

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

November 3, 2006

**Committee**  
**Report No.**

06-126

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 October 17, 2006, makes reference to County Communication No. 05-23, from the Council Chair, regarding indemnification authorization.

Your Committee is in receipt of correspondence dated October 10, 2006, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "INDEMNIFYING FRANKLYN L. SILVA AND WAYNE M. PAGAN IN SARAH C. WHITE, INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE OF STEFAN BOURNAKEL, DECEASED, AND AS NEXT FRIEND OF NICOS ROBERT BOURNAKEL, A MINOR V. CAROLANN SABATINO, ET AL., CIVIL NO. CV04-00500 ACK/LEK". Attached to the request is a copy of the verified fourth amended complaint, filed September 1, 2004. The purpose of the proposed resolution is to indemnify Franklyn L. Silva, the Director of Liquor Control, and Wayne M. Pagan, the Deputy Director of Liquor Control, in the case.

Your Committee notes that the complaint alleges that Stefan Bournakel died as a result of a motor vehicle accident caused by Carolann Sabatino on Pulehu Road on February 13, 2004. The complaint further alleges that Ms. Sabatino had consumed alcohol on navigable waters as part of a sightseeing tour, and that the named County employees were negligent because they did not enforce Section 08-101-69(a) of the Rules Governing the Sale and Manufacture of Liquor for the County of Maui with respect to tour or cruise vessel licensees.

Your Committee notes that Section 08-101-69(a) of the Rules Governing the Sale and Manufacture of Liquor prohibits the promotion of the excessive consumption of liquor including the sale, advertising, or offer to sell "all the liquor you can drink" for a fixed price.

At its meeting, your Committee met with a Deputy Corporation Counsel.

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There was no public testimony. The Deputy Corporation Counsel provided a brief overview of the case and 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, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

At its executive meeting, your Committee met with a 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.

Your Committee of the Whole RECOMMENDS that Resolution No. \_\_\_\_\_, attached hereto, entitled "INDEMNIFYING FRANKLYN L. SILVA AND WAYNE M. PAGAN IN SARAH C. WHITE, INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE OF STEFAN BOURNAKEL, DECEASED, AND AS NEXT FRIEND OF NICOS ROBERT BOURNAKEL, A MINOR V. CAROLANN SABATINO, ET AL., CIVIL NO. CV04-00500 ACK/LEK" be ADOPTED.

Adoption of this report is respectfully requested.

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**MICHAEL J. MOLINA** **Chair**

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**JO ANNE JOHNSON** **Member**

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**DAIN P. KANE** **Vice-Chair**

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**DANNY A. MATEO** **Member**

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**MICHELLE ANDERSON** **Member**

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**JOSEPH PONTANILLA** **Member**

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**ROBERT CARROLL** **Member**

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**CHARMAINE TAVARES** **Member**

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**G. RIKI HOKAMA** **Member**