



NEW YORK
STATE SENATE
NYSENATE.GOV

State Of New York
State Senate

Standing Committee on
Investigations and
Government Operations

SENATOR CRAIG M. JOHNSON
Committee Chair

IN RE: GOVERNOR'S ISLAND PRESERVATION AND EDUCATION CORPORATION

August 2009

**State Of New York
State Senate**

**Standing Committee on
Investigations and
Government Operations**

SENATOR CRAIG M. JOHNSON
Committee Chair

SENATOR GEORGE H. WINNER, JR.
Ranking Member

Members

Senator Rev. Ruben Diaz, Jr.
Senator Pedro Espada
Senator Martin Golden
Senator Jeffrey D. Klein
Senator Michael F. Nozzolio
Senator William T. Stachowski

ROGER BENNET ADLER, ESQ.
Committee Counsel

BECCA GOLUBOCK WATSON
Director

CARI ABATEMARCO
Committee Clerk

Table of Contents

Preliminary Statement	1
Timeline	2
Hearing Testimony	3
GIPEC President, Leslie Koch	3
1. The Search for a Redundant Ferry	3
2. The Purchase of the Islander	4
3. The Disposition of the Islander	5
Mr. William Welch, Harbor Ferry Services	5
Claudio Crivici	6
Costs Associated With the Evaluation, Purchase and Sale of the M/V Islander	7
Findings	8
1. GIPEC should not have made a purchasing decision relying upon Marine Safety Consultants.	8
2. GIPEC both ignored available information, and failed to appropriately evaluate the potential impact of serious informational gaps	8
3. GIPEC staff should have provided the Board of Directors with a full and balanced presentation concerning the M/V Islander and the likely repair costs. The Board should have actively participated in GIPEC’s purchasing decision.	10
4. GIPEC failed to have the Islander timely re-inspected by the Coast Guard	11
5. GIPEC proceeded on unrealistic expectations about the pur- chase and rehabilitation of a redundant vessel—expectations that should have been revised to reflect GIPEC’s developing understanding of all the available options	12
Recommendations	13
List of Appendices	14

State Of New York
State Senate

Committee on
Investigations and
Government Operations

IN RE: GOVERNOR'S ISLAND PRESERVATION AND EDUCATION CORPORATION

Preliminary Statement

The State Senate Standing Committee on Investigations and Government Operations initiated an investigation following media reports in Spring 2009 indicating that, during the summer of 2007, the Governor's Island Preservation and Education Development Corporation (GIPEC) had purchased a used ferry boat, the M/V Islander (the Islander) for \$500,000, and then sold the vessel in early 2009 for \$23,600.

The Islander, built in 1950, was purchased from the Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority (the Steamship Authority) through Turner Construction Company (Turner), GIPEC's consultant, to be utilized as a "redundant" (supplemental) ferry to transport vehicles and passengers from South Ferry in lower Manhattan to a ferry slip on Governor's Island. The purchasing recommendation was made by JMS, a naval architect based in Mystic, Connecticut, which Turner contracted to assist in the evaluation and purchase of a redundant ferry.

After the vessel was transported to Manhattan, an inspection by a second naval architect contractor, Seaworthy Systems (Seaworthy), revealed that preparing the vessel for service would cost GIPEC \$6–7 million. GIPEC decided to sell the vessel and, in accordance with public procurement procedures, released invitations to bid. After receiving no bids, GIPEC elected to sell the vessel on eBay. Dan Slovak, operator of Slovak Farms and Slovak Auto Transport of New York, purchased the vessel for \$23,600.

Accounting for all contractor fees, legal fees, maintenance, insurance, and transportation costs, GIPEC sustained a total loss of \$922,645.

The focus of the Committee's attention was upon the decision-making process which led GIPEC to submit a bid to purchase the Islander, and then to subsequently arrange for the State Office of General Services to sell the boat on an eBay auction.

TIMELINE

January 2003	New York City and State acquires Governors Island from the Federal government
March 2004	In a report to the Board of Directors, GIPEC staff identified a need for a redundant ferry.
May 2006	The GIPEC Board of Directors approved an allocation of \$3.2 million in the capital budget for the purchase and rehabilitation of a redundant vessel.
November 2006	GIPEC releases a Request for Proposals (RFP) for a naval architect to survey the field, narrow the options, and recommend and assist with the purchase of a ferry. The RFP was competitively bid, and JMS won the bid (see Appendix A).
May 2007	The Nantucket, Martha's Vineyard and Woods Hole Steamship Authority put the M/V Islander up for auction with an asking price of \$750,000. Contained within the Invitation for Bids was a survey of the Islander conducted by Marine Safety Consultants on April 12, 2007 (see Appendix C).
July 2007	Marine Safety Consultants conducted an audio-sonic gauging survey of the Islander for JMS (see Appendix D). Claudio Crivici, of Castlerock Risk Management Services, conducted a preliminary survey of the Islander for Harbor Ferry Services, the operator of GIPEC's current vessel, the Coursen (see Appendix E). GIPEC submitted a \$500,000 bid for the Islander and was accepted.
August 2007	GIPEC paid the balance of the purchase price and purchased the Islander (see Appendix F).
September 2007	William Welch of Harbor Ferry Services piloted the Islander to Governors Island.
October 2007	The GIPEC Board ratified the purchase of the Islander (see Appendix H). Seaworthy Systems' proposal was the winning bid for the second phase of the project: to assess and rehabilitate the Islander.
March 2008	Seaworthy Systems produced their report on the Islander (see Appendix G).
January 2009	The GIPEC Board voted to sell the vessel on eBay.
February 2009	The vessel sold on eBay for \$23,600.

Hearing Testimony

On May 7th, 2009 the Committee conducted a hearing chaired by Senator Craig M. Johnson to address GIPEC’s purchase and sale of the Islander. The Committee took sworn testimony from GIPEC and Empire State Development Corporation (ESDC) officers Leslie Koch (President, GIPEC), Anita W. Laremont, Esq. (General Counsel, ESDC), Jonathan Meyers (Vice President for Real Estate, GIPEC), Paul Kelly, Esq. (Counsel, GIPEC), and Maria Cassidy, Esq. (Deputy General Counsel, ESDC), as well as William Welch of Harbor Ferry Services and Claudio Crivici of Castlerock Risk Services. The Committee also invited a variety of other GIPEC officials and individuals involved with the purchase and sale of the Islander who were unable to attend (See Appendix I for a full list of witnesses invited to testify).

GIPEC President, Leslie Koch

I. The Search for a Redundant Ferry

GIPEC President Leslie Koch testified that at some point after January 2003, when Governors Island was transferred from the Coast Guard to the City and State of New York, GIPEC identified a need for a redundant ferry to accompany their current ferry, a 50-year old vessel called the Coursen. (Documents provided by GIPEC to the Committee show that GIPEC staff expressed this need in a March 2004 report to the Board of Directors.) Ms. Koch explained that once GIPEC attained State and City capital funding, the Board of Directors in a January 2006 board meeting authorized \$3.2 million in the GIPEC budget for the purchase and rehabilitation of another ferry for passenger and vehicular use. This amount, according to Ms. Koch’s testimony, was determined based on an estimate of the costs to purchase and rehabilitate the Coursen’s sister vessel (103).¹

GIPEC competitively procured a naval architect to assess the field and recommend and assist in the purchase of a redundant ferry. JMS spent December 2006–July 2007 reviewing the scope of the field. Ms. Koch testified that, because of GIPEC’s specific needs and the limited options available market options, GIPEC was limited in its search for a used ferry. “It was clear that a new boat would have cost easily five or ten times the amount in the GIPEC budget. So this search focused on an assessment of the market for a used vehicle and passenger ferries.” According to Ms. Koch’s testimony, these and other constraints made the search for a redundant ferry challenging in other respects as well:

¹ Parenthetical references relate to the minutes of the May 7th, 2009 hearing. For space purposes, the entire transcript of the 4-hour long hearing are not reprinted in the Appendix to this report. Instead, the transcript of the hearing can be accessed on the website of the Senate Standing Committee for Investigations and Governments Operations: <http://www.nysenate.gov/committee/investigations-and-government-operations>.

It became clear over the course of this several month search that the market for used vehicles is very irregular. There are a limited number of vessels available and most vessels were purposely built for a particular route or configuration that they serve. In some way, each of the vessels we looked at presented obstacles in terms of purchase cost, rehabilitation cost, transportation, suitable [sic] to the route of New York Harbor and other factors. In addition, vessel owners are a small number of closely held private firms or large public authorities. In either case during the search, JMS found and reported to us that in the used vessel market, boats are normally sold in an as-is, where-is condition and detailed records of the vessel's history are generally not provided. Most importantly, we came to understand that there were just a handful of options of available vessels that could meet our needs and that more time looking at the market was unlikely to uncover many more opportunities (104-6).

2. The Purchase of the Islander

In May 2007, the Steamship Authority announced an Invitation to Bid on the Islander. JMS spent several days in June and July inspecting the ferry. According to Ms. Koch's testimony, JMS and Harbor Ferry Services agreed that a fuller inspection was necessary, but also not possible, as GIPEC's decision-making process was limited by a three week auction period. A full vessel inspection would have required dry-docking, a costly and timely procedure that GIPEC was barred from conducting under the vessel sale terms, and which time constraints rendered impossible. Despite these constraints and informational gaps, GIPEC decided to place a bid on the Islander. Ms. Koch testified that GIPEC made an "informed decision based on the information [provided], and although the full scope of potential repair work was not available, given other available options, the Islander remained the best available choice" (108).

Much of the discussion of the purchase and subsequent sale of the Islander was conducted in meetings of the GIPEC Board's Operations Committee, chaired by Ms. Ronay Menschel. The Operations Committee is a Board of Directors advisory committee, and is therefore not required under New York State Public Officers Law to meet publicly or retain notes of proceedings. GIPEC was not able to assemble a quorum of the full Board of Directors, then chaired by Dan Doctoroff, prior to the decision to place a bid on the Islander. According to Ms. Koch's testimony, she discussed the decision to bid on the Islander with Ms. Menschel and other GIPEC officials (109).

On July 10th, 2007 GIPEC submitted a \$500,000 bid to purchase the Islander. The bid was submitted in the absence of a Board of Directors meeting, or vote on whether to bid and, if so, in what amount. As the GIPEC Board minutes reveal, the Board did not meet between the April adoption of the GIPEC budget, and the decision to bid and then purchase the Islander. The Board reconvened on October 17th, 2007 and was presented with a staff-generated resolution seeking ratification of the July 14th, 2007 purchase, and August, 2007 closing. No written or oral report was presented by Ms. Menschel prior to the Board vote.

Following the signing of a \$500,000 purchase contract on August 20th, 2007, GIPEC arranged to take possession of the Islander and subsequently retained Seaworthy Systems of Voorhees, New Jersey to conduct a full independent inspection of the Islander. Seaworthy conducted a thorough vessel inspection, and on March 31, 2008, submitted a written report. Seaworthy estimated \$6-7 million in costs to make the Islander serviceable and capable of passing Coast Guard certification requirements.

Ms. Koch testified that GIPEC determined that these costs were prohibitive, and took steps to sell the vessel. It is unclear when, and how staff alerted the full Board to the Islander's poor condition, and rehabilitation requirements. No report was provided by Ronay Menschel, or the prior Board Chair Daniel L. Doctoroff.

3. The Disposition of the Islander

The focus then shifted toward disposing of the Islander. Ms. Koch testified that many conversations concerning the Islander transpired between GIPEC staff, and the Operations Committee. However, at no point was the Board convened to assess the process of evaluating, purchasing, or selling the Islander.

GIPEC staff initially sought to resell the Islander via sealed bids. After this failed, GIPEC conferred with the State Office of General Services (OGS) and determined to auction the Islander on eBay. The vessel was sold for \$23,600. As GIPEC reports, a total of \$922,645 was expended in assessing, acquiring, and maintaining the Islander (see page 7 of this Report for a full accounting of these costs).

At a January 9th, 2009 GIPEC Board meeting, the Board (now chaired by Avi Schick, Esq.) was apprised of the Islander's difficulties and repair requirements, and voted to sell the vessel. GIPEC continues to contract with a private ferry service at a cost of \$1,000 per hour (\$4,000 daily minimum) for ferry service, to supplement the Coursen, primarily during the prime Governor's Island visiting season (Memorial Day weekend through mid-October).

Mr. William Welch, Harbor Ferry Services

Mr. William Welch of Harbor Ferry Services is the operator of the Coursen, GIPEC's current ferry. Welch became concerned about the Islander's condition and suitability in May, 2007, when he first surveyed the boat with JMS on May 4th, 2007. He reported these concerns to Turner (42). Welch explained that assessing the vessel's steel hull was perhaps the most crucial element to determining whether the vessel was viable: "In the grand scheme of things, the mechanical issues are somewhat less important than the steel condition. If you have to build an engine on it, it's an expense...however, if the hull is bad, that is, in my opinion, a deal-breaker" (35).

Welch testified that he strongly encouraged JMS to conduct a thorough audio-gauge exam of the vessel, and was surprised to learn that JMS selected Marine Safety Consultants to survey the Islander, the same entity that conducted survey of the vessel for the seller earlier that year. This spot testing (61) was conducted over JMS's protest

that this diagnostic testing was unnecessary (29). However, it was not a full audio gauging, which, Welch testified, requires two technicians and 4–5 days to conduct (61).

Further, Welch disputed Marine Safety Consultants' report, which found 10% wastage in the vessel's steel hull, testifying that the way these numbers were presented in a misleading fashion (39). The same numbers, Welch opined, could support a finding of 20% wastage (39).

After inspecting the vessel, Welch wrote a memo to Turner Construction's Project Manager Peter Monaco, addressing areas of identified concern (47–48). Among those was the issue of the Coast Guard's Certificate of Inspection. The vessel would be required to be dry-docked for a Coast Guard inspection in April, 2008. Mindful that the vessel would be inspected in a new district, Welch anticipated that it was likely that the Coast Guard would take a fresh look at the vessel, and might well apply enhanced inspection requirements. The vessel would require \$400,000 in insulation costs alone (74–75). The Islander would not pass Coast Guard inspection without "substantial repair," and Welch had "great concern" with regard to structural fire protection (62).

Claudio Crivici, Castlerock Risk Services

Welch arranged for Claudio Crivici of Castlerock Risk Services, a marine consulting agency specializing in marine surveys and risk management in Amityville, NY, to travel with him to New Bedford, MA to examine the Islander. Although Crivici was not provided with 1) the vessel's stability book, 2) maintenance logs, 3) dry dock history, and 4) casualty history, he felt that he had enough information about the vessel to raise serious concerns in his preliminary survey. He recommended both greater due diligence and cost analysis: "If the vessel is intended to be maintained and used (past 4–5 years), substantial blasting and steel updates will be required and will prove costly. The size/age of the vessel, manning requirements, extensive deferred maintenance and repairs, may prove it inefficient for the intended services." Crivici's testimony confirmed that, after spending only an afternoon assessing the vessel, he raised significant questions about the vessel's suitability and longevity. In his hearing testimony, Mr. Crivici agreed with Senator Johnson that "the purchase history would expose any buyer to what I think you called a considerable financial risk" (94).

Costs Associated with the Evaluation, Purchase, and Sale of the M/V Islander

Purpose	Expenditure
Maintenance and insurance fees on the Islander while it was docked at Governor's Island (estimated \$20,000/month)	\$157,683
Contracting fees to JMS	\$50,755
Contracting fees to Harbor Ferry Services	\$26,224
Contracting fees to Seaworthy Systems, Inc.	\$33,252
Contracting fees to Turner Construction Co.	\$36,505
Contracting fees to Windward Marine	\$51,560
Transportation costs	\$47,711
Carter, Ledyard, and Millburn law firm legal fees for closing on vessel purchase	\$16,461
eBay and OGS sales charges	\$2,494
Total purchase costs	\$500,000
TOTAL	\$922,645

Findings

Purchase of the Ferry

GIPEC's decision to purchase a half-century old ferry boat from the Woods Hole Steamship Authority was risky under the best of circumstances. A search of the ferry's records by Seaworthy Systems revealed that in 1996, the Authority had performed a cost-benefit analysis of the vessel. This 1996 report notes that "the Islander is well past its anticipated useful life of approximately thirty years due in part to the heavy costs spent on maintaining and upgrading her." After a five-plus decade service commitment, the Authority recognized that the Islander was at the end of its serviceable life.

Leslie Koch testified that GIPEC/Turner conducted an exhaustive process to assess the Islander and its suitability. However, despite the seller-imposed abbreviated timeframe allowed by the three-week auction, significantly greater due diligence was required:

1) GIPEC should not have made a purchasing decision relying upon Marine Safety Consultants.

A copy of the Authority's "Invitation for Bids" for sale of the Islander, provided by GIPEC to the Committee, contains an April 12, 2007 Marine Safety Consultants "Condition and Valuation Survey Report" produced for the Steamship Authority, confirming Welch's testimony (see Appendix C). This report found the M/V Islander in "good and serviceable condition." We dispute the existence of any credible factual basis to support this opinion, and consider it unlikely that Marine Safety consultants would submit a report to a prospective purchaser undermining its prior findings on behalf of the very client seller.

It is cause for grave concern that Marine Safety Consultants, the same company which performed a positive report for the seller of the vessel, was hired only four months later by GIPEC's representative (Turner Construction) to perform another assessment. This report was the sole written report on the Islander JMS provided to GIPEC, other than a two-paged power point presentation (see Appendix B). GIPEC, we submit, should have retained the services of an independent party to conduct a thorough audio-gauge report before investing almost a million in taxpayer dollars.

2) GIPEC both ignored available information, and failed to appropriately evaluate the potential impact of serious informational gaps.

As noted previously, JMS provided GIPEC with minimal written information about the Islander. GIPEC should have held JMS to a higher standard, and demanded far greater due diligence. Two pages of a power-point presentation provided inadequate information for GIPEC to assess the boat.

GIPEC also had at its disposal Castlerock's report, and written communications from Bill Welch, voicing strong reservations about the Islander. They chose to ignore

these assessments, and inexplicably did not circulate them to the Operations Committee or the Full Board for evaluation by all Board members prior to signing the purchase contract.

Furthermore, the post-purchase, March 31st, 2008 Seaworthy Systems Report notes that the most important evaluation component was “an assessment of steel needing replacement due to excessive corrosion and other damage” (see Appendix G, page 3). The Report further noted that, if the U.S. Coast Guard required the Islander to meet current marine and environmental standards, the cost alone of removing and replacing the vessel’s engines would exceed \$1 million (Appendix G, page 39). In order to make this determination, “original structural drawings of the vessel are normally required.” However, “not a single structural drawing of the Islander could be found on the ship or in the many boxes of files which GIPEC/Turner Construction received from the Steamship Authority”—a significant information gap which was likely not accidental.

More disturbing, it found the Islander in “very poor condition” due to both active corrosion, and coating failure (Appendix G, page 3). Many water tight bulkheads and frames were buckled, beam walls cracked, and ample evidence of both repaired bottom damage and unrepaired bottom damage was noted (Appendix G, page 3). The Report further estimated that 30% of the hull plating, 85% of the main deck, and 90% of the boat deck still needed renewal.

Without pre-bid access to vessel drawings, Seaworthy was compelled to assume much of the steel thickness based on various American Bureau of Shipping and United States Coast Guard documents. It is unclear how Marine Safety Consultants made its determinations, based on this lack of information. It is also unclear whether GIPEC identified this deficiency before purchasing the vessel, and factored it into their consideration of the Marine Safety Consultants report, or simply failed to perceive the potential significance of the information gap.

Finally, Claudio Crivici’s preliminary report identifies the following information that was unavailable to him during his pre-purchase assessment of the Islander:

1. Coast Guard inspection records
2. Islander maintenance records
3. Architectural drawings
4. Stability boot
5. Engine and maintenance logs
6. Dry dock history²
7. History of vessel and casualty claims
8. Interviews with past and present Agency crew members

² The “repaired bottom damage” caused by groundings surely would have been detected by a review of these records and history. Seaworthy reviewed shipyard repair and work orders reflecting several serious grounding incidents (Appendix G, page 7).

Because JMS did not provide GIPEC with a written vessel assessment, it is unclear which if any, of these documents they possessed, or to which they requested access. However, the sheer magnitude of the information gap rendered any purchasing decision a high risk and speculative undertaking.

3) GIPEC staff should have provided the Board of Directors with a full and balanced presentation concerning the M/V Islander and the likely repair costs. The Board should have actively participated in GIPEC's purchasing decision.

That GIPEC would commit to a half-million dollar expenditure (as well as the \$400,000 in soft costs that accompanied it) without conducting a Board meeting to evaluate the purchase constitutes a shocking approach to decision-making. According to Ms. Koch, GIPEC staff did not view briefing the Board by producing consultants and circulating their reports as a "customary practice" (215).

GIPEC's Board of Directors maintained a troublingly detached role in the decision to purchase and sell the Islander. Six months passed between its April 2007 meeting, where the need for a redundant vessel was discussed, and the October 2007 meeting, when it ratified the Islander's purchase. Staff did not succeed in initiating a late June/early July Board meeting to fully vet the surveys conducted on the Islander, and to consider the attendant risk and wisdom of undertaking this purchase. Although the purchasing decision was, according to Ms. Koch's testimony and information provided to the Committee by GIPEC, discussed with unidentified "city and state officials," this did not include Board members (208), with the exception of Ms. Menschel. At the two Board meetings when the matter of the Islander was discussed in greatest detail (October 2007 and January 2009), Ms. Menschel never reported the Board about the Islander.

After the GIPEC bid was accepted, it was not until July 17th, 2007 that the sales contract was signed. Once again, the Board was not convened to consider whether to proceed. A closing was held in August. Again, no Board meeting was held. Once again, funds were provided without Board approval.

Indeed, it was not until the fall of 2007 (October 17th) that the Board finally convened, and was asked to ratify the mid-July purchase. The Board, however, was not provided with, nor even briefed concerning the vessel purchase evaluation reports prepared by its consultants. Rather, it simply received a staff memo addressed to an agenda item ratification motion. This serious lack of Board oversight reflects a dangerous permissive environment in which staff exercised unilateral authority to make these decisions.

The Operations Committee, an advisory committee to the Board, played a significant role in the decision-making process. Director Leslie Koch testified that the Committee was "continually briefed" on the matter of the Islander both before, and after purchase. She could not recall if the Castlerock Report was provided to Ms. Menschel (209). Operations Committee Chair Ronay Menschel, was unable to confirm receipt

and review these reports when interviewed over the phone by Committee counsel.³

GIPEC Board oversight should also extend to contractor competence. Leslie Koch and Jonathan Myers, the two staff members most active in the Islander's purchase and sale, although authorized to make decisions concerning the maintenance of Governors Island, have no discernible background in the harbor maintenance or in maritime affairs. Lacking such expertise, GIPEC relies heavily on the advice of contractors. During the Islander purchase, there was significant staff turnover at Turner Construction. Not one Turner staff member assigned to GIPEC during the purchase of the M/V Islander currently works with GIPEC. JMS Vice President T. Blake Powell informed Committee staff that, by the project's end, JMS was coordinating with a Turner intern.

According to parties involved who spoke with Committee staff, communication between GIPEC, Turner, and JMS was reportedly often disorganized and unfocused. It is not always clear that GIPEC identified its needs clearly to JMS, and that JMS then articulated these needs to other contractors.

Finally, the GIPEC Board should have taken steps to evaluate and learn from what happened. At the January 2009 Board meeting, Ms. Koch and Mr. Meyers reported to the Board that the vessel would be sold through eBay. At this point, the Board should have reviewed the process of evaluating, purchasing, and selling the Islander. After sustaining a \$900,000 loss, New York taxpayers deserve a thorough review of this process to ensure that a mistake of this magnitude doesn't happen again.

4) GIPEC failed to have the Islander timely re-inspected by the Coast Guard.⁴

This re-inspection failure exposed GIPEC to costly upgrades beyond reasonable limits. Although GIPEC took possession of the Islander in August, 2007, and had until May 9th, 2008 to have the vessel re-inspected by the Coast Guard, it failed to do so. Accordingly, the existing certification expired requiring millions in additional upgrades and repairs. The failure to apply for much less to achieve recertification doomed the Islander's use, and significantly limited possible dispositional alternatives. Tragically, no one from the Coast Guard was ever even asked to address the question.

5) GIPEC proceeded on unrealistic expectations about the purchase and rehabilitation of a redundant vessel—expectations that should have been revised to reflect GIPEC's developing understanding of all of the available options.

The Seaworthy report notes GIPEC's expectation to obtain 15 to 20 years of additional service life from the Islander (Appendix G, page 34). But Seaworthy estimated that a \$6-7 million in investment in the vessel would only have extended the vessel's life for another 10 years. This intended service use time of the vessel was clearly unrealistic, both in terms of the Islander's lifespan, and in terms of the required repair costs.

³ She could not, however, recall who on the committee actually attended such briefings.

⁴ See Appendix G, page 4.

GIPEC's estimation of the costs needed to purchase and rehabilitate a suitable ferry were not revised at any point in this process to reflect new information. Ms. Koch testified that, after a thorough assessment of the scope of the field, GIPEC learned that none of the existing options were ideal (105-6). GIPEC, we submit, should have then discussed with Turner and the Board whether it was likely to find a suitable vessel within their budget, or whether they should have re-examined their goals for the project. Perhaps GIPEC could have purchased a vessel to provide back-up to the Coursen for 5 years until the field of options had changed. Or perhaps GIPEC should have considered purchasing a newer vessel with greater costs upfront but far fewer unknowns. To be sure, GIPEC confronted great obstacles in this process, but at times these obstacles not only limited their choices but also their ability to evaluate and transparently present the range of options to their Board. Flawed judgment resulted in a significant waste of taxpayer dollars, casting serious questions about the ability of current GIPEC staff to manage funds appropriated for Governors Island.

Recommendations

1) GIPEC Board

GIPEC's current by-laws do not require the Board of Directors to meet at any set interval of time. The Committee recommends that the GIPEC Board meet regularly, and to insist that staff provide it with consulting reports and relevant original documents upon which significant Board action is to be taken prior to scheduled Board meetings. Only if the Board is fully informed and actively engaged, can it provide appropriate oversight and leadership and fulfill the duties and obligations of not-for-profit law Sec. 717 (Duty of Directors and Officers).⁵

2) Contractor Liability

Empire State Development Corporation Counsel should revisit whether GIPEC has a valid basis to initiate litigation, and file claims against its consultants such as JMS. It is, we respectfully submit, not enough to simply absorb the entire loss occasioned by failed decision-making.

3) GIPEC's Staff

GIPEC should hire a Marine Superintendent with a marine management background to advise staff and the Board of Directors on the maintenance and upkeep of Governors Island. GIPEC's capital projects, including maintaining and rehabilitating the sea wall, repairing and maintaining docks and slips, and purchasing vessels, should be overseen by a staff member knowledgeable in these matters.

4) Contract with Turner Construction

According to GIPEC Board meeting transcripts, the issue of whether Turner should maintain a veritable monopoly over GIPEC affairs has been raised—but clearly this has not been enough to avoid the kind of mismanagement evidenced in this report. GIPEC, we submit, relies too heavily upon Turner, and should seek to diversify its contractors in order to effectively and efficiently make decisions on a wide variety of different challenges facing the Island as it transitions from military to civilian use.

5) Employee Discipline

The Empire State Development Corporation Chair should review this Report, and take appropriate disciplinary action against GIPEC employees for wasting corporation assets.

⁵ Directors are required to use reasonable care in performance of their duties *Billings v. Shaw*, 209 N.Y. 265, 279. This includes prudent management (*People et al Spitzer v. Grasso*, 50 A.D. 3D 535, 546-547 [1st Dept. 2008].) It is unclear how Directors can hope to fulfill their fiduciary obligations when they are not appropriately informed by staff prior to Board decision-making and the expenditure of public money (*Kavanaugh v. Kavanaugh Knitting Co.*, 226 N.Y. 185,193 [1919].).

Appendix A

Turner Construction Company Consulting Agreement—JMS Naval Architects
Turner Construction Company Consulting Agreement Change Order—JMS Naval Architects
Turner Construction Company Consulting Agreement—Seaworthy Systems, Inc.

Appendix B

Governors Island Redundant Ferry Market Survey PowerPoint—JMS

Appendix C

Invitation for Bids: Purchase and Sale of the M/V Islander Contract No. 07-07—
Woods Hole, Martha's Vineyard and Nantucket Steamship Authority
Condition and Valuation Survey Report—Marine Safety Consultants

Appendix D

Internal and Ultra-Sonic Inspection Report on M/V Islander—Marine Safety Consultants

Appendix E

Preliminary Inspection Report "Ferry Islander"—Claudio Crivici, Castlerock Risk Services

Appendix F

Purchase and Sale Contract For the M/V Islander Contract No. 07-07
Certificate of Documentation
ESDC Payment Authorization Form
ESDC Check

Appendix G

Inspection and Report of Conditions Found M/V Islander—Seaworthy Systems, Inc.

Appendix H

Relevant excerpts from the transcripts of GIPEC Board meetings

Appendix I

Hearing Witness List

