

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

December 18, 2009

**Committee
Report No.** _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on December 3, 2009, makes reference to County Communication No. 09-14, from Michael J. Molina, Chair of your Committee, regarding litigation matters submitted by the Department of the Corporation Counsel.

By correspondence dated November 9, 2009, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL GOODSILL ANDERSON QUINN AND STIFEL A LIMITED LIABILITY LAW PARTNERSHIP LLP, IN THE MATTERS RELATING TO AUCTION RATE SECURITIES". The purpose of the proposed resolution is to authorize the employment of Goodsill Anderson Quinn & Stifel, A Limited Liability Law Partnership LLP, as special counsel to advise and represent the County of Maui in matters relating to auction rate securities, for a total compensation of \$35,000.

The First Deputy Corporation Counsel explained that as part of its short-term investment portfolio, the County owns \$32 million in auction rate securities. She noted that these types of securities have historically been considered liquid assets, and were a popular short-term investment tool used by the Federal government, state governments, and municipalities. However, in 2008, the market for auction rate securities failed, and the County could not liquidate its auction rate securities. She further noted that Merrill Lynch, the investment bank that sold the auction rate securities to the County refused to buy them back.

The First Deputy Corporation Counsel further explained that the County is considering legal action to recover \$32 million from Merrill Lynch; however, it would be the first time the County has ever undertaken this type of legal action. Moreover, Merrill Lynch is an extremely large bank associated with Bank of America. She noted that due to the complexity and novelty of the legal issues, it would be prudent to hire special counsel to advise the County on its claim.

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She further noted that the requested compensation of \$35,000 is estimated to cover the cost of evaluating a legal claim and, if so advised, the filing of a complaint. If the County were to pursue legal action beyond that, the Department would return to the Council to request additional compensation.

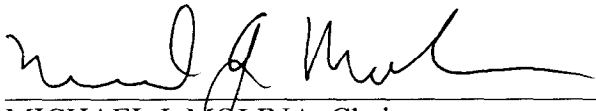
Your Committee voted 8-0 to recommend adoption of the proposed resolution. Committee Chair Molina, Vice-Chair Mateo, and members Baisa, Johnson, Medeiros, Kaho'ohalahala, Nishiki, and Victorino voted "aye". Committee member Pontanilla was excused.

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

Your Committee notes that resolutions authorizing employment of special counsel must be adopted by a two-thirds vote of the Council, pursuant to Section 3-6.6 of the Revised Charter of the County of Maui (1983), as amended.

Your Committee of the Whole RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL GOODSILL ANDERSON QUINN & STIFEL A LIMITED LIABILITY LAW PARTNERSHIP LLP, IN MATTERS RELATING TO AUCTION RATE SECURITIES" be ADOPTED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL
GOODSILL ANDERSON QUINN & STIFEL A LIMITED
LIABILITY LAW PARTNERSHIP LLP, IN MATTERS
RELATING TO AUCTION RATE SECURITIES

WHEREAS, pursuant to § 3-6.6, Revised Charter of the County of Maui (1983), as amended, the Council alone is authorized to retain or employ special counsel by resolution adopted by a vote of two-thirds of its entire membership; and

WHEREAS, the Council finds that there is a real necessity to retain the firm of GOODSILL ANDERSON QUINN & STIFEL A LIMITED LIABILITY LAW PARTNERSHIP LLP ("Firm") as special counsel to advise and represent the County of Maui in the matters relating to auction rate securities, because of the complexity of securities law issues; and

WHEREAS, the County currently has \$32,000,000 in auction rate securities as part of its investment portfolio; and

WHEREAS, the County purchased the auction rate securities from Merrill Lynch in 2007 and 2008; and

WHEREAS, the County has not been able to sell its auction rate securities in the open market; and

WHEREAS, the County has demanded that Merrill Lynch buy back all the auction rate securities it sold to the County; and

WHEREAS, Merrill Lynch has refused to buy back all the auction rate securities it sold to the County; and

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WHEREAS, the Firm and the Department of the Corporation Counsel shall work as a team in this matter and take all possible steps to minimize the level of attorneys' fees and costs; and

WHEREAS, the Firm's conduct in this matter shall reflect the firm's understanding that the County of Maui is a public entity that has obligations, concerns, and interests that may extend beyond those of a similarly situated private litigant; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council hereby authorizes the employment of GOODSILL ANDERSON QUINN & STIFEL A LIMITED LIABILITY LAW PARTNERSHIP LLP as special counsel to advise and represent the County of Maui in the matters relating to auction rate securities, because of the complexity of securities law issues; and

2. That total compensation for the employment of the Firm as special counsel shall not exceed \$35,000.00; and

3. That David J. Reber, Esq., Joachim P. Cox, Esq., and Claire E. Goldberg, Esq., of the Firm, shall provide the majority of the legal services in this matter; and

4. That the hourly rate for David J. Reber, Esq. shall not exceed \$450.00; and

5. That the hourly rate for Joachim P. Cox, Esq. shall not exceed \$295.00; and

6. That the hourly rate for Clare E. Goldberg, Esq. shall not exceed \$175.00; and

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7. That the compensable costs shall include: (1) fees for printing and witnesses; (2) fees for copies necessarily obtained for use in these matters; (3) fees of the clerk and marshall; (4) fees of a court reporter for necessary transcripts; (5) docket fees; and compensation of court-appointed experts and interpreters; and

8. That the non-compensable costs shall include: (1) telephone calls; (2) facsimile charges; (3) postal charges; (4) messenger charges; (5) fees for computerized legal research; (6) travel, unless justified by extraordinary or compelling circumstances; (7) investigative expenses; (8) other costs reasonably considered part of a law firm's overhead; and

9. That in instances of travel, both inter-island and out-of-state travel shall be on regular coach economy fare and shall be pre-approved by the Corporation Counsel; and

10. That the expenditure of additional funds or substantial changes to the responsibilities of the parties shall require prior Council approval; and

11. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel and the Director of Finance.

APPROVED AS TO FORM
AND LEGALITY:



TRACI FUJITA VILLAROSA
First Deputy Corporation Counsel
County of Maui