

(S E R V E D)
(November 30, 2006)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 06-11

**R.O. WHITE & COMPANY and CERES MARINE TERMINALS INC. v. PORT OF
MIAMI TERMINAL OPERATING COMPANY, CONTINENTAL STEVEDORING &
TERMINALS, INC. et al.**

NOTICE

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by R.O. White & Company, Inc. and Ceres Marine Terminals, Inc. ("Complainants"), against the Port of Miami Terminal Operating Company, L.L.C. ("POMTOC"); Continental Stevedoring & Terminals, Inc.; Florida Stevedoring, Inc.; P&O Ports North America, Inc.; P&O Ports Florida, Inc.; Eller-Ito Stevedoring Company, L.L.C.; and Dante B. Fascell Port of Miami-Dade, aka Miami-Dade County Seaport Department ("Respondents"). Complainants assert that Ceres Marine Terminals, Inc. performs stevedoring and/or marine terminal services at numerous ports in the United States and Canada, and R.O. White & Company is a wholly owned subsidiary of Ceres who holds a permit issued by Respondent Miami-Dade County Seaport Department ("The Port") to perform stevedoring services at the Port. Complainants assert that all of the Respondents are marine terminal operators as defined in Section 3(14) of the Shipping Act of 1984 ("The Act"), 46 U.S.C. § 40102(14).

Complainants contend that Respondents have violated the Shipping Act in several ways. First, they contend that Respondents, who are parties to FMC Agreement No. 224-200616, have violated sections 5(a), 10(a)(2), and 10(a)(3) of the Act (46 U.S.C. §§ 40302(a), 41102(b)(1) and (b)(2)) by: "failing to file their actual agreements; operating pursuant to agreements that were required to be filed, but not filed; operating outside and/or contrary to the terms of their filed agreement; and collectively agreeing to refuse R.O. White permission to perform stevedoring services at POMTOC facilities." (*Complaint* at 11-12). Second, Complainants assert that POMTOC and/or its members¹ have violated sections 10(b)(10), 10(d)(1), 10(d)(3), and 10(d)(4) of the Act (46 U.S.C. §§ 41104(10), 41102(c), 41106(3) and 41106(2)) by: using POTMOC as a device to exclude competition for stevedoring services; precluding ocean common carriers from using R.O. White as their stevedore; refusing to allow R.O. White to use its Port-granted license to perform stevedoring services at POTMOC; requiring common carriers to use only POTMOC members for stevedoring services; and "denying R.O. White access to POTMOC while allowing access to other entities for the same or similar purposes." (*Complaint* at 12). Third, Complainants assert that the Port violated sections 10(b)(10), 10(d)(1), 10(d)(3), and 10(d)(4) of the Act (46 U.S.C. §§ 41104(10), 41102(c), 41106(3) and 41106(2)) by: "failing to prevent other Respondents from engaging in the unlawful conduct alleged in Counts I and II above; failing to ensure access by qualified stevedores to the only public, multi-user cargo terminal at the Port"; (*Complaint* at 13) and failing to re-evaluate the current process and competitive structure for providing stevedore services at the Port. Complainants pray that the

¹ POMTOC is a marine terminal services provider that was formed by four of the Respondents.

Commission require Respondents to answer to the charges, order Respondents to cease and desist the aforesaid violations, establish and put in force such practices and policies as the Commission determines to be lawful and reasonable; require Respondents to pay reparations to Complainants for the unlawful conduct including interest and attorney's fees, and to make any further order or orders the Commission determines to be proper.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 C.F.R. 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 C.F.R. 502.61, the initial decision of the presiding officer in this proceeding shall be issued by November 30, 2007, and the final decision of the Commission shall be issued by March 10, 2008.

By the Commission.


Bryant L. VanBrakle
Secretary