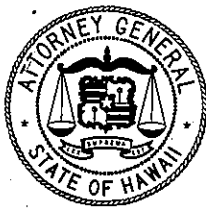


HB2508,

HD2



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 2508, H.D. 2, MAKING AN APPROPRIATION FOR
CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

DATE: Friday, March 12, 2010 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016

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

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General supports this bill.

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 claims that total \$1,816,537.35. Of this total, \$1,768,312.01 consists of general fund appropriation requests and \$48,225.34 consists of appropriation requests from departmental funds. Attachment A provides a brief description of each claim in the bill.

Since the bill was introduced, nine new claims have been resolved for an additional \$5,445,814.29. Of this total, \$5,345,814.29 consists of general fund appropriation requests and \$100,000.00 consists of appropriation requests from departmental funds. Attachment B provides a brief description of each claim in the bill. We request that the Committee amend the bill to appropriate funds to satisfy the new claims.

In addition to the new claims described in Attachment B, we are requesting the following amendments be made to the current draft of the bill.

On page 3, line 6, "Hanson" should be changed to "Henson".

On page 3, lines 10-14 should be deleted because the Flores case is already listed on page 4 of the bill. On page 3, line 16, "No. 5" should be changed to "No. 4".

On page 4, line 14, the Civil No. "03-1-1876-04" should be changed to Civil No. "07-1-0204".

Including the new claims and amendments, the appropriation request totals \$7,262,351.64 allocated among ten claims. Of this total, \$7,114,126.30 consists of general fund appropriation requests and \$148,225.34 consists of appropriation requests from departmental funds.

The Department has had a longstanding 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 amendment and passage of this measure.

the Claimants may recover the value of the property from the Director of Finance after exhausting all other remedies. All other remaining defendants are insolvent.

DEPARTMENT OF PUBLIC SAFETY:

Botelho, et al. v. State of Hawaii, et al. \$ 30,454.33 (General Fund)
Civil No. 06-00096 DAE-BMK, USDC Judgment

Inmates at the Hawaii Community Correctional Center in Hilo were injured while the prison was being evacuated during a fire on July 24, 2004. The judgment in favor of the inmates for their injuries (\$20,500.00) was paid with funds appropriated by the 2009 Legislature. Thereafter, the court awarded \$30,454.33 to the inmates' attorney for fees.

DeJesus, et al. v. State of Hawaii, \$ 80,000.00 (General Fund)
et al., Civil No. 06-1-1070-06, Settlement
First Circuit

This case involves the discharge of eight employees of the Department of Public Safety who were on workers' compensation leave for one year or more and had no foreseeable return to work date. Former Director of Public Safety John Peyton made the decision to discharge the employees to address staffing issues at the correctional facilities, i.e., to fill the positions with people who could work.

**DEPARTMENT OF TRANSPORTATION,
HARBORS DIVISION:**

Flores, et al. v. Department of \$ 23,225.34 (Department
Transportation, et al., Judgment Appropriation)
Civil No. 07-1-0204, Fifth Circuit

A roll-up door at the Pier 3 warehouse at Nawiliwili Harbor on Kauai suddenly and unexpectedly came down and struck Claimant on the head while he was picking up freight from Young Brothers on August 4, 2005. The roll-up door, which is approximately 20 feet high, had been in an open position before it unexpectedly fell and struck Claimant. Claimant's alleged injuries include a closed head injury, cervical strain, right shoulder strain and impingement, and chronic and constant headaches. This case proceeded to the Court Annexed Arbitration Program. The arbitrator found the State of Hawaii 100 percent liable and co-

DEPARTMENT OF HUMAN SERVICES:

McMillon, et al. v. State of Hawaii, \$ 610,000.00 (General Fund)
et al., Civil No. 08-00578, USDC Settlement
and
Faletogo, et al. v. State of Hawaii,
et al., Civil No. 08-1-2608-12,
First Circuit

Two class action lawsuits were filed simultaneously relating to the Kuhio Park Terrace (KPT) and Kuhio Homes housing projects. The *McMillon* lawsuit was filed in federal court and involved federally protected civil rights, i.e. Americans with Disability Act, Rehabilitation Act section 504, and Fair Housing Act disability rights. The *Faletogo* lawsuit was filed in state court and primarily involved general living conditions at KPT and the alleged breach of lease and warranty of habitability. A class has been certified in the federal case.

KPT is the oldest housing project in the state's federal inventory. Built in 1965, it consists of two 16-story towers and several two-story buildings. Built only a little later and contiguous to KPT is Kuhio Homes, which consists of several two story "town-house" style units. Both are considered part of the same project and are managed together. Large high-rise public housing projects have proven themselves to be a failed approach to low-income public housing and have been torn down throughout the United States. Because this is a United States Department of Housing and Urban Development (HUD)-financed project, nothing can be done without HUD approval and HUD funds. The Hawaii Public Housing Authority has twice applied for a HUD "Hope VI" grant to raze KPT and both times the application was denied - not for lack of merit, but rather for lack of available federal funds. Given their age, the buildings have become difficult and expensive to maintain. For example, the garbage chutes were designed as incinerator chutes and do not function well as collection receptacles. The elevators are obsolete and repair parts are no longer available; moreover, the original design of two passenger and one service elevator per building may have been adequate for a middle class apartment building but are not adequate for public housing, resulting in frustrating waits and ensuing vandalism. The high concentration of residents has led not only to vandalism but other crimes among the residents, which has increased the difficulty of maintaining the premises.

This settlement was reached after extensive mediation with a federal magistrate and a private mediator. Of the settlement amount, \$245,000 will go to residents of KPT as damages and/or "rent abatement"; the balance represents attorneys' fees for the plaintiffs' attorneys recoverable under federal statutes.

Kong-Guillermo v. Hefferman, et al. **\$ 110,000.00** *(General Fund)*
Civil No. 07-1-2406-12, First Circuit **Settlement**

A female inmate was sexually assaulted by staff at the Hawaii Youth Correctional Facility in 1995 when she was housed there as a minor. This case was mediated by Keith Hunter of Dispute Prevention & Resolution, which resulted in settlement.

Perez v. Karr, et al. **\$ 213,333.00** *(General Fund)*
Civil No. 07-1-2418-12, First Circuit **Settlement**

A female inmate was sexually assaulted by staff at the Hawaii Youth Correctional Facility in 2002 when she was housed there as a minor. This case was mediated by Keith Hunter of Dispute Prevention & Resolution, which resulted in settlement.

Wolters v. Carroll, et al. **\$ 213,333.00** *(General Fund)*
Civil No. 07-1-2358-12, First Circuit **Settlement**

A female inmate was sexually assaulted by staff at the Hawaii Youth Correctional Facility in 2002 when she was housed there as a minor. This case was mediated by Keith Hunter of Dispute Prevention & Resolution, which resulted in settlement.

Toomey v. Karr, et al. **\$ 213,333.00** *(General Fund)*
Civil No. 07-1-2407-12, First Circuit **Settlement**

A female inmate was sexually assaulted by staff at the Hawaii Youth Correctional Facility in 2002 when she was housed there as a minor. This case was mediated by Keith Hunter of Dispute Prevention & Resolution, which resulted in settlement.

**DEPARTMENT OF TRANSPORTATION,
HIGHWAYS DIVISION:**

**Cabrera, et al. v. State of Hawaii, \$ 75,000.00 (Department
et al., Civil No. 06-1-0317-02, Settlement Appropriation)
First Circuit**

Plaintiffs Warlito Cabrera, his wife Petra Cabrera, his son and daughter-in-law Peter Cabrera and Sharon Cabrera, and their daughter Lauren Cabrera own and reside at a property located at 1934 Ahuahu Place in Kalihi Valley. The property is located below DOT land that abuts Likelike Highway. There was an old storm drain that ran from the west to the east side of the highway, and behind the Cabrera property.

During heavy rains that occurred on February 27, 2004, the storm drain failed. Mud and water then entered the Cabrereras' house, and yard. The investigation after the flood indicated that the storm drain had never been checked, cleaned out, or otherwise maintained. After the flood, DOT had Royal Contracting repair and upgrade the storm drain. DOT director Rod Haraga also made a promise to Plaintiffs to repair the damage to their property. Thereafter, DOT helped perform some of the clean-up work, and Royal also performed some repairs to the yard. In light of the DOT's post-flood investigation, and Mr. Haraga's promise to Plaintiffs, the State's negligence is not in dispute.

Plaintiffs submitted an estimate of \$1,014,980 for the damages to the dwelling. After determining that Plaintiffs' expert who provided the estimate was a family member who had not used any accepted methodology for doing the estimate, the State produced its experts' estimates and itemizations, which took into account pre-flood substandard construction that contributed to the extent of the damage, as well as depreciation. Using the State's experts' analysis, the figure of \$56,015.95 was determined to be the cost of repairs (less depreciation) to damage caused solely by the flood.

In addition, the Plaintiffs made a claim for emotional distress caused by the incident and the aftermath of damage to their home. Both the mediation and settlement judges estimated that the amount for emotional distress could be in the range of \$10,000 - \$15,000. In addition, Plaintiffs would receive their costs of \$5,000 to \$8,000 if we tried the case. Therefore, the settlement amount is reasonable.

Morales v. Department of Transportation, \$ 25,000.00 *(Department*
et al., Civil No. 06-1-2206-12, **Settlement** *Appropriation)*
First Circuit

This case arises out of a single-vehicle accident that occurred on December 27, 2004, at approximately 2:30 p.m. Prior to the accident, Plaintiff was driving her 2000 Isuzu northbound on the Likelike Highway (Wilson Tunnel) to Kaneohe. Plaintiff was wearing her seat belt at the time of the accident. The Plaintiff alleges that when her vehicle came out of the tunnel, her car slid on road grime that was on the roadway, making her vehicle spin and slam into the right wall of the highway. She further alleges that the accident was the result of the State's failure to reasonably inspect, maintain, and repair the roadway. This case proceeded to the Court Annexed Arbitration Program, and the arbitrator found the State of Hawaii 100 percent liable and awarded the Plaintiff \$28,198.25. The case later settled for \$25,000.00.

MISCELLANEOUS CLAIM:

DB Structured Products Inc. **\$ 499,999.91** *(General Fund)*

Claimant requests reissuance of an outdated check that was never received. 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.