board. With the anti-appeal provisions vacated, the award is open to review by the circuit court. The Order sets the framework. The case-specific process comes when each fee is awarded.

That leaves the denied briefing request. What counsel asked to brief was the legal question the court had heard argued and had authority to decide. A court that has taken argument on its authority may rule on it. The remedy for a ruling counsel believes to be wrong is the appeal Appellants have now taken.

Next, the demand for individualized findings. The schedule sets fees by tier and percentage. Appellants say Hawai'i Rules of Professional Conduct (HRPC) Rule 1.5(a) requires case-by-case findings.

It doesn't. HRPC Rule 1.5(a) is a rule of professional conduct. The rule forbids a lawyer to charge an unreasonable fee and lists the factors for judging one. It binds the lawyer. And asks nothing of a court. The court's own authority over

reasonableness has a different footing. Trial courts hold inherent and statutory powers over the practice of law and may exercise them on their own initiative. Alexander & Baldwin, LLC v. Armitage, 151 Hawai'i 37, 49, 508 P.3d 832, 844 (2022).

The reviewability concern Appellants advance comes from a different source. Montalvo vacated fee awards because their basis went unstated and the court could not test them for fairness. 64 Haw. at 357-58, 641 P.2d at 1330. That concern remains, and the Order meets it. What does not transfer is Montalvo's lodestar bookkeeping, for the reasons already given: the method is discretionary, and a percentage of the fund is a permitted measure that needs no lodestar at all.

A common fund award is measured as a percentage of the fund, set by the value of the work that produced it. Chun, 106 Hawai'i at 436, 106 P.3d at 359. A common fund percentage does not require individualized findings. That requirement belongs to fee-shifting cases and single-client fee disputes.

The Order gives reasons. It supports why the tiers fall where they do: earlier retention and further progress meant more risk and more contribution. It sets the criteria the Board must weigh. Each applicant's role in achieving the global settlement, in resolving the subrogation and lien issues, and in allocating between individual and class claimants. And it keeps the total in check, capping individual fees well below the

common fund benchmark this court has recognized, so that the combined take stays reasonable.

Last, Appellants attack the schedule's date line as arbitrary. A client who retained counsel on or after August 19, 2024, is capped at three percent. That date tracks no settlement event, Appellants say. Settlement came later, signed November 1, 2024, approved June 3, 2025, and funded in 2026. What actually happened on August 19, 2024, was the court's order asserting jurisdiction over subrogation liens ahead of a global settlement.

The fee cap line has a reason. The court set the mechanism for resolving subrogation liens on that date. And the parties entered a term sheet contemplating a global resolution on August 2, 2024. Before that point a lawyer signed a client into open-ended litigation against a defendant whose ability to pay was in doubt. After it, the path to a global settlement was in view. A lawyer who took a case before the framework carried the full weight of that uncertainty. A lawyer who took one after carried less.

The schedule's line falls about two weeks past the term sheet. A court managing an aggregate settlement may fix an administrable date instead of weighing the risk of each engagement one by one. A reasonable court could draw the line there.

The circuit court did not abuse its discretion.

B. Takings

Appellants frame the Fund as a taking. Valid contracts are property, they say, and the \$222 million carve-out takes each client's contracted fee and gives it to lawyers the client never retained, for a private use, without compensation or process. U.S. Const. amend. V; Haw. Const. Art. I, § 20. They rely on Lynch v. United States, 292 U.S. 571 (1934). There the Court held that contracts are property the government may not appropriate.

Begin with what the Order does and does not take. It does not seize a fixed contract fee and hand it away. It sets the terms on which a shared recovery pays for the shared work that produced it. The contracted fee was never a sum immune from the court's supervision. It was a percentage of a recovery the court approved and administers, agreed to "consistent with . . . applicable law."

A common benefit assessment is part of that applicable law in litigation like this. A claimant's own lawyer is paid under the schedule. The Fund pays for the common work that benefited every claimant, that one included. Nothing is confiscated. The cost of the common work is spread across those the common work served.

That is the common fund doctrine, and it is the opposite of an uncompensated taking. See Boeing, 444 U.S. at 478; Montalvo, 64 Haw. at 352, 641 P.2d at 1327.

"For private use" fails on the Order's own terms. The Fund does not enrich strangers at the victims' expense. It pays the lawyers whose work secured the recovery every claimant shares. And what the Board does not award returns to the claimants. "Any remainder shall be distributed to all claimants in proportion to their net recovery." A device that channels its surplus back to the victims is not a seizure of their property for someone else.

Process, too, was present. The assessment came on the State's motion, with the parties' position statements, and after the court's long supervision of the settlement. The Attorney General reviewed the awards and found them "fair and reasonable." Facing a similar objection, the Alaska Supreme Court held that reserving settlement funds for a common fund fee award does not offend due process. Doan v. Banner Health, 485 P.3d 537, 543 (Alaska 2021). Process was provided.

The takings claim is the common fund objection in constitutional clothes.

C. Due Process

The due process objection runs in three strands. The Board decides silently, without findings or reasons. The court

imposed the Fund and the schedule without adequate notice. And the awards were sealed from review.

Review comes first, because it is already answered. The awards are no longer unreviewable. We have vacated the provisions that made them so. That resolves the review-shielding concern.

Notice and an opportunity to be heard were available. The court ruled on the State's motion, with position statements from Liaison Counsel, after years supervising the litigation that produced the recovery.

For the above-cap route, no fee is paid until the attorney files a motion in the special proceeding, the court sets the matter for hearing, counsel presents evidence, and "the Court . . . enter[s] an order and judgment." This is judicial process.

That leaves findings. The Board issues none. We do not wave that away. But individualized findings belong to a different kind of fee.

A common fund award is set as a percentage of the fund against the value of the work that produced it. Chun, 106 Hawai'i at 436, 106 P.3d at 359. A percentage of a shared fund is a different creature. The law has long allowed it without individualized accounting. See Blum v. Stenson, 465 U.S. 886, 900 n.16 (1984).

The Order fixes the criteria the Board must apply and the questions it must answer. With review restored, a reviewing court may require the disclosure that genuine oversight needs. The Order, as modified, supplies it.

Due process demands a fair process. What the losing party prefers is beside the point. On this Order, as modified, the process is adequate. The last word is the court's.

D. Privileges and Immunities

The Order limits eligibility for the Fund to attorneys licensed in Hawai'i. The Board may consider the work of associated pro hac vice counsel, though it does not award that counsel directly.

Appellants contend that this violates the Privileges and Immunities Clause of Article IV, § 2 of the United States Constitution by discriminating against nonresident attorneys. The clause protects the right of nonresidents "to ply their trade, practice their occupation, or pursue a common calling." Hicklin v. Orbeck, 437 U.S. 518, 524 (1978). The Supreme Court has applied it to strike residency barriers to the practice of law. Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985); Supreme Court of Virginia v. Friedman, 487 U.S. 59 (1988). A State that closes a fundamental right to nonresidents must show a substantial reason for the difference and a close

fit between the reason and the rule. Piper, 470 U.S. at 284; Friedman, 487 U.S. at 65.

The Hawai'i-attorney provision does not offend privileges and immunities.

Attorneys without a Hawai'i license are not shut out of the Fund. They may apply for a Fund award through local counsel. The Order credits their work. Compensation flows through their local counsel of record.

The Order calls for a filing. A Hawai'i-licensed attorney submits the application. That's the entire burden on the attorney without a Hawai'i license.

The clause is not implicated. The Order draws no residency line. It requires a voluntary filing. That is not "sufficiently basic to the livelihood of the Nation as to fall within the purview of the Privileges and Immunities Clause." Friedman, 487 U.S. at 64 (cleaned up).

The pro hac vice cases do not change the result. Piper and Frazier v. Heebe, 482 U.S. 641 (1987), treat pro hac vice as an inadequate substitute for full bar membership. The Order does not touch admission or the right to practice.

Even were the clause implicated, the filing condition would satisfy Piper's substantial-reason test. Hawai'i counsel are subject to this Court's supervision. The Order's condition governs who files. It fits within the broader principle that

states retain authority to regulate the practice of law within their borders. Leis v. Flynt, 439 U.S. 438, 442 (1979).

Under Rule 1.9 of the Rules of the Supreme Court of the State of Hawai'i (RSCH), attorneys not licensed to practice in Hawai'i must appear through local counsel. Local counsel of record must sign and file every pleading, motion, and brief. RSCH Rule 1.9(d). The Board application is one such filing. The clause is satisfied.

E. The Remaining Constitutional Theories

The constitutional theories that remain do not require separate resolution. Strip away the labels. They are just the authority and discretion challenges we have already answered.

The schedule is called a denial of equal protection because it allows a larger percentage from clients who retained counsel before August 19, 2024 than from those who retained later. The distinction draws no suspect classification and burdens no fundamental right. So it stands if any rational basis supports it. F.C.C. v. Beach Commc'ns, Inc., 508 U.S. 307, 313 (1993).

There is a rational basis. The date tracks the term sheet that opened the path to a global settlement and the court's order setting the mechanism for resolving the subrogation liens. Firms that took cases early and drove them toward trial carried more risk and did more to build the settlement.

Since two claimants with the same loss may pay different rates based on the date they signed, Appellants recast the cut-off as discrimination among the claimants themselves. Viewed that way, or as a line among lawyers, the classification draws the same rational-basis review. The same reason answers it: the date marks when the settlement path was in view. See supra Part VI.A.

The separation of powers claim is the jurisdictional attack renamed. Designing and supervising a common fund, appointing an aide to help review applications, and entering the judgments that pay fees are traditional judicial tasks. The claim fails for the reasons given in Part IV.

Appellants have a further separation of powers argument. This one is about our authority. Our authority they say, extends to the practice of law and the reasonableness of fees under HRPC Rule 1.5. See HRS § 605-1 (Supp. 2019). The Order, they maintain, is a local rule of professional conduct for one proceeding. Only this court may set such rules.

Appellants have the scope right. The Order does not amend Rule 1.5, discipline a lawyer, or announce fee standards for the Hawai'i bar. It sets fees from the settlement and the Fund in this case. See Alexander & Baldwin, 151 Hawai'i at 49, 508 P.3d at 844 (trial courts have inherent and statutory powers over the practice of law and may exercise them in a case before them).

Trial courts do that all the time, under fee-shifting statutes, in probate, in class actions, in common fund cases. No one supposes each such award intrudes on this court's authority over the bar. Setting a fee in a pending matter is judicial power. This court alone regulates who practices and how.

The delegation claim comes out the same way. Board awards are subject to the supervising court's review. There the review ends. The judicial power remains with the court.

The retroactivity and professional-conduct theories restate already rejected grounds. Strip those away, and the constitutional labels add nothing.

VII.

The Order Re: Attorney Fees, as amended, is affirmed as modified.

The circuit court had authority to enter the Order. The three anti-appeal provisions are vacated: the finality declaration, the void-on-appeal clause, and the above-cap payment freeze. The remaining challenges do not merit relief. The petition for writs of mandamus and prohibition, SCPW-26-0000480, is dismissed as moot by separate order.

The case is remanded to the Circuit Court of the Second Circuit for further proceedings consistent with this opinion. The Board's awards are subject to review in that court. Above-

cap orders, together with the judgments entered on them, are
subject to the ordinary appeal HRS § 641-1 provides.

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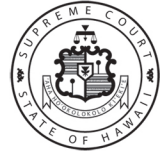
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