

# LATE TESTIMONY

February 3, 2009

EMAILED TESTIMONY TO: [CPCtestimony@Capitol.hawaii.gov](mailto:CPCtestimony@Capitol.hawaii.gov)

**Hearing Date: Wednesday, February 4, 2:00 p.m., Conference Room 325**

Honorable Representatives Robert N. Herkes, Chair, Glenn Wakai, Vice Chair, and Members of the House Committee on Consumer Protection & Commerce

Subject: **HB 1316, Relating to Torts**

Dear Chair Herkes, Vice Chair Wakai, and Committee Members,

Palms Hawaii Architecture, a Hawaii-owned and -operated small business design firm, appreciates this opportunity to **support of HB 1316**, Relating to Torts.

As a small business owner and design professional, my potential professional and personal liability is at the forefront of my mind in every project I consider. While a certain amount of risk is a reality of doing business, the current situation under joint and several liability seems very unfair, especially for small firms. This is particularly so for highway cases, where the claims and awards can be large, creating risks under joint and several liability that far outweigh our firm's potential profit.

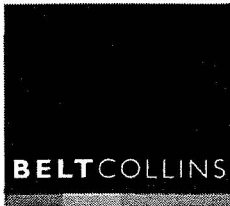
It is unfair that my financial future should be so at risk because of my minor involvement in a public works project, especially if I am not in any way negligent. Design work on such projects is performed to State and Federal design standards and codes, and are reviewed and approved by government agencies. However, under the current law, a design professional who is pulled into a claim (even frivolously), but who may be found by a jury to be only one percent (1%) liable for damages, could be forced to pay far more than his/her share of damages.

As a small business engineering firm, serving as a subcontractor on State projects, our fee is typically less than \$50,000 (profit of less than \$5,000). Clearly, the State and its citizens benefit far more than the design professional by the design of these projects, and some protection for small business design professionals is warranted.

HB 1316 provides for more fairness in allocation of risk, but certainly does not allow us to escape our responsibilities. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and would not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply.

We feel that fear on the part of small business design professionals limits the available pool of highly qualified consultants available to conduct State projects. With the many infrastructure projects anticipated, the impact of having small business firms decline to work for the DOT is to have this work go to large, predominately mainland firms, who choose to essentially self-insure and are able to absorb more risk, but who take their profits out of the state.

We appreciate the continuing efforts of your committee and the members of the Senate to assist small businesses in Hawaii. Thank you for the opportunity to testify in support of HB 1316.



# LATE TESTIMONY

February 3, 2009  
09A-063

**Sent Via Email**

CPCtestimony@Capitol.hawaii.gov

**Hearing Date: Wednesday, February 4, 2:00 p.m., Conference Room 325**

Honorable Representatives Robert N. Herkes, Chair, Glenn Wakai, Vice Chair, and Members of the House Committee on Consumer Protection & Commerce

**Subject: HB 1316, Relating to Torts**

Dear Chair Herkes, Vice Chair Wakai, and Committee Members,

Belt Collins Hawaii is a local firm engaged in civil engineering, planning, landscape architecture, and environmental consulting. We support HB 1316 which is intended to limit the liability of firms such as ours in a more equitable manner. In the past, Belt Collins has regretfully turned down work due to onerous indemnification clauses in the contracts which would have burdened us with an unfair share of liability. With the way the law stands, a single major lawsuit has the potential to drive a design firm out of business. The result is loss of high-quality jobs and one less firm able to provide services critical to our community. Given the emphasis on infrastructure improvements to stimulate the economy, this result is unacceptable.

HB 1316 attempts to bring fairness to the judicial system for design professionals, whose work results in design beneficial public works projects that greatly improve the quality of life for the State's citizens. However, for most firms, the professional liability risk for design professionals far outweighs their financial reward from these projects.

Under joint and several liability, a design professional who may be found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident may be forced to pay far more than his/her share of damages.

Even before going to trial, the insurance companies settle for the design professional's insurance policies limits, because of the risk of large rewards at trial. Because of the risks and escalating professional liability insurance premiums associated with doing highway work, many of our small firms no longer participate in these projects, reducing the pool of qualified consultants.

HB 1316 provides for more fairness in allocation of risk. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply. We have looked at tort reform legislation in other states and feel HB 1316 is a reasonable and fair compromise to the full abolition of joint and several liability enacted in a number of states.

Chair Herkes, Vice Chair Wakai, and Committee Members  
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Page 2

Belt Collins Hawaii appreciates the continuing efforts of your committee and the members of the House to improve the business climate for small business in Hawaii. Thank you for the opportunity to testify in support of HB 1316.

Very truly yours,

BELT COLLINS HAWAII LTD.

A handwritten signature in black ink, appearing to read "Lawrence S. Agena". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lawrence S. Agena  
Vice President

# LATE TESTIMONY

February 4, 2009

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**Hearing Date: Wednesday, February 4, 2:00 p.m., Conference Room 325**

Honorable Representatives Robert N. Herkes, Chair, Glenn Wakai, Vice Chair, and Members of the House Committee on Consumer Protection & Commerce

Subject: **HB 1316, Relating to Torts**

Dear Chair Herkes, Vice Chair Wakai, and Committee Members,

Umemoto Cassandro Design Corporation, a Hawaii-owned and –operated small business landscape architecture firm, appreciates this opportunity to our **support of HB 1316, Relating to Torts.**

As a small business owner and design professional, our potential professional and personal liability is at the forefront of our minds when we consider new projects. While a certain amount of risk is a reality of doing business, the current situation under joint and several liability is unfair, especially for small firms. This is particularly so for public spaces, like streetscapes and parks, where the claims and awards can be large, creating risks under joint and several liability that far outweigh our firm's potential profit.

It is unfair that our financial future should be so at risk because of limited involvement in a public works project, especially if our company's performance is not in any way negligent. Engineering and architectural work on such projects is performed to State and Federal design standards and codes, and are reviewed and approved by government agencies. However, under the current law, a design professional who is pulled into a claim (even frivolously), but who may be found by a jury to be only one percent (1%) liable for damages, could be forced to pay far more than his/her share of damages.

As a small business landscape architectural firm, serving as a subcontractor on State projects, our fee is typically less than \$50,000 (profit of less than \$5,000). Clearly, the State and its citizens benefit far more than the design professional by the design of these projects, and some protection for small business design professionals is warranted.

HB 1316 provides for more fairness in allocation of risk, but certainly does not allow us to escape our responsibilities. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and would not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply.

We feel that fear on the part of small business design professionals limits the available pool of highly qualified consultants available to conduct State projects. With the many infrastructure projects anticipated, the impact of having small business firms decline to work for the DOT is to have this work go to large, predominately mainland firms, who choose to essentially self-insure and are able to absorb more risk, but who take their profits out of the state.

We appreciate the continuing efforts of your committee and the members of the Senate to assist small businesses in Hawaii. Thank you for the opportunity to testify in support of HB 1316.



**ERNEST M. UMEMOTO AIA**  
Architect, Inc.

# LATE TESTIMONY

1/4/09

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**Hearing Date: Wednesday, February 4, 2:00 p.m., Conference Room 325**

Honorable Representatives Robert N. Herkes, Chair, Glenn Wakai, Vice Chair, and Members of the House Committee on Consumer Protection & Commerce

Subject: **HB 1316, Relating to Torts**

Dear Chair Herkes, Vice Chair Wakai, and Committee Members,

Ernest M. Umemoto Inc., a Hawaii-owned and –operated small business engineering firm, appreciates this opportunity to our **support of HB 1316, Relating to Torts.**

As a small business owner and design professional, my potential professional and personal liability is at the forefront of my mind in every project I consider. While a certain amount of risk is a reality of doing business, the current situation under joint and several liability seems very unfair, especially for small firms. This is particularly so for highway cases, where the claims and awards can be large, creating risks under joint and several liability that far outweigh our firm's potential profit.

It is unfair that my financial future should be so at risk because of my minor involvement in a public works project, especially if I am not in any way negligent. Engineering work on such projects is performed to State and Federal design standards and codes, and are reviewed and approved by government agencies. However, under the current law, a design professional who is pulled into a claim (even frivolously), but who may be found by a jury to be only one percent (1%) liable for damages, could be forced to pay far more than his/her share of damages.

As a small business engineering firm, serving as a subcontractor on State projects, our fee is typically less than \$50,000 (profit of less than \$5,000). Clearly, the State and its citizens benefit far more than the design professional by the design of these projects, and some protection for small business design professionals is warranted.

HB 1316 provides for more fairness in allocation of risk, but certainly does not allow us to escape our responsibilities. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and would not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable,



**ERNEST M. UMEMOTO AIA**  
Architect, Inc.

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joint and several liability would still apply.

We feel that fear on the part of small business design professionals limits the available pool of highly qualified consultants available to conduct State projects. With the many infrastructure projects anticipated, the impact of having small business firms decline to work for the DOT is to have this work go to large, predominately mainland firms, who choose to essentially self-insure and are able to absorb more risk, but who take their profits out of the state.

THE PEOPLE WILL SUFFER IN THE LONG-RUN IF CONTROLS ARE NOT IN PLACE.  
I has been my personal experience that single-family residence owners, apartment owners and condo owners and developers will have an increasingly harder time finding design professional to do their projects because of the numerous frivolous lawsuits and condo association dangers. I have lost settlements to stop lawsuits on projects where my performance has been without fault. We are limited on the number of these projects we are able to do by our insurance carriers and the ultimate loss will be to the home Owners.

We appreciate the continuing efforts of your committee and the members of the Senate to assist small businesses in Hawaii. Thank you for the opportunity to testify in support of HB 1316.

Yours truly,

Ernest M. Umemoto, AIA

wakai1-Karen

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**From:** Jon Nishimura (rr)  
**Sent:** Wednesday, February 04, 2009 8:31 AM  
**To:** CPCtestimony  
**Subject:** HB 1316, Relating to Torts

**LATE TESTIMONY**

February 3, 2009

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**Hearing Date: Wednesday, February 4, 2:00 p.m., Conference Room 325**

Honorable Representatives Robert N. Herkes, Chair, Glenn Wakai, Vice Chair, and Members of the House Committee on Consumer Protection & Commerce

**Subject: HB 1316, Relating to Torts**

Dear Chair Herkes, Vice Chair Wakai, and Committee Members,

**Fukunaga & Associates, Inc.** is a Hawaii-owned and managed Civil & Environmental Engineering firm operating in Hawaii since 1969. **We are in strong support of HB 1316, Relating to Torts.**

**HB 1316** attempts to bring fairness to the judicial system for design professionals, who are responsible for the design of beneficial public works projects that greatly improve the quality of life for the State's citizens.

**HB 1316** provides that design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply. We have looked at tort reform legislation passed in other states and feel **HB 1316** is a reasonable and fair compromise to the full abolition of joint and several liability enacted in a number of states.

We believe that this limited concession to design professionals for highway projects is warranted because their work is conducted for the greater good of the State's citizens, a public benefit that far exceeds the reward to the design professional. Projects are conducted to design standards and codes and are reviewed and approved by government agencies. Many of Hawaii's design professionals are small businesses, and small firms with minimal involvement in a highway project are still subject to the same joint and several liability risks.

**HB 1316** provides for more fairness in allocation of risk. Under joint and several liability, a design professional who may be found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident may be forced to pay far more than his/her share of damages (even up to 100% of the damages if other parties are unable to pay).

For most firms, the professional liability risk for design professionals far outweighs their earnings from these projects. Many small business firms earn less than \$20,000 for their work on a highway project, but face enormous financial risks under joint and several liability. Even before going to trial, insurance companies settle for the design professional's insurance policies limits, because of the risk of large rewards at trial. Thus the design professional, who may not have any negligence on a project, can be forced to pay many times more than his earnings on the project. If the settlement exceeds the design professional's insurance coverage, the design professional would be personally liable. This situation is punitive to a design professional doing good works for

the State, while not accounting for the personal responsibility of the accident party who may have been drinking, speeding, or reckless.

Because of the risk and escalating professional liability insurance premiums associated with doing highway work, many of our small firms no longer participate in these projects, reducing the pool of qualified consultants. This results in a delay of awarding of these projects and increase in traffic woes in the State.

We stress that we are not seeking to escape our responsibilities. Design professionals who are found liable would still be required to pay their share of the damages, and those greater than 25% liable would still be subject to joint and several liability. This bill, however, would provide particular relief for our small business firms.

We appreciate the continuing efforts of your committee and the members of the State Legislature to improve the business climate for small business in Hawaii. Thank you for the opportunity to testify in support of **HB 1316**.

**Jon Nishimura**

**President**

*Fukunaga & Associates, Inc.*

*1388 Kapiolani Blvd. Second floor*

*Honolulu, Hawaii 96814*

*Phone: (808) 944-1821*

*Fax: (808) 946-9339*



# LATE TESTIMONY

**KELSO ARCHITECTS inc.** mikelkelso@hawaii.rr.com

25 South Kalaheo Avenue, Kailua, Hawaii 96734 808-262-0006 Fax: 808-263-4864

February 3, 2009

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**Hearing Date: Wednesday, February 4, 2:00 p.m., Conference Room 325**

Honorable Representatives Robert N. Herkes, Chair, Glenn Wakai, Vice Chair, and Members of the House Committee on Consumer Protection & Commerce

Subject: **HB 1316, Relating to Torts**

Dear Chair Herkes, Vice Chair Wakai, and Committee Members,

Kelso Architects Inc., a Hawaii-owned and -operated small business architectural firm, appreciates this opportunity to our **support of HB 1316, Relating to Torts.**

As a small business owner and design professional, my potential professional and personal liability is at the forefront of my mind in every project I consider. While a certain amount of risk is a reality of doing business, the current situation under joint and several liability seems very unfair, especially for small firms. This is particularly so for highway cases, where the claims and awards can be large, creating risks under joint and several liability that far outweigh our firm's potential profit.

It is unfair that my financial future should be so at risk because of my minor involvement in a public works project, especially if I am not in any way negligent. Engineering work on such projects is performed to State and Federal design standards and codes, and are reviewed and approved by government agencies. However, under the current law, a design professional who is pulled into a claim (even frivolously), but who may be found by a jury to be only one percent (1%) liable for damages, could be forced to pay far more than his/her share of damages.

As a small business architectural firm, serving as a subcontractor on State projects, our fee is typically less than \$50,000 (profit of less than \$5,000). Clearly, the State and its citizens benefit far more than the design professional by the design of these projects, and some protection for small business design professionals is warranted.

HB 1316 provides for more fairness in allocation of risk, but certainly does not allow us to escape our responsibilities. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and would not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply.

We feel that fear on the part of small business design professionals limits the available pool of highly qualified consultants available to conduct State projects. With the many infrastructure projects anticipated, the impact of having small business firms decline to work for the DOT is to have this work go to large, predominately mainland firms, who choose to essentially self-insure and are able to absorb more risk, but who take their profits out of the state.

We appreciate the continuing efforts of your committee and the members of the Senate to assist small businesses in Hawaii. Thank you for the opportunity to testify in support of HB 1316.

Sincerely  
Kelso Architects, inc.



By Michael Kelso, Its President

# LATE TESTIMONY

wakai1-Karen

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**From:** Robert Kishi  
**Sent:** Wednesday, February 04, 2009 8:57 AM  
**To:** CPCtestimony  
**Subject:** HB 1316 re: torts  
**Attachments:** Signature full.pdf; ATT00001.txt

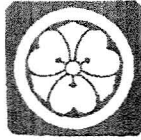
Dear Chair Herkes, Vice Chair Wakai, and Committee Members,

As a small business architectural firm, I strongly support HB 1316, relating to torts. There needs to be a reasonable limitation of liability so that design firms such as mine can qualify for construction projects.

Please help us small businesses by supporting HB 1316.

Sincerely,

# LATE TESTIMONY



**MIYASHIRO**  
AND ASSOCIATES, INC.  
Mechanical Consulting Engineers

February 4, 2009

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Honorable Representatives Robert N. Herkes, Chair, Glenn Wakai, Vice Chair, and Members of the House Committee on Consumer Protection & Commerce

Subject: **HB 1316, Relating to Torts**

Dear Chair Herkes, Vice Chair Wakai, and Committee Members,

Miyashiro and Associates, Inc., a Hawaii-owned and -operated small business engineering firm, appreciates this opportunity to **support of HB 1316, Relating to Torts.**

As a small business owner and design professional, my potential professional and personal liability is a prime factor in consideration of acceptance of every project. While a certain amount of risk is a reality of doing business in our field, the current situation under joint and several liability is very unfair, especially for small firms such as ours. This is particularly so for highway cases, where the claims and awards can be large, creating risks under joint and several liability that far outweigh a firm's potential profit.

It is unfair that my financial stability should be at risk because of my minor involvement in a public works project, especially if I am not in any way negligent. Engineering work on such projects is performed to State and Federal design standards and codes, and are reviewed and approved by government agencies. However, under the current law, a design professional who is involved in a claim (even frivolously), but who may be found by a jury to be only one percent (1%) liable for damages, could be forced to pay a disproportionate share of damages.

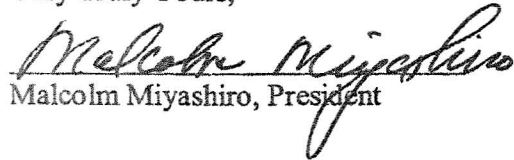
As a small business engineering firm, serving as a subcontractor on State projects, our fee is typically less than \$50,000 (profit of less than \$5,000). Clearly, the State and its citizens benefit far more than the design professional by the design of these projects, and some protection for small business design professionals is warranted.

The passage of HB 1316 will provide for more fairness in the allocation of risk, but at the same time, does not allow us to avoid our responsibilities. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and would not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply.

I believe that the current unfair exposure to liability of small business design professionals limits the available pool of qualified consultants available to conduct State projects. With the many infrastructure projects anticipated in the future, the impact of having local small business firms decline to work for the State may result in this work being awarded to large, predominately mainland firms, who have the resources to self-insure and are able to absorb more risk, but who take their profits out of the state.

We appreciate the continuing efforts of your committee and the members of the Senate to assist small businesses in Hawaii. Thank you for the opportunity to testify in support of HB 1316.

Very Truly Yours,

  
Malcolm Miyashiro, President