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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 BOB BARTHOLOMEW IN SUPPORT OF 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, Bob Bartholomew being first duly sworn, state as follows:

1. I am the Finance Director for The City and Borough of Juneau (CBJ) and

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

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have been the Finance Director since May 14, 2012.

2. I am the direct supervisor of the Controller, Assessor, and of the Purchasing, Sales Tax, and Treasury Division Department Heads for CBJ.
3. I have a degree in Business Administration with an Emphasis in Accounting from California State University – San Diego. I earned my Alaska CPA license around 1985, working for the national accounting firm of Coopers & Lybrand. My CPA license was active for about 10 years. I then moved to senior management roles with the Alaska Department of Transportation & Public Facilities, the Department of Revenue, and the Alaska Permanent Fund Corporation before moving to CBJ. I have received ongoing professional education my whole career.
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 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.
6. A portion of the Marine Passenger Fee has been allocated to certain departments of the CBJ that provide services to the passengers and/or vessels. This money is not used on the City's general operating expenses but is used to reimburse departments for the costs of services that these departments provide to the passengers or vessels.

7. For the City to provide services without the administrative costs related to tracking every second spent by every city employee providing a service to the cruise ships or passengers or crew, CBJ developed an allocation formula.
8. The application of the formula to the total fees collected results in the amount allocated to the CBJ general fund for the city departments who provide services to the ships, passengers, and/or crew.
9. The departments who are allocated some of the MPF are assessed each year to ensure only departments who provide services to passengers/and or vessels are allocated money.
10. As of FY17, 9 departments obtained some funding from the allocation formula. These departments were City Attorney, City Manager, City Clerk, Finance and Administration, Controller, Treasury, Fire, Police, and Streets.
11. CBJ has formulas for the allocation that determines the amount each department is granted from the total amount allocated each year. CBJ uses an indirect cost allocation process to recover MPF revenues to fund services provided that benefit cruise ships and/or passengers. For FY17, \$1.4 million was moved from MPF revenue and deposited into the General Fund for the allocation method to reimburse the departments providing services to the passengers and/or vessels. The formula is based on multiple metrics. The City Attorney's Office, City Manager, Finance Administration, Streets Department, and CCFR use what is commonly called the Tom Garrett

formula against a specific portion of their budgets; the City Clerk divides different sections of their budget between the cost centers (departments) with services benefiting ships and passengers; Controllers Office & Treasury allocate a section of their budget based on an estimate of time accountants spend on each cost center (department); and JPD calculates an estimated percentage of summer calls related to tourism to allocate a portion of their budget.

12. The allocation from the Marine Passenger Fee to the CBJ departments providing services to passengers and/or vessels has always been about 2% of the CBJ's general government operating budget.
13. The MPF allocated money goes into the CBJ general fund and roaded service fund to pay the costs of each specific department's services. These two funds, along with the fire service area fund, make up the General Government Fund.
14. The total operating expenses for CBJ in FY2017 was \$68,300,000, of which \$1,400,000 was paid for, as determined by the cost allocation formula, by Marine Passenger Fees.
15. The Port Development Fee does not raise revenues for general municipal services.
16. The Marine Passenger Fee does not raise revenues for general municipal services.

17. The Statter Harbor Commercial Loading Ramp listed in Plaintiff's Fact No. 98 was appropriated money from the CPV (\$9.2 million between FY17 and FY18, which pays for 85% of the project) with the remaining amount from Docks and Harbors Funds. There is no MPF or PDF money appropriated for this project.
18. There were some MPF appropriations to the Auke Bay harbor before 2010. Money was appropriated in FY01, FY02, FY04, FY05 and FY06 for the Auke Bay Commercial Loading Facility and Statter Electrical Upgrade & Other Improvements. \$20,000 was appropriated in FY02 to Statter Harbor Parking & Pedestrian improvements. In 2007 and 2009, the MPF was used to match an ADF&G grant for environmental documentation and permitting for the Statter Harbor Tourism Staging Area EIS. The last year that any money was appropriated from the MPF and PDF for Auke Bay was FY09. These projects were funded in preparation of the Statter Harbor Commercial Loading Ramp project.
19. The project referenced in CLIA's fact No. 100 and CLIA's exhibit No. 116 is for a project unrelated to the Commercial Ramp project and is not funded with MPF or PDF or the CPV.
20. The Port Development Fee has only been used for capital projects on waterfront infrastructure along the downtown waterfront with the exception of \$48,000 spent between 2007 and 2016 (between \$2,800 and \$5,000 each

year) for indirect CBJ support services costs for those projects. This annual charge is deposited into the Dock Enterprise Fund to reimburse for Docks & Harbors administrative staff time to prepare and send PDF invoices, track passenger counts, and respond to questions from the cruise lines.

21. With the exception of the \$48,000 above, which is one-tenth of a percent of the PDF funds, the PDF funds have not been transferred to "general, special revenue or enterprise funds." They have all been transferred to Capital Project or Debt Service Funds.
22. Since 2011, the PDF has only been used for cruise ship berth projects and the Seawalk. The Seawalk has been in the Long Range Waterfront Plan since 2004. It has always been my understanding that the cruise ship industry representatives expressed their support for the Long Range Waterfront Plan when it was developed.
23. Since FY15, part of the PDF was used to pay debt service on revenue bonds issued for the cruise ship berth project 16B.
24. The Port Development Fee has not been used for services related only to passengers.
25. The documents bates stamped CBJ198904-198906 are accurate in showing the projects paid for and the debt service paid with the PDF between FY2001 and FY2016. \$9.1 million was transferred to debt service and \$27.4 million was spent on capital improvements.

26. In 2014, \$6 million in bonds were sold for the Seawalk projects (\$4 million of this was spent on the portion from Taku Smokeries to the Franklin Dock). Debt service on these bonds will be paid from 2015 to 2039, with annual payments of \$405,000 for a total of \$10.1 million. The Seawalk is easily seen all summer as a popular area and walk by the cruise ship passengers.
27. In 2015, \$22.7 million in bonds were sold (including \$1.7 million for funding the required debt reserve and \$130,000 in closing costs). The remaining went into the 16B capital project. Debt service on these bonds will be paid from 2016 until 2034, with annual payments of around \$1.6 million for a total of \$31.7 million.
28. CBJ would not have taken on the indebtedness necessary to build 16b if CLIA's predecessors and members had not concurred in the Port Development Fee and its use.
29. The Port Development Fee has been used consistent with the resolutions since it was first enacted in 2002, when Resolution 2150 created a port development fee of \$1.73 per passenger and continuing in 2008, when the fee was increased to \$3.00 per passenger. (The fee originally had a sunset date, but the sunset date was repealed in 2010.) (See Resolution Nos. 2163, 2294b-am, 2423b-am, 2552).

30. CBJ has used the Port Development Fee consistent with the resolution and in doing so has consulted with CLIA's predecessor and cruise line representatives or gave them the opportunity to consult.
31. The CLIA members have all paid the Port Development Fee since its inception, by paying CBJ directly or through their agents, such as Cruise Line Agencies of Alaska.
32. The CLIA members have never objected to or challenged the payment of the PDF.
33. The most significant recent project 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 cost in excess of \$54,000,000. At the ribbon cutting ceremony in May 2017, Mr. Binkley, CLIA's Executive Director, in his speech expressed that Juneau was leading the way for all of Alaska in the development of docks to support the new larger cruise ships.
34. The Cruise Ship Berth Improvements project listed in CLIA's fact No. 127 and CLIA's Exhibit 1 is funding for the 16B project for the cruise ship docks.
35. The CT dock is used exclusively by cruise ships that pay the MPF and PDF. In 2017, all the ships who docked at the CT dock were CLIA member ships with the exception of two National Geographic ships, the Sea Bird and the

Sea Lion, who also pay the MPF and PDF but who are not owned by CLIA member companies.

36. The AS dock is used exclusively by cruise ships that pay the MPF and PDF. In 2017 the AS dock was used exclusively by CLIA member ships.
37. The CBJ incurred substantial revenue bond indebtedness to plan, design and build the dock, with the express intent to repay the indebtedness from the Port Development Fee.
38. Juneau would not have undertaken such a massive project if CLIA's members did not need a new dock for larger ships.
39. CBJ took on substantial debt based on the demands of CLIA and/or its predecessors that it would be bringing bigger ships that could not dock at the existing docks and by CBJ incurring the debt to satisfy the demands had the assurance that the PDF would be available to pay the debt service.
40. The MPF of \$5.00 per passenger has been in place since 2001.
41. The spreadsheet labeled "Marine Passenger Fee Revenue and Expenditure History/Projects" is an accurate list of all the categories of operational expenditures for the MPF from FY01-FY17 (bate stamped CBJ198832) and for all MPF funded capital projects from FY01-FY17 (bate stamped CBJ198968).<sup>1</sup>

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<sup>1</sup> Counsels note: The same spreadsheets were provided to CLIA as part of discovery on September 22, 2017 in folder number 32; the spreadsheet was bate stamped CBJ175882. CBJ has created a large pdf version for easy viewing with these documents.

42. To my knowledge, no cruise line company (nor CLIA or NWCA) ever claimed that the amount of the MPF was unreasonable.
43. Since I have been at CBJ, no cruise line company protested the payment of the fees under CBJ 69.20.100 and every CLIA member cruise line who has entered CBJ's port has paid the MPF. To my knowledge there has not been any payment of fees under protest in accordance with CBJ 69.20.100 .
44. The CBJ has expended \$548,000 in attorneys' fees up to November 2017 in this case.
45. CBJ used \$342,000 in Marine Passenger Fees to defend this lawsuit.
46. CBJ stopped using marine passenger money to defend the lawsuit on June 30, 2017.
47. CBJ assesses a passenger facility fee for enplanements and dis-embarkments at the Juneau Airport through a Passenger Facility Charge (fee) with FAA's approval. The revenue collected through this fee is expended on airport infrastructure.
48. The Plaintiff's exhibit 45 is a request for funding for wireless service at the Marine Park Downtown Library; it does not show budgeted funding. The money for this project was not appropriated prior to the filing of the Amended Complaint in this case.

49. The bus fare from summer tourists reduces the general fund subsidy to Capital Transit, but does not fully offset the costs of providing transit bus service to the summer tourists.
50. Between FY12 and FY17, CBJ granted money to the Juneau Convention and Visitors Bureau for visitor information services through the manning of a tourist info kiosk on the dock to service cruise passengers.
51. CBJ did not fund the 2007 feasibility study requested by the Downtown Business Association referenced in Plaintiff's Exhibit 55 with MPF or PDF.
52. CBJ has not used any MPF or PDF funds for a downtown circular/shuttle although the Downtown Business Association has submitted requests.
53. According to industry representations, the 2018 and 2019 passenger counts are headed towards 1.2 million passengers per summer.
54. Cruise ships stay in the Port of Juneau between 6 and 14 hours on average.
55. I have reviewed the affidavit of James Calvin. Without the opportunity to review his work papers, I am not able to determine the accuracy of many of his statements as related to the finances of CBJ and the revenues he says are generated in the Port of Juneau. For example, Mr. Calvin states in paragraph 18 a comprehensive sales tax number and he includes the "cruise industry" in the listing of persons or entities he says is responsible for that revenue. I am not aware of any of the CLIA members who bring cruise ships to the Port of Juneau paying any sales tax other than the sales tax they pay on private dock

fees. I would dispute that statement and cannot properly evaluate it without seeing what back up documents he was relying on to make that statement. I have further comments below:

56. I have never seen information that breaks out revenue collections from cruise ship passengers versus crew.
57. I do not have information on accommodation spending as calculated for cruise ship passengers.
58. I do not have information on sales tax paid by the cruise line companies while in the City and Borough of Juneau other than any sales tax paid on private dock fees.
59. I do not have information to support that \$23.2 million was generated by cruise-related activities in FY16 as alleged by CLIA in their Fact No. 90 and Calvin's affidavit No. 57. CBJ collected \$4,957,205 in MPF and \$2,940,285 in PDF in FY16. CBJ collected approximately \$500,000 in FY16 for dockage fees and \$500,000 in maintenance fees. The State collected CPV and shared \$4,460,365 to CBJ in FY16.
60. The cruise lines are not charged a sales tax for commissions they retain from tour purchases.
61. Cruise ship passengers are not charged a sales tax for flight-seeing portions of tours.

62. I do not know how Mr. Calvin estimated the percentage of property taxes that are supposedly generated by cruise-dependent industry. I need to see his work papers to properly evaluate his assertions.
63. I do not know what "services and licenses, permits, and fees" Mr. Calvin is estimating in his affidavit No. 52 as equal to \$1.4 million in 2016. I need to see his work papers to evaluate how he came up with his number.

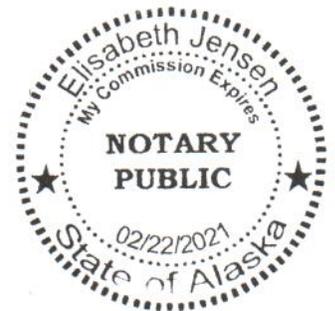
DATED: January 11, 2018

  
\_\_\_\_\_  
Bob Bartholomew

SUBSCRIBED AND SWORN to before me this 11 day of January, 2018.

  
\_\_\_\_\_  
Notary Public State of Alaska  
My commission expires: 2/22/2021

**CERTIFICATE OF SERVICE** ~~February~~ January 9, 2018 a true and correct copy of the foregoing **AFFIDAVIT OF BOB BARTHOLOMEW IN SUPPORT OF 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 ~~and U.S. First Class Mail~~.



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/s/ Robert P. Blasco

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