

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
ACTION ITEM

Item No.	4j
Date of Meeting	August 9, 2016

DATE: July 29, 2016
TO: Ted Fick, Chief Executive Officer
FROM: Craig Watson, General Counsel
SUBJECT: Settlement from insolvent London insurers

Settlement amount: Approximately \$3,850,000

Subject of settlement: Settle the Port's claims relating to certain categories of past and future environmental response costs with various insolvent insurers from the London insurance market.

ACTION REQUESTED

Authorization for the Chief Executive Officer to accept a settlement offer from insolvent London Market insurers whose bankruptcy proceeding is closing in September 2016. Net proceeds to the Port after costs associated with the settlement will be approximately \$1,230,000 in 2016 and \$2,620,000 in 2017, plus any additional amounts that may be available after a final reckoning of the bankruptcy.

SYNOPSIS

From 1964-1969 and 1978-1982, the Port had excess insurance coverage for environmental liabilities through the London insurance market. Certain of these policies, which may be available to pay future environmental cleanup costs, were underwritten in part by Orion Insurance Company (and its subsidiary London and Overseas Insurance Company, collectively "OIL"), which is now insolvent and undergoing a liquidation procedure in the UK. In British parlance, the process is known as a "scheme of arrangement."

The bar date for claims to be submitted to the "scheme" is September 12, 2016. In order to prevent its future insurance recovery from becoming barred, in 2012 the Port engaged an expert in London Market claim recoveries (Colin Gray of Lone Wolf Re), who has been presenting the Port's claim. We have now received an offer from OIL that will result in the net (after costs associated with the settlement, including Mr. Gray's fees) payment of approximately \$1.2 million in 2016, 90 days after the execution of a settlement agreement, and approximately \$2.6 million in 2017, with the possibility of additional amounts in the future. We are seeking Commission approval to accept OIL's offer and finalize the settlement agreement.

BACKGROUND, KEY DETAILS AND JUSTIFICATION

Counsel for the Port recommends that the proposed settlement be approved.

The insurance policies potentially available to reimburse the Port for future environmental cleanup costs (after exhaustion of the Port's primary layer of insurance coverage) include certain excess policies issued by the London Market (Lloyds). These are "subscription" policies, where various insurance companies agreed to take on a percentage of the risk underwritten. The companies' potential liability is limited to the percentage underwritten (e.g., a company that underwrites 10% of a \$10 million policy has a maximum potential liability of \$1 million). We believe these London Market policies will eventually be triggered by the Port's payment of future environmental cleanup costs.

One of the insurance companies that commonly participated in the Port's excess policies was OIL. OIL became insolvent in 1994, and has been in runoff since 1996. In January 2016, the UK liquidators set a bar date of September 12, 2016 for claims to OIL. After years of negotiating and explaining the Port's past and potential future costs, we received an offer in June 2016 as a full and final settlement under the scheme. The OIL scheme is fairly complex due to a portion of the policies being subject to a guarantee by ING for certain periods. The cash value to the Port is \$1,230,000 in 2016 and \$2,620,000 in 2017. Additional dividends may be payable in the future, pending the results of the claim submissions in September.

The process for approving the settlement is that Mr. Gray must first provide verbal approval of the agreed-upon amount, after which he will receive two letters confirming two portions of the settlement offers. He then must sign and submit the letters on behalf of the Port, along with supporting documentation, by September 12, for those portions of the claim to be complete. Those portions will be paid in 2017. In addition, a short time after the approval is confirmed, the Chief Executive Officer of the Port will be asked to sign a settlement and release agreement covering the third portion of the claim, which will be paid in 90 days. A form settlement agreement is enclosed as an example.

If the Port does not submit a claim by September 12, it will forego any opportunity to recover from these insurers.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternatives and implications have been considered as discussed in attorney-client privileged communications.

DOCUMENTS ENCLOSED

- Form settlement agreement (as an example of what will likely be provided after submitting the claim)