

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 11-4934-cv Caption [use short title] _____

Motion for: Court Reporter Services at Oral Argument Weissshaus v. Port Authority of New York and New Jersey, et al.

Set forth below precise, complete statement of relief sought:
Appellant seeks to retain Pirozzi & Hillman for a court reporter to
be present at Oral Argument to report and transcribe the proceeding.
Relief needed, see attached motion and declaration.

2012 AUG 20 AM 11:00
CLERK OF COURT

MOVING PARTY: Yoel Weissshaus OPPOSING PARTY: Port Authority of New York and New Jersey et al.

Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Yoel Weissshaus, Appellant OPPOSING ATTORNEY: Kathleen G. Miller Esq. Appellee
[name of attorney, with firm, address, phone number and e-mail]
516 River Road 6, New Milford NJ, 07646, c: 917.335.1933 Port Authority of New York and New Jersey, 225 Park Avenue South, 13th Floor, New York, New York 10003
e: yoelweissshaus@yahoo.com T: 212-435-3434, e: KMiller@panynj.gov

Court-Judge/Agency appealed from: Southern District of New York - Honorable Loretta A. Preska, Chief Judge

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): by e-mail on August 10, 2012 and by fax and received no response.

Opposing counsel's position on motion:
 Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
 Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date: September 11, 2012 10:00 am

Signature of Moving Attorney: *Yoel Weissshaus* Date: August 20, 2012 Service by: CM/ECF Other [Attach proof of service]

Yoel Weissshaus

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED DENIED**.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____ By: _____

CHU

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

_____	X	
Yoel Weisshaus,	:	Case: 11-4934-cv
	:	
vs.	:	On Appeal from SDNY:
	:	11-6616-cv (LAP)
Port Authority of New York and New Jersey et al.	:	
	:	
_____	X	

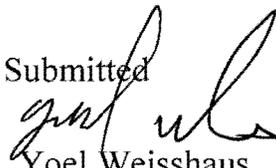
MOTION FOR COURT REPORTER SERVICES AT ORAL ARGUMENT

Yoel Weisshaus, *pro se* appellant in this action, moves this Court for leave to retain at his own expense Pirozzi & Hillman court reporters to be present at Oral Argument scheduled in this case for September 11, 2012, and transcribe the proceeding. As per the arrangement with Pirozzi & Hillman, the transcript will be available within one week for review of the panel who will hear the merits.

This relief is needed because the appellant intended to transcribe the proceedings from the court-provided CD, but it was recommended that it is more expeditious with the court reporter's presence at oral argument.

Dated: August 20, 2012

Respectfully Submitted



Yoel Weisshaus,
516 River Road 6
New Milford NJ, 07646

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

_____	X	
Yoel Weisshaus,	:	Case: 11-4934-cv
	:	
vs.	:	On Appeal from SDNY:
	:	
Port Authority of New York and New Jersey et al.	:	11-6616-cv (LAP)
_____	X	

DECLARATION IN SUPPORT FOR COURT REPORTER SERVICES AT
ORAL ARGUMENT

State of New Jersey
§
County of Bergen

I am Yoel Weisshaus (“Weisshaus” hereinafter), *pro se* appellant in this action.

Appellant requests that the Court grant leave to retain the court reporter services of Pirozzi & Hillman to be present at the September 11, 2012 oral argument of this case to transcribe the proceeding.

Before making this motion, the plaintiff-appellant notified and sought input of the adversary by email and fax about its intention to consent or in the alternative oppose this motion consistent with LR 27.1 (b) and the Notice to the Bar (Attached A). Weisshaus received no response for his request of input.

BACKGROUND

The Port Authority of New York and New Jersey (“Port Authority”) enacted increases on toll prices for all Hudson River crossings commencing on September 18, 2011. First, the increase in price exceeds the benefit of what Weisshaus confers when crossing the Hudson River. Second, the price increase is intended for uses not in approximate of the facilities used as well for uses that require prior legislature approval. Third, the amount and the price structure discriminate against interstate commerce by charging different prices based on residency and type of payment. In addition, the increase in toll prices was in absence and in violation of both the New York and the New Jersey public notice laws. This complaint and *in forma pauperis* applications were filed September 19, 2011 (Joint Appendix A, B).

The district court provided Weisshaus no opportunity to be heard or to amend his complaint and dismissed the complaint *sua sponte* with prejudice entering civil judgment on October 24, 2011 (at C, D). Weisshaus requested leave to file for reconsideration on October 31 (at E, F). As the district court did not act on the request for filing a reconsideration deadline, the first notice of appeal was filed November 16, 2011 (at G). The notice of appearance and the accompanying submissions were filed November 30. Soon after on December 8, the district court issued a denial order, denying a motion for reconsideration by misconstruing the letter requesting for leave to file as the actual motion (at H); Weisshaus amended

his notice of appeal timely to incorporate the denial order. Weisshaus filed his opening brief on March 22, 2012 and cured on the 29th. Docket Entry (“Dkt”) 34, 40, and 41.

The merits of this appeal are clear and obvious because this appeal derives from the district court’s issuance of *sua sponte* dismissal on a complaint before service on the defendants and prior to their filing of an answer despite the assertion of entirely colorable constitutional and statutory claims. Likewise this appeal derives from the district court improper denying leave to file for reconsideration, consequently denying plaintiff-appellant the right to amend his complaint to cure deficiencies without providing a reason.

Weisshaus has stated an entirely colorable claim. The precise of Weisshaus’ causes of action is challenging Defendant-Port Authority’s recent increase in toll prices because (1) the increase was without complying with public notice laws. (2) The toll is now excessive to the benefit conferred. (3) It is the direct or approximate cause that persecutes those who cannot afford the toll. (4) The increase in toll prices infringes Weisshaus’ right to travel. (5) The toll revenue is earmarked for purposes unrelated directly to travel such as the rebuilding the World Trade Center and is prohibited. (6) The toll is now an unjustifiable price difference of \$12 for travelers who pay with cash comparing to E-ZPass where it charges only \$7.50. After all, (7) starting December 2012 a \$2 penalty may be

added on those who pay toll with cash as a penalty for not acquiring E-ZPass.

Each factor and allegation stated here, has been thoroughly exhausted, reviewed, and provided with fact and law in Weisshaus' opening and reply briefs; it may be duplicative to recur herein. The focus of Weisshaus' appeal is to obtain leave to amend his complaint to cure its deficiencies and direct the district court to issue summonses.

Originally, the Port Authority took the position that they will not participate in this appeal. (at 14). However, that all changed after Weisshaus filed his opening brief and was granted leave to proceed on the Expedited Appeal Calendar ("XAC") as well as ex parte hearing. (at 47 and 53). In response, the Port Authority sought to vacate the grant order by filing a motion for reconsideration to remove this case from XAC and to file a brief, which the Court denied the request to remove from XAC but granted the unopposed filing of a brief. (at 55, 59, and 64) Later on, the Port Authority sought to file an appellee appendix but did not identify the documents it sought to include, the Court then limited an appellee appendix to documents from the district court not included on appeal. (at 65, 68, 73 at 78) Following the Court's order, Weisshaus offered the Port Authority an opportunity to resolve all differences about the appendix if the Port Authority identifies the documents it seeks to include in the appendix. The answer Weisshaus received that Port Authority will seek to strike documents rather than resolve the

differences, an opposition to their strike was filed and the motion is referred to the panel. (at 80, 85, and 88)

Weisshaus' brief was filed as cured on March 29. (at 40) This appeal raises three important issues for review that this case should be allowed to proceed to amend the complaint and vacate the lower court's orders. First, Weisshaus' complaint did state a claim that the new toll prices are excessive, the proximate cause for penalties and arrest for those unable to afford the price of the toll, and that the defendants increased toll prices without public notice. Second, the complaint in Weisshaus states a similar cause of action to an action filed 9-days after his, AAA v. Port Authority 11-cv-6746 (RJH) represented by counsel and not dismissed *sua sponte* as frivolous, failure to state a claim, or sovereign immunity. Indeed, the district court recognized AAA as a viable claim by submitting the parties to discovery after a motion to dismiss. Thirdly, Weisshaus' request to file for reconsideration was so he can amend his complaint to cure its deficiencies, but the district court overlooked that request by issuing a denial order. The cause of action of economic discrimination can be well established because charging \$12 for payment in cash, plus a \$2 penalty, a price differential from E-ZPass travelers who pay only \$7.50 is unreasonable and unjustified as well unconscionable. By amending the complaint, such deficiencies and all assumed ones can be cured.

The Port Authority filed its brief on June 27, 2012. (at 81) Weisshaus' reply brief was filed July 11, (at 90). This case is scheduled for oral argument on September 11, 2012 (at 92) followed with a Notice to the Bar (at 95).

Comes now this motion for leave to retain a court reporter to transcribe the oral argument because the Court informed in the Notice to the Bar that such application is made by motion.(Attachment B) Weisshaus does not seek nor ask for any exceptional treatment such as to cancel the audio/CD recording. This motion is limited to the presence of a court reporter at oral argument to transcribe the proceedings so a transcript would be available to the parties and to the Court, as well the record of this case.

Joe Pirozzi, who in individual capacity was employed at earlier time as the chief court reporter for the Southern District of New York, manages Pirozzi & Hillman.¹ Mr. Pirozzi is familiar with the procedures of this Court and will provide to the calendar clerk written notice in one week in advance to Oral Argument of the name, address, and telephone number of the reporter who will attend the proceeding, which will include the firm name providing the services. Upon the grant of this motion, Weisshaus will prepay Pirozzi & Hillman to transcribe the oral argument of this case. (Attachment C)

¹ See <http://pirozzireporting.com/about-us>

REASONS FOR GRANTING THIS MOTION

There is good cause for Weisshaus to have a court reporter present at oral argument because when Weisshaus contacted various court reporters to inquire about transcribing the oral proceeding from CD, he was told that it is more efficient to transcribe if a reporter were present. A transcript is needed because it is important for Weisshaus to have a stenographic record of this proceeding.

There is also good cause for the appellant to have a court report at oral argument to transcribe this case because this proceeding has so far been the only opportunity for Appellant Weisshaus to be heard. If this case remands to the district court or in the alternative proceeds for further appellate review by en banc and certiorari to the Supreme Court of the United States, the transcript will be required.

Moreover, the merits of this appeal are clear and obvious as an exceptional importance because it seeks an opportunity to state a claim against the Port Authority for imposing penalties on the payment of tolls in cash, besides of having a price difference, for the sole reason of not having an E-ZPass. There is an exceptional importance because a number of transportation authorities across the United States, by example of the defendant Port Authority in this case, started to implement penalties for payment of a toll in cash. A specific example would be the Office of New York' Governor Andrew Como, who made within this month

public statements to the media that the Governor supports the proposal to increase tolls at the Tappan Zee Bridge from \$5 to \$14, with a strong price difference as a “penalty” for payment of tolls in cash. Since the precedent of this case, may aide for review in future cases that may arise, there is a benefit to have the transcript of the proceeding in this case available on public record.

After all, the merits of this appeal favor a transcript of this proceeding because in December 2012 defendant-Port Authority is seeking to enact an increase in toll prices, which may include an additional \$2 penalty for toll payment in cash for the sole reason of not having E-ZPass. A transcript will be to the benefit of the public to comprehend the controversy of this cash payment penalty.

Besides, I have been asked many times, by people who approach me at random including attorneys and political figures, why the AAA which is represented by counsel can sue for a indistinguishable fact as in this case that the use of toll revenue to rebuild the World Trade Center is illegal. While at the same time, a person preceding *pro se* is not allowed to proceed.

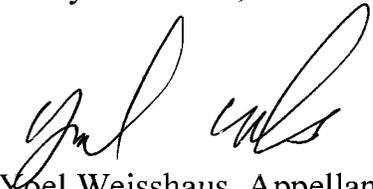
Therefore, it is in the interest of justice that the public to have access to statements that will be made at oral argument justifying and/or challenging the validity of the increase in toll prices, along with the cash payment penalties as well the issues the parties will argue before the Court.

CONCLUSION

I respectfully request that the Court grant this motion for a court reporter services to be present at oral argument and transcribe the proceeding.

Dated: August 20, 2012

Respectfully submitted,



Yoel Weisshaus, Appellant-Movent
516 River Road 6
New Milford NJ, 07646



Re: Weisshaus v. Port Authority of New York and New Jersey - 11-4934-cv

Friday, August 10, 2012 4:44 PM

From: "Yoel Weisshaus" <yoelweisshaus@yahoo.com >

To: kmiller@panynj.gov

1 File (16KB)



95-2.pdf

Dear Ms. Miller

I, am Yoel Weisshaus plaintiff-appellant in the above captioned action.

As per of the Local Rule 27.1(b), I write to seek your consent on my submission for a court reporter to be present and report the oral argument, consistent with the attached Notice to the Bar (Dck #95-2). If my application is granted, I intent to hire Pirozzi & Hillman Court Reporting Services.

If you will oppose this motion, I request that you inform me in advance to my application if you intend to file a response in opposition. Please reply to this email by Tuesday, August 14, 2012.

I appreciate you for taking the time to reply to this email, your cooperation is strongly appreciated.

Sincerely,

Yoel Weisshaus
New Milford NJ
Email: yoel@yoelweisshaus.com
Cell: 917.335.1933
Office: 201.357.2651
Fax: 201.625.6313
Website: yoelweisshaus.com

"A"

Case: 11-4934 Document: 95-2 Page: 1 07/20/2012 669484 1

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DENNIS JACOBS
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: July 20, 2012
Docket #: 11-4934ev
Short Title: Weisshaus v. Port Authority of New York

DC Docket #: 11-cv-6616
DC Court: SDNY (NEW YORK CITY)
DC Judge: Preska

NOTICE TO THE BAR

Offsite Video Argument. At this time the Court does not provide offsite video argument.

Recording of Argument. A CD of an argument may be purchased for \$30 per CD by written request to the Clerk. The request should include the case name, the docket number and the date of oral argument. CDs will be delivered by first class mail unless the request instructs to hold for pick-up or requests Federal Express Service, in which case a Federal Express account number and envelope must be provided.

Court Reporters. Parties may arrange – at their own expense – for an official court reporter to transcribe argument from a copy of the hearing tape or to attend and transcribe the hearing directly. A party must first obtain written consent from opposing counsel – or move the Court for permission – to have the court reporter attend and transcribe the hearing and must provide the calendar clerk written notice, including the name, address and telephone number of the attending reporter and, if applicable, the reporting firm at least one week prior to the hearing date.

An original and three (3) copies of the transcript **must** be submitted to the Clerk for approval by the panel that heard the case; transcripts will not be officially filed until approved.

Interpreter Services for the Hearing Impaired. Counsel requiring sign interpreters or other hearing aids must submit a written notice to the Calendar Team at least one week before oral argument.

Inquiries regarding this case may be directed to .

Court Reporting Services 9/11/12

From: joe <joe@pirozzireporting.com>
To: yoel@yoelweisshaus.com
Priority: Normal
Date: 08-13-2012 05:37 PM

Yoel: My apologies for not writing you sooner. I was reporting on depositions all day today.

As discussed, the charge for court reporting services on the Court of Appeals argument is \$6 per page. If required, we will produce a transcript on an expedited basis (3-day delivery) for an additional 2.75 per page. There is also an attendance fee of \$55.

If you decide to retain our services, we would request a deposit of \$350 which will be applied to the total cost of reporting fees.

We have received both notice of hearing date and notice to the bar.

Kind regards,
Joseph B. Pirozzi

Pirozzi & Hillman Computerized Reporting
16 West 36th Street
Suite 501
New York, NY 10018
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scheduling@pirozzireporting.com
www.pirozzireporting.com

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
YOEL WEISSHAUS	:	
	:	
Plaintiff-Appellant	:	Case: 11-4934-cv
	:	
vs.	:	
	:	
THE PORT AUTHORITY OF NEW YORK	:	SDNY 11-cv-6616 (LAP)
AND NEW JERSEY et al.	:	
	:	
Defendants-Appellees.	:	
_____	X	

AFFIRMATION OF SERVICE

I, YOEL WEISSHAUS make the following affirmation:

1. I, effected service on Defendant-Appellee Port Authority of New York and New Jersey, at 225 Park Avenue South 13th Floor, New York NY, 10003 by certified mail of the attached MOTION FOR COURT REPORTER SERVICES AT ORAL ARGUMENT on August 20, 2012.

7009 2250 0003 3557 7212

2. I declare that the foregoing is true and correct.

Dated: 20 August 2012

Bergen County NJ



Yoel Weisshaus
516 River Road 6
New Milford NJ, 07646