

TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

H.B. NO. 1016, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE:

Tuesday, February 3, 2009 TIME: 2:00 PM

LOCATION:

State Capitol, Room 325

Deliver to: State Capitol, Room 302, 1 Copy

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TESTIFIER(S): Mark J. Bennett, Attorney General

or Caron M. Inagaki, Deputy Attorney General

Chair Jon Riki 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 sixteen claims that total \$1,041,091.65. Of this total, \$341,091.65 are general fund appropriation requests and \$700,000.00 are appropriation requests from departmental funds. 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 \$190,000.00. All of these claims are general fund appropriation requests. Attachment B describes these claims. We request that the Committee amend the bill to appropriate funds to satisfy these four new claims.

Including the new claims, the appropriation request totals \$1,231,091.65 allocated among twenty claims. Of this total \$531,091.65 are general fund appropriation requests and \$700,000.00 are appropriation requests 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 EDUCATION:

Wiley, et al. v. State of Hawaii, et al. \$175,000.00 (General Fund)
Civil No. 04-1-1895-10, First Circuit Settlement

Claimant alleges she tripped and fell on an uneven sidewalk outside Aliamanu Elementary School, resulting in extensive injuries to nearly every part of her body. She allegedly required multiple surgeries. Claimant asserted a negligence claim against the State and the City. She claimed economic losses in excess of \$600,000 plus general damages. Claimant's husband asserted a claim for loss of consortium. The City was dismissed by stipulation. The case settled for \$175,000. The sidewalk was repaired after the accident.

DEPARTMENT OF HUMAN SERVICES:

Martinez v. State of Hawaii, et al. \$ 35,000.00 (General Fund)
Civil No. 06-1-1658-09, First Circuit Settlement

Claimant slipped and fell on a metal drain cover that spanned across the sidewalk at the Puuwai Momi housing area operated at the time by the Housing and Community Development Corporation of Hawaii, now being operated by the Hawaii Public Housing Authority. Claimant walked on the metal drain cover in the rain at the time he slipped. Claimant sustained a torn rotator cuff injury to his dominant shoulder. This required surgery and a lengthy period of rehabilitation during which he was unemployed.

The drain cover upon which the Claimant slipped had been installed approximately 35 years prior when this low income housing was originally built. Claimant's liability expert witness tested the drain cover for slip resistance and, based on his testing, would have testified that the coefficient of friction of the drain cover is low enough to cause the drain cover to be hazardous when wet. He would have testified that the corrugated surface of the drain cover has worn down over the years, contributing to the surface's lack of slip resistance when wet. The Claimant and Claimant's liability expert will also testify that, when wet, the drain cover is essentially the same color as the sidewalk, thus not alerting the pedestrian to the difference in walking surfaces with different degrees of slip resistance. The State's expert confirmed the slip resistance test results reached by the Claimant's expert.

This case proceeded to the Court Annexed Arbitration, and the arbitrator awarded the Claimant \$60,000.00. The lawsuit later settled for \$35,000.00.

DEPARTMENT OF PUBLIC SAFETY:

Becker v. State of Hawaii, et al. \$ 50,000.00 (General Fund)
Civil No. 05-1-1485-08, First Circuit Settlement

Claimant, an inmate at Oahu Community Correctional Center (OCCC), fell while he was trying to get off a bunk bed. He injured his head, neck, and shoulder. The ladder was removed from his bed by OCCC staff the day before. The inmate had surgery on both his neck and his shoulder for injuries allegedly sustained in the fall, and he further claims to be suffering from chronic pain, requiring ongoing treatment and medication. The case settled for \$50,000.00.

Hernandez v. State of Hawaii, et al. \$ 22,000.00 (General Fund)
Civil No. 06-1-1628-09, First Circuit Settlement

Claimant, a 55-year-old inmate at Kulani Correctional Facility, severely sprained his calf while playing frisbee. Claimant stepped into a hole that had been created by a wild pig digging in the outfield. He claims that pigs digging around the facility was a constant problem. He reported to the medical unit of the facility where he was seen by a nurse. He was not referred to an emergency room or an orthopedist. The nurse considered it a minor sprain of the calf muscle and told him to elevate the leg and apply ice to it. The PSD physician who made periodic visits to Kulani saw Claimant for the first time twelve days post injury on December 28, 2004. The PSD physician diagnosed a severe strain of the calf muscle. Since Claimant had a history of diabetes and vascular compromise in his lower extremities, the examining physician was most concerned with deep vein thrombosis. Claimant was therefore sent to Hilo for a venous Doppler test, which was negative. There was no further follow-up.

The Claimant sustained permanent atrophy and deformity of the right calf muscle. He claims this atrophy causes him difficulty in running, walking, going up and down stairs and standing for prolonged periods. He claims he has an uneven gait.

This case settled for \$22,000.00.

Rosa v. State of Hawaii Civil No. 07-1-1143-06, First Circuit \$ 23,685.05 (General Fund)
Judgment

Amount of Judgment: \$22,675.00 4% interest from 6/19/08: \$ 1,010.05

Claimant, an inmate at Waiawa Correctional Facility, severed a portion of his left index and middle fingers while operating a meat saw in the Waiawa Correctional Facility kitchen. This case proceeded to the Court Annexed Arbitration Program, and the arbitrator found in favor of the Claimant in the amount of \$22,400.00 in damages plus \$275.00 in costs plus interest.

MISCELLANEOUS CLAIMS:

Ejima, Inc.

\$ 587.75 (General Fund)

Claimant requests reissuance of an outdated check that was misplaced. The check when found was outdated and could no longer be cashed. Although the claim was not filed within six years from the date in which the claim for payment matured, as required 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.

Gladys Hayashi

\$ 223.43 (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.

Kay Y. Kawatani

\$ 107.40 (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.

Georgia K. Char Lyman as Personal Representative of the Estate of Keakealani L. Char

\$ 9,114.42 (General Fund)

Claimant requests reissuance of outdated checks that were misplaced. The checks when found were outdated and could no longer be cashed. Although the claim was not filed within six years from the date in which the claim for payment matured, as required 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.

Lottie L. Mar \$ 22,895.25 (General Fund)

Claimant requests reissuance of an outdated check that was misplaced. The check when found was outdated and could no longer be cashed. Although the claim was not filed within six years from the date in which the claim for payment matured, as required 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.

Elaine Mock \$ 353.62 (General Fund)

Claimant requests reissuance of outdated checks that were misplaced. The checks when found were outdated and could no longer be cashed. Although the claim was not filed within six years from the date in which the claim for payment matured, as required 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.

Karen M. Radius

\$ 1,853.15 (General Fund)

Claimant requests reissuance of an outdated check that was misplaced. The check when found was outdated and could no longer be cashed. Although the claim was not filed within six years from the date in which the claim for payment matured, as required 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.

Paul T. Sakuma

\$ 272.28 (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:

Parel v. Kanui, et al. Civil No. 07-1-0290, Third Circuit \$ 25,000.00 (Department Settlement Appropriation)

A State of Hawaii employee caused a four-vehicle chain-reaction accident when he struck the rear end of the vehicle in front of him while traveling at approximately 45 miles per hour. At the

time of the accident the State employee was performing his duties as a supervisor for the State of Hawaii Department of Transportation, Highways Division, in Hawaii County. The employee was driving a State of Hawaii DOT pick-up truck destined for his base yard at the time of the accident. The employee admits that his inattention at the time of the accident caused the accident. The Claimant sustained various injuries and lost one of his jobs due to his injuries.

Lang v. Prosniewski, et al. \$325,000.00 (Department Civil No. 05-1-0389(1), Second Circuit Settlement Appropriation)

Claimant suffered serious bodily injury when she was involved in a six-car accident on Maui. She was traveling in a southbound direction and was stopped behind defendant and third-party plaintiff Prosniewski, who was attempting to make a left turn at the intersection of Honoapiilani Highway and Civic Center Road. While stopped, Claimant was rear-ended by another vehicle. was the first collision. The second collision resulted when Claimant was pushed by the rear-end collision into the rear of Prosniewski's vehicle. After the second collision, Claimant's vehicle crossed the centerline into oncoming traffic. The third collision occurred when Claimant hit the right rear of another vehicle traveling in the opposite direction. Collisions four and five occurred in succession as Claimant collided with the front end of two more vehicles that were also traveling northbound. Claimant alleged that the State should have placed a "no left turn" sign at the intersection, which would have prevented Prosniewski from making a left turn. This case proceeded to mediation, which resulted in settlement.

Punsalan, et al. v. State of Hawaii, et al. \$325,000.00 (Department Civil No. 05-1-0389(1), Second Circuit Settlement Appropriation)

This case initially involved three one-car accidents on the same segment of Route 190, the Mamalahoa Highway, north of Kona on the island of Hawaii. The Punsalan accident involving Steven Punsalan, as driver, and Kathy Punsalan, his passenger, occurred on January 9, 2005. The Lactaoen accident involving Kawehilani Lactaoen, as driver, and her minor son, Kauahe Lactaoen, as passenger, occurred on November 6, 2004. Plaintiff Liliukalani Ross' accident occurred on November 26, 2002. The Ross claim was dismissed on the State's motion for summary judgment based on the statute of limitations.

All of these accidents occurred as the plaintiffs' vehicles were traveling in a northerly direction while it was raining. All of the plaintiffs claim that they were traveling between 30-35 m.p.h. while they were driving through a series of uphill "S" curves. They all claim that at basically the same point in the road their vehicle lost traction and slid, or hydroplaned, across the paved oncoming lane of travel, across the narrow unpaved shoulder and over the crest of the 200-foot steep hill or cliff. After leaving the paved surface and crossing the dirt shoulder,



ATTACHMENT "B"

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES:

Starr v. State of Hawaii, et al. \$ 75,000.00 (General Fund)
Civil No. 05-00665, USDC

Claimant alleges disability discrimination against the Department of Accounting and General Services. She alleges violations of the following: (1) Americans With Disabilities Act; (2) Retaliation; (3) Rehabilitation Act; and (4) Hawaii Revised Statutes Chapter 378. The case proceeded to trial, and the case settled for \$75,000.00.

DEPARTMENT OF EDUCATION:

Hoshijo v. State of Hawaii, et al. \$ 35,000.00 (General Fund)
HCRC No. 12617, EEOC No. 37B-A4-00211 Settlement

A female cafeteria helper employed at Waiakea Elementary School was subjected to harassment by a male co-worker based on her gender and race. The Executive Director of the Hawaii Civil Rights Commission had found that the female employee was subjected to derogatory comments by a male co-worker based on her gender and race made on a daily basis for a substantial length of time. Further, the Executive Director had found that she had reported these matters to the cafeteria manager, her immediate supervisor, and later the principal. However, no corrective action was taken.

DEPARTMENT OF PUBLIC SAFETY:

Ayala v. State of Hawaii, et al. \$ 50,000.00 (General Fund)
Civil No. 06-1-0142-01, First Circuit Settlement

A female deputy sheriff was assigned to provide security and law enforcement at the Honolulu International Airport. Based on Section 378-2, Hawaii Revised Statutes, the deputy sheriff alleged that she was subjected to employment discrimination based on her sexual orientation. Upon review, the Director of Public Safety determined that the action taken against Plaintiff was erroneous and should not have been taken.

DEPARTMENT OF TRANSPORTATION, AIRPORTS DIVISION

Freitas, et al. v. State of Hawaii \$ 30,000.00 (General Fund)
Civil No. 05-1-0514(1), Second Circuit Settlement

This lawsuit was filed by two airport firefighters assigned to the Lanai Airport based on the Hawaii Whistleblower Protection Act. The firefighters alleged they were subjected to employment retaliation after they complained of the conduct of an airport maintenance worker. The department was vulnerable to liability because the alleged retaliation was allowed to occur over an extended period of time without effective action being taken.