

CASE TYPE: 10 (OTHER CIVIL)

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In re a Petition for Instructions to)
Construe Basic Resolution 876 of)
The Port Authority of the City of)
Saint Paul.)

Court File No. CS-06-200031

**PRE-HEARING BRIEF
OF THE PORT AUTHORITY OF THE CITY OF SAINT PAUL**

INTRODUCTION

On August 30, 2006, this Court will hold a hearing on a petition for instructions that the Port Authority of the City of Saint Paul (Port Authority) filed on June 30, 2006.¹ In its petition the Port Authority seeks an order directing the Port Authority to initiate a process by which the revenue streams that are the on-going sources of payments to 876 bondholders will be sold. The proceeds of that sale, together with monies earned on the sale of repossessed properties pledged to the 876 Fund, will be distributed to 876 bondholders in liquidation of their 876 Bonds.

On August 23, 2006, a group of bondholders apparently organized by Eldon Miller, himself a securities broker, filed objections to the petition. In a separate response filed on August 28, 2006, the Port Authority addressed the objections. The Miller bondholders also petitioned for appointment of a receiver to investigate the Port Authority's proposal and handling of the 876 Fund. The Port Authority opposed that request in a response also filed on August 28.

¹ An amended petition was filed on August 18, 2006.

One of the Miller bondholder's apparent complaints is a shortage of information regarding the Port Authority's proposal. To address that concern this prehearing brief outlines the factual support for the Port Authority's petition and the legal basis for concluding that it is permissible to terminate the 876 Fund after distributing all 876 Fund assets to 876 bondholders.

EVIDENCE THE PORT AUTHORITY WILL PRESENT AT THE HEARING

At the hearing the Port Authority will present the testimony of one or more of its officers, who will review the Port Authority's administration of the 876 Fund since September 7, 2004, when this Court last confirmed the Port Authority's administration of the 876 Fund. Testimony from the Port Authority will also provide background information on the Fund, its assets and performance and explain the Basic Resolution 876 which set up the 876 Fund. The Court will also hear from Bruce Sorenson from Piper Jaffray and Co. Piper Jaffray has agreed to act as placement agent to market the 876 Fund revenue streams to potential investors. Mr. Sorenson will review the process Piper Jaffray proposes to undertake and the general terms of financial instrument Piper Jaffray would be marketing.

The Port Authority believes that distributing all remaining 876 Fund assets to 876 bondholders as soon as possible will provide those bondholders with substantial benefits over sitting back and doing nothing. At the hearing, Dr. Gary Gibbons, an expert in municipal financing like the 876 Fund, will testify regarding his analysis of the benefits to 876 bondholders of terminating the 876 Fund.

Another benefit from termination is the potential tax savings 876 bondholders could realize. To explain how that benefit could work, Martin Culhane, a partner from the law firm of Oppenheimer, Wolff & Donnelly, LLP, will explicate the tax benefits that could be available when the 876 Fund liquidates.

Finally, the Port Authority will rely on its verified petition, as amended, to support its requested relief.

A. Overview of the 876 Fund

The Port Authority's mission is to promote industrial and commercial development that will increase employment and improve the tax base of the City of Saint Paul. Consistent with that mission, on February 14, 1974, the Port Authority adopted its Basic Resolution No. 876 (Basic Resolution). The Basic Resolution created a Common Revenue Bond Fund (the 876 Fund) and established the terms by which all revenue bonds issued under the Basic Resolution (876 Bonds) would be repaid. Beginning in 1974, and continuing until May 31, 1991, the Port Authority financed 139 projects by issuing a series of taxable and tax-exempt revenue bonds payable from the 876 Fund.

The Port Authority has administered the 876 Fund. It has collected revenues from the operation of 876 Fund properties, enforced obligations of individual borrowers under their revenue agreements, repossessed and managed properties on borrower default and endeavored to secure the best price reasonably obtainable in the event of a sale of any repossessed properties. The agency has employed and still maintains a professional staff to administer the operations of the Port Authority and the 876 Fund.

The proceeds from the sale of 876 Bonds funded real estate loans that the Port Authority made to third parties ("borrowers"). To secure repayment, borrowers and the Port Authority entered into revenue agreements, generally in the form of financing leases, under which a borrower agreed to make payments to the Port Authority in an amount at least equal to the principal and interest on the related series of 876 Bonds until the loan was repaid. The term of each revenue agreement was 30 years or less. When an individual series of 876 Bonds was

issued, it was the expectation that the benefit of ownership of an 876 Bond would end at the latest when the bond matured, ordinarily at the end of its term. Consistent with that, it was also the expectation of the parties – the Port Authority as issuer and the 876 bondholders – that the 876 program would end no later than when the last 876 Bond matured in 2022.

876 Bonds are revenue bonds. As such, they are not backed by any tax revenues of the Port Authority, the City of Saint Paul or any other governmental body. Instead, 876 Bonds are secured by and payable ratably only from these sources specifically identified in the Basic Resolution, principally monies accumulated in the Common Revenue Bond Fund. Two revenue streams essentially fund the Common Revenue Bond Fund – monthly payments made by borrowers and net revenues from land and fleeting leases and tonnage charges. Fleeting leases convey use of the Port Authority's riparian rights in the Mississippi River, which allows tenants to anchor barges along the river bank. Tonnage revenues come from charges the Port Authority collects based on the volume of freight handled at Port Authority-owned barge terminals. Except for the pledge to the 876 Fund, these revenues are wholly unrelated to the 876 program. In addition, the net amounts the Port Authority earns from the operation of 876-funded properties that it has repossessed, and net revenues earned on the sale of such repossessed properties, are placed into specified accounts within the Common Revenue Bond Fund.

In addition to the Common Revenue Bond Fund, the Basic Resolution created various Reserve Funds pledged to the payment of principal and interest on the 876 Bonds. These reserves are now depleted, having been fully expended in paying principal and interest to 876 bondholders.

After allowable expenses, the revenues from the land leases are projected to be \$1,334,000 in 2007, and the fleeting and tonnage revenues are projected to be \$235,000.

Importantly, these sources are not a guaranteed revenue stream – they can disappear from nonrenewal or other market forces. Significantly, these revenue sources could be used for other public purposes if not pledged to the 876 funds.

B. The Cost of Administering the 876 Fund and Associated Projects

As discussed, the Port Authority administers the 876 fund and the supporting real estate portfolio. (*Supra* at 4.) The current annual cost in 2006 of administering the 876 Fund will be nearly \$400,000. These costs are paid out of revenues that would otherwise go into the 876 Fund. While administrative costs will decline in absolute amounts over time, they will be an increasingly larger proportionate charge on 876 Fund revenues. By 2020, these costs are projected to be nearly 15 percent of the remaining revenues flowing to the 876 Fund.

C. Profile of the Typical 876 Bondholder

Until the mid 1990's institutional holders held nearly one-half of the outstanding 876 Bonds. After three tender offers, *see infra* at 6-7, the information the Port Authority has indicates there are few, if any, remaining institutional holders. Today, it appears the typical 876 bondholder is an individual holding for personal investment a relatively small amount of 876 Bonds. These holders also likely purchased their 876 Bond when originally issued at a price at or near par value of an 876 Bond. Trading information also suggests that individual purchasers in the secondary market bought at prices below what the Port Authority projects may realize.

It is not known at this time whether the Miller bondholders fit this profile, though it appears some might.

D. Steps Taken to Implement Restructuring

Because the funds dedicated to pay 876 bondholders have long been projected to be unable to pay bondholders in full, the Port Authority has worked proactively to protect 876

bondholders' interests. For example, starting in September 1991, the Port Authority took a series of steps designed to address issues that were anticipated to result from the ongoing shortfall. The Port Authority hired Springsted, Inc., an independent public financial advisory firm, to evaluate the status of the 876 Fund. In its report Springsted made the following observation:

Assuming that the performance of individual properties remains static as of December 6, 1991, the Fund demonstrates a need to access the reserves established for the payment of debt service in 1992. It exhausts all the reserves in the period ending December 1, 2000 and reaches a position in 2001 under which it is never again able to meet debt obligations on a current basis. From this point forward through the final maturity of outstanding obligations in 2022 the Fund does not become current on its obligations although there are still revenues to be collected under existing revenue agreements

On January 24, 1992, the Port Authority mailed the Springsted report to all known holders of 876 Bonds.

Subsequently, the Port Authority explored various restructuring options to avoid the eventual shortfall. The Port Authority continued to meet with institutional bondholders over the next several years. From 1993 to 1996, the Port Authority expended over \$2,000,000 from its own resources (not those of the 876 Fund) to find a way to restructure the 876 program to avoid the projected shortfall. Unfortunately, no consensus among institutional holders was ever achieved on a restructuring proposal.

E. Tender Offers

As part of its efforts to extend full performance of the 876 Fund, the Port Authority proceeded with a series of tender offers. One method was to purchase 876 Bonds with funds generated by borrowers who prepaid their obligations to the 876 Fund under their revenue agreements. For instance in March 1996, the Port Authority used \$28,148,000 in Prepaid Net Revenues to purchase and retire \$31,815,000 of 876 Bonds in a modified Dutch auction

proceedings. This purchase resulted in a principal savings to the 876 Fund of \$3,667,000 and removed significant future interest expense from the 876 Fund.

Following the 1996 tender offer, as commercial interest rates fell, more borrowers prepaid their obligations under their revenue agreements. In addition, the Port Authority sold a number of repossessed properties at prices that were in excess of previously estimated amounts. On August 2, 2002, the Port Authority petitioned this Court for an order directing the Port Authority to use certain reserve funds to conduct another tender offer, which the Court authorized in an order dated October 8, 2002. The 2002 tender allowed the Port Authority to retire \$70,235,000 of 876 Bonds with a principal savings to the 876 Fund of \$16,191,000, plus associated interest expense savings going forward.

In January 2004, the Port Authority used \$18,240,000 of Prepaid Net Revenues and Special Funds to purchase and retire \$21,715,000 of 876 Bonds. This purchase resulted in a principal savings to the 876 Fund of \$3,475,000 and removed future interest expense from the 876 Fund. In total, the Port Authority's tender offers retired \$123,765,000 in 876 bonds at a discount of \$23,333,000 and saved the 876 Fund substantial future interest on the amounts retired. While the tender offers reduced debt service payments out of the 876 Fund, they did not increase net revenues into the 876 Fund.

F. Current Status Of 876 Bonds

As of June 30, 2006, \$51,670,882 in principal amount of 876 Bonds remained outstanding, 12 loans were still performing, 79 had been prepaid by the respective borrowers and 11 had reached their scheduled maturity. Thirty-seven loans have defaulted, with the related properties being repossessed. Presently, 34 repossessed properties have been sold and three continue to be held by the Port Authority for the benefit of the 876 Fund.

In 2002, the Court confirmed the Port Authority's administration of the 876 Fund through the date of the 2002 petition, August 2, 2002. In 2004, the Court again confirmed the Port Authority's administration of the 876 Fund through September 7, 2004. The Port Authority seeks similar confirmation of its administration of the 876 Fund with the current petition.

On December 1, 2004, the 876 Fund exhausted its revenues and was unable to pay all principal then due. The Port Authority had long cautioned 876 bondholders that eventually reserves would be depleted and incoming revenues would be insufficient to pay all principal when due.

And, in fact, the 876 bondholders have not received full payment in recent years. The Basic Resolution directs the Port Authority ratably to pay accrued interest first and then to pay principal. Since the depletion of revenues the 876 Fund has made the following payments:

	<u>Interest</u>	<u>Principal</u>
December 1, 2004	100%	55.38%
June 1, 2005	87%	0%
December 1, 2005	100%	0%
June 1, 2006	100%	50.65%

After June 2006, whether or not principal due on 876 Bonds will ever be paid again depends on if and when REO properties are sold or performer leases are prepaid. Because neither the timing nor even occurrence of those events is known at this time, there is no way to tell how much principal, if any, might be paid.

Since the 2004 petition the Port Authority has continued to manage the 876 Fund. Revenue streams have been collected and disbursed as provided for in the Basic Resolution. The three properties the Port Authority repossessed have been readied for sale. The public

accounting firm McGladrey & Pullen, LLP, audited the 876 Fund for 2004 and 2005, and the Port Authority has provided the results of those audits in the annual report on the 876 Fund to 876 bondholders.

Notwithstanding the Port Authority's efforts, however, the 876 Bonds still outstanding will never be paid in full. 876 Fund reserves are gone. All that remains to fund repayment on the 876 Bonds are payments to the Common Revenue Bond Fund by current borrowers under 876 revenue agreements, net proceeds from the sale of repossessed properties (as well as net rents during repossession), and net revenues from land and fleeting leases and tonnage charges. As 876 projects reach maturity, proceeds from revenue agreements diminish from \$1,327,296 in 2007 to about \$70,000 in 2018. Repossessed projects will be sold. Hence, in 15 years, the only remaining source of funds will be net revenues from non-876 Bond financial facilities, consisting of land and fleeting leases and tonnage charges. And those revenues will be far from sufficient to cover even interest payments.

The Basic Resolution provides 876 bondholders with no recourse for underpayment. They cannot sue the Port Authority or 876 borrowers. No default provisions were included in the Basic Resolution or any supplemental resolution that would allow 876 bondholders to accelerate payment or foreclose on the 876 Bonds. Conversely, there is no express provision allowing the 876 Fund to liquidate or dissolve until all 876 Bonds are paid in full.

Consequently, on the present path, the 876 Fund will never pay remaining 876 bondholders in full. Sources of payment on the 876 Bonds are declining. The land and fleeting lease and tonnage revenues potentially continue into the future, allowing 876 bondholders to receive small, partial interest payments, but never more than that. According to projections, money available to pay interest will decline from nearly \$3 million in 2007 to just over \$1

million by the time the last 876 Bond matures in 2022. Correspondingly, the effective interest rate on 876 Bonds will drop from 9.26% in 2007 to 3.4% in 2022. The total interest payments over those 16 years are projected to be \$27,227,000, of a total amount due of \$48,177,000. After June 2006, principal payments are very uncertain.

G. Tax Implications of Continuing the Status Quo

There is another consequence of the indefinite life of the 876 Bond program as currently structured: There will be no liquidation event to terminate the 876 Fund and allow eligible 876 bondholders as a group to recognize a capital loss on their investments.

This result comes from an Internal Revenue Service 2000 private letter ruling. Based on that ruling, the Port Authority may treat on-going payments as payments of interest. *See* Report of Martin Culhane and the IRS Revenue ruling (both attached as Exhibits 2 and 3, respectively). The Basic Resolution directs that 876 Fund payments go first to interest and then principal. Under the IRS ruling this regime will continue unless and until the 876 Fund is liquidated. At that point, payments will be allocated first to principal and second to accrued interest. Since there will be insufficient funds to cover all outstanding principal, 876 bondholders would be cashed out at a discount and a capital loss may be recognized.

Because 876 Bonds may never "liquidate" on their own terms, the 876 Fund faces a dilemma. An individual 876 bondholder could sell his or her 876 Bonds and realize a capital loss. But what may be available to an individual 876 bondholder is not available to 876 bondholders as a group, for the simple reason they realistically cannot sell all at once. The market is not sufficiently liquid to permit even a significant block of 876 Bonds to be sold in short order, except at extraordinary discount. The Port Authority's proposal to terminate the 876

Fund, however, offers a way to maximize return of principal while still attaining a tax benefit for eligible bondholders.

There are several aspects to the tax benefits of an 876 Fund termination. First, interest paid to 876 bondholders is subject to the alternative minimum tax, so some holders may pay ordinary income tax on interest they receive. (Culhane (Ex. 2) Report at 4-5.) Moreover, a capital loss can reduce an individual's tax liability. An individual, for instance, may offset capital gain in a given year with a capital loss. Further, he or she can carry the loss into subsequent tax years to offset capital gains and up to \$3,000 per year in ordinary income. In short, a typical 876 Bondholder will see an immediate and real tax benefit if the 876 Fund is terminated, compared to a dribbling out of small interest payments into the indefinite future.

H. The Port Authority's Liquidation Proposal

The Port Authority has retained Piper Jaffrey to serve as placement agent to design a liquidation proposal and market the available 876 Fund revenue streams to prospective investors. Under the proposal, the revenue streams dedicated to pay off the 876 Bonds – payments by borrowers of 876 Bond proceeds, and net revenues from the Mississippi River land and fleeting operations – will be pooled. In addition, the \$200,000-plus now used to pay Port Authority fiscal and administrative fees and the \$185,000 to third party expenses will be used to supplement the revenue streams that Piper would be marketing. Notes secured by those revenue streams will be sold. Current planning indicates that Piper would market a single debt instrument – a note to be paid off over 15 years.

Another part of the liquidation of the 876 Fund is the sale of repossessed properties. Currently the Port Authority manages three repossessed properties. These may sell at any time.

Net sale proceeds are placed in the Special Funds account within the Common Revenue Bond Fund.

Both of the Port Authority's experts believe that 876 bondholders will be better off by going forward with Piper Jaffray's proposal to monetize the future revenue streams of the 876 Fund. Dr. Gibbons believes that the cost savings and improved liquidity and marketability will likely add nearly \$5 million in value to the 876 Fund. Gibbons Report (Ex. 4) at 6. The tax benefits the typical 876 investor could realize are harder to quantify, but Martin Culhane finds that individual holders could realize several hundred dollars in tax savings for each \$5,000 bond owned. (Culhane Report (Ex. 2) at 8-9. These are benefits that decline the longer it takes to liquidate the 876 Fund and disappear altogether if nothing is done.

I. The Court Will be Able to Review the Results of the Marketing Efforts

If the Court approves the process Piper Jaffray proposes for marketing the revenue streams of the 876 Fund, the Port Authority envisions it will take several weeks to refine the proposal and complete the offering documents and any necessary due diligence. The Port Authority would present the Piper Jaffrey marketing plan for this Court's approval through another petition for instructions.² Piper Jaffray would then present the opportunity to the market, probably sometime after January 1,

APPLICABLE LEGAL PRINCIPLES AND ANALYSIS

The Port Authority is before the Court because the current situation falls within the interstices of the Basic Resolution. There is no express acceleration provision within the Basic Resolution, nor any mechanism to compel either the Port Authority or borrowers to make up any shortfall in Net Revenues. Initially, and until 2004, there were reserve funds to cover that deficit,

² If the Court is willing, that hearing date could be tentatively set at the August 30 hearing.

but those funds have been depleted. In short, the governing resolution set forth no method of ending the 876 Fund other than full payment of all principal and interest to 876 bondholders out of the dedicated revenues.

We now know that full repayment will never occur. Instead, on its present course, 876 bondholders will only receive partial interest payments and never receive repayment of their principal. Further, the only funds ultimately available to cover the declining and ongoing interest payments are net land, fleeting and tonnage revenues, and so the bondholders' rate of return will also continue to decrease. Finally, the land, fleeting and tonnage revenues are public funds unrelated to the 876 Bonds which, if not spent to make payments to 876 bondholders and cover the administrative expenses of managing the 876 Fund, could be used to meet other important public needs.

Purchasers of 876 Bonds certainly invested with the expectation that they would receive their stated rate of interest over the term of their bonds, and a return of principal at maturity. But just as certainly, neither the Port Authority nor bondholders anticipated or agreed that the 876 Fund would continue indefinitely. That is demonstrated by the structure of the entire program. The purpose of the 876 Fund was to fund loans for development projects. Series of 876 Bonds were issued to generate capital for those loans. The revenue agreements between the Port Authority and borrowers were structured such that loan repayment amounts would pay the principal and interest due 876 bondholders within the term of the loan. All parties recognized that the main revenue stream for payments to 876 bondholders – payments by borrowers – would end when the loan was repaid. Consequently, the common understanding was that the 876 Fund would wrap up when the final 876 borrower completed its payments, originally set for 2022.

The central question for the Court is to determine the most equitable manner of handling a circumstance that the parties did not anticipate and avoiding an outcome – a fund of indefinite life with no prospect of ever paying the 876 bondholders in full and waste of public resources administering such a fund – that no one expected or agreed to.

A. The Doctrine of Impossibility

Basic doctrines of contract law should guide the Court's decision. The Basic Resolution has no express termination or effective remedial provisions. Similarly, 876 bondholders can do nothing more than receive those declining payments without any prospect of gaining back their principal. The Port Authority will continue to collect annual fees amounting to hundreds of thousands of dollars.

Minnesota courts have applied the doctrine that contract performance can be excused when unanticipated events have so changed the contractual relationship that its purpose is no longer served. For instance, the performance of a contractual duty may be excused for impossibility or impracticality when:

- Performance is impractical in the sense that it would cause an excessive or unreasonable burden upon the promisor, such as when a great increase in expense or difficulty is caused by a circumstance.
- The impracticality is due to the existence of a fact or circumstance that the promisor neither knew nor had reason to know at the time of the contract. The fact or circumstance must be inconsistent with the facts which the parties assumed as likely to continue.
- Impracticability of performance is not wholly attributable to the promisor.

Powers v. Siats, 244 Minn. 515, 70 N.W.2d 344 (1955); *First Nat'l Bank of Shakopee v. Edison Homes Inc.*, 415 N.W.2d 442 (Minn. Ct. App. 1987); *DJD Partners, VII, L.L.C. v. Finest Foodservices, L.L.C.*, 2002 WL 1613844 (Minn. Ct. App. July 23, 2002); RESTATEMENT (SECOND) OF CONTRACTS, § 261. See also *City of Savage v. Formanek*, 459 N.W.2d 173 (Minn. Ct. App. 1990) (doctrine of frustration of purpose).

A good example of the doctrine is seen in *Burgi v. Eckes*, 354 N.W.2d 514 (Minn. Ct. App. 1984). *Burgi* purchased a printing business from *Eckes* and leased space in a building owned by *Eckes*. Under the lease, *Eckes* was responsible for "major or standard repairs" to the building. *Burgi* subsequently declared bankruptcy and, as a result, the purchase price for the printing business was declared to be 25% of the originally agreed upon price. *Id.* at 516. A few months later, the city inspected the building and ordered that either \$50,000 in repairs be made or the building be razed. *Eckes* allowed the building to be razed; his income from the building did not justify the repairs. *Id.*

Burgi sued, claiming damages from *Eckes*' breach of his duty to make "major or structural repairs." The Court of Appeals suspended the duty to make repairs due to economic impossibility:

The rent [*Eckes*] received under the lease was barely enough to pay taxes, insurance, and utilities, and the rest of the building was empty. Any money to pay for major repairs to the building had to come out of payments [*Burgi*] made under the sales agreement. When, through no fault of [*Eckes*], these payments were diminished to less than a fourth of the agreed amount, repairing the building became so economically disadvantageous as to be an economic impossibility.

Id. 16 516. Since *Eckes* had no reason to anticipate when the lease was signed that the return on the sale of the business would be drastically reduced, the court relieved him of his repair obligations. "Requiring [*Eckes*] to now make the major repairs the building required to avoid destruction would cast an unreasonably burdensome expense on respondent which was totally unanticipated at the time of contracting." *Id.*

The current crisis facing the 876 Fund fits within this principle of impracticality. The status quo requires the Port Authority to use funds unrelated to properties financed by 876 Bonds – the land and fleeting and tonnage lease revenues – to make partial interest payments to 876 bondholders, potentially indefinitely. Those funds were never intended to be dedicated

indefinitely to that purpose. Further, the cost of administering the fund as a percentage of revenues will only continue to grow. Without termination, substantial tax benefits to 876 bondholders could go unrealized.

B. The Basic Resolution Can Be Construed to Encompass the Relief Sought

The Basic Resolution allows the Port Authority, without the consent of 876 bondholders, to make “any ... change which is not to the prejudice of any Holders of [876] Bonds.” (Basic Resolution § 9-1) (Ex. 1). The Port Authority's current proposal to supplement or amend the Basic Resolutions to authorize liquidation is a change that will not cause any prejudice to the 876 bondholders.

If the status quo continues, 876 bondholders can expect to receive revenues from performing leases through 2018, and net land, fleeting and tonnage lease revenues through 2022. These revenue streams are not guaranteed – borrowers could default, and the other revenue streams also face market risks. The Port Authority's proposal eliminates these uncertainties.

Indeed, the Port Authority adds value that cannot be realized from the status quo, do nothing approach. Termination will eliminate the Port Authority's fiscal and administrative fee, currently over \$200,000 annually, and third party expenses of approximately \$185,000 annually. Thus, revenues to a third party purchaser could be hundreds of thousand dollars greater than what is paid to the 876 Fund. According to Dr. Gibbons, these savings contribute significantly to the \$5 million (the most likely result within a range in benefit from \$2.5 million to \$5.8 million) in value to the 876 Fund that comes from early termination.

The second benefit is outlined by Martin Culhane in his report. The typical bondholder most likely has a capital loss because current bond prices are well below par values. Though individual holders can sell to realize a capital loss, 876 bondholders in any significant block

cannot do so without undue market discount. According to Dr. Gibbons, the Port Authority's proposal avoids this liquidity and marketability problem.

In short, the typical bondholder will be better off, and certainly no worse off, under the Port Authority's proposal than under the status quo. Since no prejudice will result, supplementing and amending the 876 Resolution to allow for the proposed liquidation is proper and should be approved.

CONCLUSION

The Court should authorize the Port Authority to go forward with Piper Jaffray to convert future 876 Fund revenues into a fixed sum for a final distribution to 876 bondholders. The 876 Fund and 876 Bonds were never intended to last indefinitely. By seeking to terminate the 876 Fund now, 876 bondholders will not be prejudiced but instead will be able to realize significant benefits, both with principal returned and taxes saved, benefits that cannot be realized by doing nothing.

Dated: August 28, 2006

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Stat. § 549.211, subd. 3.


