

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

April 1, 2016

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 11, 2015, and March 18, 2016, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated December 3, 2015, the Department of the Corporation Counsel requested consideration of the possible settlement of Mark A. King v. County of Maui, Disability Compensation Division Case 5-14-00348. Attached to the request is a proposed resolution entitled "AUTHORIZING SETTLEMENT OF MARK A. KING V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00348."

By correspondence dated February 26, 2016, the Department requested consideration of the possible settlement of four related cases arising from an air crash on Lanai, Hawaii, on February 26, 2014.

Attached to each request is a proposed resolution for each claim, entitled as follows:

1. "AUTHORIZING SETTLEMENT OF TREMAINE BALBERDI V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00322";
2. "AUTHORIZING SETTLEMENT OF KATHLEEN KERN V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00330";
3. "AUTHORIZING SETTLEMENT OF JAMES A.Q. GIROUX V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00345"; and

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4. "AUTHORIZING SETTLEMENT OF DOUGLAS MILLER V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00526."

The purpose of each of the five proposed resolutions is to authorize the Department of the Corporation Counsel to settle the workers' compensation case.

Your Committee notes that it previously reported on this matter through Committee Report 15-78, which recommended that proposed resolutions authorizing settlement of each of the cases be adopted. At its meeting of July 24, 2015, the Council adopted Resolutions 15-81, 15-82, 15-83, 15-84, and 15-85.

Your Committee notes Section 3.16.020(A), Maui County Code, requires Council authorization for any settlement of a workers' compensation claim in excess of the authority granted by that provision.

Your Committee further notes four of the five claimants were employees of the Department of Planning at the time of the incident on February 26, 2014. The fifth claimant, James Giroux, was an employee of the Department of the Corporation Counsel. All five individuals were on Lanai to staff a Lanai Planning Commission meeting and were returning to Maui aboard a plane operated by Maui Island Air, Inc. when the incident occurred.

Your Committee notes Tremaine Balberdi and Kathleen Kern died in the plane crash, as did the pilot. Mark King, Douglas Miller, and James Giroux were severely injured in the crash but have since returned to work for the County.

Since the prior resolutions were adopted, an arbitration was conducted between Maui Island Air, Inc., the estate of the pilot, and the claimants. According to a Deputy Corporation Counsel, through the arbitration, a settlement was reached among the claimants, the air carrier, and the pilot's estate.

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The Corporation Counsel explained that, despite the delicate circumstances associated with the incident, the Department's obligation under the Revised Charter of the County of Maui (1983), as amended, is to inform your Committee of the applicable workers' compensation laws and the County's legal rights. He noted County officials must be mindful of their duty of loyalty to the County of Maui.

The Deputy noted the claimants have requested the County waive its right to reimbursement for previously paid workers' compensation benefits under State law, thereby allowing the claimants to retain the full proceeds of their settlement with the air carrier and the pilot's estate.

Because the cases involve ongoing litigation, the Corporation Counsel requested the opportunity to convene an executive meeting.

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 recommendations of the Department of the Corporation Counsel, your Committee voted 6-0 to recommend adoption of the five proposed resolutions to authorize settlement of the matters under the terms proposed in the executive meeting. Committee Chair Guzman and members Baisa, Carroll, Cochran, Couch, and Victorino voted "aye." Committee Vice-Chair Crivello and members Hokama and White were excused.

Your Committee of the Whole **RECOMMENDS** the following:

1. That Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF TREMAINE BALBERDI V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00322," be **ADOPTED**;

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2. That Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF KATHLEEN KERN V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00330," be ADOPTED;
3. That Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF JAMES A.Q. GIROUX V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00345," be ADOPTED;
4. That Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF MARK A. KING V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00348," be ADOPTED; and
5. That Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF DOUGLAS MILLER V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00526," be ADOPTED.

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



DON S. GUZMAN, Chair

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Resolution

No. _____

AUTHORIZING SETTLEMENT OF
TREMAINE BALBERDI V. COUNTY OF MAUI,
DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00322

WHEREAS, Claimant Tremaine Balberdi filed a Workers' Compensation Claim alleging work-related injuries sustained on February 26, 2014; and

WHEREAS, by Resolution 15-81, the Council previously authorized settlement of the case; and

WHEREAS, having reviewed the facts and circumstances regarding this matter and being advised of the proposed settlement by the Department of the Corporation Counsel, the Council wishes to authorize the settlement of the Workers' Compensation Claim under the terms and conditions proposed in an executive meeting before the Committee of the Whole; now therefore,

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

1. That it hereby approves settlement of Tremaine Balberdi v. County of Maui, Disability Compensation Division Case No. 5-14-00322, under the terms set forth in an executive meeting before the Committee of the Whole; and

2. That it hereby authorizes the Mayor to execute a Stipulation and Settlement Agreement on behalf of the County in this case; and

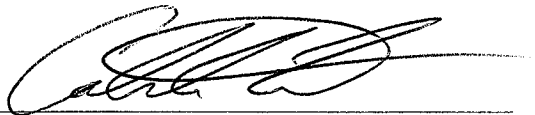
Resolution No. _____

3. That it hereby authorizes the Director of Finance 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 payment is authorized to satisfy this settlement following approval of the Stipulation and Settlement Agreement by the Department of Labor and Industrial Relations, State of Hawaii; and

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

APPROVED AS TO FORM AND LEGALITY:



CALEB P. ROWE
Deputy Corporation Counsel
County of Maui

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
KATHLEEN KERN V. COUNTY OF MAUI,
DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00330

WHEREAS, Claimant Kathleen Kern filed a Workers' Compensation Claim alleging work-related injuries sustained on February 26, 2014; and

WHEREAS, by Resolution 15-83, the Council previously authorized settlement of the case; and

WHEREAS, having reviewed the facts and circumstances regarding this matter and being advised of the proposed settlement by the Department of the Corporation Counsel, the Council wishes to authorize the settlement of the Workers' Compensation Claim under the terms and conditions proposed in an executive meeting before the Committee of the Whole; now therefore,

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

1. That it hereby approves settlement of Kathleen Kern v. County of Maui, Disability Compensation Division Case No. 5-14-00330, under the terms set forth in an executive meeting before the Committee of the Whole; and

2. That it hereby authorizes the Mayor to execute a Stipulation and Settlement Agreement on behalf of the County in this case; and


Resolution No. _____

3. That it hereby authorizes the Director of Finance 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 payment is authorized to satisfy this settlement following approval of the Stipulation and Settlement Agreement by the Department of Labor and Industrial Relations, State of Hawaii; and

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

APPROVED AS TO FORM AND LEGALITY:



CALEB P. ROWE
Deputy Corporation Counsel
County of Maui

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
JAMES A.Q. GIROUX V. COUNTY OF MAUI,
DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00345

WHEREAS, Claimant James A.Q. Giroux filed a Workers' Compensation Claim alleging work-related injuries sustained on February 26, 2014; and

WHEREAS, by Resolution 15-82, the Council previously authorized settlement of the case; and

WHEREAS, having reviewed the facts and circumstances regarding this matter and being advised of the proposed settlement by the Department of the Corporation Counsel, the Council wishes to authorize the settlement of the Workers' Compensation Claim under the terms and conditions proposed in an executive meeting before the Committee of the Whole; now therefore,

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

1. That it hereby approves settlement of James A.Q. Giroux v. County of Maui, Disability Compensation Division Case No. 5-14-00345, under the terms set forth in an executive meeting before the Committee of the Whole; and

2. That it hereby authorizes the Mayor to execute a Stipulation and Settlement Agreement on behalf of the County in this case; and

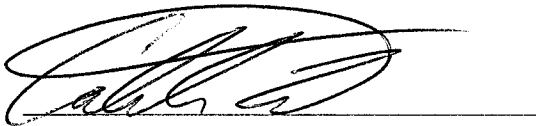
Resolution No. _____

3. That it hereby authorizes the Director of Finance 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 payment is authorized to satisfy this settlement following approval of the Stipulation and Settlement Agreement by the Department of Labor and Industrial Relations, State of Hawaii; and

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

APPROVED AS TO FORM AND LEGALITY:



CALEB P. ROWE
Deputy Corporation Counsel
County of Maui

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
MARK A. KING V. COUNTY OF MAUI,
DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00348

WHEREAS, Claimant Mark A. King filed a Workers' Compensation Claim alleging work related injuries sustained on February 26, 2014; and

WHEREAS, by Resolution 15-84, the Council previously authorized settlement of the case; and

WHEREAS, having reviewed the facts and circumstances regarding this matter and being advised of the proposed settlement by the Department of the Corporation Counsel, the Council wishes to authorize the settlement of the Workers' Compensation Claim under the terms and conditions proposed in an executive meeting before the Committee of the Whole; now therefore,

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

1. That it hereby approves settlement of Mark A. King v. County of Maui, Disability Compensation Division Case No. 5-14-00348, under the terms set forth in an executive meeting before the Committee of the Whole; and
2. That it hereby authorizes the Mayor to execute a Stipulation and Settlement Agreement on behalf of the County in this case; and

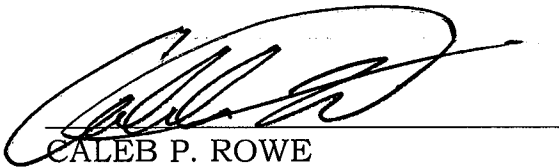
Resolution No. _____

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 payment is authorized to satisfy this settlement following approval of the Stipulation and Settlement Agreement by the Department of Labor and Industrial Relations, State of Hawaii; and

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

APPROVED AS TO FORM AND LEGALITY:



CALEB P. ROWE
Deputy Corporation Counsel
County of Maui

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
DOUGLAS MILLER V. COUNTY OF MAUI,
DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00526

WHEREAS, Claimant Douglas Miller filed a Workers' Compensation Claim alleging work-related injuries sustained on February 26, 2014; and

WHEREAS, by Resolution 15-85, the Council previously authorized settlement of the case; and

WHEREAS, having reviewed the facts and circumstances regarding this matter and being advised of the proposed settlement by the Department of the Corporation Counsel, the Council wishes to authorize the settlement of the Workers' Compensation Claim under the terms and conditions proposed in an executive meeting before the Committee of the Whole; now therefore,

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

1. That it hereby approves settlement of Douglas Miller v. County of Maui, Disability Compensation Division Case No. 5-14-00526, under the terms set forth in an executive meeting before the Committee of the Whole; and

2. That it hereby authorizes the Mayor to execute a Stipulation and Settlement Agreement on behalf of the County in this case; and

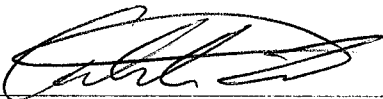
Resolution No. _____

3. That it hereby authorizes the Director of Finance 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 payment is authorized to satisfy this settlement following approval of the Stipulation and Settlement Agreement by the Department of Labor and Industrial Relations, State of Hawaii; and

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

APPROVED AS TO FORM AND LEGALITY:



CALEB P. ROWE
Deputy Corporation Counsel
County of Maui