

# COMMITTEE OF THE WHOLE

Council of the County of Maui

## MINUTES

March 18, 2016

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

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

**PRESENT:** Councilmember Don S. Guzman, Chair  
Councilmember Stacy Crivello, Vice-Chair (Out 4:32 p.m.)  
Councilmember Gladys C. Baisa (In 1:55 p.m.)  
Councilmember Robert Carroll  
Councilmember Elle Cochran  
Councilmember Don Couch  
Councilmember Riki Hokama (In 1:39 p.m.; Out 4:34 p.m.)  
Councilmember Michael P. Victorino (In 1:39 p.m.)

**EXCUSED:** Councilmember Mike White

**STAFF:** Carla Nakata, Legislative Attorney  
Tammy Frias, Substitute Committee Secretary

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

**ADMIN.:** Patrick K. Wong, Corporation Counsel, Department of the Corporation Counsel  
Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation Counsel  
Caleb P. Rowe, Deputy Corporation Counsel, Department of the Corporation Counsel  
Lydia A. Toda, Risk Management Officer, Risk Management Services Section, Department of the Corporation Counsel (Item 1(19))

*Seated in the gallery:*

William R. Spence, Director, Department of Planning (Item 1(19))  
Tivoli S. Faaumu, Chief, Department of Police (Item 1(28))

**OTHERS:** Joe Wildman, Attorney, representative for the Estate of Tremaine Balberdi (Item 1(19))  
Douglas Miller (Item 1(19))  
Malia Balberdi (Item 1(19))  
George Balberdi (Item 1(19))  
Janice Heidt, Attorney, representative for Mark King  
William Kennison (Item 1(29))

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Timothy P. McNulty, Attorney, representative for  
Dr. James H. Hattaway (Items 1(29), 1(19), and 1(28))  
Pamela Eaton (Item 1(19))  
David Yamashita (Item 1(19))  
Mary Jorgensen (Item 1(19))  
James H. Hattaway D.C. (Item 1(29))  
Simone Bosco (Item 1(19))  
Michele McLean, Deputy Director, Department of Planning (Item  
1(19))  
Livit Callentine (Item 1(19))  
Tammy Osurman (Item 1(19))  
(10) additional attendees

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

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CHAIR GUZMAN: . . .*(gavel)*. . . Good afternoon. Welcome to the Committee of the Whole. I'm Don Guzman, the Chair. Before we begin, may I please ask you to please turn off your cell phones or put it in the silence mode? I'm gonna introduce our Members for today's meeting. We have Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR GUZMAN: We have the Vice-Chair of the Committee, Stacy Crivello.

VICE-CHAIR CRIVELLO: Good afternoon, Chair.

CHAIR GUZMAN: Don Couch.

COUNCILMEMBER COUCH: Good afternoon, Chair.

CHAIR GUZMAN: Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR GUZMAN: And joining us later will be Gladys Baisa as well as Mike Victorino. Excused is Chair White and also joining us later will be Riki Hokama. For our Staff we have our Committee Secretary, Tammy Frias. Our Legislative Attorney, Carla Nakata. And for our Corporation Counsel, Pat Wong. Deputy Corporation Counsel, Caleb Rowe, and Lydia Toda from Risk Manager...Management. Before we begin I'd also like to remind everyone who is going to be testifying, when you come to the podium, please state your name and/or organization in which you represent. You'll have three minutes to testify. When you see the red blinking light, that means that you should conclude at that point. Before we begin again, I'm gonna go ahead and check in with our District Offices. In...just...Members, Lanai Office is not present today, so will not be included in the minutes. I'm gonna go ahead and check in with Hana Office. Are you here...are you there, Hana Office? Not there? I'll check in with...Molokai Office,

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are you there? I think we might...I'm gonna take a recess. I think we have some communication issues. Call of the Chair. . . .*(gavel)*. . .

**RECESS: 1:35 p.m.**

**RECONVENE: 1:39 p.m.**

CHAIR GUZMAN: . . .*(gavel)*. . . Meeting reconvene. Checking in with the Hana District.

MS. LONO: Good afternoon, Chair. This is Dawn Lono at the Hana Office. And there's no one waiting to testify.

CHAIR GUZMAN: Thank you. In Molokai Office. Are you present?

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

CHAIR GUZMAN: Thank you, Ms. Alcon.

**. . .BEGIN PUBLIC TESTIMONY. . .**

CHAIR GUZMAN: Turning to the Chambers, is there anyone wishing to testify?

MS. NAKATA: Yes, Mr. Chair. The first testifier is Joe Wildman. He'll be testifying on COW-1(19). He'll be followed by Doug Miller.

MR. WILDMAN: Good afternoon, Chair Guzman and Members of the Council. My name is Joe Wildman. I'm an attorney and I represent the estate and family of Tremaine Balberdi. As you know, Tremaine was a passenger on that fateful island...Maui Island Air flight on February 24, 2014, returning home from Lanai where she had attended a Planning Commission meeting as part of her duties with the County of Maui. Tremaine had been a County of Maui employee for 25 years and only 52 years old at the time of her death. Tremaine gave her life in service to the County of Maui. And left a husband, George, a daughter, Malia, and a grandson Giovanni. On behalf of Tremaine's estate and George and Malia, we have reached a resolution of their wrongful death claims against Maui Island Air, Maui Aircraft Leasing, and the estate of Richard Rooney. The specifics of that settlement are contained in correspondence sent to the Corporation Counsel in January of this year. Therefore, so that we may conclude resolution of these claims, and in light of Tremaine's years of service to the County of Maui, and what this family has been through, we would respectfully request that the County of Maui consent to the settlement with the third parties that I've mentioned and waived...wave the workers' compensation lien and future credit under Chapter 386, Hawaii Revised Statutes. I want to thank you for your consideration of our request. And if you have any questions, I'd be happy to respond.

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CHAIR GUZMAN: Thank you. Any questions or comments for the testifier? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And thank you, Mr. Wildman, for being here. Can you...I know, I'm sure our attorneys are going to talk about this, but waiving of the lien, what does that mean?

MR. WILDMAN: There are certain benefits that are paid to a beneficiary upon the death of a County employee. Those began to accrue effectively right after Tremaine died. After there was a Disability Compensation Division hearing. Those have accrued on a semi-monthly basis since that time and will continue to do so. The amount that has been paid thus far as well as the funeral and burial expenses would essentially be the outstanding current lien that the County of Maui has paid to Mr. Balberdi. And that's what we're asking to have waived today.

COUNCILMEMBER COUCH: Thank you, Chair.

CHAIR GUZMAN: Thank you. Any further questions from the Members? Seeing none, thank you very much, Mr. Wildman.

MR. WILDMAN: Thank you.

MS. NAKATA: Mr. Chair, the next testifier is Doug Miller. He'll be testifying on COW-1(19). He'll be followed by Malia Balberdi.

MR. MILLER: Good afternoon, Mr. Chairman and Members of the Council. My name is Doug Miller. I work as an urban planner for Maui County. I'm here today on my own time representing myself as a citizen. I'm also one of the survivors of the Lanai plane crash. On February 26, 2014, I boarded an air taxi plane hired by Maui County to fly us back and forth to the island of Lanai for a Planning Commission meeting. We'd been taking the ferry across, but there was a desire to save cost in overnight stay so we were required to travel by air for the first time. I didn't support the change and I told my wife and several friends that I was very uncomfortable in flying in a small airplane. But I had a job to do, so I went. Unfortunately, on the return flight, my worst fears were realized and the plane crashed. Three people died. Three of us survived. It was a horrific scene that will haunt me for the rest of my life. An investigation found that the pilot had failed to properly latch the cargo bay door which opened up shortly after takeoff. He tried to turn the plane around, became disoriented, and flew the plane into the ground, killing himself and two of my coworkers and seriously injuring the survivors. The pilot was not legally qualified to fly the plane since he was not up to date on his flying hours for that type of aircraft. Although the impact of the crash broke my scapula and some ribs, I managed to scramble out of the burning flame. I suffered second and third degree burns over 20 percent of my body. I was airlifted to Queen's Medical Center in critical condition where I clung to life for two weeks. I was put in a medical coma. Once I finally stabilized, I was airlifted to the Portland Burn Center, where a great team of medical professionals replaced the dead skin on my head, my face, and my hands with skin grafts. My life's changed forever. Today I have visible scarring on my head, face,

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hands, arms, and legs, from the fire and skin graft surgery. I've lost the sensitivity to heat and sharp objects on the grafted skin. I've lost my sense of smell, can no longer enjoy the fragrance of flowers, the smell of great food. But more importantly I cannot smell dangerous gases putting me at risk. Since the crash, getting on an airplane is extremely stressful. This presents a serious problem for someone living on an island that only has one option for off-island travel. Since the crash, I don't have the level of energy that I had before. And I now require a lot of sleep. This has had a negative effect on my work life, my social life, and my personal relationships. Before the crash, I was always very active in sports. Since the crash, unfortunately I can no longer participate at my sports at the level I did before. I don't have the same strength, stamina, or range or motion.

MS. NAKATA: Three minutes.

MR. MILLER: I'm unable to work fulltime. I cannot perform my job at the level I could before due to physical and emotional limitations. I do the best job I can every day, but it can be frustrating. I sometimes feel like I'm not pulling my own weight. I get frustrated with myself. And I get frustrated with others if I feel they don't understand. Overall Maui County has been very, very supportive at every level, my coworkers, my supervisors, the department heads, the Administration, the Mayor, and the Council. Maui County has also stepped up and done the right thing financially, in taking care of my medical bills, because I was injured on the job. Unfortunately the airline did not have sufficient insurance coverage to pay the sort of...pay for the sort of catastrophic injuries that occurred in this horrible tragedy. They had a \$250,000 per passenger limit...

MS. NAKATA: Four minutes.

MR. MILLER: ...which is nowhere near the amount of medical costs that have been incurred. My attorney has over 20 years' experience in the aviation law and he said he's never seen such a low amount of coverage. It's normally a million dollars. I feel it was a mistake for Maui County to contract with an air taxi company that didn't have sufficient insurance coverage in the event of a catastrophic plane crash. The victims of the crash and their families received a negotiated settlement from this small airline company and the pilot's estate to help compensate us for our physical and emotional injuries, to pay for the pain and suffering that the victims and their families have endured. Unfortunately, again, there's not enough money to pay for the costs incurred so far, let alone future costs. So here's the problem and the reason we're here today. Unfortunately, there's a State law that allows workers' comp carriers to swoop in and take third-party award monies given to workers, shifting the medical cost onto the employee, forcing them to pay out of their own pockets for the cost incurred due to an on-the-job injury.

MS. NAKATA: Five minutes.

MR. MILLER: It's unbelievable but true. Fortunately, Maui County has the ability to prevent their workers' comp carrier from taking the victims award money. Therefore I urge the

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good Members of the Maui County Council to do the right thing for the plane crash victims and their families and to choose not to enable the workers' comp carrier to pick the pockets of the victims of this tragic event and force us to pay for past and future medical costs stemming from this tragic event that occurred on the job. Mahalo and thank you for your time.

CHAIR GUZMAN: Members...excuse me, Mr. Miller. Members, do you have any questions or comments that you'd like to pose for the testifier? Seeing none, thank you very much for your testimony.

MS. NAKATA: Mr. Chair...

CHAIR GUZMAN: Yeah. I'd like to recognize before you call the next testifier, Mr. Hokama as well as Mr. Victorino present in the Committee meeting. You may proceed.

MS. NAKATA: Mr. Chair, the next testifier is Malia Balberdi, she'll be followed by George Balberdi. Ms. Balberdi is testifying on COW-1(19).

MS. BALBERDI: Good afternoon, Mr. Chair and Councilmembers. My name is Malia Balberdi. I am testifying on behalf of COW-1(19) and my mom Tremaine Balberdi. There aren't enough words that could explain how the loss of my mom has changed our lives so dramatically, not only my personal life but as a Planner for the Planning Department. For me, work cannot be an escape. And home is sometimes the last place I want to be because she's not there. Everyone says that you must move on, you must choose to get better and although they may be correct, it is easier said than done when someone who could melt even the most hardest of hearts with a simple smile and who could fill the room with so much love is tragically taken away due to an unlocked front nose baggage door. You don't just move on. I am very grateful for the support of the community and the fellow coworkers that have tried to help us. We will always be grateful. Even though nothing could ever bring her back, I'm here asking that you do the right thing, in the regards to the settlement agreement. Thank you for your time.

CHAIR GUZMAN: Thank you. We're also sorry for your loss. Any Members would like any questions? Seeing none, thank you very much. Next.

MS. NAKATA: Mr. Chair, the next testifier is George Balberdi, he'll be testifying on COW-1(19). He'll be followed by Janice Heidt.

MR. BALBERDI: Good afternoon, Chair, Council. My name is George Balberdi, the husband of Tremaine. I just want to say that, you know, life has never been the same. Never been the same. It's not an easy thing when you, like my daughter said, even at work, she has a hard time 'cause she worked with the mom. For me, when I'm home, she's not there. When I go shopping she's not there. She will never be with me ever again. Never ever again. Just one mistake, right? Just one mistake happened. And she's not here. And my heart has been broken so much, that nobody knows what I'm going through inside. People say she wants you to move on. I know that. I know that. But

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how do you move on? How do you move on? Just one mistake. One mistake, it took. And they're all gone. My grandson, I look at him every day and I tell myself what she's missing. What my wife is missing. And that was her boy. It's not an easy thing, that's all I have to say. And I thank you guys so much. Thank you.

CHAIR GUZMAN: Thank you, George. We're sorry for your loss. Members, do you have any questions at this point? Seeing none, thank you for your testimony.

MS. NAKATA: Mr. Chair, the next testifier is Janice Heidt. She's testifying as a representative of Mark King on COW-1(19). Ms. Heidt will be followed by William Kennison.

MS. HEIDT: Good afternoon. My name is Janice Heidt, I'm the attorney and I represent Mark King, who was an injured passenger...

COUNCILMEMBER VICTORINO: Chair, could she put the --

CHAIR GUZMAN: Yes.

COUNCILMEMBER VICTORINO: Put the mic closer please. Thank you.

CHAIR GUZMAN: Closer to the mic. Thank you.

MS. HEIDT: ...who was an injured passenger on this tragic plane crash. First I'd like to thank the County of Maui for being so supportive of Mark King and I know of Doug Miller. I know Mark loves his job at the...with the County of Maui. And if he didn't have...having his job with the County of Maui and being a productive member of the Maui community is really the one thing that has helped him cope with his life-altering disabilities and injuries. So keeping his job with the County of Maui is very important to him. But also he also faces the fact that he is going to have medical bills and ongoing medical treatments for the...probably the rest of his life. Mark had severe, severe burns on his...most of his body. And especially on his hands and his forearms. He also suffered a severe break in his leg. He was...when the plane crash occurred, his foot had gotten folded into the metal of the plane. And so he was...he couldn't get out of the plane...when James and Doug were able to get out, and Tremaine was sitting next to him when the fire in the plane was getting closer. And when he watched her start screaming when she was caught on fire, he was motivated to pull his leg out of the airplane which essentially almost tore his foot, you know, the lower half of his leg off. But he crawled out of the airplane and he was treated for his injuries and he was eventually, you know, he did get back to work. He still has treatments for some of the burns that he has and he has issues. When they eventually amputated his leg, unfortunately, they had to take skin for the skin grafts from his thigh, both of his thighs 'cause there wasn't very much viable skin left. So unfortunately the skin when you take a skin graft, it leaves very raw skin. And it's difficult for him to wear a prosthetic because of that and it often rubs his skin raw. And so he's often in a wheelchair. Or if he's at work, he takes the prosthetic off. The airplane charter company has offered the insurance company policy, you know, policy

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limits and also all their assets, and the deceased pilot's estate is providing all their assets. Unfortunately there's not enough money to compensate everybody. And the money that Mark would receive is...doesn't even come close to the pain and suffering that he's experienced already and he will experience in the future. And the Hawaii Supreme Court has addressed this issue many, many times. And the principle is and repeatedly supported the principle that the workers' compensation statute has a beneficent purpose and should be afforded liberal construction in favor of the employee.

MS. NAKATA: Three minutes.

MS. HEIDT: And essentially it's...the idea is to restore the claimant to, the injured worker to as nearly as possible to restore him if the wrong would have not been committed. Unfortunately we can't put Mark back together again. But certainly him receiving some of this money, whatever money he can get from the negligent parties, would help him not only to live a better life but also help him with some of the treatments that he has or any out-of-pocket expenses that he might have that aren't covered under the workers' compensation medical. So Mark...on behalf of Mark, we are requesting that the County of Maui waive its lien, workers' compensation lien and allow him to recover the monies from the at-fault parties in this matter. Thank you.

CHAIR GUZMAN: Thank you, Ms. Heidt. Members, do you have any questions for the testifier? Seeing none, thank you very much for your testimony.

MS. NAKATA: Mr. Chair, the next testifier is William Kennison. He'll be testifying on COW-1(29). He'll be followed by Timothy McNulty.

CHAIR GUZMAN: I'd like to recognize the presence of Gladys Baisa.

COUNCILMEMBER BAISA: Thank you, Chair.

CHAIR GUZMAN: Thank you.

MR. KENNISON: Chairman Guzman, Members of the Maui County Council. My name is William Kennison, trying to retire, Division Director of the ILWU, been trying for three years. Very difficult. I'm here in support of Dr. Hattaway, James Hattaway. I've been with the union for 32 years. And during that 32 years, I've worked with Mr. Hattaway for close to that 32 years. The reason I'm supporting him is because whenever we needed help he was there for us. And we have, you know, we have members who work in all different industries. And some of the industries are real difficult industries and tough industries. And our members do get injured on the job and when they get injured on the job, the only way they can get back to work is if they can get medical care and treatment to get back to work. And he has always been there for us, he has never turned us down. Workers' comp industry and the business is very difficult and some, not all doctors will accept workers' comp claims. And some of the members are really left out in the cold at times. But whenever we have an injured person and we send it to Mr. Hattaway, he does a wonderful job in helping them. I'm not going to go



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through all the details of, 'cause time limits, of the members he helped but just one example, we have a member and his daughter gave birth. And the daughter, after gave birth, couldn't walk. Could not walk. And because of the difficulty of the birth and he worked with the daughter. Worked with the daughter. We...you know, and by working with the daughter, he was able to get her on her feet and today she's walking. And she came to our meeting. They brought her to our union meeting and she walked into the meeting and she just praised Dr. Hattaway for...because if...she didn't know what to do after she had that injury while giving birth. So that's just one case but there's many. I...there's many, many cases over the years I've been. And so I'm asking you, the Maui County Council, to consider the resolution to settle Mr. Hattaway's case. He has been very helpful, he's a good man, he does a great job. And there's a lot of people in this community that goes to see him. So again, hopefully that you guys will be able to help him settle this...his case today. Thank you very much.

CHAIR GUZMAN: Thank you. Members, are...have any questions for Mr. Kennison? Seeing none, thank you very much for your testimony.

MS. NAKATA: Mr. Chair, the next testifier is Timothy McNulty, he is testifying on COW-1(29), 1(19), and 1(28). He's a representative of Dr. James Hattaway. Mr. McNulty, will be followed by Pamela Eaton.

MR. McNULTY: Thank you. Thank you, Mr. Chair, Councilmembers. I want to speak first...

COUNCILMEMBER COUCH: Mr. Chair?

CHAIR GUZMAN: Yes?

COUNCILMEMBER VICTORINO: Can you go to the mic?

CHAIR GUZMAN: Yes. Can you please identify yourself for the record?

MR. McNULTY: Yes. Timothy McNulty. I'm the attorney for James Giroux in item number one. I am the attorney for Lisa Haupu in item number two. And I am the attorney for Dr. James Hattaway in item number three. And so I echo the sentiments expressed by the testifiers in connection with the airplane crash that occurred on Lanai. The monies that are available to compensate the severely physically injured people, as well as the psychologically injured person of James Giroux are wholly inadequate. And I would request that the Council waive the HRS 386-8 lien claim as well as the credit claim to allow the continued medical treatment under the workers' compensation claim of James Giroux. In connection with item number two, which is Lisa Haupu, I'm available to answer any questions you may have. But I believe that we've discussed this with Corporation Counsel. And if there are no questions on that, I'd move onto item number three which is Dr. James H. Hattaway. Dr. Hattaway has requested that he be permitted to give certain remarks to you here today, in connection with the matter involving the County of Maui and his medical care and treatment of Lars Gascon. His remarks are protected under Hawaii Rules of Evidence Rule 408 and at this time I'd like to call Dr. Hattaway to testify.

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CHAIR GUZMAN: It's not his turn to testify. Please conclude your testimony.

MR. McNULTY: My testimony is now concluded.

CHAIR GUZMAN: Okay. Members, do you have any other questions for the testifier?  
Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And thank you, Mr. McNulty, for being here. When you say...talking about the first, for Mr. Giroux, that if we don't waive the lien, then they have to pay for their own medical bills?

MR. McNULTY: Well there's two aspects to the three...

COUNCILMEMBER COUCH: Could you speak into the microphone please?

MR. McNULTY: There's two aspects to the 386-8 right for reimbursement. The first part is a lien claim in the third-party claim. The personal injury claim against the tortfeasors, the wrongdoers in this airplane crash. And then the second element is in connection with his workers compensation case and the statute in, as it's written allows a claim of credit based on the net recovery that he receives in the personal injury claim. And that would apply to all the severely physically injured people as well. And so that's what we're asking to be waived. Both the lien claim as well as the credit claim.

COUNCILMEMBER COUCH: Okay. Thank you, Chair.

CHAIR GUZMAN: Thank you. Any other further questions from the Members? Seeing none, thank you very much, Mr. --

MR. McNULTY: Thank you.

CHAIR GUZMAN: --McNulty.

MS. NAKATA: Mr. Chair, the next testifier is Pamela Eaton. She'll be testifying on COW-1(19). She'll be followed by David Yamashita.

MS. EATON: Good afternoon, Council. I want to make clear that I'm testifying on behalf of myself. And I have taken the appropriate leave time in order to appear here today to testify in support of Mark King, Doug Miller, James Giroux, and the families of Tremaine Balberdi, and Kathleen Kern.

CHAIR GUZMAN: Excuse me. Ms. Eaton, can you please identify yourself for the record?

MS. EATON: I was just getting ready to do that.

CHAIR GUZMAN: Oh. Thank you.

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MS. EATON: Third bullet.

CHAIR GUZMAN: Okay.

MS. EATON: So my name is Pamela Eaton. And I am the Planning Program Manager of the Long Range Planning Division for the Department of Planning. I started at the Long Range Division on October 1, 2014, a little more than eight months after the plane crash which occurred on February 26<sup>th</sup>. I'm speaking to you all personally and professionally on behalf of Mark and Doug, who I supervise in my Division. They are both staffed to the Long Range Division. Doug came back to work after the crash about one week before I arrived at the Long Range Division. And Mark King came back about a half a month, or month and a half later, in mid-November. Doug is a Senior Planner and he's the project lead, by the way, for the West Maui Community Plan. Mark is a Geographic Information System Analyst and a critical asset to the GIS Division and team, rather as well. So in terms of Doug, I had a very difficult time writing this. He is probably one of the most creative, passionate, enthusiastic individuals I've ever met in my life. And what I want you to know is that every single day that I have worked with Doug, he has never once complained, ever, ever, about this accident. He blows me away with his enthusiasm and his passion. He is killing himself, putting himself into this West Maui Community Plan. He is trying to make things better, better than they've ever been before. And I want you to know that. And I want you to know that because I want you to know what an amazing asset this individual is to the County of Maui, not only to our Division and Department. Mark King, I can't put into words how brave he is and what he's undergone in coming back. And for those of you that know Mark, know what a amazingly unique, very unique individual he is. I actually did know Mark before I came to Planning. Mark has a fierce dedication to his job and that's probably a complete understatement. His center point of his life is this job. He is all about Maui County. He is all about what he can do for Maui County. He is an amazing invaluable asset. He's not only in the Planning Division and Planning Department, he has also been an HGEA steward for a long time, and my understanding is that he has served at many of your fundraisers over the years.

MS. NAKATA: Three minutes.

MS. EATON: Thank you. Mark is a brain trust on so many topics, I can't even begin to explain how much that gentleman knows. I waited with Mark before the first anniversary of the plane crash 'cause he has a very difficult time traveling back and forth and in the two hours we waited after work for the...well for the memorial, he taught me five-card Texas hold 'em. He's amazing. I have the highest regard for these two gentlemen. I have learned so much from them in the past year at the Long Range Planning Division. They are an amazing asset to the County of Maui. There's no price for what they offer us all, let alone trying to make them whole after an unspeakable horror they have been through and continue to battle each and every day. I ask you, please, please, Councilmembers, do the right thing by all of these individuals: Mark King, Doug Miller, James Giroux, and the families of Kathleen Kern, and

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Tremaine Balberdi. Please make sure they receive any and all and more compensation that you can give them, quite frankly.

MS. NAKATA: Four minutes.

MS. EATON: They are deserving. Thank you so much.

CHAIR GUZMAN: Thank you, Ms. Eaton. Is there any questions? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And thank you, Ms. Eaton, for your testimony. And maybe I should have asked this of Mr. King's attorney, but do you know why Mr. King isn't here today?

MS. EATON: Mark is not here today because he had to have surgery on his hand 'cause he was using...losing use of his hand. So he had to have surgery which was extremely painful, and I believe he's had to go back two or three times because of infection. And that's why Mark's not here today.

COUNCILMEMBER COUCH: Thank you. Thank you, Chair.

CHAIR GUZMAN: Any other questions from the Members? Seeing none, thank you very much for your testimony.

MS. NAKATA: Mr. Chair, the next testifier is David Yamashita. He'll be testifying on COW-1(19). He'll be followed by Mary Jorgensen.

MR. YAMASHITA: Aloha, Chair Guzman, Councilmembers, and Council Staff. My name is David Yamashita. And I've been the Planning Supervisor for the Long Range Division since 2011. But I'm here on personal time and I'm speaking as a private citizen and not as a County employee. Most importantly I'm here because the matter you are considering is very important to me and to many employees of the Planning Department. I stand before you to make just one request, that the County absorb the expenses for Doug Miller and Mark King after the Lanai plane crash in February 2014. You are well aware of what this means financially for Doug and Mark and for the County as well. It's not an easy decision, because you also have to be mindful of the County's legal and financial responsibilities. But I ask that you think long and hard about what the survivors, Doug and Mark as well as James Giroux, and the families of Kathleen Kern and Tremaine Balberdi, have endured and will continue to endure. Speaking for Doug and Mark, both men suffered horrific injuries. Some of which are visible and some that are not. These wounds will never go away. And no amount of money will ever make their wounds disappear. Their struggles will last a lifetime. We see their challenges every day. And we know better than most people how difficult this has been for them. But as Pam said, despite their injuries, both Doug and Mark have persevered, they've returned to work and have resumed their duties as members of the Planning Department staff while continuing to deal with the after effects of the plane crash. As much as we would like to, we can't change the past. We can't go back and undo what happened. And what we can do, what you can do, is to make Doug and

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Mark's lives a little easier by allowing them to receive the financial compensation they deserve. If we could make the decision you're faced with, you know what we would do. There's no question. We're not in that position however. So we are asking you to make the right choice to do the right thing and to demonstrate that the County of Maui truly stands behind and supports its employees when it matters the most. Mahalo.

CHAIR GUZMAN: Members, do you have any questions for Mr. Yamashita? Seeing none, thank you very much, Dave.

MS. NAKATA: Mr. Chair, the next testifier is Mary Jorgensen. She'll be testifying on COW-1(19). She'll be followed by Dr. James Hattaway.

MS. JORGENSEN: Aloha, Chair and Councilmembers. Mary Jorgensen. I'm a Senior Planner in the Long Range Division of the Planning Department. But I'm here today just representing myself. It is very difficult for me to separate my experience as a Planning Department employee from my testimony even though I'm speaking on my own time. 'Cause it was a great loss and a very traumatic...for our Division. And so I know today you have a important decision to make on whether to pass this settlement resolution, but I just want to ask you to please be generous and choose the maximum that you're allowed to give to the families and the survivors of the plane crash. And please honor the loss and grief of the families and friends of the deceased. And honor the survivors who suffered immense trauma. I also feel it's important as you are the representatives of the people of Maui, that your decision will also reach out to all County employees that their lives are valued. Because we really value the loss of our coworkers and the suffering of those that survived. And I think that today you have an opportunity to demonstrate leadership for...and a...by example to all other employees in the County to do the same, to honor your employees. Mahalo.

CHAIR GUZMAN: Members, do you have any questions for Ms. Jorgensen? Seeing none, thank you very much, Mary.

MS. NAKATA: Mr. Chair, the next testifier's Dr. James Hattaway. He'll be testifying on COW-1(29). He'll be followed by Simone Bosco.

MR. HATTAWAY: Good afternoon, Mr. Chairman. And aloha to all Councilmembers. My name is Dr. James Hattaway. My mission in life has been to heal and serve my patients to the best of my ability. Throughout my 33 years in practice, I've helped over 10,000 patients on the island of Maui. Most of my time is spent face to face with my patients with my hands on them and when I'm in the office. This...I did submit a written testimony from Jan Dapitan, who's one of my patients. I believe that was...will be passed out to you. With this being said, I'd like to take a moment and give you a synopsis of the case that happened. On June 21, 2011, the patient was involved in an industrial accident in which he injured his neck, his lower back, and his hips. With treatment his neck pain resolved and it was better. I stopped treating his neck before he had the motor vehicle accident. I continued to treat his lower back. A County of Maui medical examination was performed on the patient in February 7, 2012 by Dr.

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Francis Brewer. Dr. Brewer stated that his neck pain had resolved and he had no more pain or tenderness in his neck on his examination. Dr. Brewer diagnosed his cervical strain resolved, and he continued with a lower back problem. On May 4, 2012, about three months after his exam, the patient was involved in a motor vehicle accident. At that time, he came in with injuries in his neck and his upper back and slight injuries to his lower back. All of our billings for the no-fault were only done to the neck, we never billed the no-fault for any lower back treatment. Lower back treatment was billed to workers' comp for the County. There were no double billings of his lower back ever. Only his neck was billed to the car accident case, his lower back was billed to the County. There...I would like to sincerely express to each and every one of you that I had no willful intent to ever double bill or do anything wrong. But at this point, I would like to make things whole, refund all the funds we received, after the MVA, back to the County. I would like to create resolution and settlement and make this whole and refund the money at this point. Thank you.

CHAIR GUZMAN: Thank you. Members, do you have any questions for Dr. Hattaway? Seeing none, thank you very much, doctor.

MR. HATTAWAY: Thank you, sir.

MS. NAKATA: Mr. Chair, the next testifier is Simone Bosco. She'll be testifying on COW-1(19). She'll be followed by Michele McLean.

MS. BOSCO: Thank you, Staff. My name is Simone Bosco. I have been with the County of Maui for 18 years. I work as a Staff Planner. And at the time of the tragic plane crash, I was working alongside the victims of this event. All of the people in my office were put into the most shocking period probably of their work history. I also was very close to and very fond of Tremaine and even James, even though we don't work directly with each other. James and I had spent a lot of time together actually flying between islands. So all of these coworkers were very dear to me, and very familiar to me and very valuable. So I want to ask, Members, what is the value of life? Have you ever lost someone close to you? Then you know, you know what the value of life is. When there is an opportunity to fully live, you know to take it, to cherish every living moment and to show those you love they are loved. Have you ever lost an immediate coworker? Then you know the sacrifice they made on the job doing the same work that you do, breathing the same air that you breathe. And yet, they are no more. You know how it feels to look at their empty cubicle. Have you ever seen your dear coworkers suffer a tragic injury while on the job? I'll tell you, all of it is confusing and very difficult. You grieve for their sacrifice, you grieve because you cannot make it up to them. But you know that for those that remain, all you can do is give comfort and support. You also know that all the support you can give will mean everything to these people, to the survivors of this tragic event and to the lost and their families. You know that although no money can replace all of the damages that have occurred, support, monetarily and emotionally is the one thing that can help the most in providing amends to the losses that by no fault of their own, they suffered for.

MS. NAKATA: Three minutes.

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MS. BOSCO: So I ask and I support the maximum allowable amount that can be provided to the victims of this tragic event in February of 2014. That so many of us are still grieving, including survivors who are changed by this event for the rest of their lives. I ask that whatever you can give, you give. Whatever you can decide, please do to support these people in consideration of the enormous degree of suffering and sacrifice they have endured during the devoted performance of their job duties.

MS. NAKATA: Four minutes.

MS. BOSCO: Please grant the three survivors and the two we lost or their successors or assignees the most you can in assisting them monetarily and in any other way in appreciation for the work that they still to this day, continue to do for the people of the County of Maui. That will go a long ways in healing them in ways perhaps you may already realize. Thank you.

CHAIR GUZMAN: Thank you. Members, any questions for the testifier? Thank you, Ms. Bosco. Next?

MS. NAKATA: Mr. Chair, the next testifier's Michele McLean. She'll be testifying on COW-1(19). She'll be followed by Livit Callentine.

MS. McLEAN: Good afternoon, Chair, Committee Members. My name is Michele McLean. I would like to express support for the claimants involved in the February 26, 2014 plane crash on Lanai, in which two of our employees, along with the pilot, were killed. And two of our employees plus another in-County employee were seriously injured. Speaking as the Deputy Planning Director who's Department was profoundly impacted by this tragedy and as a 22-year resident of Maui, I believe these employees and their families deserve everything the County can offer them. We realize that you have few options and simply ask that you choose whichever option will support these folks the most. Even if that option costs the County the most. I wore purple today because it was Tremaine's favorite color. And I think all these folks from the Planning Department are here because had Kathleen Kern and Tremaine not been on that plane, they would have been the first to show up to support their colleagues. For Mark King and Doug Miller, we're not talking about some awful stereotypical government bureaucrat paper pusher who slipped on a wet floor and is trying to get a free ride at taxpayer expense. Mark and Doug want nothing more than to get back to work full time on behalf of the people of Maui County. They do excellent work and are committed to their jobs. They work for our Long Range Division and are currently involved with the community plan updates. Our community plans are really the foundation of everything the Planning Department does. And other County agencies follow these plans too. The community plan update process is highly interactive with the community. It has to be. That's why these guys were on Lanai in the first place. And guess what? They want to keep doing it. Even after all they have been through they want to keep doing it. They deserve nothing less than our wholehearted appreciation and respect and as great a financial settlement that a government employer can offer. We know this is limited, that government is different than the

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private sector in this regard. But I have no doubt that every resident, voter, and taxpayer, in the County would say the same thing. Do whatever you can to support these folks and their families, please. Thank you.

CHAIR GUZMAN: Thank you. Members, do you have any questions for Ms. McLean? Seeing none, thank you very much.

MS. NAKATA: Mr. Chair, the next testifier is Livit Callentine. She'll be testifying on COW-1(19). She'll be followed by Tammy Osurman.

MS. CALLENTINE: Good afternoon. My name's Livit Callentine and I'm a Planner with the County of Maui with the Planning Department in the Current Division. I know all the parties on this item. And I remember when I started working for the Planning Department in 2004, Tremaine was one of the first employees I met. And she welcomed me and she shared her mana'o with me. And continued to show what an incredible asset she was to the department. And she was so steadfast, she was cheerful, she was just lovely. And I miss her every day. And I sat in a meeting with Kathleen Kern planning the HCPO, Hawaii Congress of Planning Officials Conference that Maui County was hosting the following fall, that fall. I sat next to Kathleen the day before the crash and for all the work that she did in Planning, many...much that I didn't know about, I know that working with her side by side was a real challenge. She was always pushing us to think harder about creative ways of doing things. And she is missed by her colleagues, her family, her friends, by me. I have an idea, instead of talking about money, someone get out the magic wand and wave this over the whole situation and bring them back. That's all I want. Bring them back. You can't bring back the dead, I know. But you can bring back at least to some degree, to the degree possible, the health and functioning and wellbeing of the survivors, who have, I learned, I've learned much today about the details of their disabilities and I know that treatment is not a magic thing that happens overnight. It is a long-term healing process, both physically and mentally. And like others I ask that you award the maximum amount to the survivors and to the heirs...assignees of Tremaine Balberdi and Kathleen Kern. And that you follow HRS 386 and, to the maximum, waive the workers' comp lien and the future credit claims. And show all of us that these lives matter. They mattered, and they still matter, and they will continue to matter. Thank you.

CHAIR GUZMAN: Members, have any questions for the testifier? Seeing none, thank you very much for your testimony.

MS. NAKATA: Mr. Chair, the next testifier is Tammy Osurman. She'll be testifying on COW-1(19). Ms. Osurman is the last testifier to sign up in the Chamber.

MS. OSURMAN: Aloha. I'm Tammy Osurman. I am a Zoning Inspector. I'm here to ask you to help all of my heroes, all the people who have survived which is every single person in this room. I'm asking you to please help us all along. Help us work day to day. Help us...teach us that the County is fair, that the County will help all of us. We are



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here for the public, so please just take everything into consideration and give the maximum amount that you can. I beg of you. Thank you.

CHAIR GUZMAN: Thank you. Is...Members, any further questions for the testifier? Seeing none, thank you very much for your testimony.

MS. NAKATA: Mr. Chair, no one else is signed up to testify in the Chamber.

CHAIR GUZMAN: Thank you. I'll check in with...I believe Molokai District Office and Lanai District Office. Molokai District Office are you there?

MS. ALCON: Yes. I have no testifiers.

CHAIR GUZMAN: Thank you. And on...no I believe Lanai was off...is missing today. Or there's no connection. So, Hana District Office, are you there?

MS. LONO: Yes, the Hana Office has no one waiting to testify, Chair.

CHAIR GUZMAN: Okay. Thank you, ladies. At this time, Members, without objections, I'd like to close public testimony.

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: Thank you. Public testimony is now closed.

**. . .END OF PUBLIC TESTIMONY. . .**

**COW-1(19): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CLAIM OF MARK A. KING, CLAIM 5-14-00348; CLAIM OF KATHLEEN KERN, CLAIM 5-14-00330; CLAIM OF TREMAINE BALBERDI, CLAIM 5-14-00322; CLAIM OF DOUGLAS MILLER, CLAIM 5-14-00526; CLAIM OF JAMES A.Q. GIROUX, CLAIM 5-14-00345 (RELATING TO MAUI AIR INCIDENT ON LANAI)) (CC 15-6)**

CHAIR GUZMAN: Moving on for the first item on today's agenda, COW-1(19). This is the Settlement Authorization: Claim of Mark A. King, 5-14-00348; Claim of Kathleen Kern, 5-14-00330; Claim of Tremain Balberdi, 5-14-00322; Claim of Douglas Miller, 5-14-00526; Claim of James Giroux, 5-14-00345. Members, these five claims relate to the air crash on Lanai this last February 26, 2014. The Council previously authorized settlement of the claims by resolution 15-81 through 15-85 adopted on July 24, 2015. By correspondence date December 3, 2015 and February 26, 2015 the Committee received additional proposed resolutions from the Department of Corporation Counsel authorizing settlement of each of the claims. Four of the five individuals were employees of the Department of Planning and the fifth individual was an employee of the Department of Corporation Counsel at the time of the incident. They were on Lanai to staff the Lanai Planning Commission meeting and

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were returning to Maui aboard a Maui airplane when the incident occurred. Today we have on the floor, Corporation Counsel Pat Wong, Deputy Corporation Counsel Caleb Rowe, and Risk Manager Lydia Toda. I'd like to have Mr. Wong present on the floor. The floor is yours.

MR. WONG: Thank you, Chair. I'm gonna allow Mr. Rowe to do the presentation, but first I wanted to...

COUNCILMEMBER VICTORINO: Chair? Can he speak into the mic?

CHAIR GUZMAN: Yes.

COUNCILMEMBER VICTORINO: 'Cause I even get hard time hear him and I'm right here --

CHAIR GUZMAN: Yes. Yeah.

COUNCILMEMBER VICTORINO: --beside him.

MR. WONG: I wanted to add a few comments to put it in context if I may?

CHAIR GUZMAN: Yes, you may.

MR. WONG: This is a very, very, very delicate circumstance that we're confronted with. And it is our obligation by Charter, as the attorneys on behalf of the County, to present what the law provides. And being mindful of that, please understand that it is very difficult to discuss this topic. And I understand the Members may also have a very difficult time. But the workers' compensation law is not a law that was adopted by this body. It's a State law that we're obligated to abide by. I'd like to also add in that it is our obligation to also be mindful of our fiduciary responsibilities to all the rest of the County. So with that said, I'll allow Mr. Rowe to present what we can in open session. But most of which, I believe we're gonna ask to be discussed in executive session.

CHAIR GUZMAN: Okay. Thank you. Mr. Rowe? The floor is yours. If there's any questions that you cannot answer in open session, please notify the Committee and we will enter into executive session. Thank you.

MR. ROWE: Thank you, Chair. As stated, we're here to...today to discuss the issue of Hawaii Revised Statutes 386-8 which creates a lien on behalf of an employer where there's a third party that is found at fault. Since the last time we were here, there was an arbitration that was conducted between the airline, the estate of the pilot, and each of the claimants. In that arbitration, there was a settlement reached about how to divvy up those funds, and so today we are presenting with you, letting you know the extent of the funds, the amount that each individual is getting and accordingly, the amount of the County's lien. In addition, every one of the claimants has requested that we waive the lien amount and instead allow for complete...for them to keep the full amount of the amount of money that they got during that meeting, during that

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arbitration. And so we have the...we have that for each of the five people. And we will present, give you an indication of how much money that is and as well as anticipated future costs for these claims, in executive session. And I would like to request an executive session because it deals with ongoing litigation matters and medical records.

CHAIR GUZMAN: Thank you. Do we have any opening statements for Ms. Toda? Representing the Risk Management side?

MS. TODA: No I don't, Chair. Thank you.

CHAIR GUZMAN: Okay. Thank you. Members, do you have any questions that you can ask that...in open session? Seeing none, there's been a request to enter into executive session. The Chair will entertain a motion to enter into executive meeting pursuant to Section 92-5(a)(4) of the HRS to consult with legal counsel on questions and issues pertaining to duties, liabilities, privileges, immunities regarding our Committee as well as the Council, and the County.

VICE-CHAIR CRIVELLO: I so move, Chair.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Moved by Ms. Crivello, seconded by Mr. Victorino. Any further discussion? Seeing none, all those in favor, say "aye."

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed, say "no." We have eight "ayes," no "noes," one excused. Motion carries.

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

**NOES:   None.**

**ABSTAIN:   None.**

**ABSENT:   None.**

**EXC.:   Councilmember White.**

**MOTION CARRIED.**

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

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CHAIR GUZMAN: Thank you, Members.

**COW-1(28): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: LISA L. HAUPU V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 7-09-00326) (CC 15-6)**

CHAIR GUZMAN: Moving onto the next item on today's agenda, COW-1(28), Lisa L. Haupu v. County of Maui; Disability Compensation Division, Case No. 7-09-00326. The Department of Corporation Counsel is requesting consideration of the proposed resolution to authorize settlement of this case, which involves a workers' compensation case regarding injuries sustained on January 21, 2009. The Committee may consider this matter...once before on February 5, 2016. This case is also Deputy Corporation Counsel's Rowe's case. And I'd like to...him to present in open session any information or procedures that are appropriate in open session. The floor is yours, Mr. Rowe.

MR. ROWE: Thank you, Chairman. We actually did already discuss this specific case and the terms of this settlement at an earlier Committee of the Whole meeting. At that meeting it was requested that we provide a little bit more information and that we do an analysis of present-day value. And so that's what we've done. We've done that analysis and we will be providing it to you. This is a global settlement that will end our future liability and all future claims on it. And we do think that it's a good settlement, that it is good for the County as we will discuss in executive session. And at this time I'd like to ask that we enter into executive session because this involves ongoing litigation and medical records.

CHAIR GUZMAN: Thank you. Members, do you have any questions that you'd like to pose in open session? Seeing none, we have a request to enter into executive session. The Chair will entertain a motion to convene executive meeting pursuant to Section 92-5(a)(4) of the HRS to consult with legal counsel on questions and issues pertaining to the duties, privileges, immunities, and liabilities of this Committee, the Council, and the County. Also via...also pursuant to Section 92-5(a)(8) of the HRS to deliberate or make decisions upon a manner that requires consideration and information that must be kept confidential pursuant to a State or Federal law, or court ordered.

VICE-CHAIR CRIVELLO: So move, Chair.

COUNCILMEMBER VICTORINO: Second.

CHAIR GUZMAN: Moved by Ms. Crivello. Seconded by Mr. Victorino. Any further discussion? Seeing none, all those in favor, say "aye."

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those oppose, say "no." We have eight "ayes," no "noes," one excused. Motion carries.

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

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmember White.**

**MOTION CARRIED.**

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

CHAIR GUZMAN: Thank you, Members.

**COW-1(29): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: 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)) (CC 15-6)**

CHAIR GUZMAN: Moving onto the next item, COW-1(29). 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). Members, this is also, I believe, Mr. Rowe's case. You may have the floor, Mr. Rowe.

MR. ROWE: Thank you, Chairman. This case involves...it's titled Lars Gascon v. County of Maui, but Lars Gascon was the employee of the County who was being treated under workers' compensation. His physician was Dr. James Hattaway and like Ms. Haupu's claim, we have brought this to...this case to your guys' attention before. Just kind of as a refresher. There was a motor vehicle accident that the claimant sustained while he was being treated under his workers' compensation claim. According to treatment notes, that not only exacerbated his condition but also increased the length of treatments necessary and the frequency of treatments. The County was never informed of this motor vehicle accident. It was never informed of the exacerbation of his injuries as a result. This went to a hearing before the disability and...Disability Compensation Division, the DCD did find that Dr. Hattaway committed 69 acts of fraud. That decision was appealed by Dr. James Hattaway. And it is now before the Hawaii Labor and Industrial Relations Appeals Board. We have been presented with a settlement demand. That settlement demand was brought to you last time and you voted to reject it. We also brought a proposed counter settlement that you also chose

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to reject. So at this time, we are bringing another proposed counter settlement. And we can discuss more of that in executive session, which I'd like to request at the, this time because it involves ongoing litigation.

CHAIR GUZMAN: Thank you. Members, do you have any questions that you'd like to pose in open session? Mr. Victorino?

COUNCILMEMBER VICTORINO: It's not a question, Chair. It is something that, you know, concerns me and like I do all the time, if I feel there's a possibility of a conflict, I will bring it to your attention. Dr. Hattaway has treated me, has been my doctor in the past. And he's also been a contributor to my campaign. And I don't know, he...you know, I don't know who else he does, but I have to say that upfront. So if you would rather me recuse myself from this deliberation, I'd be...I'll open my...to you and the Committee to make that decision.

CHAIR GUZMAN: Okay. Mr. Wong?

MR. WONG: Chair, I guess one of the questions for Member Victorino, Chair, on your behalf, would be whether or not Mr. Victorino believes that he can sit and hear the information presented and remain unbiased in his decision making process. And also whether or not Mr. Victorino believes that he has any personal benefit in the matter before you?

CHAIR GUZMAN: Mr. Victorino? Do you have any...

COUNCILMEMBER VICTORINO: Well, the first question, I can say absolutely I can --

CHAIR GUZMAN: Okay.

COUNCILMEMBER VICTORINO: --make an unbiased decision. And secondly, no, I don't see any financial gain or any other personal gain in this matter. But I wanted it made known and I wanted it to be upfront so that there's no question in my integrity as far as this body has been concerned, because we've gone through this issue before. And so I just wanted to put that out there. So I will leave it to you and the Committee whether you should...I should stay or be recused. I leave it to you. But I will be able to...like I said earlier, by yes I can do it unbiasedly and yes there...I mean no, there is no financial compensation or any kind of financial connection with myself and Dr. Hattaway. Thank you, Chair.

CHAIR GUZMAN: Okay. Thank you. Mr. Victorino, at any time that you feel that there's a conflict, you are allowed to go ahead and personally recuse yourself. But at this point, I do not see a conflict and without objections, I would like to have Mr. Victorino stay within the meeting, or stay as a decision maker.

COUNCILMEMBERS: No objections.

**COUNCILMEMBERS VOICED NO OBJECTIONS** (excused: MW).

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CHAIR GUZMAN: Thank you. Members, there has been a request to enter into executive session. The Chair will entertain a motion to convene executive meeting pursuant to Section 92-5(a)(4) of the HRS to consult with legal counsels on questions pertaining to issues of powers, duties, privileges, immunities, and liabilities of this Committee, this Council, and this County. Also Section 92-5(a)(8) of the HRS to deliberate or make a decision upon matters that require consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order.

VICE-CHAIR CRIVELLO: So move, Chair.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Moved by Ms. Crivello, seconded by Mr. Victorino. Any further discussion? Seeing none, all those in favor, say "aye."

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those oppose, say "no." Eight "ayes," no "noes," one excused. Motion carries.

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

**NOES:**     **None.**

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

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

**EXC.:**    **Councilmember White.**

**MOTION CARRIED.**

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

CHAIR GUZMAN: Thank you, Members. I believe at this time, Members, I'm gonna go ahead and take a recess to set the Chambers for executive sessions. So the open session, at this point, is in recess. . . .(gavel). . .

**RECESS:**         **2:45 p.m.**

**RECONVENE:**    **4:38 p.m.**

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CHAIR GUZMAN: . . .(gavel). . . The Committee of the Whole shall now reconvene in open session.

**COW-1(19): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CLAIM OF MARK A. KING, CLAIM 5-14-00348; CLAIM OF KATHLEEN KERN, CLAIM 5-14-00330; CLAIM OF TREMAINE BALBERDI, CLAIM 5-14-00322; CLAIM OF DOUGLAS MILLER, CLAIM 5-14-00526; CLAIM OF JAMES A.Q. GIROUX, CLAIM 5-14-00345 (RELATING TO MAUI AIR INCIDENT ON LANAI)) (CC 15-6)**

CHAIR GUZMAN: Pursuant to the discussions that we had and the...in executive session, referring to COW-1(9) [sic], Settlement Authorization for Claim of Mark A. King 5-14-00348; Claim of Kathleen Kern, 5-14-00330; Claim of Tremaine Balberdi, 5-14-00322; Claim of Douglas Miller, 5-14-00526; Claim of James Giroux, 5-14-0034 [sic], the Chair will recommend a motion to adopt the following: A proposed resolution entitled Authorizing Settlement of Mark A. King v. County of Maui, Disability Compensation Division, as stated by the previously, the case number. A proposed resolution entitled Authorizing Settlement of Kathleen Kern v. County of Maui, Disability Compensation Division, as stated as...previously as the case number. A proposed resolution entitled Authorizing Settlement of Tremaine Balberdi v. County of Maui, Disability Compensation Division, case number as previously stated. A proposed resolution entitled Authorizing Settlement of Douglas Miller v. County of Maui, Disability Compensation Division, case number as previously stated. And a proposed resolution entitled Authorizing Settlement of James A.Q. Giroux v. County of Maui, Disability Compensation Division, case number as previously stated.

COUNCILMEMBER VICTORINO: So move, Mr. Chair.

COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: Moved by Mr. Victorino, seconded by Mr. Couch. Any further discussion? All those in favor, say "aye."

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those oppose, say "no." We have six "ayes," three excused. Motion carries. Oh no "noes," excuse me. Motion carries.



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**VOTE:**        **AYES:**    **Chair Guzman and Councilmembers Baisa, Carroll, Cochran, Couch, and Victorino.**

**NOES:**    **None.**

**ABSTAIN:**   **None.**

**ABSENT:**    **None.**

**EXC.:**    **Vice Chair Crivello and Councilmembers Hokama and White.**

**MOTION CARRIED.**

**ACTION:**   **Recommending ADOPTION of resolutions.**

CHAIR GUZMAN: Thank you, Members. Moving to the next item on the agenda. Excuse me, where's my agenda. Okay.

**COW-1(28):    LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: LISA L. HAUPU V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 7-09-00326) (CC 15-6)**

CHAIR GUZMAN: Calling up COW-1(28). Due to the limited time that we have, without objections, I would like to defer this matter.

COUNCILMEMBERS: No objections.

**COUNCILMEMBERS VOICED NO OBJECTIONS** (excused: SC, RH, MW).

CHAIR GUZMAN: Thank you. Item is deferred.

**ACTION:**   **DEFER pending further discussion.**

**COW-1(29):    LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: 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)) (CC 15-6)**

CHAIR GUZMAN: Also calling up COW-1(29), same reason, we've ran out of time. I'd like to defer this matter as well.

COUNCILMEMBERS: No objections.

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**COUNCILMEMBERS VOICED NO OBJECTIONS** (excused: SC, RH, MW).

CHAIR GUZMAN: Thank you. Members, that item shall be deferred.

**ACTION: DEFER pending further discussion.**

CHAIR GUZMAN: That concludes today's meeting, and I thank all the Members for their participation and the hard work that we've conducted today. Thank you, have a good weekend. . . .(gavel). . .

**ADJOURN:** 4:39 p.m.

APPROVED:



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DON S. GUZMAN, CHAIR  
Committee of the Whole

cow:min:160318:tc

Transcribed by: Tiare del Castillo

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CERTIFICATE

I, Tiare del Castillo, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 4<sup>th</sup> day of April, 2016, in Pukalani, Hawaii



A handwritten signature in black ink, appearing to read 'Tiare del Castillo', is written over a horizontal line.

Tiare del Castillo