

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: Other Civil

Roland J. Jensen, *et al.*,

Court File No. 62 CV-10-6099

Plaintiffs,

vs.

Port Authority of the City of Saint Paul,

**NOTICE AND ORDER FOR
HEARING TO APPROVE
SETTLEMENT AGREEMENT**

Defendant

The Plaintiffs, Roland J. Jensen, *et al.*, and the Port Authority of the City of Saint Paul (“Port Authority”) have entered into a Settlement Agreement to resolve this matter. For purposes of this litigation and settlement, the Court has preliminarily approved the Settlement Agreement and certified a class of “All Holders, owners, or beneficial owners of 876 Bonds, whether of record or otherwise, and all persons (whether individuals or legal entities of any type) as of June 1, 2010, or who acquired an interest of any type in 876 Bonds between June 1, 2010 and September 8, 2011, or who was a Holder, owner or beneficial owner on September 8, 2011, or who become Holders, owners or beneficial owners of 876 Bonds after September 8, 2011.” Now upon the joint motion of Plaintiffs and Port Authority:

IT IS HEREBY ORDERED, that on October 27, 2011, at 1:30 p.m., the Honorable Robert A. Awsumb, Ramsey County District Court Judge, will conduct a Final Settlement Hearing to approve the Settlement Agreement. The Final Settlement Hearing will take place at the Ramsey County Courthouse, Room 1360, 15 W. Kellogg Blvd., St. Paul, MN 55102. Copies of this notice, the settlement documents and related court papers are available for review as well at www.876Fund.org;

IT IS FURTHER ORDERED, that persons wishing to object to the Settlement Agreement shall, by October 20, 2011, file with the Court a written notice of intention to appear at the Final Settlement Hearing and a written objection. Any person who fails to object in the manner and by the date required will waive any objections. Objections must be filed with the Administrator of the Ramsey County District Court, bearing the court file number set forth above, and delivered to Court Administrator, Ramsey County Courthouse, 15 West Kellogg Blvd., St. Paul, MN 55102;

IT IS FURTHER ORDERED, that this Notice shall be provided to each and all 876 Bondholders by First Class Mail at the address listed in the records of the Port Authority pursuant to Section 4-6 of Basic Resolution, U.S. Bank National Association

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: Other Civil

Roland J. Jensen, *et al.*,

Court File No. 62 CV-10-6099

Plaintiffs,

vs.

**NOTICE OF FINAL SETTLEMENT
HEARING AND MEDIATED
SETTLEMENT AGREEMENT**

Port Authority of the City of Saint Paul,

Defendant

You are receiving this notice because you are the owner or holder of bonds issued by the Port Authority of the City of Saint Paul (“Port Authority”) under Basic Resolution No. 876 (“Basic Resolution”). The Plaintiffs and the Port Authority have entered into a Mediated Settlement Agreement and agreed to the form of a Final Class Action Settlement Agreement (“Settlement Agreement”). On October 27, 2011, at 1:30 p.m., the Court will conduct its Final Settlement Hearing to approve the Mediated Settlement Agreement (or such subsequent final settlement agreement to which both Parties agree in accordance with the terms of the Mediated Settlement Agreement) (referred to as the “Settlement Agreement”). The Final Settlement Hearing will take place at the Ramsey County Courthouse, Room 1360, 15 W. Kellogg Blvd., St. Paul, MN 55102. Copies of this notice, the settlement documents and related court papers are available for review as well at www.876Fund.org.

PLEASE REVIEW THE FOLLOWING INFORMATION CAREFULLY.

THIS IS A LEGAL DOCUMENT.

1. The Action. In this lawsuit, Plaintiffs, who are owners of bonds issued under Basic Resolution No. 876 (“876 Bonds”), claim that the Port Authority breached the Basic Resolution by failing to deposit all funds allegedly pledged to the 876 Bond Fund in the fund. Plaintiffs also seek a declaratory judgment on the meaning of the Basic Resolution and whether the pledges and covenants terminated on September 1, 2022. The Port Authority denies it breached the Basic Resolution or wasted assets and asserts several affirmative defenses. The Plaintiffs and the Port Authority (the “Parties”) have conducted extensive discovery and made extensive legal arguments before the Court.

The Court has certified a class under Minn. R. Civ. P. 23. The class includes:

All Holders, owners, or beneficial owners of 876 Bonds, whether of record or otherwise, and all persons (whether individuals or legal entities of any type) as of June 1, 2010, or who acquired an interest of any type in 876 Bonds between June 1, 2010 and September 8, 2011, or who was a Holder, owner or beneficial owner on September 8, 2011, or who become Holders, owners or beneficial owners of 876 Bonds after September 8, 2011.

If you are a member of the class, you may object in the manner described later in this notice, but you cannot opt out of the class.

The Parties have agreed to settle the claims in this lawsuit, and resolve all other claims concerning the 876 Bonds and the Port Authority’s administration of the 876 Bond Fund, under the terms of the Mediated Settlement Agreement. If the Settlement Agreement is approved, the lawsuit will be dismissed.

2. The Settlement Agreement. **You should review the terms of the Settlement Agreement attached as Exhibit A. The following is a summary.** The Settlement Agreement requires the Port Authority to pledge or contribute the following money to the 876 Bond Fund to pay 876 Bondholders: (a) approximately \$22,200,000 in

Prepaid Net Revenues and Special Funds currently held in trust by the Port Authority; (b) an additional \$1,500,000 from Port Authority resources; and (3) “Available Net Revenues” as defined and identified on Exhibit 1 of the Settlement Agreement, including the Net Sales Proceeds from the sale of any property that is among the sources of “Available Net Revenues” as defined by Exhibit 1 that is sold before September 1, 2032. The pledge of “Available Net Revenues,” and all pledges under the Basic Resolution and the Settlement Agreement, is extended to and shall terminate on September 1, 2032, and all 876 Bondholders’ rights under the Basic Resolution shall be fully discharged on September 1, 2032.

The money in the 876 Bond Fund shall be used as follows: (a) to pay all past due and current interest due on 876 Bonds through December 1, 2011 or such later date as the Court approves, (2) to pay approximately \$2.2 million in attorneys’ fees and costs to the Plaintiffs’ attorneys through September 8, 2011 subject to court approval, (3) to pay costs incurred in mailing notices of the Settlement Agreement to 876 Bondholders, (4) to cover any additional attorneys’ fees and costs incurred by Plaintiffs’ attorneys from September 9, 2011 through completion of the settlement process subject to court approval, (5) to pay Scheckter Dokken their full fees incurred as experts for the Plaintiffs in this litigation, (6) to pay third party expenses, including attorneys’ fees and costs, incurred by the Port Authority through September 8, 2011, (7) to pay up to an estimated \$10,000,000 to 876 Bondholders who tender 876 Bonds for sale in a Dutch Auction to be conducted by the Port Authority within a reasonable time after court approval of the Settlement Agreement; and (8) to pay the fees of an independent Trustee for the 876 Fund.

Remaining funds, including all future “Available Net Revenues” generated by the properties listed in Exhibit 1 of the Settlement Agreement, shall be used to pay 876 Bondholders as provided in the Basic Resolution until September 1, 2032. The Port Authority shall be responsible for its own attorneys’ fees incurred after September 8, 2011 and shall not take third-party costs from the 876 Fund or revenues pledged to the 876 Fund thereafter. In the event a trustee is not in place on December 1, 2011, paying agent expenses shall be paid from the 876 Fund for payments made on that date or until a trustee is in place.

Port Authority further agreed to use the remaining balance in its River Maintenance Fund as well as fleeting and tonnage payments retained by the Port Authority through September 1, 2032, for river maintenance including dredging and dock wall repair, but the Port Authority is not required to use its own resources outside of those identified resources to repair or replace dock walls or other physical infrastructure.

An independent Trustee will be retained to assume the duties of paying agent, with authority to review and audit all books and records of the Port Authority relating to the 876 Bonds and to enforce covenants of the Basic Resolution and the Settlement Agreement for the benefit of all 876 Bondholders.

There will be a Mutual Release of all Claims asserted in the Action signed by the Parties.

3. Objections to Settlement. The Court will hold a hearing (“Final Settlement Hearing”) on October 27, 2011, beginning at 1:30 p.m. The hearing will be held in the Ramsey County Courthouse in Saint Paul, Minnesota, to consider among other things (i)

whether the proposed settlement should be approved as fair, adequate, and in the best interests of each and all 876 Bondholders; (ii) whether final judgment should be entered dismissing Plaintiffs claims with prejudice and on the merits, as required by the Settlement Agreement; (iii) whether to approve the payment of attorneys' fees and costs to be paid from the 876 Bond Fund; and (iv) whether to approve payment of Schechter Dokken's expert fees and costs to be paid from the 876 Bond Fund. The Court Order Preliminarily Approving Settlement is attached as Exhibit B.

The Settlement Agreement is binding under Section 4-12 of the Basic Resolution. Subject to the provisions of Sections 4-12 and 9-4 of the Basic Resolution and Minn. R. Civ. P. 23.05, the Court will hear the objections of any 876 Bondholders to the Settlement Agreement at the Final Settlement Hearing. If you wish to object, you must file with the Court, and serve on all parties, a written notice of intention to appear at the Final Settlement Hearing and a written objection. You must file and serve a written notice of intention to appear and written objection by October 20, 2011. Any person who fails to object in the manner and by the date required will waive any objections. The following addresses may be used for filing and service:

Ramsey County District Court Administrator
Ramsey County Courthouse
15 West Kellogg Blvd.
St. Paul, MN 55102

Keith J. Broady
Lommen, Abdo, Cole, King & Stageberg, P.A.
2000 IDS Center
81 South Eighth Street
Minneapolis, MN 55402
Attorneys for Plaintiffs

Scott G. Knudson
Briggs and Morgan
2000 IDS Center
80 South Eighth Street
Minneapolis MN 555402
Attorneys for Port Authority

Dated: September 22, 2011

Issued by Court Administrator
Ramsey County District Court
Ramsey County Courthouse
15 West Kellogg Blvd.
St. Paul, MN 55102

EXHIBIT A

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

Roland J. Jensen, et al.,

Court File No. 62-CV-10-6099

Plaintiffs,

CLASS ACTION SETTLEMENT
AGREEMENT

v.

Port Authority of the City of Saint Paul,

Defendant.

This Class Action Settlement Agreement, entered into as of September 8, 2011, is between Roland J. Jensen, individually and as representative of the Settlement Class defined herein, and the Port Authority of the City of Saint Paul (“Port Authority”).

RECITALS

A. The Port Authority is an economic development agency authorized by state law to undertake economic development activities in the City of Saint Paul.

B. On February 14, 1974, the Port Authority adopted its Basic Resolution No. 876 (“Basic Resolution”) and created a revenue bond development program intended to promote economic development in Saint Paul. The Basic Resolution is the contract document that sets forth various terms and conditions under which individual series of revenue bonds would be issued (the “876 Bonds”). Under the Basic Resolution, the Port Authority financed 139 development projects.

C. The 876 Bonds the Port Authority issued under the Basic Resolution were revenue bonds payable from designated revenue sources, principally the revenues from the projects financed by 876 Bonds. As additional security, the Port Authority also pledged Net Revenues from other properties the Port Authority owned that were not otherwise pledged to the repayment of non-876 Bonds (*i.e.*, Other Secured Bonds). These properties have commonly been called Non-Revenue Bond Facilities.

D. The Basic Resolution established the Common Revenue Bond Fund (the “876 Fund”), which was the fund from which all Holders, owners or beneficial owners of 876 Bonds were paid. Individual borrowers of 876 Bond proceeds would repay the loan of 876 Bond proceeds by making payments to the Port Authority that would be deposited into the 876 Fund.

E. The Basic Resolution provided that the Port Authority would maintain subaccounts within the 876 Fund to hold Prepaid Net Revenues, which are the proceeds from prepayment by borrowers on properties originally financed by 876 Bonds, and Special Funds, which are the net proceeds from the sale of repossessed properties financed originally by 876 Bonds. As of September 1, 2011, the Port Authority held \$22,183,266.55 in Prepaid Net Revenues and Special Funds in the 876 Fund.

F. The Basic Resolution created two reserve funds that were used to pay interest and principal if there was a shortfall in the 876 Fund when debt service was due. The last of these reserves was depleted on December 1, 2004. There was another fund created by the Basic Resolution, the Accumulated Net Revenues Fund, that also served, though not exclusively, as a reserve fund. The Accumulated Net Revenues Fund was depleted on December 1, 1991.

G. Since December 1, 2004, the 876 Fund has lacked funds sufficient to pay interest and principal in full. A reason for that shortfall was a downturn in the real estate market in Saint Paul in the late 1980’s and 1990’s, which led to a significant number of borrower defaults and sales of repossessed 876 properties at prices less than the debt secured by the repossessed properties. As of September 1, 2011, \$9,472,438 in past due interest and \$46,045,882 in matured but unpaid principal was outstanding with respect to 876 Bonds. The total principal amount of outstanding 876 Bonds as of September 1, 2011 is \$51,670,881.50.

H. In August 2006, the Port Authority petitioned the Ramsey County District Court under Chapter 501B of the Minnesota Statutes to terminate the 876 Fund, sell the pledged revenues to third party investors and distribute those sale proceeds and funds on hand in a final liquidating distribution to the Holders, owners or beneficial owners of 876 Bonds (the “Bondholders”). A group of Bondholders opposed that plan of liquidation resulting in litigation over the plan of liquidation. In 2009 the Minnesota Supreme Court ruled that the district court was without jurisdiction to rule on the Port Authority’s petition.

I. On June 1, 2010, a group of Bondholders sued the Port Authority in Ramsey County District Court in an action captioned *Roland J. Jensen, et al. v.*

Port Authority of the City of Saint Paul, Case No. 62-cv-10-6099 (the “*Jensen Litigation*”). In their lawsuit, the Plaintiff Bondholders asserted various claims against the Port Authority asserting that the Port Authority failed to deposit all pledged funds in the 876 Fund and used money in the 876 Fund for purposes other than paying interest and principal to Bondholders and asserted the pledges and covenants of the Port Authority under the Basic Resolution did not terminate on September 1, 2022 as asserted by the Port Authority. The Port Authority has denied liability and has vigorously defended itself against the claims being asserted.

J. The Plaintiff Bondholders in the *Jensen Litigation* are owners and holders of more than 20 percent of the outstanding 876 Bonds. Under Section 4-12 of the Basic Resolution, Bondholders owning more than 20 percent of the principal then outstanding of 876 Bonds may act to enforce the rights of all Bondholders and the performance of all covenants and duties of the Port Authority under the Basic Resolution.

K. Both the Plaintiff Bondholders and the Port Authority have vigorously contested the allegations and claims raised in the *Jensen Litigation* and have been ably represented by counsel in the dispute. Nevertheless, given the uncertainties, delay and expense of further litigation, on September 8, 2011 (the “Settlement Date”), with the assistance of United States Magistrate Judge (ret.) Jonathan Lebedoff, the Plaintiff Bondholders and the Port Authority reached a binding settlement, to be implemented as a class action settlement under Minn. R. Civ. P. 23. A copy of the Mediated Settlement Agreement is attached hereto as Exhibit 1.

L. Both the plaintiff Bondholders and the Port Authority agree that a class of all Bondholders should be certified under Minn. R. Civ. P. 23 for settlement purposes, as the class action settlement procedures would ensure that Bondholders receive notice and have an opportunity to object. Accordingly, this Settlement Agreement incorporates and implements the settlement reached on September 8, 2011, but otherwise supersedes Exhibit 1.

NOW THEREFORE, for the consideration set forth herein, the Class (as defined below) and the Port Authority, subject to Minn. R. Civ. P. 23, hereby agree to settle as follows:

1. **Definition of the Class.** All Holders, owners, or beneficial owners of 876 Bonds, whether of record or otherwise, and all persons (whether individuals or legal entities of any type) as of June 1, 2010, or who acquired an interest of any type in 876 Bonds between June 1, 2010 and September 8, 2011, or

who was a Holder, owner or beneficial owner on September 8, 2011, or who become Holders, owners or beneficial owners of 876 Bonds after September 8, 2011.

2. **Payment to the Class.** Within 10 business days following final court approval, the Port Authority shall pay into the 876 Fund the sum of one million, five hundred thousand dollars (\$1,500,000), for distribution to the Class as set forth in Section 6 below.

3. **Definition of Pledge.** The pledge of Available Net Revenues made under the Basic Resolution is hereby defined to run through September 1, 2032, at which point all pledges to Bondholders under the Basic Resolution and under this Agreement shall terminate and all rights of Bondholders under the Basic Resolution shall be discharged. The source of Available Net Revenues from the date of this Settlement Agreement through September 1, 2032 shall be those Facilities listed on Exhibit 2 to this Settlement Agreement. Subject to Section 8 of this Settlement Agreement, Available Net Revenues from the Facilities on Exhibit 2 shall be determined as provided by the Basic Resolution and the pledges and covenants of the Basic Resolution shall remain in effect except as specifically amended or modified herein.

4. **Sale Proceeds.** In the event the Port Authority sells any of the Facilities set forth on Exhibit 2, whether or not such Facility was financed originally with 876 Bonds, the Port Authority shall secure the best price reasonably obtainable and deposit the net proceeds of such sale into the 876 Fund.

5. **Release of All Claims.** Following final court approval, Roland Jensen, or such other Bondholder as the court may designate, and the Port Authority shall execute a mutual release substantially in the form attached hereto as Exhibit 3. This mutual release shall include all claims known or unknown, fixed or contingent, asserted or unasserted that could have been brought by any Bondholder in the *Jensen Litigation*.

6. **Distributions from the 876 Bond Fund.** The moneys the Port Authority has on hand in the 876 Fund on December 1, 2011, including Available Net Revenues collected after May 15, 2011, shall be used as follows:

a. **Interest.**

On the later of December 1, 2011, or ten days after court approval of this Settlement Agreement, the Port Authority shall

cause the 876 Fund Paying Agent to distribute to Bondholders all current and past due interest on 876 Bonds.

b. Bondholder Attorneys' Fees and Expenses.

Within ten days after court approval of this Settlement Agreement, the Port Authority shall pay from the 876 Fund to Lommen, Abdo, Cole, King and Stageberg, P.A. ("Class Counsel"), the sum of two million two hundred twenty six thousand, six hundred eighty two and 17/100 dollars (\$2,226,682.17), or such lesser amount as the court may approve as Class Counsel's attorneys' fees and expenses in the *Jensen Litigation* through September 8, 2011. Class Counsel will also seek approval from the court for reasonable attorneys' fees and expenses from September 9, 2011 through completion of the settlement process.

c. Schechter Dokken expenses.

Within ten days after court approval of this Settlement Agreement, the Port Authority shall pay from the 876 Fund such amount as the court may approve for payment to Schechter Dokken for its services to the Class in the *Jensen Litigation*.

d. Tender Offer.

Following distribution of the amounts from the 876 Bond Fund set forth in Section 6(a)–(c) above, the Port Authority shall use the remaining amounts in the 876 Fund to conduct a tender offer for 876 Bonds. The terms of the tender offer shall be a "Dutch Auction" type substantially in the form the Port Authority used for tender offers it made to Bondholders in 2002 and 2004. All expenses of this tender offer shall be paid out of tender offer proceeds.

After the distributions set forth in parts (a-c) above and the tender offer is completed, on-going deposits into the 876 Fund through September 1, 2032, shall be paid to Bondholders as set forth in Section 5-8 of the Basic Resolution and made on a semi-annual basis on June 1 and December 1 of each year.

7. **River Maintenance.** The Port Authority shall allocate 50 percent of the fleeting and tonnage charges generated from Facilities whose tenants

pay fleeting or tonnage charges to a fund the Port Authority commonly refers to as the “River Maintenance Fund.” The River Maintenance Fund shall be used to pay for such activities as barge slip dredging or other routine physical maintenance associated with maintenance of Facilities which pay to the Port Authority a fleeting or tonnage charge. The Port Authority is not obligated to use its own resources outside of the River Maintenance Fund to pay for repair or replacement of dock walls or other physical maintenance. The Port Authority will seek funds from any and all other possible sources, including the State or Federal governments, to fund repair and replacement of dock walls and other maintenance, but the Port Authority provides no assurances that other sources will become available.

8. **Appointment of a Trustee.** The Port Authority shall appoint U.S. Bank, or if U.S. Bank declines appointment, another national banking association with a minimum capital of \$50 million to act as trustee, to assume the duties of paying agent and with the right and obligation to enforce the pledges and covenants of the Port Authority in the Basic Resolution until termination of the Basic Resolution on September 1, 2032. The Trustee’s fees and expenses shall be paid out of Available Net Revenues. In the event a Trustee is not appointed before December 1, 2011, paying agent fees shall be paid out of Available Net Revenues. The Port Authority shall continue to collect the Net Revenues from the properties set forth on Exhibit 2 hereto and shall negotiate lease renewals, lease amendments or new leases for those properties as the case may be, as well as providing for such river maintenance activities as provided in Section 7 of this Settlement Agreement. The Trustee shall be entitled to review and audit the books and records of the Port Authority as related to the 876 Fund. The Port Authority shall provide the Trustee a semi-annual report of receipts from or generated by the properties set forth on Exhibit 2 hereto. Notwithstanding Section 4-5 of the Basic Resolution, the Port Authority shall not be required to provide an annual audit of the 876 Fund. The Trustee shall be given reasonable access to all books and records as provided for in Section 4-5 of the Basic Resolution.

9. **Third-Party Costs.** The Port Authority shall be responsible for its own attorneys’ fees and costs after September 8, 2011 and shall not take third-party costs from the 876 Fund or revenues pledged to the 876 Fund thereafter, except for costs specifically provided for in this Settlement Agreement.

10. **Amendment of Basic Resolution.** The Port Authority shall amend the Basic Resolution as necessary to incorporate the terms of this Settlement Agreement. Other than as specifically amended or modified herein, the pledges and covenants of the Port Authority in the Basic Resolution shall remain in full force and effect through September 1, 2032.

11. **Necessary Approvals.** This Settlement Agreement is subject to the approval of the Board of Commissioners of the Port Authority and preliminary and final approval of the Ramsey County District Court. If the Board of Commissioners rejects this Settlement Agreement, it shall become null and void and the parties returned to the positions they held before the Settlement Date. The consequences of the failure to obtain court approval are set forth in Section 15 below.

12. **No Admission of Liability.** The Port Authority enters into this Settlement Agreement solely to resolve the claims the Bondholders have asserted. By settling, the Port Authority does not admit any liability for Bondholders' claims. Except in a proceeding to enforce this Settlement Agreement, it shall have no precedential effect in any litigation or administrative proceeding, shall not be used against the Port Authority for any purpose and shall not constitute evidence of anything.

13. **Preliminary Court Approval.** The parties shall move to obtain preliminary court approval of this Settlement Agreement. In this order the court shall:

- a. certify the Class under Minn. R. Civ. P. 23.02(a) and/or 23.02(b);
- b. preliminarily approve the settlement as fair, reasonable and adequate to the Class;
- c. direct that a notice be given to the Class of the settlement of the *Jensen Litigation*;
- d. set a date for the court for a final settlement hearing in order to determine:
 - (i) whether the Settlement Agreement should be approved as fair, reasonable and adequate;
 - (ii) whether a final judgment should be entered dismissing the Bondholders' claims individually and as a class with prejudice and on the merits;
 - (iii) whether to approve the application of the Class Counsel for an award of fees and costs not to exceed two million two hundred twenty six

thousand, six hundred eighty two and 17/100 dollars (\$2,226,682.17) through September 8, 2011 and a further award of fees and expenses from September 9, 2011 through completion of the settlement process including the Dutch auction and appointment of a Trustee; and

- (iv) whether to approve any additional fees and costs of Schechter Dokken not previously approved for payment.
- e. approve the form of notice to the Class for publication to be given one time in the *Bond Buyer*, *Star Tribune*, *Pioneer Press* and the *St. Paul Legal Ledger*;
- f. direct that the Port Authority further notify the Class mailing the notice to Bondholders of record by U.S. Mail at their last known address in records reasonably available to the Port Authority at least 30 days prior to final hearing to approve this Settlement Agreement;
- g. provide that the Port Authority shall be reimbursed for the costs of notice to the Class from the 876 Fund;
- h. provide that any Bondholder as Class member wishing to object to the Settlement Agreement file a written statement of objection with Ramsey County District Court Administrator at least seven (7) days in advance of the final hearing to approve this Settlement Agreement at the following address:

Court Administrator
Ramsey County District Court
Suite 600
15 West Kellogg Boulevard
St. Paul, MN 55102-1682
- i. provide that any member of the Class who failed to timely object to the Settlement Agreement shall be bound by the mutual release to be executed as part of this Settlement Agreement; and

- j. provide that the final settlement hearing may without further notice to the Class be continued or adjourned by court order.

14. **Filing of Final Approval Memorandum and Fee Request.**

Fourteen (14) days prior to the hearing to finally approve the settlement, Class Counsel shall file a memorandum in support of approving the settlement which explains the fairness of the settlement and the appropriateness of the fees requested, and report on any comments received from Bondholders.

15. **Final Court Approval.** The order for final judgment shall include provisions which:

- a. find that the notice given the Class constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the settlement and to all matters set forth within the notice and fully satisfied the requirements of the Basic Resolution and due process;
- b. find that the Settlement Agreement is fair, reasonable and adequate to the Class and all Bondholders within the Class, including minor children who are Bondholders, shall be bound by the Settlement Agreement;
- c. hold that the mutual release to be executed by the parties to be valid, binding and enforceable according to its terms;
- d. award Lommen, Abdo, Cole, King and Stageberg, P.A., as Class Counsel an amount not to exceed two million two hundred twenty six thousand, six hundred eighty two and 17/100 dollars (\$2,226,682.17) through September 8, 2011, and a further award of fees and expenses from September 9, 2011 through completion of the settlement process including the Dutch auction and appointment of Trustee, as attorneys' fees, expenses and costs, to be paid out of the 876 Bond Fund;
- e. dismiss on the merits and with prejudice all claims against the Port Authority, and permanently enjoin each and every member of the Class from bringing, joining or prosecuting any action against the Port Authority any

claim that was, could have been or may have been brought or otherwise asserted for which a release is to be or was given pursuant to Section 5;

- f. order that any party violating the court's injunction shall pay the costs and attorneys' fees incurred by the released party as a result of that violation;
- g. retain jurisdiction of all matters relating to the interpretation, administration, implementation and enforcement of this Settlement Agreement;
- h. enter final judgment dismissing with prejudice and on the merits and without costs, pursuant to the terms of this Settlement Agreement, all claims of the Bondholders in the *Jensen Litigation*; and
- i. require any Bondholder who seeks to appeal the order finally approving the settlement post a bond of not less than one million five hundred dollars (\$1,500,000) in order to secure repayment of funds to be distributed pursuant to Section 6 above and to compensate Bondholders for their lost investment opportunities if the past due interest payment or tender offer is delayed.

16. **Failure of court to approve Settlement Agreement.** In the event any court disapproves or sets aside the Settlement Agreement or any of its material provisions for any reason, or holds that the entry of the final order approving the Settlement Agreement or any material provision should be overturned or modified in any material way, then:

- a. if the parties do not jointly agree to appeal such ruling, this Settlement Agreement shall be null and void, and the parties returned to the positions they held prior to the Settlement Date, as if this Settlement Agreement had never been entered into;
- b. if the parties agree jointly to appeal or contest such ruling, objection or opposition and if the final order approving the Settlement Agreement or its equivalent in all respects is not in effect after the termination of all proceedings arising out of such appeal, the Settlement

Agreement shall become null and void and the parties returned to the positions they held prior to the Settlement Date, as if this Settlement Agreement had never been entered into.

17. **Additional Documents.** The parties shall cooperate fully and execute any supplemental documents and take any additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

18. **Integrated Agreement.** The Settlement Agreement represents an integrated document negotiated and agreed to between the parties. This agreement cannot be amended, modified or supplemented, nor can any of its provisions be deemed to be waived, except in writing.

19. **Choice of Law, Rules of Construction.** The parties have jointly negotiated and drafted this Settlement Agreement. Unless defined herein, capitalized terms shall have the meaning given them in the Basic Resolution. Because no party is the drafting party no provision shall be interpreted against any party. Minnesota law governs all substantive interpretation.

20. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, once the Settlement Agreement is fully executed and exchanged between or among counsel, shall constitute one and the same instrument.

21. **Notices.** All notices or other communications shall be in writing, shall be delivered by any courier service that provides evidence of delivery, or certified or registered mail, postage prepaid, return receipt requested to the parties, at the addresses set forth below, or such other address as a party may designate by written notice.

The addresses are as follows:

To Bondholders:

Keith J. Broady, Esq.
Lommen Abdo
2000 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

To Port Authority:

Scott G. Knudson, Esq.
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

22. **Continuing Jurisdiction.** The Ramsey County District Court shall retain jurisdiction over the implementation of this Class Action Settlement Agreement.

Port Authority of the City of Saint Paul

Dated: _____

By: Louis Jambois
Its: President

Dated: _____

Scott G. Knudson
Counsel to Port Authority

BONDHOLDERS:

Dated: _____

By: Roland Jensen, individually and on
behalf of the Class of Bondholders

Dated: _____

Keith J. Broady
Counsel to Bondholders

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: Other Civil

Roland J. Jensen, et al.,

Court File No. 62-CV-10-6099
Judge: Robert A. Awsumb

Plaintiffs,

vs.

**MEDIATED
SETTLEMENT AGREEMENT**

Port Authority of the City of Saint Paul,

Defendant.

A mediation session was held on September 8, 2011 with Jonathan Lebedoff serving as mediator. The mediation was attended by representatives of Plaintiffs and Defendant and their respective attorneys.

The case was settled on the following terms:

1. Port Authority will extend pledge of Available Net Revenues through Sept. 1, 2032 at which date all pledges terminate and the 876 Bondholders rights under the Basic Resolution are fully discharged. Sources for Available Net Revenues are identified on Mediation Ex. 1, consisting of Land Lease Payments, Land & facility leases-876 Properties, Purchase Option Revenues, Fleeting and Tonnage Payments (the amounts listed are estimated and are one-half of the total Fleeting and Tonnage, Port retains the other one-half for the RMF for use only as river maintenance), but excluded from Ex. 1 are Dock Wall and Third-Party Costs. Port will provide schedule of the Facilities and tenants from whom the Available Net Revenues are derived that form the basis for the estimates in mediation, Ex. 1, and in the event of sale of any of those Facilities through Sept. 1, 2032, the Net Sale Proceeds are pledged and the Port shall secure the best price reasonably obtainable.
2. The Fleeting and Tonnage payments, and all amounts in the RMF, retained by the Port will be used for river maintenance such as dredging and dock wall repair. The parties acknowledge that the Port is not obligated to use its own resources outside of the foregoing, to repair or replace dock walls or other physical maintenance. The Port will seek from any and all other possible sources, including the State or Federal governments, to fund repair and replacement of dock walls and other maintenance, but the Port provides no assurances that other sources will become available.

3. Parties agree an independent Trustee will be retained to assume duties of paying agent, with authority to enforce the covenants of BR 876 and this Agreement for benefit of all bondholders, the Trustee shall have the right to review and audit all of the books and records of the Port relating to the 876 Program; the Port shall provide the Trustee on at least a semi-annual basis a recap of receipts by tenant or Facility; and Port shall not be required to provide an independent audit of the 876 Program. Trustee shall be paid from Available Net Revenues.
4. Port shall contribute \$1.5 million to 876 Bond Fund.
5. The following money will be in Bond Fund or the Special Funds, etc. identified below. The following are estimated amounts, actual to control.
 - a. \$22,200,000 in Prepaid Net Revenues and Special Funds
 - b. 1,500,000 from Port
 - c. _____? Available Net Revenues collected after May 15, 2011 through November 15, 2011.
6. Use of money in Bond Fund and Special Funds, etc. Estimated amounts.
 - a. \$11,000,000 to pay all past due and current interest due on 876 Bonds through Dec. 1, 2011 or such later date as the Court approves.
 - b. \$2,000,000 for attorneys fees and costs to Plaintiffs' attorneys subject to court approval and for which the Port takes no position.
 - c. \$20,000 to \$25,000 for third party costs of sending notices to all bondholders, including Geogeson, publication, mailing, etc.
 - d. Any additional attorneys fees and costs of Plaintiffs attorneys incurred as part of settlement, subject to Court approval and for which the Port takes no position.
 - e. Schechter Dokken paid in full, subject to court approval and for which the Port takes no position.
 - f. Port attorneys' fees and litigation costs incurred through September 8, 2011, after said date Port is responsible for its own legal fees and costs.
 - g. Balance remaining, estimated \$10,000,000 used for Dutch auction.
7. Dutch auction to be conducted by Port within reasonable time after court approval, estimated 6 months. Costs for Dutch auction are estimated at 75-100 basis points and are to be paid from tender offer funds. The foregoing costs include attorneys fees and costs incurred in preparing and mailing notices and US Bank fees, actual to control. Any unused amounts from Dutch Auction will go to the 876 Fund and used to pay bondholders as provided in the Basic Resolution.
8. This agreement is subject to approval of the Board of the Port and the Ramsey County District Court after notice has been sent to all bondholders and court hearing pursuant to Rule 23. Attorneys for all parties agree to recommend approval by their clients and the Court. If approval of the Board or Court is not obtained, the parties are restored to the same position as they are on today's date, and reserve all claims and defenses. The representative of the bondholders signing this agreement will recommend to all bondholders and the court to approve this settlement but shall have no individual or personal liability if this agreement is not obtained.

9. The parties will prepare and execute a mutual release that releases all claims of the parties asserted, or could have been asserted in the above-entitled matter. The rights and obligations of the parties under Basic Resolution 876, as modified herein, remain in full force and effect.

10. The parties also acknowledge that the payments referenced above are paid in compromise and settlement of disputed claims and is not to be construed as an admission of any liability whatsoever by any of the parties herein by whom liability is expressly denied.

11. In executing this Agreement, the parties acknowledge that they have been advised by legal counsel and that they are not relying on representations or statements made by any of the parties herein released or anyone representing them. The parties represent and warrant that they have agreed to the terms of this release and settlement in entire reliance upon their own judgment and the advice and opinions of their own attorneys and advisors, and have not in any part relied upon the opinions of, or facts represented by, other parties to this agreement or attorneys for other parties.

12. This settlement is a binding agreement between the parties. Signing a mediated settlement agreement may adversely affect the legal rights of each party. The parties have been advised by their respective attorneys of the binding effect of this agreement and their legal rights. The parties further understand that the mediator has no duty to protect the parties' interests or inform them of their legal rights. The parties are signing this agreement of their own free will.

13. In the event the parties are unable to agree on the formal documents or upon the final terms or actions to be taken that are necessary to implement this agreement, then all parties appoint mediator Jonathan Lebedoff to serve as the final arbiter of the foregoing, and the mediator shall make the final determination of the terms required or actions to be taken to

implement this agreement consistent with the intent and understanding of the parties. If the services of the mediator are required to act as arbiter, the parties agree to compensate the mediator in the manner provided in the mediation agreement.

Dated: 8/18, 2011


Plaintiff REPRESENTATIVE FOR BOSTON ORS


Attorney for Plaintiffs

Dated: 9/8, 2011


Defendants


Attorney for Defendant

876 Future Revenue Sources
Mediation Exhibit 1

Year	Years	876 Pledged Sources of Funds							Less Third Party Costs	Total
		(f) Land Lease Payments	(g) Land & Facility Leases - 876 Properties	(h) Purchase Option Revenues	(i) Floating Payments	(j) Tonnage Payments	(k) Dock Well Replacement	(l) Less Third Party Costs		
2011	0.0	1,841,315	167,944	0	129,514	55,051	(825,000)	(145,958)	75,000	
2012	0.5	1,841,059	167,944	0	129,514	55,051	(825,000)	(152,250)	1,208,824	
2013	1.5	2,021,030	148,595	0	129,514	55,051	(825,000)	(154,634)	1,348,358	
2014	2.5	2,063,068	81,189	85,000	129,514	55,051	(825,000)	(100,852)	1,435,910	
2015	3.5	2,125,291	81,189	0	129,514	55,051	(825,000)	(159,250)	1,400,840	
2016	4.5	2,171,820	81,189	0	129,514	55,051	(825,000)	(181,593)	1,440,961	
2017	5.5	2,212,459	71,782	0	129,514	55,051	(300,000)	(164,017)	2,004,790	
2018	6.5	2,251,187	0	71,500	129,514	55,051	(300,000)	(165,477)	2,040,775	
2019	7.5	2,283,181	0	0	129,514	55,051	(300,000)	(171,509)	2,068,782	
2020	8.5	2,313,637	0	0	129,514	55,051	(300,000)	(174,082)	2,096,603	
2021	9.5	2,400,000	0	0	129,514	55,051	(300,000)	(175,593)	2,140,483	
2022	10.5	2,436,000	0	0	129,514	55,051	(300,000)	(175,593)	2,140,483	
2023	11.5	2,472,540	0	0	129,514	55,051	(300,000)	(175,593)	2,140,483	
2024	12.5	2,509,628	0	0	129,514	55,051	(300,000)	(175,593)	2,140,483	
2025	13.5	2,547,272	0	0	129,514	55,051	(300,000)	(175,593)	2,140,483	
2026	14.5	2,585,481	0	0	129,514	55,051	(300,000)	(175,593)	2,140,483	
2027	15.5	2,624,263	0	0	129,514	55,051	(300,000)	(175,593)	2,140,483	
2028	16.5	2,663,627	0	0	129,514	55,051	(300,000)	(175,593)	2,140,483	
2029	17.5	2,703,581	0	0	129,514	55,051	(300,000)	(175,593)	2,140,483	
2030	18.5	2,744,135	0	0	129,514	55,051	(300,000)	(175,593)	2,140,483	
2031	19.5	2,785,297	0	0	129,514	55,051	(300,000)	(175,593)	2,140,483	
2032	20.5	2,827,068	0	0	129,514	55,051	(300,000)	(175,593)	2,140,483	
		49,885,922	779,835	180,500	2,700,956	1,156,079	(5,850,000)	(3,870,578)	45,295,352	

Estimated rate of increases in 2023 and future years 1.50%

- a. Not used.
- b. Not used.
- c. Floating payments fixed through March 2027; assume estimated rate increases thereafter.
- d. Tonnage payments fixed at a set per ton fee, and assume no future change.
- e. Replacement of dock wall every forty years; cost increases same as rate increases used for leases.
- f. Actual lease rates through term of lease or historical lease increases through 2022, thereafter projected increases at the "estimated rate of increases in 2023 and future years" noted above.

876 Pledged Assets

Company	Ramsey County Property Number (PIN)	Footnote	Estimated 2011 Cash Receipts
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LAND LEASES

876 PROPERTIES			
Bay West, Inc.	31-29-22-21-0067		76,755.36
Sitma, Inc.	31-29-22-21-0088		81,189.12
			157,944.48

NON 876 FACILITIES

BARGE TERMINAL NO. 1			
Aggregate Ind (CAMAS / J L Shiely)	04-28-22-44-0001		136,753.32
Cemstone	04-28-22-13-0005		21,736.92
Flint Hills (Koch Materials)	09-28-22-14-0001		65,424.26
Great Western Recycling	04-28-22-13-0006		174,092.84
	04-28-22-42-0001		
	04-28-22-41-0001		
Hawkins Chemical Inc.	04-28-22-41-0002		34,980.00
LaFarge Corporation	09-28-22-11-0001		44,894.14
Westway Terminal	09-28-22-11-0002		87,568.00
	09-28-22-14-0002		

BARGE TERMINAL NO. 2			
Upper River Services	05-28-22-21-0007		21,139.89

SOUTH PORT			
City of St Paul - Impound Lot	09-28-22-43-0006		92,994.21
	09-28-22-34-0015		
	09-28-22-34-0021		
District Heating Dev Co	09-28-22-32-0056		26,484.00
	09-28-22-32-0060		
Alter Trading Co.	09-28-22-34-0006		294,228.00
	09-28-22-34-0003		
	09-28-22-34-0017		

	09-28-22-34-0018		
	09-28-22-43-0007		
	09-28-22-43-0003		
Hawkins Chemical Inc.	09-28-22-31-0010		21,510.00
Portable Barge Services	09-28-22-32-0054	(A)	3,421.56
New Tenant	09-28-22-31-0002		TBD
	09-28-22-31-0008		
	09-28-22-43-0001		

RED ROCK

Barton Enterprises	23-28-22-23-0009		356,004.45
ConAgra (Pillsbury; Peavey)	14-28-22-33-0001		366,113.52
	14-28-22-33-0002		
Hawkins Chemical Inc.	23-28-22-24-0003		146,250.00
LaFarge Corporation RR	23-28-22-23-0006		46,880.72

MISCELLANEOUS

Mn Mutual (Securian)	05-28-22-43-0006		5,817.48
	05-28-22-43-0007		
Northwest Publications (Dispatch Realty)	05-28-22-14-0001		3,000.00
Northwestern Bell (Qwest)	27-29-23-23-0010		1,500.00

1,950,793.31

FLEETING (net 50% share to 876 Bond Fund after River Maintenance deposit)

Upper River Services	Exhibit A		129,513.48
Portable Barge Services			6,050.04
Southport - new tenant			TBD

135,563.52

TONNAGE (net 50% share to 876 Bond Fund after River Maintenance deposit)

	Historical Average
Alter Trading Co.	2,240
Barton Enterprises	7,227
ConAgra (Pillsbury; Peavey)	16,839
Hawkins Chemical Inc. - BT # 1	1,666
Hawkins Chemical Inc. - Southport	2,041
Hawkins Chemical Inc. - Redrock	2,610
Flint Hills (Koch Materials)	1,237
Great Western Recycling	8,183
LaFarge Corporation BT1	6,725

LaFarge Corporation RR	3,395
Westway Terminal Company	1,526
Westway Terminal Company	1,363
Southport - new tenant	TBD
	55,052

FOOTNOTE:

(A) Approximately 16,293 square feet as described in the associated lease.

Additional Pledge:

The Pledge of Revenues in favor of the 876 Fund includes any additional net revenues received by the Port Authority related to land rent and 50% of any fleeting and tonnage revenues related to the expansion of Southport as contemplated and referred to in the September 1, 2011 letter by Scott Knudson of Briggs and Morgan attached hereto. Listed above as **TBD** (to be determined).



2000 IDS Center
80 South 8th Street
Minneapolis, MN 55420-1117
tel 612.267.8400
fax 612.977.8626

September 1, 2011

Scott G. Knudson
(612) 977-8279
sknudson@briggs.com

VIA EMAIL AND U.S. MAIL

Keith J. Broady
Lommen Abdo
2000 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

**Re: Roland Jensen et al. v. Port Authority of the City of Saint Paul
Ramsey County District Court File No. 62-CV-10-6999**

Dear Mr. Broady:

I write to respond to your letter of August 24, 2011, to me and the Mayor of the City of Saint Paul. Nothing in the Basic Resolution nor in the Court's September, 2010 temporary injunction order prohibits the Port Authority from going forward with the transaction with the City of Saint Paul that you object to in your letter.

The Port Authority's Statutory Mission is to Promote Economic Development along the Riverfront

Created in 1932, the Port Authority has been instrumental in developing and managing the resources of the Mississippi River to promote economic development for the City of Saint Paul. The benefits of commercial shipping on the Mississippi River extend to the economy of greater Minnesota.

In 1939 the WPA commissioned a history of the Port Authority which documents the importance the Mississippi River and the growth of Saint Paul. With the creation of a shipping channel in the 1930s, the river again was an engine of economic growth. The Port Authority played an important role in that development, as the author of the WPA history notes. That history is attached as Exhibit 1 to my letter.

The Port Authority recognizes that there are many stakeholders interested in how the Mississippi River is used and the riverfront further developed. For example, the City of Saint Paul has in recent years been promoting recreational uses of the riverfront. As

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BRIGGS AND MORGAN

Keith J. Broady
September 1, 2011
Page 2

part of that mission, the City has worked to increase public access to the river. Conversely, the City of Saint Paul has regulatory authority that it can use to restrict commercial uses along the river, which means that the Port Authority could have to yield to some of those zoning requirements in its commercial projects.

In 2008 the Port Authority and the City of Saint Paul Reached a Compromise on Commercial Use of the River

In 2008 the Port Authority obtained a variance from the City of Saint Paul to expand an existing dock wall at its Southport riverfront property, adding several hundred feet of dock wall, which would allow it to expand Southport and increase the amount of commercially usable land at that location. It expects that this additional land, when fully developed, could at least generate an additional \$100,000 to \$150,000 a year in net rental income that would go to 876 Bondholders. In exchange for the variance, the City was to receive the land that constituted Barge Terminal No. 2 and one other parcel, granting the City additional public access to the river.

Subsequent to that agreement, the Port Authority and Upper River Services, the barge operator that works out of Barge Terminal No. 2, came to the conclusion that it was more efficient for Upper River Services to remain at Barge Terminal No. 2. This year the Port Authority and the City restructured the 2008 transaction to accomplish the same purpose, to provide the City with an improved access to the river, while affording the Port Authority the opportunity to expand at Southport. The Port Authority is to convey eight small parcels to the City that are located on or near the riverfront. That conveyance will simply provide the City the consideration it was to receive for granting the variance.

None of the Parcels to be Transferred are a "Facility" under the Basic Resolution

Under the Basic Resolution, the Port Authority pledged net revenues from "Facilities," which are defined on page 3 of the Basic Resolution as follows:

All revenue producing properties from time to time owned, leased or otherwise financed by the Authority and operated, used or leased for one or more of the purposes authorized by the Act, sometimes individually referred to herein as "Facility."

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Keith J. Broady
September 1, 2011
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Unless pledged to Other Secured Bonds, net revenues from a Facility are pledged to the 876 Funds. It is the Port Authority's position that the pledge of net revenues made to 876 Bondholders in the Basic Resolution does not extend to the sale proceeds of properties that are not financed with 876 Bonds. But equally important to recognize is that in order to be a Facility under the Basic Resolution, a piece of land has to produce revenue. None of the parcels to be transferred under the agreement with the City are Facilities because none of them produce revenue. In fact, none has ever produced net rental income. Thus, none is a Facility under the Basic Resolution.

It is easy to see why that is the case from the five pages of aerial photographs I enclose as Exhibit 2, which depict the location of the parcels to be transferred. As you recall from the 2006 hearing, where the revenue-producing potential of similar properties was at issue, the parcels to be transferred to the City are equally unusable for revenue producing purposes. They are isolated parcels, often very narrow with no feasible commercial value. In some cases they are swampland. Nevertheless, they are useful to the City as part of its overall objective to promote recreational use of the river. For instance, some of the parcels will increase or extend to the Sam Morgan Trail that runs along the river. Hence, there is an important public purpose to following through on the original 2008 transaction in its current form.

The Port Authority's Public Mission Goes Beyond its 876 Program

The Port Authority's development mission is to promote the economic growth and job creation for the City of Saint Paul. The 876 Program has effectively ceased being part of that mission after the last series of 876 Bonds was issued. The interpretation that you are advocating regarding Section 4-13 of the Basic Resolution is, first of all, incorrect because the properties to be transferred are not Facilities within the meaning of the Basic Resolution. Moreover, the interpretation you advocate will straitjacket the Port Authority in effecting its mission and deny it any discretion as how it manages to accomplish what the Legislature has directed it to do - promote economic development and job growth. Given the current economic circumstances facing this Country the importance of that mission cannot gain said.

In short, public interest strongly favors following through with this transaction. As was undertaken in 2008, the Port Authority and the City balanced the competing interests of economic use of the river with recreational use of the river. The parties to that agreement modified it consistent with balancing those objectives. Going forward

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BRIGGS AND MORGAN

Keith J. Broady
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Page 4

with it is simply closing on a transaction that will benefit 876 Bondholders as well as the taxpayers of Saint Paul.

The Transaction Will Not Violate any Term of the Temporary Injunction

In your letter you also suggest that the transaction would violate terms of the temporary injunction issued in September 2010. That order merely requires that the Port Authority retain any proceeds from the sale of non-876 facilities pending a final determination by the Court as to whether or not those sale proceeds were pledged to the 876 Program. As noted, this transaction is, first of all, not the sale of a Facility. Moreover, it is a consummation of a transaction reached in 2008 that called for a non-cash exchange of land for the City agreeing to grant the Port Authority a variance to allow it to construct an extended dock wall at Southport. Because there are no proceeds to be sequestered, the September 2010 temporary injunction simply does not apply. The *quid pro quo* for the Port Authority was the right to expand Southport -- something that will benefit 876 Bondholders.

Yours truly,


Scott G. Krudsen

SGK/npw
Enclosures

cc: Honorable Chris Coleman (via email and U.S. Mail with exhibits)
Honorable Robert Awsush (via email and U.S. Mail with exhibits)
City Attorney Sara Grewing, Esq. (via email and U.S. Mail with exhibits)

4128462

MUTUAL RELEASE

THIS MUTUAL RELEASE (“Release”) is made and entered into as of this ____ day of _____, 2011, by and between Roland J. Jensen, for himself and as the representative of the Class certified in *Roland J. Jensen, et al. v. Port Authority of the City of Saint Paul*, Civ. No. 62-cv-10-6099, and the Port Authority of the City of Saint Paul (“Port Authority”).

WHEREAS, the Class and the Port Authority have been involved in litigation arising out of the Port Authority’s Basic Resolution No. 876 (the “*Jensen Litigation*”); and

WHEREAS, the Class and the Port Authority reached a settlement of the *Jensen Litigation* on September 8, 2011; and

WHEREAS, the Ramsey County District Court has given final approval of the September 8, 2011, Settlement;

NOW, THEREFORE, pursuant to the September 8, 2011, Settlement and the court order approving that Settlement, the Class and the Port Authority agree as follows:

1. The Class does hereby release, and forever discharge the Port Authority and its officers, directors, employees, successors, affiliates, agents, assigns and representatives from any and all claims, debts, liabilities, demands, liens, obligations, costs, expenses, attorneys’ fees, actions, and causes of action of every nature and kind, whether known or unknown, that were asserted or could have been asserted in the *Jensen Litigation*.

2. The Port Authority, on behalf of itself and each of its successors and assigns, does hereby release, and forever discharge every member of the Class from any and all claims, debts, liabilities, demands, liens, obligations, costs, expenses, attorneys’ fees, actions, and causes of action of every nature and kind, whether known or unknown, that were asserted or could have been asserted in the *Jensen Litigation*.

3. Each signatory to this Release represents and warrants that he has the full authority and power to execute and deliver this Release on behalf of the party for whom he is signing this Release. Each party hereto represents and warrants that it or he has not assigned or transferred to any person or party any claim that might be covered by this Release.

4. No amendment, interpretation, waiver, or termination of any of the provisions of this Release shall be effective unless made in writing and signed by the parties to this Release.

5. This Release shall be binding on all of the parties and signatories hereto. The rights and obligations provided in this Release shall continue to inure to the benefit of, or be imposed upon, any successor, heir, or assign of any party.

6. This Release shall be governed and construed in accordance with the laws of the State of Minnesota. Any action to enforce this Release shall be brought in any court venued in Minnesota. The prevailing party in any litigation brought to enforce this Release shall be entitled to its or his attorneys' fees and costs.

7. This Release may be executed in counterparts, including by facsimile, each of which shall be deemed an original, all of which together shall be deemed one Release. The terms and provisions of this Release shall be deemed severable, so that if any term or provision is deemed to be invalid or unenforceable, such term or provision shall be deemed deleted or modified so as to permit the remaining portion of this Release to be valid and enforceable to the fullest extent permitted by applicable laws.

IN WITNESS WHEREOF, the parties have executed and delivered this Release as of the date first written above.

PORT AUTHORITY OF THE CITY OF SAINT PAUL

By: _____

Title: _____

FOR HIMSELF AND THE CLASS

Roland J. Jensen

EXHIBIT B

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

Roland J. Jensen, et al.,

Court File No. 62-CV-10-6099

Plaintiffs,

**ORDER CERTIFYING CLASS AND
PRELIMINARILY APPROVING
SETTLEMENT**

v.

Port Authority of the City of Saint Paul,

Defendant.

Before the Court is the joint application of the Plaintiffs, who are holders, owners or beneficial owners of more than twenty percent in aggregate principal amount of the General Revenue Bonds issued by the Port Authority of the City of Saint Paul (“Port Authority”) under its Basic Resolution No. 876 (the “Basic Resolution”) for preliminary approval of a proposed settlement in this litigation (the “Action”). The Plaintiffs and the Port Authority will be collectively referred to as the “Parties.” The Parties have applied for an order preliminarily approving a proposed settlement of the Action in accordance with the Mediated Settlement Agreement and the exhibits attached thereto (or such subsequent final settlement agreement to which both Parties agree in accordance with the terms of the Mediated Settlement Agreement) (collectively, the “Mediated Settlement Agreement”), which is incorporated herein by reference, and dismissing the Action with prejudice upon the terms and conditions set forth in the Mediated Settlement Agreement.

The Court, having considered the submissions of the parties, the Mediated Settlement Agreement, and all of the files, records, and proceedings previously before the Court in this litigation, ORDERS as follows:

1. Proposed Settlement Preliminarily Approved

The proposed settlement, as embodied in the Mediated Settlement Agreement, is preliminarily approved pending a final hearing on the proposed settlement. The proposed settlement appears to be fair, reasonable and adequate to each and all of the Holders of General Revenue Bonds issued under the Basic Resolution and consistent with the terms of Basic Resolution.

2. The Plaintiffs and their Counsel

The Court finds and determines that Plaintiffs are Holders of more than twenty percent in aggregate principal amount of 876 Bonds in accordance with and for purposes of Section 4.12 of Basic Resolution. The Court's Order Denying Port Authority's Motion for Summary Judgment on Standing Issue dated April 25, 2011, is reconfirmed and incorporated herein. The Court further finds and determines that Plaintiffs are authorized under Section 4-12 of Basic Resolution to represent each and all 876 Bondholders to protect and enforce the rights of the 876 Bondholders and to enforce the performance of all covenants and duties of the Port Authority as set forth in Basic Resolution. The Court further finds and determines that Plaintiffs will fairly and adequately fulfill their duties under Section 4-12 of Basic Resolution. The Court further finds and determines that Plaintiffs' counsel, the law firm of Lommen, Abdo, Cole and King P.A. ("Lommen Firm"), will continue to fairly and adequately represent the

interests of Plaintiffs and each and all 876 Bondholders and the Court appoints the Lommen Firm to act on behalf of Plaintiffs and each and all 876 Bondholders with respect to the proposed settlement and Mediated Settlement Agreement. The Court authorizes the one or more of the named Plaintiffs and the Lommen Firm to enter into the Mediated Settlement Agreement on behalf of Plaintiffs and each and all 876 Bondholders, subject to final approval of the proposed settlement by the Court.

3. Class Certified

For purpose of providing a process by which holders, or beneficial owners of the General Revenue Bonds issued under the Basic Resolution (“876 Bonds”) can be informed of the settlement and make their views known, the Court certifies the following class:

All Holders, owners, or beneficial owners of 876 Bonds, whether of record or otherwise, and all persons (whether individuals or legal entities of any type) as of June 1, 2010, or who acquired an interest of any type in 876 Bonds between June 1, 2010 and September 8, 2011, or who was a Holder, owner or beneficial owner on September 8, 2011, or who become Holders, owners or beneficial owners of 876 Bonds after September 8, 2011.

4. Final Settlement Hearing and Notice

a. The Court will hold a hearing (“Final Settlement Hearing”) on October 27, 2011, beginning at 1:30 p.m. The hearing will be held in the Ramsey County Courthouse in Saint Paul, Minnesota, to consider among other things (i) whether the proposed settlement should be approved as fair, reasonable, adequate, and in the best interests of each and all 876 Bondholders; (ii) whether final judgment should be entered dismissing Plaintiffs claims with prejudice and on the merits, as required by the Mediated Settlement

Agreement; (iii) whether to approve the Lommen Firm's application for attorneys' fees and costs, of approximately \$2,200,000.00, to be paid from the 876 Bond Fund; and (iv) whether to approve any additional fees and costs of Schecter Dokken not previously approved for payment.

b. Notice of the proposed settlement shall be provided to each and all 876 Bondholders, as far as possible, for their consideration prior to the Final Settlement Hearing. The Parties shall provide Notice of Settlement and Hearing ("Settlement Notice") to each and all 876 Bondholders in substantially the same form as the Settlement Notice attached to this Order. The Parties shall be deemed to have provided the Settlement Notice to each and all 876 Bondholders if the procedures of this paragraph are followed. The form of Settlement Notice, attached as Exhibit A, is expressly approved by the Court. The Settlement Notice shall be provided to each and all 876 Bondholders by First Class Mail at the address listed in the records of the Port Authority pursuant to Section 4-6 of Basic Resolution, U.S. Bank National Association ("U.S. Bank") and/or the Depository Trust Corporation ("DTC"). The Settlement Notice shall be mailed no more than ten days after entry of this Order. Further, the Parties shall publish the form of Settlement Notice, attached as Exhibit B, in the Star Tribune, Pioneer Press, St. Paul Legal Ledger, Finance and Commerce, and the Bond Buyer. The Port Authority shall also post the Settlement Notice on its website and maintain a copy of the Settlement Notice in its office for public review upon request. The Port Authority shall also file a copy of the Settlement Notice at the office of U.S. Bank. The Court finds and determines that these actions in providing notice constitute the best notice practicable under the

circumstances, constitute due and sufficient notice of the proposed settlement to all persons entitled to receive notice, and fully satisfy the requirements of Basic Resolution No. 876 and due process. The cost of mailing and publishing the Settlement Notices shall be paid from the Common Revenue Bond Fund established under Basic Resolution No. 876 (“876 Fund”). The Court hereby authorizes and directs that the Settlement Notice be issued in the name of the Court Administrator of the Ramsey County District Court.

c. Subject to the provisions of Sections 4-12 and 9-4 of Basic Resolution, the Court will hear the objections of any 876 Bondholders to the Mediated Settlement Agreement, including the award of attorneys’ fees, costs and expenses, at the Final Settlement Hearing. No 876 Bondholder or other person will be entitled to object to the Mediated Settlement Agreement, to the final judgment to be entered in this Action, or to an award of attorneys’ fees, costs and expenses, except by serving and filing a written notice of intention to appear at the Final Settlement Hearing, and a written objection in the form and manner required by the Settlement Notice. Such written notice of intention to appear and written objection must be filed with the Court and served on the Parties at the addresses set forth herein by October 20, 2011:

Ramsey County District Court Administrator
Ramsey County Courthouse
Suite 600
15 W. Kellogg Blvd.
St. Paul, MN 55102

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2000 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Attorneys for Plaintiffs

Scott G. Knudson
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2200 IDS Center
80 South Eighth Street
Minneapolis MN 555402

Attorneys for Port Authority

Any person who fails to object in the manner and by the date required will waive any objections and shall be bound by the mutual release of claims agreed upon in the Mediated Settlement Agreement.

4. The Parties shall be prepared at the Final Settlement Hearing to respond to any objections filed by 876 Bondholders and to provide other information, as appropriate, bearing on whether or not the Mediated Settlement Agreement should be finally approved.

Court Approval

The Court reserves the right to adjourn or continue the Final Settlement Conference without further notice to the 876 Bondholders.

SO ORDERED

Dated: September 22, 2011

/s/
Hon. Robert A. Awsumb
Judge for the District Court