MICHAEL P. VICTORINO Mayor

MOANA M. LUTEY Corporation Counsel

EDWARD S. KUSHI, JR. First Deputy

LYDIA A. TODARisk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761





DEPARTMENT OF THE CORPORATION COUNSEL COUNTY OF MAUI 200 SOUTH HIGH STREET, 3RD FLOOR WAILUKU, MAUI, HAWAII 96793

EMAIL: CORPCOUN@MAUICOUNTY.GOV TELEPHONE: (808) 270-7740 FACSIMILE: (808) 270-7152

November 8, 2019

MEMORANDUM

TO:

Michael J. Molina, Chair

Governance, Ethics, and Transparency Committee

FROM:

Caleb P. Rowe, Deputy Corporation Counsel

SUBJECT:

Litigation Matters – Settlement of Claims and Lawsuits (GET-1)

Settlement of Claim No.: 30166871707-0003 of Alyssa Toth

Pursuant to Section 3.16.020B of the Maui County Code, our department hereby requests authorization to discuss settlement of the aforementioned claim. It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee. There is no immediate deadline to this matter.

Copies of the claim and proposed Resolution are enclosed. We request that a representative from the Maui Police Department be in attendance during discussion of this matter. If you have any questions, or concerns, please do not hesitate to contact me.

CPR:chs Enclosure

cc:

Chief Tivoli Faaumu,

Maui Police Department

Resolution

No.	

AUTHORIZING SETTLEMENT OF CLAIM NO. 30166871707-0003 OF ALYSSA TOTH

WHEREAS, Alyssa Toth, filed Claim No. 30166871707-0003 on November 16, 2016, against the County of Maui for injuries and damages to her vehicle she allegedly sustained at the intersection of Kula Highway and Copp Road, Kula, Maui, Hawaii on October 21, 2016 involving a Maui County fleet vehicle being operated by a County employee; and

WHEREAS, Alyssa Toth filed a Complaint with the Second Circuit on October 19, 2018 in order to preserve the statute of limitations on her claim;

WHEREAS, the County of Maui and Alyssa Toth, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a proposed resolution of this claim by way of negotiated settlement, 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, Ethics, and Transparency Committee; and

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

Resolution	No.	

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

- 1. That it approves settlement of Claim No. 30166871707-0003 under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and
- 2. That payment is authorized to satisfy settlement of this claim following the execution of the "Release and Indemnity Agreement" by Alyssa Toth; and
- 3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Police Chief, and the Corporation Counsel.

APPROVED AS TO FORM

AND LEGALITY:

CALEB P. ROWE Deputy Corporation Counsel

County of Maui RISK 2016-0852

COUNTY OF MAII

RECEIVED

CLAIM FOR DAMAGE OR INJURY

MILL NOV 16 PH 3 10

Claimant: Mr. Mrs. Ms. Ms.		COUNTY CLE	RK
Address: 20 Aolani Pl. Paia, HI 96			
elephone No.: Business 959-2	200-6224	Residence 959-200-6224	¥.
Date of Accident: October 21, 2	2016		
ocation of Accident: Intersection o	of Kula Highway & C	Copp Road	
mount of Claim: Property Damage \$	side open	Personal Injury \$ 50,000 (c5mm	/ / eln
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Page 3 of 9 DOT-1-174C (HWY-T) Rev. 08/08	TATE OF HAWAII MOT	OR VEHICLE ACCIDEN	NT REPORT	eport Number; 18-043839
01		RMATION (Cont.)		Sport region. 18-043838
Citation Number Offerse	Code (H.R.S./R.O. Section No.)	- Land Hard 20 200 1001	None (00) Functional (02) Winor (01) Disabiling (03)	No (01) Yes (02) If yes, go to CMV SUPPLEMENT
(93) Using the Diagram to the Right, include Initial Impact Point in block below: 3 9- lop 10- bottom 10- bo	6 5 9 s	\$3,000 or Greater (01) Less than \$3,000 (02)	O \$3,0	000 or Greater (01) s than \$3,000 (02)
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Page 4 of 9 DOT-1-1748 (HWY-T) Rev. 06/08	STATE OF HAWAI	I MOTOR VEHICLE	ACCIDENT REPORT	Report Number: 18-043	638
02 1		UNIT INFORMATIO	N		
 Passenger Car (01) Passenger Van (02) Pickup Truck (03) SUV/MPVH(04) Cargo Van < 10,001 lbs. (05) Other Truck < 10,001 lbs. (06) Truck > 10,000 lbs. (07) Transit Bus (08) 	 School Bus (09) Other Bus (10) Motorcycle (11) Motor Scooter (12) Moped (13) Bicycle (14) Pedestrian (15) MeInt/Construct, Equipment (1 		O Black (02) O American Ind	Vietnamese (11) Filipino (12) Unknown (13)	
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02	UNIT INI	FORMATION (Cont.)		Report Number: 16-043939
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Page __ 7 of __ 9 STATE OF HAWAII MOTOR VEHICLE ACCIDENT REPORT DOT -1-174E (HWY-T) Rev.06/08 Report Number: 18-043839 (120) ALL PERSONS E- Ejection H- Injury Cines - Injury Area J- Accident Site Care 00 None 00 Not Elected L- Medical Facility 00 None 00 None 01 Ejected, Total 02 Ejected, Partial 01 Possible 01 First Aid Hawaii County Molokal/Lanal 01 Head C&C Honolulu (cont.) 02 Non-incapaci-02 Face 01 Hilo Medical Center 02 Resuscitation 11 Molokai General Hosp. 20 Kaneone State Hospital 03 N/A Non-motorist tating 03 Incapacitating 03 Eye 04 Neck 02 Kona Hospital 03 Extrication 12 Lanal Comm. Hospital 04 Unknown 21 Kapidiani Medical Ctr. 04 Both 1 & 2 03 Kau Hospital 04 Fatal 22 Kapidani Med. - Pali Kausi County F-Safety Equipment Use 05 Thorax (Chest) 05 Both 1 & 3 04 Kohala Hospital 05 Unknown Momi 13 Wilcox Memorial Hosp. 00 Not Present 06 Spine/Back 06 Both 2 & 3 05 Honokaa Hospital 23 Kuakini Med. Ctr. 14 Kaual Vet. Mem. Hosp. 01 Not Used 07 Shoulder/Upper Arm 07 Other 06 N. Hawaii Comm. Hosp. 24 Hawali Med. Ctr. 02 Shoulder/Lap Belt Used 08 Elbow/Lower Arm/Hand 08 Refused 25 Haweii Med. Ctr. West 03 Lap Belt Only Used 04 Shoulder Belt Only Used 09 Abdomen/Pelvis Maui County C&C Honolulu K-Trans. to 26 Queen's Medical Center 10 Hip/Upper Leg 11 Knee/Lower Leg/Foot 07 Kula General Hospital Med. Facility 15 Castle Medical Center 27 Straub Clinic & Hosp. 05 Not Able to Determine 08 Maui Mem. Med. Ctr. 28 Tripler Army Med. Ctr. 29 Wahiawa General Hosp. 00 Not Transported 16 Shriner's Hosp, for 06 Child Restraint (Forward) 12 Entire Body 09 Keiser Clinic 01 EMS Children 07 Child Restraint (Rear) 10 Hena Clinic 02 Pdice 17 Kahuku Hospitel 30 Waisnee Comp. Ctr. 08 Booster Seet 03 Helicopter 18 Keiser Permanente 09 Child Restraint (Unk. Type) 04 Private Vehicle 19 Keiser Clinic - Honolulu 10 Child Resireint (Improper) 89 Other 05 Other 11 Heimet Used 12 N/A (Non-Motorist) B- Position in Unit M- Condition 13 Linknown 01 Refused Treatment Motorcycle/Moped/Bicycle G- Air Bag Deployed 02 Released Pedestrian 00 Not Present 03 Good, Fair 01 Not Deployed 04 Serious, Guarded 02 Deployed - Front 05 Critical 03 Deployed - Side 06 Dead on Arrival 04 Deployed - Other 05 Deployed - Combination 06 Deployed - Curtain Motor Vehicle 07 Dead Other For lap position use 1 in place of 0 WIKOLI, DAVID KALAOKALANI 01 10 11800 KULA HWY, KULA, HI 96790 54 M 00 02 02 00 TOTH, ALYSSA 02 10 23 F 00 Ω2 35 LUNA PL, PAIA, HI 96779 00 01 00

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STATE OF HAWAII MOTOR VEHICLE ACCIDENT REPORT

Report Number:

16-043939

Narrative

Heather M. GILROY E # 12687 Sergeant, District One Community Policing Unit

ASSIGNMENT/ARRIVAL:

On 10/21/16 at about 2315 hours I overheard Officer James BURKETT call off on motor vehicle accident in the area of Kula Highway and Copp Road in Kula. It was related that a marked patrol vehicle had been involved in the motor vehicle accident. I headed that way and arrived at about 2340 hours, made the following observations.

OBSERVATIONS/ACTIONS:

Upon arrival I observed Maui Police Department Fleet Vehicle MPD-547 straddling the double solid yellow line, in the middle of Kula Highway. There was extensive damage to the front end of the SUV. There was also liquids leaking and pooling from the front of the vehicle onto Kula Highway. On the southeast corner of Copp Road and Kula Highway intersection I observed a full size brown van down a ditch, off the roadway. The van had damage to the rear doors. I checked on the welfare of Officer WIKOLI. He related that he was not injured and just had irritation from the airbag chemicals. I made contact with the operator of the van, Alyssa TOTH who complained of pain to her lower back. She declined immediate medical attention and related she would seek treatment on her own. She did not have any visible injuries.

WARNING AND WAIVER OF RIGHTS:

On 10/21/16 at 2320 hours Alyssa TOTH was advised of her Constitutional Rights utilizing MPD Form 103. TOTH indicated understanding her rights and elected to provide a statement regarding the motor vehicle accident.

UNIT TWO STATEMENT: Alyssa TOTH A/F/Cau/Cit

TOTH related that on this date at about 2310 hours she was traveling south on Kula Highway within her van bearing Hawaii License Plate YBT-55. She purchased the vehicle two days ago and had yet to purchase insurance for it. She moved to the island about a month ago and was getting her affairs in order. Upon approaching the intersection of Copp Road and Kula Highway, she prepared to execute a left hand turn onto Copp Road from Kula Highway. She activated her left hand turn blinker and slowed for the turn. All of a sudden she felt a sharp impact from behind. Her vehicle pushed forward as a result of the impact and she tried to turn to avoid the guard rail. She continued sliding and went down a dirt / grass embankment. She felt pain to her lower back area as a result of the impact. She exited her vehicle and the Officer asked her if she was ok. Shortly after another Officer arrived. TOTH estimated her speed of travel to be between 40 and 45 miles per hour prior to executing the turn. TOTH was wearing her seatbelt at the time of the collision.

WARNING AND WAIVER OF RIGHTS:

On 10/22/16 at 0010 hours David WIKOLI was advised of his Constitutional Rights utilizing MPD Form 103. WIKOLI indicated understanding his rights and elected to provide a statement regarding the motor vehicle accident.

UNIT ONE STATEMENT: David WIKOLI A/M/Hwn/Cit

WIKOLI related that on 10/21/16 at about 2310 hours he was traveling home to his residence in Kula from the Wailuku Police Station. He was operating his assigned HITT vehicle, MPD-547. He was behind a large brown van for a length of the way, however does not remember whereabouts on the highway he first got behind it. As he was approaching the

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STATE OF HAWAII MOTOR VEHICLE ACCIDENT REPORT

Report Number: 18-043938

Narrative

intersection of Kula Highway and Copp Road he realized that all of a sudden he was about one car length away from the brown van. He slammed on his brakes to avoid hitting the van, however did not have enough time and collided with the rear end of the full size van. Both his vehicle and the van were pushed forward as a result of the impact. His front airbags deployed as a result of the impact. WIKOLI estimates his speed of travel to be between 45 and 50 miles per hour prior to the impact. WIKOLI reported not seeing a left hand turn signal or blinker illuminated on the van. He cannot remember seeing red brake lights. He immediately exited his vehicle and checked on the welfare of the female driver of the van. She was shaken up, but said she was alright. He reported irritation from the airbag chemicals. Officer BURKETT arrived a minute or two after the collision. WIKOLI was wearing his seatbelt at the time of the collision.

DAMAGES:

MPD Marked Fleet Vehicle MPD-547 sustained extensive damages to the front end, hood and bumper. Vehicle YBT-55 sustained damages to the rear doors of the van.

TOW:

Contact made with Maui Tow by Dispatch, however they were unavailable. 808 Towing responded and towed MPD-547 to the Wailuku Police Station.

SKETCH:

Refer to attached sketch by Officer BURKETT.

INJURIES:

Unit two operator, Alyssa TOTH complained of pain to her lower back area. She declined medical attention at the scene and indicated that she would follow up with her primary care physician at a later time.

SUMMARY:

Unit one (MPD-547) traveling south on Kula Highway collided into Unit two (YBT-55) whom was executing a left hand turn onto Copp Road from Kula Highway. Unit two operator complained of lower back pain.

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STATE OF HAWAII MOTOR VEHICLE ACCIDENT REPORT

Report Number:

16-043939

Narrative Supplement

Supplement type:

J. BURKETT #15266 WAILUKU PATROL 10/22/2016 @0300 HRS.

ON BEAT:

On 10/21/16 at 2315 hours, I was conducting beat checks and traveling north on Kula Highway while approaching the Copp Road intersection.

OFFICER'S OBSERVATIONS/ACTIONS:

Upon approaching the above intersection area, I observed a vehicle stopped on the center lines with steam coming from the hood area. Upon closer inspection, I observed the vehicle sustained damage to the front bumper and hood area. I identified the vehicle as an MPD sport utility vehicle bearing Hawaii LP# MPD 547 and observed the operator as Officer David WIKOLI.

I exited my patrol vehicle and checked OFC. D. WIKOLI who stated he was not injured. I then observed a brown Chevrolet Astrovan bearing Hawaii LP# YBT 55 stopped on the east side of the roadway with rear end damage. I identified the driver and sole occupant as Alyssa TOTH, who initially stated she was not injured.

SUPERVISOR NOTIFICATION:

After checking both drivers for injuries, I contacted SGT. H. GILROY by cell phone at 2317 hours and advised her of the incident involving an MPD vehicle.

CITATION ISSUED:

While obtaining vehicle information from TOTH, she was unable to provide current motor vehicle insurance and said she had just purchased the vehicle a few days earlier. Citation #2DTC-16-003361 was issued to TOTH for the offense of NO MOTOR VEHICLE INSURANCE POLICY.

J. BURKETT #15266 WAILUKU PATROL 10/22/2016 @0300 HRS.

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