

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 14-06

**SANTA FE DISCOUNT CRUISE PARKING, INC. d/b/a EZ
CRUISE PARKING; LIGHTHOUSE PARKING, INC.; and
SYLVIA ROBLEDO d/b/a 81st DOLPHIN PARKING**

Complainants

v.

**THE BOARD OF TRUSTEES OF THE GALVESTON
WHARVES and THE GALVESTON PORT FACILITIES
CORPORATION**

Respondents

**RESPONDENTS' RESPONSE TO COMPLAINANTS' OPPOSED MOTION FOR
LEAVE TO FILE FIRST AMENDED COMPLAINT**

COME NOW The Board of Trustees of the Galveston Wharves and The Galveston Port Facilities Corporation (collectively "Respondents"), by and through the undersigned, and hereby file this Response to Complainants' Opposed Motion for Leave to File First Amended Complaint.

I. ARGUMENT

a. Complainants' First Amended Complaint does not satisfy the requirements of 46 C.F.R. § 502.66.

46 C.F.R. §502.62 (a)(3) requires that all complaints filed before the Commission be verified. Whenever the Commission's rules require that a pleading be verified, its amendment must also be verified. 46 C.F.R. 502.66(c). Complainants' proposed First Amended Complaint is

not verified by the Complainants. Therefore, Complainants' Motion For Leave should be denied.

b. Complainants' First Amended Complaint impermissibly broadens the issues.

In general, 46 C.F.R. §502.66(a) prohibits amended pleadings which would broaden the issues of the proceeding. 46 C.F.R. §502.66(a). Contrary to their assertions, Complainants' proposed First Amended Complaint broadens the issues of this litigation by challenging Respondents' ability to assess and collect access fees.

The proposed First Amended Complaint alleges that "any increase in Access Fees from the former Tariff—regardless of whether charged on a Per-Space or Per-Trip basis—will place Complainants in not only a continued, but also a greater disadvantage than before."¹ Complainants then assert that the Per-Trip Access Fee is Respondents' attempt to recover the same amount of money through a different means.² These new allegations go beyond Complainants' previous allegations under the Shipping Act. In their Original Complaint, Complainants alleged violations of 46 U.S.C. §41102(c), 41106(2) and 41106(3). These alleged violations were based primarily on the claim that Complainants' access fees were calculated on a different basis than others subject to the fees because of Complainants' status as "Off-Port Parking Users." They also alleged that the Board's May 2014 Tariff amendments were discriminatory, because Complainants' "per-space" access fees increased by a greater percentage than access fees assessed against others on a "per-trip" basis.³

¹ See First Amended Complaint at p. 26, Paragraph KK.

² *Id.* at p. 26, Paragraph MM.

³ Specifically, Complainants claim that under the May 2014 Tariff amendments, their rates increased 261%, while per-trip fees for comparably-sized commercial passenger vehicles increased only 100%, from \$10 to \$20 per trip. See Original Complaint at p. 15, Paragraph T. These increased rates for Off-Port Parking Users were later rescinded retroactively.

Thereafter, the Board again amended its Tariff to eliminate the category of Off-Port Parking Users entirely. As a result, Complainants are now charged the same per-trip access fees as others covered by the Tariff.

In response, Complainants now assert that the per-trip access fee is “unsubstantiated,” “lack[s] a rational basis,” and “not reasonably related to services rendered by Respondents.”⁴ Even if these claims were true (which they are not), there is no relief available for such claims under the Shipping Act. The Act does not require that marine terminal operators charge rates the Commission deems appropriate. That issue is left to the market – presumably, marine terminal operators charging excessive rates will see their business go elsewhere.⁵

Moreover, they assert that under the current, revised Tariff, the Board will fail “to charge and and/or collect Access Fees from a material percentage – if not a majority – of [other] commercial vehicles,” an allegation that is not supported by any facts now in existence.⁶

Because Complainants’ First Amended Complaint would broaden the issues of this litigation, their motion for leave to amend should be denied.

c. Complainants no longer have a justiciable claim against Respondents.

Respondents filed their Motion to Dismiss in this proceeding on October 21, 2014. The Motion is based on recent amendments of the Board of Trustees’ Tariff Circular No. 6, Item No. 111 which rendered Complainants’ claims moot. Complainants’ First Amended Complaint is merely an attempt to create a claim under the Shipping Act where none exists.

The revised tariff charges all persons covered by Item 111 on the same per-trip basis. As such, Complainants’ access fees are assessed in the exact same manner as other similarly situated

⁴ See proposed First Amended Complaint, p. 25, paragraphs JJ, NN and MM, respectively.

⁵ Complainants also continue to assert that the new Tariff rates treat them unfairly to taxicabs. Complainants do not operate taxicabs. This issue is more fully addressed in Respondents’ Motion to Dismiss (filed October 21, 2014) at pp. 8-9.

⁶ *Id.* at p. 25, paragraph KK. These claims are pure speculation. No invoices have been assessed or collected yet under the new Tariff amendments.

commercial vehicles. Faced with these facts, Complainants seek to amend their complaint in order to assert much broader claims attacking access fees generally – for which no relief is even available under the Shipping Act.

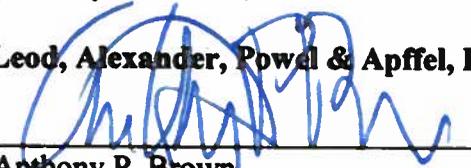
II. PRAYER

WHEREFORE, PREMISES CONSIDERED, Respondents pray that Complainants' Opposed Motion for Leave to File First Amended Complaint be denied.

Dated: October 30, 2014.

Respectfully submitted,

McLeod, Alexander, Powal & Apffel, P.C.

By: 

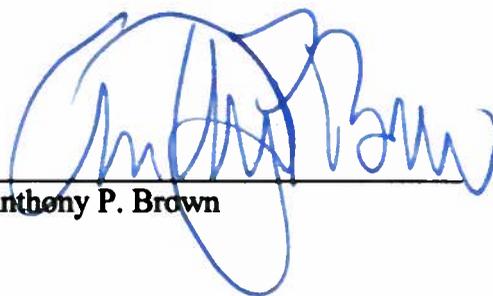
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ATTORNEYS FOR THE BOARD OF TRUSTEES
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October, 2014, a copy of the foregoing document was served by certified United States mail, return receipt requested on Complainants' counsel of record.

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