

330
6/27/06

(R-2006-993 COR.COPY)

RESOLUTION NUMBER R- 301605
DATE OF FINAL PASSAGE JUL - 5 2006

WHEREAS, in 2002 the City's insurers, Insurance Company of the State of Pennsylvania ("ISOP"), and other AIG insurers, sued the City of San Diego in Federal Court, seeking a finding of no coverage for the City's defense and damages in *Otay Acquisitions v. City*, S.D.S.C. Case No. GIC 753247; *National Enterprises v. City*, S.D.S.C. Case No. GIC 730011; and *Border Business Park, Inc. v. City*, S.D.S.C. Case No. GIC 692794 – otherwise known as the De La Fuente cases; and

WHEREAS, the City counter-claimed to establish its right to a defense and for bad faith; and

WHEREAS, in March 2005, the U.S. Court of Appeals, Ninth Circuit reversed the District Court and held that ISOP has a duty to defend the City; and

WHEREAS, despite the Court of Appeals' ruling, ISOP has continued to file motions in the District Court disputing its duty to defend and the amount of fees it must reimburse to the City; and

WHEREAS in March 2006, the District Court issued a judgment that ISOP must pay the City's defense costs, subject at present to statutory limits; and

WHEREAS, the District Court has also lifted a stay order and has allowed the City to pursue its bad faith claim against ISOP for its failure to defend; and

WHEREAS; the firm of Latham & Watkins has served as outside counsel in defense of the De La Fuente litigation and in prosecution of the City's bad faith claims thus far; and

WHEREAS the City Attorney and outside counsel Latham & Watkins recommend the retention of the firm of Levine Steinberg et al and attorney Harvey Levine to serve as co-counsel in pursuit of the City's bad faith claims, and

WHEREAS on May 16, 2006 the City Council was briefed in Closed Session on legal strategy in the aforementioned bad faith litigation and approved this strategy; NOW, THEREFORE,

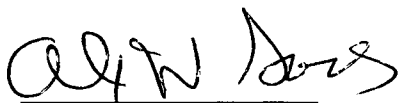
BE IT RESOLVED, by the Council of the City of San Diego, that the retention of Latham & Watkins and co-counsel Harvey Levine of Levine Steinberg et al is hereby authorized for the prosecution of bad faith claims in the case of *Insurance Company of the State of Pennsylvania vs. City of San Diego*, U.S. District Court Case No. 02-CV-0693.

BE IT FURTHER RESOLVED, that the City Attorney be and he is hereby authorized and empowered to execute, for and on behalf of the City of San Diego, a Retainer Agreement, by and between the City of San Diego and Levine Steinberg Miller & Huver, for certain legal services regarding the pursuit of bad faith claims in the aforementioned case.

BE IT FURTHER RESOLVED, that said Retainer Agreement provides for Levine Steinberg et al to be compensated on a contingent basis to be paid upon the conclusion of the case, pursuant to the terms of the agreement.

BE IT FURTHER RESOLVED that the City Auditor and Comptroller is authorized to transfer and allocate \$2,000,000 from the Unappropriated/Unallocated Reserve to the Public Liability Fund for the coverage of Latham & Watkins' legal fees and costs related to this matter.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Alex W. Sachs
Deputy City Attorney

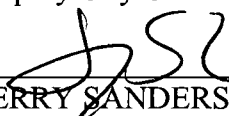
AWS:mm
05/16/2006
Or.Dept:City Atty
A/C No. 2600901
R-2006-993
COR.COPY
06/12/2006

I hereby certify that the following Resolution was passed by the Council of the City of San Diego, at its meeting of JUN 27 2006.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 7-5-06
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

**The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

CERTIFICATE OF UNALLOTTED BALANCE

AC 2600901

ORIGINATING

DEPT. NO.: 045

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$2,000,000.00

Vendor: Latham & Watkins, LLP

Purpose: Authorizing the retention of Latham & Watkins and Harvey Levine, Levine Steinberg, et al, as co-counsel to prosecute bad faith case in Insurance Company of the State of Pennsylvania vs. City of San Diego, U.S. District Court Case No. 02-CV-0693. (From Unappropriated/Unallocated Reserve).

Date: June 13, 2006 By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	100			9544					\$2,000,000.00
TOTAL AMOUNT										\$2,000,000.00

FUND OVERRIDE

AC-361 (REV 2-92)

AC 2600901

JUN 27 2006

R- 301005

Passed by the Council of The City of San Diego on JUN 27 2006, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL - 5 2006

AUTHENTICATED BY:

(Seal)

JERRY SANDERS
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Debbie Swenson-Cruz, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R-301605