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From: Speaker's Office <speaker@guamlegislature.org>
Sent: Monday, June 29, 2020 8:41 AM
To: Clerks Office
Cc: Rennae Meno
Subject: M&C Fwd: PAG Board Meeting Materials - June 25
Attachments: 062520 PAG Board Meeting Materials.pdf

06-26-20	3:23 PM	06-25-20	Materials for Board of Directors meeting held on June 25, 2020.*	Port Authority of Guam	35GL-20-1931

Sinseru yan Minagåhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

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Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.

---------- Forwarded message ---------
From: **marge** <mduenas@portofguam.com>
Date: Fri, Jun 26, 2020 at 3:23 PM
Subject: PAG Board Meeting Materials - June 25
To: <speaker@guamlegislature.org>

Hafa Adai Speaker,

In accordance with Section 8113.1, Chapter 8, 5 GCA, the Port Authority of Guam hereby submits an electronic copy of its Board of Directors, June 25, 2020 board meeting materials.

Regards – marge

PORT OF GUAM
ATURIDAT I PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

REGULAR MEETING OF THE BOARD OF DIRECTORS
Jose D. Leon Guerrero Commercial Port
Thursday, June 25, 2020
PAG Board Conference Room, Piti
3:00 p.m.

AGENDA

I. CALL TO ORDER

II. APPROVAL OF MINUTES

1. June 9, 2020 – Regular Board Meeting

III. PUBLIC COMMENTS:
a. Public Comments
b. Employee Comments
c. PAGGMA Association

IV. GENERAL MANAGER'S REPORT (deferred to Old/New Business Items)

V. OLD BUSINESS

VI. NEW BUSINESS

1. Resolution No. 2020-04 Ongoing Litigation

VII. ADJOURNMENT

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MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS
Tuesday, June 9, 2020

I. CALL TO ORDER

There being a quorum, the regular meeting of the Board of Directors was called to order at 3:02 p.m., Tuesday, June 9, 2020. Present at the meeting were:

Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Maria D.R. Taitano, Member – *Telephonic Participation*
Rory J. Respicio, General Manager
Dominic G. Muna, Deputy General Manager, Operations
Luis R. Baza, Deputy General Manager, Admin/Finance

Absent was Board member Anthony P. Chargualaf. Also present was Guam Chamber of Commerce-Thomas Hertslet; SSFM-Gerard Bautista; Deloitte-Lee Vensel and Port Staff.

For the record, the Chairman announced that Board member Maria Taitano is participating in the meeting telephonically.

II. APPROVAL OF MINUTES

a. **February 28, 2020 – Regular Board Meeting:** Director Taitano made motion to approve the minutes of February 28, 2020, subject to correction. The motion was seconded by the Vice Chairman and was unanimously passed.

III. PUBLIC COMMENTS

a. **Public Comments:** Without objection, Mr. Thomas Hertslet, Guam Chamber of Commerce addressed the Board. Mr. Hertslet thanked the members and mentioned that as a member of the Guam Invasive Species Council, he was asked to solicit the support of the Port as well as the Port Users Group with respect to how the fees are assessed that it be simplified - instead of by 'pounds' that the fee assessment be by 'containers'.

b. **Employee Comments:** None.

c. **PAGGMA Association:** PAGGMA Vice President Steve Muna reported that the 2019 PAGGMA financials have been published in the public newspaper of general circulation on March 5, 2020. Also, the association issued face masks to its members as part of their personal protective equipment for purposes of the COVID-19 pandemic.

IV. GENERAL MANAGER'S REPORT

(deferred to Old/New Business Items)

1. **Procurement Delegation of Authority.** On May 7, 2020, Ms. Claudia Acfalle, Chief Procurement Officer granted full delegation of procurement authority to the Port. Title 5, Chapter §5114, GCA, states that the CPO "may delegate authority to designees or to any governmental body or official." The Port lost its procurement authority 14 years ago and has since been trying to demonstrate its capacity to handle its procurement. In early 2019, Acfalle granted authorization to the Port's new management to handle purchases of $10,000 and below. Then on August 1, 2019, Acfalle granted a six-month conditional delegation of procurement authority and then another three-month extension. In the past nine-months, the Port's procurement division worked closely with Acfalle and Atty. Robert Kono, Special Assistant Attorney General, to process 621 purchase orders, awarded 13 invitations for bids, two requests for proposals, advertised five requests for proposals, and one invitation for bid. All of these procurements involve the purchases of materials/supplies, professional services, and the acquisition of heavy equipment. This procurement delegation after a 14-year journey is great recognition for the Port's current management and staff.

2. **Memorandum of Agreement – Attorney General.** The Board of Directors at its meeting of February 28, 2020 authorized management to engage with the Attorney General's office to enter into a memorandum of agreement (MOA) for legal services. On March 3, 2020, the Port provided a draft MOA to the Attorney General's office for their review. During discussions with the AG's office, the assignment of an Assistant Attorney General to the Port will provide legal services in furtherance of the Port's goals and objectives and not inconsistent with the legal and ethical duties and responsibilities of both parties. The general scope of legal services to be provided to the Port includes: legal advice and guidance; prepare and/or review draft administrative rules and regulations, proposed legislation and resolutions; procurement related matters; represent Port in administrative proceedings and in litigation matters; and provide other legal services as may be requested by the Port Authority. The MOA by and between the Port Authority of Guam and the Attorney General's office became effective on May 29, 2020.

3. **In-House Port Attorney.** Still in an active recruitment.

4. **Impacts of COVID-19.** With a State of Emergency declared on the island on March 14, 2020 due to the effects of COVID-19, the following impacts have occurred:

Type	February	March	April	May	Total
Differential Pay			$112,910.42	$146,080.11	$258,990.53
PPE: masks, goggles, gloves, sanitizers, disinfectants, pexiglass, handwash stations)	$1,050.00	$3,522.42	$13,066.50	5,808.27	$23,447.19
Labor & Materials				$2,954.42	$2,954.42
Total:	**$1,050.00**	**$3,522.42**	**$125,976.92**	**$154,842.80**	**$285,392.14**

Additionally, extension of free period was granted to shipping agents and customers in the amount of $240,214.00 as of March 28, 2020.

5. **General Manager's Notes for YTD Finances, as of April 30, 2020**. In addition to the financial support prepared by Mr. Jojo Guevara, Financial Affairs Controller, we are providing the following summary:

REVENUES AND CARGO THROUGHPUT:

- The Port's Container throughput for April, 2020 compared to April, 2019 is .8% lower than last year's total, and .4% lower than FY20 budget projections. The total revenue for the Port as of April 2020is $32.9 million which is .6% lower than revenue projection. The Port experienced revenue increases in container handling, wharfage, facility maintenance fee and crane surcharge.
- The total number of containers handled as of April, 2020 is 1.2% lower or 714 less containers compared to last year's April, 2019 total.

OPERATING EXPENSES:

- Overall spending YTD (Actual versus Budget for FY2020) is 10% less, or $3M in YTD cost avoidances.

OVERTIME EXPENSE AND DIRECT LABOR REVENUE:

- Overtime YTD for Operations is $924,579, which is 32% higher than YTD overtime budget of $701,604. The overtime for the month of April resulted in an increase of 6% or $6K as compared to the month of March, from $105,991 in March to $111,977 in April.
- The Direct Labor reimbursement is $2.1M, which is an 7% increase from FY20 budget. (This means that although OT expense are 32% over budget YTD, this projected budget shortfall is covered by the direct labor reimbursement.)

Direct Labor Revenue	$2,098,458
Operations Overtime	$924,579
Variance	$1,173,879

YTD OPERATING REVENUES MINUS YTD EXPENSES

- Total Net Income YTD is $5.1M. The YTD Income is 31.3% higher than net income projections for FY2020.

6. **PAG Docket 20-04 JDE EnterpriseOne Financial Management System Upgrade.** Board Resolution No. 2020-02 was adopted on February 28, 2020 relative to authorizing the Port Authority of Guam to proceed with the implementation of an upgraded Financial Management System (FMS) and petition the Public Utilities Commission for review and approval of the bond expenditure not to exceed $2.5M. On May 15, 2020, the Port submitted its petition to PUC presenting its critical purpose in acquiring the FMS System upgrade, determination of need, and compatibility of JD Edwards EnterpriseOne upgrade with the existing JD Edwards World Software provided and supported by Oracle. On May 28, 2020, the Public Utilities Commission (PUC) held a hearing on PAG Docket 20-04. Upon careful consideration, the Commissioners by a vote of 5-2, voted in favor of the Port's petition with the following Ordering provisions: 1) that the petition is hereby approved; 2) PAG is authorized to enter into the proposed contract with Oracle for the upgrade of its Financial Management System to JDE

EnterpriseOne, for a total cost of $2,140,264.40 to be funded by PAG's Revenue bond proceeds; and 3) PAG shall return to Oracle to attempt to negotiate a lower cost for the JDE EnterpriseOne upgrade considering its use by other agencies in Guam.

In adhering to the Ordering provisions, specifically Item 3, further negotiations were made with Oracle on May 29, 2020 in an attempt to negotiate a lower cost for the JDE EnterpriseOne upgrade. Oracle presented the following:

Type of Service	PAG accepts Oracle Final Offer	Oracle's Reduction Price as per PUC Order
Learning Credits Order	$111,430.40	$104,466.00
Oracle ACS Services – YR 1	$946,033.93	$931,592.14
Total:	**$1,057,464.33**	**1,036,058.14**

(Total Reduction Price: $21,406.19)

Other contract values remain unchanged:

Type of Service	Amount
Cloud Database Licensing	$172,008.00
On Premise Database/Licensing Support	$282,820.00
Hardware/Hardware Support	$35,432.07
ACS T&E/ACS Services – YR 2 & 3	$592,522.00
Total:	**$1,082,782.07**

In its letter of May 29, 2020, the Port accepted the price reduction cost as presented by Oracle, bringing the total contractual amount to $2,118,840.21 from $2,140,246.40.

7. **Guam Shipyard - Hotel Wharf.** GSY Barge YON 286 is the remaining barge temporarily moored at H-Wharf. The barge is expected to be removed sometime in July 2020 to Pohnpei. However, according to Guam Shipyard, no movement from the tug company is being made at this time due to COVID port restrictions at PNG.

8. **Pay Policy on the Application of COVID-19.** On March 14, 2020, Governor Lou Leon Guerrero via Executive Order 2020-03 placed Guam in a State of Emergency because of the effects of COVID-19 on the island.

Executive Order 2020-08 dated April 5, 2020 established a COVID-19 Response Differential Pay for "*essential employees of the Government of Guam to continue their work for the purposes of eliminating or reducing immediate threats to life, public health, or safety where their work could expose them to the coronavirus.*"

The policy provides the COVID-19 Response differential pay will be in addition to any hazardous duty differential pay already determined by the Guam Occupational Safety & Health Administrator (GOSHA), and such differential pay for the hours worked to a hazardous condition. It also established three (3) categories:

- Category 1: Twenty-five percent (25%) pay differential to essential employees in the course of their duties are in direct contact or in close physical proximity to a population infected with or may be reasonably suspected to be infected with COVID-19. Such positions may include, but not limited to sworn public safety/law enforcement, health care providers and other positions performing essential critical mission duties; or
- Category 2: Fifteen percent (15%) pay differential to essential employees in the course of their duties may incidentally come into contact with or close physical proximity to a population infected with or may be reasonably suspected to be infected with COVID-19. These employees may also be providing humanitarian services or direct public assistance to the general public; or
- Category 3: Ten percent (10%) pay differential to essential employees whose positions do not allow them to telework *and* are mandated to perform their job duties at physical worksites pre-determined by their agency heads, required by the Government's response to the COVID-19 pandemic.

The Port adopted measures to reduce the risk of employees contracting COVID-19 virus and ensure the workplace will not be mode of transmission. A Port Clinic was established on March 23, 2020 and manned by healthcare professionals. The clinic is open 24/7 and visits totaling 12,000 plus.

On May 8, 2020, the Governor declared Guam to be in Pandemic Condition of Readiness ("PCOR") 2 which allowed limited activities to operate under moderate restrictions.

Through Executive Order 2020-16, dated May 28, 2020, the Governor opened all GovGuam offices, agencies, and departments to recommence public operations effective June 1, 2020. The executive order also discontinued Category 3 of the COVID-19 Response Differential Pay. However, Categories 1 and 2 of the COVID-19 Response Differential Pay plan shall continue to be provided to those employees who are found to be eligible for such hazardous pay.

The purpose of the policy is to provide standard procedures and guidelines for the use by Division Heads and Payroll and timekeeping personnel to properly record, compute and/or process payments to employees for their COVID-19 Response Differential Pay.

Through Department of Administration Circular No. 2020-013, dated April 20, 2020, *"Any employee identified to receive a pay differential in one of the categories identified above, will be paid the differential for the whole shift worked at the highest category for the shift and not just the hours of exposure as indicated in DOA Circular 2020-12."*

Furthermore, through Executive Order 2020-08, dated April 5, 2020, *"The Director of the Department of Administration or the equivalent of in the case of autonomous and semi-autonomous agencies, shall implement a COVID-19 Response differential pay policy for employees working in support of the public health emergency and in areas*

necessary for the elimination or reduction of immediate threats to life, public health, or safety, whose work could expose them to the coronavirus."

This policy shall be guided by Executive Order 2020-08 and Executive Order 2020-16, whichever is applicable; and final approval of all COVID-19 Response Differential Pay requests will be the General Manager.

9. **Grant Opportunities.**
   a. **EDA Grant Application**. The US DOC in its letter dated May 5, 2020 informed the Port that its grant application for installing a fuel pipeline system to connect F1 and Golf piers have been reviewed for merit and selected for further consideration. Additional information is being requested by US DOC addressing environmental, engineering and legal considerations that will enable EDA to continue processing our application. Deadline to submit is June 15, 2020. The Port's proposed project will be considered for $3.6M in EDA funding under the Economic Adjustment Assistance disaster recovery program.
   b. **Department of Agriculture Grant.** ***No new developments.*** The Port has recently received $500K grant funds to support the repair work of Harbor of Refuge. The Port is waiting for the MOU from the Department of Agriculture to access these grant monies.
   c. **Office of Economic Adjustment**. Another great news for the Port Authority – OEA, US DOD issued a notice of award for the supplemental grant funding of $800K. This totals $1.6M that will support the following projects.
      i. 2020 Port Master Plan Update
      ii. Deep Draft and Fill Improvements Project Feasibility Study
      iii. Customs Inspection Feasibility Study
      iv. Conceptual Design and Revised SOW for New Admin Building Annex & Renovation of Existing Admin Building
   d. **Office of Insular Affairs.** ***No new development.*** The Port is looking to submit its grant application of the OIA Maintenance and Technical Assistance Program by end of April 2020. This grant funding will provide support to the EQMR and Operations divisions.
   e. **Gantry Crane Acquisition.**
      i. <u>USDA Direct Loan</u>. As guided by USDA, the Port continues to develop its pre-application on the acquisition of one Ship-to-Shore Gantry Crane by way of a direct loan.
      ii. <u>EDA Grant</u>. The Port continues to develop its grant application for two (2) STS gantry cranes.
   f. **FEMA – COVID-19 Public Assistance.** A conference call was held on May 19, 2020 with Bryant Trang, FEMA Program Delivery Task Force Leader for Guam's COVID-19 Public Assistance Recovery Program. Trang had advised the Port that its request for Public Assistance was approved on May 11, 2020. He then provided guidance on proper documentation to submit for reimbursement of eligible costs under this program. Planning is finalizing two (2) Project Worksheets for all costs incurred by the Port: 1) Category B materials and

supplies purchases; and 2) Differential Pay, OT Pay, Retirement & Medicare Benefits, and Emergency Pay.

g. **MARAD Port Infrastructure Development Program Grant Application.** The Port submitted a Comprehensive Acquisition of Container Yard Equipment to MARAD to the tune of $7.4M, which includes:
   - 2 ea. 80,000 Lbs. Top Lifters
   - 5 ea. 12,000 Lbs. Forklifts
   - 1 ea. 275 Ton Telescopic Crane
   - 10 ea. Tractor Trailers
   - 2 ea. 40-Plug Mobile Reefer Generators
   - 1 ea. 150 Ft. Telescopic Man Lift

10. **Procurement Solicitation Updates.**
   a. **F1 Management.** Negotiations in progress with next qualified offeror.
   b. **Performance Management Contract for Port Cranes.** Currently under review by SAAG.
   c. **Golf Pier.** The bid submittal for Construction Management services is scheduled on June 17, 2020. A site visit was conducted on May 29, 2020.

11. **Port Revenue Bonds Project Status.** As of June 4, 2020, the attachment provides information on the status of the revenue bond projects that consist of rehabilitation of hotel wharf, golf pier repairs and improvements, waterline replacement/relocation, EQMR building, and warehouse 1 repair/upgrades, new admin annex building, and other priority projects.

12. **GM's Report to the Board.** The reports for the months of March and April is appended to today's Board minutes.

V. OLD BUSINESS

There were no old business discussed.

VI. NEW BUSINESS

1. **FY2019 Port Audit:** At this time, the members recognized the presence of Mr. Lee Vensel, Deloitte & Touche. Mr. Vensel thanked the members and said the Port Authority's report on the financial statements for the year ending September 30, 2019 is unqualified, which generally means there are no problems with the accounting – low risk auditee.

Mr. Vensel highlighted the following:

Statement of Net Position
Assets

- Increase is mainly due to cash of over $5.6M.
- Property, plant and equipment decreased by $2M due to depreciation.

- Deferred outflows increased about $1M. Deferred outflows are expenses that have not been recognized yet which is largely part of the pension and other post-employment benefits.

Liabilities

- Decreased by $17M, largely due to an increase in the deferred inflows of resources from other post-employment benefits.

Director Koki asked whether there are any contingent liabilities recorded. Mr. Vensel replied that under 'Liabilities-Security deposits and other payables', what is recognized is that there was an increase from FY2018 at $1M to $3.8M in FY2019 in contingent liabilities. He said this is mainly due to settlements of port employees that were terminated from prior years.

Statement of Revenues, Expenses and Changes in Net Position

- Increase in net position is $3.5M.
- Revenues increased by a $1M due to tariff increases.
- Expenses decreased by $2M from $50M to $48.3M. Expenses were fairly controlled, and the main part of the reduction was due to the 'retiree healthcare and other benefits', in that FY2018 was $6.7M whereas FY2019 was about $3M.
- Non-operating expenses went from $3.9M in FY2018 to $4M in FY2019.
- Other income expense is about $3M.
- Earnings is $2.8M in FY2019 as compared to a loss of $336K in FY2018.

Mr. Vensel mentioned that other matters of internal control and improvement to consider is the IT systems access to avoid vulnerability and exposure; change in IT hardware/software needs to be strengthened; and to update commercial leases. The General Manager stated that these concerns are being looked into.

2. **Resolution No. 2020-03 OEA Supplemental Grant Funding:** Director Koki made motion to approve Resolution No. 2020-03 relative to petitioning the Public Utilities Commission to review and approve supplemental Office of Economic Adjustment grant funding in the amount of $800,000.00 for additional port modernization initiatives in support of the 2020 Master Plan Update to be performed by Owner's Agent Engineer, WSP USA, Inc. Motion was seconded by the Vice Chairman and was unanimously approved.

3. **Strategic Planning Applied Grants – PAG Cost Share:** The General Manager mentioned that Strategic Planning continues to leverage grant opportunities to not only further modernize Port infrastructure, equipment and facilities, but also ensure the administrative and operational support is provided to all divisions in the form of training and manpower enhancements. There are nine grant applications totaling $12,978,134.00 that were applied for and currently await notification of award. The Port's cost-share ranges from zero to fifty percent match depending on each respective federal agency requirement.

Grantor/Grant Program	Description	Total	Federal	PAG
FEMA HMG Program	Warehouse 1 Hardening Project (Rollup Doors)	$479,220.00	$359,415.00	$119,805.00
			75% share	*25% share*
FEMA HMG Program	Fendering System Hardening Project (F3-F6)	$804,919.00	$603,689.00	$201,230.00
			75% share	*25% share*
EDA Disaster Supplemental Grant Program	Installation of Fuel Pipeline for F1 Pier & Golf Pier Connectivity	$3,016,363.00	$2,413,091.00	$603,272.00
			80% share	*20% share*
FEMA PSG Program	Acquisition of TWIC Readers and Credentialing System	$205,008.00	$153,756.00	$51,252.00
			75% share	*25% share*
FEMA PSG Program	Acquisition of Portable Barricades	$244,283.00	$183,212.25	$61,070.75
			75% share	*25% share*
FEMA PSG Program	Training and Awareness Program	$183,005.00	$137,253.75	$45,751.25
			75% share	*25% share*
DOI Maintenance Assistance Program	Maintenance Support Project for PAG Welding Shop (Equipment & Construction)	$480,650.00	$240,325.00	$240,325.00
			50% share	*50% share*
DOI Technical Assistance Program	Government Finance Training Program	$160,686.00	$160,686.00	$0.00
			100% share	*0% share*
MARAD Port Infrastructure Development Program	Comprehensive Acquisition of Specialized CY Equipment	$7,404,000.00	$5,553,000.00	$1,851,000.00
			75% share	*25% share*
		$ 12,978,134.00	$9,804,428.00	***$3,173,706.00***

Based on this, Board approval is being requested to approve the Port's cost-share in the amount of $3,173,706.00 for the grant applications presented which will be funded through the Equipment account with a budget of $4M. Director Taitano asked whether the funding source identified would impact any equipment purchase that have already been budgeted for. The General Manager replied negatively, and mentioned that the funds in the Equipment account has not been expended as of yet. The Port is looking to first attempt to purchase those same equipments through federal grant funding and if the Port is not successful with the grant award, then such purchase will be made using Port funds. Without further discussion, Director Koki made motion to approve the Port's cost-share in the amount of $3.2M for the grant applications presented to be funded through the Equipment account, seconded by the Vice Chairman. Motion was unanimously approved.

4. **ExxonMobil – Lot 1 and Area A Annex Building; Lot 3B:** The General Manager mentioned there are three items being presented: 1) Lot 1 – Mobil is exercising their option to renew the Sublease Agreement for the 4th of 7 successive terms of 10-years, to be effective from March 20, 2020 to March 20, 2030 and the matter to be addressed is the lease rental; 2) Area A Annex Building – Mobil continues to occupy the office space. The holdover period is for the period of July 2019 to present; and 3) Lot 3B – In their letter dated June 3, 2020, Mobil request that Lot 3B's location, being in the same area, and similarity of land use, proposes that same 14.5% increase for Lot 1 be applied to Lot 3B.

Lot 1: Square Meters 23,121

	'As Is'	EM ($)	PAG ($)	EM Prop Mid-Split	PAG Prop
PerSqMtr	$190.00	$210.90	$224.90	$217.55	$218.50
TDV	$4,392,990.00	$4,876,219.00	$5,200,000.00	$5,029,974.00	$5,051,939.00
FMV (ROR 8%)	$351,439.20	$390,097.52	$416,000.00	$402,397.92	$404,155.12
Variance		11%	18%	14.5%	15%

The General Manager mentioned that if both parties do not come to an agreement, the next step in accordance with the lease agreement is to go through an arbitration process wherein the service of a third appraiser will be acquired at a shared cost between the parties. The outcome of the third appraiser will then be binding which could conceivably be lower than 11% or higher that 15%. In the Port's discussion with Mobil, had agreed that this would not be the most prudent route to take. Given the calculations presented, management requests for Board direction. Director Koki was more inclined with the 14.5% than running the risk of acquiring a third appraiser. The Vice Chairman agrees with Director Koki. Without further discussion, Director Koki made a motion to approve the 14.5% mid-split rate as presented, seconded by the Vice Chairman. Motion was unanimously approved.

As to Area A Annex Building, the Port's appraiser came up with $1.00/square feet with an area of 3,400ft2 ($3,400/month); however, Mobil appraised the area at $0.80/square feet with an area of 3,118ft2 ($2,494.40/month). Management recommends to charge a flat rate of $3,000.00 per month for the holdover period and beyond since Mobil continues to occupy the space. In response to the Vice Chairman's query on the disparity in area space, Mobil has taken the position on what is 'useful space' and what is not (for example, storage space). Director Koki made motion to approve to charge a flat rate of $3,000.00 per month for the Area A Annex Building, seconded by the Vice Chairman. Motion was unanimously approved.

As to Lot 3B, the Vice Chairman made motion to apply the same percentage as approved for in Lot 1 to Lot 3B, seconded by Director Koki. Motion was unanimously approved.

5. **Rent Deferral:** The General Manager mentioned that port tenants are seeking rental relief due to the impact the COVID-19 pandemic has had on their respective operations. In a memo dated April 24, 2020, the Port formally assured port tenants that plans and options will be explored for the financial relief which will be presented to the Board for review and consideration. In doing so, it has been determined that a rent relief in the form of a deferment is preferred, and that this approach is not to waiver or consider an abatement of rental payments due. As such, the recommendation is to grant port tenants who requests for financial relief with a rent deferral for a period of six (6) months, commencing retroactively from March 1 thru August 31, 2020. Method of recovery to accompany this preferred deferral option will be remission of current month's rent for month seven plus one-half of the rent due for the first deferred month, and shall continue every month thereafter until such time the total deferred amount is achieved. The Vice Chairman made motion to approve the rent deferral as recommended for a period of six (6) months, commencing retroactively from March 1 thru August 31, 2020, seconded by Director Koki. Motion was unanimously approved.

6. **RFP No. PAG-020-001 Professional Legal Services:** The General Manager said one (1) firm officially submitted their bid offer in response to the request for proposal. After careful evaluation of the proposal by the Evaluation committee, the results were finalized and the committee has determined that Attorney Vanessa L. Williams as the highest qualified offeror and is the most qualified, responsive and responsible offeror. As part of the procurement process, cost negotiations ensued with the offeror. On June 9, 2020, Atty. Williams accepted the Port's counter-offer which resulted in both parties reaching a fair and reasonable negotiation. Based on this, management requests the Board to approve the award to Attorney Vanessa L. Williams that has been deemed to have met all the requirements set forth in the request for proposal and is consistent with the Guam Procurement Regulations.

The Vice Chairman made motion to approve the contract award to Attorney Vanessa L. Williams, Law Office of Vanessa L. Williams for RFP No. PAG-020-001 Professional Legal Services for a contract period of one (1) year with three (3) options to renew for one (1) additional year thereafter, provided that this contract does not exceed a total of four (4) years. The motion was seconded by Director Koki and was unanimously approved.

7. **RFP No. PAG-020-003 Drug-Free Workplace Program:** The General Manager said one (1) firm officially submitted their bid offer in response to the request for proposal. After careful evaluation of the proposal by the Evaluation committee, the results were finalized and the committee has determined that Pacific Human Resource Services as the most qualified, responsive and responsible offeror. As part of the procurement process, cost negotiations ensued with the offeror and resulted in a cost to be fair and reasonable. Based on this, management requests the Board to approve the award to Pacific Human Resource Services that has been deemed to have met all the requirements set forth in the request for proposal and is consistent with the Guam Procurement Regulations.

The Vice Chairman made motion to approve the award to Pacific Human Resource Services for RFP No. PAG-020-003 Drug-Free Workplace Program for a contract period for an initial three (3) year term, that may be extended for an additional one (1) year periods, not to exceed a total of five (5) years. The motion was seconded by Director Koki and was unanimously approved.

8. **Status Update on Crane Demolition/Removal:** The General Manager mentioned that at its meeting of December 3, 2019, the Board approved a draft MOU which sets the terms and conditions between Guam Industrial Services, Inc, also known as Guam Shipyard and the Port to the perform the following services:

a. Demolish, dismantle, and dispose of the Port's two decommissioned ship-to-shore container cranes (aka gantry cranes); and
b. Lift, cut, and dispose of the Port's partially sunk barge located in the waters adjacent to the F-6 pier.

With the draft MOU as approved by the Board, was with the requirement that the Attorney General provide legal guidance to determine whether this initiative is doable without

having to circumvent the procurement process. Although the then-Port Counsel had opined that it is not a procurement issue; the Port desired to obtain the position of the Attorney General's office. In communication with the Attorney General's office, it was conveyed to the Port that this initiative falls within the procurement process. With this, he requested for Board's approval to issue an Information for Bid. The potential funding source for this project will be through the crane surcharge, facility maintenance fee, or through grant funding. Director Koki made motion to authorize management to issue a procurement bid for the crane demolition/removal project, seconded by the Vice Chairman. Motion was unanimously approved.

Without objections, and for Board's information, the General Manager mentioned that the Port has been providing support to the private sector economy. At the time the Governor of Guam declared the island to be in Pandemic COR 1 as a result of the global health threat posed by COVID-19, there were container vessels en-route to Guam and the Port extended the free storage period to the agents for their container vessels that are stockpiled and organized in the terminal yard. The extension of the free period translates to $240K in revenue the Port would have captured, but these are not revenues that are factored in the Port's financials. The Port's and Board's contribution to the local economy was to provide for this kind service.

VII. ADJOURNMENT

There being no further business to discuss, it was moved by the Vice Chairman and seconded by Director Koki to adjourn the meeting at 4:02 p.m. The motion was unanimously passed.

ISA MARIE C. KOKI, Board Secretary
Board of Directors

APPROVED BY:

FRANCISCO G. SANTOS, Chairman
Board of Directors

PORT OF GUAM
ATURIDAT I PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: *www.portguam.com*

Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

June 24, 2020

MEMORANDUM

TO: Board of Directors

FROM: Luis R. Baza, Deputy General Manager, Admin/Finance

SUBJECT: Resolution No. 2020-04

Hafa Adai, Mr. Chairman, and members of the Board of Directors!

This memorandum is to provide a factual account of seven (7) terminated Port employees, and to provide a strong recommendation to settle the four (4) remaining personnel cases. These personnel cases have been on-going for nearly eight (8) years. We are all well aware that these personnel cases have consumed a great deal of ratepayer money, the Port's time and resources, resulting in millions of dollars in legal fees to the former Port legal counsel, as well as payouts ordered by the Supreme Court and the Civil Service Commission (CSC). Unfortunately, after 8 years, there remains 4 out of these seven (7) labor issues which have yet to be resolved, and again the Port's contingent liabilities, if NOT immediately adjudicated by this Board, will continue to rise.

I am offering for your approval Resolution No 2020-04, which is **RELATIVE TO INSTRUCTING MR. LUIS R. BAZA, DEPUTY GENERAL MANAGER OF ADMINISTRATION & FINANCE FOR JOSE D. LEON GUERRERO COMMERCIAL PORT OF GUAM TO PROCEED WITH FOUR (4) SETTLEMENT AGREEMENTS, AND TO HEREIN PROVIDE THE FINALIZED FOUR (4) SETTLEMENT AGREEMENTS TO THE HONORABLE BENJAMIN J.F. CRUZ, GUAM PUBLIC AUDITOR IN THE INTEREST OF TRANSPARENCY AND ACCOUNTABILITY**, as a means to bring closure to these adverse actions which have repeatedly been declared by the courts to be defective and unjustified and to mitigate ensuing damages that continue to grow each day we delay.

Factual Summary

These adverse actions all stem from a slip and fall, which occurred on September 22, 2011. The slip and fall was actually documented the day it happened and on that same day the Port's Safety Administrator apologized in writing to the employee for the accident and admitted that the maintenance workers had sprayed a slippery substance while cleaning the restroom and that they were going to use a 50/50 mix of Clorox and water to clean the slippery substance on the floor. (***Attachment #1)***

The previous Board of Directors met in secrecy in October 2012 in violation of the laws of Guam pertaining to the Open Government Law and along with the former Legal Counsel engaged in a meeting to discuss termination of the employees. The December 5, 2012 meeting minutes (***Attachment #2)*** reflect that at that meeting the former Legal Counsel informed the board that it was on the 50th day of the time that management knew or should have known the facts and events upon which the forthcoming December 18, 2012 terminations were based. The 5th of December is being the 50th day, made the 60th day December 15, 2012. The board and legal counsel knew at the time they issued the adverse actions that they had violated the 60-day rule yet they continued for years and years at an enormous cost to rate payers to fight these cases

even though the Supreme Court of Guam in the Guevara case, applying the lesser standard of evidence, found that the Board violated 4 GCA §4406 as to the application of the Sixty Days Rule.

Despite already knowing they had violated the 60-day rule, on December 18, 2012, the Port Authority of Guam issued final notices of adverse action of termination to former employees Josette J. Javelosa, Frances Arriola Cepeda, Francine T. Rocio, Jose B. Guevara III, Bernadette Sterne Meno, and Vivian Castro Leon. Mrs. Leon Guerrero was issued her final adverse action notice in February 2013. These notices accused the former employees of processing an allegedly fraudulent Workers Compensation Claim based on the slip and fall.

Following their terminations, the former employees filed appeals with the Civil Service Commission.

Here are factual, documented events from 2013 to June 2020 which occurred involving the appeals of the former employees:

1. On May 1 and June 6, 2013, in separate hearings, CSC Commissioners granted Mr. Guevara's and Mrs. Cepeda's motions to null and void. Consequently, the CSC voided their final notices of adverse action of termination because the Port violated the 60-day rule.

2. Merit hearings were held for Mrs. Leon Guerrero on June/July 2014, Mrs. Javelosa in August/September 2014 and Mrs. Rocio in October 2014 which CSC Commissioners ruled the Port failed to meet its burden of proof that action taken against the employees and ordered they be reinstated to their prior employment.

3. From 2014 to 2015, CSC rescheduled Mrs. Leon and Mrs. Meno's status call hearings and merit hearings on numerous occasions and eventually informed them that their future hearings would be canceled because the Commissioners' calendar was booked for the next few years until at least 2017.

4. Port appealed CSC's decisions, and judgments in Superior Court rendered for Mr. Guevara in September 2013, Mrs. Javelosa on October 4, 2014, Mrs. Leon Guerrero on October 30, 2014, Mrs. Rocio on April 21, 2015, and Mrs. Cepeda on June 15, 2015.

5. On July 2, 2015 and June 24, 2016, Superior Court affirmed CSC's decision and judgement rendered to Mr. Guevara that the Port violated the 60-day rule and ordered to reinstate the employee to his prior position, which Port appealed to Supreme Court on October 26, 2016.

6. In September 5, 2015, Superior Court reversed CSC decision and judgment for Mrs. Javelosa and remanded the matter to CSC, who shall determine, based upon substantial evidence, whether or not a criminal act or acts were committed, which the employee appealed to Supreme Court on October 5, 2015.

7. On March 15, 2016, in their regular meeting, CSC Commissioners decided to remove the status call conference and merit hearings for Mrs. Meno and Mrs. Leon indefinitely until Supreme Court issues a decision on Mrs. Javelosa's case.

8. On February 7, 2018, Supreme Court rendered a decision in favor of Mr. Guevara, and the Port requested for reconsideration on March 26, 2018, which the Court denied on April 17, 2018, and ordered the employee be reinstated to his prior position with the Port.

9. At their Board of Directors meeting of July 25, 2018, management was authorized to reinstate Mr. Guevara to his position as Financial Affairs Controller effective July 30, 2018, in compliance with Superior Court's decisions of 2015 and 2016.

10. On July 26, 2018, Supreme Court affirmed Superior Court's decision and order for Mrs. Javelosa and remanded the case to Superior Court so it may return the matter to CSC for a threshold determination of the proper standard of review in her case.

11. On August 24, 2018, Superior Court issued a decision and order to award Mr. Guevara full back pay and benefits, which the Port appealed on September 2, 2018.

12. On March 6, 2019, the Superior Court remanded the cases of Mrs. Javelosa, Mrs. Leon Guerrero, and Mrs. Rocio to CSC for a threshold determination of the proper standard of review in their cases as concluded in the Supreme Court decision of July 26, 2018.

13. On March 29, 2019, the Board of Directors authorized Port Legal Counsel to proceed in settlement discussions with Mr. Guevara's attorney.

14. On July 25, 2019, Supreme Court affirmed in part and reversed in part the Superior Court's judgment for Mrs. Cepeda and remanded the matter to CSC for consideration of the merits of the allegation that Mrs. Cepeda backdated a memo to file and for other proceedings not inconsistent with this opinion.

15. In accordance with Superior Court's decision, the CSC scheduled hearings for Mrs. Rocio for August 2019 and for the calendar year 2020 for Mrs. Leon Guerrero, Mrs. Javelosa, Mrs. Meno, Mrs. Cepeda, and Mrs. Leon.

16. On August 27, 2019, CSC Administrative Law Judge held a motion hearing to null and void the personnel action of termination for Mrs. Rocio, and on September 30, 2019, he rendered a recommendation that Mrs. Rocio's motions to dismiss be granted.

17. In August of 2019, Mr. Joe McDonald, former Port Staff Attorney held discussions with the attorneys of Mrs. Javelosa, Mrs. Cepeda, Mrs. Leon Guerrero, Mrs. Meno and Mrs. Leon regarding settlement proposals and initial settlement proposals were submitted to the Port in September 2019.

18. On October 10, 2019, CSC Commissioners voted on Mrs. Rocio's motions that the Port did not notify her of adverse action within 60 days as mandated by law at the time, the Port's final notice of adverse action lacked specificity, and burden of proof was clear and convincing.

19. The Port filed with CSC a motion to reconsider its decision for Mrs. Rocio and CSC Commissioners on November 21, 2019, denied the Port's motion.

20. On November 26, 2019, the Port reinstated Mrs. Rocio to her position as a Personnel Services Administrator and finalized the settlement agreement on December 13, 2019.

21. On December 19, 2019, the Board of Directors approved Resolution No. 2019-20, approving an offer to settle adverse action appeal between the Port and Mrs. Leon Guerrero.

22. On December 19, 2019, the Board of Directors passed Resolution 2019-22, authorizing Port Legal Counsel to enter into settlement agreements with Mrs. Javelosa and Mrs. Cepeda.

23. On December 23, 2019, the Port finalized the settlement agreement and reinstated Mrs. Leon Guerrero to her position of Planner-Work Coordinator on January 6, 2020.

24. On February 28, 2020, the Port Staff Attorney resigned with the Port and the settlement agreements for Mrs. Javelosa and Mrs. Cepeda were not yet finalized.

25. On March 11, 2020, the CSC Administrative Law Judge filed his "Recommendations of Administrative Law Judge on Motion to Void Based on Violation of the 60 Day Rule" in Mrs. Meno's case and found in his analysis "undisputed facts" that identified at least three dates management knew or should have known which were September 10, 2012, September 17, 2012 and October 16, 2012 which, according to the ALJ were 100 days, 93 days and 63 days and therefore stated that the adverse action taken against Mrs. Meno should be revoked; she should be reinstated immediately until such time the decision is overturned by judicial review; and that Mrs. Meno should be awarded back pay, reasonable attorney fees and costs. (***Attachment #3)***

26. On June 8, 2020, CSC Administrative Law Judge issued recommendations that the CSC grant Mrs. Javelosa's motion to void as to allegations of processing and conspiracy to process an allegedly fraudulent Worker Commission Claim because the final notice of adverse action violated the 60-day rule and stated with regards to the memo she was accused of backdating to file "There is no conceivable way to conclude that this memo in any way aided the process of the original approval of work related injury leave. Moreover, there is no way to conclude that the memo was an effort to cover up fraudulent acts. The undersigned concludes that the memo cannot support or justify the adverse action" and thus recommended that Mrs. Javelosa be awarded back pay, reasonable attorney fees and costs; and be reinstated immediately until such time the decision is overturned by judicial review. (***Attachment #4)***

27. The CSC Administrative Judge will be presenting his recommendations to the CSC Commissioners for Mrs. Meno on July 2, 2020 and Mrs. Javelosa on July 7, 2020.

Current Approach to all litigation facing the Port

On January 16, 2019, the General Manager formed a task force, which was chaired by the then-Deputy General Manager of Administration and Finance to review eighteen (18) adverse action appeal cases under litigation.

This task force revealed that because Supreme Court mandated the Port to pay Messrs. Guevara and Kevin Susuico the back wages, attorney fees, and associated costs, the Port could not enter into settlement discussions with the employees and had no choice but to comply with the higher Court's orders resulting in the Port paying Mr. Guevara in three (3) staggered payments within ten (10) months a total amount of $381,381.61 and to Mr. Susuico a one-time payment of $99,000.16 without any mitigation. The task force solicited input from former General Manager Mary Torres regarding the cases and the incident leading to the terminations. (***Attachments #5 & #6)***

Port Staff Attorney, through Board direction, entered into settlement agreements with Mrs. Rocio and Mrs. Leon Guerrero, which allowed the Port and the employees to agree upon a payment plan for back wages spreading over a year or two-year period which had a benefit to the Port by not impacting cash flow with immediate, one-time payments and also mitigating the actual back wages at a significant cost savings to the Port worth several hundred thousand dollars.

The CSC Administrative Law Judge's recent recommendations for Mrs. Rocio, Mrs. Leon Guerrero, Mrs. Meno, and Mrs. Javelosa is to null and void the personnel actions of termination because the Port failed to comply with the 60-day rule. The merits of these adverse actions and the technical violations in these adverse action notices have been repeatedly ruled on by the CSC, Superior Court, Supreme Court and the CSC Administrative Law Judge. Yet, for 7½ years, the Port pursued this litigation, and each time the employees continued to prevail. Again, it is important to underscore that the Port has paid at least an estimated $7 Million Dollars to former Port Legal Counsel to pursue repeated appeals of these cases, which has led to significant financial damage to the Port through continued legal losses. This liability continues to grow daily. Further, the former legal counsel for years alleged that there was a conspiracy to present a false claim for worker's compensation. This wholly false statement led to the former Port legal counsel promising the CSC that the government of Guam Attorney General would be bringing criminal charges against the employees, and later promise of criminal charges by the United States' Attorney, neither or which came true. While under the misguidance of the former legal counsel, the Port paid him more than $7 Million Dollars to fight cases he already knew, based on the executive session minutes, were technically deficient and has run up a huge liability for back wages to seven falsely accused employees. This liability grows daily to the detriment of the Port and the people of Guam.

The technical violations cited by the CSC Administrative Law Judge as well as the Superior and Supreme Courts would also apply to Mrs. Cepeda and Mrs. Leon since the date management knew or should have known are precisely the same as Mr. Guevara, Mrs. Rocio, Mrs. Meno and Mrs. Javelosa in their final notices of adverse action. I believe it is time to settle these cases in order to realize savings to the Port and ratepayers which we estimate to be more than $1 Million Dollars.

Proposal for Settlement Agreements

Should the Board of Directors wish to continue to pursue litigation and appeal those who have prevailed in CSC to higher judicial review, the gross pay (**without benefits**) for the remaining four employees **without mitigation** as of June 30, 2020, which the Port would need to pay if they prevail again in the higher courts are:

1.	Josette J. Javelosa	$569,810.44
2.	Frances A. Cepeda	$580,046.86
3.	Bernadette S. Meno	$716,274.92
4.	Vivian C. Leon	$980,951.42
	Total:	$2,847,083.64

However, through mitigation efforts, the Port will be able to offer terms to these affected employees surrounding a payment plan on their back wages and agree upon staggered payments to ensure the Port's obligation to our revenue bond investors are met as well as its cash flow is not impeded.

For example, in the case of Mrs. Leon and if she prevails in her case, the Port would be obligated to pay her based on one of the following Option 1 or 2, and if a settlement is pursued, Option 3 could be negotiated:

Option 1. Non-mitigation: $1,278,670.19 including benefits
Option 2. Non-mitigation: $1,278,670.19 including benefits and Port would pay the Retirement Fund $674,036.00 for her annuities they remitted during 2013 to present; and
Option 3. Mitigation: $387,029.25 including benefits.

Moreover, should the Port enter into settlement negotiations with Mrs. Javelosa, Mrs. Cepeda, Mrs. Meno, and Mrs. Leon and **mandate mitigation** in the settlements, then the cost to the Port would be $1,790,529.80 instead of $2,847,083.64.

I believe it is in the best interest of the Port to explore and offer settlement terms that **include mitigation** to Mrs. Javelosa, Mrs. Cepeda, Mrs. Meno, and Mrs. Leon, which will save the Port a minimum of $1,056,553.84.

The following parameters should be set by the Board:

1. That the Board of Directors of the Jose D. Leon Guerrero Commercial Port hereby provide me, in my capacity as Deputy General Manager for Administration & Finance, the latitude to negotiate the final settlement agreements which is to incorporate the benefits owed, execute and deliver such documents, undertake such acts, and provide direction to staff as are necessary to comply with the terms of the settlement after an employee has signed the agreement.

2. That the first settlement agreement for Mrs. Javelosa be based on the following terms:
   a. Back wages (net gross pay after mitigation) $409,356.68;
   b. A payment schedule plan favorable to the Port;
   c. Reinstatement of sick leave hours and annual leave hours owed;
   d. Reasonable legal fees; and
   e. Remit to Retirement Fund retirement benefits owed to the employee.

3. That the second settlement agreement for Mrs. Cepeda be based on the following terms:
   a. Back wages (net gross pay after mitigation) $437,268.94;
   b. A payment schedule plan favorable to the Port;
   c. Reinstatement of sick leave hours and annual leave hours owed;
   d. Reasonable legal fees; and
   e. Remit to Retirement Fund retirement benefits owed to the employee.

4. That the third settlement agreement for Mrs. Meno be based on the following terms:
   a. Back wages (net gross pay after mitigation) $646,988.76;
   b. A payment schedule plan favorable to the Port;
   c. Reinstatement of sick leave hours and annual leave hours owed;
   d. Reasonable legal fees; and
   e. Remit to Retirement Fund retirement benefits owed to the employee.

5. That the fourth settlement agreement for Mrs. Leon be based on the following:
    a. Back wages (net gross pay after mitigation) $296,915.42;
    b. A payment schedule plan favorable to the Port;
    c. Reinstatement of sick leave hours and annual leave hours owed;
    d. Reasonable legal fees; and
    e. Remit to Retirement Fund retirement benefits owed to the employee.

This memorandum further requests that the Board instruct me to forward the finalized and signed settlement agreements to the Honorable Benjamin J.F. Cruz, Guam Public Auditor in the interest of transparency and accountability. And to also notify the CSC of these settlements and these employees' desires to withdraw the litigation before the CSC Commissioners and comply with the Rules and Regulations of the Commission with regards to settlement of the Adverse Action Appeal.

Conclusion

If the Port continues to pursue litigation, the Board would need to be prepared that there is a long and established history of precedent in these specific cases already decided by the Supreme Court of Guam, the Superior Court of Guam and the CSC which recognizes the legislative mandate imposed by Title 4, Guam Code Annotated, Section 4406. This statute requires the Commission to void adverse actions where Management fails to comply with the 60-day rule. In one of the Commission's decision it was stated, "The 60-day rule is a compelling mandate which has a statutorily determined outcome, and is not subject to waiver, estoppel, negotiation or equitable tolling." The 60-day period commences to run on the first date that Management knew or should have known the underlying facts or events which form the basis for the adverse action. As I stated above, the previous board under the guidance of the former legal counsel was aware of the 60-day rule and knew it had been violated. Despite this knowledge, the former legal counsel made more than $7 Million Dollars off the Port continuing to appeal each and every case that the employees won and entangling the Port for all these years in costly litigation.

Mr. Chairman and distinguished Board members, I have spent decades of my life defending the merit system and as such I have read each and every case and have come to the conclusion that there is nothing that has been alleged against these employees that warranted termination. Based on my review of all the cases and documents, I believe that it would be in the best interest of the Port to pursue settlement agreements with the remaining four (4) employees. And because of the recent rulings in the cases of Mrs. Meno and Mrs. Javelosa, we now have a small window of opportunity to realize a savings of more than $1 Million Dollars to the Port through settlement. And while the financial savings is important, we must also look at the human cost of this matter. For almost eight (8) years, these employees have continued to fight for their integrity and it has been at an enormous cost to them not only financially but emotionally as well. Despite the years and the constant battles, these employees have never once lost faith that the Port will one day make things right. As such, I implore you, the Board, to correct the injustice that has been committed to these employees and bring closure to this matter once and for all.

whiteeagleglobalsolutions@gmail.com

From: Bernadette Meno <guam.avon@gmail.com>
Sent: Friday, June 22, 2018 2:20 AM
To: White Eagle Global Solutions
Subject: Fwd: RE: Work Place Accident

Sent from Astro for iOS

Begin forwarded message:
From: Bernadette Meno <bmeno@portguam.com>
Subject RE: Work Place Accident
Date: September 22, 2011 at 2:34:32 PM GMT+10
To 'Frank C. Roberto' <fcroberto@portguam.com>
Cc 'Paul R. Salas' <prsalas@portguam.com>

Thank you Mr. Roberto.

Mr. Salas already came by and took a report from me and he was very prompt and courteous. Thank you very much.

Bernadette

From: Frank C. Roberto [mailto:fcroberto@portguam.com]
Sent: Thursday, September 22, 2011 2:33 PM
To: Bernadette Meno
Cc: Paul R. Salas
Subject: Re: Work Place Accident

Bernadette,

I am so sorry about you slipping and falling in the bathroom. I sent Paul Salas to see the condition. I also spoke with Evelyn B. who oversees janitorial services for the admin bldg. She informed me that after the clean up of the bathroom the cleaner sprayed "Fabuloso". This chemical when sprayed over wet surface it will make the floor slippery for unsuspecting individual.

Clorox mix 50/50 with water will clean the film and slippery condition once it dried up. Evelyn B. will have this done.

Frank R.

----- Original Message -----

From: Bernadette Meno

To: fcroberto@portguam.com ; ftrocio@portguam.com

Cc: vcleon@portguam.com

Sent: Thursday, September 22, 2011 11:31 AM

Subject: Work Place Accident

Hafa Adai Mr. Roberto

Just to let you know that I just slipped and fell inside the women's bathroom on the second floor Admin building. There is a very slippery film on the floor near the drain in the middle of the bathroom and when I stepped on it I slipped and my feet went airborne and I landed hard on the floor even trying to brace the fall with my arm. The fall left me sore on my legs, hips, back and my arm.

After I left the bathroom I immediately told Jesse and asked him to get someone from facility in there to wipe down the floors to make it safe again. I took Josette inside and showed her the area and when she placed her shoe on it her shoe also slid. You can still see the marks on the floor from my shoes sliding across the area on the floor.

Thank you

Bernadette Meno

BERNADETTE S. MENO

Marketing Administrator

Port Authority of Guam

Jose D. Leon Guerrero Commercial Port

1026 Cabras Highway Suite 201 - Piti, GU 96925

Phone (671) 477-5931 Ext. 545 Fax (671) 477-2689

bmeno@portguam.com

www.portguam.com

20/2006

Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96925
Telephone: 671-477-5931-4

FACSIMILE TRANSMITTAL SHEET

TO	Workers Compensation Commission Attn: Manny Pablo Joannalynn Fullerton
FROM	Leonora Vergara-Taylor Planner-Work Coordinator Safety Division
FAX NUMBER	475-7026
RE	Meno, Bernadette DOI: 09/22/2011 Attached documents
DATE	September 26, 2011
PAGES	5

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

This information in the facsimile transmission is from Port Authority of Guam and may contain confidential and/or legally privileged information. This information is intended only for the individual or entity named on this sheet. If you have received this facsimile in error, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on this telecopied information is strictly prohibited and the document(s) should be returned to Port Authority of Guam immediately

Hafa Adai Manny/Joannalynn,

Attached you will several supporting documents namely, GWC-101a, GWC-201 and 202 for Mrs. Bernadette Meno.

Order of Documents: DOI: 09/22/2011

GWC101a - GMH
GWC201/202
(Pending 101b/Medical Record from GMH)

The original documents will be delivered to your office.

Please contact me for any questions or concerns at 477-5931 Ext 420 or Ext 422.

Thank you.

Regards,
Leonora Vergara-Taylor
Planner-Work Coordinator
Safety Division

RECEIVED
SEP 26 2011
WCC
Dept. of Labor

The Law Offices of
PHILLIPS & BORDALLO

RECEIVED BY: [illegible]
DATE: 1-16-13
TIME: 12:05

E046

WORKER'S COMPENSATION ...ISSION

Department of Labor * Government of Guam * P.O. Box 9970 Tamuning, Guam 96931

Tel: (671) 475-7033/4 * Fax: (671) 475-7026

WCC File#

INSTRUCTIONS: This side of the form should be completed in full. It authorizes a physician (duly qualified physicians include surgeon osteopathic acupuncturists within the scope of their practice as defined by law) to examine and/or treat the employee for the injuries and such accidental occupational injury, illness, or disease covered by the Guam Worker's Compensation Law. PLEASE TYPE OR PRINT

1. Name of Authorized Physician:	2. Name of Medical Facility:
Physician on Duty at GMHA	Guam Memorial Hospital Authority
3. Physician's Address:	4. Medical Facility's Address:
Same as box 4	850 Gov Carlos Camacho Road Tamuning, Guam 96911
5. Name of Injured Employee, DoB, & SSN: 01-05-71 Mesa, Bernadeth R. 440-94-2999	6. Occupation: Marketing Administrator
	7. Date of Inj: 09-22-

8. Description of Injury: Slipped and fell on restroom flr. Outrigger Bldg - 2nd flr. felt pain in her back and right shoulder

9. YOU ARE AUTHORIZED TO PROVIDE MEDICAL SERVICES TO THE EMPLOYEE AS FOLLOWS: (Please check one)

X	A) If you believe the condition is related to the injury, furnish office and/or hospital treatment as necessary for t the injury.
	B) If there is doubt as to whether the condition is related to the injury, you are authorized to examine the employ indicated non-surgical diagnostic studies, and should promptly advise those listed in Item 14 whether you belie disability is due to the allegedinjury. Pending further advice, you may provide such necessary conservative trea
	C) Other: EXAMINATION & TREATMENT of INJURY(IES) AS STATED IN BOX 8 - SINGLE VISIT ONLY. ****** AUTHORIZATION INVALID IF ALTERED WITHOUT PRIOR APPROVAL BY WCC OFICE **********

YOU ARE REQUESTED TO SUBMIT A WRITTEN REPORT OF FIRST TREATMENT WITHIN 20 DAYS TO THE COMMISSIONER AT THE AD INDICATED ITEM 13 BELOW. (See back of this form for instructions as to the medical report and the submissiof your charges). Report requisite if services are to be paid.

GCG 37031 PENALTY FOR MISREPRESENTATION: "Any person who wfully makes any false or misleading statement or representation purpose of obtaining any benefit or payment unde this Title or for the purpose of evading liability for any benefit or payment under this T be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment not to exceed one (1) year, or both."

10. Signature and Title of Authorizing Official:	11. Name and Address of Employer:
Francisco C. Robert C. [illegible]trator SAFETY ADMINISTRATOR PORT AUTHORITY OF GUAM	Port Authority of Guam 1026 Cabras Highway, Suite 201 Piti, Guam 96915
12. Date: 09-20-11	

13. Send your REPORT to:	14. Name & address of Insurance Carrier to whom COPY of your report and BILL are to
WORKER'S COMPENSATION COMMISSION P.O. Box 9970 Tamuning, Guam 96931	See Box 13

RECEIVED
SEP 26 2011
WCC
Dept. of Labor

FOR STATISTICAL PURPOSES ONLY:

Employee's ethnicity (please choose one):					Employee's citizenship (please choose one):
Yapese	Pohnpeian	American	Korean		U.S.
Chuukese	Marshalls	Pacific Islander	Chinese		Permanent Alien Resident
Kosrean	Palauan	Filipino		Japanese	Other (specify):
Other (specify):					

FORM GWC-101a: AUTHORIZATION for MEDICAL EXAMINATION and/or TREATMENT (Revised ...) F046

WORKERS COMPENSATION COMMISSION

Department of Labor * Government of Guam

P. O. Box 9970 Tamuning, Guam 96931

Tel: (671) 475-7033/34 * Fax: (671) 475-7026

WCC File #:

INSTRUCTIONS: This form may be used by the Employee [illegible] benefits need be paid without this notice. Notice shall be given to [illegible] 22 GCA 9113. PLEASE PRINT OR TYPE.

1. Name of Injured Employee, DOB, & SSN: Bernadette MENO, 1-5-71, 440942499	2. Name of Employer & EIN: Port Authority.
3. Employee's address & telephone no: ( ) PO Box 3840 Agana Guam 96932	4. Employer's address: 1026 Cabras Hwy Piti
5. Date & time of alleged injury/illness: 11:20Am 9/22/11	6. Did employee stop work? NO If so, date stopped:
7. Employee's occupation: Marketing Administrator	8. Name of supervisor at time of injury: Anisia Terlaje
9. Place where injury occurred: Womens Bathroom 2nd floor	
10. Is another person not of your employment the cause of the accident? [ ] YES [X] NO	11. Will you file suit against the other person? [ ] YES [ ] NO

12. DESCRIBE IN FULL HOW THE ACCIDENT OCCURRED: Relate the events which resulted in the injury/illness. Tell what the employee was doing at the time of the accident. Tell what happened and how it happened. Name any object or substance involved and tell how they were involved. Give full details on all factors which led or contributed to the accident. Use additional sheets if required and attach to this report. I was in the restroom when I slipped on an oily substance and fell very hard on the floor hitting legs, back, arm etc

13. Effects of the injury (Indicate parts of body affected and how affected).

Pain

22 GCA 9132 PENALTY FOR MISREPRESENTATION – Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Title or for the purpose of evading liability for any benefit or payment under this Title shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars ($1,000.00), or by imprisonment not to exceed one (1) year, or both.

14. Name & signature of person completing this notice: Bernadette Meno

15. Date of this notice: 9/22/11 2:02pm

RECEIVED

SEP 26 2011

W C

Dept. of Labor

FOR STATISTICAL PURPOSES ONLY

Please choose ONE ETHNICITY:

Yapese, Chuukese, Kosraean, Pohnpeian, Chinese, Marshallese, Palauan, Guamanian, Filipino, Other (specify):

American, African American, Japanese, Korean

Please choose ONE CITIZENSHIP:

United States, Permanent Resident Alien, Other (specify):

Form GWC-201: NOTICE of EMPLOYEE'S INJURY/ILLNESS or DEATH (Revised Dec 2004)

E0465

Doc. No. 35GL-20-1931.*

WORKER'S COMPENSATION COMMISSION

Department of Labor * Government of Guam
P.O. Box 9970, Tamuning, Guam 96931
Tel: (671) 475-7033/34 * Fax. (671) 475-7026

WCC File #:

INSTRUCTIONS: This form may be used by the Employer to report an injury or illness. 22 GCA 9131 requires the Employer to report to the Commissio within ten (10) days from the date of or knowledge of any injury or illness. Failure or refusal to file this report may subject the Employer to a penalty of u $500.00. PLEASE PRINT OR TYPE:

1. Name of injured Employee, DOB & SSN: Bernadette MEND, 1-5-71, 440 94 2999	2. Name of Employer & EIN: Port Authority of Guam
3. Employee's address & telephone no: ( ) PO Box 3840 671 4822866	4. Employer's address & Telephone no.: ( ) C/O Port Authority
5. Date & time of alleged injury/illness: Thursday 11:30	6. Date of Employer's first knowledge of injury: Thursday
7. Date & hour Employee first lost time because of injury/illness: N/A	8. Date & hour Employee returned to work:
9. Date & hour pay stopped: N/A	10. Days usually worked per week (x days): S M T W TH F S Average hours per week: 80+
11. Employee's occupation: Marketing Administrator.	12. Employee's wages/earnings (overtime, etc):
13. Is another person not of your employment caused the accident? [ ] YES [X] NO	a. Hourly: $ 34.06 b. Weekly: $ 1362

14. DESCRIBE IN FULL HOW THE ACCIDENT OCCURRED: Relate the events which resulted in the injury/illness. Tell what the injured was doing at th time of the accident. Tell what happened and how it happened. Name any object or substance involved and tell how they were involved. Give full details all factors which led or contributed to the accident. Use additional sheets if required and attach to this report.

Employee stated she was in the women's restroom when a slippery substance believed to be Fabuloso caused her to slip and fall on the floor causing her pain in her back and right shoulder.

15. NATURE OF INJURY/ILLNESS (Name part of body affected - fractured leg, bruised arm, lacerated finger, etc) Note any amputations.

pain in back and right shoulder

16. Has medical attention been authorized? N/A [X] YES [ ] NO	17. Date authorized: 09-26-11	18. Has insurance carrier been notified? [ ] YES [X] NO	19. Date notified:
20. Name of treating physician:		21. Name of insurance carrier:	
22. Name of treating facility: Guam Memorial Hospital		23. Name & signature of person completing report: Anisia B. TERLAJE Anisia B. Terlaje	

22 GCA 9132 PENALTY FOR MISREPRESENTATION: "Any person who willfully makes any false or misleading statement or representation for th purpose of obtaining any benefit or payment under this Title or for the purpose of evading liability for any benefit or payment under this Title sha be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not to exceed one thousand dollars ($1,000.00), or by imprisonment not to exceed one (1) year, or both."

24. Title of person completing report: Deputy General Manager	25. Date of this report: 9/26/11

RECEIVED
SEP 26 2011
WCC
Dept. of Labor

FOR STATISTICAL PURPOSES ONLY:

Please choose ONE ETHNICITY:

Yapese	Marshallese	Caucasian/American	Japanese
Chuukese	Palauan	Chinese	American
Kosraean	Chamorro		
Pohnapian	Filipino		
Korean	Other (specify):		

Please choose ONE CITIZENSHIP:

- United States
- Permanent Resident Alien
- Other (specify):

Form GWC-202: EMPLOYER'S REPORT of OCCUPATIONAL INJURY or ILLNESS (Revised 01/2005)

E046

PLEASE CIRCLE THE APPROPRIATE ITEMS (for statistical purposes)

A. EVENT CODE

01 Fatality	02 No Time Loss	03 Time Loss

B. NATURE OF INJURY CODE

01 Amputation	08 Disease/Illness	15 Hearing Loss
02 Asphyxia	09 Dislocation	16 Hernia
03 Bruise/Contusion/Abrasion	10 Electric Shock	17 Poisoning (Systemic)
04 Burn (Chemical)	11 Exertion	18 Puncture
05 Burn (Heat)	12 Foreign Body in Eye/Conjunctivitis	19 Radiation Effects
06 Concussion	13 Fracture	20 Strain/Sprain
07 Cut/Laceration/Puncture	14 Freezing/Frostbite	21 Other (Specify)

C. BODY PART CODE

	LEFT	RIGHT		LEFT	RIGHT		LEFT	RIGHT
Abdomen	01		Thumb	14	15	Great Toe	34	35
Ankle(s)	02	03	Fingers Index-Small (First-Fourth)	16 17 18 19	20 21 22 23	Toes (First-Fourth)	36 37 38 39	40 41 42 43
Back	04							
Body System	05		Wrist			Ankle	44	45
Chest	06		Hand	24	25	Foot	46	47
Head	07		Elbow	26	27	Knee	48	49
Ear(s)	08		Arm	28	29	Leg	50	51
Eye(s)	09	10	Shoulder	30	31	Hip(s)	52	53
Face	11	12		32	33			
	13							

D. TYPE OF EVENT CODE

01 Absorption	05 Fall (Same level)	10 Rubbed/Abraded
02 Bite/Sting/Scratch	06 Fall (From elevation)	11 Shock
03 Cardio-Vascular/Respiratory System Failure	07 Ingestion	12 Struck Against
04 Caught In or Between	08 Inhalation	13 Struck By
	09 Repeated Motion/Pressure	14 Other (Specify)

E. SOURCE INJURY CODE

01 Aircraft	15 Electrical Apparatus/Wiring	29 Metal Products
02 Air Pressure	16 Explosives	30 Motor Vehicle (Highway)
03 Animal/Insect/Bird/Reptile/Fish	17 Fire/Smoke	31 Motor Vehicle (Industrial)
04 Boat	18 Food	32 Motorcycle
05 Bodily Motion	19 Furniture/Furnishings	33 Person
06 Boiler/Pressure Vessel	20 Gases	34 Petroleum Products
07 Boxes/Barrels, Etc.	21 Glass	35 Pump/Prime Motor
08 Buildings/Structures	22 Hand Tool (Manual)	36 Radiation
09 Chemical Liquid/Vapor	23 Hand Tool (Powered)	37 Vegetation
10 Cleaning Compound	24 Heat (Environmental/Mechanical)	38 Waste Products
11 Cold (Environment/Mechanical)	25 Hoisting Apparatus	29 Water
12 Dirt/Sand/Stone	26 Ladder	40 Weapons
13 Drugs/Alcohol	27 Machine	41 Working Surface
14 Dust/Particles/Chips	28 Materials Handling Equipment	42 Other (Specify) Floor

F. CONTRIBUTING ENVIRONMENTAL FACTOR CODE

01 Catch Point/Pointer Action	10 Pinch Point Action
02 Chemical Action/Reaction Exposure	11 Radiation Condition
03 Flammable Liquid/Solid Exposure	12 Shear Point Action
04 Flying Object Motion	13 Sound Level
05 Gas/Vapor/Mist/Fume/Smoke/Dust Condition	14 Squeeze Point Action
06 Illumination	15 Temperature Above or Below Tolerance Level
07 Materials Handling Equipment/Method	16 Weather/Earthquake, Etc. Condition
08 Overhead Moving and/or Falling Object Action	17 Working Surface/Facility Layout Condition
09 Overpressure/Underpressure Condition	18 Other (Specify) Slippery.

G. TASK ASSIGNMENT CODE

01 Employee Working at Regularly Assigned Task(s)	02 Employee Working at OTHER than Regularly Assigned Task(s)

RECEIVED
SEP 20 2005
W.C.B.
Dept. of Labor

E0467

LC: We're already on day 50th. We're already on possibly on day 50 they got another 10 days. So the 10 days if issued today would end on day 60 of the time period that we're very confident about and those 10 days are included in the 60. So we're on day 50 of 60. It's not 60 days. It's really a full 10 days or so.

Chairman: Okay so that's what I'm saying 10 days from now is their deadline to respond.

LC: They have a deadline within the 10 days and we have a deadline of 10 days.

Chairman: We have a deadline of 10 days to respond after their response, their reply?

LC: No, we have 10 days because we have up to 60 days to issue the final adverse action and we're already on day 50. This is the last day.

Chairman: Okay so what I'm saying though is we issue the actions today. The 10 days their going to have, they're going to be afforded and accorded the 10 days to respond [**LC:** Right.] and then after the 60th day – what?

LC: On the 60th day we issue the final adverse action.

Chairman: Okay so, and that could be handled by someone who's not a subject or conflicted at all in the matter – from start to finish.

LC: That's right, if they're GM for that period of time.

Mrs. Baleto: Oh so we're just talking about 10 days.

Mr. Ilao: *Comment made undecipherable*

VC: So there's no language about the Chairman doing it?

Atty. Hiton: No. Nice try Shell, nice try.

Ms. Gibson: It's in there – keep looking.

VC: Alright so **[end]**

Chairman: Are those 10 calendar days Mike including weekends or what?

LC: Calendar days, yes Dan.

Mrs. Baleto: Calendar.

LOURDES A. LEON GUERRERO
Governor
JOSHUA F. TENORIO
Lieutenant Governor

CIVIL SERVICE COMMISSION
Kumision I Setbision Sibit
GOVERNMENT OF GUAM
I Gobietnon Guahan
Bell Tower, Suite 201
710 West Marine Corps Drive
Hagatna, Guam 96910
Tel: (671) 647-1855/1857 • Fax: (671) 647-1867
Website: csc.guam.gov

DANIEL D. LEON GUERRERO
Executive Director

C.S.C. No.: 2020-018

March 11, 2020

Via Facsimile: <curtis@vandeveld.attorney>
Curtis Van de Veld, Esquire
Gill & Perez House, Second Floor
123 Hernan Cortex Avenue
Hagatna, Guam 96910

Via Facsimile: <lrbaza@portguam.com>
Luis R. Baza, Deputy General Manager
Administration and Finance
Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96915

Re: Bernadette Stern Meno vs. Port Authority of Guam
Civil Service Commission Case No.: 13-AA03T

Please find attached the Recommendations of the Administrative Law Judge on Motion to Void Based on Violation of the Sixty-Day Rule dated September 20, 2019, regarding the above matter. Upon service of the findings, the parties shall have ten (10) days to file a written objection with the Civil Service Commission. The Continued Hearing on the Merits will be scheduled before the Civil Service Commission Board at which time you will have the opportunity to be heard on the Recommendations. An official notice from the Commission will be issued for the Continued Hearing on the Merits.

Senseramente,

Eric D. Miller
Administrative Law Judge
Civil Service Commission

Attachment
Cc: Daniel D. Leon Guerrero, Executive Director
Civil Service Commission

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF:

BERNADETTE STERN MENO,

Employee,

vs.

PORT AUTHORITY OF GUAM,

Management.

ADVERSE ACTION APPEAL
CASE NO.: 13-AA03T

RECOMMENDATIONS OF ADMINISTRATIVE LAW JUDGE ON MOTION TO VOID BASED ON VIOLATION OF THE SIXTY-DAY RULE

This matter comes before the undersigned, sitting as a duly appointed and designated Administrative Law Judge (ALJ) for the Civil Service Commission (Commission) pursuant to 4 GCA, §4405.

BACKGROUND

Employee in this matter was given a Final Notice of Adverse Action (FNAA) on December 18, 2012. The notice accuses Employee of processing a fraudulent Workers Compensation Claim (WCC) based on a slip and fall on September 22, 2011. Procedurally this case was delayed awaiting Supreme Court of Guam decision on a related case.

ANALYSIS

Employee has filed a motion to void based on a defective FNAA and a violation of the 60 - day rule, i.e. the FNAA must be served on Employee within 60 days of when Management knew or should have known the facts which are the basis of the FNAA. 4 GCA, §4406. At the time of this FNAA the rule was 60 days. Later legislation expanded the time to 90 days.

This case was originally assigned to Administrative Law Judge (ALJ) R. Todd Thompson. ALJ Thompson in an order dated October 9, 2019 found that addressing the 60 day rule violation motion would likely result in further delay and duplication of efforts. The undersigned disagrees.

The undersigned finds Management's exhibits include documents signed by several management personnel that establish the critical moment in time when management knew or should have known Employee was processing a fraudulent WCC.

The undisputed facts are that Employee applied for and received code 45 leave (work injury leave) on September 10, 2012 and September 17, 2012, and the General Manager (GM) of the Port Authority of Guam (Port), Mary C. Torres and other management personnel signed their approval on those dates. See M0123 and M0127. On that date, the GM and other management knew or should have known that there was no approved WCC at the time of approving the code 45 leave. The FNAA was served December 18, 2012, which is 93 and 100 days respectively, after the GM approved the code 45 leave.

Port staff processed an initial funding request for ten-(10) day stay in a Hawaii, per diem, and Sixty-Six Thousand Dollars ($66,000) in medical procedures. The GM and other management personnel signed their approval of the request on October 16, 2012 when they knew or should have known there was no approved WCC.

The GM and other management personnel also signed their approval of the Travel Authorization on October 16, 2012. See M0145.

The FNAA was served on Employee December 18, 2012, 63 days after the GM's and other management personnel's approval of the funding request and Travel Authorization.

Part of the GM's and other management personnel's responsibility and fiduciary duty is to only authorize leave and expenditures supported by the law and the documents before them. It is the fundamental responsibility of management to require proof of an approved Workers Compensation Claim before spending government money on medical treatment and injury leave. The GM and other management personnel should have known not to approve expenditures without a written document authorizing the Workers Compensation Claim.

The undersigned notes that the Commission, in an order dated October 10, 2013, ruled to the contrary finding that the Employee failed to carry her burden on the 60-day rule violation. As the presiding ALJ in this case, I cannot make a recommendation to the Commission which I do not agree with. The Commission has the inherent authority to reconsider its prior decision before the matter is appealed to the Superior Court of Guam. The Superior Court of Guam has not ruled on the issue of the 60-day rule in this case and the issue, therefore, is fair game for reconsideration on remand.

CONCLUSION

The undersigned recommends the Commission grant Employee's motion to void because the FNAA violated what was then the 60-day rule. The Adverse Action should be revoked. The

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Employee should be reinstated immediately until such time as this decision is overturned by judicial review. 4 GCA §4406(g). Employee should be awarded back pay, reasonable attorney fees and costs.

RESPECTFULLY SUBMITTED THIS 11TH DAY OF MARCH, 2020.

ERIC D. MILLER
Administrative Law Judge

LOU A. LEON GUERRERO
Governor
JOSHUA TENORIO
Lieutenant Governor

CIVIL SERVICE COMMISSION
Kumision I Setbision Sibit
GOVERNMENT OF GUAM
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Tel: (671) 647-1855/1857 • Fax: (671) 647-1867
Website: csc.guam.gov

DANIEL D. LEON GUERRERO
Executive Director

C.S.C. No. : 2020-023

June 8, 2020

Via Facsimile: john@terlaje.net
THE LAW OFFICE OF JOHN C. TERLAJE
Terlaje Professional Building
194 Hernan Cortez Ave., Suite 216
Hagatna, Guam 96910

Via Facsimile: < lrbaza@portguam.com>
Luis R. Baza, Deputy General Manager
Administration and Finance
Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96915

Re: Josette Javelosa vs. Port Authority of Guam
Civil Service Commission Case No.: 13-AA01T SP

Please find attached the Recommendations of the Administrative Law Judge on Motion to Void, Based on Violation of the Sixty-Day Rule dated June 8, 2020, regarding the above matter. Upon service of the findings, the parties shall have ten (10) days to file a written objection with the Civil Service Commission. The Continued Hearing on the Motion will be scheduled before the Civil Service Commission Board at which time you will have the opportunity to be heard on the Recommendations. An official notice from the Commission will be issued for the Hearing.

Senseramente,

Eric D. Miller
Administrative Law Judge
Civil Service Commission

Attachment
Cc: Daniel D. Leon Guerrero, Executive Director
Civil Service Commission

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF:

Josette Javelosa

Employee,

vs.

PORT AUTHORITY OF GUAM,

Management.

ADVERSE ACTION APPEAL
CASE NO.: 13-AA01T SP

RECOMMENDATIONS OF ADMINISTRATIVE LAW JUDGE

This matter comes before the undersigned, sitting as a duly appointed and designated Administrative Law Judge (ALJ) for the Civil Service Commission (Commission) pursuant to 4 GCA, §4405.

BACKGROUND

Employee in this matter was given a Final Notice of Adverse Action (FNAA) on December 18, 2012. The notice accuses Employee of processing a fraudulent Workers Compensation Claim (WCC) based on a slip and fall occurring September 22, 2011. Employee is also accused of back-dating a memo to file as part of a scheme to

cover up the fraud. Finally Employee is accused of falsely claiming that Mr. Roberto was the person responsible for Mrs. Meno receiving the code 45 leave she was not entitled to. Procedurally this case was delayed awaiting the Supreme Court of Guam decision on a related case.

ANALYSIS

Employee has filed a motion to void based on a violation of the 60 -day rule, i.e. the FNAA must be served on Employee within 60 days of when Management knew or should have known the facts which are the basis of the FNAA. 4 GCA, §4406. At the time of this FNAA the rule was 60 days. Later legislation expanded the time to 90 days.

The undersigned finds Management's exhibits include documents signed by several management personnel that establish the critical moment in time when management knew or should have known Employee was processing a fraudulent WCC.

The undisputed facts are that Bernadette Meno an employee of the Port applied for and received code 45 leave (work injury leave) on September 10, 2012 and September 17, 2012, and the General Manager (GM) of the Port Authority of Guam (Port), Mary C. Torres and other management personnel signed their approval on those dates (copies attached) On those dates, the GM and other management knew or should have known that there was no approved WCC at the time of approving the code 45 leave. The FNAA was served December 18, 2012, which is 93 and 100 days respectively, after the GM approved the two code 45 leave applications.

Port staff processed an initial funding request for ten-(10) day stay in a Hawaii, per diem, and Sixty-Six Thousand Dollars ($66,000) in medical procedures. The GM and other management personnel signed their approval of the request on October 16, 2012 when they knew or should have known there was no approved WCC.

The GM and other management personnel also signed their approval of the Travel Authorization on October 16, 2012.

The FNAA was served on Employee December 18, 2012, 63 days after the GM's and other management personnel's approval of the funding request and Travel Authorization.

Part of the GM's and other management personnel's responsibility and fiduciary duty is to only authorize leave and expenditures supported by the law and the documents before them. It is the fundamental responsibility of management to require proof of an approved Workers Compensation Claim before spending government money on medical treatment and injury leave. The GM and other management personnel should have known not to approve expenditures without a written document authorizing the Workers Compensation Claim.

The back-dated memo to file is a separate issue. The FNAA does not place a date on when the back-dating took place. Assuming the document was back-dated it is impossible to conclude that the memo was somehow part of the scheme to hide the fraud or mislead the Board. The memo attached hereto simply notes that Employee was instructed by management to reverse job injury leave for Bernadette Meno to sick leave. The memo is dated October 13, 2012 which is a Saturday. The document speaks for itself. Even assuming the document was intentionally back dated, it indicates nothing more than a notation that she was instructed to correct the allegedly fraudulent granting of work injury leave. There is no conceivable way to conclude that this memo in any way aided the process of the original approval of work related injury leave. Moreover there is no way to conclude that the memo was an effort to cover up fraudulent acts. It is not really relevant when the memo was drafted, but obviously it was after the approval of the code 45 leave. If Employee was trying to back date the memo and create some kind of deception, she would not have back-dated it to Saturday. The purpose of the memo was to leave a written explanation of why she was changing the leave from code 45 to sick leave. The undersigned concludes that the memo cannot support or justify the adverse action.

The undersigned notes that the Commission, in an order dated October 10, 2013, ruled to the contrary finding that the Employee failed to carry her burden on the 60-day rule violation. As the presiding ALJ in this case, I cannot make a recommendation to the Commission which I do not agree with. The Commission has the inherent authority to reconsider its prior decision before the matter is appealed to the Superior Court of Guam. The Superior Court of Guam has not ruled on the issue of the 60-day rule in this case and the issue, therefore, is fair game for reconsideration on remand.

The FNAA accuses Employee of falsely claiming that Mr. Roberto was responsible for Mrs. Meno receiving the code 45 (job injury leave) to which she was not entitled. This accusation is contradicted by the Code 45 leave application forms attached hereto which are clearly signed by Mr. Roberto as the Port Safety Administrator. Mr. Roberto was in fact responsible along with other Port management who signed their approval of the job injury leave. This accusation cannot sustain an adverse action.

CONCLUSION

The undersigned recommends the Commission grant Employee's motion to void as to allegations of processing and conspiracy to process a fraudulent WCC because the FNAA violated what was then the 60-day rule.

The undersigned also finds that the allegations of backdating a document and the allegation of falsely accusing Roberto of being responsible for Mrs. Meno receiving the code 45 leave could not sustain or justify an adverse action.

The undersigned recommends that the Commission find that the memo to file does not warrant an adverse action.

The Adverse Action should be revoked. The Employee should be reinstated immediately until such time as this decision is overturned by judicial review. 4 GCA §4406(g). Employee should be awarded back pay, reasonable attorney fees and costs.

RESPECTFULLY SUBMITTED THIS 8th DAY OF JUNE, 2020.

ERIC D. MILLER
Administrative Law Judge

PCN 2-0-1 (REV. 4-04)

GOVERNMENT OF GUAM

LEAVE APPLICATION FORM

NAME: (First, Middle, Last)	SOCIAL SECURITY NO.:	DATE OF REQUEST:
BERNADETTE S. MENO	1786	09/10/12

TYPE OF LEAVE REQUESTED

( ) ANNUAL ( ) SICK ( ) LEAVE W/O PAY ( ) COMP-TIME OFF (✓) OTHER (SPECIFY) JOB INJURY

LEAVE PERIOD

FROM: (Hour, Month, Day, Year)	TO: (Hour, Month, Day, Year)	TOTAL HOURS REQUESTED:
0800 09/10/12	1700 09/21/12	80 HRS.

ADDRESS WHILE ON LEAVE: HOME

APPLICATION FOR PREPAYMENT OF VACATION LEAVE

Minimum requirement is not less than ten (10) consecutive days. It is understood that if I return to duty before the expiration of my prepaid vacation, I shall reimburse the government in the amount equivalent to the unexpired portion of the prepaid leave.

FROM: (Hour, Month, Day Year)	TO: (Hour, Month, Day, Year)	TOTAL HOURS PREPAID:

MEDICAL CERTIFICATION

I certify that the above person was under my professional care or quarantine during the period stated below. From a medical standpoint, his/her condition during this period was such that I considered it inadvisable for him/her to report to work.

FROM: (Month, Day, Year)	TO: (Month, Day, Year)	TOTAL NO. OF DAYS:

REMARKS:

NAME OF LICENSED PHYSICIAN/HEALTH PROFESSIONAL (TYPE OR PRINT)	SIGNATURE OF LICENSED PHYSICIAN/HEALTH PROFESSIONAL
	E.C. ROBERTO SAFETY ADMINISTRATOR PORT AUTHORITY OF GUAM

SIGNATURE OF EMPLOYEE:

(✓) APPROVED ( ) DISAPPROVED	(✓) APPROVED ( ) DISAPPROVED
Grisia B. Terlaje SIGNATURE OF IMMEDIATE SUPERVISOR	SIGNATURE OF AUTHORIZED OFFICIAL OR APPOINTING AUTHORITY

M0123

PCN 2-0-1 (REV. 4-04)

GOVERNMENT OF GUAM

LEAVE APPLICATION FORM

NAME (First, Middle, Last)	SOCIAL SECURITY NO.:	DATE OF REQUEST:
BERNADETTE S. MENO	1786	9/17/12

TYPE OF LEAVE REQUESTED

( ) ANNUAL ( ) SICK ( ) LEAVE W/O PAY ( ) COMP-TIME OFF (✓) OTHER (SPECIFY) JOB INJURY

LEAVE PERIOD

FROM: (Hour, Month, Day Year)	TO: (Hour, Month, Day, Year)	TOTAL HOURS REQUESTED:
0800 9/17/12	1200 10/05/12	80 HRS.

ADDRESS WHILE ON LEAVE HOME

APPLICATION FOR DEPARTMENT OF VACATION LEAVE

Minimum requirement is not less than ten (10) consecutive days. It is understood that if I return to duty before the expiration of my prepaid vacation, I shall reimburse the government in the amount equivalent to the unexpired portion of the prepaid leave.

FROM: (Hour, Month, Day Year)	TO: (Hour, Month, Day, Year)	TOTAL HOURS PREPAID:

SICK LEAVE CERTIFICATION

I certify that the above person was under my professional care or quarantine during the period stated below. From a medical standpoint, his/her confinement during this period was such that I considered it inadvisable for him/her to report to work.

FROM: (Month, Day Year)	TO: (Month, Day, Year)	TOTAL NO. OF DAYS:

REMARKS:

NAME OF LICENSED PHYSICIAN/HEALTH PROFESSIONAL (TYPE OR PRINT)	SIGNATURE OF LICENSED PHYSICIAN/HEALTH PROFESSIONAL

SIGNATURE OF EMPLOYEE: BMeno

(✓) APPROVED ( ) DISAPPROVED	(✓) APPROVED ( ) DISAPPROVED
Ginnie B. Tenorio	Mary C. Bus
SIGNATURE OF IMMEDIATE SUPERVISOR	SIGNATURE OF AUTHORIZED OFFICIAL OR APPOINTING AUTHORITY

F.C. ROBERTO
SAFETY ADMINISTRATOR
PORT AUTHORITY OF GUAM

M0127

Doc. No. 35GL-20-1931.*

MARY C. TORRES
277 Chalan Santo Papa
Hagatna, Guam 96910
671-777-0000

February 6, 2019

Transmitted Electronically and via Hand Delivery

Ms. Connie Jo Shinohara
Deputy Manager of Finance
Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96915

RE: Further comments in connection with the practices of the Law Firm of Phillips & Bordallo, P. C. as attorneys for the Port Authority of Guam

Dear Ms. Shinohara:

Thank you for allowing me to provide additional information for your review and consideration. In my last correspondence to you, I described in great detail the ethical miscarriage committed by the Phillips Firm during their investigation of the 2012 workers compensation claim.

While these violations provide sufficient cause for alarm, they are merely symptoms of a larger problem that began long before my tenure at the Port and will continue so long as the Law Office of Phillips and Bordallo, P.C. remains its counsel.

In all fairness to the aggrieved parties and the general community of Guam, I believe your task force cannot conduct an objective review of the "Port 7" cases without an overall examination of the Phillips Firm's long history of questionable practices in the name of the Port's "best interests."

A Panoply of the Absurd

The Law of Parsimony is a logical principle that says the simplest explanation is usually the correct one. Unfortunately, for the Phillips Firm and many of the Port's previous management, logic was simply not their forte.

Rather than believe that Ms. Meno—a woman who had never been subjected to any prior discipline at the Port; a woman who, just one week before her notice of adverse action, was awarded a Certificate of Achievement by the Port's own Board of Directors; a woman who had earned the Port's Marketing Division a MagPro award—had indeed suffered a work injury as she

claimed, management chose to concoct a 'conspiracy theory' so absurd one would have to be a contortionist to navigate the mental gymnastics required to believe it.[1]

Consider it for a moment. Why would every single one of these employees—many of whom had long-term employment and a dedicated history of service to the Port—risk everything to collectively fabricate a work injury requiring back surgery, with most of the $70,000 earmarked for doctors and hospitalization? What exact benefit would each of them gain that could possibly surpass the loss of their jobs, livelihood, reputation, and the prospect of criminal prosecution?

While the Phillips Firm publicly portrayed Ms. Meno's extension of leave in Hawaii to be a form of vacation, if this indeed were the grand conspiratorial exercise counsel represented it to be, why not give the alleged the credit to dream a bit bigger than a simple claim requiring back surgery at the nearest U.S. facility? The great lengths these supposed schemers would go for very little gain requires an excessive suspension of disbelief.

Nonetheless, to this day, though the statute of limitations to press criminal charges has since expired, the Port's counsel maintains that these employees were involved in criminal conduct, and that the facts exist to prove it. And yet, no law enforcement body, local or federal, has seen it fit to hand down a single indictment against any member of the Port 7. No criminal charges were brought despite the urging of then Board Chairman Dan Tydingco to his brother, Phil Tydingco, then-Chief Prosecutor of the Attorney General's Office, and Joanne Brown's relentless and unabashed efforts to get Attorney General Elizabeth Barrett-Anderson to prosecute the port employees. You should feel free to contact former AG Barrett-Anderson who mentioned to me Ms. Brown's persistence and obstinacy when she indicated to Ms. Brown that there would be no criminal prosecutions.

Still, as incredulous as this conspiracy sounds, it pales in comparison to the repeated failure of the Port to properly assess and manage the Port 7 cases.

The "Tail that Wags the Dog"

We all know that attorneys have an obligation to provide advice that is in the best interests of their client. But as sworn officers of our legal system, they are also subject to ethical rules and standards—and for good reason. Zealously appealing rulings for no substantial purpose other than to embarrass or violate the legal rights of third persons or furthering factually unfounded positions

[1]Again, it should be noted that Attorney Bell himself stated that Ms. Meno should be examined by an independent medical examiner, and that such action was needed in order to expedite her treatment as quickly as possible. He later followed up this statement explaining that it was unfortunate that Ms. Meno had to undergo the review and **that it was everyone's intent that she get the medical care that she needs as quickly as possible and to make everything right.**

are not only clear violations of the Guam Rules of Professional Conduct, they are classic demonstrations of the "tail wagging the dog."

In this instance, the Port's tail has wagged the agency to the tune of millions of dollars. For the past seven years, the Port has racked up $6 million in legal fees and may be liable for $3.2 million in back wages and fees—all over a $70,000 worker's compensation claim. On top of this, there have been court judgments handed down to include reinstatement of employment rights, repayment of back wages and benefits, and payment of attorneys' fees.

Based on testimony provided to the Legislature by Port Board members, there has been no evaluation of the cost benefit associated with fighting these cases, nor any risk assessment, litigation management, or management assessment.[2] This complete disregard for common business practice, or just plain common sense, begs the question: **Is it Phillips's interest or the Port's interest that are paramount when his firm engages in such legal tactics?**

An initial litigation risk assessment if done properly, becomes the business plan for the litigation and is reviewed and revised as more facts become available. It provides a metric against which settlement opportunities and the cost of further litigation can be evaluated. The value of this process is to implement disciplined case management and rigorous case evaluation. Such a process results in: (1) significant reductions in the overall coast of litigation including payouts and attorney fees and expenses; (2) improved ability to evaluate the performance of counsel; (3) improved ability to settle disputes creatively; and (4) improved ability to make informed settle or litigate decisions. Unfortunately, the Port did none of this, and I'm glad you are undertaking this review and evaluation.

Potential Bill Padding

I asked the above question myself on several occasions during my short term at the Port—specifically when it came to the approval of billing invoices. While I approved only a few billing invoices, most of which were for matters performed before I assumed employment, my initial scrutiny toward the documents Legal Counsel submitted resulted in their failure to provide any additional billings for the remainder of my term.

A later examination of the invoices submitted by the Law Office of Phillips and Bordallo revealed a number of obvious problems that you should be aware of, as they did not appear to

[2]At the Legislature's confirmation hearing for two Port board members held in June 2016, I asked the former Deputy Manager in charge of Finance Management if anyone at the Port was evaluating the cost benefit associated with fighting these cases, and specifically if anyone at the Port is doing risk assessments, litigation management or mitigation assessments. Ms. Maria Taitano testified that she does not. I further inquired if the Board convened executive sessions for purposes of deciding such legal matters—to which the current chairman of the Board, Mr. Frank Santos, testified at his legislative confirmation hearing that legal matters are decided by the General Manager and Legal Counsel.

fairly reflect the basis on which the attorney's charges had been determined. At worst, the charges indicate that the Phillips Firm was, and may still be, padding their invoices. At best, they demonstrate an inefficient expenditure of public funds.

A. Block Billing and Vague or Insufficient Descriptions

The first set of questionable practices involved the use of block billing and vague or insufficient descriptions—raising suspicions about whether all the work claimed was actually accomplished or whether it was necessary and cost efficient. This is important because, when public funds are being expended, attorney bills must be carefully scrutinized.

Courts have frowned upon and disallowed attorneys from engaging in such practices. See *Sonia S. Chan, ABA Formal Opinion 93-379: Double Billing, Padding and Other Forms of Overbilling, 9 Geo. J. Legal Ethics 611, 617-18 (1996)*

Such practices also raise more important underlying ethical issues:

> "These ethical questions, including attorney deception, the conflict between the client's needs and the attorney's economic interests, hindrances to expediting litigation and efficiency and risks of an attorney abusing his discretion, therefore, should be carefully examined." Id at 614; *see also* Douglas *R. Richmond, For A Few Dollars More: The Perplexing Problems of Unethical Billing Practices by Lawyers, 60 S.C. L. Rev. 63, 81 (2008)*

B. Exorbitant Number of Very Long Days

The second concern regarding these invoices were the exorbitant number of very long days. While there were numerous days where the billable hours for multiple lawyers exceeded 10 hours in a day—even though no trial days were involved—amazingly, and contrary to the laws of time and space, **one Phillips bill included billing by a single attorney of more than 24 hours in a day**.

For example, on November 27, 2012, Attorney John Bell individually billed more than 24 hours for that day. By the time I exposed it—forcing Phillips to correct the invoice—the bill was already certified and paid by the Port. Moreover, in the months of September and October 2012 alone, there were 35 instances where the billable hours for a single attorney were 10 or more hours and 17 more instances where the billable hours for a single attorney were nine or more hours. This should serve as a strong indication that Phillips was likely padding the billing invoices. See *Gerald*

F. Phillips, Time Bandits: Attempts by Lawyers to Pad Hours Can Often Be Uncovered by A Careful Examination of Billing Statements, 29 W. St. U. L. Rev. 265, 279 (2002).[3]

Unfortunately, these bills were not submitted on a timely basis as Phillips submits invoices sometimes more than 10 months after the services were first rendered. Needless to say, this delay in submitting invoices complicates and makes more difficult the determination of whether the expenditure of public funds on Phillips is cost efficient, necessary, reasonable, or compensable. See *Iowa Supreme Court Bd. of Professional Ethics and Conduct v. Tofflemire* 689 N.W.2d 83 (2004).[4]

C. Use of Quarter Billing

Finally, paragraph 3.1 (b) of the Agreement between Phillips and the Port [Exhibit A of my correspondence dated January 25, 2019] specifically requires that Phillips shall bill in time increments of six minutes or one-tenth of an hour. Phillips instead consistently billed in quarter hour increments which was expressly contrary to his Agreement. Such conduct is disfavored because there is a greater likelihood overbilling will result. See, e.g., *Cambridge Toxicology Group, Inc. v. Exnicios*, 495 F.3d 169, 181-82 (5th Cir. 2007) (reducing the attorney's award because he used quarter-hour billing and consistently rounded up his time); *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 949 (9th Cir. 2007) ("[T]he hours were inflated because counsel billed a minimum of [fifteen] minutes for numerous phone calls and e-mails that likely took a fraction of the time."); *Republican Party of Minn. v. White,* 456 F.3d 912, 920 (8th Cir. 2006) ("We agree that quarter-hour increment billing is less reliable than tenth-hour billing and risks bill inflation."). See also *Douglas R. Richmond, For A Few Dollars More: The Perplexing Problems of Unethical Billing Practices by Lawyers*, 60 S.C. L. Rev 63.

Conclusion

It has been said that the unvarnished truth is more valuable than the political convenience of a polite lie. Seven years ago, I did the politically inconvenient because I believed it was necessary to expose the truth and make all facts known regarding the handling of my termination and the continued disposition of the Port 7.

While this political vendetta gone awry must end—the greater injustice to the people of Guam is the continued pilferage of the Port's coffers by your Legal Counsel. In addition to the

[3] Exorbitant number of very long days suggest that the law firm might have been padding the billing statements. Few of us can work twelve to sixteen hours a day for several consecutive days. The senior partner tried to camouflage this by billing 8.30, 8.50 and 8.80 hours. In fact, the partner billed fifty-three times in increments in excess of one hour, and twenty-eight percent of these instances were for more than eight hours.

[4]Use of "block and summary" system of billing, in which bills were not prepared until several months after services were performed, leading to questionable level of accuracy for the bills, violated attorney disciplinary rules prohibiting conduct prejudicial to administration of justice and conduct adversely reflecting on fitness to practice law.

questionable practices I have laid out here, I have attached listing, together with court judgments and rulings of the Civil Service Commission in the matters of employees Jose B. Guevara III, Francine T. Rocio, Josette Javelosa, Frances Arriola Cepeda, Leonora V. Leon Guerrero, Bernadette Meno, and Vivian Leon.

Had the Port's board considered a proper and necessary risk assessment of the various cases involving the Port 7, had they not turned a blind eye to the ill-gotten exorbitant billing practices of their Legal Counsel, or had they simply been smarter than their tail—perhaps we would not have reached this point where new management finds it necessary to review the legitimacy of these cases.

Congratulations again on your new position at the Port and thank you for your consideration.

Sincerely,

Mary C. Torres

MARY C. TORRES
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671-777-0000

January 25, 2019

Transmitted via Hand Delivery

Ms. Connie Jo Shinohara
Deputy Manager of Finance
Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96915

Re: Submission of Documents Relative to Actions of the Law Firm of Phillips & Bordallo, P.C., as Attorneys of the Port Authority of Guam, in Violation of the Guam Rules of Professional Conduct

Dear Ms. Shinohara:

I write to you in the hopes of providing information which may aid your review of the December 2012 termination of employees at the Port Authority of Guam.

As you are aware, I formerly served as the General Manager of the Port from February of 2012 until December of 2012. During my tenure as the GM, the law firm of Phillips & Bordallo, P.C. ("Phillips Firm") served as the Port's counsel.

I've publicly stated my belief that the Phillips Firm committed multiple ethical violations in the past. My purpose in providing this evidence for your review remains the same: **to reiterate the ruin of innocent lives when officers of our legal system violate the very rules they were sworn to uphold and defend.**

While some have painted the re-examination of the "Port 7" case as nothing more than a political exercise, I can't help but note the irony. The employees, most of whom were long-time members of the Port's family, were nothing more than victims of an orchestrated political hit—so evident in its design that the very person who is responsible for processing worker compensation claims and initiating payment was notably excluded from any of the Firm's accusations of conspiracy or wrongdoing.[1]

One would assume that the attorneys of the Phillips Firm demonstrate respect for the legal system and use the law's procedures only for legitimate purposes. The details and evidence contained herein indicate otherwise. I maintain that, had the Philips Firm regarded their responsibilities and rules of professional conduct when investigating the 2012 worker's compensation claim, **we would not be embroiled in the unresolved liability and credibility issues which threaten the Port to this day.**

To demonstrate this belief, this correspondence contains a brief **Factual Background** of the Phillips Firm's actions, as well as a short analysis of the **Conduct by the Attorneys John R.B. Bell**

[1] Notwithstanding the fact that Attorney John R.B. Bell of the Phillips Firm sent an email, on approximately October 31, 2012, stating that Bell thought the individual responsible for processing worker compensation claims, Mr. Roberto, did not understand the requirements of the worker's comp administration and that Mr. Roberto was basing decisions regarding the 2012 claim on erroneous factual and legal conclusions.

and Michael F. Phillips in violation of the Ethics Rules. At all times relevant herein, the Phillips Firm served as counsel to the Port pursuant to a Professional Services Agreement between the Port and the Phillips Firm dated November 28, 2011. I have also included as exhibits the following documents:

1. **Exhibit "A"**— the Professional Services Agreement between the Phillips Firm and the Port. This document establishes that at all relevant times, the Phillips Firm was the attorney for the Port Authority of Guam, and not any individual member of the Port's Board of Directors ("Board").

2. **Exhibit "B"** — an undated report prepared and issued by the Phillips Firm, together with Exhibits 1-60, titled "Reported Slip and Fall." Although this report is undated it was provided to me on November 30, 2012 and the accompanying exhibits were delivered on December 2, 2012.

3. **Exhibit "C"** - a second report prepared and issued by the Phillips Firm, titled "Findings of Fact and Conclusions of Law," dated December 4, 2012. (Exhibits "B" and "C" are hereinafter referred to as the "Phillips Report," unless otherwise stated). The Exhibit C Report contains the Phillips Firm's so-called investigative findings relating to the worker's compensation matter, and many harmful misrepresentations and falsifications regarding my conduct. I believe it also contains harmful misrepresentations as to the conduct of the other Port employees named in the Report. The Report improperly accused me of civil and criminal violations, and these allegations are not supported in fact or in law and were advanced to harass and maliciously injure me.

4. **Exhibit "D"** — a copy of my response to the Phillips Report which I presented to the Port's Board at a public hearing held on December 19, 2012. My response details the many misrepresentations made by the Phillips Firm in the Phillips Report.

5. **Exhibit "E"** — copy of my public statement dated December 19, 2012, prepared by me in response to the actions by the Port's Board after the Phillips Report was issued.

6. **Exhibit "F"** — a copy of the document titled Phillips Response to Order Re: Discovery dated February 5, 2013, filed in Adverse Action Appeal Case No. 13AA04T (Civil Service Commission). This filing shows that the Phillips Firm has sought criminal prosecution of certain Port employees. These are the same employees that the Firm accused of criminal and civil violations based on the Firm's communications with these unrepresented employees undertaken without disclosing the Firm's adverse interest and representation.

7. **Exhibit "G"** — a copy of a letter from Leonora V. Leon Guerrero to the current Port General Manager Joanne Brown, dated February 21, 2013. In the letter, Ms. Leon Guerrero, who is a Port employee, details recent meetings she had with three attorneys for the Port, where the attorneys interrogated Ms. Leon Guerrero and attempted to get Ms. Leon Guerrero to say that Mary Torres or Vivian Leon falsified Port documents. (This document was previously released to the Press).

Factual Background

In October of 2012, during my tenure as GM, an interoffice memorandum prepared by the Port's safety administrator Mr. Roberto, who was responsible for processing worker compensation claims, requested funding for off-island medical treatment for a Port employee, Ms. Bemadette Meno. The

inter-office memo also included a travel request and authorization ("TA"). Because this inter-office memo and TA involved a work-related injury, I will refer to this matter generally as the "worker's compensation claim."

As the GM, I proceeded to address the claim in accordance with the Port's procedures for handling worker's compensation claims. The attorneys of the Phillips Firm thereafter commenced an inquiry into Ms. Meno's claim and contacted various Port employees requesting information regarding the claim and the handling of the claim by the Port's management.

At the conclusion of the investigation, the Phillips Firm prepared two reports (collectively the Phillips Report), which detailed the actions supposedly taken by me (and other Port employees) with regard to the handling of the worker's compensation claim. The Phillips Report was not signed by any particular attorney of the Phillips Firm, but it appeared from the Report that the Report was prepared by Attorney Bell, under supervision of Attorney Phillips.

As a result of this Phillips Report, I was effectively terminated as GM of the Port, and six other employees were also terminated via Adverse Action notices.

Conduct by Attorneys Bell and Phillips in Violation of the Ethics Rules

I believe the Phillips Firm and their attorneys committed ethical violations during the investigation and in their preparation and distribution of the Phillips Report.

First, the **Phillips Report contained multiple misrepresentations concerning my actions, and, based on these misrepresentations, wrongly accused me of violating civil and criminal statutes**. Please refer to my December 19, 2012 statements (attached as Exhibits "D" and "E"), which responded to many of the specific findings of fact and conclusions of law contained in the Phillips Report, and details the misrepresentations the Phillips Firm makes in the Report.

Second, the Phillips Report, which **(i) detailed the actions of seven Port employees (including me), accusing most of them, including me, of criminal and civil liability, (ii) contained misrepresentations as explained above**, and **(iii) contained Ms. Meno's confidential personnel and medical information, was disclosed to third parties.**[2] The Phillips Report was provided to me, to the Board members, and I believe also to the six other terminated employees. Attorney Bell emailed me the Reported Slip and Fall (Exhibit B) on November 30, 2012, the accompanying exhibits on December 2, and the Findings of Fact and Conclusions of Law (Exhibit C) on December 4. Attorneys Phillips and Darleen Hiton of the Phillips Firm and all Port Authority of Guam Board members, namely, Daniel J. Tydingco, Michael Benito, Michelle "Shelley" Gibson, Christine Baleto and Eduardo Ilao, were also copied on these respective emails.

Third, as the Phillips Report and emails from the Phillips Firm show, **the Phillips Firm and its Attorneys, without disclosing their potential and/or actual adverse interest, used their communications with the employees of their client, the Port, as grounds to conclude that the Port's employees committed criminal and civil violations.** Even more troubling is that the Phillips Firm, explaining the identity of the client and their apparent adverse interests, obtained information and documents from these unrepresented employees which were later submitted to the Attomey General of Guam, the United States Attomey and the Federal Bureau of Investigation for potential criminal prosecution. See Phillips Response to Order Re: Discovery dated February 5, 2013 Civil

[2] Ms. Meno has consented to me providing a copy of the Phillips Report and attachments.

Service Commission Adverse Action Appeal Case No.13AA04T (Exhibit F hereto). This was done without any forewarning by the Phillips Firm concerning the potential ramifications of the employees' communications with the Phillips Firm. The Phillips Firm misled the employees to their prejudice, concerning the identity and interests of the client that the Phillips Firm represented, and the Phillips Firm knew, or reasonably should have known, that the unrepresented employees misunderstood the Phillips Firm's role in the matter.

One such communication between the attorneys for the Phillips Firm and Port employees, which has adversely affected me, occurred on or about October 19, 2012. On that date, John Bell came to the Port seeking documents relating to the worker's compensation claim. In my presence, Mr. Bell asked another Port employee, Ms. Leon, for the files relating to Ms. Meno's worker's compensation claim. In response to Mr. Bell's request, I gave Ms. Leon instructions as to how to address Mr. Bell's request.

At no time did Mr. Bell inform me (or Mrs. Leon), that we were subject to the Phillips Firm's investigation. Yet, in the Phillips Report, the Phillips Firm cited my communications and interactions with Attomey Bell as a basis for civil and criminal liability. Specifically, the Phillips Report states: "When Mr. Bell insisted he get whatever they then had per the Board's instructions, Ms. Leon only handed it over after she and Mrs. Torres stepped out of the room for a private conference."

The Phillips Report then concludes that as result of these and other actions, I "inhibited the investigation into the matter" and "withheld documents," and that these actions amounted to a "cover-up" for which I may be charged with the misdemeanors of "Forgery, Tampering With Public Records, Misapplication of Entrusted Funds, Official Misconduct, Unswom Falsifications, and Obstructing Government Functions," and the Third Degree Felonies of "Forgery, Unlawful Influence, and Tampering With Public Records."

The Phillips Firm facilitated my misunderstanding of their adverse role in the matter through email communications to me and other Port employees, where Attorney Bell sought the aid and assistance of the Port's employees with regard to the worker's compensation claim. For instance, Attorney Bell sent several emails to me and other Port employees, including employees accused of committing criminal and civil violations such as Ms. Francine Rocio, requesting documents pertaining to Ms. Meno's claim, thanking the respective employees for our help. From my recollection these emails were sent on October 30, 2012 and November 6, 2012.

Attorney Bell continued to mislead me (and other Port employees) as to his true adverse role in other email communications. In an email which I believe was sent on November 2, 2012, from Attorney Bell to me and Port employees Vivian Leon, Francine Rocio, and Frank Roberto, Attorney Bell stated that Ms. Meno should be examined by an independent medical examiner, and that such action was needed in order to expedite her treatment as quickly as possible. Attorney Bell then sent a follow-up email to me, which I believe was the next day, explaining that in requesting that Ms. Meno submit to an independent medical exam, he was not trying to make things difficult. He explained that it was unfortunate that Ms. Meno had to undergo the review and that it was everyone's intent that she get the medical care that she needs as quickly as possible and to make everything right.

Attorney Bell's emails would lead any recipient of these emails to believe that Bell was seeking the assistance of the Port's employees to resolve the worker's compensation matter, and that the Phillips Firm had the goal of successfully processing Ms. Meno's worker's

compensation claim so that she could get the medical care she needed as quickly as possible and to make everything right.

From these communications, it would not be reasonable for any of the recipients (including me) to think that Attorney Bell or the Phillips Firm represented an adverse party (the Port or Board) in connection with an internal investigation as to possible wrongdoing in connection with the worker's compensation claim. **Without disclosing his adverse representation in these communications, the Phillips Firm** nonetheless **used his communications with me (and the other Port employees) as grounds to support its findings in the Phillips Report that I (and other employees) committed criminal and civil violations in handling the worker's compensation matter.**

Relevant Rules of Professional Conduct

As I explain below, I believe that the Phillips Firm violated multiple rules of the Guam Rules of Professional Conduct ("Ethics Rules") while handling its investigation of a workplace injury and the worker's compensation matter at the Port Authority of Guam. These Ethics Rules include:

- **Rule 3.1 (Meritorious Claims And Contentions),**
- **Rule 4.3 (Dealing With Unrepresented Person),**
- **Rule 4.4 (Respect For Rights Of Third Persons), and**
- **Rule 8.4 (Misconduct)**

RULE 3.1: MERITORIOUS CLAIMS AND CONTENTIONS

> **RULE 3.1: MERITORIOUS CLAIMS AND CONTENTIONS.**
> A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law…

Comment 1 to the ABA's Model Rule 3.1 states that "While the advocate has a duty to use legal procedure for the fullest benefit of the client's cause, he also has a concomitant duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. Rule 3.1 prohibits an advocate from asserting frivolous claims."

Rule 3.1 applies to proceedings other than formal litigation. *See* ADMONITION NO. 02-11, 2002 32254517 (Ma st. Bar. Disp. Bd. 2002) (groundless settlement demand letter under c.93A by respondents in a civil dispute advanced a frivolous claim in violation of Mass. R. Prof. C. 3.1).

"A lawyer who threatens criminal prosecution that is not well-founded in fact or law or threatens such prosecutions in furtherance of a civil claim that is not well-founded," violates Rule 3.1. see Alaska Ethics Opinion No. 97-2, 1997 WL 411805, * 2 (Alaska Bar. Assn. Eth. Comm., Mar. 6, 1997; Board of Govemors, Mar. 29, 1997); *In re Smith*, 236 P.3d 137, 143-44 (Or. 2010) (position lawyer took was frivolous, supporting finding that attorney violated professional rule prohibiting a lawyer from asserting an issue without a basis in law and fact); *In re Conduct of Lewelling*, 678 P.2d 1229, 1231 (Or. 1984) (attorney who "threaten[s] to present criminal charges solely to obtain an advantage in a civil matter" is a "violation of a more serious nature," an "intimidating tactic that is an abuse of our legal processes").

Responsible attorneys are charged with being able to recognize, based on the facts and circumstances, a genuinely frivolous claim. This is indicated by the Terminology provision of Rules, which states that knowledge "may be inferred from the circumstances." Guam R. Prof. cond., Rule 1.0.

In the Report, the Phillips Firm, acting through its attomeys Bell and Phillips, made conclusions that I violated civil and criminal laws. These conclusions formed the basis of my termination from my position as the GM of the Port. As explained above, the conclusion that I violated the law was based on false statements as to my handling of the worker's compensation claim. **The Phillips Firm violated Rule 3.1 by making claims that I violated the law, where such claims were based on misstatements and serious mischaracterizations of the facts pertaining to my involvement in handling the worker's compensation claim.**

Even assuming the factual findings made by the attorneys in the Phillips Report are taken as true (which they are not true as explained in detail in my December 19, 2012 Statements, Exs. D and E), there can be no colorable, good faith claim that these facts amount to a violation of the criminal and civil laws cited in the Phillips Report.

Frivolous Allegations and Accusations:

The Phillips Report alleged that I may be charged with Forgery under 9 GCA § 46.10. The forgery statute requires a finding that a person, with intent to injure or defraud, makes a false instrument or alters an existing one so that the instrument purports to be an authentic creation of its maker. *See* 9 GCA § 46.10. In order to establish forgery, there must be a showing that I created or altered an instrument purportedly authored by another person. The Report states broadly and without any support that "the per diem and length of stay was altered by management without Mr. Roberto's knowledge or approval." See Phillips Report, Ex. C. There is no allegation that I made these alterations. There are simply no facts in the Phillips Report to support any finding that I committed the criminal act of forgery.

The Phillips Report alleged that I may be charged with Misapplication of Entrusted Funds under 9 GCA §46.70. To prove an offense under the statute, there must be a showing that I applied or disposed of property of the government, in a manner which "is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted." 9 GCA §46.70. There are no allegations in the Phillips Report that any govemment property was actually "applied or disposed of" relating to Ms. Meno's October 2012 work-related injury claim. The Report states that I approved leave and certain payments for the work-related injury; however, the Report also states that no actual money or checks were disbursed or released. The only other allegation in the Report regarding the payment of govemment funds is the statement that expenses were incurred by arranging the flight with a travel agency. However, the Report does not allege that I made any travel arrangements. The facts stated in the Report, even if accepted as true, do not establish that I may be charged with a violation of 9 GCA 46.70.

The Phillips Report alleged that I may be charged with the crime of Unlawful Influence under 9 GCA §49.40. The crime of unlawful influence "is addressed to the problem of the solicitation of benefits by one who is not a public servant for the ostensible purpose of improperly influencing a public servant in the performance of his official function." Comment, Title 9 Chapter 49. In order to be charged with Unlawful Influence, there must be a showing that a person either offered a benefit to or accepted a benefit from another person in exchange for improperly influencing (or attempting to

so influence) a public servant in the performance of his official duties. *See* 9 GCA §49.40. There are no allegations in the Phillips Report that I either offered to confer a benefit on anyone, or that I accepted a benefit from anyone, in exchange for improperly influencing a public official. There is nothing in the Phillips Report that would give rise to a claim that I committed the crime of Unlawful Influence.

The Phillips Report again improperly alleged that I committed the offence of Tampering With Public Records under 9 GCA §955.10. The tampering offense requires a finding that I knowingly made a false entry in or altered a document kept as a govemment record, knowingly used a false record with the intent that it be taken as genuine, or intentionally destroyed, removed, concealed, or impaired the availability of a government document. See 9 GCA §55.10. Again, the Phillips Report does not make any specific factual allegation that I made a false entry in any government document, that I used a false record with intent that it be taken as true, or that I personally destroyed or concealed any public record. The facts as alleged in the Report, even if taken as true, do not establish even a colorable claim that I violated 9 GCA §55.10.

In addition to the frivolous allegations that I violated criminal laws, the Phillips Report also accuses me, without any colorable basis in law or fact, of violating 5 GCA § 22401, which prohibits expenditures which are not for an authorized purpose or exceeds the budgeted amount for such expenditure. However, Title 5 GCA §22401 concerning "Illegal Expenditures" applies only to funds appropriated by the legislature and not to Port funds that were not appropriated.[3]

In accusing me of violating the criminal and civil statutes without any basis in law or fact, the Phillips Firm, and its attomeys Bell and Phillips, violated Rule 3.1.

RULE 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS.

> **RULE 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS.**
> In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person;…

Rule 4.1 prohibits lawyers from making false statements to others. "Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements." Model Rules 4.1, Cmt. 1.

This Rule applies to statements to clients as well as third parties, *see* Comment to La. Rules of Prof. Conduct[4], modeled after ABA Model Rules ("This rule covers not only statements made to adverse counsel and adverse parties, see, e.g., ABA Comm. on Ethics and Professional Responsibility, Formal Op. 95-397 (1995), but also to clients and other persons."), and applies to

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[3] See 7 GCA §22401 (a)(6)(A)(6) (providing that "As used in this Section, the term appropriation means the funds allocated by the Legislature which directs how the amount, manner and purpose of the funds are to be used."). This interpretation is supported by Santos v. Calvo, 1982 WL 30790 (D. Guam App. Div. 1982), which interpreted Government Code §6118, which is the predecessor of 5 GCA §22401, as applying to funds appropriated by the legislature. The interpretation is also supported by Pangelinan v. Gutierrez, 2003 Guam 13, ¶¶ 16-18, which noted that the federal anti-deficiency statute, 31 USC §1341, the language of which is tracked in 5 GCA §22401, was meant to address the problem of the executive branch obligating the government prior to an appropriation by the legislature. This purpose of the statute as recognized by the Pangelinan Court supports the notion that § 22401 applies only to appropriated funds. The alleged funds at issue with Ms. Meno's work-related injury claim were Port funds, and not any funds appropriated by the legislature. There is accordingly no basis in law or fact to support the conclusion in the Phillips Report that I violated 5 GCA § 22401.

[4] Found at http:malegaIethics.org/?page_id=367.

statements made by a lawyer as part of an investigation, *see* Phil. Bar Assoc. Opinion 2009-02 (Mar 2009).

Accordingly, a lawyer violates Rule 4.1 if he directly or indirectly (by omission or misleading statements) makes misrepresentations in reports to clients and others. As explained above and in my December 19, 2012 statements (attached as Exhibits "D" and "E"), **the Phillips Report misstated the facts, and omitted true facts, regarding my actions in handling the worker's compensation claim**. The Report was provided to others, including the Board and other employees of the Port.

Attorney Bell also made misrepresentations as to his role and intent in his communications to the Port employees, by falsely stating or implying in emails to me and other Port employees that he intended to favorably resolve Ms. Meno's worker compensation claim. It is evident from the Phillips Report (Exs. B and C) and the Phillips Firm's interrogation of and threats to a Port employee (Ex. G), that Attorney Bell had no such intent. **The Phillips Firm and its attorneys violated Rule 4.1 by misrepresenting to third parties their role, adverse position, and adverse intentions in this matter.**

A lawyer also violates Rule 4.1 if he threatens criminal prosecution where he knows the facts do not support such charges. *See* Utah State Bar Ethics Advisory Opinion Committee: Opinion No. 03-04, 2003 WL 23146204, * 3 (Oct. 14, 2003); *see also In re Myers*, 981 P.2d 143, 144 (Colo. 1999)[5] The Phillips Report not only contained material misrepresentations of fact, but also concluded that I violated criminal laws based on these false facts.

RULE 4.4: RESPECT FOR RIGHTS OF THIRD PERSONS

> **RULE 4.4: RESPECT FOR RIGHTS OF THIRD PERSONS:**
> (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person

"[A]n off-hand threat without any informed opinion that criminal charges are well-founded may violate Rule 4.4." UT Eth. op. 03-04, 2003 WL 23146204, * 2 (Utah St. Bar. Oct. 14, 2003).

In the Phillips Report (Ex. C), the Phillips Firm states that "all persons identified were afforded ample time and opportunity to come clean earlier but chose not to." *See* Exhibit C. This statement suggests that further proceedings, whether criminal or civil proceedings, or proceedings facilitating the firing of the employees, would not be initiated if the Port's employees cooperated in the manner demanded by counsel.[6]

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[5] Disciplining an attorney who indirectly threatened a complaining witness in a theft case by stating that the attorney would use a nonexistent criminal record against the complaining witless if the case went to trial, and asserting that the witness was as guilty as the defendant because the witess failed to follow the law in signing a confession which "could reasonably be construed as a threat that criminal charges would be lodged against him," and finding a violation of Rules 4.1, 8.4(d), and 8.4(h)).

[6] In fact, the employee who was responsible for worker's compensation at the Port (Mr. Roberto) and who initiated payment of Ms. Meno's claim, was not accused by legal counsel of any wrongdoing in the Phillips Report, notwithstanding that Attorney Bell sent a prior email, on approximately October 3 1, 2012, stating that Bell thought Mr. Roberto did not understand the requirements of the worker's comp administration and that Mr. Roberto was basing decisions regarding Ms. Meno's claim on erroneous factual and legal conclusions.

As I stated in my December 19, 2012 statement, the Port's Board had an agenda against Ms. Meno, and ultimately wanted to fire her.

However, threatening either criminal or civil proceedings against me (and other Port employees) to gain leverage for a client in an unrelated legal matter (here, the plan to fire Ms. Meno), violates Rule 4.4 where the threat is made with "no substantial purpose other than to embarrass, delay, or burden a third person" or is used as a method of "obtaining evidence that violate[s] the legal rights of such a person."

See Robertson's Case, 626 A.2d 397, 400 (N.H. 1993) (accusing attorneys of serious crimes (25 felonies) for purpose of intimidating settlement and embarrassing and burdening attorneys warrants disciplinary action).[7]

The Phillips Firm's threat of retaliatory action for an employee's lack of cooperation with legal counsel's agenda is clearly evident in the Firm's dealings with Port employee Leonora Leon Guerrero. *See* Ex. G (2/21/13 letter from Ms. Leon Guerrero to Port GM Joanne Brown). Ms. Leon Guerrero sent a letter to the Port's General Manager dated February 21, 2013, explaining that three of the Port's lawyers interrogated her during interviews held in January of 2013, and tried to get Ms. Leon Guerrero to state that "Mary Torres or Vivian Leon 'directed'" her "to alter" documents relating to Ms. Meno's workers compensation claim. *See* Ex. G. Ms. Leon Guerrero stated that when she explained to the attomeys that no one had "directed" her to do anything, the attorneys "became upset." *See* Ex. G. Shortly thereafter Ms. Leon Guerrero was given a notice of proposed adverse action. *See* Ex. G. The Phillips Firm engaged in "abusive treatment of a witness" when they demanded that Ms. Leon Guerrero present false evidence and when they got "upset" when she refused to do so.

According to Ms. Leon Guerrero, as a direct consequence of refusing "to lie on behalf of the Port's counsel," Attorney Phillips directed another Port employee, Paul Salas, to tell Ms. Leon Guerrero that she would lose her job and would be criminally prosecuted. *See* Ex. G. Shortly thereafter, Ms. Leon Guerrero was issued a notice of proposed adverse action. Such abusive and threatening tactics, used to procure favorable evidence in connection with the Board's claim against Ms. Meno, violated Rule 4.4. see UT Eth. op. 03-04, 2003 WL 23146204, * 1 (Utah st. Bar. Oct. 14, 2003) (opining that a lawyer may not threaten to bring criminal charges against an opposing party or a witness while negotiating a civil matter if the threat..."constitutes 'extortion,' if the lawyer does not have a reasonable belief that such charges are warranted by the law and the facts, or if it involves 'abusive treatment' of a witness").

RULE 4.3: DEALING WITH UNREPRESENTED PERSON

> **RULE 4.3: DEALING WITH UNREPRESENTED PERSON**
> In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct

[7]The Report prepared by the Phillips Firm, attached as Exhibit C, is titled "Findings of Fact and Conclusions of Law", which is a title normally used by ajudicial tribunal. The report was provided to lay persons, including myself, members of the Board, and, I believe, the six terminated employees. The title of the report is clearly threatening because it leaves the distinct impression to any lay person (certainly the Port's employees) that the report was issued by a person with adjudicative authority.

> the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.
>
> *See also* **RULE 1.13: ORGANIZATION AS CLIENT**
>
> …. (d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

Under Rule 4.3, in dealing with third persons, a lawyer must disclose any adverse relationship between the lawyer's client and the third person. *See* Arizona Ethics Opinion No. 87-25 (Dec. 30, 1987)[8]

As explained in a leading authority (ALI-ABA), a lawyer's duty to fully disclose potential conflicts applies in the context of investigations of employees:

> Lawyers may interview an unrepresented party so long as the attorney's role and potential conflicts of interests are made clear…
>
> One area in which a labor lawyer must be especially careful is when he or she represents a company and interviews an employee with whom the company may have a conflict of interest, for example, an employee accused of discrimination by another employee who plans to bring suit…Also, if an attomey uses an investigator to conduct the interview, the investigator must reveal on whose behalf he is working.

A similar rule requiring a lawyer's disclosure of his interests in dealings with third persons is contained in 103 of the Restatement (Third) of the Law Governing Lawyers. Comment *c* to the §103 explains that: "This Section applies to a lawyer's dealings with both unrepresented nonclients of adverse interest and those of apparently congruent interest. The Section applies to a lawyer's work in litigation, transactions, and other matters. It also applies to a lawyer representing a corporation or other organization in dealing with an unrepresented nonclient employee or other constituent of the organization." Rest (3d) Law Goveming Lawyers, §103, cmt. c.

In his interactions with me**, Attorney Bell did not disclose that he was investigating me for potential criminal or civil wrongdoing. Attorney Bell did not ask me whether I was represented by legal counsel, nor did he inform me at any time that I should consult with my own counsel**. At the time of these interactions, the Phillips Firm was the attorney of record for the Port, and I was

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8 Found at: http://www.azbar.orgEthics/EthicsOpinionsNiewEthicsOpinion?id=574. ("In this case, the attorney not only knows that the unrepresented defendant misunderstands the lawyer's role, he is deliberately creating a situation in which the defendant will be unaware of their adversarial relationship in order to obtain a potentially prejudicial statement from her, before she realizes that she should consult with counsel. ER 4.3 obligates an attomey to make a reasonable effort to correct an inadvertent misunderstanding of fflis sort; a fortiori, ER 4.3 implicitly prohibits an attomey from deliberately creating such a misunderstanding.

the General Manger. I had no reason to believe that Attorney Bell was pursuing actions on behalf of the Port's Board adverse to me, particularly since I served as the General Manager of Attomey Bell's client, the Port. In fact, Attomey Bell sent various emails to me and other Port employees stating that his intent was to assist in facilitating Ms. Meno's medical treatment, and requesting and thanking us for our assistance in gathering information relevant to the worker's compensation claim and to make everything right. These emails indicated to me that he was not representing an adverse party or taking an adverse position. Attorney Bell nonetheless cited my dealings with him as grounds for the Phillips Firm's conclusions that I violated civil and criminal law. The Phillips Report also accused other Port employees of criminal and civil violations (including Vivian Leon and Francine Rocio), notwithstanding that Attorney Bell sent emails to these employees failing to disclose his adverse interest and implying that his interests were to facilitate the processing of Ms. Meno's claim.

By failing to disclose the true nature of Attomey Bell's investigation, and particularly that I was being investigated for possible wrongdoing in connection with the worker's compensation matter, the Phillips Firm, and attomeys Bell and Phillips, violated Rule 4.3.

RULE 8.4: MISCONDUCT

> **RULE 8.4: MISCONDUCT**
> It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;…(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice;

Finally, the actions of the Phillips Firm and their attorneys Bell and Phillips also violate Rule 8.4. **By including material misrepresentations and by seriously mischaracterizing my actions** with regard to my handling of the worker's compensation claim in the Phillips Report, the firm, and its lawyers responsible for the Report (Bell and Phillips**), engaged in "conduct involving dishonesty, fraud, deceit or misrepresentation."** Guam R. Prof. Cond., Rule 8.4(c). In working together to prepare and issue the Report, the attomeys Bell and Phillips "knowingly assist[ed] or induce[d] another to" violate the Rules of Professional Conduct. Guam R. Prof. Cond., Rule 8.4(a). By supervising attomey Bell and in authorizing the Report, attomey Michael Phillips violated Rule 8.4(a).

Furthermore, by interacting with me (and other Port staff) yet failing to disclose during such interactions that the Firm was investigating my actions (as well as the actions of other Port employees), Attomey Bell violated Rule 4.3, as discussed above, as well as Rule 8.4(d). See Arizona Ethics Opinion No. 87-25 (Dec. 30, 1987)[9]

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9 Found at: http://www.azbar.org/Ethics/EthicsOpinionsNiewEthicsOpinion?id=574. ("In this case, the conduct in question would fall squarely within the paramerters of ER 8.4(c). By deliberately withholding the fact that the person being interviewed was a named defendant in the lawsuit, an attomey would create the impression that he was conducting a witness interview rather than obtaining information to be used against the defendant in an adversarial proceeding. As in Milita, if the defendant was aware of the true nature of the communication, she probably would not consent to the interview, much less its tape-recording. In any event, she would be denied the opportunity to make an informed choice. The attomey's failure to disclose the existence of the adversarial relationship between his client and the defendant would be at best misrepresentation and deceit, and at worst fraud, under the Rules.").

Rules 8.4(c) and (d) likewise prohibit the lawyer from dishonestly stating that another person has violated the law. *See* UT Eth. op. 03-04, 2003 WL 23146204, * 3 (Utah st. Bar. Oct. 14, 2003).

Most disturbingly, according to the February 21, 2013 letter from Ms. Leon Guerrero to the Port's current General Manager, the attorneys of the Phillips Firm continued to engage in actions severely prejudicial to the administration of justice, in violation of Rule 8.4. Ms. Leon Guerrero has stated that attorneys of the Firm interviewed her in January of that year regarding Ms. Meno's claim, and that the attorneys demanded that she state that "Mary Torres or Vivian Leon" directed her to alter govemment documents. Ex. G. Ms. Leon Guerrero claims that when she refused to lie, the attomeys became upset. Ex. G. Attorney Phillips then directed another Port employee, Paul Salas, to tell Ms. Leon Guerrero that she would lose her job and would be criminally prosecuted. Ex. G. Ms. Leon Guerrero was thereafter served with a notice of proposed adverse action. She responded to the allegations and complained about the heavy-handed threats by Attorney Phillips. She was subsequently terminated. These actions, amounting to threats against a witness, clearly violate Rule 8.4(d).

Conclusion

I believe that the Phillips Firm and Attomeys Bell and Phillips acted unethically in their investigation of the worker's compensation claim as attorneys for the Port. They made misrepresentations, and misstated facts concerning my involvement with the worker's compensation claim which any reasonable person operating under even the most minimal standard of diligence would have known were false. They prepared and distributed to third parties reports containing misrepresentations as to my involvement in the worker's compensation claim. They wrongly accused me of violating the law based on facts, which, even if true, would not support the alleged criminal or civil violations.

When dealing with me, they failed to advise me that they were investigating me on behalf of the Port or its Board, and failed to advise me to consult with legal counsel to represent my interests, and thereafter used their communications and dealings with me as the basis of their serious allegations that I engaged in civil and criminal and transmitted information and documents received from me to law enforcement agencies. I believe that these actions by the Phillips Firm and Attorneys Bell and Phillips rise to the level of ethical violations. Moreover, the Phillips Firm and Attorneys Bell and Phillips knowingly engaged in such conduct in violation of their duties owed as professionals with the intent to obtain a benefit for Phillips Firm or another and caused serious injury to these employees and to the integrity of the legal process.

In short, I firmly believe a review of the foregoing is essential to a thorough reexamination of the cases the Port's General Manager has tasked you with. Thank you for your consideration. As always, I remain available to discuss this matter at greater length, should you require it, and can be reached at the addresses and numbers indicated above.

Sincerely,

Mary C. Torres

BOARD OF DIRECTORS
Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Maria D.R. Taitano, Member
Anthony P. Chargualaf, Jr., Member

PORT OF GUAM

Resolution No. 2020-04

RELATIVE TO INSTRUCTING MR. LUIS R. BAZA, DEPUTY GENERAL MANAGER OF ADMINISTRATION & FINANCE FOR JOSE D. LEON GUERRERO COMMERCIAL PORT OF GUAM TO PROCEED WITH FOUR (4) SETTLEMENT AGREEMENTS, AND TO HEREIN PROVIDE THE FINALIZED FOUR (4) SETTLEMENT AGREEMENTS TO THE HONORABLE BENJAMIN J.F. CRUZ, GUAM PUBLIC AUDITOR IN THE INTEREST OF TRANSPARENCY AND ACCOUNTABILITY

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PORT AUTHORITY OF GUAM:

WHEREAS, on December 18, 2012, Port Authority of Guam issued final notices of adverse action of termination to former employees Josette J. Javelosa, Frances Arriola Cepeda, Francine T. Rocio, Jose B. Guevara III, Leonora V. Leon Guerrero, Bernadette Sterne Meno and Vivian Castro Leon; and

WHEREAS, the notices accused the former employees of processing an allegedly fraudulent Workers Compensation Claim (WCC) based on a slip and fall which occurred on September 22, 2011; and

WHEREAS, the former employees filed appeals with the Civil Service Commission (the "CSC") which the CSC Commissioners found the filing of such appeals were timely and scheduled motion and merit hearings for each employee; and

WHEREAS, below are events from 2013 to June 2020 which occurred involving the appeals of the former employees:

1. On May 1 and June 6, 2013, in separate hearings, CSC Commissioners granted Mr. Guevara's and Mrs. Cepeda's motions to null and void their final notices of adverse action of termination because the Port violated the 60-day rule.

2. Merit hearings were held for Mrs. Leon Guerrero on June/July 2014, Mrs. Javelosa in August/September 2014 and Mrs. Rocio in October 2014 which CSC Commissioners ruled the Port failed to meet its burden of proof that action taken against the employees and ordered they be reinstated to their prior employment.

3. From 2014 to 2015, CSC rescheduled Mrs. Leon and Mrs. Meno's status call hearings and merit hearings on numerous occasions and eventually informed them that their future hearings would be cancelled because the Commissioners' calendar was booked for the next few years until at least 2017.

4. Port appealed CSC's decisions and judgments in Superior Court rendered for Mr. Guevara in September 2013, Mrs. Javelosa on October 4, 2014, Mrs. Leon Guerrero on October 30, 2014, Mrs. Rocio on April 21, 2015, and Mrs. Cepeda on June 15, 2015.

5. On July 2, 2015 and June 24, 2016, Superior Court affirmed CSC's decision and judgement rendered to Mr. Guevara that the Port violated the 60-day rule and ordered to reinstate the employee to his prior position, which Port appealed to Supreme Court on October 26, 2016.

6. In September 5, 2015, Superior Court reversed CSC decision and judgment for Mrs. Javelosa and remanded the matter to CSC who shall determine, based upon substantial evidence, whether or not a criminal act or acts were committed, which the employee appealed to Supreme Court on October 5, 2015.

7. On March 15, 2016, in their regular meeting, CSC Commissioners decided to remove the status call conference and merit hearings for Mrs. Meno and Mrs. Leon indefinitely until Supreme Court issues a decision on Mrs. Javelosa's case.

8. On February 7, 2018, Supreme Court rendered a decision in favor of Mr. Guevara, and the Port requested for reconsideration on March 26, 2018, which the Court denied on April 17, 2018 and ordered the employee be reinstated to his prior position with the Port.

9. At their Board of Directors meeting of July 25, 2018, management was authorized to reinstate Mr. Guevara to his position as Financial Affairs Controller effective July 30, 2018 in compliance with Superior Court's decisions of 2015 and 2016.

10. On July 26, 2018 Supreme Court affirmed Superior Court's decision and order for Mrs. Javelosa and remanded the case to Superior Court so it may return the matter to CSC for a threshold determination of the proper standard of review in her case.

11. On August 24, 2018, Superior Court issued a decision and order to award Mr. Guevara full back pay and benefits, which the Port appealed on September 2, 2018.

12. On March 6, 2019, the Superior Court remanded the cases of Mrs. Javelosa, Mrs. Leon Guerrero, and Mrs. Rocio to CSC for a threshold determination of the proper standard of review in their cases as concluded in the Supreme Court decision of July 26, 2018.

13. On March 29, 2019, the Board of Directors authorized Port Legal Counsel to proceed in settlement discussions with Mr. Guevara's attorney.

14. On July 25, 2019, Supreme Court affirmed in part and reversed in part the Superior Court's judgment for Mrs. Cepeda and remanded the matter to CSC for consideration of the merits of the allegation that Mrs. Cepeda backdated a memo to file and for other proceedings not inconsistent with this opinion.

15. In accordance with Superior Court's decision, the CSC scheduled hearings for Mrs. Rocio for August 2019 and for calendar year 2020 for Mrs. Leon Guerrero, Mrs. Javelosa, Mrs. Meno, Mrs. Cepeda and Mrs. Leon.

16. On August 27, 2019, CSC Administrative Law Judge held a motion hearing to null and void the personnel action of termination for Mrs. Rocio, and on September 30, 2019, he rendered a recommendation that Mrs. Rocio's motions to dismiss be granted.

17. In August of 2019, Mr. Joe McDonald, former Port Staff Attorney held discussions with the attorneys of Mrs. Javelosa, Mrs. Cepeda, Mrs. Leon Guerrero, Mrs. Meno and Mrs. Leon regarding settlement proposals and initial settlement proposals were submitted to the Port in September 2019.

18. On October 10, 2019, CSC Commissioners voted on Mrs. Rocio's motions that the Port did not notify her of adverse action within 60 days as mandated by law at the time, the Port's final notice of adverse action lacked specificity, and burden of proof was clear and convincing.

19. The Port filed with CSC a motion to reconsider its decision for Mrs. Rocio and CSC Commissioners on November 21, 2019 denied the Port's motion.

20. On November 26, 2019, the Port reinstated Mrs. Rocio to her position as Personnel Services Administrator and finalized the settlement agreement on December 13, 2019.

21. On December 19, 2019, the Board of Directors approved Resolution No. 2019-20 approving an offer to settle adverse action appeal between the Port and Mrs. Leon Guerrero.

22. On December 19, 2019, the Board of Directors passed Resolution 2019-22, authorizing Port Legal Counsel to enter into settlement agreements with Mrs. Javelosa and Mrs. Cepeda.

23. On December 23, 2019, the Port finalized the settlement agreement and reinstated Mrs. Leon Guerrero to her position of Planner-Work Coordinator on January 6, 2020.

24. On February 28, 2020, the Port Staff Attorney resigned with the Port and the settlement agreements for Mrs. Javelosa and Mrs. Cepeda were not yet finalized.

25. On March 11, 2020, the CSC Administrative Law Judge filed his "Recommendations of Administrative Law Judge on Motion to Void Based on Violation of the 60 Day Rule" in Mrs. Meno's case and found in his analysis "undisputed facts" that identified at least three dates management knew or should have known which were September 10, 2012, September 17, 2012 and October 16, 2012 which, according to the ALJ were 100 days, 93 days and 63 days and therefore stated that the adverse action taken against Mrs. Meno should be revoked; she should be reinstated immediately until such time the decision is overturned by judicial review; and that Mrs. Meno should be awarded back pay, reasonable attorney fees and costs.

26. On June 8, 2020, CSC Administrative Law Judge issued recommendations that the CSC grant Mrs. Javelosa's motion to void as to allegations of processing and conspiracy to process an allegedly fraudulent Worker Commission Claim because the final notice of adverse action violated the 60-day rule and stated with regards to the memo she was accused of backdating to file "There is no conceivable way to conclude that this memo in any way aided the process of the original approval of work related injury leave. Moreover, there is no way to conclude that the memo was an effort to cover up fraudulent acts. The undersigned concludes that the memo cannot support or justify the adverse action" and thus recommended that Mrs. Javelosa be awarded back pay, reasonable attorney fees and costs; and be reinstated immediately until such time the decision is overturned by judicial review.

27. The CSC Administrative Judge will be presenting his recommendations to the CSC Commissioners for Mrs. Meno on July 2, 2020 and Mrs. Javelosa on July 7, 2020; and

WHEREAS, on January 16, 2019, the General Manager formed a task force to be chaired by the Deputy General Manager to review 18 adverse action appeal cases under litigation, examine each case, gather facts through review of documents, conduct interviews with active and inactive employee, identify inconsistencies, if any, in the rules, procedures and/or process; determine whether the provisions of the Personnel Rules and Regulations, required disclosure and transparency process and/or other mandates were complied with; identify the risk exposed, if any, to the Port, and provide the recommended administrative action(s) to the General Manager and/or Board of Directors; and

WHEREAS, the review of the task force revealed that because Supreme Court mandated the Port to pay Messrs. Guevara and Susuico the back wages, attorney fees and associated costs, the Port could not enter into settlement discussions with the employees and had no choice but to comply with the higher court's orders resulting in the Port paying Mr. Guevara in three (3) staggered payments within a 10-month period a total amount of $381,381.61 and to Mr. Kevin Susuico a one-time payment of $99,000.16 without any mitigation; and

WHEREAS, Port Staff Attorney, through Board direction, entered into settlement agreements with Mrs. Rocio and Mrs. Leon Guerrero, which allowed the Port and the employees to agree upon a payment plan for back wages spreading over a year or two-year period which had a benefit to the port by not impacting cash flow with immediate, one-time payments and also mitigating the actual back wages at a significant cost savings to the Port worth several hundred thousand dollars; and

WHEREAS, the CSC Administrative Law Judge's recent recommendations for Mrs. Rocio, Mrs. Leon Guerrero, Mrs. Meno and Mrs. Javelosa is to null and void the personnel actions of termination because the Port failed to comply with the 60-day rule; and

WHEREAS, the merits of the adverse action and the technical violations in the adverse action notices have been repeatedly ruled on by the CSC, Superior Courts, Supreme Court and the CSC Administrative Law Judge and yet for 7½ years the Port pursued this litigation and each time the employees continued to prevail; and

WHEREAS, the Port has paid millions of dollars to former Legal Counsel to pursue higher judicial reviews which has led to significant financial damage to the Port through continued legal losses and this liability continues to grow daily; and

WHEREAS, the Board of Directors find that the technical violations cited by the CSC Administrative Law Judge in the cases of Mrs. Rocio, Mrs. Leon Guerrero, Mrs. Meno and Mrs. Javelosa would also apply to Mrs. Cepeda and Mrs. Leon since the date management knew or should have known are exactly the same as Mr. Guevara, Mrs. Rocio, Mrs. Meno and Mrs. Javelosa in their final notices of adverse action; and

WHEREAS, if the Board of Directors wishes to continue to pursue litigation and appeal those who have prevailed in CSC to higher judicial review, the gross pay (**without benefits**) for the employees **without mitigation** as of June 30, 2020 which the Port would need to pay, if they prevail again in the higher courts are:

1.	Josette J. Javelosa	$569,810.44
2.	Frances A. Cepeda	$580,046.86
3.	Bernadette S. Meno	$716,274.92
4.	Vivian C. Leon	$980,951.42
	Total:	$2,847,083.64

WHEREAS, with mitigation, the Port would be able to offer terms to the employees in respect to a payment plan on their back wages and agree upon staggered payments to ensure the Port's obligation to our revenue bond investors are met as well as its cash flow is not impeded; and

WHEREAS, for example, in the case of Mrs. Leon and if she prevails in her case, the Port would be obligated to pay her based on one of the following Option 1 or 2, and if settlement is pursued, Option 3 could be negotiated; and:

Option 1. Non-mitigation: $1,278,670.19 including benefits
Option 2. Non-mitigation: $1,278,670.19 including benefits and Port would pay the Retirement Fund $674,036.00 for her annuities they remitted during 2013 to present; and
Option 3. Mitigation: $387,029.25 including benefits.

WHEREAS, the Board of Directors finds that if the Port were to enter into settlement negotiations with Mrs. Javelosa, Mrs. Cepeda, Mrs. Meno and Mrs. Leon and **mandate mitigation** in the settlements then the cost to the port would be $1,790,529.80 instead of $2,847,083.64 for a savings to the Port of $1,056,553.84; and

WHEREAS, the Board of Directors finds that it is in the best interest of the Port to explore and offer settlement terms that **include mitigation** to Mrs. Javelosa, Mrs. Cepeda, Mrs. Meno and Mrs. Leon which will save the Port a minimum of $1,056,553.84; now therefore be it

PORT OF GUAM

RESOLVED, that the Board of Directors of the Jose D. Leon Guerrero Commercial Port hereby provide Mr. Luis R. Baza, Deputy General Manager for Administration & Finance the latitude to negotiate the final settlement agreements which is to incorporate the benefits owed, execute and deliver such documents, undertake such acts, and provide direction to staff as are necessary to comply with the terms of the settlement after an employee has signed the agreement; and be it further

RESOLVED, the first settlement agreement for Mrs. Josette J. Javelosa be based on the following terms:

1. Back wages (net gross pay after mitigation) $409,356.68;
2. A payment schedule plan favorable to the Port;
3. Reinstatement of sick leave hours and annual leave hours owed;
4. Reasonable legal fees;
5. Remit to Retirement Fund retirement benefits owed to employee; and be it further

RESOLVED, that the second settlement agreement for Mrs. Frances Arriola Cepeda be based on the following terms:

1. Back wages (net gross pay after mitigation) $437,268.94;
2. A payment schedule plan favorable to the Port;
3. Reinstatement of sick leave hours and annual leave hours owed;
4. Reasonable legal fees;
5. Remit to Retirement Fund retirement benefits owed to employee; and be it further

RESOLVED, that the third settlement agreement for Mrs. Bernadette Sterne Meno be based on the following terms:

1. Back wages (net gross pay after mitigation) $646,988.76;
2. A payment schedule plan favorable to the Port;
3. Reinstatement of sick leave hours and annual leave hours owed;
4. Reasonable legal fees;
5. Remit to Retirement Fund retirement benefits owed to employee; and be it further

RESOLVED, that the fourth settlement agreement for Mrs. Vivian Castro Leon be based on the following:

1. Back wages (net gross pay after mitigation) $296,915.42;
2. A payment schedule plan favorable to the Port;
3. Reinstatement of sick leave hours and annual leave hours owed;
4. Reasonable legal fees;
5. Remit to Retirement Fund retirement benefits owed to employee; and be it further

RESOLVED, that Mr. Luis R. Baza forwards the finalized and signed settlement agreements to the Honorable Benjamin J.F. Cruz, Guam Public Auditor in the interest of transparency and accountability; and be it further

RESOLVED, the Civil Service Commission shall be notified of the settlements and the parties' desires to withdraw the litigation before the Commissioners and comply with the Rules and Regulations of the Commission with regards to settlement of the Adverse Action Appeal; and be it further

RESOLVED, the Chairman certify to and the Secretary attest to the adoption hereof and that a copy of this resolution be transmitted to the Civil Service Commission.

PASSED AND ADOPTED BY A MAJORITY VOTE BY THE BOARD OF DIRECTORS THIS 25th DAY OF JUNE, 2020.

FRANCISCO G. SANTOS
CHAIRMAN, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

ISA MARIE C. KOKI
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM