

RECEIVED

2016 MAY -3 PM 3:47

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

BROOKE F SHAPIRO
(212) 294-6827
bfshapiro@winston.com

May 2, 2016

VIA FEDERAL EXPRESS

Office of the Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Washington, DC 20573

Re: Maher Terminals, LLC v. The Port Authority of New York and New Jersey, FMC Docket No. 12-02

Dear Secretary Gregory:

Pursuant to 46 C.F.R. § 502.2(f)(3) and the Presiding Officer's Scheduling Order dated January 29, 2016, please find enclosed an original and five copies of the Parties' Joint Status Report, filed electronically at secretary@fmc.gov on May 2, 2016

Please do not hesitate to contact me if you have any questions.

Sincerely,



Brooke F Shapiro

Enclosures



ORIGINAL

cc: OS
OCC
RUSG)
Rb

BEFORE THE
FEDERAL MARITIME COMMISSION

FILED

Docket No. 12-02

MAY 2-2016

Federal Maritime Commission
Office of the Secretary

MAHER TERMINALS, LLC

COMPLAINANT

v

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

JOINT STATUS REPORT

Complainant, Maher Terminals, LLC (“Maher”) and Respondent Port Authority of New York and New Jersey (“PANYNJ”) hereby submit this Joint Status Report pursuant to the Presiding Officer’s Scheduling Order dated January 29, 2016 (the “Scheduling Order”). Each party has submitted its position as set forth below. The parties agreed to exchange their positions by email at 5 p.m. on Monday, May 2, 2016, and Maher further agreed to combine the positions into this document and file the exchanged positions without change.

Maher’s Position

Last month’s Rule 201 Report detailed how the Port Authority stonewalled discovery in this proceeding. The Port Authority’s stonewalling continues. Therefore, on May 2, 2016 Maher filed a motion to compel.

On April 5, 2015, Maher wrote to the Port Authority concerning the Port Authority’s willingness, first revealed in its April 1, 2016 Rule 201 report, to make several deponents

available under restrictive conditions. Letter from L Kiern to J Friedmann (Apr 5, 2016), Ex. 1. In its letter, Maher explained its position that depositions should await a decision from the Presiding Officer on the Port Authority's motion for a protective order which, among other things, sought to severely limit the number of depositions to four for each side. Considering the lack of clarity regarding the number of depositions to be allowed, and the lack of responsive Port Authority documents and interrogatory responses which the Port Authority refused to provide, it made no sense to attempt to proceed with depositions at that point. Maher again confirmed this position in a subsequent April 7, 2016 letter to the Port Authority, following an April 6, 2016 letter from the Port Authority feigning confusion. Letter from L Kiern to J Friedmann (Apr 7, 2016), Ex. 2 & Letter from J Friedmann to L Kiern (Apr 6, 2016), Ex. 3

On April 12, 2016, the Presiding Officer issued the *Order on Subpoena Requests and Respondent's Motion for Protective Order from Revised Discovery Requests*. The Presiding Officer rejected the Port Authority's motion to limit the number of depositions to only four per side and instead allowed each Party to take eight depositions as an initial matter and to request more if necessary. The Presiding Officer denied all subpoena requests without prejudice, and directed the parties to coordinate and agree upon deposition dates prior to submitting subpoena requests. Therefore, Maher has begun the process of locating and reaching out to the third-party witnesses that the Port Authority has noticed for deposition in order to coordinate with the Port Authority if possible.

The Presiding Officer observed that "discovery requests should be limited to 'prior discovery requests that [the party] asserts have not already been answered.'" However, the Presiding Officer also ruled that the parties would be permitted ten additional interrogatories, with any interrogatory requested after the Scheduling Order counting towards the ten unless

withdrawn. With respect to the Port Authority's temporal objections, the Presiding Officer held that "temporal requests that are longer than initially requested will not be permitted."

Following Maher's detailed deficiency letter dated March 31, 2016, Ex. 4, requesting the Port Authority's availability to meet and confer regarding such deficiencies, the Port Authority finally agreed to do so two weeks later, on April 13, 2016. Maher's March 31 letter addressed deficiencies not the subject of the Port Authority's protective order motion. During the meet and confer of April 13, counsel for the parties discussed those deficiencies and also the Presiding Officer's April 12th Order. Maher identified its 2012 Interrogatory Nos. 6-11, 15-16, and 26-27 as the "prior discovery requests that it asserts have not already been answered" pursuant to the April 12th Order. Email from L. Kiern to J. Friedmann (Apr. 15, 2016), Ex. 5. Maher also identified the ten additional Interrogatories permitted by the April 12th Order as 2016 Interrogatory Nos. 9(c), 9(d), 11, 12, 21, 23, 24, 27, and 28-29, with the balance withdrawn per the Order. *Id.* By email dated April 15, 2016, Maher identified the 2012 Document Request Nos. 1-3, 6-14, and 23-24 as its "prior discovery requests that it asserts have not already been answered." Email from J. Friedmann to L. Kiern (Apr. 13, 2016), Ex. 6. During the meet and confer, counsel for the Port Authority represented it would not supplement or cure any of the deficiencies in its responses, although it committed to complete its ongoing "rolling" document production by May 13, 2016. Email from J. Friedmann to L. Kiern (Apr. 13, 2016), Ex. 6, Email from L. Kiern to J. Friedmann (Apr. 15, 2016), Ex. 5, Email from J. Friedmann to L. Kiern (Apr. 18, 2016), Ex. 7, Email from L. Kiern to J. Friedmann (Apr. 19, 2016), Ex. 8. On April 20, 2016, however, the Port Authority indicated that it intended to supplement its responses with respect to "some or all" of its responses to 2016 Interrogatory Nos. 21, 23, 24, 28, or 29 during

the week of April 25, 2016 Email from J Friedmann to L. Kiern (Apr 20, 2016), Ex. 9
However, it did not do so.

During the April 13th meet and confer, the Port Authority refused to supplement its discovery responses with evidence subsequent to March 30, 2012 Counsel for the Port Authority argued adamantly that March 30, 2012 was the discovery cut-off. Email from J Friedmann to L. Kiern (Apr 18, 2016), Ex. 7

Maher explained to the Port Authority that the Presiding Officer's Order did not specify a discovery cut-off date of March 30, 2012. Rather, it permitted discovery requests within the temporal scope "initially requested" which means that the Port Authority must provide responsive information up "to the present" with a continuing duty to supplement pursuant to FMC Rule 201(k)(1), since that is what Maher initially requested in its 2012 Interrogatories and 2012 Document Requests, and at all events Maher's Complaint alleges continuing violations. Email from L. Kiern to J Friedmann (Apr 19, 2016), Ex. 8 However, the Port Authority contends that under the Order it has no obligation to provide responsive information after March 30, 2012.

Sadly, the Port Authority continues to stonewall discovery The Port Authority has refused to supplement its deficient answers to Maher's 2012 Interrogatories or Maher's 2012 Document Requests, and most of Maher's ten permitted additional 2016 Interrogatories. Furthermore, the Port Authority refuses to produce crucial evidence regarding its continuing violations. And lacking any of this discovery or a date certain by which it may be obtained, Maher is prejudiced with respect to any depositions it may take. In these circumstances, on May 2, 2016, Maher filed motion to compel production from the Port Authority

If Maher receives the documents which the Port Authority promised to provide by May 13, 2016, and the other evidence requested which is the subject of the motion to compel, Maher has proposed the following tentative schedule to the Port Authority, which is generally consistent the time periods in the January 29, 2016 Scheduling Order in light of the subsequent developments and considering the holiday season.

May 13, 2016	Parties complete their discovery responses.
June 15, 2016	Depositions of fact witnesses begin.
July 15, 2016	Depositions of fact witnesses completed.
August 1 , 2016	Fact discovery closes.
August 15, 2016	Parties file stipulation of facts on which they agree.
August 15, 2016	Maher designates expert witnesses and produces their reports.
September 30, 2016	Port Authority designates rebuttal expert witnesses and produces their reports.
October 31, 2016	Maher designates rebuttal expert witnesses and produces their reports.
November 30, 2016	Expert witness depositions completed.
January 17, 2017	Maher files Brief and Proposed Findings of Fact
February 15, 2017	Port Authority files Opposition Brief, Responses to Complainant's Proposed Findings of Fact, and Proposed Findings of Fact
March 15, 2017	Maher files Reply Brief and Responses to Respondent's Findings of Fact

Of course, if the Port Authority fails to complete its discovery responses on May 13, 2016, or the Presiding Officer has not yet ruled on Maher's motion to compel by May 13, 2016, Maher proposes that the dates beginning with the deposition of fact witnesses be accorded a corresponding delay sufficient to permit preparation for depositions to avoid the burden and

expense of having to re-depose the witnesses, most of whom are third parties. Maher transmitted this proposal to the Port Authority on May 2nd, and the Port Authority has taken it under consideration with a promise to provide a response in the next several days.

The Port Authority's Positions on the Status of this Action

Following the Presiding Officer's ruling and order on the Port Authority's Motion to Compel, dated April 12, 2016 (the "Order"), the parties have met and conferred and also exchanged numerous emails regarding the application of the Order to Maher's discovery requests. Maher identified the ten "new" interrogatory requests that it intends to press. Maher also pointed out certain purported deficiencies in some of these requests—many of which the Port Authority objected to answering while its motion for a protective order was pending—and the Port Authority has agreed to supplement a number of them. Maher also identified several interrogatories from its original requests served in 2012 that it advised will be the subject of a motion to compel in light of the Port Authority's position that it already provided the principal and material facts in response to those interrogatories years ago, and notwithstanding the FMC's recognition that these prior requests "[were] overbroad on their face" January 29, 2016 Scheduling Order; *see also* Port Authority's Response to Maher's Motion to Compel, dated Sept. 25, 2012 at 33-54, 56-63, 87-92

Maher also advised that it intends to file a motion to compel discovery from a period beyond the timeframes set forth in Complainant's initial discovery requests (*i.e.*, 1997 to 2012 for interrogatories and 2005 to 2012 for document requests), disingenuously arguing that the Order permits Maher to expand its discovery requests through the present. The April 12 Order clearly stated that "the parties are instructed to limit, not expand, their discovery requests" and that "temporal request that are longer than initially requested will not be permitted." Order at 3

Because the Presiding Officer has already ruled on this issue in connection with the Port Authority's recent motion for a protective order, any such motion by Maher would be an improper motion for reconsideration and would unnecessarily waste the resources of the Presiding Officer and the Port Authority

The parties have mutually confirmed via email that both anticipate completing their respective document productions by around May 15. Following a short period to review the productions, the parties will endeavor to agree on a mutually acceptable schedule for depositions. This morning, Maher provided a proposed schedule for the duration of this litigation. The Port Authority now is reviewing same and then the parties will see if they can agree on a mutually acceptable schedule to propose to the Presiding Officer

Dated. May 2, 2016

Respectfully submitted,

/s/ Lawrence I. Kiern
Lawrence I Kiern
Bryant E. Gardner
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006
(202) 282-5000

Attorneys for Maher Terminals, LLC

Respectfully submitted,

/s/ Richard A. Rothman
Richard A. Rothman
Jared R. Friedmann
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Peter D Isakoff
Weil, Gotshal & Manges LLP
1300 Eye Street, NW
Suite 900
Washington, DC 20005
(202) 682-7000

*Attorneys for The Port Authority of New
York and New Jersey*



North America Europe Asia

1700 K Street, NW
Washington, DC 20006
T +1 202 282 5000
F +1 202 282 5100

LAWRENCE I. KIERN
Partner
(202) 282-5811
lkiern@winston.com

April 5, 2016

VIA EMAIL

Jared R. Friedmann
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153

**Re: *Maher Terminals, LLC v The Port Authority of New York and New Jersey,*
FMC Docket No. 12-02**

Dear Jared.

We were surprised to read for the first time in your Rule 201 Report received late last Friday, April 1, 2016, that the Port Authority reported to the Presiding Officer that it was prepared to offer to provide two of the witnesses Maher noticed over five weeks ago (Charles Huang and Richard Larrabee) for depositions on April 21 and 25, 2016, respectively. You did not actually indicate you were prepared to propose a date for Ann Marie Clancy, but rather indicated that you are in the process of ascertaining her availability. You also indicated that you were prepared to propose that Mr. Larrabee appear only once as the 30(b)(6) witness despite the fact that Maher noticed his deposition in his individual capacity and that Maher issued separate 30(b)(6) notices pertaining to the two separate topics of Maher's claims. (1) the consent fee and (2) Global.

Oddly, in your Rule 201 Report, you suggest to the Presiding Officer that Maher should first take the deposition of the Port Authority's Rule 30(b)(6) witness, Mr. Larrabee, to "obviate the need for all of the additional discovery sought by Maher—both additional depositions and interrogatories." Of course, that is a *non sequitur*. We require the documents and answers to the interrogatories that you refuse to provide in order to take the depositions.

Your Rule 201 Report also stated "The Port Authority hoped to discuss the schedule with Maher yesterday, but its efforts to speak were rebuffed." You know as well as I do that this representation to the Presiding Officer is untrue. Your partner's email to me mentioned nothing about this and if you really meant to make these proposals to us, all you had to do was email them or leave me a voicemail. This is not rocket science.

Because the Port Authority has stonewalled Maher's discovery at every turn and the Port Authority's motion for protective order remains pending, any attempt to depose the witnesses is frustrated by the Port Authority's objections which are the subject of the motion for a protective order and the Port Authority's refusals to produce responsive documents and answer the interrogatories.

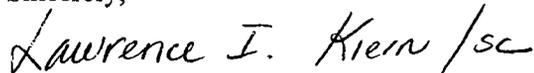
As you know, Maher opposes the Port Authority's proposal to limit deposition examination to only four witnesses. And, if the Presiding Officer decides to limit the number of depositions below the 20 provided for by the Commission's own rule, Maher will then have to prioritize the witnesses to include persons with more knowledge about the claims at issue than the persons you have reported to the Presiding Officer that you might provide. For example, it is plain that you are intentionally *not* providing the persons who you previously identified under oath as most knowledgeable about the remaining claims. Messrs. Lombardi and Borelli.

Curiously, although the Port Authority has been unable to confirm the availability of a Port Authority current employee for a deposition noticed over five weeks ago, late at night on Thursday, March 31st, you noticed depositions to begin a week from yesterday, including third parties and former employees of Maher. Obviously, this was not a serious proposal and in all events it is simply unreasonable to attempt to arrange such depositions with such inadequate notice. Moreover, it is hypocritical and unfair to notice depositions of Maher witnesses while refusing to provide your own witnesses. No doubt, this is why you shifted ground at the last minute in your Rule 201 Report submission Friday night and wrote the Presiding Officer that you were now prepared to propose to provide Messrs. Larrabee and Huang.

Apropos of April Fools Day, your new positions set forth in your April 1st Rule 201 submission manifest a desperate last ditch effort to rescue the Port Authority from the consequences of its stonewalling of discovery. Your gamesmanship is blatant.

In these circumstances, where the parties agree that the current schedule is unworkable and that the Presiding Officer should decide the motion for a protective order, Maher's position is that as an initial matter depositions should await a decision on that motion. Additionally, as you know we provided you written notice of other Port Authority discovery deficiencies which require resolution for depositions to proceed. Otherwise, we risk having to take the depositions a second time which is wasteful and burdensome not only on the parties, but also third-party witnesses.

Sincerely,

Handwritten signature of Lawrence I. Kiern in cursive script, followed by the initials "/sc".

Lawrence I. Kiern

cc Peter D. Isakoff (via e-mail)
Richard A. Rothman (via e-mail)



North America Europe Asia

1700 K Street, NW
Washington, DC 20006
T +1 202 282 5000
F +1 202 282 5100

LAWRENCE I. KIERN
Partner
(202) 282-5811
lkiern@winston.com

April 7, 2016

VIA EMAIL

Jared R. Friedmann
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153

**Re *Maher Terminals, LLC v. The Port Authority of New York and New Jersey,*
FMC Docket No. 12-02**

Dear Jared

We write in response to certain aspects of your letter of April 6, 2016

Suffice it to say that we reject your revisionist history of events and usual *ad hominem* swipes. By the same token, your rank gamesmanship to obstruct discovery renders your invocation of “professional courtesy” disingenuous.

First, you know full well that you misrepresented the facts to the Presiding Officer. Your purported “efforts to speak were [not] rebuffed” and you cite no language to that effect. Again, if you really wanted to communicate specific proposals re depositions, all you had to do was put them in an email or a voice mail message to me. Your position is not credible, especially in light of our repeated previous requests to you to confirm the depositions and our previous meet and confer on the subject of March 9th

Second, your quibbling about the manner of filing the Rule 201 Report by using separate submissions combined for filing ignores the fact that this is not the first instance that the parties have done this. Indeed, you did not object to it in this instance. And, as discussed above, if you really intended to propose something specific to us before the filing of the report, you were not prohibited from doing so and could have easily done so. But you didn’t, and as in most things *actions* speak louder than words. While bemoaning a purported unwillingness on my part to discuss depositions with you on March 31st, you ignore the fact that we had previously met and conferred on the subject of the discovery, including depositions, on March 9th. And the result of that conversation was your motion for a protective order the following day objecting to the depositions we had noticed on March 2nd

Third, with respect to your arguments about your proposed Port Authority depositions on April 21st and 25th, we explained our reasons for not proceeding with them at this juncture in our letter of April 5, 2016. Among other reasons, we explained.

In these circumstances, where the parties agree that the current schedule is unworkable and that the Presiding Officer should decide the motion for a protective order, Maher's position is that as an initial matter depositions should await a decision on that motion.

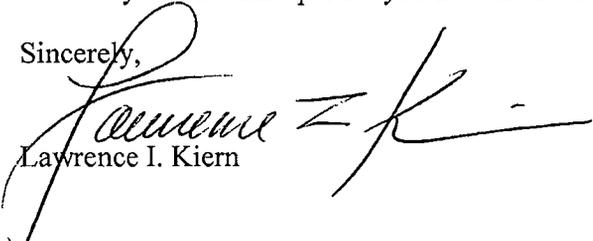
Yet, your letter of April 6th pretends not to understand our proposal regarding next steps. We could not have been clearer: "depositions should await a decision on that motion." You admit as much yourself in your Rule 201 submission where you write to the Presiding Officer that a realistic schedule "will depend, in part upon the Presiding Officer's ruling on the Port Authority's pending motion for a protective order."

Fourth, regarding the Port Authority's refusal to answer interrogatories, produce documents, and produce witnesses for deposition, on March 10th you filed a motion for a protective order and objected to the discovery requests and depositions. So, there is no doubt that the Port Authority refused to answer interrogatories, produce responsive documents, and produce witnesses. You only belatedly shifted ground about three witnesses in your April 1st Rule 201 submission to the Presiding Officer. Also, your reference to the volume of Maher's document production is a *red herring*. The Port Authority has the evidence establishing its violations of the Shipping Act, not Maher. The evidence of the Port Authority's purported bases, justifications, and calculations of its unlawful consent fee practices and the categorical exclusion of Maher is in its files, not Maher's.

Fifth, you know full well that your late-night March 31, 2016 deposition notices are not serious. Indeed, your cover letter only further confirms that fact. We neither "neglected" nor "failed" to include the letter as part of our exhibit as you have now further misrepresented to the Presiding Officer. You were free to include it as an exhibit to your submission, but you elected not to do so. That was your decision. Nor did you even reference the letter *or its contents* in your Rule 201 submission. Again, that was your decision.

With respect to your belated deposition notices, we will begin the process of ascertaining the availability of witnesses. However, as a threshold matter, with respect to the 13 topics of the 30(b)(6) notice please identify the time period for which we should prepare the designees to testify. Also, as you are aware the 13 topics you listed pertain largely to evidence in your possession which you have refused to produce. Therefore, preparation of Maher's 30(b)(6) designees depends on the production of evidence that you have refused to provide. It also appears that topic No. 13 is irrelevant to this proceeding. Please explain why it is relevant. Also, as requested by your letter of April 6th, we will seek to ascertain if subpoenas will be necessary for the third-parties you have noticed and inform you accordingly.

Sincerely,


Lawrence I. Kiern

cc Peter D. Isakoff (via e-mail)
Richard A. Rothman (via e-mail)

Weil, Gotshal & Manges LLP

BY E-MAIL

767 Fifth Avenue
New York, NY 10153-0119
+1 212 310 8000 tel
+1 212 310 8007 fax

April 6 2016

Jared R. Friedmann
+1 (212) 310-8828
Jared.Friedmann@weil.com

Lawrence I. Kiern, Esq
Winston & Strawn LLP
1700 K Street NW
Washington, DC 20006

Re *Maher Terminals LLC v The Port Authority of New York and New Jersey*, FMC Docket No 12-02

Dear Larry

We write in response to your April 5, 2016 letter. As an initial matter, your assertions that anything in our Rule 201 Report was untrue or that the Port Authority has in any way been “stonewalling discovery” could not be further from the truth. The facts are clearly otherwise.

As you grudgingly but misleadingly acknowledge, Mr. Isakoff emailed you last Thursday morning asking to speak with you “about the joint status report due tomorrow *and issues relating to the current litigation schedule*” (Emphasis added.) Had you exercised even minimal professional courtesy and consented to speak with us, we would have advised you then and there of the availability of certain witnesses as set forth in our portion of the Rule 201 Report filed the next day. When you failed to respond to Mr. Isakoff’s request for a call, I separately followed up with your partner, Mr. Gardner—again to no avail.

It bears noting that in any normal case, where professional courtesies are routinely observed, one of the purposes of a “joint” status report is to ensure that the parties actually discuss the issues to be included in the report in advance of the “joint” filing. Your automatic proposal simply to exchange separate drafts to be included in the “joint” submission at 5:00 p.m. on the day that the report is due with no attempt even to see if there are at least some points on which the parties could agree is at odds with the concept of requiring the parties to prepare and submit a “joint” report. Had we first discussed the issues, as we proposed, the purported surprises of which you disingenuously complain would have been of no surprise at all. This is all about fomenting needless disputes, consistent with your well-worn style.

Contrary to your assertion, there is nothing odd about suggesting that Maher first take the deposition of the Port Authority’s designated Rule 30(b)(6) witness on April 25, who will be prepared to answer questions regarding all of the issues noticed, many of which overlap with Maher’s purported complaints with the Port Authority’s interrogatory responses. Moreover, to the extent that the Rule 30(b)(6) deponent is able to respond to your questions—as we anticipate will be the case—subsequent

April 6, 2016
Page 2

depositions of other, less knowledgeable, witnesses could be obviated as an unproductive redundant exercise.

Your assertion that the Port Authority has refused to provide documents is absurd. To date, the Port Authority has produced more than 5,000 documents, as compared to Maher's paltry production of about 300 documents. Although we are still in the process of reviewing and producing additional documents—another production is expected to be ready by the end of this week—Maher's complaints about our document production, given Maher's own meager production, are utterly divorced from reality.

Your complaint to the Presiding Officer and now again in your letter that there was something unreasonable or unfair about the Port Authority's deposition notices, including concerning the dates in the notices, is entirely disingenuous, not least because you conspicuously omit reference to the letter accompanying the deposition notices, which plainly stated that the Port Authority "is flexible with regard to the noticed dates depending on witness availability, thereby making plain that the noticed dates were mere placeholders. It is no accident that when you attached the deposition notices to the Rule 201 Report you somehow neglected to include that cover letter as part of Maher's "exhibit." Contrary to your representations in the Rule 201 Report, that our notices contradicted our position that each side be limited to four depositions, that cover letter also stated that if the Presiding Officer accepted the Port Authority's position that each side be limited to four depositions it would "withdraw certain notices accordingly." As you seem to have lost all memory of the March 31 cover letter, it is attached hereto for your reference. As indicated in the letter, the Port Authority is happy to work with you to schedule the noticed depositions for mutually convenient dates.

Your assertion that the Port Authority is "refusing to produce" the witnesses you have noticed for deposition is completely false. We provided Maher with a proposed date for the noticed Rule 30(b)(6) depositions and also confirmed the availability of one of the two current employee witnesses noticed for deposition on April 21. Other than those two current employee witnesses, all of the other witnesses you have noticed are former employees who have not been served with subpoenas. We cannot compel them to attend a deposition without a subpoena, though if you are prepared to work with us in a professionally courteous way we may be able to obviate the need for you to proceed with subpoenas through persuasion.

Lost in your usual assortment of "complaints" is any clear proposal regarding next steps. Do you actually not wish to proceed with Mr. Huang's noticed deposition on April 21, for example? Are you declining our proposal to take the deposition of our designated Rule 30(b)(6) witness on April 25?

Please also advise as to the availability of Maher's witnesses, including its Rule 30(b)(6) designee for depositions. Will the service of subpoenas be necessary for the former Maher employees whose depositions we have noticed?

April 6, 2016
Page 3

As for your letter regarding our objections to Maher's requests for production and our objections and responses to Maher's interrogatories, we are still analyzing the issues raised, and will endeavor to revert to you in the near future.

Sincerely,



Jared R. Friedmann

Attachment

cc Bryant E. Gardner, Esq
Richard A. Rothman, Esq
Peter D Isakoff, Esq

Weil, Gotshal & Manges LLP

BY FEDEX

767 Fifth Avenue
New York, NY 10153-0119
+1 212 310 8000 tel
+1 212 310 8007 fax

March 31, 2016

Jennifer M. Oliver
+1 (212) 310-8480
Jennifer.Oliver@weil.com

Lawrence I Kiern
Winston & Strawn LLP
1700 K Street, N W
Washington, D C 20006

Re Maier Terminals, LLC v. Port Authority of New York and New Jersey. Case No. 12-02

Dear Lawrence.

Enclosed please find the Port Authority's fact and Rule 30(b)(6) deposition notices in the above referenced matter. The Port Authority is flexible with regard to the noticed dates depending on witness availability. Please also note that the tentative dates in the enclosed notices are subject to the ALJ's ruling on the Port Authority's pending motion for a protective order. If the ALJ accepts our proposed limit of four (4) depositions per side, we will withdraw certain notices accordingly.

Sincerely



Jennifer M. Oliver

Encls.

BRYANT E. GARDNER
Partner
(202) 282-5893
bgardner@winston.com

March 31, 2016

VIA EMAIL

Jared R. Friedmann
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153

**Re: *Maher Terminals, LLC v. The Port Authority of New York and New Jersey,*
FMC Docket No. 12-02**

Dear Jared.

Maher has received Respondent's responses to Complainant's Revised First Set of Interrogatories Propounded on the Port of New York and New Jersey and Complainant's Revised First Request for Production of Documents from the Port Authority of New York and New Jersey, served on March 17, 2016, and finds them deficient in key respects not otherwise the subject of the Port Authority's pending Motion for Protective Order. We therefore write to you with hopes of resolving some of these matters and avoiding motions practice.

The Responses to Maher's First Revised Document Requests

Freestanding "General Objections" such as those employed by the Port Authority in its responses are not a valid response to requests. Therefore, the Port Authority's listing of "General Objections" and its incorporation by reference into the specific responses, without specific explanation of how those objections apply to the particular request, is improper and only leads to confusion about what objections the Port Authority is really asserting and withholding evidence in reliance upon objection.

With respect to Document Request No. 2, PANYNJ states it objects "to the extent that it seeks Respondent's basis under applicable law for a legal argument as to the sufficiency of Complainant's pleading, rather than facts that are reflected in the documentary record." As a document request, it calls for responsive documents, not for PANYNJ's explanation of its legal argument. Although, if there are such responsive documents that are privileged, PANYNJ should admit that and provide a corresponding privilege log. We do not understand why PANYNJ states only "facts that are reflected in the documentary record" are appropriate, because the request seeks to discover the responsive documents to enter them into the record, and if PANYNJ is objecting to production of responsive documents on the basis that they are not already in the record, at this stage that is improper.

With respect to Document Request Nos. 3, 5, 6, 8, 9, 12, and 19, PANYNJ objects to producing “documents that are a matter of public record and/or documents that are equally accessible to the Complainant.” We do not understand the scope of documents to which this objection refers. Please identify what documents you are withholding on the basis of this objection

As you are aware, Federal Rule 34, pursuant to FMC Rule 12, now provides that responses must state whether any responsive documents have been withheld pursuant to asserted objections. The Port Authority’s failure to provide this disclosure is improper

Federal Rule 34 also now further provides that the responses must specify the date by which responsive documents will be provided. The Port Authority failed to do so, and in this respect its responses are improper. While the Port Authority produced some documents on March 17, 2016, it did not indicate whether it contemplates supplemental document production and, if so, when we can expect them. We are concerned about this in light of the Port Authority’s past practice of producing voluminous documents late in the discovery process and even after the close of discovery

The Responses to Maher’s First Revised Interrogatories

Maher also has concerns regarding a number of PANYNJ’s interrogatory responses, beyond those matters which are subject to the pending motion for a protective order. Like its document responses, PANYNJ employs improper blanket “General Objections” incorporated into every answer, which make it impossible to ascertain PANYNJ’s specific objections to the interrogatories and in what instances it is withholding responsive information pursuant to such objections. Furthermore, in many instances, PANYNJ has failed to answer the question presented or referred back to prior interrogatory responses, which also failed to answer the question presented.

In its response to Interrogatory Nos. 1 and 2, PANYNJ does not provide complete answers. The interrogatories pertain not only to an actual change of control or transfer of ownership of Maher, but also to any “contemplated” change of control or transfer of ownership. We understand that you refuse to answer the questions pending a decision on your motion for a protective order. However, for the avoidance of any doubt, if that is not the reason you must supplement the answers.

In its response to Interrogatory No. 3, PANYNJ does not provide a complete answer, but instead refers Maher back to PANYNJ’s April 26, 2012 Motion to Dismiss. However, that motion does not answer the request for the basis of PANYNJ’s allegation that Maher has failed to state facts sufficient to constitute a claim for relief. The Commission has already ruled that is not the case, and found that Maher did state facts sufficient to support the remaining claims. Therefore, the objection is baseless and the Port Authority must supplement the answer.

Similarly, PANYNJ refers Maher to the Amended Answer in lieu of responding to Interrogatory No. 4. But the Amended Answer provides no response to Interrogatory No. 4, nor does PANYNJ explain how it provides a response, or what portion of the Amended Answer provides the responsive information, if any. The purported justification in the Amended Answer does not address the gravamen of the remaining claims and neither does the answer to the interrogatory. You must supplement the answer.

With respect to Interrogatory No 5, the Port Authority provides no evidence that Maher's claims accrued more than three years before the complaint was filed. Therefore, you must supplement the answer

The response that PANYNJ provides to Interrogatory No 6 provides no answer. All that PANYNJ offers here is speculation of how PANYNJ might argue Maher's claims are barred by collateral estoppel *if* "for example" Maher argues that APM's "internal reorganization" amounted to a "change of control." As you know, the Commission has already rejected your argument. Your answer must provide the complete information available to the Respondent. If you have no other information, you should admit it so we can dispense with this baseless affirmative defense and streamline this proceeding.

In response to Interrogatory No 7, calling for the factual support behind PANYNJ's allegation that the claims are barred by lack of standing, PANYNJ's only response is that PANYNJ wants to preserve the argument. That is no answer. If PANYNJ has any responsive facts in support of its allegation, it must provide those which are principal and material. If not, admit it so we can also dispense with this baseless affirmative defense.

With respect to Interrogatory No 9, we understand PANYNJ objects because it filed a protective order so it will not have to disclose any change of control events which occurred prior to 1997, after March 30, 2012, or which were contemplated, but did not occur. Putting aside these matters, PANYNJ still has not answered the question. PANYNJ moved for protection with respect to Interrogatory No 9(a)-(b) & (e), but not 9(c) and (d). For 9(c), PANYNJ refers Maher back to its response to Original Interrogatory No 9, but all that PANYNJ provided there were three vague factors: (1) "new owners are committed to investment in the terminal," (2) "protect the Port Authority's investments and assets;" and (3) "capital gains." PANYNJ does not identify how or whether these vague factors applied in each of the change of control events it has identified. Nor does the Port Authority describe in detail *in each instance* how the vague factors pertain to the consent fee payments and economic consideration terms required. For 9(d), PANYNJ still refuses to explain how it arrived at the sums extracted from some of its marine terminal operators. All the PANYNJ answer does is refer back to the same three factors in Original Interrogatory No 9 and to its response to Original Interrogatory No 10, which disclosed PANYNJ determined consent obligations "scaled in comparison to the outcome of PNCT's transfer of control to AIG" with "appropriate modifications." PANYNJ must identify and describe in detail how, in *each* of the changes of control or ownership, the required consent fee and economic considerations terms were determined. As the Commission ruled when sustaining Maher's change of control claims, PANYNJ must justify the reasonableness of its practices and its disparate treatment of marine terminal operators, because some are required to pay millions of dollars in consent fees and other consideration to the Port Authority while others are not. Having known about its basis for disparate treatment and these claims for years, the Port Authority should have precise answers for these simple questions and it must supplement its answer.

Regarding Interrogatory No 10, beyond the Port Authority's protective order motion, PANYNJ's response does not answer the question. The references to other interrogatory answers do not answer the question. The answer does not address the change of control involving A.P. Møller-Maersk's acquisition of P&O Container Line in or around 2005 to which the Port Authority consented later. And, the portion of the answer pertaining to APMT overlooks the fact that the question pertains to not only "changes of control," but also to changes of "ownership" which plainly occurred with respect to the consent provided.

by PANYNJ to APMT to allow it to spin off up to 50% ownership. Therefore, you must supplement the answer.

Likewise, PANYNJ also fails to answer Interrogatory No. 11, irrespective of the protective order motion. The Port Authority merely refers to a *different but overlapping* set of vague factors, this time in its response Original Interrogatory No. 6, which include: (1) “whether the new entity was suitable to control in terms of its integrity, financial capacity, security qualifications and operational ability,” and (2) “the entity would commit to make appropriate capital investments in the facility.” While PANYNJ now confesses that “no one obligation” of the tenant was correlated to the PANYNJ’s consent, this fails to answer the questions. (1) what consideration was agreed, (2) what was paid, and (3) what was not. If there was no consideration agreed, PANYNJ only need say so, if there was consideration agreed, explain what has been paid and what has not.

PANYNJ’s response to Interrogatory No. 12 objects to PANYNJ’s perception that the question implies that change of control consideration paid by tenants is or should be related to services, benefits, etc., provided by PANYNJ, but that is no answer. Nor is it sufficient for PANYNJ to point vaguely to “large sums it has invested in the terminals and surrounding infrastructure,” “*inter alia*” that PANYNJ neglects to specify, and unspecified “risks” as justifications for the 2010/2011 PNCT change of control. The interrogatory does not answer the question. You must describe in detail the (1) “large sums invested in the terminals and surrounding infrastructure;” (2) “*inter alia*;” and (3) the purported “risks to which the Port Authority may be subjected due to the change of control.” Therefore, you must supplement the answer.

Interrogatory No. 15 asks whether PANYNJ charged for the changes of control/ownership to which it consented in 2011, in addition to the \$10+\$40 million that AIG committed with respect to the 2007 change of control event. PANYNJ’s cross-reference to PANYNJ’s response to Original Interrogatory No. 6 does not answer this question and neither does referring to the lease agreement. Therefore, you must supplement the answer.

Interrogatory Nos. 17 and 18 go to PANYNJ’s fundamental policy, practice, or procedure for levying change of control/ownership fees and consideration before and after the 2007 Board approval, respectively. Rather than answering the questions, PANYNJ refers Maher back to its prior responses to Original Interrogatory Nos. 7 and 8, which were subjects of Maher’s motion to compel. These responses were and remain deficient, for the reasons set forth in the motion to compel. PANYNJ references the two factors set forth in PANYNJ’s response to Original Interrogatory No. 6: (1) “whether the new entity was suitable to control in terms of its integrity, financial capacity, security qualifications and operational ability;” and (2) “the entity would commit to make appropriate capital investments in the facility;” stating that PANYNJ staff looked at each lease “on a case-by-case basis” applying the two factors to decide whether the change of control “would result in the same or better circumstances for the port authority.” Merely stating a review occurred which considered these two factors does not explain how the factors were actually applied in each instance. The Port Authority’s actual practice for handling each change of control consent and how it actually concluded by extracting millions from some, but nothing from others is expressly asked by the interrogatories and is central to this proceeding as the Commission has explained. The answer also fails to account for the three Original Interrogatory No. 9 factors, including capital gains extraction.

The Port Authority fails to answer Interrogatory No. 20. The reference to the responses to Original Interrogatory Nos. 9 and 11 do not answer the question. According to PANYNJ, only three of the 16 consents to change of control/ownership, to which it has admitted, provided for any capital investment in the facility. Why not the others? You must supplement the answer.

Many of Maher's Global-related interrogatories also remain unanswered. Maher's Interrogatory No. 33 requests that PANYNJ explain why the Qualified Transferee provision was purportedly required to induce Global's lenders to convert their fee simple mortgage into a leasehold mortgage. PANYNJ directs Maher to PANYNJ's prior response to Original Interrogatory No. 16, which asked a very different question. And PANYNJ's answer to Original Interrogatory No. 16 provides no answer to Interrogatory No. 33. Therefore, you must supplement the answer.

Further, PANYNJ's response to Interrogatory No. 34, which requests PANYNJ's purpose for using the Qualified Transferee provision to review transactions for anticompetitive impacts, likewise refers Maher back to PANYNJ's response to Original Interrogatory No. 16, which provides no answer except say that the Port Authority deployed the provision excluding existing terminal operators to control "potential anticompetitive impacts." Nor does PANYNJ explain why, in response to Interrogatory No. 35, the provision was crafted only to exclude *existing* terminal operators, as opposed to others who might affect the competitive environment or wellbeing of the Port. Therefore, you must supplement the answers.

In numerous instances, PANYNJ also asserts the attorney-client privilege improperly to avoid answering questions and to block discovery. PANYNJ may not use the privilege as both a sword and a shield, and by doing so it has put its purportedly privileged communications at issue and waived the privilege. See PANYNJ Response to Interrogatory Nos. 34, 35 (incorporating response to Original Interrogatory No. 16 invoking the privilege), 36, 37 (incorporating response to Original Interrogatory No. 26 invoking the privilege), and 38 (same), Maher's Motion to Compel Production, Dkt. 12-02 (Sept. 10, 2012).

Maher requests a meet and confer telephone conference with respect to the foregoing deficiencies with hopes of efficiently resolving the matter. We propose to accomplish this tomorrow April 1st at 4:00 p.m. Please confirm your availability for a call to discuss.

Sincerely,



Bryant E. Gardner

cc Peter D. Isakoff (via e-mail)
Richard A. Rothman (via e-mail)

Gardner, Bryant

From: Kiern, Larry
Sent: 15 April, 2016 17:05
To: Friedmann, Jared
Cc: Rothman, Richard; Isakoff, Peter; Mitchell, Alea; Gardner, Bryant; Kiern, Larry
Subject: RE: Maher v PA - 12-02 - Meet and Confer of April 13, 2016, Etc.

Jared – Further to our meet and confer conducted on Wednesday, April 13th, for the avoidance of any doubt we take this opportunity to memorialize a few key points.

- (1) We informed you that Maher contends that of Complainant's First Set of Interrogatories Propounded on the Port Authority of New York and New Jersey served March 30, 2012, Nos. 6-11, 15-16, and 26-27 as "still relevant and have not already been answered" within the meaning specified in the January 29, 2016 Scheduling Order and the Presiding Officer's April 12, 2016 Order on Subpoena Requests and Respondent's Motion for Protective Order From Revised Discovery Requests
- (2) We also informed you that, pursuant to the April 12, 2016 Order, Maher's ten additional interrogatories are Nos. 9(c), 9(d), 11, 12, 21, 23, 34, 27, 28, and 29 from Complainant's Revised First Set of Interrogatories Propounded on the Port of New York and New Jersey served February 16, 2016. We understood your position to be that the Port Authority will not supplement or amend its answers to these interrogatories to cure its deficiencies. Additionally, you indicated that the Port Authority does not intend to supplement or amend its responses to Maher's document requests. For the avoidance of any doubt, Maher's position is that Nos. 1-3, 6-14, and 23-24 from Complainant's First Request for Production of Documents from the Port Authority of New York and New Jersey served March 30, 2012 are "still relevant and have not already been answered "
- (3) We explained our position that the Port Authority should supplement its discovery responses, including with respect to the pertinent time period, to the present and with a continuing obligation to supplement per Rule 201, and with respect to additional detail requested per the April 12, 2016 Order. You indicated that you disagreed with our position and would not be supplementing in these respects.
- (4) In light of the Port Authority's position that it will not supplement its answers to interrogatories or its document production with any information after March 30, 2012, etc., we explained that we must seek the assistance of the Presiding Officer

Regards, Larry

Lawrence I Kiern

Partner

Winston & Strawn LLP
1700 K Street, N W
Washington, DC 20006-3817

D: +1 (202) 282-5811

M: +1 (703) 898-6260

F: +1 (202) 282-5100

Bio | VCard | Email | winston.com

**WINSTON
& STRAWN**
LLP

Please consider the environment before printing this e-mail.

From: Friedmann, Jared [<mailto:Jared.Friedmann@weil.com>]

Sent: Wednesday, April 13, 2016 10:12 PM

To: Kiern, Larry; Gardner, Bryant

Cc: Rothman, Richard; Isakoff, Peter; Mitchell, Alea

Subject: Maher v PA 12-02

Further to our discussion today, based on current pace of review and barring any unexpected setbacks, I anticipate the PA completing its document production within the next 30 days. Please advise when Maher expects to complete its production.

Thanks,
Jared



Jared R. Friedmann

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
jared.friedmann@weil.com
+1 212 310 8828 Direct
+1 917 951 8730 Mobile
+1 212 310 8007 Fax

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you

Chinyavong, Somchay

From: Friedmann, Jared <Jared.Friedmann@weil.com>
Sent: Wednesday, April 13, 2016 10:12 PM
To: Kiern, Larry; Gardner, Bryant
Cc: Rothman, Richard; Isakoff, Peter; Mitchell, Alea
Subject: Maher v PA 12-02

Further to our discussion today, based on current pace of review and barring any unexpected setbacks, I anticipate the PA completing its document production within the next 30 days. Please advise when Maher expects to complete its production.

Thanks,
Jared



Jared R. Friedmann

Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
jared.friedmann@weil.com
+1 212 310 8828 Direct
+1 917 951 8730 Mobile
+1 212 310 8007 Fax

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you.



Gardner, Bryant

From: Friedmann, Jared <Jared.Friedmann@weil.com>
Sent: 18 April, 2016 17:37
To: Kiern, Larry
Cc: Rothman, Richard; Isakoff, Peter; Mitchell, Alea; Gardner, Bryant; Oliver, Jennifer
Subject: RE. Maher v PA - 12-02 - Meet and Confer of April 13, 2016, Etc.

Larry,

Thank you for your email

1. During our call last week, you advised that Maher's position is that Interrogatory Nos. 6-11, 15-16, and 26-27 from Maher's first set of interrogatories back in 2012 are "still relevant and have not already been answered" We disagree The Port Authority previously provided the principal and material facts in response to each of those interrogatories. See Port Authority's Response to Maher's Motion to Compel, dated Sept. 25, 2012 at 33-54, 56-63, and 87-92.
- 2 Maher also advised as to its ten "additional" interrogatories, but our discussion was otherwise limited to those previously identified in Maher's March 31, 2016 letter (*i.e.*, Nos. 9(c), 9(d), 11, and 12) We did not discuss the other interrogatories that you identified (*i.e.*, Nos. 21, 23, 24*, 27, 28, and 29) * Your note below lists No 34, but we believe this is a typo and that you meant 24, which is what our notes of the call reflect.

With regard to the last sentence of your second paragraph, our understanding was that Maher's revised document requests (served on March 17) were intended to supersede the document requests served on March 30, 2012. Please advise which specific requests in which set of document requests Maher is pressing. In any event, the referenced Request Nos 1-3 and 23 in Maher's initial March 30, 2012 requests are precisely the type of requests that the Federal Maritime Commission held were "overbroad on their face" See FMC Memorandum and Order dated December 17, 2015, at 71. With respect to Request No. 24 (in Maher's initial March 30, 2012 requests), that request is premature and, as previously stated and subject to its objections, the Port Authority will produce its expert disclosures in accordance with the Scheduling Order

- 3 Your position that "the Port Authority should supplement its discovery responses, including with respect to the pertinent time period, to the present" is at odds with the Presiding Officer's April 12, 2016 Order, which specifically noted that Maher's original discovery requests sought information only through 2012, then recited Maher's assertion that it "requires discovery regarding the Port Authority's alleged terminal investments. through 2016.," but then ruled "[t]emporal requests that are longer than initially requested will not be permitted" April 12 Order at 3 Your reference to Rule 201 is a *non sequitur*, and cannot expand the temporal limits set forth in the Presiding Officer's April 12 Order
- 4 Because the Presiding Officer has already ruled on this issue in connection with the Port Authority's recent motion for a protective order, which specifically sought, *inter alia*, relief from having to produce discovery from after the Complaint was filed, any such motion by Maher would be an improper motion for reconsideration.

Please let me know if you would like to discuss any of these issues.

Regards,
Jared



Jared R. Friedmann

Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
jared.friedmann@weil.com
+1 212 310 8828 Direct
+1 917 951 8730 Mobile
+1 212 310 8007 Fax

From Kiern, Larry [mailto:LKiern@winston.com]
Sent: Friday, April 15, 2016 5:05 PM
To: Friedmann, Jared
Cc: Rothman, Richard, Isakoff, Peter; Mitchell, Alea, Gardner, Bryant; Kiern, Larry
Subject: RE: Maher v PA - 12-02 - Meet and Confer of April 13, 2016, Etc.

Jared – Further to our meet and confer conducted on Wednesday, April 13th, for the avoidance of any doubt we take this opportunity to memorialize a few key points.

- (1) We informed you that Maher contends that of Complainant’s First Set of Interrogatories Propounded on the Port Authority of New York and New Jersey served March 30, 2012, Nos. 6-11, 15-16, and 26-27 as “still relevant and have not already been answered” within the meaning specified in the January 29, 2016 Scheduling Order and the Presiding Officer’s April 12, 2016 Order on Subpoena Requests and Respondent’s Motion for Protective Order From Revised Discovery Requests
- (2) We also informed you that, pursuant to the April 12, 2016 Order, Maher’s ten additional interrogatories are Nos. 9(c), 9(d), 11, 12, 21, 23, 34, 27, 28, and 29 from Complainant’s Revised First Set of Interrogatories Propounded on the Port of New York and New Jersey served February 16, 2016 We understood your position to be that the Port Authority will not supplement or amend its answers to these interrogatories to cure its deficiencies. Additionally, you indicated that the Port Authority does not intend to supplement or amend its responses to Maher’s document requests. For the avoidance of any doubt, Maher’s position is that Nos. 1-3, 6-14, and 23-24 from Complainant’s First Request for Production of Documents from the Port Authority of New York and New Jersey served March 30, 2012 are “still relevant and have not already been answered ”
- (3) We explained our position that the Port Authority should supplement its discovery responses, including with respect to the pertinent time period, to the present and with a continuing obligation to supplement per Rule 201, and with respect to additional detail requested per the April 12, 2016 Order You indicated that you disagreed with our position and would not be supplementing in these respects.
- (4) In light of the Port Authority’s position that it will not supplement its answers to interrogatories or its document production with any information after March 30, 2012, etc., we explained that we must seek the assistance of the Presiding Officer

Regards, Larry

Lawrence I Kiern

Partner

Winston & Strawn LLP
1700 K Street, N W
Washington DC 20006-3817

D: +1 (202) 282-5811

M: +1 (703) 898-6260

F +1 (202) 282-5100

Bio | VCard | Email | winston.com

**WINSTON
& STRAWN**
LLP

Please consider the environment before printing this e-mail.

From Friedmann, Jared [<mailto:Jared.Friedmann@weil.com>]
Sent: Wednesday, April 13, 2016 10:12 PM
To: Kiern, Larry; Gardner, Bryant
Cc: Rothman, Richard, Isakoff, Peter; Mitchell, Alea
Subject: Maher v PA 12-02

Further to our discussion today, based on current pace of review and barring any unexpected setbacks, I anticipate the PA completing its document production within the next 30 days. Please advise when Maher expects to complete its production.

Thanks,
Jared



Jared R. Friedmann

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
jared.friedmann@weil.com
+1 212 310 8828 Direct
+1 917 951 8730 Mobile
+1 212 310 8007 Fax

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you.

The contents of this message may be privileged and confidential. If this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author. Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under applicable tax laws and regulations.

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you.



Gardner, Bryant

From: Kiern, Larry
Sent: 19 April, 2016 11.32
To: Friedmann, Jared
Cc: Rothman, Richard; Isakoff, Peter; Mitchell, Alea; Gardner, Bryant; Oliver, Jennifer; Kiern, Larry
Subject: RE. Maher v PA - 12-02 - Discovery Matters & Meet and Confer of April 13, 2016, Etc.

Thanks for your attached email of late yesterday. This responds to your points *seriatim*.

(1) With respect to Interrogatory Nos. 6-11, 15-16, and 26-27 from Maher's first set of interrogatories of 2012, we understand that you refuse to supplement.

(2) Regarding Maher's 2016 Interrogatories -- Nos. 21, 23, 24, 27, 28, and 29 identified per the Presiding Officer's most recent order -- Maher identified your answers as deficient for the reasons already outlined to you in our letter and discussion, i.e., improper use of general objections and failure to comply with the Presiding Officer's order regarding the temporal and additional details expansion permitted by the order, including your duty to supplement through the present, and failure to answer the questions posed.

- No. 21 requests the legitimate business reasons if any, for each consent fee/consideration sought (whether or not achieved) since 1997. The Port Authority's response is to point Maher back to its response to 2012 Interrogatory No. 9, which provided three general factors but did not identify the reasons for each instance such consideration was sought. And the Port Authority's reference to unidentified leases also does not answer the question, since the Port Authority has not provided or committed to provide those documents, and the Port Authority is much more familiar with them such that it must identify the answering provisions in the leases for each such instance.

- No. 23 calls on the Port Authority to identify which expenditures are those it claims justify the change of control consent consideration, explaining which fees are justified by which expenditures. The Port Authority's reference back to its 2016 Interrogatory No. 22 response provides no answer. There, the Port Authority again references the three vague factors from its response to 2012 Interrogatory No. 9. But that does not indicate which expenditures are those that justify the extracted consideration. The 2016 Interrogatory No. 22 response indicates that the Port Authority did not and cannot correlate the consent fees it charged to any particular investments, but it fails to even identify the investments at all and it should supplement its answer to do so. Additionally, the Port Authority claims the investments are only loosely tied to the consent fees. So, are the investments impossible to correlate, or are they loosely tied, and if the latter, which investments are loosely tied to which fees and what does "loosely" tied mean?

- No. 24 asks the Port Authority if, as it claims, the consent fees are justified by investments it has made, whether the Port Authority uses consent fees levied on some operators to recover investments made in other operators' facilities or for the benefit of other operators. The Port Authority offers only objections in response and does not answer.

- The Port Authority's response to No. 27 replies only with the assertion that the Port Authority "expects" documents might be produced responsive to the request. First, the Port Authority has not committed whether such documents will be produced, and if so, when. Second, the Port Authority has failed to sufficiently identify such documents.

- The Port Authority's response to No. 28 provides no substantive response, only objections.

- The Port Authority's response to No. 29 provides no substantive response, only objections.

Per your request for us to identify the "specific requests in which set of document requests Maher is pressing," we did that in our previous email to you per the Presiding Officer's order: "For the avoidance of any doubt, Maher's position is

that Nos. 1-3, 6-14, and 23-24 from Complainant's First Request for Production of Documents from the Port Authority of New York and New Jersey served March 30, 2012 are "still relevant and have not already been answered " We disagree with your objection to the requests as overbroad

(3) As we discussed on April 13, we disagree with your interpretation of the Presiding Officer's order. Contrary to your assertion, the order did not cut off discovery at March 30, 2012 and notably you quote no language from the order stating that. Moreover, you ignore the order's plain language allowing the parties to issue new interrogatories to "expand" the scope and pursue more "details" than previously requested. We understand your position is that discovery is cut off at March 30, 2012, but that is not what the order states and your argument invites the Presiding Officer to abuse her discretion by denying Maher discovery of evidence relevant to its claims.

(4) For the foregoing reasons, we do not agree that our pursuit of the discovery plainly permitted and ordered in this proceeding via a motion to compel would be an improper motion for reconsideration.

Based upon our meet and confer conferences on these subjects and your oral and written refusals to supplement, we must seek the assistance of the Presiding Officer to obtain the evidence of the Port Authority's violations of the Shipping Act.

Regards, Larry

Lawrence I. Kiern

Partner

Winston & Strawn LLP
1700 K Street, N.W
Washington, DC 20006-3817

D: +1 (202) 282-5811

M: +1 (703) 898-6260

F: +1 (202) 282-5100

Bio | VCard | Email | winston.com

**WINSTON
& STRAWN**
LLP

Please consider the environment before printing this e-mail.

From: Friedmann, Jared [mailto:Jared.Friedmann@weil.com]

Sent: Monday, April 18, 2016 5:37 PM

To: Kiern, Larry

Cc: Rothman, Richard; Isakoff, Peter; Mitchell, Alea; Gardner, Bryant; Oliver, Jennifer

Subject: RE: Maher v PA - 12-02 - Meet and Confer of April 13, 2016, Etc.

Larry,

Thank you for your email

1. During our call last week, you advised that Maher's position is that Interrogatory Nos. 6-11, 15-16, and 26-27 from Maher's first set of interrogatories back in 2012 are "still relevant and have not already been answered." We disagree. The Port Authority previously provided the principal and material facts in response to each of those interrogatories. See Port Authority's Response to Maher's Motion to Compel, dated Sept. 25, 2012 at 33-54, 56-63, and 87-92.
2. Maher also advised as to its ten "additional" interrogatories, but our discussion was otherwise limited to those previously identified in Maher's March 31, 2016 letter (*i.e.*, Nos. 9(c), 9(d), 11, and 12). We did not discuss the other interrogatories that you identified (*i.e.*, Nos. 21, 23, 24*, 27, 28, and 29). * Your note below lists No. 34, but we believe this is a typo and that you meant 24, which is what our notes of the call reflect.

With regard to the last sentence of your second paragraph, our understanding was that Maher's revised document requests (served on March 17) were intended to supersede the document requests served on March 30, 2012. Please advise which specific requests in which set of document requests Maher is pressing. In any event, the referenced Request Nos. 1-3 and 23 in Maher's initial March 30, 2012 requests are precisely the type of requests that the Federal Maritime Commission held were "overbroad on their face." See FMC Memorandum and Order dated December 17, 2015, at 71. With respect to Request No. 24 (in Maher's initial March 30, 2012 requests), that request is premature and, as previously stated and subject to its objections, the Port Authority will produce its expert disclosures in accordance with the Scheduling Order.

3. Your position that "the Port Authority should supplement its discovery responses, including with respect to the pertinent time period, to the present" is at odds with the Presiding Officer's April 12, 2016 Order, which specifically noted that Maher's original discovery requests sought information only through 2012, then recited Maher's assertion that it "requires discovery regarding the Port Authority's alleged terminal investments through 2016," but then ruled "[t]emporal requests that are longer than initially requested will not be permitted." April 12 Order at 3. Your reference to Rule 201 is a *non sequitur*, and cannot expand the temporal limits set forth in the Presiding Officer's April 12 Order.
4. Because the Presiding Officer has already ruled on this issue in connection with the Port Authority's recent motion for a protective order, which specifically sought, *inter alia*, relief from having to produce discovery from after the Complaint was filed, any such motion by Maher would be an improper motion for reconsideration.

Please let me know if you would like to discuss any of these issues.

Regards,
Jared



Jared R. Friedmann

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
jared.friedmann@weil.com
+1 212 310 8828 Direct
+1 917 951 8730 Mobile
+1 212 310 8007 Fax

From: Kiern, Larry [<mailto:LKiern@winston.com>]
Sent: Friday, April 15, 2016 5:05 PM
To: Friedmann, Jared
Cc: Rothman, Richard; Isakoff, Peter; Mitchell, Alea; Gardner, Bryant; Kiern, Larry
Subject: RE: Maher v. PA - 12-02 - Meet and Confer of April 13, 2016, Etc.

Jared – Further to our meet and confer conducted on Wednesday, April 13th, for the avoidance of any doubt we take this opportunity to memorialize a few key points.

- (1) We informed you that Maher contends that of Complainant's First Set of Interrogatories Propounded on the Port Authority of New York and New Jersey served March 30, 2012, Nos. 6-11, 15-16, and 26-27 as "still relevant and have not already been answered" within the meaning specified in the January 29, 2016 Scheduling Order.

and the Presiding Officer's April 12, 2016 Order on Subpoena Requests and Respondent's Motion for Protective Order From Revised Discovery Requests.

- (2) We also informed you that, pursuant to the April 12, 2016 Order, Maher's ten additional interrogatories are Nos. 9(c), 9(d), 11, 12, 21, 23, 34, 27, 28, and 29 from Complainant's Revised First Set of Interrogatories Propounded on the Port of New York and New Jersey served February 16, 2016. We understood your position to be that the Port Authority will not supplement or amend its answers to these interrogatories to cure its deficiencies. Additionally, you indicated that the Port Authority does not intend to supplement or amend its responses to Maher's document requests. For the avoidance of any doubt, Maher's position is that Nos. 1-3, 6-14, and 23-24 from Complainant's First Request for Production of Documents from the Port Authority of New York and New Jersey served March 30, 2012 are "still relevant and have not already been answered."
- (3) We explained our position that the Port Authority should supplement its discovery responses, including with respect to the pertinent time period, to the present and with a continuing obligation to supplement per Rule 201, and with respect to additional detail requested per the April 12, 2016 Order. You indicated that you disagreed with our position and would not be supplementing in these respects.
- (4) In light of the Port Authority's position that it will not supplement its answers to interrogatories or its document production with any information after March 30, 2012, etc., we explained that we must seek the assistance of the Presiding Officer.

Regards, Larry

Lawrence I Kiern

Partner

Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817

D: +1 (202) 282-5811

M: +1 (703) 898-6260

F: +1 (202) 282-5100

Bio | VCard | Email | winston.com

**WINSTON
& STRAWN**
LLP

Please consider the environment before printing this e-mail.

From: Friedmann, Jared [<mailto:Jared.Friedmann@weil.com>]

Sent: Wednesday, April 13, 2016 10:12 PM

To: Kiern, Larry; Gardner, Bryant

Cc: Rothman, Richard, Isakoff, Peter; Mitchell, Alea

Subject: Maher v PA 12-02

Further to our discussion today, based on current pace of review and barring any unexpected setbacks, I anticipate the PA completing its document production within the next 30 days. Please advise when Maher expects to complete its production.

Thanks,

Jared



Jared R. Friedmann

Weil, Gotshal & Manges LLP
767 Fifth Avenue

New York, NY 10153
jared.friedmann@weil.com
+1 212 310 8828 Direct
+1 917 951 8730 Mobile
+1 212 310 8007 Fax

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you.

The contents of this message may be privileged and confidential. If this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author. Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under applicable tax laws and regulations.

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

Gardner, Bryant

From: Friedmann, Jared <Jared.Friedmann@weil.com>
Sent: 20 April, 2016 12:47
To: Kiern, Larry
Cc: Rothman, Richard; Isakoff, Peter; Mitchell, Alea; Gardner, Bryant; Oliver, Jennifer
Subject: RE. Maher v PA - 12-02 - Discovery Matters & Meet and Confer of April 13, 2016, Etc.

Larry,

Further to my email below The specific issues raised in your emails below regarding Maher's 2016 Interrogatories Nos. 21, 23, 24 ,27, 28, and 29, were not previously raised Having now had an opportunity to review those issues, and in light of the Presiding Officer's order on our motion for a protective order, the PA plans to supplement our responses to some or all of those interrogatories. We anticipate providing supplemental responses next week.

Regards,
Jared



Jared R. Friedmann

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
jared.friedmann@weil.com
+1 212 310 8828 Direct
+1 917 951 8730 Mobile
+1 212 310 8007 Fax

From Friedmann, Jared
Sent: Tuesday, April 19, 2016 4.30 PM
To: 'Kiern, Larry'
Cc: Rothman, Richard, Isakoff, Peter; Mitchell, Alea, Gardner, Bryant; Oliver, Jennifer
Subject: RE. Maher v PA - 12-02 - Discovery Matters & Meet and Confer of April 13, 2016, Etc.

Larry,

Thanks for your email We will review and revert, particularly with respect to #2, which appears to include a number of issues that were not discussed during our call last week.

Regards,
Jared



Jared R. Friedmann

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
jared.friedmann@weil.com
+1 212 310 8828 Direct
+1 917 951 8730 Mobile
+1 212 310 8007 Fax

From: Kiern, Larry [<mailto:LKiern@winston.com>]
Sent: Tuesday, April 19, 2016 11:32 AM
To: Friedmann, Jared
Cc: Rothman, Richard; Isakoff, Peter; Mitchell, Alea; Gardner, Bryant; Oliver, Jennifer; Kiern, Larry
Subject: RE: Maher v PA - 12-02 - Discovery Matters & Meet and Confer of April 13, 2016, Etc.

Thanks for your attached email of late yesterday. This responds to your points *seriatim*.

- (1) With respect to Interrogatory Nos. 6-11, 15-16, and 26-27 from Maher's first set of interrogatories of 2012, we understand that you refuse to supplement.
- (2) Regarding Maher's 2016 Interrogatories -- Nos. 21, 23, 24, 27, 28, and 29 identified per the Presiding Officer's most recent order -- Maher identified your answers as deficient for the reasons already outlined to you in our letter and discussion, i.e., improper use of general objections and failure to comply with the Presiding Officer's order regarding the temporal and additional details expansion permitted by the order, including your duty to supplement through the present, and failure to answer the questions posed.
 - No. 21 requests the legitimate business reasons if any, for each consent fee/consideration sought (whether or not achieved) since 1997. The Port Authority's response is to point Maher back to its response to 2012 Interrogatory No. 9, which provided three general factors but did not identify the reasons for each instance such consideration was sought. And the Port Authority's reference to unidentified leases also does not answer the question, since the Port Authority has not provided or committed to provide those documents, and the Port Authority is much more familiar with them such that it must identify the answering provisions in the leases for each such instance.
 - No. 23 calls on the Port Authority to identify which expenditures are those it claims justify the change of control consent consideration, explaining which fees are justified by which expenditures. The Port Authority's reference back to its 2016 Interrogatory No. 22 response provides no answer. There, the Port Authority again references the three vague factors from its response to 2012 Interrogatory No. 9. But that does not indicate which expenditures are those that justify the extracted consideration. The 2016 Interrogatory No. 22 response indicates that the Port Authority did not and cannot correlate the consent fees it charged to any particular investments, but it fails to even identify the investments at all and it should supplement its answer to do so. Additionally, the Port Authority claims the investments are only loosely tied to the consent fees. So, are the investments impossible to correlate, or are they loosely tied, and if the latter, which investments are loosely tied to which fees and what does "loosely" tied mean?
 - No. 24 asks the Port Authority if, as it claims, the consent fees are justified by investments it has made, whether the Port Authority uses consent fees levied on some operators to recover investments made in other operators' facilities or for the benefit of other operators. The Port Authority offers only objections in response and does not answer.
 - The Port Authority's response to No. 27 replies only with the assertion that the Port Authority "expects" documents might be produced responsive to the request. First, the Port Authority has not committed whether such documents will be produced, and if so, when. Second, the Port Authority has failed to sufficiently identify such documents.
 - The Port Authority's response to No. 28 provides no substantive response, only objections.
 - The Port Authority's response to No. 29 provides no substantive response, only objections.

Per your request for us to identify the “specific requests in which set of document requests Maher is pressing,” we did that in our previous email to you per the Presiding Officer’s order: “For the avoidance of any doubt, Maher’s position is that Nos. 1-3, 6-14, and 23-24 from Complainant’s First Request for Production of Documents from the Port Authority of New York and New Jersey served March 30, 2012 are “still relevant and have not already been answered ” We disagree with your objection to the requests as overbroad

(3) As we discussed on April 13, we disagree with your interpretation of the Presiding Officer’s order. Contrary to your assertion, the order did not cut off discovery at March 30, 2012 and notably you quote no language from the order stating that. Moreover, you ignore the order’s plain language allowing the parties to issue new interrogatories to “expand” the scope and pursue more “details” than previously requested. We understand your position is that discovery is cut off at March 30, 2012, but that is not what the order states and your argument invites the Presiding Officer to abuse her discretion by denying Maher discovery of evidence relevant to its claims.

(4) For the foregoing reasons, we do not agree that our pursuit of the discovery plainly permitted and ordered in this proceeding via a motion to compel would be an improper motion for reconsideration.

Based upon our meet and confer conferences on these subjects and your oral and written refusals to supplement, we must seek the assistance of the Presiding Officer to obtain the evidence of the Port Authority’s violations of the Shipping Act.

Regards, Larry

Lawrence I. Kiern

Partner

Winston & Strawn LLP
1700 K Street, N W
Washington, DC 20006-3817

D: +1 (202) 282-5811

M: +1 (703) 898-6260

F: +1 (202) 282-5100

Bio | VCard | Email | winston.com

**WINSTON
& STRAWN**
LLP

Please consider the environment before printing this e-mail.

From: Friedmann, Jared [<mailto:Jared.Friedmann@weil.com>]

Sent: Monday, April 18, 2016 5:37 PM

To: Kiern, Larry

Cc: Rothman, Richard; Isakoff, Peter; Mitchell, Alea; Gardner, Bryant; Oliver, Jennifer

Subject: RE: Maher v. PA - 12-02 - Meet and Confer of April 13, 2016, Etc.

Larry,

Thank you for your email

1. During our call last week, you advised that Maher’s position is that Interrogatory Nos. 6-11, 15-16, and 26-27 from Maher’s first set of interrogatories back in 2012 are “still relevant and have not already been answered ” We disagree. The Port Authority previously provided the principal and material facts in response to each of those interrogatories. See Port Authority’s Response to Maher’s Motion to Compel, dated Sept. 25, 2012 at 33-54, 56-63, and 87-92.
2. Maher also advised as to its ten “additional” interrogatories, but our discussion was otherwise limited to those previously identified in Maher’s March 31, 2016 letter (*i.e.*, Nos. 9(c), 9(d), 11, and 12). We did not discuss the

other interrogatories that you identified (*i e* , Nos. 21, 23, 24*, 27, 28, and 29) * Your note below lists No 34, but we believe this is a typo and that you meant 24, which is what our notes of the call reflect.

With regard to the last sentence of your second paragraph, our understanding was that Maher's revised document requests (served on March 17) were intended to supersede the document requests served on March 30, 2012. Please advise which specific requests in which set of document requests Maher is pressing. In any event, the referenced Request Nos. 1-3 and 23 in Maher's initial March 30, 2012 requests are precisely the type of requests that the Federal Maritime Commission held were "overbroad on their face " See FMC Memorandum and Order dated December 17, 2015, at 71 With respect to Request No 24 (in Maher's initial March 30, 2012 requests), that request is premature and, as previously stated and subject to its objections, the Port Authority will produce its expert disclosures in accordance with the Scheduling Order

- 3 Your position that "the Port Authority should supplement its discovery responses, including with respect to the pertinent time period, to the present" is at odds with the Presiding Officer's April 12, 2016 Order, which specifically noted that Maher's original discovery requests sought information only through 2012, then recited Maher's assertion that it "requires discovery regarding the Port Authority's alleged terminal investments through 2016. ," but then ruled "[t]emporal requests that are longer than initially requested will not be permitted " April 12 Order at 3 Your reference to Rule 201 is a *non sequitur*, and cannot expand the temporal limits set forth in the Presiding Officer's April 12 Order
- 4 Because the Presiding Officer has already ruled on this issue in connection with the Port Authority's recent motion for a protective order, which specifically sought, *inter alia*, relief from having to produce discovery from after the Complaint was filed, any such motion by Maher would be an improper motion for reconsideration

Please let me know if you would like to discuss any of these issues.

Regards,
Jared



Jared R. Friedmann

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
jared.friedmann@weil.com
+1 212 310 8828 Direct
+1 917 951 8730 Mobile
+1 212 310 8007 Fax

From: Kiern, Larry [<mailto:LKiern@winston.com>]
Sent: Friday, April 15, 2016 5 05 PM
To: Friedmann, Jared
Cc: Rothman, Richard, Isakoff, Peter; Mitchell, Alea, Gardner, Bryant; Kiern, Larry
Subject: RE Maher v PA - 12-02 - Meet and Confer of April 13, 2016, Etc.

Jared – Further to our meet and confer conducted on Wednesday, April 13th, for the avoidance of any doubt we take this opportunity to memorialize a few key points.

- (1) We informed you that Maher contends that of Complainant's First Set of Interrogatories Propounded on the Port Authority of New York and New Jersey served March 30, 2012, Nos. 6-11, 15-16, and 26-27 as "still relevant and have not already been answered" within the meaning specified in the January 29, 2016 Scheduling Order and the Presiding Officer's April 12, 2016 Order on Subpoena Requests and Respondent's Motion for Protective Order From Revised Discovery Requests
- (2) We also informed you that, pursuant to the April 12, 2016 Order, Maher's ten additional interrogatories are Nos. 9(c), 9(d), 11, 12, 21, 23, 34, 27, 28, and 29 from Complainant's Revised First Set of Interrogatories Propounded on the Port of New York and New Jersey served February 16, 2016. We understood your position to be that the Port Authority will not supplement or amend its answers to these interrogatories to cure its deficiencies. Additionally, you indicated that the Port Authority does not intend to supplement or amend its responses to Maher's document requests. For the avoidance of any doubt, Maher's position is that Nos. 1-3, 6-14, and 23-24 from Complainant's First Request for Production of Documents from the Port Authority of New York and New Jersey served March 30, 2012 are "still relevant and have not already been answered"
- (3) We explained our position that the Port Authority should supplement its discovery responses, including with respect to the pertinent time period, to the present and with a continuing obligation to supplement per Rule 201, and with respect to additional detail requested per the April 12, 2016 Order. You indicated that you disagreed with our position and would not be supplementing in these respects.
- (4) In light of the Port Authority's position that it will not supplement its answers to interrogatories or its document production with any information after March 30, 2012, etc., we explained that we must seek the assistance of the Presiding Officer

Regards, Larry

Lawrence I Kiern

Partner

Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817

D: +1 (202) 282-5811

M: +1 (703) 898-6260

F: +1 (202) 282-5100

Bio | VCard | Email | winston.com

**WINSTON
& STRAWN**
LLP

Please consider the environment before printing this e-mail.

From: Friedmann, Jared [<mailto:Jared.Friedmann@weil.com>]

Sent: Wednesday, April 13, 2016 10:12 PM

To: Kiern, Larry; Gardner, Bryant

Cc: Rothman, Richard; Isakoff, Peter; Mitchell, Alea

Subject: Maher v. PA 12-02

Further to our discussion today, based on current pace of review and barring any unexpected setbacks, I anticipate the PA completing its document production within the next 30 days. Please advise when Maher expects to complete its production.

Thanks,
Jared



Jared R. Friedmann

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
jared.friedmann@weil.com
+1 212 310 8828 Direct
+1 917 951 8730 Mobile
+1 212 310 8007 Fax

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you.

The contents of this message may be privileged and confidential. If this message has been received in error please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author. Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under applicable tax laws and regulations.

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you.

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you.