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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

CRUISE LINES INTERNATIONAL  
ASSOCIATION ALASKA, and CRUISE  
LINES INTERNATIONAL  
ASSOCIATION,

Plaintiffs,

v.

THE CITY AND BOROUGH OF JUNEAU,  
ALASKA, a municipal corporation, RORIE  
WATT, in his official capacity as City  
Manager,

Defendants.

Case No.: 1:16-cv-00008-HRH

**AFFIDAVIT OF DUNCAN RORIE WATT IN SUPPORT OF THE CITY AND  
BOROUGH OF JUNEAU'S OPPOSITION AND CROSS-MOTION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

STATE OF ALASKA                    )  
  )ss:  
FIRST JUDICIAL DISTRICT        )

I, Rorie Watt, being first duly sworn, states as follows:

1. I am City Manager for the City and Borough of Juneau ("CBJ") and have been the Manager since April 18, 2016.

*CLIAA, et al. v. CBJ, et al.*

*Case No. 1:16-cv-00008-HRH*

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OPPOSITION AND CROSS-MOTION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT Page 1 of 18

2. Before I became City Manager, I was the Director of CBJ's Engineering and Public Works Department.
3. I have a degree in Operations Research and Industrial Engineering and an Alaskan Civil Engineering license.
4. I have reviewed the Plaintiff's Motion for Summary Judgment and their Statement of Facts in Support of the Motion for Summary Judgment.
5. The CBJ yearly budget approaches \$90,000,000 and that does not include other expenses such as bond debt and other commitments on long term projects. CBJ Marine Passenger and Port Development fees total \$8,000,000 based on 1,000,000 passengers. The fees are used on services for the passengers and/or vessels, not on the City's general operating expenses.
6. The Port Development Fee ("PDF") is a passenger fee assessed in accordance with an initial CBJ ordinance and several resolutions to establish a fee for infrastructure construction and improvement. The Marine Passenger Fee ("MPF") is a passenger fee assessed in accordance with a voter's initiative, followed by a CBJ ordinance that established a fee to address the services and infrastructure rendered to cruise ships and their passengers. (CBJ Code 69.20.005).
7. The Port Development Fee and the Marine Passenger Fee are used for services rendered or conveniences provided to the cruise ship passengers, and/or crew, and/or vessels.
8. Neither the MPF nor the PDF is intended to raise revenue for services and infrastructure for the general public benefit.

9. The list of potential uses for the MPF in CBJ code 69.20.120(a) do not reflect typical municipal governances: Design, construction, enhancement, operation, or maintenance of capital improvements; Operating funds for personnel, training, commodities, rentals, services and equipment for services provided, made available to, or required as a result of marine passenger ships and marine passengers; Projects and programs that promote safety, environmental improvements efficiency of interstate and international commerce, or enforcement of laws caused or required by marine passenger ships and marine passengers; Acquisition of land required to execute the activities listed in this section; Surveys, analyses, polls, plans, monitoring, and similar efforts to measure, describe or predict, or manage marine passenger ships and marine passengers, for above list. These are costs directly related to the vessels and passengers necessitated by visitation of more than one million cruise ship passengers per year. Without these fees the CBJ would not offer any of these services.
10. It is not feasible or economically cost efficient to track every minute spent by every CBJ employee providing some service to the cruise ships, passengers and crew. In order to address these costs to the CBJ for providing the service, the CBJ developed an allocation formula for allocating a portion of the Marine Passenger Fees collected for the department operating expenses for those departments who provide such services. The explanation of this formula is accurately stated in the Statement of Facts. There are currently nine departments who received an allocation in this manner. This allocation formula was provided to CLIA's predecessor for comment before it was implemented, and neither CLIA nor its members objected to or

provided any alternative formula. The CLIA predecessor representative's only response was that CBJ not state in the manager's report that the allocation formula had been approved by the NWCA.

11. The amount allocated to the CBJ departments for identified government operations that support the cruise industry is about 2% of the overall CBJ general government operating budget per year. This amount has never exceeded 2% of the total overall CBJ general government operating budget per year.
12. The remaining MPF has been spent on capital projects and on services funded for the benefit of the vessels and/or the passengers.
13. All of the expenditures challenged by CLIA are for services rendered or facilities provided to the cruise ship vessels and/or their passengers and/or crew.
14. The "man-made" island that CLIA has listed in their motion is not outside the waterfront planning and development area as identified in the CBJ adopted Long Range Waterfront Plan (LRWP) in 2004.
15. The whale statue that CLIA has listed in their motion is not outside the waterfront planning and development area as identified in the CBJ adopted Long Range Waterfront Plan (LRWP) in 2004.
16. None of the fees from the MPF and the PDF have been used for the "whale statue" referenced in CLIA's motion. This was paid for with donated private funds.
17. In preparing the yearly proposed list of projects for the MPF and PDF as required of me by the CBJ code, I acted in good faith on my belief that expenditures for services to passengers was constitutional.

18. Each year I prepare a list of recommended projects and grants for the use of the MPF based on input from CBJ departments, CLIA and its members, CLIA affiliated companies such as Cruise Lines Agency of Alaska, the Docks and Harbors Board, and the public. The draft list is public and is distributed to CLIA's representatives and members.
19. Since I have been City Manager, I have met and consulted with industry representatives prior to presenting my proposed list for MPF expenditures each year to the CBJ Finance Committee and gave the industry the opportunity to object to any expenditures as has been required under the CBJ code since 2008.
20. I relied on the requests for funding for certain projects and services by CLIA or CLIA member representatives or their agents, and on their lack of written objections to other projects and services to make my final MPF recommendations to the CBJ Finance Committee and the Assembly.
21. The CBJ Finance Committee forwards their approved list of MPF expenditures to the CBJ Assembly during its yearly budget analysis. CLIA and its members and their agents often provided their input, including requests for funding of services and projects, to the Finance Committee.
22. The Assembly makes the ultimate decisions as to what is spent out of the PDF and MPF each year as part of the Assembly's discretionary budgetary decision-making powers. The recommendations from the Finance Committee are discussed in public session. CLIA and its members and their agents often testified at the Assembly meetings, including providing their support for funding of services and projects that benefitted the passengers, such as the crossing guards program.

23. CBJ's MPF and PDF are similar to the City of Ketchikan's fees which total \$7.00 and are used similarly, for example both the CBJ and Ketchikan use the fees to fund crossing guards.
24. The Port Development Fee has been collected since 2002, and in its present form of \$3.00 since 2008. CLIA has never objected to or challenged the collection of the PDF or the reasonableness of the fee since I have been City Manager.
25. CBJ used the PDF consistent with the resolutions and has consulted with CLIA's predecessors, CLIA, and cruise line representatives or gave them the opportunity to consult on proposed PDF projects.
26. The CBJ relied on the requests by industry and their lack of objections to certain projects when deciding what to finance with PDF.
27. The CBJ has been unreasonably prejudiced by CLIA's delay in bringing a lawsuit more than 14 years from the implementation of the fees. Many of the prior city managers and assembly members who made the decisions on the CBJ projects are no longer part of CBJ and CBJ cannot reach these individuals for testimony in the case. CBJ has also relied on CLIA and the industry's requests for projects and agreements with other projects and relied on the representations of cruise industry representatives supporting the services and projects to believe those services and projects would not be challenged later as they were approved or requested by the cruise ship industry representatives and/or agents. CBJ relied on the statement by Don Habeger in 2008 who made public comments as the representative of the industry and the NWCA in response to the resolution creating the \$3.00 MPF, when he said that the industry supported the PDF and that the industry specifically said

the fee would be in harmony with any project in the waterfront plan. (See CBJ069749). The creation of new docks and the Seawalk were in the waterfront plan since 2004.

28. The Port Development Fee has only been used for capital projects on infrastructure directly used by the cruise vessels along the downtown waterfront.
29. The most significant recent project paid for by the PDF is the 16B Project to construct a new public dock known as the Cruise Ship Terminal (CT) dock and to reconstruct the Alaska Steamship Wharf (AS) to accommodate larger cruise ships. This project costs in excess of \$54,000,000. The docks are used solely by cruise ships that pay the MPF and PDF.
30. Other than objections to specific design components of project 16B, no industry representative has objected to or challenged any use of the PDF. There was an Advisory Group for the 16B project which included CLIA's Executive Director John Binkley. Comments from the Advisory Group were taken into account in the design of the project. At the 16B ribbon cutting ceremony, CLIA's Executive Director Binkley complimented the CBJ for leading the way in creating large docks.
31. Since 2011, the PDF has only been spent on the 16B dock project and the Seawalk.
32. The PDF has not been spent on services only for passengers.
33. The CBJ incurred substantial bond indebtedness to plan, design and build the 16B project, with the express intent to repay the indebtedness in large part from the Port Development Fee.
34. Juneau would not have undertaken such a massive project if CLIA's members did not need a new dock for larger ships. CBJ took on substantial debt based on the

assurance of CLIA's predecessor and its members that CLIA and its members did not and would not challenge the Port Development Fee. CLIA's members solely determine the size, deployment and scheduling of the ships on a year-to-year basis with the help of Drew Green of Cruise Line Agencies of Alaska. CLIA has never asked CBJ to participate in the planning or scheduling of ship visitation.

35. Since the imposition of the \$5.00 MPF passenger fee in 2001, I have found no evidence that any cruise ship company or CLIA or CLIA representative, or any CLIA member has challenged the collection of the MPF as laid out in CBJ code 69.20.100. No CLIA member has paid their MPF under protest.
36. Up until the filing of this lawsuit, neither CLIA nor any of the representatives of its member companies ever expressed the position to me that the MPF and PDF could only be used for services to the actual physical vessel. I have also found no evidence in the files that CLIA or its members ever expressed to any prior City Manager that they believed the MPF and PDF could only be spent on services to the physical vessel.
37. CLIA, through its members, regularly requested projects and expenditures for funding from the MPF, including many which could be categorized as services not only for the physical vessel.
38. CLIA, through its members, did not limit its approval to only projects on the actual docks.
39. The CBJ has funded projects and programs specifically requested by CLIA's members. For example, the Tourism Best Management Practices funded every year



with MPF since FY04 is a program requested by Kirby Day with Princess Cruises, a CLIA member, who also runs the program.

40. Kirby Day and Drew Green have presented themselves as industry representatives to the CBJ and the City Managers and Assembly have relied on their representations in making decisions on MPF funding each year. Neither CLIA nor its predecessor nor any CLIA members ever advised myself or any prior City Manager that Mr. Day and Mr. Green were not representatives of the cruise ship industry when they communicated with me, prior City Managers, the Finance Committee and the Assembly. Neither Mr. Day nor Mr. Green ever limited their written and verbal comments about the services and projects to only being on behalf of Princess or Cruise Lines Agencies.
41. CLIA's members continued to request projects that could be considered services to passengers even after the Complaint was filed. For example, restroom cleaning and maintenance at the A.J. Dock in FY2017, which is privately owned with a majority shareholder being Holland America Line, Inc. and whose interests were represented to the CBJ by Drew Green. The agreement with CBJ for that funding was signed in June 2016 after the Complaint was filed. CBJ07191 is a correct copy of the memorandum of agreement for this funding. The A.J. Dock and Franklin Dock continue to request funding for restroom cleaning and maintenance for the FY19 funding in written letters from December 2017 and in a meeting on January 12, 2018.

42. On a six-cruise ship day, over 10,000 passengers will disembark on the docks and into downtown Juneau and use all of the services CLIA has listed in its motion as allegedly being unconstitutional.
43. The restrooms located near Marine Park in the ground floor of the parking garage were constructed solely due to the large number of cruise ship passengers utilizing the area; these restrooms are closed in the winter months when there are no cruise ships in town. Due to high volume use by cruise ship passengers, the bathrooms must be cleaned and restocked every two hours.
44. The crossing guards located downtown are for the safety and efficiency benefits of the cruise ship passengers in the downtown area and for vehicle transportation including the substantial number of tour vehicles which solely serve the cruise ships and which are a fundamental piece of the cruise ship's business; the crossing guards never work when there are no cruise ships in town, there is no need. There would be no need for these crossing guards if it were not for the cruise ship passengers in downtown Juneau.
45. The information kiosk provides services to cruise passengers and is manned by the Juneau Visitors Bureau. It is closed after the cruise ships leave each season. There would be no need for the information kiosk if it were not for the cruise ship passengers in downtown Juneau.
46. Cruise ship passengers and crew do use the payphones located downtown. The CBJ would not be funding these payphones downtown if it were not for the use by the cruise ship passengers and crew.

47. The cruise ship passengers and crew do visit the City and State Museum located within walking distance to the docks.
48. The extra police officers are stationed downtown in the summer to enhance the safety for cruise passengers and crew in Juneau. The cruise passengers and crew do benefit from the extra security. The CBJ would not station these extra police officers downtown if it were not for the cruise ship passengers and crew who increase Juneau's downtown population dramatically.
49. The downtown security program referenced in CLIA's fact No. 219 ensures that the cruise ship passengers and crew have a safe and inviting shopping experience in downtown Juneau. This program would not be needed if it were not for the high numbers of cruise ship passengers using and enjoying this area each day a ship is in port.
50. Cruise ship passengers use CBJ's ambulances, EMTs, Bartlett Hospital, and Capital City Fire and Rescue ("CCFR") and non-profit medical air transportation. These services are needed to provide emergency medical services to the cruise ship passengers, which the cruise ship companies are unable or unwilling to provide. CBJ is not willing to let passengers suffer from medical emergencies even if the cruise ship companies do not provide emergency medical providers or emergency facilities while their passengers are in port. But, CBJ would not be able to fund these additional services except through the MPF. If CBJ did not fund additional ambulance service, CBJ would regularly respond to cruise ships and their passengers and be unable to respond to Juneau citizens in dire need of emergency life support services.

51. There would not be a need for the MPF funding of non-profit medical air transport or the CCFR air ambulance if it were not for the cruise ships coming to Juneau and their passengers needing emergency medical care. CBJ would not provide non-profit medical air transport funding if it were not for the need due to the transportation of cruise ship passengers.
52. The passengers who obtain emergency medical services in Juneau through Juneau's ambulances and Bartlett Hospital have not paid 100% for these services; the amounts requested by the medical providers and funded by the MPF is the amount that was unable to be collected from the passengers. The collected amounts did not cover the cost of the CBJ employees providing the emergency services nor the cost of maintenance and purchasing for additional emergency vehicles and equipment necessary due to the increase in the need for services from the cruise ship passengers.
53. The dedicated case manager and cruise ship passenger liaison that has been funded by the MPF for Bartlett Regional Hospital would not be needed if it was not for the cruise ships coming to Juneau.
54. The EMS funding listed in CLIA's Exhibit No. 1, page 47, provides additional responders and funds overtime for EMTs to service CBJ ambulances as they are transporting passengers from the cruise ships to Bartlett Regional Hospital or the airport for aircraft transport; this funding would not be needed if it were not for the cruise ships and their passengers who need medical transport and are not provided medical transportation by CLIA's members. There would be a staff shortage

without this funding and CBJ would be unable to respond to the passenger emergencies.

55. The amount noted in CLIA's fact No. 160 only provided partial funding for the CCFR ambulance that replaced a 2003 ambulance that operated almost entirely to transport cruise ship passengers. The amount funded by the MPF did not pay for the entire ambulance although this ambulance is used almost exclusively for cruise ship passengers.
56. The street and sidewalk improvements scheduled for FY18 will directly promote the safety of the cruise ship passengers. CBJ would not be undertaking these improvements if not for the 1,000,000 plus passengers coming into the dock and port/harbor areas. CLIA did not object to these projects in writing when my proposed FY18 MPF list was circulated.
57. The use of the MPF for some of the legal fees to defend this lawsuit is a benefit to the vessels. If CBJ did not vigorously defend this lawsuit, and the fees could not be used for the infrastructure, security, safety measures and other services, CBJ would not have built the 16B dock for the large cruise ships and would not undertake any of the other infrastructure activities and improvements directly used by and benefitting the vessels.
58. That the CBJ is granted CPV funds does not change how the CBJ uses the MPF and PDF, which are vetted and granted for services and projects in accordance with CBJ code after consultation with CLIA and its members and its agents and representatives and the public.

59. The Statter Commercial Loading Ramp project being paid for with CPV funds was designed to address issues relating to the buses carrying cruise passengers to the for-hire tours, and the loading and unloading of these tours at the harbor. The numbers of tours and tourists overwhelms the existing infrastructure and poses safety hazards to cruise ship passengers and exposes CBJ to significant liability.
60. CLIA's Exhibit 44 is the FY16 MPF funding list; CLIA cruise line members or related private dock owners specifically requested the projects listed on pages 4-6 of the FY16 list.
61. CLIA's Exhibit 46 is the FY17 list that was approved; the majority of the projects listed on pages 3-7 of CLIA's Exhibit 46 were specifically requested by CLIA cruise line members or related private dock owners, which include CLIA members in that ownership.
62. The Plaintiffs and their member companies did not object to the proposed FY18 MPF list in writing when I circulated my list for public comment.
63. The expenditure to expand wireless internet service at the Marine Park Downtown Public Library in FY18 is to provide free internet to the passengers and crew of the cruise ships who frequent Marine Park and the dock area. Marine Park is used almost exclusively by cruise ship passengers, crew, and food and tour vendors during the cruise season. CLIA's Exhibit 45 discussed in CLIA's fact No. 128 is a request for funding, not showing any budgeted funding. CLIA did not object to this project in writing when it was proposed for the FY18 Marine Passenger funding list. If the CBJ did not provide wireless internet in Marine Park, the immediately

adjacent public library would be rendered useless at times for Juneau residents as cruise ship passengers heavily use the facility for access to Wi-Fi.

64. The Marine Park bus parking lot is used by CLIA's members tour buses who provide transportation to cruise ship passengers for tours. The parking lot is closed in the summer for public parking.
65. The Marine Park bus parking lot brick repair budgeted in FY16 and referenced in CLIA's fact No. 135 would not be needed if it were not for the tour buses owned by CLIA's members and associated companies and the over one million cruise ship passengers who visit the CBJ each year. The tour buses have torn up the parking lot with their use.
66. The funding provided to Capital Transit referenced in CLIA's Fact No. 133 was used to offset additional demands to the public transit system by the cruise ship passengers and crew.
67. CLIA's Exhibit 110 is a list of all proposed Capital Improvement Projects ("CIP") for FY2018-2023. It is not limited to projects funded by the MPF or PDF and is not limited to projects which already have approved funding.
68. The projects to Front Street and Franklin Street and First Street in FY17 and FY18 referenced in CLIA's Facts No. 140 and 141 are to provide safe sidewalks, ensure ADA compliant sidewalks, and provide safe crosswalks and travel lanes for the cruise ship passengers as they walk through downtown and as they access Juneau by the cruise ship owned or affiliated tour buses. But for the seasonal rush of passengers, CBJ would be able to do construction costs on these roads in the summer. Since this is not feasible, we have programmed construction during the

winter, thus driving up project costs. CBJ cannot deny ships entry to Juneau, driving the need to fix sidewalks, widen sidewalks, and provide directional signage. The majority of the road funding has come from local funds, not from the MPF. This project may not have been needed if it were not for the 1,000,000 passengers who come to Juneau and use the sidewalks each summer and for the high number of buses using this road due to the cruise ship industry. I have attached two videos from the 2016 cruise season showing the difference between the use of the port and dock areas when there are no cruise ships and when 4 cruise ships are in town. These videos do not do complete justice to the volume of passengers using the port and dock facilities on a five, six, or seven cruise ship day. These videos also do not show all the areas of the CBJ used by the passengers. CLIA did not object in writing to these projects in FY17 or FY18 when they were proposed for public circulation.

69. The new bathrooms proposed in FY18 would be located south of the library and the parking garage referenced in CLIA's fact No. 143 will be in a location accessed by cruise ship passengers as they travel between the docks and downtown. The restrooms would not be built if it were not for the high amounts of cruise ship passengers and these bathrooms will not be open to the public in the winter. The current bathrooms located in Marine Park are used so heavily by cruise passengers they need to be cleaned and stocked every two hours.
70. The Seawalk goes directly along the cruise ship docks, starting at the Franklin Dock and continuing along the CT and AS docks before connecting to the sidewalk. The Seawalk picks up again at Gold Creek and continues to the whale statue. The



Seawalk was envisioned and included in the Long Range Waterfront Plan in 2004. This Seawalk is similar to the Seawalk in Ketchikan, which CLIA has not objected to the use of Ketchikan's MPF to construct. It is also similar to seawalks in other cruise ship destinations, either existing, planned, or recommended, such as in Hoonah.

71. CLIA did not comment on the funding source of the Seawalk until December 2015, after the CLIA members and representatives had supported the project in the past, and after the Seawalk sections starting at industry-owned Franklin Dock and continuing along the CT and AS docks had already been constructed.
72. The Goldbelt dock is used for docking of smaller cruise ships and tourist day excursion boats which serve cruise line passengers. Some of the smaller cruise ships are subject to the CBJ Marine Passenger Fee, some are exempt (based on size). Some tour vessels previously used the CBJ lightering float in Marine Park which has since been removed to allow for docking of the new larger cruise ships.
73. The term "volunteer overtime hours" for Juneau Police Department referenced in CLIA's "fact" No. 145 does not mean that CBJ would need to pay the overtime hours.
74. The Last Chance Basin project listed in CLIA's fact No. 221 was designed to improve production so that cruise ships could draw fresh water in Juneau. Prior to this project, the CBJ was unable to supply cruise ships with stable or predictable water supply when in Juneau. This provides a direct service to the vessels, and was approved by the industry.

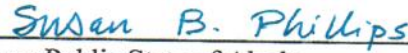
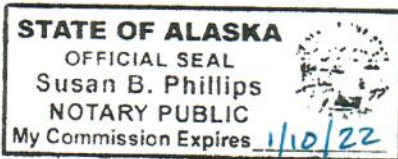
75. The Alaska Marine Highway ferries do not dock or enter the Port of Juneau downtown.

Dated: January 26<sup>TH</sup>, 2018



Duncan Rorie Watt

SUBSCRIBED AND SWORN before me this 26<sup>th</sup> day of January, 2018.



Notary Public State of Alaska

My commission expires: 1/10/22

**CERTIFICATE OF SERVICE**

The undersigned certifies that on <sup>February</sup> 9, 2018 a true and correct copy of the foregoing **AFFIDAVIT OF DUNCAN RORIE WATT IN SUPPORT OF THE CITY AND BOROUGH OF JUNEAU'S OPPOSITION AND CROSS-MOTION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** was served on the following parties of record via ECF:

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/s/ Robert P. Blasco

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