

Approaching a Marine Terminal Lease Negotiation

Port Administrative & Legal Issues Seminar

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Introduction

- Leases different than private sector
- Overriding economic, policy and legal considerations
- Federal statutes and regulation applicable

Fundamentals

- Establish a Negotiating Team
- Determine the Goals of the Organization
- Make Clear the Need for Legal Direction



Fundamentals (cont.)

- Establish a List of Basic Terms Sought:
 - Financial Terms
 - Insurance Requirements
 - Security Responsibilities
 - Length of Agreement
 - Facility Control
 - Environmental Responsibility



Fundamentals (cont.)

- Agreement on levels of authority of those involved
- Establish liaison with public relations
- Set a schedule
- Know the Law!



Potential Pitfalls

- High demand + Limited supply = Sellers Market
- Problems
 - Personal connections
 - Port Authority “policy”
 - Political considerations
 - Union involvement



Shipping Act Concerns

- Are you subject to it?
- State of California v. United States
- “Non-compensatory charges”
- 1984 Shipping Act
- Port agency vs. Economic development agency

Shipping Act Concerns (cont.)

- Thou shalt not:
 - “give any undue or unreasonable preference or advantage to any particular person, locality or description of traffic”
 - “subject any particular person, locality or description or traffic to an unreasonable refusal to deal or any undue or unreasonable prejudice or disadvantage in any respect whatsoever”

Shipping Act Concerns (cont.)

■ Cases of interest

- Stevedoring Services of America v. Board of Harbor Commissioners of the City of Los Angeles
- Savannah International Terminal v. Georgia Port Authority
- Maryland Port Administration v. Federal Maritime Commission
- Holt Cargo Systems, Inc. v. Delaware River Port Authority

Defensive Law

- All communication potentially discoverable
- Avoid possible compromising positions
- Prepare policy making board



If anyone goes to
jail...make sure it's not
the lawyer!

