



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 2288, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, February 5, 2020 **TIME:** 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Lee 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 seven (7) claims that total \$1,027,941.54. Five (5) claims are general fund appropriation requests that total \$77,941.54, and two (2) claims are appropriation requests from a departmental fund that totals \$950,000.00. Attachment A provides a brief description of each claim in the bill.

Since the bill was introduced, five (5) new claims have been resolved for an additional \$132,543.46. These claims are appropriation requests from the general fund. Attachment B provides a brief description of the new claims.

Including the new claims, the appropriation requests total \$1,160,485.00 allocated among twelve (12) claims. Of this total \$210,485.00 are general fund appropriation requests, and \$950,000.00 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 the additional appropriations and amendments.

ATTACHMENT "A"

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Ching, et al. v. Case, et al. **\$ 9,514.99** *(General Fund)*
Civil No. 14-1-1085-04, First Circuit **Judgment**

This civil action was filed against the State alleging a violation of the public trust doctrine in connection with the Department of Land and Natural Resources' management of State lands leased to the United States for military training purposes at Pohakuloa on the Island of Hawaii. The Circuit Court of the First Circuit, Judge Gary W.B. Chang presiding, found that the State breached its public trust duty to conduct periodic inspections of the leased land at Pohakuloa, and ordered the State to submit a management and inspection plan for approval. The Circuit Court also awarded costs to Plaintiffs in the amount of \$9,514.99, although the award of costs was stayed pending the outcome of the State's appeal. On appeal, the Hawaii Supreme Court upheld the Circuit Court's findings (with certain modifications), including the award of costs. The total amount of the judgment for costs is \$9,514.99.

Gold Coast Neighborhood Association v. **\$ 13,160.94** *(General Fund)*
State of Hawaii, et al., Civil No. 07-1-1122-06, **Judgment**
First Circuit

Gold Coast Neighborhood Association (GCNA) sued the State seeking a declaration that the State owns, and has a duty to repair, seawalls in front of various condominiums and co-ops along Waikiki's Gold Coast. After trial, appeal to the Intermediate Court of Appeals, and certiorari to the Hawaii Supreme Court, the Supreme Court ruled that the State owns an easement on the walls and the State shares responsibility to repair with the condominiums and co-ops. The Supreme Court held that GCNA was the prevailing party. The trial court awarded costs of \$13,160.94.

Keauhou Canoe Club v. Department of Land **\$ 9,918.58** *(General Fund)*
and Natural Resources, et al. **Judgment**
Civil No. 13-1-678K, Third Circuit

This civil action was filed against the State to address whether an Environmental Assessment (EA) was required for a State harbor project at Keauhou Bay on the Island of Hawaii. The project involved renovations to vessel moorings in Keauhou Bay. After suit was filed, the State voluntarily agreed to prepare an EA for the renovation project if it proceeded, making the relief sought by the Plaintiff moot. The Circuit Court granted summary judgment in favor of the State and dismissed all of Plaintiffs' claims, but still

awarded the Plaintiff's attorneys' fees, costs, and post-judgment interest. The State appealed.

On appeal, the Intermediate Court of Appeals upheld the award of fees and costs, finding that the suit prompted the client agency to make the determination to prepare an EA if the project were to proceed. However, the Intermediate Court of Appeals reversed the Circuit Court's award of interest thereon. Accordingly, the total amount of the judgment on appeal is \$9,918.58.

DEPARTMENT OF PUBLIC SAFETY:

Shiira v. State of Hawaii, et al. **\$ 44,946.75** *(General Fund)*
Civil No. 13-1-0331, Fifth Circuit **Judgment**

While detained at the Kauai Community Correctional Center in January 2011, Plaintiff, a former inmate, was not allowed by staff nurses to take the pain medication prescribed to him by his personal physician because the Department of Public Safety's policy does not allow for the use of narcotics in jail. Following a bench trial in February 2019, the Court found that the jail's conduct fell below the standard of care and found for the Plaintiff. The Court awarded \$40,000.00 in damages plus costs.

MISCELLANEOUS CLAIMS:

Grace Blevins **\$ 400.28** *(General Fund)*

Claimant requests reissuance of an outdated check that was not 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:

Hayselden, et al. v. State of Hawaii, et al. **\$ 300,000.00** *(Department*
Civil No. 17-1-0204, Third Circuit **Settlement** *Appropriation)*

This case arises out of a single vehicle accident that occurred on Sunday, February 24, 2013, at approximately 5:00 a.m. when it was still dark. Plaintiff Joan Mayo was driving and her co-worker Plaintiff Helene Hayselden was the front seat passenger in the vehicle. They allege that while traveling west at approximately .06 of a mile north of Mile Marker 21, on Route 19, the vehicle struck a large rock that was in their lane of travel. The rock had likely rolled down from the adjacent hillside shoulder of the highway. The Department of Transportation (DOT) owns the highway and shoulders. Both Plaintiffs sustained serious injuries in the accident and were out from work for months.

The subject accident occurred before the Hawaii Supreme Court decision in *O'Grady v. State*. The *O'Grady* decision determined that the State DOT's negligent failure to have an operational level rock fall hazard monitoring, maintenance, and training program was a legal cause of the accident in that case. In *O'Grady*, a large boulder from the hillside adjacent to Route 11 rolled onto the O'Grady's vehicle. In the subject case, a large rock had rolled from the adjacent hillside adjacent to Route 19 and was sitting on the highway in a curve on the road when Plaintiffs vehicle struck the rock. The similarities between the *O'Grady* case and the subject case make it likely that the trial judge will determine that the State is liable to Plaintiffs and award damages against the State.

With the assistance of retired Hawaii Supreme Court Justice James Duffy serving as the mediator, the parties in this case were able to reach agreement on the settlement amount, subject to administrative and legislative approvals.

Vares, et al. v. State of Hawaii, et al.
Civil No. 16-1-0512-03, First Circuit

\$ 650,000.00 (*Department
Settlement Appropriation*)

On March 20, 2014, sixteen year old Nicolette Maile Vares ("Nikki"), was riding her Vespa motor scooter on the Likelike Highway on-ramp to the H-3 Freeway, ahead of her father, Plaintiff Nick Vares, who was following Nikki on his motorcycle. As they approached a curve to the right on the on-ramp, Nikki hit her brakes, lost control of her motor scooter, and crashed into a guardrail. Nikki sustained fatal blunt force injuries to the torso. Plaintiff alleged that the signs posted on the on-ramp were inadequate to warn Nikki of the impending "hairpin turn" on the on-ramp, and failed to comply with applicable traffic engineering standards. The case proceeded to mediation, which resulted in the settlement.

ATTACHMENT "B"

DEPARTMENT OF EDUCATION:

Zhang v. State of Hawaii, et al.
Civil No. 19-1-0824-05, First Circuit

\$ 130,000.00 (*General Fund
Settlement*)

In June of 2017, student K.Z. participated in a summer session physical education class at Kalani High School. K.Z. has been a DOE special education ("SPED") student since kindergarten and he planned to start as a freshman at Kalani when the academic year began in August of 2017. The first PE module was swimming conducted under the supervision of a single DOE teacher. Students like K.Z. who could not swim were instructed to stay in the shallow end of the pool but there was no physical divider or

demarcation in the water between the shallow and overhead depths. The non-swimmers did not have flotation devices.

Near the end of the first class and while the instructor's attention was distracted away from the pool, K.Z. walked alone and unnoticed toward the deep end. When he started to struggle, K.Z. was fully underwater and looked initially like he was playing around. This delayed his classmates' call for help. In addition, the teacher's height of eye on the pool deck kept him from noticing K.Z.'s predicament at the bottom of the pool any sooner. Based on post-accident oxygen levels noted by EMS, Plaintiffs estimate that K.Z. may have been under water for 3-4 minutes. K.Z. was revived by the instructor and transported to Kapiolani where he was treated and observed for 3 days.

The case proceeded to mediation, which resulted in the settlement.

MISCELLANEOUS CLAIMS:

Kathleen A. Kehlor Harper **\$ 809.11** *(General Fund)*

Claimant requests reissuance of an outdated check that was 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, Hawaii Revised Statutes.

John and Deborah Mar **\$ 866.75** *(General Fund)*

Claimant requests reissuance of an outdated checks that were 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, Hawaii Revised Statutes.

Judith Ross **\$ 578.40** *(General Fund)*

Claimant requests reissuance of an outdated check that was 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, Hawaii Revised Statutes.

Barbara H. Ursal **\$ 289.20** *(General Fund)*

Claimant requests reissuance of an outdated check that was 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, Hawaii Revised Statutes.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

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

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H.B. 2288
RELATING TO MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE,
ITS OFFICERS, OR ITS EMPLOYEES.

House Committee on Judiciary

The Department of Transportation **supports** this bill as it provides the necessary appropriation to fund settlement agreements and judgements against the Department.

Thank you for the opportunity to provide testimony.