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MINUTES
COMMITTEE OF THE WHOLE

Council of the County of Maui

Council Chamber

October 16, 2001

CONVENE: 1:34 p.m.

PRESENT: Councilmember Dain P. Kane, Chair
Councilmember G. Riki Hokama, Vice-Chair
Councilmember Alan M. Arakawa, Member
Councilmember Robert Carroll, Member
Councilmember Jo Anne Johnson, Member
Councilmember Michael J. Molina, Member
Councilmember Wayne K. Nishiki, Member

EXCUSED: Councilmember Patrick S. Kawano, Member
Councilmember Charmaine Tavares, Member

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

James Johnson, Executive Assistant to Councilmember Johnson
Jock Yamaguchi, Executive Assistant to Councilmember Kane

ADMIN.: Victoria Takayesu, Deputy Corporation Counsel, Department of the
Corporation Counsel
Marian Feenstra, Chief of Aquatics, Department of Parks and Recreation

OTHERS: William Ota, Esq., Robbins & Rhodes
Plus (2) other people

PRESS: *Akaku--Maui County Community Television, Inc.*

CHAIR KANE: We'd like to call the Council's Committee of the Whole meeting to order. For the record we have in attendance committee members Carroll, Johnson, Molina, Nishiki. Excused from this meeting members Kawano and Tavares. Also present to this meeting is the Vice-Chair of the committee, Councilmember . . . or excuse me, committee member Riki Hokama. We also have in attendance with us our Corporation Counsel Deputy Victoria

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Takayesu. Also in attendance is our committee member Alan Arakawa. And staff, we have Pauline Martins our Secretary and Richelle Kawasaki-Lu our Legal Analyst for the committee. Good afternoon, members.

COUNCILMEMBER CARROLL: Good afternoon.

VICE-CHAIR HOKAMA: Good afternoon.

CHAIR KANE: If there are no objections members, I would like to direct your attention to Item No. 46(11) of our committee agenda. We . . . uh . . . if there are no objections, I'd like to . . . for us to proceed to that particular item for us to start this discussion. Members, any objections?

COUNCILMEMBER ARAKAWA: No objections.

COUNCILMEMBER MOLINA: No objections.

COUNCILMEMBER CARROLL: No objections.

CHAIR KANE: Thank you, members.

COW-46(11) SPECIAL COUNSEL [ATAHAN, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 95-0160 (1)]

CHAIR KANE: Directing your attention to Item No. 46(11), we have a special counsel item. The Atahan, et al. versus the County of Maui, Civil No. 95-0160 (1). Members, we are here to consider the Corporation Counsel's Department request for authorization of additional compensation to Robbins & Rhodes in the Atahan case. Members, if you've had the opportunity to look at the request, an additional \$100,000 in compensation is being sought. And members, if it's approved, this would bring the total compensation limit for special counsel on this case to \$200,000. At this time, members, I would like to ask our Deputy Corp. Counsel Tori Takayesu to give us an overview and update of this particular item and we'll go from there--Ms. Takayesu.

MS. TAKAYESU: Thank you. As you may be aware, this case has been presented to Committee of the Whole before in connection for the initial request for authorization. The case does involve an individual who was rendered a quadriplegic at one of our beaches and Mr. Robbins has been representing the County, to date, on this case. We are requesting--actually at his request--additional money. Trial is set for next year but he does believe additional moneys will be required prior to the trial date . . . and I think if there are any specific questions, we should take them up in executive session.

CHAIR KANE: Thank you. Members, any questions at this point? Yeah--Mr. Nishiki, go ahead.

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COUNCILMEMBER NISHIKI: Yeah. Thank you.

CHAIR KANE: Sure.

COUNCILMEMBER NISHIKI: Is the lawyer here, from Honolulu?

MS. TAKAYESU: He just arrived at the airport. I guess . . .

CHAIR KANE: Oh--I'm sorry. Let me interject. I'm sorry, Mr. Nishiki. Mr. Bill Ota, who represents Robbins & Rhodes, just got off the airplane. If you notice he was originally scheduled as the third item on our agenda. He is on his way. I will be requesting for an executive session on this particular item, to have that discussion and we will call to order the executive session meeting as soon as Mr. Ota, who represents Robbins & Rhodes, arrives. We anticipate him being here in the next 15 minutes. So just to respond to that particular question, Mr. Nishiki.

COUNCILMEMBER NISHIKI: Thank you. The other question I have is when you asked this County of Maui taxpayers to fund the \$100,000 . . . uh . . . was that something that we expected to only pay and now we've got another \$100,000 being asked for?

MS. TAKAYESU: I think I can safely say because there are different phases of litigation that that initial \$100,000 was probably an outside estimate in the hopes that we'd settle the case. So, I don't think we would have expected that \$100,000 to cover from discovery to trial. It was probably some initial discovery work and settlement on those issues. That was my thinking of . . . um . . . wasn't present when the initial \$100,000 . . . (*inaudible*) . . .

COUNCILMEMBER NISHIKI: Yeah, that's true. And I'm just trying to remember--I mean it's almost doubling of the ante as far as I'm concerned. And then now we're gonna go to trial and I guess my question is . . . uh . . . why is it so **much** to pay for this attorney--is my question? I mean, you know . . . \$100,000 was enough. Now, you're asking for us to double that.

MS. TAKAYESU: I believe Mr. Ota could probably give you an idea of what he requires or his firm requires in order to take it to trial.

CHAIR KANE: Nishiki?

COUNCILMEMBER NISHIKI: I've got no other questions.

CHAIR KANE: Ms. Takayesu--maybe you can . . . for the committee, perhaps touch on some of the issues that are a matter of public record as to the complexity of this case and **why** we are here at this juncture, at this point. So if you can gather your thoughts on, and . . . on presenting that to the committee. I think it would be beneficial for us to be . . . **here**--why we're here at this juncture. And again, touching on some public record on . . .

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MS. TAKAYESU: Um . . .

CHAIR KANE: And if you can't then that's fine too, you know, but I'm just asking you.

MS. TAKAYESU: Okay.

CHAIR KANE: For the public's sake, I think it's important that they understand as much as is possible without us compromising the case that . . . that's before us. And obviously, there's sensitive issues that cannot be discussed at this time.

MS. TAKAYESU: I . . .

CHAIR KANE: But is there anything further you can say to bring light to why we're at this juncture of asking for an additional \$100,000?

MS. TAKAYESU: I'm only generally on . . . I was not the attorney who was initially on this. I've only kind of come into this late. I know this is . . . has to do with . . . uh . . . this case involved an individual who was injured at Big Beach. And it was an injury that occurred after we had reached an agreement with the State to provide lifeguards in lifeguard towers, which we apparently did not do, at that time. I think that it goes to, well it not only goes to duty to warn--put the signs out like we're supposed to do. But because we took affirmative steps in agreeing to provide these safeguards and then did not, it has left the County rather open to these type of lawsuits. There was another lawsuit in which we were successful in reaching a very agreeable settlement on. In this particular case, the individual had arrived at the beach through a private lot and then we took that up to the Supreme Court because we initially had received a favorable role in that if you arrived through a beach, through a private lot that the County wasn't . . . uh . . . liable. But the Supreme Court in Atahan disagreed and found that we had invited . . . um . . . or we apparently had enough motive that this had occurred that the landowner wouldn't, the landowner was not gonna be liable--it was gonna be us. But generally speaking, I can't give you too much more details . . . but that is my understanding.

CHAIR KANE: Any other questions? Hearing none, members, I'd like to ask for a motion to enter into executive session 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 be taking that motion, members.

COUNCILMEMBER MOLINA: So moved.

VICE-CHAIR HOKAMA: Second.

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

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VICE-CHAIR HOKAMA: "Aye".

COUNCILMEMBER MOLINA: "Aye".

CHAIR KANE: Opposed?

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Kawano and Tavares.

MOTION CARRIED.

ACTION: EXECUTIVE SESSION.

CHAIR KANE: Carried. Members, this meeting is in recess and we will reconvene this meeting upon the completion of our executive session meeting. We are in recess.

RECESS: 1:42 p.m.

(THE COMMITTEE OF THE WHOLE MEETING ENTERED INTO EXECUTIVE SESSION AT 2:00 P.M. AND ENDED AT 2:43 P.M.)

RECONVENE: 2:45 p.m.

CHAIR KANE: I'd like to reconvene the Council's Committee of the Whole meeting.

COW-46(11) SPECIAL COUNSEL [ATAHAN, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 95-0160 (1)]

CHAIR KANE: Members, we are looking at Item No. 46(11), special counsel in the Atahan, et al. versus County of Maui, et al., Civil No. 95-0160 (1).

COUNCILMEMBER ARAKAWA: Your recommendation?

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COUNCILMEMBER MOLINA: Yeah.

CHAIR KANE: So tomorrow afternoon at 3 p.m. in this chamber. And at that time, we will take up the remaining items on today's agenda which is COW-1(1), the HSAC 2002 Legislative Package; COW-8, the Maui County Legislative Package; COW-11(1), settlement authorization of claims and lawsuits in the H.S.T., Inc. Claim No. 2000-124 . . .

MS. KAWASAKI: 2:30.

CHAIR KANE: Oh, I'm sorry--2:30. Sorry . . . and I'll get to that. I'll make that correction. COW-11(3), settlement authorization in the Maalaea Kai Enterprises, Inc., et al. versus Oahu Construction Company, Civil No. 98-0630 (3) and Kevin M. Hogan, et al. versus Oahu Construction Company, Civil No. 99-0132 (3); as well as the final item, members, is COW-46(13), special counsel for those two same that's previously mentioned in COW-11(3). Let me make a correction, members. I'd like to call the recess until **2:30** tomorrow afternoon, not 3 o'clock--2:30. Any objections to the recessed time? If not, members, this meeting . . .

COUNCILMEMBER ARAKAWA: Mr. Chairman.

CHAIR KANE: Yes. I'm sorry--Mr. Arakawa?

COUNCILMEMBER ARAKAWA: Just for the record, I do have something else that I have planned. I will try and readjust my schedule for the 2:30 meeting tomorrow, but I may not be able to make it.

CHAIR KANE: Okay. Thank you for that.

COUNCILMEMBER ARAKAWA: I will try.

CHAIR KANE: And we'll note that and if you're unable to make it, Mr. Arakawa, we'll mark you as excused.

COUNCILMEMBER ARAKAWA: Okay.


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CHAIR KANE: Yeah, thank you. Members, hearing no other comments, this meeting is in recess.

RECESS: 2:48 p.m.

APPROVED BY:



DAIN R. KANE, Chair
Committee of the Whole

cow:min:011016:pm

Transcribed by: Pauline Martins