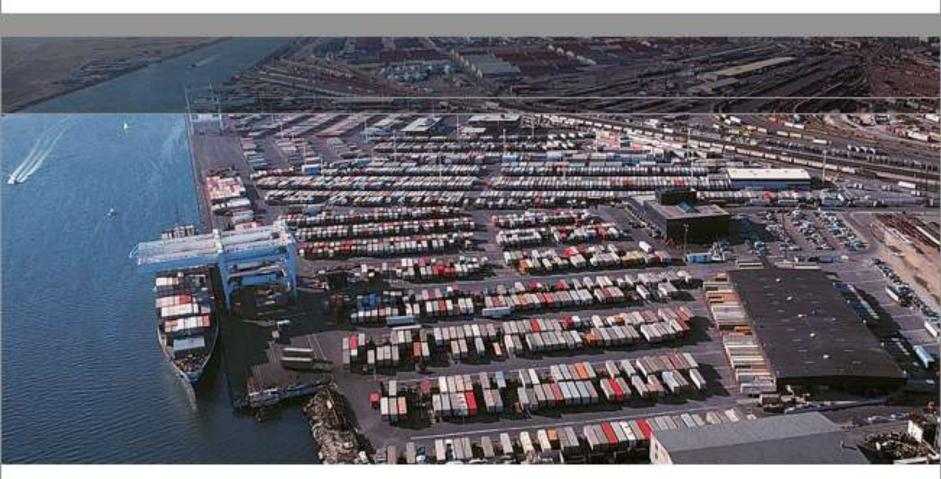
### O O'MELVENY & MYERS LLP

American Association of Port Authorities Port Administration and Legal Issues Seminar 13 April 2011 / San Francisco

Presented by Eric A. S. Richards



Lessons Learned: Negotiating and Drafting Long-Term Strategic Port Leases

### **Presentation Overview**

- Process Tips
- Consideration of Counterparty Financing and Other Constituencies
- Protecting Port Interests in a Risk-Sharing Context
- Special Environmental Considerations
- Mitigating Post-Execution, Pre-Closing Risks



## **Process Tips**

- Control Drafting Responsibility
- Utilize Term Sheets
- Special Considerations for Competitive Bids
  - define organizational objective(s) at outset
  - organize integrated internal project team
  - coordinate with key stakeholders
  - ensure due diligence opportunities for bidders
  - communicate openly with prospective bidders
  - ensure fair and transparent selection process

#### **Consideration of Counterparty Financing and Other Constituencies**

- Project Debt
- Equity
- Operational Expertise
- Sublessees



#### **Protecting Port Interests in a Risk-Sharing Context**

- Limited Representations and Warranties
- Limited Termination and Other Remedies
- Limited Indemnity Provisions
- Addressing Potential Liability for Changes in Law
- Recordkeeping and Audit Requirements

# **Special Environmental Considerations**

- Pre-Existing Conditions
  - baseline vs. shared responsibility approach
- New Conditions
  - partial vs. complete clean-up
- Consideration of Supplementary Environmental Agreement



## Mitigating Post-Execution, Pre-Closing Risks

- Earnest Money Deposit
- Communication

