

HOLLAND GROUP PORT INVESTMENT (MAYAGÜEZ), INC.'S  
ANSWER TO THE AMENDED VERIFIED COMPLAINT

**ORIGINAL**

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**BEFORE THE  
FEDERAL MARITIME COMMISSION**

FEDERAL MARITIME COURT

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<b>WESTERN HOLDING GROUP, Inc.,</b>	)
<i>et al.,</i>	)
<b>Complainants,</b>	)
	)
<b>v.</b>	)
	)
<b>MAYAGÜEZ PORT COMMISSION,</b>	)
<i>et al.,</i>	)
<b>Respondents.</b>	)
<hr/>	

**Docket No. 08-06**

**HOLLAND GROUP PORT INVESTMENT (MAYAGÜEZ), INC.'S  
ANSWER TO THE AMENDED VERIFIED COMPLAINT**

Respondent Holland Group Port Investment (Mayagüez), Inc. ("Holland Group") hereby responds to the Amended Verified Complaint of Western Holding Group, Inc., Marine Express, Inc. and Corporación Ferries del Caribe, Inc. (together "Complainants") as follows ("Amended Verified Complaint"):

**I. Complainants**

1. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 1 of the Amended Verified Complaint and on that basis denies the allegations therein.
2. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 2 of the Amended Verified Complaint and on that basis denies the allegations therein.

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3. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 3 of the Amended Verified Complaint and on that basis denies the allegations therein.

**II. Respondents**

4. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 4 of the Amended Verified Complaint and on that basis denies the allegations therein.

5. Holland Group admits the allegations in the first, second, third and last sentences of paragraph 5 of the Amended Verified Complaint and denies all other allegations in paragraph 5. The document described in paragraph 5 of the Amended Verified Complaint as the "Lease and Development Agreement" speaks for itself.

**III. Jurisdiction**

6. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in the second sentence of paragraph 6 of the Amended Verified Complaint and on that basis denies the allegations therein. Holland Group denies all other allegations in paragraph 6 of the Amended Verified Complaint. Complainants have sought a preliminary injunction against Holland Group and others in the United States District Court for the district of Puerto Rico. The magistrate judge found that complainants are not entitled to such relief and recommended that Complainants' request be denied. Magistrate Judge's Report and Recommendation on Motion for Preliminary Injunction, CIVIL 08-2335 (ADC), filed April 17, 2009. See Attachment A hereto.

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**IV. Factual Background**

**a. Complainants' operation in the Port of Mayagüez.**

7. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 7 of the Amended Verified Complaint and on that basis denies the allegations therein.

8. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 8 of the Amended Verified Complaint and on that basis denies the allegations therein.

9. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 9 of the Amended Verified Complaint and on that basis denies the allegations therein.

10. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 10 of the Amended Verified Complaint and on that basis denies the allegations therein.

11. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 11 of the Amended Verified Complaint and on that basis denies the allegations therein.

12. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 12 of the Amended Verified Complaint and on that basis denies the allegations therein.

13. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 13 of the Amended Verified Complaint and on that basis denies the allegations therein.

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14. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 14 of the Amended Verified Complaint and on that basis denies the allegations therein.

**b. The Mayagüez Port Commission's unreasonable cancellation of the Terminal Lease Agreement and refusal to negotiate.**

15. This subsection IV.b of the Amended Verified Complaint is directed to Respondent Mayagüez Port Commission's alleged "unreasonable cancellation of the Terminal Lease Agreement and refusal to negotiate," and not to conduct alleged against Holland Group. Holland Group nevertheless denies the allegations in paragraph 15 of the Amended Verified Complaint on the basis that Holland Group does not have sufficient information or knowledge to admit or deny the allegations therein.

16. This subsection IV.b of the Amended Verified Complaint is directed to Respondent Mayagüez Port Commission's alleged "unreasonable cancellation of the Terminal Lease Agreement and refusal to negotiate," and not to conduct alleged against Holland Group. Holland Group nevertheless denies the allegations in paragraph 16 of the Amended Verified Complaint on the basis that Holland Group does not have sufficient information or knowledge to admit or deny the allegations therein.

17. This subsection IV.b of the Amended Verified Complaint is directed to Respondent Mayagüez Port Commission's alleged "unreasonable cancellation of the Terminal Lease Agreement and refusal to negotiate," and not to conduct alleged against Holland Group. Holland Group nevertheless denies the allegations in paragraph 17 of the Amended Verified Complaint on the basis that Holland Group does not have sufficient information or knowledge to admit or deny the allegations therein.

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18. This subsection IV.b of the Amended Verified Complaint is directed to Respondent Mayagüez Port Commission's alleged "unreasonable cancellation of the Terminal Lease Agreement and refusal to negotiate," and not to conduct alleged against Holland Group. Holland Group nevertheless denies the allegations in paragraph 18 of the Amended Verified Complaint on the basis that Holland Group does not have sufficient information or knowledge to admit or deny the allegations therein.

19. This subsection IV.b of the Amended Verified Complaint is directed to Respondent Mayagüez Port Commission's alleged "unreasonable cancellation of the Terminal Lease Agreement and refusal to negotiate," and not to conduct alleged against Holland Group. Holland Group nevertheless denies the allegations in paragraph 19 of the Amended Verified Complaint on the basis that Holland Group does not have sufficient information or knowledge to admit or deny the allegations therein.

20. This subsection IV.b of the Amended Verified Complaint is directed to Respondent Mayagüez Port Commission's alleged "unreasonable cancellation of the Terminal Lease Agreement and refusal to negotiate," and not to conduct alleged against Holland Group. Holland Group nevertheless denies the allegations in paragraph 20 of the Amended Verified Complaint on the basis that Holland Group does not have sufficient information or knowledge to admit or deny the allegations therein.

21. This subsection IV.b of the Amended Verified Complaint is directed to Respondent Mayagüez Port Commission's alleged "unreasonable cancellation of the Terminal Lease Agreement and refusal to negotiate," and not to conduct alleged against Holland Group. Holland Group nevertheless denies the allegations in paragraph 21 of the

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Amended Verified Complaint on the basis that Holland Group does not have sufficient information or knowledge to admit or deny the allegations therein.

22. This subsection IV.b of the Amended Verified Complaint is directed to Respondent Mayagüez Port Commission's alleged "unreasonable cancellation of the Terminal Lease Agreement and refusal to negotiate," and not to conduct alleged against Holland Group. Holland Group nevertheless denies the allegations in paragraph 22 of the Amended Verified Complaint on the basis that Holland Group does not have sufficient information or knowledge to admit or deny the allegations therein.

23. This subsection IV.b of the Amended Verified Complaint is directed to Respondent Mayagüez Port Commission's alleged "unreasonable cancellation of the Terminal Lease Agreement and refusal to negotiate," and not to conduct alleged against Holland Group. Holland Group nevertheless denies the allegations in paragraph 23 of the Amended Verified Complaint on the basis that Holland Group does not have sufficient information or knowledge to admit or deny the allegations therein.

**c. The Port Commission and Holland Group refused to negotiate a lease agreement with Complainants.**

24. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 24 of the Amended Verified Complaint and on that basis denies the allegations therein. The letter described in paragraph 24 speaks for itself.

25. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 25 of the Amended Verified Complaint and on that basis denies the allegations therein.

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26. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 26 of the Amended Verified Complaint and on that basis denies the allegations therein. The “draft” document described in paragraph 26 speaks for itself.

27. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 27 of the Amended Verified Complaint and on that basis denies the allegations therein. The “letter dated April 23, 2007” described in paragraph 27 speaks for itself.

28. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 28 of the Amended Verified Complaint and on that basis denies the allegations therein.

29. Holland Group admits the allegations in paragraph 29 of the Amended Verified Complaint.

30. Holland Group denies the allegations in paragraph 30 of the Amended Verified Complaint.

31. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 31 of the Amended Verified Complaint and on that basis denies the allegations therein.

32. Holland Group admits the allegations in paragraph 32 of the Amended Verified Complaint.

33. Holland Group admits the allegations in paragraph 33 of the Amended Verified Complaint; except that as to allegations concerning the Port Commission, Holland Group

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does not have sufficient information or knowledge to admit or deny said allegations in paragraph 33 of the Amended Verified Complaint and on that basis denies them.

34. Holland Group denies the allegations in paragraph 34 of the Amended Verified Complaint.

35. Holland Group admits the allegations in the first sentence of paragraph 35 of the Amended Verified Complaint. Holland Group denies the allegations in the remainder of paragraph 35 of the Amended Verified Complaint.

36. Holland Group denies the allegations in paragraph 36 of the Amended Verified Complaint.

**d. The Port Commission and Holland Group failed to establish, observe, and enforce just and reasonable regulations and practices.**

37. Holland Group admits the allegations in the first sentence of paragraph 37 of the Amended Verified Complaint. Holland Group denies the allegations in the remainder of paragraph 37 of the Amended Verified Complaint.

**i. Rule 8.3 and Rate 16.7.5**

38. Holland Group denies the allegations in paragraph 38 of the Amended Verified Complaint. The Tariff No. 01 Rule 8.3 described in paragraph 38 speaks for itself.

39. Holland Group does not have sufficient information or knowledge to admit or deny the allegations the first, second and third sentences of paragraph 39 of the Amended Verified Complaint and on that basis denies the allegations therein. Holland Group denies the allegations in the remainder of paragraph 39 of the Amended Verified Complaint.

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40. Holland Group denies the allegations in paragraph 40 of the Amended Verified Complaint.

41. Holland Group denies the allegations in paragraph 41 of the Amended Verified Complaint. The Rate 16.7.5 described in paragraph 41 speaks for itself.

42. Holland Group denies the allegations in paragraph 42 of the Amended Verified Complaint.

**ii. Rules 1.37 and 9.1.1.4 and Rate 16.2.9.**

43. Holland Group denies the allegations in paragraph 43 of the Amended Verified Complaint. Tariff No. 01 Rules 1.37, 9.1.1.4, 9.1.1.4.1, 9.1.1.4.2 and Rate 16.2.9 described in paragraph 43 of the Amended Verified Complaint speak for themselves.

44. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 44 of the Amended Verified Complaint and on that basis denies the allegations therein, except that Holland Group denies the allegations in the last sentence of paragraph 44.

**iii. Unwarranted 800% increase in rental charges under Rule 15.0.**

The Tariff No. 01 Rule 15.0 described in the unnumbered paragraph under sub-heading iii of the Amended Verified Complaint speaks for itself.

45. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 45 of the Amended Verified Complaint, and on that basis denies the allegations therein, except that Holland Group denies the allegation in paragraph 45 that “the rental rates are at the whim of Holland Group, without limitation.”

46. Holland Group denies the allegations in the first, penultimate and last sentences in paragraph 46 of the Amended Verified Complaint. Holland Group does not have

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sufficient information or knowledge to admit or deny the allegations in the remainder of paragraph 46 of the Amended Verified Complaint and on that basis denies the allegations therein.

47. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 47 of the Amended Verified Complaint and on that basis denies the allegations therein.

48. Holland Group denies the allegations against Holland Group in paragraph 48 of the Amended Verified Complaint. Holland Group does not have sufficient information or knowledge to admit or deny the allegations against the Mayagüez Port Commission in paragraph 48 of the Amended Verified Complaint and on that basis denies the allegations therein.

49. Holland Group denies the allegations against Holland Group in paragraph 49 of the Amended Verified Complaint. Holland Group does not have sufficient information or knowledge to admit or deny the allegations against the Mayagüez Port Commission in paragraph 48 of the Amended Verified Complaint and on that basis denies the allegations therein.

e. **Holland Group threatens to close the terminal and attempts to extort \$600,000.00.**

50. Holland Group denies the allegations in paragraph 50 of the Amended Verified Complaint.

51. Holland Group admits the allegations in the first sentence of paragraph 51 of the Amended Verified Complaint. Holland Group denies the allegations in the remainder of paragraph 51.

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52. Holland Group denies the allegations in paragraph 52 of the Amended Verified Complaint.

53. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 53 of the Amended Verified Complaint and on that basis denies the allegations therein.

**f. Holland Group retaliates by imposing other unwarranted fees and charges in the amount of \$112,917.64.**

54. Holland Group denies the allegations in paragraph 51 of the Amended Verified Complaint, except that Holland Group admits that it sent to Complainants the numbered invoices listed in paragraph 54.

55. Holland Group denies the allegations in paragraph 55 of the Amended Verified Complaint.

56. Holland Group denies the allegations in paragraph 56 of the Amended Verified Complaint.

57. Holland Group denies the allegations in paragraph 57 of the Amended Verified Complaint. The Tariff No. 01 Rate 16.6.3.1 described in paragraph 57 speaks for itself.

58. Holland Group denies the allegations in paragraph 58 of the Amended Verified Complaint.

59. Holland Group does not have sufficient information or knowledge to admit or deny the allegations in paragraph 59 of the Amended Verified Complaint and on that basis denies the allegations therein.

60. Holland Group denies the allegations in paragraph 60 of the Amended Verified Complaint.

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**g. Holland Group unjustifiably closed Area Gate #5 of the Terminal, impeding cargo operations.**

61. Holland Group denies the allegations in paragraph 61 of the Amended Verified Complaint.

62. Holland Group denies the allegations in paragraph 62 of the Amended Verified Complaint.

63. Holland Group admits that Complainants were put on a cash prepayment basis. Holland Group denies the remainder of the allegations in paragraph 63 of the Amended Verified Complaint.

64. Holland Group denies the allegations in paragraph 64 of the Amended Verified Complaint.

65. Holland Group denies the allegations in paragraph 61 of the Amended Verified Complaint.

66. Holland Group denies the allegations in paragraph 66 of the Amended Verified Complaint.

**h. Holland Group unjustifiably required all charges to be prepaid and overcharges for docking.**

67. Holland Group denies the allegations in paragraph 62 of the Amended Verified Complaint.

68. Holland Group denies the allegations in paragraph 68 of the Amended Verified Complaint, except that Holland Group does not have sufficient information or knowledge to admit or deny the allegation that "Complainants have formally notified the U.S. Coast Guard, San Juan Sector and U.S. Customs" and on that basis denies the allegations therein.

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69. Holland Group denies the allegations in paragraph 69 of the Amended Verified Complaint, except that Holland Group does not have sufficient information or knowledge to admit or deny the allegation that “on October 28, 2008, the Complainants submitted a formal complaint with the Mayagüez Port Commission” and on that basis denies the allegations therein.

**i Unfit condition of Mayagüez Terminal**

70. Holland Group denies the allegations in paragraph 70 of the Amended Verified Complaint.

71. Holland Group denies the allegations in paragraph 71 of the Amended Verified Complaint, except that Holland Group does not have sufficient information or knowledge to admit or deny the allegation that “Complainants filed a formal complaint with the Port Commission” and on that basis denies the allegations therein.

**V. Violations of the Shipping Act**

Holland Group denies the allegations in section V of the Amended Verified Complaint, including subparagraphs 1-16, except that as to paragraph 16 of section V, Holland Group does not have sufficient information or knowledge to admit or deny the allegations and on that basis denies the allegations therein.

**VI. Prayer for Relief**

Holland Group denies that Complainants are entitled to relief from the Commission as alleged in section VI of the Amended Verified Complaint, including subparagraphs i-v, or to any other relief from Holland Group; and Holland Group respectfully urges that the Amended Verified Complaint be dismissed as to Holland Group with prejudice; that Complainants not be awarded relief in the form of a cease and

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desist order; that Complainants not be ordered to adopt any practices; that Complainants not be awarded reparations, attorney's fees, interest or any monetary damages whatsoever; and that Complainants not be awarded any other form of relief against Holland Group. Any allegation in the Amended Verified Complaint not specifically admitted is denied.

The parties have engaged in mediation through the Commission's Office of Consumer Affairs & Dispute Resolution Services.

**AFFIRMATIVE DEFENSES**

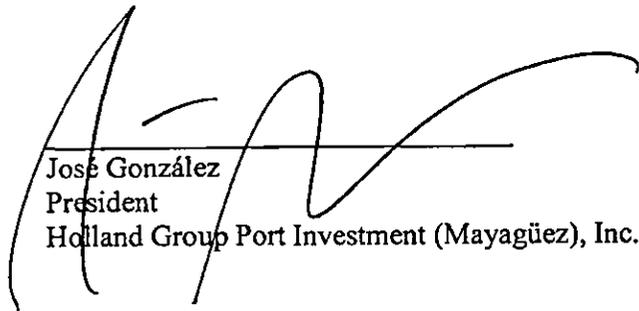
**First Affirmative Defense**

The Amended Verified Complaint fails to state a claim against Holland Group for which relief can be granted.

**Second Affirmative Defense**

Holland Group has lawfully operated, administered and developed the Port of Mayagüez and continues to lawfully operate, administer and develop the Port of Mayagüez under the delegation of authority from the Mayagüez Port Commission. Attachment B is an aerial view of the Port of Mayagüez with the Complainants' vessel, the M/V CARIBBEAN EXPRESS, docked at the Port.

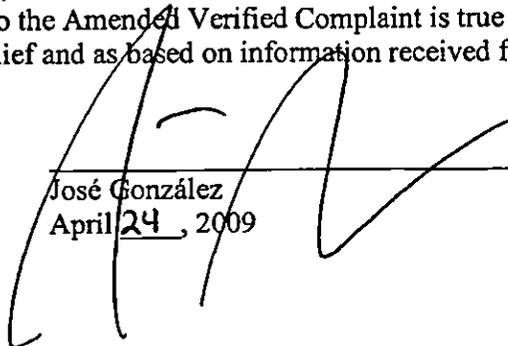
HOLLAND GROUP PORT INVESTMENT (MAYAGÜEZ), INC.'S  
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\_\_\_\_\_  
José González  
President  
Holland Group Port Investment (Mayagüez), Inc.

**VERIFICATION**

I, José González, President of Holland Group Port Investment (Mayagüez), Inc., declare under penalty of perjury that I am the person who signed the foregoing Answer to the Amended Verified Complaint, that I have read the Answer to the Amended Verified Complaint, and that the Answer to the Amended Verified Complaint is true and correct to the best of my knowledge and belief and as based on information received from others.



\_\_\_\_\_  
José González  
April 24, 2009

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of April 2009, a copy of the foregoing  
Holland Group Port Investment (Mayagüez), Inc.'s Answer to the Amended Verified  
Complaint was served on the following by email and United States mail:

Jorge F. Blasini, Esq.  
Jose Ramon Rivera, Esq.  
Jiménez, Graffam & Laussell  
P.O. Box 366104  
San Juan, Puerto Rico 00936-6104  
[jblasini@jgl.com](mailto:jblasini@jgl.com)  
[rrivera@jgl.com](mailto:rrivera@jgl.com)

Edward W. Hill, Esq.  
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Eliot J. Halperin

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

WESTERN HOLDING GROUP, INC.;  
MARINE EXPRESS, INC. and  
CORPORACIÓN FERRIES DEL  
CARIBE, INC.,

Plaintiffs

v.

THE MAYAGÜEZ PORT COMMISSION,  
et al.,

Defendants

CIVIL 08-2335 (ADC)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
ON MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, allegedly common carriers within the meaning of the Shipping Act of 1984, bring this complaint against the defendants, who are allegedly marine terminal operators, for violations of the Shipping Act of 1984, 46 U.S.C. § 41102(c), violations which include unreasonable tariffs, their unjust, unreasonable and unlawful practices, (Docket No. 1, at 27, ¶ 89), unreasonable refusals to negotiate, and unreasonable discrimination, thus causing undue or unreasonable prejudice or disadvantages to plaintiffs in violation of 46 U.S.C. § 41106 (1)-(3). Plaintiffs also allege violation of their Constitutional rights under the Foreign Commerce Clause, the Import-Export Clause, the Tonnage Clause, the right to travel under the Fifth Amendment Due Process Clause, the Taking Clause, the Substantive Due Process and Equal Protection Clauses.

1 CIVIL 08-2335 (ADC)

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This matter is before the court on Motion for Preliminary Injunction filed by plaintiffs Western Holding Group, Inc., Marine Express, Inc. and Corporación Ferries del Caribe, Inc., on November 25, 2008 (Docket No. 2) against defendants Mayagüez Port Commission and its members, Commissioners Dennis Bechara, Alfredo Archilla, Sergio Zeligman, Enrique Gómez and William Phiths, in their official capacity, and Holland Group Port Investment (Mayagüez), Inc., José González Freyre, and Antonio Jacobs, as administrators of the port of Mayagüez. For purposes of the preliminary injunction issue, plaintiffs are foregoing the constitution-based attacks on the defendants' actions.

The parties are engaged in varying disputes before the Federal Maritime Commission, before this court, and before the defendant Mayagüez Port Commission. Plaintiffs are arguably common carriers and owners of the M/V Caribbean Express, a vessel which operates out of the port of Mayagüez. Plaintiffs operate a ferry service which transports goods and passengers to and from the Dominican Republic, something they have done for the last 15 years. The vessel has a capacity for 1,067 passengers, forty 45-foot containers, and fifty motor vehicles. Due to her particular design, the M/V Caribbean Express can apparently dock only at the port of Mayagüez of all the ports in Puerto Rico. The defendants are the owners and operators of the port of Mayagüez.

On November 14, 2008, the defendants were served with a copy of a verified complaint filed by plaintiffs with the Federal Maritime Commission

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3 requesting redress and damages under the Shipping Act. (Docket No. 1, at 23,  
4 ¶ 78); Fed. Reg. Vol. 73, No. 233, at 73655. The Federal Maritime Commission  
5 is the primary forum for resolving disputes between marine terminal operators  
6 and common carriers. In the matter before the Federal Maritime Commission,  
7 plaintiffs argue that the defendants have failed to honor the terms of Marine  
8 Express' existing lease, and further contend that their actions constitute violations  
9 of the Shipping Act, including unjust, unreasonable and unlawful practices in  
10 violation of 46 U.S.C. § 41102(c), and unreasonable refusals to negotiate,  
11 unreasonable discrimination and undue or unreasonable prejudice and  
12 disadvantages in violation of 46 U.S.C. § 41106(1)-(3). Plaintiffs ask the Federal  
13 Maritime Commission to order these defendants to cease and desist from  
14 violations of the Shipping Act, that it put in force such practices as the Federal  
15 Maritime Commission determines lawful and reasonable and pay plaintiffs  
16 reparations of \$25,000,000.  
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21 Plaintiffs argue before this court that the defendants' predatory practices  
22 have the intention of driving them out of business while having a negative effect  
23 on an economically depressed area. The president of Holland Group is also  
24 charged with attempting to extortionately extract \$600,000 from plaintiffs payable  
25 in any manner. Plaintiffs allege that the defendants have locked them out of the  
26 cargo operations area, have cancelled the terminal lease contract, have refused  
27 to negotiate, have arbitrarily and unreasonably imposed wharfage, demurrage and  
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3 other penalties, have overcharged docking, and have increased the rent by 833%,  
4 all in violation of the Shipping Act of 1984. (Docket No. 2, at 3.) Plaintiffs  
5 conclude that the defendants' stated objective is to prohibit plaintiffs' vessel from  
6 docking at the port of Mayagüez. The defendants on the other hand riposte that  
7 plaintiffs have been subsidized by a previously non-profit port operation lacking  
8 in fiscal reality and that Holland Group has been willing to negotiate the terms of  
9 the new lease agreement but that plaintiffs are entrenched in keeping the old  
10 rate, a rate which does not reflect the realities of the expenses of the port. The  
11 defendants rely on the recently published tariff governing port operations, and the  
12 fact that there is no current valid lease with the plaintiffs.  
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16 The focus of the preliminary injunction request and indeed the complaint is  
17 to temporarily enjoin the defendants from actions that violate the Shipping Act  
18 while the Federal Maritime Commission adjudicates the complaint filed there. This  
19 is so because the Shipping Act does not grant the Federal Maritime Commission  
20 the authority to issue a preliminary injunction during the pendency of the  
21 proceedings before it. To the contrary, the district court is granted such  
22 jurisdiction to maintain the status quo while the administrative proceedings are  
23 concluded. See 46 U.S.C. § 41306.  
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26 At the hearings held on January 16, 20, 26, and February 6, 2009, plaintiffs  
27 were represented by Jorge Blasini and J. Ramón Rivera Morales, Esqs., appearing  
28 defendants Holland Group Port Investment (Mayagüez), Inc., José González

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3 Freyre, and Antonio Jacobs, as administrators of the port of Mayagüez by  
4 attorneys José Cancio Bigas and Charles Vilaro Valderrábano; attorney Ivonne M.  
5 Menéndez Calero, representing the port of Mayagüez, announced a stipulation in  
6 relation to the motion for preliminary injunction and other matters, which  
7 stipulation was approved on the morning of January 16, 2009. (Docket No. 52.)  
8 Comprehensive and thoughtful post-hearing memoranda have been filed by  
9 plaintiffs (Docket No. 73, dated February 23, 2009) and participating defendants  
10 (Docket No. 76, dated February 25, 2009).  
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13 TESTIMONY OF MARIBEL MÁS

14 Maribel Más Rivera testified that she lives in Mayagüez, has a bachelor's  
15 degree in accounting, has been a licensed C.P.A. since 1993, and holds a J.D.  
16 She is the vice-president of the three plaintiff corporations, Marine Express, Inc.,  
17 Corporación Ferries del Caribe, Inc., and Western Holding Group, Inc. Sixteen  
18 years ago, she was part of the group that started Marine Express, which is  
19 dedicated to the transport of maritime container cargo between Santo Domingo  
20 and Puerto Rico. Corporación Ferries del Caribe began in 1998, and was  
21 dedicated to the transportation of passengers and cargo between Santo Domingo  
22 and Mayagüez. Western Holding Group owns and charters a ship, the M/V  
23 Caribbean Express. It has rented the ship in this case to Marine Express and  
24 Ferries del Caribe since 2004. The purchase price for the vessel was  
25 \$12,800,000. Before Ferries del Caribe started, Marine Express exclusively rented  
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3 out RORO (roll-on/roll-off) cargo ships, where the containers could go on and off  
4 of the ship using trucks. Thus, the containers could leave the ship on their own  
5 wheels. Cranes are not required for loading and unloading. The ship itself is a  
6 combined type cruise vessel, a hybrid, containing nine floors, five of which are  
7 dedicated to passengers. The vessel has all the facilities of a cruise ship. It has  
8 365 cabins or rooms, two restaurants, children and infant playroom areas, duty  
9 free shops, a beauty salon, spa, jewelry show, nightclub, orchestra, and a show  
10 every night. In short, the vessel has everything a cruise ship has. The rest of the  
11 floors of the Caribbean Express contain cargo and passenger cars. While the  
12 operation began in 1998, the Caribbean Express began in 2003, under a charter  
13 agreement. The vessel was in Europe when chartered and arrived here via its  
14 own propulsion. Displacement of the vessel in gross tonnage is 19,292 tons. The  
15 ship is 525 feet long, and has a crew of 175, including deck and engine personnel.  
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20 It has a capacity of 1,067 passengers, as well as 80 cargo containers 20 feet  
21 long, referred to as TEU's<sup>1</sup>, and 50 vehicles. At the closing of the last fiscal year,  
22 the Caribbean Express had transported 169,002 passengers, as well as  
23 approximately 22,500 TEU's, and 18,800 vehicles. The ports of operation are  
24 Mayagüez and Santo Domingo, close to San Souci. The travel distance between  
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28 <sup>1</sup>TEU stands for twenty-foot equivalent unit, a term of cargo capacity.

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4 Santo Domingo and Mayagüez is approximately 160 nautical miles. The  
5 Caribbean Express is a Panamanian flag vessel.

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Ms. Más has responsibilities in the three corporations, including their establishments, everything related to fiscal and accounting issues, some legal matters, matter related to internal controls and procedures, and human resources issues. Six managers report to her. She handles issues dealing with invoices and accounts. In some matters, accounting is performed by *Ferries del Caribe*, and in others by Marine Express. Making reference to Exhibit 44 (Worldwide Foreign Tariff), Ms. Más noted that this includes the tariffs applicable to Marine Express, tariffs which are published before the Federal Maritime Commission by the Effective Tariff Management Corporation. At page 1, referring to Worldwide Foreign Tariff, the first line shows Marine Express to be a common carrier before the Federal Maritime Commission, number 0111247. The tariff is where prices are published with different rates for different movements or commodities so that the general public knows what Marine Express' rates are if they are interested in their service.

Ms. Más referred to Exhibit 45, a bill of lading used by Marine Express for transportation, and noted that it contains the contract on the back part (adverse), something required by common carriers when they ship goods for their clients. Those clients can acquire the bills of lading and prepare them, or the clients ask Marine Express to prepare them, which it does. In general, the bills of lading are

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3 used by the public at large who want the product. At the front lower left hand  
4 side of the bill of lading, it notes that this document is attached to the carrier's  
5 tariffs published with the Federal Maritime Commission. The bill of lading has to  
6 be presented to the Federal Maritime Commission for its approval. This particular  
7 bill of lading has been used since Marine Express began operations in 1993. The  
8 port of loading portion reflects where the container is loaded on the vessel, which  
9 could be Santo Domingo or Mayagüez.  
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12 Ms. Más referred to Exhibit 46, a passenger ticket containing the contract  
13 of transport. Agencies that sell the ticket or company personnel prepare the  
14 ticket. These are offered to the public in general which wishes to use their  
15 product. Exhibit 47 is an electronic confirmation from the Federal Maritime  
16 Commission, FORM FMC-1, confirming that Marine Express, Inc., is a VOCC  
17 (vessel operator common carrier), and is marked on the list as vessel operator  
18 common carrier. A person cannot board the vessel without a passenger ticket,  
19 nor can a container get on board the vessel without a bill of lading.  
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22 Making reference to the facilities at the port of Mayagüez, Ms. Más noted  
23 that prior to 2003, they had a lease for the buildings the company uses with the  
24 Puerto Rico Ports Authority, and the tariff applied to that contract with the Puerto  
25 Rico Ports Authority. In January 2003, they renewed the lease contract for an  
26 additional five years. The area under that lease was 129,000 square feet,  
27 including areas for offices, a workhouse, warehouse, and, among others, a  
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preferential land area of about 2 cuerdas.<sup>2</sup> The preferential area is a designated zone assigned by the Puerto Rico Ports Authority so the common carrier or maritime agent can accommodate containers for unlimited time without paying an additional charge.<sup>3</sup> The cost for rental for the preferential area is therefore higher than any other part of the port area.

Referring to Exhibit 1, a contract with the Puerto Rico Ports Authority, Ms. Más noted that she signed it in January 2003, representing Marine Express, Inc. Article 1 of the contract makes reference to a land area close to 129,000 square feet. Referring to Exhibit 43, a blueprint of the port of Mayagüez, Ms. Más noted that the yellow highlighter marked the areas leased in 2003 with Puerto Rico Ports Authority. At the lower left of Exhibit 43 is reflected where the ship docks. A part of the port near Gate 4 is rented, as is a section for passenger buses to the right of the middle of the blueprint. There is an area with three offices which they have now, plus 2.9 cuerdas (preferential area) at the upper left of the blueprint, near gate 5. There is a smaller area which is also a preferential area. There are no demurrage charges nor additional charges forthcoming as a result of the use of the preferential area. A demurrage charge is leveled against the common carrier

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<sup>2</sup>A cuerda is a unit of land measure which is slightly less than a acre, roughly 96.5%.

<sup>3</sup>Exhibit B shows the large preferential area as the largest area circled in blue marker.

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3 when it exceeds the free time. If one does not have a preferential area, then one  
4 is charged with demurrage.  
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6 Ms. Más stated that the monthly rent in 2003 was \$7,900 plus \$600 for  
7 water and electrical power, for a total of \$8,611, under Exhibit 1, the existing  
8 tariff, which is in M-1-5, the Puerto Rico Ports Authority tariff, the tariff applicable  
9 to all of the ports of Puerto Rico. Exhibit 2 contains the published tariff or rates  
10 of the Puerto Rico Ports Authority beginning in January 2004 (through December  
11 31, 2008), Tariff M-1-6, which rate is applicable to the lease agreement at the  
12 port of Mayagüez.  
13

14 Ms. Más explained that in August 2004, the Municipality of Mayagüez  
15 created the Mayagüez Port Commission for the purpose of administering and  
16 managing the port. The rent continued under the same terms of the original  
17 contract with the Puerto Rico Ports Authority. Plaintiffs paid approximately \$9,118  
18 a month, and in August, 2004, they paid the rent to the Mayagüez Port  
19 Commission rather than to the Puerto Rico Ports Authority. Referring to Exhibit  
20 3, Ms. Más noted it is a letter dated August 18, 2004 from the Mayagüez Port  
21 Commission to her firm, notifying that the port was transferred, and all rents were  
22 to be paid to the Mayagüez Port Commission. Seventeen months later, in  
23 January 2006, the Mayagüez Port Commission said they will no longer consider  
24 valid the contract in force, although the rent payment was the same previously  
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3 maintained under the M-1-6 tariff.<sup>4</sup> The Mayagüez Port Commission let plaintiffs  
4 know they terminated plaintiffs' contract although it was valid until January 2008.  
5 They said that if plaintiffs were not in agreement, they had 15 days to leave the  
6 premises. Plaintiffs' response was to oppose the Port of Mayagüez' decision, and  
7 to note that the contract was in force until January 2008. (See Exhibit 5, letter  
8 dated February 13, 2006.)  
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11 Referring to Exhibit 6, a letter dated March 22, 2007, Ms. Más noted it was  
12 a letter to the Mayagüez Port Commission. Since more than a year had passed  
13 since the previous stated communication, plaintiffs proceeded to spell out their  
14 needs. No tariff had yet been published by the Mayagüez Port Commission, and  
15 plaintiffs told them of their needs and suggested that the tariffs of the Puerto Rico  
16 Ports Authority be retained. Plaintiffs asked to sign a new contract because their  
17 contract would expires in 10 months. Plaintiffs asked for a 15-year contract.  
18 Marine Express has been there 16 years and the structure that has been created  
19 with the three corporations, Marine Express, Ferries del Caribe, and Western  
20 Holding Group, Inc., required a long term contract in order to give continuity to  
21 the business because of the cost involved. The Mayagüez Port Commission did  
22 not respond to this request. Exhibit 7 is the draft of a contract sent to plaintiffs  
23 by the Mayagüez Port Commission on April 18, 2007. The draft was not  
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28 <sup>4</sup>See Exhibit 4.

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3 negotiated and plaintiffs were not able to accept it. This contact would place  
4 plaintiffs out of the Port of Mayagüez. The Mayagüez Port Commission offered  
5 3,000 square feet to handle all of plaintiffs' operation, cargo and passengers. It  
6 allowed for 1,600 square feet for operations and 1,400 square feet for office  
7 space. In two cuerdas, they could place a bit more than 20 containers. In 1,600  
8 square feet, they could park about 4 containers. The rent payment under the  
9 draft contract reflected about 1,000% rent increase. If the rate were pro-rated,  
10 the rent payment would be over \$1,000,000, this for the only carrier at the  
11 terminal.  
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15 Ms. Más sent a letter, Exhibit 8, dated May 8, 2007, to the Mayagüez Port  
16 Commission, opposing the proposal because they were taking plaintiffs out of the  
17 port of Mayagüez. The letter asked them to consider that plaintiffs were the only  
18 company operating there for the last 14 ½ years, and had direct employment of  
19 more than 600 individuals.  
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21 In May 2007, Holland Group signed a contract with Mayagüez Port  
22 Commission to manage the port of Mayagüez. Exhibit 9, a letter dated May 25,  
23 2007, is signed by José González Freyre, president of Holland Group. It lets  
24 plaintiffs know that on May 11, 2007, they had signed an agreement for Holland  
25 Group to manage and operate the port, and they were in the takeover phase. The  
26 letter said to notify them of any requirements plaintiffs had by July 15, 2007.  
27 Ms. Más learned of this agreement through the press on May 11, 2007. On  
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May 30, 2007, Néstor González, plaintiffs' president, wrote José González Freyre of Holland Group, responding to the May 25 letter, welcoming Holland Group and detailing plaintiffs' general necessities in the port of Mayagüez. See Exhibit 10.

Exhibit 11 is a letter from Holland Group which threatens plaintiffs in that plaintiffs' ship will not be permitted to dock, and notes information that there was leakage from the fuel tank used to load plaintiffs' trucks. Ms. Más denied this. There was no leak of fuel tanks. She explained that a forklift of plaintiffs' operations had one of its hydraulic lines fall on the surface and there was spillage.

Ms. Más noted that the ground operation is complex and complete. Plaintiffs have 2,000 pieces of equipment. The Caribbean Express makes three to four round trip voyages per week, continuously, dispatching and receiving containers. Furthermore, there is loose cargo which is managed with forklift, and transferred to platforms. They also have special tractors used to move the containers into and out of the vessel. The workshop area is used to continuously verify the containers to assure that they comply with the rules of Puerto Rico public roads and Santo Domingo roads. If those rules are not complied with, plaintiffs will receive a number of fines and this would not allow them to be able to put their equipment to work. Santo Domingo's regulations are quite different and there is a category of people there that, due to their necessities, pull out lights and cable work from the containers (vandalize) and plaintiffs have to guarantee and verify the equipment within the port. Clients have a considerable volume of equipment.

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3 There are 200 clients between Mayagüez and Santo Domingo. Each client has 6,  
4 8 to 12 units. In the port of Santo Domingo, in Mayagüez, and other places,  
5 there are more than 2,000 units available. If the equipment is not being used, it  
6 would be stored in the preferential area, as well as loose cargo, and cargo on  
7 pallets, which, if the pallets are broken, have to be changed to other pallets. That  
8 is done with a forklift, and the trash has to be disposed of.  
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11 Ms. Más referred to Exhibit 12, a letter dated June 6, 2007 from Holland  
12 Group and its president José González Freyre. It is a follow-up to the May 30,  
13 2007 letter where plaintiffs told them of their necessities. In the last paragraph,  
14 Holland Group asks plaintiffs to again give them their needs and requirements in  
15 the port of Mayagüez. Ms. Más did not know why Mr. González requested this.  
16

17 Exhibit 13, letter dated June 8, 2007, states that between June and August  
18 2007, the parties could not negotiate. Ms. Más disagrees with this assessment.  
19 Rather, there was a 90-day period from the date of signature where Holland  
20 Group could not sign contracts with plaintiffs. The letter of June 8 from the  
21 Mayagüez Port Commission said that plaintiffs have to negotiate with Holland  
22 Group. Thus Ms. Más noted that there is a limbo which lasts two months since  
23 plaintiffs could not contract with either Holland Group or the Mayagüez Port  
24 Commission. In August 2007, Holland Group took possession of the port, but  
25 Ms. Más did not meet with Holland Group. Rather, there was a general cocktail  
26 party with Holland Group people and plaintiffs spent time with them at the cocktail  
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party but no contract was discussed. The cocktail party was Holland Group's celebration for their taking control of the port. Exhibit 14, dated August 10, 2007, the date after the cocktail party, is a letter to José González Freyre, president of Holland Group, from Néstor González, plaintiffs' president, referring to a conversation of August 9, where José González Freyre had said to write down plaintiffs' needs. Thus, Exhibit 14 details the areas where plaintiffs are needing, and the area size they are needing, including a map so that he could see the area which plaintiffs were referring to. Plaintiffs needed only 11.5% of the total area of the port facility. There were no other users of the ports facilities.

In January 2008, the Puerto Rico Ports Authority contract expired or lapsed and the rent was maintained the same. Plaintiffs thus paid the same rent. In March 13, 2008, Holland Group had plaintiffs receive the tariff rates related to the docking of vessels, effective in 48 hours after delivery time of same. Ms. Más did not review them. There had been hearings in the summer of 2007, as required by law when a tariff is going to be drafted. Plaintiffs asked for a copy and evaluated it. The increases were unreasonable and unjustified, as to some of the items. They were high.

Ms. Más made reference to Exhibit 42 which reflects a series of rent invoices, and copies of plaintiffs' payments. The first rent invoice is for \$9,118.82 a month, an invoice which she paid. Invoice 0158 is for the month of March 2008. For April, 2008, the invoice is for the amount of \$9,118.82; for May, the amount

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of the invoice is \$9,118.82, and for June, July, and August, it is the same: \$9,118.82. The September invoice, number 0330, is for \$9,118.82. That amount was paid. Invoice 0337, dated September 9, 2008 was for \$57,478.91, applying the first payment of September as credit. The payment would be approximately \$66,600 if no credit were given. There was no previous notification of this increase, and the same was not negotiated.

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Exhibit 16, dated September 9, 2008, is from Holland Group to Maribel Más, in which Holland Group states for the first time the rent payments for the Mayagüez port facilities and the costs of utilities. The annual rent became close to \$800,000, where \$106,000 had been the annual entry. For the first time plaintiffs are informed of these payments, payments which were not negotiated. No tariffs concerning rental were provided to Maribel Más.

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For comparative purposes, Ms. Más referred to Exhibit 41, a rental agreement between Puerto Rico Ports Authority and Crowley Liner Services, Inc. At article 1, page 2, the total area rented is 81.1153 cuerdas. Article 2, page 3 shows the term of the lease agreement is 10 years with 2 options of 5 years at Crowley's option or discretion. At article 5, page 8, the rental for the Terminal in Isla Grande is \$165,297.01 monthly for 81.11 cuerdas while Exhibit 16 is \$66,597.73 for close to 3 cuerdas. In 2007, plaintiffs paid out \$106,000 for utilities including electrical power and water. The increase is about \$700,000 or an 833% increase, without utilities. Ms. Más found this totally unreasonable,

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3 unjustified and the effect would be that they would be the only shipping company  
4 in Puerto Rico paying these rates. Ms. Más referred to Exhibit 17, dated  
5 September 10, 2008, a notification to the Mayagüez Port Commission informing  
6 them about Holland Group's increase in rent, close to an additional \$704,000,  
7 excluding utilities and asking them to intervene. The Mayagüez Port Commission  
8 did not respond to this letter. Exhibit 18 is plaintiffs' letter to Holland Group  
9 stating that they were not in agreement with the rent of \$66,000, telling Holland  
10 Group that they were agreeable to sit down and negotiate, and telling them about  
11 the Puerto Rico Ports Authority rents paid in Puerto Rico. Exhibit 20, a letter to  
12 Holland Group dated September 30, 2008, notifies it of plaintiffs' opposition to  
13 the rental invoice for the month of October. Holland Group responded on October  
14 1 (Exhibit 21) and notified plaintiffs to empty the premises of the workshop and  
15 offices and that they would be shutting down the air conditioning system at the  
16 terminal and all non-essential services of loading and unloading the vessels and  
17 they would be telling United States Customs to leave the port premises. (This  
18 would close the operation.) The letter is signed by Tony Jacobs, port director of  
19 the Holland Group, and is sent to Maribel Más. Ms. Más noted that if the air  
20 conditioning is turned off, it is uncomfortable for the passengers, personnel and  
21 United States Customs because they could not work, and the computers are at  
22 risk because of the temperature of the computers. If there is no customs service,  
23 the vessels could not be received.  
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3 Plaintiffs did not reply to this letter in writing. Rather, they called members  
4 of the Mayagüez Port Commission who then coordinated a meeting with Holland  
5 Group and plaintiffs on October 2, 2008. Present at that meeting representing the  
6 Mayagüez Port Commission was attorney José Sánchez, Holland Group,  
7 represented by José González Freyre, its president, and Sarimila Méndez, and  
8 plaintiffs, represented by attorney Antonio Rodríguez from Fiddler & González,  
9 Carlos Bayron, Néstor González, president of Marine Express, and Ms. Más.  
10 Antonio Jacobs was not there. The meeting began with José González Freyre  
11 looking at plaintiffs' president, saying "The message is clear. I need \$600,000  
12 from you. How you're going to pay, it doesn't matter." Néstor González told José  
13 González Freyre that the rental for the areas was unreasonable, and asked him  
14 why this is necessary, and José González Freyre said "due to services." Néstor  
15 González then said that nothing has been done any differently than during the last  
16 16 years, and José González Freyre repeated "Services. Services," with no  
17 explanation. The meeting lasted two hour.  
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22 Considering the demand for the additional \$600,000 while not providing any  
23 additional services at all, Ms. Más felt uncomfortable and extorted. Trying to  
24 reach a negotiation and a conclusion, plaintiffs told José González Freyre that  
25 while Holland Group had been at the port 14 months or so, plaintiffs would be  
26 disposed to include in the port tariff a \$1.50 per passenger fee, which would have  
27 amounted to \$255,000 per year. Adding this to the tariff increase of January 1,  
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2009, they would increase income to \$416,000. José González Freyre said that he would set up a table close to United States Customs and charge the customer a Customs Access Fee of \$3.00 per passenger, prior to their getting on the ship. Plaintiffs' attorney Carlos Bayron, the Mayagüez Port Commission attorney José Sánchez, and Ms. Más decided that this could not be done and that the tariff would have to be amended to establish this additional fee. José González Freyre did not agree. It was agreed that plaintiffs' attorney, Carlos Bayron, would send plaintiffs' proposal to the attorney for the Mayagüez Port Commission. José González Freyre said that since there is no agreement, as of the previous day, Holland Group would be invoicing on a daily basis in accordance with a clause allowing for appropriate tariff rates.

On October 3, 2008, plaintiffs started receiving daily invoices, the first for about \$6,000 per day, reflecting a fee for equipment at the port. The invoice did not include an inventory of dates of entry, and did not have supporting documentation. (See Exhibit 30, invoice 0357 refer to the tariff 16.6.3.1 in its second item, and for the amount of \$6,083.28.) Referring to Exhibit 15, page 114, use of crane and specialized equipment, Ms. Más noted that plaintiffs have RORO, and do not have cranes. She also noted that vessel owners will be held responsible for violating any of the Port of Mayagüez' resolution. Before this, plaintiffs had never been charged for this rate. Item 60.7.2.1 of invoice 0357, is for demurrage in excess of the free time. Five days is the general rule for free

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time in the tariff, but for cargo coming from overseas, the free time is six days since it has to go through Customs. If plaintiffs pay preferential area rental, the purpose is not to pay demurrage. Ms. Más did not know why Holland Group was charging demurrage since it was not applicable. Similar charges are reflected in other invoices contained in Exhibit 30. Maribel Más wrote Holland Group and said that they disagreed with the invoices and why they disagreed, but also because there were no supporting documents. Plaintiffs did not know what equipment was being referred to.

Plaintiffs made a formal complaint before the Mayagüez Port Commission for the illegal rate. Previously, they had never complained. Plaintiffs had had a preferential area and their conclusion was that Holland Group had taken away their preferential area. The check for October's rent was returned to plaintiffs.

Ms. Más referred to Exhibit 22, a letter dated October 8, 2008 from plaintiffs' attorney Carlos Bayron which he had promised to send to attorney Sánchez of the Mayagüez Port Commission, with plaintiffs' proposal to reach an agreement with Holland Group so they could have additional income and leave the rent as it was, competitive with the ports of Puerto Rico. Exhibit 23 is a letter dated October 10, 2008, which plaintiffs sent Holland Group stating that they were not in agreement with the invoices and stating the reason why, that there was a lack of inventory and improper assessment of tariffs. Ms. Más referred to Exhibit 25, a letter dated October 20 2008, from her to Holland Group's Antonio Jacobs,

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3 which is a follow-up letter related to the issue of the invoices that had continued  
4 coming and which she felt are an improper application of the tariff list.  
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6 Ms. Más testified that Thursday, October 23, 2008 was "grave" for plaintiffs'  
7 operation. At about 9:30 A.M., Gate 5, which provides access to the operations  
8 area, was closed, and no vehicle was allowed in or out. Thus, plaintiffs could not  
9 take the equipment in or out. The marine terminal has five main gates. Gate 5  
10 is where Marine Express' cargo enters and exits, and it was closed with a lock. A  
11 guard was present with instructions not to allow equipment in or out.  
12

13 Plaintiffs received complaints from their clients. Cargo had arrived  
14 Wednesday. While tax and customs releases were acquired, the containers were  
15 not permitted to leave the port. In addition, the containers that were arriving that  
16 day had to be received and accommodated on the street because plaintiffs could  
17 not put them inside the operations area, and if they were inside, they were not  
18 able to come out. This gate closure lasted the rest of that day. There was also  
19 cargo of third parties which had nothing to do with the parties. Marine Express  
20 had made arrangements with large companies in Puerto Rico and Santo Domingo  
21 which had large expenses in warehousing and because of the voyage frequency,  
22 many of these companies operated their manufacturing cycle in a certain manner  
23 and did not have to warehouse products due to plaintiffs' schedule. Thus, not  
24 being able to give them merchandise on the 23rd, this affected their operations  
25 also. Ground transportation firms allowed plaintiffs to place buses and containers  
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3 in their premises at a cost. Plaintiffs have four large Greyhound-like, 48-  
4 passenger and 60-passenger buses, which provide transportation from the  
5 Mayagüez and San Juan metropolitan area. There was a dedicated area in the  
6 port before that, but after October 23, these went to Orlando González' premises,  
7 which are a bit far from the port. Plaintiffs' employees had to retrieve the buses  
8 from these areas. In the port of San Juan, plaintiffs have 2 cuerdas contracted  
9 with Puerto Rico Ports Authority, and a small office. It is located next to Pan-  
10 American I, in Isla Grande. Plaintiffs pay \$25,000 per cuerda per year. This is a  
11 preferential area for both and they pay \$50,000 a year for five years. The  
12 purpose is to allow Marine Express' clients to drop off or retrieve empty containers  
13 there.  
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17 Ms. Más noted that Exhibit 26 is a letter dated October 23, 2008 signed by  
18 Tony Jacobs to her. It established that the vessel will not be docking unless the  
19 operation of docking the ship is prepaid. Before October 23, 2008, once the  
20 docking permit was requested, which was 2 or 3 weeks in advance, plaintiffs had  
21 24 hours after docking to pay the invoice, except for Friday operations which were  
22 paid on Monday. A docking permit is given by the administrator of the port with  
23 the purpose of allowing a ship to enter the port. The vessel cannot come in if  
24 there is no docking permit. In the port of San Juan, the procedure is that you can  
25 turn in the permit request up to one month in advance. It is not prepaid in San  
26 Juan. Plaintiffs also were to get a 5% discount which was for those common  
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3 carriers which are excellent payers. Before this, plaintiffs never had to prepay for  
4 the docking permit.  
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6 A second letter dated October 23, 2008, from Tony Jacobs to Marine  
7 Express, notifies them that their credit privileges are revoked. They were further  
8 notified that there is no negotiation with plaintiffs although they tried to negotiate  
9 terms at the meeting of October 2, and on October 8, plaintiffs sent a proposal  
10 which was never responded to.  
11

12 Ms. Más referred to Exhibit 30, invoice 438, reflecting a fee of 28.56 for  
13 specialized equipment which had been abandoned. On October 24, 2008, due to  
14 the Gate 5 closing problem, plaintiffs called the Mayagüez Port Commission and  
15 asked it to intervene because it was unreasonable to operate smoothly during  
16 negotiations. Sergio Zeligman and Dennis Bechara agreed by telephone to be  
17 with plaintiffs at the port. Mr. Zeligman and Mr. Bechara went to the port. They  
18 had talked to Holland Group personnel trying to seek a solution. The operation  
19 began normally and plaintiffs had to make prepayment or they would not be able  
20 to dock the vessel. While at the Mayagüez Port Commission, plaintiffs started  
21 getting another set of invoices from Holland Group. For example, if a container  
22 had been in port more than six days, plaintiffs had to make a check for every  
23 container to get the container out of the port. Plaintiffs had to pay these invoices,  
24 or they could not provide the cargo to the clients. These charges were  
25 demurrage, which is when a client exceeded the free time that is notified through  
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3 the tariff. The client has 10 days under their tariff to return the container empty,  
4 and he is then charged demurrage. The normal procedure is net 30 days as  
5 terms. If a client has demurrage previously, plaintiffs do not detain or stop them  
6 based on that charge. Ms. Más noted that there is a regulation which does not  
7 allow delaying the cargo. Ms. Más referred to Exhibit 29, the complaint  
8 against Holland Group before the Mayagüez Port Commission due to conditions at  
9 the port where there are risks for the operations. One part of the pier or dock  
10 which is transited through is sloping; the gutters there have holes since there is  
11 excess girth of pavement so that the grills cannot be elevated, and thus the  
12 surface turns into a hole. There are no fenders to protect the vessel. If the  
13 vessel goes back, it can receive a serious impact with the dock or a vessel.  
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17 Ms. Más noted that Exhibit 42, invoice 0351, is for rent for October in the  
18 amount of \$66,597, forwarded by Holland Group. Invoice 0480, dated  
19 October 31, 2008, is for October's rent for another amount. In other words, there  
20 are two invoices for the same concept and same month. The second invoice is for  
21 \$16,549.90. (Mr. Jacobs later addresses this particular discrepancy.) Ms. Más  
22 noted that the difference are the 2 cuerdas of preferential area. The first invoice  
23 includes the 2 cuerdas and the second invoice stopped charging for those 2  
24 cuerdas. Invoice number 0583 is for the rent for November in the amount of  
25 \$14,216.56.  
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A summary of invoices is reflected in an oversized chart, Exhibit 52, which reflects how the rent varies and also the removed space, as well as the lack of notification to plaintiffs that the preferential area was eliminated. The first nine invoices were paid, but then they received an invoice for the same concept for \$66,597.73, an invoice which was for the same area 129,000 square feet (3.55 cuerdas) since the beginning of the year. Plaintiffs were the only user of the terminal. Then, with invoice 480, there was a reduction in rent for October, reflecting the eliminated 2 cuerdas of preferential area. For the first time, parking was invoiced although it is public, and used by federal agencies, passengers, Holland Group personnel, and by visitors in general. On November 30, 2008, the invoice was for \$14,216.56, which reflected the difference of 4,000 square feet being eliminated from Marine Express without previous notice. Plaintiffs had not been shown the tariff notice relating to rental, and no assessment of land value had been shown to them. The December rent was never invoiced, nor January 2009. Thus plaintiffs have been consigning the rent in the court for the October through January 2009 rent, based on \$9,118.62 per month.

Referring to Exhibit 43, the port of Mayagüez diagram, Ms. Más showed what was taken away (using a red pen). In October, the preferential areas were taken away. In October and November, 2008, the 4,000 square feet in front of the Marine Express' office was taken away. Plaintiffs have the remaining office,

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warehouse, Marine Express workshop and the three offices of Corporación Ferries del Caribe. Marine Express was being charged for parking area (1st parking areas on left of the map). Five or six parking spaces are assigned to plaintiffs but outside of that it is a public parking area.

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Ms. Más referred to Exhibit 32, a letter dated November 5, 2008, from Tony Jacobs, representing José González Freyre, to plaintiffs and to Maribel Más. The fourth paragraph informs that what she sent on August 10, 2007 was evaluated 14 months later and therefore plaintiffs are getting invoices for September and October. It gives five days to send alternatives, and says that plaintiffs never sent them any. Ms. Más said that was false because on October 8, attorney Carlos Bayron sent proposals. Holland Group informed plaintiffs that negotiations had ended. Holland Group called Nelson González and told him if he wanted to negotiate with the Commission, good luck, and they hung up the phone.

Ms. Más noted that plaintiffs' previous preferential area is being used for containers that have free time or are released prior to free time. In some parts of the Mayagüez port, sections of a statue of Christopher Columbus, built in Russia and previously stored in Cataño, are placed.

In a letter to Mr. Bechara, president of the Mayagüez Port Commission, dated November 5, 2008 (Exhibit 33), Ms. Más tells him that because of the Holland Group and plaintiffs' issues, plaintiffs ask the Mayagüez Port Commission for an emergency meeting to explain the situation in the port of Mayagüez.

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3 Exhibit 34 dated November 12, 2008 is a letter by Carlos Bayron to Dennis  
4 Bechara, and is a second complaint or follow-up for wrongful invoices of Holland  
5 Group to plaintiffs. On that date, plaintiffs filed a complaint before the Federal  
6 Maritime Commission. Exhibit 35 is plaintiffs' presentation before the Mayagüez  
7 Port Commission establishing the situation they had in the Port of Mayagüez and  
8 Holland Group's aggravating conduct and invoices reflecting increases of 833%,  
9 as well as additional invoices which are illegal since they did not comply with the  
10 tariff and lack supporting documentation. Also complained of was their taking  
11 away plaintiffs' credit line, notwithstanding plaintiffs' excellent line of credit.  
12 Plaintiffs told the Mayagüez Port Commission about the letter they got from  
13 Holland Group, taking away plaintiffs' facilities, telling plaintiffs to leave the office  
14 spaces, and threatening to shut off the air conditioning. Plaintiffs reviewed the  
15 proposal which was never taken into consideration, and established details to the  
16 risk if there was a refusal to allow the docking at the port of Mayagüez. Plaintiffs  
17 also related their background in operation for 16 years. Plaintiffs informed them  
18 of the filing of a complaint before the Federal Maritime Commission and that if the  
19 situation were to continue to be aggravated, they would request an injunction.  
20 That was the 13th. On November 14, plaintiffs received letters from Holland  
21 Group (Exhibit 36), and a letter from the Mayagüez Port Commission returning to  
22 plaintiffs their complaints of improper invoices and that they should send them to  
23 Holland Group. Exhibit 37, dated November 14, 2008, is a letter by Tony Jacobs,  
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3 port director of Holland Group, addressed to Maribel Más. In this letter, plaintiffs  
4 are requested to clean area "F", which is the preferential area, taken away in  
5 October. They received an invoice for \$1,020 for the cutting of grass where there  
6 is no grass.  
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8 Ms. Más explained that if a vehicle is not allowed to enter Puerto Rico and  
9 authorities decide it cannot enter, or if they seize it, in the past, they would leave  
10 the seized vehicle in port and then the authorities later disposed of those vehicles,  
11 but with passengers they would leave them and plaintiffs do not have jurisdiction  
12 over those vehicles. Plaintiffs would tell the municipality but nobody would take  
13 the responsibility for withdrawing them from the port area and they were placed  
14 in the preferential area. About a year or one and a half years ago, plaintiffs  
15 issued a notarized writ and moved the inventoried vehicles to a private lot and  
16 reported this to the police department division of stolen vehicles. Those vehicles  
17 are still in the private lot.  
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21 The second letter of Exhibit 37, November 14, 2008, is from Tony Jacobs,  
22 port director of Holland Group to Maribel Más. It announces the increases in  
23 advance (prepayment charge) which they had to provide since October 24, in  
24 order to receive the vessel from \$6,000 to \$7,500 per docking. This covered  
25 docking, wharfage and water provided for the vessel exclusively. Ms. Más  
26 considered a reasonable amount to be \$5,600. They talk about a high season  
27 which did not begin on the date they have. Historically high seasons begin  
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Christmas, mid-December to mid-January, and summer, second week of June to first week of August. There might be another high season like Thanksgiving or Lent.

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The vessel Caribbean Express has 168 entries per year. Since 1993, it has had 2,500 entries, and has paid in docking charges approximately \$1,300,000 per year.

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Ms. Más referred to Exhibit 38, a letter dated November 17, 2008, from the Mayagüez Port Commission to plaintiffs. The Commission returned plaintiffs' complaints so plaintiffs forwarded them to Holland Group. On November 25, 2008, plaintiffs filed this request for injunction.

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Ms. Más referred to Exhibit 40, Resolution and Order by Mayagüez Port Commission, in relation to improper invoicing and referring to Holland Group. Then on December 15 2008, the Mayagüez Port Commission made a ruling concluding that the Commission can fine the defendant an amount per occurrence if it is determined that there are unauthorized charges inconsistent with the regulations.

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Ms. Más explained that plaintiffs have about 600 employees. Plaintiffs carry commercial debt of about \$16,000,000, and monthly expenses of about \$3,000,000. They are currently seeking loans. Ms. Más, a C.P.A., deals with the finance departments of the three companies. She knows the debt through the monthly financial statements. If the vessel has no docking permit in the port of

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3 Mayagüez, it has to return to Santo Domingo because there is no other port  
4 prepared in Puerto Rico which can receive this type of vessel. If it has to return  
5 to Santo Domingo, this has a domino effect, so all the subsequent trips are  
6 damaged, and there is damage to the companies plaintiffs deal with, damages  
7 caused because they rely on the frequency and regularity of the voyages. Holland  
8 Group cannot interrupt plaintiffs' itinerary. The vessel has to persistently dock at  
9 the port of Mayagüez or there would be an impact financially. They could not  
10 operate, could not pay their responsibilities, and expenses, and sustain jobs, thus  
11 closing the business.  
12  
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14 Ms. Más stated that because plaintiffs have no preferential area at  
15 Mayagüez, they are operating with much difficulty, and have equipment in  
16 different places, in several lots of land, and on the street and therefore that  
17 equipment is assuming risks which they did not have before, as well as the  
18 additional costs.  
19

20 Ms. Más explained that Marine Express is the common carrier from  
21 Mayagüez to Santo Domingo. Because of the current situation, the employees  
22 feel that plaintiffs are not going to have operations in Mayagüez. Ms. Más  
23 explained that there is no other user for the port of Mayagüez, and that there are  
24 no other ports in Puerto Rico which can receive this type of vessel.  
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26 On cross-examination by attorney Cancio-Bigas, Ms. Más emphasized that  
27 the position of the company is that the Caribbean Express is a cruise ship that  
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transports cargo; it is a hybrid. Western Holding Group is the owner, and Marine Express operates the vessel. Marine Express is recorded as a common carrier in the Federal Maritime Commission. Ms. Más does not know how the port of Mayagüez classifies the vessel.

Ms. Más explained that plaintiffs pay docking fees, wharfage fees and a special charge for ferry service inbound and outbound. The tariff (Exhibit 15, at 113, § 16.4.1) states fees for passengers of charters for 2008 to be \$12 per passenger. Marine Express does not pay this fee. They pay \$1.50 per passenger per route. Section 16.5.3 of the tariff says that the fee applies for ferryboats in the port of Mayagüez. This is the one that applies to plaintiffs' hybrid product although there is no hybrid distinction under sections 16.5.3 and 16.5.4 of the tariff. This is not Ms. Más' interpretation, but rather, Holland Group making the interpretation. Plaintiffs pay \$1.50 per passenger per route.

Holland Group entered into a contract to begin operating the port on May 7, 2007 and in August 2007 began managing the port.

Referring to Exhibit 20, Ms. Más' letter in response to the invoice for \$66,597.73 from Holland Group, she noted that plaintiffs' position is reflected there and they are not in agreement with the amount invoiced. While the contract with Puerto Rico Ports Authority concluded and expired on January 28, 2008, plaintiffs maintained paying \$9,118.00 a month. Plaintiffs had tried to negotiate and initiated attempts and yet wishes to negotiate. On September 30, 2008,

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there was no lease agreement of Puerto Rico Ports Authority. Plaintiffs have been paying pursuant to an implicit renewal "tacita reconducción." Ms. Más reiterated, referring to Exhibit 20, that until defendants agree to sit down and negotiate, plaintiffs would continue to pay that rent.

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Ms. Más reviewed Exhibit 21 with her lawyer, a letter dated October 1, 2008, sent to plaintiffs by Holland Group in 2008 giving them instructions to vacate the offices and workshop, and also stating, in the first paragraph, that plaintiffs had rejected the invoice for \$66,000. It also affirmed that plaintiffs had told Holland Group there was no contract with them. Plaintiffs had told them they had not negotiated a new contract with Holland Group. In the second paragraph, the letter noted that Holland Group would be invoicing port servicing strictly by the tariff published by the port. Mr. Jacobs stated he would cancel the invoice, and Ms. Más understood that he had canceled that invoice. Holland Group noted that it will not accept any rent to maintain the Puerto Rico Ports Authority contract which was rejected, and would not keep the contract active. This was rejected by Mayagüez Port Commission and Holland Group, which resulted in Maribel Más' letter of September 30 regarding the implicit renewal. Thus Holland Group was stopping the implicit renewal, saying there is no contract.

Ms. Más explained the "tacita reconducción," that the rental rate continued month to month, or according to the contract term, or until the landlord states that the contract is eliminated. Nevertheless, Holland Group said plaintiffs should

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3 evacuate the workshop shed and offices immediately since what takes place there  
4 is not consonant with the shipping business. If this were to happen, the air  
5 conditioning would be eliminated and the United States Customs would have to  
6 exit the premises. Holland Group never eliminated the air conditioning but it was  
7 out of order, damaged. It has since been repaired, and was not intentionally  
8 discontinued. Holland Group asked the United States Customs to start paying rent  
9 but Ms. Más did not know if they are paying rent. She stated that no services had  
10 been discontinued, because upon plaintiffs' requesting the injunction, all threats  
11 stopped. The threats included the closing of the port on October 23, and a  
12 request for payment for cutting the grass on November 14, as well as inapplicable  
13 demurrage charges. She believed these were retaliation for not accepting the new  
14 rent. There was prepayment of the docking fee. Ms. Más related that Mr. Jacobs'  
15 letter explained that if there was no prepayment, the ship would not dock. While  
16 there was a delinquent account with Holland Group, it was because of the unlawful  
17 invoices that they were unable to sustain. The daily invoices for operations were  
18 always paid within 24 hours, including charges for wharfage, docking and water  
19 service to the vessel.  
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24 While the tariff does not deal with lease agreements between the Mayagüez  
25 Port Commission or port operator with the users of the port, she believed that an  
26 assessment should be done for a fair and reasonable rent. Such assessment  
27 should include a comparison of similar places. In Exhibit 16, a letter from Holland  
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Group dated September 9, 2008, Holland Group informs plaintiffs for the first time of the rental rates of 800% more than what plaintiffs had been paying up to then.

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Ms. Más said it could not be the assessment of the tariff because the tariff is just and reasonable, and plaintiffs believe this is not. Section 15, page 108 of the tariff, the second paragraph, reads

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The precise rental rate applicable to a particular parcel of such land will depend at each facility at which land is available on assessments of land values and taking into consideration the size of the particular parcel under consideration, its location in relation to the waterfront, the service highways, the existing utilities, and similar factors which have a direct bearing on rental value.

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(Docket No. 2-7, at 50, ¶ 2.) The next paragraph at page 109 of the tariff, reads

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In accordance with the Port of Mayagüez policy, rental agreements, involving land at the Port of Mayagüez Marine Terminals, will provide for the re-establishment of the rental rate by the Port Administrator without limitation.

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(Id. at 51, ¶ 1.)

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Ms. Más stated that the port of Mayagüez is comprised of 19 cuerdas. According to Exhibit 16, Holland Group was beginning to charge for office space \$4,129.26 per square foot and for work sheds \$4,217.09. The charge was \$10 per square foot and for the paved area, the rent was \$32,413.98 at \$7.00 per square foot. The non-paved area would be at \$5.00 per square foot. Inside the preferential area there are paved and non-paved areas. When she received letters from Mr. Jacobs, she went back to him with a proposal for a reasonable

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4 amount of rent, which is the rent being paid in other ports of Puerto Rico under  
5 the Puerto Rico Ports Authority. She thought the proposed rent was excessive but  
6 also thought the rent established in 2003 was fair, the rent paid in other ports in  
7 Puerto Rico.  
8

9 Referring to Exhibit 19, a letter forwarded on September 16, 2008 from  
10 Holland Group to plaintiffs, Ms. Más referred to the second paragraph where  
11 Mr. Jacobs says that the rent is what the other port renters pay and if plaintiffs  
12 want a discount for volume, they should request it. Plaintiffs then sent an offer  
13 for discount for volume. Plaintiffs reiterate that they believe that the fair rent is  
14 the rent paid at the rest of the ports, although plaintiffs did make an offer to  
15 increase the passenger fee on October 8. Ms. Más does not know if profit is made  
16 in other Puerto Rico ports, and does not know if the ports of the government are  
17 meant to make a profit. She felt it should be the same rent for plaintiffs, although  
18 Mayagüez is smaller and operated by a private operator. She is not aware of the  
19 rents of the other clients in the port of Mayagüez.  
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22 Ms. Más referred to Exhibit 22, an October 8 letter to the attorney for the  
23 Mayagüez Port Commission, Mr. Sánchez, with copy sent to Holland Group.  
24 Copies of the letter were sent to Néstor González, Dennis Bechara, and José  
25 González Freyre. In this letter, attorney Bayron is trying to summarize the  
26 October 2 proposal to Holland Group. This was plaintiffs' principal interest. And  
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she said that it was agreed that the letter would be sent to the attorney of the Mayagüez Port Commission because their proposal would affect the tariff and the Mayagüez Port Commission would have to evaluate it. Plaintiffs' proposal would mean a temporary adjustment to the tariff while Holland Group matured as a firm. When asked what entities are allowed to propose new tariffs, Ms. Más stated that she understands that proposals come from the Commission, or whomever administers the same, and from plaintiffs, as agreed to. Referring to page 17 of the tariff, the last sentence of definition, she read: "The port administrator is the party responsible for proposing any new rule and amendment." She said that all three parties were at a meeting on October 2, and all agreed as to what was to be done. Nothing happened with the proposal of Mr. Bayron made on October 8. The proposal was made to Holland Group. In the letter of October 10, in the second paragraph, plaintiffs make reference to the meeting of October 2, making reference to the negotiation process. In the October 14 letter by Tony Jacobs (Exhibit 24), he refers to her complaints in her October 10 letter (Exhibit 23) concerning the charges that were being made by Holland Group, because there were no supporting documents and some invoices were for charges in arrears. Mr. Jacobs states that the procedure is that it has to be paid first and then disputed, but Ms. Más explained that that is when they are complete and those invoices are not, they have no supporting documents. This is an incorrect

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4 application of the tariff based on the lack of supporting documentation. Thus,  
5 both provide reasons not to pay. As to the vessel manifest and the tariff, the  
6 issue of the invoices is before the Mayagüez Port Commission at the present.

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8 Ms. Más related the incident of October 23, when Gate 5 was closed without  
9 prior notice. Nobody was told this would happen. They could not find Mr. Jacobs  
10 and left him a message. They called the Mayagüez Port Commission to intervene,  
11 considering the vessel would arrive the next day at 8:00 A.M. and the vessel had  
12 to dock. Containers of Marine Express were stopped, although not vehicles. On  
13 the following day, the matter was resolved. The Mayagüez Port Commission said  
14 it would call Holland Group. Holland Group referred to the invoices that plaintiffs  
15 had not paid and that was why Gate 5 was closed. Plaintiffs were then required  
16 to pay in advance and had to make a prepayment in order for the vessel to dock.  
17 After October 23, 2008, Holland Group has not interrupted plaintiffs.  
18

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20 Ms. Más opined that there were no more obstacles because of the Federal  
21 Maritime Commission filing and this injunction proceeding. No more transiting  
22 containers have been stopped. However, every day Holland Group demands a  
23 check based upon each exiting container and plaintiffs have to pay demurrage for  
24 any containers remaining in the port for more than six days. If there is no check,  
25 the container cannot leave. She noted that plaintiffs have never owed the  
26 defendants anything, and that the defendants refuse to negotiate with them.  
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Referring to the tariff at page 64, section 7.31, it describes payment of invoices and the consequences of not paying. Section 7.32 notes that delinquent accounts have a 9% annual arrears rate. Accounts that are delinquent become due immediately. Invoices are payable in full although the vessel owner has the right to dispute. Ms. Más disagrees that plaintiffs' account was delinquent, and that it is unreasonable to pay over \$100,000 in 23 days. She did not follow the procedure. Plaintiffs paid the rent every month but the rent is not regulated under the tariff list and they have not paid the rent imposed by Holland Group at the arbitrary un-negotiated rate. Notwithstanding section 7.34 of the tariff regarding prepaid operations, Ms. Más found the rent to be unreasonable and has been paying the \$9,118 a month.

Ms. Más testified explaining what invoices have been paid by Corporación Ferries del Caribe or Marine Express as of the date of the hearing. Since September 2008, plaintiffs have paid 100% of all invoices in relation to the docking of the vessel, and each one in relation to the rental, as corrected, that is, \$9,118. The rent from October to January has been consigned in this court, at \$9,118 a month. Plaintiffs have not paid any rent in excess of that originally established, and no excess has been paid since it has not been negotiated. As to demurrage charges, those specifically for demurrage were paid under protest or otherwise the containers could not leave port. Ms. Más has not talked to

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4 Mr. Jacobs to discuss this matter since October when she asked for inventories of  
5 the invoices so they could evaluate them. She felt the invoices are illegal and not  
6 subject to that procedure. Ms. Más has looked at the tariff as it applies to her  
7 companies and does not know if the legality is described in the tariff. About 22  
8 or 23 invoices have not been resolved. The first invoices relating to demurrage,  
9 from October 24 forward were corrected after plaintiffs showed their concern.  
10

11 These were paid. Every time plaintiffs prepay, any excess payment is reimbursed.

12 This happened in the first overpayments. After that, there were no  
13 reimbursements made by the defendants and the defendants have a debt of over  
14 \$30,000. (There is no account to credit that amount.) However, Mr. Jacobs has  
15 written that excess as credited to plaintiffs' account.  
16

17 Looking at Exhibit 50 (Disputed Charge Claim Form), Ms. Más noted that she  
18 has used this form on more than 60 occasions. The procedure is to complete the  
19 form, with a copy of the invoice claimed, and send it to Holland Group. Holland  
20 Group then evaluates the claim and responds to some of them. Some responses  
21 have been negative. Basically very few, possibly none, have been favorably  
22 reviewed by Holland Group. The majority have been denied. Aside from the first  
23 three cases, there has been no adjustment after that.  
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25 Referring to Exhibit 48 (Docking Application and Permit), once completed  
26 it is used as the permit. The request is for a specific date. Now it is done the day  
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4 before because of prepayment. The application is sent two to three weeks prior  
5 to docking. Then, so that the final permit is received, the check has to be  
6 delivered to Holland Group and the docking permit is then delivered. In Exhibit  
7 48, conditions 1 to 6 are terms and conditions whereby the ship is allowed to dock  
8 in Mayagüez.  
9

10 Ms. Más noted that plaintiffs had filed complaints with the Mayagüez Port  
11 Commission and they were returned. She did not know how the Commission dealt  
12 with the complaints since they were returned. Before the filing of this case, the  
13 Commission told attorney Bayron that they had made an error and were then  
14 evaluating the complaints, by way of letter dated November 20, 2008. The letter  
15 states that the Commission is evaluating the merits of the complaint for  
16 correctness of each one of the invoices for improper invoicing.  
17

18 Ms. Más referred to Exhibit 9, dated May 25, 2007, a letter by Holland Group  
19 saying they were the managers of the port of Mayagüez, and asking plaintiffs  
20 what needs they had. Plaintiffs then sent Holland Group what their needs were.  
21 From then on, plaintiffs have not been able to negotiate with the port or with  
22 Holland Group. Nor were plaintiffs ever heard in terms of their needs. In August,  
23 plaintiffs sent their needs in details, and there was no response. They had to wait  
24 for a tariff at the port (in March 2008). In the reunion, there was an offer and  
25 counterproposal and no answer. Ms. Más referred to Exhibit 16, dated September  
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4 9, 2008, as an assessment. Mr. Jacobs never told Marine Express that this was  
5 an assessment of land value for purposes of rentals. There was no contract for  
6 lease of the terminal by September 2008. Referring to Exhibit 18, dated  
7 September 11, 2008, the letter to Holland Group opposing the rent of the \$66,000  
8 invoiced, Ms. Más notes that plaintiffs tell Holland Group about the Puerto Rico  
9 Ports Authority rents, and that it was unjust, unreasonable and no negotiations  
10 were conducted. Plaintiffs also mention some attempts to negotiate. Holland  
11 Group did nothing about this letter.  
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Ms. Más made reference to the second letter, Exhibit 26, from Tony Jacobs to Marine Express and its last sentence where he says that José González Freyre said there is no agreement to settle any invoice and there is no negotiation pending and that negotiations are concluded. From May 2007 to October 2008, plaintiffs received no draft of a lease contract for the Mayagüez terminal from Holland Group. Looking at Exhibit 32, 4th paragraph, from Tony Jacobs but signed by José González Freyre, it says that Maribel Más' letter of August 10, 2007 has been evaluated (14 months later), that the analysis is concluded, and that the rent is not \$9,118 but \$66,000 per month plus utilities. There is still no draft lease contract.

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Making reference to the October 23 incident, Ms. Más noted that the operational area of the terminal was closed, and that the containers had no access

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4 to those gates. The municipal police of Mayagüez were there controlling the  
5 gates. *Holland Group* has a control of the municipal police to control everything.

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7 Plaintiffs prepay because they have not paid the 23 or 24 invoices which  
8 have not been properly documented. They pay more over the cost of the  
9 operation so they have paid in excess of \$30,000. Referring to Exhibit 40, a ruling  
10 of the Mayagüez Port Commission dated December 15, 2008, she noted the 3rd  
11 paragraph which states that the 22 invoices lack sufficient detail. Making  
12 reference to Exhibit 50 (Port of Mayagüez Dispute Charge Claim Form), Ms. Más  
13 said that the first time she received this was the second week of November, after  
14 the invoices totaling \$122,000 were before the Mayagüez Port Commission. She  
15 filled out a claim form for each invoice. Looking at Exhibit 48 (Docking Application  
16 and Permit), she noted that the authorization at other ports is up to one month  
17 before the docking. One pays under the Puerto Rico Ports Authority 10 days after  
18 the invoice arrives, with discount. At the port terminal of Mayagüez, to get  
19 authorization, one pays the day before the vessel arrives. One pays and then one  
20 gets the permit to dock. If there is no prepayment, there is no permit to dock.  
21 Referring again to Exhibit 48, term number 5, it states that the port will apply for  
22 any claim of wharfage, cargo demurrage or any other amount owed to the port.  
23 If there is a controversy, the vessel can be denied access to the port. Thus,  
24 plaintiffs' urgency, notwithstanding their credit's being excellent.  
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4 Ms. Más admitted that the port administrator has never notified plaintiffs  
5 that the ship cannot dock, although there have been threats. One reason that  
6 plaintiffs seek injunction is paragraph 5 of the Docking Permit, the fear that they  
7 might be restricted. She noted that the air conditioning at the terminal is  
8 working. All claims are before the Mayagüez Port Commission, and while plaintiffs  
9 have not been evicted, they have been notified of eviction. They do not want to  
10 run the risks while the Federal Maritime Commission looks at the tariffs and its  
11 errors, and defendants' refusal to negotiate. The docking permit does not arrive  
12 if plaintiffs do not issue the check. Payment causes damage to plaintiffs' cash  
13 flow. They get pre-charged because they have no credit with Holland Group due  
14 to outstanding invoices, and because Marine Express refuses to pay more rent  
15 than it would be paying with the Puerto Rico Ports Authority. When the \$600,000  
16 was demanded, plaintiffs got upset. After plaintiffs paid the September rent, and  
17 defendants collected it, then the first high rent bill came in. They want to charge  
18 a higher rent and plaintiffs do not accept it. On October 23, when Gate 5 was  
19 closed after 9:30 A.M., no containers could go through if demurrage was not paid.  
20 The problem is not resolved. Plaintiffs now have no preferential areas because  
21 Holland Group has removed them.  
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4 Ms. Más emphasized that payment is based on the tariff but the assessment  
5 must be made and it must be reasonable. The tariff regulates under what  
6 condition rent should be established.

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8 Ms. Más said that the proceeding at the Federal Maritime Commission is to  
9 have Holland Group negotiate. All the ports of Puerto Rico are regulated and  
10 plaintiffs want a ruling on the rent, since it is not regulated. The Puerto Rico Ports  
11 Authority makes the rates and they are published. They are not negotiated.

12

13 Ms. Más stated that no lease agreement draft has been tendered to plaintiffs  
14 from Holland Group, nor have plaintiffs tendered a lease agreement draft. In April  
15 2007, the Mayagüez Port Commission issued a draft contract which plaintiffs could  
16 not sign because it disposed of 98% of the land they had rented. With 3,000  
17 square feet, plaintiffs could not operate the companies. They objected to the  
18 contract, which brought the rented area from 129,000 to 3,000 square feet,  
19 resulting in a proportional 1,000 % increase in rent. Finally, Ms. Más referred to  
20 Exhibit 33, a letter signed by her in the way of an emergency request to  
21 Mayagüez Port Commission to discuss the problem with Holland Group. This letter  
22 was not notified to Holland Group.

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25 TESTIMONY OF ANTONIO (TONY) JACOBS

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Holland Group presented the testimony of Antonio (Tony) E. Jacobs  
González, who has been the port director of the Mayagüez operation of Holland

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4 Group since May 9, 2007. Mr. Jacobs holds a B.A. from the University of Puerto  
5 Rico, Mayagüez Campus, and has 30 years experience in manufacturing related  
6 to marine industry, raw materials arriving in ocean barges, vessels, and direct  
7 experience in operations and receiving material. He explained that the city of  
8 Mayagüez transferred operation of the port of Mayagüez to the Mayagüez Port  
9 Commission, which decided in 2006 to get a private operator to operate the port.  
10 In May 2007, the transfer began so that the Holland Group could start operating  
11 the port. Holland Group began actually operating the port on August 10, 2007.  
12  
13 Mr. Jacobs noted that Holland Group is a for profit operation. There existed a  
14 contract between Holland Group and Mayagüez Port Commission. Holland Group  
15 operates the port daily and a tariff was implemented in March 2008. All users of  
16 the port must abide by the new tariff rates.  
17

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19 Mr. Jacobs explained that Holland Group has certain obligations, like paying  
20 rent to the Mayagüez Port Commission, so that part of its income goes to the  
21 Mayagüez Port Commission. Holland Group has a master plan in relation to  
22 possible operators of the port, and a long term development plan, to make the  
23 port more productive, considering the extensive properties which are not in use  
24 right now.  
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26 Mr. Jacobs referred to Exhibit 43, a blue print of the port facilities of  
27 Mayagüez. There are 19 cuerdas, three of which are fenced out because they are  
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in Starkist grounds, so there are really 16 cuerdas. The blue print shows the west side parking area, small boats, terminal, and the United States Customs area for the processing of passengers. The lower part of the print shows the operational area. There is an area for sheds, Marine Express operations, FEMA, Customs, and Holland Group. The vessel would be perpendicular to the lower edge of the area. As to the Starkist area, they are working with PRIDCO and FOMENTO to negotiate this area, but there is no immediate usage for the Starkist area, and it is not rented.

When Mr. Jacobs began at the port, the users of the port were Marine Express, a customs broker, René Ortiz Villafañe, a small cafeteria which is not there anymore, and United States Customs offices which use half of the terminal. Customs uses 14,000 square feet as well as areas outside the terminal. United States Customs does not pay rent, and does not have a contract with Holland Group. Customs had a contract with Puerto Rico Ports Authority and paid \$1.00 a year before. Holland Group negotiated with María Palmer of United States Customs and the response to negotiations by United States Customs is that it does not pay rent because it is the responsibility of the carrier who processes passengers at the port to provide facilities for Customs. There was previously no rent allotted for the United States Customs Service, and nobody pays the rent for the Customs spaces. Mr. Jacobs wrote María Palmer about the possibility of

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4 signing a contract with Holland Group and United States Customs Service.  
5 Holland Group wrote to plaintiffs that it is the responsibility of the carrier vis a vis  
6 United States Customs Service to pay for at least the utilities used by people  
7 there. Besides Marine Express and other companies using the port, Continental  
8 Shipping has offices there. Eight cruise ships have come to Mayagüez. In those  
9 cases, Customs uses a small amount of agents since most passengers are United  
10 States citizens. On January 6, 2009, a ship had 1,800 passengers and crew, and  
11 was inspected by one supervisor and four officers.  
12

13  
14 Mr. Jacobs explained that Marine Express' operation includes passengers  
15 which come from the Dominican Republic so the inspection is much different and  
16 it takes all of the United States Custom personnel at Mayagüez. The Marine  
17 Express vessel arrives on Monday, Wednesday, and Friday at 8:00 A.M., unloads,  
18 and returns at 8:00 P.M. on the same day. They unload, do maintenance and  
19 cleaning of the vessel for the passengers. In the afternoon, there is cargo  
20 loading, then at 5:00 P.M. and 6:00 P.M. the cars, and finally passengers are  
21 loaded. Referring to Exhibit 43, Mr. Jacobs shows the vessel in green marker.  
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23  
24 Mr. Jacobs explained the Mediterranean docking system, which instead of  
25 normal docking, that is, docking side by side, the vessel docks perpendicular to  
26 the berth. He also noted that the port has a navigation channel which the Corps  
27 of Engineers marks with buoys so there are channels which he marks in green on  
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4 Exhibit 43, and there are buoys which mark the navigation channel. The length  
5 of the vessel Caribbean Express protrudes into the channel so this creates a  
6 problem for large vessels if one were to have to gain access to the port. Small  
7 vessels have no problem but if a big vessel wants to come in, Caribbean Express  
8 has to go out and come back in.  
9

10 Mr. Jacobs described the payment of utilities. Holland Group pays the  
11 utilities. The monthly utilities expenses for the port as of the summer of 2008 is  
12 about \$14,000 to \$17,000 a month for electricity. The expense for water services  
13 varies from \$18,000 to \$23,000 a month. Part of that water is sold to the M/V  
14 Caribbean Express and the balance is absorbed by the Holland Group. Marine  
15 Express uses about 80% of the electricity of the port. Most of the areas of the  
16 port are currently used by Marine Express. Regarding the number of passengers,  
17 about 170,000, there are two seasons when they increase: summer and  
18 Christmas. In low season, there can be 200 passengers per trip; in high season,  
19 there can be 800 and over 1,000 passengers per trip.  
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22 When Holland Group began at the port in May 2007, the lease agreement  
23 was in place with the Puerto Rico Ports Authority. That agreement ended in  
24 January 2008. There was then an exchange of letters between the Mayagüez Port  
25 Commission. The rent being paid by plaintiffs to Holland Group was \$9,118, and  
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4 \$700 for electricity and \$400 for other utilities so the rent was actually about  
5 \$8,000.

6 When Holland Group came into the port, it sent letters that they were the  
7 new administrators of the port and wanted to know the needs of the clients.  
8 (Exhibit 9.) Ferries del Caribe sent a letter to José González Freyre. (Exhibit 10.)  
9 They were told by Fernando Rivera, under-treasurer, and a port commissioner at  
10 the time, that it was emphatic not to negotiate with Holland Group during a  
11 certain period. No negotiations were to be conducted between Holland Group and  
12 plaintiffs in the 90-day transition. In relation to the negotiations, there are letters  
13 that reflect the negotiation of contracts. (Exhibit 14, letter of August 10 from  
14 Ferries del Caribe (Néstor González) to José González Freyre telling him of the  
15 needs of space allocation of the port.) Plaintiffs say they have 1,280 square feet,  
16 and four offices and asked for an increase of 1,500 to 2,780 square feet. In  
17 relation to operations areas, they have eight areas rented and 4,000 square feet  
18 for light mechanical work, and have 115,000 square feet in preferential areas,  
19 which they would be willing to temporarily reduce by 44,000 square feet, about  
20 one cuerda, since due to the frequency of movement of equipment, a lower  
21 amount would considerably hamper plaintiffs' operations. Their request was for  
22 2.2 cuerdas. While they say there are 19 operational cuerdas areas, there are  
23 not. Referring to Exhibit B, an aerial photograph of the port of Mayagüez, the  
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4 (larger) blue areas reflect the preferential area that Marine Express has. There  
5 are two work shops, the Marine Express office at the left parking lot, the  
6 preferential area next to the vessel, and the area on the right of the picture next  
7 to United States Customs Service. The photograph reflects what the port looked  
8 like before the two cuerdas were delivered to Holland Group. Marked in blue are  
9 the 2.2 cuerdas. Starkist grounds are on the left. A water tank is visible. Holland  
10 Group now has the large preferential area of 2 cuerdas and the preferential area  
11 next to the area where the vessel docks. (The vessel is visible in the photograph.)  
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14 Mr. Jacobs testified that Holland Group has business opportunities that they  
15 were evaluating, and noted that there is not that much other space to develop by  
16 Holland Group so that future opportunity would be outside the current 19 cuerdas.  
17

18 When Holland Group came on, the Puerto Rico Ports Authority M-1-6 tariff  
19 (Exhibit 2) stayed in place until a new tariff came out of the Mayagüez Port  
20 Commission. Until then, the old tariff was used. Since there was no tariff, this  
21 influenced the negotiations. Ferries del Caribe did not know the impact of a new  
22 tariff rate, and they were not in a position to negotiate a new contract because  
23 they did not know the effect. The new tariff then took effect. (See Exhibit 15,  
24 Handbook and Tariff No. 1 from Mayagüez Port Commission.) Exhibit 15 also  
25 includes a letter from Mr. Jacobs to Néstor González, president of Ferries del  
26 Caribe, telling him the tariff will come in place effective March 15, 2008, and  
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inviting them to establish dates to negotiate a contract between Holland Group and Ferries del Caribe. The communication notes that the tariff will cover the years 2008 to 2011. Mr. Jacobs does not remember meeting with anyone from Ferries del Caribe, but Holland Group received answers that there were issues as to the tariff. The invitation to negotiate was never answered. Referring to Exhibit 16, Mr. Jacobs noted it is a letter from him to Maribel Más dated September 9. He stated that Holland Group had been trying to negotiate and the new rates for rent are notified plus additional fees for utilities. Holland Group proposed \$21 per square foot for office space so that the annual rent would be \$86,714. The shed rate would be \$10 square foot for an annual rate of \$42,117 for 4,217 square feet. Also provided for were the paved and non-paved areas. Area F of the port was Starkist operations area. The big preferential areas is both paved and not paved, and is in bad shape, filled in with mogolla (debris). Holland Group does not count this area as paved although 80% of the area is paved. Exhibit C is an enlarged photo taken from the top of the water tank in May 2007. Mr. Jacobs took the photo himself. It shows an unpaved area (in the preferential area). Exhibit D, a photo taken by Mr. Jacobs of the F area, shows the condition of containers and cars and other materials when Holland Group came to the port.

Referring to Exhibit 16, it provides for additional payment for utilities, which is 30% of actual invoice from Puerto Rico Electric Power Authority, and 30% of

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4 invoice Holland Group receives from Puerto Rico Acueduct Authority, subtracting  
5 water sold to the ship. It is a portion of what they use. The attachment to the  
6 letter is an invoice for the rent charges for that month. In relation to the increase  
7 of square foot charge, Holland Group reached those amounts by studying the  
8 rents paid in similar areas close to ports and compared tariff rates on the Federal  
9 Maritime Commission page (a link), where there is an infinity of tariff rates for  
10 different ports. The rent charged by Puerto Rico Ports Authority was also  
11 considered. Their rent is a totally different concept than that of a private  
12 operator. The response from Marine Express was to reject the invoices in terms  
13 of the numbers and Marine Express kept sending checks for the amount that they  
14 have been paying for the last five years, which checks Holland Group rejected.  
15 If you add up the annual rent and the total square feet, it comes out to \$6.00 per  
16 square foot for all areas. The rent is applicable to everyone in the port, including  
17 the Bates Company, warehouse space to FEMA, and René Ortiz Villafañe who pays  
18 \$21, and also to Claro, who rented a space for two months, and who pays \$21 per  
19 square foot a month.  
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24 Looking at Exhibit 18, a letter dated September 11, 2008 from Maribel Más  
25 to Antonio Jacobs, Mr. Jacobs noted this is plaintiffs' reply to Holland Group's  
26 invoice of September 9, 2008. In it, Ms. Más complains of the amount of rent  
27 and utilities, and that the defendants have not answered letters in terms of  
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negotiations. There is a statement of different rental rates. Exhibit 19 is Mr. Jacobs' answer to the letter stating, and not going into the details, that Holland Group charges this rate to the other users of the port. Holland Group asked Ms. Más for the requirements of space and discounts and Holland Group suggested a terminal tax per passenger, to transfer cost to the customers. Exhibit 20 is a letter from Ms. Más to Mr. Jacobs, dated September 30, 2008, replying to invoice 0351 for \$66,597.63 for the rent for facilities. Maribel Más rejects the invoice in total and stated clearly that Marine Express has not accepted a lease contract including the amount being charged. She states that the last signed contract was January 28, 2003, for a term of five years, that was their last contract, that it expired, and that the contract has been implicitly renewed. Holland Group interpreted this letter as Marine Express' acceptance that they have no contract, and that Ms. Más is paying the 2003 rent contracted with Puerto Rico Ports Authority.

Referring to Exhibit 21, dated October 1, 2008, it is a letter from him to Ms. Más. It notes that Holland Group will bill services of the port according to the tariff. Holland Group cancelled invoice 0351, and stated that it would not accept any action of her company to continue the terms of the contract signed with Puerto Rico Ports Authority to unjustly enrich itself all these years. Terminal building air-conditioning service would be eliminated. That, however, did not

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4 happen. Mr. Jacobs explained that there are offices of Marine Express, where  
5 there is the selling of tickets, and half the terminal contains United States  
6 Customs. The air conditioning to his office was in bad condition. It broke down  
7 and it was decided to get a new unit. One of Marine Express' offices was affected.  
8  
9 The terminal now has air conditioning. United States Customs Service was never  
10 asked to deliver the premises. No non-essential services were discontinued.  
11 None of those measures were taken. After this letter, Holland Group decided to  
12 invoice on a daily basis on every piece equipment that Marine Express had at the  
13 port. In relation to the preferential areas, since there were none, every piece of  
14 equipment would be inventoried on a daily basis. There was no more preferential  
15 area because of the letter of September 30 by Maribel Más stating that Marine  
16 Express had no contract with Holland Group.  
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19 In September, Holland Group had invoiced Marine Express about \$66,000.  
20 That invoice was cancelled after the letter, and Holland Group told Marine Express  
21 it would be invoiced at the end of each month, depending on the areas that Marine  
22 Express used. Marine Express then decided to take some equipment out of the  
23 port, like chassis, junk cars, because they would be invoiced. Referring to Exhibit  
24 C, Mr. Jacobs noted that this is area F, the preferential area. Some equipment  
25 is usable; some are old containers sitting there for years. There is an area of junk  
26 and there are containers next to road number 64 which are not in use. Marine  
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4 Express started taking the containers out of the port. This photo was taken on  
5 May 25, 2007. By October 2008, the status of the preferential area had changed.

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8 Marine Express took out the unusable equipment, and they left operation and

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Express had taken out the junk and car on top. (See Exhibit D.) They were out

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by August 2007, but in September 2008, there was junk there again. Referring

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to Exhibit B, the aerial photo of the port taken from Google Earth, Mr. Jacobs

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noted different areas where there was junk.

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Mr. Jacobs referred to Exhibit 24, a letter from him to Marine Express and

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Ms. Más, informing her she has an obligation with the tariff to pay the invoices

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immediately, and that Holland Group will evaluate them if they are wrongly

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invoiced once she pays. Exhibit 25 is her reply to Exhibit 24, where Ms. Más says

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she cannot pay the invoices because of lack of information. Holland Group said

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that it has the documents available at Holland Group's offices, but Ms. Más says

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she has to check them at her offices to see if the invoices are correct.

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Exhibit 26 is composed of two letters dated October 23, 2008. The first is

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from Mr. Jacobs to Ms. Más where he send her an invoice for \$6,000 for operation

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of the vessel (prepaid operations), referring to section 7.3.4 of the tariff. The

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next letter is canceling the credit privilege because Marine Express has not paid

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4 any invoices, and notifying that any operations will have to be prepaid as to the  
5 tariff, since Holland Group had not received payment.

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8 was revoked, all operations had to be prepaid, and any container in and out would  
9 have to be cleared out, so no container with demurrage or debt had to be cleared.

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10 On October 23, containers were let out of Gate 5 until 9:30 A.M. or 10:00 A.M.,  
11 but after that, Marine Express dispatched all of their personnel because they did  
12 not have tools to verify demurrage, that is, the outstanding balance on  
13 demurrage.

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15 On October 23, 2008, Mr. Jacobs was at his office at the port of Mayagüez.  
16 He was not contacted by anyone from Marine Express on that day.

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18 On October 24, 2008, two commissioners from the Mayagüez Port  
19 Commission were present and one of them, Sergio Zeligman, went to his office  
20 and wanted to intervene. He did, and Marine Express started to make the process  
21 of the payments. So Marine Express would go to their accounting office, bring the  
22 check and then the container would go out. As of this date, the process of  
23 movement through Gate 5 is a normal operation. Fifty to sixty containers are  
24 cleared on a daily basis, and all have free time of six days. Marine Express is very  
25 careful and has no problem. Marine Express has paid no demurrage in the last

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4 two weeks. Marine Express has good records in relation to their containers and  
5 when the sixth day comes up, the container is taken out of the port.

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8 Referring to the Google Earth picture, Exhibit B, Mr. Jacobs showed where  
9 Marine Express and other plaintiffs are located and where they operate. All  
10 containers come from the road through Gate 5. The middle white center office is  
11 Marine Express' dispatch office. There, Marine Express inspects the condition of  
12 the container. The container can use the whole operational area of the port for  
13 free time. Referring to Exhibit B, there are containers that need repairs (below  
14 the white string of center buildings with blue borders) and Marine Express can also  
15 park containers in the former preferential area up to the end of free time, which  
16 is six days.

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When asked if there has been a refusal to negotiate, Mr. Jacobs replied that he thinks there are 24 or 26 letters between Marine Express and Holland Group in relation to tariff and lease, spaces, and allocations. From May 2008, there was a constraint that there was no published tariffs, and their publication took longer than expected. On March 15, 2008, the tariff rate was published. Marine Express said they preferred a published tariff and not having a tariff in place made a lease contract negotiation constraining. So Mr. Jacobs invited Marine Express to pick dates to negotiate a new lease contract. In later letters, Marine Express never mentioned a date to negotiate a lease contract.

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4 Exhibit 28 is a letter sent by José González Freyre to Maribel Más discussing  
5 several tariff issues, and Mr. Jacobs mentions that he had a meeting with Ms. Más  
6 at his office two or three days before October 30, and she asked him if they could  
7 send her a draft of the lease contract. The invoices were not actually paid since  
8 there was a dispute in relation to the tariff rate used by Marine Express. They had  
9 meetings with Néstor González and they discussed invoices and crediting them  
10 and taking care of discrepancies. He never received an answer from her; she  
11 came to the office to resolve doubt in relation to tariff, like free time. Marine  
12 Express has been prepaying the invoices, and if there is an excess in the amount,  
13 it is credit to their account. Other invoices relate to demurrage, etc., and they  
14 have not been paid. There is a form of disputed charged, so this form is used as  
15 of October 1 until the present. If the claim is approved, the amount is credited  
16 to Marine Express's account. As of the previous week, \$28,000 had been credited  
17 to their account.  
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21 Regarding proceedings in the Mayagüez Port Commission, Mr. Jacobs  
22 testified that from October 1 to October 22, 2008, there were complaints. In  
23 particular, there was a complaint in terms of the condition of the port. By  
24 December 1, 2008, Holland Group felt that this was taken care of.  
25

26 Exhibit 29 is a letter from Marine Express to the Mayagüez Port Commission  
27 in relation to the condition of the port. Mr. Jacobs described those problems  
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4 concerning driveways, potholes, ship fenders, sewers. He testified that these  
5 problems were taken care of. He noted that in Mayagüez it rains every day, and  
6 the driveway gets damaged so Holland Group gets a cement truck and roads are  
7 patched up with concrete in those areas.

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10 On October 2, there was a meeting with Holland Group, Marine Express and  
11 Mayagüez Port Commission, to discuss the lease. After that meeting, there was  
12 an agreement to establish a charge for the use of the terminal by passengers to  
13 help cover the new lease agreement for the new lease rates that Holland Group  
14 had established. After that meeting, Marine Express sent a letter to attorney José  
15 Sánchez with a proposal with the new tariff rate, passenger terminal fee, but that  
16 letter should have gone to Holland Group, which is the party with which it had to  
17 negotiate. The Mayagüez Port Commission was an observer, and has nothing to  
18 do with the lease agreement. Marine Express cannot propose changing the tariff.  
19 The only entity to propose a change in the tariff is Holland Group, and the  
20 proposal has to go through them. The Mayagüez Port Commission then returned  
21 the letter to Marine Express.

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Exhibit 32 is a letter from José González Freyre to Maribel Más in relation  
to the application of the tariff. If the tariff rate is not correctly applied, the letter  
refers Ms. Más to section 7 of the tariff. In the letter, José González Freyre tells  
Ms. Más that the port operator determines the tariff, and the port administrator