

January 23, 2007

Via Messenger

Andrew J. Heimert, Esq.
Executive Director & General Counsel
Antitrust Modernization Commission
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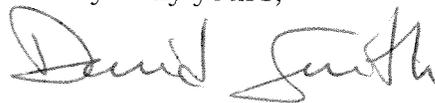
Re: Comments of the Members of the West Coast MTO
Agreement On Immunities and Exemptions

Dear Mr. Heimert:

Enclosed herewith are the comments of the members of the West Coast MTO Agreement on immunities and exemptions.

A copy of this letter and its enclosure has been provided for your acknowledgement of receipt.

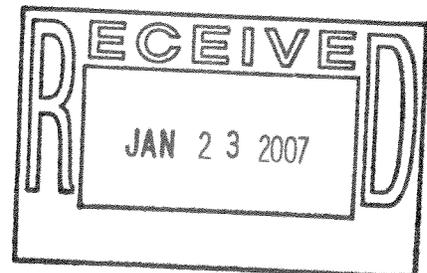
Very truly yours,



David F. Smith

Enclosure

cc: West Coast MTO Agreement



**Before the
ANTITRUST MODERNIZATION COMMISSION**

**COMMENTS OF THE
MEMBERS OF THE WEST COAST MTO AGREEMENT
ON IMMUNITIES AND EXEMPTIONS**

Introduction

The marine terminal operator members of the West Coast MTO Agreement (“WCMTOA” or the “Agreement”) listed in the attachment hereto, through undersigned counsel, submit the following comments on the antitrust immunity available under the U.S. Shipping Act of 1984, as amended (the “Act”).

The WCMTOA Agreement and the PierPASS program it developed were mentioned by several witnesses that testified before the Antitrust Modernization Commission at its hearing on the Act in October of 2006. In light of discussion of the Agreement by others, the members of WCMTOA believe it appropriate to submit their own comments to the Commission on the issue of immunities and exemptions from the antitrust laws, as it relates to marine terminal operators.

The PierPASS program has proved to be a strikingly successful industry solution to the pressing truck congestion problem in Southern California, at no cost to the taxpayers. It would not have been possible without the business certainty afforded by the antitrust immunity provided by the Shipping Act.

Background

WCMTOA is an agreement among thirteen (13) marine terminal operators filed with the U.S. Federal Maritime Commission (“FMC”) pursuant to the Act. The member companies of WCMTOA all operate marine terminal facilities and provide marine terminal services to ocean carriers at either the Port of Los Angeles or the Port of Long Beach. Each of these ports handles more containerized cargo than any other U.S.

port. Together, they handled over 14 million twenty-foot equivalent units, or “TEUs” during 2005, the 7th largest port complex in the world.

The WCMTOA agreement was filed with the FMC pursuant to the Act on May 3, 2003, and went into effect in accordance with Shipping Act procedures and FMC regulations on June 23, 2003. The process of its becoming effective is discussed in more detail below.

Operation And Benefits Of The Agreement

The WCMTOA Agreement was formed to deal with the very serious port congestion problems at the ports of Los Angeles and Long Beach, the nation’s largest port complex. Virtually all cargo arriving at or leaving those ports does so either by truck or rail, and the volume of trucks necessary to move the cargo entering and leaving the port during daytime hours had grown to the point that it was causing substantial delays at the terminal gates. That meant that trucks would idle for long periods of time, reducing throughput efficiency and contributing to an already substantial air quality problem. The number of trucks moving to and from the port was also creating congestion on local highways.

These problems had drawn considerable attention from state legislators, who proposed a number of bills to deal with various aspects of the congestion/truck traffic/air quality problem. The members of WCMTOA believed that an industry solution developed by the terminal operators directly handling truck traffic at their facilities would be quicker, more efficient, and more effective than a legislative solution.

Therefore, the members of WCMTOA and other segments of the industry, with the support of state legislators and other industry segments, developed a solution that would address the causes of the problem in a manner that would involve minimal

disruption for all concerned. After extensive consultation with cargo interests, railroads and truckers, the members of WCMTOA set up a nonprofit company named "PierPASS" through which they established a program to address congestion issues.

Under the PierPASS program, the members of WCMTOA all agreed that they would keep their terminals open during nighttime hours in order to spread cargo flows more evenly and process cargo during periods of lower highway congestion. To pay for the considerable cost of the additional night shifts, and to provide an incentive for cargo shippers to move their cargo during off-peak hours, the terminal operators adopted a fee on cargoes entering and leaving the ports during normal daytime work hours. The objective of this program was to reduce the number of trucks entering and leaving the port during peak daylight hours, thereby reducing congestion and increasing the efficiency of terminal operations.

The PierPASS program has succeeded far beyond expectations, and has been hailed by a wide variety of government and industry interests. In its first full year of operation commencing in July of 2005, approximately 2.5 million truck trips were diverted from the peak daytime hours to the night shifts. This represents over 35 percent of truck traffic moving through the Ports of Los Angeles and Long Beach. During calendar year 2006, almost 3 million trucks will enter and exit the terminals at night and on weekends rather than during the day.

This diversion of truck traffic has reduced congestion on port area highways and greatly reduced the waiting times for trucks serving the ports. Truckers can make more trips during a workday, allowing them to earn more money. Moreover, the effective throughput volume of the ports has been expanded -- with no expenditures for the construction of additional physical infrastructure and no government money required. By all measures, the undertaking has been an unqualified success.

**The PierPASS Program Was Made Possible
By The Antitrust Immunity Provided Under The Shipping Act**

Absent antitrust immunity, the PierPASS program would not have been possible. Such a program could only work if it were applied uniformly by all terminals. The terminals were able to make the investment necessary to keep their terminals open at night based on assurance that other terminals would do likewise. If any terminal were to take a different approach, the incentive for terminal operators to keep their terminals open, and for terminal users to alter their behavior and use the nighttime and weekend hours, would be undermined.

Because the program relies on uniform rules and a uniform charge to cover costs and induce a shift to off-peak cargo movements it would, in the absence of antitrust immunity, arguably be subject to invalidation under the antitrust laws. Even if the program were not ultimately held to be unlawful, the prospect of considerable time and expense of defending the program in antitrust litigation would have made the program significantly less attractive to the terminal operators, and would likely have deterred adoption of the program in the first place. Thus, antitrust immunity provided the legal certainty that enabled the terminal operators to develop and implement an industry solution to the congestion problem.

FMC Agreements Are Subject To Significant Regulatory Oversight

The antitrust immunity provided to terminal operators and ocean carriers under the Shipping Act is not unlimited or open-ended. Rather, their conduct is circumscribed in a number of ways by the Shipping Act and by FMC oversight.

In this regard, agreements filed with the FMC (including WCMTOA) are subject to numerous regulatory requirements and restrictions. For example, as with all agreements among marine terminal operators (and ocean common carriers), when the WCMTOA Agreement was filed, it was reviewed by the FMC staff to determine if it was

likely, through a reduction in competition, to result in an unreasonable increase in transportation cost or an unreasonable reduction in transportation service (a standard established by section 6(g) of the Act). In addition, as is also the case with all agreement filings, notice of the Agreement was published in the Federal Register, the Agreement was made available to the public, and the public was afforded the opportunity to comment on the Agreement. After the FMC staff completed its review, and after the FMC commissioners (who are appointed by the President and confirmed by the Senate) considered the staff's analysis and recommendations and any comments received from the public, the Agreement was permitted to go into effect on June 23, 2003. Numerous other substantive statutory prohibitions apply to WCMTOA, as well as to carrier agreements.

FMC regulations require that WCMTOA and many other agreements file minutes of all their meetings (including copies of documents circulated or discussed at those meetings) with the agency promptly after the meeting. The FMC also has an extensive monitoring report program in place, which requires agreements to submit various types of economic information to the agency on a quarterly basis so that the agency can monitor the impact of the agreement on an on-going basis. WCMTOA submits such quarterly information to the FMC.

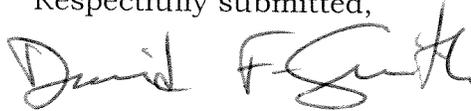
Thus, the antitrust immunity available under the Act is not unlimited, and entities subject to the Act are subject to numerous statutory limitations and restrictions as well as extensive FMC oversight.

CONCLUSION

Through the Shipping Act, Congress has established an effective and comprehensive regulatory system, administered by an expert independent regulatory agency. The limited antitrust immunity afforded by the Shipping Act has permitted

the members of WCMTOA and other segments of the industry to develop cooperative solutions to serious public interest concerns – air quality, infrastructure capacity, and port and traffic congestion -- that would not have been possible without the immunity. Accordingly, the members of WCMTOA respectfully urge the Antitrust Modernization Commission to recommend preservation of the limited antitrust immunity under the Shipping Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David F. Smith". The signature is fluid and cursive, with the first name "David" being the most prominent.

David F. Smith
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COUNSEL FOR THE WEST COAST MTO
AGREEMENT

January 22, 2007

West Coast MTO Agreement Members

APM TERMINALS PACIFIC LTD.

CALIFORNIA UNITED TERMINALS, INC.

EAGLE MARINE SERVICES, LTD.

INTERNATIONAL TRANSPORTATION SERVICE, INC.

LONG BEACH CONTAINER TERMINAL, INC.

PACIFIC MARITIME SERVICES, L.L.C.

SEASIDE TRANSPORTATION SERVICE LLC

SSA TERMINAL (LONG BEACH), LLC

SSA TERMINALS, LLC

TOTAL TERMINALS LLC

TRANS PACIFIC CONTAINER SERVICE CORPORATION

WEST BASIN CONTAINER TERMINAL LLC

YUSEN TERMINALS, INC.