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September 13, 2013

To: The Honorable Richard K. Eaton
United State District Court Judge
Southern District of New York
500 Pearl Street - New York NY, 10007

Re: *Weissshaus v. Port Authority, et al.* 11-cv-6616 (RKE)

Dear Judge Eaton,

I Yoel Weissshaus am the plaintiff in the named matter. I reply to distinguish my request to amend the complaint from the imprecise conclusions drawn by the Port Authority of New York and New Jersey (“Port Authority”) in its letter to the Court dated September 10, 2013. Instead, I request that the Court schedule October 28, 2013 as the date for plaintiff to amend the complaint, and if filed for the issuance of a summons.

The precedent in FRCP 15(d) requires leave to amend “even though the original pleading is defective in stating a claim or defense.” Likewise, the precedent sets forth that “the court should not dismiss without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim **might** be stated.” *See Robles v. Evans*, 480 Fed.Appx. 86, 88 (2nd Cir. 5-11-2012)(emphasis added) In its letter, the Port Authority does not dispute the indication of a valid claim, instead estimates that the outcome of summary judgment in *Automobile Club of New York and New Jersey* (“AAA”) might somehow determine an amended complaint—not yet filed. Nonetheless, the causes of action *here* is distinct from AAA.

The key issue this case raises is the *amount reasonableness*, of the sudden 100+% increase in toll prices that the Port Authority implemented September 18, 2011, because it exceeds twofold what an itinerate from New Jersey earns in New York under the local wage—per hour. The 2011 price increase contains a surge in price in addition to the prior increases of 300+ percentages, where in less than 10 years went from \$4 in 2001 to \$12. The Port Authority proclaims its repeated price increases, which includes a “penalty” for cash payment: to raise the Bayonne Bridge for post-PANAMAX ships, to fund the World Trade Center, expand the Goethals Bridge, and finance debt for *future* construction. Consequently, such charges are excessive to the benefit conferred because even if the payer’s (the traveler’s) benefit of these developments *might* happen in the future, the benefit does currently not exist. Were the amount is unjust and unreasonable as exceeding its approximation of facilities and excessive to the benefit conferred, the

plausibility standard can be met to plead a cause of action under the dormant Commerce Clause.

While this case and AAA both challenge the same increase in toll prices; at this point, the Port Authority is in no position to determine whether an amended complaint is identical to the AAA action because both cases operate on distinct fact. AAA **only** takes issue with using toll revenue for building the World Trade Center, but completely ignores and even endorses the “penalty” for cash payment and the taxing on itinerates for post-PANAMAX ships. The causes of action in *Weissshaus* are therefore, not predicted on AAA.

In contrast to the conclusions made by the Port Authority, the Second Circuit found that Weissshaus stated a cause of action under 42 U.S.C. § 1983 but remanded for review on the dormant Commerce Clause, as it reads:

“In this case, with respect to his constitutional claims, Weissshaus’s challenge to the Port Authority’s actions is that, while exercising its state law authority to regulate toll rates, the Port Authority violated his federal constitutional rights, **which is precisely the type of claim for which § 1983 provides a remedy.**”

See *Weissshaus v. Port Authority of New York*, 497 Fed.Appx. 102, 104-5 (2nd Cir. 9-20-2012) (emphasis added) but affirmed because in its Circuit under the right to travel *minor restrictions* and *mere affect* are permitted, notwithstanding any other constitutional provision to the contrary. Nevertheless, on the facial plausibility under the dormant Commerce Clause the Second Circuit reached:

“However, we conclude that the district court erred in failing to consider whether Weissshaus had adequately pleaded a constitutional challenge to the reasonableness of the amount of the tolls under the dormant Commerce Clause, and, accordingly, we remand the case to the district court to determine in the first instance whether Weissshaus has adequately pleaded such a claim or should be granted leave to amend the claim.”

Id at 104-5.

Of course, after amending the complaint and the service of a summons, the Port Authority can then, upon a showing of good cause (such as by showing that AAA and *Weissshaus* is somehow identical), ask the Court then to consider staying it is answer pending AAA, and likewise face an opposition by plaintiff. The same concept the Second Circuit stated, “In the alternative, the district court may, in its discretion, consider...” While the Summary Order allows staying the **determination** of the action, the language does not call for staying amendment of the complaint.

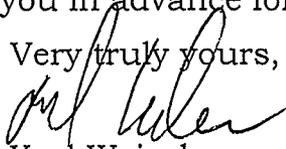
Moreover, amending the complaint by itself does not prejudice the Port Authority in any way, while predicting the facial plausibility of an amended complaint before its birth does hinder where public policy favor judicial review of a case on its merits, and not on mere estimates. Especially where the Port Authority estimates that, the merits of summary judgment in AAA might somehow determine the merits of this case. Assuming *arguendo*, even if the amended complaint is predicted on Summary Judgment of AAA, it would only serve in the interest of justice and give the Court a more concise pleading to review the present case through an amended complaint.

Similarly, the complaint in this case has been filed 9-days before AAA and has yet to have a full opportunity to present its case by amending the complaint. Aside of this motion, there was no prior request with the Court for leave to amend the complaint.

WHEREFORE, I write to request that the Court deny the requests made in the Port Authority's letter and request at the same time that the Court schedule October 28, 2013 as the date to amend the complaint, and if filed for the issuance of a summons.

I thank you in advance for consideration of this matter.

Very truly yours,



Yoel Weisshaus

Cc: Kathleen G. Miller for the Port Authority, by email