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July 10, 2007

Mr. Donald R. Allee  
CEO and President  
Mississippi State Port Authority at Gulfport  
P. O. Box 40  
Gulfport, MS 39502

Re: Fishing Industry at the Mississippi State Port at Gulfport

Dear Mr. Allee:

A question has been raised by certain individuals regarding whether the Mississippi State Port Authority at Gulfport ("MSPA")<sup>1</sup> is required to include space for a fishing harbor in its master rebuilding plan.<sup>2</sup> Presently, no decision has been made as to whether the reconstruction pursuant to the Master Plan will include a fishing harbor.

The language at issue is based on the Warranty Deeds which conveyed the property currently under the MSPA's jurisdiction from: (1) Illinois Central Railroad Company ("Illinois Central") to the City of Gulfport, Mississippi ("Gulfport Deed")<sup>3</sup>; and from (2) the City of Gulfport, Mississippi, to the State of Mississippi ("State Deed").<sup>4</sup>

The apparent provision in the Gulfport Deed that is at issue reads as follows:

3. As a further consideration of said grant it is hereby understood and agreed that the premises herein agreed to be conveyed to the CITY shall be purchased upon the following express conditions, limitations and reservations;

(a) use by the City of the within described premises shall be solely as and for port facilities, no other use to be made thereof without the written consent of the Railroad Company first had and obtained therefor, excepting that permitted by virtue of and as provided in all existing leases and renewals thereof and, further, the permanent location of fishing

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<sup>1</sup> The MSPA is an agency of the state that was created and has jurisdiction over the property of the Mississippi State Port at Gulfport ("Port") pursuant to Mississippi Code §§ 59-5-1, *et seq.*

<sup>2</sup> See June 12, 2007 letter to Ben H. Stone from Joseph A. Runnels, Jr., Special Assistant Attorney General, which is incorporated herein by reference.

<sup>3</sup> See Warranty Deed of March 10, 1949, which is incorporated herein by reference.

<sup>4</sup> See Warranty Deed of December 6, 1960, which is incorporated herein by reference.

industries which will be relocated to the northwesterly portion of the premises herein agreed to be conveyed which adjoin the westerly basin.<sup>5</sup>

The Gulfport Deed further provides:

6. It is further understood and agreed by and between the parties hereto that if and in case the CITY:

(a) operates the premises or permits the operation thereof for any purpose other than as a port facility, as provided in Section 3(a) hereof,

(b) permits the premises herein described to be served by any other line or lines of railroad other than the RAILROAD COMPANY as herein designated, its successors and assigns,

(c) violates any of the covenants on its part herein agreed to be performed,

the RAILROAD COMPANY may, at its option, re-enter and take possession of the premises herein described and operate same . . . .<sup>6</sup>

The first exception expressed in Paragraph 3(a) of the Gulfport Deed which requires that existing non-port leases would terminate at the end of their lease terms has been complied with. The second exception which would allow but not require the fishing industry to exist on a permanent basis was handled as follows. After the conveyance of the Port property to the City of Gulfport, fishing industries were allowed to operate at the northwestern portion of the property conveyed in the Gulfport Deed (which was thereafter conveyed in the State Deed). Commercial fishing industries, however, were relocated to a portion of the Port property other than the northwestern portion following the inception of operations of the former Grand Casino on the Port property in 1990. This relocation of the fishing industries continued for well over 10 years.

Subsequently, the fishing industry buildings and piers were destroyed during Hurricane Katrina.

We have formulated three (3) questions which have been raised by your request and which form the basis for our opinion on this matter.

1. Does Paragraph 3(a) of the Gulfport Deed which states that the conveyed premises be used "solely as and for port facilities . . . , excepting . . . the permanent location of fishing industries which will be relocated to the northwesterly portion of the premises" require as a condition of the conveyance that fishing industries always be allowed to locate at that certain portion of the premises conveyed?

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<sup>5</sup> See Gulfport Deed at 190-91 (emphasis added).

<sup>6</sup> *Id.* at 191-92.

The plain wording of the fishing industry exception to the requirement that the land be used "solely as and for port facilities" is permissive for the MSPA to allow such use and in no way mandates that the MSPA provide an area for the fishing industry. The use of the word "permanent" allows for the fishing use to exist longer than the then existing leases and differentiates the second exception from the first. It is not to be interpreted as a mandate to require permanent fishing facilities.

2. Even if the answer to Question No. 1 had been "yes," was any possible right of re-entry of Illinois Central, or its successors or assigns, adversely possessed by the MSPA pursuant to Mississippi Code §§ 15-1-7 and 15-1-13 by the unchallenged relocation of fishing industries from the northwestern portion of the property conveyed in the Gulfport Deed to another portion of the Port property over 10 years prior to this time?

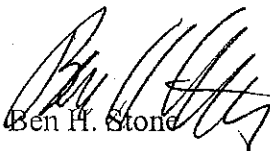
Yes. The plain language of Mississippi Code §§ 15-1-7<sup>7</sup> and 15-1-13<sup>8</sup> dictate that any possible right of re-entry is barred and that adverse possession has occurred. Therefore, even had the answer to Question No. 1 been yes, there is no current mandate to require fishing use.

3. Would an individual employed within the fishing industry who is not a successor or assign of Illinois Central have legal standing to seek the enforcement of the rights, obligations, covenants, etc., contained in the Gulfport Deed as it applies to the MSPA?

No, such individuals would not be vested with legal standing to raise this issue even if the answers to Questions Nos. 1 and 2 above had been different.<sup>9</sup>

It is, therefore, our opinion that the MSPA is not required under the language of the Gulfport Deed to include space for a fishing harbor at the Port.

Respectfully submitted,

  
Ben H. Stone

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<sup>7</sup> "A person may not make an entry or commence an action to recover land except within ten years next after the time at which the right to make the entry or to bring the action shall have first accrued to some person through whom he claims . . ." Miss. Code Ann. § 15-1-7.

<sup>8</sup> "Ten (10) years' actual adverse possession by any person claiming to be the owner for that time of any land, uninterruptedly continued for ten (10) years by occupancy, descent, conveyance, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title . . ." Miss. Code Ann. § 15-1-13.

<sup>9</sup> See *Hunt Oil Co. v. Berry*, 86 So. 2d 7, 10 (Miss. 1956); *Jones v. New Orleans & Northeastern R.R. Co.*, 59 So. 2d 541, 546 (Miss. 1952).