



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2961, S.D. 1, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Monday, February 25, 2008 **TIME:** 10:30 AM

LOCATION: State Capitol Room 211

Deliver to: State Capitol, Room 210, 1 copy

TESTIFIER(S): WRITTEN TESTIMONY ONLY (For further information, please contact Caron M. Inagaki, Deputy Attorney General, 586-1300)

Chair Baker 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 eighteen (18) claims that total \$2,082,394.88. Of this total, \$606,430.03 are general fund appropriation requests and \$1,475,964.85 are appropriation requests from departmental funds. Attachment A provides a brief description of each claim in the bill.

Since the bill was last amended, three (3) new claims have been resolved for an additional \$50,284.00. All of these claims are general fund appropriation requests. Attachment B describes these claims. We request that the Committee amend the bill to appropriate funds to satisfy these three (3) new claims.

Including the new claims, the appropriation request totals \$2,132,678.88 allocated among twenty-one (21) claims. Of this total \$656,714.03 are general fund appropriation requests and \$1,475,964.85 are appropriation requests from departmental funds.

We also request the following amendment to the current draft of the bill. On page 1, line 22, "DEPARTMENT OF HUMAN RESOURCES AND DEVELOPMENT" should be amended to read "DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT."

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.

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

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:

Bateman, et al. v. State of Hawaii \$ 56,873.17 (General Fund)
Civil No. 06-1-1907-11, First Circuit 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.

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.

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.

MISCELLANEOUS CLAIMS:

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. Although the claim was not filed within six years from the date on which the claim for payment matured required by section 37-77, Hawaii Revised Statutes, there is sufficient reason the delay was caused by circumstances beyond the claimant's control and, therefore, good cause exists to pay the claim.

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. Although the claim was not filed within six years from the date on which the claim for payment matured required by section 37-77, Hawaii Revised Statutes, there is sufficient reason the delay was caused by circumstances beyond the claimant's control and, therefore, good cause exists to pay the claim.

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 (Department
Civil No. 05-1-2155-12, First Circuit Settlement Appropriation)
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).

<p>Dunn, et al. v. Department of Transportation, et al., Civil No. 04-1-1330-07, First Circuit</p>	<p>\$ 930,964.85 Judgment</p>	<p>(Department Appropriation)</p>
<p>Amount of judgment: \$911,051.16</p>		
<p>4% interest from 1/14/08: \$ 19,913.69</p>		

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.

<p>Hashimoto v. Liftee, et al. Civil No. 99-2462-06, First Circuit</p>	<p>\$ 250,000.00 Settlement</p>	<p>(Department Appropriation)</p>
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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

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 HEALTH:

Enchanted Lakes Residents Association \$ 4,800.00 (General Fund)
v. Department of Health Settlement
Medication Center of the Pacific No. 2007-0939

The State of Hawaii Department of Health (DOH) and Enchanted Lakes Residents Association (ELRA) of Kailua, a nonprofit corporation, entered into a contract in 2004 (ASO Log No. 04-295). The contract provided that ELRA would support community efforts at removing invasive mangroves, trash, and debris from Kaelepulu Pond while educating the surrounding grade schools about storm water runoff pollution. At the end of the contract term in January 2006, DOH denied ELRA final payment of \$9,676 out of a total contract of \$35,300, claiming that ELRA had materially breached the contract by failing to produce several specified contract deliverables. ELRA sought payment of the full contract amount from DOH, claiming that it had substantially performed, that the mangrove removal work was more expensive than expected, and that DOH had added details to the required contract deliverables. After mediation, ELRA agreed to accept slightly less than half of the disputed amount and to provide DOH some of the missing contract deliverables.

DEPARTMENT OF HUMAN SERVICES:

Aihara v. Department of Human Services, \$ 45,000.00 (General Fund)
et al., Civil No. 05-1-0514-03, Settlement
First Circuit

This action arises out of a dispute as to the meaning of the terms of the 1992 Neighbor Island Airport Settlement Agreement between the Blind Vendors, the Department of Human Services (who administers the Blind Vendors program), and the Department of Transportation (who is responsible for overseeing the airports). According to the 1992 Neighbor Island Airport Settlement Agreement, the Blind Vendors were to receive income from all of the vending machines located in the passenger terminal buildings. Beginning in 1992, the Department of Human Services construed that provision to mean all of the vending machines located in the public sections of the passenger terminal buildings. This practice continued until suit was brought in 2005, after a new blind vendor took over at the Kauai Airport. The Department of Human Services agreed to accept the interpretation of the term "all vending machines" to mean vending machines located in public and non-public areas of the passenger terminal buildings. The \$45,000 settlement represents both lost profits and attorneys' fees.

MISCELLANEOUS CLAIM:

Karen Y. Nakamura

\$ 484.00 (General Fund)

Claimant requests reissuance of an outdated check that was misplaced. The check when found was outdated and could no longer be cashed. Although the claim was not filed within six years from the date on which the claim for payment matured, as required by section 37-77, Hawaii Revised Statutes, there is sufficient reason the delay was caused by circumstances beyond the claimant's control and, therefore, good cause exists to pay the claim.