

ORIGINAL

FEDERAL MARITIME COMMISSION

SSA TERMINALS, LLC, and SSA
TERMINALS (OAKLAND), LLC

Petitioner,

v.

THE CITY OF OAKLAND, Acting
By And Through Its Board Of Port
Commissioners,

Respondent.

Docket No. 09-08

Served: July 21, 2011

BY THE COMMISSION: Richard A. Lidinsky, Jr., *Chairman*;
Joseph E. Brennan, Mario Cordero, Rebecca F. Dye, and
Michael A. Khouri, *Commissioners*.

Order Granting Motion for Oral Argument

On December 11, 2009, SSAT filed the above-titled complaint against the Port of Oakland ("the Port"), seeking a cease and desist order and reparations for injuries caused by violations of the Shipping Act, 46 U.S.C. §§ 41106(2) and (3) and 41102(c). SSAT alleged that the Port violated the Shipping Act by (a) imposing an undue or unreasonable prejudice or disadvantage on SSA Terminals, LLC ("SSAT"); (b) granting an undue or unreasonable preference or advantage to Ports America Outer Harbor Terminal; (c) refusing to deal with or negotiate with SSAT; and (d) failing to

establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property.

Now before the Commission is the Port's appeal of the Administrative Law Judge's denial of its motion to dismiss based on sovereign immunity under the Eleventh Amendment, as well as SSAT's motion for oral argument on the appeal.

It is hereby **ORDERED** that SSAT's Motion for Oral Argument is **GRANTED**. The argument will be limited to the following issue:

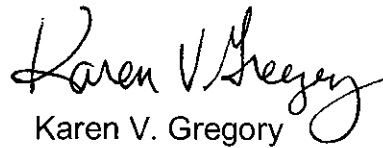
Whether the Port of Oakland is an arm of the State of California, and therefore entitled to sovereign immunity.

The Secretary is **DIRECTED** to serve a copy of this Order on the Attorney General of the State of California and request a brief *amicus curiae* providing the Attorney General's views on the issues of state law raised in the pleadings, including, but not limited to, the effect of the Port's status under California law as a tidelands trustee and the effect of the Port Revenue Fund.

Notice is given that the matter is scheduled for oral argument on September 9, 2011 at 10:00 a.m. The Port will appear first and will be allotted 30 minutes for argument, a portion of which may be reserved for rebuttal. SSAT will be allotted 30 minutes. The parties shall submit to the Secretary, by August 19, 2011, the name of the person who will argue on that party's behalf. This notification shall conform to the service requirements of the Commission's Rules, and shall be filed with the Commission at its Offices at 800 North Capitol Street, NW, Washington, 20573.

The Port may submit, if it so chooses, a brief not to exceed 20 pages on or before August 3, 2011. If the Port submits a brief, Petitioner SSA Terminals may submit a Response brief not to exceed 20 pages on or before August 17, 2011. The Port may thereafter submit a Reply brief, if any, not to exceed 10 pages on or before August 31, 2011.

By the Commission.


Karen V. Gregory
Secretary