



Flor v. Holguin, 9 P.3d 404 (Haw. 2000)

Topics Covered: Abusive Litigation Against Physicians, Workers' Compensation

Outcome: Somewhat Favorable

Issue

The issue in this case was whether an employer should be charged under the “last injurious exposure rule” if an employee was unable to determine when and where she contracted a disease.

AMA Interest

The AMA strives to avoid the expansion of liability theories against physicians, which can lead to abusive litigation.

Case Summary

A dental hygienist contracted Hepatitis C and sued three dentists to recover workers compensation damages. She had worked for these dentists over a roughly ten year period. She was unable to identify when she contracted the disease or which dentist, if any, had employed her when she had contracted it.

On appeal from a denial of workers compensation benefits, the Hawaii Supreme Court recognized Hepatitis C as a compensable occupational disease under the Hawaii workers compensation statute. The court also ruled that, because of the difficulty of determining when Hepatitis C is contracted and because each exposure “contributes to the progression of the disease,” the court would employ the “last injurious exposure rule” and charge the employer for whom the plaintiff worked at the time of diagnosis with liability for all of plaintiff’s charges.

The defendants petitioned the Hawaii Supreme Court for rehearing. The court granted in part and denied in part the defendants’ request for rehearing. The court held that on rehearing the employers would be allowed to present evidence on whether the employee’s continued exposure to the conditions that initially precipitated her hepatitis C infection contributed to or otherwise aggravated the progression of her disease.

Litigation Center Involvement

The Litigation Center and the Hawaii Medical Association filed an *amicus* brief to support the petition for rehearing. The brief argued that the basic medical assumption underlying the Hawaii Supreme Court’s prior ruling was questionable. The brief requested that, on remand, the parties be permitted to submit additional evidence on issues concerning aggravation of a preexisting disease.