

FY2012 Supplemental Bill Amendment

OFFERED IN: The House and Senate Finance Committees

TO: Supplemental Appropriations

OFFERED BY:

ADD: A new section as follows:

*** Sec. X. DEPARTMENT OF LAW. The sum of \$358,197.54 is appropriated from the general fund to the Department of Law, civil division, deputy attorney general's office, for the purpose of paying judgments and settlements against the state for the fiscal year ending June 30, 2012.**

FY2012 Additional Settlements as of 3-28-2012

Case Name	Description	Date	Amount	Interest	Total	EIN
Redoubt v. SOA	Settlement related to RFP dispute.	1/12/2012	\$67,417.00	\$0.00	\$67,417.00	
Giordano v. SOA	Settlement related to Fair Hearing decision availability to the public.	3/16/2012	\$26,000.00	\$0.00	\$26,000.00	
Sea Hawk Seafoods v. SOA	Judgment related to untimely raising of the affirmative defense of sovereign immunity.	3/22/2012	\$260,920.35	\$3,860.19	<u>\$264,780.54</u>	
					\$358,197.54	

MAR 15 2012

DEPT. OF LAW
ADMIN. SERVICES

Department of Law

JUDGMENTS/CLAIMS/SETTLEMENTS FOR PAYMENT

(Please Type)

**This form will be used for the purpose of standardizing the submission of claims to the Legislature. Complete and accurate information will expedite payment to the claimants, thereby reducing the amount of interest required to be paid by the state. Please submit this form to the Director, Administrative Services Division, P.O. Box 110300, Juneau, AK 99811, or call (907) 465-3673.

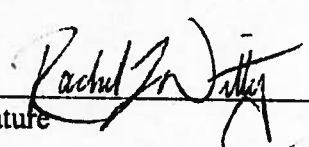
PART ONE

1. **Case Name:** Redoubt Development LLC vs. Division of Administrative Services
2. **Case Number:** OAH No. 08-0637-PRO
3. **Judge/Justices:** Administrative Law Judge Christopher Kennedy
4. **Date Settlement Agreement Signed:** January 12, 2012
5. **Did the date of the cause of action accrue on or after August 7, 1997?** yes
6. **Amount to be paid:** \$67,417.00
7. **Interest Rate:** N/A **Effective Date:**
8. **Requested hourly rate and total compensation of attorneys to be paid:** N/A
9. **Court approved/ordered hourly rate and total compensation of attorneys to be paid:**
N/A
10. **Payable to:** Redoubt Development, LLC
11. **EIN:** Submit separately or **SSN:** Submit separately
12. **Send check to:** above address Departmental contact: _____

Departmental attorney contact:

Departmental Approval:


Signature



Telephone Number

269-5231

Deputy Attorney General



Date

2/13/12

Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name: Redoubt Development LLC vs. Division of Administrative Services

Case No.: OAH No. 08-0637-PRO / Superior Court Case No. 3AN-09-5095 CI

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State.

This case is a protest appeal arising from a 2009 Request for Proposals (RFP) for lease space for the Department of Labor and Workforce Development, Division of Vocational Rehabilitation. The protest, Redoubt Development, was the second ranked offeror and protested the Division's practice of rounding price points. The Division of General Services prevailed in the matter before the Office of Administrative Hearings. Redoubt filed an administrative appeal to the Superior Court where Judge Frank Pfiffner overturned the Administrative Law Judge's decision and ordered the Division to pay Redoubt its reasonable proposal preparation costs. The parties then entered into a mediated settlement agreement as to what proposal preparation costs were reasonable.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case.

Redoubt's protest appeal arose out of the Division of General Services' established, but unpublished, practice of rounding price points when scoring lease proposals. This resulted in a tie in overall point totals, and a notice of intent to award to DeBarr, the intervenor, whose offer contained the lowest price. If no rounding had occurred, the Appellant would have received 35.195 points for price and a total score of 82.595 points, compared to 82.4 points for DeBarr, LLC. The division maintained that it acted reasonably, impartially, and did not commit an "arithmetic error." Redoubt argued that the process of rounding should have been set forth in the RFP. Because it was not, it should not have occurred.

3. Did the State prevail on any issues? If so, describe.

The state prevailed before the office of administrative hearings but lost on appeal.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful.

The Division of General Services successfully challenged

5. What was the source of the State's liability in this case?

Under the procurement code, the only damages that may be awarded to a successful protestor are its reasonable bid preparation costs. That is the item that that state has been ordered to pay in this case.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future?

The agency has revised its RFP forms to identify when rounding is used.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was.

See above.

8. Any recommendations concerning cases of this type in the future?

None.

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations.

None.

Attorney completing form:

Rachel Witty
Assistant Attorney General
Title

Date:

2/27/12
269-5281
Phone Number

SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This Settlement Agreement and Mutual Release (Agreement) is made this ___ day of January, 2012, by and between Redoubt Development, LLC ("Redoubt") and the State of Alaska, Department of Administration, Division of General Services ("State of Alaska").

RECITALS

WHEREAS, certain disputes have arisen between Redoubt and the State of Alaska, (hereinafter referred to as the "parties"), relating to RFP No. 2009-0700-8059 for lease space for the Department of Labor and Workforce Development, Division of Rehabilitation Services (the "RFP");

WHEREAS, as a result of these disputes, Redoubt filed a protest with the procurement officer which resulted first in a protest appeal to the Office of Administrative Hearings, and ultimately, in an administrative appeal to the State of Alaska Superior Court in which the judge ordered the State to pay Redoubt its reasonable proposal preparation costs (the "Claim");

WHEREAS, the parties engaged in a mediation on December 13, 2011 to determine an amount of reasonable proposal preparation costs, with Administrative Law Judge Chris Kennedy acting as mediator;

WHEREAS, as a result of the December 13, 2011 mediation, the parties agreed to settle their dispute and to permanently and fully resolve and compromise all claims, rights, and actions, whether arising in contract, tort, statute, or regulation, between and among the parties.

AGREEMENTS

NOW THEREFORE, for good and valuable consideration, including the mutual covenants herein contained, it is agreed as follows:

1. Effective upon receipt of the payment in paragraph 4 below, Redoubt and its affiliates, subsidiaries, owners, parent, partners, directors, officers, associates, employees, agents, contractors, representatives, lawyers, predecessors in interest, successors in interest, and assigns, whether past or present, and all persons acting by, through, under or in concert with any or all of them, hereby releases and fully and forever discharges the State of Alaska and any of its agents or employees of and from any and all claims, demands, suits, liabilities, causes of action, judgments, settlements, losses, damages, expenses, costs and penalties of every kind and nature whatsoever, which they now have or may hereafter have, whether now known or hereafter discovered, whether

fixed or contingent, whether suspected or unsuspected, and whether foreseen or unforeseen, and which arise out of or relate in any way to the subject matter of the Claim. The claims released by Redoubt by operation of the foregoing release include, but are not limited to, the following: (i) any and all claims that may be based upon or connected in any manner with any of the matters referred to or encompassed in the protest or appeal filed by Redoubt relating to relating to RFP No. 2009-0700-8059; (ii) any and all claims for costs and/or attorney's fees related to the Claim; and (iii) any other injury, loss or damage allegedly sustained by Redoubt which in any way relates to or arises from any of the foregoing matters in subsections (i), or (ii).

2. With respect to the foregoing release, the parties hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims, facts, damages or injuries based upon, relating to or arising out of the subject matter of the Released Claims in addition to or different from those which they now know or believe to exist, but that it is nevertheless their intention to hereby fully, finally and forever settle and release all of the claims known or unknown, suspected or unsuspected, which each has against the other based upon, relating to, or arising out of the subject matter of the Released Claims. In furtherance of such intention, the release of claims herein given shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any additional or different claims, facts, damages or injuries. The parties are aware of the decision in the case of *Witt v. Watkins*, 579 P.2d 106.5 (Alaska 1978). The parties expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred upon them by, the holding in *Witt v. Watkins* or any other similar case law decision, statute or other legal authority law of the State of Alaska, of any other state or territory of the United States, of the United States, or of any foreign country, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the subject matter of the Released Claims.

3. The parties are aware of the decisions in the cases of *Young v. State*, 455 P.2d 889 (Alaska 1969) and *Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Service Co.*, 584 P.2d 15 (Alaska 1978), and any protections of the holdings therein relevant to the present case are hereby waived and relinquished. It is the true intent and desire of Redoubt and the State of Alaska to fully release all individuals, firms, corporations or other business entities related to Redoubt and the State of Alaska who may in any way have been connected with any claims released herein as fully as though they were specifically listed and named herein. The parties acknowledge their freedom of choice and understand that they do not need to consent to the terms of this Agreement, and further acknowledge the availability of other reasonable alternatives and adequate remedies, but have nonetheless freely, voluntarily, and intentionally chosen not to pursue the same for the purpose of making a full, final, and complete compromise of the claims released herein.

4. The State of Alaska shall pay Redoubt the sum of sixty-seven thousand four hundred seventeen dollars and no cents (\$67,417.00) within thirty days after the effective date of the supplemental budget bill containing an appropriation for the purpose of paying this settlement.

5. Redoubt agrees to dismiss with prejudice its claim against the State of Alaska, OAH No. 08-0637-PRO, within ten (10) days after receipt of the payment specified in Paragraph 4, with each party to bear its own attorney's fees, costs and expenses incurred in connection with the Claim, other than the amounts already paid by the State in connection with the administrative appeal to superior court.

6. Except to the extent necessary to enforce the terms and conditions of this Agreement, Redoubt and the State of Alaska hereby covenant and agree not to sue, commence, aid, prosecute, or cause to be commenced or prosecuted, any legal action, lawsuit or other proceeding against the other with respect to any of the Released Claims.

7. The parties agree that Redoubt's claim against the State of Alaska, OAH No. 08-0637-PRO shall remain in Alternative Dispute Resolution status and shall be stayed until the date of adjournment of the 27th Legislature, second regular session. If no appropriation to pay this settlement has been approved by both houses of the Legislature by that date, the releases herein shall not become effective and the stay shall be dissolved.

8. Redoubt hereby represents, warrants and covenants to the State of Alaska that it has not assigned, transferred, conveyed, or purported to assign, transfer or convey, and will not in the future assign or transfer to any person, firm, entity, corporation or organization whatsoever, any claim, demand, obligation, cause of action, right or damages in any way related to any of the released claims, and that no person, firm, entity or corporation has any lien, claim or interest in any of the released claims. Additionally, Redoubt represents that no other person, firm, entity or corporation has the right to enforce or otherwise sue for damages, injunctive relief or recovery under any of Redoubt's released claims.

9. Redoubt and the State of Alaska each individually represents, warrants and agrees that it has the full right and authority to enter into this Agreement, and to provide the covenants set forth in this Agreement, and that the party or representative executing this Agreement has the full right and authority to commit and bind such party according to the provisions hereof.

10. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their predecessors, successors, heirs, assigns and representatives. This Agreement represents the compromise of disputed claims.

11. Redoubt and the State of Alaska each shall bear all attorney's fees and costs arising from the actions of their own counsel in connection with the drafting and negotiation of this Agreement.

12. It is expressly understood and agreed that the terms hereof are contractual and not merely recitals and that the agreements herein contained and the consideration transferred is to compromise disputed claims, to avoid litigation, and to buy peace. No consideration given shall be construed to establish damages or as an admission of liability or wrongdoing on the part of any party hereto to the other, all liability or wrongdoing being expressly denied.

14. This Agreement constitutes the entire agreement between Redoubt and the State of Alaska relating to the settlement of the Claim. No statements, communications, letters or other agreements, whether written or verbal, relating to this settlement shall have any force or effect unless embodied in this Agreement.

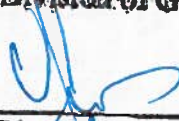
15. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska. Any action arising out of this Agreement shall be brought and maintained in the Superior Court for the State of Alaska, Third Judicial District at Anchorage.

16. This Agreement may be executed in multiple counterparts by each of the parties hereto, including by facsimile, each of which shall be deemed an original agreement, and all of which shall constitute one agreement, notwithstanding that all of the parties are not signatories to the original or the same counterpart, to be effective as of the day and year first above written. A facsimile signature received from any party hereto shall be treated as an original for purposes of finalizing the Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as set forth below, intending to be legally bound by the terms and conditions of this Agreement.

Dated: 1/12/12

State of Alaska,
Department of Administration
Division of General Services

By: 
Vern Jones

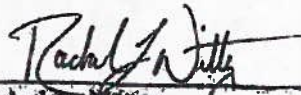
Dated: 1/9/12

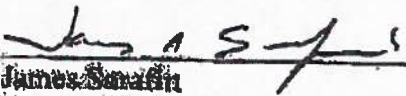
Redoubt Development, LLC


By: MARK PETTER

Approved as to form:

RICHARD SVOBODNY
ACTING ATTORNEY GENERAL

By: 
Rachel L. Willy
Assistant Attorney General

By: 
James S. Smith
Counsel for Redoubt

Department of Law

JUDGMENTS/CLAIMS/SETTLEMENTS FOR PAYMENT

(Please Type)

**This form will be used for the purpose of standardizing the submission of claims to the Legislature. Complete and accurate information will expedite payment to the claimants, thereby reducing the amount of interest required to be paid by the state. Please submit this form to the Director, Administrative Services Division, P.O. Box 110300, Juneau, AK 99811, or call (907) 465-3673.

PART ONE

1. **Case Name:** *James Giordano v. Bill Hogan, in his official capacity as Commissioner of Dep't of Health and Social Services, and Elizabeth Vazquez, in her official capacity as Manager of the Office of Hearings and Appeals.*
2. **Case Number:** 3AN-08-11411 CI
3. **Judge/Justices:** Sen Tan, Superior Court Judge
4. **Date Judgment entered:** Settlement agreement signed on March 16, 2012. Judgment not yet entered.
5. **Did the date of the cause of action accrue on or after August 7, 1997?** Yes.
6. **Amount to be paid:** \$26,000.00
7. **Interest Rate:** ϕ **Effective Date:** July 1, 2012
8. **Requested hourly rate and total compensation of attorneys to be paid:** n/a
9. **Court approved/ordered hourly rate and total compensation of attorneys to be paid:** n/a
10. **Payable to:** Alaska Legal Services Corporation
11. **EIN:** Submit separately **or** **SSN:** Submit separately
12. **Send check to:** _____ above address **Departmental contact:** X

Departmental attorney contact:
Brenda B. Page
Brenda B. Page, Assistant Att'y General
Telephone Number

Departmental Approval:
[Signature]
Deputy Attorney General
3-16-12
Date

Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST
QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name: *James Giordano v. Bill Hogan, in his official capacity as Commissioner of the Department of Health and Social Services, and Elizabeth Vazquez, in her official capacity as Supervisor of the Office of Hearings and Appeals.*

Case No.: 3AN-08-11411 CI

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State.

The plaintiff, James Giordano, filed this lawsuit in October 2008, claiming that the defendants had violated 7 AAC 49.240 by failing to insure that the Fair Hearing decisions issued by the Office of Hearings and Appeals were available to the public. Mr. Giordano also claimed that the Office of Hearings and Appeals was engaged in improper and potentially *ex parte* relations with the Department of Law.

After several years of litigation, the defendants entered into a settlement with Mr. Giordano agreeing that the defendants, unless a court otherwise orders, will insure that all Fair Hearing decisions will remain available to the public in a timely fashion from their date of issuance, subject to the duty to redact privileged or confidential information from the decisions, as 7 AAC 49.240 provides. The defendants also agreed to pay Mr. Giordano's counsel, Alaska Legal Services Corporation, \$26,000 in complete payment of Mr. Giordano's and ALSC's claims, including claims for costs and attorney fees.

The agreement is contingent upon Executive Order No. 116 taking effect, under which the State of Alaska's Fair Hearing functions would transfer from the Department of Health and Social Services to the Office of Administrative Hearings in the Department of Administration.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case.

There were no unusual issues of State policy or law involved in this case.

3. Did the State prevail on any issues? If so, describe.

This case was resolved by a settlement agreement between the parties, with no admission of liability on the part of the defendants.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful.

Each party is responsible for its own fees and costs as part of the settlement.

5. What was the source of the State's liability in this case?

There was no admission of liability in this case. The source of potential liability was the manner in which Fair Hearing decisions were made available to the public.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future?

The Office of Hearings and Appeals now has the ability to redact privileged and confidential information contained in the opinions in a timely fashion after the date of their issuance.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was.

Same as above.

8. Any recommendations concerning cases of this type in the future?

No.

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations.

No changes are recommended.

Attorney completing form:

Date:

Brenda B. Page

Senior Assistant Attorney General
Title

(907) 269-6612
Phone Number

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The State of Alaska will pay Mr. Giordano's counsel, Alaska Legal Services Corporation, twenty-six thousand and 00/100ths dollars (\$26,000.00), in complete payment of Mr. Giordano's and ALSC's claims, including claims for costs and attorney fees, in this case. The settlement amount includes any sanctions awarded against the defendants in this case. This case will recommence if ALSC does not receive the settlement payment by July 1, 2012.

In return, and upon payment of the settlement amount, Mr. Giordano will dismiss this case with prejudice and will release all claims that he has or could have asserted in this case against the defendants, the State of Alaska, the Department of Health and Social Services, any current or former Commissioner of Health and Social Services, or their current or former agencies, officers, employees, agents, representatives, or insurers.

This agreement is contingent upon Executive Order No. 116 taking effect. If Executive Order No. 116 does not take effect, this settlement agreement is void and this case will recommence. Executive Order No. 116 is currently set to take effect on July 1, 2012. Under Executive Order No. 116, the State of Alaska's Fair Hearing functions would transfer from the Department of Health and Social Services to the Office of Administrative Hearings in the Department of Administration.

The parties acknowledge that this settlement is the compromise of disputed claims. The parties acknowledge that the State of Alaska's payment of the settlement amount does not constitute an admission of liability by the defendants, and that the defendants expressly deny that they are liable for anything.

The parties acknowledge that they have had sufficient time and opportunity to consult with their attorneys about this agreement. The parties acknowledge that this agreement was not secured under duress or in haste. The parties acknowledge that they have had the opportunity

1
2 to review the Alaska Supreme Court's decisions in the cases of *Witt v. Watkins*, 579 P.2d 1065
3 (Alaska 1978), and *Young v. State*, 455 P.2d 889 (Alaska 1969), and waive the protection of
4 those decisions.

5 The parties acknowledge that no promise or agreement not expressed in this agreement
6 has been made by anyone to them and that this agreement contains the entire agreement
7 between the parties to the agreement.

8 The parties acknowledge that this agreement will be binding upon them and their heirs,
9 executors, administrators, legal representatives, successors, and assigns.

10 This agreement will be interpreted under, and governed by the laws of the State of
11 Alaska.

12 DATED: 3/16/12 2012. ALASKA LEGAL SERVICES CORPORATION
13 Attorneys for Plaintiff

14
15 JAMES J. DAVIS, JR., BAR NO. 9412140
16 1016 West 6th Avenue, Suite 200
Anchorage, Alaska 99501

17 DATED this 15th day of March, 2012.

18 MICHAEL C. GERAGHTY
19 ATTORNEY GENERAL

20 By: Brenda B. Page
21 for Brenda B. Page
22 Assistant Attorney General
Alaska Bar No. 0303007

23 IT IS SO ORDERED.

24 DATED: _____, 2012.

25
26 _____
Judge Sen K. Tan

Attachment to Part I

The question of to whom the fee award should be paid will turn on proper resolution of another issue. The Attorney General's office has been served with a writ of execution seeking to garnish the money in the anticipated appropriation paying the Sea Hawk judgment, towards satisfying another judgment for \$822,196.58 which Sea Hawk itself owes to the City of Valdez, in case no. 3VA-07-14CI. This writ presents several novel legal issues; it appears that no one has tried before to garnish a legislative appropriation to pay off a judgment. Since paying the appropriated money directly to Sea Hawk could potentially expose the State to liability to the City, and paying the appropriated money towards the City's judgment could potentially leave Sea Hawk's judgment against the State unsatisfied, the Attorney General's office has concluded that the safest course for the State to follow is filing an interpleader to lodge the money with the court, and let the court determine how the money should be paid after Sea Hawk and the City each have presented their arguments.

JUDGMENT/SETTLEMENT FUNDING REQUEST QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name: Sea Hawk Seafoods Inc. v. State

Case No.: 3AN-95-3500CI

I. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State.

Valdez Fisheries Development Association (VFDA) owed the State Division of Investments ~\$7,000,000 in loans as of July 1997, at which point Sea Hawk Seafoods prevailed in a lawsuit and obtained a judgment against VFDA for about \$2,000,000. Fearing that Sea Hawk's collection efforts would impair the collateral securing the State's loans, the State called the VFDA loans, shortly thereafter issuing VFDA a new loan to try to keep it in business. Sea Hawk filed a petition in October 1997 against VFDA and the State, alleging that the arrangement had been a fraudulent conveyance. The DoI answer raised sovereign immunity as to Sea Hawk's claims for punitive damages, but not as to Sea Hawk's claims for declaratory, injunctive and reconveyance relief. Sea Hawk subsequently moved to amend its petition to seek compensatory damages, which the State opposed. State proceedings were stayed when VFDA filed for bankruptcy in February 1998. VFDA reached a settlement in the bankruptcy case with Sea Hawk in March 1999. Although the State thought this settlement waived Sea Hawk's claims against the State as well as VFDA, Sea Hawk reasserted its fraudulent conveyance claims against the State in state court in April 1999. Sea Hawk and the State litigated for several years, over whether the settlement had released the State, and initially over whether that issue should be resolved by the state or federal courts. Eventually the Ninth Circuit ruled in 2006 that the federal courts lacked jurisdiction, and the settlement issue went back to state court. While briefing the settlement issue, the State raised sovereign immunity as to all Sea Hawk's claims in July 2007, arguing that its earlier incomplete answer could not waive sovereign immunity because only the legislature could do so. The superior court dismissed the case. Sea Hawk's appeal led to *Sea Hawk v. State*, 215 P.3d 333 (Alaska 2009), holding that the State could waive its sovereign immunity through inadvertent omission of that defense from an answer under Rule 8(c), but that the State could raise the defense belatedly if the superior court found on remand that the prejudice to the opposing party could be cured. On remand, Judge Tan eventually ruled that future prejudice to Sea Hawk was cured by Sea Hawk's filing of a subsequent case against the individual state employees (*Sea Hawk v. Massey et al.*, 3AN-09-6534CI), and that past prejudice to Sea Hawk could be cured by an award of full attorney's fees. Sea Hawk claimed \$1.25 million in fees, which the State contested. Eventually the superior court awarded \$260,920.35.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case.

The major issue policy issue, whether sovereign immunity could be waived by Assistant Attorney General inaction rather than solely by legislative enactment, was resolved by the 2009 opinion. The State put substantial effort and expense in trying, unsuccessfully, to avoid that result. Lesser policy issues were entailed in the State's efforts to show that the settlement had released Sea Hawk's claims, an argument Judge Tan ultimately rejected, and in the State's efforts to defend against the fraudulent conveyance claim itself on the merits, which ultimately was not resolved in this case, but may be resolved in the separate case *Sea Hawk v. Massey et al.*

3. Did the State prevail on any issues? If so, describe.

The state was ultimately able to get the underlying case dismissed on sovereign immunity grounds.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful.

Yes. First, by getting the case dismissed on sovereign immunity grounds, we were able to avoid the potential for exposure on the fraudulent conveyance claim, as to which Sea Hawk was claiming damages of approximately \$2 million. Secondly, we vigorously opposed Sea Hawk's claim that \$1.25 million in costs and fees would be necessary to cure the prejudice from the untimely assertion of sovereign immunity, reducing that to the \$261,000 awarded by the court.

5. What was the source of the State's liability in this case?

Although the underlying claim was grounded in the fraudulent conveyance claim, Sea Hawk recovered nothing on that claim. The source of the \$260,000 the State will be paying is essentially the omission of a complete sovereign immunity defense as to all claims in the answer the State filed in October 1997.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future?

The Department's current practice is to assert sovereign immunity defense in all lawsuits seeking damages from the state, except as such suits may be allowed under specific statutory immunity-waiving provisions. The Department's Civil Division Manual was amended to note the *Sea Hawk* opinion and the need to avoid inadvertent waivers of sovereign immunity. The liability arising in *Seahawk* results from factual circumstances that are somewhat unique and therefore the likelihood of such circumstances being repeated is not high.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from

publication by statute, privilege, or right to privacy, indicate what the corrective action was.

See response to #6.

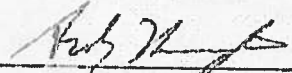
8. Any recommendations concerning cases of this type in the future?

No

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations.

Not at this time.

Attorney completing form:



Andy Harrington
Assistant Attorney General

Date:

3/23/2012

Telephone 451-2914

Judgment Interest Calculation

(Using 3.75% per Annum)

	Month	Day	Year
1. Date of Judgment:	2	22	2012
2. Amount of Judgment:	260,920.35		
3. Estimated/Actual Date of Payment:	7	15	2012

Calculation for

a. Judgment Amt:	260,920.35
b. Days interest:	144
c. Interest Factor:	0.01479
c. Interest Amount:	3,860.19

Total Due:	264,780.54

2/22/2012

7/15/2012 144

Daily % 0.000102740

Total %	0.014794521	260,920.35
	Int	3,860.19

		264,780.54