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COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

KEBEDE ADMASU, *et al.*,

Appellants,

v.

THE PORT OF SEATTLE, a  
Washington municipal corporation,

Respondent.

No. 70220-3-I

THE PORT OF SEATTLE'S  
ANSWER TO APPELLANTS'  
MOTION TO STRIKE

**1. IDENTITY OF ANSWERING PARTY**

The Port of Seattle, Respondent, files this Answer to Appellants' Motion to Strike portions of the Airports Council International – North America *amicus curiae* brief (Appellants' Response to *Amicus Curiae* Brief and Motion to Strike, dated September 10, 2014).

**2. STATEMENT OF RELIEF SOUGHT**

The Port of Seattle requests that the Court deny Appellants' Motion to Strike.

**3. ARGUMENT**

No basis exists for striking any portion of ACI-NA's analysis regarding whether vibrations from low frequency noise fall within the scope of the damages limitation contained in 49 U.S.C. § 47506 and 14 C.F.R. § 150.21. This issue was raised at both the trial court and before

THE PORT OF SEATTLE'S ANSWER TO APPELLANTS'  
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this court—it is not an issue introduced into the case by ACI-NA. Further, the Federal Aviation Administration and expert panel reports referenced in ACI-NA’s brief constitute the type of “legislative facts” that are routinely included in *amicus* briefing and relied upon by appellate courts in interpreting statutes. No portion of ACI-NA’s *amicus* brief should be stricken.

**A. The Issue Of Whether 49 U.S.C. § 47506 And 14 C.F.R. § 150.21 Bar Claims For Damages From The Effects Low Frequency Noise Is A Legal Question That Was Raised By The Parties.**

ACI-NA has not injected a new issue into the proceedings—whether 49 U.S.C. § 47506 and 14 C.F.R. § 150.21 bar claims for damages based on vibrations from low frequency airplane noise is squarely before this Court as a core issue in Plaintiffs’ appeal. This issue was raised in the Port’s summary judgment motion (CP 3849), responded to by Plaintiffs in their summary judgment opposition (CP 3953-54), and addressed again in strict reply by the Port (CP 4269-71). Likewise, this issue was raised in briefing to this court. *See* Appellants’ Br. pp. 4, 29-30, and 37-38; and Appellees’ Br. pp. 55-57.

The “purpose of an *amicus* brief is to help the court with points of law.” *Ochoa Agunlimited, L.L.C. v. Delanoy*, 128 Wn. App. 165, 172, 114 P.3d 692 (2005) (agency’s *amicus* brief regarding whether seed potatoes

fit within the definition of “seed” under the state’s regulatory scheme was helpful to the Court and would be considered). ACI-NA’s briefing on whether “vibrations” fall within the statutory and regulatory limitations of claims based on “noise” is consistent with this purpose and is properly before this court. *Id.*

**B. The FAA Reports And Noise Impact Expert Panel Study Are “Legislative Facts” That Are Routinely Considered By Washington Appellate Courts.**

Appellants argue that the Court should not consider ACI-NA’s arguments on pages 16 through 18 of ACI-NA’s *amicus* brief because the arguments reference three reports<sup>1</sup> not previously cited to the trial court. Appellants’ position is at odds with Washington law.

The contents of the FAA reports and the expert panel report are “legislative facts” that may be relied upon by appellate courts in interpreting a statute even though these reports were not before the trial court. *See, e.g., State v. CPC Fairfax Hospital*, 129 Wn.2d 439, 453-54, 918 P.2d 497 (1996) (appellate court not limited “to the precise record presented to the trial court,” but may consider scholarly articles, reports,

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<sup>1</sup> The specific references that Appellants seek to strike from consideration are two Federal Aviation Administration documents (a 1985 Aviation Noise Effects report and a 2000 Aviation Noise Abatement Policy) and a 1998 expert panel report relating to the potential impacts of low-frequency noise from aircraft around Minneapolis-St. Paul International Airport.

and the like as “legislative facts” in interpreting a statute); *Canal Station North Condominium Ass’n v. Ballard Leary Phase II, LP*, 179 Wn. App. 289, 306, 322 P.3d 1229 (2013) (legislative reports and law review article are “legislative facts” that the appellate court “may consider when determining the constitutionality or interpretation of a statute”); and 5 Wash. Prac. § 201.16 (5th ed.) (“[T]he term *legislative facts* refers to the sort of background information a judge takes into account when determining the constitutionality or proper interpretation of a statute....”).

The purpose of allowing “legislative facts” is to provide a court with guidance in interpreting statutes. *Id.* In this case, two of the reports referenced in ACI-NA’s brief were created by the FAA, the agency charged with overseeing and applying the noise statutes and regulations at issue in the Port’s Noise Exposure Map summary judgment motion. The third report was created by a panel of experts for the purpose of assessing the impact of noise, including low-frequency noise (i.e. vibrations), on the geographic area surrounding the Minneapolis-St. Paul International Airport.

The reports referenced in ACI-NA’s *amicus* brief are of like kind to those scholarly articles and reports appended to an *amicus* brief that the Washington Supreme Court found appropriate for consideration in *CPC*

*Fairfax Hospital. CPC Fairfax Hospital*, 129 Wn.2d at 453-54. As in that case, the authorities have not been included to establish the specific facts in this case, but to assist with the interpretation of the overarching scope of the statutory and regulatory scheme. *Id.* As such, they are appropriately before this Court and should be considered.

**4. CONCLUSION**

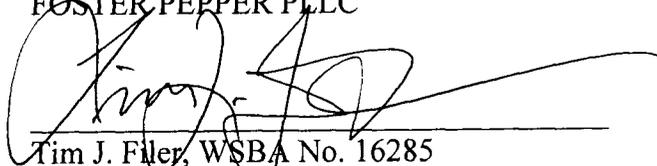
For the foregoing reasons, this Court should deny Appellants' Motion to Strike.

RESPECTFULLY SUBMITTED this 18th day of September, 2014.

THE PORT OF SEATTLE

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v.	)	<b>CERTIFICATE OF</b>
	)	<b>SERVICE</b>
THE PORT OF SEATTLE, a	)	
Washington municipal corporation,	)	
	)	
Respondent.	)	

The undersigned declares that on September 18, 2014, I caused to be served the following documents:

1. The Port of Seattle's Answer to Appellants' Motion to Strike; and
2. Certificate of Service.

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I declare under penalty of perjury under the laws of the State of  
Washington on September 18, 2014, at Seattle, Washington.

  
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Kelly M. Mueller