



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

H.B. NO. 1016, H.D. 1, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Friday, February 27, 2009 **TIME:** 3:00 PM

LOCATION: State Capitol, Room 308
Deliver to: State Capitol, Room 306, 2 Copies

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

Chair Oshiro 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 claims that total \$1,231,091.65. Of this total, \$531,091.65 are general fund appropriation requests and \$700,000.00 are appropriation requests from departmental funds. Attachment A provides a brief description of each claim in the bill.

Since the bill was last amended, five new claims have been resolved for an additional \$456,067.28. Three of these claims are general fund appropriation requests, and two claims are appropriation requests from departmental funds. Attachment B describes these claims. We request that the Committee amend the bill to appropriate funds to satisfy these five new claims.

In addition to the new claims described in Attachment B, we are requesting a new section 3 of part II of the bill be added

to reflect the Department of Transportation, Harbors Division, case. The new section 3 should read as follows:

SECTION 3. The following sums or so much thereof as may be necessary for fiscal year 2008-2009 are appropriated out of the state harbor fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	AMOUNT
DEPARTMENT OF TRANSPORTATION, HARBORS DIVISION:	
Haole v. State of Hawaii Civil No. 03-1-0876-04, First Circuit	\$275,000.00 Settlement
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SUBTOTAL:	\$275,000.00
TOTAL (SECTION 3)	\$275,000.00

The sums appropriated shall be expended by the department of transportation, harbors division, for the purposes of this Act.

Sections 3 through 7 under part III should be renumbered accordingly as sections 4 through 8.

Additionally, we are requesting the following correction to the current draft of the bill. The Freitas, et al. v. State of Hawaii case, Civil No. 05-1-0514(1), Second Circuit, on page 3, lines 2-5, of the bill should be changed from \$30,000.00 to \$60,000.00.

Including the new claims and amendment, the appropriation request totals \$1,687,158.93 allocated among twenty-five claims. Of this total \$621,158.93 are general fund appropriation

requests and \$1,066,000.00 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.

surgery on both his neck and his shoulder for injuries allegedly sustained in the fall, and he further claims to be suffering from chronic pain, requiring ongoing treatment and medication. The case settled for \$50,000.00.

Hernandez v. State of Hawaii, et al. **\$ 22,000.00** (General Fund)
Civil No. 06-1-1628-09, First Circuit **Settlement**

Claimant, a 55-year-old inmate at Kulani Correctional Facility, severely sprained his calf while playing frisbee. Claimant stepped into a hole that had been created by a wild pig digging in the outfield. He claims that pigs digging around the facility was a constant problem. He reported to the medical unit of the facility where he was seen by a nurse. He was not referred to an emergency room or an orthopedist. The nurse considered it a minor sprain of the calf muscle and told him to elevate the leg and apply ice to it. The PSD physician who made periodic visits to Kulani saw Claimant for the first time twelve days post injury on December 28, 2004. The PSD physician diagnosed a severe strain of the calf muscle. Since Claimant had a history of diabetes and vascular compromise in his lower extremities, the examining physician was most concerned with deep vein thrombosis. Claimant was therefore sent to Hilo for a venous Doppler test, which was negative. There was no further follow-up.

The Claimant sustained permanent atrophy and deformity of the right calf muscle. He claims this atrophy causes him difficulty in running, walking, going up and down stairs and standing for prolonged periods. He claims he has an uneven gait.

This case settled for \$22,000.00.

Rosa v. State of Hawaii **\$ 23,685.05** (General Fund)
Civil No. 07-1-1143-06, First Circuit **Judgment**
Amount of Judgment: \$22,675.00
4% interest from 6/19/08: \$ 1,010.05

Claimant, an inmate at Waiawa Correctional Facility, severed a portion of his left index and middle fingers while operating a meat saw in the Waiawa Correctional Facility kitchen. This case proceeded to the Court Annexed Arbitration Program, and the arbitrator found in favor of the Claimant in the amount of \$22,400.00 in damages plus \$275.00 in costs plus interest.

MISCELLANEOUS CLAIMS:

Ejima, Inc. **\$ 587.75** (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 in 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.

Gladys Hayashi \$ 223.43 (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.

Kay Y. Kawatani \$ 107.40 (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.

**Georgia K. Char Lyman as Personal
Representative of the Estate of
Keakealani L. Char** \$ 9,114.42 (General Fund)

Claimant requests reissuance of outdated checks that were misplaced. The checks when found were outdated and could no longer be cashed. Although the claim was not filed within six years from the date in 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.

Lottie L. Mar \$ 22,895.25 (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 in 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.

Elaine Mock \$ 353.62 (General Fund)

Claimant requests reissuance of outdated checks that were misplaced. The checks when found were outdated and could no longer be cashed. Although the claim was not filed within six years from the date in 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.

Karen M. Radius \$ 1,853.15 (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 in 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.

Paul T. Sakuma \$ 272.28 (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, AIRPORTS DIVISION

Freitas, et al. v. State of Hawaii \$ 60,000.00 (General Fund)
Civil No. 05-1-0514(1), Second Circuit Settlement

This lawsuit was filed by two airport firefighters assigned to the Lanai Airport based on the Hawaii Whistleblower Protection Act. The firefighters alleged they were subjected to employment retaliation after they complained of the conduct of an airport maintenance worker. The department was vulnerable to liability because the alleged retaliation was allowed to occur over an extended period of time without effective action being taken.

DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:

Parel v. Kanui, et al.
Civil No. 07-1-0290, Third Circuit

\$ 25,000.00 (Department
Settlement Appropriation)

A State of Hawaii employee caused a four-vehicle chain-reaction accident when he struck the rear end of the vehicle in front of him while traveling at approximately 45 miles per hour. At the time of the accident the State employee was performing his duties as a supervisor for the State of Hawaii Department of Transportation, Highways Division, in Hawaii County. The employee was driving a State of Hawaii DOT pick-up truck destined for his base yard at the time of the accident. The employee admits that his inattention at the time of the accident caused the accident. The Claimant sustained various injuries and lost one of his jobs due to his injuries.

Lang v. Prosniewski, et al.
Civil No. 05-1-0389(1), Second Circuit

\$325,000.00 (Department
Settlement Appropriation)

Claimant suffered serious bodily injury when she was involved in a six-car accident on Maui. She was traveling in a southbound direction and was stopped behind defendant and third-party plaintiff Prosniewski, who was attempting to make a left turn at the intersection of Honoapiilani Highway and Civic Center Road. While stopped, Claimant was rear-ended by another vehicle. This was the first collision. The second collision resulted when Claimant was pushed by the rear-end collision into the rear of Prosniewski's vehicle. After the second collision, Claimant's vehicle crossed the centerline into oncoming traffic. The third collision occurred when Claimant hit the right rear of another vehicle traveling in the opposite direction. Collisions four and five occurred in succession as Claimant collided with the front end of two more vehicles that were also traveling northbound. Claimant alleged that the State should have placed a "no left turn" sign at the intersection, which would have prevented Prosniewski from making a left turn. This case proceeded to mediation, which resulted in settlement.

Punsalan, et al. v. State of Hawaii, et al.
Civil No. 05-1-0389(1), Second Circuit

\$325,000.00 (Department
Settlement Appropriation)

This case initially involved three one-car accidents on the same segment of Route 190, the Mamalahoa Highway, north of Kona on the island of Hawaii. The Punsalan accident involving Steven Punsalan, as driver, and Kathy Punsalan, his passenger, occurred on January 9, 2005. The Lactaoen accident involving Kawehilani Lactaoen, as driver, and her minor son, Kauahe Lactaoen, as passenger, occurred on November 6, 2004. Plaintiff Liliukalani Ross' accident occurred on November 26, 2002. The Ross claim was dismissed on the State's motion for summary judgment based on the statute of limitations.

All of these accidents occurred as the plaintiffs' vehicles were traveling in a northerly direction while it was raining. All of the plaintiffs claim that they were traveling between 30-35 m.p.h. while they were driving through a series of uphill "S" curves. They all claim that at basically the same point in the road their vehicle lost traction and slid, or hydroplaned, across the paved oncoming lane of travel, across the narrow unpaved shoulder and over the crest of the 200-foot steep hill or cliff. After leaving the paved surface and crossing the dirt shoulder, all of the plaintiffs' vehicles tumbled down the hill causing the plaintiffs' varying severity of injuries.

ATTACHMENT "B"

DEPARTMENT OF EDUCATION:

Tort Claim of Dominic Quimbao \$ 20,000.00 (General Fund)

A kindergarten student at Kaimiloa Elementary School smashed his finger in a swinging gate. He placed his hand on top of the pole hinge of the gate, when suddenly, an unknown student swung the gate and Dominic's ring finger on his right hand was caught between the post and the gate. At the time of the subject accident the gate was in its open position and not secured because refuse collection was suppose to come to the school that day.

The school's procedure was to have the gate secured with a padlock and in a closed position. However, on the day of the incident, the school was on a half-day schedule and the area where the gate was located was where many students waited to get picked up. Because the refuse collection had not yet been picked up that day, the gate remained unsecured while the students were waiting to be picked up.

Additionally, the area where the incident occurred was generally supervised by the school's advisor and a crossing guard. However, the crossing guard was out sick that day and there was no substitute available positioned near the gate. The other school advisor was not directly near the gate and therefore did not witness the incident.

The student is right handed. As a result of the subject incident, he sustained a fracture to his right ring finger which required him to undergo surgery. Although he is able to write, Dominic claims that at times he is unable to bend his finger, which makes it difficult and uncomfortable for him to write and hold objects.

DEPARTMENT OF HUMAN SERVICES:

Morris v. Kihara, et al. \$ 39,617.28 (General Fund)
Civil No. 06-1-0063, Fifth Circuit Settlement

Claimant's vehicle was rear-ended by a Department of Human Services employee driving a state vehicle. The accident occurred on Kuhio Highway near Lihue. Claimant suffered whiplash and soft tissue lower back injuries. The case proceeded to the Court Annexed Arbitration Program, and the arbitrator awarded the Claimant \$46,617.28. The State appealed

the arbitrator's decision, and the case later settled for \$39,617.28.

MISCELLANEOUS CLAIM:

Eleanor K. Ohnaga **\$ 450.00** (General Fund)

Claimant requests reissuance of outdated checks that were misplaced. The checks when found were 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, HARBORS DIVISION:

Haole v. State of Hawaii **\$ 275,000.00** (Department
Civil No. 03-1-0876-04, First Circuit Settlement Appropriation)

Plaintiff, a longshoreman employed by McCabe, Hamilton & Renny ("McCabe"), was injured in an automobile accident that occurred on a State-owned pier in Honolulu Harbor. The accident took place at approximately 1:00 a.m., as Plaintiff and his co-workers were loading and unloading automobiles from the barge Waialeale. McCabe was Matson's subcontractor; Matson had hired McCabe to perform stevedoring work, including the loading and unloading of the Waialeale at the time of the accident.

Plaintiff was on the barge when Defendant Eric Rapoza ("Defendant Driver"), the McCabe foreman, offered Plaintiff a ride in a white, two-door Pontiac Firebird convertible that was being off-loaded. As the vehicle crossed the open space, the car entered an area with three fixed light posts. The car then struck a post extending upward from the ground and stopped suddenly.

The pipe that the vehicle struck was part of an old vapor extraction system installed on Pier 26 when Young Brothers previously occupied the premises. The State took the position that the pipe should have been removed by the contractors as part of the State's contract under the Shed Demolition Project. The contractors were also named defendants in this case.

Plaintiff underwent two surgeries for injuries to his right shoulder and continues to feel lower back pain for which he indicated he was contemplating future surgery to relieve the pain. As a result of the injuries he attributed to the subject accident, Plaintiff did not return to work for more than one

