

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

November 3, 2009

Council Chamber, 8th Floor

CONVENE: 9:00 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Danny A. Mateo, Vice-Chair
Councilmember Gladys C. Baisa, Member (Out 10:30 a.m.)
Councilmember Jo Anne Johnson, Member (In 9:06 a.m.)
Councilmember Sol P. Kaho'ohalahala, Member
Councilmember Bill Kauakea Medeiros, Member
Councilmember Wayne K. Nishiki, Member
Councilmember Joseph Pontanilla, Member (In 9:01 a.m.)

EXCUSED: Councilmember Michael P. Victorino, Member

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

ADMIN.: Milton M. Arakawa, Director, Department of Public Works (Item No. 1(17))
Tamara Horcajo, Director, Department of Parks and Recreation (Item No. 1(18))
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation
Counsel (Item Nos. 1(17), 1(18), and 1(19))
Kimberly A. Sloper, Deputy Corporation Counsel, Department of the
Corporation Counsel (Item No. 2(2))

Seated in the gallery:

Roy Silva, Executive Assistant, Office of the Mayor (Item No. 2(2))
Ryan M. K. Anderson-Teshima, Deputy Corporation Counsel, Department
of the Corporation Counsel

OTHERS: One (1) additional unidentified attendee

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

CHAIR MOLINA: . . .(*gavel*). . . The Committee of the Whole meeting for November 3rd, 2009 is now in session. It is now 9:00 a.m. For the record, we have in attendance Committee Members Baisa, Kaho'ohalahala, Medeiros, Nishiki and Molina. Excused are Members Mateo, Johnson, Pontanilla and Victorino. From the Committee Staff we have our Committee Analyst, Kirstin Hamman, and Committee Secretary, Camille Sakamoto. And from the Corporation Counsel's Office joining us today we have Moana Lutey, as well as our Public Works Director, Milton Arakawa. Good morning, all.

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COUNCILMEMBER NISHIKI: Morning.

COUNCILMEMBER MEDEIROS: Morning.

CHAIR MOLINA: Good morning. Committee Secretary, do we have any signups for any of our agenda items for this morning?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MOLINA: All right. Members, the Chair's gonna recommend we close public testimony on all of our agenda items. Any objections?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. So ordered. Testimony is closed. Let's get right down to business, Members.

ITEM NO. 1(17): LITIGATION MATTERS (SPECIAL COUNSEL AUTHORIZATION: MAGLIATO, INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE OF KEONE ANTHONY MAGLIATO VS. FORREST TANIGUCHI A/K/A FOREST TANIGUCHI, ET AL.; CIVIL NO. 09-1-0043(3)) (C.C. No. 09-14)

CHAIR MOLINA: We have Committee of the Whole Item 1(17), Special Counsel Authorization: Magliato, Individually and As Special Administrator of the Estate of Keone Anthony Magliato versus Forrest Taniguchi, also known as Forest Taniguchi, et al., Civil Case No. 09-1-0043(3). The Committee is in receipt of a correspondence dated September 21, 2009, from the Corporation Counsel's Office, requesting consideration of the proposed resolution, as mentioned earlier. The complaint alleges the wrongful death of Keone Anthony Magliato resulting from injuries suffered in a vehicle collision on Kauhikoa Road, a County roadway near the intersection of Kauhikoalani in Haiku, Maui, on October 27th, 2008. The purpose of the proposed resolution is to authorize the employment of Ortiz & Katano, a law corporation as special counsel in the case for a total compensation of \$130,000. At this point, Committee Members, the Chair will turn matters over to Ms. Lutey. But before we do that, Chair would like to recognize Committee Member Pontanilla to this morning's proceedings. Good morning, Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Good morning.

CHAIR MOLINA: Okay. Ms. Lutey.

MS. LUTEY: Thank you. Good morning. I'm requesting outside counsel in this matter. This is a wrongful death/roadway defect-type case. And the basic facts are that on October 27th, 2008, Keone Magliato, who was a minor at the time of his death, was

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operating his motorcycle in the mauka direction on Kauhikoa Road when Forest Taniguchi, who was operating a motor vehicle, pulled out causing a collision between the two of them. And from the injuries sustained in that collision, Mr. Magliato died. This lawsuit was initially filed solely against the operator of the motor vehicle, which was Forest Taniguchi. It was later amended in March of this year to add in the County of Maui. And the primary complaint against the County is that there's an obstruction of sight distance at the intersection where this collision occurred. I'm asking for outside counsel--and in this matter the appointment of Jonathan Ortiz of Ortiz & Katano. You will see that Mr. Ortiz's firm is on two of these agenda items. And the reason for that is that I did a negotiated flat fee arrangement with him to get the best deal possible for the representation in these cases. And for this particular matter I'm asking for \$130,000 for compensation and this should be enough to cover this all the way through trial. The flat fee that Mr. Ortiz will receive is \$125,000. The additional 5,000 that I'm requesting is for travel expenses and so forth, because Mr. Ortiz is located on Oahu and would need to travel here to Maui to handle the defense of this case when it...when and if it goes to trial and also for depositions. I am available for questions regarding this issue. If it gets into an area that I think needs Executive Session I will ask it, but I...I think that we should probably be able to handle this on the floor.

COUNCILMEMBER MATEO: Chair.

CHAIR MOLINA: Okay. Thank you, Ms. Lutey, and before the Chair opens the floor up for questions, the Chair would like to recognize Committee Vice-Chair and Council Chair Mateo to our proceedings this morning. Members...again, just as Corporation Counsel had reiterated, the request is again for special counsel for \$130,000. In terms of the line of questions, the Corporation Counsel would have to come back to us if we do approve this and...and a settlement in the future. And maybe at that point is where we can ask more detailed questions about the case itself. But for today's purposes I would like...you to confine your questions as much as possible strictly to the employment of Ortiz & Katano and the \$130,000 if...Members would consider that. So at this point, Members, the floor is open for questions to Corporation Counsel with regards to the request of special counsel. Mr. Pontanilla, followed by Mr. Medeiros.

COUNCILMEMBER PONTANILLA: Thank you. Corporation—Prosecuting Attorney [*sic*] Lutey, have you ever hired this particular law firm before, Ortiz & Katano?

MS. LUTEY: Yes, Councilmember Pontanilla. You'll notice that I have a third matter on here where I'm asking for some additional compensation--that is for Ortiz & Katano's firm. That case that they represented on as previously was not a tort litigation case like this one. It's actually a labor union grievance matter.

COUNCILMEMBER PONTANILLA: And have they done satisfactory work up to then...up to now?

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MS. LUTEY: I...I've actually worked with Mr. Ortiz in other defense cases as well. He represents State Farm insureds typically so we've been in other litigation together. So, yes, I've worked with him. He does excellent work. And he did good work also in that grievance.

COUNCILMEMBER PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Mr. Medeiros, and before we recognize Mr. Medeiros, Chair would like to recognize Committee Member Johnson to our proceedings this morning.

COUNCILMEMBER JOHNSON: Good morning.

CHAIR MOLINA: Good morning. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yes, I...I'd like to ask if part of the consideration of outside employ...outside counsel, is part of the process that the outside counsel being considered would give an assessment of potential success litigating the case in consideration of the merits of the case to challenge the suit? So, without details, does...does that include that as far as Corporation Counsel looking for an outside counsel? Do...do you ask the potential people you're considering to give you an assessment of potential success?

CHAIR MOLINA: Ms. Lutey?

MS. LUTEY: Thank you. Councilmember Medeiros, actually that's kind of difficult to do because until we've actually retained them and are offering them some form of compensation, they're not going to be reading through all of the documentation. The *assessment* of whether there is liability or whether this is the case that we should actually pursue to litigation if that what it comes to—or, I'm sorry, to *trial* if that what it goes to—is really something that *we* assess in-house. In other words, whether liability seems like it might be questionable and whether this is a case that should be proceed to trial.

COUNCILMEMBER MEDEIROS: So with that response, if we do contract them, *then* would they do an assessment at the...as preliminary consideration?

MS. LUTEY: Typically, yes, they will do an assessment of the case. But the truth is, is that it's really *difficult* to get a *full* picture of the case until some discovery's been done like depositions, site visits. A lot of times we'll retain expert witnesses to give us an evaluation of what they think the problems are there. And so once that's done, then you can have a *better* evaluation of it. So early on, it's kind of hard do. You can look at it and say, yeah, it looks like liability against the County's sort of sketchy because it might look as though the driver of the opposite vehicle would be --

COUNCILMEMBER MEDEIROS: Right.

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MS. LUTEY: --you know, more liable or something along those lines. But until you've gone through a lot of the discovery, it's really hard to fully assess your case.

COUNCILMEMBER MEDEIROS: Okay. Thank you for that clarification. And then, in this kind of case, help me understand, is it possible for the County through outside counsel, if the case is successful for the County, a recovery of attorney fees from the other party?

MS. LUTEY: We don't typically get recovery of attorney's fees except in specific *types* of cases. In a case like this we would not be entitled to it, but you can get *costs* back if there's an offer of judgment that isn't met by the opposite side. And I don't know if you need any more clarification on that, but...

COUNCILMEMBER MEDEIROS: No. I...I think that helps me understand that relationship. And then, finally, in...in the contract amount it says total compensation. So whether the case drags on or, and other things are...are required, that is the total compensation or there's a potential to come back and ask for additional funding?

MS. LUTEY: The total compensation to Mr. Ortiz's firm will be \$125,000. The additional 5 is for travel expenses and other related types of expense, that he'll incur coming here, that's compensable. And that's based on statute. But it will not exceed that. And the way that this payment is done when we do flat fee contracts like this is that we make it backend heavy which means that in the beginning there'll be a retainer payment made upfront so that the review of the documents and the cost for that are covered. And then there'll be smaller payments in between there that will get heavier as it gets closer to trial. And then if it doesn't resolve by motion, in other words, if we don't get dismissed out or...or get into a position where the case looks like it's going to be dismissed or is dismissed, then the payments will get heavier on the trial date.

COUNCILMEMBER MEDEIROS: Okay. And then, Mr. Chairman, just one more question, please. So...so if we have a total compensation of 130,000--

MS. LUTEY: Uh-huh.

COUNCILMEMBER MEDEIROS: --does the attorneys, outside attorney firm, give us a breakdown on the expenses and charges? And if there's a surplus, do we receive anything back if the 130,000 is not totally used?

MS. LUTEY: We don't—yeah. I guess I wasn't clear on the first round. We don't pay them the 125 upfront. So they'll get a—I think it's a 15,000 signing retainer fee. But there's no other payment until six months out from trial. And then at the six-month mark they'll receive nominal payments—or I guess nominal in terms of the total package—of \$5,000 each month up until the trial date. And then there'll get a bulk payment on day of trial. So if we never get to the point where those payments are triggered, we don't ever get rid of those payments. So we'll still have that money.

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COUNCILMEMBER MEDEIROS: I see. Thank you very much for the information. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. I'm just puzzled by, first of all, hiring a Honolulu attorney although you mentioned that he's very familiar because he works for an insurance company?

MS. LUTEY: Yes.

COUNCILMEMBER NISHIKI: What insurance company firstly?

MS. LUTEY: State Farm.

COUNCILMEMBER NISHIKI: Okay. I see by this complaint and...and...and the family, I guess, is being represented by Mr. Krueger. And I don't know if any of you've read the cover letter from—no, it's not. I don't know. It's all stapled all together. But second to the last...third to the last...fourth to the last page, fourth to the last page, last paragraph, Page 2 with Krueger & Wong cover...stationery. He's saying, it is difficult to provide a precise figure for the damage sought inasmuch as the items of life, future economics, are unlike buying a tube of toothpaste or a pound of hamburger, the value of which is established already. Certainly a death case, such as this, can be expected to generate a seven-figure recovery from a jury. As evidence...as the evidence develops during litigation, the County will become further educated as to the extent of this claim. My...my...my question is, Mr. Krueger is, I would say, good in...in...in these type of circumstances. Have you looked at what he is saying the...the...where the County was negligent?

MS. LUTEY: Yes. If you look at his complaint he actually includes photographs. What you are reading from is the claim that was filed at the County Clerk's Office.

COUNCILMEMBER NISHIKI: Yeah.

MS. LUTEY: But in his complaint itself he puts photos of some hedge that's at the corner of a private property. I think you're...you've got that right in front of you now. *That's* what he claims our liability is over--the sight distance caused by that brush is what caused this accident.

COUNCILMEMBER NISHIKI: Ahh, I see that. Okay. I know I have to be careful on anymore that I say. I...I...I guess the question is, what *other* legal firms, if any, did you...did you look at and...and...and why not anybody from Maui?

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MS. LUTEY: That's actually kind of a complex question. We solicit for out...outside counsel to provide us with letters of interest. And I don't recall any Maui firm actually providing us with a letter of interest. But once we get those, there's a Procurement Committee that gets together and actually goes through all of the firms that are listed as being interested in having business with the County and providing legal services. And through that we'll go through them and assess them and then evaluate them and rank them based on what types of work they do and whether this is something within their lines. There...there wasn't many people or many firms that were available to do this *type* of tort litigation in our procurement list. And that's *part* of the reason Ortiz & Katano was selected. But the other part of it, really, is that they are the most qualified from the list that we had looked at and also that they were willing to do a flat-fee negotiated contract with us.

COUNCILMEMBER NISHIKI: I...I...I guess my concern is, you said, "we". So obviously, there's a group of you that made this choice.

MS. LUTEY: Yes.

COUNCILMEMBER NISHIKI: So who are you?

MS. LUTEY: There's a Procurement Committee. Currently I sit on it, so does Jane Lovell and the third member is Madelyn D'Enbeau. But that can change. On this committee I did sit this.

COUNCILMEMBER NISHIKI: So the three of you got together and examined this case and looked at all the applicants.

MS. LUTEY: Yes.

COUNCILMEMBER NISHIKI: So you...you're talking about getting a good deal. I'm not worried about getting a good deal.

MS. LUTEY: Uh-huh.

COUNCILMEMBER NISHIKI: I'm worried about getting somebody that's good.

MS. LUTEY: Yes. I think that's always--

COUNCILMEMBER NISHIKI: So . . .

MS. LUTEY: --our primary goal as well.

COUNCILMEMBER NISHIKI: Who else was in the running?

MS. LUTEY: My—from the top of my head, I recall the firm that was probably rated second, was Ken Robbins and Associates. He's also an excellent attorney but he currently has

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another wrongful death case with us. And so he was not selected as first choice because of the fact that he...his firm is small and would not be able to handle two wrongful death cases for us.

COUNCILMEMBER NISHIKI: And who was the third?

MS. LUTEY: I believe the third one was Oshima but I'm not positive of that. We...I've never actually worked with them, and I had tried to contact one of the partners in it who had advertised himself as a tort litigator but not, did not receive a call back.

COUNCILMEMBER NISHIKI: Mr. Chair?

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER NISHIKI: Is it...is it normal that we ourselves allow the process as they...they go through right now with three of their lawyers and...and we have no say in interviewing the different people that may be put in front of us?

CHAIR MOLINA: You know, that's a--

COUNCILMEMBER NISHIKI: Employed?

CHAIR MOLINA: That's a question that's difficult for me to answer. I guess, past practices as long as I've been on the Council—I know for certain cases we've had the opportunity to interview. But if --

COUNCILMEMBER NISHIKI: Right.

CHAIR MOLINA: --that's something the Committee would like to consider, I mean, I guess it's—I mean ultimately we have to approve the funding. But this is a time-sensitive matter. Ms. Lutey, do you care to further expound on Mr. Nishiki's question?

MS. LUTEY: Yeah. I haven't actually had that request before. I...I think there's a lot that goes into the evaluation of it. We could make Mr. Ortiz available by phone if you would like to interview him. But I wouldn't know how you would interview. . .I mean, are you talking about interviewing every tort litigator who advertises and has requested potential business with the County? So I just...I don't know how we would do that, you know, like, bring. . .all—I'm talking about logistics, I guess.

COUNCILMEMBER NISHIKI: Yeah. I...I don't really care about logistics. Personally, I wanna...I wanna be able to find out what the process is that we follow, Mr. Chairman. And I...I...I...I...I can vaguely but remember that at least we had a chance to talk to these attorneys and somewhat ask questions about, you know, their knowledge of something like this just to get a feel. And I don't know if you guys even did that. Did you do that? Or you just ask for bids and solicited names? I mean did you *talk* to them

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about the case, the nature of the case, who the attorney is and that whole line? I mean, excuse me for offending you if I do, but I still need to ask that question.

MS. LUTEY: I do that systematically with all of them.

COUNCILMEMBER NISHIKI: I'll give other people...an opportunity. I need to think more about this, Mr. Chairman. Thank you.

CHAIR MOLINA: All right. Thank you, Mr. Nishiki. Before I recognize Mr. Pontanilla. . Ms. Lutey, has it ever been, you know, with this Committee that you have this selection committee in terms of hiring out, considering outside counsel...since you've been with the County has there ever been any involvement with, say asking attorneys on the Legislative Branch to come in and sit in on this to...or this strictly Admin...Corporation Counsel administrative...

MS. LUTEY: It's only been through Corporation Counsel. And typically the Litigation Section of our Department, not the Administrative Section.

CHAIR MOLINA: Uh-huh.

MS. LUTEY: So that's typically been the way it's...it's always been handled--

CHAIR MOLINA: Right.

MS. LUTEY: --for as long as I can recall.

CHAIR MOLINA: Past practice, right?

MS. LUTEY: Yes.

CHAIR MOLINA: Okay. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you, Chairman. You know, I agree with my fellow colleague over here. But in a time-sensitive manner, if this is time-sensitive, you know, I can understand the Department's concern. And, you know, who better to tell us than our own attorneys that, you know, that look at all of the different candidates for this particular case. I would put my trust in...in...in our attorneys in selecting somebody that can represent this County in...in...in any legal matter. So for me, Chairman, you know, although the questions were asked in regards to interviews and things like that, for me, you know, I put my trust in our Prosecuting Attorney [*sic*] and...and their wisdom and judgment. Thank you.

CHAIR MOLINA: Thank you, Mr. Pontanilla. Member Baisa?

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COUNCILMEMBER BAISA: Thank you very much, Chair. I think that the questions that I would've asked have already been asked particularly in regards to money . . . *(clears throat)*. . . and the time-sensitivity of the issue. I don't think that I have the expertise to judge the skills of legal people. That's out of my area. I can certainly judge the results. And I believe that our people have done the best they can in establishing a list of people that are qualified and prepared to represent us. And I'm prepared to support their recommendation.

CHAIR MOLINA: Thank you, Member Baisa. Member Johnson?

COUNCILMEMBER JOHNSON: Yes. And I don't know if you know this, Moana, but I know whenever we pay for these expenses it comes from a particular fund.

MS. LUTEY: Yes.

COUNCILMEMBER JOHNSON: So do you know at the present time, do we have any idea of what that fund is? And even if you don't, can we get a report to just show what's remaining in that? 'Cause a lot of times when we make a financial commitment I wanna be certain that we're being fiscally responsible and that, I guess, we have enough money in the checking account . . . *(laughter)*. . .

MS. LUTEY: Sure.

COUNCILMEMBER JOHNSON: . . .to pay for these expenses. So if at some point if you don't feel comfortable giving, you know, that information now, if you could just send it to the Chair and just give us a status update? I'd appreciate it.

MS. LUTEY: I actually don't have the balance --

COUNCILMEMBER JOHNSON: Okay.

MS. LUTEY: --I don't know at the top of my head, but I don't have a problem providing that information to—

COUNCILMEMBER JOHNSON: Yeah. And...and...and even, you know, if nobody else is interested, I, Mr. Chair, would. . .just because that's the pot of money out of which, you know, we pay the attorneys' fees as well as the claims. So thank you very much.

CHAIR MOLINA: Yeah. That a...that's a reasonable request, Member Johnson. I'll ask Staff to maybe just draft a letter if need be for formality's sake. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Just a couple of follow-up questions, please. Is there any information available to Corporation Counsel's Office of similar cases being successfully litigated...in tort litigation in challenging this particular attorney who is representing the plaintiffs? Any kind of information like that of

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successful attorneys against this particular attorney representing the plaintiffs in similar cases?

CHAIR MOLINA: Ms. Lutey?

MS. LUTEY: I'm not sure if I really understand your question.

COUNCILMEMBER MEDEIROS: Okay. This is a tort litigation case?

MS. LUTEY: Yes.

COUNCILMEMBER MEDEIROS: Mr. Krueger is representing the plaintiffs?

MS. LUTEY: Right.

COUNCILMEMBER MEDEIROS: In similar cases of such, is there information available of attorneys that have been successful against this plaintiff's attorney in representing the other side of . . . *(laughter)*. . . the group? No?

MS. LUTEY: There are a number of cases that Mr. Krueger has not prevailed on.

COUNCILMEMBER MEDEIROS: Okay. So do we know what attorneys were successful in that?

MS. LUTEY: There's a variety of attorneys actually.

COUNCILMEMBER MEDEIROS: In such similar cases as tort?

MS. LUTEY: It...not...well, "tort" is sort of a broad term.

COUNCILMEMBER MEDEIROS: Uh-huh.

MS. LUTEY: This is more of a roadway defect type of case.

COUNCILMEMBER MEDEIROS: Okay.

MS. LUTEY: But it falls within tort.

COUNCILMEMBER MEDEIROS: Okay.

MS. LUTEY: And I...off the top of my head, I'm not certain of who would have prevailed against Mr. Krueger in...in a roadway defect where the...specific allegation was sight-distance obstruction based on. . . a shrub of some sort.

COUNCILMEMBER MEDEIROS: Right, right.

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MS. LUTEY: So that I'm not certain of. But there are manuals that are published by a man named Neal Seamon that list different types of cases and the outcomes of them. So we could search through them that way. But most times cases are pretty unique unto themselves. So you might be able to find a *roadway defect* case--

COUNCILMEMBER MEDEIROS: Uh-huh.

MS. LUTEY: --but whether it's based on sight distance on a shrub, I'm...I'm not sure.

COUNCILMEMBER MEDEIROS: Okay. Thank you. And then, why do we...we receive such communication as this in being time-sensitive? What makes it time-sensitive? What created the time-sensitivity? Why don't we get this earlier for further consideration instead of being held to the fire of making a decision because it's time-sensitive?

MS. LUTEY: It's because all lawsuits are time-sensitive. Once they're filed the clock starts ticking and trial dates are set. Dispositive motion deadlines are set. Expert report deadlines are set. So the second it's filed—and the Plaintiffs can figure out when they're gonna file and then serve us, you know, within a six-month period.

COUNCILMEMBER MEDEIROS: Right.

MS. LUTEY: Our deadlines are already in motion. We can ask for extensions of them but whether the court will give those to us or not is a completely different story. We can't bank on that.

COUNCILMEMBER MEDEIROS: Uh-huh.

MS. LUTEY: So pretty much all litigation matters are gonna be time-sensitive because the litigation starts going pretty much at its own pace based on court-ordered deadlines.

COUNCILMEMBER MEDEIROS: So...so what's the window of opportunity for us in considering this once...once you get the case --

MS. LUTEY: I...I...

COUNCILMEMBER MEDEIROS: --and it's filed?

MS. LUTEY: I don't think that there's a specific deadline that I can give you. Typically it's best to get it moving along with the counsel that will be handling it full time as quickly as possible, because in the meantime discovery is not typically being done. In this case we have done some discovery but it's wisest to have that type of strategy handled by the trial counsel.

COUNCILMEMBER MEDEIROS: Okay. Thank you very much. Mahalo, Mr. Chairman.

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CHAIR MOLINA: Thank you, Mr. Medeiros. So I guess to sum it up, like everyone else the Council is at the mercy of the courts, if you know what I mean. Members, any other questions before the Chair offers a recommendation? Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. I...I...I don't think that answer was something that maybe Mr. Medeiros was looking at. Moana?

MS. LUTEY: Yes?

COUNCILMEMBER NISHIKI: You guys are coming in to us and saying it's time-sensitive. What do you mean by that?

MS. LUTEY: It means that I need to have it heard as quickly as possible.

COUNCILMEMBER NISHIKI: Today?

MS. LUTEY: Yes.

COUNCILMEMBER NISHIKI: Okay. So let's follow up. When did you know about this case and when it was filed?

MS. LUTEY: When we were served with it and...

COUNCILMEMBER NISHIKI: When was that?

MS. LUTEY: I don't know.

COUNCILMEMBER NISHIKI: You don't *know* when you were *served*?

MS. LUTEY: No, because that's actually done on any deputy in our Department. I can tell you that I filed the answer on April 24th.

COUNCILMEMBER NISHIKI: Jeez. And...and...and...and I don't know when it was served to them, Mr. Chairman. This is November the 3rd. So...I don't understand other than...why we didn't know about this earlier.

CHAIR MOLINA: Mr. Nishiki, if I could add? Maybe Ms. Lutey --

COUNCILMEMBER NISHIKI: Yeah.

CHAIR MOLINA: --if you wanna expound? I know you've had some staff shortages. Would you like to elaborate on that? Does that...could that have been a possible reason why we're addressing it now instead of, you know, sooner?

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MS. LUTEY: No. I believe that this resolution was pending for quite some time. I think part of the problem was that by the time we were served, this Council was in Budget. And then my recollection—although I don't have the reso in front of me—was sent down and sat pending for a period of time. It's not that we sat on it and did nothing with it. It's...we act as quickly as we can but all of us are subject to the varying scheduling conflicts that different agencies have.

COUNCILMEMBER NISHIKI: Okay. I...I...I'm not...I'm not pointing the finger at anybody. I'm just trying to understand why things come to us and it being time-sensitive and as one previous speaker said, we're under the gun. That's all. So I think that's a fair question.

MS. LUTEY: I don't have a problem with your question, Mr. Nishiki.

COUNCILMEMBER NISHIKI: Yeah.

MS. LUTEY: I just really think that the problem is I...I don't know what the resolution to that would be.

COUNCILMEMBER NISHIKI: ... Yeah.

NOTE: Silence.

COUNCILMEMBER NISHIKI: Um. . .if I may, Mr. Chairman?

CHAIR MOLINA: Go ahead.

COUNCILMEMBER NISHIKI: Thank you. When Mr. Ortiz was chosen--I looked at all of these cases here, personal injury cases that you put down as his reason why he is being chosen. And then you mentioned Oshima or whatever. They...they...they've never had situations like this where, you know, the...the...there was a wrongful death type of circumstance?

NOTE: Silence.

MS. LUTEY: ... Mr. Ortiz lists a wrongful death on his first page in '07.

COUNCILMEMBER NISHIKI: Oh, that Dizor case

MS. LUTEY: Geniblazo versus Dizor.

COUNCILMEMBER NISHIKI: Yeah. And then when it says "Defense Verdict", what does that mean?

MS. LUTEY: That means that he won.

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COUNCILMEMBER NISHIKI: Oh, okay. Good. Let me ask you about the person that hit and killed this guy. What...what...what type of insurance does he have?

MS. LUTEY: I'm not sure what you mean. How *much* does he have?

COUNCILMEMBER NISHIKI: Well, I'm sure that he's been sued also, right?

MS. LUTEY: Yes. And he's actually in the process of being settled out of this case. There's been a negotiated agreement between the Plaintiff and Mr. Taniguchi. It is currently pending determination by the--

COUNCILMEMBER NISHIKI: Uh-huh.

MS. LUTEY: Circuit Court judge.

COUNCILMEMBER NISHIKI: So we're gonna be holding the bag then --

MS. LUTEY: We're it.

COUNCILMEMBER NISHIKI: --ultimately. And who...who was he...who was he represented by?

MS. LUTEY: Mr. Taniguchi?

COUNCILMEMBER NISHIKI: Yeah.

MS. LUTEY: Mark Morita.

COUNCILMEMBER NISHIKI: Honolulu?

MS. LUTEY: Yes.

COUNCILMEMBER NISHIKI: Insurance company?

MS. LUTEY: I believe so. Actually I'm positive of it because they've settled out for their insurance limits which was \$20,000.

COUNCILMEMBER NISHIKI: Oh, wow. So it's an out-of-court settlement.

MS. LUTEY: It's an in-court settlement that . . . (*Change to Tape 1B*). . . petition for good faith settlement asking that the court grant him various types of relief. One of 'em is to be completely excluded and exonerated from this case from any type of liability, although his name could still end up on a special verdict form. And so we've been contesting that. There have been motions filed by us on that.

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COUNCILMEMBER NISHIKI: Okay. And what...what...what...what did he have as far as insurance?

MS. LUTEY: \$20,000.

COUNCILMEMBER NISHIKI: That's the max he had?

MS. LUTEY: Yes. That's his policy limit.

COUNCILMEMBER NISHIKI: Whew! Okay. I'm done.

CHAIR MOLINA: Okay. Thank you, Mr. Nishiki. Any other questions before the Chair offers a recommendation?

NOTE: Silence.

CHAIR MOLINA: Okay, Members. Chair will ask for motion to adopt the proposed resolution.

VICE-CHAIR MATEO: Chairman, I move for the adoption of the proposed resolution.

COUNCILMEMBER PONTANILLA: Chairman, I second.

CHAIR MOLINA: Okay. Motion has been made to adopt the proposed resolution by Vice-Chair Mateo and seconded by Member Pontanilla. And, of course, the resolution is entitled Authorizing the Employment of Special Counsel Ortiz & Katano, A Law Corporation, in Michael Magliato, Individually and as Special Administrator of the Estate of Keone Anthony Magliato vs. Forrest...Taniguchi, a/k/a Forest Taniguchi, et al., Civil No. 09-1-0043(3). Members, discussion?

COUNCILMEMBER NISHIKI: Yeah.

CHAIR MOLINA: Mr. Nishiki?

COUNCILMEMBER NISHIKI: Just...just...just for my information. You know, we talk about a amount, a large sum amount, but am I to understand that his per hour charge is \$285?

CHAIR MOLINA: Corporation Counsel?

MS. LUTEY: Thank you. That's typically their charge.

COUNCILMEMBER NISHIKI: Okay.

MS. LUTEY: But in our agreement it's flat fee.

COUNCILMEMBER NISHIKI: Okay.

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NOTE: Silence.

COUNCILMEMBER NISHIKI: . . . And so we will see what the final agreement that is signed reads, Mr. Chairman? Or is this resolution...

CHAIR MOLINA: I think this basically will authorize the...up to \$130,000...expenditure. Right?

UNIDENTIFIED SPEAKER: Uh-huh.

CHAIR MOLINA: I guess that could be provided--

COUNCILMEMBER NISHIKI: At \$285 per hour?

CHAIR MOLINA: I think she said it was a flat fee so I don't know how they're gonna break it down in terms of hours. I guess that could be requested if they wanna—right, Corporation Counsel, they could?

MS. LUTEY: We can provide that--

CHAIR MOLINA: Give us, provide us a breakdown? But--

MS. LUTEY: Yes.

CHAIR MOLINA: But the max is just a 130,000 and it's not going to be paid hourly, as to my understanding. If the Committee would like to request a breakdown from Corporation Counsel for Mr. Ortiz's services, we can.

COUNCILMEMBER NISHIKI: Mr. Chairman?

CHAIR MOLINA: I'm sure they can provide that for us, Mr. Nishiki.

COUNCILMEMBER NISHIKI: Yeah. You know, even if it's a bulk settlement, you know, if...if somebody calculates it, they have down and they show exactly what they...what they figure out their expenses are gonna be.

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER NISHIKI: And I'd like to see that.

CHAIR MOLINA: Okay. So noted. We will ask...Corporation Counsel for...to provide, to have Mr. Ortiz--should this be approved--provide the Committee with a breakdown.

COUNCILMEMBER MEDEIROS: Uh-huh.

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CHAIR MOLINA: Okay?

COUNCILMEMBER NISHIKI: Mr. Chairman?

CHAIR MOLINA: Okay. Mr. Nishiki?

COUNCILMEMBER NISHIKI: The only reason why I say that is because I experienced one a long time ago where people came--and I'm not saying that these...people will do it again. But, you know, they rented a hotel room, first class, brought their secretary, the whole, did the whole thing. And you may have been there, too--

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER NISHIKI: --during that time and it was like a vacation for these people and . . .

CHAIR MOLINA: Yeah.

COUNCILMEMBER NISHIKI: . . . what they poured on to us. So I'd like to see what that is going to be this time. Thank you.

CHAIR MOLINA: Sure. No, I think that's a perfectly. . .reasonable request. We wanna make sure that our public dollars are expended appropriately. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, I...I have a question that I wanted to ask here is, in reading through the material—and I can't locate it again—but I...I remember understanding that when this complaint was initially filed or considered the County wasn't a part of it. It was added later on. Now is there some reason that that happened in representing the Plaintiff that the County was brought into the case after the initial consideration?

CHAIR MOLINA: Ms. Lutey?

MS. LUTEY: I assume it's because we're the deep pocket.

COUNCILMEMBER MEDEIROS: Okay. I wasn't gonna say that but . . .*(chuckles)*. . . okay. And then finally, if this resolution isn't approved, then Corp. Counsel would have to represent us? Then what happens to the time-sensitivity?

MS. LUTEY: If...that's actually—if we're gonna get to that, I would like to go into Executive Session--

COUNCILMEMBER MEDEIROS: Okay.

MS. LUTEY: --because that, I think, is an issue of manpower that...

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COUNCILMEMBER MEDEIROS: Okay. Well, I'll...I'll leave that for the Chairman to decide on. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Members, any other questions before the Chair calls for the vote?

COUNCILMEMBER BAISA: Ready.

CHAIR MOLINA: Okay, Members, all those in favor, signify by saying, "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay, Chair marks it with eight "ayes" with one excusal, Member Victorino. The motion passes.

VOTE: AYES: Councilmembers Baisa, Johnson, Kaho'ohalahala, Medeiros, Nishiki, Pontanilla, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Victorino.

MOTION CARRIED.

ACTION: ADOPTION of resolution.

ITEM NO. 1(18): LITIGATION MATTERS (SPECIAL COUNSEL AUTHORIZATION: CALEB J. SANDERS VS. COUNTY OF MAUI, ET AL.; CIVIL NO. 09 1-0287(3)) (C.C. No. 09-14)

CHAIR MOLINA: Okay, Members, moving on to our next item, Committee of the Whole Item 1(18), Special Counsel Authorization, Caleb J. Sanders vs. County of Maui, et al., Civil No. 09-1-0287(3). The Committee is in receipt of a correspondence dated September 21st, 2009, from the Corporation Counsel's Office, requesting consideration of a proposed resolution. . .which was a proposed resolution entitled, which I mentioned earlier, Authorizing Caleb J. Sanders vs. County of Maui, et al. The complaint alleges that on April 25th, 2007, because of the County's negligence, the Plaintiff suffered injuries from a fall at Kalama Park in Kihei, Maui. The purpose of the proposed resolution is to authorize the employment of Ortiz & Katano, a law corporation, as special counsel in the case for a total compensation of \$50,000. Now once again, the

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Chair will recognize Ms. Lutey. And joining us as well will be the Director of Parks and Recreation, Ms. Tamara Horcajo. Ms. Lutey?

MS. LUTEY: Thank you. This incident happened on April 24th— or I'm sorry, 25th, 2007. And the allegations are that Mr. Sanders was at Kalama Beach Park when he slipped and fell on a boat ramp that he alleges is maintained and controlled by the County. In that slip and fall he broke a femur, claims to have incurred approximately \$80,000 in outstanding medical expenses. And in this matter, I am again asking for outside counsel of...with the same firm we've previously discussed, Ortiz & Katano, for a total compensation of \$50,000. Like the prior matter, in this case I have provided for \$5,000 of travel expenses. The flat fee amount that Mr. Ortiz would work off of is \$45,000. That would be his total compensation to take this matter first to arbitration and then through trial if arbitration does not resolve this matter. And I think we've discussed quite a bit about Mr. Ortiz and Katano's firm. If you would like to discuss more about that, I am open for discussion.

CHAIR MOLINA: Okay. Thank you, Ms. Lutey. Members, any questions with regards to the request for a \$50,000 compensation for outside counsel--

COUNCILMEMBER MEDEIROS: Mister--

CHAIR MOLINA: --as well as any questions for the Department of Parks as well? Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yeah, mahalo. Before I ask any question, I just wanna ask a procedural question. In the previous case, even though we're done with that . . . *(laughter)*. . . I had intention to ask that the Director of Public Works . . . *(laughter)*. . . some questions.

CHAIR MOLINA: Oh.

COUNCILMEMBER MEDEIROS: But we were only with the...the Corporation Counsel. I thought he was gonna give comments first and then we could ask.

CHAIR MOLINA: Oh.

COUNCILMEMBER MEDEIROS: So I just wanna be sure in this time --

CHAIR MOLINA: Yeah, sure.

COUNCILMEMBER MEDEIROS: --that we're gonna...I'm gonna know when I can ask the Director of Parks.

CHAIR MOLINA: Oh, okay. I'm...I'm sorry. What...what we can do...if you went through the Committee Staff, we can forward any questions you have for Public Works as well prior to, you know, first reading on the County Council for the previous matter as well--

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COUNCILMEMBER MEDEIROS: Yeah, okay.

CHAIR MOLINA: --Mr. Medeiros.

COUNCILMEMBER PONTANILLA: Chairman?

CHAIR MOLINA: So for...

COUNCILMEMBER MEDEIROS: So do you want --

CHAIR MOLINA: Yeah. For now...

COUNCILMEMBER MEDEIROS: --the Director to give comments first--

CHAIR MOLINA: Uh--

COUNCILMEMBER MEDEIROS: --before we ask or just ask--

CHAIR MOLINA: Well--

COUNCILMEMBER MEDEIROS: --Corp. Counsel?

CHAIR MOLINA: Well, we'll just go...take it...if you have...we'll start with Corp. Counsel.
If you, any of you wanna chime in with an additional question for Parks, the Chair is open.

COUNCILMEMBER MEDEIROS: Okay. I...I...I have some questions for the Director of Parks when you want me to ask those.

CHAIR MOLINA: Okay, okay. Well, let me ask--any questions for Corporation Counsel on her opening remarks first?

COUNCILMEMBER PONTANILLA: I, I--

CHAIR MOLINA: If not, we'll go to--

COUNCILMEMBER PONTANILLA: I have--

CHAIR MOLINA: --Parks Department.

COUNCILMEMBER PONTANILLA: --a question for you.

CHAIR MOLINA: Corporation, for...question for Corp. Counsel?

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COUNCILMEMBER PONTANILLA: No, for you--

CHAIR MOLINA: Okay.

COUNCILMEMBER PONTANILLA: --as the Chairman.

CHAIR MOLINA: Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. I...I know the first one we talked about the law firm --

CHAIR MOLINA: Right.

COUNCILMEMBER PONTANILLA: --and not the case.

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER PONTANILLA: In this matter...and I'm looking at this as, you know, hiring this law firm and not the...the incident itself.

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER PONTANILLA: I'm hoping that—I *know* it's gonna come back to us again—

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER PONTANILLA: --and at that time, you know, ask the proper questions, probably in Executive Meeting. So for me, Chairman, I'm looking at both of 'em as hiring this particular law firm and not going into the details of the injury itself. Thank you.

CHAIR MOLINA: Okay. Yeah, and Members, again, that, reiterating my earlier suggestion to the Committee--although I cannot, you know, stop you from getting into. . .asking some *broad* questions about the case itself, but if you want...if you have questions that may require Executive Session, again, it may, you know, depending on how much time you have, but the Chair's preference would be the Corp. Counsel, they will have to come back if there is a settlement proposal. At that point, that juncture, may be the better time where we can get into more details about the case itself. But again based on what's on the agenda, the consideration is for the \$50,000 appropriation for outside counsel. So again, Members, and we...as a courtesy, we do invite the departments here to answer any questions that may not require Executive Session but just as a, you know, a courtesy. 'Cause, you know, one never knows when any Member may have a question for the Department itself. So that's the purpose for having the directors here. So...

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MS. LUTEY: Can I just add something?

CHAIR MOLINA: Yes, Ms. Lutey.

MS. LUTEY: Thank you, Chairman. The other thing is that you might not have to wait that long, because I would imagine at some point Mr. Krueger's going to be issuing a demand. When we get a demand from them saying they want a certain amount of money, then we will come down here and provide you with all of the information that they've provided us. And typically at that point we'll have at least a better hold on what this case is about. We'll have some medical records by then. Some discovery should've been done and that type of thing. So you will have that opportunity.

CHAIR MOLINA: Uh-huh. And plus in addition, you'll have that...I'm sure a representative from that law firm here --

MS. LUTEY: Yes.

CHAIR MOLINA: --to...to respond to any questions as well. So that might be the better time to get into more details about the case itself. But, again, the Chair's preference is if you could confine your questions more for the request for special counsel and a monetary request being made as well. So, but again, if you have some basic broad questions that you need answered then the Chair's open to that. So Mr. Medeiros, any additional?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. And, yeah, in listening to your comments on it, I...I...I think if I ask questions I'll direct it to Corp. Counsel, because then they can determine . . . *(laughter)* . . . if it's something allowable in open session or not. So I...I won't get the Director of Parks, you know, in a tough bind about whether she can answer the question or not. And mine would have to...my questions would have to do with the particulars of the case. So I don't know if that should be asked now.

CHAIR MOLINA: Uh--

COUNCILMEMBER MEDEIROS: Or are we considering...

CHAIR MOLINA: Yeah. Well, the...the Chair's preference, if you do have...a lot of detailed questions that if you could wait until we have a formal settlement proposed. And at that time, I think Corp. Counsel will have more information to...to give you as well that they could better answer your questions at *that* point.

COUNCILMEMBER MEDEIROS: Uh-huh. Uh-huh.

CHAIR MOLINA: But, however, if you just have a couple of basic questions that they could answer at this point, the Chair's open to that. But at the same time, please keep in mind that, you know, I'd...I'd prefer that we keep our questions confined more towards the proposal--

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COUNCILMEMBER MEDEIROS: Right.

CHAIR MOLINA: --monetary--

COUNCILMEMBER MEDEIROS: Right.

CHAIR MOLINA: --request for special counsel.

COUNCILMEMBER MEDEIROS: Yeah. Okay, Mr. Chairman, in that...in that regard, then, I'll yield at this time.

CHAIR MOLINA: Okay. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah, I'm particularly disturbed at some of the statements being made this morning. Number one, I'm not sold, Mr. Chairman, that our Corporation Counsel cannot defend us. Okay, I think we've got good people in...in...in this office. I'm not sold until we go to perhaps to Executive Session, if you're concerned about it, to listen. As Mr. Medeiros said, what happened? Because if the case really seems like we feel that...hey, we've got attorneys, man. You know, I think we've got damn good ones, you know. And...and...and I had this problem the last time when we...we constantly went out to go and hire people, taxpayers' money again. You know, and...and...and until I'm told, hey, you know, we...we don't feel like we can defend this case. But I wanna hear the reasons why. This seems to me, you know, pretty simple. But what, you guys are afraid of Krueger? You guys have faced Krueger before and *won* before. So this is something that I feel, Mr. Chairman, if we gotta go into the Executive Session and...and find out about where they slipped and everything else as I read this thing--you know, where's...where's this ramp you're talking about? You know, I wanna know all these questions because it's something that, you know, I feel our attorneys can have the expertise to do it. Man, we've got people like Jane Lovell that's *awesome*, you know, and...and...and...and many more probably. But for us to just sit down and kowtow and...and say that we...we...we don't feel—I don't know what the reason is. I...I'm...I'm concerned. You know?

CHAIR MOLINA: Okay. Thank you, Mr. Nishiki.

COUNCILMEMBER NISHIKI: So, you know, if I...when I read the...the claim for injury by Mr. Lawson, I don't know what the—how to get other Members to look at it. I guess it's right after the resolution. It's the third page...fourth page from the back again. You know, it just seems like it's pretty much of a simple thing. But unless the Corporation Counsel wants to go into Executive Session, I...I...I wanna know more about this fall and, you know, why this request is so high. I don't know. I didn't see where this guy got any kind of...concussion or was paralyzed or anything. I don't see anything like that in it. So I wanna know what...what...what the whole thing of this case is, Mr. Chairman.

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CHAIR MOLINA: Okay. Thank you, Mr. Nishiki. Well, Members, it is your prerogative. I believe if a Member from the floor would like to request Executive Session I think they may do that. And, but you do need six votes—am I correct, Staff—to go into, two-thirds vote to go into Executive Session?

MS. HAMMAN: Yes, that's correct.

CHAIR MOLINA: Okay. Members, if that is your intention—well, first of all, any other questions before the Chair will open the floor for a consideration of Executive Session?

COUNCILMEMBER NISHIKI: Well, yeah--

CHAIR MOLINA: Mr. Nishiki?

COUNCILMEMBER NISHIKI: --I...I wanna ask on the floor. Why, why do we need to go and hire someone? This seems like something that our attorneys can handle.

CHAIR MOLINA: Ms. Lutey?

MS. LUTEY: I...I think that's something that would best be discussed in Executive Session.

COUNCILMEMBER NISHIKI: ...*(sigh)*...

NOTE: Silence.

MS. LUTEY: ... I think that if we get in Executive Session, it'll be very clear to you.

COUNCILMEMBER NISHIKI: Why do we need to go into Executive Session? They say that they can't handle the case. They got too many people or what? They're not expert? Fine.

MS. LUTEY: I...I think that there's a bigger issue involved in that. I...I really think this is the wrong...*(inaudible)*...

CHAIR MOLINA: All right. Mr. Nishiki, I guess the Corporation Counsel's having difficulty explaining in open session so that may be a consideration for us to go into Executive. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. I think Ms. Lutey answered my question because I understand that maybe two years ago we had a similar case--I don't know if it's settled or not--in the same area. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Members, Chair's gonna call just a short recess. Procedural question to confer with Staff. So, Members, please stay in the Chambers. Recess, subject to call of the Chair. ...*(gavel)*...

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RECESS: 9:49 a.m.

RECONVENE: 9:53 a.m.

CHAIR MOLINA: . . .(*gavel*). . . Committee of the Whole meeting for November 3rd, 2009 is now back in session. Members, thank you for the opportunity for the Chair to confer with Staff on a procedural matter related to Committee of the Whole Item 1(18). Members, there has been some discussion with regards to Executive Session as it relates to Committee of the Whole Item 1(18). The Chair will open the floor to any Member who would like to propose Executive Session for this particular matter. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Mr. Chair, move to go into Executive Session in regards to Committee of the Whole agenda Item 1(18), Caleb Sanders vs. County of Maui, et al.

COUNCILMEMBER MEDEIROS: Mr. Chair, I second the motion.

CHAIR MOLINA: Okay. Motion has been made to go into Executive Session for Committee of the Whole Item 1(18) by Member Nishiki, and seconded by Member Medeiros. And again we...we will state for the record this is 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. Members, any discussion on the motion to go into Executive Session? Mr. Nishiki?

COUNCILMEMBER NISHIKI: Just the exact statement from our Corporation Counsel--I'm unable to answer your question that you asked in regards to why they can't settle this case using our attorneys. There's, I think, a good reason to find out why they cannot. And furthermore about what really occurred from the Parks Department in regards to this slippage on the ramp.

CHAIR MOLINA: Okay.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR MOLINA: Thank you, Mr. Nishiki. Committee Members, any other discussion as it relates to the motion to go into Executive Session? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, I...I'm, you know, seconding the motion because in reading the documents made available to us in our binders--and I understand that not all the information can be *made* available to us because of the sensitivity of the information--the information is very *general*. And I think for us to ask more detailed questions, we would have to be in Executive Session. So that's my reason for supporting the motion. Mahalo, Mr. Chairman.

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CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Yeah. I can support the motion based on what...Mr. Nishiki had asked the questions of our Prosecuting Attorney [*sic*] in regards to, you know, cannot answer in open session. But, again, you know, I...I just wanna point out that the agenda is authorizing employment of Special Counsel Ortiz & Katano, A Law Corporation, in Caleb J. Sanders vs. County of Maui, et al., Civil No. 09-1-0287(3). So as far as the response from the Prosecuting Attorney [*sic*] regarding the question of Mr. Nishiki, I can support that. Thank you.

CHAIR MOLINA: Okay. All right, thank you, Mr. Pontanilla. Member Baisa?

COUNCILMEMBER BAISA: Oh, thank you very much, Chair. I will not be supporting the motion. I think that the timing of an Executive Session will be later when we have an...some kind of an offer of a settlement. We'll want to know all the details. But at this time, I'm willing to rely on the recommendation from Corp. Counsel.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Member Johnson?

COUNCILMEMBER JOHNSON: Yes. I...I think at this point, because we're just looking at the special counsel, I...I have no problem with any Member requesting additional details if they want to specifically ask. Once the attorney has been retained and as Ms. Lutey said, once they have a chance to go through the case they will be able to better answer our questions and respond as to what's going on. And my understanding is that we're maxed out as far as, I guess, some of the expertise that we have available to us at the County. And Ms. Lutey is not a prosecutor...*(laughter)*... She is defense...*(laughter)*... I just want to set that straight. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Committee Members, any other discussion as it relates to the motion to go into Executive Session? Okay, seeing none, Chair will then call for the vote for Executive Session. And keep in mind, six votes are needed. And Chair has some reservations of going into Executive Session at...at this point. And, again, at a later time when they can come by, if there is a settlement proposed then we can get into more details and so forth. But, anyway, be it as it may, Chair will call for the vote. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. I...I...I wanna speak to this motion just because I've heard some of your—those of you that have spoken up—reasons. My reason...is...maybe the fact the we don't need to hire an outside attorney. My reason is that we need to be told why we can't hire an outside attorney. Your reasons are that you wanna hire and spend taxpayers' money without really giving us the opportunity to hear the reason why not. So I think it's not fair that those questions go unanswered, because with this resolution you're giving permission to go and hire an outside attorney. My question is, you do not have *faith* in our attorneys? And I'd like to know the reason why

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we wanna spend again taxpayers' money for this defense. Some of you seem to know the answer. And I'm surprised that we've not been told that. Thank you.

CHAIR MOLINA: Thank you, Mr. Nishiki. Members, any other questions before the Chair calls for the vote? Mr. Pontanilla, followed by Member Medeiros.

COUNCILMEMBER PONTANILLA: Thank you. For my last comment, you know, I do have all the faith in our attorneys. I don't know if manpower is an issue with the number of cases that we do have on hand that, you know, special litigation...special attorneys need to be hired. So for me, you know, I...I look at whenever they come to us, you know, it's more expertise plus manpower requirements that not...not available by the Department. So, but again, you know, Mr. Nishiki's question in regards to Corporate...to the defense attorney that we have over here, I can support, you know, having that portion answered by Ms. Lutey. But, again, you know, we do have good attorneys. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman, yeah, for my second opportunity. In supporting this, the resolution is to *hire* special counsel from the outside. Now if we wait to ask our questions at a different point on...of this procedure then the answers that we get will not affect our decision on if we should *hire* special counsel. I think the questions need to be asked *now* and not later, because later is, means we have hired them and then we're just talking about the details of...of the case at that point. So I am for being able to ask the questions in Executive Session, so it can help us...give us the information for us to make decisions on the merits of hiring special counsel from the outside. Mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. And, Members, keep in mind that whether this matter makes it to Executive Session in Committee or not...ultimately the Chair's hopeful that some vote will be taken as it relates to this matter. This still has to go before the full Council, too. So we're far from out of the woods yet. And hopefully by the time it reaches—if it does reach the full Council, we have nine members on board. And at that point, if another request for Executive Session is made, then so be it. That can be done as well, if I'm correct, although preferably we like to keep matters in Committee as much as possible. But this is still, you know, far from out of the woods yet so, and obviously if there's a settlement proposed in the future...needless to say Corporation Counsel will have to come back. They may be more fully prepared to answer some of your questions, and at that point, we can have a very long and hopefully productive Executive Session on that matter. But anyway--Member Johnson?

COUNCILMEMBER JOHNSON: Yes, I just wanted to clarify that when we go into Executive Session, I know that because of the posting there's certain constraints that we have as to the parameters of what's being posted. So I've heard some of the questions. Some of them, you know, relate to other things which may not necessarily be posted. And I just wanna be very clear about what we are confined to when we discuss this in Executive

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Session. So if we could have Staff or, you know, even Ms. Lutey if she's aware of, you know, she knows what the ordinances are--what are we actually limited to that we can discuss? Because if we can't get to the questions . . . *(laughter)*. . . if it's not something that is within the purview of what's posted, I just wanna make sure that we're not going and then we get told then, well no, you can't ask that. So...

CHAIR MOLINA: Uh-huh. Thank you, Member Johnson. That's a reasonable...request to make. Staff or Corporation Counsel, can you respond to Member Johnson's question? I guess, based on what is posted on the agenda and as it relates to Sunshine Law, are you able to comment at this point?

MS. HAMMAN: Well, Mr. Chair, I believe anytime you go into Executive Session it's for the very limited purposes within Chapter 92 of the Hawaii Revised Statutes, the Sunshine Law. And in this particular case I think the section cited was 92-5(a)(4).

COUNCILMEMBER JOHNSON: . . . *(laughter)*. . .

CHAIR MOLINA: Member Johnson, does that answer your question . . . *(laughter)*. . . ?

COUNCILMEMBER JOHNSON: That...not really, you know, because I just, you know, I know...I know . . . *(laughter)*. . . what that law says. But I just wanna know if the parameters in which we're discussing this particular item are going to be able to fully *cover* some of the subjects that we have touched upon in open session. That's my only question. And I guess, Mr. Chair, what you'll have to do is make the determination based on the vote as to whether it's a...question that falls within this...parameter or not.

CHAIR MOLINA: Yeah.

COUNCILMEMBER JOHNSON: So, I'm...I'm...

CHAIR MOLINA: So, Member Johnson, if I can hopefully not muddle things more--

COUNCILMEMBER JOHNSON: . . . *(laughter)*. . .

CHAIR MOLINA: --what you're wanting to know is basically with the issue that was brought up by, if I may say so, Mr. Nishiki --

COUNCILMEMBER JOHNSON: Right.

CHAIR MOLINA: --with regards as to why Corporation Counsel needs to go into Executive Session--

COUNCILMEMBER JOHNSON: Right.

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CHAIR MOLINA: --and some of the other questions brought up. . .does that require a posting of that or --

COUNCILMEMBER JOHNSON: Yeah, are we--

CHAIR MOLINA: --does that meet the parameters?

UNIDENTIFIED SPEAKER: . . .*(Chuckles)*. . .

COUNCILMEMBER _____: . . .*(inaudible)*. . .

CHAIR MOLINA: I mean...I guess...I guess that's maybe...maybe the question, what you're asking, Member Johnson?

COUNCILMEMBER JOHNSON: Yeah. And...and all I'm asking, Mr. Chair, is what we have posted today and what we discuss in Executive Session, are we constrained at all by that, by the subject matter? 'Cause we've been all over the map today--both in this and an earlier issue. I just wanna make sure that we...we are very clear about what we can and cannot discuss before we do this.

CHAIR MOLINA: Corp. Counsel or Staff?

MS. LUTEY: I...I think what I'm hearing you say, Councilmember Johnson, is you're asking whether or not they can actually discuss or get into a discussion over the *facts* of the case as opposed to why we're hiring outside counsel?

COUNCILMEMBER JOHNSON: That's part of it. But also with regard to staffing and other issues within your own Department which would ordinarily come up in Budget. Or, you know, like let's say, if we're reviewing your office in general and how these cases all stack up. You know, because it's a wider, broader kind of discussion that we're having about the capabilities, you know, with regard to your staffing and other...other situation, I just want to make sure that it's not a problem.

MS. LUTEY: I...I don't think that's...I don't think there's a problem with addressing the reasons for retention of outside counsel. I'm not sure if it would be appropriate and I defer to Council Staff on whether or not the facts of this matter would be or not, because that's really not what we came down here for.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: Right.

MS. LUTEY: But I would defer on that.

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MS. HAMMAN: And I would just say, I think as it relates to the issue of...special counsel. So as far as . . .(Change to Tape 2A). . .

COUNCILMEMBER JOHNSON: That's fine.

CHAIR MOLINA: Okay, Member Johnson. Any other questions before the Chair calls for the vote for Executive Session? Okay. Seeing none, all those in favor of going to Executive Session for Committee of the Whole Item 1(18) signify by saying "aye".

COUNCILMEMBER MEDEIROS: Aye.

COUNCILMEMBER NISHIKI: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER BAISA: No.

COUNCILMEMBER JOHNSON: No.

CHAIR MOLINA: Chair votes "no".

COUNCILMEMBER: _____: . . .(inaudible). . .

CHAIR MOLINA: We have five "ayes"; and three "noes", Baisa, Johnson, and Molina. Staff, am I correct? And one excusal, Member Victorino. The six votes for Executive Session is then not achieved.

VOTE: AYES: Councilmembers Kaho'ohalahala, Medeiros, Nishiki, Pontanilla, and Vice-Chair Mateo.

NOES: Councilmembers Baisa, Johnson, and Chair Molina.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Victorino.

MOTION FAILED.

MS. HAMMAN: That's correct, Mr. Chair.

CHAIR MOLINA: Okay. Thank you. The motion fails to go into Executive Session. Members, the floor is still open for additional questions regarding Committee of the Whole Item 1(18) prior to the Chair making a recommendation.

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. . . Okay, seeing none, Chair will recommend the adoption of the proposed resolution entitled Authorizing the Employment of Special Counsel Ortiz & Katano, A Law Corporation, in Caleb J. Sanders vs. County of Maui, et al., Civil No. 09-1-0287(3).

VICE-CHAIR MATEO: Chairman, I move for the adoption of the proposed resolution as you have so read.

COUNCILMEMBER PONTANILLA: Mr. Chairman, I second.

CHAIR MOLINA: Okay, the motion has been made by Committee Vice-Chair Mateo and seconded by Committee Member Pontanilla to adopt the...adopt the proposed resolution. Members, discussion? Mr. Nishiki?

COUNCILMEMBER NISHIKI: . . .*(gasp)*. . . Mr. Chairman. . .I guess I'm not surprised. But I think that the general public after listening to some of our concerns is surprised that . . .*(laughter)*. . . my fellow Members in this Council would not concur to go into Executive Session and find out the very reasons for the concerns that some of us may have had and...and want to have a discussion on it. It bothers me. You know, for me in...in...in the years that I've served on this Council--I think, you know, whether it be one Member or two Members if they've got legitimate concerns, you know, sometimes you can learn by this. And, you know, to not have the ability to discuss these sensitive items bothers me. You know, I thought in the spirit of cooperation we would at least have some sort of comradeship when it comes to . . .*(laughter)*. . . working towards resolving circumstances. And...and...and I tell you right now it saddens me to see no reason why a request that we made. . .cannot be allowed. I would never do it to any of you even if you were one person in that...requesting it. I would never do it because I feel that you as one voting Member should be given...that opportunity. And so again, not my disgust, my...my...my...my sadness that this has occurred. And again, I cannot be supporting using taxpayers' money again without that opportunity to find out more about the case, about what the reasoning is behind having to go and hire somebody when I feel that we have people within the Corporation Counsel's Office that can do this type of work. They've gone to law school. We've...we've dealt with this kind of situations. And. . .again I have. . .fully. . .the. . .confidence that these people have. Finally, *finally*, using taxpayers' money in...in time of austerity...you guys always nickel and dime and...and...and...and talk about watching how we spend our hard-working taxpayers' money. For me to not fully have the opportunity to get to this point leaves me only one alternative. You know, I've been taught many times, Wayne, if you don't know then don't do it. Vote "no". And I have to follow that same circumstance because some of you stop me from having that opportunity as your fellow Council Member. So, again, disappointment, sadness and, you know, I'll move on. But I'm...I'm...I'm real disappointed. Thank you. And I'm voting "no" to this, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Nishiki. Mr. Medeiros, followed by Member Johnson.

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COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. You know, I join my colleague from South Maui with the same sentiments. I'm sure most of my colleagues have gotten e-mail, telephone calls or even conversations at the local supermarket or drugstore regarding our constituents' reactions to watching our meetings on Akaku. And many times I get the comments and remarks that they appreciate the questions I ask, because it's questions they would want to have asked but didn't have the opportunity to. So I think when we take away the opportunity for an Executive Session, it takes away our duties and responsibilities as elected officials to ask the questions on behalf of our constituents. So it is disappointing that we didn't get the needed votes to go into Executive Session. So I'm asked to make a decision with questions in my mind that are unanswered. And I think to take that opportunity away from our taxpayers who pay the bills through our elected officials I think shortchanges our constituents and taxpayers. So I, too, will vote "no", not because of the merits of the resolution but because I didn't have the opportunity to ask the questions I wanted to in Executive Session. So mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Member Johnson?

COUNCILMEMBER JOHNSON: Yes. And...and certainly I understand the concerns raised by both Member Nishiki and Member Medeiros. And I respect their right to know. Always when we have information that is either unavailable to us or cannot be obtained in any other way except through a Council meeting, I would agree with what they're saying. Ms. Lutey was kind enough to answer the questions that I asked, that I posed, because many times we have issues that are before us where we do have questions. She was kind enough to share that information and it's my understanding that as a general rule when they have things that are unusual that do come before us, each one of us is afforded an opportunity--albeit it may not be in this particular session. We still have the right to ask those questions. Any one of us can ask those questions. And that opportunity was afforded, at least from my understanding, to each one of us. Whether we choose to avail ourselves of that or not because of our personal style or choice, that's up to us. I chose to do that because we have so many things on our docket and that's the only reason why. We just have only—and...and this is my last term, you know—so I have so much that I need to get done and ordinarily with special counsel there's always justification as to why we're taking a particular route. I have enough faith and *confidence* in our Corporation Counsel that, when they do need that expertise for *whatever* reason, they are not going to frivolously utilize taxpayer dollars in a way that would be disrespectful to our constituents. And they are *not* going to do it unless there is a very good and a sound reason. And so it's with that faith and trust and confidence and with the additional information that was afforded, I...I will be supporting this, because I believe that any one of us at any time can question--whether it's inside a meeting or outside a meeting. It doesn't make a difference. I chose, in this particular case, to take that route. So I just, you know, and I appreciate Ms. Lutey extending that invitation and, of course, justifying why that was something that was necessary. So I appreciate it. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Ms. Johnson. Ms. Baisa?

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COUNCILMEMBER BAISA: Yes, Chair. Thank you for the opportunity to explain. You know, again with much respect for my colleagues, I did what I did because I, too, had the opportunity to ask my questions. And Ms. Lutey graciously answered them so there was no need. And based on our conversation. . .I did not think it was necessary to go into Executive Session. Thank you.

CHAIR MOLINA: Thank you, Ms. Baisa. Committee Members, any other questions before the Chair...the Chair calls for the vote on Committee of the Whole 1(18)? Okay, Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you, Chairman. You know, I too have met with Ms. Lutey before this meeting in regards to some of the questions that I had in regards to what is on your agenda this morning. And she kinda explained to me, you know, what was transpiring. So I'll be supporting this...this motion. Thank you.

CHAIR MOLINA: Thank you, Mr. Pontanilla. Mr. Nishiki?

COUNCILMEMBER NISHIKI: I'll...I'll...I'll...I'll...I'll speak in general terms because I've heard some statements in...in defense. You know, that's the reason why we've got the form of government that we have--the legislative, the executive, and the judicial. And that's the reason why. . .we have these divisions--is because you have the check and the balance. And you've seen it nationally. You've seen it Statewide. You've seen it. . .locally. And it's not that I don't *trust* what is being said. I think that people have entrusted need to ask those questions prior to making a good decision. And today that ability for me to question in Executive Session was ripped away, taken away. And that was the action that was done. And as I have said before and I'll say it again, and listen, I will never take away that opportunity from any of you. . .

. . . that opportunity to be able to ask those sensitive questions that were not allowed in open session. And that is the reason why we have the ability to go into it. And you took that away from me. And because of that, as I said, now I don't have the information to support this motion. So my alternative is, again, to vote "no". Thank you, Mr. Chairman and my fellow Members.

CHAIR MOLINA: Thank you, Mr. Nishiki. Chair is gonna reserve the right to speak last on this issue. Members, this is one of the most difficult votes I've taken. As long as I've been on the Council, I don't know...if there ever was a denial of Executive Session that I can recall. But again the...the door is not closed for any Members' request for additional information should this go on to the full Council. A request for Executive Session can be made. Hopefully we'll have all nine members present for the Council meeting if the need is a must for some of you to go into Executive Session to find out why Corporation Counsel has suggested that the issue brought up by Mr. Nishiki go into Executive Session. It's also about trusting in your Corporation Counsel. If we can't trust our Corporation Counsel then who can we trust? I mean, let's face it. Litigation is going to

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be around with us forever and...and it costs money. And sometimes you may have to spend a little money to save money over the long run. And I know as...as unpleasant as that may sound but that's the realities of what we have to face. And in terms of getting information for your constituents, one, if you go into Executive Session, you are not bound by law to share any of that information that you go into Executive Session with. Okay, so let me make that real clear. And I'm sure all of us wanna do the best for our constituency, but at the same time when we were elected to the County Council we swore to uphold the Constitution to protect our County. That's another major part of our responsibility, Members. So and...and just to sum it up, you know, again, we all have an opportunity to seek the answers we need whether it be through Executive Session at the next level, the Council level, or on our own to confer with Corporation Counsel who has made themselves available to answer any of your questions. So I'll leave it at that, Members. The Chair will call for the vote for Committee of the Whole Item 1(18). All those in favor, signify by saying "aye".

COUNCILMEMBER BAISA: Aye.

COUNCILMEMBER PONTANILLA: Aye.

COUNCILMEMBER JOHNSON: Aye.

CHAIR MOLINA: Aye.

VICE-CHAIR MATEO: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER NISHIKI: No.

COUNCILMEMBER MEDEIROS: No.

COUNCILMEMBER KAHO`OHALAHALA: No.

CHAIR MOLINA: Okay, we have one, two, three, four, five "ayes"--Molina, Mateo, Baisa, Johnson and Pontanilla. And three "noes"--Kaho'ohalahala, Medeiros and Nishiki. And one excusal. Am I correct with that summary, Staff?

MS. HAMMAN: Yes, you are.

CHAIR MOLINA: Okay. All right, the measure passes by a vote of five to three with one excusal.

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VOTE: AYES: Councilmembers Baisa, Johnson, Pontanilla, Vice-Chair Mateo, and Chair Molina.

NOES: Councilmembers Kahō`ohalahala, Nishiki and Medeiros.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

COUNCILMEMBER NISHIKI: Short recess.

CHAIR MOLINA: Thank you. Thank you, Mr. Nishiki, you took the words right out of my mouth. Members, we'll take our morning recess. Ten minutes? Fifteen minutes, Members? What is your preference?

COUNCILMEMBER JOHNSON Sure.

CHAIR MOLINA: Shall we go 15? All right, I think we need a little longer recess. It's 10:25. Members, the Chair will ask that you return to the Chambers at 10:40. The Committee of the Whole meeting for November 3, 2009 is now in recess. . . .(gavel). . .

RECESS: 10:25 a.m.

RECONVENE: 10:42 a.m.

CHAIR MOLINA: . . .(gavel). . . The Committee of the Whole meeting for November 3, 2009 is now back in session. It's 10:42. Members, we have two more items on our agenda.

ITEM NO. 1(19): LITIGATION MATTERS (SPECIAL COUNSEL ADDITIONAL COMPENSATION: IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN THE STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS ON BEHALF OF MARTELL IRISH AND DEREK KAAUKAI, GRIEVANTS, AND COUNTY OF MAUI, EMPLOYER; SHOPO NOS. M-2005-008 AND M-2005-009) (C.C. No. 09-14)

CHAIR MOLINA: We have first Committee of the Whole Item 1(19) Litigation Matters Special Counsel Additional Compensation: In the Matter of the Grievance Arbitration Between the State of Hawaii Organization of Police Officers on Behalf of Martell Irish and Derek Kaaukai, Grievants, and County of Maui, Employer, SHOPO Nos. M-2005-008 and M-2005-009. The Committee is in receipt of a correspondence dated September 21st,

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2009, from the Corporation Counsel's Office, requesting consideration of the proposed resolution which is...I've already...pretty much given you the title for. And the arbitration involves grievances challenging the terminations of Martell Irish and Derek Kaaukai as police officers. The purpose of the proposed resolution is to authorize \$1,743.72 in additional compensation for Ortiz & Katano, A Law Corporation, as special counsel in the case for a total compensation \$26,743.72. And at this point, the Chair will turn matters over once again to Corporation Counsel Lutey for additional comment on this request.

MS. LUTEY: Thank you, Chairman Molina. This matter was handled by Ortiz & Katano's firm for a flat fee arrangement of \$25,000. I am here today to request the additional compensation of \$1,743.72 which is the travel costs that were...that was incurred by Mr. Ortiz in traveling to Maui for the arbitration on numerous occasions as well as witness preparation and hotel.

CHAIR MOLINA: Okay. Thank you, Ms. Lutey. Committee Members, questions? Mr. Mateo?

VICE-CHAIR MATEO: Chairman, thank you. Ms. Lutey, thank you. So the...the additional request, the travel and et cetera, was not inclusive on the original \$25,000 that was earmarked for the hire?

MS. LUTEY: No, Council Chair Mateo. That was actually a mistake on my part. I knew that these costs were compensable and thought that they would be covered outside of that. That is why today on the other matters I've had, I've given a cushion. I did not do that cushion in this one and that's why I'm back here to seek Council approval for this additional compensation.

VICE-CHAIR MATEO: Okay. And at this particular point in time, that is the only amount of monies that's...that's...being requested at this point?

MS. LUTEY: Yes. This matter has actually finished. We're now in briefing and that's being done by my office to...to finish this last part of this arbitration. But Mr. Ortiz's role in that arbitration has been completed.

VICE-CHAIR MATEO: Okay. And the additional 1,743.72 being requested, this closes this out altogether at this point?

MS. LUTEY: Yes, it would.

VICE-CHAIR MATEO: Thank you. Thank you, Mr. Chairman.

MS. LUTEY: Thank you.

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CHAIR MOLINA: Thank you, Mr. Mateo. Committee Members, any other questions? The Chair would just ask Ms. Lutey if...I guess you can provide the Committee...a breakdown of the expenses as...as a courtesy to the other Members? If that can be made possible?

MS. LUTEY: We could do that.

CHAIR MOLINA: All right. Okay, thank you. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Ms. Lutey, so the arbitration is not finalized yet?

MS. LUTEY: The arbitration itself has been completed.

COUNCILMEMBER MEDEIROS: Oh.

MS. LUTEY: But we are now doing *closing* briefs...and that's what the arbitrator will review before making a decision and issuing an order.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Ms. Lutey. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Members, any other questions before the Chair makes a recommendation?

... Okay. Seeing none, the Chair will ask for a motion to adopt the proposed resolution Authorizing Additional Compensation for Special Counsel Ortiz & Katano, A Law Corporation, In the Matter of the Grievance Arbitration Between the State of Hawaii Organization of Police Officers on Behalf of Martell Irish and Derek Kaaukai, Grievants, and County of Maui, Employer; SHOPO Nos. M-2005-008 and M-2005-009. And again, the compensation is for \$1,743.72.

VICE-CHAIR MATEO: Chairman, I move for the adoption of the proposed resolution as you have so recognized.

COUNCILMEMBER PONTANILLA: Chairman, I second.

CHAIR MOLINA: Okay. Thank you. The motion has been made by Committee Vice-Chair Mateo and seconded by Committee Member Pontanilla to adopt the proposed resolution. Any discussion, Members? Seeing none, all those in favor, signify by saying "aye."

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

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CHAIR MOLINA: Okay, thank you. The Chair will mark it six “ayes” with three excusals-- Members Baisa, Kaho‘ohalahala and Victorino. Thank you very much, Members.

VOTE: AYES: Councilmembers Johnson, Medeiros, Nishiki, Pontanilla, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Kaho‘ohalahala and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

MS. LUTEY: Thank you.

CHAIR MOLINA: Thank you, Ms. Lutey.

ITEM NO. 2(2): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS
(ANIMAL CONTROL BOARD) (C.C. No. 09-15)

CHAIR MOLINA: Members, our last item of the day is Committee of the Whole Item 2(2), Nominations to Boards, Committees and Commissions, the Animal Control Board. The Committee is in receipt of a correspondence dated October 13th, 2009, from the Council Chair, transmitting correspondence dated October 9th, 2009, from the Mayor, informing the Council that her correspondence dated January 30th, 2009, nominating Allan Almeida to the Animal Control Board incorrectly indicated Mr. Almeida’s term was to expire on March 31st, 2014 when it should’ve read March 31st, 2012. And the Council previously approved the appointment of Mr. Almeida for a term expiring on March 31st, 2014, in the Committee of the Whole Report No. 09-23. With us to expound further on this issue, we have from the Corporation Counsel’s Office, Ms. Kim Sloper.

MS. SLOPER: Good morning. The discrepancy that I have found in this is that the Animal Control Board, the terms for the members of the Animal Control Board is governed by Section 6.04.095 of the Maui County Code. It gives a specific *three-year* term for the members as opposed to the General Charter provisions under Article 13...Section 13-2 which...states, unless otherwise provided, the member shall have five-year terms. So because it is specifically provided in the Code, that’s where the discrepancy is in this case.

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CHAIR MOLINA: Okay, thank you. Committee Members, questions for Ms. Sloper on this particular matter? Seeing none, then the Chair's recommendation will be to--oh, Mr. Medeiros, you have...oh, sorry. Okay. Then the Chair will entertain a motion to approve a **correction** to the expiration date of Mr. Almeida's term on the Animal Control Board to read March 31, 2012.

VICE-CHAIR MATEO: Mr. Chair, I move for the approval of the correction to the expiration date of Mr. Almeida's term to March 31, 2012.

COUNCILMEMBER PONTANILLA: Mr. Chairman, I second.

CHAIR MOLINA: Okay. The motion has been made to approve the correction for the expiration date of Mr. Almeida's term on the Animal Control Board to now read March 31st, 2012 by Committee Vice-Chair Mateo and seconded by Committee Member Pontanilla. Members, discussion? 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 six "ayes", three excusals--Members Baisa, Kaho'ohalahala and Victorino.

VOTE: AYES: Councilmembers Johnson, Medeiros, Nishiki, Pontanilla, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Kaho'ohalahala and Victorino.

MOTION CARRIED.

ACTION: Recommending APPROVAL of correction to the expiration date of Mr. Almeida's term on the Animal Control Board to March 31, 2012.

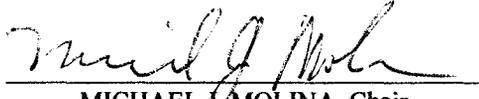
CHAIR MOLINA: Wow, Members, that was quick. That takes care of all of our agenda items for today. The Chair thanks all of you for your very hard work, and also to the Committee Staff and to the Administration. It's 11 minutes to the hour of 11 o'clock. This Committee of the Whole meeting for November 3rd, 2009 is now adjourned. . . .(gavel). . .

COMMITTEE OF THE WHOLE MINUTES
Council of the County of Maui

November 3, 2009

ADJOURN: 10:49 a.m.

APPROVED:



MICHAEL J. MOLINA, Chair
Committee of the Whole

cow:min:091103

Transcribed by: Reinette Kutz

COMMITTEE OF THE WHOLE MINUTES
Council of the County of Maui

November 3, 2009

CERTIFICATE

I, Reinette Kutz, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 24th day of November 2009, in Wailuku, Hawaii.


Reinette L. Kutz