



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

S.B. NO. 2246, S.D. 2, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 18, 2014

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Caron M. Inagaki, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of this bill is to seek appropriations 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 fourteen claims that total \$983,030.69. Eleven claims are general fund appropriation requests that total \$860,530.69, and three claims are appropriation requests from departmental funds that total \$122,500.00. Attachment A provides a brief description of each claim in the bill.

Since this bill was last amended, four new claims have been resolved for an additional \$336,080.66. These claims are all general fund appropriations requests. Attachment B provides a brief description of the new claims. We request that the Committee amend the bill to appropriate funds to satisfy the new claims.

Including the new claims, the appropriation request totals \$1,319,111.35 allocated among eighteen claims. Of this total \$1,196,611.35 are general fund appropriation requests and \$122,500.00 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 with amendments to add the new claims.

ATTACHMENT "A"

DEPARTMENT OF EDUCATION:

Barnett v. State of Hawaii, et al.
Civil No. 10-1-0236, Fifth Circuit

\$ 41,511.54 (*General Fund*)
Judgment

A female soccer player at Kapaa High School on Kauai cut her knee on a metal base plate from a temporary goal set up by the coach. The soccer player continues to suffer some disability from the accident. This case proceeded to trial, and the judge found that the coach was liable for having used the temporary goal.

In the Matter of the Arbitration Between Hawaii State Teachers Association and Na Wai Ola (Waters of Life) Public Charter School, State of Hawaii, Grievance of Ginger Krauss

\$ 44,951.43 (*General Fund*)
Judgment

A teacher was terminated from the Waters of Life Public Charter School for cause. The teacher was a member of HSTA and filed a grievance challenging the termination. After hearings on the merits, the Arbitrator concluded that the termination was without proper cause and issued: (1) the Arbitrator's Decision and Award for back pay, back EUTF benefit contributions, back ERS contributions and interest on all of the amounts for a total of \$33,649.66 and (2) the Arbitrator's Supplemental Award for the arbitrator's fees and costs and interest for a total of \$11,301.77.

DEPARTMENT OF HUMAN SERVICES:

Louis, et al. v. State of Hawaii, et al.
Civil No. 05-1-0935-05, First Circuit

\$ 180,000.00 (*General Fund*)
Settlement

This case arises out of alleged mistreatment of four former wards of the Hawaii Youth Correctional Facility (HYCF). The claims against the State are a failure to properly train and supervise the Youth Correctional Officers (YCOs). As to the four individually named Defendant YCOs, three of the four have denied assaulting the youths. Although physical force was used on the youths in many instances, the YCOs have asserted that the force used was reasonable and necessary under the circumstances, and was not excessive. As to the remaining YCO, he did assault one of the youths. He was prosecuted for that assault by the Department of the Attorney General, and a conviction was secured. (The Department of the Attorney General declined to represent that YCO, based on the YCO's action being outside the scope of his employment.) The State denies it failed to properly train and supervise any of the YCOs involved. There were six instances of abuse alleged involving the four former wards. The youths claim to have suffered physical injuries and emotional distress as a result of the alleged mistreatment. The case proceeded to court-ordered mediation, and the mediator believed that the case had a settlement value of approximately \$200,000.00. The case later settled for \$180,000.00.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS:

Hawaii Pacific Health, et al. v. Dwight Takamine, \$ **89,645.15** *(General Fund)*
Civil No. 11-00706 SOM/RLP, USDC **Settlement**

This is a declaratory action initiated by Plaintiffs that sought orders to declare that Hawaii Revised Statutes (HRS) § 378-32(b) is preempted by the National Labor Relations Act (NLRA) and is unconstitutional under the Equal Protection Clause. Plaintiffs also sought to obtain permanent injunctive relief to bar enforcement of HRS § 378-32(b). The court heard the parties' motions for summary judgment. The court held that HRS § 378-32(b) is preempted by the NLRA and is unconstitutional under the Equal Protection Clause.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Coziar v. State of Hawaii \$ **30,000.00** *(General Fund)*
Civil No. 13-1-0018(1), Second Circuit **Settlement**

An employee of the Department of Land and Natural Resources was turning mauka in Lahaina, Maui, and his vision was momentarily blocked by the early morning sunlight shining in his eyes. He did not see Plaintiff, who is legally blind, walking in the crosswalk. Plaintiff's special damages exceeded \$10,000, therefore, the parties agreed to settle for \$30,000.

DEPARTMENT OF PUBLIC SAFETY:

Buan v. State of Hawaii, et al. \$ **50,000.00** *(General Fund)*
Civil No. 11-1-1222-06, First Circuit **Settlement**

Plaintiff, a former nurse working for the Department of Public Safety, claims that she was discriminated against by her immediate supervisor because of the Filipino portion of her ancestry and because their religious beliefs differed. She further claims that she was discriminated or retaliated against because she filed complaints about a wide range of issues. Plaintiff's economic expert calculated potential damages of \$2,700,000, and the Department's economic expert calculated worse case potential damages of \$250,000 including attorney's fees. This settlement was inadvertently not included in the appropriations bill in 2013, which resulted in the Department of Public Safety being forced to pay the agreed upon amount to Plaintiff out of its general operating funds in order to preserve the settlement. Accordingly, the purpose of this appropriation is to reimburse the Department of Public Safety.

MISCELLANEOUS CLAIMS:

Yoshikatsu Asano \$ **1,939.00** *(General Fund)*

Claimant requests reissuance of outdated checks that were misplaced. The checks when found were 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.

Aimee Clay **\$ 497.48** (*General Fund*)

Claimant requests reissuance of outdated checks that were misplaced. The checks when found were 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.

Marie-Gertrude N. Leopoldo **\$ 417.00** (*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.

Bruce A. Menin **\$ 421,346.13** (*General Fund*)

Claimant requests reissuance of an outdated check that he claims he never received in 2009. 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.

Thomas K. Nagano **\$ 222.96** (*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:

Adams, et al. v. Yokooji, et al. **\$ 25,000.00** (*Department*
Civil No. 07-1-1567, First Circuit **Settlement** *Appropriation*)

A pedestrian was struck by a vehicle near the intersection of Kalaniana'ole Highway and Kanapuu Drive in Kailua. There is a crosswalk across the highway located on the Kailua side of the intersection. On that night, Plaintiff took a cab to visit her children who lived in Waimanalo. When the cabbie learned that she did not have enough money for the fare, he dropped Plaintiff off at a bus stop on the Kailua bound side instead of the Waimanalo bound side of the highway. Plaintiff crossed the highway to get to the bus stop on the Waimanalo bound side. A vehicle heading toward Waimanalo hit Plaintiff and claims it was too dark to see Plaintiff. Plaintiff intends to prove that the site was dangerously dark because the State should have had increased footcandles/lumens of the street lights and that overgrown tree branches obscured the street lights.

The State would likely prevail at trial because of the strength of its expert witnesses when compared with the weaknesses of Plaintiffs' expert witnesses, and the fact that an independent witness had adequate street lighting to see Plaintiff crossing the highway. However, it would be a non-jury trial before a trial judge who has a history of sympathizing with Plaintiffs. Therefore, it was recommended that the State counter Plaintiffs' settlement demand of \$750,000, with the amount of one-half of the costs to bring the State's four expert witnesses from the mainland for trial, rather than risk a possible judgment in a wrongful death case, the State's proportionate share of which could be in excess of \$100,000.

Booth v. State of Hawaii, et al.
Civil No. 12-1-0262, Fifth Circuit

\$ 65,000.00 (*Department
Settlement Appropriation*)

Plaintiff was walking on the sidewalk of Rice Street in Lihue, Kauai, and he tripped over the edge of the drainage culvert installed adjacent to the sidewalk. The drainage culvert had been constructed so that its surface was two inches higher than the adjacent surface of the sidewalk. Although this difference in the height of the surfaces was contrary to the specifications of the contract to construct that facility, the Department of Transportation accepted the contract work. This trip hazard existed for eleven years without any effort to modify it to make it less hazardous. As a result of the trip and fall, Plaintiff tore his left rotator cuff and sustained other injuries. He was required to undergo surgery and physical therapy. His medical expenses were approximately \$44,000 and his lost income claims was approximately \$30,000. This case proceeded to Court Annexed Arbitration, and the arbitrator awarded Plaintiff \$70,000. The case later settled for \$65,000.

Nakandakare, et al. v. State of Hawaii, et al.
Civil No. 11-1-1740-08, First Circuit

\$ 32,500.00 (*Department
Settlement Appropriation*)

A man was riding his bicycle over the Halawa stream bridge, town-bound, when his bicycle tire got caught in the groove of an expansion joint on the bridge, causing him to fall off his bicycle, resulting in personal injuries. The case proceeded to the Court Annexed Arbitration Program, and the arbitrator awarded the man \$80,491.00 plus costs. The case later settled for \$32,500.00.

ATTACHMENT "B"

DEPARTMENT OF HEALTH:

Johnson v. Rainbow Rehabilitation, et al.
Civil No. 07-1-1855-10, First Circuit

\$ 221,080.66 *(General Fund)*
Judgment

In 2002, the Department of Health (DOH) referred 15-year-old public high school student Michael Johnson to Rainbow House with which the DOH had a contract. Mr. Johnson had been diagnosed with mild mental retardation, ADHD, Tourette's Syndrome, and other mental and behavioral problems. Mr. Johnson was supposed to receive community-based mental health services at Rainbow House. During his six months there, Mr. Johnson engaged in a sexual relationship with one of the male staffers. After these sexual encounters came to light, suit was brought against Rainbow Rehabilitation, the employee, and the State. Following a bench trial in 2009, the State was found liable and damages were awarded against it.

DEPARTMENT OF HUMAN SERVICES:

Kolio, et al. v. State of Hawaii, et al.
Civil No. 11-00266 LEK RLP, USDC

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

This case was filed by three Plaintiffs as a class action for injunctive relief and incidental damages, alleging violation by Defendants of the ADA, section 504 of the Rehabilitation Act and the Amendments to the Fair Housing Act as pertains to Mayor Wright Housing. Plaintiffs' Motion for Class Certification on behalf of mobility impaired residents of Mayor Wright Homes was denied by the Court. The Defendants included the State of Hawaii, Hawaii Public Housing Authority, and its Executive Director, Hakim Ouansafi. During the pendency of the lawsuit, one Plaintiff was evicted from housing for unrelated reasons and two other Plaintiffs accepted "reasonable accommodations" within Mayor Wright Homes. The deadlines for adding or substituting parties passed. Significant legal questions remained particularly whether due to the age of the buildings at Mayor Wright Homes, Defendants were required to make them compliant with the ADA, section 504, and/or the Fair Housing Act Amendments.

With the assistance of the Federal Magistrate Judge, a settlement was reached for the claims of the remaining individual Plaintiffs in the total sum of \$20,000, inclusive of attorney's fees.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Imig v. State of Hawaii, et al.
Civil No. 13-1-2995-11 (ECN), First Circuit

\$ 60,000.00 *(General Fund)*
Settlement

On February 5, 2013, Plaintiff tripped and fell on the sidewalk fronting the Ala Wai Yacht Harbor, adjacent to Holomoana Street, behind the Hawaii Prince Hotel. At the area in question, a steel plate, which appears to house a storm drain, sits on top of the sidewalk. A concrete patch in front of the steel plate (to eliminate the edge of the plate) was missing on half of the width of the plate, creating a one-inch discrepancy on the sidewalk. Plaintiff sustained a fractured right wrist that required surgical repair.

DEPARTMENT OF PUBLIC SAFETY:

Fontanilla v. State of Hawaii, et al.
Civil No. 12-00641 BMK, USDC

\$ 35,000.00 (*General Fund*)
Settlement

Plaintiff alleges that his rights were violated during a traffic stop and filed a section 1983 civil rights claim. Plaintiff was being pursued by deputy sheriffs from the Airport Sheriff Division as he was driving an allegedly stolen vehicle. He was driving erratically and resisted an order to stop the vehicle. When the vehicle Plaintiff was driving ceased to operate, Plaintiff got out of the vehicle and proceeded on foot running up an embankment on the H-1 Freeway off ramp with a deputy sheriff in pursuit. A physical altercation occurred between Plaintiff and the deputy sheriff. The deputy sheriff claims that Plaintiff attacked him with a knife causing the deputy to draw his service pistol. The deputy then slipped on the uneven ground on the embankment and fired just he lost his footing. Simultaneously, Plaintiff turned and the bullet struck him in the buttocks. The deputy did not know he had shot the Plaintiff and still had to tackle, subdue, and handcuff Plaintiff, to prevent Plaintiff from escaping. At the time, Plaintiff was high on crystal methamphetamine. Plaintiff claimed that he never attacked the deputy and was simply trying to walk away when he was shot in the buttocks. The accounts of Plaintiff and the deputy markedly differ and there were no eye witnesses to the sequences of events. The physical evidence was equivocal.