

ORIGINAL

cc OS/GC
ALS(2)
Pub

BEFORE THE
FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

_____)
THE LAKE CHARLES HARBOR AND)
TERMINAL DISTRICT,)
)
	<i>Complainant,</i>)
v.)
)
WEST CAMERON PORT, HARBOR AND)
TERMINAL DISTRICT,)
)
	<i>Respondent.</i>)
_____)

FMC Docket No. 06-02

**REPLY IN OPPOSITION OF LAKE CHARLES HARBOR
AND TERMINAL DISTRICT TO MOTION TO DISMISS**

Lake Charles Harbor and Terminal District (“Lake Charles”) opposes the motion to dismiss the amended complaint of West Cameron Port Harbor and Terminal District (“West Cameron”), and pursuant to Rule 74 of the Commission’s Rules of Practice and Procedure, 46 CFR § 502.74, submits this reply in opposition. The presiding Judge should deny the motion to dismiss of West Cameron and its accompanying memorandum (hereafter referred to collectively as the “Motion”) because the foundation of the Motion suffers from more than one severe flaw, as well as many lesser defects. These flaws in the foundation of the Motion include matters that strike at the heart of the Commission’s jurisdiction over this matter, and they are so profound that the presiding Judge should reject the Motion out of hand.

The most egregious flaw in the foundation of the Motion is the assumption that it is preferable for the presiding Judge to find the facts in this case by adopting the assertions of West Cameron counsel as to issues of fact and mixed law/fact issues, rather than going through the

more accurate, and time-consuming process of discovery, testimony and cross-examination. With respect to Commission jurisdiction, the Motion turns on the premature and inaccurate assertion that West Cameron is not a “marine terminal operator.” It further blandly asserts, without any attempt at explanation, that the vessels that use the Calcasieu Ship Channel are not “common carriers,” and that the Liquefied Natural Gas (“LNG”) terminals are not marine terminals, as those terms are defined in The Shipping Act of 1984. Accordingly, the Motion concludes that the Commission has no jurisdiction in this matter and that Lake Charles has failed to state a claim for relief. As discussed in more detail below, however, it would not be appropriate for the presiding Judge to allow the assertions of fact by counsel (even in a verified motion) to take the place of facts that should be developed in the course of the discovery and hearing process. Moreover, Lake Charles cannot respond to the various fact or mixed fact/law allegations made in the Motion without the benefit of discovery.¹

The Motion suffers another defect by its mischaracterization of the impact upon Lake Charles of the injuries caused by the unlawful actions of West Cameron. There is no doubt that Lake Charles has standing to seek reparations for its injuries caused by West Cameron’s threat of collecting unjust and unreasonable fees; a threat that is discouraging investors right now. This

¹ For instance, Lake Charles is unable to respond to the unsupported allegations West Cameron makes on behalf of Cheniere LNG, Inc. with respect to the LNG terminals at issue in this proceeding. *See* Motion at 8-12. These allegations go to the heart of the factual basis of the claims in the Amended Complaint—the imposition of unjust and unreasonable fees that are not reasonably related to services rendered by West Cameron—and jurisdiction of the Commission over West Cameron. *See* Am. Compl at ¶ 1. Even though Lake Charles does not herein specifically address each of the factual allegations contained in the Motion, the presiding Judge is expected to regard the facts alleged by the complainant as true for purposes of a motion to dismiss the complaint. *See Conley v. Gibson*, 355 US 41 (1957). *See also Spark Int’l Trading, Inc. v. Danzas Corp.*, 27 SRR 242, 243 (ALJ, 1995) (noting that it is “well recognized that the amended complaint is read in the light most favorable to the complainant and against the moving party”).

threat is immediate, regardless whether or not the LNG terminals have been constructed or whether or not West Cameron has already collected its unlawful “wharfage” fees.

It is equally inappropriate for West Cameron to insist that the resolution of this matter under the Shipping Act of 1984 (the “Act”) is governed by the dictates of Louisiana state law. It is true that on certain issues, it is appropriate for the Commission to look to state law for guidance; it is equally true that on Shipping Act issues, the Commission and its mission are better served by looking to federal maritime jurisprudence under the Act.

As we describe more fully below, by virtue of the many flaws in the West Cameron Motion, we respectfully urge the presiding Judge to deny the Motion. We further respectfully request the presiding Judge to set the Motion for oral argument.

Argument

I. The West Cameron Motion is Premature

West Cameron seeks to dispose of this matter through the assertions of its counsel, and without the benefit of discovery or hearing. West Cameron argues in the Motion that the Commission lacks jurisdiction over it, and similarly argues Lake Charles has failed to state a claim for relief, because neither West Cameron, nor the LNG terminals located within its territory, qualify under the definition of a “marine terminal operator,” and that the LNG vessels themselves do not qualify as “common carriers” under the Shipping Act. Such arguments, however, are premature as no discovery has been taken on the issues of fact.

A. The Federal Maritime Commission has jurisdiction over West Cameron and the claims raised in the Amended Complaint

Determination of whether or not the Commission has jurisdiction in this proceeding is predicated on whether or not West Cameron falls within the ambit of the Shipping Act. West Cameron is a public port agency authorized to exercise control over the Calcasieu Ship Channel,

as well as over marine terminals serving vessels in Cameron Parish. By virtue of its location astride the Calcasieu Ship Channel and between Lake Charles and the Gulf of Mexico, West Cameron has the ability to exclude vessels from reaching marine terminals in Lake Charles and to impose fees upon those vessels. Under prevailing law, this ability to exclude common carrier vessels from their Lake Charles terminals creates Commission jurisdiction over West Cameron. *See Plaquemines Port, Harbor and Terminal District v. Federal Maritime Commission*, 838 F.2d 536, 543 (D.C. Cir. 1988).

West Cameron correctly asserts that Lake Charles will rely on the D.C. Circuit opinion in *Plaquemines*, for the sound reason that the case controls in this matter.² The decision in *Plaquemines* confirms that the FMC has jurisdiction to address in the first instance the validity and reasonableness of the vessel fees imposed by West Cameron. The primary issue in that case was whether a series of charges imposed by the port district to subsidize its fire, emergency, and other governmental services provided by the Parish of Plaquemines violated the anti-discrimination and reasonableness standards imposed by the Act. In the 1984 Act, 46 U.S.C. app. §§1701 *et seq.* (“84 Act”), Congress has given the FMC jurisdiction to address the validity of fees charged by maritime terminal operators, defined as “person[s] . . . in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier.” 46 U.S.C. app. § 1702(14); *Plaquemines*, 838 F.2d at 542-43. In upholding the FMC’s exercise of jurisdiction, the court explained that “the critical issue for jurisdiction is that the

² The presiding Judge should be cautious of West Cameron’s interpretation of maritime law. West Cameron claims to know of no case whereby a port filed a suit or complaint against another port for violations of the Shipping Act. Motion at 19. Yet, at least one complaint has been filed with the FMC by one state port authority against another. *See, e.g., South Carolina State Ports Authority v Georgia Ports Authority*, 22 SRR 111 (ALJ, 1984). This case was brought under the predecessor Shipping Act, 1916, the relevant provisions of which are identical to the ’84 Act.

degree of the Port's involvement enables the Port to discriminate in the fees it charges by controlling access to private terminal facilities.” *Id.* at 543.

In *Louis Dreyfus Corp. v. Plaquemines Port, Harbor and Terminal District*, 21 S.R.R. 1072 (F.M.C. 1982), an earlier decision in which the FMC held that the port authority's user fee was within the FMC's jurisdiction, the FMC explained that “[a]n entity need not directly or physically provide terminal services to be deemed an ‘other person’ subject to the 84 Act. [I]t is the control of terminal rates . . . which constitutes ‘furnishing’ terminal facilities and confers Commission jurisdiction.” *Id.* at 1080. The DC Circuit affirmed this interpretation, which provides controlling authority for the presiding Judge in this proceeding. *Plaquemines*, 838 F.2d at 543.

The cases West Cameron relies on are far less persuasive on the issues before the presiding Judge than *Plaquemines*. First, West Cameron's reliance on *Puerto Rico Ports Authority v Federal Maritime Commission*, 919 F.2d 799 (1st Cir. 1990), as “the most analogous case to the instant matter” is disingenuous. In distinguishing *Plaquemines* from the decision before it, the court in the Puerto Rico case relied on the statutory exemption given to private terminal facilities that freed it from the port authority's “control and administration.” *Id.* at 806 (citing 23 L.P.R.A. § 2202). Thus, the court found that, in that case, the port authority did not have the required amount of control. West Cameron has no such limiting authority. *See generally* La. R.S. 34:2551, et seq.; Motion at 2-4. In fact, West Cameron concedes its ability to exercise control over vessels passing through its jurisdiction. *See* Motion at 2-4. As noted below, the extent of the control exercised by West Cameron is an issue of fact that requires evidentiary support to aid the presiding Judge in this proceeding.

The second case cited by West Cameron, the decision in *Bridgeport & Port Jefferson Steamboat Co. v. Bridgeport Port Auth.*, 335 F. Supp. 2d 275 (D. Conn. 2004), fails to provide a persuasive and controlling authority for the presiding Judge. This is one decision issued by a single district court judge and does not carry the same weight as the DC Circuit in *Plaquemines*, or the FMC in *Louis Dreyfus*. Moreover, the factual underpinnings of this matter have not been developed through discovery or tested in a hearing.

Similar to its conclusory allegations that LNG terminals are not marine terminals, West Cameron broadly asserts that LNG vessels are not “common carriers,” as defined in the 84 Act. In light of the broad definition of “common carrier” adopted by the Commission in its landmark decision to initiate Docket 01-06 (the agency found that bulk grain vessels were “common carriers”), we suggest that the facts developed in this case will similarly demonstrate that the LNG ships traversing the Calcasieu Ship Channel are “common carriers” entitled to protection under the 84 Act. It would, therefore, be premature to dismiss the Amended Complaint without discovery on this issue.

B. Discovery is necessary to resolve the jurisdictional issues in this proceeding.

Arguments as to the Commission’s jurisdiction over West Cameron are premature, at best, given that no evidence has been introduced at this very early stage of the proceeding.³ The Commission has denied similar motions to dismiss and required the parties to conduct discovery to establish issues of fact. *See, e.g., River Parishes Co., Inc. v. Ormet Primary Aluminum Corp.*, 27 SRR 621 (ALJ, 1996) (finding complainant entitled to seek evidence through discovery as to

³ As noted above, West Cameron also argues that Lake Charles has failed to state a claim because (1) West Cameron is not a marine terminal operator, (2) the LNG terminals are not marine terminal operators, and (3) the LNG vessels are not common carriers. In the same light as the jurisdictional analysis, the Motion to Dismiss for failure to state a claim also fails for want of evidence.

whether the terminal operator has served a common carrier vessel); *Independent Pier Co. v. Philadelphia Port Corp.*, 25 SRR 1335 (ALJ, 1991) (denying respondent's motion to dismiss where respondent claimed the Commission lacked jurisdiction over it because it was not a marine terminal operator to permit discovery).

Chief ALJ Kline in *River Parishes* examined the necessity for discovery to proceed on jurisdictional issues of fact over an early motion to dismiss. "Case law holds that the burden of proof on the question of jurisdiction falls on the party seeking to involve the tribunal's jurisdiction, i.e., the complainant here, and that to deny reasonable discovery into the necessary relevant facts would be reversible error." *River Parishes*, 27 SRR at 623 n.2. Relying on Moore's Federal Practice, Judge Kline continued:

If the jurisdictional allegations of the complaint are disputed, the party asserting the existence of subject matter jurisdiction should be given the opportunity to demonstrate that jurisdiction exists prior to dismissal of the action. (Footnote and case citations herein omitted.) Reasonable discovery for this purpose should be allowed, and failure to permit such discovery is usually treated as reversible error. (Footnote and case citations therein omitted).

Id. (citing 2A Moore's Federal Practice (2d ed. 1995) para. 12.07 [2-.1] at p. 12-59). *See also Cedars-Sinai Medical Center v. Watkins*, 11 F.3d 1573, 1584 (Fed. Cir. 1993) (burden on complainant to prove jurisdiction with evidence); *Majd-Pour v. Georgiana Community Hospital, Inc.*, 724 F.2d 901, 903 (11th Cir. 1984) (lower court abused discretion in not allowing complainant to proceed with reasonable discovery on jurisdictional issue). The ALJ further noted that the Commission has followed this doctrine in its own cases. *Id.* (citing *American Warehousemen's Assoc. v. Port of Portland*, 14 SRR 148 (ALJ 1973); *Std. Fruit v. PMA*, 19 SRR 1459 (ALJ 1980)).

There is no "evidence" of any sort before the presiding Judge at present, so it would be imprudent to agree with West Cameron that neither it nor the LNG terminals qualify as marine

terminal operators, nor that the vessels calling at West Cameron do not qualify as common carriers. West Cameron's assertions notwithstanding, the presiding Judge needs relevant facts (not assertions of counsel) to determine these material issues of fact. Discovery and the development of facts at hearing need to be conducted before these issues can be properly resolved.⁴

One set of facts to be discovered is the amount of control West Cameron is able to exercise over the terminal facilities within its jurisdiction. For instance, West Cameron has the authority to exercise control over terminal facilities, regardless of its claim that it has never assessed fees, nor provided services. The port's enabling legislation provides West Cameron with the authority to, among other things:

(4) Own, construct, acquire, operate and maintain docks, wharves, landings, elevators, sheds, warehouses, basins, locks, slips, laterals, canals and all other property, structures, equipment, facilities and works of public improvement necessary or useful for port, harbor and/or terminal purposes.

(12) Establish and charge reasonable fees, rates, tariffs or other charges for the use of all facilities administered by it and for all services rendered by it.

(13) Charge a reasonable fee to each vessel arriving in the port area in ballast or carrying cargo of any kind.

⁴ The parties have a right to cross-examine witnesses where the determination of jurisdiction is dependent upon the resolution of issues of fact. *See Tselentis v. Michalinos Maritime & Commercial Co., Ltd.*, 104 F. Supp. 942, 945 (S.D.N.Y. 1952) (finding that jurisdictional fact issues "cannot be determined upon mere vehemence of the assertions in the papers ... [i]t can properly be determined only [by] the affording the trial court an opportunity to hear and observe the witnesses, or, if this is impossible, by the submission of either oral depositions or written interrogatories, and in either instance the right of cross-examination will be afforded the parties."). *See also Hartmann Coal Mining Co., Inc. v. Hoke*, 157 F. Supp 313 (E.D. Pa. 1957) (providing defendant an opportunity to cross-examine relevant witnesses on jurisdictional facts).

Motion at 2-3 (citing La. R.S. 34:2551). While this grant of authority is not in dispute, there are issues of fact relating to the likelihood that vessels destined for the facilities of Lake Charles “always had and will always have unimpeded passage through West Cameron’s jurisdiction.” *See* Motion at 4. Given the fact that the only access to Lake Charles is through West Cameron, this is a factual matter of great importance that requires the parties to conduct discovery to provide the presiding Judge with evidence on the “degree of [West Cameron] involvement [that] enables [it] to discriminate in the fees it charges by controlling access to private terminal facilities.” *Plaquemines*, 838 F.2d at 543.

Additionally, the claim by West Cameron that it does not have the apparatus, economic means or infrastructure to assess vessels calling on private terminal facilities within its jurisdiction, (Motion at 3), is belied by its own admissions. West Cameron has extracted a \$1000 per vessel charge from Cheniere LNG, Inc. for the Sabine Pass LNG terminal (characterized by West Cameron as “economic consideration” in an effort to avoid regulatory oversight) and Creole Trail LNG terminal (characterized by West Cameron as a “rental payment”). Motion at 8-11. While West Cameron argues that these fees are not charged against the vessel, it appears that West Cameron is, in actuality, assessing a fixed per vessel fee. These are critical facts for which there is currently no evidence. Thus, the Motion is premature and must be denied to permit the parties to conduct discovery.

II. Lake Charles has Standing to Bring the Amended Complaint

Lake Charles filed this action to remedy actual injury caused by West Cameron’s violations of the 84 Act that threaten the continued development of LNG facilities. Am. Compl. at ¶ 22. The 84 Act provides that “any person may file with the Commission a sworn complaint alleging a violation of this Act . . . and may seek reparation for any injury caused by the

complainant by that violation.” 46 U.S.C. app. § 1710(a). For the purpose of standing under section 11(a) of the 84 Act, it is sufficient for complainant to allege injury and charge the respondent with its cause. *See Chilean Nitrate Sales Corp. v. San Diego Unified Port District*, 24 SRR 920 (FMC, 1988) (citing *Cargill, Inc. v. Waterman Steamship Corp.*, 21 SRR 287, 300 (1981)); *see also South Carolina State Ports Authority v. Georgia Ports Authority*, 22 SRR 1111, 1116-17 (ALJ, 1984) (finding that a port has standing to sue a competing port for violations of the 1916 Shipping Act). Here, Lake Charles has standing to address its injuries alleged in the Amended Complaint that were caused by the violations of West Cameron of the 84 Act.

Even under the constitutional analysis for standing before an Article III federal court, Lake Charles has standing to address its injuries. A ruling on a standing question upon a motion to dismiss early in proceedings between adverse parties “must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.” *Warth v. Seldin*, 422 U.S. 490, 501 (1975). The constitutional “injury in fact” requirement for a standing analysis is met when the litigant shows (1) that it has suffered an actual or threatened personal injury, (2) caused by the challenged activity, and (3) for which the court can provide a remedy. *Government Suppliers Consolidating Services, Inc. v. Bayh*, 753 F.Supp. 739 (S.D. Ind. 1990) (citing *Allen v. Wright*, 468 U.S. 737, 751 (1984) (additional citations omitted).

In *Government Suppliers*, the plaintiffs challenged legislation that sought to close the state landfill market. The plaintiff was found to have suffered an injury-in-fact where it stood to lose business as a result of the challenged legislation; the court noted that this is precisely the type of economic injury that is consistently found to satisfy the constitutional injury in fact requirement. *Id.* at 759; *see, e.g., Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 267 (1983) (plaintiffs “entitled to litigate whether ... discriminatory tax has had an adverse competitive

impact on their business); *Village of Arlington Heights v. Metropolitan Hous. Dev.*, 429 U.S. 252, 262 (1977) (“economic injury” recognized on the basis of money spent for “plans and studies” which may not have been used even if there had been no violation of law); *Association of Data Processing Serv. Org., Inc. v. Camp*, 397 U.S. 150, 152 (1970) (injury found on the basis of probable loss of business due to entry of new competitors into market served by plaintiff); *Marshall & Ilsley Corp. v. Heimann*, 652 F.2d 685, 692 (7th Cir. 1981) (injury sufficient to confer standing found on the basis of “a change in the competitive configuration of Milwaukee’s banking community”), cert. denied, 455 U.S. 981 (1982).

The court’s analysis in *Government Suppliers* is persuasive for the matter before the presiding Judge. In that case, the court noted that the plaintiff’s economic injury might be said to be indirect because the challenged act applied to its customers, not directly to plaintiffs. The court found that, “nevertheless, an injury of the sort suffered by plaintiffs, though only indirectly caused by the challenged statute or regulation, is frequently found to confer standing on the indirectly injured party. *Government Suppliers*, 753 F.Supp at 759 (citations omitted). *See also Czajkowski v. Illinois*, 460 F. Supp. 1265 (N.D. Ill. 1977) (finding distributor had standing to challenge cigarette use tax imposed by Illinois on the distributor’s customers, but which caused it to lose customers and revenue as a result).

While convenient for its argument that Lake Charles lacks standing to bring a cause of action for injuries suffered by third parties, West Cameron’s mischaracterization of the Lake Charles claim for reparations as a “third party” claim misses the mark. The fact that third parties (such as ocean carriers) may also be harmed by West Cameron’s actions is of no moment. The relevant inquiry for the presiding Judge is whether Lake Charles has been harmed and whether that harm can be addressed in these proceedings. Lake Charles is being injured by West

Cameron's threat to impose a "wharfage" charge in association with the operation of any LNG project located within West Cameron. Am. Compl. at ¶ 1. Contrary to its statements in the Motion, representatives of West Cameron have suggested that it must be paid something by Lake Charles in order for Lake Charles to lease its property to Cameron LNG and for the Cameron LNG project to move forward. *See* Am. Compl. at ¶ 20. It is inconsequential whether or not West Cameron has already **collected** its wharfage fee.⁵ The Amended Complaint makes it clear that the threat to impose the "wharfage fees" by West Cameron is a sword of Damocles and is discouraging investors right now.⁶ Thus, Lake Charles has standing to seek redress for its injuries caused by the violations of the 84 Act by West Cameron.

III. Lake Charles Properly States Claims for Relief

West Cameron alleges that—because it does not qualify as a marine terminal operator, vessels calling at the LNG terminals do not qualify as common carriers and the LNG terminals themselves are not marine terminals—the claims asserted by Lake Charles should be dismissed. As provided above, however, West Cameron's assertions are not sufficient to avoid the Commission's jurisdiction over it in this matter. Nor are these assertions sufficient to dismiss the Amended Complaint for failure to state a claim. Rather, the presiding Judge should reserve for

⁵ Lake Charles does not concede its injury is merely prospective. Even if the presiding Judge would so find, however, the injury-in-fact requirement may be satisfied even though the injury is only prospectively threatened. *Warth v. Seldin*, 422 U.S. 490, 499 (1975) (concluding that federal jurisdiction exists where a plaintiff "suffered some threatened or actual injury resulting from putatively illegal action").

⁶ West Cameron wrongly argues that Lake Charles "will assert third-party standing." Motion at 20. As noted above, Lake Charles is seeking reparations for its injuries directly caused by the actions of West Cameron. Even if the presiding Judge would find an analysis under a third party standing theory necessary, Lake Charles avers that the third parties to be charged "wharfage fees" by West Cameron would not necessarily bring a case against West Cameron for commercial reasons. This is yet another issue of fact that requires the parties to conduct discovery.

himself the opportunity to review evidence gathered by discovery to evaluate properly whether a sufficient claim has been made with respect to West Cameron's threatened imposition of fees.

West Cameron argues further that Lake Charles has suffered no actual injury because (1) no "wharfage" has ever been charged, and (2) the LNG terminals have not yet been built. Motion at 22-23. As noted above with respect to the standing of Lake Charles to file the Amended Complaint, these assertions are not relevant to the issues in this proceeding. Lake Charles is currently being injured by the threat of West Cameron to impose unjust and unreasonable fees, which is discouraging potential investors who would otherwise be attracted to Calcasieu Parish and the Port of Lake Charles. Am. Compl. at ¶¶ 2-3. Once again, these issues of fact make it prudent for the presiding Judge to deny the Motion and permit the parties to proceed with discovery.

Finally, West Cameron states that, even if it were willing to assess fees against vessels merely passing through its jurisdiction, it is prohibited from doing so under Louisiana law. Motion at 3-4 (citing La. R.S. § 34:2556). This proceeding should not be affected by whether or not West Cameron would be in violation of state law for imposing fees. That is a matter for the state court in Louisiana where West Cameron has filed suit against Lake Charles. The Commission is only concerned with violations by West Cameron of the 84 Act. As noted above, there are issues of fact relating to the fees imposed by West Cameron with respect to certain terminals, fees that Lake Charles claims are in violation of the 84 Act. Dismissal of the Amended Complaint is not appropriate until these issues of fact can be developed through discovery, testimony and cross-examination.

Conclusion

For the reasons stated above, Lake Charles respectfully requests the presiding Judge to deny West Cameron's Motion to Dismiss. West Cameron wants the presiding Judge to rely upon the assertions of its counsel to establish facts critical to Commission jurisdiction in this case; but this position is contrary to controlling law.

Respectfully submitted,



Michael K. Dees
General Counsel
Lake Charles Harbor and Terminal District
P. O. Box 3753
Lake Charles, Louisiana 70602
Tel: (337) 493-3504
Fax: (337) 493-3502



Edward J. Sheppard
Ryan K. Manger
THOMPSON COBURN LLP
1909 K Street, Suite 600
Washington, D.C. 20006
Tel: (202) 585-6900
Fax: (202) 585-6969

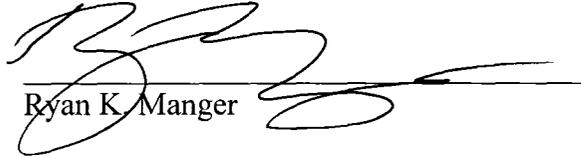
Timothy F. Noelker
THOMPSON COBURN LLP
One U.S. Bank Plaza
St. Louis, Missouri 63101
Tel: (314) 552-6000
Fax: (314) 552-7000

*Attorneys for Complainant Lake Charles Harbor
and Terminal District*

Dated: March 6, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply in Opposition of Lake Charles Harbor and Terminal District to Motion to Dismiss has been served upon all parties of record by first class mail, postage prepaid this 6th day of March, 2006.


Ryan K. Manger

ORIGINAL

OS/GTC
AL(2)
pub

BEFORE THE
FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

_____)
THE LAKE CHARLES HARBOR AND)
TERMINAL DISTRICT,)
)
	<i>Complainant,</i>)
v.)
)
WEST CAMERON PORT, HARBOR AND)
TERMINAL DISTRICT,)
)
	<i>Respondent.</i>)
_____)

FMC Docket No. 06-02

**MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND ANSWERS TO INTERROGATORIES**

Complainant Lake Charles Harbor and Terminal District (“Lake Charles”) hereby moves the presiding Judge, pursuant to Rule 73 of the Commission’s Rules of Practice and Procedure, 46 CFR § 502.73, for an order compelling respondent West Cameron Port Harbor and Terminal District (“West Cameron”) to produce and to permit the inspection and copying of the documents requested by Lake Charles in its Request for Production and to answer the Interrogatories, both of which were served upon West Cameron by the Commission on January 27, 2006 with the Complaint.¹

¹ The discovery requests directed West Cameron to respond within 30 days of its receipt thereof, which would have been February 27, 2006. As the presiding Judge is aware, Lake Charles filed an Amended Complaint on February 16, 2006, after the motion for leave to file amended complaint was granted. This filing, however, did not affect the time for which West Cameron was required to respond to the discovery request.

West Cameron has not answered the interrogatories or produced the documents requested by Lake Charles, nor did the respondent move for a protective order, or in any way lodge a timely objection to the discovery requests served on it.² By failing to do so, West Cameron has waived any objections with respect to these discovery requests and should be ordered to respond immediately and fully thereto. *See* Fed. R. Civ. P. 33(b)(4), 34(b); *see also* 7 Moore's Federal Practice, § 33.174[2] (Matthew Bender 3d ed.) ("If the responding party fails to seek an extension of time to answer or objection, the party may be found to have waived all objections and be subject to sanctions for failure to answer."); *Krewson v. City of Quincy*, 120 F.R.D. 6, 7 (D. Mass. 1988); *Perry v. Golub*, 74 F.R.D. 360, 363 (N.D. Ala. 1976).

West Cameron has chosen to ignore its obligations in this proceeding and to flout the Commission's Rules of Practice and Procedure, but has instead filed a premature motion to dismiss the Lake Charles Amended Complaint, as well as an untimely motion to stay discovery.³ As stated more fully in the Reply in Opposition of Lake Charles to Motion to Dismiss, West Cameron cannot avoid the process of discovery, testimony and cross-examination on key issues involving whether West Cameron falls within the ambit of the Shipping Act of 1984, and its violations thereunder through its imposition of unjust and unreasonable fees. Discovery is essential in this proceeding to provide the presiding Judge with the material facts essential to a reasoned decision on these issues. The attempt by West Cameron to circumvent this process should not go unchallenged. The strategy that West Cameron has adopted in this proceeding is

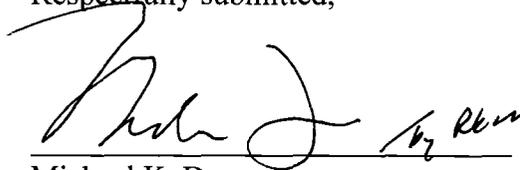
² Rather, West Cameron has filed an out-of-time, motion to stay discovery that we received on March 3. Earlier in the day, we left a voice message with counsel for West Cameron to meet and confer on its failure to respond to the discovery requests but did not receive a return call.

³ Lake Charles received a copy of the motion to stay discovery on Friday, March 3, several days after the West Cameron discovery responses were due.

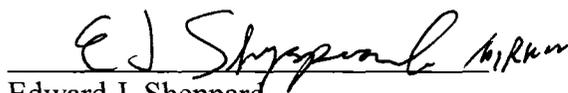
clear – it has decided to adopt questionable procedural tactics to delay the development of the facts that will enable the presiding Judge to render a reasoned decision on the merits of the Lake Charles complaint.⁴ We suggest that it will be a sound use of his judicial power for the presiding Judge to address this tactic promptly by granting our motion to compel, demonstrating to West Cameron that its plan is ill advised and likely to fail.

Accordingly, Lake Charles respectfully requests that the presiding Judge order West Cameron to comply with the Interrogatories and Request for Production served by the Commission within forty eight hours of publication of his ruling on this Motion.

Respectfully submitted,



Michael K. Dees
General Counsel
Lake Charles Harbor and Terminal District
P. O. Box 3753
Lake Charles, Louisiana 70602
Tel: (337) 493-3504
Fax: (337) 493-3502



Edward J. Sheppard
Ryan K. Manger
THOMPSON COBURN LLP
1909 K Street, Suite 600
Washington, D.C. 20006
Tel: (202) 585-6900
Fax: (202) 585-6969

⁴ The West Cameron tactics include not only the frivolous motion to dismiss and the late motion to stay discovery. The respondent has also resorted to a corollary tactic of attempting to interfere with Complainant's right to counsel of its choice. Attached as Exhibit A is a letter from West Cameron to the Attorney General of Louisiana, which seeks to cause Lake Charles to be deprived of FMC counsel.

Timothy F. Noelker
THOMPSON COBURN LLP
One U.S. Bank Plaza
St. Louis, Missouri 63101
Tel: (314) 552-6000
Fax: (314) 552-7000

*Attorneys for Complainant Lake Charles Harbor
and Terminal District*

Dated: March 6, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Compel Production of Documents and Answers to Interrogatories has been served upon all parties of record by first class mail, postage prepaid this 6th day of March, 2006.



Ryan K. Manger



**WEST CAMERON
PORT COMMISSION**

P. O. Box 366
Cameron, Louisiana
(337) 775-5718



Board Members

Clifton Cabell, President
Jimmy Brown, Vice-President
Greg Wicke, Secretary
Terry Hebert, Treasurer

Howard Romero
Dwight Savoie
Wendell Wilkerson
Ricky Poole

February 27, 2006

Honorable Charles C. Foti, Jr
Attorney General
State of Louisiana
Office of the Attorney General
P. O. Box 94005
Baton Rouge, LA 70804-9005

Re: Request for Attorney General Opinion Regarding Engagement of
Special Counsel

Dear General Foti,

Please find enclosed a copy of the complaint (the "Complaint") filed by the Lake Charles Harbor and Terminal District ("LC Port") against West Cameron Port, Harbor and Terminal District ("West Cameron"). As you will note from the Complaint, LC Port has engaged special counsel with respect to its legal representation in this matter. West Cameron requests an attorney general opinion with respect to the issues concerning engaging special counsel with respect to the Complaint:

It is noted that the following provisions of the Louisiana Revised Statutes provide the procedure for requesting special counsel.

La. R.S. 42:263, which provides:

No parish governing authority, levee board except as provided in Subsection B hereof, parish school board, city school board, or other local or state board shall retain or employ any special attorney to represent it in any special matter or pay any compensation for any legal services

whatever unless a real necessity exists, made to appear by a resolution thereof stating fully the reasons for the action and the compensation to be paid. The resolution then shall be subject to the approval of the attorney general and, if approved by him, shall be spread upon the minutes of the body and published in the official journal of the parish.

and

La. R.S. 42:262, which provides:

In the event it should be necessary to protect the public interest, for any state board or commission to retain or employ any special attorney or counsel to represent it in any special matter for which services any compensation is to be paid by it, the board or commission may retain or employ such special attorney solely on written approval of the governor and the Attorney General and pay only such compensation as the governor and the Attorney General may designate in the written approval. The approval shall be given in their discretion upon the application of the board or commission by a resolution thereof setting forth fully the reasons for the proposed retention or employment of the special attorney or counsel and the amount of the proposed compensation.

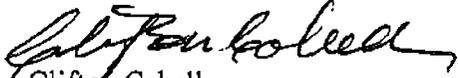
With respect to the engagement of counsel by both the LC Port and West Cameron to represent their respective interests in the matter initiated by LC Port in the Complaint (the "Engagement of Counsel"), please provide an opinion on the following:

- a. Are the respective ports required to follow the requirements of La. R.S. 44:262 and La. R.S. 44:263 with respect to the Engagement of Counsel?
- b. Will Engagement of Counsel be subject to the current Attorney General approved hourly rates? If not, can you provide some guidance on what rate structure would be generally acceptable for the Engagement of Counsel? Two Washington, D.C. law firms were contacted and the hourly rates for partners in those firms to handle matters such as this were in the area of \$475.00 per hour and \$490.00 per hour.
- c. If the answer in a, above is in the affirmative, please advise if LC Port has complied with such requirements in the engagement of Mr. Edward Shephard with the firm of Thompson Coburn of Washington, D.C., as he appears as counsel of record on the Complaint.
- d. If the answer to c, above is negative, please advise of the consequences and/or penalties or effects of engaging counsel without complying with the required procedures.

As this is a pending matter, it is imperative that we receive a prompt Attorney General Opinion in response to this request.

Thanking you and remaining,

Respectfully,



Clifton Cabell

President, West Cameron Port Commission

cc: West Cameron Port Commission
Mr. Michael K. Dees
Mr. Edward J. Sheppard, Jr.

LEXSTAT LA. R. S 34:204

LexisNexis Louisiana Annotated Statutes
Copyright (c) 2005 by Matthew Bender & Company, Inc.,
a member of the LexisNexis Group.
All rights reserved.

*** THIS DOCUMENT IS CURRENT THROUGH ALL 2005 LEGISLATIVE SESSIONS ***
*** Annotations current through December 22, 2005 ***

LOUISIANA REVISED STATUTES
TITLE 34. NAVIGATION AND SHIPPING
CHAPTER 1. PORTS AND HARBORS
PART 2. LAKE CHARLES HARBOR AND TERMINAL DISTRICT

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S 34:204 (2005)

§ 34:204. Officers of board; meetings; offices; agents and employees; travel

A. The board shall elect from among its own members a president, a vice president, a secretary, and a treasurer, whose duties shall be only those duties established in the bylaws of the board, adopted or amended by two-thirds of the board; however, such duties shall be those usual to such offices. At the option of the board, the offices of secretary and treasurer may be held by one person. The board shall meet in regular session once each month and shall also meet in special session as often as the president of the board convenes them, or on written request of four voting members. Four voting members of the board shall constitute a quorum. No action may be taken by the board without concurrence of at least four voting members. The board shall prescribe rules to govern its meetings and shall maintain suitable offices in the city of Lake Charles. The board shall elect its officers prior to July first each year, and officers shall serve in such positions until July first of the following year. No person shall be elected to serve for more than two consecutive years in the same office. After serving two consecutive years in a particular office, a member shall not be eligible to hold that office for a period of one year.

B. The board may contract with and employ attorneys and engineers and fix their compensation and terms of employment.

C. The board shall not pay any costs associated with out-of-state travel by a board member unless such payment is approved by five members of the board voting at a meeting of the board.

HISTORY: Acts 1987, No. 429, § 1, eff. July 9, 1987; Acts 1988, No. 351, § 1, eff. Sept. 15, 1988; Acts 1991, No. 638, § 1, eff. July 17, 1991; Acts 2003, No. 149, § 1, eff. May 29, 2003.

NOTES:

LexisNexis (R) Notes:

Amendment Notes

2003 Amendments.

Acts 2003, No. 149, § 1, effective May 29, 2003, inserted "travel" in the section heading; in (A), inserted "only those duties established in the bylaws of the board, adopted or amended by two-thirds of the board; however, such duties shall be" preceding "those usual to such offices" in the first sentence, added the last three sentences; rewrote (B), which read:

LEXSTAT LA. R.S. 42:262

LexisNexis Louisiana Annotated Statutes
Copyright (c) 2005 by Matthew Bender & Company, Inc.,
a member of the LexisNexis Group.
All rights reserved.

*** THIS DOCUMENT IS CURRENT THROUGH ALL 2005 LEGISLATIVE SESSIONS ***
*** Annotations current through December 22, 2005 ***

LOUISIANA REVISED STATUTES
TITLE 42 PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 5. DUTIES
PART 1. SPECIAL DUTIES

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 42:262 (2005)

§ 42:262. Special attorneys

In the event it should be necessary to protect the public interest, for any state board or commission to retain or employ any special attorney or counsel to represent it in any special matter for which services any compensation is to be paid by it, the board or commission may retain or employ such special attorney or counsel solely on written approval of the governor and the Attorney General and pay only such compensation as the governor and the Attorney General may designate in the written approval. The approval shall be given in their discretion upon the application of the board or commission by a resolution thereof setting forth fully the reasons for the proposed retention or employment of the special attorney or counsel and the amount of the proposed compensation

The governor and Attorney General shall not ratify or approve any action of a board in employing any special attorney or counsel or paying any compensation for special service rendered, unless all the formalities as provided by this Part as to resolutions and the like, have been complied with.

NOTES:

LexisNexis (R) Notes:

RELATED STATUTES & RULES

Louisiana Law:

Powers of the board, see *La. R.S. 37:2153*

Procurement of private contractual legal services for state agencies, see *La. R.S. 49:258*

ADMINISTRATIVE LAW AND DECISIONS

Attorney General:

Proposed contracts with attorney and bank/trustee for recovery of abandoned property are in compliance with statutes but must be processed under 39:1481 et seq. and be approved by Attorney General and Governor for appointment of counsel., OPINION No. 86-664, *La. Atty. Gen. Op. No. 1986-664, 1986 La. AG LEXIS 215.*

The Attorney General shall provide legal representation to the Louisiana State Racing Commission, to advise the Commission, represent it in legal proceedings, and prosecute violations of the Louisiana Racing statutes and rules. The

La. R.S. 42:262

Commission may contract with special counsel to represent it in special matters where there is a real necessity there-
fore., OPINION NUMBER 92-53, *La. Atty. Gen. Op. No. 1992-53*; 1992 *La. AG LEXIS* 78.

94 -- Schools & School Districts -- Administration, OPINION NUMBER 95-500, *La. Atty. Gen. Op. No. 1995-500*;
1995 *La AG LEXIS* 401.

LEXSTAT LA. R.S. 42:263

LexisNexis Louisiana Annotated Statutes
Copyright (c) 2005 by Matthew Bender & Company, Inc.,
a member of the LexisNexis Group.
All rights reserved.

*** THIS DOCUMENT IS CURRENT THROUGH ALL 2005 LEGISLATIVE SESSIONS ***
*** Annotations current through December 22, 2005 ***

LOUISIANA REVISED STATUTES
TITLE 42. PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 5 DUTIES
PART 1. SPECIAL DUTIES

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 42.263 (2005)

§ 42:263. Resolution requesting special counsel

A. No parish governing authority, levee board except as provided in Subsection B hereof, parish school board, city school board, or other local or state board shall retain or employ any special attorney or counsel to represent it in any special matter or pay any compensation for any legal services whatever unless a real necessity exists, made to appear by a resolution thereof stating fully the reasons for the action and the compensation to be paid. The resolution then shall be subject to the approval of the attorney general and, if approved by him, shall be spread upon the minutes of the body and published in the official journal of the parish.

B. Notwithstanding the provisions of Subsection A of this Section or *R.S. 42:264*, the governing boards of the Cane River Levee and Drainage District, the Campti-Clarence Levee District, the Natchitoches Levee and Drainage District, the Red River Levee and Drainage District, the Fifth Louisiana Levee District, and the Nineteenth Louisiana Levee District may retain or employ special counsel as needed and without the approval of the attorney general.

C. Notwithstanding the provisions of Subsection A of this Section or *R.S. 42:264*, the Board of Commissioners of the Black Lake Bayou Recreation and Water Conservation District of Red River Parish may retain or employ general or special counsel as needed and without the approval of the attorney general.

HISTORY: Amended by Acts 1979, No. 78, § 1; Acts 1982, No. 570, § 2.

NOTES:

LexisNexis (R) Notes:

RELATED STATUTES & RULES

Louisiana Law:

Duty of district attorney to act as counsel for parish boards and commissions, see *La. R.S. 16.2*

District attorneys; counsel for boards and commissions, see *La. R.S. 42:261*

CASE NOTES

1. *La. Rev. Stat. Ann. § 42:263* is not unconstitutional because it does not abridge or impinge upon a local government's structure, organization, or distribution of powers and functions; representation by counsel for advice and re-

sponse to a lawsuit is not a matter of structure and organization, and *La. Rev. Stat. Ann. § 42:263* merely allows and requires a resolution for the selection process. *Breaux v Lafourche Parish Council, La. App. 2002-1422, 851 So. 2d 1173, 2003 La. App. LEXIS 1337* (La.App. 1 Cir. May 9 2003), writ denied by *La. 2003-2678, 860 So. 2d 1163, 2003 La. LEXIS 3666* (La. Dec. 12, 2003).

2. *La. Rev. Stat. Ann. § 42:263(A)* was not unconstitutional where it applied to the Parish of Lafourche; the statute did not impinge or abridge the council's structure or organization or distribution of powers and functions. *Breaux v Lafourche Parish Council, La. App. 2002-1422, 851 So. 2d 1173, 2003 La. App. LEXIS 1337* (La.App. 1 Cir. May 9 2003), writ denied by *La. 2003-2678, 860 So. 2d 1163, 2003 La. LEXIS 3666* (La. Dec. 12, 2003).

3. Council could, by resolution, hire an attorney to represent it in proceedings brought by the parish president, as the parish district attorney had recused himself due to conflicts of interests. *Breaux v Lafourche Parish Council, La. App. 2002-1422, 851 So. 2d 1173, 2003 La. App. LEXIS 1337* (La.App. 1 Cir. May 9 2003), writ denied by *La. 2003-2678, 860 So. 2d 1163, 2003 La. LEXIS 3666* (La. Dec. 12, 2003).

4. Judgment that sustained an exception of no cause of action filed by the Attorney General to an action that sought to enjoin him from approving a school board's resolution ratifying the payment of special counsel fees was affirmed, even though it was alleged that the school board had failed to comply with the requirements of *La. Rev. Stat. Ann. § 42:263* by not obtaining the Attorney General's prior approval. *Flanagan v. Guste, 359 So. 2d 686, 1978 La. App. LEXIS 3453* (La.App. 1 Cir. 1978).

5. *La. Rev. Stat. Ann. § 42:263* is not unconstitutional because it does not abridge or impinge upon a local government's structure, organization, or distribution of powers and functions; representation by counsel for advice and response to a lawsuit is not a matter of structure and organization, and *La. Rev. Stat. Ann. § 42:263* merely allows and requires a resolution for the selection process. *Breaux v Lafourche Parish Council, La. App. 2002-1422, 851 So. 2d 1173, 2003 La. App. LEXIS 1337* (La.App. 1 Cir. May 9 2003), writ denied by *La. 2003-2678, 860 So. 2d 1163, 2003 La. LEXIS 3666* (La. Dec. 12, 2003).

6. Where taxpayers ceased paying sales and use taxes owed to a school board, the school board had a real necessity to employ special counsel to collect the delinquent taxes. *Cortina v. Gulf States Utils.-Cajun Elec. Power Coop., Inc., 594 So. 2d 1326, 1991 La. App. LEXIS 3224* (La.App. 1 Cir. 1991).

ADMINISTRATIVE LAW AND DECISIONS

Attorney General:

Re: Employing of special counsel, OPINION NUMBER 78-1472, *La. Atty. Gen. Op. No. 1978-1472, 1978 La. AG LEXIS 124.*

R.S. 41:961; 42:263, OPINION No. 78-1214, La. Atty. Gen. Op. No. 1978-1214; 1978 La. AG LEXIS 361.

D.A. is legal counsel and advisor to levee districts. Special legal counsel may also be employed., OPINION NUMBER 78-845, *La. Atty. Gen. Op. No. 1978-845; 1978 La. AG LEXIS 562.*

A waterworks district may not hire an attorney on a retainer fee basis., OPINION NUMBER 78-247, *La. Atty. Gen. Op. No. 1978-247; 1978 La. AG LEXIS 871.*

R.S. 39:1403, OPINION NUMBER 83-719, La. Atty. Gen. Op. No. 1983-719; 1983 La. AG LEXIS 332.

"Misc. C", OPINION REQUEST No. 82-1161, *La. Atty. Gen. Op. No. 1982-1161; 1983 La. AG LEXIS 824*

La. Const. Art V § 29, OPINION No. 86-700, La. Atty. Gen. Op. No. 1986-700; 1986 La. AG LEXIS 312.

OPINION REQUEST NUMBER 88-182 61. . . . Laws, General 63. . . . Levees 90-A. . . Political Subdivisions *R.S. 42:261, et seq, R.S. 42:263* Request to retain and compensate special counsel must be made by resolution. OPINION No. 88-182, *La. Atty. Gen. Op. No. 1988-182; 1988 La. AG LEXIS 108.*

R.S. 42:263(A) is applicable to the Caddo-Shreveport Sales and Use Tax Commission and said commission is the proper entity to adopt any resolution enacted pursuant to said statute., OPINION NUMBER 89-16, *La. Atty. Gen. Op. No. 1989-16, 1989 La. AG LEXIS 84.*

R.S. 38:305 is not an exception to *R.S. 42:263* legal representation by special counsel, but is an exception to *R.S. 42:261* legal representation by regular counsel., OPINION NUMBER 89-249, *La. Atty. Gen. Op. No. 1989-249; 1989 La. AG LEXIS 322.*

Parish governing authority may hire special counsel only if it complies with requirements of *R.S. 42:263*., OPINION NUMBER 89-612, *La. Atty. Gen. Op. No. 1989-612; 1989 La. AG LEXIS 543*

At-will public employees may be discharged without cause and without a hearing, if they are not subject to civil service; district attorney by law is counsel for all state boards and commissions domiciled in his jurisdiction, but in case of necessity boards may be authorized to hire special counsel., OPINION NUMBER 90-150, *La. Atty. Gen. Op. No. 1990-150*; 1990 *La. AG LEXIS 185*.

R.S. 16:2; *R.S. 42:263*; District attorney is regular counsel by statute for state and parochial entities in his district; governmental entities can only hire private counsel in cases of "real necessity" after following special procedure mandated by statute., OPINION NUMBER 90-593, *La. Atty. Gen. Op. No. 1990-593*; 1991 *La. AG LEXIS 9*.

A levee board or drainage board is free to employ a full time or part time attorney for general legal work. If the board contracts with an attorney for special legal work that contract must be approved by the Attorney General's office under *La. R.S. 42:263*., OPINION No. 91-91A, *La. Atty. Gen. Op. No. 1991-91*; 1991 *La. AG LEXIS 132*.

Discusses approval of local associate for bond issue., OPINION NUMBER 91-353, *La. Atty. Gen. Op. No. 1991-353*; 1991 *La. AG LEXIS 333*.

The Attorney General shall provide legal representation to the Louisiana State Racing Commission, to advise the Commission, represent it in legal proceedings, and prosecute violations of the Louisiana Racing statutes and rules. The Commission may contract with special counsel to represent it in special matters where there is a real necessity therefore., OPINION NUMBER 92-53, *La. Atty. Gen. Op. No. 1992-53*; 1992 *La. AG LEXIS 78*.

Fire Protection District may use its funds to hire legal counsel., OPINION NUMBER 92-238, *La. Atty. Gen. Op. No. 1992-238*, 1992 *La. AG LEXIS 253*.

Police Juries may retain services of special attorney in connection with real estate matters, but if District Attorney's office is capable of handling those matters, services should be performed by District Attorney's office., OPINION NUMBER 92-738, *La. Atty. Gen. Op. No. 1992-738*; 1992 *La. AG LEXIS 591*.

The School Board may hire special counsel with approval of the Attorney General but is still bound by the terms of its insurance contract for the deductible for its representation. OPINION NUMBER 95-500, *La. Atty. Gen. Op. No. 1995-500*; 1995 *La. AG LEXIS 401*.

Discussion of the use of public funds for representation of Coroner and his office., OPINION NUMBER 96-95, *La. Atty. Gen. Op. No. 1996-95*; 1996 *La. AG LEXIS 204*.

The Ethics Advisory Committee of the Louisiana Bar Association is the proper entity to address conflicts of interest regarding District Attorneys., OPINION NUMBER 97-486, *La. Atty. Gen. Op. No. 1997-486*; 1997 *La. AG LEXIS 488*.

Executive director of the Environmental Services Commission of St. Tammany Parish is not required to obtain the approval of this office prior to retaining special counsel to represent himself in his individual capacity, and the Commission is not required to obtain the Attorney General's approval prior to reimbursing the executive director for legal fees and expenses incurred in the defense of the Civil Action., Opinion Number 97-516, *La. Atty. Gen. Op. No. 1997-516*; 1998 *La. AG LEXIS 42*

Soil and water conservation districts should contact their local parish or municipal governing body to determine whether it participates in a self insurance program and whether the district is eligible. Otherwise, the districts should acquire insurance through a commercial carrier., Opinion No. 98-473, *La. Atty. Gen. Op. No. 1998-473*; 1999 *La. AG LEXIS 31*.

Solid Waste Commission is represented by the District Attorney. Whether there is a real necessity for the Solid Waste Commission to hire special counsel is a factual question as to which the office will not speculate , Opinion Number 99-302 *La. Atty. Gen. Op. No. 1999-302*; 1999 *La. AG LEXIS 493*.

The Vermilion Parish Library Board of Control cannot purchase property for new library independently of the Police Jury. The Police Jury is the appropriate entity to purchase said property. The District Attorney is legal counsel to the Library Board of Control as it is a creation of the Police Jury., Opinion No. 99-413, *La. Atty. Gen. Op. No. 1999-413*, 2000 *La. AG LEXIS 16*.

Parish can amend provisions of home rule charter to authorize the Council to have a full time attorney to handle Council matters , OPINION NUMBER 00-189, *La. Atty. Gen. Op. No. 2000-189*, 2000 *La. AG LEXIS 156*

Special counsel retained by Third Party Administrator for the behalf of a school board does not need to obtain attorney general approval, unless the School Board is to pay compensation for legal services., OPINION NUMBER 01-0430, *La. Atty. Gen. Op. No. 2001-0430*; 2002 *La. AG LEXIS 24*.

Discussion of legal fees for particular litigation., OPINION NUMBER 02-0061, *La. Atty. Gen. Op. No. 2002-0061*, 2002 *La. AG LEXIS 408*.

R.S. 33:2506, *R.S. 33:2480(A)*; contract for the employment of general counsel for the Fire and Police Civil Service Board does not require the approval of the Mayor and Board of Aldermen. The municipality must provide funding for the contract., Opinion 03-0306, 2003 *La. AG LEXIS 421*.

THOMPSON COBURN

*Thompson Coburn LLP
Attorneys at Law*

Suite 600
1909 K Street, N W
Washington, D C 20006-1167
202-585-6900
FAX 202-585-6969
www.thompsoncoburn.com

March 6, 2006

Ryan K Manger
202-585-6911
FAX 202-508-1032
EMAIL rmanger@
thompsoncoburn.com

VIA HAND DELIVERY

Office of the Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

Re: Lake Charles Harbor and Terminal District v. West Cameron Port, Harbor and
Terminal District; FMC Docket 06-02

Dear Secretary VanBrakle:

I am enclosing an original and fifteen (15) additional copies of the Reply in Opposition of Lake Charles Harbor and Terminal District to Motion to Dismiss, to be filed in the referenced docket. Additionally, I am enclosing for filing an original and fifteen (15) additional copies of the Motion to Compel Production of Documents and Answers to Interrogatories.

Please stamp and return the extra copies in the envelope attached hereto. Thank you for your attention to this matter. Please let me know if you have any questions.

Very truly yours,



Ryan K. Manger

Enclosures

cc: Randall K. Theunissen, Esquire (by U.S., first class mail)