



350 WARD AVENUE, #106-8
HONOLULU, HAWAII 96814

April 6, 2024

Honorable Judge James H. Ashford
Deputy Chief / Administrative Judge
First Circuit Court
State of Hawaii
Ka'ahumanu Hale
777 Punchbowl Street, 4th Floor
Honolulu, Hawaii 96813-5093

Hand Delivery

Re: **Marjorie J. Walsh and Craig W. Walsh -v- MMI Realty Services Inc.**
Civil Number 1CCV-24-0000003

Dear Judge Ashford:

We, Marjorie J. Walsh (hereafter **Marjorie**) and Craig W. Walsh (hereafter **Craig**), the Plaintiffs *Pro Se* in the above captioned matter, hereby:

- OBJECT pursuant to Rule 9 (D) of the Rules Governing the Court Annexed Arbitration Program (hereafter CAAP) to the Denial dated March 27, 2024 of our March 18, 2024 Objection to an Arbitrator,
- Alternatively, and preferably, REQUEST TO REMOVE this matter from the CAAP pursuant to governing Rule 8 (C).

The correspondence in this matter to date is attached for your convenience.

Objection to Denial of our March 18, 2024 Objection

As stated in our March 18, 2024 letter, we do not know Jonathan L. Ortiz, Esq. and do not wish to impugn him in any way. From the little information we have been able to gather from public sources, he appears to represent defendants on behalf of insurance companies (including our own insurer, State Farm) 93% of the time. This varies considerably from the 70% estimate we understand he provided to the CAAP office.

Mr. Otiz appears to have a similar practice to the attorney defending this case on behalf of First Insurance, Randall Y. Kaya, Esq. As best we have been able to ascertain, both spend essentially all their time defending insured clients against claims, including claims such as ours, and no time representing injured parties.

We reiterate the quotation from *Commonwealth Coatings v. Continental Cas.*, 393 U.S. 145 (1968) in our March 18, 2024 letter and would add from the same case:

“This rule of arbitration and this canon of judicial ethics [33d Canon of Judicial Ethics] rest on the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased, but also ***must avoid even the appearance of bias***. We cannot believe that it was the purpose of Congress to authorize litigants to submit their cases and controversies to arbitration boards that might reasonably be thought biased against one litigant and favorable to another. [Emphasis added]”

Looking closer to home, in *Kay v. Kaiser Foundation Health Plan*, 119 Haw. 219, 194 P.3d 1181 (Haw. Ct. App. 2008):

“Arbitrators wield great power over the scope and nature of the arbitration proceedings and all determinations of fact and law, with virtually no appellate review of their decisions. ***The fundamental ‘fairness’ of these expansive powers must be grounded in the assurance that neutral arbitrators are indeed neutral*** and that the arbitrators will disclose any facts that might reasonably cause a party to question the arbitrator’s neutrality. The only protection that arbitration parties have against ***prejudices, biases, or the appearance thereof***, is the requirement that an arbitrator must disclose his or her past or existing relationship with the parties, their counsel (or representatives), witnesses, or another arbitrator. [Emphasis added]

“Adequate disclosures are crucial to the appearance of fairness and the integrity of the arbitration system, particularly in the context of cases like this one. The judiciary should play a minimal role in reviewing impartiality. However, the *sine qua non* for minimal review must be the arbitrator’s fidelity to the disclosure obligation.”

Based upon the limited information available to us, we do not have the “assurance” that Mr. Ortiz will be a “neutral arbitrator,” and do not wish to have him “wield great power” in this matter. We ask that the March 27, 2024 Denial be reversed, and that a new attorney – one who handles a more balanced client mix or is not involved in personal injury litigation – be assigned as a potential arbitrator.

Removal of this Matter from CAAP

CAAP Rule 8 (C) says in part, “Subsequent to the filing of the complaint, any party who believes a case should be removed from, admitted or readmitted to the Program, shall file a request to remove, admit or readmit, with the Arbitration Judge.”

On the understanding that “no statements or testimony made in the course of the arbitration hearing shall be admissible in evidence for any purpose in the trial *de novo*” CAAP Rule 23 (C) we

make the following comments in the hope they clarify our reasons for the matter to be removed from CAAP:

This claim involves **Marjorie**'s trip and fall in the parking lot at Kahala Mall on August 16, 2023 in which she fractured the distal neck of her left femur, the largest bone in the body. This resulted in a visit to the Straub emergency room, two days of hospitalization, and an otherwise unnecessary total hip replacement. Her orthopaedic surgeon, Dr. Cass Nakasone, wrote in **Marjorie**'s chart that "her hip surgery was a consequence of a hip fracture and not hip arthritis, her hip pains may be more intense and more prolong [sic] than someone who has been dealing with years of arthritis."

On December 6, 2023 we delivered **Marjorie**'s sworn statement, numerous photographs, her medical record (from January 1, 2023 to the date of the statement), and Straub Clinic & Hospital bills to Ms. Lisa Kinoshita, a Senior Claims Adjuster at First Insurance Company (Mr. Kaya's employer). **Marjorie**'s medical bills now exceed \$60,000 (prior to Medicare adjustments).

Non-economic damages are more subjective. If we use a multiplier (which we understand usually ranges between 2- and 5-times economic damages) then $2 \times \$60,000 = \$120,000$. Economic damages (\$60,000) and estimated non-economic damages (\$120,000) equal \$180,000 – which is more than the \$150,000 figure for CAAP Rule 6 (A).

In addition to likely damages (assuming we prevail) exceeding the \$150,000 CAAP limit, 73 days have now passed since the Defendant filed its Answer to the Complaint. If this case had not been assigned to CAAP, the Scheduling Conference pursuant to Rule 16 (b)(4) of the Hawaii Rules of Civil Procedure and Rule 12 (a)(4) of the Rules of the Circuit Courts of the State of Hawaii would have been held on or before March 24, 2024. We would know, by now, the court date, be able to commence discovery, and have considered and hopefully resolved the other subjects in HRCP Rule 16 (c).

We are particularly eager to depose Mr. Gifford H. John, the uniformed security guard who was on scene after **Marjorie** was injured. Based upon Mr. John's very short incident report, furnished to us by the Defendant in response to our First Interrogatories, he appears to have failed to obtain the names and contact details of any of the four people who stopped to comfort **Marjorie** and to get her in our car. HI Rev Stat § 463-10.5 (2023) requires all security guards to take eight hours of classroom instruction before they can be registered. The curriculum, as specified in the statute, must include "techniques of observation and reporting of incidents, including how to prepare an incident report." The Department of Commerce and Consumer Affairs expands this on their website to "How to write detailed reports (who, what, why, when, where, and how)."¹

Memories fade, so it is always better to conduct depositions sooner rather than later.

¹ <https://cca.hawaii.gov/pvl/files/2017/02/SecurityGuardTrainingCurricula-11-9-17.pdf>

We have also conducted extensive research at the City & County of Honolulu Department of Planning and Permitting attempting to locate the relevant building permit for the installation of the storm drain where **Marjorie** tripped. The one permit that has been identified, BP #237311 dated October 20, 1986, shows the construction of the raised concrete crosswalk in which the drain is installed, but without the drain. Our research is ongoing, but difficult without the ability to issue a *subpoena duces tecum*.

We have had three proposed arbitrators to date. We believe we have demonstrated a willingness to enter, and embrace, arbitration. At this point, however, we wish to remove this case from CAAP and return it to the Court. We understand under CAAP Rule 15(A) that “All arbitrations shall take place and all awards filed no later than nine (9) months from the date of service of the complaint to all defendants [...]” We have already lost 73 of the 274 days between January 24, 2024 to October 24, 2024 (27%) – whereas the purpose of CAAP is “to provide a simplified procedure for obtaining a *prompt* and equitable resolution of certain civil matters [...]”[Emphasis added]. CAAP Rule 2 (A)

Mahalo, Your Honor, for your consideration of these requests.

Yours sincerely



Marjorie J. Walsh
Plaintiff *Pro Se*



Craig W. Walsh
Plaintiff *Pro Se*

Copy:	CAAP Administration Offices	(By Hand)
	Randall Y. Kaya, Esq.	(via e-mail)