



THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice
MEMORANDUM

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515/281-5164
FACSIMILE: 515/281-4209

TO: Representative David Millage
Senator Jeff Lamberti

FROM: Eric Tabor, Chief of Staff, Attorney General's Office

RE: Pending Lawsuits and Claims Exceeding \$1 Million

DATE: July 25, 2002

You have asked that the Iowa Attorney General's Office (Office) provide information concerning pending lawsuits and claims against the State of Iowa which could potentially result in substantial liability, specifically lawsuits and claims exceeding \$1 million.

General Comments. Several general points need to be made concerning this memorandum. First, the memorandum is limited to matters involving pending lawsuits or claims. Unasserted claims are not addressed. Second, the memorandum is based on information concerning matters in which the Office has been engaged and devoted substantial attention on behalf of the State in the form of legal consultation and representation of state agencies. Third, specific information about how particular lawsuits and claims will be evaluated and defended cannot be provided without violating attorney-client privilege and compromising the State's interests. Suffice it to say that the Office will vigorously defend these cases and settle only where the evidence and law indicates potential liability on behalf of the States. Fourth, this memorandum does not address potential liability under the pending FLSA cases and the RACI, et al. v. Fitzgerald case, which will be addressed separately at the Legislative Fiscal Committee's meeting.

Tort Lawsuits and Tort Claims. The Office defends the State against tort lawsuits and tort claims, including cases alleging medical malpractice, cases alleging negligence by the Iowa Department of Transportation (DOT) and other state agencies, and cases alleging inadequate, negligent, or unconstitutional treatment of prison inmates.

Tort Lawsuits. Currently, there are approximately 80 tort lawsuits pending with claims exceeding \$1 million. Some of these cases involve allegations of medical malpractice in treatment at the University of Iowa Hospital and Clinics (UIHC). The number of lawsuits is inflated because it is common for several lawsuits with claims exceeding \$1 million to be filed in connection with one incident of alleged medical practice (i.e. individual lawsuits against the hospital, physicians, and other staff). In many of these cases, damages awarded are paid not only by the State, but also by insurers and the self-insurance program established by physicians.

Tort Claims. Currently, there are about 115 tort claims pending with claims exceeding \$1 million. Again, some involve treatment at UIHC. Many involve allegations by inmates of mistreatment at correctional institutions. Often these claims are frivolous and are routinely denied by

Representative David Millage
Senator Jeff Lamberti
July 24, 2002
Page 2

the State Appeal Board. For example, one inmate has approximately 45 tort claims pending that exceed \$1 million.

Total Estimated Exposure for All Tort Claims and Lawsuits. In the aggregate, the Office believes that damages awarded in all pending tort lawsuits and claims (regardless of amount claimed) would not exceed \$10 million. Some numbers for comparison:

* In FY01, the State paid \$4,814,194 for tort claims and settlements and judgments from the general fund and \$466,189 for tort claims and settlements and judgments involving the DOT from the road use tax fund.

* In FY02, the State paid \$5,209,573 for tort claims and settlements and judgments from the general fund and \$1,149,311 for tort claims and settlements and judgments involving the DOT from the road use tax fund

* In FY03 to date, the State has paid approximately \$2,250,000 for tort claims and settlements and judgements from the general fund and \$3,705 for tort claims involving the DOT from the road use tax fund.

Tax Cases. The Office represents the Iowa Department of Revenue and Finance in tax cases. Currently, there are two revenue cases exceeding \$1 million. One is a tax protest case for approximately \$1.7 million and the other is a protective refund claim for approximately \$3.5 million.

Civil Rights Cases. The Office defends state agencies and state employees against lawsuits alleging violation of civil rights laws. Two matters are relevant: One is a claim by an individual against the Iowa Department of Human Services (DHS) for about \$1 million. The other is the United States Department of Justice's investigation of DHS' facilities at Woodward and Glenwood which could result in mandated remedial steps. While this matter is far from resolved, the cost of any such remedial steps could conceivably exceed \$1 million.

Please do not hesitate to contact this Office for additional information.