

RECEIVED

ORIGINAL

03 DEC 29 PM 3:55

OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMMISSION  
**BEFORE THE  
FEDERAL MARITIME COMMISSION**

\_\_\_\_\_  
**Docket No. 04-01**  
\_\_\_\_\_

**INTERNATIONAL SHIPPING AGENCY, INC.**

**COMPLAINANT**

**V.**

**THE PUERTO RICO PORTS AUTHORITY**

**RESPONDENT**

\_\_\_\_\_



**COMPLAINT**

**I. Complainant**

A. Complainant International Shipping Agency, Inc. ("Intership") is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico. Intership is a marine terminal operator which is, and at all times material to this Complaint has been, engaged in the business of furnishing stevedoring and terminal services in the Port of San Juan, Puerto Rico to ocean common carriers engaged in U.S. domestic and foreign commerce.

B. Intership has provided stevedoring and marine terminal operator services to ocean common carriers in the Port of San Juan, Puerto Rico ("Port") for over 40 years at several berthing facilities at the Port.

C. Intership's mailing address is P.O. Box 9022748, San Juan, Puerto Rico, 00908-2748.

## **II. Respondent**

A. Respondent, the Puerto Rico Ports Authority ("PRPA") is a public corporation of the Commonwealth of Puerto Rico. The PRPA is a marine terminal operator which owns marine terminal facilities at the Port of San Juan, including port facilities at Puerto Nuevo, Puerta de Tierra, Isla Grande, and the Army Terminal. The PRPA is in the business of furnishing terminal facilities and services to ocean common carriers engaged in U.S. domestic and foreign commerce.

B. The PRPA has a "legal existence and personality separate and apart from those of the Government [of Puerto Rico] and any official thereof and power "to sue and be sued." 23 L.P.R.A. § 333 (b), § 336(e).

C. The PRPA's mailing address is P.O. Box 362829, San Juan, Puerto Rico, 00936-2829.

## **III. Jurisdiction**

Intership and the PRPA are both marine terminal operators within the meaning of Section 3(14) of the Shipping Act of 1984, 46 U.S.C. App.

§ 1702(14). This Complaint is being filed pursuant to Section 1 l(a) of the Shipping Act, 46 U.S.C. App. 1710(a). Intership is seeking reparations for injuries caused to it by the PRPA's violations of Sections 10(a)(3), 10(d)(l), 10(d)(3) and 10(d)(4) of the Shipping Act. As more particularly alleged below, the PRPA has failed to operate in accordance with the Piers M/N/O Terminal

Lease and Development Agreement, FMC Agreement No. 224 – 2010 11, has failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, has refused to deal or negotiate with Intership, and has imposed unjust and unreasonable prejudice or disadvantage with respect to Intership.

Iv. **Statement of Facts**

**FMC Docket No. 94-25**

A. The events giving rise to this Complaint have their origins in the FMC Docket No. 94-25 instituted by Intership on October 28, 1994. In that docket, Intership filed a complaint against the PRPA alleging violations of the 1984 Shipping Act arising out of the PRPA's discriminatory treatment of Intership in relation to the leasing of certain marine terminal property.

B. The PRPA owns and controls all of the marine terminal facilities in San Juan. It in turn leases facilities to other marine terminal operators such as Intership.

C. Intership has provided stevedoring and marine terminal operator services to ocean common carriers in the Port of San Juan, Puerto Rico since 1961. Since then, Intership successively began operations at the **Drydock** Terminal, Piers 9 and 15 and Pier 11 in 1971, **Isla Grande** in 1984, and Pier 12 in 1992, all pursuant to month-to-month leases from the PRPA. Since at least 1986, having been advised by the PRPA that it would eventually have to vacate the Pier 11 and **Isla Grande** facilities, Intership requested the PRPA to lease

other unoccupied land on Isla Grande in order to expand its operations and develop new and modern port and terminal facilities.

D. The PRPA informed Intership that the unoccupied land on Isla Grande was not available for commercial lease because it had been designated for Puerto Rico government projects. The PRPA further informed Intership that the only property available was the Army Terminal facilities which were undeveloped at that time. In 1991, Intership entered into the lease of the Army Terminal. In 1992, the PRPA granted one of Intership's competitors an extremely advantageous lease and development agreement over the entire Isla Grande port facility. In violation of the terms of the Army Terminal Lease Agreement, which granted Intership the right to continue operating at Isla Grande until the Army Terminal was fully developed, the PRPA then attempted to evict Intership from Isla Grande.

E. As a result of those and other actions of the PRPA, on October 28, 1994, Intership filed a Complaint against the PRPA before the FMC. (Docket No. 94-25).

F. On December 2, 1996, in order to avoid further litigation, the PRPA and Intership entered into a Settlement Agreement. The settlement purported to address Intership's desire to consolidate its San Juan operations by granting Intership certain preferential berthing rights and the exclusive right to develop two new public terminals (Piers ½ N and 0) adjacent to a terminal already operated by Intership on a temporary basis (Pier M). The settlement terms

included development rights over certain backlands areas behind Piers L, M, N, and O.

G. The settlement benefited the PRPA because Intership's financial and operational support enabled the PRPA to proceed with development of a new Public Terminal, to be known as the **InterMarine** Public Terminal.

H. The PRPA determined that the lease to Intership for the development and operation of the Public Terminal would be in the public interest, would better serve the economy of Puerto Rico, and would expand and efficiently enhance the PRPA's ability to more effectively serve national and international cargo vessels in the port.

I. The lease and development agreement that was the main consideration of the settlement is reflected in and governed by the Piers M/N/O Terminal Lease and Development Agreement, FMC No. 224-20 10 11, which was **filed** with the FMC and became effective on December 2, 1996.

#### **The Piers M/N/O Agreement**

J. Under the terms of the Piers M/N/O Agreement, the PRPA granted to Intership first preferential berthing rights at Pier M and Piers ½ N & O (to be developed), second preferential berthing rights at Pier L, the right to extend crane rails to Pier L under certain conditions, and exclusive lease and development rights over 42.854 cuerdas of the backlands of Piers L, M, N and O. (A cuerda is a traditional unit of land area measurement in Puerto Rico, roughly equivalent to an acre.)

K. Twenty-eight (28) cuerdas of unoccupied land were delivered to Intership on or before execution and filing of the Piers M/N/O Agreement. Approximately 14 cuerdas were, however, being occupied by holdover tenants at that time. Such tenants were using the land for non-maritime, depreciating uses, without paying rent to the PRPA.

L. The PRPA agreed to use its best efforts and exercise all of its rights and legal remedies to vacate and deliver to Intership as soon as practicable the occupied areas. In the event PRPA was not able to remove some or all of the holdover tenants, the Piers M/N/O Agreement provided for the PRPA to grant to Intership comparable space at Puerto Nuevo to make up for any shortfall.

M. Under the terms of the Piers M/N/O Agreement, the PRPA was not permitted to request or require that Intership vacate its facilities at Isla Grande or Piers 11 and 12 until it delivered to Intership all the occupied areas and the same were completely developed and operational. Also, the PRPA guaranteed Intership berthing rights at Piers J, K, L, and M of Puerto Nuevo until Piers ½ N & O were complete and operational.

N. The Piers M/N/O Agreement anticipated a five-year construction and development term with Intership and the PRPA sharing in various aspects of the planning and construction work. The orderly and timely development of the Public Terminal was dependant on the PRPA and Intership each timely performing their respective obligations. The parties agreed to cooperate in a diligent and timely manner to resolve any development issues, and agreed that: "Time is of the essence in the development of the **InterMarine** Public Terminal."

0. The Piers M/N/O Agreement defines certain aspects of the work that are the responsibility of the PRPA and which are to be funded by the PRPA through a loan obtained from the Government Development Bank of Puerto Rico (the "GDB")

P. The Piers M/N/O Agreement provides for a Joint Management Committee which meets monthly to coordinate the project and address development issues. Despite more than 70 meetings, the Committee failed to resolve any of the conflicts that are the subject of this Complaint.

Q. The Piers M/N/O Agreement sets forth procedures for the resolution of claims and disputes, including mediation.

**V. Matters Complained of**  
**Problems in the Development of the Public Terminal, Guaranteed Berthing and Pier L**

A. Contrary to the terms of the FMC Agreement, the PRPA has failed to properly and timely perform its obligations regarding the construction and development of the PRPA's Improvements and failed to assist Intership as required, causing significant unreasonable delay and an exorbitant increase in the cost of developing the Public Terminal.

B. The PRPA failed to timely vacate and deliver to Intership all of the 14 cuerdas of occupied areas.

C. Notwithstanding its failure to timely deliver the occupied areas to Intership, the PRPA refused and continues to refuse to provide comparable marine terminal areas at Puerto Nuevo to Intership to make up for the occupied areas undelivered as of this date. Intership also lost approximately 3

cuerdas of leased areas because of the Kennedy Avenue marginal road expansion.

D. The PRPA ignored and continues to ignore many requests from Intership for the temporary lease of several available Puerto Nuevo lots to alleviate the serious lack of terminal space confronted by Intership as a consequence of the PRPA's failure to deliver the occupied areas.

E. Regarding the construction of Piers ½ N & O, the PRPA negligently accepted from its contractor and certified the dredging to substantially less than the depth specified in the construction drawings and the Piers M/N/O Agreement.

F. Such deficient and insufficient dredging by the PRPA's contractor caused a "soft bottom" problem that interfered with the pile driving. The PRPA, upon recommendation from its consultants, proceeded to deposit bolder type rocks on the bottom of berths N & O despite warnings by the piers' designers that such a "solution" could, in fact, cause other problems. Such negligent actions and omissions of the PRPA resulted in delay and costly change orders to the PRPA's contract for Piers ½ N & O.

G. The PRPA certified the substantial completion of Piers ½ N & O in August 1999. The piers began settling shortly thereafter and in April 2000 the sheet piling was displaced. Piers ½ N & O have been unusable ever since and the PRPA has failed and continues to fail to repair Piers ½ N & O, despite charging rent to Intership for their use.

H. During the construction and attempts to repair Piers ½ N & O, the PRPA ignored Intership's demands of its guaranteed berthing rights at Piers H, J, K and L and second preference on Pier L, and even partial use of Pier L to compensate for the loss of use of the 900 feet of Piers ½ N & O.

I. In sharp contrast with its treatment towards Intership, the PRPA allowed NPR, Inc. ("NPR"), then the lessee of Pier L, and its stevedoring subsidiary, San Juan International Terminals ("SJIT"), to continuously interfere with Intership's operations at the Public Terminal. The PRPA refused to close certain gates opened by said entities without its authorization that conflicted with the traffic in and out the Public Terminal, even though said entities had more than 12 other entrance and exit gates in the 119 cuerdas of marine land they leased from the PRPA.

J. The PRPA further tolerated and acquiesced to other actions of NPR and SJIT clearly intended to prevent Intership from using Pier L, such as stacking and storing containers and equipment and repairing cranes on the "L" platform. The PRPA failed to charge demurrage or take any action to avoid such interference with Intership's secondary preferential use of Pier L.

K. The PRPA negligently and/or willfully failed to properly and timely perform its obligations regarding the construction and development of the PRPA's Improvements and failed to assist Intership as required, causing significant unreasonable delay and an exorbitant increase in the cost of developing the Public Terminal.

L. The PRPA failed or refused to resolve the numerous problems and development issues that were the subject of more than 70 meetings of the Joint Management Committee. As a consequence, Intership had to accelerate its plan for acquisition of cranes and stevedoring equipment as the only way to increase productivity and compensate for the deprivation of the contracted berthing and terminal facilities that the PRPA delivered belatedly, or not at all. Intership has invested approximately \$25,000,000 in cranes and stevedoring equipment, far exceeding its investment commitment of \$19,500,000. Notwithstanding Intership's efforts to mitigate its damages, its capacity to obtain new business has been adversely affected.

**Eviction from Isla Grande and Piers 11 & 12**

M. For 3 years, from 2000 to 2002, the PRPA refused to assign to Intership the Pan American Dock at Isla Grande for the berthing of Intership's car carriers, while assigning said berth for re-bar vessels. Since September 2001, the PRPA has used the construction of the Royal Caribbean Cruise Lines terminal as a pretext for denying the berth to Intership. The PRPA has also failed to provide electricity to Intership's car facility at Isla Grande, forcing Intership to provide its own power with generators.

N. The PRPA's actions forced Intership to discharge its car carriers at inappropriate berthing facilities in Puerta de Tierra at a higher risk of damage to the cars and increased operational costs and to transfer the cars to Isla Grande, while paying rent, security and other operating expenses at its Isla Grande car facility.

O. The PRPA, through the above described actions, has constructively evicted Intership from its Isla Grande car facility, without complying with the conditions precedent imposed upon it by the Piers M/N/O Agreement.

P. In May 2000, on occasion of the San Juan "Regatta 2000," the PRPA evicted Intership from Piers 11 & 12, by tearing down the doors of the Pier 11 warehouse building where Intership had its offices and by interrupting the water service, without complying with the conditions precedent imposed upon it by the Piers M/N/O Agreement.

### **Depletion of GDB Funds**

Q. The PRPA improperly paid for the insufficient dredging of Piers ½ N & 0 from the GDB financing, even though dredging was not part of the PRPA's Improvements to be paid therefrom. As a result thereof, over \$3,700,000 became unavailable to pay for the PRPA's Improvements authorized by the Piers M/N/O Agreement.

R. The PRPA improperly paid from the GDB financing change orders to the construction contracts for various PRPA's improvements including Piers ½ N & 0, which exceeded 25% of the projected cost and were caused directly by the PRPA's failure to properly perform and timely discharge its construction responsibilities regarding the Public Terminal.

S. The PRPA improperly reimbursed itself from the GDB financing for credits for wharfage and dockage extended to Intership for Interim Improvements.

T. The PRPA improperly depleted the GDB financing and Intership has had to absorb the cost of completing projects such as the "South Lots," the gate and access entrance to the public Terminal and other projects that are still underway. As of this date, Intership has disbursed in excess of \$5,000,000 to fund the pending developments. The PRPA refused and continues to refuse to reimburse Intership for these expenditures or obtain additional financing.

**Piers ½ N & 0 and Intership's Gantry Cranes**

U. As part of its commitment under the Piers M/N/O Agreement, Intership purchased two high speed, Post-Panamax gantry cranes ("Gantry Cranes") for installation at Piers ½ N and 0, at a total investment of approximately \$8,500,000, including financing costs.

V. Upon the displacement of the sheet piling of Piers ½ N & 0 in April 2000, the PRPA represented to Intership that it would repair the same by December 200 1.

W. The PRPA ignored and refused several requests by Intership to treat the repair of Piers ½ N & 0 as an emergency.

X. Intership purchased the Gantry Cranes relying on the PRPA's representation and assurance that the PRPA would repair Piers ½ N & 0 by December 2001. Intership started advising the PRPA of its intention to purchase the same in February 200 1.

Y. The PRPA ignored Intership's continuous warnings that Piers ½ N & 0 had to be repaired on time for the arrival of the cranes in San Juan.

Z. It nevertheless took the PRPA until August 2001 to solicit bids for a repair contract. The only contractor to bid was the same contractor that had performed the insufficient dredging for Piers ½ N & 0. This contractor could not be awarded the contract because it had since been debarred from performing contracts for the federal government and the government of Puerto Rico.

AA. The PRPA failed to repair Piers ½ N & 0 by December 2001.

BB. At the suggestion of Intership, the PRPA entered into discussions with a second contractor, which had successfully repaired the Pan American Dock at Isla Grande for the Authority and had equipment and personnel ready for mobilization. This contractor offered to start the repair by January 2002 and promised to tender 450 feet of berths ½ N & 0 by March 2002.

CC. Intership kept the PRPA advised of the schedule for completion and estimated dates of arrival of the Gantry Cranes to San Juan. The March 2002 completion date would have allowed Piers ½ N & 0 to be repaired on time.

DD. In December 2001, however, the PRPA alleged that the repair plan proposed by the second contractor was inconsistent with that of the PRPA's consultant and with the PRPA's theory regarding the cause of the structural failure of Piers ½ N & 0 in the arbitration case with the contractor that built the piers. The PRPA thus rejected the second contractor and awarded the repair contracts to a third contractor, advising Intership that the repair work would commence in January 2002 and that the contractor was asked to tender

450 feet of Piers ½ N & 0 by March 2002, still on time for the arrival of the cranes.

EE. The PRPA failed to repair Piers ½ N & 0 by March 2002.

FF. The Gantry Cranes arrived in San Juan, Puerto Rico on July 20, 2002. Piers ½ N and 0 were not ready for the receipt, installation, and commissioning of the Gantry Cranes.

GG. The PRPA next committed in writing to repair Piers ½ N & 0 by April 2003, but again failed to complete the repairs by those dates.

HH. The PRPA has failed to repair Piers ½ N & 0 as of this date and the Gantry Cranes have been sitting at Pier 0, idle and inoperable.

II. As a direct result of the **PRPA's** failure to repair Piers ½ N & 0 on time for the arrival and installation of Intership's gantry cranes in July 2002, Intership was injured in the following respects, among others: the procedures for unloading of the Gantry Cranes had to be modified; the commissioning of the Gantry Cranes was delayed and impeded; the cranes' manufacturer claimed substantial liquidated damages for delay and other costs; Intership had to extend the service contract of its cranes' technical advisor at additional, substantial cost; Intership had to waive substantial liquidated damages and forgo the endurance tests of the cranes; a second OSHA inspection of the cranes was required; the cost for Intership of spare parts increased; Intership lost engineering support; the cranes could not be anchored to secure them during the 2002 hurricane season; and a temporary tie down system for the

cranes at Piers ½ N & O had to be installed to secure them for the 2003 hurricane season.

JJ. The cranes were damaged as a result of being idle and inoperable for over a year, the interruption of power due to the rupture of the supply line by the piers' repair contractor that the PRPA refused to repair, and by carelessness and negligence of said contractor in performing work around the cranes.

KK. Additional survey and reconditioning expenses are required to restore the cranes to the condition in which they were upon arriving in Puerto Rico on or about July 20, 2002.

LL. Intership lost more than one-year of warranty on the Gantry Cranes, which can only be extended at substantial costs per crane and depreciates the cranes' value.

MM. Due to the inordinate delay of the PRPA in repairing Piers ½ N & O and the uncertainty as to their operational capacity upon their being repaired, Intership has had to contract the consulting services of a Seattle based engineering firm with vast experience in the construction of marine facilities to evaluate the conditions of the piers and make recommendations.

NN. Said engineering firm recommended that Intership extend 900 feet of rail at Piers M and L as an "insurance policy" for safeguarding its investment on the cranes, due to serious doubts regarding the repair performed by the PRPA and its contractors, at a projected cost for Intership of \$3,600,000,

including a new, permanent hurricane tie down to be installed at Piers M and L.

00. Intership has been paying the monthly installments of the cranes, taxes, insurance, security, and other charges, without generating any revenue from the cranes since July 20, 2002.

PP. To compensate for the loss of use of the Gantry Cranes, Intership had to lease and refurbish a fourth Gottwald crane to improve productivity and mitigate its damages.

QQ. Even if Piers ½ N & O are put back into service, Intership's consultants have advised that there will be a permanent dysfunction and disfigurement of the piers that will reduce the reach of the Gantry Cranes.

**Discriminatory Treatment Regarding the Puerto Nuevo Port Zone**

RR. The PRPA has engaged in other unjust, unreasonable and unlawful practices, has unreasonably refused to deal or negotiate with Intership and has imposed undue or unreasonable prejudices and disadvantages in its dealings with Intership and other marine terminal operators and carriers with respect to its plans for re-allotment of the Puerto Nuevo Port Zone.

ss. Ever since the Piers M/N/O Agreement was signed, Intership had expressed to the PRPA its interest in leasing additional exclusive terminal areas adjacent to Piers M/N/O, at full tariff rates. Intership repeatedly noted that NPR was using Pier L and its backlands to store junk and abandoned equipment and did not pay full rent to the PRPA because of the PRPA's

perpetuation of special concessions it had made to the government entities predecessors of NPR.

TT. In 2001, while NPR was in bankruptcy proceedings, the PRPA inquired whether Intership would be willing to lease from it additional Puerto Nuevo land in the event that the PRPA would receive back part of the land leased to NPR. Intership confirmed in writing its request for lease of 30-40 cuerdas adjacent to Piers M/N/O. The PRPA acknowledged Intership's request and agreed to give the same "serious consideration" depending on the outcome of **NPR's** bankruptcy.

UU. During 2001 and 2002, the PRPA and Intership actively negotiated a lease to Intership of approximately 21 cuerdas of the "L" backlands and first preferential rights to Pier L in consideration of Intership's willingness to improve and develop the same at its own cost, substantial projected revenues for the PRPA in ~~wharfage~~ and dockage, and other considerations.

vv. In or around November 2002, Sea Star Line, LLC, who had purchased the lease agreements of NPR with the PRPA in the bankruptcy proceedings, returned to the PRPA approximately 16 cuerdas of the backlands of Pier L and approximately 15 cuerdas of backlands of Pier G pursuant to certain agreements between the PRPA and Sea Star and the terms of a bankruptcy court's order.

WW. Notwithstanding its previous recognition of Intership's interest in and request for a lease of Pier L and its backlands and the negotiations between the PRPA and Intership, the PRPA failed, and has refused to this date

to confer that lease to Intership, alleging that it needs to conduct a public procurement for the said facilities.

XX. The PRPA nevertheless agreed to transfer the 15 cuerdas of Pier G backlands to carrier Horizon Lines without public procurement and to pay for the demolition of a warehouse and the environmental clean-up to allow the use of said land by Horizon Lines.

YY. At present, Intership handles approximately 30% of the containerized cargo, 80% of the automotive cargo, all of the alcohol and molasses cargo and other break-bulk cargo for its customer carriers in the Port of San Juan. During 2002-03, Intership moved in excess of 330,000 cargo containers and automobiles, equivalent to 550,000 TEU's.

zz. Horizon Lines leases from the PRPA ninety-four (94) cuerdas in Puerto Nuevo, almost three times the land leased by Intership, and handles less than half the cargo handled by Intership. The excess of space enjoyed by Horizon Lines has prompted its alliance with a stevedore who controls the Port of Ponce, to provide stevedoring services at the Port of San Juan.

### **Intership's Article XXXII Claims and Disputes**

AAA. By reason of the injuries sustained by Intership as a direct result of the PRPA's continued failure to operate in accordance with the terms of the Piers M/N/O Agreement, on April 11, 2003 Intership submitted to the PRPA a first "Article XXXII Claim and Dispute" ("First Claim"). The PRPA failed to respond or act with respect to Intership's First Claim.

BBB. On May 20, 2003, Intership requested mediation with the PRPA pursuant to Article XXXII .

CCC. On June 13, 2003 the PRPA agreed to mediate Intership's First Claim and Second Claim (which was then still to be filed).

DDD. On August 15, 2003, Intership submitted to the PRPA its Second Article XXX11 Claim and Dispute ("Second Claim").

EEE. The PRPA failed to respond to or act with respect to Intership's Second Claim.

FFF. Notwithstanding its agreement to mediate both claims, the PRPA has as of this date failed to respond to Intership's proposal of candidates for mediator.

GGG. In view of the PRPA's failure to respond to Intership's First and Second Claims and follow through with the mediation, Intership has exhausted the claim and dispute procedures of the Piers M/N/O Agreement.

## **VI. Violations of the Shipping Act of 1984**

A. The actions of the PRPA set forth in Parts IV and V of this Complaint constitute failure of the PRPA to operate in accordance with the terms of the Piers M/N/O Agreement in violation of Section 10(a)(3) of the 1984 Act, 46 U.S.C. app. § 1709(a)(3), which failure has had an adverse effect on the development of the Public Terminal, including without limitation: the PRPA's failure to deliver comparable marine terminal areas at Puerto Nuevo to make up for the occupied areas not delivered to Intership; the failure to enforce Intership's second preference on Pier L; the failure to provide Intership

guaranteed berthing at Piers H, J, K and L; the failure to implement the PRPA's Improvements; the eviction of Intership from Isla Grande and Piers 11 and 12; and the improper depletion of GDB funds to be used for Port's improvements.

B. The actions of the PRPA set forth in Parts IV and V of this Complaint constitute unjust, unreasonable, and unlawful practices in violation of Section 10(d)(l) of the 1984 Act, 46 U.S.C. app. § 1709(d)(l), including without limitation: the failure to repair Piers ½ N & O while charging Intership rent for their use; the obstruction of Intership's use of its facility at Isla Grande; failing to enforce Intership's right to the second preference use of Pier L and guaranteed berthing at Piers H, J, K, and L, using strong-arm tactics to evict Intership from Isla Grande and Piers 11 and 12; misleading Intership as to the timing of the repairs to Piers ½ N & O; and allowing other users to store junk and abandoned equipment on the backlands of Piers L, M, N and O without paying Port charges.

C. The actions of the PRPA set forth in Parts IV and V of this Complaint constitute an unreasonable refusal to deal or negotiate with Intership in violation of Sections 10(d)(3) and 10(b)(10) of the 1984 Act, 46 U.S.C. app. §§ 1709(d)(3) and 1709(b)(10), including without limitation: refusing to follow the mediation provisions of the Piers M/N/O Agreement; failing to take the action agreed to in the meetings of the Joint Management Committee; ignoring Intership's requests for the lease of several available Puerto Nuevo lots to alleviate the serious lack of terminal space confronted by

Intership; and refusing to negotiate with Intership for the use of Pier L **and its** backlands citing conditions not imposed on other Port users.

D. The actions of the PRPA set forth in Parts IV and V of this Complaint constitute impositions of undue or unreasonable prejudices or disadvantages with respect to Intership in violation of Section **10(d)(4)** of the 1984 Act, 46 U.S.C. § 1709(d)(4), including without limitation: allowing other users of the Port to interfere with Intership's operations at the Public Terminal; allowing other users of the Port to violate the use and cleaning standards for preferential areas; allowing other uses of the Port to use the Port facilities without paying rent or other Port charges; refusing to reimburse Intership for the costs Intership has incurred in making PRPA Improvements; awarding the backlands of the Port to other users without public procurement while insisting that any cuerdas leased to Intership be by public procurement; and granting a disproportionate amount of space to other Port users who handle substantially less cargo than Intership.

## **VII. INJURY TO INTERSHIP**

A. As a direct result of the violations of the 1984 Act by the PRPA, Intership has suffered and will continue to suffer substantial economic damages and injury, as follows:

1. In an amount exceeding **\$31,000,000** consisting of foregone profits, net capital expenditures and other expenditures, including interest.
2. In an amount exceeding **\$1,300,000** for the Intership's eviction from and loss of use of its **Isla Grande** car facility.

3. In an amount exceeding \$5,000,000 for the costs incurred by Intership in completing the development of the Public Terminal that the PRPA was required to pay from the GDB Project Financing and refuses to reimburse Intership or obtain additional financing.

B. As a direct result of the violations of the 1984 Act by the PRPA set forth in this Complaint, and more particularly the PRPA's failure to repair Piers ½ N & O and consequent impediment of the installation, commissioning and operation of Intership's Post-Panamax gantry cranes, Intership has suffered additional economic damages and injuries in an amount exceeding \$14,000,000 consisting of foregone profits and additional expenditures.

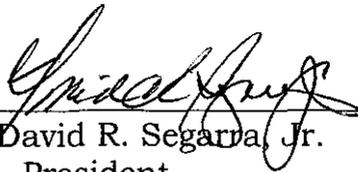
### **VIII. Prayer for Relief**

Intership prays that the PRPA be required to answer the charges in this Complaint; that after due hearing and investigation an order be made commanding the PRPA to cease and desist from the aforementioned violations of the 1984 Act and to establish and put in force such practices as the Commission determines to be lawful and reasonable; that an order be made commanding the PRPA to pay Intership reparations for violations of the 1984 Act (which include up to twice the amount of actual injury caused by the PRPA's violations of Section 10(a)(3) of the 1984 Act (as authorized by Section 1 l(g) of the 1984 Act, 46 U.S.C. § 1710 (g))), plus interest, costs, and attorney's fees, and any other damages to be determined; that an order be made commanding the PRPA to comply with all applicable provisions of the Piers M/N/O Agreement that the Commission finds as having been violated contrary

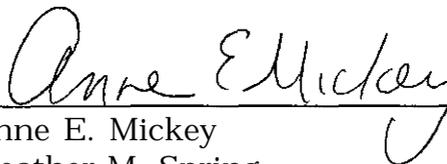
to the 1984 Act; and that such other and further relief be granted as the Commission determines to be proper, fair, and just in the circumstances.

Intership requests a hearing on this matter, and further requests that the hearing be held in Washington, D.C.

Respectfully submitted,



By: David R. Segarra, Jr.  
Title: President  
International Shipping Agency, Inc.  
P.O. Box 9022748  
San Juan, Puerto Rico, 00908-2748  
Tel.: (787) 721-4355  
Fax: (787) 721-4343

By: 

Anne E. Mickey  
Heather M. Spring  
Donald J. Kassilke  
SHER & BLACKWELL, LLP  
1850 M Street, N.W., Suite 900  
Washington, D. C. 20036  
Tel.: (202) 463-2500  
Fax: (202) 463-4950/4840

Attorneys for International  
Shipping Agency, Inc.

Of Counsel:

JOSE E. ALFARO-DELGADO  
Condado Astor Building.  
# 10 18 Ashford Avenue, Suite 2 15  
San Juan, PR 009037-I 137  
Tel. (787) 722-8812  
Fax (787) 722-8889

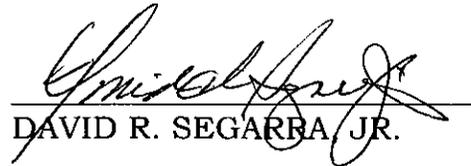
December <sup>23</sup>\_\_, 2003

**VERIFICATION**

\_\_\_\_\_  
Commonwealth of Puerto Rico )  
 )  
Municipality of San Juan ) SS:  
\_\_\_\_\_

David R. Segarra, Jr., of legal age, married and resident of Guaynabo, Puerto Rico, being first duly sworn on oath, deposes and says that he is the President of Complainant and is the person who signed the foregoing Complaint in his capacity as President of Complainant; that he has read the Complaint and that the facts stated therein are true to the best of his information and belief.

In San Juan, Puerto Rico, this 23 day of December, 2003.

  
DAVID R. SEGARRA, JR.

Affidavit No. 2045

Subscribed and sworn to before me by Mr. David R. Segarra, Jr. of the above stated personal circumstances and who is known personally to me, in San Juan, Puerto Rico, this 23 day of December, 2003.



  
NOTARY PUBLIC

My Commission expires: Indef.

CC 020/050  
**ORIGINAL** 022  
**ORIGINAL** 30  
RECEIVED 060(2)

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

03 DEC 29 PM 3:55

OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMMISSION

Docket No. ~~04~~ 01

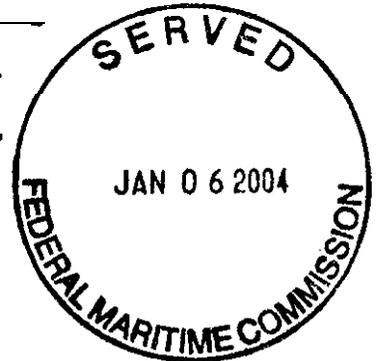
**INTERNATIONAL SHIPPING AGENCY, INC.**

**COMPLAINANT**

**V.**

**THE PUERTO RICO PORTS AUTHORITY**

**RESPONDENT**



**COMPLAINANT INTERNATIONAL SHIPPING AGENCY, INC.'S  
FIRST REQUEST FOR ADMISSIONS, FIRST SET OF  
INTERROGATORIES AND  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO  
RESPONDENT PUERTO RICO PORTS AUTHORITY**

**DEFINITIONS**

1. The terms "Authority", "Respondent", "PRPA", "You" or "Your" refer to the Puerto Rico Ports Authority.
2. The term "Authority's Improvements" means the Authority's Improvements as defined in Article VII(c)(5) of the Piers M/N/O Agreement, including the construction, installation, structural repair, replacement and reinforcement of pier, piling, steel bulkheads, related dolphins and defenses, and structural reinforcement (except structural

reinforcement for the installation of any cranes to be covered by Intership under the Piers M/N/O Agreement).

3. The term “Complaint” means the Complaint filed by Intership in this Docket.

4. The terms “Complainant”, and “Intership” refers to International Shipping Agency, Inc.

5. The term “document” includes, but is not limited to the following: any written, printed, typed, or other graphic matter of any kind or nature; any physical object or thing, animate or inanimate; all mechanical, magnetic or electrical sound or video recordings or transcripts thereof; any retrievable data, information, or statistics contained on any memory device or other information retrieval systems (whether encoded, taped, or coded electrostatically, electromagnetically, or otherwise); and also without limitation, agreements, books, catalogs, charts, checks, compilations, conversations, correspondence, descriptions, diagrams, diaries, directives, drawings, electronic recordings, files, films, graphs, inspection reports, interoffice memos, instructions, letters, maps, measurements, memoranda, minutes, motion pictures, notes, notebooks, notices, pamphlets, periodicals, photocopies, photographs, plans, plats, proposals, publications and published or unpublished speeches or articles, literature, recordings, records, reports, x-rays, reproductions, samples, schedules, sketches, specifications,

statements, studies, summaries, surveys, telegrams, telephone call slips and transcripts of telephone conversations, test results, transcripts, work sheets and working papers that are in the possession, custody, or control of PRPA wherever located. The term “document” or any other similar term, shall also mean all copies of documents, by whatever means made (including, but not limited to, carbon, handwritten, microfilmed, photostatic or xerographic copies), and include all non-identical copies (whether different from the original because of any alterations, notes, comments or other material contained thereon or attached thereto, or otherwise). The term “document,” or any similar term, shall also include any attachment thereto or enclosures therewith. The term “document,” or any similar term, shall also include any and all data compilations from which information can be obtained.

6. The term “FMC Rules of Practice and Procedure” means the rules of practice and procedure set forth in 46 C.F.R. Part 502.

7. The term “Gantry Cranes” means the two Post-Panamax gantry cranes acquired by Intership in 200 1.

8. The term “GDB” means the Government Development Bank of Puerto Rico.

9. The term “Guaranteed Berthing” means the availability of a berth comparable to a right of first preference but not limited to a specific berth and that once berthed, the vessel will enjoy the right to remain at

the assigned berth until the completion of the unloading, loading, and servicing of the vessel, as set forth in the Piers M/N/O Agreement.

10. The term “Misener” means Misener Marine Construction, Inc.

11. The term “NPR” means NPR, Inc., and/or its stevedoring subsidiary, San Juan International Terminal (“SJIT”).

12. The term “Occupied Exclusive Areas” means areas NE-4, NE-5, NE-6, ME-3, LE-3, LE-4, LE-5, LE-6, LE-7 and LE-8, as defined in the Piers M/N/O Agreement.

13. “Or” means and/or.

14. The term “Person” means and includes natural persons, governmental entities and agencies, proprietorships, partnerships, corporations, and all other forms of organization or association.

15. The term “Pier **G**” means Pier G at the Puerto Nuevo Port Zone.

16. The term “Pier **H**” means Pier H at the Puerto Nuevo Port Zone.

17. The term “Pier **J**” means Pier J at the Puerto Nuevo Port Zone.

18. The term “Pier **K**” means Pier K at the Puerto Nuevo Port Zone.

19. The term “Pier **L**” means Pier L at the Puerto Nuevo Port Zone.

20. The term “Pier **M**” means Pier M at the Puerto Nuevo Port Zone.

21. The term “Piers  $\frac{1}{2}$  N & O” means Piers N and O at the Puerto Nuevo Port Zone.

22. The term “Piers M/N/O Agreement” means the Piers M/N/O Terminal Lease and Development Agreement entered into between PRPA and Intership on December 2, 1996, FMC Agreement No. 224-201011.

23. The term “Preferential Area Use and Cleaning Standards” means the use and cleaning standards for preferential areas set forth in Article V(B)(5)(b) of the Piers M/N/O Agreement and includes the obligation of users of preferential areas (i) to keep free and clear at all times a 30 foot vehicle and equipment access and circulation roadway parallel to the water’s edge, and a similar access and circulation roadway connecting such parallel roadway to the Berthing Apron between each berth and (ii) to clear all cargo prior to the arrival of an authorized vessel from the service gates and the first 150 feet of the apron from the water’s edge.

24. The term “Public Terminal” means the InterMarine Public Terminal to be developed and operated by Intership on the premises known as Piers M, N, and O and backlands.

25. The term “Puerto Nuevo Marine Terminal Areas” or “Puerto Nuevo Port Zone” means those port areas from Berths E to O, and the terminal areas to the south thereof extending to Kennedy Avenue, identified as the Puerto Nuevo Marine Terminal Areas and located on the southern edge of the Bay of San Juan.

26. The term “Redondo” means Redondo Construction Corp.

27. The term “Terminal Improvements” means the Terminal Improvements Intership is required to pay for as set forth in Article VII(c)(4) of the Piers M/N/O Agreement.

28. Terms not otherwise defined herein shall have the meaning set forth in the Piers M/N/O Agreement.

**GENERAL INSTRUCTIONS FOR REQUEST FOR  
ADMISSIONS, INTERROGATORIES AND PRODUCTION OF  
DOCUMENTS**

A. Each interrogatory must be answered separately and specifically.

B. These interrogatories are to be deemed continuing in nature, and any subsequently discovered or additional information responsive to these interrogatories shall be supplied immediately upon Your learning of such information.

C. Answers to these Interrogatories are to be based upon all knowledge or information available to You, including, but not limited to, all knowledge or information derivable from business or other records, all

knowledge or information possessed by any employee, agent, attorney, expert witness, consultant, or other advisor or other persons subject to Your instruction, direction, or control.

D. If you cannot answer certain of the following interrogatories in full after exercising due diligence to secure the information to do so, answer to the extent possible and explain your inability to provide a complete answer. State whatever information or knowledge you have about the unanswered portion of any interrogatory.

E. If any information called for by an Interrogatory or Request for Production is withheld on the basis of a claim of privilege:

1. Identify the nature of the privilege asserted; and
2. The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:
  - (a) For Documents: (1) the type of Document; (2) general subject matter of the Document; (3) the date of the Document; and (4) such other information as is sufficient to identify the Document for the purposes of a motion to compel its production, including where appropriate, the author of the Document, the addressee of the Document, and, where not apparent, the relationship of the author to the addressee;
  - (b) For oral communications: (1) the name of the person making the communication and the names of the persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and place of the communication; and

(3) the general subject matter of the communication.

F. “Identify” or to give the “identity of,” shall mean:

1. In the case of a natural person, to state:

- (a) Full name;
- (b) Last known business and home address;
- (c) Employer or business affiliate; and
- (d) Occupation and business position (including title) held;

2. In the case of a company or other business entity, to state:

- (a) Name;
- (b) Nature of the business entity;
- (c) Business address; and
- (d) Partners, if any;

3. In the case of a document, to state:

- (a) Identity of the person(s) preparing it and of the sender(s);
- (b) Its title or, if it has no title, a description of the general nature of its subject matter;
- (c) The identity of the addressee(s), if any;
- (d) Its date of preparation;
- (e) Location of the original, or, if there is no original, the location of all copies, and identity of present custodian;
- (f) Whether or not the document is claimed to be privileged; and
- (g) The identity of the person(s) who can identify it;

4. In the case of an oral statement or communication, to state:
  - (a) The maker and recipients of the oral statement or communication;
  - (b) Where and when the oral statement or communication was made;
  - (c) The identity of all persons present when the oral statement or communication was made;
  - (d) The mode of communication;
  - (e) The subject matter of the oral statement or communication;
  - (f) The complete contents of the statement or communication.

G. "Describe" means provide a detailed statement of all things relating to or affecting the particular subject to be described including, but not limited to, dates and places and the names and addresses of any persons involved. With respect to documents, reports, or other written matter, the term "describe" also includes a detailed statement of the substance of the facts and opinions made reference to or stated in each document, report, or written matter.

H. Where an objection is made to any Interrogatory or Request for Production or sub-part thereof, pursuant to FMC Rules of Practice and Procedure, the objection shall state with reasonable specificity all grounds for the objection

I. If, in answering these Interrogatories or responding to these Requests for Production, You claim any ambiguity in interpreting either a particular Interrogatory or Request for Production or a definition or

instruction, such claim shall not be utilized as a basis for refusing to answer. Instead, You shall set forth as part of the answer the language deemed to be ambiguous and the interpretation utilized in the response to the Interrogatory or Request for Production.

J. In the event an election is made to offer and produce business records for examination in response to any of these Interrogatories or Requests for Production of Documents:

1. Identify such records in Your answer to each of the interrogatories to which such an election is made;
2. Specify the time and location at which such records will be available for inspection and copying; and
3. At the time and location of the production of such records, segregate, according to each of the interrogatories to which such an election is made, the specific records which are offered in response to each such interrogatory.

K. In answering each interrogatory:

1. Identify each document relied upon or which forms a basis of the answer given or which corroborates the answer given or the substance of what is given in answer to these interrogatories;
2. State whether the information furnished is within the personal knowledge of the person answering, and, if not, the identity, if known, of each person to whom the information is a matter of personal knowledge; and
3. Identify each person who assisted or participated in preparing and supplying any of the information given in answer to or relied upon in preparing answers to these interrogatories.

L. Documents responsive **to each Interrogatory or request for** production shall be identified and produced by reference to the Interrogatory or Request for Production number to which they are responsive.

M. Each Request for Production of documents contained herein extends to all documents in Your possession, custody or control, or the possession, custody or control of anyone acting on your behalf, including counsel, representatives, agents, servants, employees, investigators or consultants. A document is to be deemed in Your possession, custody, or control (a) if it is in Your physical custody or (b) if it is in the physical custody of any other person and You (i) own such document in whole or in part and You, (ii) have a right, by contract, statute or otherwise, to use, inspect, examine or copy such document on any terms or, (iii) have an understanding, expressed or implied, that you may use, inspect, examine or copy such document when you seek to do so.

N. If any document requested to be produced was, but is no longer in your possession or control or is no longer in existence, state whether it is: (a) missing or lost; (b) destroyed; (c) transferred voluntarily or involuntarily to others, and if so to whom; or (d) otherwise disposed of. In each instance explain the circumstances surrounding the authorization for such disposition (including the name, title and address of the person who directed such disposition) and state the approximate date thereof.

0. This request includes all documents generated after December 2, 1996 and shall be deemed to be continuing in nature so as to require production of all documents created or obtained by you up to the trial of this matter.

**DEFENDANTS' FIRST REQUEST FOR ADMISSIONS**

Pursuant to FMC Rules of Practice and Procedure Rule 207, Complainant International Shipping Agency, Inc. requests Respondent Puerto Rico Port Authority, within thirty (30) days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility, which may be interposed at trial.

**REQUEST FOR ADMISSION NO. 1:**

Admit that Intership procured all Permitting Services required by Article VII(A)(l) of the Piers M/N/O Agreement.

**REQUEST FOR ADMISSION NO. 2:**

Admit that Intership procured all Design Services required by Article VII(A)(l) of the Piers M/N/O Agreement.

**REQUEST FOR ADMISSION NO. 3:**

Admit that Misener tendered, and the PRPA accepted substantial completion of Piers ½ N & O in August of 1999.

**REQUEST FOR ADMISSION NO. 4:**

Admit that in September 1999, the pavement of the Piers ½ N & 0 started to settle to such an extent that the piers were required to be repaved.

**REQUEST FOR ADMISSION NO. 5:**

Admit that by the end of April 2000, a section of the sheet piling of Piers ½ N & 0 came apart, causing Intership to lose the use of said berths.

**REQUEST FOR ADMISSION NO. 6:**

Admit that in December 2001, a piece of Pier 0 fell into the water.

**REQUEST FOR ADMISSION NO. 7:**

Admit that after December 2001, the pavement of Piers ½ N & 0 continued to subside and the condition of the piers continued to deteriorate.

**REQUEST FOR ADMISSION NO. 8:**

Admit that the insufficient dredging at Piers ½ N & 0 performed by Redondo, and the subsequent deposit of rock material on the bottom of the berths, contributed to the failure of Piers ½ N & 0.

**REQUEST FOR ADMISSION NO. 9:**

Admit that the two Gantry Cranes purchased by Intership arrived in Puerto Rico on or about July 20, 2002.

**REQUEST FOR ADMISSION NO. 10:**

Admit that Intership gave PRPA advance notice of the arrival of the Gantry Cranes and of the importance of completing Piers ½ N & 0 in time for their arrival.

**REQUEST FOR ADMISSION NO. 11:**

Admit that PRPA promised to complete the repairs to Piers ½ N & 0 in time for the delivery of the Gantry Cranes.

**REQUEST FOR ADMISSION NO. 12:**

Admit that on July 20, 2002, Piers ½ N & 0 were not repaired and were not ready to receive, install and commission the Gantry Cranes.

**REQUEST FOR ADMISSION NO. 13:**

Admit that the two Gantry Cranes could not be commissioned until October 2003.

**REQUEST FOR ADMISSION NO. 14:**

Admit that the PRPA has failed to fully repair Piers ½ N & 0 as of the date of the Complaint.

**REQUEST FOR ADMISSION NO. 15:**

Admit that Intership has been unable to use the Gantry Cranes as of the date of the Complaint.

**REQUEST FOR ADMISSION NO. 16:**

Admit that the PRPA advised Intership in late April 2003 that the PRPA could not say when Piers ½ N & 0 would be repaired.

**REQUEST FOR ADMISSION NO. 17:**

Admit that during the construction and attempts by PRPA to repair Piers ½ N & O, the PRPA failed on several occasions to provide Guaranteed Berthing to Intership at Piers H, J, K, and L.

**REQUEST FOR ADMISSION NO. 18:**

Admit that during the construction and attempts by PRPA to repair Piers ½ N & O, NPR repeatedly stored containers and chassis on the platform of Pier L in violation of the PRPA's Preferential Area Use and Cleaning Standards.

**REQUEST FOR ADMISSION NO. 19:**

Admit that during the construction and attempts by PRPA to repair Piers ½ N & O, NPR repeatedly repaired cranes on the platform of Pier L in violation of the PRPA's Preferential Area Use and Cleaning Standards.

**REQUEST FOR ADMISSION NO. 20:**

Admit that during the construction and attempts by PRPA to repair Piers ½ N & O, the PRPA did not enforce the Preferential Area Use and Cleaning Standards, blocking Intership from exercising its second preference rights to Pier L under the Piers M/N/ O Agreement.

**REQUEST FOR ADMISSION NO. 21:**

Admit that PRPA did not charge demurrage to NPR for containers and chassis left on the Pier L platform.

**REQUEST FOR ADMISSION NO. 22:**

Admit that during the construction and attempts by PRPA to repair Piers ½ N & O, the PRPA failed to prevent interference by NPR with Intership's second preference rights to Pier L.

**REQUEST FOR ADMISSION NO. 23:**

Admit that during the construction and attempts by PRPA to repair Piers ½ N & O, the PRPA failed to prevent interference by other users of Pier L with Intership's second preference rights to Pier L.

**REQUEST FOR ADMISSION NO. 24:**

Admit that Occupied Exclusive Area ME-3 has not been delivered to Intership pursuant to the Piers M/N/O Agreement.

**REQUEST FOR ADMISSION NO. 25:**

Admit that Occupied Exclusive Area NE-5 has not been delivered to Intership pursuant to the Piers M/N/O Agreement.

**REQUEST FOR ADMISSION NO. 26:**

Admit that Occupied Exclusive Area LE-8 has not been fully delivered to Intership pursuant to the Piers M/N/O Agreement.

**REQUEST FOR ADMISSION NO. 27:**

Admit that the PRPA has conveyed less than 42 cuerdas to Intership pursuant to the Piers M/N/O Agreement.

**REQUEST FOR ADMISSION NO. 28:**

Admit that the PRPA has not provided comparable marine terminal exclusive operations areas at the Puerto Nuevo Marine Terminal Areas as

required by the Piers M/N/O Agreement to make up for the PRPA's failure to deliver all of the Occupied Exclusive Area to Intership.

**REQUEST FOR ADMISSION NO. 29:**

Admit that the PRPA has not complied with all of the conditions set forth in Article VIII (B) of the Piers M/N/O Agreement.

**REQUEST FOR ADMISSION NO. 30:**

Admit that in May 2000, the PRPA tore down the doors of the Pier 11 warehouse building where Intership had its primary offices and interrupted water service.

**REQUEST FOR ADMISSION NO. 31:**

Admit that the PRPA has not complied with all of the conditions set forth in Article VIII (A) of the Piers M/N/O Agreement

**REQUEST FOR ADMISSION NO. 32:**

Admit that until the end of 2002, the PRPA repeatedly refused to assign to Intership the Pan American Dock at Isla Grande for the berthing of Intership's car carriers.

**REQUEST FOR ADMISSION NO. 33:**

Admit that the PRPA permitted removal of components of the electrical system at Isla Grande, forcing Intership to operate at Isla Grande with its own diesel generators.

**REQUEST FOR ADMISSION NO. 34:**

Admit that the PRPA transferred or intends to transfer 15 cuerdas of the backlands of Pier G to carrier Horizon Lines without a public procurement.

**REQUEST FOR ADMISSION NO. 35:**

Admit that the PRPA has paid or intends to pay for certain demolition and environmental clean-up so as to allow Horizon to use the backlands of Pier G.

**REQUEST FOR ADMISSION NO. 36:**

Admit that the PRPA refuses to lease Pier L and the backlands of Pier L to Intership without a public procurement for such facilities.

**FIRST SET OF INTERROGATORIES TO RESPONDENT**

Pursuant to FMC Rules of Practice and Procedure Rule 205, Complainant International Shipping Agency, Inc. by and through its undersigned counsel, hereby requires Respondent Puerto Rico Ports Authority to answer fully and separately in writing, under oath, the following interrogatories within thirty (30) days after the date of service.

**INTERROGATORY NO. 1:**

For each request in Complainant's First Requests for Admissions which is denied, denied in part or qualified:

(a) set forth in detail all of the reasons why the PRPA denies the request, denies the request in part, or has qualified its answer; and

(b) identify all documents which support the PRPA's denial of the request, denial of the request in part, or qualification of the PRPA's answer.

**INTERROGATORY NO. 2:**

For each request or part of each request in Complainant's First Request for Admissions to which the PRPA states it cannot truthfully admit or deny the request:

(a) set forth in detail all reasons why the PRPA cannot truthfully admit or deny the request; and

(b) describe in detail the inquiry the PRPA has made to enable the PRPA to admit or deny the request.

**INTERROGATORY NO. 3:**

Identify all persons whom You know, or have any reason to believe, have knowledge of any facts relevant to the issues in this proceeding, and provide each Person's name, home address and telephone number, business address and telephone number, their association with the PRPA, their job title and a general description of the facts known by each such person.

**INTERROGATORY NO. 4:**

For each expert witness You expect to call to testify on Your behalf in the trial of this case, state:

- (a) the expert's name;
- (b) the expert's address and telephone number;
- (c) the subject matter on which the expert is expected to testify;
- (d) the substance of the facts and opinions regarding which the expert is expected to testify and the grounds for each such opinion; and
- (e) the identity of all consulting experts whose opinions, beliefs, or theories form the basis, in whole or in part, for the testifying expert's opinion or will otherwise be relied upon by the testifying expert.

**FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to FMC Rules of Practice and Procedure Rule 206, Complainant International Shipping Agency, Inc. by and through its undersigned counsel requests that Respondent Puerto Rico Ports Authority produce the following documents for inspection and copying within thirty (30) days of service of this Request at the office of Sher & Blackwell, LLP, Suite 900, 1850 M Street, N.W., Washington, D.C. 20036.

**DOCUMENT REQUEST NO. 1:**

To the extent not previously produced, all document relied upon or identified in denying, denying in part, or qualifying any of Complainant's First Requests for Admissions or in stating that You cannot truthfully admit or deny the request.

**DOCUMENT REQUEST NO. 2:**

Produce all reports, summaries, or other documents prepared, reviewed, relied upon, or which may be reviewed or relied upon, by an expert whom You expect to call to testify in this case.

**DOCUMENT REQUEST NO. 3:**

Produce the resume of any person You may call as an expert witness at a deposition or in the trial of this matter.

**DOCUMENT REQUEST NO. 4:**

Produce all documents concerning any fee arrangements, agreements for compensation or bills and invoices concerning any person You may call as an expert witness .at a deposition or in the trial of this matter.

**DOCUMENT REQUEST NO. 5:**

Produce the minutes of all the meetings of the Joint Management Committee since its creation.

**DOCUMENT REQUEST NO. 6:**

Produce all documents related to the PRPA's efforts to vacate or evict the Occupied Exclusive Areas, including the complete pleading files of all eviction actions pursued by the PRPA before the Courts of the Commonwealth of Puerto Rico.

**DOCUMENT REQUEST NO. 7:**

Produce the arbitral award which was the subject of Puerto Rico Ports Authority v. Misener Marine Construction Inc., No. Civ. 02-1401

(HL) (D.P.R. Nov. 18, 2002) (2002 WL 31641071) and all documents submitted to the arbitrator(s) by the PRPA and Misener, including without limitation, depositions and other discovery documents.

**DOCUMENT REQUEST NO. 8:**

Produce all documents generated by and among the PRPA, Misener, Yanez & Mayo<sup>1</sup> and any other consultants regarding the construction of Piers ½ N & O.

**DOCUMENT REQUEST NO. 9:**

Produce all documents generated by and among the PRPA, Misener, J.O.G. Engineering, Del Valle Group, USR Dames & Moore Lebron LLP, Dr. Leondro Rodriguez, and any other consultants for the PRPA as to the cause of the structural failure of Piers ½ N & O, the needed repairs, and the PRPA's efforts to repair the same.

**DOCUMENT REQUEST NO. 10:**

To the extent not previously produced, produce all the documents relating to the dredging, construction, and repair of Piers ½ N & O.

**DOCUMENT REQUEST NO. 11:**

Produce all documents which support the payment of the amounts set forth opposite each of the following recipients from funds financed by the GDB:

Autoridad de Energia Electricia	\$50,000.00
CMC Construction Group	\$1,538,468.77
Diego Loinaz	\$28,931.09
Intership	\$265,155.00
Jose A. Quinonez	\$256,851.12
Jose Espinal	\$446,649.92

Misener Marine	\$17,317,782.22
Intership	\$1,033,835.00
Redondo Construction	\$3,729,946.50
Yanez & Mayo1	\$307,040.00
Yanez & Mayo1	\$14,980.00

**DOCUMENT REQUEST NO. 12:**

Produce all documents related to Intership's request and negotiations for the lease of Pier L and its backlands.

**DOCUMENT REQUEST NO. 13:**

Produce all documents related to other parties' request for the lease of Pier L and its backlands.

**DOCUMENT REQUEST NO. 14:**

Produce all minutes of meetings of the Board of Directors of the PRPA for the period 1996-2003 in which any issues regarding Intership and the Piers M/N/O Agreement have been discussed.

**DOCUMENT REQUEST NO. 15:**

Produce all minutes of meetings of the Board of Directors of the PRPA for the period 2000-2003 in which Intership's request and negotiations with PRPA for the lease of Piers L and its backlands have been discussed.

**DOCUMENT REQUEST NO. 16:**

Produce all minutes of meetings of the Board of Directors of the PRPA for the period 2000-2003 in which other parties' requests for the lease of Piers L and its backlands have been discussed.

**DOCUMENT REQUEST NO. 17:**

Produce all minutes of meetings between PRPA and the Land Committee of the Puerto Rico Shipping Association relating to the re-allotment or reconfiguration of the Puerto Nuevo Port Zone.

**DOCUMENT REQUEST NO. 18:**

Produce all the plans, master plans and drawings in your possession regarding the Port of San Juan.

**DOCUMENT REQUEST NO. 19:**

Produce all documents in your possession regarding the bankruptcy of Holt, NPR, Inc. and their affiliates and subsidiaries.

**DOCUMENT REQUEST NO. 20:**

Produce all documents in your possession regarding the acquisition by Sea Star Line Inc. of certain assets of NPR, Inc. in the bankruptcy of Holt, NPR, Inc. and their affiliates and subsidiaries.

**DOCUMENT REQUEST NO. 21:**

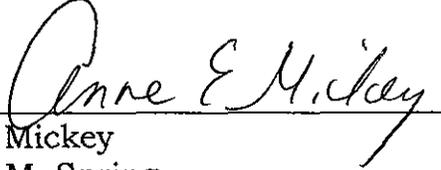
Produce all documents in your possession regarding the negotiations and agreements between the PRPA and Sea Star Line LLC regarding the return by Sea Star to PRPA of piers or backlands or any parts thereof acquired by Sea Star in the bankruptcy of Holt, NPR, Inc. and their affiliates and subsidiaries.

**DOCUMENT REQUEST NO. 22:**

Produce all documents in your possession regarding communications of the PRPA with the FMC Bureau of Enforcement or

with users, lessees or other parties interested in the re-allotment of the Puerto Nuevo Port Zone.

Respectfully submitted,

By:   
Anne E. Mickey  
Heather M. Spring  
Donald J. Kassilke  
SHER & BLACKWELL, LLP  
1850 M Street, N.W., Suite 900  
Washington, D. C. 20036  
Tel. (202) 463-2500  
Fax (202) 463-4950/4840

Attorneys for International  
Shipping Agency, Inc.

Of Counsel:

JOSE E. ALFARO-DELGADO  
Condado Astor Building.  
# 10 18 Ashford Avenue, Suite 2 15  
San Juan, PR 009037-1 137  
Tel. (787) 722-8812  
Fax (787) 722-8889

December 23, 2003