CARLSMITH BALL LLP

IAN L. SANDISON 5597
JOHN P. MANAUT 3989
LINDSAY N. MCANEELEY 8810
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, HI 96813
Tel No. 808.523.2500
Fax No. 808.523.0842
isandison@carlsmith.com
JPM@carlsmith.com
lmcaneeley@carlsmith.com

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hāmakua, Hawai'i, TMK (3) 4-4-015:009	Case No. BLNR-CC-16-002 APPLICANT UNIVERSITY OF HAWAI'I AT HILO'S **OPPOSITION TO FLORES-CASE 'OHANA'S MOTION TO RECONSIDER MINUTE ORDER NO. 44 AND SPOLIATION OF EVIDENCE, FILED APRIL 27, 2017 [DOC. 577]**; DECLARATION OF COUNSEL; EXHIBITS "A"-"G"; CERTIFICATE OF SERVICE

APPLICANT UNIVERSITY OF HAWAI'I AT HILO'S OPPOSITION TO FLORES-CASE 'OHANA'S MOTION TO RECONSIDER MINUTE ORDER NO. 44 AND SPOLIATION OF EVIDENCE, FILED APRIL 27, 2017 [DOC. 577]

Applicant UNIVERSITY OF HAWAI'I AT HILO ("**University**"), through counsel, submits this Opposition to the *Flores-Case 'Ohana's Motion for Reconsideration of Minute Order No. 44 and Spoliation of Evidence, filed April 27, 2017 [Doc. 577]* ("**Motion**").[1] The

[1] The University also submits this Opposition to respond to Clarence Kukauakahi Ching's *Joinder of 1) Temple of Lono Motion for Reconsideration of Minute Order 44 and Memorandum*

University respectfully requests that, pursuant to the authority delegated to the Hearing Officer under Hawai'i Revised Statutes ("**HRS**") § 91-10 and Hawai'i Administrative Rules ("**HAR**") §§ 13-1-32, 34, and 35, the Hearing Officer deny the Motion.

I. INTRODUCTION

In its Motion, the Flores-Case 'Ohana argues that the Hearing Officer's decision not to receive certain of the Flores-Case 'Ohana's exhibits is a violation of due process. The exhibits at issue, however, were submitted ***after*** the close of the evidentiary hearing. Though the Flores-Case 'Ohana cites HRS § 91-10(3) to support admitting their exhibits as purported rebuttal evidence, nothing in the language of that statute allows the Flores-Case 'Ohana to continue to present entirely ***new*** exhibits, not previously used or seen, ***after*** the close of the evidentiary hearing. Moreover, the Hearing Officer set forth a clear mechanism to seek leave to present rebuttal evidence—a mechanism that the Flores-Case 'Ohana knowingly failed to avail itself of with respect to the evidence at issue here. Having deprived the parties of the opportunity to cross-examine any witness on those exhibits, the Hearing Officer's exclusion of those exhibits was proper and does not give rise to a due process violation. Whether those exhibits are relevant, material and not duplicative is simply not pertinent in light of their untimely submission.

The Motion also lodges numerous allegations of wrongdoing against the Department of

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in Support, 2) Flores-Case 'Ohana's Motion to Reconsider Minute Order No. 44 and Notice of Spoliation of Evidence, and Memorandum in Support Dated April 26, 2017, and 3) Mauna Kea Anaina Hou et al. Joinder to the Temple of Lono Motion for Reconsideration of Minute Order 44 and Objections Dated April 27, 2017, Certificate of Service, filed April 28, 2017 [Doc. 587] ("**Ching Joinder**"), to the extent that the Ching Joinder addresses arguments made in the Motion. The University separately responds to the Ching Joinder to the Temple of Lono's *Motion for Reconsideration of Minute Order 44* and *Mauna Kea Anaina Hou et al. Joinder to the Temple of Lono Motion for Reconsideration of Minute Order 44 and Objections Dated April 27, 2017.*

Land and Natural Resources ("**DLNR**") Office of Conservation and Coastal Lands ("**OCCL**"), specifically that OCCL's alleged mismanagement of certain filings somehow constitutes spoliation of evidence. Based on those claims, the Flores-Case 'Ohana requests "a full disclosure and listing of exhibits… that were switched after the initial documents were filed in the Evidentiary Hearings Submittals," and that the deadline for the submission of the proposed findings of fact, conclusions of law, and decision and order ("**FOF/COL**") be reassessed. Motion at 7. The Ching Joinder additionally argues that replacing Exhibit R-7 with a signed copy is spoliation of evidence and that the Hearing Officer failed to hold a public hearing on the requests to intervene. Notably, both the Motion and Ching Joinder fail to provide any legal authority or credible evidence to support their allegations of spoliation and requested relief. Given the numerous exhibits and supplemental disclosures filed by the Flores-Case 'Ohana and the other "B" Petitioners, the most obvious explanation for any alleged discrepancy between OCCL's website and the actual filings is clerical error. OCCL provided electronic access to the exhibits and filings as a convenience to the parties. For the Flores-Case 'Ohana and Mr. Ching to distort OCCL's efforts to accommodate the parties to manufacture a spoliation argument to justify its demand for further delay is unwarranted and improper.

Furthermore, Mr. Ching's complaint about a lack of public hearing to admit intervenors is entirely unfounded given the Hearing Officer held—and Mr. Ching's then-counsel attended—an appropriate hearing for the motions to intervene.

For all of these reasons, the Flores-Case 'Ohana's Motion and the Ching Joinder should be denied.

II. ARGUMENT

A. THE DEADLINE SET TO FILE ALL EVIDENCE DID NOT VIOLATE THE FLORES-CASE 'OHANA'S DUE PROCESS RIGHTS

In its Motion, the Flores-Case 'Ohana argues that in requiring all evidence to be introduced by the close of the evidentiary hearing on March 2, 2017, its due process rights were violated because "the Hearing Officer did NOT specify that all exhibits had to be submitted before the last hearing date." Motion at 2-3. In fact, the record is clear that the Hearing Officer said exactly that:

> ***And, again, I'll close the documentary portion. So no more documents, no more testimony***. And that's it, so ***no more testimony after tomorrow***. And I know I'm repeating myself, but I want to really make sure it's understood and heard. ***No more testimony after tomorrow. No more documents after March 9th***. So ***you may have to submit some of the added exhibits that were identified in the course of the examination of [the] witness***. I get that that has to be uploaded, and you want to move that in. And so that is why I'm giving you the extra time to do that, gather everything and put it all in one document.

Ex. A, Tr. 03/01/17 at 255:4-15 (emphases added). In other words, the Hearing Officer made clear that no new exhibits or testimony could be introduced after March 2, 2017, and that the March 9, 2017 deadline was simply to allow the parties to submit copies of exhibits to DLNR "that were identified in the course of the examination of [the] witness."

In this case, the Hearing Officer denied Exhibits B.14, B.26, B.27, B. 81a - B.81e, B.82a, B.82b, B.83, B.84, B.85a - B.85e, and B.86a - B.86d as untimely because they were introduced, ***for the first time***, ***after*** the close of the evidentiary hearing on March 2, 2017. Contrary to the Flores-Case 'Ohana's assertions, those exhibits were not denied simply because Flores-Case 'Ohana filed its motion to admit those exhibits after March 2, 2017. Rather, those exhibits were denied because they were introduced and provided to the parties ***for the first time*** after the close

of the evidentiary hearings on March 2, 2017. Given the clear notice that all parties had regarding the close of the evidentiary portion of the hearing and the time to file exhibits, the Flores-Case 'Ohana's due process rights were not violated. To the contrary, admitting those exhibits into evidence after the evidentiary hearing was closed, with no opportunity to cross-examine any witnesses on those exhibits would violate the University's and all the other parties' due process rights.

B. THE UNIVERSITY'S OBJECTIONS TO THE FLORES-CASE 'OHANA'S EXHIBITS ARE NOT FRIVOLOUS

After reviewing the exhibits filed by the parties and in reliance on the representation of the exhibits on the Documents Library and Evidentiary Hearing Submittals webpages (collectively, the "**Documents Library**"), the University raised objections to those exhibits that it felt fell into the categories set forth in its *Opposition to Motions to Admit Exhibits and Written Direct Testimony*, filed March 16, 2017 [Doc. 533]. The Flores-Case 'Ohana now asserts that the University's objections were frivolous and "go beyond the exclusion of immaterial, irrelevant, or unduly repetitious evidence," without providing any explanation of how the University's objections might be frivolous. Motion at 3.

Notwithstanding the above, the Flores-Case 'Ohana appears to argue that the denial of Exhibits B.30, B.31, B.32, B.33, B.34, B.35, B.36, B.37a/B.37, B.37b/B.38, B.38/B.39, B.39/B.40, B.40/B.41, B.41/B.42, and B.42/B.43[2] was improper because they are "alternate copies" of several of the University's exhibits. Motion at 9-10. It is unclear how additional copies of already submitted exhibits are not duplicative. However, to the extent Flores-Case

[2] Although the Hearing Officer appears to have denied admission of Exhibits B.37a, B.37b, B.38, B.39, B.40, B.41, and B.42 on page 26 of Minute Order No. 44, the Hearing Officer received into evidence Exhibits B.37, B.38, B.39, B.40, B.41, B.42, and B.43 which the Flores-Case 'Ohana admits are the same exhibits but have been renumbered.

'Ohana is representing that those exhibits are different versions of exhibits *already in the record*, but not duplicative, the University does not object to the admission of those exhibits into evidence.

With respect to Exhibit B.14, the University maintains that it was properly excluded. As discussed above, Exhibit B.14 was introduced and filed for the first time after the close of the evidentiary hearings. Additionally, in its Joinder [Doc. 532], the Flores-Case 'Ohana agreed with the University that written direct testimony for witnesses who did not appear for cross-examination should be excluded. Doc. 532 at 3. Exhibit B.14 is a transcript of testimony by Pualani Kanahele. Characterizing the document as rebuttal evidence does not change the fact that Exhibit B.14 is clearly the testimony of Ms. Kanahele. It is indisputable that Ms. Kanahele was not presented as a witness during the evidentiary proceedings, and the Flores-Case 'Ohana does not allege that Exhibit B.14 was introduced through the testimony of any other witness. Accordingly, Exhibit B.14 was properly excluded.

With respect to Exhibits B.27, B.81a-B.81e, B.82a, and B.82b, the Flores-Case 'Ohana asserts that these exhibits were referenced throughout Mr. Flores's written direct testimony. Motion at 11-12. However, a review of his written direct testimony shows that those exhibit numbers are not referenced anywhere therein. Those exhibits were never even identified until after the close of the evidentiary hearing, and more than five months *after* Mr. Flores's written direct testimony was filed. Even assuming Mr. Flores's written direct testimony contains tangential references to the contents of those exhibits, it was incumbent on Mr. Flores to identify by exhibit number, either in his written direct testimony or during his examination, those documents intended to be used as evidence; a mere passing ambiguous reference is not sufficient to alert parties as to what materials are being introduced as exhibits for which review and cross-

examination would be appropriate. Moreover, the Flores-Case 'Ohana's Motion ignores the fact that a copy of Exhibit B.27 was never provided to the parties or OCCL. Therefore, Exhibits B.27, B.81a - B.81e, B.82a, and B.82b were properly excluded.

The Motion also asserts that Exhibits B.83 through B.86d were improperly denied because "rebuttal evidence is allowed per § 91-10(3)." Motion at 12-13. HRS § 91-10(3) does not give parties an unfettered right to submit evidence whenever it wants, regardless of its relevance, materiality or duplicative nature. Rather, the parties' ability to introduce evidence is limited by HAR §§ 13-1-32(c) and 13-1-35, which give the Hearing Officer broad discretion to conduct the contested case proceedings, including setting deadlines and procedures for the submission of evidence.

Moreover, at the hearing on January 31, 2017, the Hearing Officer notified the parties that anyone wishing to present rebuttal witnesses must seek leave to do so by filing a motion by February 13, 2017. *See* Ex. B, Tr. 01/31/17 at 252-53. The Flores-Case 'Ohana did not seek leave to present rebuttal witnesses or evidence. By failing to avail themselves of this clearly laid out process, the Flores-Case 'Ohana thus forfeited its opportunity to seek to present rebuttal evidence in this proceeding. Thus, the Flores-Case 'Ohana's belated attempt to submit purported rebuttal evidence, not only after the deadline for such motions, but after the evidentiary hearing has closed, is clearly untimely.

Accordingly, Exhibits B.27, B.81a - B.81e, B.82a, B.82b, and B.83 through B.86d were properly excluded.

C. OCCL'S MANAGEMENT OF THE FILINGS DID NOT RESULT IN PREJUDICE TO THE FLORES-CASE 'OHANA

The Flores-Case 'Ohana next argues that confusion of the exhibits, in particular renumbering of its Exhibits B.37a, B.37b, B.38, B.39, B.40, B.41, B.42, and B.43 to Exhibits

B.37, B.38, B.39, B.40, B.41, B.42, and B.43, and replacement of Exhibits B.30 through B.36 with copies of R-1 through R-7, was exacerbated by OCCL's management of the filings through the Documents Library, somehow prejudicing the Flores-Case 'Ohana. Motion at 4-6.

The Documents Library in this proceeding was created for the convenience of the parties. It is not required by the Board of Land and Natural Resources' ("**Board**") rules or any statute. As the sponsor of the exhibits, the Flores-Case 'Ohana maintains the responsibility to properly identify the exhibits it wants to move into evidence. Indeed, in its *Motion to Admit First Supplemental Exhibits Into Evidence*, filed March 8, 2017 [Doc. 500] ("**First Supplemental Motion**"), the Flores-Case 'Ohana admitted it was aware of the inconsistencies in the exhibit numbering. First Supplemental Motion at 3. The Flores-Case 'Ohana had ample time to raise and correct this issue. However, instead of identifying the numbering issue that the Flores-Case 'Ohana claims is so serious and prejudicial, the Flores-Case 'Ohana simply "move[d] to admit into the record [Exhibits B.37 through B.43] based upon the assigned numbers in the Evidentiary Hearing Submittals[.]" *Id.* at 3. In other words, the Flores-Case 'Ohana not only remained silent despite knowledge of the numbering errors, but actively worked to perpetuate them. As such, the Flores-Case 'Ohana's claim of prejudice is disingenuous at best. More importantly, the Flores-Case 'Ohana has suffered no actual harm as a result of its alleged confusion because Exhibits B.37 through B.43 were nonetheless admitted into evidence. Motion at 5; Minute Order No. 44 at 28. Therefore, the Flores-Case 'Ohana's claim of prejudice is without merit.

D. THE FLORES-CASE 'OHANA'S ASSERTION OF SPOLIATION OF EVIDENCE IS UNFOUNDED

The Flores-Case 'Ohana and Mr. Ching attempt to characterize corrections to the record and clerical errors related to documents R-7 and R-8 as spoliation of evidence by alleging that certain actions by OCCL compromised the integrity of certain exhibits. *See* Motion at 5-6;

Ching Joinder at 1-2. This argument fails on a number of levels.

First, to the extent the Flores-Case 'Ohana and Mr. Ching are asserting a *claim* for spoliation of evidence, such a claim is a civil tort which cannot be adjudicated by the Hearing Officer in a contested case proceeding. Moreover, the Hawai'i Supreme Court has never recognized the tort of spoliation of evidence. *See Matsuura v. E.I. du Pont de Nemours & Co.*, 102 Hawai'i 149, 168, 73 P.3d 687, 706 (2003); *Jou v. Adalian*, Civ. No. 15-00155, 2016 WL 4582042 at * 19 (D. Haw. Sept. 1, 2016).

Second, spoliation of evidence generally requires proof of impairment to the aggrieved party's ability to prove its claim. *See Matsuura*, 102 Hawai'i at 166-67, 73 P.3d at 704-05 (citations omitted); *see also Jou* 2016 WL 4582042, at *19. Furthermore, a claim of intentional spoliation of evidence requires affirmative evidence of the intentional destruction of evidence. Here, there is no evidence—nor have the Flores-Case 'Ohana nor Mr. Ching alleged any—that the claimed switching Exhibits R-7 and R-8 (draft copies) with final signed copies by OCCL was done either (a) intentionally for the purpose of disrupting or defeating proceedings in this matter, or (b) has caused significant impairment in the ability to prove the Flores-Case 'Ohana's or Mr. Ching's claims. Rather, it appears that the OCCL made an inadvertent error in transferring two voluminous documents that are nearly identical except for the signature pages. The most logical explanation is that once OCCL recognized its error in uploading a draft copy of these documents, as pointed out by the Flores-Case 'Ohana and others during the course of the proceedings, OCCL made the good faith effort to correct the signature pages. Regardless, there is no dispute that OCCL did, in fact, sign and approve the document that was filed as R-7. Ex. C, Tr. 02/27/17 at 220:6-15; 221:24-222:22; 223:2-14. Therefore, the alleged switching complained of by the Flores-Case 'Ohana and Mr. Ching cannot impair any party's ability to prove its claims. Indeed,

the Flores-Case 'Ohana and Mr. Ching do not provide an iota of evidence that the alleged spoliation prevents either party from prevailing on their respective claims.[3] Clerical errors, without more, are insufficient to support a claim for spoliation of evidence.

E. The 5-day Reconsideration Period is Reasonable

The Flores-Case 'Ohana next argues that the five-day deadline to file a motion for reconsideration is unreasonable. This argument is moot because the Flores-Case 'Ohana has already filed its motion for reconsideration within the deadline. As discussed above, the Hearing Officer has broad discretion to conduct the contested case proceedings, including setting deadlines and procedures for the submission of evidence. HAR §§ 13-1-32(c) &13-1-34(a). HAR § 13-1-39(b) expressly provides for a five-day reconsideration period. The Hearing Officer clearly acted within her authority by imposing a deadline that is specifically provided for in the rules. Furthermore, the five-day reconsideration period is the same reconsideration period that has been in place for the entirety of these proceedings. For these reasons, this argument lacks merit.

F. EXHIBITS R-1 THROUGH R-8 ARE PART OF THE OFFICIAL RECORD

The Flores-Case 'Ohana also states that it is unclear whether or not the Hearing Officer admitted documents R-1 through R-8. As discussed at the hearing on October 25, 2016, the Hearing Officer did not have to separately admit R-1 through R-8; the University and the

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[3] *See* Ex. D, *Ito v. ADM Inv'r Servs., Inc.*, No. CAAP-11-0000391, 2015 WL 1360939, at *11 (Haw. Ct. App. Mar. 25, 2015), as corrected (May 18, 2015) (affirming the lower court's ruling denying discovery sanctions for alleged spoliation because Defendant/Third–Party Plaintiff–Appellant ADMIS failed to show the alleged spoliation was relevant to or affected the court's analysis and that even though ADMIS did not have original copies of the State's files, ADMIS nonetheless had copies of all relevant documents) (cited pursuant to Hawai'i Rules of Appellate Procedure Rule 35(c)); *see also See Stender v. Vincent*, 92 Hawai'i 355, 363, 992 P.2d 50, 58 (2000) (stating that in determining whether to impose a discovery sanction, a relevant factor for the court to consider is "whether the opposing party suffered any resulting prejudice as a result of the offending party's destroying or withholding the discoverable evidence").

original Petitioners—which includes the Flores-Case 'Ohana—already agreed that those documents are part of the record. *See* Ex. E, Tr. 10/25/16 at 106-10; Ex. E, Tr. 10/20/16 at 234.

G. AN APPROPRIATE HEARING WAS HELD ON THE MOTIONS TO INTERVENE

Mr. Ching's assertion that the public hearing required for standing of the intervenors in this proceeding did not take place is completely devoid of merit. The Board's rules do not require that a ***public*** hearing be held to determine who may be a party to a contested case—just that a hearing must be held. *See* HAR § 13-1-31(f); § 13-1-2.[4] In accordance with HAR § 13-1-31(f), a hearing on the motions to intervene was held on June 17, 2016, a hearing at which Mr. Ching himself was present and participated in through his then-counsel. *See* Ex. F, Tr. 06/17/16 at 4.

H. THE FLORES-CASE 'OHANA'S REQUESTED RELIEF IS NOT WARRANTED

Based on the arguments in its Motion, the Flores-Case 'Ohana contends that deadlines for submission of the parties' proposed FOF/COL cannot be set until rulings relating to the admissibility of evidence are final. Motion at 7. The University notes that the Flores-Case 'Ohana cites no authority to support this argument.

To the extent the Flores-Case 'Ohana is attempting to make an argument similar to the Temple of Lono's argument based on HAR § 13-1-38(a), that argument also fails. As discussed in the University's *Opposition to the Temple of Lono's Motion for Reconsideration of Minute Order No. 43 [Doc. 559]*, the Hearing Officer has broad authority under the Board's rules to

[4] A "public hearing" means "a hearing required by law in which members of the public generally may comment upon the subject matter of the hearing." HAR § 13-1-2 *compare with* HAR § 13-1-28(b) (Contested Case Hearings) (providing that "[t]he contested case hearing shall be held ***after any public hearing*** which by law is required to be held on the same subject matter") (emphasis added).

regulate the course and conduct of the hearing, including the setting of deadlines. *See* HAR § 13-1-32(c). HAR § 13-1-38(a) provides that the deadline for the parties to submit proposed FOF/COL is ten days after the transcript is made available, "unless the presiding officer shall otherwise prescribe." Based on the plain reading of the rules, the presiding officer has broad discretion to set submission deadlines. Therefore, the Flores-Case 'Ohana's argument not only lacks legal support, it contradicts the rule; and, therefore, fails as a matter of law.

The Flores-Case 'Ohana also asks for a full disclosure and list of exhibits that were switched after the initial R-1 through R-8 documents were filed in the Documents Library, as well as leave to re-file its exhibits. Motion at 7. Again, the Motion lacks any legal basis or authority for demanding such relief. The present Motion questions the accuracy of only nine exhibits out of approximately 616 exhibits received into evidence. In other words, the accuracy of the overwhelming majority of exhibits remains uncontested. Accordingly, a full disclosure of exhibits that were updated by OCCL, as well of resubmission of the Flores-Case 'Ohana exhibits, is unnecessary.

III. CONCLUSION

In the interest of judicial economy and upon the Flores-Case 'Ohana's representations that B.28, B.30 - B.36, and B.70[5] are not duplicative of what has already been admitted, the University does not object to the admission of those exhibits. However, for the foregoing reasons, the University respectfully submits that the Flores-Case 'Ohana's Motion should otherwise be denied.

[5] As discussed in fn. 3, *supra*, although Exhibits B.37a, B.37b, B.38, B.39, B.40, B.41, and B.42 appear to have been renumbered as Exhibits B.37, B.38, B.39, B.40, B.41, B.42, the Hearing Officer has already admitted those exhibits so re-admitting them at this stage is unnecessary.

DATED: Honolulu, Hawai'i, May 4, 2017.

IAN L. SANDISON
JOHN P. MANAUT
LINDSAY N. MCANEELEY

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hāmakua, Hawai'i, TMK (3) 4-4-015:009	Case No. BLNR-CC-16-002 DECLARATION OF COUNSEL; EXHIBITS "A"-"G"

DECLARATION OF COUNSEL

I, IAN L. SANDISON, declare:

1. I am an attorney with Carlsmith Ball LLP, counsel for Applicant University of Hawai'i at Hilo ("**University**") in the above-captioned matter.

2. I am authorized and competent to testify to the matters set forth herein, and unless otherwise indicated, I make this declaration based upon personal knowledge.

3. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the transcript prepared by Carol E.M. Sugiyama of the evidentiary hearing held on March 1, 2017 in the above-captioned matter, presided over by Judge Riki May Amano (Ret.).

4. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the transcript prepared by Hedy Coleman of the evidentiary hearing held on January 31, 2017 in the above-captioned matter, presided over by Judge Riki May Amano (Ret.).

5. Attached hereto as **Exhibit C** is a true and correct copy of excerpts from the transcript prepared by Laura Savo of the evidentiary hearing held on February 27, 2017 in the above-captioned matter, presided over by Judge Riki May Amano (Ret.).

6. Attached hereto as **Exhibit D** is a true and correct copy of *Ito v. ADM Inv'r Servs., Inc.*, No. CAAP-11-0000391, 2015 WL 1360939 at *1 (Haw. Ct. App. Mar. 25, 2015), as corrected (May 18, 2015) (cited pursuant to Hawai'i Rules of Appellate Procedure Rule 35(c)).

7. Attached hereto as **Exhibit E** is a true and correct copy of excerpts from the transcript prepared by Jean Marie McManus of the evidentiary hearing held on October 25, 2016 in the above-captioned matter, presided over by Judge Riki May Amano (Ret.).

8. Attached hereto as **Exhibit F** is a true and correct copy of excerpts from the transcript prepared by Jean Marie McManus of the evidentiary hearing held on October 20, 2016 in the above-captioned matter, presided over by Judge Riki May Amano (Ret.).

9. Attached hereto as **Exhibit G** is a true and correct copy of excerpts from the transcript prepared by Jean Marie McManus of the hearing on the motions to intervene held on June 17, 2016 in the above-captioned matter, presided over by Judge Riki May Amano (Ret.).

10. The highlighting included in these excerpts were added by our law firm for ease of reference.

This declaration is made upon personal knowledge. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, May 4, 2017.

IAN L. SANDISON

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF	)CASE NO. BLNR-CC-16-002
Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 For the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hamakua, Hawaii TMK (3)4-4-015:009	) VOLUME 43

TRANSCRIPT OF CONTESTED CASE HEARING

Taken at the Grand Naniloa Hotel, Crown Room, 93 Banyan Drive, Hilo, Hawaii, 96720 commencing at 9:00 a.m., on Wednesday, March 1, 2017.

REPORTED BY: CAROL E.M. SUGIYAMA, RPR, CSR NO. 295

EXHIBIT A

APPEARANCES:

JUDGE RIKI MAY AMANO, ESQ. Hearings Officer

JULIE CHINA, ESQ. Deputy Attorney General

STAFF: ALEX ROY

IAN SANDISON, ESQ.
JOHN PETE MANAUT, ESQ.
TIMOTHY LUI KWAN, ESQ.
Attorneys for the University of Hawaii

DOUGLAS ING, ESQ.
JEFFREY ONO, ESQ.
Attorneys for TMT International Observatory, LLC

LINCOLN S.T. ASHIDA, ESQ.
KEAHI WARFIELD
Attorney and representative for PUEO

DEXTER KAIAMA, ESQ.
Attorney for Kahea

LANNY SINKIN
For Temple of Lono

E. KALANI FLORES
For Flores-Case Ohana

13:04:02 Pro Se

KEALOHA PISCIOTTA for Mauna Kea Anaina Hou and Paul Neves

DEBORAH WARD

CLARENCE KUKAUAKAHI CHING

13:04:02 HARRY FERGERSTROM

MEHANA KIHOI

DWIGHT VICENTE

CINDY FREITAS

WILLIAM FREITAS

13:04:02 WILMA HOLI

KALIKOLEHUA KANAELE

JOSEPH CAMARA

I N D E X

Kahea's Exhibit B-3, those should be separate so that I can see them separately.

You can put them in one document if you wish, but I need to have them identified separately. You have to put your reasons. I don't want to read your documents and have to guess. If I'm going to guess, I'm going to receive it in, I'm just letting you know.

Then a week later, March 23rd, you will have my minute order regarding admitting exhibits, and so I'll lay out all of the exhibits that I intend to -- that I will receive into evidence, that is evidence.

Also, I will then close the documentary portion of the hearing.

So tomorrow, I'm going to close the testimonial portion. No more testimony, so don't go submitting any more written direct or supplemental direct. If you want to make a correction, that is one thing. But it gets really like I should have said "and" instead of "but." Something like that, I get that, grammatical. But beyond that, if substantive, don't do it.

Your testimony is your testimony and your written documents are in. We relied on them throughout the hearing. And so I will in that minute order lay out all of the exhibits that I'll be receiving in evidence.

When you write your decision and order and proposed decision and order and findings of fact, that is what you have to rely on, those exhibits.

And, again, I'll close the documentary portion. So no more documents, no more testimony. And that's it, so no more testimony after tomorrow. And I know I'm repeating myself, but I want to really make sure it's understood and heard. No more testimony after tomorrow. No more documents after March 9th.

So you may have to submit some of the added exhibits that were identified in the course of the examination of witness. I get that that has to be uploaded, and you want to move that in. And so that is why I'm giving you the extra time to do that, gather everything and put it all in one document.

I'll try to find out tonight the estimated time for the completion of the transcripts. Pursuant to rule, the deadline for submission of the proposed decision and order including the findings of fact and conclusion of law is 10 days. All along, I've been saying to you all, well, two weeks sound more reasonable to me.

But I told you I would reconsider at the end. I know we have gone real long, and in case anybody is interested, today was the 43rd day of our hearing. And

Mr. Kanaele is Witness No. 68. And so, it's a lot.

So, therefore, my intention is to give you 30 days after the transcripts are completed.

Now, obviously, you are going to be doing a lot of work before that. And then once the transcripts are completed, I'll have to issue a minute order laying out the next deadline. And the next deadline will be 30 days from that to submit your proposed decision and order, findings of fact, and conclusions of law.

I don't have a clue right now when that is going to be because it's triggered by the transcript. And I don't know when that is going to be completed. Thereafter, after your 30 days, the proposals are in and you will have two weeks from there to send your objections, replies, joinders and whatever.

And then after that, I'll be issuing my own decision and order, proposed decision and order and recommendations to the Board. You might take a look at the Hawaii Administrative Rules that lay out the next process, which by then is out of my hands.

So, I can't give you any specific dates except ones that I just gave you for the exhibits. Really important, March 9th, documentary exhibits. You have a week to object. A week after that, you will get a minute order saying to you, these are the exhibits, this

C E R T I F I C A T E

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, CAROL E.M. SUGIYAMA, C.S.R., do hereby certify:

That on March 1, 2017, at 9:00 a.m., the proceedings contained herein was taken down by me in the machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

DATED: March 29, 2017

S/S Carol E.M. Sugiyama

CAROL E.M. SUGIYAMA, C.S.R. #295
Certified Shorthand Reporter

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 For The Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hamakua, Hawai'i TMK (3) 4-4-015:009.

CASE NO. BLNR-CC-002

VOLUME 33

CONTESTED CASE HEARING

Held on Tuesday, January 31, 2017,

at the Grand Naniloa Hotel, Crown Room;

93 Banyan Drive; Hilo, Hawaii 96720,

commencing at 9:03 a.m, before

Hon. Riki May Amano (Ret)., Hearings Officer.

Reported by: HEDY COLEMAN, CSR NO. 116
Registered Merit Reporter

EXHIBIT B

APPEARANCES:

Hearings Officer:

JUDGE RIKI MAY AMANO (RET.)
Dispute Prevention & Resolution
Pauahi Tower, Suite 1155
1003 Bishop Street
Honolulu, Hawaii 96813

Staff: ALEX ROY, Planner

For Hearing Officer Amano: WILLIAM WYNHOFF, DEPUTY
Attorney General

For University of Hawaii:

JOHN "PETE" MANAUT, ESQ.
IAN SANDISON, ESQ.
Carlsmith Ball
American Savings Bank Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawaii 96813
Email: jpm@carlsmith.com
isandison@carlsmith.com

For TMT International Observatory, LLC:

ROSS T. SHINYAMA, ESQ.
Watanabe Ing, LLP
First Hawaiian Center, Suite 1250
999 Bishop Street
Honolulu, Hawaii 96813
Email: Rshinyama@wik.com

For Perpetuating Unique Educational Opportunities:

NEWTON CHU, ESQ.
RICHARD KWOCK, PH.D.

For KAHEA: YUKLIN ALULI, ESQ.

For Temple of Lono: LANNY SINKIN

For Flores-Case Ohana:

PUA CASE
E. KALANI FLORES
HAWANE RIOS

For Mauna Kea Anaina Hou:

KEALOHA PISCIOTTA
KEOMAILANI VON GOGH

PRO SE:

DEBORAH WARD

CLARENCE K. CHING

HARRY FERGERSTROM, JR.

MEHANA KIHOI

DWIGHT J. VICENTE

CINDY FREITAS

WILLIAM FREITAS

LOUIE CHUNG

KALIKOLEHUA KANAELE

I N D E X

I N D E X (Continued)

you, don't focus on that person's flaws. Instead, gaze at Aloha through the eyes in your heart, and those irritants will watch over you without harming you or hurting others.

"Judging other people is a sinful snare that draws you away from Aloha. How much better it is to be joyful in Aloha, your Savior. The more you focus on Aloha, the more Aloha can strengthen you. In fact, Aloha is your strength.

"You can train your mind to stare away from Aloha even when other things are demanding your attention. Aloha created you with an amazing brain that is able to be conscious of several things at once. Create a permanent place for Aloha in your mind and Aloha's light will shine on all your moments."

Am I Christian? Of course, I am. Am I a Kanaka Wai? Can't help it. Am I Ali'i? It's my responsibility.

Thank you very much, Hearing Officer. I'm pau.

HEARINGS OFFICER AMANO: Mr. Neves, thank you very much. You're released.

(Applause.)

HEARINGS OFFICER AMANO: I apologize for having kept everyone this long. I wanted to have a chance to finish at least this witness so he wouldn't

have to come back, and I felt we were close. But, there are a couple of housekeeping matters I need to bring up. It won't take very long.

I did indicate that I would be setting up a schedule for rebuttal witnesses. So, the motion for rebuttal witnesses -- so if you intend or wish to call a rebuttal witness, you need to make a motion, file it by the 13th of February, couple weeks. Any replies, responses, joinders, one week later, by the 20th. Same way, submit by email, upload it, I'll take a look.

On the 21st, that's the first day we'll be coming back after the holiday. I'll say it again in a different way.

But, on the 21st, in the morning, we'll take up the request -- or perhaps in the afternoon, we'll take up the motions for rebuttal witnesses. For rebuttal witnesses, I'm looking to see what your reasons are, why you would not have put that witness on in your case in chief. It has to be through rebuttal. I've been saying that quite a bit. So make sure you put in your motions your reasons so that when I read it, I understand it. Okay.

So that's the schedule for rebuttal. Motions are due on the 13th of February. Replies, joinders,

responses, whatever you call it, need to be done by the 20th -- 20th of February. And the next day on the 21st, we will take it up, perhaps at the end of the day or the morning, depends on where we are.

And I'll make decisions at that time. And if there are rebuttal witnesses that will be allowed, we have to then set them for scheduling as well. So that's the reason I want to wait that long to take this up.

I am going to grant -- and I'll do it in writing, but I will let everybody know. I'm granting Mr. Camara's request to present witnesses. I thought his reasons were -- goes to the level of good cause.

And so from my reading, he didn't say in his motion, but my reading of his submitted witness list, he has only two people, and that's himself and Mililani Trask. I'm not sure if he's going to call Miss Trask, so what I will do when I respond in the order is probably give him the 27th. But, I'll have to take a look at the way the schedule is looking down the road. Okay.

Miss Pisciotta?

MS. PISCIOTTA: I think...(Inaudible.)

HEARINGS OFFICER AMANO: I actually have information on that. I do know all he said to me was anytime after the 15th of February would be fine with

C E R T I F I C A T E

I, HEDY COLEMAN, CSR No. 116, in and for the State of Hawaii, do hereby certify:

That I was acting as shorthand reporter in the foregoing matter on the 31st day of January 2017;

That the proceedings were taken down in machine shorthand by me and were thereafter reduced to print by me; that the foregoing pages one through 267 represents, to the best of my ability, a correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption.

DATED:_____

_____

HEDY COLEMAN, CSR #116

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 For The Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hamakua, Hawai'i TMK (3)4-4-015:009	CASE NO. BLNR-CC-002 VOLUME 41

CONTESTED CASE HEARING

Held on Monday, February 27, 2017, commencing at 9:04 a.m., at the Grand Naniloa Hotel, Crown Room, 93 Banyan Drive, Hilo, Hawaii 96720.

BEFORE: Laura Savo, CSR #347

APPEARANCES:

JUDGE RIKI MAY AMANO, Hearings Officer

JULIE CHINA, Deputy Attorney General

STAFF: MICHAEL CAIN, Planner

TIM LUI-KWAN, ESQ.
IAN L. SANDISON, ESQ.
Attorneys for University of Hawai'i at Hilo

DOUGLAS ING, ESQ.
JEFF ONO, ESQ.
Attorneys for TMT International Observatory, LLC

LINCOLN S.T. ASHIDA, ESQ.
Attorney for PUEO

YUKLIN ALULI, ESQ.
Attorney for KAHEA

DONNA KALAMA, ESQ.
Attorney for DLNR

LANNY SINKIN
Temple of Lono

E. KALANI FLORES
Flores-Case 'Ohana

KEALOHA PISCIOTTA
Mauna Kea Anaina Hou

PRO SE:
DEBORAH WARD
CLARENCE CHING
HARRY FERGERSTROM
MEHANA KIHOI
DWIGHT J. VICENTE
CINDY FREITAS
WILLIAM K. FREITAS
KALIKOLEHUA KANAELE
JOSEPH CAMARA
TIFFNIE KAKALIA

ALSO PRESENT:
WILMA HOLI

I N D E X

You go through a number of drafts, and then at some point, we agree on a final draft and then that is submitted to the chair. 03:37:23 03:37:26 03:37:30

Q Okay. How is this agreement -- so when you say "we," are you referring to you and Mr. Cain coming to some type of agreement regarding the final? 03:37:32 03:37:36 03:37:39

A Yes. 03:37:42

Q And is there any particular sections that you recall that had to be redone or revised? 03:37:43 03:37:47

A This was seven years ago. So it's not easy to recall exactly what parts of the report that I had, you know, so-called significant concerns over, but, generally, I do -- I do get very much involved in the -- in the work of the planners and offer suggestions on changes. 03:37:52 03:37:57 03:38:01 03:38:07 03:38:11 03:38:16

Q Okay. Thank you. So it's fair to say that -- it's accurate to say that OCCL was responsible for compiling the staff report dated February 25th, 2011, for CDUA HA-3568? 03:38:18 03:38:23 03:38:29 03:38:34

A Yes, I would agree. 03:38:40

Q So was this staff report prepared for members of the Board of Land and Natural Resources? 03:38:45 03:38:48

A Yes. 03:38:51

Q And was it prepared for the February 25th, 2011, meeting? 03:38:52 03:38:54

A Yes. 03:38:56

Q So prior to submitting this staff report to BLNR, was it signed by you? 03:38:57 03:39:08

A Yes. My signature does appear on the staff report. 03:39:14 03:39:17

Q Okay. And so the document that you have before you is Exhibit R-7. Can you turn to page 66, please, which is that last page of that document? Is your signature on there? 03:39:19 03:39:21 03:39:28 03:39:36

A There's no signature. 03:39:37

Q And so your signature, it's not on the document. Then it's just considered -- it's still in draft form? 03:39:39 03:39:42 03:39:48

A I don't know why my signature is not on this document. 03:39:54 03:39:56

Q Okay. And so I'm going to just -- I'd like to present Exhibit B-70 to Mr. Lemmo. I'm actually just presenting him with the first page and the last page of Exhibit B seven zero -- seventy. 03:39:57 03:40:04 03:40:14 03:40:18

MS. ALULI: B seven zero? 03:40:23

MR. FLORES: Yes. 03:40:28

Q And so what I have before you is, once again, Exhibit B-70, and then on the bottom right-hand -- excuse me -- the bottom right -- bottom corner, there's -- it's typed "Item K-1." Does that 03:40:32 03:40:38 03:40:42 03:40:45

look familiar to you? 03:40:51

A Yeah, it looks familiar. 03:40:54

Q So the one I just handed to you? 03:41:01

A Yeah. 03:41:03

Q Okay. But on the Exhibit R-7, it doesn't have "Item K-1" on it; is that correct? 03:41:04 03:41:08

A It does not appear to have the item count. 03:41:11 03:41:14

Q So what does that reference "Item K-1" refer to? 03:41:14 03:41:18

A That's a numbering system that the DLNR uses to number staff reports. K is assigned to OCCL. And so K-1 would mean that that was our first item that we are presenting at that particular board meeting. K-2 would be -- that's a different board submit -- board report. 03:41:18 03:41:22 03:41:34 03:41:36 03:41:40 03:41:44

Q Thank you. And so this reference is that this document is going beyond the agenda of the board meeting of February 21st -- I mean, excuse me, February 25th, 2011; is that correct? 03:41:45 03:41:49 03:41:53 03:41:57

A Yeah. 03:42:05

Q Okay.

A That's what it says, yeah. 03:42:07

Q And then looking at the same exhibit I just handed to you, the last page 66 -- this is 03:42:10 03:42:12

Exhibit B-70 -- is there a -- is your signature on this particular document? 03:42:16 03:42:20

A Yes. 03:42:22

Q And then how come -- I mean, I know that the document states and has "Michael Cain, staff member of OCCL." So why did you sign on this document that was presented to BLNR instead of Michael Cain? 03:42:24 03:42:28 03:42:34 03:42:39 03:42:43

A To the best of my recollection, Michael submitted this -- we have to submit the report several weeks before the meeting so it can get vetted by the chair and then can get photocopied and then get "agendized" and the agenda's got to go out. So you need several weeks to accomplish that. Michael had a long vacation planned, something like a month-long vacation. And so I asked him to give me an unsigned report because the report could undergo changes or there could be changes requested, and if he wasn't there, we wouldn't be able to get him to re-sign the application if it had been modified or reformatted, and so I asked him if I could sign it for him and he said I could. 03:42:44 03:42:59 03:43:02 03:43:06 03:43:10 03:43:15 03:43:18 03:43:21 03:43:26 03:43:31 03:43:34 03:43:39 03:43:44 03:43:47

Q And so once you signed it, then it's forwarded to the chair of BLNR to be put on the agenda? Is that the process? 03:43:48 03:43:55 03:43:58

A That's correct. 03:43:58

Q And so the document that you also have, 03:43:59
is it also signed off by the chair at the time, 03:44:01
William Aila? 03:44:06

A Yes. 03:44:06

Q So it's fair to say that this -- from 03:44:07
Exhibit B-70, from the first page and the page 66 03:44:13
that was handed to you, that's the actual copy, at 03:44:17
least the front part and the back part? Is that 03:44:23
actually what was submitted to -- 03:44:25

A Yeah.

Q -- on the agenda for that particular 03:44:27
meeting date; is that correct? 03:44:30

A Sure. If I can imagine, you know, 66 -- 03:44:31
64 pages in between that -- 03:44:34

Q There's a lot of pages in there.

A -- that would be it. 03:44:36

Q So a follow-up to that, so the report is 03:44:38
dated February 25th, 2011, but that's not the date it 03:44:43
was actually finalized; is that correct? 03:44:46

A No. 03:44:51

Q And that's because that's the date when 03:44:51
it's being presented at the BLNR meeting; is that 03:44:54
correct? 03:44:57

A That's correct. 03:44:57

Q Thank you. And so are you aware that in addition to this particular report, and you have the copy identified in Exhibit R-7, that it also included several exhibits along with it? 03:44:58 03:45:07 03:45:10 03:45:18

A Yeah. 03:45:20

Q And those exhibits end the document library for the contested case that's been referenced as R-8. 03:45:28 03:45:34 03:45:38

So in the preparation of this particular staff report, who compiled the information for this staff report? 03:45:45 03:45:48 03:45:53

A Michael Cain. 03:45:54

Q And who -- who actually authored this staff report? 03:45:58 03:46:02

A Michael Cain. 03:46:02

Q Where was the information for this staff report obtained from? 03:46:06 03:46:09

A Lots of different sources. In this case, many sources. 03:46:10 03:46:19

Q And do you know which sources in specific? 03:46:21 03:46:26

A Yeah. I would, you know, start with the application itself. I would then suggest that information was garnered from the final environmental impact statement. I understand that information was 03:46:27 03:46:33 03:46:38 03:46:43

C E R T I F I C A T E

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

I, LAURA SAVO, a Certified Shorthand Reporter in and for the State of Hawaii, do hereby certify:

That the foregoing proceedings were taken down by me in machine shorthand at the time and place herein stated, and was thereafter reduced to typewriting under my supervision;

That the foregoing is a full, true and correct transcript of said proceedings;

I further certify that I am not of counsel or attorney for any of the parties to this case, nor in any way interested in the outcome hereof, and that I am not related to any of the parties hereto.

Dated this 17th day of March 2017 in Honolulu, Hawaii.

/S/ Laura Savo
LAURA SAVO, RPR, CSR NO. 347

2015 WL 1360939
Unpublished Disposition
Only the Westlaw citation is currently available.
Unpublished disposition. See
HI R RAP Rule 35 before citing.
Intermediate Court of Appeals of Hawai'i.

Gordon I. ITO, Insurance Commissioner of the State of Hawai'i, in his capacity as Liquidator of Investors Equity Life Insurance Company of Hawai'i, Ltd., on behalf of the company and its respective policyholders, claimants and creditors; and Investors Equity Life Insurance Company of Hawai'i, Ltd., Plaintiffs–Nominal Appellees,

v.

ADM INVESTOR SERVICES, INC., Kenneth K.S. Fong; Gary L. Vose; and Investors Service Equity Life Holding Company, Defendants–Nominal Appellees

and

ADM Investor Services, Inc., Defendant/Third–Party Plaintiff–Appellant,

v.

Gordon I. Ito, Insurance Commissioner of the State of Hawai'i, and the State of Hawai'i, Plaintiffs/Third–Party Defendants–Appellees.

No. CAAP–11–0000391.
|
March 25, 2015.
|
As Corrected May 18, 2015.

Appeal from the Circuit Court of the First Circuit (Civil No. 95–2513).

Attorneys and Law Firms

Paul A. Schraff (Dwyer Schraff Meyer Grant & Green) Michael R. Lieber (Ice Miller, L.L.P.), on the briefs, for Defendant/Third–Party Plaintiff–Appellant.

Clifford K. Higa Wendell H. Fuji Special Deputy Attorneys General (Kobayashi Sugita & Goda) and James F. Nagle Deborah Day Emerson Deputy Attorneys General and Kenneth S. Robbins John–Anderson L. Meyer Sergio Rufo (Robbins Meyer & Rufo Attorneys at Law A Law Corporation) for Plaintiffs/Third–Party Defendants–Appellees.

NAKAMURA, C.J., and FOLEY and LEONARD, JJ.

MEMORANDUM OPINION

***1** The State of Hawai'i (State), through the Insurance Commissioner and the Hawai'i Insurance Division (HID), is responsible for regulating insurance companies doing business in Hawai'i. *See* Hawaii Revised Statutes (HRS) Chapter 431. Investors Equity Life Insurance Company of Hawai'i, Ltd. (IEL) was an insurance company regulated by the State. IEL opened a trading account with ADM Investor Services, Inc. (ADMIS), a sophisticated securities brokerage firm. Prior to IEL's opening its trading account with ADMIS, Donald E. Goo (Goo), a State insurance examiner, allegedly gave faulty advice to IEL regarding the types of investments IEL was authorized to make under the Hawai'i Insurance Code. IEL's lawyer, at the request of a different brokerage firm (not ADMIS), sought confirmation from Hiram Tanaka (Tanaka), the Deputy Insurance Commissioner, that Goo had authority to opine on HID's behalf about permissible investments by IEL, and Tanaka allegedly responded that such confirmation was not necessary.

IEL engaged in speculative trading through its account with ADMIS. After IEL was declared insolvent and was in the process of liquidation, an arbitration panel ruled that ADMIS had acted unreasonably in permitting IEL to engage in speculative trading and found ADMIS liable for damages in the amount of $6,917,667 for net trading losses and fees and commissions incurred by IEL. ADMIS did not have any direct contact with and did not seek advice from the State regarding IEL's trading or permitted investments.

ADMIS filed a third-party complaint against the State and the Hawai'i Insurance Commissioner (collectively referred to as the "State"), asserting claims for negligence, negligent supervision, and indemnification, and seeking to recover damages from the State, including the entire amount of the arbitration award entered against ADMIS. This appeal presents the question of whether, as a matter of law, the State owed a duty of care to ADMIS. As explained below, we hold that under the facts presented by this case, the State did not owe a duty of care to ADMIS. We also hold that ADMIS was not entitled to indemnification from the State. We therefore affirm the decision of the Circuit Court of the First Circuit (Circuit

Court) [1] to dismiss ADMIS's claims against the State. [2] We further hold that the Circuit Court did not abuse its discretion in denying ADMIS's request for sanctions for spoliation of evidence. Accordingly, we affirm the Circuit Court's Final Judgment.

BACKGROUND

I.

IEL was a Hawai'i-based insurance company involved in the sale of life insurance policies and annuity contracts. In the early 1990s, IEL engaged in a pattern of highly speculative futures trading with various securities brokerages, including ADMIS. ADMIS was a Delaware Corporation headquartered in Illinois that bought and sold "financial and commodities futures contracts on behalf of its customers and provid[ed] execution and clearing services for its customers." It described itself as a leader in the commodity futures and financial futures industry.

***2** In late 1993, IEL executives twice wrote to Deputy Insurance Commissioner Tanaka seeking confirmation that investment activities IEL was undertaking were permitted under the Hawai'i Insurance Code. Tanaka referred IEL's requests to Senior Insurance Examiner Goo. Goo issued two letters to IEL confirming that the investment activities IEL asked about were permitted under the Insurance Code. At the request of another brokerage firm (not ADMIS), counsel for IEL called Tanaka and asked whether Goo had authority to opine on HID's behalf as to permitted investments under the Insurance Code. Tanaka allegedly responded that such confirmation was not necessary.

IEL's speculative futures trading resulted in large financial loses, leading to its insolvency and liquidation in 1994. The Commissioner was appointed as the liquidator of IEL (Liquidator). In 1995, the Liquidator filed a demand for an arbitration proceeding against ADMIS pursuant to an arbitration clause in IEL's customer agreement. The arbitration panel ordered ADMIS to pay the Liquidator $6,917,667 in damages for the net trading losses in IEL's account and for fees and commissions ADMIS earned for executing the trades. The arbitration panel also awarded interest on this amount. [3]

The arbitration panel determined that the handling of the account by ADMIS was not reasonable. As such, the arbitration panel imposed liability based on ADMIS's failure to act reasonably with respect to the known interests of IEL and its policyholders and annuitants. According to the arbitration panel, "evidence of speculation, known to ADMIS'[s] account officer, was immediate, repeated and overwhelming." As a result, "continuation of the account placed on ADMIS liability for the foreseeable consequences of its breach of an industry standard."

In support of its conclusion, the arbitration panel found that ADMIS was immediately aware of the following information:

* IEL, as a life insurance company, had financial obligations to a large population of policyholders and annuitants—equity holders who relied on IEL for prudent investment of premiums and who had no capacity to oversee IEL's investment activities.

* IEL's pretended hedge-trading account contained, on its transfer to ADMIS, an obvious imbedded unrealized loss of $17.79 million. ADMIS had a report of the A.M. Best rating service stating that as of year-end 1992 IEL had a net worth as low as $6 million. ADMIS also had a draft "Blue Book" for the year ended December 31, 1993, prepared by IEL, claiming an unaudited net worth of only $16 million. ADMIS thus had information at the very beginning of the relationship strongly indicating that IEL was already insolvent.

* If the pretended hedge account had been properly designated a speculative account, recognition of the $17+ million imbedded loss would have been compelled by accounting rules; liquidation of IEL should have been immediate and the further losses in bond futures trading handled by ADMIS would have been obviated.

***3** * IEL's trading behavior every day, from the opening of the account until the seizure of the company, was obviously desperate speculation for the purpose of attempting to bet the company's way out of past speculative losses. The trading pattern cannot be reconciled with any plausible hedge strategy.

* When IEL became insolvent, the risk of added loss from further speculative trading rested not with IEL's

> sole shareholder but with IEL's unknowing and helpless policyholders and annuitants.

The arbitration panel further found that the ADMIS executive responsible for the IEL account knowingly ignored the risk of loss to policyholders and annuitants; that "ADMIS'[s] actions were motivated by the desire to generate large and above-market fee revenue while permitting IEL's management to attempt to escape from its desperate situation of insolvency"; and that it was not reasonable for ADMIS to act in disregard of the rights of unknowing and helpless policyholders and annuitants. The arbitration panel noted that Goo's letter "was not an 'order of approval' such as would be necessary to authorize IEL to speculate in bond futures."

The Liquidator moved to confirm, and ADMIS moved to vacate, the arbitration award before the United States District Court for the District of Hawai'i. The federal District Court cited the above-mentioned findings in confirming the arbitration award. *Investors Equity Life Ins. Co. of Hawaii, Ltd. v. ADM Investor Services, Inc.*, No. CV 97–01382 DAE, 1997 WL 33100645, at *8–9 (D.Hawai'i Dec.15, 1997). In reaching its conclusion that the arbitration panel did not act in manifest disregard of the law in holding ADMIS liable for its professional negligence, the District Court stated that the arbitration panel had before it,

> substantial evidence which indicated that [ADMIS] did not prevent [IEL] from illegally using its account for speculation, not hedging. Based on the volume of the trades, the size of the trades, and frequency of the trades, [ADMIS] had sufficient information to indicate that [IEL] was improperly using its account for speculation. Under the Hawaii Insurance Code, [IEL] was prohibited from using its account for anything other than hedging. *See* H.R.S. § 431:6–103(a); H.R.S. § 431:6–321. Pursuant to Chicago Board of Trade Rule 431.02.07 and the Hedge Account Representation, [ADMIS] was required to ensure that [IEL] was only using its account for bona-fide hedging. However, despite the fact that "evidence of speculation, known to [ADMIS's] account officer, was immediate, repeated, and overwhelming," [ADMIS] did nothing to stop [IEL's] trading in the account. Instead, [ADMIS] permitted [IEL] to continue its speculative trading, while it continued to collect substantial commissions on the trades.

Id. at *9.

The District Court's decision was then upheld on appeal to the United States Court of Appeals for the Ninth Circuit. *Investors Equity Life Ins. Co. of Hawaii Ltd. v. ADM Investor Services, Inc.*, Nos. 98–15140, 98–15290, 99–15122, 2001 WL 32048 (9th Cir. Jan.12, 2001).

II.

A.

***4** Meanwhile, in 1995, the same year the Liquidator initiated the arbitration proceeding against ADMIS, the Liquidator and IEL filed a lawsuit against ADMIS in Circuit Court in order to preserve all claims that might not be resolved through arbitration. After the arbitration award against ADMIS was confirmed by the federal District Court in 1997, ADMIS filed its initial third-party complaint against the State.

B.

On April 24, 2007, ADMIS filed its Third Amended Third–Party Complaint, which underlies the present appeal. ADMIS alleged that as a result of the Commissioner's and HID's negligence, ADMIS suffered damages, including the amount of the arbitration award. Specifically, ADMIS alleged claims of negligence, negligent supervision, indemnification, and contribution.

Relevant to the question of the State's duty, ADMIS alleged in its negligence claim that the Commissioner and HID had a duty: (1) "to know and to enforce the restrictions upon insurers set forth in the Insurance Code"; (2) to ensure that only authorized HID employees supplied information to insurers and that the information was accurate; and (3) "to inform IEL and its brokers, including ADMIS, of the erroneous information contained in [Goo's] opinion letters." ADMIS reiterated in its negligent supervision claim that the Commissioner and HID had a duty to ensure that only authorized HID employees supplied information and that the information was accurate, and it further alleged that they had a "duty to ensure that they properly hire, train, retain, and supervise HID's employees." ADMIS claimed that it was

entitled to indemnification because its "liability is the direct result of the Commissioner's and HID's negligence or negligent supervision" and that its "liability, if any, is thus purely secondary, passive, technical, vicarious, and imputed, while the liability of the Commissioner and HID is direct, primary, and active."

C.

On June 17, 2008, the State filed a "Motion to Dismiss [ADMIS's] Third Amended Third–Party Complaint, Filed April 24, 2007, or in the Alternative, Motion for Summary Judgment." In an Order filed on September 11, 2008, Circuit Judge Karen Ahn granted in part and denied in part the State's motion. The Order dismissed ADMIS's contribution claim (ADMIS agreed to the dismissal), but denied the State's motion in all other respects. As to the issue of the State's duty, Judge Ahn's Order stated that "[t]he State has failed to provide enough information for the Court to evaluate these policy arguments for and against the creation of a duty."

III.

On February 1, 2011, the State filed a motion to dismiss ADMIS's remaining claims, or in the alternative a motion for judgment on the pleadings (Motion to Dismiss). After a hearing, Circuit Judge Karl K. Sakamoto, who inherited the case from Judge Ahn, granted the State's Motion to Dismiss, disposing of all of ADMIS's remaining claims.

In his March 24, 2011, Order granting the State's Motion to Dismiss, Judge Sakamoto concluded that "there is no basis for [ADMIS's] claim of negligence against [the State] as [the State] owed [ADMIS] no duty." As a preliminary matter, Judge Sakamoto indicated that his ruling did not violate the law of the case doctrine, because Judge Ann's prior order "did not make a determination regarding the issue of duty[.]" Rather, Judge Sakamoto noted that Judge Ahn stated that "the State had failed to provide enough information for the Court to evaluate the policy arguments for and against the creation of a duty" and "deliberately did not make a determination regarding the issue of duty[.]"

***5** As to ADMIS's claim of negligent supervision, Judge Sakamoto held that "because the negligent supervision claim also arises from the presumption that [the State] owed a duty to [ADMIS] and the Court finds that there is no such duty," the negligent supervision claim also fails.

Finally, Judge Sakamoto held that "a claim for third-party indemnification must arise out of a contract or some other independent duty." Because there was no contract providing for indemnification and because he had determined that the State did not owe any duty to ADMIS, Judge Sakamoto dismissed the claim for indemnification.

ADMIS filed a motion for reconsideration, which the Circuit Court summarily denied. The Circuit Court entered its Final Judgment on April 28, 2011. This appeal followed.

DISCUSSION

I.

ADMIS contends that the Circuit Court erred in granting the State's Motion to Dismiss regarding ADMIS's negligence and negligent supervision claims because the Circuit Court erroneously arrived at the conclusion that the State owed no duty to ADMIS. We disagree.

A.

It is well-established that "a negligence action lies only where there is a duty owed by the defendant to the plaintiff." *Hayes v. Nagata,* 68 Haw. 662, 666, 730 P.2d 914, 916 (1986). The existence of a duty is entirely a question of law. *Hao v. Campbell Estate,* 76 Hawai'i 77, 80, 869 P.2d 216, 219 (1994). "[W]hether a duty exists is a question of fairness that involves a weighing of the nature of the risk, the magnitude of the burden of guarding against the risk, and the public interest in the proposed solution." *Id.* (internal quotation marks and citation omitted).

1.

In considering whether to impose a duty of reasonable care, Hawai'i courts recognize

> that duty is not sacrosanct in itself, but only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection. Legal duties are not discoverable facts of nature, but merely conclusory expressions that, in cases of a particular type, liability should be imposed for damage done. In determining whether or not a duty is owed, we must weigh the considerations of policy which favor the plaintiff's recovery against those which favor limiting the defendant's liability. The question of whether one owes a duty to another must be decided on a case-by-case basis.

Pulawa v. GTE Hawaiian Tel, 112 Hawai'i 3, 12, 143 P.3d 1205, 1214 (2006) (block quote format, citation, and brackets omitted). The Hawai'i Supreme Court has identified the following factors for a court to consider in determining whether to impose a duty:

> Whether a special relationship exists, the foreseeability of harm to the injured party, the degree of certainty that the injured party suffered injury, the closeness of the connection between the defendants' conduct and the injury suffered, the moral blame attached to the defendants, the policy of preventing harm, the extent of the burden to the defendants and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

***6** *Id.* (block quote format, citation, and brackets omitted).

2.

Whether a government entity owes a duty of care to an injured party "should be determined by an analysis of legislative intent of the applicable statute or ordinance." *Cootey v. Sun Inv., Inc.,* 68 Haw. 480, 485, 718 P.2d 1086, 1091 (1986).

The Hawai'i Insurance Code provides that "[t]he business of insurance is one affected by the public interest, requiring that all persons be actuated in good faith, abstain from deception and practice honesty and equity in all insurance matters." HRS § 431:1–102 (2005). The Commissioner is responsible for supervising and controlling the Hawai'i Insurance Division, making reasonable rules to effectuate the Insurance Code, and enforcing the Code. *See* HRS § 431:2–201 (2005 & Supp.2014).[4] In its role as a regulator, the State has no duty to regulated insurance companies to provide adequate regulation, and it cannot be sued by regulated insurance companies for providing inadequate regulation. *See Hayes,* 68 Haw. at 667, 730 P.2d at 917. ADMIS does not contend that the Insurance Code creates any cause of action enabling third-parties to sue the State for its failure to properly regulate insurance companies or enforce the Insurance Code. In addition, under the State Tort Liability Act, the State is immune from suit for claims arising out of misrepresentations made by its employees. HRS § 662–15(4); *Doe Parents No. 1 v. State, Dept. of Educ.,* 100 Hawai'i 34, 67 n. 38, 58 P.3d 545, 578 n. 38 (2002).

3.

The Hawai'i Supreme Court has stated that Hawai'i courts are "reluctant to impose a new duty upon members of our society without any logical, sound, and compelling reasons taking into consideration the social and human relationships of our society." *Birmingham v. Fodor's Travel Publications, Inc.,* 73 Haw. 359, 370, 833 P.2d 70, 76 (1992) (internal quotation marks and citation omitted). The reluctance to impose new duties is especially applicable to State entities acting in their regulatory capacity or implementing statutory requirements. This is because the Hawai'i Supreme Court has recognized that the imposition of a legal duty on State entities in certain circumstances "would result in 'unmanageable, unbearable, and totally unpredictable liability [.]' " *Molfino v. Yuen,* 134 Hawai'i 181, ——, 339 P.3d 679, 683 (2014) (quoting *Cootey,* 68 Haw. at 484, 718 P.2d at 1090).

In *Hayes,* the Hawai'i Supreme Court held that the bankruptcy trustee for Paradise Palms Vacation Club (PPVC), an organization of timeshare unit owners, could not sue the State for damages due to the States's alleged negligence in allowing the timeshare developer and PPVC to conduct timeshare operations without complying with the regulatory scheme. *Hayes,* 68 Haw. at 663–68, 730 P.2d at 915–17. In holding that the State owed no duty to PPVC, the supreme court concluded that "[t]he considerations favoring a limitation on the State's liability in this situation ... need no belaboring." *Id.* at 667, 730 P.2d 914, 730 P.2d at 917. The court further concluded that "the State Tort Liability Act 'was not intended to visit the sovereign with novel liabilities [.]' " *Id.* at 667–68, 730 P.2d at 917 (citation omitted).

***7** In *Molfino,* the Hawai'i Supreme Court recently addressed whether it "should impose a duty of reasonable care on the Planning Department of the County of Hawai'i to a property owner, leading to potential negligence liability for damages allegedly sustained due to the Planning Department's failure to maintain all pertinent correspondence in its property files at all times." *Molfino,* 134 Hawai'i at ——, 339 P.3d at 680. The court declined to impose a duty of reasonable care on the Planning Department in favor of the property owner to maintain such records, holding that "policy considerations counsel against the judicial creation of such a duty under the common law" and that there was no basis under the applicable statutes or regulations to impose negligence liability on the Planning Department for failing to maintain its files in complete condition at all times. *Id.* at ——, ——, 339 P.3d 679, 339 P.3d at 680, 685.

In support of its decision, the court discussed its prior opinion in *Cootey,* 68 Haw. 480, 718 P.2d 1086, in which it declined to impose a duty of care on the County of Hawai'i to homeowners, who claimed they were damaged by flooding caused by the County's negligence in approving an adjoining development. The court described the facts of *Cootey* and its analysis in *Cootey* as follows:

> In *Cootey,* plaintiff homeowners (the Cooteys) sued the County of Hawai'i for negligently approving a subdivision, the development of which allegedly caused flooding on the Cooteys' property. The Cooteys claimed that the County owed them a "duty to administer and enforce the applicable laws, rules and regulations and directives of the County and the State of Hawai'i...." This court disagreed, holding that such a duty was "too expansive in light of public policy considerations versus liability and remedial considerations."
>
> In *Cootey,* this court noted that the determination of whether a duty exists requires a balancing of "the policy considerations supporting recovery by the injured party against those favoring a limitation of the County's liability." The court struck the balance in favor of limiting the County's liability. *This court stated, "Government is not intended to be an insurer of all the dangers of modern life, despite its ever-increasing effort to protect its citizens from peril."* Government should not be "liable for all injuries sustained by private persons as a result of governmental activity, even though doing so would spread the losses over the largest possible base." Government agencies must still be able to function effectively for their own "socially approved ends." This court held that the imposition of a duty in the Cooteys' situation would "reorder priorities and force reallocation of resources upon the other branches primarily the legislative branch which make policy decisions in this regard." Specifically, "exposure to such liability would unduly lengthen the permit process, or could very well dissuade the County from enacting rules, regulations and laws applicable to proposed subdivisions and intended for the protection and welfare of the public, a result contrary to the public interest." *In conclusion, this court held that the imposition of a legal duty in Cootey would result in "unmanageable, unbearable, and totally unpredictable liability" for the County.*

***8** *Id.* at ——, 718 P.2d 1086, 339 P.3d at 683(citations and brackets omitted; ellipsis points in original). The court in *Molfino* held that policy considerations similar to that expressed in *Cootey* supported its refusal to impose a legal duty on the Planning Department to property owners to maintain pertinent correspondence in its property files at all times. *Id.* at ——, 718 P.2d 1086, 339 P.3d at 683.

B.

ADMIS does not contend that the State owes it a duty of care based on obligations imposed by the Insurance Code or insurance regulations. ADMIS also does not dispute that no special relationships exist that would warrant imposing on the State a duty of care to ADMIS. We conclude based on the purpose of the Insurance Code and

relevant policy considerations that the State does not owe a duty of care to ADMIS under the circumstances of this case.

Here, the injury to ADMIS arises from an arbitration decision which concluded that ADMIS acted unreasonably, in violation of industry standards, in handling IEL's trading account and awarded damages against ADMIS based on its conduct. ADMIS was a sophisticated brokerage firm and by its own description has "for decades" been "a leader in the commodity futures and financial futures industry [.]" The Insurance Code was not designed or intended to provide protection to sophisticated brokerage firms from adverse arbitration awards arising out of their handling of trading accounts. The State was not a party to ADMIS's trading account agreement with IEL. In addition, ADMIS did not directly contact the State or seek its advice regarding whether IEL's trading activities were permissible under the Insurance Code.

Under these circumstances, we decline to impose a duty of care on the State in favor of ADMIS. The imposition of such a duty is not warranted as a matter of "fairness ... weighing ... the nature of the risk, the magnitude of the burden of guarding against the risk, and the public interest in the proposed solution." *Hao,* 76 Hawai'i at 80, 869 P.2d at 219. In addition, imposing a duty on the State under these circumstances would result in "unmanageable, unbearable, and totally unpredictable liability[,]" and could dissuade the State from engaging in regulatory activities beneficial to the public. *Cootey,* 68 Haw. at 484, 486, 718 P.2d at 1090, 1091; *see also Scott v. Dep't of Commerce,* 104 Nev. 580, 763 P.2d 341, 344 (Nev.1988). For the same policy considerations articulated by the Hawai'i Supreme Court in *Molfino* and *Cootey,* we hold that the judicial creation of a duty under the common law owed by the State to ADMIS under the facts of this case is not warranted. [5]

C.

Relying on *Doe Parents,* ADMIS argues that the "affirmative acts" the State took in the form of "training an employee, supervising an employee, and answering outside questions regarding that employee's authority to engage in certain conduct" gave rise to a duty to exercise ordinary care. We reject ADMIS's argument based on *Doe Parents.*

***9** In *Doe Parents,* the Hawai'i Supreme Court described the State's duty in tort as follows:

> Absent a duty to adhere to a particular standard of care by virtue of the State and either the plaintiff or the third person sharing a "special relationship" (or, alternatively, because a statute or administrative rule or regulation mandates that the defendant adhere to a particular standard of care [)], the State is, as is any person, generally required to exercise only "ordinary care" in the activities it affirmatively undertakes to prevent foreseeable harm to others.

Doe Parents, 100 Hawai'i at 72, 58 P.3d at 583 (internal citations omitted).

As to foreseeability in the context of duty, the supreme court stated:

> Regardless of the source of a particular duty, a defendant's liability for failing to adhere to the requisite standard of care is limited by the preposition that "the defendant's obligation to refrain from particular conduct tor, as the circumstances may warrant, to take whatever affirmative steps are reasonable to protect another] is owed only to those who are foreseeably endangered by the conduct and only with respect to those risks or hazards whose likelihood made the conduct [or omission] unreasonably dangerous." Thus, if it is not reasonably foreseeable that the particular plaintiff will be injured if the expected harm in fact occurs, the defendant does not owe that plaintiff a duty reasonably to prevent the expected harm. Similarly, but not synonymously, if the harm is not reasonably foreseeable, the defendant will not be deemed to have breached the duty of care that he or she owes to a foreseeable plaintiff.

Id. (citations omitted; brackets in original) (emphases added); *see also Janssen v. Am. Hawai'i Cruises, Inc.,* 69 Haw. 31, 34, 731 P.2d 163, 165 (1987) (stating that "a defendant owes a duty of care only to those who are

foreseeably endangered by the conduct and only with respect to those risks or hazards whose likelihood made the conduct unreasonably dangerous" (internal quotation marks and citations omitted)).

In *Pulawa,* the supreme court stated that "in the context of determining the existence and scope of a duty, foreseeability is a question of law for the court to resolve." *Pulawa,* 112 Hawai'i at 13, 143 P.3d at 1215. The court observed:

> Foreseeability as it impacts duty determinations refers to the knowledge of the risk of injury to be apprehended. The risk reasonably to be perceived defines the duty to be obeyed; it is the risk reasonably within the range of apprehension, of injury to another person, that is taken into account in determining the existence of the duty to exercise care.

Id. (block quote format, citation, brackets, and emphasis omitted). As a factor in determining the existence of a duty, foreseeability involves the prospective consideration of the facts existing at the time of the alleged negligent conduct. *Id.*

We conclude that it was not reasonably foreseeable to the State that its actions in (1) training and supervising its employees and (2) responding to questions by a regulated insurance company regarding permissible investment activities and Goo's authority to provide advice would result in the injury sustained by ADMIS. As noted, ADMIS's injury was caused by an arbitration panel's decision that ADMIS had acted unreasonably and had mishandled IEL's trading account. ADMIS did not have any direct contact with and did not seek advice from the State regarding IEL's permitted investments or trading activities. We conclude that it was not reasonably forseeable to the State when it undertook to train and supervise its employees and responded to inquiries by IEL, that ADMIS, a sophisticated brokerage firm who had no direct contact with the State, would enter into a trading account relationship with IEL; that IEL would engage in speculative trades; that ADMIS would permit IEL to engage in such speculative trades; that IEL would become insolvent; and that an arbitration panel would determine that ADMIS was liable for losses sustained by IEL due to ADMIS's mishandling of IEL's trading account. Accordingly, we reject ADMIS's contention that, pursuant to *Doe Parents,* the alleged "affirmative acts" [6] taken by the State created a duty of care owed by the State to ADMIS under the circumstances of this case.

II.

***10** ADMIS argues that the Circuit Court erred by dismissing its indemnification count, which asserted a claim of equitable indemnity. We disagree.

"[E]quitable indemnity is only available among tortfeasors who are jointly and severally liable for the plaintiff's injury." *In re Parker,* 471 B.R. 570, 576 (B.A.P. 9th Cir.2012). In other words, there can be no equitable indemnity "where the party from whom indemnity is sought owes no duty to the plaintiff or is not responsible for the injury." *Wells Fargo Bank, N.A. v. Renz,* 795 F.Supp.2d 898, 927 (N.D.Cal.2011). The Restatement (Second) of Torts § 886B(1) (1979) expresses the requirement for equitable indemnity—that the indemnitor and indemnitee both owe a duty to a third-party and are jointly liable for the injury sustained by the third-party—as follows: "If two persons are liable in tort to a third person for the same harm and one of them discharges the liability of both, he is entitled to indemnity from the other if the other would be unjustly enriched at his expense by the discharge of the liability."

Here the State, as a regulator, did not owe a duty to IEL or those represented by IEL's Liquidator, and the State was not jointly liable with ADMIS to IEL or those represented by IEL's Liquidator, under the circumstances of this case. *See Hayes,* 68 Haw. at 667–68, 730 P.2d at 917. As such, ADMIS, as a matter of law, was not entitled to equitable indemnity from the State with respect to the damages ADMIS was required to pay to IEL's Liquidator for the injuries ADMIS caused to those represented by IEL's Liquidator. *See Harmsen v. Smith,* 586 F.2d 156, 157 (9th Cir.1978) (holding that bank directors sued by bank shareholders could not state a claim for equitable indemnity against the Comptroller of the Currency (which regulated the bank) because the Comptroller did not owe a duty to the shareholders).

ADMIS's reliance on *In re All Asbestos Cases,* 603 F.Supp. 599 (D.Hawai'i 1984), is misplaced. *All Asbestos Cases*

recognizes situations in which equitable indemnity is appropriate because one joint tortfeasor is more culpable than another joint tortfeasor in causing injury to a third party. *See All Asbestos Cases* 603 F.Supp. at 606–07. But it does not alter the prerequisite for equitable indemnity that the indemnitor and indemnitee be jointly liable to the injured third party. *See id.* at 606 ("Tort or 'equitable' indemnity will be recognized when the indemnitor is guilty of 'active,' 'primary' or 'original' fault, as opposed to the merely 'passive,' 'secondary,' or 'implied' fault of the indemnitee.").

III.

ADMIS argues that the Circuit Court abused its discretion in denying its motion for sanctions. Specifically, ADMIS argues that the Circuit Court previously ordered the parties to maintain their records during a stay of discovery imposed by the Circuit Court and that the State failed to do so. As such, ADMIS contends that the Circuit Court should have imposed sanctions against the State for spoliation of evidence. We conclude that the Circuit Court did not abuse its discretion in denying ADMIS's motion for sanctions.

A.

***11** The pertinent facts underlying this issue are as follows. In 1998, while the federal District Court's confirmation of the arbitration award against ADMIS was on appeal to the United States Court of Appeals for the Ninth Circuit (Ninth Circuit), ADMIS initiated discovery in this case. The Liquidator and IEL filed a motion to stay all discovery pending the conclusion of the appeal. Over ADMIS's objection, the Circuit Court granted the motion to stay discovery pending the appeal to the Ninth Circuit, but ordered all parties to "retain all documents in their custody or control which may be responsive ... to [ADMIS's] discovery requests[.]" The Ninth Circuit filed its decision in 2001.

On January 10, 2011, after a period of discovery, ADMIS filed a motion for sanctions for spoliation of evidence (Motion for Sanctions), arguing that the State had violated the Circuit Court's previous order that required preservation of documents. Specifically, ADMIS alleged that materials produced during discovery resulted in "multiple copies of documents whose source can no longer be determined." Further, ADMIS stated that the State refused to admit the authenticity of certain documents produced "because the State could not locate the State's original of the document[.]" ADMIS sought sanctions ranging from "barring the State from denying the authenticity of documents which should be in HID's files, to entering a judgment on liability in favor of ADMIS and against the State." The State opposed ADMIS's Motion for Sanction, arguing that ADMIS had not satisfied the requirements for the imposition of sanctions.

In the meantime, at a hearing held on February 25, 2011, the Circuit Court orally granted the State's Motion to Dismiss ADMIS's Third Amended Third–Party Complaint. At the hearing, ADMIS's counsel suggested that the Circuit Court's dismissal of ADMIS's case had rendered ADMIS's Motion for Sanctions moot. The Circuit Court responded that it did not believe the Motion for Sanctions had become moot, but indicated that it was inclined to deny the motion and that it did not believe the State had acted in bad faith or had attempted to destroy documents to its advantage. The Circuit Court then heard argument on the Motion for Sanctions. On March 23, 2011, the Circuit Court issued its order denying ADMIS's Motion for Sanctions.

B.

On appeal, ADMIS points to the following three letters that it claims were missing from HID's files: (1) IEL's "November 3, 1993 letter to Mr. Tanaka, the Deputy Commissioner, requesting the guidance that the Goo Letters provided"; (2) "the November 4, 1993 letter from Mr. Goo [to IEL], providing part of that guidance"; and (3) IEL's "February 2, 1994 letter to Harold Yamami [(an HID examiner)], explaining why IEL borrowed a half billion dollars in 1993 and enclosing Mr. Goo's letter stating that IEL's trading was legal." ADMIS apparently had copies of all these documents, but not originals from HID's files. We conclude that the alleged discovery violation underlying ADMIS's spoliation claim was irrelevant to and did not affect the analysis of the Circuit Court or this court in determining that the State was entitled to the dismissal of ADMIS's Third Amended Third–Party Complaint. Therefore, ADMIS failed to show that the absence of the alleged missing evidence

resulted in prejudice to ADMIS. *See Stender v. Vincent*, 92 Hawai'i 355, 363, 992 P.2d 50, 58 (2000) (stating that in determining whether to impose a discovery sanction, a relevant factor for the court to consider is "whether the opposing party suffered any resulting prejudice as a result of the offending party's destroying or withholding the discoverable evidence" (block quote format and citation omitted)). We conclude that the Circuit Court's denial of ADMIS's Motion for Sanctions did not constitute an abuse of discretion.

CONCLUSION

***12** For the foregoing reasons, we affirm the Circuit Court's Final Judgment.

All Citations

Slip Copy, 2015 WL 1360939 (Table)

Footnotes

1 The Honorable Karl K. Sakamoto presided over the proceedings relevant to this appeal.

2 We note that ADMIS also asserted a claim for contribution against the State. However, with ADMIS's agreement, the Circuit Court dismissed the contribution claim, and that claim is no longer in issue.

3 According to ADMIS, following several unsuccessful appeals, ADMIS paid the Liquidator $10,867,370.57 pursuant to the arbitration award.

4 We cite to the current version of HRS § 431:2–201. For purposes of our analysis, there is no material difference between the current version and the version in effect at the time relevant to this case.

5 ADMIS contends that the Circuit Court erred by violating the law of the case doctrine when it ruled that the State did not owe a duty of care to ADMIS. We conclude that the Circuit Court did not violate the law of the case doctrine because it had not previously made a definitive ruling regarding whether the State owed a duty of care to ADMIS. In any event, the law of the case is a prudential doctrine. *See Messinger v. Anderson*, 225 U.S. 436, 444, 32 S.Ct. 739, 56 L.Ed. 1152 (1912) (concluding that the "law of the case" doctrine "merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power"). In addition, "law of the case cannot bind [an appellate court] in reviewing decisions below[,]" and "cannot insulate an issue from appellate review [.]" *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988).

6 We note that the State disputes that the acts cited by ADMIS constitute affirmative acts.

End of Document

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF	CASE NO. BLNR-CC-002
Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 For The Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hamakua, Hawai'i TMK (3) 4-4-015:009	VOLUME 3

CONTESTED CASE HEARING

Held on October 25, 2016, commencing at 9:00 a.m., at Grand Naniloa Hotel, Crown Room, 93 Banyan Drive, Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

EXHIBIT E

APPEARANCES:

JUDGE RIKI MAY AMANO, Hearings Officer

WILLIAM WYNHOFF, Deputy Attorney General

STAFF: MICHAEL CAIN, Planner

TIM LUI-KWAN, ESQ.
IAN L. SANDISON, ESQ.
Attorneys for University of Hawai'i

DOUGLAS ING, ESQ.
ROSS SHINYAMA, ESQ.
Attorneys For TMT International Observatory, LLC

LINCOLN S.T. ASHIDA, ESQ.
KEAHI WARFIELD
RICHARD HA
For PUEO

YUKLIN ALULI, ESQ.
Attorney for KAHEA

LANNY SINKIN
Temple of Lono

B. PUALANI CASE
Flores-Case Ohana

KEALOHA PISCIOTTA
PAUL NEVES
Mauna Kea Anaina Hou

PRO SE

DEBORAH WARD
CLARENCE CHING
HARRY FERGERSTROM
MEHANA KIHOI
JENNIFER LEINA'ALA SLEIGHTHOLM
DWIGHT J. VICENTE
CINDY FREITAS
WILLIAM K. FREITAS
KALIKOLEHUA KANAELE
BRANNON KAMAHANA KEALOHA
JOSEPH CAMARA
KAHO'OKAHI KANUHA
ALSO PRESENT:
WILMA HOLI

INDEX

MR. KEALOHA: Oh, okay.

HEARINGS OFFICER AMANO: So if there is nothing else, we need to move forward.

MR. KEALOHA: There's four more points.

HEARINGS OFFICER AMANO: If you can summarize, please.

MR. KEALOHA: He could not explain, quantify or offer any systematic reliable process in which he weighed the value and influence of the cultural survey and the EIS and CDUA recommendation.

No answer at all as to what the reasoning is that we're using a 2010 recommendation as opposed to, this is 2016; discrepancies of the references he says he relied on them when he made his decision. And thank you very much.

HEARINGS OFFICER AMANO: Okay.

MR. KEALOHA: And I will write that down.

HEARINGS OFFICER AMANO: Ms. Freitas, did you have any objection to my deferring the exhibits?

MS. FREITAS: No objection.

HEARINGS OFFICER AMANO: Mr. Freitas, any objection to my deferring the exhibits?

MR. FREITAS: No objection, Your Honor.

HEARINGS OFFICER AMANO: Thank you. And Mr. Fergerstrom, did I ask you earlier?

MR. FERGERSTROM: Yes. I have no objection.

HEARINGS OFFICER AMANO: All right, thank you. So, Mr. Ching?

MR. CHING: Clarence Ching. First thing just to clarify.

I was objecting to Mr. Sandison's motion, and I agree with your finding.

HEARINGS OFFICER AMANO: Thank you. Mr. Sandison?

MR. SANDISON: We note for the record that Exhibits R-1, R-2, R-3, R-4, R-5, R-7 and R-8 are the same as our Exhibits A-1, A-2, A-3, A-4, A-5, A-7 and A-8.

HEARINGS OFFICER AMANO: Are you withdrawing the exhibits?

MR. SANDISON: No. And those documents are already in the record. And we also note that we have joined in TIO's memorandum and added some additional information. That document is not yet posted in the Documents Library, but we, of course, defer to the Hearing Officer's decision, and we appreciate that the same rules will apply to everyone as far as the admission of exhibits go.

HEARINGS OFFICER AMANO: So based on what

you just said, it sounds like those exhibits are cumulative.

MR. SANDISON: They are in the record.

HEARINGS OFFICER AMANO: They're already part of the record, so why do I have to receive them then?

MR. SANDISON: They were tied to Mr. White's testimony. If you believe it is appropriate, and I can go to something that can be take into consideration as you evaluate this going forward.

HEARINGS OFFICER AMANO: All right. I'm going to continue to consider it and defer until the end of the witnesses.

Mr. Shinyama, did you want to add anything else?

MR. SHINYAMA: Your Honor, we understand what Your Honor is proposing, and given that it is a relaxed standard of administrative proceedings, we are -- we have no objection to that plan that you have proposed so long as obviously it's evenly applied to everyone.

Ms. Aluli brought up a bunch of things about business records, evidentiary rules, if we're going to go down that road and be strictly in compliance with evidentiary rules, we will be here a

long time, and I don't think a lot of people will be able to lay the foundation for the exhibits.

And so I'm just saying it has to be an even playing field in terms of admissibility. And I understand Your Honor has already noted that, and we appreciate that.

I would ask though for the case that Ms. Aluli's referenced, if she could provide myself or everyone in this room with the legal citation.

HEARINGS OFFICER AMANO: Your request is so noted. And I think, hearing you, it makes me more confident that this is the right thing to do, wait until I see all the exhibits, hear all the testimony, and then deal with the exhibits at the end. Because then I will be able to apply the same standard for everyone.

So, Mr. Kealoha, do you have anything else? If it is the same issue --

MR. KEALOHA: Well, I believe you mentioned my exhibits are R-1 through --

HEARINGS OFFICER AMANO: No, he's talking about the record.

MR. KEALOHA: Okay, thank you very much.

HEARINGS OFFICER AMANO: Sorry about that. Thank you for asking.

Mr. Sinkin?

MR. SINKIN: Yes, I wanted to address the idea that the R exhibits are the same as admitted evidence. We had a little bit of discussion about that once before but --

HEARINGS OFFICER AMANO: It's in the record.

MR. SINKIN: It was the record created at the time the case began by the parties that were admitted at that time before interventions took place.

HEARINGS OFFICER AMANO: Yes.

MR. SINKIN: And so that was the -- the record was the application and the supporting documents, if I understood what was being admitted.

HEARINGS OFFICER AMANO: The record is clearly in the Document Library designated R.

MR. SINKIN: I understand that. I understand that. But what is there in that R section is the original application and the documents supporting that application. That's what was put into the record so that the case could begin. It couldn't begin without the application and its supporting documents.

HEARINGS OFFICER AMANO: Right.

MR. SINKIN: That didn't mean those documents were submitted and validated as evidence.

HEARINGS OFFICER AMANO: Mr. Sinkin, I'm going to explain it one last time.

So at the time we held the first prehearing conference there were only two parties, that was Mauna Kea Anaina Hou and KAHEA represented by Mr. Wurdeman and the University.

MR. SINKIN: And how did they become parties, Mauna Kea Anaina Hou, become a party?

HEARINGS OFFICER AMANO: They came back by remand from the Supreme Court.

MR. SINKIN: For a new contested case.

HEARINGS OFFICER AMANO: For a new contested case, yes. So I don't know anything about the case. I needed to figure out where we needed to pick up. I was relying on the representation of counsel at the recorded prehearing conference. And so it was ascertained that those R designations, whatever was there, is where I would be picking up the case from. That's the record.

So that's what happened at the prehearing conference. And then subsequently, we entertained motions to join as parties. And then we had the hearing on that. Then I set prehearing motion

deadlines. And then we dealt with all of those motions as well. And so that's where we are. There's nothing else I can add to that.

MR. SINKIN: I understand, thank you.

HEARINGS OFFICER AMANO: All right.

Ms. Aluli?

MS. ALULI: Your Honor, I was not -- and I have asked Mr. Wurdeman about his recollection of how the R -- not Mr. Kealoha's R's -- came to be on the record. And I will probably go and have to ask for a copy of the recorded prehearing thing.

Would that be through this court reporter?

HEARINGS OFFICER AMANO: Yes.

MS. ALULI: And the cite is 132 Hawaii 9, it's Diamond versus Dobbin.

HEARINGS OFFICER AMANO: Could you spell the last name?

MS. ALULI: D-O-B-B-I-N.

HEARINGS OFFICER AMANO: And the year, please?

MS. ALULI: It was January, 2014.

HEARINGS OFFICER AMANO: Thank you.

All right, so we're going to get the next witness up, please. There are two individuals here who Security has reported to me have been taking

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on October 25, 2016, at 9:00 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 25th day of October, 2016, in Honolulu, Hawaii.

/s/ Jean Marie McManus

JEAN MARIE McMANUS, CSR #156

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF	CASE NO. BLNR-CC-002
Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 For The Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hamakua, Hawai'i TMK (3) 4-4-015:009	VOLUME 1

CONTESTED CASE HEARING

Held on October 20, 2016, commencing at 9:00 a.m., at Grand Naniloa Hotel, Crown Room, 93 Banyan Drive, Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

EXHIBIT F

APPEARANCES:

JUDGE RIKI MAY AMANO, Hearings Officer

JULIE CHINA, Deputy Attorney General

STAFF: MICHAEL CAIN, Planner

TIM LUI-KWAN, ESQ.
IAN L. SANDISON, ESQ.
GUNTHER HASINGER
Attorneys for University of Hawai'i

DOUGLAS ING, ESQ.
ROSS SHINYAMA, ESQ.
Attorneys For TMT International Observatory, LLC

LINCOLN S.T. ASHIDA, ESQ.
KEAHI WARFIELD
For PUEO

DEXTER KAIAMA, ESQ.
CANDACE FUJIKANE
Attorney for KAHEA

LANNY SINKIN
KAHUNA NOBRIGA
Temple of Lono

B. PUALANI CASE
HAWANE RIOS
Flores-Case Ohana

KEALOHA PISCIOTTA
Mauna Kea Anaina Hou

PRO SE
DEBORAH WARD
CLARENCE CHING
HARRY FERGERSTROM
MEHANA KIHOI
JENNIFER LEINA'ALA SLEIGHTHOLM
DWIGHT J. VICENTE
CINDY FREITAS
WILLIAM K. FREITAS
KALIKOLEHUA KANAELE
BRANNON KAMAHANA KEALOHA
JOSEPH CAMARA
ALSO PRESENT:
WILMA HOLI

INDEX

HEARINGS OFFICER AMANO: So you would like to have hard copies from everyone including Mauna Kea Anaina Hou and they have a substantial number of exhibits.

MR. FERGERSTROM: I'm actually more interested in University of Hawai'i one that was presented today.

HEARINGS OFFICER AMANO: Well, Mr. Fergerstrom, as we move forward there are lots of witnesses coming, you can see how the exhibits are referred by the witnesses and then become evidence. So it's either you're going to get hard copies from everybody, or you're going to rely on the electronic copies?

MR. FERGERSTROM: Hard copies from everyone. Thank you.

HEARINGS OFFICER AMANO: Ms. Pisciotta, did you understand what happened? He wants the hard copies, so you have to make a hard copy. You will have all your exhibits and submissions.

MS. PISCIOTTA: Two of them for Vicente.

HEARINGS OFFICER AMANO: I'm asking everyone to produce hard copies to Mr. Fergerstrom and to Mr. Vicente.

Yes, Mr. Sinkin.

If you don't mind, can you summarize, I mean, to spend a couple minutes making sure everybody knows what is going to happen on Monday and Tuesday, warn everybody to be prepared.

MR. SINKIN: Clarity about these exhibits already admitted into the record. Some of them already admitted into the record.

We certainly didn't participate in any process that I'm aware that brought Final EIS into the record in this proceeding. I understand in the last proceeding. I'm not sure what they were arguing about to what is in the record or not in the record.

HEARINGS OFFICER AMANO: If you take a look at the Documents Library designations called R, which is "record", and at the first prehearing conference I asked existing parties at the time which included Mauna Kea Anaina Hou and whoever the representatives, Mr. Wurdeman was representing, and the UH, because I was confused myself, what needs to be in the record? Where do I start? And what you see as designated R is what they agreed is where I would start.

MR. SINKIN: I don't understand how we could have any kind of agreement between us before all the parties were determined --

HEARINGS OFFICER AMANO: I'm not going to

argue with you. I've explained what happened. Those parties at the time, it was subsequent to that that we then set up a process for intervention, and then there were motions process as well, et cetera. So that's what happened.

MR. SINKIN: Okay.

HEARINGS OFFICER AMANO: So for Monday, how does the University wish to proceed?

MR. LUI-KWAN: Well, Judge, you saw our first five, right? I will name the next five we're going to submit.

HEARINGS OFFICER AMANO: I want to know who's coming on Monday starting with Mr. White.

MR. LUI-KWAN: Mr. White, Perry White, James Hayes, Robert McLaren, Chad Baybayan, Dr. Gunther.

HEARINGS OFFICER AMANO: Can I ask you for the order, because I think Dr. Sander, Gary Sander for TIO was supposed to go at some point, so I'm asking you to please tell me what order the witnesses will be coming.

MR. LUI-KWAN: My understanding, Judge, that Dr. Sanders was available today. He has to -- he's traveling, has to go back to the mainland, so he's not going to be here on Monday. So we are going

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on October 20, 2016, at 9:00 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 20th day of October, 2016, in Honolulu, Hawaii.

/S/ Jean Marie McManus

JEAN MARIE McMANUS, CSR #156

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF	CASE NO. BLNR-CC-002
Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 For The Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hamakua, Hawai'i TMK (3) 4-4-015:009	

REQUEST FOR ADMISSION AND MOTIONS

Held on June 17, 2016, commencing at 10:00 a.m. at the Hilo State Office, Conference Rooms A, B and C, 75 Aupuni Street, Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

EXHIBIT G

APPEARANCES:

JUDGE RIKI MAY AMANO, Hearing Officer

JULIE CHINA, Deputy Attorney General
WILLIAM WYNHOFF, Deputy Attorney General

STEPHEN MICHAEL CAIN, Staff Planner

TIM LUI-KWON, ESQ.
JOHN P. MANAUT, ESQ.
IAN L. SANDISON, ESQ.
Attorneys for University of Hawaii

RICHARD N. WURDEMAN, ESQ.
Attorney for Mauna Kea Anaina Hou, et al

HEARING OFFICER AMANO: You may I ask that counsel introduce themselves and those persons with them.

MR. LUI-KWAN: Thank you, Judge Amano. My name is Tim Lui-Kwan. I'm one of the attorneys for University of Hawaii Hilo, the Applicant. With me today is --

UNKNOWN SPEAKER: Can't hear you.

HEARING OFFICER AMANO: Let me explain why this mike doesn't work as well.

We gave the better mike to the other side so that when you guys are talking, it's louder. We are using the softer microphone, but we will try to do it as best we can.

(Many people speaking at once.)

HEARING OFFICER AMANO: Excuse me.

One of the things that happens when the court reporter is taking down every word, she needs to know who is speaking. So I hear you, but there's no record of you.

So we're going to change microphones and try to increase the volume. But it is appropriate for them to address me. And so I'm going to ask them to do that. Mr. Lui-Kwan.

MR. LUI-KWAN: My name is Tim Lui-Kwan,

representing the University of Hawaii Hilo, the Applicant in this case. With me today is J.P. Manaut off to my right. Off to my far right is Ian Sandison, another attorney. And with us today our clients David one boring University of Hawaii and Dr. Robert McLaren from the Institute for Astronomy.

MR. WURDEMAN: Good morning, Richard Wurdeman on behalf of Petitioners. Present with me this morning is Kealoha Pisciotta of Anaina Hou, Clarence Kukauakahi Ching. And seated behind me are Deborah Ward, Kalani Flores and Pua Case of the Flores-Case Ohana.

HEARING OFFICER AMANO: I have a list of all the requests and motions that have been filed. So I'm going to, starting from the first motion we received or request, I'm going to call that name and I'll ask that you stand and identify yourself. And I apologize, I know it's going to be difficult for you folks to get to the front, so if I can hear your name I'll repeat it or spell it and maybe that will help us get through this a little bit quicker.

So the first motion was filed, motion to have TMT International Observatory LLC, et cetera.

Would you stand and identify yourself, please.

MR. ING: Yes, Your Honor. Douglas Ing. I'm the attorney for TMT International Observatory LLC.

HEARING OFFICER AMANO: Thank you, Mr. Ing.

Next request to be admitted as a party, that would be C.M. Kaho'okahi Kanuha.

MR. KANUHA: Aloha.

HEARING OFFICER AMANO: You're Mr. Kanuha?

MR. KANUHA: Aye.

HEARING OFFICER AMANO: Thank you.

Next is requested to be admitted as a party Mehana Kihoi.

MS. KIHOI: Aloha.

HEARING OFFICER AMANO: Good morning.

Next requested to be admitted as a party Ana Nawahine-Kaho'opi'i. Absent.

Next request to be admitted as a party Wai'ala Ahn. Absent.

Next request to be admitted as a party, Edward K. Akiona. Absent.

Request to be admitted as a party Joseph Kualii Lindsey Camara.

MR. CAMARA: (Raises hand.)

HEARING OFFICER AMANO: Good morning, Mr. Camara.

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on June 17, 2016, at 10:00 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 17th day of June, 2016, in Honolulu, Hawaii.

/s/ Jean Marie McManus

JEAN MARIE McMANUS, CSR #156

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hāmakua, Hawai'i, TMK (3) 4-4-015:009	Case No. BLNR-CC-16-002 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

DLNR Office of Conservation and Coastal Lands ("*OCCL*")
dlnr.maunakea@hawaii.gov

MICHAEL CAIN
Office of Conservation and Coastal Lands
1151 Punchbowl Street, Room 131
Honolulu, HI 96813
michael.cain@hawaii.gov
Custodian of the Records
(original + digital copy)

DAVE M. LOUIE, ESQ.
CLIFFORD K. HIGA, ESQ.
NICHOLAS R. MONLUX, ESQ.
Kobayashi Sugita & Goda, LLP
dml@ksglaw.com
ckh@ksglaw.com
nrm@ksglaw.com
Special Deputy Attorneys General for ATTORNEY GENERAL DOUGLAS S. CHIN, THE DEPARTMENT OF THE ATTORNEY GENERAL, and DEPUTY ATTORNEYS GENERAL IN THEIR CAPACITY AS COUNSEL FOR THE BOARD OF LAND AND NATURAL RESOURCES and HEARING OFFICER

WILLIAM J. WYNHOFF, ESQ.
Deputy Attorney General
bill.j.wynhoff@hawaii.gov
Counsel for the BOARD OF LAND AND NATURAL RESOURCES

J. DOUGLAS ING, ESQ.
douging@wik.com
ROSS T. SHINYAMA, ESQ.
rshinyama@wik.com
SUMMER H. KAIAWE, ESQ.
skaiawe@wik.com
Watanabe Ing LLP
Counsel for TMT INTERNATIONAL OBSERVATORY, LLC

LINCOLN S.T. ASHIDA, ESQ.
lsa@torkildson.com
NEWTON J. CHU, ESQ.
njc@torkildson.com
Torkildson, Katz, Moore, Hetherington & Harris
Counsel for PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES (PUEO)

JOSEPH KUALII LINDSEY CAMARA
kualiic@hotmail.com

DWIGHT J. VICENTE
2608 Ainaola Drive
Hilo, HI 96720-3538
dwightjvicente@gmail.com
(via email & U.S. mail)

HARRY FERGERSTROM
P.O. Box 951
Kurtistown, HI 96760
hankhawaiian@yahoo.com
(*via email & U.S. mail*)

RICHARD L. DELEON
kekaukike@msn.com

WILLIAM FREITAS
pohaku7@yahoo.com

CINDY FREITAS
hanahanai@hawaii.rr.com

TIFFNIE KAKALIA
tiffniekakalia@gmail.com

C. M. KAHO'OKAHI KANUHA
kahookahi.kukiaimauna@gmail.com

BRANNON KAMAHANA KEALOHA
brannonk@hawaii.edu

KALIKOLEHUA KANAELE
akulele@yahoo.com

GLEN KILA
makakila@gmail.com

MEHANA KIHOI
uhiwai@live.com

JENNIFER LEINA'ALA SLEIGHTHOLM
leinaala.mauna@gmail.com
leina.ala.s808@gmail.com

LANNY ALAN SINKIN
lanny.sinkin@gmail.com
Representative for the Temple of Lono

STEPHANIE-MALIA:TABBADA
s.tabbada@hawaiiantel.net

MAUNA KEA ANAINA HOU
c/o Kealoha Pisciotta
keomaivg@gmail.com

DONNA H. KALAMA, ESQ.,
Deputy Attorney General
donna.h.kalama@hawaii.gov
Counsel for the Honorable DAVID Y. IGE, and BLNR Members SUZANNE CASE and

STANLEY ROEHRIG

E. KALANI FLORES
ekflores@hawaiiantel.net

CLARENCE KUKAUAKAHI CHING
kahiwaL@cs.com

DEBORAH J. WARD
cordylinecolor@gmail.com

B. PUALANI CASE
puacase@hawaiiantel.net

YUKLIN ALULI, ESQ.
Law Offices of Yuklin Aluli
yuklin@kailualaw.com
DEXTER KAIAMA, ESQ.
Law Offices of Dexter K. Kaiama
cdexk@hotmail.com
Counsel for KAHEA: THE ENVIRONMENTAL ALLIANCE

PAUL K. NEVES
kealiikea@yahoo.com

IVY MCINTOSH
3popoki@gmail.com
Witness for the Hearing Officer

WILMA H. HOLI
P. O. Box 368
Hanapepe, HI 96716
w_holi@hotmail.com
Witness for the Hearing Officer (via email & U.S. mail)

PATRICIA P. IKEDA
peheakeanila@gmail.com
Witness for the Hearing Officer

MOSES KEALAMAKIA, JR.
mkealama@yahoo.com
Witness for the Hearing Officer

CRYSTAL F. WEST
crystalinx@yahoo.com
Witness for Hearing Officer

DATED: Honolulu, Hawai'i, May 4, 2017.

IAN L. SANDISON
JOHN P. MANAUT
LINDSAY N. MCANEELEY

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO