

SB 2961



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

S.B. NO. 2961, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, January 31, 2008 **TIME:** 9:00 AM

LOCATION: State Capitol Room
Deliver to: State Capitol, Room 219, 1 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Caron M. Inagaki, Deputy Attorney General

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General supports this measure.

The purpose of this bill is to appropriate funds to satisfy claims against the State, its officers, or its employees, including claims for legislative relief, judgments against the State, settlements, and miscellaneous claims.

The bill in its present form contains thirteen (13) claims that total \$744,556.86. Of this total, \$449,556.86 are general fund appropriation requests and \$295,000.00 are appropriation requests from departmental funds. Attachment A provides a brief description of each claim in the bill.

Since the bill was introduced, five (5) new claims have been resolved for an additional \$1,337,838.02. Of this total, three (3) claims are general fund appropriation requests totaling \$156,873.17, and two (2) claims are appropriation requests from departmental funds totaling \$1,180,964.85. Attachment B describes these claims. We request that the Committee amend the bill to appropriate funds to satisfy these five (5) new claims.

Including the new claims, the appropriation request totals \$2,082,394.88 allocated among eighteen (18) claims. Of this total \$606,430.03 are general fund appropriation requests and \$1,475,964.85 are appropriation requests from departmental funds.

The Department has had a long-standing policy of advising agencies as to how to avoid claims such as those in this bill. The Department has also complied with section 37-77.5, Hawaii Revised Statutes, which requires the Attorney General to develop and implement a procedure for advising our client agencies on how to avoid future claims.

We therefore respectfully request passage of this measure.

ATTACHMENT "A"

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES:

Reale v. State of Hawaii, et al. \$ 50,000.00 (General Fund)
Civil No. 06-1-0928-05, First Circuit Settlement

This is a negligence action arising out of a 2004 trip and fall in the parking lot of Aloha Stadium. Aloha Stadium is responsible for the maintenance and repair of the parking lot. Plaintiff Mary Ann Reale, then 57 years old and a visitor from Wisconsin, allegedly tripped and fell in the parking lot while attending the swap meet. The general accident area where she fell allegedly consisted of uneven, eroded asphalt with some deviations exceeding ½ inch. Plaintiff was immediately transported to and hospitalized at Pali Momi. She sustained a comminuted right elbow fracture requiring surgery, including internal fixation and rehabilitation. Plaintiff initially presented this as a tort claim seeking \$375,000.

DEPARTMENT OF HUMAN SERVICES:

Ruiz, et al. v. State of Hawaii, et al. \$ 350,000.00 (General Fund)
Civil No. 04-1-1739-09, First Circuit Settlement

A female ward at the Hawaii Youth Correctional Facility alleged that she was sexually assaulted by a youth corrections officer in June 2003. The claims against the State were for negligent supervision and failure to protect. The case proceeded to trial, and a mistrial was declared on the second day of trial. The case settled before the second trial began.

DEPARTMENT OF PUBLIC SAFETY:

Branco v. State of Hawaii \$ 12,357.46 (General Fund)
Civil No. 06-1-0755-05, First Circuit Settlement

An inmate at Halawa Correctional Facility slipped and fell on a slippery area when he was entering his cell. His head hit the bunk bed as he fell, injuring his neck and eyes due to the trauma. The inmate continues to complain of neck problems and eye problems (comprising "floaters" and "photo sensitivity"), which have been corroborated through two MRI's and an outside ophthalmologist. This case proceeded to the Court Annexed Arbitration Program, and the arbitrator awarded him \$12,357.46. The case subsequently settled for \$12,357.46.

Gonsalves v. State of Hawaii \$ 24,000.00 (General Fund)
Civil No. 06-1-1843-10, First Circuit Settlement

An inmate at Halawa Correctional Facility twisted his right knee when he jumped off the top bunk bed of his cell. The same inmate also claims that he injured his second and third fingers while using a table saw at Waiawa Correctional Facility. The case proceeded to the Court Annexed Arbitration Program, and the arbitrator awarded him \$88,446.76. The case subsequently settled for \$24,000.00.

Pregil v. State of Hawaii, et al. \$ 10,092.80 (General Fund)
Civil No. 06-1-0772-05, First Circuit Judgment

Amount of Judgment: \$10,038.47
4% interest from 4/11/07: \$54.33

A deputy sheriff was transporting an inmate to be booked and he rear-ended a Honolulu Police Department vehicle. The inmate claims soft tissue injuries. This case proceeded to the Court Annexed Arbitration Program and the arbitrator awarded the claimant \$10,092.80.

MISCELLANEOUS CLAIMS:

Mitsue T. Kimata \$ 131.40 (General Fund)

Claimant requests reissuance of an outdated check that was misplaced. The check when found was outdated and could no longer be cashed. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

Dennis Donovan \$ 2,975.20 (General Fund)

Claimant requests reissuance of an outdated check that was misplaced. The check when found was outdated and could no longer be cashed. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:

Antonio v. State of Hawaii \$ 30,000.00 (Department
Civil No. 06-1-0131-01, First Circuit Settlement Appropriation)

Plaintiff was riding his motorcycle on the eastbound merge from Fort Weaver Road onto H-1 freeway when his motorcycle struck a pothole.

According to Plaintiff, he was in the left lane when he struck the pothole. He was driving at approximately 30-40 miles per hour when he lost control of his motorcycle. He did not get ejected from his motorcycle and did not lose consciousness at any time. Plaintiff was able to drive himself to the hospital following the accident. As a result of the incident, he sustained an injury to his right shoulder, which required surgery. Plaintiff continues to feel pain and is contemplating undergoing another surgery to his right shoulder. Plaintiff appealed the arbitration award in favor of the State. The case then settled for \$30,000.

Carvalho v. State of Hawaii	\$ 30,000.00	<i>(Department</i>
Civil No. 05-1-2155-12, First Circuit	Settlement	<i>Appropriation)</i>
and		
Carvalho v. State of Hawaii		
Civil No. 06-00667, USDC		

During a storm in December 2003, a significant volume of water flooded from Camp Smith across the road and down on to the Plaintiffs' home. An estimated 80 tons of mud and debris were hauled away. The large retaining wall was cracked, and the mud covered the Plaintiffs' pickup truck, three 5-ton AC units, and entered the home. The Plaintiffs alleged that the State was liable because in an earlier re-surfacing project on the road, rather than raising the storm drain so that the opening would remain at the designed height in order to handle the volume of water for which it was designed, the State simply poured the asphalt, leaving the opening narrower than it should have been. In addition, they alleged that the State was liable since, by not having removed an old utility pole and chunks of asphalt dumped on the State's right of way adjoining the retaining wall, the State increased the velocity of the run-off of the water and put additional pressure on the retaining wall due to the greater weight of material in the right of way. They alleged that the federal government was liable because yellow plastic security barriers were not filled with water or sand and were not lashed together, such that the flooding water pushed them together, creating a funnel of water directed toward the Plaintiffs' property. The Plaintiffs obtained estimates from contractors for the repairs. The original tort claim submitted was for \$278,854, which included the removal of mud and debris and clean-up (\$32,000), earthwork and demolition (\$134,200), damage to personal property (\$15,000), and replacement of the retaining wall (\$72,860).

Hoffelt, et al. v. Tesoro, et al.	\$ 150,000.00	<i>(Department</i>
Civil No. 05-1-0480(3), Second Circuit	Settlement	<i>Appropriation)</i>

The case arises out of a motor vehicle-pedestrian accident that occurred on March 24, 2004. The decedent, 74-year old pedestrian

Barbara Hoffelt, and her husband, John Hoffelt, were tourists from Chicago, Illinois, and on vacation in Maui. They had spent the morning shopping in the Front Street-wharf area in Lahaina and were planning to meet their son Michael and his wife, who were waiting for them at the West Maui Center shopping mall on the northeast side of the Honoapiilani Highway. The decedent and her husband crossed the highway from the west side of the intersection where there had previously been a marked and signalized crosswalk. Barbara Hoffelt had nearly made it to the mall side of the highway when she was struck by a vehicle owned and driven by Lamberto Tesoro. The impact was witnessed by her husband. Michael Hoffelt arrived soon after and saw his father standing on the sidewalk and two bystanders performing cardiopulmonary resuscitation ("CPR") on his mother who was lying on the highway. Because he is an emergency medical technician in Chicago, Michael then assisted the bystanders with the CPR. The point of impact was in the rightmost westbound lane and the removed crosswalk area. The case proceeded to mediation, which resulted in settlement.

Madriaga, et al. v. Baldwin, et al. \$ **25,000.00** *(Department*
Civil No. 04-1-0327(3), Second Circuit **Settlement** *Appropriation)*

Claimant was the driver of a pickup truck that was rear-ended by another pickup truck owned by the State of Hawaii and operated by a Department of Transportation employee, on December 5, 1996, on Honoapiilani Highway. The employee was acting within the scope of his employment at the time of the accident. Claimant sustained neck, thoracic and low back strains or sprains. This case proceeded to the Court Annexed Arbitration Program, and the arbitrator awarded the Claimant \$29,984.00. The case subsequently settled for \$25,000.00.

Scharsch v. State of Hawaii, et al. \$ **20,000.00** *(Department*
Civil No. 05-1-0435-03, First Circuit **Settlement** *Appropriation)*

This case arises out of flood and landslide damage at the end of 2003 and the first few days of 2004, from Likelike Highway onto and into the Plaintiff's home at 3128 Numana Road in Kalihi Valley from a very old (reputedly 50 years) Department of Transportation drainage pipe that failed.

Schlosser v. Lat, et al. \$ **40,000.00** *(Department*
Civil No. 05-1-0474(3), Second Circuit **Settlement** *Appropriation)*

This case arises from an accident that occurred on April 9, 2005, at Honoapiilani Highway and Halelo Street, the main intersection into the Kaanapali resort area, when Defendant Jose Lat ran a red light and hit the Decedent, Rolf Schlosser, 68, of Lahaina, who was riding his motorcycle in a makai direction through the intersection. Mr.

Schlosser died shortly after the accident. He was survived by his wife (the Plaintiff), and a son and grandson. The Plaintiff settled her claim against Defendant Lat for his maximum insurance coverage of \$20,000. The Plaintiff sued the State on the theory that the limit line that the Department of Transportation had painted on Haleo Street (private property owned by Kaanapali Development Corp., as it was known then), made the intersection dangerous because the sight distance from the limit line was inadequate. This case proceeded to mediation, which resulted in settlement.

ATTACHMENT "B"

DEPARTMENT OF HUMAN RESOURCES AND DEVELOPMENT:

Walsh, et al. v. City & County of Honolulu, et al., Civil No. 05-00378DAE, U.S.D.C.	\$ 50,000.00 (General Fund) Settlement
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This class action was filed in 2005 to challenge the constitutionality of the resident-at-time of application prerequisite for public employment in section 78-1(c), Hawaii Revised Statutes, before it was repealed by Act 52, Session Laws of Hawaii 2007. The Plaintiffs asserted the requirement violated their constitutionally protected right to travel and the privileges and immunities and equal protection clauses of the federal constitution. After hearing the parties' respective motions for summary judgment, Judge Ezra agreed with the plaintiffs and entered a permanent injunction enjoining the State and the City and County of Honolulu from enforcing the residency prerequisite on July 14, 2006.

The State appealed the judgment to the Ninth Circuit Court of Appeals. After the appeal was fully briefed but before oral argument was held, the Legislature repealed the residency prerequisite by enacting Act 52, which in the State's view, rendered the plaintiffs' constitutional challenge moot. With that as its position, the State suggested that the case be settled. The Plaintiffs and the State agreed that the State would pay the American Civil Liberties Union \$50,000 as statutory fees and costs for the litigation in both the district and appellate courts by August 15, 2008.

The judgment of the District Court was vacated and the case was dismissed.

DEPARTMENT OF PUBLIC SAFETY:

Bateman, et al. v. State of Hawaii Civil No. 06-1-1907-11, First Circuit	\$ 56,873.17 (General Fund) Judgment
Amount of judgment:	\$55,573.40
4% interest from 12/13/07:	\$ 1,299.77

This case is based upon the death of Antonio Prieto on April 15, 2004, while he was an inmate at Halawa Correctional Facility. He had presented with symptoms of a severe asthmatic attack and was treated in the prison's infirmary. He died four days later. His estate and surviving family members sued the State alleging that inmate Prieto died as a result of medical malpractice at the prison. This case proceeded to the Court Annexed Arbitration Program, which resulted in a judgment against the State in the amount of

\$55,573.40. The requested appropriation includes interest on the judgment.

Segawa v. State of Hawaii, et al. **\$ 50,000.00** *(General Fund)*
Civil No. 05-1-1562-09, First Circuit **Settlement**

Claimant is the current corrections supervisor at Kulani Correctional Facility. Claimant filed a whistleblower action against the Department of Public Safety and various employees of the Kulani Correctional Facility claiming that she was subjected to harassment and discrimination in retaliation for an investigation that she initiated of an employee in the facility. The departmental investigation of this employee did not find misconduct. After the investigation was initiated, animosity developed between the Claimant and friends of the employee who was investigated and various other employees of the facility. This led to other charges of misconduct against the Claimant as well as other employees. The investigation into these allegations did not find misconduct by anyone. Instead, the investigation found that a very divisive work environment was allowed to have occurred where employees were separated into hostile factions. The settlement provides for steps to be taken to alleviate the problems that gave rise to the litigation.

DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:

Dunn, et al. v. Department of **\$ 930,964.85** *(Department*
Transportation, et al., **Judgment** *Appropriation)*
Civil No. 04-1-1330-07, First Circuit

Amount of judgment: \$911,051.16
 4% interest from 1/14/08: \$ 19,913.69

The case arises out of a bicycle accident that occurred on August 16, 2003. At approximately 5:30-5:45 a.m., Plaintiff and his friend were bicycling east toward Waimanalo along Kalaniana'ole Highway. There is a series of white plastic delineators installed along the shoulder of the highway opposite of the Olomana Golf Course. The paved shoulder on which the delineators are installed is a designated bicycle route. It was very dark at the time of the accident. Plaintiff's bicycle struck the black base of a missing delineator and flew off his bicycle onto the highway shoulder. The impact from the fall caused his helmet to split and Plaintiff sustained a severe head injury. Before trial, the parties participated in mediation and settlement conferences; however, Plaintiffs refused settlement for any amount less than \$1,000,000. The case proceeded to trial, which resulted in a judgment against the State for \$930,964.85.

Hashimoto v. Liftee, et al.
Civil No. 99-2462-06, First Circuit

\$ 250,000.00 (Department
Settlement Appropriation)

Plaintiff was riding a moped and collided broad-side into a car making a left-turn across his path at the intersection of Nuuanu Avenue and Vineyard Boulevard. Plaintiff alleged that the State of Hawaii negligently designed the intersection by failing to install a left-turn arrow there prior to the accident. Although there was a left-turn lane at the intersection at the time of the accident, there was no left-turn arrow. Plaintiff sustained severe internal injuries, including a ruptured spleen, liver lacerations, and pulmonary contusion/laceration. Plaintiff suffered significant blood loss. Plaintiff's spleen was removed. A part of Plaintiff's stomach and his large and small intestines were also removed.

This case proceeded to the Court Annexed Arbitration Program, and the arbitrator found the driver of the left-turning vehicle 100% negligent. Both the Plaintiff and the driver appealed. The trial court granted the State's motion for summary judgment based on the discretionary function defense, but the Hawaii Supreme Court reversed and remanded the case for trial. The case subsequently settled for \$250,000.000.