



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 775, H.D. 2, S.D. 1, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Monday, March 25, 2013

TIME: 9:05 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN TESTIMONY ONLY.

(For more information, contact David M. Louie, Attorney General or Caron Inagaki, Deputy Attorney General, at 586-1300)

Chair Ige and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of this bill is to seek an appropriation 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 contains thirty-one claims that total \$27,736,198.87. Twenty-six claims are general fund appropriation requests that total \$24,141,198.87 and five claims are appropriation requests from departmental funds that total \$2,595,000.00. Attachment A provides a brief description of each claim in the bill.

Since the bill was last amended, three new claims have been resolved for an additional \$556,078.00. One claim is a general fund appropriation request and two claims are appropriation requests from a departmental fund. 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.

Including the new claims, the appropriation request totals \$28,292,276.87 allocated among thirty-four claims. Of this total, \$24,835,120.87 are general fund appropriation requests and \$2,901,078.00 are 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 respectfully request passage of this bill.

ATTACHMENT “A”

**DEPARTMENT OF ACCOUNTING AND GENERAL:
SERVICES:**

Macy-McCrea v. State of Hawaii, et al.
Civil No. 10-1-0466-03, First Circuit

\$ 30,000.00 (*General Fund*)
Settlement

A woman drove to the State Tax Building and parked her car in the adjacent parking lot. As she exited her car, a large branch from a nearby monkey pod tree measuring about 7 to 8 feet fell on her and the roof of her car. The tree branch struck the back of her head, the left side of her neck and her left shoulder. Her injuries included a closed head injury, post-concussive syndrome, neck pain, shoulder pain, headaches, depression, anxiety, memory loss and an inability to concentrate. The case proceeded to the Court Annexed Arbitration Program, and the arbitrator awarded her \$41,934.00. The case later settled for \$30,000.00.

DEPARTMENT OF THE ATTORNEY GENERAL:

Mitchell v. State of Hawaii
FEPA No. 16448; EEOC No. 486-2011-00251

\$ 95,000.00 (*General Fund*)
Settlement

A Criminal Justice Planning Specialist employee in the Department of the Attorney General underwent a double mastectomy for breast cancer and was on leave for approximately two months. When she returned to work she began chemotherapy and radiation for her cancer. Thereafter, her supervisors discovered that her job performance was substandard and made attempts to work with her in the form of sending her feedback and suggestions for changes to her work. As a result of the performance issues, she was given a list of specific areas in which to improve and was told she would be re-assessed in six months. She was also reassigned to administer and monitor a different less demanding grant. This grant was temporary. The funding on the temporary grant ran out and the employee was given the choice of remaining full time until the grant ran out or working part-time in order to extend her length of employment and her medical insurance. She opted for part-time work so that her medical coverage would be extended. A few months later the employee transferred from the Department of the Attorney General to the Department of Human Services on a full-time basis at a lower rate of pay. Several months later she left the State of Hawaii employment and began work in the private sector at a higher rate of pay with no benefits. Subsequently, she filed a charge of disability discrimination with the EEOC claiming that her job performance was criticized without considering the effects of her disability (cancer) and treatment, that she was treated differently from her co-workers, that her workload doubled, that her work status changed to .52FTE, and the length of the job was contingent upon available federal funding.

The case proceeded to mediation where settlement was reached in the amount of \$95,000.00 for back pay, loss of benefits, and loss of future retirement benefits.

DEPARTMENT OF EDUCATION:

Basa v. State of Hawaii \$ **30,000.00** (*General Fund*)
Civil No. 10-1-1374-06, First Circuit **Settlement**

A 12-year-old student at Moanalua Middle School was injured while attempting to jump over an 18 inch modified hurdle. As a result of the incident, the student sustained a displaced fracture involving the anterior aspect of the tibial plateau and the tibial tubercle. The case proceeded to the Court Annexed Arbitration Program, and the arbitrator found the State of Hawaii 80 percent negligent. The arbitrator awarded the student \$45,755.51. The State of Hawaii appealed the award. The case subsequently settled for \$30,000.00.

Bitanga v. State of Hawaii \$ **18,000.00** (*General Fund*)
Tort Claim **Settlement**

A student at Kailua High School was inadvertently struck on the head when a teacher threw a hammer in shop class. The student suffered a gash to his head. The parties agreed to settle the matter prior to the filing of a lawsuit.

Cain, et al. v. State of Hawaii Academy of Arts & \$ **30,000.00** (*General Fund*)
Science Charter School **Settlement**
Civil No. 11-00501, USDC

Hawaii Academy of Arts & Sciences is a publicly funded “start-up” public charter school and is an entity of the State of Hawaii. Plaintiffs Lisa and Michael Cain worked at the school for most of 2007 and part of 2008. Plaintiff Lisa Cain was originally assigned to serve as an instructor in Home Economics and Cooking, but was asked, and supposedly agreed, to a new assignment maintaining a school herbal garden. Plaintiff Michael Cain (Lisa’s husband) was retained as an independent contractor to perform construction/handyman services for the school on an as-needed basis. On August 13, 2008, Ms. Cain was terminated for allegedly repeatedly failing to show up for work and neglecting to notify the school that she would not be coming in. Ms. Cain claims she was terminated because of her disability, her race, and in retaliation for complaining about discrimination. On August 19, 2008, Mr. Cain was called in for a meeting with the school’s principal to explain why Mr. Cain had improperly told his wife information that was not true. The meeting ended so poorly that Mr. Cain was informed that his services were no longer required. Mr. Cain claims that he was terminated in retaliation for complaining about discrimination. Plaintiffs filed suit alleging, among other things, violations of the Americans with Disabilities Act and Title VII, Civil Rights Act of 1964, hostile work environment, retaliation and invasion of privacy. The parties agreed to a settlement in the amount of \$30,000.

Doe, et al. v. State of Hawaii, et al. \$ **5,000,000.00** (*General Fund*)
Civil No. 11-00550, USDC **Settlement**

This lawsuit is a class action alleging that Plaintiffs and others had been the victims of sexual assaults alleged to have occurred at the Hawaii Center for the Deaf and Blind, also known as the

Hawaii School For the Deaf and Blind, a school operated by the Department of Education, State of Hawaii. The Plaintiffs have made two basic claims: Defendants failed to properly supervise the students and/or school staff and Defendants attempted to cover up the alleged sexual assaults after becoming aware of the allegations.

The Settlement Class is defined as any student who is or was enrolled in the Hawaii School for the Deaf and Blind or the Hawaii Center for the Deaf and Blind, between August 10, 2001, and the date of approval of the Settlement Agreement by the District Court, and who suffered injury as a result of one of the following:

- A sexual assault on the school grounds or on a school bus or a coerced sexual encounter on the school grounds or on a school bus involving another student or students;
- A sexual encounter involving a staff member; or
- Witnessing a sexual assault or a coerced sexual encounter involving another student on the school grounds or on the school bus or a sexual encounter involving a staff member and a student.

This settlement will resolve in full all claims against the State of Hawaii and its employees involving the alleged sexual assaults that occurred at the Hawaii Center for the Deaf and Blind or the Hawaii School for the Deaf and Blind and any violations of Title II of the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*), Title IX of the Educational Amendments of 1972 (20 U.S.C. § 1681, *et seq.*), and the Individuals with Disabilities Acts (20 U.S.C. § 1400 *et seq.*), as alleged in the First Amended Complaint, as a result of those alleged sexual assaults.

The United States District Court gave preliminary approval to the settlement on February 19, 2013 and has scheduled a hearing to provide final approval for April 22, 2013. A notice of the proposed settlement was published on February 25, 2013, and a notification to the Settlement Class by mailing is scheduled for March 8, 2013.

The proposed settlement will allow class members to make their claims through a Claim Administrator, who will likely be Judge Riki May Amano (Ret.). It was the belief of the parties that a claimant would be more likely to make a claim using this process rather than being required to prosecute their claim in a public setting, such as a courtroom.

Garner, et al. v. Department of Education, et al.
Civil No. 03-1-000305(KKS), First Circuit

\$ 15,091,122.33 (General Fund)
Settlement

These are class action suits wherein substitute teachers are claiming they have been underpaid. Substitute teachers are not covered by collective bargaining. Their compensation is set by statute which, at the relevant times, tied the substitutes' compensation to the amount paid to Class II full-time teachers. The exact meaning of the statute was affected by complex issues of collective bargaining and federal standards. In any event, these consolidated class action cases claim the Department of Education underpaid the substitutes. The circuit court agreed. The State appealed. The Intermediate Court of Appeals (the "ICA") affirmed the circuit court's decision and the Hawaii

Supreme Court denied review. The parties are now back in the circuit court where the parties have agreed that the undisputed amount of the underpayment is \$15,091,122.33.

Whether the State is required to pay prejudgment interest on the amount of the underpayment is subject to conflicting court decisions. The ICA affirmed one circuit court's decision that pursuant to Hawaii Revised Statutes section 662-2, the State "shall not be liable for interest prior to judgment." After the ICA's decision, the class changed the theory under which it sought prejudgment interest. Thereafter, another circuit court ruled that the class is entitled to prejudgment interest. Currently, the prejudgment interest claim totals approximately \$8.5 million through May 31, 2012, and accrues at approximately \$2,000 per day. The State intends to appeal the circuit court's decision with respect to prejudgment interest.

Because an appeal on the issue of prejudgment interest could take years to resolve and the interest claim continues to accrue at approximately \$2,000 a day, the State has reached a tentative settlement with the class to pay only the agreed upon amount for back wages, along with appropriate taxes. This partial settlement will resolve claims regarding back wages, but will reserve claims for prejudgment interest and attorneys' fees, and a few other miscellaneous claims. Upon the circuit court's approval of the settlement, the claim for prejudgment interest will stop accruing. Plaintiffs' attorneys may also be entitled to an award of reasonable attorneys' fees. The claim for attorneys' fees is being reviewed and analyzed.

Lopes v. Department of Education, et al.
Civil No. 10-1-1886-08, First Circuit

\$ 14,000.00 (*General Fund*)
Settlement

A tenth grade student at Campbell High School cut his foot on a piece of metal on the corner of a platform stage in the music classroom. The student sustained a serious laceration to his left foot with scarring. The case proceeded to the Court Annexed Arbitration Program, and the arbitrator awarded the student \$19,182.66. The State of Hawaii appealed the award and subsequently settled for \$14,000.00.

Lum, et al. v. State of Hawaii, et al.
Civil No. 11-1-1498-07, First Circuit

\$ 155,000.00 (*General Fund*)
Settlement

A woman fell on the grounds of Ahuimanu Elementary School in Kaneohe after stepping in a hole on the ground. She sustained a fractured shoulder joint that required one surgery to replace the shoulder joint and a second surgery to increase range of motion and remove scar tissue. The case proceeded to the Court Annexed Arbitration Program, and the arbitrator awarded the woman \$189,000.00 plus \$1,900.00 in costs. The State of Hawaii appealed the award and subsequently settled for \$155,000.00.

Manigo-Brown v. State of Hawaii, et al.
Civil No. 00-00383 LEK-RLP, USDC

\$ 23,396.66 (*General Fund*)
Settlement

A woman was driving on Waikele Street towards Farrington Highway when her vehicle collided with a state vehicle being driven by a state employee. As a result of the accident, the woman

suffered neck and back pain. The police report states that the cause of the collision was due to inattention and misjudgment of the state driver. The case proceeded to the Court Annexed Arbitration Program, and the arbitrator awarded the woman \$23,396.66. The parties agreed to settle for the same amount to avoid additional costs.

Mark H., et al. v. Hamamoto, et al.
Civil No. 00-00383 LEK-RLP, USDC

\$ 3,300,000.00 *(General Fund)*
Settlement

Plaintiffs filed suit in 2000 claiming money damages under Section 504 of the Rehabilitation Act upon allegations that the Department of Education (DOE) discriminated against Plaintiff sisters, who are both autistic and eligible for special education and related services, by failing to provide the sisters with appropriate autism-specific services from 1994-1999. Although the autism-specific services were available and being provided to other autistic students, they were not provided to the sisters. However, liability for damages under Section 504 requires a showing of “deliberate indifference” and the DOE disputed that its employees were deliberately indifferent and that the services were not delivered, at most, as a result of negligence. Plaintiffs claimed that the sisters, currently ages 21 and 19, would now be better off had the autism-specific services been provided. Plaintiffs’ requested damages included life care plans for the sisters, which together totaled approximately \$20 million. Plaintiffs’ attorneys’ fees, which is permitted by statute to a “prevailing party,” was reportedly close to \$2 million. This very contentious lawsuit was litigated for over a decade and involved two separate appeals to the Ninth Circuit Court of Appeals.

CAMPAIGN SPENDING COMMISSION:

Yamada v. Weaver
Civil No. 10-00497 JMS-RLP, USDC

\$ 63,852.34 *(General Fund)*
Judgment

Plaintiffs filed several claims alleging that certain provisions of Hawaii’s campaign finance laws were unconstitutional under the First Amendment. The State of Hawaii prevailed on most of the claims, but lost one. Plaintiffs were entitled to some fees premised on their partial success under 42 U.S.C. section 1988. The amount the State owed in attorneys’ fees was substantially reduced through successful litigation at the district court level from the nearly \$200,000.00 initially sought by the Plaintiffs to just over \$60,000.00 ordered by the United States District Court.

DEPARTMENT OF HEALTH:

E.P., et al. v. State of Hawaii, et al.
Civil No. 10-1-1357-06, First Circuit

\$ 40,000.00 *(General Fund)*
Settlement

Hawaii Disabilities Rights Center sued the Department of Health, Adult Mental Health Division (AMHD) because in 2009, AMHD narrowed the scope of its eligibility criteria for services by policy and procedure rather than promulgating administrative rules. Applicants were evaluated under these new criteria from July 1, 2009, until December 16, 2010, when legally promulgated administrative rules went into effect. In its settlement agreement, AMHD agreed to notify the people who applied for AMHD services between July 1, 2009, and December 16, 2010, that they would be eligible for a

new eligibility determination under the old, broader criteria. There was no money settlement with respect to the substance of this lawsuit. This settlement is for attorneys' fees and costs only.

Vendetti, et al. v. Abercrombie, et al.
Civil No. 10-1-2084-09, First Circuit

\$ 84,000.00 (*General Fund*)
Settlement

Plaintiffs were employed in the positions of Service Area Administrator (SAA) by the Department of Health (DOH), State of Hawaii. The SAAs were responsible for coordinating adult mental health services on the islands of Maui, Hawaii, and Kauai. The SAA positions were exempt positions with yearly not to exceed (NTE) dates. In June 2010, the SAAs were informed that they were not being extended beyond their current NTE dates and that the last day of work would be on June 30, 2010. In October 2010, the DOH abolished the SAA positions. On September 29, 2010, the Plaintiffs filed a Complaint in State circuit court alleging: (1) whistleblower; (2) declaratory relief/constitutional violation; (3) intentional infliction of emotional distress; and (4) negligent infliction of emotional distress. The SAA positions were 3 of approximately 350 positions at DOH that were abolished as cost-saving measures. Appointment of an SAA in each county is mandated pursuant to section 334-3(c)(3), HRS. When the DOH abolished the SAA positions the functions assigned to the SAAs were assigned to other DOH employees and those employees were appointed SAAs in addition to their other duties. During the course of their employment with DOH, the SAAs were vocal in their complaints about the impact of budget cuts on adult mental health services. This is the basis for the whistleblower claim. The basis for the claim of declaratory relief/constitutional violation is the allegation that section 334-3(c)(3), HRS, requires the DOH to appoint an SAA to perform exclusive SAA functions. The decision to abolish the SAA positions was made by former DOH Director Chiyome Fukino. Dr. Fukino has relocated to the mainland. A mediation was held with Judge (Ret.) Victoria Marks whereby the parties agreed to settle for approximately 5 months of back pay for each Plaintiff.

DEPARTMENT OF HUMAN SERVICES:

J.B. and R.C. v. State of Hawaii, et al.
Civil No. 09-1-1157-05, First Circuit

\$ 25,000.00 (*General Fund*)
Settlement

Plaintiffs are a husband and wife whose claim arises out of a Department of Human Services (DHS) investigation into allegations of child abuse. School officials discovered a bruise on the face of the wife's biological son during his first day of kindergarten at Pearl City Elementary School. The son was asked how he got the bruise and he provided several explanations. The police responded and the police report reflects that one of the child's explanations was that his stepfather hit him. The police placed the child and his sister into protective custody with the DHS. The DHS investigated the matter. Plaintiffs claim that the matter was negligently investigated and that DHS was negligent for failing to properly train, supervise, and discipline its employees. Plaintiffs maintained throughout that the husband did not abuse the child. Although there were a few gaps in the documentation of the investigation, the DHS workers followed the correct procedures. Additionally, their actions were supported by the Family Court judge who found that Plaintiff husband was the perpetrator of harm and ordered family supervision and that Plaintiff husband not have contact with the children until he obtained counseling. The case proceeded to mediation, which resulted in settlement.

Lopez, et al. v. Kalama, et al.
Civil No. 09-1-2021-08, First Circuit
Naki, et al. v. Kalama, et al.
Civil No. 10-1-0616-03, First Circuit

\$ 550,000.00 *(General Fund)*
Settlement

DHS placed five siblings with their maternal aunt and then had to remove them due to a statutory rape conviction of the aunt's husband 47 years earlier. Following an Ohana Conference, the family decided that the aunt's daughter and her husband (in their early 20s), would become the children's guardians. DHS did not oppose the guardianship. Ultimately, over a period of 4-5 years, the guardians and the aunt exercised excessive physical abuse of the children and the uncle apparently engaged in some sexual abuse of the elder female child. No one reported any problems in the interim and it was not until the oldest boy confided in a classmate, who reported the situation to a teacher, that the problems came to light.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Gentry v. Aila, et al.
Civil No. 11-1-0008, Fifth Circuit

\$ 75,000.00 *(General Fund)*
Settlement

A man was camping overnight at Polihale State Park on Kauai. After dark, in an attempt to gather wood for a campfire, he climbed a tree and hung from a branch about 10 feet off the ground to break it while his friend held a flashlight. When he came down, he landed on a metal post and was severely injured in his groin area. The man alleged the pole was unreasonably dangerous because it was painted green and the top of the pole had sharp edges.

DEPARTMENT OF PUBLIC SAFETY:

Aliviado, et al. v. Kimoto, et al.
Civil No. 12-00259 SOM-BMK, USDC

\$ 86,871.21 *(General Fund)*
Settlement

This action involves the denial of permission to two Hawaii inmates in Arizona to marry their fiancés. The Plaintiffs are the fiancées. The Defendants are officials involved in the decision to deny permission. The Department of Public Safety will be issuing a Memorandum to ensure that its employees understand the policy, and clarifying that permission to marry should be granted unless the employee can articulate specific reasons as to why permission should not be granted pursuant to Department policy. Additionally, the application packets provided to inmates wishing to apply to be married will contain a copy of the Department's policy for the inmate's review.

Butler v. Nouchi, et al.
Civil No. 08-00203, USDC

\$ 15,000.00 *(General Fund)*
Settlement

This case arose out of a suicide attempt by a former pretrial detainee at Maui Community Correctional Center (MCCC). The inmate filed suit for damages pursuant to 42 U.S.C. section 1983, alleging that his constitutional rights under the Due Process Clause of the Fourteenth Amendment were violated during his detention at MCCC. The inmate asserted claims of excessive force, deliberate indifference to serious medical needs, and punitive conditions of confinement.

Doe Parent, et al. v. State of Hawaii, et al.
Civil No. 09-1-2773-11, First Circuit

\$ 20,000.00 (*General Fund*)
Settlement

Plaintiffs allege that beginning in November 2007, a former youth correctional officer (YCO) at the Hawaii Youth Correctional Facility (HYCF) made inappropriate sexual comments to Doe Minor Child, who was a ward at HYCF. The YCO, among other things, allegedly expressed a desire to have sexual relations with Doe Minor Child. Plaintiffs further allege that the YCO, while on duty, asked Doe Minor Child for some help in the utility room, then proceeded to perform oral sex on Doe Minor Child.

Gilding v. State of Hawaii
Civil No. 08-1-1852-09, First Circuit

\$ 350,000.00 (*General Fund*)
Settlement

This case arises out of an accident that occurred on September 15, 2006, at the Oahu Community Correctional Center when inmate Rocky Gilding was being transported from OCCC to the Federal Detention Center. Gilding fell when he was exiting the transport van. A non-jury/bench trial was held beginning January 31, 2011. The trial judge awarded Gilding \$100,516 for past medical treatment, and \$200,000 in general damages for a total of \$300,516. The trial judge found that there was insufficient evidence of future medical expenses. Gilding and the State filed cross appeals. The appellate court affirmed the damage award of \$300,516 for past medical and general damages, but reversed the trial judge's finding of insufficient evidence to support an award of future damages, and remanded to the trial court for determination of that amount. On remand, the trial judge informed the attorneys for the parties as to how he would determine the additional damage award. It is likely that the judge would have awarded an additional \$113,000 for future damages, thereby resulting in a total damage award and judgment in excess of \$400,000. The parties agreed to settle for a total of \$350,000.

Naeu v. State of Hawaii, et al.
Civil No. 09-1-2604-11, First Circuit

\$ 38,579.99 (*General Fund*)
Judgment

An inmate at Waiawa Correctional Facility injured his eye while using a garden hose to wash dishes. Waiawa Correctional Facility did not have the correct hot water hose. The case proceeded to the Court Annexed Arbitration Program, and the arbitrator awarded the inmate \$35,657.07. Including interest, the total amount is \$38,579.99.

MISCELLANEOUS CLAIMS:

Susan C. Harrison

\$ 1,738.59 (*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.

Gwen Kubo

\$ 3,337.75 (*General Fund*)

Claimant requests reissuance of an outdated check that could no longer be cashed. Although the claim was not 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, there is sufficient reason the delay was caused by circumstances beyond the claimant's control, and, therefore, good cause exists to pay the claim.

Debra Matthey

\$ 700.00 (*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.

Hon Ying Yuen

\$ 600.00 (*General Fund*)

Claimant requests reissuance of outdated checks that could no longer be cashed. Although the claim was not 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, there is sufficient reason the delay was caused by circumstances beyond the claimant's control, and, therefore, good cause exists to pay the claim.

DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:

Callo, et al v. State of Hawaii
Civil No. 05-19782, Second Circuit
Douger, et al. v. State of Hawaii
Civil No. 05-18339, Second Circuit
(Consolidated cases)

\$ 2,100,000.00 (*Department
Settlement Appropriation*)

These two cases arose out of a single vehicle accident that occurred at a remnant parcel owned by the State of Hawaii Department of Transportation overlooking the ocean along Honoapiilani Highway. In the car was the driver, 34-year-old Denise Callo, her 16 year old lover, passenger James Makekau, her brother's girlfriend 16-year-old Tiffany Romena and Romena's infant daughter. The vehicle went over the edge of the remnant and fell approximately 300 feet to the rocks at the shoreline. Denis Callo and James Makekau died. Romena and her daughter survived. The case was tried without a jury and

although Callo was intoxicated and had recently used marijuana, the judge determined that the State was one hundred percent at fault and that Callo, as well as her passengers, who were aware of Callo's alcohol and marijuana use, were zero percent at fault. The judge awarded Denise Callo's mother \$400,000, the Estate of Denise Callo \$725,000 and Tiffany Romena \$250,000 for a total of \$1,375,000. The judge awarded the Estate of James Makekau \$1,103,834, Karen Dougher (James Makekau's mother) \$400,000 and the Estate of Robert Makekau (James' father) \$400,000, for a total of \$1,903,834. The total judgment in both cases was \$3,360,000.00. The parties mediated the case and reached a settlement in the amount of \$2,100,000 for both cases.

Dela Cruz v. State of Hawaii, et al.
Civil No. 06-1-0258, Third Circuit

\$ 35,000.00 (*Department
Settlement Appropriation*)

Prior to sunrise on November 13, 2005, as Plaintiff was driving on Route 19 toward Hilo, his vehicle struck a large boulder that had fallen off the cut slope on the shoulder of the road and had rolled into the middle of the paved surface. Plaintiff was severely injured. The State of Hawaii Department of Transportation, Highways Division had contracted with Hawaiian Dredging Construction Co. two years before to repair the same part of the cut slope from where the boulder had fallen. The repairs made by Hawaiian Dredging were necessary due to rock falls and flooding of that portion of the highway. Although the cut slope was repaired, Plaintiff alleged that the State was negligent in its follow up inspection and maintenance. The contractor, Hawaiian Dredging, is paying one half of the total settlement of \$70,000.00.

Delouise v. Werner, et al.
Civil No. 07-1-0459(1), Second Circuit

\$ 275,000.00 (*Department
Settlement Appropriation*)

Plaintiff was struck by Defendant Werner as he was driving a motorcycle on Kuihelani Highway on Maui. Defendant Werner failed to yield after stopping at the stop sign at the intersection of Kuihelani and Maui Lani Parkway. The Plaintiff sustained severe orthopedic injuries and brain damage. The Plaintiff alleged that the State of Hawaii failed to install traffic signals in view of the increase in traffic volume as a result of the development of the Maui Lani planned community. The settlement amount is the State of Hawaii's contribution to a universal settlement among all the parties.

Pleasanton v. State of Hawaii
Civil No. 09-1-2836-12 KTN, First Circuit

\$ 35,000.00 (*Department
Settlement Appropriation*)

A woman was driving to work on the Pali Highway and a tree fell onto the road. Her vehicle struck the fallen tree, and she was injured as a result of the collision. The case proceeded to the Court Annexed Arbitration Program which resulted in the settlement.

DEPARTMENT OF TRANSPORTATION, HARBORS DIVISION:

Andrade v. State of Hawaii, et al.
Civil No. 09-1-2959-12, First Circuit

\$ 150,000.00 (*Department
Settlement Appropriation*)

A longshoreman for Young Bros., injured his left ankle in a concrete expansion joint at the Young Bros. pier area, Pier 40, at Honolulu Harbor while he was unloading a container. The State owns the pier, but while Young Bros. has, in effect, exclusive use of the pier, Department of Transportation remains responsible for its maintenance. The longshoreman allegedly suffered torn ligaments and a fracture in his ankle and was out of work for seven months. He later re-injured his ankle in October 2009, while stepping off a forklift. He claimed he had chronic ankle instability as a result of the first injury.

ATTACHMENT “B”

DEPARTMENT OF EDUCATION:

Jackson v. State of Hawaii, et al. **\$ 250,000.00** *(General Fund)*
Civil No. 12-1-1004-04, First Circuit **Settlement**

A woman was visiting the Library for the Blind and Physically Handicapped located near Waikiki when her foot got caught in a dangling telephone cord by the front desk area, and she fell and broke her hip. A longtime patron of the library, she was legally blind and had poor hearing. She was able to walk with no assistance before the accident. She had hip replacement surgery following the accident, and a pin was placed in the left hip. This case proceeded to mediation, which resulted in the settlement.

DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:

Chang v. State of Hawaii, et al. **\$ 15,000.00** *(Department*
Civil No. 12-1-1408-05, First Circuit **Settlement Appropriation)**

An 86 year old man who walks with a cane tripped over a cable attached to a traffic counting meter that the Department of Transportation had placed across the mauka sidewalk along Kalanianaʻole Highway, in the vicinity of the Wailupe Stream Bridge. The cable was not taped down or marked by a cone. The man alleged that the Department of Transportation created an unsafe condition that presented an unreasonable risk of harm to pedestrians using the sidewalk. He sustained skin tears on his right wrist, a laceration on his right cheek, and multiple abrasions and contusions on his right shoulder and knee.

Eager v. State of Hawaii, et al. **\$ 291,078.00** *(Department*
Civil No. 12-1-1408-05, First Circuit **Settlement Appropriation)**

A man was riding his moped over railroad tracks and allegedly hit a pothole, lost control of the moped, and was thrown to the side of the road with the moped landing on his right foot. He claims to have sustained injuries to his hand, left knee, and right foot and had to undergo several surgeries. Following a bench trial, the court found the State 100 percent liable and awarded him a total of \$306,397.90. His attorney then filed motions seeking fees and costs for approximately \$48,000. Before the court ruled on the motions, the parties agreed to settle for \$291,078.00.



From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: w9w@hotmail.com
Subject: *Submitted testimony for HB775 on Mar 25, 2013 09:05AM*
Date: Monday, March 25, 2013 4:31:09 AM

HB775

Submitted on: 3/25/2013

Testimony for WAM on Mar 25, 2013 09:05AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
kurt	Individual	Oppose	No

Comments:

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