DISSENTING OPINION OF ACOBA, J.

I dissent.

I do not agree that Plaintiff-Appellant Lloyd Nobuo Saito, as Special Administrator of the Estate of Thomas Masao Saito, "should have discovered the negligent act, the damage, and the causal connection between the former and the latter[,]" Russell v. Atco, 82 Hawai'i 461, 463, 923 P.2d 403, 405 (1996), and that the two-year statute of limitations applicable should have run from April 12, 1996. On that date, the City provided photographs and accident reports, including an "Electrical Accident Summary" and a "Report of Industrial Injury/Illness," both dated July 29, 1994. In essence, the Summary noted that "work on energized [electrical] systems is an accepted practice[,]" emphasized the lack of "departmental written procedures for work on electrical systems[,]" and recommended that a written policy be implemented and employees be trained in accordance therewith. One of the recommended corrective steps was to "[r]equire lock-out and tag-out of electrical systems prior to performing work." I believe the nebulous language employed in these reports failed to give adequate notice that an "injuring employee" "consciously fail[ed] to avoid [a known] peril." Iddings v. Mee-Lee, 82 Hawai'i 1, 12, 919 P.2d 263, 274 (1996).

Under Iddings, Plaintiff had a high standard to satisfy in seeking damages from a third-party employee for "wilful and wanton misconduct" pursuant to Hawai'i Revised Statutes § 386-8 (1993), that is, to prove by clear and convincing evidence that the conduct was either

> (1) motivated by an actual intent to cause injury; or (2) committed in circumstances indicating that the injuring employee (a) has knowledge of the peril to be apprehended, (b) has knowledge that the injury is a probable, as opposed to a possible, result of the danger, and (c) consciously fails to avoid the peril.

Iddings, 82 Hawai'i at 12, 919 P.2d at 274 (emphasis added). According to Plaintiff's counsel, the statute of limitations should have run from September 4, 1997, when Conklin McKee, Thomas's co-worker, told Plaintiff's counsel that, "although the building maintenance personnel had 'lock out' devices available to use while working in the Municipal Building, they were not required to use them by their supervisors."

While the documents produced on April 12, 1996 would indicate negligence existed, only Conklin's report would have provided sufficient notice to Plaintiff that there were circumstances demonstrating that the third-party "injuring employee[s]" "consciously fail[ed]" to avoid the danger to Plaintiff's decedent caused by the energized electrical lines. Id.

Therefore, I would reverse the circuit court's order dismissing the case and remand for further proceedings.