Approaching a Marine Terminal Lease Negotiation

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Introduction

Before beginning any lease negotiation relating to a marine terminal facility an attorney, particularly one who has not had a great deal of experience in port law, would be well advised to do some fundamental preparation by reading applicable statutes and regulations. You will quickly discover that what may appear obvious in a different context is not so obvious here. Even those who have experience with leases for facilities used in other transportations modes will find that it is a different world.
As an example, while you may believe that you are dealing with a land lease you will be wrong. Actually you are dealing with something called a Marine Terminal Facilities Agreement as defined by Federal Regulations.[1] For our purposes here today however we'll call them leases.

A lease is a fundamental business deal whereby a landlord or property owner leases land to another, a tenant, for the tenants use. It is technically a conveyance of certain property interests. The tenant pays a consideration for the conveyance and the parties agree to certain conditions and restrictions regarding the use. Sounds simple just like they taught it in law school. In the real world of ports however it seldom is. There often are overriding economic, policy and legal considerations that have to be dealt with.

Fundamentals

Before beginning negotiations of a lease I suggest that certain preparatory work be undertaken. This may all seem very basic to experienced attorneys but sometimes a review is helpful.

1. Establish a negotiating team.

The old adage about too many cooks is certainly applicable to lease negotiations. Particularly high visibility transactions. I was always certain that numerous experts would crop up during and such negotiations or any other major business transaction. Having a pre designated team makes communication with the organization easier, provides for a division of responsibility and utilizes the appropriate expertise from with the organization. I suggest that a team consisting of law, operations, finance and management be put together.

1 See 46 CFR 535.311.

2. Determine the goals of the organization.

Port authorities, being by definition governmental agencies, are driven by certain political, legislative, economic and business considerations. Policy is established by the Board of Directors, whether they be called commissioners or directors, and of course will guide staff consistent with applicable law and regulations. The agency is the client and it is wise to advise the client of legal constraints and determine what goals the client wishes to achieve in the negotiations.

3. Make clear the need for legal direction.

Too often negotiations are driven by ego or other irrelevant considerations. Experience has shown that many port authorities have encountered difficulties by not recognizing early the need for sound legal guidance during the process. The responsibility of legal counsel goes beyond merely drafting a document incorporating the terms agreed on. For example the staff should be made aware of the fact that internal communications are creating a record that may very well someday be embarrassing if not protected. They also must be made aware of the constraints imposed by applicable law.

4. Establish a list of the basic terms sought.

Established clearly what basic terms are required in any lease entered into without which there will be no agreement. These are the parameters within which the negotiating team will work. While the terms can cover any number of issues the following typically are considered:

a. Financial terms
b. Liability issues
c. Insurance requirements
d. Security responsibility
e. Length of agreement
f. Facility control
g. Environmental responsibility.

5. Agreement on levels of authority of those involved.

Within any organization there are levels of authority provided for in by-laws or organizational structure. Authority may be delegated or be explicitly provided for. Before starting negotiations however the negotiating team should clearly understand their level of authority and what they can agree to. Usually any agreement is subject to final approval of a board unless authority has previously been delegated, but the negotiating team must know what it can tentatively agree to without going back for instructions or approval.

One case involving Georgia comes to mind where a lease agreement was abrogated because the port authority forgot that under applicable state law the approval of the attorney general was required prior to the conveyance of a property interest, which of course a lease is.

6. Establish liaison with public relations

Carrier and marine terminal operators are very sophisticated and have learned that they can sometimes influence negotiations through the use of politics or public relations. It is wise to prepare to react to such tactics. I do not however suggest that the terms of leases be negotiated in the press.

7. Set a schedule.

Time is money with a vacant facility and it is advisable to have a schedule for negotiations as well as the necessary approvals that are necessary for such agreements. Negotiations have been known to drag on for months unless the parties agree to a schedule to move them to closure.

8. **Know the law!**

Potential pitfalls

Many port authorities find themselves in the happy circumstance of having little land available for lease and are currently operating at almost full capacity. With the potential growth of international trade that is being predicted and the limits of available land for expansion the demand for marine terminal facilities will increase in the future while the supply may not. If one considers basic economic theory it is clear how pressure will develop.
High demand + limited supply = sellers market.

The situation that many ports now face is not unlike the experience of air terminals a few years ago with the entry into the market by start up carriers. The limited supply of terminal space coupled with an increased demand by airlines for space that would permit them to compete in a particular market created pressure on some airport operators. In some cases the Justice Department, threatening use of the antitrust laws, stepped in to encourage the opening of the markets and the avoidance of market dominance by some carriers.

But the fact is that marine terminal space is and will continue to be a hot commodity and with such a market comes temptations and problems that previously have not been encountered by port authorities on a wide scale. Whenever there is something of high value and limited availability there exists the potential for fraud, abuse, or wrong doing. It is important that even the appearance of any impropriety be avoided.

While, over the years there have been some complaints, particularly from disappointed applicants seeking facilities, there have been very few cases of proven illegal activity by individuals. I believe that this is because of the fact that most port authorities have formal

procurement policies and levels of oversight that would discourage such activity. In addition most port officials have limited authority and while they might be in a position to favor a particular applicant their decision alone would not be sufficient to guarantee a lease to a potential tenant.

I have seen a number of cases that had potential problems but were short of criminal conduct. Some were merely stupid. In an effort to protect the innocent and stupid and preserve confidentiality in discussing examples I'll try to change names and genders, and alter the places, facts and personalities during any discussions or examples except where the cases are reported.

As attorneys or port managers you should be aware of the pressures that can be applied to advantage a particular company that is seeking space at a port facility. We've all seen certain problem areas which give rise to problems during the selection process.

Personal connections.

The maritime community is a relatively small one and it is not uncommon for executives to take advantage of friendships or connections to seek an advantage for their companies. It is as old as business itself. The use of personal connections seems more common in foreign business where it is an accepted feature of the business culture. I know of one case where a port executive announced that a particular ocean carrier would get a lease for a facility that was becoming vacant because a promise was made over dinner in Asia that the company would get the next available vacancy.

Port Authority "Policy"

Consider the predicament of the port executive or attorney who is informed that it is now the policy of the port authority to favor ocean carriers because they bring "new cargo" into the region and thus will stimulate the economy; or a policy that discourages doing business with any company that has outstanding suits or claims against the port authority. Seldom are such "policies" in writing. As an attorney I hope that they are not. But usually there is an interesting paper or electronic trail relating to such matters that will be discussed later.

Political considerations

Port authorities, being governmental agencies of states or cities, are certainly subject to political oversight and pressure. It is not unheard of for politicians to favor companies or individuals who have been responsible for campaign contributions, favorable publicity, or other undefined favors. Does anyone that it is totally unforeseeable that somewhere some governor might have a staff person call to encourage that a particular facility be leased to a generous supporter, that more favorable terms be negotiated or perhaps checking if it is true that the port authority has taken too intransigent a position during negotiations. Once a governor dispatched staff members to conduct separate negotiations with an ocean carrier without telling port officials.

Union Involvement

Some unions favor certain companies. It could be because of amicable labor relations, personal contacts or the fact that certain operations generate more jobs. Whatever the reason, unions have been known to attempt to assert their preferences.

Shipping Act Concerns

It is ironic that the statutes and regulations that often are considered to be a nuisance to port attorneys and executives often can be the salvation of the agency protecting it from the varied pressure that can be brought to bear during negotiations. Statutes and regulations provide a legal limit and control on what the port authority can and cannot do. Often they are a protection for a port authority from itself.

During the debates regarding the 1984 Shipping Act [2],and the Ocean Shipping Reform Act of 1998 [3], there was a great deal of discussion within the AAPA whether deregulation was good for the industry and whether port authorities would be better off subject to the anti trust laws rather then regulation. The consensus was that the current regulatory regime was working and provided a consistent and uniform system that was better then a system that would treat marine terminal operators differently depending on their structure and status. Essentially it was felt that everyone should play by the same rules. These rules provide port attorneys and executives with valid arguments that the port business should be conducted as a business. Knowledge of the law is essential however to appreciate the vulnerabilities that arise if the rules are violated. Consider that the Shipping Acts can take pressure off of the staff.

It never ceases to amaze me how many port commissioners and directors do not realize that they are operating in a regulated industry. This fact is one that should be impressed on them by the port attorney before any major negotiation begins. It should be explained to the policy making body of the port authority how the selection process should be conducted and what limits exist regarding the terms of any agreement.

Perhaps it would be beneficial to quickly review some significant applicable law so that you can remind your commissioners or directors how they could affect a business deal.

For many years, there was uncertainty regarding whether public port agencies were even covered by the Shipping Act of 1916. In the early part of this century, most marine terminals, with some notable exceptions, were owned and operated by private interests. In many cases, the owners of the facilities were the ocean carriers themselves. The latter part of the century, following the container revolution, saw an evolution during which port terminal development became the responsibility of public agencies, i.e. port authorities, which used public money, usually the proceeds from the sale of bonds, to finance capital construction. Often these undertakings were perceived not as marine terminal operations but as a form of economic development, that is projects undertaken to stimulate the growth of commerce in a particular

2. 46 U.S.C. app. Sec 1701
3 46 U.S.C. app. Sec. 1701-1719

region. This is the origin of a dilemma port authorities face in negotiations that will be discussed later.

Among public sector agencies, are operating ports and landlord ports. The public agencies involved in port development, management or operation may be a department of a state government, such as the Alabama State Docks. Others have some autonomy and may be a part of the State government such as the Port Authorities in Maryland, North Carolina and Georgia. Many are municipal port departments, such as the Port of Los Angeles. Still others are independent port or navigation districts which function as political subdivisions of certain states. Some like The Port Authority of New York and New Jersey and the Delaware River Port Authority are bi-state agencies which were created by compact or treaty between states pursuant to the Compact Clause of the United States Constitution.

While the structure, legal genesis, management philosophy and operating characteristics of ports may differ, they are all affected by federal law and regulation. Their differences do become significant however when discussing possible changes in existing law, particularly, the elimination of antitrust immunity but that is beyond our discussion here.

The Shipping Act of 1916 was based on the premise that competition is inherently limited in ocean shipping but it was desirable to retain the benefits of improved service and rate stability provided by the conference system. The Act created the United States Shipping Board, which later came to be known as the Federal Maritime Commission (FMC), to implement the Shipping Act.

While the historic application of this law to the Ocean Shipping Industry in general is interesting and worthy of discussion ,our focus here is narrower and concerns the regulatory requirements that apply to ports as part of that greater industry.

Section 1 of the Shipping Act of 1916, defined the term "other person" subject to the Act as "any person not included in the term common carrier by water, carrying on the business of forwarding or furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water." This section also included "...corporations, partnerships, and associations, existing under or authorized by the laws of the United States or any State, territory, district or possession thereof, or any foreign country."[4] Notably, there was no explicit reference to states or state agencies. For many years the Commission did not impose regulatory restrictions on land side activities. However, in a 1944 decision, the United States Supreme Court, in State of California v. United States[5] ,decided that the Commission's power to set the prices that marine terminal operators could charge for demurrage, storage, and free time was confirmed. The Court found that the circumstances that gave rise to the enactment of the Shipping Act must be given primary consideration when determining what is an "other person"

[4] 46 U.S.C. §801

[5] 320 U.S. 578, 64 S. Ct. 352, 886 L. Ed. 322 (1944)

subject to Federal Maritime Commission jurisdiction. The Court in the decision written by Justice Frankfurter, ultimately determined that municipalities, i.e. port authorities, are included in the term "other person" since they are the public owners of wharves and piers which furnish the sort of facilities ordinarily subject to the jurisdiction of the Act. The Court noted that to exempt such facilities from the jurisdiction of the Shipping Act "would have defeated the very purpose for which Congress framed the scheme for regulating waterfront terminals to exempt those operated by governmental agencies ... whatever may be the limitations implied by the phrase in connection with a common carrier by water which modifies the grant of jurisdiction over those furnishing wharfage, dock, warehouse, or other terminal facilities, there can be no doubt that wharf storage facilities provided at shipside for cargo which has been unloaded from water carriers are subject to regulation by the Commission".[6]

This decision, when read with the lower court opinion,[7] suggests that the adoption of non-compensatory charges for marine terminal services violated the Shipping Act.[8] While “non-compensatory” is not necessarily synonymous with “unreasonable”, the Court’s ,and later the Commission’s ,reasoning seems to have been forgotten or ignored by Ports and others when they began to consider themselves economic development agencies rather than marine terminal operators. This is an interesting and significant point to remember during internal discussions related to the need to charge unreasonably low rates to enhance the competitive position of a port.

In 1984, Congress passed the Shipping Act of 1984, specifically confirming the Federal Maritime Commission's jurisdiction over ports and terminals. The Act did not contain a clear and explicit statement of the intent of Congress to regulate states or state agencies, leaving the assumption that they were included within the definition of “other persons” subject to the Act. The 1984 Act repealed its predecessor, the Shipping Act of 1916, insofar as that Act dealt with international ocean shipping,[9] and is now the principal statute governing economic regulation of ocean shipping between the United States and foreign countries. The Shipping Act of 1916 survived in its application to domestic cargo. This leads to interesting consequences when applied to facilities which handle "mixed" cargo.

The 1984 Shipping Act as applied to Marine Terminal Operators, i.e. Ports, covers agreements, to the extent the agreements involve ocean transportation in the foreign commerce of the United States among marine terminal operators and among one or more marine terminal operators and one or more ocean common carrier to:

"(1) discuss, fix, or regulate rates or other conditions of service; and

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[6] Id. at 586.

[7] California v. United States, 46 F. Supp. 474 (1942)

[8] See also City of Los Angeles Agreements, 12 F.M.C. 110 (1968); Practices etc. of San Francisco Bay Area Terminals, 2 U.S.M.C. 588 (1941); Investigation of Free Time Practices - Port of San Diego, 9 F.M.C. 525 (1966).

[9] See 46 U.S.C. §1719.

(2) Engage in exclusive, preferential, or cooperative working arrangements."[10]

The port industry has been moving toward less regulation recognizing the realities of the market place. Nevertheless, several issues relating to regulation remain of vital concern to ports, particularly when they are about to embark on an experience of negotiating with sophisticated and litigious parties.

In contrast to many other countries, the United States does not have a national port system. There is no comprehensive port facility planning with an allocation of national resources to various ports based upon such a plan. Such an undertaking could in fact be problematic in light of the often forgotten Constitutional restriction that "No preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over another . . ."[11] The United States has a port system which is the product of local and state government initiative with some private sector participation. The result is one of the finest, most efficient marine terminal systems in the world. Port authorities responsible for most of the development of deep water ports are, for the most part, fiercely competitive public agencies. It is the combination of this competition and the commitment of public development funds which has produced superior facilities. Public ports are perceived as economic development agencies charged by the local public and legislative bodies which created them to make investments that create local employment and other economic benefits. While the port industry is intensely competitive, the decisions of public port officials regarding their operation are directed not only by market objectives but also by public goals and political considerations. Public port development does not usually result from the investment of private capital, which implies the application of purely market forces. Instead, the development of public port facilities is more often undertaken with public funds and frequently involves matters of public policy that include local and regional development considerations. Ocean carriers and marine terminal operators often assume that local port authorities have an obligation to underwrite or subsidize operations as a necessary means of protecting the port's competitive position, notwithstanding existing law relating to non-compensatory charges. This you will see influences the opening position taken in negotiations by many potential tenants. Ports today are thus faced with a paradox: they must operate profitably in a fiercely competitive environment under a regulatory regime that assumes that competition and economic forces will control decisions yet are influenced by political considerations based on concerns other then market forces. They are public agencies functioning in a private sector industry.

Existing legislation prohibits ports, i.e. marine terminal operators, from giving any undue or unreasonable preference or advantage to any particular person, locality or description of traffic, and/or subjecting "any particular person, locality or description of traffic to an unreasonable

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[10] 46 U.S.C. §1703.

[11] U.S. Const. Art. 1, Sec. 9, Clause 6.

refusal to deal or any undue or unreasonable prejudice or disadvantage in any respect whatsoever".[12] Remember this and so advise your clients. This requirement is at times perceived as being in conflict with the need for public port agencies to exercise a fiduciary responsibility in managing their assets and engage in regional planning to maximize the use of their facilities. The legislative prohibitions in turn have been used by tenants as leverage in negotiations with their landlord ports.

Issues relating to exclusion, preference and discrimination, falling within the prohibitions of the Shipping Acts, continue to occupy the FMC and be of concern to port operators. In recent years, there have been a number of cases challenging marine terminal lease agreements. In most of these cases stevedores, companies who provide terminal services to common carriers, alleged that port facilities being offered to them were inferior, or that they were priced too high or that the port refused to deal with them. All of these allegations would fall under the statutory prohibition against unjust discrimination, unfair advantage, prejudice or refusal to deal.

This trend began in 1988 when Stevedoring Services of America (SSA) filed an action against the Port of Los Angeles and the Overseas Shipping Company.[13] SSA was a lessee of an independently operated public marine terminal facility and challenged the Port's refusal to renew its lease, which was due to expire one year after the complaint was filed. The Port, attempting to consolidate its properties, sought to have SSA share its terminal facility with an operator of an adjacent terminal who was to be relocated to SSA's space. Negotiations broke down with regard to the reallocation of space. Other similar actions followed involving the ports of Indiana, Seattle, Philadelphia and Savannah, all involving either allegations of preferential treatment of a competitor or refusal to deal.

In Savannah International Terminal v. Georgia Port Authority,[14] the Georgia Port Authority entered into a lease with the Savannah International Terminal (SIT) and subsequently withdrew the lease from the filing with the FMC. The lease, which provided volume incentives for business brought to the port, attracted the interest of competing companies who filed a complaint with the FMC challenging the agreement as being non-compensatory and preferential. Essentially, the competitors were seeking similar incentives as those contained in the SIT lease. The lease had been signed and filed with the FMC. Eventually, the lease was withdrawn when the Port was faced with the prospect of having to negotiate similar provisions with a number of its tenants. The officially stated reason given for the withdrawal was the fact that the Attorney General of the State had not approved the lease.

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[12] 46 U.S.C. 1709 (b) (12).

[13] Stevedoring Services of America v. Board of Harbor Comm’rs of the City of Los Angeles, FMC Docket No. 88-23.

[14] FMC Docket No. 89-17.

This is the dilemma faced by Ports. Savannah attempted to promote new business and attract additional cargo through the use of cargo incentives in accordance with its mandate to promote commerce. There is a tendency for landlord ports to incorrectly assume that ocean carriers or their marine terminal subsidiaries will be in a position to redirect cargo through their port. Hence, in negotiating a lease, a port is often willing to compromise the return on its investment if the transaction will result in secondary or ancillary benefits to the region in the form of additional traffic and jobs. The regulatory regime, however, will only focus on the competitive nature of the ocean carrier and marine terminal business and assumes that if the economics of the business deal are the same, tenants should be treated non-preferentially. In addition, the law does not distinguish between public sector and private sector marine terminal operators regarding the application of the Shipping Acts.

It is not necessary to go on at length and describe in detail a series of other cases that have been filed against ports. Reference can be made to the list below should any interest in the facts of those cases exist.

Independent Pier Co. v. Philadelphia Port Corp, Docket No. 90-15
Ceres Terminals, Inc. v. Indiana Port Commission, Docket No. 89-13
Secon Terminals v. Port of Seattle, Docket No. 90-16

With the exception of the case against the Port of Seattle, none of the above cases went to a decision but were resolved through negotiations. There is evidence, if one traces the pattern of these cases, that the regulatory system was being used for negotiating leverage in an attempt to receive more favorable commercial transaction. There are other more recent cases that other speakers will undoubtedly refer to but I mention these to illustrate the nature of the possible legal challenges.

While it has been recognized that since port authorities are public agencies, their agreements should be accorded deference,[15] and that they may consider their own self interest in making business decisions,[16] the existing legislation and regulatory regime still creates a dilemma for public port agencies that is often apparent in decisions regarding leaseholds and lease negotiations.

The case of Maryland Port Administration v. Federal Maritime Commission[17] and its precedent case before the Federal Maritime Commission, illustrate the tension that exists. There is a need for public port agencies to successfully engage in interport competition while they comply with the Shipping Acts prohibition against unreasonable preferences. In that matter, the Maryland Port Administration (MPA) entered into a lease agreement with Maersk Line which contained certain incentives to encourage Maersk to move cargo through the Port of Baltimore.

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[15] See, e.g., Free Time Practices - Port of San Diego, 7 SRR 307 (1966).

[16] See Puerto Rico Ports Authority v. FMC, 642 F 2d 471 (D.C. Cir. 1980)

[17] 164 F.3d 624 (4th Cir. 1998).

Ceres Marine Terminal, Inc. sought the same incentives and expressed a willingness to make similar guarantees. The Port Administration refused to enter into a transaction on the terms sought and Ceres and MPA eventually entered into a lease with what was considered by Ceres to be unfavorable terms. The Administrative Law Judge, and later the Commission, found that MPA favored ocean carrier customers such as Maersk. Maersk was given an unreasonable preference or advantage under the rates and conditions of its lease with MPA in violation of section 10(b)(11) of the 1984 Shipping Act. It was also found that Ceres was subjected to an unreasonable and undue prejudice or disadvantage also in violation of the Act.

The United States Court of Appeals for the Fourth Circuit remanded the case to the FMC on the issue as to whether Ceres was estopped from disputing the terms of a lease that it had entered into. However, it let stand the decision of the Commission regarding the discrimination against Ceres by the MPA. Hence, the principle remains that while a port agency may be obligated to compete for trade and promote the economy of the region it represents but it may not violate the proscriptions of the Shipping Acts to accomplish that end. It must be assumed that those proscriptions continue to include a prohibition against charging non-compensatory rates.

The case involving the Maryland Port Administration was eventually resolved following the Supreme Court's decision relating to the immunity of certain state port agencies from third party suits before the Federal Maritime Commission. But the lessons learned are still significant.

The pressure being applied to port authorities by disgruntled or disappointed stevedores is limited only by the imagination of their attorneys. It would be wise to keep that in mind in advising your client prior to the commencement of any negotiations. As an example one stevedoring company, Holt Cargo Systems, not only filed an action before the federal maritime Commission but also commenced suit in federal court against the Delaware River Port Authority, the Philadelphia Regional Port Authority and the Port of Philadelphia and Camden alleging violations of their substantive due process rights and equal protection rights under Section 1983 of the Federal Civil Rights Act. [18]

I suggest that you practice defensive law in advising your clients. In addition to being familiar with the applicable law a few other suggestions should be focused on.

Remind the staff that all communications are potentially discoverable in any future legal proceeding. The information and comments that are circulated in email correspondence is sometimes amazing. People tend to forget that it is correspondence and will be a matter of record. This provides a fertile hunting ground for attorneys in any litigation. There are ways of protecting communication but the best way is for staff to use common sense when writing anything.

Care should be taken in any relations with a potential tenant. I would suggest that staff be advised not to put themselves in a position where they can be placed under any pressure. Naturally they should never accept a favor or gratuity. They should never have a financial or other interest in a potential tenant.

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18. Holt Cargo Systems, Inc v. Delaware River Port Authority et. al. 20 F.Supp.2d 803 (E.D.Pa 1998)

Prepare your governing board for a possible public relations or political initiative on behalf of a potential tenant. Suggesting that board members refrain from direct communications with any representative of the other party on anything even remotely related to the negotiations will be constructive.

As I mentioned earlier the value of marine terminal facilities will continue to increase as the amount of vacant space decrease. The stakes are increasing every day in deals now being negotiated. With that comes added pressure and temptation.

As I often jokingly said to my staff, if any one goes to jail make sure it’s not the lawyer!

HUGH H. WELSH

Hugh H. Welsh retired after 33 years with the Port Authority of New York and New Jersey where he served as the First Deputy General Counsel. He graduated from Saint Peter's College and was awarded his Juris Doctorate degree in 1964 from Rutgers University School of Law. Mr. Welsh is a member of the Bar of the State of New Jersey and the District of Columbia and is admitted to practice before federal district and appellate Courts as well as the Supreme Court of the United States. He is currently providing consulting services to public agencies including ports.

Mr. Welsh served in the United States Army reaching the rank of Captain in the Army Intelligence. He served in Vietnam where he participated in special military intelligence operations and was awarded several decorations including the Bronze Star.

As First Deputy General Counsel, Mr. Welsh was responsible for all major Port Authority legal matters and the administration of the Authority's 75 attorney Law Department. He represented that agency in all courts up to and including the Supreme Court of the United States. He also served as counsel to the Agency's 1300 member police force and PATH the Agency's rapid transit subsidiary.

Mr. Welsh survived both attacks on the World Trade Center, 1993 and on 9/11. He coordinated and managed the reestablishment of legal services for the Port Authority after the bombing of the World Trade Center in 1993 and managed the recovery and reestablishment of legal services and operations in the wake of the September 11, 2001 attack on and destruction of the World Trade Center. Subsequent to 9/11 he was also involved in the development of security practices for both aviation and maritime facilities and has lectured on both Crisis Management and Security Issues.

In addition to his responsibility for litigation involving the Port Authority in the New Jersey Courts and Federal Courts, Mr. Welsh was responsible for all Federal Administrative Law proceedings involving that Agency, particularly on issues dealing with the aviation, maritime and railroad industries. He has practiced before the Federal Maritime Commission, the Surface Transportation Board, the Federal Railroad Administration and other regulatory agencies. A nationally recognized expert on maritime and transportation law, he has represented the Port Authority and the AAPA on numerous occasions before Congressional Committees and has lectured throughout the United States. He was involved with the drafting of the Water Resources Development Act of 1986 and amendments thereto and negotiated all of the major project cooperation agreements that the Port Authority of New York has been involved in. He has consulted with a number of port authorities and governments regarding the organization of port agencies.

Mr. Welsh is a member of the American Bar Association serving in the local government law section and the Admiralty and Maritime Law Committee, the New Jersey State Bar Association, the District of Columbia Bar Association, the Federal Bar Association, the New Jersey Trial Lawyers Association, the Railway Trial Lawyers Association, and the Association of Transportation Law, Logistics and Policy. He served as Chairman of the Law Committee of the American Association of Port Authorities for more then 16 years and also served on the Board of Directors of the AAPA. He was also elected to the Board of Directors of the North Atlantic Ports Association. Mr. Welsh served as Chairman of the Committee of Legal Counselors of the International Association of Ports and Harbors, one of only six such legal counselors in the world and was designated Senior Advisor to that organization. He also has served as an adjunct professor at New Jersey Institute of Technology and has lectured at several law schools.

Mr. Welsh, in addition to his duties with the Port Authority, represented the International Association of Ports and Harbors, an organization representing the ports of the world, in negotiations at the United Nations Commission on International Trade Law and was designated as an alternate delegate to represent the Department of State in negotiations before the Commission on the Convention relating to the Limitation of Liabilities of International Transport Terminal Operators.

Mr. Welsh has served as a consultant to a number of state and foreign governments on transportation and maritime issues and at the request of the federal government conferred with Officials of the Republic of Panama regarding the creation of an agency to manage the Panama Canal after 1999.

The International Association of Port and Harbors elected Mr. Welsh as an Honorary Member. He is the recipient of the Distinguished Achievement Award from the American Association of Port Authorities and was awarded the Robert F. Wagner Medal for Distinguished Public Service. He has received four Executive Director Unit Citations from the Port Authority of New York and New Jersey for outstanding work on specific projects.

Mr. Welsh was awarded a special citation for his professionalism and courage during the 9/11 attack on the World Trade Center.