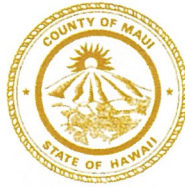


MICHAEL P. VICTORINO
Mayor

MOANA M. LUTEY
Corporation Counsel

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LYDIA A. TODA
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DEPARTMENT OF THE CORPORATION COUNSEL
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November 29, 2021

MEMO TO: Mike Molina, Chair
Government Relations, Ethics, and Transparency Committee

FROM: Brian A. Bilberry, Deputy Corporation Counsel

A handwritten signature in black ink, appearing to be "B. Bilberry", written over the name in the FROM field.

SUBJECT: Litigation Matter – Case Status GREAT-11(10)
Geoffrey E. Wittmer, as the Special Administrator for the ESTATE OF ERIC G. WITTMER, deceased v. County of Maui, Maui Police Department, et al.; Civil No. 19-1-0198(1)

Our Department is requesting the opportunity to discuss the above referenced case with the Committee and to provide status of the litigation and discuss settlement options. We would like this matter to be heard at the next available committee meeting on December 14, 2021 or January 4, 2022. Mediation in this matter is scheduled for January 24, 2022.

A copy of plaintiff Geoffrey E. Wittmer's Second Amended Complaint is attached.

Should you have any questions or concerns, please do not hesitate to contact our office.

Resolution

No. _____

AUTHORIZING SETTLEMENT OF GEOFFREY E. WITTMER, ET AL.
v. COUNTY OF MAUI, ET AL., CIVIL 19-1-0198 (1)

WHEREAS, Geoffrey E. Wittmer, as the Special Administrator for the Estate of Eric G. Wittmer, filed a lawsuit in the Second Circuit Court of the State of Hawaii on April 9, 2020, Civil 19-1-0198 (1), against the County of Maui and County of Maui Police Department, for alleged Wrongful Death; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Governance Relations, Ethics, and Transparency Committee; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

Resolution No. _____

BE IT RESOLVED by the Council of the County of Maui:

1. That it approves settlement of this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee;
2. That it authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case;
3. That it authorizes the Director of Finance to satisfy said settlement of this case; and
4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Chief of Police, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



BRIAN A. BILBERRY
Deputy Corporation Counsel
County of Maui
LIT-6066

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Attorneys for Plaintiff
GEOFFREY E. WITTMER as the
Special Administrator for the
ESTATE OF ERIC G. WITTMER

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

GEOFFREY E. WITTMER as the Special)	CIVIL NO. <u>19-1-0198 (1)</u>
Administrator for the ESTATE OF ERIC G.)	<i>(Other Non-Vehicle Tort)</i>
WITTMER, deceased,)	
)	SECOND AMENDED COMPLAINT and
Plaintiff,)	SUMMONS
)	
vs.)	
)	
COUNTY OF MAUI; COUNTY OF MAUI)	
POLICE DEPARTMENT; INTERNATIONAL)	
LIFE SUPPORT INC. <i>doing business as</i>)	
AMERICAN MEDICAL RESPONSE <i>also</i>)	
<i>known as</i> AMR; JOHN DOES 1-5; JANE)	
DOES 1-5; DOE CORPORATIONS 1-5; DOE)	
PARTNERSHIPS 1-5; DOE ENTITIES 1-5 and)	
DOE GOVERNMENTAL UNITS 1-5;)	
)	
Defendants.)	
)	

SECOND AMENDED COMPLAINT

COMES NOW, Plaintiff GEOFFREY E. WITTMER as the Special Administrator for the ESTATE OF ERIC G. WITTMER, deceased, by and through his attorneys MATTHEW S. KOHM ESQ., and CARL M. VARADY ESQ, for a Second Amended Complaint alleging as set forth below and, without limitation, adding Defendant International Life Support Inc., following completion of proceedings before the Medical Inquiry and Conciliation Panel (“MICP”), pursuant to HRS § 671-18. Plaintiff hereby complains and alleges against Defendant(s) above-named jointly and severally, under HRCF Rules 7, 8, 10, and 65, HRS Chapter 632, and hereby claims against said Defendant(s) jointly and severally as follows:

PARTIES, JURISDICTION, AND VENUE

1. At all times relevant herein Plaintiff GEOFFREY E. WITTMER as the Special Administrator for the ESTATE OF ERIC G. WITTMER, deceased (hereinafter “Plaintiff,” “Estate” or “WITTMER”) and is an Estate domiciled in Hawai‘i and a resident of the State of Hawai‘i.

2. Plaintiff was appointed as Special Administrator for the Estate of ERIC G. WITTMER, deceased, in THE ESTATE OF ERIC G. WITTMER, Circuit Court of the Second Circuit Probate Number 19-1-0109 (2), and the Estate of ERIC G. WITTMER, *deceased*, is a proper party herein.

3. At all times relevant herein Defendant COUNTY OF MAUI (“County” or County of Maui”), is a municipality and/or County and/or municipal corporation organized under the laws of the State of Hawai‘i.

4. At all times relevant herein Defendant COUNTY OF MAUI POLICE DEPARTMENT (as “Police” or “MPD”) is a governmental department, unit, and/or division of the COUNTY OF MAUI organized under the laws of the County of Maui and State of Hawai‘i.

5. At all times relevant herein Defendant INTERNATIONAL LIFE SUPPORT INC. *doing business as* AMERICAN MEDICAL RESPONSE *also known as* AMR, is a for profit business incorporated within the State of Hawai'i providing emergency and non emergency medical services and transportation.

6. The decedent ERIC G. WITTMER was a resident and domiciled within the State of Hawai'i, when he died on June 12, 2017.

7. Unidentified Defendants JOHN DOES 1-5; JANE DOES 1-5; DOE CORPORATIONS 1-5; DOE PARTNERSHIPS 1-5; DOE ENTITIES; and DOE GOVERNMENTAL ENTITIES 1-5, named herein are sued under their fictitious names for the reason that their true names and identities are presently unknown to Plaintiffs. Plaintiffs prays for leave when the true names and capacities of said Defendants are ascertained, and that the same shall be identified with appropriate allegations, amendments of pleadings and service thereon made. Each of the fictitious Defendants named herein is believed to be connected in some manner with the named Defendant and/or the events described herein, as agents, servants, employers, employees, representatives, co-venturers, associates, co-responsible, inspectors or licensors, of the above-named Defendant(s). Each of the fictitious Defendants designated herein individually or in association with the named Defendant is negligently responsible and/or strictly liable in some manner for the events herein referred to which conduct proximately caused the injuries and damages sustained by Plaintiff(s) herein alleged. The fictitious Defendants may also have violated a duty and standard of care to assess and provide necessary medical care, treatment, and/or care, and that Plaintiff must statutorily determine subject matter jurisdiction upon such Defendants prior to adding such to the lawsuit. Upon procedure and/or identification and proper motion, Plaintiff(s) pray for leave to identify and name Doe Defendants as parties to this action.

8. All matters alleged herein occurred in the County of Maui, State of Hawai'i, and are within the jurisdiction of the Second Circuit Court of the State of Hawai'i, and venue is proper in that court.

9. All Defendants are sued jointly and severally for the actions herein.

10. An actual controversy exists between Plaintiffs and Defendants as to the rights and legal obligations of the parties, for which they seek declaratory, injunctive and other relief. Plaintiffs seek declaratory, injunctive and other relief as to their rights, the legal obligations of Defendants, and the applicability of the request for private attorney general application and attorney fees requested herein.

11. The Court has jurisdiction over Plaintiffs' claims for declaratory, injunctive and related relief pursuant to HRS Chapter 632 and HRCPP Rule 65.

12. All jurisdictional requirements or requirements to exhaust administrative remedies under HRS § 671-18, have been fulfilled.

GENERAL ALLEGATIONS

13. On or about Monday June 12, 2017, in the early morning, Plaintiff WITTMER, died from the physical symptoms resulting from alcohol withdrawal, in cell number 8 of the MPD Receiving Desk area within the care, custody and control of Defendants, while he was being held as an arrestee, prior to arraignment.

14. WITTMER had been arrestee on Friday June 9, 2017, at approximately 2010 hours. WITTMER was placed under arrest for Operating a Vehicle Under the Influence of Alcohol and had provided a BrAC (*breath alcohol content test*) reading of .293.

15. On June 10, 2017 at about 11:58 a.m., Defendant INTERNATIONAL LIFE SUPPORT, INC. (hereinafter "AMR" ambulance and/or "ILS") through its employees, and/or agents, responded to an emergency request to come to the MPD Wailuku cellblock to

assess Wittmer's health.

16. AMR's responding employees were informed and understood that Wittmer was in ETOH (alcohol) withdrawal.

17. Defendant AMR failed to examine and treat Wittmer properly or meet the standards of professional care: No blood pressure was taken; nor did AMR's employees check Wittmer's blood sugar levels, heart rate, blood pressure or provide intravenous fluids. Wittmer was pleading for help to detox from the alcohol.

18. AMR's employees was under a duty to examine and assess Wittmer's condition according to established standards of professional care.

19. AMR's employees did not satisfy these professional standards. In fact, no examination was done to determine Wittmer's vital signs.

20. No attempt was made by AMR or its employees transport Wittmer to Maui Memorial Hospital or other health care facility with Wittmer could receive competent care.

21. Defendant AMR was informed and aware that Wittmer was undergoing alcohol withdrawal, and he requested treatment for such from Defendant AMR.

22. Instead of performing an examination and assessment consistent with relevant standards of professional care, Defendant AMR looked at Wittmer and simply told Defendant MPD "the worst case scenario is Wittmer has a seizure, and that MPD could provide transport to the hospital 0.5 miles away."

23. Over the several days in jail, Plaintiff WITTMER continuously displayed the symptoms of severe alcohol withdrawal, which Defendants observed, were or should have been aware of.

24. It was or should have been apparent to Defendants that WITTMER required clinical treatment.

25. Defendant AMR had a duty to provide appropriate examination, assessment and emergency medical care to Wittmer , even though Wittmer was in the custody and control of MPD. That Wittmer was in police custody did not alter or diminish AMR's duty of care.

26. Defendants breached their duty to provide reasonable care and offer or obtain such treatment for WITTMER, even though WITTMER requested medical help multiple times and was observed or known to be: coughing and breathing heavily; complaining of not feeling well; shivering and sweating profusely; having difficulty breathing; walking around shaking, and/or shaking in a manner that appeared to be a seizure.

27. Wittmer suffered and died as direct and proximate result of Defendants' breaches of duty, where were a substantial factor in his suffering and death.

28. MPD classifies and refers to the pretrial detainees/arrestee occupants of its Receiving Desk area jail cell as "prisoners."

29. Because they are in custody and control of Defendants County and MPD, Defendants have a special relationship with those in its care, custody, and control, such as pretrial detainees, arrestees and/or prisoners.

30. Defendants had a special relationship with Plaintiff WITTMER and owed an affirmative duty to protect him from foreseeable harm and/or to come to his aid because they knew or reasonably should have known of WITTMER's need for medial care and treatment.

31. WITTMER was not the first arrestee/prisoner to suffer severe alcohol withdrawal and die because Defendants did not provide medical care Defendants knew or should have known was required.

32. Defendants owed a duty to Plaintiff to keep WITTMER under observation and knew or reasonably should have known he was experiencing the physical symptoms of

alcohol withdrawal.

33. Defendant AMR owed a duty to Plaintiff to conduct a thorough and complete examination and assessment of Wittmer to determine his condition and provide emergency treatment consistent with that condition, situation, including obtaining a complete and proper medical history, seeking the advice of a physician, providing necessary emergency treatment, and transport a patient when warranted.

34. Defendants are vicariously liable for the actions and/or omissions of each other and the actions or omissions of their employees under the theories of vicarious liability, respondeat superior, and/or master-servant and/or principal-agent.

35. MPD employees could easily monitor WITTMER, as MPD had video surveillance in jail cell #8 in which WITTMER was confined.

36. Plaintiff WITTMER died as a direct and proximate result of Defendants' actions when they neglected to provide reasonable care to WITTMER for the physical symptoms related to his alcohol withdrawal.

37. Defendants knew WITTMER was highly intoxicated when he was arrested and while in the custody and control of Defendants, was in a particularly vulnerable state and dependent upon Defendants for aid, safety and care.

38. Defendants had actual and/or constructive knowledge of the dangerous and foreseeable condition WITTMER was in, and deliberately disregarded these risks.

39. Defendants actions and failure to "act" and correct the dangerous and foreseeable condition WITTMER was in constitutes a violation of a legal duty, and was a willful and wanton grossly negligent, reckless and/or willful and wanton act on the part of Defendants, jointly and severally.

40. Upon information and belief, Defendants are aware of the physical signs,

appearance and issue of alcohol intoxication of prisoners, and the dangers of alcohol withdrawal syndrome/symptoms, and the risks of injury and/or death to such detainees.

41. Highlighting Defendants' lack of ordinary care, WITTMER was dead for a period of hours before Defendants realized he was dead, even though WITTMER was or should have been under constant surveillance.

FIRST CLAIM FOR RELIEF

(Negligence)

42. Plaintiffs allege and incorporate the foregoing paragraphs by reference.

43. Defendants knew or should have known WITTMER was highly intoxicated when he was arrested and while in the custody and control of Defendants, was in a particularly vulnerable state and dependent upon Defendants for aid, safety and care.

44. Defendants knew or should have know that WITTMER required medical care and treatment he was arrested and while in the custody and control of Defendants.

45. Defendant AMR's actions towards Wittmer constitute abandonment and improper termination of care.

46. Defendants had a duty to exercise ordinary and reasonable care to those arrested and under Defendants's exclusive custody and control, including, without limitation, the duty to provide competent and adequate medical care and treatment to prisoners they knew, or should have known need immediate care and treatment.

47. Defendants had a duty of reasonable care to inspect, recommend, monitor, and act to assure the safety and protection of prisoners in their care, custody and control, including, without limitation, a duty to provide aid, safety and/or provide medical for such prisoners.

48. Defendants had duties of reasonable care to provide competent and

adequate medical care and treatment for prisoners care and to inspect, recommend, monitor, and act to assure the safety and protection of prisoners in their care, custody and control, including, without limitation, a duty to provide aid, safety and/or provide medical for such prisoners was non-delegable.

49. WITTMER's suffering and death were directly and proximately caused by Defendants breaches of the duty of ordinary care.

50. Plaintiff WITTMER's injuries and losses were caused jointly and severally by the affirmative acts and/or omissions to act of Defendants.

51. Defendants, their agents, servants and employees, including but not limited to their negligence, strict liability, breach of affirmative duty under special relationship, gross negligence, reckless and/or willful and wanton conduct in failing to inspect, recommend, monitor, intervene, aid, protect, and/or properly provide safety, care and medical care.

52. As a direct and proximate cause of Defendants' joint and several breach of duties, Decedent Eric G. Wittmer suffered severe conscious pain and suffering, severe emotional distress, pain and suffering, loss of enjoyment of life, loss of income, loss of future wages, funeral and burial expenses, and such other and further damages as shall be proved at trial, for which Special Administrator GEOFFREY E. WITTMER is entitled to obtain recovery.

SECOND CLAIM FOR RELIEF

(Wrongful Death)

53. Plaintiffs allege and incorporate the foregoing paragraphs by reference.

54. As a direct and proximate result of Defendants' joint and several breaches of their duties of care, Plaintiff WITTMER has a lawful right to recover for his brother Eric Wittmer's wrongful death.

55. WITTMER has suffered injuries, including but not limited to, severe

emotional distress; mental anguish; loss of love, affection, companionship, comfort, protection; filial loss of consortium; loss of filial care and all special and general damages provided under HRS § 663-3, in amounts to be proved and for which he may recover at trial.

PUBLIC POLICY: PRIVATE ATTORNEYS GENERAL
(Attorneys' Fees Claim)

56. Plaintiffs allege and incorporate the foregoing paragraphs by reference.

57. Hawai'i recognizes a strong public policy that pretrial prisoners in the care, custody and control of public entities must be provided with necessary medical care. There is a strong public policy and/or strong societal importance of such a public policy.

58. Plaintiff has been required by necessity to seek private enforcement of the governmental obligation to provide a pretrial prisoner in its care, custody and control, with proper medical care and treatment, and to assess liability for breach of this important public duty.

59. The magnitude of the resultant burden on the Plaintiff in seeking private enforcement of these duties and strong public policy supports all Plaintiffs' claims for attorneys' fees as private attorneys general.

60. The number of people standing to benefit from a decision in favor of Plaintiff and against Defendants for their failure to provide proper care to pretrial prisoners who need emergency medical examination, assessment and treatment, supports all Plaintiffs' claims for attorneys' fees as private attorneys general.

61. Should Plaintiff prevail on any of its claims in the instant case, Plaintiff has vindicated important public rights and should receive an award attorney fees and costs under the private attorney general doctrine.

WHEREFORE, Plaintiffs prays for judgment in their favor and against

Defendant(s), jointly and severally for relief as follows:

- a. A declaration that Defendants' actions were unlawful and failed to meet the standard of ordinary care;
- b. Equitable relief, mandating Defendants adopt policies, procedures and training to assure that intoxicated prisoners are provided reasonable medical care and treatment;
- c. Special damages in an amount to be proved at trial;
- d. General damages in an amount to be proved at trial;
- e. Punitive damages against all entities subject to such damage awards;
- f. Attorney's fees and costs under the Private Attorney General Doctrine;
- g. Pre- and post-judgment interest; and
- h. Such other relief as the Court deems just, equitable or as mandated by law.

DATED: Wailuku, Maui, Hawai'i, April 9, 2020.



CARL M. VARADY
MATTHEW S. KOHM
ATTORNEYS FOR PLAINTIFFS