

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

DECLARATION OF PETER D. ISAKOFF

PETER D. ISAKOFF, ESQ. hereby declares as follows:

1. I am a partner at the law firm of Weil, Gotshal, and Manges LLP (“Weil”), attorneys for Respondent The Port Authority of New York and New Jersey (the “Port Authority”) in this action. I submit this declaration in connection with the Port Authority’s Motion for Protective Order from Maher’s Revised Discovery Requests and Deposition Notices. I am personally familiar with the facts stated herein.
2. The present action is part of a series of disputes instigated by Maher against the Port Authority. As relevant here, the parties have exchanged extensive related discovery regarding the issues in this proceeding, both in the current action and in related litigations.
3. On February 16, 2016, following the Commission’s decision reinstating Maher’s claims concerning just two scenarios involving the Port Authority’s change in

control practices and the letting of the Global terminal, Maher propounded 38 interrogatories on the Port Authority. Attached hereto as Exhibit A is a true and correct copy of Complainant's Revised First Set of Interrogatories Propounded on the Port Authority of New York and New Jersey, dated February 16, 2016.

4. Also on February 16, 2016, Maher propounded 24 document requests on the Port Authority. Attached hereto as Exhibit B is a true and correct copy of Complainant's Revised First Request for Production of Documents from the Port Authority of New York and New Jersey, dated February 16, 2016.

5. On March 2, 2016, Maher served notices of thirteen depositions on the Port Authority, including nine individual depositions, two third-party 30(b)(6) depositions, and two 30(b)(6) depositions of the Port Authority on nine topics.

- a. Attached hereto as Exhibit C is a true and correct copy of Complainant's Notice of Deposition of Ann Marie Clancy, dated March 2, 2016.
- b. Attached hereto as Exhibit D is a true and correct copy of Complainant's Notice of Deposition of Charles Huang, dated March 2, 2016.
- c. Attached hereto as Exhibit E is a true and correct copy of Complainant's Notice of Deposition of Dennis Lombardi, dated March 2, 2016.
- d. Attached hereto as Exhibit F is a true and correct copy of Complainant's Notice of Deposition of Jason Kirin, dated March 2, 2016.
- e. Attached hereto as Exhibit G is a true and correct copy of Complainant's Notice of Deposition of Peter Zantal, dated March 2, 2016.

- f. Attached hereto as Exhibit H is a true and correct copy of Complainant's Notice of Deposition of Robert Evans, dated March 2, 2016.
- g. Attached hereto as Exhibit I is a true and correct copy of Complainant's Notice of Deposition of Richard Larrabee, dated March 2, 2016.
- h. Attached hereto as Exhibit J is a true and correct copy of Complainant's Notice of Deposition of Steven Borrelli, dated March 2, 2016.
- i. Attached hereto as Exhibit K is a true and correct copy of Complainant's Notice of Deposition of William Ellis, dated March 2, 2016.
- j. Attached hereto as Exhibit L is a true and correct copy of Complainant's Notice of Deposition of DCG Corplan Consulting, L.L.C., dated March 2, 2016.
- k. Attached hereto as Exhibit M is a true and correct copy of Complainant's Notice of Deposition of Evercore Group L.L.C., dated March 2, 2016.
- l. Attached hereto as Exhibit N is a true and correct copy of Complainant's Notice of Deposition of the Port Authority of New York and New Jersey (Consent Fee), dated March 2, 2016.
- m. Attached hereto as Exhibit O is a true and correct copy of Complainant's Notice of Deposition of the Port Authority of New York and New Jersey (Global Lease), dated March 2, 2016.

6. These 38 interrogatories, 24 document requests, and 13 depositions are in addition to extensive discovery the parties have already exchanged. Maher had initially served 28 interrogatories and 24 document requests on the Port Authority in this action in

2012 while the Port Authority's motion to dismiss was pending. Of these, (i) eleven requests sought information regarding Maher's allegations about the Port Authority's change of control practices (Interrogatories Nos. 6-11; Doc. Requests Nos. 10-14), and (ii) seven requests sought information regarding Maher's allegations about the letting of a 70-acre marine terminal facility that is now part of the Global terminal and subject to the Global Lease (Interrogatories Nos. 14-16; Doc. Requests Nos. 6-9). Attached hereto as Exhibit P is a true and correct copy of Complainant's First Request for Production of Documents and First Set of Interrogatories Propounded on the Port Authority of New York and New Jersey, served in this action, dated March 30, 2012.

7. In response, on May 7, 2012, the Port Authority provided Maher with objections and responses to Maher's first set of interrogatories, which it later supplemented and amended on July 12, 2012.

- a. Attached hereto as Exhibit Q is a true and correct copy of the Port Authority's Objections and Responses to Complainant's First Set of Interrogatories, dated May 7, 2012.
- b. Attached hereto as Exhibit R is a true and correct copy of the Port Authority's Amended and Supplemental Objections & Responses to Complainant's First Set of Interrogatories, dated July 12, 2012.

8. The Port Authority also served written responses and objections to Maher's first document requests on May 7, 2012. Attached hereto as Exhibit S is a true and correct copy of the Port Authority's Objections and Responses to the Complainant's First Request for Production of Documents, dated May 7, 2012.

9. At the same time, the Port Authority, using the parameters set out by Maher in its document requests, collected, processed, and began its review of potentially responsive documents. This collection, processing, and review included, but was not limited to, over 200,000 documents from 43 custodians spanning the years 1980 to 2012.

10. Neither party produced any documents during the pendency of the Port Authority's motion to dismiss and request for a stay of discovery.

11. In addition, and as relevant here, the parties also exchanged extensive related discovery regarding the issues in this proceeding in related actions.

12. For example, in *Maher Terminals, LLC v. The Port Authority of New York and New Jersey*, FMC Docket 08-03, Maher propounded 11 sets of interrogatories and 10 sets of document requests on the Port Authority—of which 14 requests sought information regarding the Port Authority's change of control practices or consent fees and in response to which the Port Authority responded and produced documents. The following attached examples come from the prior 08-03 litigation.

- a. Attached hereto as Exhibit T is a true and correct excerpted copy of the Port Authority's Supplemental Objections and Responses to Complainant's First Set of Interrogatories, dated December 17, 2010, No. 21.
- b. Attached hereto as Exhibit U is a true and correct excerpted copy of the Port Authority's Objections and Responses to Complainant's Second Set of Interrogatories, dated August 29, 2008, Nos. 8h and 21.

- c. Attached hereto as Exhibit V is a true and correct excerpted copy of the Port Authority's Objections and Responses to Complainant's Sixth Set of Interrogatories, dated November 13, 2008, No. 29
- d. Attached hereto as Exhibit W is a true and correct excerpted copy of the Port Authority's Objections and Responses to Complainant's Ninth Set of Interrogatories, dated April 27, 2009, Nos. 6-11.
- e. Attached hereto as Exhibit X is a true and correct excerpted copy of the Port Authority's Objections and Responses to Complainant's Tenth Set of Interrogatories, dated March 3, 2011, Nos. 36 and 37.
- f. Attached hereto as Exhibit Y is a true and correct excerpted copy of the Port Authority's Objections and Responses to Complainant's Second Request for Production of Documents, dated August 29, 2008, No. 34.
- g. Attached hereto as Exhibit Z is a true and correct excerpted copy of Maher's Eighth Request for Production of Documents, dated April 27, 2009, Nos. 6-7.

13. In *Maher v. Port Auth. of N.Y. & N.J.*, No. CIV. 2:12-6090 KM (D.N.J.), Maher likewise sought extensive information regarding the Port Authority's change of control practices and in response to which the Port Authority responded and produced documents. The following attached examples come from the now-concluded District of New Jersey litigation.

- a. Attached hereto as Exhibit AA is a true and correct excerpted copy of Defendants' Objections and Responses to Plaintiff's First Set of Interrogatories, dated July 10, 2013, No. 15.
- b. Attached hereto as Exhibit BB is a true and correct excerpted copy of Defendants' Objections and Responses to Plaintiff's First Set of Document Requests, dated June 20, 2013, Nos. 17 and 18.

14. Unsurprisingly, then, on February 29, 2016, the Port Authority communicated to Maher its objection to the number and scope—both substantively and temporally—of Maher's most recent additional discovery requests, and its intent to seek to meet and confer with Maher to try to resolve the issue. At the request of the Port Authority, and after several days of communications via email, counsel scheduled a meet and confer to take place telephonically on March 9, 2016.

15. On March 8, 2016, at Maher's request, the Port Authority emailed to Maher a detailed list of the discovery requests and depositions it objected to, specifying the basis for its objections, in essence that Maher's new discovery requests were disproportionate to the needs of the action and inconsistent with the Presiding Officer's discovery instructions. It specified which of Maher's 38 interrogatories (i) were duplicative, (ii) far exceeded the scope of its prior requests, and/or (iii) improperly parsed the Port Authority's prior complete responses, and stated its objection to the improperly expanded temporal scope of discovery. It also stated that Maher's demand for 13 depositions was disproportionate to the remaining claims and proposed that the parties agree to a limit of four depositions per side in accordance with the narrowed scope of the case. Attached

hereto as Exhibit CC is a true and correct copy of the email, dated March 8, 2016, from the Port Authority's attorney Jared Friedmann to Maher's attorney Larry Kiern.

16. On March 9, 2016, the Port Authority met and conferred with Maher telephonically in a good faith effort to determine whether Maher was amenable to resolving these discovery issues. Maher declined to reconsider, withdraw or modify any of its requests. The Port Authority proposed that the parties limit their discovery requests to a 2012 cut-off date to be consistent with the parties' prior discovery requests. Maher rejected this proposal. The Port Authority proposed that the parties agree to a limit of four depositions each, with the ability to seek leave to take additional depositions upon a showing of good cause. Maher also rejected this proposal. The conference ended without any resolution of the Port Authority's objections to Maher's discovery demands.

17. Attached hereto as Exhibit DD is a Proposed Order prepared in connection with the Port Authority's Motion for Protective Order from Maher's Revised Discovery Requests and Deposition Notices.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: Washington, DC
March 10, 2016



Peter D. Isakoff