

RICHARD T. BISSEN, JR.
Mayor

VICTORIA J. TAKAYESU
Corporation Counsel

MIMI DESJARDINS
First Deputy

LYDIA A. TODA
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
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May 8, 2025

Via email only at county.clerk@mauicounty.us

Honorable Alice L. Lee, Chair
and Members of the Council
County of Maui
Wailuku, Hawai'i 96793

SUBJECT: Litigation Matter – Settlement Authorization – AUTHORIZING
SETTLEMENT OF FIRST FIRE AND CASUALTY INSURANCE OF
HAWAII, INC. v. COUNTY OF MAUI, ET AL.; CIVIL FILE: 2CCV-24-
0001055

Dear Chair Lee and Council Members:

Please find attached separately a Proposed Resolution entitled "AUTHORIZING
SETTLEMENT OF FIRST FIRE AND CASUALTY INSURANCE OF HAWAII, INC.
v. COUNTY OF MAUI, ET AL.; CIVIL FILE: 2CCV-24-0001055." The purpose of
the proposed resolution is to discuss settlement authority with regards to the
above-referenced lawsuit.

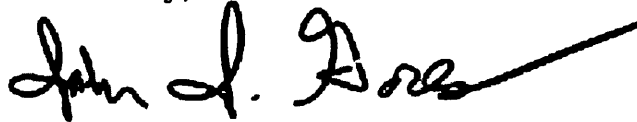
I request that the proposed resolution be scheduled for discussion and
action, or referral to the appropriate standing committee as soon as possible.
For further information, I have also attached the Complaint in this matter,
which was filed on December 17, 2024.

Executive session will be necessary to discuss questions and issues
pertaining to the powers, duties, privileges, immunities, and liabilities of the
County, the Council, and/or the Committee.

If you have any questions or concerns, please do not hesitate to contact
us. Thank you for your anticipated assistance in this matter.

Honorable Alice L. Lee, Chair
May 8, 2025
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Sincerely,

A handwritten signature in black ink, appearing to read "John J. Gores", with a long, sweeping horizontal line extending to the right.

JOHN J. GORES
Deputy Corporation Counsel

cc: Jordan Molina, Director of Public Works

Attachments:

(1) Proposed Resolution: AUTHORIZING SETTLEMENT OF FIRST FIRE AND CASUALTY INSURANCE OF HAWAII, INC. v. COUNTY OF MAUI, ET AL.; CIVIL FILE: 2CCV-24-0001055;

(2) Complaint filed December 17, 2024.

LAW OFFICES OF LESLIE R. KOP

MICHAEL A. LORUSSO **3448**
1100 Ward Avenue, Suite 500
Honolulu, Hawaii 96814
Telephone: (808) 527-7063
Facsimile: (808) 628-2525
Email: mlorusso@staffcounsel808.com

Electronically Filed
SECOND CIRCUIT
2CCV-24-0001055
17-DEC-2024
02:15 PM
Dkt. 1 CMPS

Attorney for Plaintiff
FIRST FIRE AND CASUALTY INSURANCE OF
HAWAII, INC.

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

FIRST FIRE AND CASUALTY)	CIVIL NO. _____
INSURANCE OF HAWAII, INC.,)	(Other Civil Action)
)	
Plaintiff,)	COMPLAINT; SUMMONS
)	
vs.)	
)	
COUNTY OF MAUI; JOHN DOES 1-10;)	
JANE DOES 1-10; DOE)	
CORPORATIONS 1-10; DOE)	
PARTNERSHIPS 1-10; DOE BUSINESS)	
ENTITIES 1-10; DOE NON-PROFIT)	
ENTITIES 1-10 AND DOE)	
GOVERNMENTAL ENTITIES 1-10,)	
)	
Defendants.)	
)	

COMPLAINT

Plaintiff FIRST FIRE AND CASUALTY INSURANCE OF HAWAII, INC.

("Plaintiff"), by and through its attorneys, the LAW OFFICES OF LESLIE R. KOP, for claims
of relief against Defendant COUNTY OF MAUI ("Defendant"), alleges and avers as follows:

PARTIES

1. At all relevant times herein, Plaintiff is and/or was an insurance company incorporated in the State of Hawaii, with its principal place of business in Honolulu, Hawaii.

2. Upon information and belief, at all relevant times herein, Defendant is a municipal corporation organized and existing under the laws of the State of Hawaii with its principle place of business on the Island and County of Maui, State of Hawaii.

3. Defendants JOHN DOES 1-10, JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE BUSINESS ENTITIES 1-10, DOE NON-PROFIT ENTITIES 1-10; and DOE GOVERNMENTAL AGENCIES 1-10 (“Doe Defendants”) are sued herein under fictitious names for the reason that after diligent and good efforts, Plaintiff has been unable to ascertain their true names and identities, except that they are connected in some manner with the named Defendant and/or the agents, servants, employees, employers, representatives, co-venturers, associates, vendors, suppliers, manufacturers, subcontractors, or contractors and/or owners, lessees, assignees, licensees, designers and/or architects of the named Defendant and/or in some manner presently unknown to Plaintiff engaged in the activities alleged herein and/or were in some manner responsible for the damages to Plaintiff and/or manufactured and/or designed and/or placed into the stream of commerce a product which was defective; which defect was a legal cause of the damages to Plaintiff and/or conducted some activity in a negligent or dangerous manner; which negligent or dangerous conduct was a legal cause of damages to Plaintiff and/or were in some manner related to the named Defendant and Plaintiff pray for leave to insert and/or substitute herein their true names, identities, capacities, activities and/or responsibilities when the same are ascertained.

JURISDICTION AND VENUE

4. All of the acts and occurrences alleged herein occurred within the Island and County of Maui, State of Hawaii.

5. The amount of Plaintiff's claimed damages herein fall within the jurisdictional requirements of this Court.

6. This Court has jurisdiction over the parties and subject matter of this action pursuant to §603-21.5(a)(3) of the *Hawaii Revised Statutes*.

7. Venue is proper in the Circuit Court of the Second Circuit, State of Hawaii, pursuant to §603-36(5) of the *Hawaii Revised Statutes*.

8. At all times relevant herein, Defendant and/or Doe Defendants, or any of them, managed, controlled, owned, maintained, or otherwise had some control over the premises in question which caused Plaintiff's damages.

9. The circumstances that give rise to this action involve an incident which occurred on or about December 19, 2022, in the County of Maui, State of Hawaii, within the jurisdiction of this court and is sought under Hawaii Revised Statutes (HRS) Section 634-35.

FACTUAL BACKGROUND

10. On or about December 19, 2022, Anthony Riecke-Gonzales was the owner of real property located at 1695 Piihola Road, Makawao, Maui, Hawaii ("subject property").

11. On or about December 19, 2022, a tree owned, maintained, inspected and/or under the care, custody and control of Defendant and/or Doe Defendants toppled over and struck the subject property.

12. Defendant and/or Doe Defendants and each of them were on actual,

constructive and/or implied notice as to the condition of the tree and that the tree posed an unreasonable risk of harm to person or property.

13. As a result of the tree toppling on December 19, 2022 and striking the subject property, the subject property sustained significant property damage (“subject incident”).

14. At the time of the subject incident on December 19, 2022, the subject property owned by Anthony Riecke-Gonzales was insured by Plaintiff.

15. As a result of the subject incident, Anthony Riecke-Gonzales submitted first-party insurance claims to Plaintiff arising out of the subject incident. To date, Plaintiff has paid to Anthony Riecke-Gonzales and/or the deductible has been paid in the sum of ***One Hundred Seventeen Thousand Six Hundred Twenty-Nine and 82/100 Dollars (\$117,629.82)*** for dwelling repairs, loss of use, Additional Living Expenses and other costs and/or damages arising out of the subject incident.

16. By paying for the property damage losses suffered by Anthony Riecke-Gonzales as a result of the subject incident, Plaintiff has rights of subrogation against Defendant and/or Doe Defendants.

COUNT I (NEGLIGENCE)

17. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 16 of this Complaint, above.

18. At all times relevant hereto, Defendant and/or Doe Defendants and each of them were responsible for the ownership, care, upkeep, inspection, maintenance, monitoring, cleaning and/or warnings with respect to the tree.

19. Defendant and/or Doe Defendants and each of them had a duty to protect the subject property from any hazards on the property which presented an unreasonable risk of harm.

20. Prior to the subject incident complained of herein, Defendant and/or Doe Defendants and each of them, knew or should have known of the unreasonable risk of harm presented by the condition of the tree on their property.

21. Defendant and/or Doe Defendants had or should have had actual knowledge of the condition of the tree and failed to take any steps to eliminate the danger.

22. Defendant and/or Doe Defendants and each of them negligently breached their duty and the damages sustained were directly and proximately caused by the negligence of Defendant and/or Doe Defendants.

23. The negligence of the Defendant and/or Doe Defendants and each of them, include, but are not limited to the following:

- a. Permitting an unreasonable risk of harm to exist on their property;
- b. Failing to properly inspect, monitor, supervise, maintain or otherwise oversee their property so as to prevent or eliminate the unreasonable risk of harm;
- c. Permitting or allowing the tree to decay and/or continue to decay;
- d. Permitting or allowing the tree to remain standing on their property;
- e. Failing to warn, advise, or otherwise provide notice regarding the unreasonable risk of harm.

24. The actions of the Defendant and/or Doe Defendants individually and in

concert, as alleged herein, were negligent and subject to joint and several liability.

25. The negligence of each Defendant and/or Doe Defendants was a substantial factor in causing the damages and losses.

26. Defendant and/or Doe Defendants are vicariously liable for the aforesaid negligence of its employees and/or agents under the doctrine of respondeat superior and/or principles of agency.

27. The negligent acts and/or omissions of Defendant and/or Doe Defendants and each of them were the direct and proximate causes of the damages.

28. By failing to take reasonable measures and/or precautions to prevent and/or stop the tree from toppling onto the subject property and causing the subject incident, Defendant and/or Doe Defendants were negligent.

29. The negligent and/or wrongful acts and/or omissions of Defendant and/or Doe Defendants, by and through their authorized employees, agents, and/or representatives, were the legal cause of the subject incident and resulting property damage at the subject property.

30. The negligent and/or wrongful acts and/or omissions of Defendant and/or Doe Defendants, by and through their authorized employees, agents, and/or representatives, resulted in monetary losses to Plaintiff and its insured in the sum of at least ***One Hundred Seventeen Thousand Six Hundred Twenty-Nine and 82/100 Dollars (\$117,629.82)***.

31. Defendant and/or Doe Defendants are liable for the monetary losses incurred by Plaintiff and its insured arising out of the subject incident.

COUNT II (RESPONDEAT SUPERIOR AND VICARIOUS LIABILITY)

32. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 31 of this Complaint, above.

33. The negligent and/or wrongful acts and/or omissions of the authorized employees, agents, and/or representatives of Defendant and/or Doe Defendants in the subject incident were done within the course and scope of their employment.

34. Defendant and/or Doe Defendants are vicariously liable for the negligence of their authorized employees, agents, and/or representatives in the subject incident, pursuant to the doctrines of *respondeat superior*, general agency principles and/or the master-servant relationship.

35. The negligent and/or wrongful acts and/or omissions of Defendant and/or Doe Defendants, by and through their authorized employees, agents, and/or representatives, were the legal cause of the subject incident and resulting property damage at the subject property.

36. The negligent and/or wrongful acts and/or omissions of Defendant and/or Doe Defendants, by and through their authorized employees, agents, and/or representatives, resulted in monetary losses to Plaintiff in the sum of at least ***One Hundred Seventeen Thousand Six Hundred Twenty-Nine and 82/100 Dollars (\$117,629.82)***.

37. Defendant and/or Doe Defendants are liable for the monetary losses incurred by Plaintiff arising out of the subject incident.

WHEREFORE, Plaintiff prays for the following:

- A. Judgment in its favor and against the Defendant and/or Doe Defendants for damages in amounts to be proven at trial; and
- B. Pre-judgment interest, post-judgment interest, attorneys' fees, costs, and such other further relief as this Court may deem appropriate under the circumstances.

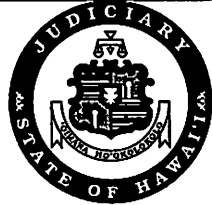

DATED: Honolulu, Hawaii, December 17, 2024.

/s/Michael A. Lorusso

MICHAEL A. LORUSSO

Attorney for Plaintiff

FIRST FIRE AND CASUALTY INSURANCE OF
HAWAII, INC.

STATE OF HAWAII CIRCUIT COURT OF THE SECOND CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	
CASE NUMBER	PLAINTIFF'S NAME & ADDRESS, TEL. NO. MICHAEL A. LORUSSO, ESQ. #3448 Law Offices of Leslie R. Kop 1100 Ward Avenue, Suite 500 Honolulu, Hawaii 96814 T: (808) 527-7063 Attorney for Plaintiff FIRST FIRE AND CASUALTY INSURANCE OF HAWAII, INC.	
PLAINTIFF FIRST FIRE AND CASUALTY INSURANCE OF HAWAII, INC.		
DEFENDANT(S) COUNTY OF MAUI; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE BUSINESS ENTITIES 1-10; DOE NON-PROFIT ENTITIES 1-10 AND DOE GOVERNMENTAL ENTITIES 1-10		
TO THE ABOVE-NAMED DEFENDANT(S) You are hereby summoned and required to filed with the court and serve upon MICHAEL A. LORUSSO, ESQ. #3448 Law Offices of Leslie R. Kop 1100 Ward Avenue, Suite 500 Honolulu, Hawaii 96814 Attorney for Plaintiff FIRST FIRE AND CASUALTY INSURANCE OF HAWAII, INC.		
plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.		
THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.		
A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.		
DATE ISSUED _____	<div style="border: 1px solid black; padding: 5px;"> Effective Date of 03-Jul-2023 signed by: /s/M. Ferreira Clerk, 2nd Circuit, State of Hawai'i The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us </div> <div style="text-align: right; margin-top: 10px;">  </div>	
<div style="display: flex; align-items: center;">  <p> If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation: Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: adarequest@courts.hawaii.gov. The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation. </p> </div>		