

RECOMMENDATION PAPER TO THE  
AUDIT-LEGAL COMMITTEE

PROPOSED POLICY ON THE AUTHORITY TO SETTLE CLAIMS  
PRESENTED IN LITIGATION AGAINST THE AIRPORTS AUTHORITY  
AND CERTAIN OTHER MATTERS

JUNE 2013

RECOMMENDATION

That the Committee approve and recommend to the Board of Directors the adoption of a policy, proposed by a working group of the Committee, that defines the individuals authorized to settle claims presented in litigation, filed in federal or state court, against the Airports Authority and/or Authority officials and employees, and certain other matters.

DISCUSSION

Over the past two months, a Committee working group, consisting of Co-Chairman Adams and Directors Wells and McDermott, has worked on developing a policy that assigns responsibility and authority to settle, on behalf of the Airports Authority, claims that have been raised in litigation against the Airports Authority and/or Authority officials and employees. This effort was prompted by discussions at Board meetings earlier this year.

The working group has considered the policies in this area of several other airport sponsors, has discussed alternative approaches to the issue, has reviewed a number of draft versions of a proposed policy, and has agreed upon a policy to propose to the Committee which is set out in full on page 3. In addition to covering agreements settling litigation claims, the proposed policy addresses agreements between the Airports Authority and employees, reached outside of litigation, pursuant to which an employee's employment with the Airports Authority is to be ended and a payment to the employee is to be made by the Airports Authority.

The proposed policy contains four major features.

1. Authority to settle litigation claims (other than workers' compensation claims) that involve a payment by the Airports Authority of \$200,000 or less in Authority funds, and to execute a corresponding settlement agreement that binds the Airports Authority, is assigned to the General Counsel. This

\$200,000 threshold figure was chosen by the working group for a couple of reasons. First, it fell approximately in the midpoint of the settlement authority policies of other airport sponsors. As shown by the attachment to this paper, of the nine airport sponsors responding to an inquiry from the working group, two retain all settlement authority at the governing body level, two assign unlimited settlement authority to the General Counsel, and the remainder utilize differing dollar thresholds that define the maximum settlements that may be reached by either the General Counsel or the chief operating officer – with those thresholds ranging from \$10,000 to \$300,000.<sup>1</sup> Second, the proposed policy’s \$200,000 threshold parallels the threshold in the Airports Authority’s federal Transfer Act that defines the value of procurements which, in order to proceed with less than full and open competition, must obtain the approval of the Board of Directors. The working group believed that this statutory \$200,000 threshold, though arising in a different setting, was an appropriate measure of the settlements requiring Board or Committee approval.

2. Authority to settle litigation claims that involve a payment by the Airports Authority of more than \$200,000 in Authority funds is assigned to the Audit-Legal Committee. Thus, settlement of these claims will require the approval of the Committee. Here, the policy also provides that, following Committee approval of a settlement, the General Counsel is authorized to execute the implementing settlement agreement on behalf of the Airports Authority.
3. The working group wished to make clear that the policy’s \$200,000 threshold is not a hard and fast rule, effectively barring the General Counsel from presenting to the Committee settlements calling for a payment of less than \$200,000. The policy therefore provides that it is not to be construed as preventing the General Counsel, in his or her discretion, from presenting settlements involving the payment of less than \$200,000 to the Audit-Legal Committee for its review and comment.
4. Finally, any agreement between the Airports Authority and an employee, which is reached apart from and outside of litigation, in which the Authority commits to pay a sum in excess of \$200,000 in Authority funds to the employee and the employee commits to terminate employment with the Authority is to be presented to the Audit-Legal Committee for its review and comment. The policy provides that, following Committee review, the

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<sup>1</sup> The settlement thresholds used by these airport sponsors are as follows: \$10,000, \$25,000, \$100,000, \$250,000, and \$300,000. It should be noted that the \$250,000 threshold, which is utilized by Massport, applies to the level of the claims being settled, not the level of payment to be made under the settlement. Discussions with Massport indicate that the application of its settlement policy over the years has resulted in a practice whereby settlements involving *payments* less than the range of \$150,000 to \$175,000 are entered by the General Counsel.

authority to decide whether to enter any such agreement remains with the President and Chief Executive Officer or any employee to whom such authority has been re-delegated.

The policy that is proposed by the working group reads in full as follows:

**PROPOSED POLICY ON THE AUTHORITY TO SETTLE  
LITIGATION CLAIMS AND CERTAIN OTHER MATTERS**

This policy addresses the authority to settle Claims, as defined below, on behalf of the Airports Authority.

For purposes of this policy, Claims means any claim for damages or other monetary relief that has been asserted in litigation filed in federal or state court against the Airports Authority and/or against one or more Authority employees, whether sued in their official or individual capacity, including claims asserted against Authority contractors that are covered by an “owner controlled insurance program” that the Authority operates within the Aviation Enterprise as the operator of Reagan National and Dulles International Airports or a comparable insurance program that the Authority operates within the Dulles Corridor Enterprise as the constructor of the Dulles Corridor Metrorail Project, but excluding worker compensation claims that arise from workplace injuries or illnesses sustained by Authority employees.

The General Counsel is authorized to approve the settlement of one or more Claims asserted in litigation that involves the payment of \$200,000 or less in Airports Authority funds (whether such funds are from the Authority’s Aviation Enterprise Fund or Dulles Corridor Enterprise Fund) to the party asserting the Claim or Claims, and to execute on behalf of the Authority an agreement that implements the settlement, so long as budgeted funds are available.

The Audit-Legal Committee is authorized to approve the settlement of one or more Claims asserted in litigation that involves the payment of more than \$200,000 in Airports Authority funds to the party asserting the Claim or Claims, and, following such approval, the General Counsel is authorized to execute on behalf of the Authority an agreement that implements the settlement, so long as budgeted funds are available. Nothing in this policy should be construed as preventing the General Counsel, in his or her discretion, from presenting to the Audit-Legal Committee, for its review and comment, a settlement of one or more

Claims asserted in litigation that involves the payment of less than \$200,000 in Authority funds.

In addition, any agreement between the Airports Authority and an employee of the Authority, which is reached outside of litigation, in which the Authority commits to pay a sum in excess of \$200,000 in Authority funds to the employee and the employee commits to resign from or otherwise terminate his or her employment with the Authority shall, prior to execution, be submitted to the Audit-Legal Committee for its review and comment. However, the authority to decide whether to enter and execute the agreement on behalf of the Authority shall remain with the President and Chief Executive Officer or any employee to whom the President and CEO has delegated that authority.

### CONCLUSION

It is recommended that the Committee approve the proposed policy on the settlement of litigation claims and certain other matters, and recommend its adoption by the Board of Directors.

Prepared by

Office of General Counsel  
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Attachment

AIRPORT SPONSOR ASSIGNMENTS OF AUTHORITY TO SETTLE CLAIMS

| Airport           | Nature of Airport Sponsor      | Person/Entity with Settlement Authority                             | Limit on Settlement Authority | Comments  |
|-------------------|--------------------------------|---|-------------------------------|---|
| San Francisco, CA | Department/ commission of city | SF Airports Commission with recommendation of the city attorney     | \$100,000                     | No settlement authority appears to be delegated to management<br><br>City's Board of Supervisors retains approval authority above \$100,000 |
| Milwaukee, WI     | Department of county           | Judiciary Committee of county's Board of Supervisors and county CEO | Unlimited                     | No settlement authority appears to be delegated to management   |
| San Diego, CA     | Independent airport authority  | General counsel (of the authority)                                  | \$10,000                      | Settlements above threshold are approved by authority board   |
| Oakland, CA       | Independent port authority     | Port attorney   | \$25,000                      | Settlements above threshold are approved by authority board   |
| Jacksonville, FL  | Independent airport authority  | CEO (of the authority)  | \$150,000                     | Settlements above threshold are approved by authority board   |
| Boston, MA        | Independent port authority     | General counsel (of the authority)                                  | \$250,000                     | CEO concurrence is required between \$100,000 and 250,000   |
| Seattle, WA       | Department/ commission of city | CEO (of the commission)   | \$300,000                     | Settlement requires general counsel's certification that it is "justified"  |
| Denver, CO        | Department of city             | City attorney   | Unlimited                     | Practice, based on reading of city charter, is that all settlements may be approved by city attorney  |
| St. Louis, MO     | Department of city             | City attorney   | Unlimited                     | City charter places all settlement authority in hands of "city counselor"   |