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MINUTES
COMMITTEE OF THE WHOLE

Council of the County of Maui

Council Chamber

June 12, 2001

CONVENE: 1:31 p.m.

PRESENT: Councilmember Dain P. Kane, Chair
Councilmember Alan M. Arakawa, Member (ar. 1:32 p.m.)
Councilmember Robert Carroll, Member
Councilmember Jo Anne Johnson, Member
Councilmember Michael J. Molina, Member
Councilmember Wayne K. Nishiki, Member
Councilmember Charmaine Tavares, Member

EXCUSED: Councilmember G. Riki Hokama, Vice-Chair
Councilmember Patrick S. Kawano, Member

STAFF: Richelle K. Kawasaki, Legislative Attorney
David Raatz, Legislative Attorney
Pauline Martins, Committee Secretary

James Johnson, Executive Assistant to Councilmember Johnson

ADMIN.: James Takayesu, Corporation Counsel, Department of the Corporation
Counsel
David Goode, Director, Department of Public Works and Waste
Management (Item No. 11[1])
Thomas Phillips, Chief of Police, Department of Police (Item No. 11[3])
Richard Bissen, Prosecuting Attorney, Department of the Prosecuting
Attorney (Item No. 46[8])
Robert Rivera, Deputy Corporation Counsel, Department of the
Corporation Counsel (Item No. 11[1])
Gregory Garneau, Deputy Corporation Counsel, Department of the
Corporation Counsel (Item No. 11[3] & 46[8])

OTHERS: 1 other person

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PRESS: None.

CHAIR KANE: The Council's Committee of the Whole will come to order. For the record, we have Councilmembers Nishiki, Carroll, Johnson, Molina, Tavares, Kane present. Excused--Arakawa, Hokama and Kawano. Good afternoon, members. We have three items on today's agenda.

COW-11(1) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS [Rachel Sialana, et al. vs. County of Maui, Civil No. 001-0574 (1)]

CHAIR KANE: First item--if I can direct your attention, please--is COW-11(1), the settlement authorization of claims and lawsuits in the Rachel Sialana, et al. versus County of Maui, Civil No. 001-0574 (1). Members, before we get started, we do have Deputy Corp. Counsels available with us this morning. For the record, we also have Councilmember Arakawa present as well as staff--committee staff--from Office of Council Services. Let's go . . . Mr. Rivera, why don't you go ahead and start us up. But before you do that, members, we are here to consider recommending adoption of a proposed resolution to authorize settlement of a case that alleges that a motor vehicle accident in November of '98 was caused by the County's negligent failure to maintain the intersection of Hina Avenue and Kamehameha Avenue. So Mr. Rivera, if you can, please.

MR. RIVERA: Okay. Thank you, Mr. Chair. Good afternoon, Councilmembers and Mr. Chair, again, thank you. This is a pending lawsuit right now in circuit--Second Circuit Court--and again it involves a collision that occurred at South Kamehameha Avenue and Hina Avenue. Because it is pending, there are issues of liability, which I do wish to discuss . . . uh . . . with the Council and I do, I want to do that in executive session. Thank you.

CHAIR KANE: Thank you, members. Any questions? Yes, Mr. Arakawa?

COUNCILMEMBER ARAKAWA: Mr. Chairman. I happen to live on the intersection of Kamehameha and Hina and I would like to know . . . um . . . how many total accidents have been reported in this area--this particular intersection--within the last five years.

CHAIR KANE: Okay. We can--would you have that answer now, Mr. Rivera?

MR. RIVERA: Well . . . um . . . Mr. Arakawa, because there is a pending lawsuit and this is an open forum--at this point--I would be . . . uh . . . able to discuss with that, with you in executive session because it does address concerns of liability and with . . . um . . . testimo., possible testimony from expert witnesses.

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COUNCILMEMBER ARAKAWA: Well the, the problem is, sir, that this has been a sore spot for years. There have been request by member of the community to put a traffic light at this intersection and we are being sued because we have not done that. And, you know, we, actually, should be sued just about every month because of accidents that happen in that intersection. So, we can go in executive session and discuss it. But, I think, we really need to discuss this matter in open session so that the general public can understand that there are certain intersections that need work and we're not working on it.

CHAIR KANE: Thank you, Mr. Arakawa. Any other comments? Hearing none, we'll follow the same format, members. We'll address each of `em in open, since all of `em are scheduled for a potential . . . uh . . . executive session--especially the settlement cases--those ones, especially, we need to go in executive session.

COW-11(3) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS [Partial Settlement of Diane Garrett vs. County of Maui, et al., Civil No. 01-1-0163 (3)]

CHAIR KANE: Moving on to the next item, members, COW-11(3), settlement authorization of claims and lawsuits, partial settlement of Diane Garrett versus County of Maui, Civil No. 01-1-0163 (3). This is, members, recommending adoption of a proposed resolution authorizing partial settlement of the case that alleges that a motor vehicle accident on Hana Highway near Huelo in September of 2000 was caused by County Police Officers. Corporation Counsel?

MR. GARNEAU: Yes, thank you, Mr. Chair.

CHAIR KANE: And I'm sorry--sir--I don't know your name.

MR. GARNEAU: Oh.

CHAIR KANE: I apologize.

MR. GARNEAU: My name . . .

CHAIR KANE: So, if you can, speak into the mic--first of all--and introduce yourself. Thank you.

MR. GARNEAU: Okay. My name is Gregory Garneau and I'm with the Corporation Counsel's Office.

CHAIR KANE: Thank you.

MR. GARNEAU: You're welcome. Thank you. This case, essentially, involves a motor vehicle accident which occurred in September 21st of 2000.

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CHAIR KANE: Mr. Garneau--

MR. GARNEAU: Oh.

CHAIR KANE: --if you can, please speak into the mic--

MR. GARNEAU: Okay.

CHAIR KANE: --so we can have it on record.

MR. GARNEAU: Can you hear me now?

CHAIR KANE: Members?

MR. GARNEAU: Yes?

CHAIR KANE: Can you hear him?

MR. GARNEAU: Okay.

CHAIR KANE: Thank you.

MR. GARNEAU: This case involved a motor vehicle accident, which occurred on September 21st . . . uh . . . 2000. It involved a private citizen and two County police cars. The claim alleges property damage . . . uh . . . to a vehicle as well as personal injury . . . um . . . and I'm here today to discuss settlement of the property damage portion of the claim **only** and I ask that the Council take up this matter in executive session, today. This is an ongoing case. There has been a complaint filed in the circuit court.

CHAIR KANE: Thank you, Mr. Garneau. Members, any comments or questions?

COUNCILMEMBER NISHIKI: . . . *(inaudible)* . . .

CHAIR KANE: Seeing no comments, members--oh.

COUNCILMEMBER NISHIKI: Yeah.

CHAIR KANE: Mr. Nishiki, go ahead.

COUNCILMEMBER NISHIKI: Thank you. You are saying that this is only dealing with the property damage and not with the injuries?

MR. GARNEAU: That's correct.

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COUNCILMEMBER NISHIKI: So, we may get a suit because the person was injured also?

MR. GARNEAU: We, we do have a suit, in fact. The, there has been a complaint filed in this case as well. There was a se., this is settling just the property portion of the ca., claim that I wanted to discuss today.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR KANE: Thank you, Mr. Nishiki. Any other comments?

COW-46(8) SPECIAL COUNSEL AND/OR INDEMNIFICATION [Barton J. Adams v. Richard Schwab, et al., Civil No. 97-01549 SPK]

CHAIR KANE: Hearing none, members, I'd like to move on to the final item on the agenda, which is COW-46(8), the special counsel and/or indemnification, Barton J. Adams versus Richard Schwab, Civil No. 97-01549 SPK. Members, we are here to consider the possible approval of special counsel and/or indemnification for various defendants in Barton J. Adams versus Richard Schwab. Complaint alleges that several current and former employees of the Department of Prosecuting Attorney . . . uh . . . participated in the malicious prosecution of the plaintiff from 1990 to 1995. The Department of . . . uh . . . Corp. Counsel has transmitted a proposed resolution that--if adopted--will require the County to accept the responsibility for the payment of any damages assessed in the case against the individual defendants identified in the proposed resolution. The committee met on this matter . . . uh . . . in April of this year. The Council adopted a resolution authorizing special counsel for Former Prosecuting Attorney Joseph E. Cardoza. Members, the Chair does have some questions for Corp. Counsel but, again, I'll yield the floor for any members . . . uh . . . after we hear an opening statement by Corp. Counsel.

MR. GARNEAU: Thank you, Mr. Chair and also members of the Council. This case--as you'll remember--involves a State law tort claim for malicious prosecution. It was brought in Federal court against a number of former and current County Prosecutors. In that claim, the plaintiff alleged that he was maliciously prosecuted by the Prosecutors Office and that he suffered damages as a result of their act., actions. I'm here today on the issue of indemnification of the County employees who have been sued both in their individual as well as their official capacities and I also ask that you take this up in executive session.

CHAIR KANE: Members--Mr. Arakawa?

COUNCILMEMBER ARAKAWA: Yes, Mr. Chairman. My question is, why would you have to come to ask for this indemnification? I mean if they're, if they're County attorneys, shouldn't they automatically be protected? Why, why do we have to do an indemnification?

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MR. GARNEAU: Because in this case, this involves a . . . um . . . claim of malicious prosecution and as alleged in the complaint . . . um . . . Mr. Adams alleges punitive damages--

COUNCILMEMBER ARAKAWA: Well . . .

MR. GARNEAU: --and those punitive damages are normally . . . uh . . . would not, you know, County would not be liable for punitive damage in . . . *(inaudible)* . . .

COUNCILMEMBER ARAKAWA: And we, we'd only have to settle that if indeed they were guilty of malicious prosecution--is that correct?

MR. GARNEAU: That's correct.

COUNCILMEMBER ARAKAWA: So, malicious prosecution would be above and beyond what their scope of authority is?

MR. GARNEAU: That's correct. And in this case, we have no evidence that the Prosecutors ever--although it's been alleged by Mr. Adams--that they ever acted outside of their scope of their authority.

COUNCILMEMBER ARAKAWA: . . . *(inaudible)* . . . but if . . .

MR. GARNEAU: . . . *(inaudible)* . . . all time . . .

COUNCILMEMBER ARAKAWA: If that, that is true, then we don't need to indemnify them. The court will decide one way or the other.

MR. GARNEAU: That's correct except for, that once, if we go forward with the case, at, currently, they--Prosecutors--do not have their individual counsel. And we do have a duty to defend them with regards to work that they've done in their official capacities. So, right now--with the exception of Judge Cardoza, who has separate counsel--all the other parties who have been sued in this case are represented by Corporation Counsel, together. So, if we don't indemnify them then the issue really becomes, there, there is a conflict among these people . . . because, in the end, let--if they were to be, for example . . . um . . . Mr. Adams' claim was to be sustained then without indemnification, they could be individually liable for any judgement.

COUNCILMEMBER ARAKAWA: But--under our rules--shouldn't they be individually liable if they're out, acting outside of their authority? And malicious meaning outside of the scope of their authority--

MR. GARNEAU: Yes.

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COUNCILMEMBER ARAKAWA: --over and beyond.

MR. GARNEAU: You're absolutely--true. And I don't mean to say that there is a duty on behalf of the Council to indemnify, in this case. But if we don't indemnify then it creates a conflict for our office because there is multiple defendants which we're not . . . um . . . we haven't--from the outset--decided that we would indemnify them. So they--according to an ODC opinion--then they have a right to separate counsel.

COUNCILMEMBER ARAKAWA: We'll discuss it in executive session.

CHAIR KANE: Thank you.

COUNCILMEMBER ARAKAWA: I have some definite questions on this.

MR. GARNEAU: Okay. Thank you.

CHAIR KANE: Thank you, Mr. Arakawa. Any other comments or questions? Hearing none . . . um . . . one of the questions that the Chair has is--and just for . . . um . . . Mr. Garneau, if you can provide clarification to the questions.

MR. GARNEAU: Certainly.

CHAIR KANE: The Ninth Circuit Court of Appeals has held that municipal legislature . . . uh . . . legislators can be individually liable for bad-faith indemnification. Can you explain what that means to this Council?

MR. GARNEAU: Right. And I think we had submitted, actually, . . . uh . . . a memorandum on Friday . . .

CHAIR KANE: Yeah. We can make reference to that, too--

MR. GARNEAU: Yeah.

CHAIR KANE: --as well, just for the members' knowledge.

MR. GARNEAU: Essentially, I think your question . . . um . . . related to, you know, if the Council were to indemnify, what effect does that have on the Council's qualified immunity--is that correct?

CHAIR KANE: I'm sorry--one more time?

MR. GARNEAU: If the Council were to make the decision to indemnify, what effect that would have on the Council's qualified immunity? That's what your question related to in a nutshell.

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CHAIR KANE: That is correct.

MR. GARNEAU: And while it is true the Council has, does have qualified immunity. If the Council were to indemnify employees in bad faith, meaning . . . um . . . that comes up mostly in cases where the County actors have . . . um . . . 1983 which are Federal claims and they have done something . . . um . . . that's later determined to be improper and the Council, in a way ratifies and they do it in bad faith. Then that can affect the immunity of the Council, meaning . . . um . . . there was a case that you'd sent--Navarro case--that brought that up, which was the Ninth Circuit case.

CHAIR KANE: Members, there is a (*Note: Chair cleared his throat*)--excuse me--in your binders, there's a response to a question that I sent out to Corporation Counsel. This was sent on June 7th to Corp. Counsel requesting the review of . . . uh . . . a Federal Appellate Court jurisdiction and we got a response back on June 8th. And as far as relevance to the question that the Chair just asked, the very end of that, I believe Corp. Counsel adequately responds . . . uh . . . in the last--members, this is, just for your information--the last stapled document that's in your memo . . . uh . . . in your binder, excuse me, June 8th. It's a memo to the Chair from . . . uh . . . Mr. Garneau. And I think on Page 4, the very last paragraph, and it, and it . . . uh . . . ex., continues as the last sentence to Page 5 . . . uh . . . talks about that . . . because this is--we're talking about State. Is that correct, Mr. Garneau? We're not dealing with a Federal, civil--

MR. GARNEAU: That's right.

CHAIR KANE: --civil lawsuit? So . . .

MR. GARNEAU: Although this case is pending before the Federal court, it's still, all it's left is the State law claim . . . um . . . which is prosecution because all of the 1983 claims--the Federal claims--were all knocked out prior. So that those are not left any longer.

CHAIR KANE: Any questions, members? The next question is, can't the individual defendants waive the conflict-of-interest problem and allow Corp. Counsel to defend them, Mr. Garneau?

MR. GARNEAU: Yes, they could waive . . . uh . . . if they were each informed--fully informed--and then it would be their decision whether to waive the conflict or not. There's no way, that I know of, of forcing a client to waive the conflict.

CHAIR KANE: Next question would be, even if it's more expensive, isn't it--would you consider it a better policy to provide the individual defendants with special counsel, instead of agreeing to pay for punitive damages?

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MR. GARNEAU: All right. That's a very good question and the only way I can answer that is on a case-by-case basis. I have had the opportunity to review our entire file in this case and I also went back and reviewed the Prosecutor's criminal file relating to this case and here, you know, it's my opinion that the chance of punitives being awarded that--which would, could only happen if the Prosecutors were, in fact, found to have behaved maliciously--that he was able to establish that element, I consider it very remote. So the question then for the Council is, if you don't want to indemnify and you want to satisfy the problem of conflict between the parties in terms of representation by counsel than it would be, it could end up being more expensive to hire outside counsel for everyone than on the off-chance that there were any . . . uh . . . than to indemnify on the off-chance that there were any punitives awarded. I don't see this, you know, different from, say a case where, for example, perhaps a police officer was . . . um . . . within, you know, on duty and . . . um . . . assaulted someone with no basis then to indemnify in that case wouldn't make any sense. Our def., the Council would want to be able to defend against that by saying, look, this person was acting outside of their scope. That's not the case here. And so it, that's really a question for the Council to balance--the competing interest of the Prosecutors' right to have independent counsel versus the risk that there may be . . . um . . . punitive damages awarded.

CHAIR KANE: Can you . . . uh . . . for the, for the benefit of the Chair and if the members can benefit from it too, can you--in your words--define what punitive damages are? What does it, what does that mean--punitive damages?

MR. GARNEAU: Yeah. Those would be damages, you know, over and above the normal kinds of damage you would expect and they would be based upon . . . um . . . you know--to punish--I mean that's why it says punitive . . . for behavior that is . . . um . . . so outrageous or so outside the scope of what one would expect that, to, you know, the party should be thought a lesson in a sense is the easiest way of explaining it.

CHAIR KANE: And in this case, you're saying that there is no apparent situation occurring regarding punitive damages, in this case?

MR. GARNEAU: In my opinion, I think that the . . . um . . . that those being awarded would be a very remote chance.

CHAIR KANE: Okay. One final question. Wouldn't special counsel costs be relatively . . . uh . . . minimal because the private attorneys would be, essentially, mimicking the County's defense?

MR. GARNEAU: Well, I think in that event, if we decided to not indemnify and go for special counsel then the question is whe., do each of the parties get separate special counsel? They could ask for that. Or would they be agreeable to having one counsel? I mean the cost would vary depending on how it came out . . . um . . . but again, I'd--there is no way of . . . um . . . forcing any of the parties to waive, even if they have one outside counsel with Corporation Counsels continuing to represent the County--'cause the County is still a party in this case. So,

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regardless of what happens with counsel, we will still have to go forward and defend the case 'cause we're sued as the employer. So then the question is, would the parties agree to waive any conflict among themselves and have one outside counsel? They might. But we can't determine that absent--you know--disclosure to all of them and allow them the opportunity to decide.

CHAIR KANE: Members--at this point, members--I'd like to do four things. Because . . . um . . . it was a relatively new thing that we did, I'd like to vote to consider executive session for each one, individually. The Chair will recommend--in light of some recent undercurrents--the Chair will be recommending that we will no longer be voting in executive session. I will remind you though that that decision to vote in executive session was a unanimous decision of this body to do so and I say that in my own defense as the Chair because I've been kind of targeted as the one who made that decision and I want you all to know that I--to say it nicely--will disagree with that conclusion that was drawn, in that we all know, for ourselves, that we all decided to do that and we saw what happened. So, it is the Chair's recommendation that we no longer vote in executive session, that we just vote out like we used to and we'll just go from there. But we will still be convening--or calling to order--and adjourning each executive session, separately. It's just that the vote will be taking place outside of executive session. Members, any questions or comments regarding this? Ms. Tavares?

COUNCILMEMBER TAVARES: And just one comment on the voting in executive session. Our vote was based upon opinion from Corp. Counsel.

CHAIR KANE: That is correct.

COUNCILMEMBER TAVARES: It was not independently decided by each of us that this is how we wanted to do it.

CHAIR KANE: That's correct.

COUNCILMEMBER TAVARES: Yeah. Thank you.

CHAIR KANE: Thank you, Ms. Tavares. Mr. Arakawa?

COUNCILMEMBER ARAKAWA: And just for clarification, I did request that we not vote in executive session.

CHAIR KANE: However, we all did vote in executive session--Mr. Arakawa--and that was unanimous. So, that's my point.

COUNCILMEMBER ARAKAWA: I was required by our rules--everybody had to vote.

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CHAIR KANE: Okay. Members, so on Item No. COW-11(1), Chair would entertain a motion to enter executive session.

COUNCILMEMBER NISHIKI: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR KANE: It's been moved by Nishiki, seconded by Molina that we convene in executive session on COW-11(1). Members, this is pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities and liabilities of the County, the Council and the Committee. Any discussion? Hearing none, all in favor, say "aye".

COUNCILMEMBER NISHIKI: "Aye".

COUNCILMEMBER TAVARES: "Aye".

COUNCILMEMBER CARROLL: "Aye".

CHAIR KANE: Opposed?

VOTE: AYES: Councilmembers Arakawa, Carroll, Johnson, Molina, Nishiki and Tavares, and Chair Kane.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kawano and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: EXECUTIVE SESSION MEETING ON COW-11(1).

CHAIR KANE: It's carried. We will convene in executive session. Members, moving on to COW-11(3). Members, again, the Chair will entertain a motion to enter into executive session on that item.

COUNCILMEMBER MOLINA: So moved.

COUNCILMEMBER NISHIKI: Second.

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COUNCILMEMBER TAVARES: Second.

CHAIR KANE: It's been moved by Molina, seconded by Nishiki. And again, regarding . . . uh . . . pursuant to Section 92-5(a)(4) of Hawaii Revised Statutes. Members, discussion? Hearing none, all in favor, say "aye".

COUNCILMEMBER NISHIKI: "Aye".

COUNCILMEMBER TAVARES: "Aye".

COUNCILMEMBER CARROLL: "Aye".

CHAIR KANE: Opposed?

VOTE: AYES: Councilmembers Arakawa, Carroll, Johnson, Molina, Nishiki and Tavares, and Chair Kane.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kawano and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: EXECUTIVE SESSION MEETING ON COW-11(3).

CHAIR KANE: It's carried. And members, finally, in regards to special counsel and/or indemnification, COW-46(8), Chair will entertain a motion to enter into executive session.

COUNCILMEMBER NISHIKI: So moved.

CHAIR KANE: An executive meeting--excuse me.

COUNCILMEMBER TAVARES: Second.

CHAIR KANE: It's been moved by Nishiki, seconded by Tavares. Again, this is pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes. Discussion? Hearing none, all in favor, say "aye".

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COUNCILMEMBER TAVARES: "Aye".

COUNCILMEMBER MOLINA: "Aye".

COUNCILMEMBER ARAKAWA: "Aye".

CHAIR KANE: Opposed?

VOTE: AYES: Councilmembers Arakawa, Carroll, Johnson, Molina, Nishiki and Tavares, and Chair Kane.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kawano and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: EXECUTIVE SESSION MEETING ON COW-46(8).

CHAIR KANE: Carried. This open meeting is in recess and we will reconvene once we complete our executive session meetings. Recess.

RECESS: 1:53 p.m.

(THE COMMITTEE OF THE WHOLE MEETING ENTERED INTO EXECUTIVE SESSION AT 1:58 P.M. AND ENDED AT 3:20 P.M.)

RECONVENE: 3:22 p.m.

CHAIR KANE: Council's Committee of the Whole will reconvene. Members, we are in open session. We have three items to vote on . . . or to consider.

COW-11(1) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS [Rachel Sialana, et al. vs. County of Maui, Civil No. 001-0574 (1)]

CHAIR KANE: First item, members, COW-11(1), settlement authorization of claims and lawsuits in the Rachel Sialana, et al. versus County of Maui, Civil No. 001-0574 (1). Members, the Chair's recommendation is to approve--

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COUNCILMEMBER ARAKAWA: So moved.

CHAIR KANE: --the proposed settlement of Corporation Counsel that was discussed in executive session.

COUNCILMEMBER ARAKAWA: So moved.

COUNCILMEMBER CARROLL: Second.

COUNCILMEMBER MOLINA: Second.

CHAIR KANE: It's been moved by Arakawa, seconded by Carroll. Any discussion?

COUNCILMEMBER ARAKAWA: Mr. Chairman.

CHAIR KANE: Yes, Mr. Arakawa?

COUNCILMEMBER ARAKAWA: Just by way of discussion . . . uh . . . hopefully, Public Works will be able to look at this intersection.

CHAIR KANE: Thank you. Any other comments? Discussion? Hearing none, all in favor, say "aye".

COUNCILMEMBER TAVARES: "Aye".

COUNCILMEMBER MOLINA: "Aye".

COUNCILMEMBER CARROLL: "Aye".

COUNCILMEMBER ARAKAWA: "Aye".

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CHAIR KANE: Opposed?

VOTE: AYES: Councilmembers Arakawa, Carroll, Johnson, Molina, Nishiki and Tavares, and Chair Kane.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kawano and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: ADOPTION OF PROPOSED RESOLUTION.

CHAIR KANE: It's carried and . . . uh . . . moved on as a recommendation to the full Council.

COW-11(3) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS [Partial Settlement of Diane Garrett vs. County of Maui, et al., Civil No. 01-1-0163 (3)]

CHAIR KANE: Members, Chair directs your attention to COW-11(3), settlement authorization of claims and lawsuits. And this is the partial settlement of the Diane Garrett versus County of Maui, et al., Civil No. 01-1-0163 (3). Members, the Chair's recommendation is to approve the proposed settlement amount--

COUNCILMEMBER ARAKAWA: So moved.

CHAIR KANE: --discussed in executive session.

COUNCILMEMBER ARAKAWA: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR KANE: It's been moved by Arakawa, seconded by Molina. Any discussion? Hearing none, all in favor, say "aye".

COUNCILMEMBER TAVARES: "Aye".

COUNCILMEMBER MOLINA: "Aye".

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COUNCILMEMBER ARAKAWA: "Aye".

COUNCILMEMBER CARROLL: "Aye".

CHAIR KANE: Opposed?

VOTE: AYES: Councilmembers Arakawa, Carroll, Johnson, Molina, Nishiki and Tavares, and Chair Kane.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kawano and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: ADOPTION OF PROPOSED RESOLUTION.

CHAIR KANE: It's been carried as a recommendation on to the full Council for consideration.

COW-46(8) SPECIAL COUNSEL AND/OR INDEMNIFICATION [Barton J. Adams v. Richard Schwab, et al., Civil No. 97-01549 SPK]

CHAIR KANE: And finally, members, with the Item No. COW-46(8), it is the Chair's recommendation, at this time, to--without objection--defer this item.

COUNCILMEMBER ARAKAWA: No objection.

COUNCILMEMBER TAVARES: No objection.

COUNCILMEMBER CARROLL: No.

CHAIR KANE: And members, this would enable the Corporation Counsel to . . . uh . . . speak to the individual . . . uh . . . I would, I guess--defendants in this case--and have a discussion and possible proposal to this body of resolutions . . . uh . . . regarding special counsel and some, I guess, waivers. So, members, that's the intent of the committee. Any discussion before we accept that final of no objections to deferring? Hearing none, it's been deferred.

COMMITTEE OF THE WHOLE
Council of the County of Maui

June 12, 2001

COUNCIL MEMBERS VOICED NO OBJECTIONS. (PRESENT: ARAKAWA, CARROLL, JOHNSON, MOLINA, NISHIKI AND TAVARES, AND CHAIR KANE)

ACTION: DEFER.

CHAIR KANE: Any announcements from the members? Seeing none, this meeting is adjourned.

ADJOURN: 3:25 p.m.

APPROVED BY:



DAIN P. KANE, Chair
Committee of the Whole

cow:min:010612:pm

Transcribed by: Pauline Martins