



## **Court rules in favor of Hawaiian Homelands, beneficiaries could receive millions from lawsuit**

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Wednesday, July 1st 2020, 9:25 AM HST by KITV Web Staff

The Hawaii Supreme Court has ruled in favor of Hawaiian homelands beneficiaries. Some have been on the waitlists for years, even decades.

The ruling means the state could pay tens of millions of dollars to beneficiaries. It affects the more than 2700 people on the list-- some who have died since the lawsuit was filed back in 1991.

In the unanimous decision, the court noted, "the State of Hawai'i has done little to address the ever-lengthening waitlist for lease awards of Hawaiian homelands."

In a statement, co-lead counsel Thomas Grande said "DHHL's principal duty was not to create waiting lists; DHHL's principal duty is to rehabilitate native Hawaiians by creating homesteads that they can inhabit, farm or ranch."

The state said it's reviewing the decision.

The State can no longer avoid its obligation to pay damages to Hawaiian homelands beneficiaries who filed suit in 1999, under a 1991 statute intended to provide a quick remedy to waiting lists claimants, said the Hawai'i Supreme Court today. In a unanimous opinion, the Court rejected arguments that the State has made for 2 decades in its attempt to avoid paying for delays in homestead awards resulting from the Department of Hawaiian Home Lands failures to manage and preserve trust property and maintain adequate records.

The litigation began nearly 3 decades ago, when the Hawaii legislature adopted a statute intended compensate claimants through a quick and informal process. Instead of the informal process envisioned by the legislature and Governor Waihee, the administrative process begun in 1991 failed to produce any results. Hundreds of litigants who filed claims in that process have died without receiving any relief.

At the outset of its opinion, the court notes that in 1990 Sen. Michael Crozier had observed “both the length of the list and the length of the weight make the vast majority of native wine people despair of ever receiving an award of land.” The court noted “in the 30 years since Sen. Crozier’s statement, the State of Hawaii has done little to address the ever-lengthening weight list for lease awards of Hawaiian homelands.”

In construing the statute, said the court, “the interests of justice and the extent of the state’s wrongful conduct support a liberal interpretation... and a generous construe rule of the circuit courts damages model.”

In a carefully reasoned 57 page opinion, the Court rejected the State’s argument that each claimants’ damages had to be proved by individual cases. Instead the court upheld a measure of damages using fair market rental value of a developed

residential lot in Ma`ili as an appropriate measure of the value of a homestead for all claimants, using the Fair Market Rental Value for such a lot for each year the beneficiaries were on the waiting list. With claims going back to the 1960s, the court recognized “the State’s decision to continue to litigate this case for decades has compounded the challenges resulted from its own failure to keep adequate records....”

It would be “unjust,” said the court, to allow the state to demand individual proof when DHHL’s own failure to keep and maintain adequate records regarding beneficiaries’ applications and trust land inventory made it difficult if not impossible for them to produce such proof.

“It is clear to us that the State, by mismanaging the trust, failing to keep adequate records, and continuing to litigate this case for decades is responsible for creating a situation in which it will be difficult to accurately assess damages,” concluded the court in adopting a class-wide measure based on Fair Market Rental Value.

Additionally, the court rejected the argument made by the State that beneficiaries who did not accept awards because of poverty and inability to qualify for a mortgage were not disqualified from receiving damage awards under the ruling.

“By arguing for 20 years that poor beneficiaries who are “deferred” from receiving awards because they are unable to obtain mortgages aren’t entitled to received damages, the Department has undermined and perverted the very purpose of the Home Lands Trust-- to rehabilitate Native Hawaiians.” Said co-lead attorney Carl Varady who, with co-lead attorney Thomas Grande, has pursued this litigation for more than 20 years. “Poverty is not a disqualification to receive homesteads. DHHL has statutory authority to lend and to develop property. We are gratified that the court rejected the idea that Native Hawaiian

poverty is a defense for DHHL to avoid its ongoing breaches of trust since statehood,” Varady continued.

The court also rejected the trial court’s ruling that damages would not begin to run until a beneficiary had been on the waiting list for 6 years. The court found there was no logical reason why the State should be allotted a six-year grace period between an applicant was placed on the waitlist and when damages begin to accrue.

“DHHL’s duties as a trustee are the highest duties recognized in law,” said co-lead counsel Thomas Grande “DHHL’s principal duty was not to create waiting lists; DHHL’s principal duty is to rehabilitate native Hawaiians by creating homesteads that they can inhabit, farm or ranch. The Hawaii Supreme Court understood this and applied the statute in a manner that supports its remedial purposes to achieve a just result,” Grande concluded.

Using the Hawaiian Claims Office list of claimants, who filed claims in the period from 1991 through 1997, established the class of those beneficiaries who could pursue compensation for being placed on the waiting list. The State has the burden of proving that these 2,721 beneficiaries did not suffer losses or were not qualified to receive homestead awards.

In addition to mismanaging the trust assets and failing to maintain adequate records, the court ruled that the state, as these successor trustee to the Federal Government at the time of statehood, was obligated to restore the trust by replenishing property or providing compensation for trust properties that had been wrongfully taken from the trust by the federal state and local governments.

The Hawaii court recognized that the state use litigation as a tool to complicate and delay the relief the statute was intended to provide to the 2,721 claimants who submitted claims in the administrative process between 1991 and 1997. Because they received no compensation, those claimants filed suit in 1999 in state circuit court. Every administration after Governor Waihee's has vigorously opposed any compensation and even the right of the beneficiaries to sue in court. Today's case is the second appeal; the first one was filed in 2000 and resolved by the first decision of the Hawaii Supreme Court in 2006 which ruled that the claimants had a right to sue.

The claims will not go into an administrative process that plaintiffs hope will bring the matter to conclusion as originally envisioned by legislature and Governor Waihee.

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