



THE TWIN TOWERS ALLIANCE

November 14, 2011

Hon. Richard J. Holwell
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

4 Pages by Fax: (212) 805-7948

Re: Request for Leave to File an Amicus Curiae Brief in the Matter of
Automobile Club of New York, Inc., d/b/a/ AAA New York and AAA North Jersey, Inc.
vs. The Port Authority of New York and New Jersey
11 CIV 6746 (RJH)

Dear Judge Holwell,

As the founders and directors of a grassroots organization dedicated to promoting the public interest at the World Trade Center, we have extensively documented a disturbing lack of transparency on the part of the Port Authority of New York and New Jersey. We therefore ask that you allow us to present details that we believe materially reflect on the character of any and all representations made by the agency.

We want to explain at the outset that care was taken to present this request in an acceptable form. We called your Chambers for instructions and were advised to visit the Pro Se Office, where we were told to send our request to you in a letter. Before beginning this letter we diligently researched how to best present it and hope that any irregularities in form will not overshadow the value of what we have to offer.

Since we are not sure how much information should be included here, we will be as brief as possible, but are ready to expand on what is presented. If we are given permission to contribute what we believe would be uniquely helpful, our *amicus curiae* brief will be filed by legal counsel.

Your Honor, the sum of all that follows is that we can provide an overwhelming history of instances where the Port Authority's actions have deprived the agency of credibility – across the board. The PA is staffed with knowledgeable career bureaucrats, who have a vested interest in furthering the agency's agenda. But its agenda is supposed to be to act in the public's best interest and we believe our testimony will show that there has been significant and costly deviation from that imperative.

In the Port Authority's papers opposing the AAA suit, the first nine pages of Mr. Fabiano's affidavit present information that could have been presented a year ago, because none, not one, of the underlying fundamentals has changed. Analyzing the PA's own 8/5/2011 press release headline makes that clear:

“FACED WITH CONSTRAINED CAPACITY DUE TO HISTORIC ECONOMIC RECESSION, COUPLED WITH BILLIONS IN WTC AND POST 9-11 SECURITY COSTS, AND UNPRECEDENTED NEED FOR INFRASTRUCTURE OVERHAUL, PORT AUTHORITY PROPOSES TOLL AND FARE INCREASE”

Presenting a 2011-2020 Capital Plan halfway through 2011 does not inspire confidence. And failing to refute widespread reports that without the hikes progress at the WTC site could come to a halt was a cynical maneuver that backfired – as did the hastily called hearings where not a single Commissioner was present to look those who made the effort to be there in the eye – followed by a vote before the transcript of 1500 statements could have possibly been carefully discussed and digested.

The press release’s reference to the “more than \$11 billion in funding necessary to rebuild the WTC site” as one of the factors leading to the agency’s difficult financial position, only to now shift the rationale by claiming that the release was merely discussing the various economic factors affecting the overall operation of the Port Authority and that no toll money will go to the WTC construction strongly resembles a three-card monte play.

The specious logic is made apparent by asking instead: If the \$11 billion dollar expenditure at the World Trade Center were not required, would the recent toll hikes have been necessary?

In Mr. Fabiano's tone-deaf effort to minimize the harm being done to the driving public, he fails to address the injury to consumers along the eastern seaboard who are paying the tolls that are embedded into the cost of all the goods being trucked across the Hudson River, or the commercial hardship that is rippling across the region. And his effort to belittle the AAA attorneys by calling the “contention that the purpose of toll and fare increases is to fund the World Trade Center” a *confection* insults the intelligence of all concerned.

But when he dismissively charges that “Plaintiffs rely on a press release and portions of the Port Authority's 2011 Budget for their claims,” that is where our organization’s unique experience with the agency becomes useful. To begin with, if the Port Authority were as transparent as it claims to be, the AAA attorneys would have had far more authoritative information to work with on the public’s behalf.

The Port Authority's bi-state nature makes the state courts' jurisdiction uncertain and complicates the enforcement of the rules of transparency that other State and Federal agencies must strictly observe. But that surely does not put the PA above the law. *In fact, the direct access the agency has to the public purse makes transparency more of an imperative, not less.*

We hope to have the chance to bring to the Court’s attention the astonishing record of how the agency has handled our Freedom of Information requests. Contracts that belong in the public domain have been arbitrarily withheld – even after the well-respected Executive Director of New York’s Committee on Open Government urged their release and encouraged the Port Authority, and others, to reconsider their “actions and transparency.” But the Port Authority continues to stonewall. Why? What are they hiding?

The documents and contracts we have requested are merely the byproduct of an Open Meetings Policy that allows the Board to comply when it is convenient and suspend it when it is not. That is not a policy – it is a subterfuge – and the inevitable result is finally becoming clear.

Why would officials discredit the agency by such adamant resistance to the public's *right to know* what they are up to? Just one of many mysteries that disclosure might clear up is why a public agency assumed responsibility for a building a \$3.2 billion tower that the WTC leaseholder was required to build – and what it was the public received in exchange. If the public has been well-served, why avoid disclosure? Doesn't the public have a right to know why the PA Board assumed more and more responsibility for the WTC project, while Mr. Silverstein and his backers actually took back their initial down payment from the insurance proceeds and even used the insurance funds to pay the annual rent, with only the residue going to reconstruction?

The PA Board's clandestine methods are no secret. We were interviewed last year for a *Star-Ledger* article that was examining the curious record of "unanimous votes on 302 resolutions during 42 meetings since January 2008, which means they cast 2,068 votes in favor — and none against." The Board Meetings are obviously all for show, with no pretense that the handful of strictly-limited three-minute statements (in meetings that rarely run an hour) will make the slightest difference. The remarks are immediately followed by votes to rubber-stamp some policies, while the truly far-reaching decisions are sealed in secrecy.

Both the Freedom of Information Policy and the Open Meetings Policy, which are incorporated in the PA's By-Laws, claim to be "consistent" with the laws of New York and New Jersey. But a 1991 New Jersey Statute reads:

"The Legislature finds and declares that the right of the public to be present at meetings of the Port Authority of New York and New Jersey, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of the authority, is vital to the enhancement and proper functioning of the democratic process, and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society; and declares it to be the public policy of this State to insure the right of its citizens to have adequate advance notice of and the right to attend all meetings of the authority at which any business affecting the public is discussed or acted upon in any way except only in those circumstances where otherwise the public interest would be clearly endangered..."

Virtually every significant decision about the future of the WTC site has been discussed and decided without public oversight or any mechanism in place to monitor compliance. No one can seriously suggest that every WTC policy decision was done behind closed doors because it would otherwise *clearly endanger the public interest*. Treating the public as if it has to be protected from itself is absurd and perverse, when in fact, the only thing that clearly endangers the public interest is the Board's secrecy.

Allowing a bloated, headstrong bureaucracy to force the public into coming to their rescue, instead of requiring them to pay the price for a mess that is largely of their own creation, would send the message that the paying public it is at the mercy of a pernicious and predatory system.

Claiming that the toll hikes are not related to the World Trade Center construction is akin to claiming that the Freedom Tower – with a roof height that is almost a hundred feet shorter than the Sears/Willis Tower in Chicago – will be the tallest building in North America. It is emblematic of the dysfunctional, self-serving logic that drives the Port Authority today – sticking to the letter, while gutting the spirit.

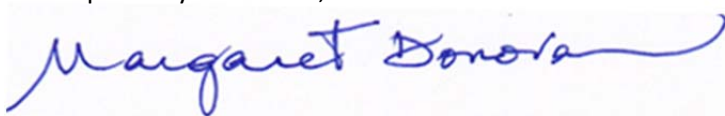
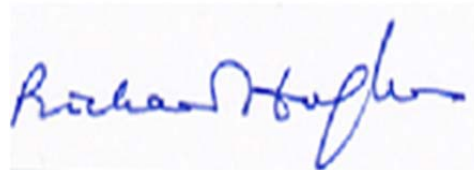
Mr. Fabiano insults millions of citizens when he smugly refers to “the unlikely event” that the Plaintiffs will prevail in this challenge. But that is the Port Authority in a nutshell: arrogantly sure that they will escape the consequences of their bad policies because they have friends in high places. He states that if an injunction is granted and the tolls and fares are rolled back, “the Port Authority has no way of recouping these monies if it ultimately prevails.” That is not true. He went on to conclude his statement by pointing out that “the ITN operates at a deficit and will continue to operate at a deficit even with the toll and fare increases. The Port Authority must consequently find revenue from other sources to support the ITN.” Exactly.

The Port Authority has billions of dollars in public holdings that should be subject to privatization in order to repair its balance sheet. Until it is required to face that reality it will always treat the public as its captive lender. There is nothing about the Port Authority that has endeared it to the people who support it or that has shown that it is uniquely qualified to wear the many hats it now wears. Threats to cut back on needed maintenance and improvements is holding the region hostage to the agency’s imperial pretensions. Forcing them to sell off whatever holdings they need to in order to fund required maintenance, instead of raiding the public purse like a piggy bank, would be the best medicine for the agency’s future viability.

The Court’s inquiry into the propriety of the toll hikes is the public’s best chance to hold the agency accountable for its actions and policies. We hope to help in that probe by sharing a record that reveals the culture of arrogance and incompetence that has diminished a once great agency and that is unlikely to change as long as the Port Authority is allowed to maintain the veil of secrecy that got us where we are today. Until the independent audit establishes how much of the PA’s woes are of its own making and what the options are, how can this agency legitimately ask the public to grin and bear it?

There are always ways to get around the truth, but no harm they can point to would be more damaging to the public good than allowing master manipulators to prevail in this matter. It is not in the public interest to once again bail out those who have mismanaged the public’s funds just because in their own conceited estimation they are too big to fail. Preserving the Port Authority’s prerogatives is not high on the list of the public’s legitimate concerns. Getting to the truth of the matter is.

Respectfully submitted,



Margaret Donovan and Richard Hughes
for The Twin Towers Alliance

cc: Kathleen Miller, Esq. for The Port Authority of New York and New Jersey
Marta Genovese, Esq., Vice President of Public and Government Services, AAA New York
James Dugan, Esq., Vice President of Government Affairs, AAA North Jersey
Brendan Lantry, Director of Legal Affairs, Staten Island Office of Representative Michael Grimm