

**RECOMMENDATION PAPER TO THE
BOARD OF DIRECTORS**

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

JULY 2013

RECOMMENDATION

That the Board of Directors adopt a policy, approved and recommended by the Audit-Legal Committee that defines the persons authorized to settle claims presented in litigation, filed in federal or state court, against the Airports Authority and/or Authority officials and employees, and to enter agreements involving certain other matters.

DISCUSSION

At its June meeting, the Audit-Legal Committee (“Committee”) considered a proposed policy, developed by a working group of three Committee members, that assigns the responsibility and authority, on behalf of the Airports Authority, (i) to settle claims that have been presented in litigation against the Airports Authority and/or Authority officials and employees, and (ii) to enter agreements with certain employees, reached outside of litigation, under which an employee’s employment with the Authority will end and a payment to the employee will be made by the Authority.

This proposed policy, which is set out below on pages 3 and 4, was approved by the Committee with two changes and, as amended by those changes, was recommended for adoption by the Board. These two changes are included in the policy on pages 3 and 4, and are shown by underlining.

The Committee-recommended policy has four major features.

1. The policy assigns to the Airports Authority General Counsel, with the written concurrence of the President and Chief Executive Officer, the authority to settle litigation claims (other than worker compensation claims) that involve a payment by the Authority of \$200,000 or less in Authority funds, and to execute a corresponding settlement agreement that binds the Authority. This \$200,000 threshold figure was chosen for two reasons. First, it fell approximately in the midpoint of the settlement authority policies of other

airport sponsors. (See the summary of these policies to this paper.) Of the nine airport sponsors responding to an inquiry from the Airports Authority, 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 the sponsor's general counsel or chief executive officer – with those thresholds ranging from \$10,000 to \$300,000.¹ Second, the recommended 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. This statutory \$200,000 threshold, though arising in a different context, was seen as an appropriate measure of the litigation settlements requiring Board or Committee approval.

2. The policy assigns to the Audit-Legal Committee the authority to settle litigation claims that involve a payment by the Airports Authority of more than \$200,000 in Authority funds. Settlement of such claims will, therefore, require the approval of the Committee. The policy authorizes the General Counsel, following the Committee's approval of a settlement, to execute the implementing settlement agreement on behalf of the Airports Authority.
3. The policy makes clear that its \$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. Thus, the policy expressly states 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 Committee for its review and comment.
4. Finally, the policy requires that any agreement between the Airports Authority and an employee (other than an employee who reports to the Board), which is reached apart from and outside of litigation, and 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, be presented to the Audit-Legal Committee for its review and comment. The policy further provides that, following Committee review, the authority to decide whether to enter any such agreement remains with the

¹ 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 that 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 made by the general counsel.

President and Chief Executive Officer or any employee to whom such authority has been delegated.

The policy recommended by the Committee 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.

With the written concurrence of the President and Chief Executive Officer, 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 (other than an employee who reports to the Board of Directors), which is reached outside of litigation, and 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. 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 Chief Executive Officer has delegated that authority.

CONCLUSION

It is recommended that the Board of Directors approve the policy, which has been recommended by the Audit-Legal Committee, on the settlement of litigation claims and certain other matters.

Prepared by

Office of General Counsel
July 2013

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 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"

Proposed Resolution

Approving a Policy For the Authority to Settle Claims Presented in Litigation Against the Airports Authority and to Enter Agreements Involving Certain Other Matters

WHEREAS, At its June 2013 meeting, the Audit-Legal Committee (Committee) considered a proposed policy, developed by a Committee working group, that assigns the responsibility and authority to settle claims that have been presented in litigation against the Airports Authority, and to enter employment separation agreements with employees;

WHEREAS, At its June 2013 meeting, the Committee discussed the proposed policy, made amendments to it, and approved the proposed policy, as amended, and recommended its approval to the Board of Directors; now, therefore, be it Resolved, That the policy recommended by the Committee, which is set out in paragraph 2 of this resolution, is hereby approved and adopted;

2. That the policy approved by this resolution is as follows:

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

For purposes of this policy, Claims mean 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.

With the written concurrence of the President and Chief Executive Officer, 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 (other than an employee who reports to the Board of Directors), which is reached outside of litigation, and 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. 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 Chief Executive Officer has delegated that authority.

For consideration by the Board of Directors on July 17, 2013