

COUNCIL OF THE COUNTY OF MAUI  
**COMMITTEE OF THE WHOLE**

June 23, 2006

**Committee  
Report No.**

\_\_\_\_\_ 06-66 \_\_\_\_\_

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 June 6, 2006, makes reference to County Communication No. 05-23, from the Council Chair, regarding indemnification authorization.

Your Committee is in receipt of correspondence dated May 4, 2006, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "INDEMNIFYING CLIFFORD PACHECO IN CIVIL NO. CV06-00113, MICHAEL DAVID OGDEN, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF CHARLES BENSON OGDEN V. COUNTY OF MAUI, ET AL.". Attached to the request is a copy of the complaint filed on February 23, 2006. The purpose of the proposed resolution is to indemnify Clifford Pacheco, a police officer, in the referenced lawsuit.

Your Committee notes that this case includes allegations of wrongful death and various violations of the constitutional and civil rights of the deceased, Charles Benson Ogden.

At its meeting, your Committee met with the 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 and recommended adoption of the proposed resolution to indemnify the police officer. She noted that the police officer was on duty at the time of the incident and was acting within the scope of his employment.

Your Committee questioned who was present during the incident and the area where the incident occurred. A Deputy Corporation Counsel stated that the police officer, the deceased, and John Lucia, a private homeowner of the area, were present at the time of the incident. The incident occurred on an area of beach fronting private

COUNCIL OF THE COUNTY OF MAUI  
**COMMITTEE OF THE WHOLE**

June 23, 2006  
Page 2

**Committee**  
**Report No.**      06-66

residences. A Deputy Corporation Counsel further stated that the deceased possessed bear repellent spray that was used to ward off the police officer. She further stated that the police officer fired at the deceased after being repeatedly sprayed in the face with the repellent. Your Committee noted that Mr. Lucia was not in the police officer's line of fire.

A Deputy Corporation Counsel stated that the case is in the preliminary stages and discovery has not yet been conducted. The matter may come before the Council for further action, including authorization for settlement or the hiring of special counsel, if the case is not dismissed by the County.

Your Committee briefly discussed the deceased's mental condition at the time of the incident. A Deputy Corporation Counsel could not confirm whether the deceased had a history of mental illness.

Your Committee discussed whether an internal investigation of the incident had been conducted. A Deputy Corporation Counsel stated that an internal investigation was conducted and the case was reviewed by the Department of the Prosecuting Attorney, but no disciplinary action was taken and no criminal charges were brought against the police officer.

Your Committee discussed whether the use of a Taser gun was an option for the police officer. According to a Deputy Corporation Counsel, the police officer did not possess a Taser gun at the time of the incident. If a Taser gun had been used, the highly flammable bear repellent used by the deceased could have easily ignited.

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.

Your Committee of the Whole **RECOMMENDS** that Resolution No. \_\_\_\_\_, attached hereto, entitled "INDEMNIFYING CLIFFORD PACHECO IN CIVIL NO. CV06-00113, MICHAEL DAVID OGDEN, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF CHARLES BENSON OGDEN V. COUNTY OF MAUI, ET AL." be **ADOPTED**.

Adoption of this report is respectfully requested.

COUNCIL OF THE COUNTY OF MAUI  
**COMMITTEE OF THE WHOLE**

June 23, 2006  
Page 3

**Committee**  
**Report No.** 06-66

cow:cr:0604(9)aa.rkk

COUNCIL OF THE COUNTY OF MAUI  
**COMMITTEE OF THE WHOLE**

June 23, 2006  
Page 4

Committee  
Report No. 06-66

---

**MICHAEL J. MOLINA** Chair

---

**JO ANNE JOHNSON** Member

---

**DAIN P. KANE** Vice-Chair

---

**DANNY A. MATEO** Member

---

**MICHELLE ANDERSON** Member

---

**JOSEPH PONTANILLA** Member

---

**ROBERT CARROLL** Member

---

**CHARMAINE TAVARES** Member

---

**G. RIKI HOKAMA** Member