

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

F. OTAKE
CLERK

STATE OF HAWAII

LEONA KALIMA, DIANE BONER and)	Civil No. 99-0-4771-12 (EEH)
RAYNETTE NALANI AH CHONG,)	(Class Action)
special administrator of the estate of)	
JOSEPH CHING, deceased, on behalf of)	
themselves and all others similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
STATE OF HAWAI'I; STATE OF HAWAI'I)	DECISION REGARDING LIABILITY
DEPARTMENT OF HAWAIIAN HOME)	AND LEGAL CAUSATION
LANDS; STATE OF HAWAI'I HAWAIIAN)	FOLLOWING BIFURCATED TRIAL
HOME LANDS TRUST INDIVIDUAL)	ON AFORESAID ISSUES;
CLAIMS REVIEW PANEL; LINDA)	CERTIFICATE OF SERVICE
LINGLE, in her official capacity as Governor)	
of the State of Hawai'i; JOHN DOES 1-10;)	
JANE DOES 1-10; DOE CORPORATIONS)	
1-10; DOE PARTNERSHIPS 1-10; AND)	
DOE GOVERNMENTAL ENTITIES 1-10,)	
)	
Defendants.)	

DECISION REGARDING LIABILITY AND LEGAL CAUSATION

FOLLOWING BIFURCATED TRIAL ON AFORESAID ISSUES

The court, having concluded this five-week trial from 8/4/09 through 9/11/09 and having considered the trial evidence and arguments of counsel, determines that Plaintiffs proved

by clear and convincing evidence breaches of trust by the Defendant State of Hawai'i ("State") and Defendant Department of Hawaiian Home Lands ("DHHL") during the claims period (August 21, 1959, statehood, through 1988) and that said breaches were a substantial factor or legal cause of eligible Native Hawaiians not being placed on the land in further breach of trust obligations as alleged in the waiting list subclass bifurcated trial. This court suggests that further proceedings on the out-of-pocket damages should involve motions to establish the parameters for fairly calculating such damages and appointment of a special master to apply those parameters to individual class member submittals of evidence for review and consideration by the trial court.

This court's ruling on liability is based on the applicable federal and state law and trial evidence, more particularly nonexpert testimony, the trust experts' testimony regarding trust duties, and documentary evidence; in particular, trial exhibits 2, 3, 10, 11, 12, 15, 16, 24, 86, 89, 232, 1004, 1005, 3427, 3432, 3279a, the DHHL Annual Reports in evidence as well as Exhibits 1, 4 through 9, 13, 14, 17 through 20, 22, 23, 25 through 30, 224 through 228 but not to the exclusion of other exhibits supporting the findings of fact.

The following findings of fact were proven by clear and convincing evidence unless otherwise noted herein:

1. The Hawaiian Homes Commission Act ("HCCA") created trust duties owed to the beneficiaries by the Territory of Hawaii. Upon statehood the Defendant State became the successor trustee with attendant trust obligations and duties. See generally Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp., 177 P.3d 884, 905 (Haw. 2008); Kalima v. State, 111 Hawaii 84, 137 P.3d 990 (2006); The Aged Hawaiians v. Hawaiian Homes Comm'n., 78 Haw. 192, 891 P.2d 279 (1995); Ahuna v. Dep't of Hawaiian Home Lands, 64 Haw. 327, 640 P.2d

1161 (1982). The trust instruments are the Hawaiian Homes Commission Act (1921 and amendments), the Admission Act, Sections 4, 5(f), and State Constitutional provisions including Article XI, Section 2 (1959)(renumbered Article XII, Section 2, 1978); Article XII, Section 1 (1978). See Price v. Hawaii, 764 F.2d 623, 628 (9th Cir. 1985) Keaukaha-Panaewa Community Assn. v. Hawaiian Homes Comm'n., 739 F.2d 1467, 1472 (9th Cir. 1984); testimony of State's expert Mr. Taylor.

2. Throughout the claims period the applicable trust law includes Hawaii common law and its establishment or incorporation of many provisions of the Restatement (Second) of the Law of Trusts (1957). The trust experts for all parties agreed and this court determines that the duties of the Defendant State during the claims period include, *inter alia*, the following (Restatement (Second) of Trusts (1957) Sections):

Sec. 169 Duty to Administer the Trust

Sec. 170 Duty of Loyalty

(1) to the beneficiary to administer the trust solely in the interest of the beneficiary; and

(2) to deal fairly with the beneficiary and communicate to him all material facts.

Sec. 171 Duty Not To Delegate

Sec. 172 Duty To Keep and Render Accounts

[Trustee is liable for any loss or expense resulting from his failure to keep proper accounts. Comment b.]

Sec. 174 Duty To Exercise Reasonable Care and Skill

Duty to beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property.

Sec. 175 Duty To Take and Keep Control [of the trust property]

Sec. 176 Duty To Preserve the Trust Property

Duty to the beneficiary to use reasonable care and skill to preserve the trust property [as a man of ordinary prudence would exercise in dealing with his own property].

Sec. 177 Duty To Enforce Claims

Duty to the beneficiary to take reasonable steps to realize on claims which he holds in trust. [This duty includes taking reasonable steps to compromise or settle doubtful or uncollectible claims or to forego making a claim if reasonable not to seek enforcement because of expense or improbability of success or uncollectibility if successful. Comments a, c.]

Sec. 179 Duty To Keep Trust Property Separate [from trustee's property and to earmark/identify the trust property as property of the trust. Comment d.]

Sec. 181 Duty To Make the Trust Property Productive

Duty to the beneficiary to use reasonable care and skill to make the trust property productive. [A trustee of land is normally under a duty to lease it or to manage it so that it will produce income. By the terms of the trust, however, it may be his duty to give possession of the land to the beneficiary Similarly the trustee is not under a duty to make the land productive if the land is unimproved land which cannot be leased and cannot otherwise be made productive without making improvements which the trustee is not empowered to make.

Comment a.]

Sec. 183 Duty To Deal Impartially with Beneficiaries

Sec. 187 Duty of Discretionary Powers

Where discretion is conferred upon the trustee with respect to the exercise of a power, its exercise is not subject to court control except to prevent an abuse of discretion by the trustee. [The exercise of trustee power is NOT DISCRETIONARY when required by the terms of the trust or by principles of law set forth in Restatement Sections 169 through 185. Comment a.] Comment j and the experts agree that the terms of the trust instruments; that is, the HHCA and related authority creating the trust could have but did not confer discretionary powers (absolute or unlimited discretion absent dishonesty, or improper motive) on the trustee in connection with the principles of law in Sections 169 through 185. This court determines the principles of law set forth in Restatement Sections 169 through 185 are trust duties imposed upon the State as trustee and are not discretionary as that term is used in Section 187. Comments d and e regarding factors used to judge abuse of discretion lose force in analyzing alleged breaches of Restatement Sections 169-185.

Sec. 223(2) Liability of Successor Trustee

A trustee is liable to the beneficiary for breach of trust, if he (a) knows or should know of a situation constituting a breach of trust committed by his predecessor and he improperly permits it to continue; or (b) neglects to take proper steps to compel the predecessor to deliver the trust property to him; or (c) neglects to take proper steps to redress a breach of trust committed by the predecessor. [Although a successor trustee is not liable merely because his predecessor has committed a breach of trust, the successor is liable under the Section 175 duty (to take reasonable steps to control the trust property) if he neglects to take proper steps to

compel the predecessor to deliver the trust property back to the trust. Comment c on Section 2(b). Likewise, liability to the successor trustee for breach of Section 177 duty to realize claims which are part of the trust property results when the successor neglects to take proper steps to compel the predecessor to redress the predecessor's breaches. Comment d on Section 2(c).]

3. This court also determines there was no trust duty of Defendant State to fund (through legislative appropriations) the trust. The Plaintiffs' own trust expert, Mr. Harper, so testified as did Defendants' trust expert, Mr. Taylor. Thus, the State's failure to appropriate general funds or to authorize general obligation or revenue bonds is not itself a breach of trust. Failure of the trustee to fund the trust through State general funds, etc. is distinct from the duty to manage the trust in a manner that protects trust assets and the ability to make the trust assets productive including but not limited to properly maintaining financial records so that DHHL would be fiscally responsible enough to be minimally eligible to receive appropriations and bonding authority if the legislature chose to provide it.

4. Mr. Rodney Lau credibly testified that financial records of DHHL for the years June 1962 to 1972 were not available, clearly not auditable, and that period was not accounted for. (Accord Exhibit 23 at 20 "accounting system and internal controls . . . were wholly inadequate" for period July 1, 1962 to June 30, 1972; id. at 21, loss of \$1,000 on May 26, 1992 because armored car pick-up bag left unattended.) Thus, when Mr. Lau was later hired by the State and in charge of attempting to reconcile the accounts, it became clear and it was agreed among the departments (Department of Accounting and General Services ("DAGS") and DHHL) that the reconciliation would begin with the year 1972, the first year of the period from 1963 for which records could be found. (See Exhibit 24 at 12 (After DAGS reconciliation efforts as of

June 30, 1972, the DHHL records “were almost immediately again out of balance. By 1977-78 despite DAGS renewed efforts “significant differences still exist.”)

Beginning in 1982, Lau and a couple colleagues worked three (3) years full time and overtime including many weekends in order to reconcile the records that did exist for the period 1972-1985. The financial statement of 1985 was the first in the history of DHHL that met AICPA (generally accepted accounting) standards. As credibly explained by Mr. Lau, the records were simply not auditable before his work was completed and thus DHHL could not qualify for and the State legislature never authorized revenue bonding authority for DHHL until 1989. The ability to reconcile and keep accurate accounts was essential to the revenue bonding authority. A total of \$50 million in revenue bonds were authorized in 1989 (although it is not clear whether the entire amount was actually issued). These facts lead this court to conclude that the State as trustee breached applicable duties including but not limited to the aforesaid Sections 172, 174, 169, 181 during the claims period. In addition, it was not until FY 88-89 that the State legislature appropriated funds for operating costs for DHHL. Thus, for the first time since statehood DHHL did not have to use self-generating money for administrative costs and therefore could leverage the general lease revenues to float bonds to finance homestead lots. This was not possible until the financial records were reconciled. (It is also documented that mismanagement resulted in lost interest; that is, a financial loss. Exhibit 15 at 300.) Failure to maintain proper, auditable records constitutes breach of trust caused by acts or omissions by employees of the State in the management and disposition of trust resources.

5. When the Defendant State became successor trustee to the Territory of Hawaii upon statehood in 1959, documentary evidence confirms the State knew or should have known

that there remained uncertainty since 1920 because of the language of the HHCA as to whether certain specific parcels were within the trust. Exhibits 1004 and 1005. The State took no action to identify the inventory during most or all of the claims period. The efforts undertaken during the tenure of Governor Waihee ultimately resulted in compromise through legislation (\$600 million) to extinguish all claims known and unknown. (Testimony of Mr. Yagodich; Exhibit 9; Exhibit 3238, Act 14, 1995). Failure to ascertain the property within the trust and to correct that same failure by the predecessor trustee constituted breach of trust by the State including applicable principles set forth in Sections 174, 175, 176, 177, 179, 223.

6. It is undisputed that more than 29,000 acres of Hawaiian home lands were withdrawn from the trust by executive orders or proclamations, most before statehood by predecessor trustees. Exhibit 9 at 1139-1145. The executive actions provided no compensation to the trust and alienated lands to private entities or exchanged homestead lands for lesser value. E.g., Exhibit 11 at 1191, 1218 (DOT using 361 acres for General Lyman Field; 156 acres for Molokai Airport; aggregate 800 acres being used by Defendant State paying no rent) (1976 report transmitted by DHHL Director to Governor). The earliest of these "set asides" occurred in 1922 (Lualualei, Oahu); the last, in 1969 (Kula, Maui). Exhibit 9 at 1139-1146. Most of the executive orders were not canceled or withdrawn until December 1984. Id. The John Child & Company appraisal report completed in 1992 established the range of fair market back-rent at that time to be between \$19.6 million and \$29.5 million (the portion since statehood being between \$10.9 million and \$16.9 million). Exhibit 12 at 7. The same appraisal determined "current exchange values for the fee simple interest in the set aside properties total about \$103.3 million." Id. The State did not remedy the unpaid compensation until 1992, amended in 1993, by appropriation of

\$12 million for “uncompensated use of Hawaiian home lands since August 21, 1959, including the use of these lands under governors’ executive orders and proclamations” (Exhibit 81 at 996) and restoring in 1994 16,518 acres to the trust by administratively transferring them from DLNR to DHHL after DHHL conducted a diligent search of lands being offered and choosing those deemed best either for residential homestead development or commercial leasing to enhance trust revenues. (Testimony of Mr. Yagodich; Testimony of Governor Waihee; Exhibit 3432.)

Defendant State’s failure for 25 years (1959 to 1984) to correct its own and the predecessor trustees’ illegal “set asides” by cancellation or withdrawal of those executive orders or proclamations together with Defendant State’s failure throughout the claims period to restore lands to the trust and to compensate the trust for fair rent during the period of non-beneficiary State use of trust lands were breaches of trust and trust duties as set forth in Sections 170, 174, 175, 176, 177, 179, 181, 223.

7. Throughout the claims period DLNR managed the DHHL lands under lease. In addition, DHHL’s portion of the proceeds from sugar cane leases and water licenses were managed by DLNR. While it is not disputed that the homelands were generally of poor quality for agriculture, ranching and residential development when established in 1920, the record supports the conclusion that comparable lands owned and leased by private trusts or entities obtained significantly more favorable rates and/or included requirements for improvements to be built and remain with the land at the end of any long term lease. In addition, the DHHL lands were subject to many licenses for short duration that neither brought improvements nor high lease rents. In other words, the leasing was mismanaged and failed to make homelands fully productive even given their quality. Exhibit 11 at 11 (“The sugar companies and Parker Ranch

are examples of concerns leasing Hawaiian home lands. The terms of these leases vary according to use and the return expected from that use. Thus, revenues from high quality agricultural lands would exceed those from rocky, dry, grazing lands. But the Commission has been, in many cases, underpaid for the lands it leases out, especially in comparison to like lands leased out for revenue purposes by other landholding entities like the Bishop and Campbell Estates.”); Exhibit 4 at 467 (December 1991)(“[O]ver 60% of the lands are being used by non-natives, often for minimal compensation.”); Exhibit 4 at 497 & n. 69 (1969 lease to Kekaha Sugar Company of 14,558 acres on Kauai for 25 years at \$4.30 per acre per year plus 6% of gross proceeds from sugar sales given as example of undervalued lease by Hawaii Advisory Committee to the United States Commission on Civil Rights, 1991 report.)

The Defendant State presented expert testimony of Mr. Hallstrom in an attempt to show that the DHHL leases were not undervalued during the claims period. His testimony is not persuasive inasmuch as he compared DLNR leases for non-beneficiary land with those of DHHL lands but did not compare the leases with contemporaneous private sector leases for comparable land. In rejecting the comparison this court notes that the State’s control and leasing of public lands that are not HHCA trust lands is not constrained by the duties of loyalty to HHCA beneficiaries and to make the trust productive. The discretionary and political considerations properly governing DLNR’s leases of non-trust lands would not reach the same results for trust lands. For example, the State in leasing public lands may have chosen to support or shore up declining economic sectors (traditional sugar and/or pineapple agribusiness in particular) by offering more favorable leases or water license terms than those found in the private sector or for other reasons not insist that improvements be made with long term leases or not insist they

remain with the land when the lease expires or prefer the flexibility of short term licenses instead of long term, more lucrative leases.

The more applicable analysis here is comparison with private trust entities that have the same trust obligations which obtain to the Defendant State when leasing Hawaiian home lands. At trial the State did not make a fair market comparison regarding any of the thousands of acres leased. The court infers from the credible evidence that the State lease provisions for DHHL property were significantly inferior to those of private trust lessors and thus the Defendant State mismanaged trust assets and breached applicable duties including the aforesaid Sections 171, 174, 181.

8. All of the above discussed breaches of trust were caused by acts or omissions by employees of the State in the management and disposition of trust resources.

9. On a related matter, this court is cognizant that Plaintiffs have provided evidence through Legislative Auditor Reports that the 1980 Memorandum of Understanding between DLNR and DHHL regarding distribution of sugar cane revenues and disposition of lands has been breached and there is no proper accounting of the amounts that should have been paid to DHHL. Exhibits 27, 28, 29. This court having reviewed the exhibits finds they do not explicitly address the claims period but rather deal with improper transactions and post 1989 accounting. Thus, this court will not consider them herein and gives them no weight in deriving these findings of fact and conclusions.

10. It is undisputed that the purpose of the HHCA was to "rehabilitate" the beneficiaries. While Congress has not amended the Act to adopt the specific language of Act 349, Section 101, 1990 Hawaii State Legislature, formally articulating the purpose to place

Native Hawaiians on the land in a prompt and efficient manner, there can be no doubt that a primary reason for the trust was and is to award eligible beneficiaries homesteads. Failure to do so constitutes breach of the trust and applicable trust duties including Section 181.

From its origin HHCA contemplated residential and either agricultural or pastoral homesteads be awarded, but over time the waiting lists grew and the greatest demand during the claims period became and remains for residential homesteads. E.g., Exhibit 1004 at 15 (Statehood report); Exhibit 10 at 329-30 (1971 report noting “only 30-40 new houses built per year while the waiting list has grown to some 2,815 applicants” as of October 20, 1970); Exhibit 3 at 247 (Application Waiting List for all islands as of May 31, 1983 total 6,734 residential, 783 farm, 384 ranch).

11. At the outset of the claims period DHHL awarded residential homesteads (land with site development) for awardees who were required thereafter to construct a house within two years. The Department bore the site development costs, the lease of the lot was the nominal \$1 per year, and the awardee paid for construction of the house. Originally agricultural and pastoral leases could not have a residence (although a small structure may have been allowed on agriculture lots), but a dwelling apparently now is allowed on an agricultural lease. While the HHCA contains language regarding the range or size of each type of homestead, Mr. Yagodich explained the awards for pastoral homesteads were scaled down to subsistence levels of 5 to 15 acres (supporting 2 to 4 animals) and 3 to 5 acres for agricultural. The residential homesteads likewise have been trimmed from 7,500 square feet on Oahu in 1983 to a smaller 5,000 square feet; 10,000 square feet in general on Maui and Kauai; half-acre in Hilo, Hawaii; and less than one acre in Kula, Maui. (Testimony of Mr. Yagodich.)

12. The testimony and exhibits are consistent that the major drawback to awarding homesteads was insufficient DHHL funds to complete site development, compounded by the poor quality or relatively remote locations of land thus requiring greater development expenses. E.g., Exhibits 1004 through 1008, 1012, 1015, 1021, 1022. The site development costs have of course risen over time. Exhibit 18 at 12-13 (development costs from 1920-1963 ranged from \$2,000 to \$4,000); Exhibit 10 at 20 (1971 per house site development cost of \$8,000 and construction loans of \$17,000 per house but only can build five per year and wait list is 2,815); Exhibit 3 at 247 (1983 site development costs: \$35,000 on Oahu; \$15,000 to \$25,000 on other islands); Exhibit 1026 (\$35,000 in 1987 to provide infrastructure during accelerated awards). During the 1980s claims period DHHL adopted an acceleration strategy that sought to and did award leases without site development. That strategy also led to recent staged development with undivided interests being awarded to the incomplete lots on Maui. (Testimony of Mr. Yagodich.)

13. The State's witness Mr. Ben Henderson, former deputy to DHHL chairperson, credibly testified that the normal site development time is 5 to 6 years and that would be the logical, optimal waiting list time for eligible applicants. It is not disputed that the waiting list during the claims period was often five or more multiples of that time frame, and several beneficiaries who testified only received awards after the claims period. The specifics of maintaining the waiting list, the priority placement, the fact of many remaining on the wait list having deferred offerings for financial inability to qualify for a home construction loan, and the fact of others having rejected offering(s) for unwillingness to live in the area offered (sometimes but not always to maintain employment in the existing area of residency) are not issues to be

decided in this trial but rather in connection with damages, mitigation of damages and the like.

14. In this bifurcated trial the parties litigated whether any of the trust breaches found by the court were a legal cause (a substantial factor) in wait list applicants experiencing compensable harm (out-of-pocket expenses) through the failure or inordinate delay in receiving homestead awards of any kind. This court determines that the Plaintiffs prevailed on their burden of proof regarding legal causation. (Concomitantly the court finds Defendants' expert Taylor's cursory review of a limited number of DHHL Commission minutes and his opinion based thereon are not a credible defense and gives the incomplete data no persuasive value.)

15. The evidence provided several methods of determining whether any of the alleged breaches would have reduced the backlog by making more homesteads available to eligible applicants. By any measure and any method the clear and convincing evidence proves the award of significantly more homesteads would have occurred during the claims period if the Defendant State had cured its own breaches and those of predecessor trustees for which the State became equally responsible as the successor trustee that knew and ignored the prior breaches.

16. Failure to keep adequate and auditable records from 1962 to 1972 deprived DHHL of any ability to obtain State bonding authority or other financial resources at a time when site development costs were some \$4,000 per lot (1963) to \$8,000 (1971). Once the accounting problem was cured, toward the end of the claims period in 1985, the Hawaii State Legislature in FY 1988-89 appropriated operating funds which meant DHHL no longer had to be entirely self-sufficient for administrative costs. The Legislature also authorized \$50-million in revenue bonds (in 1989, just after the claims period) which was only possible because the accounts finally were

reconciled, auditable and in order, and bonds were issued although not to the full amount authorized. The waiting list in October 20, 1970 was 2,815 applicants.

Even assuming the highest development cost for this period of breach, and assuming but doubting that the wait list did not have any overlap of husband/wife to whom only one residential homestead instead of two could be awarded, the amount to provide site development for every applicant (including those who would not actually qualify for lack of ability to timely build a home on the lot or for inability to verify blood quantum or any other legitimate reason) the amount would have been \$22,520,000 (2,815 x \$8,000), and in the earlier part of the period of breach would have been approximately half that amount. This court finds it is highly probable that some amount of revenue bonds would have been issued if financial records had been in order, even if not the full amount authorized, and the evidence proves the failure to keep accurate records was a substantial factor in aggravating the lack of funds to create homesteads and thus significantly contributed to delay of awards.

17. The litigants devoted much of their evidence on legal causation to analyzing how the Act 14, \$600-million-over-time appropriation for extinguishing DHHL claims arising from conveyances of lands not alienated by executive order but those public and private lands about which there remained doubt (in DLNR's view) ever belonged to the trust established by HHCA in 1921. Thus, the parties' experts provided pretrial figures which Plaintiffs' expert, Mr. Loudat, corrected during the trial, and some evidence of Defendants' expert Udinsky also was admitted although he did not testify. This court places little weight on the testimony of Mr. Loudat because of the many corrections necessary to reconcile his figures with the underlying data. In any event, the experts corrected the \$600-million for inflation, determined the equivalent

dollars near the end of the claims period and estimated the number of site developments that could have been turned into homesteads. Using Udinsky figures, approximately 437.8 homesteads per year after 2008 could be built; thus leading Plaintiffs to argue the Udinsky figures when applied to the claims period would mean 29 years of homestead production totaling 12,673 homesteads. This court accepts the inflation correction figures but finds it unlikely the legislature would have acknowledged State responsibility for disputed lands any time before the clearly illegal "set asides" were canceled or withdrawn by Governor Ariyoshi in 1984. In other words, the court finds this argument speculative. Even assuming the claims for disputed lands would and should have been accomplished by 1980 and funding made available then, given the acceptable three to five year site development design and construction time line, the claims period nearly would have passed before homesteads could be awarded with site development.

Alternatively, all the breaches have the combined effect of delaying homestead awards, and the Defendant State may not benefit from belated cancellation of the executive order and proclamations to reduce the damages or defeat legal causation. Thus, on a cumulative effect of breaches, the preponderance of evidence may support a conclusion that 437 homesteads for the last three years of the claims period could have been built thereby reducing the wait list by 1,311 in 1988. This has not been shown by clear and convincing evidence.

18. Notwithstanding Act 14 analysis, this court determines that restoration of the 16,518 acres as set forth in Exhibit 3432 together with payment in 1992 of \$12-million in State's back rent (Exhibit 81) clearly should have occurred during the claims period, although the back-rent amount would have been less. DHHL has used the restored lands to create 1,585 new homesteads (Exhibit 3432) from 1988 to 2009. There is nothing to suggest this better quality


land for residential lots and/or commercial ventures to enhance revenue could not have been completed upon statehood had the State met its trustee duties to restore the trust. The court determines failure to preserve the trust property was a substantial factor negatively affecting the waiting list sub-class by unreasonably delaying the award of homesteads and resulting in increased numbers and length of time on the wait list.

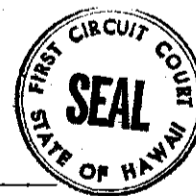
19. The court finds insufficient evidence to determine the amount of damages caused by mismanagement of leases to private entities; thus it is difficult to say how much revenue was lost during the claims period. Similarly, it would be speculation to say to what extent proper management of such leases would have enhanced revenues for site development or home loan funds or administrative costs.

NOW, THEREFORE, IT IS HEREBY ADJUDGED:

That Plaintiffs have proven by clear and convincing evidence breaches of trust by Defendants State and DHHL during the claims period and that the individual and/or cumulative effects of such breaches caused by acts or omissions by employees of the State in the management and disposition of trust resources were a legal cause of harm to the Plaintiffs herein which are compensable as defined by Sections 674-1, -17 of Hawaii Revised Statutes, thus necessitating further proceedings to determine the amount of damages, if any, each subclass member proves s/he sustained as a result of the breaches during the claim period.

Dated: Honolulu, Hawai'i, November 3, 2009.


EDEN ELIZABETH HIFO
Judge of the Above-Entitled Court



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Decision Regarding Liability and Legal Causation Following Bifurcated Trial on Aforesaid Issues was served upon the following persons by placing the same in the United States Mail, postage prepaid, on November 3, 2009:

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DATED: Honolulu, Hawai'i, November 3, 2009.


EDEN ELIZABETH HIFO
Judge of the Above-Entitled Court