



Oral Argument Before the Hawaii Supreme Court–SCCQ-22-0000658

No. SCCQ-22-0000658, Thursday, July 6, 2023, 2 p.m.

ST. PAUL FIRE AND MARINE INSURANCE COMPANY; THE TRAVELERS INDEMNITY COMPANY OF AMERICA; THE PHOENIX INSURANCE COMPANY; and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Plaintiffs-Appellants, vs. BODELL CONSTRUCTION COMPANY; SUNSTONE REALTY PARTNERS X, LLC; and STEADFAST INSURANCE COMPANY, Defendants-Appellees.

The above-captioned case has been set for argument on the merits at:

Supreme Court Courtroom
Ali'iōlani Hale, 2nd Floor
417 South King Street
Honolulu, HI 96813

The oral argument will also be livestreamed for public viewing via 'Ōlelo Community Television and the Judiciary's YouTube channel at [YouTube.com/hawaiicourts](https://www.youtube.com/hawaiicourts).

Attorneys for Appellants St. Paul Fire & Marine Insurance Company, The Travelers Indemnity Company of America, the Phoenix Insurance Company, and Travelers Property Casualty Company of America:

Phillip A. Li, Matt A. Tsukazaki, and Tyler A. Tsukazaki of Li & Tsukazaki

Attorneys for Appellee Bodell Construction Company:

Tred R. Eyerly, Casey T. Miyashiro, and Jonathan N. Marchuk of Damon Key Leong Kupchak Hastert

Attorneys for Appellee Sunstone Realty Partners X, LLC:

Cid H. Inouye, Kelvin H. Kaneshiro, and Katherine B. Hughes of O'Connor Playdon Guben & Inouye LLP

NOTE: Order accepting Certified Questions, filed 11/10/22.

NOTE: Order assigning Circuit Judge John M. Tonaki and Circuit Judge Lisa W. Cataldo due to vacancies, filed 05/02/23.

COURT: Recktenwald, C.J., McKenna, and Eddins, JJ., Circuit Judge Tonaki and Circuit Judge Cataldo, assigned by reason of vacancies

[[Listen to the entire audio recording in mp3 format \(http://oaoa.hawaii.gov/jud/oa/23/SCOA_070623_SCCQ_22_0000658.mp3\)](http://oaoa.hawaii.gov/jud/oa/23/SCOA_070623_SCCQ_22_0000658.mp3)]

Brief Description:

In this United States District Court for the District of Hawai'i case, the Plaintiffs-Insurers seek equitable reimbursement from Defendants for fees and costs after defending them. The insurance companies sent a reservation of rights letter to Defendants that reserved the right to seek reimbursement of defense related payments. These policies have no express provision for reimbursement. The Plaintiffs defended all claims, including those not covered by the policies.

The District Court certified two questions to the Hawai'i Supreme Court:

Under Hawai'i law, may an insurer seek equitable reimbursement from an insured for defense fees and costs when the applicable insurance policy contains no express provision for such reimbursement, but the insurer agrees to defend the insured subject to a reservation of rights, including reimbursement of defense fees and costs?

If an insurer may seek equitable reimbursement of defense fees and costs under Hawai'i law, (A) for what specific fees and costs may the insurer obtain reimbursement, (B) which party carries the burden of proof, and (C) what is the burden of proof?

The Court accepted these questions under Hawai'i Rules of Appellate Procedure Rule 13.