

# COMMITTEE OF THE WHOLE

Council of the County of Maui

## MINUTES

March 10, 2009

Council Chamber, 8<sup>th</sup> Floor

**CONVENE:** 10:57 a.m.

**PRESENT:** Councilmember Michael J. Molina, Chair  
Councilmember Gladys C. Baisa, Member  
Councilmember Jo Anne Johnson, Member  
Councilmember Sol P. Kaho'ohalahala, Member  
Councilmember Bill Kauakea Medeiros, Member

**EXCUSED:** Councilmember Danny A. Mateo, Vice-Chair  
Councilmember Joseph Pontanilla, Member  
Councilmember Michael P. Victorino, Member  
Councilmember Wayne K. Nishiki, Member

**STAFF:** Kirstin Hamman, Legislative Analyst  
Camille Sakamoto, Committee Secretary

Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros  
Sarah Dyal, Executive Assistant to Councilmember Wayne K. Nishiki  
Dana Broncheau, Executive Assistant to Councilmember Jo Anne Johnson

**ADMIN.:** Jane E. Lovell, Chief, Litigation Section, Department of the Corporation  
Counsel  
Brian T. Moto, Corporation Counsel, Department of the Corporation Counsel

*Seated in the gallery:*

Marian Feenstra, Executive Assistant, Office of the Mayor

**PRESS:** *Akaku: Maui Community Television, Inc.*  
*Harry Eager, The Maui News*

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CHAIR MOLINA: . . .(*gavel*). . . The Committee of the Whole meeting for March 10<sup>th</sup>, 2009 is now in session. Members, we are getting off to a bit of a late start for our Committee of the Whole meeting for March 10<sup>th</sup>, which was posted as 10:30. Time is 10:55. Present for our meeting today, we have Members Baisa, Johnson, Kaho'ohalahala, Medeiros, and Molina. Excused are Members Mateo, Nishiki, Pontanilla, and Victorino. From Committee Staff, we have Committee Analyst Kirstin Hamman, Committee Secretary Camille Sakamoto. And from the Corporation Counsel's office, we have Jane Lovell. We have one matter to consider here today, Members. And that is Committee of the

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Whole Item 1(4), litigation matters which is a settlement authorization--Constance C. Deans, et al. versus County of Maui, et al.

**ITEM NO. 1(4): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CONSTANCE C. DEANS ET AL. V. COUNTY OF MAUI, ET AL.; CIVIL NO. 06-1-0175(1)) (C.C. No. 09-14)**

CHAIR MOLINA: Committee Secretary, have we had any requests to . . . sign ups for testimony on this item today?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MOLINA: Okay. Thank you very much. You've heard from the Committee Secretary no one has signed up for testimony on this item. So at this point, the Chair is gonna recommend to close public testimony on Committee of the Whole Item 1(4). Any objections, Members?

COUNCILMEMBER MEDEIROS: No objections.

COUNCILMEMBER BAISA: No objections.

CHAIR MOLINA: Okay, so ordered by the Committee, public testimony is closed. Members, this item relates to a resolution which is authorizing payment of County self-insured retention limits to County's insurer to permit County's insurer to settle Constance C. Deans, et al. versus County of Maui, et al; Civil Number 06-1-0175(1), which relates to a correspondence dated February 26, 2009 from the Corporation Counsel. The intent of the proposed resolution is to authorize payment to the County's insurer to permit the County's insurer to settle the . . . the case. And this complaint alleges general and special damages as a result of injuries sustained by the Plaintiffs on August 11<sup>th</sup>, 2005. I'll now turn matters over to our Corporation Counsel Lovell to give us a further explanation of this matter. Ms. Lovell?

MS. LOVELL: Thank you, Chair Molina. And. . . good morning, Members.

COUNCILMEMBER \_\_\_\_\_: Good morning.

MS. LOVELL: This is a wrongful death case that was filed as a result of the death of Stuart Deans on August 11<sup>th</sup>, 2005. The death occurred at the Lahaina Aquatic Center while Mr. Deans was swimming there. The lawsuit was filed in May of 2006. The County is insured for this claim. And the insurance carrier with the first layer of insurance on this claim--which is administered by a company called ACE--wishes to conclude this case by way of a settlement. The insurance company has hired its own attorney in order to do so. However, under the terms of our insurance contract, the insurance company cannot take this case and settle it on its own without the County first tendering. . . to the insurance carrier what is left of the County's self-insured retention.

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Self-insured retention under this particular policy that applies to this claim is 500,000 dollars. That erodes, however, based on amounts that are spent in defense of the claim. I, given the nature of the discussions, I would recommend a . . . an executive session pursuant to Chapter 92-5 of the Hawaii Revised Statutes to discuss the County's liabilities in this matter, and also so that information can be shared with the Committee that would otherwise need to be kept confidential pursuant to both State law and court order.

CHAIR MOLINA: Uh-huh. Okay. Thank you, Ms. Lovell. Members, questions in open session for Corporation Counsel Lovell on this matter?

. . . Okay, Members, seeing none, the Chair is going to recommend a motion to go into executive session pursuant to Section 92-5(a)(4), 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; and Section 92-5(a)(8), HRS, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law or a court order.

COUNCILMEMBER JOHNSON: So moved.

COUNCILMEMBER KAHO'OHALAHALA: Second.

CHAIR MOLINA: Okay, it's been moved by Member Johnson; seconded by Member Kaho'ohalahala. And, Members, the Chair would like to note because we do have only five Members present here today, in order to go into executive session, we do need a unanimous vote on this to go into executive session. Any discussion on the motion to go into executive session?

. . . Seeing none, all those in favor, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

. . . Thank you. The Chair will mark it 5 "ayes" with 4 excusals--Members Mateo, Nishiki, Pontanilla, and Victorino. All right the matter passes.

**VOTE:       AYES:       Councilmembers Baisa, Johnson, Kaho'ohalahala, Medeiros, and Chair Molina.**

**NOES:       None.**

**ABSTAIN:   None.**

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**ABSENT:** None.

**EXC.:** Councilmembers Nishiki, Pontanilla, Victorino, and Vice-Chair Mateo.

**MOTION CARRIED.**

**ACTION:** APPROVE; RECESS Open Session and CONVENE Executive Session.

CHAIR MOLINA: So, Members, we'll go into executive session. We'll need about, maybe, two to three minutes to get the Chambers prepared for executive session. So this meeting is in recess . . .(*gavel*). . .

**RECESS:** 11:02 a.m.

**RECONVENE:** 11:27 a.m.

CHAIR MOLINA: . . .(*gavel*). . . The Committee of the Whole meeting for March 10<sup>th</sup>, 2009 is now back in session. Members, we are on Committee of the Whole Item 1(4), which relates to the authorization of Constance C. Deans, et al. versus County of Maui, et al.; Civil Number, case 06-1-0175(1). Members, any other questions in open session for this matter before the Chair offers a recommendation?

COUNCILMEMBER BAISA: Recommendation?

CHAIR MOLINA: Okay. Thank you very much. The Chair would like to recommend a motion to approve the resolution authorizing payment of County's self-insured retention limits to County's insurer to permit County's insurer to settle Constance C. Deans, et al. versus County of Maui, et al; Civil, case Number 06-1-0175(1), and transmitting a copy of the first amended complaint.

COUNCILMEMBER BAISA: So moved.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: Okay, it's been. . .moved by Member Baisa; second by Member Johnson. Any. . .questions or comments related to the motion on the floor?

. . . Seeing none, all those in favor, signify by saying "aye".

COUNCIL MEMBERS: Aye.

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CHAIR MOLINA: All those opposed?

. . . Thank you. The Chair will mark it 5 "ayes" with 4 excusals--Members Mateo, Nishiki, Pontanilla, and Victorino.

**VOTE: AYES: Councilmembers Baisa, Johnson, Kaho'ohalahala, Medeiros, and Chair Molina.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmembers Nishiki, Pontanilla, Victorino, and Vice-Chair Mateo.**


**MOTION CARRIED.**

**ACTION: Recommending ADOPTION of resolution.**

CHAIR MOLINA: And let's see. . .I believe that will conclude our business for today. Staff? So at this point, Chair would like to thank you for your attendance on this particular Committee item. So with that said, it is 11:28. The Committee of the Whole meeting relating to March 10<sup>th</sup>, 2009 is now adjourned . . .(gavel). . .

**ADJOURN: 11:28 a.m.**

APPROVED:

  
MICHAEL J. MOLINA, Chair  
Committee of the Whole

cow:min:090310

Transcribed by: Camille Sakamoto