

**MICHAEL P. VICTORINO**  
Mayor

**MOANA M. LUTEY**  
Corporation Counsel

**RICHELLE M. THOMSON**  
First Deputy

**LYDIA A. TODA**  
Risk Management Officer



**DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI**

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**WAILUKU, MAUI, HAWAII 96793**

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May 15, 2020

MEMO TO: Mike Molina, Chair  
Governance, Ethics, and Transparency Committee

FROM: Brian A. Bilberry, Deputy Corporation Counsel

SUBJECT: Litigation Matter – Case Status GET-11  
*Amiri v County of Maui; Civil No. 19-CV-00373*  
U.S. District Court, District of Hawaii

A handwritten signature in black ink, appearing to be "B. Bilberry", with a long horizontal stroke extending to the right.

Our Department is requesting the opportunity to discuss with the Committee the litigation of the above-referenced case, update on the status of the litigation, and to discuss settlement options with regard to the above-reference lawsuit. A settlement conference is set for June 18, 2020 and trial is set for September 8, 2020. We would like this matter heard at the currently scheduled June 2, 2020 committee meeting.

A copy of plaintiff Avid Amiri's Complaint is attached.

It is anticipated that an executive session will be necessary to discuss a settlement demand received from Mr. Amiri's lawyer.

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

cc: Michele McLean, Director, Department of Planning,  
Rowena Dagdag-Andaya, Director, Department of Public Works

# Resolution

No. \_\_\_\_\_

AUTHORIZING SETTLEMENT OF  
AVID AMIRI, INDIVIDUALLY AND AS TRUSTEE OF THE  
DEUTSCHE INTERNATIONAL TRUST II VS. COUNTY OF MAUI,  
CIVIL NO. 19-CV-00373

WHEREAS, Plaintiff Avid Amiri filed a lawsuit in the United States District in the State of Hawaii on July 11, 2019, Case No. 19-cv-00373, against the County of Maui, claiming negligence with the construction, inspection, maintenance and repair of the culvert and roadway providing access to the 372 Puu Way, Haiku, Maui, Hawaii; 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, Ethics, and Transparency Committee on June 2, 2020; 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

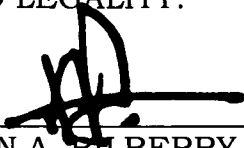
**Resolution No. \_\_\_\_\_**

negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

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

1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee on June 2, 2020; and
2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case; and
3. That it hereby 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 Director of Public Works, and the Corporation Counsel.

APPROVED AS TO FORM  
AND LEGALITY:



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BRIAN A. BILBERRY  
Deputy Corporation Counsel  
County of Maui  
Lit 6017

THE LAW OFFICE OF GREGORY A. FERREN, LLC

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Attorney for Plaintiffs  
AVID AMIRI, Individually and as  
Trustee of the DEUTSCHE  
INTERNATIONAL TRUST II

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

AVID AMIRI, Individually and as	)	Case No. 19-cv-373
Trustee of the DEUTSCHE	)	
INTERNATIONAL TRUST II,	)	
	)	COMPLAINT; DEMAND FOR
Plaintiffs,	)	JURY TRIAL
vs.	)	
	)	
COUNTY OF MAUI; DOE	)	
DEFENDANTS 1-100,	)	
	)	
Defendants.	)	
	)	
	)	

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**COMPLAINT**

COMES NOW, Plaintiff Avid Amiri, Individually and as Trustee of the  
Deutsche International Trust II, by and through his attorney, and complaining of

Defendants above-named, alleges and avers as follows:

**PARTIES**

1. Plaintiff Avid Amiri (“Amiri”) is a citizen and resident of the State of Utah and the trustee and beneficiary of the Deutsche International Trust II (“DIT”), a Utah revocable trust.

2. Defendant Maui County (“County”) is a political subdivision of the State of Hawai’i. Its powers are governed by Article VIII of the Constitution of the State of Hawai’i, by Hawai’i Revised Statutes (“H.R.S.”) Chapter 46 and other state laws, and by the Maui County Charter.

3. Doe Defendants 1-100 (“Doe Defendants”) are individual residents of Hawaii whose actual identities are not yet specifically known and who caused or contributed to Plaintiffs’ injuries. Plaintiffs have reviewed all facts available to them to determine the Doe Defendants and their activities and/or responsibilities and will continue such investigation as this case progresses. Plaintiffs will seek leave to identify or certify Doe Defendants as to their true names, identities, capacities, activities, and/or responsibilities when the same are ascertained.

**JURISDICTION AND VENUE**

4. This is a suit which is authorized by and instituted, in part, pursuant to 28 U.S.C § 1332 in that at the time the suit is being commenced, there is complete diversity of citizenship between the Plaintiffs and the Defendants, and because this

suit involves an amount in controversy which exceeds \$75,000 for each claim asserted exclusive of interest, costs, or attorney's fees. Consequently, this Court has jurisdiction over this matter.

5. The incidents that form the basis of this suit and all of the unlawful practices and torts alleged herein occurred within the State of Hawaii and/or caused injury in the State of Hawaii, and within this District. Consequently, venue is proper in this Court pursuant to 28 U.S.C. § 1391.

### **BACKGROUND**

6. DIT owns, and at all relevant times did own, real property located at 372 Puu Way, Haiku, Maui 96707 (the "Property").

7. On or around August 24, 2018, a culvert located near the Property failed, causing the only road that provided access to the Property to be completely washed out.

8. As a result of the failure of the culvert, the Property became landlocked.

9. Upon information and belief, the design, construction, and/or maintenance of the culvert was defective and/or insufficient for its location, and/or the County failed to act in a reasonable manner in connection with the design, construction, and/or maintenance of the culvert.

10. In media reports of the incident, Director of Public Works, David

Goode, admitted that the County was in fact negligent in its maintenance of the culvert. Specifically, Mr. Goode was quoted as stating that “the two 72-inch-diameter corrugated drainage pipes under the road had reached the end of their useful life”, and that “[a]t Waha Place downstream, two 96-inch culverts were installed four years ago” which “seemed to do OK” during the August 24, 2018 storm.

11. In addition, following the incident, the County has failed to take reasonable steps to repair and replace the culvert or otherwise restore access to the Property.

12. As a result of the County’s negligence, Plaintiffs have suffered damages that include, but are not limited to, loss of rental income, loss in the value of the Property, general deterioration of the both the Property and personal property contained therein as a result of the lack of access, and a burglary that occurred that was made possible by the fact that the Property was isolated and landlocked.

13. Plaintiffs provided written notice of their claims pursuant to H.R.S. § 46-72 on December 17, 2019. Plaintiffs were notified of the County’s denial of their claim by letter dated February 19, 2019.

#### **COUNT I - NEGLIGENCE**

14. Plaintiffs reallege and incorporate by reference herein the foregoing

paragraphs.

15. The County owed a duty to Plaintiffs to act reasonably in connection with the construction, inspection, maintenance, and repair of the culvert and roadway that provided access to the Property.

16. The County also owed a duty to Plaintiffs to act reasonably in connection with restoring access to the Property after the incident of August 24, 2018.

17. The County breached said duties as set forth in further detail above and, as such, was negligent.

18. As a direct and proximate cause of the County's negligence, Plaintiffs suffered damages in an amount to be proven at trial.

## **COUNT II – GROSS NEGLIGENCE**

19. Plaintiffs reallege and incorporate by reference herein the foregoing paragraphs.

20. The actions of the County, as set forth above, were wanton, malicious, reckless, and grossly negligent, and involved an extreme degree of risk considering the probability and magnitude of the potential harm to residents and property owners.

21. As a direct and proximate cause of the County's wanton, malicious, reckless, and grossly negligent conduct, Plaintiffs suffered damages in an amount



to be proven at trial.

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and that they be awarded:

A. Restitution, actual, special, general, compensatory, expectation, consequential, treble, exemplary, and/or punitive damages, as is appropriate, in amounts to be proven at trial;

B. Prejudgment and post-judgment interest;

C. Costs of suit and attorneys' fees; and,

D. Such other and further relief as the Court deems appropriate.

DATED: Honolulu, Hawaii, July 11, 2019.

THE LAW OFFICE OF GREGORY A. FERREN

/s/ Gregory A. Ferren  
Gregory A. Ferren

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

AVID AMIRI, Individually and as	)	Case No. 19-cv-373
Trustee of the DEUTSCHE	)	
INTERNATIONAL TRUST II,	)	
	)	DEMAND FOR JURY TRIAL
Plaintiffs,	)	
vs.	)	
	)	
COUNTY OF MAUI; DOE	)	
DEFENDANTS 1-100,	)	
	)	
Defendants.	)	
	)	
	)	

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**DEMAND FOR JURY TRIAL**

Trial by jury is hereby demanded in the above-entitled action on all triable issues.

DATED: Honolulu, Hawaii, July 11, 2019.

THE LAW OFFICE OF GREGORY A. FERREN

/s/ Gregory A. Ferren  
Gregory A. Ferren

Attorney for Plaintiffs