

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

May 10, 2011

Committee
Report No. _____

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

Chair and Members:

Your Policy Committee, having met on April 15, 2011, makes reference to County Communication No. 11-30, from Council Chair Danny A. Mateo, regarding litigation matters.

By correspondence dated April 4, 2011, the Department of the Corporation Counsel requested consideration of the possible settlement of Stacey Pounder v. County of Maui, et al., Civil No. 09-1-0202(1). Attached to the request is a copy of the Amended Complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF STACEY POUNDER v. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0202(1)". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

Your Committee notes that the complaint alleges that on September 12, 2008, Ms. Pounder suffered injuries as a result of the County's failure to maintain, in a reasonably safe manner, a metal-plate-covered concrete water meter junction box, located at the Eddie Tam Memorial Center, Makawao, Maui, Hawaii. Your Committee further notes that the Council previously authorized settlement of the case by Resolution No. 10-76.

A Deputy Corporation Counsel provided an overview of the case and requested the opportunity to discuss the matter in an executive meeting, closed to the public.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee decided against authorizing settlement of the case for an amount greater than previously authorized, and voted 6-0 to recommend filing of the correspondence from the Department of the Corporation Counsel. Committee Chair

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Hokama, Vice-Chair Carroll, and members Cochran, Couch, Mateo, and White voted “aye”. Committee members Baisa, Pontanilla, and Victorino were excused.

Your Policy Committee RECOMMENDS that the correspondence dated April 4, 2011, attached hereto, from the Department of the Corporation Counsel, transmitting a proposed resolution entitled “AUTHORIZING SETTLEMENT OF STACEY POUNDER v. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0202(1)”, be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



G. RIKI HOKAMA, Chair

pol:cr:11001(10)aa:cmn

ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740
FAX: (808) 270-7152

OFFICE OF THE
CORPORATION COUNSEL
APR -4 10:31:19

April 4, 2011

MEMO TO: Honorable G. Riki Hokama, Chair
Policy Committee

FROM: Ryan Anderson-Teshima, Esq.
Deputy Corporation Counsel

SUBJECT: **Stacey Pounder v. County of Maui, et al.**
Civil No. 09-1-0202(1)

Our Department respectfully requests the opportunity to discuss settlement of the above-referenced matter. The scheduling of this matter is time sensitive because the trial is currently scheduled for May 23, 2011. We would need Council action by May 10, 2011.

It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

Copies of the Complaint and the proposed Resolution are enclosed. We would also request that a representative of the Department of Parks and Recreation and a representative of the Department of Water Supply be present to answer any questions that may arise.

Thank you for your anticipated assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Enclosures

cc: Glenn Correa, Director of Parks and Recreation
Dave Taylor, Director of Water Supply

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
STACEY POUNDER v. COUNTY OF MAUI, ET AL.,
CIVIL NO. 09-1-0202(1)

WHEREAS, Plaintiff Stacey Pounder ("Plaintiff") filed a lawsuit in the Circuit Court of the Second Circuit of the State of Hawaii on December 9, 2009, Civil No. 09-1-0202(1), against the County of Maui and the County of Maui, Department of Water Supply (collectively, "County of Maui"). Plaintiff claimed that on September 12, 2008, she suffered injuries as a result of the County's failure to maintain a metal-plate covered concrete water meter junction box located at the Eddie Tam Memorial Center.

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Policy Committee; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer of Judgment by the

Resolution No. _____

Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

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

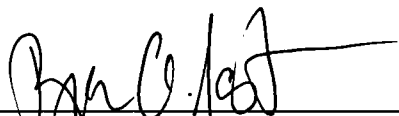
1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Policy Committee; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of the Department of Water Supply, the Director of Parks and Recreation, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



RYAN ANDERSON-TESHIMA
Deputy Corporation Counsel
County of Maui

COPY

CAHILL & O'NEILL
Attorneys at Law

RECEIVED
CORPORATION COUNSEL

2009 DEC 17 PM 4:03

JAG 12/17/09
4:00 pm

FILED

file
1/6/10

2009 DEC -9 AM 2:02

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John M. O'Neill, Esq. 6314
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N. MARTINS, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

STACEY POUNDER,)	CIVIL NO. 09-1-0202(1)
)	(Other Non-Vehicle Tort)
Plaintiff,)	
)	
v.)	AMENDED COMPLAINT; SUMMONS ON
)	AMENDED COMPLAINT
COUNTY OF MAUI, COUNTY OF)	
MAUI, DEPARTMENT OF WATER)	
SUPPLY, JOHN DOES 1-10, JOHN)	
DOE PARTNERSHIPS 1-10, JOHN)	
DOE CORPORATIONS 1-10, and)	
JOHN DOE GOVERNMENT ENTITIES)	
1-10,)	
)	
Defendants.)	

AMENDED COMPLAINT

1. At all times relevant herein, plaintiff STACEY POUNDER was a citizen and resident of the County of Maui, State of Hawaii.

2. At all times relevant herein, defendant COUNTY OF MAUI is and was a municipal corporation in the State of Hawaii,

I hereby certify that this is a full, true and correct copy of the Original.


Clerk, Second Circuit Court

duly organized and existing pursuant to the laws of the County of Maui and the State of Hawaii.

3. At all times relevant herein, defendant COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY, is and was an agency of defendant COUNTY OF MAUI, in the State of Hawaii, duly organized and existing pursuant to the laws of the County of Maui and the State of Hawaii.

4. There may be other defendants, whose precise identities are presently unknown to plaintiff, but who later may need be defendants herein. Although presently unknown to plaintiff, plaintiff alleges, on information and believe, that, directly or indirectly, the conduct of such other unidentified potential defendants may have been a legal cause of the occurrence complained of and/or the injury, damage, or loss sustained by plaintiff, so that all defendants, unidentified and identified, are legally, jointly and severally liable therefor, inasmuch as the conduct of each defendant may have coincided and concurred with that of each and every other defendant.

5. Plaintiff alleges, upon information and belief, that at all times relevant herein, the presently unknown defendants, or any of them, transacted business in the State of Hawaii, derived substantial revenues from the sale of goods or services in the State of Hawaii, and/or committed tortious acts in the State of Hawaii.

6. On or about September 12, 2008, plaintiff STACEY POUNDER was lawfully upon the premises owned, controlled and/or maintained by defendants, or any of them, at the Mayor Eddie Tam

Memorial Center in Makawao, Maui, Hawaii, when plaintiff STACEY POUNDER suffered severe and permanent injuries as a result of defendants', or any of their's, failure to maintain their premises, including but not limited to the metal-plate-covered concrete water meter junction box located near Makawao Avenue, in a reasonably safe condition.

7. At all times relevant herein, defendants, or any of them, failed to warn persons such as plaintiff STACEY POUNDER of the unreasonable risk of harm on the premises.

8. The conduct of defendants, or any of them, in connection with the foregoing was negligent which negligence was a legal cause of STACEY POUNDER's injuries, damages, and losses.

9. As a result of the negligence of defendants, or any of them, STACEY POUNDER sustained severe, substantial, significant, permanent physical and mental injuries, incurred medical expense, and will continue to incur medical expense, has undergone and continues to undergo medical treatment.


10. As a further result of the negligence of defendants, or any of them, STACEY POUNDER suffered and continues to suffer severe emotional distress, mental anguish, and great physical pain and suffering.

11. As a further result of the negligence of defendants, or any of them, STACEY POUNDER suffered a loss of income and/or wages and diminished earning capacity as well as loss of enjoyment of life's activities.

WHEREFORE, upon a hearing hereof, plaintiff prays that judgment will be entered in her favor and against defendants for

such special, general, and/or other damages as to which she shall be entitled pursuant to proof adduced at trial, together with costs of suit, attorneys' fees, pre- and post-judgment interest, and such other and further relief as to which she shall be entitled pursuant to Rule 54 of the Hawaii Rules of Civil Procedure.

DATED: Wailuku, Maui, Hawaii, 12-9-09.



PETER T. CAHILL
JOHN M. O'NEILL
Attorneys for Plaintiff

<p>STATE OF HAWAII CIRCUIT COURT OF THE SECOND CIRCUIT</p>	<p>SUMMONS TO ANSWER CIVIL COMPLAINT (AMENDED)</p>	<p>CASE NUMBER Civil No. 09-1-0202(1)</p>
<p>PLAINTIFF</p> <p>STACEY POUNDER,</p>	<p>vs.</p>	<p>DEFENDANTS</p> <p>COUNTY OF MAUI, COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY, JOHN DOES 1-10, JOHN DOE PARTNERSHIPS 1- 10, JOHNDOE CORPORATIONS 1-10, and JOHN DOE GOVERNMENT ENTITIES1-10,</p>
<p>PLAINTIFFS' ATTORNEY (NAME, ADDRESS, TEL. NO.)</p> <p>Peter T. Cahill, Esq. 5151 John M. O'Neill, Esq. 6314 Cahill & O'Neill 2233 Vineyard Street, Suite D Wailuku, Maui, Hawaii 96793 (808) 244-6929</p>		
<p>TO THE DEFENDANT(S):</p> <p>You are hereby summoned and required to serve upon plaintiff's attorney, whose address is stated above, an answer to the amended complaint which is attached. This action must be taken within twenty days after service of this summons upon you, exclusive of the day of service.</p> <p>If you fail to make your answer within the twenty day time limit, judgment by default will be taken against you for the relief demanded in the amended complaint.</p> <p>If you fail to obey this summons this may result in an entry of default and default judgment.</p> <p>Pursuant to Rule 4(b) of the <u>Hawai'i Rules of Civil Procedure</u>, this summons shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the District or Circuit courts permits, in writing on the summons, personal delivery during those hours.</p>		
<p>DATE ISSUED</p> <p>DEC - 9 2009</p>	<p>CLERK</p> <p>/sgd/ N. MARTINS (seal)</p>	
<p>I do hereby certify that this is a full, true, and correct copy of the original on file in this office.</p>	<p>CIRCUIT COURT CLERK</p>	