

# COMMITTEE OF THE WHOLE

Council of the County of Maui

## MINUTES

August 25, 2015

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

**CONVENE:** 1:33 p.m.

**PRESENT:** Councilmember Don S. Guzman, Chair  
Councilmember Stacy Crivello, Vice-Chair  
Councilmember Gladys C. Baisa  
Councilmember Robert Carroll  
Councilmember Elle Cochran  
Councilmember Don Couch  
Councilmember Riki Hokama  
Councilmember Michael P. Victorino  
Councilmember Mike White

**STAFF:** Carla Nakata, Legislative Attorney  
Clarita Balala, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)

**ADMIN.:** Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel  
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel  
Kyle Ginoza, Director, Department of Environmental Management  
Victor Ramos, Assistant Chief, Uniformed Services Bureau, Department of Police  
David Sakoda, Arboriculturist, Department of Parks and Recreation

**OTHERS:** Rosemary Robbins

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

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CHAIR GUZMAN: . . .(*gavel*). . . Good afternoon. I'm Don Guzman. Welcome to the Committee of the Whole. Before we begin may I ask everyone to turn their cellphones on silence. I'd like to introduce our Members for this afternoon's meeting. For our Vice-Chair of the Committee, we have Stacy Crivello.

VICE-CHAIR CRIVELLO: Good afternoon, Chair.

CHAIR GUZMAN: Good afternoon. We have Gladys Baisa.

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COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR GUZMAN: Good afternoon. And Mr. Couch.

COUNCILMEMBER COUCH: Good afternoon, Chair.

CHAIR GUZMAN: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR GUZMAN: And Mr. Victorino.

COUNCILMEMBER VICTORINO: Good afternoon, Chair.

CHAIR GUZMAN: Thank you. And also joining us later will be Chair Mike White as well as Member Carroll, Robert Carroll, I believe is coming right now . . . rolling down. So excused will be Elle Cochran. I'd like to introduce our Staff for today is our Legislative Attorney Carla Nakata as well as our Committee Secretary Clarita Balala. For our Corporation Counsel side, we have Richelle Thomson and sitting with her is Moana Lutey. Joining us right now is also Member Elle Cochran, good afternoon. Before we begin, I'd like to check in to see if we have any testifiers in the Chambers.

MS. BALALA: There is no one.

CHAIR GUZMAN: None. Okay. Let's check in with our District Offices. Hana Office, are you there? Apparently, we don't have anyone in the Hana Office today. So we'll move forward on Lanai Office, are you there?

MS. FERNANDEZ: Aloha, Chair, this is Denise Fernandez on Lanai and there is no one waiting to testify.

CHAIR GUZMAN: Thank you very much. On Molokai Office, are you there?

MS. ALCON: Good afternoon, Chair, this is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR GUZMAN: Thank you very much. And I'll go back to the Chambers, is there anyone that has signed up to testify?

MS. BALALA: No.

CHAIR GUZMAN: Seeing none. Members, I would like to close testimony.

COUNCIL MEMBERS: No objections.

CHAIR GUZMAN: Thank you. That is now closed.

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**COW-1(3):     LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI; CIVIL 12-00198 SOM BMK)**  
(CC 15-6)

CHAIR GUZMAN: So we will move on to today's agenda, COW-1(3), Litigation Matters, Settlement Authorization: Hawaii Wildlife Fund, et al. v. County of Maui; Civil No. 12-00198 SOM BMK. The Committee is in receipt of the correspondence dated July 21, 2015, from the Department of the Corporation Counsel, requesting consideration of the proposed resolution entitled "AUTHORIZING SETTLEMENT IN THE HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK." The First Amended Complaint alleges violations under the Federal Water Pollution Control Act, also known as the Clean Water Act, caused by the discharge of wastewater into the ocean from injection wells operated by the County of Maui at the Lahaina Wastewater Reclamation Facility. The purpose of the proposed resolution is to authorize settlement of the case. The Committee may consider whether to recommend adoption of the proposed resolution, with or without revisions. The Committee may also consider other related actions. Today, we have presenting the case is Richelle Thomson from the Department of the Corporation Counsel. Would you like to brief the Members in open session?

MS. THOMSON: Sure. Thank you, Chair. So, as you are aware, we will present a settlement, a proposed settlement agreement in executive session. The court does have the trial currently scheduled for November. However, of course, that date will be taken off calendar if we are able to reach settlement. And I don't have any further open session comment.

CHAIR GUZMAN: Okay. Thank you. Members, do you have any open session comments or questions that you want to pose? Seeing none. There's been a request from Corporation Counsel to enter into executive session. The Chair will entertain a motion to convene executive session pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and this Committee.

VICE-CHAIR CRIVELLO: So move, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Seconded by Mr. Victorino. Any further discussion? Seeing none. All those in favor say "aye".

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no." Nine ayes, zero noes. Motion carries.

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**VOTE:**       **AYES:**   **Chair Guzman, Vice-Chair Crivello, and Councilmembers Baisa, Carroll, Cochran, Couch, Hokama, Victorino, and White.**

**NOES:**    **None.**

**ABSTAIN:** **None.**

**ABSENT:** **None.**

**EXC.:**   **None.**

**MOTION CARRIED.**

**ACTION:**               **APPROVE; RECESS open meeting and CONVENE executive meeting.**

CHAIR GUZMAN: Moving on, Members, to the next item.

**COW-1(17):    **LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: GEICO, ON BEHALF OF ITS INSURED, LAURIE MCCARTHY, CLAIM 2014-2020-15)****  
(CC 15-6)

CHAIR GUZMAN: We have Item No. COW-1(17). This is Litigation Matters, Settlement Authorization: GEICO, on Behalf of its Insured, Laurie McCarthy, Claim 2014-2020-15. The Committee is in receipt of the following: correspondence dated June 23, 2015, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution to authorize settlement of Claim 2014-2020-15 of GEICO, on behalf of the insured, Laurie McCarthy, for \$8,682.01, and transmitting a copy of the claim. The claim alleges damages to Laurie McCarthy's vehicle resulting from a collision with a coconut tree lying across Honoapiilani Highway, Lahaina, Maui, Hawaii, on January 3, 2014. Also on the agenda is the correspondence dated August 11, 2015, from the Department of the Corporation Counsel, requesting consideration of a revised proposed resolution entitled "AUTHORIZING SETTLEMENT OF CLAIM NO. 2014-2020-15 OF GEICO, ON BEHALF OF ITS INSURED, LAURIE MCCARTHY." The revised proposed resolution incorporates nonsubstantive revisions. The Committee may consider whether to recommend adoption of the revised proposed resolution, with or without revisions. The Committee may also consider other actions. I believe we have, uh, Ms. Lutey, this is your case.

MS. LUTEY: Thank you, Chair. Good afternoon. I think that this may be a claim that we can handle in open session because it does not involve any bodily injury claim. At this point, it is purely a property damage matter. Basically, what happened is on January 3, 2014, at about 1:07 in the morning, Ms. McCarthy was driving on Honoapiilani Highway across from Hawaiian Homes when she strikes a coconut tree that is owned by the County that is lying in the roadway. It is my understanding that the coconut tree was

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something that we were going to remove because we were aware that there was some damage to it; however, it fell before that happened. I'm requesting settlement authority in the amount of \$8,682.01 and the breakdown of that is the following: there's a car rental charge of \$131.41; the value of the vehicle is \$9,275 and that includes a \$500 deductible; there's reimbursement for tax and Department of Motor Vehicle registration for \$396.40; and the towing of Ms. McCarthy's vehicle for \$98.96. That total amount is \$9,901.77 but this car was sold as salvaged so the County would get a credit of \$1,219.76 which ends up with my settlement request amount of \$8,682.01.

CHAIR GUZMAN: Okay. Thank you, Ms. Lutey. Any questions in open session from the Members?

COUNCILMEMBER HOKAMA: Chairman?

CHAIR GUZMAN: Mr. Hokama?

COUNCILMEMBER HOKAMA: Thank you, Chairman. So, Ms. Lutey, so we can understand this right. The tree before it was across the highway was already determined for removal?

MS. LUTEY: It was something that was going to be removed.

COUNCILMEMBER HOKAMA: Okay. And what caused it to lie across the road? Act of God?

MS. LUTEY: I don't know the specifics. I'm sorry?

COUNCILMEMBER HOKAMA: Act of God?

MS. LUTEY: I'm assuming that just whatever was in it gave but our Arborist is present. I don't know if he has a more detailed explanation of what. It's just that it fell before we had a chance to remove it.

COUNCILMEMBER HOKAMA: Okay. Now, I'm more concerned about the road. Was there any other traffic and only this individual could not avoid this tree?

MS. LUTEY: According to the claim filed by the insurance company, two other vehicles were also damaged in this. But I'm not aware of those claims specifically. We had another situation. I'm not sure if these are the same. Perhaps they are. I know of at least one other and that resolved under the \$7,500 limit as well. So that was resolved outside of this body.

COUNCILMEMBER HOKAMA: Do you know why the tree was being planned for removal?

MS. LUTEY: There was a disease in the tree that was noted by one of the contractors that does work for the County on a regular basis, and they notified us of it and we had scheduled removal.

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COUNCILMEMBER HOKAMA: How long from notification to this incident?

MS. LUTEY: That I don't know.

COUNCILMEMBER HOKAMA: Cause I'm tired of paying claims on trees that should be removed far in advance of the actual situations.

MS. LUTEY: Sure.

COUNCILMEMBER HOKAMA: I'm tired of paying this kind of unnecessary claims. I would rather deduct this from the Department's budget.

CHAIR GUZMAN: Members, we do have a representative from the Parks and Recreation Department. I believe it's the Arborist. I had him scheduled as one of the resource persons. If you would like to come down onto the floor, maybe some of the Members would like to ask some questions. If you could please state your name and your position for the record?

MR. SAKODA: David Sakoda, County Arboriculturist.

CHAIR GUZMAN: Members, do you have any further questions for the Department or Corporation Counsel?

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR GUZMAN: Mr. Victorino?

COUNCILMEMBER VICTORINO: Since you brought him down. Mr. Sakoda, could you give us a timeframe from when you are notified that a tree is diseased and should be either trimmed or cut down? And how long does it normally take for us to get it done? I think this is the question that's burning in all of our minds at this point in time. Well, I'll speak for myself. I'm sorry. Go ahead.

MR. SAKODA: Yes. In this specific case, the contractor was trimming the coconuts in the park, and we do that on a continuous basis. And they noted that there was a cavity in the tree and that they were not going to climb it. At that point in time, they didn't have a bucket either, the boom truck. So I inspected the tree and there was a cavity in it. It was right adjacent to the guardrail and the highway, and it didn't get trimmed but I don't know what the weather circumstances were but it gave way and failed. The time span between when they notified me of that defect and when the tree fell was a matter of weeks. It wasn't a matter of months but it was . . . depending on the site and the circumstances, you know, we can take action immediately and get an emergency procurement purchase order and have it done within a matter of days. But in this case, there were other coconuts that needed to get removed and I was trying to consolidate that to make it more economically feasible.

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COUNCILMEMBER VICTORINO: So in your opinion, in your expert opinion, the tree wasn't defective enough to have it immediately cut down?

MR. SAKODA: Well, it was going to be removed within, yeah, a relatively short period of time, but I didn't get an emergency purchase order for that, no.

COUNCILMEMBER VICTORINO: You didn't feel it was necessary in this case?

MR. SAKODA: At that point in time, yeah.

COUNCILMEMBER VICTORINO: Okay. Thank you. Thank you, Mr. Chair.

CHAIR GUZMAN: Thank you. Other Members have any questions? I have a few questions. Ms. Lutey, can you explain the liability of the County in regards to the tree itself? So the County owns the coconut tree?

MS. LUTEY: Yes. We only maintain.

CHAIR GUZMAN: Okay. And because we were put on notice that it was, they had cavity where it needed to be cut down then that basically puts us on the hook for it's not an act of God. So we basically had the notice weeks before.

MS. LUTEY: We're liable for this. There is no contributory negligence that we can pass off to the driver in this case.

CHAIR GUZMAN: Okay. Any other further questions, Members? Okay. So at this time, I will without objections, give the recommendation. I recommend to authorize the settlement in the amount of \$8,682.01.

VICE-CHAIR CRIVELLO: I so move, Chair.

CHAIR GUZMAN: Okay. The Chair will entertain --

COUNCILMEMBER VICTORINO: Second.

CHAIR GUZMAN: --a motion to recommend filing, I mean, sorry, recommend a motion to adopt the revised proposed resolution entitled "AUTHORIZING SETTLEMENT OF CLAIM NO. 2014-2020-15 OF GEICO, ON BEHALF OF ITS INSURED, LAURIE McCARTHY." Moved by Ms. Crivello, seconded by Mr. Victorino. Any further discussion?

COUNCILMEMBER HOKAMA: Chairman?

CHAIR GUZMAN: Mr. Hokama?

COUNCILMEMBER HOKAMA: I am supportive of the motion before the Committee. I would say in our experience we should consider a policy that once notified we'll expedite the removal.

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CHAIR GUZMAN: Yes. And I am going to ask Staff to send out a letter to examine the notification process of when trees, when the County is at least warned or put on notice on trees and what is the effective time period that they are to respond.

COUNCILMEMBER HOKAMA: And again, Chairman, I can appreciate the Departments trying to be fiscally conservative, trying to save the County money. But I prefer they expend a little upfront to save us the bigger claims later. Because you know most of the Members . . . current Members didn't sit but I sat on a Council that within a County park, same thing except this one the trimmer fell with the tree and we got stuck with a cost flow of a paraplegic incident.

CHAIR GUZMAN: Yes.

CHAIR HOKAMA: We don't need that in this County. We rather be safe than sorry, and a little money upfront is better than a lot of money afterwards. We've got a lot of old trees in this County especially on Lanai that I'm giving the County notice we better take care of it because I'm not going to tolerate the residents getting hurt from our trees. Thank you.

CHAIR GUZMAN: It's good that I'm also the Chair for the Parks so I'd like to see at least examine the SOPs for the Arborist. Any other . . . Yes?

COUNCILMEMBER COCHRAN: Chair?

CHAIR GUZMAN: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And Mr. Hokama brought up a point a little bit earlier in his opening comments in reference to charging the department. Has that occurred? I mean, is that a practice that can be used or . . . I mean, I hear this solution being something as deemed diseased or whatever get it done immediately as an emergency case but also if it starts to reoccur, is there a way to nip the particular department that's responsible for acting on it?

CHAIR GUZMAN: Yeah.

COUNCILMEMBER COCHRAN: And if they get dinged more often I think they would really be paying attention then so . . .

CHAIR GUZMAN: I don't think we have a mechanism for that. I believe that everything that has to do with litigation matters has to come from the litigation fund. And I think Deputy Corporation Counsel Lutey can elaborate.

MS. LUTEY: Thank you, Chair. I've never seen us bill a department for it. We have a self-insured retention fund that this body budgets for us every year. And so when claims come in like this that are potential litigation they are paid out of that. But just you know our Risk Management Division also has funding for emergency-type of repairs and



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so forth and we have used that in the past to address trees and so forth that needed to be removed on an emergency basis where funding was either tight or not just available at the time through the Department. So we have done it for that as well.

COUNCILMEMBER COCHRAN: Okay. Very good. Thank you. And real quick follow up in regards to when we start talking about trees there's an incident at Launiupoko Beach Park where a papaya fell onto a truck. And as we know, papayas become hollow as they get older and they all topple over after their life span occurs. So I mentioned to Parks please do not plant those types of trees in parking lots where it becomes a hazard just the sheer nature of how papayas, the life span of how a papaya grows out. So I think Mr. Sakoda would probably know this too but I see it . . . maybe they're just volunteers that happen, they just pop up in these parking lots but I believe Launiupoko still has a couple papayas. So, hopefully, we can avoid that situation. I had happened to be there surfing and saw the big tree crash in the whole front windshield of the truck. Thank you.

CHAIR GUZMAN: Thank you. Very noted. I think the Arborist is here also to hear those facts. Mr. Hokama, did you have a comment?

COUNCILMEMBER HOKAMA: Chairman, I would just say that the current ordinance in the budget we passed I would say Ms. Lutey is accurate. It doesn't mean that in the upcoming budget we cannot structure the new ordinance to have those primary departments be financially responsible for certain non-actions. That we can do by ordinance and it will be by Council decision. So it can be done.

CHAIR GUZMAN: Very good. Okay. So are there any other questions? Seeing none.

COUNCILMEMBER HOKAMA: Recommendation, Chairman.

CHAIR GUZMAN: Recommendation that we go ahead and approve . . .

COUNCILMEMBER COUCH: There's a motion on the floor, Chair.

COUNCILMEMBER VICTORINO: Yeah, Ms. Crivello made the motion.

CHAIR GUZMAN: Yeah, sorry. I got so involved with the discussion, I forgot where we were. Very good. So there's a motion on the floor. Any further discussion? Seeing none. All those in favor say "aye".

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no." We have nine ayes, no noes. Motion carries. Thank you, Members.

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**VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Baisa, Carroll, Cochran, Couch, Hokama, Victorino, and White.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: None.**

**MOTION CARRIED.**

**ACTION: Recommending ADOPTION of revised resolution.**

CHAIR GUZMAN: Moving on to the next agenda item.

**COW-1(16): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: FIRST INSURANCE COMPANY OF HAWAII, LTD., ON BEHALF OF ITS INSURED, NELIA PADIONG, CLAIM 2013-1064-10) (CC 15-6)**

CHAIR GUZMAN: We have the Litigation Matters, Settlement Authorization: First Insurance Company of Hawaii, Ltd., on Behalf of its Insured, Nelia Padiong, Claim No. 2013-1064-10. This is COW-1(16) on the agenda. The Committee is in receipt of the following: correspondence dated June 22<sup>nd</sup> from the Department of the Corporation Counsel requesting consideration of the proposed resolution to authorize settlement of the Claim 2013-1064-10 of the First Insurance Company of Hawaii, Ltd., on behalf of its insured, Nelia Padiong for \$15,470.05, and transmitting a copy of the claim. The claim alleges damages to the Plaintiffs vehicle resulting from a collision involving the Department of Police vehicle on April 23, 2013. Correspondence dated August 11, 2015, from the Department of the Corporation Counsel, requesting consideration of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF CLAIM NO. 2013-1064-10 OF FIRST INSURANCE COMPANY OF HAWAII, LTD., ON BEHALF OF ITS INSURED, NELIA PADIONG." The revised proposed resolution incorporates nonsubstantive revisions. The Committee may consider whether to recommend adoption or adoption of the revised resolution with or without revisions. The Committee may also consider other matters. Today we also have Ms. Lutey, I believe, that will be presenting the case. Along side her is a representative from the Maui Police Department. So the floor is yours, Ms. Lutey.

MS. LUTEY: Thank you. Chief Ramos is joining me in the front here if you've got questions. This too is purely a property damage claim. It involves absolutely no bodily injury so it should be something that we can deal with on the floor unless you have questions that go into employment issues then we're going to need to get into executive. Basically what happened on April 25, 2013, let me get the date, yes, at about 5:10 in the morning is a police officer who is driving a patrol vehicle is on Kanaloa Avenue fronting the YMCA

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but heading towards the Police Department and he temporarily falls asleep and collides into the Padiong vehicle. The repair cost for that vehicle is \$13,985.06. Ms. Padiong had to pay \$500 for her deductible and the car rental fees were \$899.99 which brings us to a grand total of \$15,470.05 that I am requesting settlement authority for to compensate Ms. Padiong's insurance company, First Insurance, and Ms. Padiong for her deductible.

CHAIR GUZMAN: That's for \$15,470.05.

MS. LUTEY: Yes.

CHAIR GUZMAN: Members, oh, excuse me, the representative from MPD can you identify yourself and if you have any opening statements for this session.

MR. RAMOS: Good afternoon, Mr. Chair, Councilmembers, Victor Ramos, Maui Police Department, Bureau Chief of Patrol, and a lot of these MVAs and motor vehicle crashes involve my personnel.

CHAIR GUZMAN: Okay. Thank you. Members, any questions on the floor?

COUNCILMEMBER VICTORINO: Chair?

CHAIR GUZMAN: Mr. Victorino.

COUNCILMEMBER VICTORINO: Thank you. And if Ms. Lutey, I'm planning to stray into what we need to go into executive session then tell me, you know, I'll make that request.

MS. LUTEY: Thank you.

COUNCILMEMBER VICTORINO: I understand what has happened. Was any disciplinary action taken for this particular officer?

MS. LUTEY: That we'll have to go into executive session.

COUNCILMEMBER VICTORINO: Okay, so that would be my burning question. It happens. When you're on duty that's the question I would have to have answered as far as that is concerned, Mr. Chair.

CHAIR GUZMAN: Any further questions? Mr. Hokama?

COUNCILMEMBER HOKAMA: Can we ask whether this was a rookie or not?

MS. LUTEY: Sure.

COUNCILMEMBER HOKAMA: Was this a brand new officer?

MR. RAMOS: He was . . . I would consider him a rookie – five years and under.

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COUNCILMEMBER HOKAMA: Okay. So is there an issue with training? Is this an issue, I mean, we know where the YMCA is, we know where the station is, we're talking about less than a minute and I would think our officers would have common sense to pull on the side or something instead of keep going knowing you're falling asleep at the wheel. And I appreciate my colleague because I understand his point but for me that's not good enough for our professionals, not good enough.

MR. RAMOS: Yeah, I appreciate your comment. I feel the same way. Our officers are trained to operate the motor vehicles as safely as possible. In this particular case, the officer was working first watch and for whatever reason he didn't pull over or advise the Supervisor that he needed some time to rest. That definitely falls within the responsibility of the officer. From time-to-time we do see a lot of these accidents and trust me I'm as frustrated as you are because these cars cost a lot of money. And you folks have to make the decision whether or not to pay off items like this that costs tens of thousands of dollars. But the training is that we have an excellent training program. It's really that we have to instill in our officers to if you're feeling tired you gotta let somebody know and pull over because you're no good if you get injured.

COUNCILMEMBER HOKAMA: And I thank you for your candid comments, Chief, because I know you're one of our dedicated officers in the Department and I have worked with you and I appreciate your candidness. I find it just refreshing and I thank you for that. My point, Chairman, is lucky nobody died. We could have had, be dealing with a fatality right now and paying a claim on a fatality, an unnecessary situation again, Chairman, is my point. And I trust in Chief Faaumu and Chief Ramos to make the appropriate adjustments but I would say that this is something that even the Commissioners should pay attention to in your operating procedures. Thank you, Chairman.

CHAIR GUZMAN: Okay. Thank you. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair, and thank you, Chief, for being here. Just for us lay folks what is first watch? What are the hours?

MR. RAMOS: First watch is our midnight shift. It starts at 10:30 at night and carries over into 7:15 in the morning. Depending on how busy they are they may continue on till 10 o'clock sometimes.

COUNCILMEMBER COUCH: Okay. And what happened to our vehicle? What happened to the vehicle that the officer was driving?

MR. RAMOS: I believe it was totaled.

COUNCILMEMBER COUCH: Okay. Thank you, Chair.

CHAIR GUZMAN: Any other questions? Ms. Cochran?

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COUNCILMEMBER COCHRAN: I'm not sure if any of these questions fall into executive session but hearing the timeframe that that first watch occurs this accident happened at what time?

MS. LUTEY: Five in the morning.

COUNCILMEMBER COCHRAN: Five a.m. so couple more hours till he ended his shift. And so just wasn't sure if can answer, I mean, was he like doing back-to-back or was he just on his normal eight hour but was I guess sleepy?

MR. RAMOS: I don't have information on that.

COUNCILMEMBER COCHRAN: Okay.

MR. RAMOS: Yeah.

COUNCILMEMBER COCHRAN: Okay. And . . . all right. I think the others would be executive session but yeah, again, thank God nobody died.

CHAIR GUZMAN: Yeah. Thank you. Members, did you want to go into executive session? Is there any motion that you would like to propose? Okay. Seeing none. I have a question for Ms. Lutey, was there any contributory negligence involved on the, I guess, on the claim side?

MS. LUTEY: Thank you, Chair. No, this car was properly parked on the side of the road in a marked parking stall.

CHAIR GUZMAN: Oh, okay. So, Members, at this time, if there's no further questions, the Chair will entertain a motion to adopt the revised proposed resolution entitled "AUTHORIZING SETTLEMENT OF CLAIM NO. 2013-1064-10 OF FIRST INSURANCE COMPANY OF HAWAII, LTD., ON BEHALF OF ITS INSURED NELIA PADIONG".

VICE-CHAIR CRIVELLO: I so move, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Second by Mr. Victorino. Any further discussion? Seeing none. All those in favor say "aye".

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no". Nine ayes, no noes. Motion carries. Thank you, Members.

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**VOTE:**       **AYES:**   **Chair Guzman, Vice-Chair Crivello, and Councilmembers Baisa, Carroll, Cochran, Couch, Hokama, Victorino, and White.**

**NOES:**    **None.**

**ABSTAIN:** **None.**

**ABSENT:** **None.**

**EXC.:**   **None.**

**MOTION CARRIED.**

**ACTION:**   **Recommending ADOPTION of revised resolution.**

CHAIR GUZMAN: Moving on to the next agenda item.

**COW-1(18):    LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CLAIM OF REGINALD YAP, CLAIM 2013-1079-10) (CC 15-6)**

CHAIR GUZMAN: We have COW-1(18). This is the Litigation Matter regarding the Claim of Reginald Yap, Claim No. 2013-1079-10. The Committee is in receipt of the following: correspondence dated June 23, 2015, from the Department of the Corporation Counsel, requesting consideration of the proposed resolution to authorize settlement of the Claim 2013-1079-10 of Reginald Yap for \$10,000 and transmitting a copy of the claim. The claim alleges property damage and injuries arising out of a motor vehicle accident on Makawao Avenue, Makawao, Hawaii, involving a Department of Police fleet vehicle on August 15, 2013. Now, also we have on the agenda is the correspondence dated August 11, 2015, from the Department of the Corporation Counsel, requesting consideration of the revised proposed resolution entitled "AUTHORIZING THE SETTLEMENT OF CLAIM 2013-1079-10 OF REGINALD YAP". The revised proposed resolution incorporates nonsubstantive revisions. The Committee may consider to recommend adoption of the revised proposed resolution with or without revisions. The Committee may also consider other related matters. I believe this is also Ms. Lutey's case. You have the floor, Ms. Lutey.

MS. LUTEY: Thank you. This matter I will have to ask for executive session on because it involves a bodily injury claim. And so to discuss those types of matters we are going to need to get into executive. But basically what happened is on August 15, 2013 at 11:10 in the morning there were two police officers traveling on Makawao Avenue and a vehicle two in front of them comes to a stop to take a left at Koehana Place, and when that vehicle comes to a stop the vehicle behind her slows down to stop, the patrol vehicle behind her immediately stops, and the last patrol vehicle in that line-up the officer operating it is distracted for a moment looking for a pen, rear ends the vehicle in front of him, which caused a chain reaction collision. So this is a four-car accident. Mr. Yap

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did sustain bodily injuries and so we will need to discuss that in executive session but I am requesting settlement authority at \$10,000 to resolve that claim.

CHAIR GUZMAN: Members, have any . . . oh, excuse me. Does Maui Police . . . Mr. Lieutenant Victor Ramos do you have any . . .

UNIDENTIFIED SPEAKER: Chief.

CHAIR GUZMAN: Chief, I'm sorry. He was a Lieutenant back in the days.

MR. RAMOS: No, I don't have anything to add.

CHAIR GUZMAN: Chief Ramos, do you have any opening statements?

MR. RAMOS: No, nothing.

CHAIR GUZMAN: Okay. Members, do you have any questions? Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I don't know if this is something that can be answered in open session but you know when there is something like this, are there any consequences to the officer?

CHAIR GUZMAN: Chief?

MS. LUTEY: Chair, I can broadly answer that. There was a disciplinary policy in place but I can't discuss specifics for any of the officers involved in this matter but there is progressive discipline based on their union contract and the policies within the Department. So the officers can be disciplined for these types of matters.

MR. RAMOS: I'd like to add to that, ma'am. In every case when there's a motor vehicle crash involving an officer, the Supervisor and the District Commander has to determine who was at fault. And if the motor vehicle crash can be avoided, that is, the officer should not have gotten into the accident, then an investigation takes place, an administrative investigation which is an Internal Affairs investigation. Basically, all accidents that are deemed avoidable, in other words, the officer should have avoided this crash will be disciplined.

COUNCILMEMBER BAISA: Thank you very much. That's a very straight answer.

CHAIR GUZMAN: Thank you. Any other questions in open session, Members? Seeing none. Corporation Counsel has requested us to convene executive session for this matter. The Chair will entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes, to consult with legal counsel on questions pertaining to powers, duties, privileges, immunities, and liabilities for the Council, and this Committee as well as Section 92-5(a)(8), of the HRS, for consideration and deliberation in making decisions that require confidentiality.

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VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER VICTORINO: Second.

CHAIR GUZMAN: Seconded by Mr. Victorino. Any further discussion? Seeing none. All those in favor say "aye."

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no." Nine ayes, no noes. Motion carries.

**VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Baisa, Carroll, Cochran, Couch, Hokama, Victorino, and White.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: None.**

**MOTION CARRIED.**

**ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.**

CHAIR GUZMAN: Thank you, Members. We're going to take a . . . wait, one last one.

**COW-1(30): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CHRISTOPHER CARROLL AND DUKE-PATRICK CARROLL V. COUNTY OF MAUI, ET AL.; CIVIL CV13-00066 LEK KSC) (CC 13-41)**

CHAIR GUZMAN: Members, on the next item on the agenda is COW-1(30). This is Litigation Matters, Settlement Authorization: Christopher Carroll and Duke-Patrick Carroll v. County of Maui, et al.; Civil CV 13-00066 LEK KSC. The Committee is in receipt of the following: correspondence dated October 16, 2013, from the Department of the Corporation Counsel, requesting consideration of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF CHRISTOPHER CARROLL, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL CV 13-00066 LEK KSC," and transmitting a copy of the complaint. The complaint alleges Plaintiffs Christopher Carroll and Duke-Patrick Carroll were unlawfully arrested and subjected to excessive force at their residence in Kihei, Maui, Hawaii, by the Department of Police on February 11, 2011. The purpose of the proposed resolution is to authorize settlement of the case. Also, we have a correspondence dated



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August 6, 2015, from the Department of the Corporation Counsel, advising that the summary judgment has been granted in favor of the County and the individual defendants, and a judgment entered in their favor. The Department states that the case is closed and the Committee may, therefore, file this matter. I believe that this was Mr. Rost's case but I think we have representation. Ms. Lutey, can you handle this?

MS. LUTEY: That was my case. It was Mr. Rost's for a period of time and then because it was a Taser case I took it. We won that by a motion outright on all counts and there is no appeal currently pending so this is an outright win for us.

CHAIR GUZMAN: So the facts on this, Ms. Lutey, you mentioned a Taser?

MS. LUTEY: Yes. The officers were at Mr. Carroll's residence to serve him with a restraining order that had been filed against him on behalf of his wife who was in custody of Adult Protective Services. And when they got there, Mr. Carroll was just belligerent and began kicking and clawing at the police. When he refused to obey their commands they gave 'em one round of a Taser deployment which normally gets people into compliance, however, Mr. Carroll refused to comply, began struggling with them again and a second deployment was given to him. At that point, he did end up complying with police. While that was going on, his son was interfering with the control of his father so both were arrested on the scene and taken into custody and later released. Neither of them were criminally prosecuted. I don't know why. As a result, we were sued and then we won.

CHAIR GUZMAN: That's what the allegation was excessive force?

MS. LUTEY: It was excessive force, unlawful arrest and it just . . . you know, we normally get the whole gamut, right, when we use any force on people.

CHAIR GUZMAN: Very good. So, Members, any questions? Seeing none. I will . . . the Chair will entertain a motion to recommend filing of the correspondence.

VICE-CHAIR CRIVELLO: So move.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER VICTORINO: Second.

CHAIR GUZMAN: Seconded by Mr. Victorino. Any further discussion? Seeing none. All those in favor say "aye."

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no." Nine ayes, zero noes. Motion carries. Thank you, Members.







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COUNCILMEMBER HOKAMA: Chairman?

CHAIR GUZMAN: Yes, Mr. Hokama?

COUNCILMEMBER HOKAMA: I was gonna ask if you prefer to file the last item, COW-1(30)?

CHAIR GUZMAN: Oh, yes. Yes. Thank you very much. And also filing of County Communications. . .

COUNCILMEMBER COUCH: We did. We voted.

COUNCILMEMBER HOKAMA: Oh, we voted on it?

COUNCILMEMBER COUCH: We voted on it already.

CHAIR GUZMAN: Oh, yeah. We . . . didn't we?

COUNCILMEMBER COUCH: Yep. We did, 9-0.


CHAIR GUZMAN: Alright.

COUNCILMEMBER HOKAMA: You so good.

CHAIR GUZMAN: Alright. So this meeting is now adjourned. Thank you very much.  
...*(gavel)*...

**ADJOURN:** 3:01 p.m.

APPROVED:

  
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DON S. GUZMAN, CHAIR  
Committee of the Whole

cow:min:150825

Transcribed by: Jo-Ann Sato