

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**MINUTES**

**Thursday, June 29, 2006**

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**MINUTES of the Meeting of The Port Authority of New York and New Jersey held Thursday,  
June 29, 2006, at 225 Park Avenue South, City, County and State of New York.**

**PRESENT:**

**NEW JERSEY**

Hon. Anthony R. Coscia, Chairman  
 Hon. Angelo J. Genova  
 Hon. Anthony J. Sartor  
 Hon. Jack G. Sinagra  
 Hon. David S. Steiner

**NEW YORK**

Hon. Charles A. Gargano, Vice Chairman  
 Hon. Bruce A. Blakeman  
 Hon. Michael J. Chasanoff  
 Hon. Christine A. Ferer  
 Hon. David S. Mack  
 Hon. Henry R. Silverman

Kenneth J. Ringler, Jr., Executive Director  
 Darrell B. Buchbinder, General Counsel  
 Karen E. Eastman, Secretary

Gwendolyn Archie, Senior Administrator, Office of the Secretary  
 Kayla M. Bergeron, Chief, Public and Government Affairs  
 A. Paul Blanco, Chief Financial Officer  
 John D. Brill, Director, Audit  
 Ernesto L. Butcher, Chief Operating Officer  
 Steven J. Coleman, Public Information Officer, Public Affairs  
 William R. DeCota, Director, Aviation  
 John C. Denise, Supervisor, Audio Visual/Photography, Public Affairs  
 Pasquale DiFulco, Public Information Officer, Public Affairs  
 Francis A. DiMola, Director, Real Estate  
 John J. Drobny, Director, Project Management  
 James P. Fox, Deputy Executive Director  
 Michael B. Francois, Chief of Real Estate/Regional and Economic Development  
 Jessica L. Goldstein, Staff External Affairs Representative, Government & Community Relations  
 Linda C. Handel, Assistant Secretary  
 Paul Higgins, Manager of Capital & Major Works Program, Office of Environmental Policy  
 Howard G. Kadin, Senior Attorney, Law  
 Victoria C. Kelly, Director, Tunnels, Bridges and Terminals  
 Kirby King, Deputy Director, PATH  
 Joseph Kucich, Professional Assistant, Office of the Secretary  
 Louis J. LaCapra, Chief Administrative Officer  
 Richard M. Larrabee, Director, Port Commerce  
 Timothy Lizura, Director, World Trade Center Redevelopment  
 Francis J. Lombardi, Chief Engineer  
 Robert F. Lurie, Chief of Strategic Planning  
 Stephen Marinko, Attorney, Law  
 John P. McCarthy, Director, Public Affairs  
 James E. McCoy, Manager, Board Management Support, Office of the Secretary  
 Anne Marie C. Mulligan, Treasurer  
 Lynn A. Nerney, Senior Administrator, Office of the Secretary

Steven P. Plate, Director, Priority Capital Programs

Alan L. Reiss, Deputy Director, Aviation

Edmond F. Schorno, Chief of Staff

Stephen Sigmund, Senior Policy Advisor, Office of the Deputy Executive Director

Sheree R. Van Duyne, Manager of Policy and Protocol, Office of the Secretary

Christopher R. Zeppie, Director, Office of Environmental Policy, Programs and Compliance

Peter J. Zipf, Deputy Chief Engineer

The public session was called to order by Chairman Coscia at 1:40 p.m. and ended at 1:46 p.m. Commissioner Pocino was present for the executive session.

### **Action on Minutes**

The Secretary submitted for approval Minutes of the meeting of May 25, 2006. She reported that copies of these Minutes were sent to all of the Commissioners and to the Governors of New York and New Jersey. She reported further that the time for action by the Governors of New York and New Jersey has expired.

Whereupon, the Board of Commissioners unanimously approved the Minutes.

The Secretary also reported that the action set forth on page 128 of the Minutes for the meeting of April 26, 2006 entitled "*Authorization to Provide Funding to the Township of Weehawken, New Jersey, for the Rehabilitation and Upgrade of Baldwin Avenue*" has been corrected to reflect a recusal by Commissioner Coscia.

Whereupon, the Board of Commissioners unanimously approved the Minutes.

### **Report of Audit Committee**

The Audit Committee reported, for information, on matters discussed in executive session at its meeting on May 25, 2006, which included discussion of internal audit matters, and the report was received.

### **Report of Committee on Finance**

The Committee on Finance reported, for information, on matters discussed in executive session at its meeting on June 29, 2006, which included discussion of matters related to or which could impact upon the issuance, sale, resale, or redemption of Port Authority Bonds, Notes or other obligations, and matters which could affect the competitive economic position of the Port Authority, the Port District or businesses with which we deal, in addition to matters filed with the Committee pursuant to Board action or separately reported to the Board of Commissioners at this meeting of the Board, and the report was received.

### **Report of Committee on Capital Programs/Port Planning**

The Committee on Capital Programs/Port Planning reported, for information, on matters discussed in executive session at its meeting on June 29, 2006, which included discussion of contract matters, and the report was received.

### **Report of Committee on Construction**

The Committee on Construction reported, for information, on matters discussed at its meeting on June 29, 2006, which included discussion of the status of the redevelopment of Terminals 8 and 9 and the construction of a new parking garage at John F. Kennedy International Airport, as well as matters discussed in executive session, which included discussion of contract matters, in addition to matters filed with the Committee pursuant to Board action or separately reported to the Board of Commissioners at this meeting of the Board, and the report was received.

### **Report of Committee on Operations**

The Committee on Operations reported, for information, on matters discussed and action taken in executive session at its meeting on June 29, 2006, which included discussion of certain contract and lease matters and matters which could affect the competitive economic position of the Port Authority, the Port District or businesses with which we deal, and the report was received.

### **Staff Report**

A presentation was made by staff on the Port Authority's policy for sustainable design in construction activities at its facilities.

**TETERBORO AIRPORT – AUTHORIZATION TO ENTER INTO AGREEMENT WITH THE BOROUGH OF MOONACHIE**

It was recommended that the Board authorize the Executive Director to enter into an agreement with the Borough of Moonachie, New Jersey (Borough) providing for: (1) the use and occupancy by the Borough of approximately 1.83 acres of Port Authority-owned land at Teterboro Airport (TEB) for a 30-year term and for the construction by the Borough of a multi-purpose facility (Facility) on this land; and (2) the provision by the Port Authority of funding toward engineering, construction and associated expenses for the Facility, in an amount not to exceed \$1.75 million.

The territory of the Borough consists of approximately 900 acres of land, of which 487 acres are within the boundaries of TEB. In addition to a small payment in lieu of taxes (PILOT) of approximately \$16,000 per year, the only other compensation that the Borough receives from the Port Authority related to TEB is an annual property tax payment which was imposed as a result of a 1962 decision by the New Jersey Supreme Court holding that Building 72 at TEB, a multi-tenant office/warehouse Port Authority building located on airport property within the Borough, was not exempt from property taxation. Prior to December 2001, when the Port Authority reassumed the role of Airport Operator at TEB, the tax payments had been made by the previous Airport Operators. Subsequently, the Port Authority continued to make these payments for several years, while seeking alternative methods to compensate the Borough, in lieu of making tax payments. The current tax assessment for the building is approximately \$100,000 annually. The Borough has agreed to support the Port Authority's Petition of Appeal to the County of Bergen (County) to abate real estate taxes, currently estimated at \$100,000 annually, on Building 72.

Under the proposed use and occupancy agreement with the Borough, the Port Authority would provide the Borough with the use of approximately 1.83 acres of land at TEB (Although this land is considered airport property, it is not within the boundaries of the TEB Airport Layout Plan, as filed with the Federal Aviation Administration.) in "as is" condition, for a 30-year term from the commencement date of the agreement, on or about August 1, 2006. The Port Authority would retain the fee ownership of this land. The Borough would construct the Facility on the land, for use by its Department of Public Works, and Police and Fire Departments. The construction of the Facility, in part, for the Borough's Police and Fire Departments at TEB would enhance the Borough's ability to provide back-up emergency response support at the airport. (The Borough's Police Department is a "first responder" in responding to police emergencies at TEB.)

The Borough would be responsible for all aspects of construction and remediation, and would assume all environmental liability associated with the property, including pre-existing conditions, if any. The Borough also would be responsible for all repair and maintenance obligations, both structural and non-structural, associated with the land and any buildings constructed thereon over the term of the agreement. The funds provided to the Borough by the Port Authority under the agreement would be subject to such conditions as may be mutually agreed upon.

The Borough's Mayor and Council have adopted a resolution supporting the exemption of the TEB Building 72 leasehold from annual real estate taxes, and it is anticipated that, based on the Borough's support, the County will approve the exemption.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Blakeman, Chasanoff, Coscia, Ferer, Gargano, Genova, Mack, Sartor, Silverman, Sinagra and Steiner voting in favor; none against:

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into an agreement with the Borough of Moonachie, New Jersey (Borough) providing for: (1) the use and occupancy by the Borough of approximately 1.83 acres of Port Authority-owned land at Teterboro Airport for a 30-year term and for the construction by the Borough of a multi-purpose facility (Facility) on this land, substantially in accordance with the terms and conditions outlined to the Board; and (2) the provision by the Port Authority of funding toward engineering, construction and associated expenses for the Facility, in an amount not to exceed \$1.75 million; and it is further

**RESOLVED**, that the form of the foregoing agreement shall be subject to the approval of General Counsel or his authorized representative.

**LINCOLN TUNNEL - THE DERMOT COMPANY, INC. – SALE OF SURPLUS DEVELOPMENT RIGHTS – MIDTOWN WEST PROPERTIES, MANHATTAN**

It was recommended that the Board authorize: (1) the declaration of approximately 650,000 square feet of air space above two parcels located between 36<sup>th</sup> and 38<sup>th</sup> Streets and between Ninth and Tenth Avenues in Manhattan, New York (the Property), as surplus property; and (2) the Executive Director to: (a) enter into two contracts of sale of the Property with two affiliates of The Dermot Company, Inc. (Dermot) for development; and (b) enter into two easement and operating agreements (EOAs) or other similar agreements with such affiliates of Dermot for the granting of easement rights to support the development, and providing for the operation and maintenance of its intended development over Port Authority property. Dermot intends to use the Property to build two mid-rise residential towers with incidental commercial uses and open space on platforms to be constructed over Port Authority property (the Project).

The term of each EOA would be 99 years, commencing upon Dermot's closing of the financing for the Project, anticipated to be on or about July 1, 2007. If such closing has not occurred on or before the date which is 18 months from the date of EOA execution, Dermot would have an option to extend the closing of the financing by up to two additional three-month periods with non-refundable, in whole or in part, up-front payments payable to the Port Authority on or before the expiration of the relevant period.

Dermot would receive a credit for certain of the costs of construction of the platforms. Dermot would compensate the Port Authority for any additional operating costs it incurs as a result of the platforms.

The Property would be conveyed to Dermot on an "as is" basis, and Dermot would be responsible for all environmental conditions of the Property.

The Port Authority would have the right to purchase the Project at the end of the 99-year term of the EOAs for a nominal amount and without assumption of any accrued liabilities, and the sellers would be required to deliver unencumbered and insurable title to the Port Authority at such time.

Dermot would invest approximately \$425 million in the Project. Dermot would have to secure approval from the New York City Department of City Planning to obtain the bonus in allowable building height associated with the creation of open space. In addition, Dermot would seek financing through the New York State Housing Finance Agency's 80/20 tax-exempt bond program.

Dermot was formed in 1991 as a real estate investment and management company, and now has approximately \$1.1 billion in assets under management and development in New York City. Dermot completed the Hudson Crossing residential project, located adjacent to Port Authority property on West 37<sup>th</sup> Street, in 2003. This project was constructed in part with development rights that were transferred from Port Authority property in 2001.

The Special Hudson Yards District was established in February 2005 and rezoned the area in which the site to be developed by Dermot is located. The rezoning permits higher density development, with an emphasis on residential and open space development on platforms to be constructed over Port Authority property. In consideration of this recent rezoning, increased valuation levels of property in the vicinity and heightened development activity, Ernst & Young LLP, Real Estate Solution Group, LLC and Vollmer Associates, LLP were retained by the Port Authority to conduct a portfolio market and valuation analysis and strategic plan for 13 parcels owned by the Port Authority in the vicinity of the Lincoln Tunnel in New York City. The study confirmed that there is an opportunity to maximize returns on the development of the agency's portfolio through a comprehensive strategic plan, of which this transaction is a component.

The proposed agreement would be subject to a due diligence review by staff and final approval of the Vice-Chairman of the Port Authority.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Blakeman, Chasanoff, Coscia, Ferer, Gargano, Genova, Mack, Sartor, Silverman, Sinagra and Steiner voting in favor; none against:

**RESOLVED**, that the Board hereby finds and determines that the approximately 650,000 square feet of air space above two parcels located between 36<sup>th</sup> and 38<sup>th</sup> Streets and between Ninth and Tenth Avenues in Manhattan, New York (the Property), is no longer required for the purposes for which it was acquired; and it is further

**RESOLVED**, that the Chief Engineer of the Port Authority be and he hereby is authorized and directed, for and on behalf of the Port Authority, to execute a certificate to be annexed to the appropriate Port Authority Map stating that the Property is no longer required for the purposes for which it was acquired, such map to be filed with the Office of the Secretary of the Port Authority; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to: (1) enter into two contracts of sale of the Property with two affiliates of The Dermot Company, Inc. (Dermot) for development; and (2) enter into two 99-year easement agreements or other similar agreements with such affiliates for the granting of easement rights to support the development, and providing for the operation and maintenance of its intended development, substantially in accordance with the terms and conditions outlined to the Board; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into any other related agreements to effectuate the transfer of title to the Property and the granting of easement rights to two affiliates of Dermot, and do all other things necessary and appropriate to effectuate the foregoing; and it is further

**RESOLVED**, that the form of all documents and agreements necessary to effectuate the foregoing shall be subject to the approval of General Counsel or his authorized representative.

**DOWNTOWN RESTORATION PROGRAM - WORLD TRADE CENTER (WTC) SITE REDEVELOPMENT – INCREASE IN AUTHORIZATION FOR CERTAIN PROFESSIONAL, TECHNICAL AND ADVISORY SERVICES CONTRACTS IN CONNECTION WITH THE IMPLEMENTATION OF THE WTC CONCEPTUAL FRAMEWORK AGREEMENT WITH SILVERSTEIN PROPERTIES**

It was recommended that the Board authorize increases in the authorization for certain existing professional, technical, and advisory services contracts in connection with implementation of the Conceptual Framework Agreement (Agreement) between the Port Authority and Silverstein Properties, Inc. (SPI) regarding redevelopment of the World Trade Center (WTC) site, in the aggregate amount of approximately \$4 million, including: (1) an increase of \$2 million under the existing real estate advisory services contract with Jones Lang LaSalle (JLL), to provide additional services required in connection with an evaluation of the Freedom Tower design to address contingencies included in the Agreement; and (2) an estimated increase of \$2 million under other existing contracts for professional services that will be required in connection with the implementation of the conceptual framework, including an estimated increase of \$1.2 million for the architectural and engineering design services contract with the Downtown Design Partnership (DDP) to evaluate and incorporate potential design adjustments to the WTC Transportation Hub and common infrastructure projects, as well as an estimated increase of \$800,000 for contracts with other firms for professional services that will be required prior to the execution of a final agreement with SPI.

Since 2003, the JLL consulting team, which includes Callison, Kohn, Pederson & Fox, Economics Research Associates, AKF Engineers, Tishman Speyer, Schirmer Engineering Corporation, Ducibella, Venter and Santore, Steven Winters Associates and Robert F. Futterman & Associates, LLC, among others, has consulted on many aspects of the WTC Development Planning, such as a potential Port Authority space lease, retail development planning, including Phase 1 Preliminary Engineering, the right of first offer with the former retail net lessee, hotel feasibility, Towers 3 and 4 analysis, financial modeling and SPI renegotiation strategy, federal General Services Administration (GSA) space leasing, office net leasing, and operations and maintenance planning.

Due to the Agreement entered into between the Port Authority and SPI, certain contingencies must be fulfilled by September 2006 - contingencies representing scopes of work that were not contemplated under previous authorizations that address necessary design changes to the Freedom Tower, including working with the GSA and other entities to lease at least one million square feet in the Freedom Tower, as well as requirements for antenna and mechanical requirements on top of the building.

In addition, the Agreement also accelerates the commercial development of the East Bath tub area, which must be coordinated with the WTC Transportation Hub project. In particular, there are potential design adjustments to the WTC Transportation Hub and common infrastructure projects that must be evaluated to accommodate design concepts being developed and proposed concurrently for Towers 2, 3 and 4, as well as the WTC retail development. This authorization would enable DDP to evaluate and incorporate these design adjustments in the

WTC Transportation Hub project, and to finalize a coordinated configuration of the subgrade and street level plans among all the projects.

Since August 2003, DDP has performed most of the planning and design work for the WTC Transportation Hub project that is now in final design, including the significant portions of the site common infrastructure. In particular, major portions of the mechanical equipment rooms, emergency generator locations, as well as final configuration of corridors and structures in the East Bath tub, need to be integrated with the designs for the commercial office towers, retail spaces, and associated infrastructure.

In addition, in order to implement various project and planning initiatives authorized by the Board, staff has retained various firms to provide professional architectural and engineering services on a “call-in” basis in connection with the Downtown Restoration Program. Among these firms, Vollmer Associates, LLP performs surveys for engineering design and property transactions, and Archidata, Inc. provides computer-aided drafting (CAD) support services. Other firms retained by staff to prepare design criteria include Studio Daniel Libeskind to prepare commercial design guidelines, Croxton Collaborative (including Ducibella, Venter, and Santore) to prepare sustainable design guidelines and security design criteria, and these firms will be utilized to review the proposed commercial tower designs for conformance with the established guidelines. Finally, staff has retained additional firms, including Louis Berger Group, PB-URS, and Phoenix Construction, to prepare and review project cost estimates, schedules and construction logistics plans. These additional support services are anticipated in order to prepare and review the necessary plans, property surveys, lease exhibits, project costs and schedules that will be committed as part of the final agreements with SPI.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Blakeman, Chasanoff, Coscia, Ferer, Gargano, Mack, Silverman, Sinagra and Steiner voting in favor; none against; Commissioners Genova and Sartor recused:

**RESOLVED**, that increases in authorization for certain existing professional, technical, and advisory services contracts in connection with implementation of the Conceptual Framework Agreement between the Port Authority and Silverstein Properties, Inc. (SPI) regarding redevelopment of the WTC site, in the aggregate amount of approximately \$4 million, including: (1) an estimated increase of \$2 million under the existing real estate advisory services contract with Jones Lang LaSalle, to provide additional services required in connection with an evaluation of the Freedom Tower design to address contingencies included in the Conceptual Framework Agreement; and (2) an estimated increase of \$2 million under existing contracts for professional services that will be required in connection with the implementation of the conceptual framework, including an increase of \$1.2 million for the architectural and engineering design services contract with the Downtown Design Partnership to evaluate and incorporate potential design adjustments to the WTC Transportation Hub and common infrastructure projects, as well as an estimated increase of \$800,000 for contracts with other firms for professional services that will be required prior to the execution of a final agreement with SPI , be and they hereby are authorized.

**POLICE ACADEMY – ADMISSION REQUIREMENT MODIFICATIONS**

Under Article XII, Paragraph (a) of the By-Laws, the Executive Director is authorized, unless otherwise directed by the Committee on Operations or by Resolution of the Board, to determine and prescribe the qualifications for appointment to positions within the staff. It has come to the attention of the Board that there are certain requirements that have been set forth by the Human Resources Department, acting pursuant to this authorization, concerning the employment of police officers by the Port Authority. One such requirement is that an applicant who takes the police examination and passes, and is offered admission to the Port Authority's Police Academy, must have a minimum number of college credits or military service completed prior to entry into the Police Academy. An applicant who has not completed a sufficient number of credits or served honorably in the military is denied admission to the Police Academy and is removed from the eligible list without a chance to be deferred to complete the college credit requirement.

The Board desires to create a narrow exception to the requirements, consistent with practices in the States of New York and New Jersey. The Board believes that a surviving son or daughter of a Police Officer determined by competent authority to have lost his or her life in the line of duty should be granted, at the discretion of the Superintendent of Police, either: (1) a deferral until that candidate has completed the college credit requirements, or (2) admission to enter the Police Academy on a provisional basis, subject to satisfying the course credits.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Blakeman, Chasanoff, Coscia, Ferer, Gargano, Genova, Mack, Sartor, Silverman, Sinagra and Steiner voting in favor; none against:

**RESOLVED**, that the Superintendent of Police be and he hereby is authorized, on and after January 1, 2006, for and on behalf of the Port Authority, in the case of any applicant for appointment to the position of Police Officer who is the son or daughter of a Police Officer who lost his or her life in the line of duty and who has not yet completed the college credit or military service requirement for such appointment, and subject to all other applicable qualification requirements, to: (1) grant deferral of admission to the Port Authority Police Academy Training Program until such requirement has been completed, or (2) allow admission to the Port Authority Police Academy Training Program on a conditional basis, subject to completion of such requirements prior to graduation from the Police Academy and completion of the Training Program.

**SETTLEMENT OF CLAIM – THOMAS PESCE V. THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, ET AL.**

It was recommended that the Board authorize General Counsel to finalize the settlement of a personal injury claim in the action entitled Thomas Pesce v. The Port Authority of New York and New Jersey, Stephen D. Howe and Lui Wai in the amount of \$650,000, inclusive of attorneys' fees, costs and disbursements. In return, plaintiff would provide the Port Authority with a General Release and Stipulation of Discontinuance with Prejudice.

On November 21, 2001, plaintiff Thomas Pesce, who was 52 years old at the time, was involved in a motor vehicle accident at the corner of Delancy Street and the Bowery in New York City. Mr. Pesce claims that his vehicle was struck in the rear by a vehicle owned by the Port Authority and operated by a Port Authority employee, Stephen D. Howe. Mr. Pesce also claims that a vehicle driven by co-defendant Lui Wai cut in front of him, forcing plaintiff to stop short to avoid hitting Mr. Wai's vehicle, which caused the Port Authority vehicle to rear-end Mr. Pesce's vehicle and forced his vehicle into Mr. Wai's. Plaintiff claims that he injured his back in this accident, resulting in a disc herniation at L5-S1 and a disc bulge at L4-L5. Plaintiff underwent two laminectomies in an effort to correct the derangement in his back. At the time of trial, he was still experiencing debilitating pain, and his physician testified that he required a spinal fusion. Port Authority medical experts, Dr. Jerome Block, neurologist, and Dr. Edward Crane, orthopedist, reviewed plaintiff's medical history and confirmed that there was no evidence that plaintiff had experienced prior back problems. The experts also verified the nature of the injuries and confirmed that plaintiff underwent two laminectomies post-incident. Trial commenced on May 4, 2006, and this settlement was reached just prior to summations.

Plaintiff initially demanded \$2.5 million to settle this action, but through aggressive negotiation and with the assistance of the Court, the parties agreed upon the settlement as described above, subject to Board approval. Pursuant to the proposed settlement, the Port Authority would pay plaintiff the amount of \$650,000 and co-defendant Lui Wai would pay \$37,500.

Pursuant to the foregoing report, the following resolution was adopted in executive session with Commissioners Blakeman, Chasanoff, Coscia, Ferer, Gargano, Genova, Mack, Pocino, Sartor, Silverman, Sinagra and Steiner voting in favor; none against:

**RESOLVED**, that General Counsel be and he hereby is authorized, for and on behalf of the Port Authority, to finalize the settlement of the action entitled Thomas Pesce v. The Port Authority of New York and New Jersey, Stephen D. Howe and Lui Wai in the amount of \$650,000, inclusive of attorneys' fees, costs and disbursements.

**SETTLEMENT OF CLAIM – MICHAEL EPSTEIN, AS PLAN ADMINISTRATOR OF OMNI FACILITY SERVICES, INC. v. THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

It was recommended that the Board authorize General Counsel to finalize the settlement of an adversary proceeding in an action in the U.S. Bankruptcy Court of the Southern District of New York entitled Michael Epstein, as Plan Administrator of Omni Facility Services, Inc. v. The Port Authority of New York and New Jersey in the amount of \$348,421, inclusive of attorneys' fees, costs and disbursements.

Plaintiff, Michael Epstein, the Plan Administrator of the bankrupt debtor, Omni Facility Services, Inc. (Omni), has instituted an adversary proceeding against the Port Authority to recover approximately \$929,103.80. The debtor alleges the amount sought in this proceeding represents money withheld by the Port Authority from payments to Omni's subsidiary, Maintenance Technology Group (MTG), an Operation and Maintenance contractor at John F. Kennedy International Airport. The Port Authority withheld payments following yearly audits of MTG recommending the withholding of amounts defined as the "Underpayment Amount," the difference between the contract cost of certain skilled employees and the amount that MTG actually paid such employees. As per the Port Authority's audit findings, the Underpayment Amount for the three contract years was \$725,370, plus assessed interest of \$139,271, for a total underpayment of \$864,641.43.

The Port Authority has withheld \$837,421 that would have been due to MTG over the term of the contract. This represents Underpayment Amounts withheld prior to Omni's bankruptcy filing on June 2, 2004, totaling \$489,000, and unpaid MTG invoices totaling \$348,421. Under the proposed settlement, the Port Authority would pay the outstanding invoices in the amount of \$348,421. The plaintiff and the Port Authority would enter into a Settlement Agreement that would be approved and filed with the Bankruptcy Court.

Pursuant to the foregoing report, the following resolution was adopted in executive session with Commissioners Blakeman, Chasanoff, Coscia, Ferer, Gargano, Genova, Mack, Pocino, Sartor, Silverman, Sinagra and Steiner voting in favor; none against:

**RESOLVED**, that General Counsel be and he hereby is authorized, for and on behalf of the Port Authority, to finalize the settlement of the action entitled Michael Epstein, as Plan Administrator of Omni Facility Services, Inc. v. The Port Authority of New York and New Jersey in the amount of \$348,421, inclusive of attorneys' fees, costs and disbursements.

**SETTLEMENT OF CLAIM – RICKIE TAYLOR v. THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY AND THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY v. NEW JERSEY TRANSIT CORPORATION**

It was recommended that the Board authorize General Counsel to finalize the settlement of a personal injury claim in the action entitled Rickie Taylor v. The Port Authority of New York and New Jersey, and The Port Authority of New York and New Jersey v. New Jersey Transit Corporation in the amount of \$161,500, inclusive of attorneys' fees, costs and disbursements. Plaintiff would provide the Port Authority with a General Release and a Stipulation of Dismissal with Prejudice. Third-party defendant New Jersey Transit Corporation (NJT) is also paying plaintiff \$161,500 as part of the proposed settlement, and the Court has ordered that the Port Authority's share of the settlement amount and all of its costs associated with the defense of this matter are to be reimbursed by NJT, pursuant to NJT's obligation to defend and indemnify the Port Authority for claims arising out of its operations at the Port Authority Bus Terminal (PABT).

Plaintiff, a NJT employee assigned to work at the PABT, alleges that, on June 27, 2002, he was injured when his foot became caught in an uncovered expansion joint in the concrete floor near PABT Gate 214. Plaintiff underwent two arthroscopic surgeries to his right knee to repair a lateral meniscus tear. In April 2003, a partial knee replacement was performed. A fourth surgery consisting of a total knee replacement was performed on October 5, 2003. Plaintiff is in his early fifties, and his medical expert has opined that future knee replacement is probable. Plaintiff attempted to return to work, but was unable to perform his duties. He was awarded a disability pension.

Given the serious nature of plaintiff's injuries, NJT and the Port Authority agreed upon the proposed settlement with plaintiff in the total amount of \$323,000 (\$161,500 from each defendant), and to submit to a bench trial on the issues of insurance and indemnification.

As a result of the bench trial, the Court ruled that NJT is required to indemnify the Port Authority for all costs associated with plaintiff's claim. The Court directed the Port Authority to pay to plaintiff its share of the settlement and then seek reimbursement from NJT. NJT has signaled its intent to appeal the Court's decision requiring it to indemnify the Port Authority.

Plaintiff initially demanded \$675,000 to settle this action. An arbitrator recommended that the Port Authority settle the matter for \$450,000. On the day of trial, the Port Authority agreed upon the settlement as described above, subject to Board approval.

Pursuant to the foregoing report, the following resolution was adopted in executive session with Commissioners Blakeman, Chasanoff, Coscia, Ferer, Gargano, Mack, Pocino, Silverman, Sinagra and Steiner voting in favor; none against; Commissioners Genova and Sartor recused:

**RESOLVED**, that General Counsel be and he hereby is authorized, for and on behalf of the Port Authority, to finalize the a settlement of the pending civil action entitled Rickie Taylor v. The Port Authority of New York and New Jersey, and The Port Authority of New York and New Jersey v. New Jersey Transit Corporation, in the amount of \$161,500, inclusive of attorneys' fees, costs and disbursements.

Whereupon, the meeting was adjourned.

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Secretary