

AAPA PORT ADMINISTRATION AND LEGAL ISSUES SEMINAR

Miami, Florida
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ADDRESSING PORT DEVELOPMENT CHALLENGES

SHIPPING ACT CONSIDERATIONS

1. Marine Terminal Operators
 - Definition
 - “marine terminal operator” means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to sub-chapter 11 of chapter 135 of title 49, United States Code
 - Affiliated terminals vs. independent terminals
 - Operating ports vs. non-operating ports
 - Citizenship of port operators
2. Different Treatment vs. Undue or Unreasonable Preference or Prejudice
 - Comparison terminal to terminal, lease to lease
 - Changed (more onerous) terms
 - Failure to enforce
 - Response to market conditions/competition
 - Most favored nation
 - Non-compensatory terms
3. Termination of an Existing Tenant
 - Preference allowed/required
 - Refusal to negotiate
 - Exclusive dealing cases
 - Refusal to deal
 - Boycott
 - Right of first refusal
 - Impact of nationwide shortage of facilities/space

4. Procedures for Leasing/Renewals/Terminations/Negotiations
 - Requirement for written procedures/rules/criteria?
 - RFP/procurement vs. negotiation
 - Unequal information
 - Informal relations among existing parties
 - Market surveys
 - Strategic plans
 - Documentation of decision
 - Record in FMC litigation
 - E-mails
 - Subordinates records vs. decision maker
 - Public access to lease documents

5. Port Productivity Requirements.
 - Easy in theory
 - Can be complicated in practice
 - Unjust discrimination questions
 - Implementation of new requirements
 - Does a Port always have the right to make its best deal?

6. Public Policy Issues
 - Abolition of carrier antitrust immunity in Europe
 - FMC rulemaking in NVOCC service contracts
 - Commission on antitrust immunity in U.S. trades