

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

November 16, 2007

**Committee
Report No.**

07-135

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

Chair and Members:

Your Policy Committee, having met on October 30, 2007, makes reference to County Communication No. 07-11, from the Council Chair, regarding the settlement of claims and lawsuits.

By correspondence dated October 10, 2007, the Department of the Corporation Counsel requested consideration of the possible settlement of Michael David Ogden as Special Administrator of the Estate of Charles Benson Ogden v. County of Maui, et. al., Civil No. CV06-00113 JMS LEK. Attached to the request is a copy of the complaint, a copy of the settlement demand, and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF MICHAEL DAVID OGDEN AS SPECIAL ADMINISTRATOR OF THE ESTATE OF CHARLES BENSON OGDEN VS. COUNTY OF MAUI, ET AL., CIVIL NO. CV06-00113 JMS LEK". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

Your Committee notes that this case alleges wrongful death and various violations of Charles Benson Ogden's constitutional and civil rights.

At its meeting, your Committee met with the Deputy Chief of Police, the Corporation Counsel, and two Deputy Corporation Counsel.

There was no public testimony.

A Deputy Corporation Counsel provided a brief overview of the case. She explained that the Department of Police received a call that an individual had exposed himself inappropriately. When the Police Officer responded to the call, Charles Benson Ogden, the suspect, sprayed bear repellent into the Police Officer's face. While the Police Officer's vision was blurred, Mr. Ogden repeatedly lunged toward the Police Officer and failed to respond to an order to stop. The Police Officer fired five shots at Mr. Ogden, resulting in his death.

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The Deputy Corporation Counsel noted that trial is currently scheduled for July 2, 2008. She requested the opportunity to discuss the matter in an executive meeting.

Your Committee voted to convene an executive meeting for the purpose of consulting with legal counsel on liability issues in the matter and to deliberate upon confidential information, pursuant to Sections 92-5(a)(4) and 92-5(a)(8), Hawaii Revised Statutes.

At its executive meeting, your Committee met with the Deputy Chief of Police, the Corporation Counsel, and two Deputy Corporation Counsel.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted to recommend adoption of the proposed resolution to authorize the settlement of the matter under the terms proposed in the executive meeting.

Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF MICHAEL DAVID OGDEN AS SPECIAL ADMINISTRATOR OF THE ESTATE OF CHARLES BENSON OGDEN VS. COUNTY OF MAUI, ET AL., CIVIL NO. CV06-00113 JMS LEK" be ADOPTED.

Adoption of this report is respectfully requested.

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Resolution

No. _____

AUTHORIZING SETTLEMENT OF
MICHAEL DAVID OGDEN AS SPECIAL ADMINISTRATOR OF THE ESTATE OF
CHARLES BENSON OGDEN VS. COUNTY OF MAUI, ET AL.,
CIVIL NO. CV06-00113 JMS LEK

WHEREAS, Plaintiff Michael David Ogden as Special Administrator of the Estate of Charles Benson Ogden, (hereinafter "Plaintiff") filed a lawsuit in the U.S. District for the District of Hawaii on February 23, 2006, Civil No. CV06-00113 JMS LEK, against the County of Maui and Clifford Pacheco, claiming general and special damages arising from the death of Charles Benson Ogden which occurred on or about February 29, 2004, in Kihei, Maui, Hawaii; and

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

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case for an amount not to exceed the range of authority granted by the Council on this case; and

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

Resolution No. _____

therefore,


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

1. That it hereby authorizes the Department of the Corporation Counsel to negotiate settlement of this case and, if appropriate, to serve an Offer of Judgment in an amount not to exceed the range of authority granted by the Council on this case; and

2. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case in Civil No. CV06-00113 JMS LEK, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. 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:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui