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BEFORE THE
FEDERAL MARITIME COMMISSION

04 APR 21 PM 4: 39

FEDERAL MARITIME COMMISSION

SAN ANTONIO MARITIME CORP.,)
)
 Complainant, and)
)
 ANTILLES CEMENT CORP.,)
)
 Complainant,)
)
 v.)
)
 PUERTO RICO PORTS AUTHORITY,)
)
 Respondent.)

RECEIVED PAYMENT
Federal Maritime
Commission

Date 4/22/04 #11398
Per. left 209^{ca}

FMC Docket No. 04- 06

COMPLAINT



I. Complainant

Complainant San Antonio Maritime Corporation ("SAM"), was incorporated June 19, 1996, under the laws of the Commonwealth of Puerto Rico. It is engaged in the development of lands and dock facilities and the administration of vessels and berthing facilities. SAM's operations and facilities are dedicated to the receiving, handling, storing, packing and distribution of cement and related materials. Since its inception, SAM has operated in facilities in the Port of San Juan, Puerto Rico. SAM's address is P.O. Box 192261, San Juan, Puerto Rico, 00919.

Complainant Antilles Cement Corporation ("ACC") was incorporated June 19, 1996, under the laws of the Commonwealth of Puerto Rico. Its primary business is the import of bulk cement and related materials, and the packing, distribution and sale of such cement

and related materials in Puerto Rico. ACC is the principal user and customer of SAM's facility. ACC's address is P.O. Box 192261, San Juan, Puerto Rico, 00919.

II. Respondent

Respondent Puerto Rico Ports Authority ("PRPA"), P.O. Box 362829, San Juan, PR 00936, is a public corporation of the Commonwealth of Puerto Rico. The PRPA is a marine terminal operator which owns and furnishes wharfage, dock, warehouse, and other marine terminal facilities at the Port of San Juan, in connection with common carriers engaged in U.S. domestic and foreign commerce.

III. Jurisdiction

This action is brought pursuant to Section 11 of the Shipping Act, 46 U.S.C. App. 1710. PRPA is a marine terminal operator within the meaning of Section 3(14) of the Shipping Act of 1984, 46 U.S.C. App. § 1702(14). SAM asks that the Commission award reparations for injuries caused by the PRPA's violations of sections 10(d)(1), 10(d)(3) and 10(d)(4) of the Shipping Act, and that the Commission order PRPA to cease and desist from future violations thereof.

IV. Facts

A. Background

1. Throughout SAM's tenure in the Port of San Juan, the PRPA has followed a pattern of: providing unfit, unusable and decrepit facilities for SAM's use; requiring SAM to invest millions of dollars in improvements in such facilities just so SAM can keep its business operating; unreasonably seeking to eject SAM from such improved facilities; and imposing

a broad range of unfair restrictions, charges, and discriminatory practices that gravely interfere with the continued business operations of SAM and ACC.

2. More broadly, since SAM and ACC commenced operations, Puerto Rican authorities have taken a broad range of actions to obstruct and impede their business operations, and otherwise erect various unfair trade barriers to the importation of foreign cement by sea, in a concerted effort to protect domestic Puerto Rican cement producers from foreign competition.

B. Puerta de Tierra Facility

1. When SAM commenced operations in 1996, it made use of the facilities at Pier 12 in the section of the Port of San Juan known as Puerta de Tierra, through a verbal agreement with Transcaribbean Maritime Corporation (“TMC”), which at that time held a lease for those facilities from the PRPA. SAM paid TMC a total of \$8,753.38 monthly for the use of that facility, which included Pier 12, its open area and the extension of the pier.

2. In 1997, SAM requested PRPA to formally assign the contract of these facilities SAM. PRPA agreed, but never carried out the required steps. Nonetheless, SAM continued using the facilities and in 1998, with PRPA’s consent, SAM began to pay PRPA directly for the lease of the pier.

3. Pier 12 and Pier 12-extension had a capacity to receive and serve ships with drafts of up to 30 feet and as long as 600 feet. However, these facilities were run down, inadequate, and in urgent need of repair.

4. In 1996, PRPA requested that San Antonio make all of Pier 12’s facilities fully operational. Accordingly, in 1996-97, SAM had no choice but to carry out enormously

expensive repairs and improvements to the Pier 12 facility in order to make it operational. PRPA requested repairs to the Pier 12's warehouse roof, repairs to the buildings' interior concrete floors which had collapsed, infrastructure repairs to the electrical stations, utilities, dock and apron facilities, and general cleanup of the area. After obtaining the required permits from the PRPA and relevant government agencies, San Antonio carried out and paid for the following necessary repairs, at a cost of in excess of \$1,000,000: reconditioning of open areas and repaving Pier 12; structural repairs to the warehouse, which was 75% unusable: repairs to the roofs of the existing sheds; electrical repairs through out the entire infrastructure; installation of a new electrical sub-station; necessary repairs to the existent office facilities, including water and telephone utilities for the area; repairs to the pier's entrance gates; repairs to the pier's aprons: installation of mooring bits; installation of lighting for the docking area and apron; reinforcement of the warehouse walls; and removal of trash, scrap and debris.

5. After Hurricane Georges struck Puerto Rico in September 1998, SAM made additional costly repairs, totaling approximately \$500,000, under the understanding that PRPA would seek recovery of these damages from its insurer. However PRPA never assisted SAM in making these repairs or other improvements, nor did PRPA or its insurer reimburse SAM any amount for them, even though they were essential for the pier to operate. Instead, in 1998 PRPA increased the facility's rent, based on SAM's improvements.

6. In contrast, other tenants have been provided terminal facilities without being forced to make substantial and extraordinary repairs and improvements to make such facilities

minimally functional. Similarly, other tenants have not been charged additional rent for making improvements on facilities to bring them up to a functioning level.

C. Port of Yabucoa Project

1. In 1998, SAM proposed to PRPA the possibility of developing a new, large-scale facility for long term use. Accordingly, SAM it submitted a proposal to PRPA to lease certain undeveloped lands at the Port of Yabucoa and to construct there importation facilities. On the 16th of July, 1997, the Board of Directors of the Ports Authority issued a resolution in which it authorized its Executive Director to begin the negotiations of a contract with the company Port of Yabucoa, Inc., of which SAM is a partner, for the leasing of facilities at the Port of Yabucoa.

2. Numerous meetings were held between both parties, with continued assurances by the PRPA that a contract for the development of the Yabucoa land would be awarded to SAM. At PRPA's encouragement, SAM engaged in extensive planning any analysis for the Yabucoa facility, incurring expenses of approximately \$300,000.

3. Negotiations for the Yabucoa project lasted for approximately three years, in accordance with the economic terms outlined by the PRPA Board of Directors. However, in 2001, new political leadership in PRPA unilaterally and arbitrarily announced a substantial change in the economic terms of the project, effectively bringing negotiations for the facility to an end.

D. Forced Relocation to Isla Grande

1. Notwithstanding the sizable investment that SAM had just made in its Pier 12 facility with PRPA's approval and direction, in October 1999, the PRPA demanded that SAM

evacuate that facility in 30 days. PRPA stated rationale for this abrupt and expedited relocation was an upcoming 1 O-day sailboat festival called “Regatta 2000,” and a planned “Triangulo Dorado” tourism and cruise ship development project. The decision to eject SAM placed its business and commercial viability at grave risk.

2. PRPA directed SAM to relocate its operations to a vacant lot of five cuerdas (1 cuerda = 0.97 acre) at the Isla Grande terminal, which had been used for the shipment and storage of scrap. PRPA sent Mr. Victor González, President of SAM, a draft lease for the Isla Grande facility. Clause three of the draft provided that the lease would last “until operations are completely relocated in Yabucoa.” Given the urgency of the PRPA’s demands, SAM had no choice but to consent to utilize the facilities at Isla Grande as a temporary basis, as its only alternative was to shut its business, and that of ACC.

3. On the 22nd of October of 1999, SAM and PRPA executed two contracts. The first was a short term lease (contract number 99-00-(4)-034) for the lease of Pier 12, with a stated expiry date of less than two months. The second was number 99-00-(4)-035, a lease for three years of a parcel of five cuerdas at Isla Grande. This lease included a relocation clause, granting PRPA the right to unilaterally direct SAM to move again to other facilities, wholly at SAM’s expense.

4. In contrast to SAM’s experience, other tenants in PRPA facilities have not been required to undertake such sudden, extensive, and costly relocations without adequate prior notice or subsequent compensation.

5. Some time after the costly, difficult, and disruptive relocation of almost all of SAM’s operations, SAM become aware that PRPA lacked any real or valid transportation-related

basis for forcing SAM to relocate out of Pier 12 to Isla Grande with virtually no advance notice or compensation. The “Triangulo Dorado” development project-on which PRPA premised SAM’s urgent relocation – has failed to materialize.

6. SAM now has relocated virtually all of its cargo handling operations to Isla Grande. However, because of the inadequate size and condition of the Isla Grande facility (as described more fully below) SAM has no choice but to continue to utilize and pay for part of the Pier 12 facility for some storage operations. PRPA continues to penalize SAM for such operations and seek to eject SAM from Pier 12, without negotiating to provide any workable or adequate alternative for SAM or its customers.

E. Unfit Condition of Isla Grande Facilities

1. At the time it directed SAM to relocate to Isla Grande, the PRPA was aware that the dock and accompanying land at Isla Grande was in an unusable and badly decrepit state. SAM repeatedly notified PRPA that the Isla Grande parcel lacked cargo facilities, lacked adequate draft, was littered (both on the ground and on the sea floor) with tons of scrap metal and other debris. In addition, PRPA was still using part of the terrain to store debris, vehicles, and scrap metal, the area was not fenced, and the seawall and apron were severely deteriorated and in urgent need of repairs.

2. SAM again notified PRPA on October 26, 1999, of serious problem with the draft of the pier to which SAM had been relocated. The depth was only approximately 20 feet next to the dock, 24 feet on the other side, and from 26 to 27 feet throughout the rest of the dock, whereas the vessels that SAM had berthed at the Puerta de Tierra pier required a draft of not less than 30 feet.

3. On the 1st of November of 1999, SAM sent another letter to PRPA, remitting the first payment on the contract and seeking remediation of severe problems impeding the terminal's operations. Among other things, part of the property leased from PRPA was being used to store scrap and it was necessary to remove it in order to be able to erect a fence and use the leased property in its entirety. In addition, the draft of the berth was seriously affected by the scrap that had fallen into the sea.

4. While PRPA approved SAM's plans for the site, PRPA did not respond to, address, or take any steps to correct the severe problems faced by the Isla Grande terminal. Faced with the inaction of PRPA, SAM was forced to obtain all the permits to remove the scrap debris from the sea floor and carry out this work. SAM also was forced to repair the berth and build loading facilities, incurring in expenses of over ten million dollars (\$1 0,000,000). Even after such work was undertaken by SAM, PRPA still failed, despite assurances to the contrary, to clean up scrap from the terminal or remove the debris from the sea floor which SAM had paid to bring to the surface and place on the apron for disposal by PRPA.

5. While PRPA recently has made some initial and sporadic efforts to clean up this debris, much of it remains, where it continues to present an obstacle to operations and an ongoing safety hazard.

F. PRPA Failure to Provide Urgently Needed Promised Dredging

1. As noted above, SAM repeatedly pointed out that the draft at the berth at Isla Grande was inadequate for deep-draft bulk cargo vessel operations. PRPA provided SAM repeatedly with assurances that the situation would be addressed, and on November 30, 2001, PRPA and SAM entered into contract number (E-I)-AP-99-OO-(4)-035, obligating

PRPA to dredge the Isla Grande dock to a depth of 33 feet of draft. Despite these assurances by PRPA, to this day the dredging has not been carried out.

2. In contrast PRPA has had dredging contractors conduct extensive dredging at other Port of San Juan users' facilities, including immediately around and adjacent to SAM's Isla Grande. Further, PRPA has actively worked to obstruct efforts by SAM to have its dredging contractors perform dredging at SAM's terminal, even if such work would be done for SAM's account. In addition, PRPA has refused even to certify the current draft of SAM's terminals, causing SAM to face operational problems and increased risks of liability when berthing vessels at the facility.

3. The insufficiency of draft at the Isla Grande pier, which prevents the vessels that bring merchandise for SAM from docking there, has represented and represents an economic loss of approximately one million dollars per year.

G. Improper Charges for Barge Maria Cecilia

1. Because of PRPA's abrupt relocation of SAM's business to inadequate facilities and refusals to dredge and clear the berth of debris, SAM had no choice but to acquire a barge, the Maria *Cecilia*, to act as a lighter and floating storage facility. The barge, which has a draft of 24 feet, had to be used to discharge the cement from the vessels that arrive in San Juan (which, with drafts of 30+ feet, could not reach the Isla Grande dock) and take the cement across the channel to Isla Grande. In addition, it was used to store cement, as Isla Grande lacked cargo facilities. The barge cost SAM \$650,000.

2. Initially, PRPA approved the use of the barge, and indicated to SAM that no port charges would accrue for its use. Subsequently, however, PRPA has claimed from SAM

port charges for the barge, which reach almost \$1,500,000.00, despite the fact that it is precisely PRPA's non-fulfillment of its obligations that has made necessary the acquisition and use of the barge.

H. Increased Rental Charges for Facility Improvements Made By SAM

1. On September 28, 2001, the parties executed contract number AP-01-02-(4)-030, in which SAM leased the property it was occupying in Isla Grande for a term of ten years. In that agreement, PRPA raised SAM's monthly rent from \$10,416.00 to \$23,054.10, based on the additional value of the improvements made and paid for by SAM. In this lease, PRPA again reserved the right to force SAM's relocation at any time, wholly at SAM's expense.

2. As noted above, on information and belief, other tenants have not been required to pay additional rent for facilities and improvements that were performed and funded by the users.

I. Other Unwarranted Fees and Charges

1. PRPA has also continued to invoice SAM for a number of charges that are unfair and unwarranted, with no basis in PRPA's marine terminal schedule or lease agreements.

For example, for the Pier 12 Facility, PRPA continues to assess a charge on SAM of \$25 per day for SAM's own cement unloading equipment. In addition, PRPA has continued to assess rental charges for part of the Pier 12 patio, even though the section is actually the roadway from Pier 14 to Pier 11, and thus unusable by SAM.

2. Moreover, PRPA has levied on SAM penalty charges for failure to vacate Pier 12 after the passage of the nominal expiration date of its lease. However, on information and

belief, several tenant facilities in the Port of San Juan are operating, or have operated in the past, on a month to month basis after the expiration of their lease agreements without the assessment of any such penalty assessments.

3. In addition, beginning in October 2002, PRPA has sought to collect equipment demurrage charges for cement trucks involved in the unloading of cement from vessels at SAM's facility. There is no precedent or basis for assessing such charges against cement trucks.

J. PRPA's Refusal to Provide Long Term Lease In Isla Grande

1. When PRPA on September 28, 2001, executed contract number AP-01-02-(4)-030, extending SAM's lease term in Isla Grande to ten years, it continued to maintain the right to force the relocation of SAM's operations, at SAM's expense, on 30 days notice.

2. Almost two years later, on May 14, 2003, the parties executed a Supplementary Agreement, which amended contract number AP-OI-02-(4)-030 of the 28th of September of 2001, to add that PRPA agreed not to relocate SAM for a period of ten years. Because the amendment was retroactive to the 28th of September of 2001, PRPA's commitment not to relocate SAM actually was only slightly over eight years in duration.

3. SAM repeatedly has requested a 20-year lease term from PRPA. Because of the substantial investments that SAM is required to make in its facilities, SAM needs to seek capital for construction and other improvements from commercial sources. However, commercial lenders will not provide adequate or competitive financing to SAM unless SAM holds a reasonably long (i.e., 20-year) lease commitment from the port. Otherwise, lenders would face the risk that PRPA will, once again, seek to arbitrarily eject SAM from its

facilities, appropriate its improvements, and imperil SAM's business after just a short tenancy.

4. In contrast, it appears that PRPA has provided 20-year lease terms to a number of other tenants, including a similar terminal importing dry bulk building material products.

K. PRPA Refusals to Negotiate for or Provide Needed Space

1. SAM repeatedly has requested that PRPA provide a lease to an additional 2.5 additional cuerdas of space at the Isla Grande dock, because of the inadequate size and condition of the Isla Grande facility. With this additional space, SAM would expand its operations, making substantial investment and improvements in the additional acreage. However, PRPA has flatly refused to negotiate or deal with SAM for this purpose.

2. Rather than negotiate to provide SAM with the needed space to conduct its operations, PRPA has unilaterally sought to evict SAM from the section of Pier 12 that SAM is forced to continue using for storage, due to the inadequacy of the Isla Grande facility. If PRPA succeeds in evicting SAM from Pier 12 and fails to provide adequate space in Isla Grande, SAM and ACC will suffer significant economic hardship and loss of business.

L. PRPA's Refusal to Provide Preferential Berthing Riughts

1. As noted above, SAM was forced to incur substantial expenses to repair the dock in front of its facility, including repairing the apron and seawall, installing lights and mooring bitts, and cleaning metal scrap from sea floor. Notwithstanding this investment, PRPA has refused to provide SAM preferential berthing rights at that pier. As a result, SAM's vessels

face hours or days of delay as scrap metal operators and other users line up vessels to take advantage of the berth improved by SAM.

2. In contrast, PRPA has provided first and second preference berthing rights to numerous other tenants, even when those tenants have invested far less than SAM in repair and maintenance of their berths.

3. The denial of preferential berthing rights results in additional costs and expenses of approximately \$100,000 per year.

M. Unfair and Arbitrary Disapprovals of Facilities and Structures

1. PRPA has arbitrarily objected to or refused permission for various cement-handling structures in SAM's facility, with the effect of increasing SAM's costs and threatening its operations altogether.

2. In 1999, during SAM's forced relocation to Isla Grande, SAM presented PRPA with plans to build a large dome-shaped building in which SAM could store cement. Such dome shaped structure are far better suited, structurally, for the storage of bulk cement, and are thus far more efficient and cost-effective than ordinary rectangular warehouses. However, PRPA informed SAM representatives that a dome-shaped building would violate PRPA's rules or policies, and that SAM was required to build a traditional rectangular shed on the site, which SAM did. The inability to construct a dome-shaped building has caused SAM to incur significant additional costs on an ongoing basis.

3. Very shortly after informing SAM that it could not construct a dome-shaped building, PRPA permitted another tenant to build a dome-shaped building for the storage of dry bulk construction material.

4. Also, in February 2004, PRPA notified SAM that it lacked regulatory approval for a silo in SAM's facility, and demanded that the silo be shut down. PRPA took this unusual step despite the fact that PRPA had approved the plans for the site and has long been aware of what buildings and facilities are there. Such a shutdown of a silo would appear to be unprecedented, and would have a severely negative impact on Complainants' business operations.

N. Excessive Wharfage Charges for Bulk Cement

1. In the current PRPA published rate schedule, there is no **wharfage** rate available for "Bulk Cement and Aggregates," or even for "Dry Bulk Cargo N.O.S." As a result, SAM has no choice but to pay **wharfage** charges at PRPA's high General Cargo or Cargo N.O.S. rate. Given the high weight and low value of cement shipments, the imposition of the General Cargo or Cargo N.O.S. **wharfage** charges for such ships results in excessive costs.

2. In contrast, other bulk commodities that move through the port have **wharfage** rates assessed by PRPA at rates significantly lower than the General Cargo or Cargo N.O.S. rate of \$1.1796 per ton. For example, the charge for molasses is \$0.2563 per ton, and the charge for Liquid Cargo (including petroleum) in bulk is \$ 0.0178 per barrel (or approximately \$0.12 per ton).

3. There is no valid transportation-related reason to treat cement differently from other bulk commodities handled in the port. The cement that SAM handles is unloaded using pipes, similar to liquid cargo such as liquid sugar and molasses, and conveyed to

specialized storage areas (constructed by SAM) nearby, away from the wharf, on land leased by SAM.

V. Violations of the Shipping Act of 1984

The actions of the PRPA as described in sections IV.A-N of this Complaint constitute violations of section 10 of the Shipping Act of 1984, 46 App. U.S.C. 1709, including: unjust, unreasonable, and unlawful practices in violation of section 10(d)(1), unreasonable refusals to deal or negotiate in violation of sections 10(d)(3) and 10(b)(10), and imposition of undue or unreasonable prejudices or disadvantages in violation of Section 10(d)(4) of the 1984 Act. Such violations by PRPA include, but are not limited to:

1. Unreasonably seeking to eject SAM from its Pier 12 facility, immediately after requiring that SAM perform extensive repairs and rehabilitation of the facility to make it operational;
2. Unreasonably forcing SAM to relocate the bulk of its operations from Pier 12 to Isla Grande with grossly inadequate notice and no compensation;
3. Unreasonably forcing SAM to relocate its operations to a badly run-down, damaged, debris-strewn and inoperable site, and requiring the SAM fund and execute all improvements itself to make the facility operational;
4. Unreasonably charging rent on SAM-funded and -constructed buildings and improvements, and increasing rent on leased facilities as a result of SAM making them operational.
5. Unreasonably refusing to perform necessary and promised dredging of the berth in front of SAM's facility;

6. Unreasonably assessing harbor fees on the Maria Cecilia, even though it was PRPA's unreasonable practices, neglect and misfeasance that caused SAM to have to use the barge as an emergency measure;
7. Unreasonably and unilaterally terminating negotiations for the Port of Yabucoa project, after inducing SAM to substantial sums on planning for the site;
8. Unreasonably imposing baseless charges on SAM for demurrage on cement trucks;
9. Unreasonably overcharging SAM rent payments for Pier 12;
10. Unreasonably assessing against SAM "penalty" charges for failure to leave Pier 12.
11. Unreasonably refusing to provide a long term lease similar to that enjoyed by similar port users;
12. Unreasonably refusing to negotiate or deal to provide adequate space for SAM's operations in Isla Grande.
13. Unreasonably refusing to negotiate for or provide preferential berthing rights at Isla Grande;
14. Unreasonably refusing SAM permission to construct an efficient dome-shaped storage facility;
15. Unreasonably seeking to halt the operation of the existing cement silo in SAM's Isla Grande facility;
16. Unreasonably refusing to develop a reasonable wharfage charge for bulk cement in its marine terminal schedule.

VI. PRAYER FOR RELIEF

As a direct result of the violations of the 1984 Act by the PRPA, Complainants have suffered, and will continue to suffer, substantial ongoing economic damages and injury, valued at not less than \$20 million. Accordingly, Complainants respectfully request that PRPA be required to answer the charges in this Complaint, and that after due investigation and hearing PRPA be ordered to: cease and desist from the above-described violations of the 1984 Act; establish and put in force such practices as the Commission determines to be lawful and reasonable; pay Complainants reparations for violations of the 1984 Act plus interest, costs, and attorney's fees, and any other damages to be determined; and take any other such action or provide any other such relief as the Commission determines to be warranted under the circumstances.

VII. ALTERNATIVE DISPUTE RESOLUTION

The Commission's informal dispute resolution procedures have not been used prior to the filing of the complaint. Counsel for the Complainants has had preliminary consultations with the Commission's Dispute Resolution Specialist regarding the availability of alternative dispute resolution (ADR) under the Commission's ADR program. 46 CFR § 502.62(e).

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Dated: April 21, 2004

BY 

Matthew J. Thomas
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Suite 1200
Washington, DC 20006
(202) 775-0725
(202) 223-8604 (fax)

Counsel for San Antonio Maritime
Corporation and Antilles Cement
Corporation

Verification

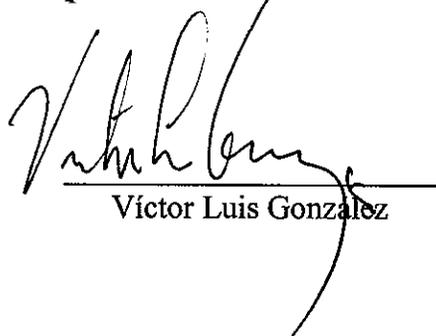
Affidavit No. 2972

Commonwealth of Puerto Rico

City of San Juan

NOW COMES, Victor Luis Gonzalez, of legal age, married, executive and a resident of San Juan, P.R. who upon being duly sworn, deposes as follows:

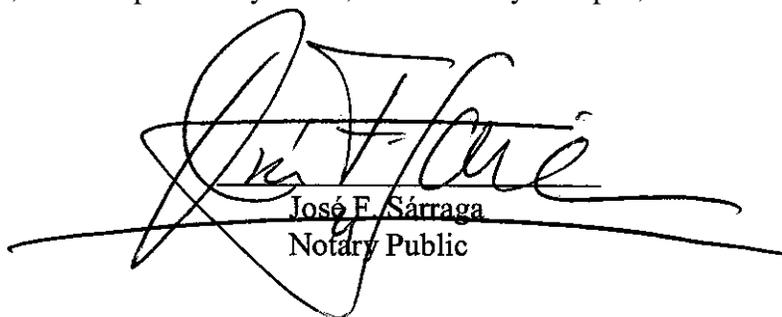
1. That my personal circumstances and residency are set forth above.
2. That I am President of San Antonio Maritime Corp. and Antilles Cement Corp., have read the attached complaint, and believe the complaint and the facts stated therein to be true.



Víctor Luis González

Subscribed and sworn to before me by Victor Luis Gonzalez, of the personal circumstances and residency set forth above, whom I personally know, this 20th day of April, 2004, at San Juan, Puerto Rico.

[Seal]

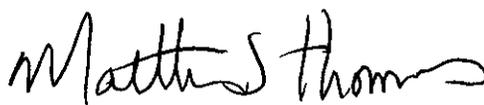


José F. Sárraga
Notary Public

My Commission is permanent.

CERTIFICATE OF SERVICE

I hereby certify that on this 21 st day of April 2004, a copy of the foregoing complaint was served via first class mail, postage prepaid, upon Respondent Puerto Rico Ports Authority, P.O. Box 362829, San Juan, PR 00936.

A handwritten signature in cursive script that reads "Matthew J. Thomas". The signature is written in black ink and is positioned above a horizontal line.

Matthew J. Thomas

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DEPT. OF THE MARITIME COMMISSION
FEDERAL MARITIME COMMISSION



FMC Docket No. 04-06

BEFORE THE
FEDERAL MARITIME COMMISSION

SAN ANTONIO MARITIME CORP.,)
)
 Complainant, and)
)
 ANTILLES CEMENT CORP.,)
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 Complainant,)
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 v.)
)
 PUERTO RICO PORTS AUTHORITY,)
)
 Respondent.)

COMPLAINANTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

DEFINITIONS AND INSTRUCTIONS

The following definitions are applicable to terms used in these requests:

A. "PRPA", "Ports Authority," "Respondent" or "the Authority" refers to Puerto Rico Ports Authority and its directors, officers, employees, counsel, agents, consultants, and representatives.

B. "Complainants" refers to San Antonio Maritime Corporation ("SAM") and Antilles Cement Corporation ("ACC").

C. As used herein, the term "document(s)" refers to written, printed, typed, or visually or aurally or electronically reproduced or archived material of any kind, and includes but is not limited to all copies (regardless of origin and whether or not including

additional writing thereon or attached thereto) of any and all letters, correspondence, recommendations, contracts, spread sheets, agreements, orders, records, minutes, reports, press releases, plans, lists, memoranda, instructions, notes, notices, confirmations, inter-office communications, electronic mail messages or notes, cables, notation or memoranda of any sort of conversations, telephone calls, meetings or other communications, summaries, messages, reviews, opinions, studies and investigations, questionnaires and surveys, and includes the original and every non-identical draft, copy or reproduction in the possession, custody or control of Respondent.

D. To “identify” a person means to state the person’s name, occupation, job title, and current business address, or if unknown, the last-known business and home address.

E. Unless it otherwise appears from the context, a request for identity of a person relates to all persons in such classification or category.

F. In construing these requests, the singular shall include the plural, and the plural shall include the singular; and the conjunctions “and” and “or” shall be read either disjunctively or conjunctively so as to bring within the scope of these requests all information that might otherwise be construed to be outside their scope.

G. With respect to any document requested below for which a claim of privilege or work product is made, indicate the nature of the document; identify by name, address, title and business affiliation, the writer, the addressee and all recipients thereof, and set forth general subject matter to which the document relates, and its date.

H. Each response shall be made based upon the respondent's entire knowledge, acquired with due diligence and available from all sources, including all information in its possession or that of its agents, representatives, or attorneys.

I. If you cannot respond to the request in full after exercising due diligence to secure the documents and things necessary to do so, please set forth your efforts to ascertain the requested documents and things and respond to the extent possible.

J. If you qualify a response in any manner, please set forth the exact nature and extent of the qualification.

K. Wherever it is reasonably possible, please produce documents in such a manner as will facilitate their identification with the particular request or requests to which they are responsive.

L. Unless otherwise specified in an individual request, these requests are not limited to any time period.

Requests

Complainants request that the following be provided:

1. All documents related to negotiations between the Ports Authority and Complainants and/or Mr. Victor **González**, or otherwise related to the leasing, use, development, or improvement of properties or facilities of the Ports Authority by the Complainants and/or Mr. Victor Gonzalez.

2. All documents relating to the PRPA consideration, discussion, and decisionmaking regarding the relocation of SAM from Pier 12 to Isla Grande.

3. All documents from January 1998 or later relating to the rehabilitation, repair, cleaning, or improvement of the Isla Grande berth and facility where SAM currently operates.

4. Any leases, contracts or other agreements between the Ports Authority and Ecológica Carmelo, Inc. and/or Empresas Carmelo and/or Bloques Carmelo, Inc. and/or Mrs. Melba Figueroa related to facilities or property owned or controlled by the Ports Authority and/or by the Government of the Commonwealth of Puerto Rico.

5. Any leases, contracts or other agreements between the Ports Authority and International Shipping Agency, Inc. related to facilities or property owned or controlled by the Ports Authority and/or by the Government of the Commonwealth of Puerto Rico.

6. Any leases, contracts or other agreements between the Ports Authority and Royal Caribbean International and/or Carnival Cruise Lines (or any affiliate or subsidiaries thereof) related to facilities or property owned or controlled by the Ports Authority and/or by the Government of the Commonwealth of Puerto Rico from January 1, 1996 to the present.

7. Any leases, contracts or other agreements between the Ports Authority and any other party for the rental or long-term use of facilities or property owned or controlled by the Ports Authority and/or by the Government of the Commonwealth of Puerto Rico for the purposes of loading, unloading, storing or discharging bulk cargo. "Bulk cargo" means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics, including but not limited to ore, coal, grains, sugar, molasses, cementitious materials, liquid cargoes, chemicals, bauxite, alumina, phosphates, crude oil, and petroleum products from January 1, 1996 to the present.

8. Any leases, contracts or other agreements that extend for a term of eight years or longer in duration between the Ports Authority and any other party, for the rental or long-term use of facilities or property owned or controlled by the Ports Authority and/or by the Government of the Commonwealth of Puerto Rico.

9. All correspondence and/or written communication of any nature between the P.R. Ports Authority and the United States Army Corps of Engineers, or any contractor thereof, related to dredging at or around Isla Grande from January 1, 1996 to the present.

10. All documents related to the consideration, planning or execution of dredging of the berths at or around the Isla Grande terminal where the facilities of the Complainants are located.

11. All documents relating to the Ports Authority decisions or actions to stop dredging activities at the Isla Grande terminal where Complainant's facilities are located.

12. All documents related to the Barge Maria Cecilia owned by SAM, or to the berthing, use, or operations of said barge, or to any PRPA policies or charges applied thereto.

13. All correspondence between the Ports Authority and Scorpion Metal Processing from January 1, 1996 to the present.

14. All leases, contracts or other agreements between the Ports Authority and Scorpion Metal Processing from January 1, 1996 to the present.

15. All documents setting forth policies, requirements or specifications for sheds or buildings constructed by tenants or users on property owned or controlled by the Ports Authority and/or by the Government of the Commonwealth of Puerto Rico.

16. All documents related to the specifications for, or the design and construction of, buildings or facilities for **Ecológica Carmelo, Inc.** and/or **Empresas Carmelo** and/or **Bloques Carmelo, Inc.** and/or **Mrs. Melba Figueroa**.

17. All documents related to the consideration, adoption, adjustment or elimination of tariff **wharfage** rates for cement or other bulk cargo from January 1996 to the present.

18. Provide the name and address of all the persons who have been members of the Board of Directors of the Ports Authority since the first of January 1996 until the present.

19. Provide the name and address of all the people who have managed the Legal Department of the Ports Authority since the first of January 1996 until the present.

20. Provide the name and address of all the people who have managed the Maritime Bureau of the Ports Authority since the first of January 1996 until the present.

21. Provide the name and address of all the people who have managed the Environmental Division of the Ports Authority since the first of January 1996 until the present.

22. Provide the name and address of all persons who have occupied the position of Executive Director of the Ports Authority since the first of January 1996 until the present.

23. Provide the name and address of all the people who have occupied the position of Sub-director (and/or Deputy Director) of the Ports Authority since the first of January 1996 until the present.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Dated: April 21, 2004

BY

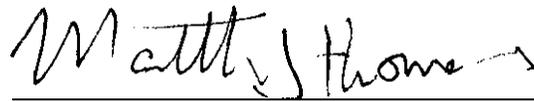
A handwritten signature in black ink, appearing to read "Matthew J. Thomas", written over a horizontal line.

Matthew J. Thomas
1801 K Street, NW
Suite 1200
Washington, DC 20006
(202) 775-0725
(202) 223-8604 (fax)

Counsel for San Antonio Maritime Corp.
and Antilles Cement Corp.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April 2004, a copy of the foregoing was served via first class mail, postage prepaid, upon Respondent Puerto Rico Ports Authority, P.O. Box 362829, San Juan, PR 00936.

A handwritten signature in black ink that reads "Matthew J. Thomas". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Matthew J. Thomas