



Damon Key Secures Landmark Hawaii Supreme Court Insurance Law Victory

New decision is a significant win for insurance consumers

When we're ill, the last thing we need is for our health insurer to add to our troubles. If we're in a situation where we need to rely on our insurance, we may not be in the best frame of mind to make critical decisions in very short time frames. We rightly rely on our insurance company to provide timely and accurate information, especially about our coverage. Because of the importance of insurance to our security and peace of mind, and because the insurer/insured relationship is one of unequal bargaining power, the law requires insurance companies to treat us with the utmost care and in good faith.

A recent landmark decision by the Hawaii Supreme Court—in which Insurance Law attorney Tred Eyerly successfully led Damon Key's appellate team—confirmed that important principle. In *Adams v. HMSA*, the unanimous Hawaii Supreme Court held that all insurance companies owe their insureds the highest duty of fair treatment at all times, and not only during the formal claims process. This decision is a major victory for insurance consumers, and goes a long way towards making the process more balanced.

Brent Adams was diagnosed with a rare and aggressive cancer. His doctors told him that it was important to treat it immediately, and that his best chance was a series of stem cell transplants. Brent and his wife Patricia turned to their insurance provider HMSA, informing it that this two-part treatment was his best chance for survival. HMSA told them to travel to a California hospital that specializes in this procedure. They asked if HMSA needed any more information about the treatment plan, but did not receive any further requests or instructions from HMSA. Brent's doctor submitted to HMSA a precertification request for a stem cell transplant, which noted that Brent's siblings would be tested to determine if they could serve as donors for the second phase transplant. Brent underwent the first transplant.

Brent's doctor then contacted HMSA regarding participation in a clinical trial for the additional stem cell transplant in preparation for the recommended second phase. Over the next few months, Brent, Patricia, and their doctor communicated numerous times with HMSA about their desire to undertake the second phase transplant, including telling HMSA that one of Brent's siblings turned out to be a donor match. Patricia told HMSA that they were "desperately trying to avoid any delays."

But when Brent's doctor submitted a precertification request for this second transplant, they were shocked when HMSA informed him that Brent's plan policy didn't cover this type of procedure. Brent went ahead with repeating the first transplant in lieu of the recommended second transplant. The Adams appealed the HMSA's denial. The Insurance Division and the circuit court overruled HMSA, finding that the second transplant was covered. At this point, HMSA relented and paid for the second transplant, but continued its appeals. The ICA reversed, finding the second transplant was not covered under the HMSA plan, but it took over a year to get through the administrative and judicial process. Brent died during the lengthy appeal process.

Before he died, Brent and Patricia sued HMSA, alleging that by not telling him that the needed treatments were not covered by his plan—a fact that was HMSA's position all along—it treated him in bad faith. Had HMSA timely informed them that Brent's plan did not cover the second transplant, he would have undertaken a different treatment, entered a clinical trial or raised money for the second transplant. By the time HMSA did tell him, it was too late for an effective second transplant recommended by his doctors.

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But the trial court concluded that HMSA's only duty was to process his claim after the precertification request was submitted, and that it didn't matter what HMSA did before that. When Patricia appealed, the Intermediate Court of Appeals affirmed. The appeals court reasoned that Patricia's claim was for bad faith claims handling, and that "the duties of good faith and fair dealing implied in every insurance contract arise after the insured complies with the claims procedure described in the insurance policy."

That's when she turned to Tred Eyerly, the Chair of Damon Key's Insurance Law Practice Group. Tred is not only one of the leading lawyers in Hawaii on insurance law, he has a national reputation in the field, built on years of practice and experience. Tred brought in Damon Key's appellate team—Joanna Zeigler and Robert Thomas—for their experience in the Hawaii Supreme Court, and together they petitioned the court to review the case. It didn't seem right that an insurance company's duty to treat its insureds in the utmost good faith only applies *after* an insured person submits a claim. Insurers are supposed to provide full information about coverage all the time, not just after a claim has been made, and Brent might have had a better chance of survival if HMSA had simply told him at the outset that his preferred course of treatment was not covered by his plan. The firm's appellate team prepared and filed a petition for certiorari.

The Supreme Court granted the petition, and in January 2019, heard the case. Tred argued that the trial court should have allowed Patricia to present evidence of HMSA's conduct and its failure to provide complete information to Brent and her, especially information about coverage of the second transplant.

On September 30, 2019, the court issued a unanimous opinion completely agreeing with that argument. The court held, "[t]o determine whether an insurer reasonably handled a claim, we consider the conduct of the parties to the contract *before and after* the formal submission of the claim." The court of appeals erred when it "analyzed HMSA's conduct without considering its conduct throughout the duration of its relationship with Brent, starting with the first communication." The Supreme Court sent the case back for the lower courts to consider Patricia's evidence about HMSA's pre-claim conduct.

This decision vindicating Patricia's claim sets a national precedent that benefits all consumers of insurance. It is the first case to expressly confirm that insurance providers have a duty to treat their insureds in good faith by providing them information about their coverage and treatment at all times, not just after a claim has been filed.

If you have any questions on this article, please contact Tred R. Eyerly, Chair of Damon Key's Insurance Law Practice Group at (808) 531-8031 or email at te@hawaiilawyer.com.