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MINUTES
COMMITTEE OF THE WHOLE

Council of the County of Maui

Council Chamber

October 2, 2001

CONVENE: 1:30 p.m.

PRESENT: Councilmember Dain P. Kane, Chair
Councilmember G. Riki Hokama, Vice-Chair (ar. 2:38 p.m.)
Councilmember Alan M. Arakawa, Member
Councilmember Robert Carroll, Member
Councilmember Jo Anne Johnson, Member
Councilmember Michael J. Molina, Member
Councilmember Charmaine Tavares, Member

EXCUSED: Councilmember Patrick S. Kawano, Member
Councilmember Wayne K. Nishiki, Member

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

Jock Yamaguchi, Executive Assistant to Councilmember Kane

ADMIN.: Gregory Garneau, Deputy Corporation Counsel, Department of the
Corporation Counsel (Item No. 46[8])
Judith Williams, Deputy Corporation Counsel, Department of the
Corporation Counsel (Item No. 46[9])
Benjamin Acob, First Deputy Prosecuting Attorney, Department of
the Prosecuting Attorney (Item No. 46[8])
Kekuhaupio Akana, Deputy Chief, Department of Police
(Item No. 46[9])

OTHERS: Michael N. Tanoue, Esq., Pacific Law Group

PRESS: None.

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CHAIR KANE: I'd like to call the Council's Committee of the Whole to order. For the record, we have in attendance Council member--or excuse me--committee members Arakawa, Carroll, Johnson, Molina and Tavares. Excused is Nishiki and Kawano and I believe on his way shortly is Mr. Hokama. Good afternoon, members.

COUNCILMEMBER TAVARES: Good afternoon.

COUNCILMEMBER CARROLL: Good afternoon.

COUNCILMEMBER MOLINA: Good afternoon.

CHAIR KANE: We have two items on the agenda for today.

**COW-46(8) SPECIAL COUNSEL [BARTON J. ADAMS V. RICHARD SCHWAB, ET AL.,
CIVIL NO. 97-01549 SPK]**

CHAIR KANE: First item--if I can direct your attention to Item No. 46(8), special counsel, the Barton J. Adams versus Richard Schwab, et al., Civil No. 97-01549 SPK. Members, we are here to discuss a proposed resolution to authorize additional compensation for special counsel. We do have with us Mr. Michael Tanoue. Sitting with us as long . . . uh . . . as well as Greg--I'm sorry, Greg?

MR. GARNEAU: Garneau.

CHAIR KANE: Thank you--Garneau. Greg Garneau, our Deputy Corporation Counsel, and of course staff members. At this time, I'd like to give you the mic, Mr. Garneau.

MR. GARNEAU: Okay. Thank you very much, Mr. Chairman and also members of the Council. As you all might remember, this case involved a State law claim that was brought in Federal court some time ago against former and current Maui Prosecutors. It involved a malicious prosecution claim and one of the Prosecutors in the case was Joseph Cardoza, who's now a sitting Circuit Court Judge here on Maui. The Council previously approved the appointment of special counsel--which was this year in April--and Mr. Michael Tanoue now represents Judge Cardoza. At this point, the case is at the pretrial stage. Motions for summary judgment were prepared by all of the defendants and set to be decided without oral argument after November 13, 2001. Mr. Tanoue's contract was initially for \$10,000--of which, at this time, there is approximately \$400 remaining on the contract--and so we're asking for an additional \$10,000 for special counsel fees. And . . . uh . . . as of today--I did check this morning--the balance for the claims settlement account is \$1,269,415.

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CHAIR KANE: Thank you, Mr. Garneau. Members, any questions? There is no request to go into executive session unless any of you feel it's necessary for us to do so to discuss the details of the particular case. I think what was just explained can be perceived as self-explanatory. We're at the end and there's still some things to get done. Any questions? Mr. Arakawa--

COUNCILMEMBER ARAKAWA: Just one question.

CHAIR KANE: --you have the floor.

COUNCILMEMBER ARAKAWA: Is this gonna be the . . . um . . . the \$10,000--will that pretty much conclude what you're gonna need?

MR. GARNEAU: Well, we're hopeful. As I've said, we have pending . . . uh . . . motions for summary judgment . . . and those were originally scheduled to be heard in, on September 7th of this year and the court did continue those to give the plaintiff some more time to file a memo in opposition. As of today, we have not received any such opposition and we are hopeful that we will prevail at the time of these motions but--and I hope that what we're asking for now will resolve that. Certainly, if we were not to prevail and had to go further that to trial then the amount that I'm requesting today would, in all likelihood, not cover all that.

COUNCILMEMBER ARAKAWA: Okay. So at this point, you would prefer just to do the \$10,000 and then come back, rather than ask for an amount that would close it out?

MR. GARNEAU: Yes, because it's my . . . um . . . opinion at this time that that should be enough based on my confidence in our motions that are pending. And I would rather do that and then if it need be come back again.

COUNCILMEMBER ARAKAWA: Okay, thank you. When you're ready, I'm ready for the question.

CHAIR KANE: Yeah. Thank you, Mr. Arakawa. Any other questions? Ms. Johnson?

COUNCILMEMBER JOHNSON: Yes . . . uh . . . Mr. Garneau?

MR. GARNEAU: Yes.

COUNCILMEMBER JOHNSON: At any time would there be an opportunity for the County--if there's found to be any kind of a baseless suit or we should prevail . . . is there an opportunity to file any kind of a counterclaim to recoup any of the costs against the person who filed these charges?

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MR. GARNEAU: I think we have the possibility of asking for costs but I do think that, in my opinion, it's unlikely that we'd recover. The plaintiff in this case is a pro se plaintiff and without going into the long history, this was a case that was initially brought . . . um . . . most of the claims--the vast majority of the claims dismissed. It went up on appeal . . . and the Federal courts that's in the Ninth Circuit had indicated the one claim that we have now, that it was applied with enough specificity to remand the case and that's what we're going forward to now. So you know, to answer your question, is it possible--yes. Do I think that's likely, probably not.

COUNCILMEMBER JOHNSON: All right. Thank you very much.

CHAIR KANE: Thank you, Ms. Johnson. Any other questions? Hearing none, the recommendation of the Chair is to approve the additional compensation of \$10,000 to Michael Tanoue, Esq.

COUNCILMEMBER ARAKAWA: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR KANE: It's been moved by Arakawa, seconded by Molina and . . . uh . . . members, I apologize. I don't see anybody in the gallery for testimony. However, I will ask if there is anybody here to testify?

COUNCILMEMBER ARAKAWA: . . . *(chuckled)* . . .

CHAIR KANE: Seeing none, at this time, we will be closing testimony for today's COW meeting. Thank you. We do have a motion on the floor. Members, any discussion? Hearing none, all in favor of the motion, say "aye".

COUNCILMEMBER JOHNSON: "Aye".

COUNCILMEMBER ARAKAWA: "Aye".

COUNCILMEMBER MOLINA: "Aye".

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**COW-46(9) SPECIAL COUNSEL AND/OR INDEMNIFICATION [GENOA LOPEZ,
ET AL., V. COUNTY OF MAUI, ET AL.; CIVIL NO. 01-1-0100 (3)]**

CHAIR KANE: Members, before us--if I can direct your attention to COW-46(9). Excuse me--special counsel and/or indemnification, the Genoa Lopez, et al. versus County of Maui, et al., Civil No. 01-1-0100 (3). We are here to discuss a proposed resolution to authorize indemnification of Richard Staszyn, a County employee, in the Lopez case. In the alternative, members, the correspondence requests consideration of the authorization of special counsel for the aforementioned County employee if we cannot reach a conclusion on indemnifying this individual. The complaint, in this case, alleges personal injury due to negligent operation of a motor vehicle. And at this time, we have with us our Deputy Chief Kekuhaupio Akana. Thank you, Deputy . . . uh . . . thank you for being with us. As well as Judith Williams from Corporation Counsel, our Deputy Corporation Counsel--and I'll turn the floor over to Judith, at this time, to give us a briefing on this case--Judith.

MS. WILLIAMS: Thank you. I want to give you an opportunity to read through the materials but briefly if I just explain what I presented to you, it might help you.

CHAIR KANE: Before you proceed . . . um . . . we'll take care of that in executive session, if that's the requirement that you or you have requested. So keep in mind that we are in open session at this time. If you can just give us an overview of the case itself in open session and then if you feel it's necessary for us to go into executive, Ms. Williams, then you can make that request and then I will take the vote with the members. Okay, thank you.

MS. WILLIAMS: Thank you. This is a lawsuit being brought against the County of Maui, which concerns a motor-vehicle accident, which occurred on April 4, 1998, where the County's driver was Detective Richard Staszyn and he was involved in a motor-vehicle accident with a taxi van, which had four passengers. Detective Staszyn is being sued by three of the passengers in his official capacity as an employee of the County of Maui. The driver was . . . um . . . was brought in by the County as a third-party plaintiff. We are alleging that he was contributorily negligent in the accident. In his cross-claim against the County, he has also sued Detective Staszyn--individually--and I would like to discuss with Council in executive session some of the issues that that would present for our defense.

CHAIR KANE: Thank you, Ms. Williams. Members, any question in open session? Hearing none, at this time, members, I'd like to ask for a motion to enter into executive session . . . uh . . . an executive session meeting 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. I'll entertain a motion to that effect.

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CHAIR KANE: Carried. We are in recess to the open session meeting.

RECESS: 1:48 p.m.

(THE COMMITTEE OF THE WHOLE MEETING ENTERED INTO EXECUTIVE SESSION AT 1:51 P.M. AND ENDED AT 2:40 P.M.)

RECONVENE: 2:43 p.m.

CHAIR KANE: Members, I'd like to reconvene the October 2nd Committee of the Whole meeting.

COUNCILMEMBER TAVARES: . . . *(inaudible)* . . .

COW-46(9) SPECIAL COUNSEL AND/OR INDEMNIFICATION [GENOA LOPEZ, ET AL., V. COUNTY OF MAUI, ET AL.; CIVIL NO. 01-1-0100 (3)]

CHAIR KANE: We have . . . *(chuckled)* . . . the final item before us, Item No. 46(9). And members . . . um . . . after our lengthy discussion in executive session, the Chair's recommendation is to--

COUNCILMEMBER ARAKAWA: Indemnify.

CHAIR KANE: --ask for a motion to accept the recommendation that was presented to this body in executive session.

COUNCILMEMBER CARROLL: So moved.

COUNCILMEMBER ARAKAWA: Second.

CHAIR KANE: It's been moved by Committee Member Carroll, seconded by Committee Member Arakawa. Discussion? Hearing none, all in favor, say "aye".

COUNCILMEMBER ARAKAWA: "Aye".

COUNCILMEMBER TAVARES: "Aye".

COUNCILMEMBER MOLINA: "Aye".

COUNCILMEMBER CARROLL: "Aye".

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CHAIR KANE: Opposed?

VOTE: AYES: Councilmembers Arakawa, Carroll, Johnson, Molina and Tavares, Vice-Chair Hokama, and Chair Kane.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Kawano and Nishiki.

MOTION CARRIED.

ACTION: ADOPT PROPOSED RESOLUTION.

CHAIR KANE: Carried. It's been moved on to the full Council as a recommendation. Members, we have no other items on our agenda. Are there any announcements? Seeing none--oh, excuse me, Mr. Carroll.

MEMBERS: . . . *(laughter)* . . .

COUNCILMEMBER CARROLL: Ugh . . . fooled you that time, yeah, Chair? . . . *(chuckled)* . . .

CHAIR KANE: I was trying to be quicker than you, Mr. Carroll. . . . *(laughter)* . . .

MEMBERS: . . . *(laughter)* . . .

COUNCILMEMBER CARROLL: All right. Everyone . . . uh . . . in case anybody doesn't know, there's a meeting in Haiku tonight at 6:30 p.m. on the mosquitoes. If--update--if any of the Council members are interested and put on your mosquito repellent.

CHAIR KANE: Thank you very much, Council member.

COUNCILMEMBER TAVARES: Or don't take a bath for several days. . . . *(chuckled)* . . .

MEMBERS: . . . *(chuckled)* . . .

CHAIR KANE: Thank you. Thank you very much. And I, and hopefully, the main--

COUNCILMEMBER TAVARES: Off . . . *(inaudible)* . . .

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CHAIR KANE: --objective of that is to get everybody educated on what, what it is and how we can deal with it. So thank you very much, Mr. Carroll. And I . . . I urge members if you don't know about it, educate yourself about it so that if you have any people with, constituencies that have a concern that you're able to respond to them in a, in a positive and informative manner. So, it's only to your benefit. Thank you, Mr. Carroll. Any other announcements?

COUNCILMEMBER TAVARES: Get your flu shots.

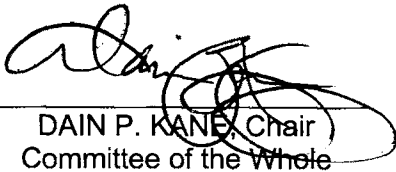
CHAIR KANE: Get your flu shots.

COUNCILMEMBER TAVARES: . . . *(chuckled)* . . . Season's here.

CHAIR KANE: And hearing no other announcements, this meeting is adjourned.

ADJOURN: 2:44 p.m.

APPROVED BY:



DAIN P. KANE, Chair
Committee of the Whole

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Transcribed by: Pauline Martins