

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

March 23, 2005

**Committee
Report No.**

05-48

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 9, 2005, makes reference to County Communication No. 05-23, from the Council Chair, regarding indemnification authorization.

Your Committee is in receipt of correspondence dated February 28, 2005, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "INDEMNIFYING LOUIS M. GOMES IN CIVIL NO. 05-1-0166, VERIZON HAWAII, INC. VS. COUNTY OF MAUI, ET AL.". Attached to the request is a copy of the complaint filed on February 2, 2005. The purpose of the proposed resolution is to indemnify Louis M. Gomes, an Equipment Operator III with the Department of Public Works and Environmental Management, in the referenced lawsuit.

Your Committee notes that this case includes allegations of damages due to the severing of four utility cables on Kaupakalua Road in Makawao, Maui, by a brush cutter mower on August 26, 2003.

At its meeting, your Committee met with the Director of Public Works and Environmental Management, the Corporation Counsel, and two Deputy Corporation Counsel.

There was no public testimony. A Deputy Corporation Counsel provided a brief overview of the case. The Deputy Corporation Counsel indicated that the County employee was acting within the scope of his duties and as instructed by his supervisor when he severed the utility cables.

Your Committee discussed the type of equipment used in the incident. The Director of Public Works and Environmental Management indicated that the brush cutter mower has a hydraulic arm for trimming. He explained that the vegetation that was trimmed was resting on utility lines in a manner that obscured view of the utility lines. The utility lines were severed when the

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vegetation was trimmed and the utility lines bounced upward. He also stated that the Department of Public Works and Environmental Management has since instituted a policy of informing the utility company of the overgrowth of vegetation, and no longer trims the vegetation.

Your Committee discussed the County's denial of Verizon Hawaii, Inc.'s claim for damages to the utility lines and the County's position that Verizon Hawaii, Inc. failed to maintain their utility lines properly.

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 LOUIS M. GOMES IN CIVIL NO. 05-1-0166, VERIZON HAWAII, INC. VS. COUNTY OF MAUI, ET AL." be **ADOPTED**.

Adoption of this report is respectfully requested.

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