



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 1277, S.D. 2, H.D. 1, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Monday, April 3, 2023

TIME: 2:30 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Yamashita and Members of the Committee:

The Department of the Attorney General (Department) 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 current draft of the bill contains twenty-four claims that total \$7,571,395.42. Of this total, \$7,071,395.42 are general funds appropriation requests allocated among twenty-three claims, and \$500,000.00 is an appropriation request from a departmental fund. Attachment A provides a brief description of each claim in this bill.

Since the bill was last amended, four new claims were resolved for an additional \$17,949,394.67. Three claims are for general funded appropriation requests for \$949,394.67 and the other claim is an appropriation request from departmental funds for \$17,000,000.00. Attachment B provides a brief description of the new claims.

Including the new claims, the appropriation request totals \$25,520,790.09 allocated among twenty-eight claims. Of this total, \$8,020,790.09 are general fund appropriation requests and \$17,500,000.00 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 also has 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 ACCOUNTING AND GENERAL SERVICES:

Frances Kaluhiwa v. State of Hawaii **\$ 275,000.00** *(General Fund)*
Civil No. 1CCV-20-0000638, First Circuit **Settlement**

Plaintiff, then age 75, tripped and fell on an uneven spot in the sidewalk between the Iolani Palace grounds and the State Capitol Building. Plaintiff broke her hip and underwent partial hip replacement surgery. She complains of ongoing pain and disability. The case went through the Court Annexed Arbitration Program where the arbitrator found for the Plaintiff and awarded \$113,511.44 in special damages and \$284,778.60 in general damages for a total of \$397,290.04. The State appealed the arbitration award and settled for \$275,000.00.

DEPARTMENT OF THE ATTORNEY GENERAL:

Honolulu Civil Beat Inc. v. Department of **\$ 79,199.38** *(General Fund)*
the Attorney General **Judgment**
SCAP 21-00000057
Civil No. 1CC-16-1-001743 JMT

Honolulu Civil Beat Inc. brought a lawsuit against the Department of the Attorney General to force disclosure of a 2016 Attorney General Investigative Report concerning the Auditor's Office. The Hawaii Supreme Court ruled that the report should be disclosed with certain information redacted. Under section 92F-15(d), Hawaii Revised Statutes (HRS), a successful plaintiff in a public records lawsuit is entitled to reasonable attorney's fees and costs incurred in the litigation to force disclosure of the records. Final judgment in the amount of \$78,120.00 in attorney's fees and \$1,079.38 in costs, totaling \$79,199.38, was entered on September 30, 2022.

DEPARTMENT OF EDUCATION:

Kristen Kam, et al. v. State of Hawaii **\$ 250,000.00** *(General Fund)*
Board of Education, et al. **Settlement**
Civil No. 21-00211 JAO-KJM, USDC

Plaintiff Kristen Kam alleges that from November 2018 through February 26, 2019, her daughter, K.K., was repeatedly sexually assaulted, sexually abused, harassed, or bullied at Konawaena High School (KHS) by a male high school student after school hours. K.K. was a middle school student at Konawaena Middle School, which was located adjacent to KHS and shared the same plot of land. Plaintiff claims that the State of Hawaii Board of Education, Department of Education, and KHS's principal failed to take actions to protect K.K. from the male student despite having received

reports that the male student had previously engaged in misconduct prior to November 2018.

Cipriano Millano, et al. v. State of Hawaii, et al. **\$ 750,000.00** *(General Fund)*
Civil No. 2CC-13-1-000031, Second Circuit **Settlement**

A lawsuit was filed by the father of a six-year-old student, L.J.M., who injured his eye when he ran into a pedestrian gate while walking with his father on a walkway to his classroom at Lihikai Elementary School in Kahului, Maui. The Department of Education owns the school grounds and operates the school. There is a perimeter fence that surrounds the school grounds. In the fence there is a pedestrian gate that separates a classroom area from the school staff parking stalls. The gate has a common U-latch. Trial proceeded on liability only. The father testified that when he pushed the U-latch up to open the gate, the gate swung back, the latch fell and struck his son in the left eye. As a result of the injury, L.J.M. lost sight in his eye. The trial court determined that the State was negligent, and its negligence was a legal cause of the accident and injury, and the State was 100 percent at fault. The parties settled for \$750,000.00, which is within the settlement and judgment range for cases involving the loss of vision in one eye.

Roe No. 113 v. State of Hawaii **\$ 450,000.00** *(General Fund)*
Civil No. 1CC191000460, First Circuit **Settlement**

Plaintiff alleged that in 1977, when he was a minor student at Highlands Intermediate School, he was repeatedly sexually abused by school security officer, Joseph Moisa. He alleged that the abuse occurred on school grounds, and at a camping trip allegedly arranged by Moisa for participants in the Campus Police Officer (CPO) program. Because the records retention period had long since lapsed, the State was unable to find any relevant records to confirm or refute Plaintiff's allegations other than school yearbooks that seemed to support the claim that Moisa was working at the school as a security officer and was involved in the CPO program. Due to the passage of section 657-1.8, HRS, the statute of limitations was waived for adult survivors of child sexual abuse if they could prove gross negligence on the part of the State. All the State employees who would have been in any position to know any facts or information regarding this matter are dead. Therefore, the Department of Education was unable to offer evidence to contradict Plaintiff's claims and decided to settle for \$450,000.00 rather than risk an adverse judgment of a much higher amount if the case went to trial.

DEPARTMENT OF HUMAN SERVICES:

**E.F. v. State of Hawaii, Department
Human Services, et al.
Civil No. 1CCV-20-0000497, First Circuit**

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

Plaintiff filed a claim alleging that he was sexually abused by his foster parents in 1964-1967. Plaintiff had two sets of records to support his claim. One was Department of Education records, which stated that he had "foster parents," and included the names "Rose Keim" and "Mr. and Mrs. Keim." The other is a document from the then-named "Juvenile Court" regarding Plaintiff from the 1950s, but there is no remaining file at the family court. There are no documents at the Department of Human Services (from its predecessor, Department of Public Welfare, which later became the Department of Social Services), either due to the passage of time, or because there were never any records for E.F., or the Keims to begin with. Plaintiff alleges that no social worker came to check on him, and if he had been checked, he would have disclosed the abuse and the abuse would have ended. This is a case that was brought under the re-opening of the window for sexual abuse for entity liability, section 657-1.8(b)(2), HRS.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

**Mary Chang, et al. v. State of Hawaii; et al.
Civil No. 1CCV-21-0000913, First Circuit**

**\$ 830,000.00 (General Fund)
Settlement**

On March 1, 2021, Plaintiffs, a 59-year-old nurse and a 71-year-old, retired bank manager, were traveling on Kamehameha Highway in Kaaawa when a large ironwood tree fell and landed on their vehicle smashing the top of the passenger compartment and trapping them in the car. The ironwood tree was located on State property managed by the Department of Land and Natural Resources (DLNR). DLNR believed the tree was located on a Department of Transportation right-of-way so it did not monitor, inspect, or maintain the tree. The driver sustained closed fractures to her sternum and thoracic spinal endplates. The passenger sustained a closed fracture to a lumbar endplate. Both plaintiffs complain of daily pain. Their spouses made loss of consortium claims.

DEPARTMENT OF PUBLIC SAFETY:

**Eric Yoshioka v. State of Hawaii
Civil No. 17-1-1435-09, First Circuit**

**\$ 37,500.00 (General Fund)
Settlement**

Plaintiff, who is a former inmate at Oahu Community Correctional Center, was over-detained by 69 days due to the miscalculation of Plaintiff's pre-sentence credits. Plaintiff was immediately released when the miscalculation was discovered and corrected by the Department of Public Safety.

DEPARTMENT OF TRANSPORTATION:

Satya Simmons, et al. v. State of Hawaii, et al.
Civil No. 2CC171000224, Second Circuit

\$ 500,000.00 (*Dept. Appropriation*)
Settlement

On the evening of November 27, 2016, a 16-year-old female pedestrian, H.R.S., and her two teenaged male companions were crossing Piilani Highway in Maui in a marked and signalized crosswalk. The "walk" signal was on and the pedestrians had the right-of-way. A pick-up truck driver failed to yield to the pedestrians and struck H.R.S. who later died as a result of her injuries. The highway in the vicinity of the accident and at the intersection has continuous street lighting. On the evening of the accident, one of the four street lights at the intersection was not functioning. The State of Hawaii Department of Transportation (DOT) owns and operates the highway, intersection, and crosswalks. The lights are maintained and repaired by Maui Electric Company (MECO). The street lights were originally installed in the late 1980s to early 1990s as part of residential subdivisions that were developed at the time. Between the original installation and the date of the accident, there had been four highway improvement projects that included the subject intersection. However, the street lights had not been upgraded to meet illumination guidelines that were current at the time of the accident. The DOT had a statewide contract to replace the lights with Light Emitting Diode (LED) lights. DOT mistakenly believed that it owned the street lights on its highways on Maui and included the lights at this intersection in the statewide contract. DOT and MECO disputed ownership of the street lights but because DOT included the replacement of these lights in the contract, the trial court could have determined that this was indicia of control of the lights by the State. Plaintiff Simmons is the decedent's natural mother. Ms. Simmons sued the driver for negligent operation of his vehicle as well as the State and MECO for negligent design, maintenance, repair, and operation of the street lights. After the lawsuit was filed, the driver passed away of causes unrelated to the accident. Plaintiff settled her claims against the driver's estate in 2021. More recently, Plaintiff settled her claims with MECO.

HAWAII STATE FOUNDATION ON CULTURE AND THE ARTS:

Claim of Allison D. Wong Daniel

\$ 55,000.00 (*General Fund*)
Settlement

This is an employment dispute between the State Foundation of Culture and the Arts (SFCA) and its former Executive Director, Allison D. Wong Daniel. The SFCA is governed by a Board of Commissioners, which hired Ms. Wong to serve as the SFCA Executive Director (ED) beginning August 1, 2022. After Ms. Wong began her term, the Board received complaints and concerns about Ms. Wong's performance as ED. These complaints and concerns made it difficult for Ms. Wong and the SFCA to fulfill their respective responsibilities. The Board decided it would be in the best interests of the SFCA, the State, and Ms. Wong to separate Ms. Wong from her position. In

consideration of the agreement to pay Ms. Wong \$55,000.00 to settle the dispute, Ms. Wong resigned from the SFCA on January 31, 2023, and released the State from all claims arising from her employment with SFCA.

STATE PUBLIC CHARTER SCHOOL COMMISSION:

**Beth Bulgeron v. The Hawaii State Public
Charter School Commission, et al.
Civil No. 1CCV-20-0001620, First Circuit**

**\$ 58,000.00 (General Fund)
Settlement**

Plaintiff is a former employee of the Charter School Commission (CSC). Immediately after resigning from the CSC, she started a school improvement consultant business. After obtaining a written opinion from the State Ethics Commission that she could contract with the CSC, she contracted with the CSC through its former Executive Director, Sione Thompson. Mr. Thompson entered into contracts with Plaintiff without the knowledge of the CSC staff or its commissioners, and without review by the Department of the Attorney General. After Mr. Thompson resigned from the CSC, the CSC unilaterally cancelled the contract with two months remaining on the contract. The stated basis for the cancellation was the Governor's Executive Memorandum 20-01 allowing for the cancellation or deferring of contracts and other expenditures of low priority. However, the contract was not cancelled in accordance with its 60-day written notice of termination provision. Plaintiff filed a lawsuit alleging breach of contract, assumpsit, unjust enrichment, and promissory estoppel against the CSC. Plaintiff also sued the current Interim Executive Director and the former CSC Chair for tortious interference with contract and the CSC, infliction of emotional distress, and libel and slander. Based on the unilateral cancellation, Plaintiff claims that she is owed final payments in the amount of \$67,500.00 plus attorneys' fees pursuant to section 607-14, HRS. The parties reached a settlement in a judicially supervised settlement conference for \$58,000.00.

MISCELLANEOUS CLAIMS:

Kelly and Robert Armstrong

\$ 100,333.33 (General Fund)

Claimant requests reissuance of an outdated check that was misplaced or lost. 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, HRS.

Community Empowerment Resources

\$ 153,110.25 (General Fund)

Claimant requests reissuance of an outdated check that was misplaced or lost. 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, HRS.

Garry A. Harsanyi and Kimberly M. Harsanyi

\$ 406.00 *(General Fund)*

Claimant requests reissuance of an outdated check that was damaged and unable to be deposited. After requesting a reissuance, claimant's request was misplaced or lost. 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, HRS.

Interval International Inc.

\$ 3,078,145.74 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. 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, HRS.

Ding Jing

\$ 118,524.00 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. 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, HRS.

Kailua Local Cab Inc.

\$ 2,019.71 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. 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, HRS.

Morgan Stanley Smith Barney Holdings LLC

\$ 239,927.00 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. 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, HRS.

Mercedes Nakaza

\$ 94.46 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. 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, HRS.

Jyron Salamanca

\$ 1,992.30 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. 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, HRS.

Saltchuk Resources, Inc.

\$ 550,000.00 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. 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, HRS.

Michael Shiira

\$ 902.00 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. 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, HRS.

Tamura Enterprises, Inc.

\$ 1,464.22 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. 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, HRS.

Estate of Take Yamashiro

\$ 4,777.03 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. 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, HRS.

ATTACHMENT "B"

DEPARTMENT OF LAND AND NATURAL RESOURCES:

**Healoha Carmichael, et al. v. Board of Land and
Natural Resources, SCWC-16-000071**

\$ 49,394.67 *(General Fund)*
Judgment

This case involved the issuance of revocable water permits for four license areas that were issued annually by the Board of Land and Natural Resources (Board) since 1985. The revocable permits were issued to Alexander & Baldwin and East Maui Irrigation Co. (collectively "A&B"), which allowed A&B to divert water from East Maui for use in central and upcountry Maui for agricultural and domestic water use.

The revocable permits were challenged on the basis that they were continued without an environmental assessment first being made pursuant to the Hawaii Environmental Policy Act, chapter 343, HRS, and because they were not the temporary use authorized by sections 171-55 or 58, HRS. The plaintiffs filed a motion for partial summary judgment, which was granted by the circuit court.

The decision of the circuit court was appealed to the Intermediate Court of Appeals (ICA). The decision of the ICA was taken up by the Supreme Court on a writ of certiorari. The Supreme Court held that although the revocable permits were properly considered "temporary" under the provisions of section 171-55, the Board failed to make factual findings or enter conclusions of law showing that it was in the best interests of the State to continue the permits as required under section 171-55.

The Supreme Court also found that permits constituted an "action" for purposes of chapter 343, HRS, and as such was subject to the requirements of chapter 343. The plaintiffs were awarded \$148,184.00 in attorneys' fees and costs. This amount is being split equally between defendants, A&B, the County of Maui, and the State, with each party's share being \$49,394.67.

DEPARTMENT OF TRANSPORTATION:

James Braddock, et al. v. Misty Mitchell, et al.
Civil No. 19-1-0994-06, First Circuit Court

\$ 17,000,000.00 *(Dept. Appropriation)*
Settlement

The DOT owns and operates the H-3 Freeway and Likelike and Kahekili Highways. Along the right shoulder of Likelike Highway northbound, just before the offramp to Kahekili Highway, there is an entrance to a runaway truck ramp. On April 27, 2019, the DOT received a report that a vehicle had used the truck ramp and damaged some of the cable restraints inside the ramp. DOT Oahu District requested that its contractor place Type II traffic barricades at the entrance to the truck ramp for the weekend. The Oahu District also requested that DOT's in-house crew replace the barricades with an array of sand barrels on the inside of the ramp. In addition, the DOT requested that its other contractor order replacement cables. The DOT did not intend for the runaway

ramp to be closed. The cables were scheduled for replacement and repair on June 22, 2019. The plaintiffs' accident occurred on June 12, 2019. At the time of the accident, there were Type II barricades in place at the entrance to the truck ramp but there were no sand barrels inside or near the truck ramp.

On the day of the accident, a Pinky Tows towing company truck driver was hauling a large refrigeration truck and began to experience "sponginess" in the brakes, a precursor to brake failure. The driver testified that she saw the barricades at the entrance of the runaway ramp and believed that the ramp was not available for use. She took the offramp to Kahekili Highway toward the intersection of Likelike Highway and Kahekili Highway. There were a number of vehicles waiting at a red light including the plaintiff's. The tow truck struck the plaintiff's vehicle and nine other vehicles. The plaintiff's vehicle was completely mangled and he had to be extricated from the vehicle and rushed to the hospital. The plaintiff sustained severe, permanent, and debilitating head, brain, and other bodily injuries. He will require continued treatment and rehabilitation and daily attendant care throughout his life. The range of full damages exposure was estimated to be well in excess of \$30,000,000.00. Because of concerns that the State would be held jointly and severally liable with the tow truck company and its driver under sections 663-10.5 and 663-10.9, HRS, settlement was reached in the amount of \$26,000,000.00. Of this total, \$9,000,000 will be funded by the excess insurance carriers for the State and \$17,000,000.00 will be funded by the State.

DEPARTMENT OF PUBLIC SAFETY:

**Cheyenne K. Chong, Individually and as
Personal Representative of Wesley Chong v.
State of Hawaii, Department of Public Safety, et al.
Civil No. 1CC 20-000089, First Circuit**

**\$ 200,000.00 (General Fund)
Settlement**

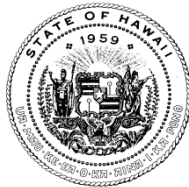
Wesley Chong, 63, was an inmate at Kulani Correctional Facility (KCF) on Hawaii island. Mr. Chong was diagnosed with a heart condition that made it necessary for his own safety to be transferred to a different facility. KCF is located several miles from the nearest hospital and is located at a higher altitude. It is routine procedure to relocate inmates with heart conditions to other facilities. Hours prior to his scheduled transfer to Halawa Correctional Facility, Mr. Chong was found by other inmates in a bathroom bleeding from cuts on both of his arms. Adult Corrections Officers, with the assistance of other inmates, moved Mr. Chong to another section of the prison and tried to stop the bleeding. The ambulance arrived approximately an hour after Mr. Chong was first discovered and the Emergency Medical Technicians were unable to save Mr. Chong.

**Janet Salas v. State of Hawaii, Department
of Public Safety, et al.
Civil No. 1CCV-21-0001541, First Circuit**

\$ 700,000.00 *(General Fund)*
Settlement

James Salas was beaten by three inmates while he was incarcerated in Annex I at the Oahu Community Correction Center. Mr. Salas died on January 16, 2020, from brain injuries sustained in the beating. The death certificate and autopsy report identified the cause of death as "blunt force injuries of the head due to assault" and the manner of death as "homicide." Plaintiff is Mr. Salas' mother who alleges that Mr. Salas was beaten in retribution for being a "snitch" and for quitting a prison gang known as La Familia. Plaintiff claims that the State was negligent in housing Mr. Salas in general population despite Mr. Salas' requests to be placed in protective custody due to the risk to his life and safety. Video surveillance equipment in Annex I was inoperable on the date of the beating, which prevented the guards from detecting the assault in time to intervene.

JOSH GREEN, M.D.
GOVERNOR



TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN K. SHISHIDO
JAMES KUNANE TOKIOKA

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

April 3, 2023
2:30 P.M.
State Capitol, Room 308 & Videoconference

S.B. 1277 SD2 HD1
RELATING TO MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE,
ITS OFFICERS, OR ITS EMPLOYEES

House Committee on Finance

The Department of Transportation supports S.B. 1277 SD2 HD1 that authorizes judgements for claims against the State.

Thank you for the opportunity to provide testimony.