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FIRST CIRCUIT
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Dkt. 1699 ORD

SETTLEMENT SPECIAL MASTER

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEONA KALIMA, DIANE BONER,
RAYNETTE NALANI AH CHONG,
special administrator of the estate of JOSEPH
CHING, deceased,

Plaintiffs,

vs.

STATE OF HAWAI'I, STATE OF HAWAI'I
DEPARTMENT OF HAWAIIAN HOME
LANDS; et al.,

Defendants.

CIVIL NO. 99-4771-12 LWC
(Class Action)

ORDER APPROVING CONSTRUCTION
EXPERT REPORT; EXHIBIT A

POST-TRIAL PROCEEDINGS JUDGE:
HON. LISA W. CATALDO

SETTLEMENT JUDGE: HON. GARY
W.B. CHANG

ORDER APPROVING CONSTRUCTION EXPERT REPORT

Pursuant to the Order Adopting First Amended Findings and Recommendations of the Special Master to Approve Proposed Settlement Distribution Plan and Revised Class Notices (Filed December 22, 2022), [Dkt. 1580], the Court has reviewed the Construction Expert Report submitted by the Settlement Special Master [Dkt. 1677], along with the exhibits attached hereto, including Exhibit "2" which was reviewed *in camera* in order to preserve confidential information required to be protected by the Court's February 26, 2014 Amended Order Granting Plaintiffs' Motion for Release of Confidential Information filed March 1, 2007

¶ 3 at 3:



Plaintiffs' Counsel shall comply with all applicable statutes, court rules and rules of professional conduct in safeguarding and ensuring the confidentiality of the material State Defendants produce that contains Plaintiffs' confidential information, including taking appropriate action to safeguard information that is transmitted to third parties, such as experts, consultants, and claims administrators.

and State of Hawai'i Department of Hawaiian Home Lands, Hawai'i Administrative Rules § 10-1-3(d):

Personal information received or recorded by the department shall be held in absolute confidence and no release of information shall be made without written approval of the individual concerned.

Defendants have taken no position on filing Exhibit "2" *in camera*.

Pursuant to the Order Adopting First Amended Findings and Recommendations of the Special Master to Approve Proposed Settlement Distribution Plan and Revised Class Notices (Filed December 22, 2022), [Dkt. 1580] and the Court finding good cause therefore, the Court approves the findings and recommendations of the Construction Expert Report, attached as Exhibit A, hereto.

APPROVED AND SO ORDERED.

/s/ Lisa W. Cataldo



JUDGE OF THE ABOVE-ENTITLED COURT

Kalima, et al. v. State of Hawai'i, et al., Civil No. 99-4771-12 LWC Order Approving Construction Expert Report

EXHIBIT “A”

Wayson W. S. Wong
Attorney at Law, A Law Corporation
2550 E. Manoa Rd., Honolulu, Hawaii 96822
Ph.: (808) 753-4442, Email: WaysonWong@aol.com

May 23, 2023

Via E-mail

Judge Michael Broderick (RET.)
Principal
Broderick Dispute Resolution
1164 Bishop Street, Suite 924
Honolulu, Hawai'i 96813

Re: Kalima v. State of Hawai'i - Report of Construction Expert

Dear Judge Broderick:

Thank you for the opportunity to act as construction expert for this case and to prepare this report of my recommendations for settlement payments for class members in *Kalima v. State of Hawai'i* who asserted house and infrastructure claims caused by the Department of Hawaiian Home Lands' breaches of trust.

Pursuant to the Order of my appointment ("Order"), please forward this report to Judge Catalado for "the Court's final approval."¹

SUMMARY OF FINDINGS:

I reviewed 104 claims from all islands: The total of the recommended payments, \$1,006,878.45, range from \$1,000.00 to \$105,879.20. The average recommended payment is \$9,969.09.

A List of Claim Amounts is attached as Exhibit "1", including three "no claim" decisions.

A multipage Excel spreadsheet containing a "summary description of each claim and an explanation of the basis of [my] payment decision"² is attached as Exhibit "2". Exhibit "2"

¹ Order Adopting Amended Findings and Recommendations of the Special Master to Approve Proposed Settlement Distribution Plan and Revised Class Notice (filed December 22, 2022), Revised Exhibit 1 ¶ 2.f at 17.

² Order Adopting Amended Findings and Recommendations of the Special Master to Approve Proposed Settlement Distribution Plan and Revised Class Notice (filed December 22, 2022), Revised Exhibit 1 ¶ 2.e at 17.

EXH. "A"

should be filed *in camera* to comply with previous court orders³ and Department of Hawaiian Home Land rules⁴ to protect Personal Private information (PPI) and pursuant to the Court's instructions at the May 11, 2023, Status Conference.

ASSIGNED TASK:

My assigned task was to “make payment recommendations based on claims data submitted by class members, similar cases, average repair/damages amounts, or other reasonable bases based on available facts, including [my] training, knowledge, and experience in the field of construction remediation.”⁵

INFORMATION GIVEN & ASSUMPTIONS:

I was informed of the following and asked to assume them to be true for the purposes of my evaluation:

1) All of the house damages and infrastructure claims under review had been determined to be valid claims under the Kalima settlement claims process.

³ February 26, 2014 Amended Order Granting Plaintiffs' Motion for Release of Confidential Information filed March 1, 2007 ¶ 3 at 3:

Plaintiffs' Counsel shall comply with all applicable statutes, court rules and rules of professional conduct in safeguarding and ensuring the confidentiality of the material State Defendants produce that contains Plaintiffs' confidential information, including taking appropriate action to safeguard information that is transmitted to third parties, such as experts, consultants, and claims administrators.

⁴ State of Hawai'i Department of Hawaiian Home Lands, Hawai'i Administrative Rules § 10-1-3(d):

Personal information received or recorded by the department shall be held in absolute confidence and no release of information shall be made without written approval of the individual concerned.

⁵ Order Adopting Amended Findings and Recommendations of the Special Master to Approve Proposed Settlement Distribution Plan and Revised Class Notice (filed December 22, 2022), Revised Exhibit 1 ¶ D.2.c at 17.

2) The construction claims were actionable because the breach of trust or fiduciary duty by the State legally caused damages to the claimants, especially those involving design and/or construction defects of the houses or properties.

3) The claims were made for claimants' damages sustained because of a breach of trust that occurred between August 21, 1959, and June 30, 1988.

4) The claims were submitted to the Hawaiian Claims Office ("HCO") between 1993 and 1995, and evidence was submitted to the Hawaiian Claims Office between 1993 and 1999.

DATA REVIEWED:

The data I reviewed for my task, pursuant to the requirements of the Order, included:

1) Claims Data Submitted by Class Members – For each case, I reviewed all available records submitted to the Hawaiian Claims Office and/or available in the Department of Hawaiian Home Land records. This data consisted of HCO Claim Forms and accompanying documents (if any); HCO Investigative Files and Investigative Reports and accompanying documents (if any); HCO Correspondence Files; Findings of Fact made by Hearings Officers and/or the HCO Claims Panel; and correspondence and documents relating to the claims contained in DHHL files.

Class members were also invited to submit additional information and/or documentation, if any. Only one class member submitted additional information, which I reviewed.

2) Similar Cases – Many of the construction claims and infrastructure defects resulted from work done by the same contractor and/or in the same development. Thus, I was able to rely upon both damage descriptions and estimated repair cost data to evaluate damages and repair costs for other similar cases in the same homestead area lacking such information. This information was used to provide the averages next described.

3) Average Repair/Damages Amounts – For the same or similar defects or problems, I compiled them and then computed average repair costs and average damage amounts. I was able to use these averages to evaluate claims with similar defects or problems but with little or no repair or damage amounts stated by the claimant.

4) Other Reasonable Bases Based on Available Facts –

a) Expert Reports and Contractor Estimates - Several of the repair estimates were based upon or were accompanied by an expert report and/or contractor's repair estimate. These reports and estimates provided more detailed information about the causes, nature, and extent of the defects and

repair costs. When appropriate, such information was also used to compute the averages described above.

- b) Expert Consultation – I also relied on information from Ken Goldblatt, a reliable construction defects and repair expert whom I have worked with for many years. Mr. Goldblatt had prepared several reports in the late 1990s about the Molokai DHHL homes constructed by Jamal Construction. His reports focused on the cause, nature and extent and repair costs for the construction defects of many of those homes. Mr. Goldblatt provided me with valuable relevant information about those defects and repairs that helped me validate the information I used in my evaluations.

TRAINING, EXPERIENCE, AND KNOWLEDGE IN THE FIELD OF CONSTRUCTION:

I understand that my appointment as an expert qualified me to render opinions based upon my training, knowledge, and experience in the field of construction. I have attached a copy of my resume as Exhibit “3”, which outlines that training and experience.

In brief, I have been a trained civil engineer, an Army combat and construction engineer, and for over 45 years in Hawai‘i, an experienced construction defects attorney. Thus, I have practical and historical knowledge of Hawai‘i construction practices during the relevant time periods, including the repairs needed and their costs for the defects or problems described by the claimants.

STANDARDS APPLIED:

The Court’s Settlement Distribution Plan⁶ set out general and specific rules that I followed to “determine the reasonable costs of necessary repairs”⁷ based on the “some evidence”⁸ standard analogous to that applied under Hawai‘i Rules of Civil Procedure 59 to determine if DHHL’s breaches were a legal cause of the damages claimed. Under such standard, if warranted, I then determined the reasonable costs of repair or remediation at the time the claim was submitted.⁹ In some instances where a loan was taken out to repair the defect, I included the total cost of the loan from the date of the loan.

⁶ *Id.* Revised Exhibit 1 at 15-17.

⁷ *Id.* Revised Exhibit 1 ¶ D.1 at 16.

⁸ *Id.* Revised Exhibit 1 ¶ D.1 at 16.

⁹ *Id.* Revised Exhibit 1 ¶ D.2.d at 17.

DE NOVO REVIEW/AVAILABLE EVIDENCE:

I was informed that my review was to be “*de novo*”, i.e., I was not bound by any Hearing Officer recommendation or HCO Panel rulings, but I could use findings of facts within them to evaluate the claims to determine reasonableness. See HRS § 673-11.¹⁰ I was informed that I could consider all evidence and documents contained in the HCO claim files and DHHL application and award files.

SPECIFIC STANDARDS:

I was instructed to apply three specific standards:

- 1) Settlement payment will be based on a factual finding made by the HCO Claims Panel or Hearings Officer and/or the amount stated in the HCO Claim Form, unless I concluded that the amount(s) is/are unreasonable.¹¹
- 2) If I concluded that the amount stated in the HCO Claim Form or factual finding is unreasonable, I recommended a reasonable settlement payment.
- 3) If there is no amount stated in the HCO Claim form or no factual findings, I recommended a reasonable settlement payment based upon the standards set forth in the Order.

PROCESS OF EVALUATION:

Class counsel and I developed a Work Plan that contained five parts:

- 1) File Logistics/Training – Because I was unfamiliar with the structure and contents of the files, Class Counsel and Paralegal Vivien Lopez held a training session for me and for Epiq Systems’ researchers, who assisted in the initial file review.

¹⁰ “**Subsequent litigation; excluded evidence.** No statement made in the course of any investigation, hearing, or review proceedings of the panel shall be admissible in evidence either as an admission, to impeach the credibility of a witness, or for any other purpose in any legal proceeding. No opinion, conclusion, finding, or recommendation of the panel on the issue of liability, or on the issue of compensation, or corrective action shall be admitted into evidence in any legal proceeding, nor shall any party to the panel hearing, or the counsel, or other representative of the party, refer to or comment thereon in any opening statement, any argument, or at any other time, to any court or jury.”

¹¹ Id. Revised Exhibit 1 ¶ D.2.a at 16. However, I determined that all of their findings were factually supported, well-reasoned and reasonable.

Epiq Systems' researchers performed the initial file review to record (1) claim defects and (2) repair cost. However, because of complexity and volume of the records. I requested that Ms. Lopez assist me after the initial review. She provided outstanding assistance. As Mr. Grande's paralegal, Ms. Lopez's time is not included as a part of my charges.

Class Counsel developed a list of potential defects, which was ultimately supplemented and updated by Ms. Lopez and me.

2) Review HCO Construction Findings of Fact – My initial task was to review all existing relevant factual findings to establish a baseline. Most of them were for the Molokai subdivisions housing units constructed by Jamal Construction; and as indicated, many of them had been evaluated by Mr. Goldblatt. This review provided much of the baseline information we used in computing the averages described.

After completion of this task, I met with Class Counsel to review the data and to make sure that I fully understood the requirements of the Order and my assignment.

3) Review HCO Claim Forms and HCO Investigative Reports with Requested Repair Amounts – This task provided the second set of data and contained specific information relevant to particular developments on each island. In order to properly assess similarly situated properties, we divided our task by island and area of development.

4) Prepare Baseline of Damage Elements and Damage Amounts.

Once I completed initial review of all claims with some claims data, I did a second review of all completed claims referenced in paragraphs 2 and 3 above. This was done primarily because I wanted to be reasonably assured that the amounts were consistent both within and between developments before using such amounts for all claims when I needed to do that.

5) Review All Individual Claims

After establishing our baseline amounts and averages described, we undertook our review of individual claims. While most of the claims information was contained in HCO files, Ms. Lopez also reviewed (at my request) individual DHHL application and award files. I also requested (and received) additional information on some of the claims that was in the possession of the Department of Attorney General, which then were obtained and provided for my review.

TIME RECORDS:

Because I was informed that this project needed to be completed on a time-sensitive basis, I began preliminary work on the case in November 2022, more than two months prior to my official appointment. My time records have been submitted and approved.

TIMETABLE:

The Work Plan established a timetable for completion of my tasks by April 21, 2023. Because of the preliminary work I had done in November and December 2022, I completed all of the assigned tasks (with the exception of this report) a minimum of 30 days before any applicable deadlines.

CLAIM VALUE REVIEW:

The claims review process required reviewing each claim at least several times. Claims that had extensive, some or no repair information were treated the same way. Each claim was given an initial review and evaluation. Each claim was then cross-checked first with claims from the same area, subdivision or island and then cross-checked with claims from other areas and/or other islands, all to try to bring about consistency in my evaluations, when appropriate.

After determining that the claimed defects or problems were within the scope of my review, I then determined whether the amount claimed to address the defect(s) was not unreasonable, using any pertinent information in the files for the claim, including lump sum contractor repair estimates or narratives of the nature and extent of the defect or problem in correspondence or investigation reports. If the amount claimed was not unreasonable, I would suggest that amount to be paid.

If no amount was claimed, I again used any other pertinent information in the files; the baseline information and averages we had developed; and/or my expertise to determine and suggest a reasonable amount. In some cases, rather than listing each defect or problem and itemizing a suggested amount for each, I determined and suggested an overall reasonable amount for the entire claim. This was frequently the case when there was a contractor's estimate for all of the defects or problems claimed that did not itemize them in terms of repair costs for each or when treating the defects as a single cost was the better, more practical way to evaluate and report on the claim.

SUMMARY EXPLANATION OF EACH CLAIM:

As indicated, Exhibit 2 is a multipage Excel spreadsheet containing my findings and opinions regarding reasonable settlement payments for these 104 claims.

In the spreadsheet, when appropriate, each claim is itemized as to the individual defects or problems (roof, flooring, cabinets, etc. problems) and the amount of suggested payment to repair or resolve it. However, as mentioned, when information was not available to itemize as

Judge Michael Broderick (RET.)

May 23, 2023

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indicated, an overall reasonable suggested amount was listed and defects were identified by a “check” instead of a dollar amount.

There were three “no claims”, all of which were not under the jurisdiction of HRS Chapter 674. Two claims involved house purchases from private parties; one claim did not assert a construction defect.

If you have any concerns, comments or questions, I will be happy to respond to them.

APPRECIATION FOR THE OPPORTUNITY TO PARTICIPATE IN THIS PROCESS:

I thank the Court, the Special Master, and Class Counsel for allowing me to participate in this process; and I thank Ms. Lopez for her invaluable assistance. I found it to be one of the most gratifying tasks that I have professionally undertaken. I hope that I have been of good service to the Hawaiian beneficiaries involved. *Mahalo Nui Loa.*

/s/ Wayson W. S. Wong
Wayson W. S. Wong, Esq.

LIST OF CLAIM AMOUNTS

Exhibit 1

	TRACKING NUMBER	RECOMMENDED CLAIM AMOUNT
1	59	\$ 1,250.00
2	127	\$ 41,700.00
3	228	\$ 10,000.00
4	243	\$ 4,675.00
5	297	\$ 1,000.00
6	298	\$ 11,950.00
7	334	\$ 3,000.00
8	346	\$ 33,196.72
9	364	\$ 5,000.00
10	372	\$ 5,400.00
11	379	\$ 4,500.00
12	418	\$ 5,100.00
13	473	\$ 5,000.00
14	507	\$ 3,000.00
15	522	\$ 9,850.00
16	531	\$ 5,100.00
17	542	\$ 15,133.72
18	565	\$ 9,375.00
19	626	\$ 2,650.00
20	643	\$ 38,744.13
21	650	\$ 7,850.00
22	669	\$ 25,000.00
23	745	\$ 2,200.00
24	754	\$ 1,800.00
25	804	\$ 9,550.00
26	855	\$ 2,000.00
27	933	\$ 4,750.00
28	946	\$ 20,000.00
29	1008	\$ 10,700.00
30	1020	\$ 5,000.00
31	1088	\$ 4,350.00
32	1092	\$ 3,875.00
33	1158	\$ 1,000.00
34	1170	\$ 14,000.00
35	1173	\$ 1,000.00
36	1175	\$ 2,950.00
37	1180	\$ 1,000.00
38	1185	\$ 4,200.00
39	1291	\$ 3,200.00

EXH 1

to Report of Construction Expert

LIST OF CLAIM AMOUNTS

Exhibit 1

	TRACKING NUMBER	RECOMMENDED CLAIM AMOUNT
40	1312	\$ 5,004.00
41	1386	\$ 10,175.00
42	1413	\$ 25,000.00
43	1421	\$ 16,000.00
44	1428	\$ 2,400.00
45	1507	\$ 1,000.00
46	1554	\$ 3,450.00
47	1557	\$ 6,775.00
48	1569	\$ 3,005.00
49	1570	\$ 8,800.00
50	1579	\$ 8,400.00
51	1608	\$ 26,975.00
52	1653	\$ 1,000.00
53	1654	\$ 1,850.00
54	1689	\$ 3,950.00
55	1797	\$ 35,390.00
56	1798	\$ 2,000.00
57	1825	NO CLAIM
58	1836	\$ 1,000.00
59	1847	\$ 4,700.00
60	1894	\$ 8,375.00
61	1951	\$ 16,000.00
62	1966	\$ 5,300.00
63	1967	\$ 1,120.00
64	1982	\$ 8,915.00
65	1994	\$ 7,392.07
66	2050	\$ 9,925.00
67	2053	\$ 6,090.00
68	2069	\$ 2,050.00
69	2072	\$ 3,850.00
70	2145	\$ 5,000.00
71	2203	\$ 11,811.16
72	2255	\$ 25,000.00
73	2264	\$ 16,039.00
74	2282	\$ 4,783.45
75	2306	\$ 3,750.00
76	2308	\$ 3,700.00
77	2330	\$ 2,000.00
78	2340	\$ 1,200.00

EXH 1
to Report of Construction Expert

LIST OF CLAIM AMOUNTS

Exhibit 1

	TRACKING NUMBER	RECOMMENDED CLAIM AMOUNT
79	2348	\$ 15,710.00
80	2366	NO CLAIM
81	2404	\$ 5,000.00
82	2424	\$ 3,000.00
83	2460	\$ 36,000.00
84	2515	\$ 1,000.00
85	2548	\$ 8,000.00
86	2583	\$ 5,000.00
87	2591	\$ 16,925.00
88	2595	\$ 8,975.00
89	2596	NO CLAIM
90	2615	\$ 2,200.00
91	2645	\$ 18,500.00
92	2658	\$ 10,000.00
93	2659	\$ 4,200.00
94	2715	\$ 19,300.00
95	2734	\$ 105,879.20
96	3298	\$ 1,000.00
97	3372	\$ 2,750.00
98	3373	\$ 4,300.00
99	3374	\$ 3,500.00
100	3375	\$ 21,000.00
101	3376	\$ 40,765.00
102	3377	\$ 7,075.00
103	3378	\$ 9,650.00
104	3379	\$ 7,925.00
	TOTAL	\$ 1,006,878.45

EXH 1
to Report of Construction Expert

EXHIBIT “2”

FILED *IN CAMERA*

WAYSON W. S. WONG, ESQ.

PROFESSIONAL EXPERIENCE

1999 – Present Wayson W. S. Wong, Attorney at Law, A Law Corporation, 2550 East Manoa Road, Honolulu, Hawaii 96822, Solo Practitioner, Litigation Practice

1999 – Present Law Offices of Wayson Wong, A Professional Corporation, GCIC Building, 8th Floor, Suite 808, Hagatna, Guam 96910, Solo Practitioner, Litigation Practice

1968 – 2001 U. S. Army, Hawaii Army National Guard, 3949 Diamond Head Rd., Ft. Ruger, Hawaii 96816, Military soldier, enlisted, non-commissioned officer and officer, retired at the rank of Colonel and as the Staff Judge Advocate (senior military attorney) of the Hawaii Army National Guard with the Legion of Merit

1977 – 1999 Lee, Kim, Wong, Yee & Lau, Attorneys at Law, A Law Corporation, 345 Queen St., Suite 700, Honolulu, Hawaii 96813, Associate and then Director, Litigation Practice

1976 – 1977 Supreme Court of the State of Hawaii, 417 S. King St., Honolulu, Hawaii 96813, Law Clerk to Chief Justice William S. Richardson, Appellate Case Work

ADMITTED TO PRACTICE LAW BEFORE THE FOLLOWING COURTS

United States Supreme Court

United States Court of Appeals for the Ninth Circuit

United States Court of Military Appeals

United States District Court for the District of Hawaii

United States District Court for the Territory of Guam

United States District Court for the Northern Mariana Islands

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EMAIL ADDRESS: WAYSONWONG@AOL.COM

Supreme Court of the State of Hawaii
Supreme Court of Guam
Supreme Court of the Northern Mariana Islands (Inactive)

PROFESSIONAL MEMBERSHIPS

American Bar Association
Hawaii Bar Association
Guam Bar Association
CNMI Bar Association (Inactive)

EDUCATION

1973 – 1976 William S. Richardson School of Law (University of Hawaii), Juris Doctorate, graduated in top 10% of class

1968 – 1973 University of Hawaii at Manoa, College of Engineering, Bachelor of Science in Civil Engineering (cum laude), Army service delayed graduation

1968 – 1996 U. S. Army, Basic Combat Training, Advanced Individual Training, Officer Candidate School, Engineer Officer Basic Course, Judge Advocate General Corps Basic and Advance Course, Government Procurement Law Course; Command and General Staff College, Army War College, graduated successfully from all

COMMUNITY ACTIVITIES

Member, First Church of God, Barrigada, Guam

Member, Community Church of Honolulu, Honolulu, Hawaii

EXH. 3
to Construction Expert Report

REFERENCES

The Hon. Brian Shatz, United States Senator, State of Hawaii,
Honolulu, Hawaii

The Hon. Helen J. Gilmor, U. S. District Judge for the District of
Hawaii, Honolulu, Hawaii

Pastor Ron Guison, pastor of the First Church of God, Barrigada,
Guam

PERSONAL

Married to the former Pamela Jill Santos for 50 years; three
daughters, Kimberley, Kelly, Kathleen; and seven wonderful
grandchildren, Kate, Jonathan, Noah, Keane, Christian, Kira and
Belle

EXH. 3
to Construction Expert Report