

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

September 15, 2006

**Committee  
Report No.**

06-107

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 August 29, 2006, makes reference to County Communication No. 05-23, from the Council Chair, regarding indemnification authorization.

Your Committee is in receipt of correspondence dated August 15, 2006, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "INDEMNIFYING BYRON KAI IN GABRIELE MCMILLEN V. COUNTY OF MAUI, ET AL., CIVIL NO. 06-1-0038(3)" and attaching a copy of the complaint. The purpose of the proposed resolution is to indemnify Byron Kai, a County employee, in the case.

Your Committee notes that this case includes allegations of injuries due to a motor vehicle accident.

At its meeting, your Committee met with the Director of Water Supply and two Deputy Corporation Counsel.

There was no public testimony.

A Deputy Corporation Counsel provided a brief overview of the case. He stated that the complaint alleges that Mr. Kai, who is an employee of the Department of Water Supply, reversed into the plaintiff's vehicle at Hana Ranch Store in Hana, Maui on January 29, 2003. According to the Deputy Corporation Counsel, Mr. Kai claims that he was in a stationary County vehicle, and the plaintiff collided into the County vehicle as she attempted to maneuver past him. The Deputy Corporation Counsel said that although the complaint alleges that Mr. Kai was acting within the scope of his employment, Mr. Kai may have been off-duty and on a personal errand using the County vehicle. The Deputy Corporation Counsel indicated that even if Mr. Kai was not acting within the scope of his employment, the County's self insurance provisions require that the County cover claims for bodily injury when a County vehicle is involved. The Deputy Corporation Counsel recommended that the County indemnify Mr. Kai in order to

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

September 15, 2006  
Page 2

**Committee**  
**Report No.**     06-107

eliminate any potential conflict with Mr. Kai, and the possibility that special counsel may need to be employed to defend Mr. Kai should the request for indemnification be denied.

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 BYRON KAI IN GABRIELE MCMILLEN V. COUNTY OF MAUI, ET AL., CIVIL NO. 06-1-0038(3)" be ADOPTED.

Adoption of this report is respectfully requested.

cow:cr:0604(13)aa:rk

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

September 15, 2006  
Page 3

Committee  
Report No. 06-107

---

**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