



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2961, S.D. 2, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 11, 2008 **TIME:** 2:00 p.m.

LOCATION: State Capitol Room 325
Deliver to: State Capitol, Room 302, 5 copies

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

Chair Waters 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 twenty-one (21) claims that total \$2,132,678.88. Of this total, \$656,714.03 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, six (6) new claims have been resolved for an additional \$216,988.07. 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 six (6) new claims.

Including the new claims, the appropriation request totals \$2,349,666.95 allocated among twenty-seven (27) claims. Of this total \$873,702.10 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.

The \$45,000 settlement represents both lost profits and attorneys' fees.

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

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.

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.

DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:

Antonio v. State of Hawaii
Civil No. 06-1-0131-01, First Circuit

\$ 30,000.00 (Department
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
Civil No. 05-1-2155-12, First Circuit

\$ 30,000.00 (Department
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).

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

ATTACHMENT "B"

DEPARTMENT OF EDUCATION:

In the Matter of the Arbitration \$ 25,000.00 (General Fund)
Between Hawaii State Teachers Association, Settlement
AFSME Local 152, AFL-CIO and Kihei Public
Charter High School (Grievance of John
Loomis), Case No. 03-18

This grievance concerned the termination of a teacher from his teaching position in 2002 by the then school principal for failure to perform the specific task of leveling standards for each student project in his class. The potential exposure faced by the school was approximately \$84,000 which represented the difference in wages the grievant would have earned if not terminated and what he in fact did earn during the relevant period. Before the final three witnesses testified at the arbitration hearing, the parties, with the assistance of the arbitrator, tentatively agreed to settle the case for \$50,000 conditioned on the approval of the School Board and the Department of the Attorney General. The School Board agreed to the following settlement: The first payment of \$25,000 made by the school on November 1, 2007, and the remaining balance through the 2008 legislative session. The union had no opposition to this proposal.

Huddleston, et al. v. Kamaaina Care, Inc., \$ 74,500.00 (General Fund)
et al., Civil No. 06-1-0077, Third Circuit Settlement

A girl was injured while playing dodge ball during an A+ activity being run by Kamaaina Kids at Kaumana Elementary School in Hilo. The girl's injuries allegedly were due to a backwards fall. She allegedly had hit her head against a protruding bolt that was attached to a chain link fence gate. Stan's Construction had built the play court area. The girl has been evaluated for cognitive and neurological deficits by Plaintiffs' expert. This case proceeded to mediation which resulted in the settlement.

DEPARTMENT OF PUBLIC SAFETY:

Kimberly v. State of Hawaii, et al. \$ 91,619.02 (General Fund)
Civil No. 95-0718-03, First Circuit Judgment
Amount of judgment: \$87,245.88
4% interest from 5/1/07: \$ 4,373.44

Claimant was sexually assaulted and harassed by an Adult Corrections Officer (ACO) while she was incarcerated at the Oahu Community Correctional Center ("OCCC") as a pretrial detainee. Claimant is a transgendered individual whose self-identity and outward appearance is female. A former employee, a social worker, was alleged to have

conducted an inadequate investigation of Claimant's grievances against the ACO. This case proceeded to trial in January 2000, and judgment was entered in favor of the Claimant. The case was appealed to the Hawaii Supreme Court, and the Hawaii Supreme Court affirmed the judgment, except for the award of general damages against the State. The Hawaii Supreme Court remanded the case for a re-determination of the amount of general damages against the State. Trial was held in June 2006. Following the second trial, the trial court issued an Amended Final Judgment, awarding the total amount of \$425,833.28 against the social worker (\$415,833.28, jointly and severally with the ACO, and \$10,000 in punitive damages against the social worker). The trial court awarded the total amount of \$87,245.58 plus interest against the State.

Sampaio v. State of Hawaii	\$ 25,244.05 (General Fund)
Civil No. 06-1-0751-05, First Circuit	Judgment
Amount of judgment:	\$24,770.30
4% interest from 2/22/08:	\$ 473.75

An inmate at Halawa Correctional Facility slipped and fell as he was walking to Module A to take a shower. He was wearing black rubber slippers when he slipped and fell on his tailbone. The case proceeded to the Court Annexed Arbitration Program, and the arbitrator found the State of Hawaii 100% negligent and awarded Claimant \$32,254.08. The State appealed the arbitration award, and the case went to trial. At trial, the court found the State of Hawaii 100% negligent and awarded Claimant \$24,770.30 plus interest.

MISCELLANEOUS CLAIM:

Estate of Audrey Marie Au	\$ 500.00 (General Fund)
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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.

Cynthia C. Matsumura	\$ 125.00 (General Fund)
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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.