

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

April 7, 2006

Committee
Report No.

_____ 06-49

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 March 14, 2006 and March 16, 2006, makes reference to County Communication No. 05-24, from the Council Chair, regarding the settlement of claims and lawsuits.

Your Committee is in receipt of correspondence dated March 6, 2006, from the Department of the Corporation Counsel, requesting consideration of the possible settlement of Pauline Hafoka, Claim No. 2006-012. Attached to the request is a copy of the claim and related documents. Also attached to the request is a proposed resolution entitled "AUTHORIZING SETTLEMENT OF CLAIM NO. 2006-012 OF PAULINE HAFOKA". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case for \$17,368.42.

Your Committee notes that the claim alleges damages arising from an automobile collision with a County vehicle on November 30, 2005.

At its meeting of March 14, 2006, your Committee met with the Assistant Chief, Investigative Services Bureau, Department of Police; and a Deputy Corporation Counsel.

There was no public testimony.

Due to the shortage of time, your Committee deferred discussion on the matter and recessed its meeting to March 16, 2006.

At its reconvened meeting of March 16, 2006, your Committee met with the Assistant Chief, Investigative Services Bureau, Department of Police; and a Deputy Corporation Counsel.

The Deputy Corporation Counsel provided a brief overview of the case.

Your Committee discussed whether the police officer was working a double shift or whether he was in active pursuit at the time of the accident. The Deputy Corporation

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Counsel acknowledged that the officer was working a 12-hour shift. She further acknowledged that prior to the accident, the officer's car was on the shoulder assisting another vehicle. The police officer's statement was not available; therefore, it is unclear why he was traveling in the wrong lane of Kuihelani Highway in the direction of oncoming traffic.

Your Committee questioned what disciplinary action, if any, would be taken by the Department of Police (Department) against the officer in this case. Since the case is still under investigation, the Deputy Corporation Counsel stated that the Department would continue its investigation, the Administrative Review Board would review the case, and any disciplinary action deemed appropriate would be taken at that time. The Deputy Corporation Counsel further stated that violations of general order, such as this one, would generally be handled by the Administrative Review Board and/or investigated by the Department's Internal Affairs Division, rather than the Maui Police Commission.

Your Committee questioned whether the settlement paid by the County could be recouped directly from the officer. The Deputy Corporation Counsel stated that the standard for recovering monetary funds in such a case would be a standard of gross negligence. She further stated that proving gross negligence, or that the officer intentionally caused harm, would be a high standard to meet. Therefore, recovery of funds from the officer would be improbable.

Your Committee discussed whether it is the Department's standard to allow officers to leave the scene of an accident. The Deputy Corporation Counsel stated that allowing officers to leave the scene of an accident is discretionary. In this case, the officer may have left for further follow-up and/or medical treatment.

The Deputy Corporation Counsel stated that towing a vehicle involved in an accident is also optional. Unless the vehicle is taken into custody as evidence, individuals are provided with a list of towing companies to use or they may use a company of their choice. She further stated that the County does not normally pay for the towing service. Furthermore, the County does not typically coordinate towing arrangements unless asked. In this case, a lack of communication between the supervising officer and the driver may be a reason why towing arrangements were not made.

The Deputy Corporation Counsel noted that Ms. Hafoka's vehicle was declared a total loss as a result of the collision. She further noted that the majority of the settlement

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will be paid to Bank of Hawaii (the lien holder). The cash value of the vehicle exceeded the amount owed on it; therefore, a residual amount of approximately \$1,200 will be paid to Ms. Hafoka.

The Deputy Corporation Counsel noted that this case involves clear liability against the County, and therefore, settlement of the case is warranted.

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 settlement of the claim for \$17,368.42.

Your Committee of the Whole RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF CLAIM NO. 2006-012 OF PAULINE HAFOKA" be ADOPTED.

Adoption of this report is respectfully requested.

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