



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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 3, 2009 **TIME:** 2:00 PM

**LOCATION:** State Capitol, Room 325  
*Deliver to: State Capitol, Room 302, 1 Copy*

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

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Chair Jon Riki Karamatsu 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 sixteen claims that total \$1,041,091.65. Of this total, \$341,091.65 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 introduced, four new claims have been resolved for an additional \$190,000.00. 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 four new claims.

Including the new claims, the appropriation request totals \$1,231,091.65 allocated among twenty claims. Of this total \$531,091.65 are general fund appropriation requests and \$700,000.00 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.

**ATTACHMENT "A"**

**DEPARTMENT OF EDUCATION:**

**Wiley, et al. v. State of Hawaii, et al.     \$175,000.00 (General Fund)**  
**Civil No. 04-1-1895-10, First Circuit        Settlement**

Claimant alleges she tripped and fell on an uneven sidewalk outside Aliamanu Elementary School, resulting in extensive injuries to nearly every part of her body. She allegedly required multiple surgeries. Claimant asserted a negligence claim against the State and the City. She claimed economic losses in excess of \$600,000 plus general damages. Claimant's husband asserted a claim for loss of consortium. The City was dismissed by stipulation. The case settled for \$175,000. The sidewalk was repaired after the accident.

**DEPARTMENT OF HUMAN SERVICES:**

**Martinez v. State of Hawaii, et al.         \$ 35,000.00 (General Fund)**  
**Civil No. 06-1-1658-09, First Circuit        Settlement**

Claimant slipped and fell on a metal drain cover that spanned across the sidewalk at the Puuwai Momi housing area operated at the time by the Housing and Community Development Corporation of Hawaii, now being operated by the Hawaii Public Housing Authority. Claimant walked on the metal drain cover in the rain at the time he slipped. Claimant sustained a torn rotator cuff injury to his dominant shoulder. This required surgery and a lengthy period of rehabilitation during which he was unemployed.

The drain cover upon which the Claimant slipped had been installed approximately 35 years prior when this low income housing was originally built. Claimant's liability expert witness tested the drain cover for slip resistance and, based on his testing, would have testified that the coefficient of friction of the drain cover is low enough to cause the drain cover to be hazardous when wet. He would have testified that the corrugated surface of the drain cover has worn down over the years, contributing to the surface's lack of slip resistance when wet. The Claimant and Claimant's liability expert will also testify that, when wet, the drain cover is essentially the same color as the sidewalk, thus not alerting the pedestrian to the difference in walking surfaces with different degrees of slip resistance. The State's expert confirmed the slip resistance test results reached by the Claimant's expert.

This case proceeded to the Court Annexed Arbitration, and the arbitrator awarded the Claimant \$60,000.00. The lawsuit later settled for \$35,000.00.



**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, HIGHWAYS DIVISION:**

**Parel v. Kanui, et al.**

**\$ 25,000.00** (Department

**Civil No. 07-1-0290, Third Circuit**

**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



all of the plaintiffs' vehicles tumbled down the hill causing the plaintiffs' varying severity of injuries.





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.