

From: Yoel Weisshaus  
516 River Road 6 - New Milford NJ, 07646

To: The Honorable Loretta A. Preska  
United State District Court Chief Judge  
Southern District of New York  
500 Pearl Street - New York NY, 10007

Re: Weisshaus vs. Port Authority of New York and New Jersey et al. 11-cv-6616

Dear Judge Preska,

I am Yoel Weisshaus, plaintiff in this action.

I request leave to file a motion for reconsideration dismissing this case, for the Court to take notice of factors that were overlooked in Judge Batts decision.

I further request that the Court grant leave and schedule my motion for reconsideration to be due by November 28, 2011.

Specifically, I request the Court grant me leave to effect and file a notice of claim upon the Port Authority before filing a motion for reconsideration. If reconsideration is granted, plaintiff will be able to pursue a challenge to the state statute under FRCP Rule 5.1.

Plaintiff has good cause for reconsideration, because the states have consented to jurisdiction in this Court. In addition, the Eleventh Amendment does not proscribe claims against the Port Authority of New York and New Jersey.

With respect to the right of travel and constitutional claims, this complaint has been filed under USC § 1331 and §2201; there is not a single mention of USC § 1983.

This case was dismissed prematurely, and Weisshaus is entitled to relief because:

- (i) Justice requires so where the Court overlooked the state statutes consenting jurisdiction to this Court;
- (ii) There was no opportunity to correct the deficiencies in the complaint (including eliminating state defendants because this case is directed primarily against the Port Authority of New York and New Jersey<sup>1</sup>). The states and their legislators are only limited defendants in this case with respect to the relief sought and not a liable party of guilt. Nevertheless, state statute is challenged;

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<sup>1</sup> The states and its legislators were only listed as a party for the purposes of the relief sought. If, the Court grants leave to file for reconsideration, plaintiff will voluntarily dismiss the states and its legislators to enable the Court to pursue this action under FRCP 5.1

- (iii) When filing this action, the *Pro Se Desk* told Weisshaus that he does not need to effect a Notice of Claim prior to filing such action in Federal Court. Alternatively, the statute of limitations has not run and plaintiff should be given leave to effect a notice of claim and pursue this action;
- (iv) This case seeks declaratory relief, which is available to this Court under USC § 1331 and §2201. (Assuming this suit under §1983 may constitute fraud upon the court for the purposes of filing for reconsideration); In addition,
- (v) The Court overlooked *in forma pauperis* declaration of Weisshaus requesting that he be given the opportunity to pay the Court fee in November, when he receives his student aid reimbursement. Therefore, Weisshaus was prejudiced by 28 USC § 1915(e) (2) (B).

Moreover, the Court overlooked that this case meets the criteria of Actual Controversy and Conduct Capable of Repetition Yet Evading Review. Therefore, a motion for reconsideration is proper.

### **Background**

Weisshaus has good cause for reconsideration because a motion for reconsideration is proper when justice requires, provided by FRCP 60(b) (6). In this case, Yoel Weisshaus is threatened by the defendants with arrest and civil penalties for the sole reason of plainly not having any money to pay toll, p, NY McK § 6816.

The fact of the matter is that the Port Authority does indeed charge extra money, as a penalty, for those who do not have an EZ Pass. In this case, Weisshaus is poor, does not have the luxury of a credit card, and therefore is subject to discriminatory penalties through economics for not having an EZ Pass. Regardless of poverty, a penalty for not having EZ Pass is economic discrimination.

Further, state statutes only allow penalties for those who “evade” toll. In this case, Weisshaus is not evading toll, he simply does not have the money. In the days, he literally has no money; he so informs the toll clerk and still receives the penalty of evading a toll beside the EZ Pass penalty.

Government actions, such as increasing toll prices require reasonable public notice and public hearings. In this case, defendants are charged with increasing toll prices absent public hearings and public notice.

Federal Statute 33 U.S.C. §508 requires that toll prices be just and reasonable. In this case, the Port Authority toll prices are plainly unjust and unreasonable because its prices exceed what a person under the minimum wage guideline can afford. Consequently, Port Authority bridges and tunnels are interstate expressways under the

Federal power of Congress; this statute provides for Weisshaus standing and confers his right for a valid claim to be heard.

The Port Authority was created by statute of the two states of New York and Jersey. When establishing the Port Authority, the legislators waived immunity with consent for suits N.J.S.A. 32:1-157, McK § 7101. When consenting to suits, the legislators did not exclude themselves from actions for declaratory relief or for challenging their statutes. Moreover, the states consented to pursuing actions in Federal Court for claims against the Port Authority N.J.S.A. 32:1 162 and 32:1-171, McK.Unconsol.Laws § 7106.

Further, the Court has jurisdiction to hear claims because the:

Port Authority of New York and New Jersey is not a state agency for Eleventh Amendment purposes; Port Authority is a body corporate and politic created by interstate compact between New York and New Jersey and is to be regarded as the municipal corporate instrumentality of the two states for the purposes of developing the port of New York. Feeney v. Port Authority Trans-Hudson Corp., C.A.2 (N.Y.) 1989, 873 F.2d 628, certiorari granted 110 S.Ct. 320, 493 U.S. 932, 107 L.Ed.2d 311, affirmed 110 S.Ct. 1868, 495 U.S. 299, 109 L.Ed.2d 264. U.S. Const. amend. XI (West)

On the instant research of this issue, generally a notice of claim is required where the claims relate to a tort. On the content of the claims in this case, Weisshaus was unable to find clarity as to whether such notice is required, because some elements may fall under tort law. Nevertheless, the complaint was not served yet on defendants, and because the Court *sua sponte* invoked sovereign immunity, this action may indirectly fall under the notice of claim provisions. Therefore, Weisshaus seeks the Court's direction, to effect service of notice of claim and proceed with this action accordingly.

Weighing its factors, it will only be effective and expeditious for the Court to grant effecting a notice of claim because, on the one hand, if a resolution is reached Weisshaus will submit a voluntary dismissal. On the other hand, if a resolution is not reached, upon notice to the Court, jurisdiction cannot be disputed.

### **Legal Argument**

Weisshaus is still within the time limits of effecting a Notice of Claim because the issues relating to this action are both continuous and date to September 18, 2011. Moreover, there is still sufficient time to serve the notice of claim according to the applicable statutes. In addition, the Complaint was not served yet, therefore, this action, even though filed, is not commenced until service is perfected.

Under the New Jersey statute in regards to the Port Authority, the Court has the discretion to allow submission of a notice of claim where an "action or proceeding

commenced within the time specified in section seven [N.J.S.A. 32:1-163] hereof, then any court in which such suit, action or proceeding may be brought may in its discretion grant leave to serve the notice of claim and to commence the suit” N.J. Stat. Ann. § 32:1-164 (West).

Similarly McKinney’s Unconsolidated § 7107 and 7108, provide that a Notice of Claim can be issued “before such suit, action or proceeding is commenced”, and §7108 gives the Court the discretion to allow proceeding the case.

No prior such requests have been made and the original date dismissing this case is dated October 25, 2011. The adversary consent has not been sought because this case has been dismissed before the defendants were served with the Complaint. Shall the Court determine that this case does not require the effect of notice of claim; I request that the Court grant that determination in a memorandum for the education of this issue.

At the same time, I appreciate the Court for taking its valuable time to read this letter and I am looking forward for the Court to grant leave to effect a notice of claim and file a motion for reconsideration by November 28, 2011.

Dated: October 29, 2011

Sincerely,

Yoel Weisshaus