

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

April 15, 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 February 5, 2016, March 18, 2016, and April 1, 2016, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated January 21, 2016, the Department of the Corporation Counsel requested consideration of the possible settlement of Lars M. Gascon v. County of Maui, Disability Compensation Division Case 7-11-01155; Labor and Industrial Relations Appeals Board Case AB 2015-319(M). Attached to the request is a proposed resolution entitled "AUTHORIZING SETTLEMENT OF LARS M. GASCON V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 7-11-01155; LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD CASE NO. AB 2015-319(M)." The purpose of the proposed resolution is to authorize the Department to settle the workers' compensation appeal.

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.

A Deputy Corporation Counsel provided a brief overview of the case. He noted Lars Gascon, a County employee, was injured during the course and scope of his duties. Mr. Gascon was treated by Dr. James Hattaway. While being treated for his industrial injury, Mr. Gascon was in a car accident which exacerbated his injuries and increased the length and frequency of treatments necessary. The County was never informed of the motor vehicle accident or the exacerbation of injuries. Mr. Gascon continued to be treated by Dr. Hattaway for his injuries under both his workers' compensation claim and his private insurance.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

Page 2

**Committee
Report No.** _____

The Deputy said the County brought a fraud claim against Dr. Hattaway. The Disability Compensation Division found that Dr. Hattaway had committed 69 counts of fraud. Dr. Hattaway has appealed the Disability Compensation Division's decision to the Labor and Industrial Relations Appeals Board. The Deputy said a settlement has been offered in the appeal which would require the County's withdrawal of the fraud complaint.

Because the case involves ongoing litigation and confidential medical information, the Deputy requested the opportunity to convene an executive meeting.

At each of its three meetings, 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; and Section 92-5(a)(8), Hawaii Revised Statutes, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order.

Your Committee twice deferred action on the matter. At the February 5, 2016 meeting, your Committee requested additional information from the Department. At the March 18, 2016 meeting, your Committee had insufficient time to complete discussion of the matters on its agenda.

Following the executive meeting on April 1, 2016, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department, your Committee voted 5-0 to recommend adoption of the proposed resolution. Committee Chair Guzman and members Carroll, Cochran, Couch, and Hokama voted "aye." Committee Vice-Chair Crivello and members Baisa, Victorino, and White were excused.

Your Committee of the Whole RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF LARS M. GASCON V. COUNTY OF MAUI, DISABILITY COMPENSATION

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

Page 3

**Committee
Report No.** _____

DIVISION CASE NO. 7-11-01155; LABOR AND INDUSTRIAL RELATIONS
APPEALS BOARD CASE NO. AB 2015-319(M),” be ADOPTED.

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



DON S. GUZMAN, Chair

cow:cr:16001(29)aa:cmn

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
LARS M. GASCON V. COUNTY OF MAUI,
DISABILITY COMPENSATION DIVISION CASE NO. 7-11-01155;
LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
CASE NO. AB 2015-319(M)

WHEREAS, Claimant Lars M. Gascon filed a Workers' Compensation Claim alleging work-related injuries sustained on June 21, 2011; and

WHEREAS, Claimant Lars M. Gascon treated with Dr. James Hattaway for his injuries; and

WHEREAS, the County of Maui brought a fraud claim inclusive of 69 counts of fraud against his treating provider, Dr. James Hattaway, on May 2, 2014; and

WHEREAS, the Disability Compensation Division found that Dr. James Hattaway had committed 69 counts of fraud by way of Decision and Order dated July 24, 2015; and

WHEREAS, Dr. James Hattaway appealed this decision to the Labor and Industrial Relations Appeals Board; 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 Appeal under the terms and

Resolution No. _____

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 the fraud claim against Dr. James Hattaway in Lars M. Gascon v. County of Maui, Disability Compensation Division Case No. 7-11-01155; Labor and Industrial Relations Appeals Board Case No. AB 2015-319(M), 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

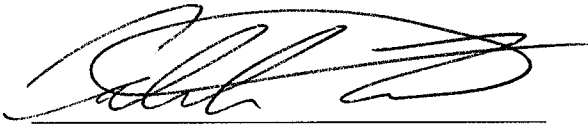
3. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

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

Resolution No. _____

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

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, appearing to read 'Caleb P. Rowe', written over a horizontal line.

CALEB P. ROWE
Deputy Corporation Counsel
County of Maui