



O'MELVENY & MYERS LLP

American Association of Port Authorities
Port Administration and Legal Issues Seminar
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**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