



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2508, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 4, 2010 **TIME:** 2:20 p.m.

LOCATION: State Capitol, Room 325

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

Chair 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 five claims that total \$1,564,462.01. All claims are general fund appropriation requests. 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 \$227,075.34. Of this total, \$203,850.00 are general fund appropriation requests and \$23,225.34 is an appropriation request from departmental funds. Attachment B provides a brief description of each new claim. 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 a new section 2 of part II of the bill be added

to reflect the Department of Transportation, Harbors Division, case. The new section 2 should read as follows:

SECTION 2. The following sums or so much thereof as may be necessary for fiscal year 2009-2010 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:	
Flores v. State of Hawaii Civil No. 03-1-0876-04, Fifth Circuit	\$ 23,225.34 Judgment
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SUBTOTAL:	\$ 23,225.34
TOTAL (SECTION 2)	\$ 23,225.34

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

Sections 2 and 3 under part III should be renumbered accordingly as sections 3 and 4.

Including the new claims, the appropriation request totals \$1,791,537.35 allocated among nine claims. Of this total, \$1,768,312.01 are general fund appropriation requests and \$23,225.34 is an appropriation request 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 HUMAN SERVICES:

Manalo v. Wells, et al. **\$ 32,478.37** *(General Fund)*
Civil No. 08-1-2212-10, First Circuit **Judgment**

Claimant's vehicle was struck by a State of Hawaii, Department of Human Services' employee acting in the course and scope of his duties on December 4, 2006. Claimant suffered damages as a result of the accident. This case proceeded to the Court Annexed Arbitration Program, and the arbitrator found in favor of the Claimant and awarded her \$40,109.66 in total damages, less \$10,000 for the covered loss deductible, plus \$1,391.73 in costs and interest.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Consolidated Cases:

Fehring, et al. v. Pflueger, et al. **\$1,500,000.00** *(General Fund)*
Civil No. 06-1-0082, Fifth Circuit **Settlement**

Midler, et al. v. Pflueger, et al.
Civil No. 06-1-0110, Fifth Circuit

Pflueger, et al. v. State of Hawaii
Civil No. 07-1-0117, Fifth Circuit

Calisher, et al. v. Pflueger, et al.
Civil No. 07-1-0106, Fifth Circuit

Fehring, et al. v. Pflueger, et al.
Civil No. 08-1-0050, Fifth Circuit

Fehring, et al. v. Pflueger, et al.
Civil No. 08-1-0051, Fifth Circuit

Bosma, et al. v. Pflueger, et al.
Civil No. 08-1-0052, Fifth Circuit

Midler, et al. v. Pflueger, et al.
Civil No. 08-1-0053, Fifth Circuit

These cases are based on the breach of the Ka Loko Dam on March 14, 2006, resulting in a flood that caused the death of seven persons (Fehring) and damage to numerous parcels of property (Midler, Bosma and Calisher). The State was made a party based on the allegations of negligence by PUC in regulating the

irrigation system operator, by the Department of Land and Natural Resources in not inspecting the dam and requiring the owner of the dam to maintain the dam, and by the State of Hawaii generally as the landowner of the watershed above the dam allegedly having the responsibility of controlling the flow of water.

The cases proceeded to mediation resulting in the global settlement among all parties. The State of Hawaii succeeded on having all allegations of liability dismissed except for the allegations related to the State of Hawaii being the owner of the property above the private property on which the dam was located.

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.

MISCELLANEOUS CLAIMS:

Kathy M. Gillett \$ 1,379.31 (General Fund)

Claimant requests tax refunds for amended tax returns for 2003 through 2005. 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.

June S. Hashizaki \$ 150.00 (General Fund)

Claimant requests reissuance of an outdated check that was misplaced. The check when found was outdated and could no longer be cashed. 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.

ATTACHMENT "B"

DEPARTMENT OF HUMAN SERVICES:

Hanson v. State of Hawaii **\$ 30,000.00** (General Fund)
Civil No. 06-1-0794, First Circuit **Settlement**

The biological parents of two minor children ages 9 and 6 years old allege that the Department of Human Services (DHS) wrongfully removed the children from their family home and placed them in a temporary foster home. The parents allege that DHS conducted an untimely and incomplete investigation of a child neglect complaint against them, and misrepresented, among other things, that three mental health professionals supported removal of the children, when they, in fact, did not. As a result, the children were removed from their home for a month, but subsequently returned when the three professionals disclaimed support for the removal.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Roque v. Dickman, et al. **\$ 93,850.00** (General Fund)
Civil No. 07-1-0497-03 First Circuit **Settlement**

Claimants were defrauded of their interest in property pursuant to a forged deed. The parties who defrauded Claimants of their interest subsequently mortgaged the property. The mortgagee claims to have a superior secured interest in the property based upon the Land Court having issued a transfer certificate of title naming the defrauding parties as owners of the property. Pursuant to section 501-212, Hawaii Revised Statutes, et seq., 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:

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-defendant Young Brothers not liable. Plaintiff was awarded \$88,332 in damages. The State appealed and the case went to trial. The trial court found that both Young Brothers and the State were liable. The State's share of damages was \$27,298.93. Because the State was able to substantially improve on the arbitration award, Plaintiff was required to pay for the State's trial costs, reducing the total amount of the State's liability to \$22,661.59. With interest, the total amount of the appropriation is \$23,225.34.