

THE PORT AUTHORITY OF NY & NJ

Darrell Buchbinder, General Counsel
James M. Begley, Deputy General Counsel

September 24, 2012

Honorable Debra A. Batts
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

**Re: Weisshaus v. The Port Authority of New York and New Jersey, et al.
11 Civ. 6616**

Dear Judge Batts:

This office represents The Port Authority of New York and New Jersey (the "Port Authority") in the above-referenced matter. Although the Port Authority has never been served with the complaint in this action, we appeared with permission on the appeal in the Second Circuit Court of Appeals, primarily to address Mr. Weisshaus's argument that his challenge to the toll increase was made pursuant to the dormant Commerce Clause.

This office is co-counsel to the Port Authority in the pending action entitled *Automobile Club of New York, Inc. v. Port Authority of New York and New Jersey*, 11 cv-6746 (S.D.N.Y. filed September 27, 2011) ("*AAA*"), which is referenced in the order of the Second Circuit dated September 20, 2012 affirming the judgment of this Court and remanding the matter for further proceedings. In *AAA*, the plaintiff challenged the September 2011 toll increases under the dormant Commerce Clause and the Highway Act (33 U.S.C. § 508). *AAA*'s complaint seeks both injunctive and declaratory relief. The Port Authority answered and moved to dismiss. In his order and decision of February 6, 2012, the Hon. Richard J. Holwell denied *AAA*'s application for injunctive relief stating that "*AAA* has failed to demonstrate a likelihood of success on the merits in its Commerce Clause claim, let alone a clear or substantial likelihood of success." I enclose a copy of that decision for the Court's convenience. Before the Second Circuit, Weisshaus contended that he has made the same claim as *AAA*, that the toll increase is to fund the construction of the World Trade Center.

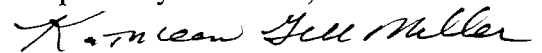
Judge Holwell converted the Port Authority's motion to dismiss to a motion for summary judgment, deferred decision on the converted motion and permitted *AAA* limited discovery. The *AAA* matter has been reassigned to Judge Richard K. Eaton who has referred discovery to Magistrate Judge Henry B. Pitman. Discovery in *AAA* is progressing, and it is contemplated that

THE PORT AUTHORITY OF NY & NJ

it will be completed by the end of the year. At that time, it is anticipated that the motion for summary judgment will be fully briefed and submitted.

In its decision, the Second Circuit outlined two options for this Court including “staying the action pending a decision in *AAA*...” The Port Authority respectfully requests, without waiving any of its rights and defenses, that in the interest of judicial economy, this Court stay reconsideration of Mr. Weisshaus’s pleadings in this action pending the decision on the deferred summary judgment motion in *AAA*. Summary judgment in favor of the Port Authority would dismiss *AAA*’s dormant Commerce Clause claim on its merits. If summary judgment is so granted, this Court need not address whether Mr. Weisshaus did, in fact, plead a dormant Commerce Clause claim, because even if he did so, summary judgment in favor of the Port Authority in *AAA* would require dismissal of any such claim and, thus, of his action. Issuance of a stay would obviate the unnecessary expenditure of resources by this Court and of any further public funds on litigation costs.

Respectfully submitted,



Kathleen Gill Miller

cc: Y. Weisshaus
Pro Se Appellant
516 River Road, Apt. 6
New Milford, NJ 07646-1900