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