

Saul Ewing
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FEDERAL MARITIME COMMISSION

Michele D. Baskerville
Phone: (202) 295-6634
Fax: (202) 295-6734
MBaskerville@saul.com
www.saul.com

July 14, 2010

Rachel Dickon
Federal Maritime Commission
800 North Capitol St., NW
Room 1046
Washington, DC 20573

Re SSA Terminals, LLC v. The City of Oakland
Docket No. 09-08

Dear Rachel:

In response to our telephone conversation this afternoon, I have enclosed the original Declarations of Sara Lee and David Murtha, in the above-captioned case. Declarations with facsimile signature pages were filed with the City of Oakland's Motion to Dismiss on July 7.

I have also enclosed an original and four (4) copies of an Errata to the Motion to Dismiss filed on July 7. The Errata reflects typographical errors found in the brief. Please date-stamp a copy of the Errata and return it to the courier. For the convenience of Judge Wirth, I have enclosed a corrected copy of the Motion to Dismiss.

Sincerely,

Michele Baskerville

Michele Baskerville
Paralegal

cc: All Counsel

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2600 Virginia Avenue, N.W. ♦ Suite 1000 – The Watergate ♦ Washington, D.C. 20037-1922

Phone: (202) 333-8800 ♦ Fax: (202) 337-6065

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BEFORE THE
FEDERAL MARITIME COMMISSION

FEDERAL MARITIME COURT

Docket No. 09-08

SSA TERMINALS, LLC
AND
SSA TERMINALS (OAKLAND), LLC

COMPLAINANTS

v.

THE CITY OAKLAND, ACTING BY AND THROUGH
ITS BOARD OF PORT COMMISSIONERS

RESPONDENT

NOTICE OF ERRATA TO RESPONDENT'S MOTION TO DISMISS AND
SUPPORTING MEMORANDUM



Paul M. Heylman
Allison B. Newhart
Carolyn Due
2600 Virginia Avenue, N.W.
Suite 1000 - The Watergate
Washington, D.C. 20037-1922
202.342.3422
202.295.6723 (facsimile)

David Alexander, Esq.
Donnell Choy, Esq.
Port of Oakland
530 Water Street, 4th Floor
Oakland, CA 94607

Counsel for Respondent
The Port of Oakland

Amendments to the Table of Authorities of Respondent's Motion to Dismiss and Supporting Memorandum to reflect the following typographical errors:

1. Under Federal Cases, *Belanger v. Madera Unified Sch. Dist.*, delete the page numbers and insert "passim."
2. Under Federal Cases, *FMC v. S.C. State Port Auth.*, insert pages "12" and "25."
3. Under State Cases, *City of Coronado v. San Diego Unified Port Dist.*, within the parentheses insert "Cal. Ct. App." before "1964."
4. Under State Cases, the first listing of the *City of Long Beach v. Morse*, delete the page numbers and insert "passim."
5. Under State Cases, delete the second listing of *City of Long Beach v. Morse*.
6. Under State Cases, *City of Oakland v. Hogan*, only the case name should be italicized, the rest should not be italicized. Also, within the parentheses, delete the words "*Ct. of Appeal, 1st Dist.*" and insert "Cal. Ct. App." before "1940."
7. Under State Cases, *City of Oakland v. Williams*, only the case name should be italicized, the rest should not be italicized.
8. Under State Cases, *Kirchmann v. Lake Elsinore Unified Sch. Dist.*, within the parentheses, delete the words "4th Dist." and insert "Cal. Ct. App." before "2000."
9. Under State Cases, *Martin v. Smith*, within the parentheses insert "Cal. Ct. App." before "1960."

10. Under State Cases, add an entry for "*Mosler v. City of Los Angeles*, Docket 02-CV-02278 (C.D. Cal. 2009)" with the page listing of "passim."
11. Under State Cases, *State ex rel. State Lands Comm'n v. County of Orange*, within the parentheses, delete the words "Court of Appeals, 4th Dist." and insert "Cal. Ct. App." before "1982."
12. Under Federal Statutes, delete the entries for "11th Amendment" and the "United States Constitution."
13. Under State Statutes, add an entry for "California Public Resources Code, §6306(c)" at page "10."
14. Under State Statutes, add the word "California" in front of the last entry beginning "Public Resources Code."
15. Under State Statutes, add an entry for "Statutes of 1911, Chapter 657" at pages "3, 4, 5, 22."
16. Under State Statutes, an entry for "Statutes of 1917, Chapter 59" at pages "3, 4, 5, 22."
17. Under State Statutes, add an entry for "Statutes of 1919, Chapter 516" at pages "3, 4, 5, 22."
18. Under State Statutes, add an entry for "Statutes of 1937, Chapter 96" at pages "3, 4, 5, 22."
19. Under State Statutes, add an entry for "Statutes of 1981, Chapter 1016" at pages "3, 4, 5, 22."
20. Under Other Authorities, *Carolina Marine v. SCSPA*, delete the page numbers and insert "passim."

21. Under Other Authorities, *Ceres v. Maryland Port Administration*, add the page number "32."
22. Under Other Authorities, *Hanson v. Port of Los Angeles*, add the page numbers "5" and "25." Also, the entire entry should be listed under the category "State Cases."
23. Under Other Authorities, the second entry of *Odyssea* should be deleted and the page number "18" should be added to the first entry of *Odyssea*.
24. Under Other Authorities, add an entry for the "California State Auditor Report of 2001" at pages "6," "9," "11," and "12."
25. Under Other Authorities, insert the words "Charter of the City of Oakland" in front of all of the section listings.
26. Under Other Authorities, the entry for "§§ 701-702" of the Charter of the City of Oakland should be two entries. One entry for "Charter of the City of Oakland §701" and a separate entry for "Charter of the City of Oakland §702." The page numbers for each entry should be "7" and "8."
27. Under Other Authorities, the entry for "§§ 706(15) and (19)" of the Charter of the City of Oakland should be two entries. One entry for "Charter of the City of Oakland §706(15)" and a separate entry for "Charter of the City of Oakland §706(19)."
28. Under Other Authorities, insert an entry for the "Charter of the City of Oakland §706(3)" at page "8."
29. Under Other Authorities, insert an entry for the "Charter of the City of Oakland §706(6)" at page "8."

30. Under Other Authorities, add an entry for the "Charter of the City of Oakland, Article VII" at pages "2" and "7."
31. Under Other Authorities, add an entry for the "Comprehensive Financial Report for FY 2008-09" at pages "7," "9," and "31."
32. Under Other Authorities, add an entry for the "California State Lands Commission, "Public Trust Policy"" at page "11."

Amendments to Respondent's Motion to Dismiss and Supporting Memorandum to reflect the following typographical errors:

1. Page 2, citation "*See Id.*" should read "*See id.*"
2. Page 3, second citation to "Chapter 657, Statutes of 1911" insert "(emphasis in original)" after the citation.
3. Page 4, first citation to "Chapter 59, St. of 1917" in the first paragraph should read "Chapter 59, Statutes of 1917."
4. Page 5, first citation to "See *City of Long Beach v. Morse*, 31 Cal. 2d 256-57 (1947)", insert "254," after "Cal. 2d."
5. Page 7, footnote 7 delete the word "publice" and insert the word "public" before the word "record."
6. Page 7, footnote 7, delete the link "www.portoakland.com/pdf/abou_doc_fin9.pdf" and insert "http://www.portoakland.com/pdf/abou_docu_fina9.pdf."
7. Page 8, for the first citation to "See *City Charter*," italicize the word "See."
8. Page 8, for the first citation to the "*City of Oakland v. Hogan*," italicize only the case name, the rest of the citation should not be italicized.
9. Page 8, for the first citation to the "*City of Oakland v. Hogan*," within the parentheses, delete the words "*Ct. of Appeal, 1st Dist.*" and insert the words "Cal. Ct. App."
10. Page 8, for the first citation to the "*City of Oakland v. Williams*," italicize only the case name, the rest of the citation should not be italicized.
11. Page 9, citation "CAFR at iii" should read "*Id.* at iii."

12. Page 9, citation "CAFR at 27" should read "*Id.* at 27."
13. Page 10, for the citation "*See City of Coronado v. San Diego Unified Port District*, 227 Cal. App. 2d 455, 474 (1964)" insert "Cal. Ct. App." before "1964" within the parentheses.
14. Page 11, for the citation "*State ex rel. State Lands Comm'n v. County of Orange*," within the parentheses, delete the words "Court of Appeals, 4th Dist." and insert "Cal. Ct. App." before "1982."
15. Page 12, first partial paragraph, first line, delete the word "periodic."
16. Page 12, citation to "SCSPA at 753-754" should read "SCSPA, 535 U.S. at 753-54."
17. Page 12, citation to "SCSPA at 760" should read "*Id.* at 760."
18. Page 12, second full paragraph, second line, delete the initials "S.C." and insert the words "*South Carolina*" in its place.
19. Page 13, first full paragraph, third line, delete the last word "the" after the word "grounds on" and in its place, the word "that" should be inserted, so that it reads "grounds on that."
20. Page 14, first paragraph, seventh line, insert end quotation marks after the word "proceeding" and before the word "and."
21. Page 16, first paragraph, the first line, delete "SCSPA" and insert "*South Carolina State Ports Authority*" in the case name.
22. Page 16, first paragraph, second line, insert " or "*Carolina Marine*" after "CMH."
23. Page 19, first paragraph, tenth line, delete the second "and."

24. Page 19, first paragraph, tenth line, delete the parentheses surrounding the sentence and capitalize the letter "I" in the word "it."
25. Page 19, first paragraph, last line, in the citation "*Id.* At 874-877," delete "At" and replace it with a lower case "at."
26. Page 20, second paragraph, third line, delete the word "Shippng" and in its place insert the word "Shipping."
27. Page 21, second full paragraph, second line, delete the word "that" so the sentence reads "After *Regents* it is manifestly not necessary for the state treasury to actually be at risk of paying a judgment, but the question of whether state money is "legally" if not "financially" at risk is important in all the tests."
28. Page 22, first partial paragraph, third line, the citation to "*Id.* at 614-15" should read "*Marshall*, 11 Cal. 2d at 614-15."
29. Page 23, for the citation "*See Martin v. Smith*", within the parentheses insert "Cal. Ct. App." before "1960."
30. Page 25, for the citation "*See Kirchmann v. Lake Elsinore Unified Sch. Dist.*", within the parentheses, delete the words "4th Dist." and insert "Cal. Ct. App." before "2000."
31. Page 27, first partial paragraph, third line, insert an ending quotation mark after the word "*Belanger*."
32. Page 28, last paragraph, fourth line, insert quotation marks around the words "inappropriately convert a *sufficient* condition for sovereign immunity into the single *necessary* condition for arm-of-the-state status."

33. Page 30, first full paragraph, last line, capitalize the letter "S" in the words "state of California."
34. Page 30, second full paragraph, first line, insert the citation "*Id.* at 873" after the sentence "The second factor is the State's control over the entity."
35. Page 30, third full paragraph, first line, insert the citation "*Id.*" after the sentence "The third factor is "entity's overall effects on the state treasury.""
36. Page 31, second paragraph, third line, insert the word "to" after the words "RDA with specific powers."
37. Page 33, first full paragraph, seventh line, delete the words "Similar to the Commission's finding" and replace with the words "The Commission found."
38. Page 33, first full paragraph, seventh line, delete the comma after the words "*Carolina Marine.*"

Respectfully submitted,



Paul Heylman
Allison B. Newhart

SAUL EWING LLP
2600 Virginia Avenue, N.W.
Suite 1000 - The Watergate
Washington, D.C. 20037-1922
202.342.3422
202.295.6723 (facsimile)
pheyman@saul.com

David Alexander, Esq.
Donnell Choy, Esq.
Port of Oakland

530 Water Street, 4th Floor
Oakland, CA 94607

Counsel for Respondent
The Port of Oakland

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Notice of Errata to Respondent's Motion for Summary Judgment and Supporting Memorandum was served by mail on the following:

Anne E. Mickey, Esq.
Sher & Blackwell
Suite 900
1850 M Street, N.W.
Washington, DC 20046



Paul M. Heylman

Dated: July 14, 2010