

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 5f
Date of Meeting April 2, 2013

DATE: March 27, 2013
TO: Tay Yoshitani, Chief Executive Officer
FROM: Craig Watson, General Counsel
SUBJECT: Motion Authorizing Payment of Defense Costs

ACTION REQUESTED:

Request Commission approval of a motion to authorize payment of defense costs for current employees for claims related to the Airport Concessions Disadvantaged Business Enterprise (ACDBE) program.

BACKGROUND:

Pursuant to RCW 53.08.208, a port commission may authorize the payment of defense costs to any current or former employee arising out of the performance or failure of performance of duties. Section 9 of Resolution No. 3605, as amended, provides that the Chief Executive Officer may retain appropriate legal representation “whenever any action, claim or proceeding is instituted against any person who is or was an officer, employee, or agent of the Port arising out of the performance or failure of performance of duties,” provided that the Commission must approve the retention of counsel if allegations of fraud or illegal activity are included in the action, claim or proceeding.

The Port has received a notice of claim against the Port and certain employees from Concourse Concessions, LLC; JLAD LLC dba Quiznos B Concourse; SeaTac Bar Group, LLC; and Sun’s Incorporated dba Manchu Wok alleging, among other things, illegal discrimination in the award and administration of leases in the ACDBE program.

It has been the Port’s practice to pay defense costs subject to the statutory limitations that the employees were acting in good faith and within the scope of their employment. If the employees are at any time found to be acting in bad faith and outside the scope of their employment or engaged in fraud or illegal activity, the offer for defense costs will be revoked.