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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT  
Ralph King Anderson, III, Administrative Law Judge

SC Court of Appeals

Appellant Case No. 2014-000847

Preservation Society of Charleston, Historic Charleston Foundation, Historic  
Ansonborough Neighborhood Association, South Carolina Coastal Conservation League,  
Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider  
Foundation, and Charleston Communities for Cruise Control ..... Appellants,

vs.

South Carolina State Ports Authority and South Carolina Department of Health and  
Environmental Control..... Respondents.

APPENDIX TO RECORD ON APPEAL  
VOLUME II OF II

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# **Exhibit 33**

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TRANSCRIBED AUDIO FILE

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City of Charleston Press Conference

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Regarding Lawsuit Against Cruise Line.wav

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COMPUSCRIPTS, INC.

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00:01

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2 MAYOR RILEY: Thank you all very much for  
3 coming, and so, just to let the, the press know, all  
4 of you know, that I'm going to speak for a while,  
5 maybe a little bit longer than normal. And, now, my  
6 council members and former council members would say  
7 that really doesn't define things too much. Anyway...

8 The lawsuit that was brought this morning is  
9 outrageous and abusive. It threatens the  
10 redevelopment of Union Pier and the economy of our  
11 community. It's interesting that a lawsuit that has  
12 brought a lot of criticism in our community is being  
13 heard just across the street at the federal  
14 courthouse, the NLRB action against Boeing. This  
15 lawsuit brought this morning is far worse than that.  
16 The former is within some color of authority of the  
17 organization, the NLRB, whose position I vehemently  
18 disagree with. But what we have here is a lawsuit  
19 brought that, that asserts to exercise, first of all,  
20 the responsibility that city council has and is --  
21 contains an amazing list of causes of action that I  
22 will mention in just a minute that I think and often  
23 try to think of, of what the citizens I serve sitting  
24 around a coffee table would think about something.  
25 You know, how, how would they feel about it? And

1 what this lawsuit is doing is outrageous, and the  
2 City of Charleston will seek to intervene. Because  
3 if this lawsuit is successful, it would, as I said,  
4 prevent the redevelopment of Union Pier, it would  
5 damage our economy, it would hurt our maritime  
6 industry, it would harm our citizens, and we will do  
7 everything we can to make sure that this lawsuit  
8 fails. And, and -- Representative Merrill, come on  
9 up, please. Jim Merrill, a member of the General  
10 Assembly of South Carolina

11 MR. MERRILL: Sorry to be late. Squeeze in  
12 here. Yes, sir.

13 MAYOR RILEY: And, and it's a waste of money.  
14 The city will spend money, the Ports Authority will  
15 spend money, and a wonderful partner that I will talk  
16 about in just a minute, Carnival Cruise Lines, will  
17 have to spend money as well. Now, what are some of  
18 the things that this lawsuit asserts that I think  
19 will probably bring a few chuckles at the coffee  
20 table as well as anger? First of all, they challenge  
21 that ships in the historic port city of Charleston,  
22 that if you can see them at the end of a street, are  
23 in violation of a city view corridor ordinance. This  
24 -- the streets in Charleston were named after  
25 wharves. When Charleston was founded, you looked

1 down the street to see if the ships were there, and  
2 you hoped they were. South Atlantic wharf, North  
3 Atlantic wharf, Middle Atlantic wharf, North Atlantic  
4 wharf, Boyces wharf, Vendue Range -- *range* was a, was  
5 a term. It was the end of a wharf. At the end of  
6 Vendue Range, you know what was there? It was the  
7 Clyde Line ships that brought visitors and took  
8 passengers to and from Charleston and the East Coast.  
9 So this lawsuit asserts -- this ridiculous,  
10 outrageous, abusive lawsuit asserts that you should  
11 not be able to see a ship at the end of a street in  
12 the historic city of Charleston. I mean, this is,  
13 this is beyond outrageous.

14 And then, they assert -- now, this is in a  
15 lawsuit that was filed that we have to defend. It  
16 requires some creativity, you have to admit, as  
17 outrageous it is, that the Carnival Cruise logo on  
18 the top of the ship violates the city's sign  
19 ordinance. So what that would mean is, that Federal  
20 Express has to cover up their trucks when they come  
21 into the city of Charleston because if it's parked,  
22 you've got the Federal Express logo, and, you know,  
23 that, that's what, what we're up against. I mean,  
24 this, this is a discussion that has gone way beyond,  
25 and I'll explain how we got there in just a minute.

1       Then, the lawsuit challenges another cause of  
2   action, is that the ships tied up on our piers --  
3   where ships have been tied up since the first pier  
4   was built in this city when it moved over to the  
5   peninsula in 1680 -- that ships tied up are governed  
6   by a height ordinance. So you need to check the  
7   height of your ship before you come into this  
8   historic port city of Charleston.

9       And then, they say that it violates the city's  
10   noise ordinance, Carnival Cruise Line. Now, a good  
11   Trivial Pursuit question: Name the number of  
12   official complaints that have been called into the  
13   City of Charleston Police Department about noise  
14   coming from the two cruise ships.

15       MULTIPLE SPEAKERS: Zero. Zero. Zero.

16       MAYOR RILEY: If you guessed zero, you would  
17   have won that Trivial Pursuit question. So they're  
18   going to cost the taxpayers money. They're going to  
19   cost the Ports Authority money. They're going to  
20   cost Carnival Cruise money. They've got all of us  
21   here because Carnival Cruise is in violation of the  
22   city's noise ordinance, and the City of Charleston  
23   Police Department has not received one single  
24   complaint yet. Plus, the Ports Authority has asked  
25   Carnival, and they've agreed and the others, to make

1 the announcements onboard the ship that aren't  
2 necessary for safety purposes to not be made. The  
3 bottom line is, it's not in violation of the city's  
4 noise ordinance, and it hasn't.

5 Now, how did we get here? And it's important to  
6 me to tell you how I know we got here. We got here  
7 because the Coastal Conservation League, a year and a  
8 half ago, decided that they were going to take on the  
9 cruise industry no matter what. So we had a  
10 community event at the museum in January, and the  
11 head of the Conservation League -- and I could then  
12 kind of see it coming -- gave a PowerPoint  
13 presentation, and the first slide was a cruise ship  
14 hitting a whale. Now, that would get the average  
15 person feeling kind of bad about cruise ships, right?  
16 Turns out, that slide that was shown to the 350  
17 people at the museum was, was untruthful, in that  
18 that whale had been dead for five days when the  
19 cruise ship hit it. NOAA investigated, did the  
20 autopsy on the whale. It had been dead for five  
21 days, but that's what, what started -- clearly, the  
22 Conservation League determined that they needed  
23 another trophy to hang on their wall, and they wanted  
24 to be the organization that went after the cruise  
25 industry in America, and unfortunately, they picked

1 on our community and our Union Pier redevelopment  
2 plan and our Ports Authority and Ken Riley's  
3 employees and all the people who serve the cruise  
4 industry, they're, they're, they're, they're catching  
5 us in their safari to go find another trophy and  
6 abuse the citizens of our city, and we're not going  
7 to stand up for it, and we're going to seek to  
8 intervene, and we're going to win, and we're going to  
9 beat them. We're going to stop this kind of  
10 foolishness in our city.

11 I'd like to say something to the people at  
12 Carnival, to the, to those who direct the company and  
13 all the wonderful people that we've had the  
14 opportunity to interact in our community. We welcome  
15 your presence in Charleston. We are proud and  
16 honored to have you. We're proud that this historic  
17 port city has your ships calling. We're proud of the  
18 quality of service that you render. We're proud of  
19 your commitments to environmental stewardship and to  
20 good service. We welcome you, and we look forward to  
21 a long-term, mutually beneficial partnership between  
22 Carnival Cruise Lines, the South Carolina State Ports  
23 Authority, and the community of Charleston.

24 As I mentioned, one of the things that is at  
25 stake in this abusive lawsuit is the Union Pier

1 redevelopment plan because the Union Pier  
2 redevelopment plan is possible because of the  
3 relocation of the passenger terminal, the  
4 construction of a beautiful, new, state-of-the-art  
5 passenger terminal, handling all the parking on-site  
6 -- the traffic jams behind Harris Teeter will be a  
7 thing of the past -- and then creating the  
8 opportunity for the southern part of Union Pier to be  
9 redeveloped. As I told the director of the National  
10 Trust for Historic Preservation, what we're doing  
11 will get on the front page of that organization.  
12 And, and so, we, we can't let the wonderful Union  
13 Pier redevelopment that the citizens of our city of  
14 Charleston want not happen.

15       This is a maritime community. We, we embrace  
16 that, we're proud of that, we welcome that, and  
17 Charleston, for all of its history, has welcomed  
18 people coming here or leaving here by ship, just as  
19 we do by rail or by air. The cruise ship activity is  
20 very important to our economy and is a job creator.  
21 I have a list here of -- it looks like it's about 35  
22 or so, entities or organizations that are directly  
23 involved with the cruise ships. Jobs, you know, like  
24 Coburg Dairy. They sell all the milk. Like the  
25 Detyens Shipyard that does ship repair. Like the

1 Coleman Supply, the ship chandlers that help provide  
2 all the things that a ship needs. Like the meal  
3 supplies for the team from Papa John's and Jason's  
4 Delis and (INDISTINCT) and Harris Teeters and others.  
5 Like Staples, that provides them office supplies.  
6 Like Colonial Oil, that provides fuel, or A Floral  
7 Affair, that provides flowers, or Dade Paper, that  
8 provides paper products, or Lancaster Tours, that  
9 handles parking and shuttles, or Roper St. Francis,  
10 and MUSC, that provide health care and services to  
11 the crew and more. It's a long list there. And  
12 then, quickly, just some comments from Jestine's  
13 Kitchen. "Some people come on ships from other  
14 cities and some come to Charleston a few days before  
15 they leave on a cruise. Many cruisers eat with us  
16 each day they are visiting Charleston." Charleston  
17 Crab House, John Keener: "We absolutely see a  
18 positive effect from cruises." Old Exchange and  
19 Provost Dungeon, Tony Youmans: "Brilliant pairing of  
20 our industries." Floral Affair, I just mentioned.  
21 Inchcape Shipping Services: "Cruise ships generate a  
22 lot of revenue for the city, and they want to be  
23 friends of the city." Just a few others. Sheraton  
24 Charleston: "Each time a cruise leaves from  
25 Charleston we see at least 15-25 guest rooms." The

1 Mills House: "We know --" talks about the value and  
2 so much more. The economic impact and the job  
3 creation is tremendous. Our City Council, and I'm  
4 pleased to have two members of City Council, Council  
5 Member Aubry Alexander and Council Member Dean  
6 Riegel, former Council Member Larry Shirley with us.  
7 Our City Council unanimously, 13 to nothing, approved  
8 the Union Pier redevelopment plan and the -- all that  
9 is going on that is empowered through the Carnival  
10 Cruise Line contract.

11 Charleston has been an international leader in  
12 tourism management. We wrote the book. We certainly  
13 wrote the book in our country, how to make a working,  
14 special place, which is Charleston -- there is no  
15 other Charleston -- how to make it work so that it's  
16 a wonderful place to live and a wonderful place to  
17 work and a wonderful place to visit, and have all of  
18 those things going on at the same time. We've worked  
19 very hard to manage that, and, and, and we did the  
20 first tourism management plan in our country. So for  
21 us to make sure and be committed that we have the  
22 right scale, the cruise activity is natural, and  
23 we've worked very hard on that. And that's why the  
24 South Carolina State Ports Authority agreed. They  
25 didn't have to agree. They agreed. Not just the

1 executive director, Jim Newsome -- not just; he's a  
2 wonderful man and a great leader and deserves a  
3 tremendous amount of credit -- but in addition to  
4 him, the board of the State Ports Authority agreed  
5 that there will only be 104 ships, plus, they're only  
6 going to build one berth. So there will be a place  
7 for one ship, one ship at a time, and 104 ships per  
8 year max. Now, people say, well, what about the  
9 future? You know, things can change. Well, for the  
10 future, what we worked out is this, that if ever --  
11 and I will tell you, there is no business model,  
12 there's no expectation that it goes more than that,  
13 and not to go into great detail, but the, the cruise  
14 market we serve is substantially this part of the  
15 country, the Carolinas and Virginia and Georgia, a  
16 little Tennessee, for the most part, and so this is,  
17 this is not -- there's no exponential growth  
18 anticipated, just a good, solid -- same reason we  
19 don't have 10 747's landing at Charleston Airport  
20 every hour. It's a scale thing, we're not going to  
21 have that, so the hundred and four is what the port  
22 believes, what their market study believes is the  
23 max. But if, 30 years from now, the port wants to,  
24 whenever, do more than that, they have to begin a  
25 one-year-long community dialogue to determine whether

1 or not that level should be increased. And, you  
2 know, people say, well, you don't control that.  
3 well, we don't legally control lots of things that we  
4 impact. You know, we don't control the federal  
5 government, but when the federal government wanted to  
6 build, right over there, a federal courthouse that  
7 was too big and in the wrong location, the community  
8 worked with them, and we worked it out. That's what  
9 Charleston always does. There's no, there's no  
10 reason to fear that a South Carolina State Ports  
11 Authority, founded, really, by this city -- there's a  
12 plaque upstairs. Mayor Grace, John P. Grace,  
13 acquired the water -- the ship -- the terminals that  
14 had fallen in because of the earthquake and sat there  
15 for a couple of generations (INDISTINCT) and city  
16 councils before us have done that.

17 Now, I think I might be finished. But, but in  
18 conclusion, there are times when, if we aren't  
19 resolute, and if we don't work hard, something very  
20 important to a community will be lost. Now, what I  
21 know is, an overwhelming majority of the citizens  
22 whom I serve think that the right scale cruise  
23 activity in Charleston is a very good thing. I also  
24 know that if we don't work hard and defeat this  
25 lawsuit promptly as we should, then something very

1 important that has a lasting, positive opportunity  
2 and impact for our city will be lost, the  
3 redevelopment of Union Pier. So we're not going to  
4 let people or organizations with their own agenda get  
5 in the way of economic progress or the very  
6 significant opportunity for a positive, forever-  
7 beneficial water's edge redevelopment in our city.

8 And now, I'd like to call on John Hassell, a  
9 Charlestonian and member of the South Carolina State  
10 Ports Authority Board. John?

11 MR. HASSELL: Thank you, Mayor Riley. I think I  
12 should say right up front that it is the intent of  
13 the South Carolina State Ports Authority to also join  
14 in this lawsuit and take every measure we know to  
15 defeat it. It's the right thing to do. It's the  
16 right thing to do on behalf of our partners -- the  
17 city, Carnival, many of the businesses that are  
18 represented in this room -- and it is the right thing  
19 to do because our mission, our charter under state  
20 government is to promote and promulgate international  
21 commerce, and that includes the passenger cruise  
22 business. Also, on a personal note, I'm 62 now, and  
23 I've spent most of my adult life in the economic  
24 development arena because I learned early on that the  
25 foundation of good quality of life is a job. And

1 what we're about in this project, this service to a  
2 fine partner in Carnival Cruise Lines, is a creation  
3 of jobs. So because it's our mission, because the  
4 creation of jobs is a necessary thing at this  
5 particular time, we're going to exercise every  
6 resource under our command as the State Ports  
7 Authority to see that we succeed in this project with  
8 our partners and in this lawsuit.

9 I'm among many here who are proud to have  
10 welcomed Carnival to Charleston. We have marveled at  
11 their marketing savvy, their operational efficiency,  
12 and their incredible sensation of family enjoyment  
13 that they create for their guests. Their high  
14 standards are reflected in the requirements for the  
15 best possible service at all times. That's what  
16 their guests expect of them, and they accept no less  
17 from the State Ports Authority or the maritime  
18 businesses that serve them. The management team of  
19 the Ports Authority is certain that we could never  
20 find a better business partner than Carnival.

21 Between 2005 and 2009, our port experienced a  
22 decline in activity, due to the international  
23 downturn in business we all know about. More  
24 recently, our circumstances have improved, and  
25 Carnival is a key contributor to the resurgence of

1 the port of Charleston. We talk about jobs? Hundred  
2 of jobs with every vessel call that comes in here,  
3 and they're jobs that many people in Charleston don't  
4 even know about: harbor pilots, line handlers,  
5 stevedores, longshoremen, vessel agents, security  
6 officers, and many, many others. These are jobs that  
7 people all through this community would love to have.  
8 This kind of economic opportunity is worth  
9 (INDISTINCT) out for and going to the wall for.  
10 We're going to do that. We should do that against  
11 any unreasonable challenge to the economic  
12 opportunity that businesses like Carnival offer us.  
13 Regrettably, the lawsuit that was filed this morning  
14 is just such a challenge. It was introduced this  
15 morning, as the mayor said, and as I would term, by a  
16 group of extremists that have been unable to reach  
17 their objective any other way, so they've taken a  
18 route of attempting to harass Carnival and cause them  
19 to leave our port. That's their objective, just  
20 plain and simple. I don't know what to say, except  
21 that it's a desperate act, and I think that it  
22 demonstrates a reckless and selfish disregard for the  
23 welfare of fellow Charlestonians during hard times,  
24 and it threatens the future of international commerce  
25 through the Port of Charleston.

1        what we can do right now is oppose this lawsuit,  
2    but I know I will stand sho -- we will stand shoulder  
3    to shoulder with all of our partners and many of you  
4    here today in taking action in the future that will  
5    support Carnival and ensure their success and ensure  
6    the success of the development of the Union Pier plan  
7    that we all have worked so hard for during the last  
8    couple years.

9        Thank you, and I think that now, we have the new  
10   leader of our Chamber of Commerce coming forward.

11       MR. DERREBERRY: Thank you. Thank you very  
12   much. Good afternoon. I'm Bryan Derreberry,  
13   president and CEO of the Charleston Metro Chamber of  
14   Commerce. It's my honor and privilege to represent  
15   the 1850 businesses that comprise the Charleston  
16   Metro Chamber and their 75,000 employees. Together,  
17   our combined organizations support free enterprise  
18   principals and community advancement goals that place  
19   us solidly in support of Carnival and the cruise  
20   industry.

21       Two hundred and thirty-eight years ago, our  
22   chamber was founded to support Charleston's  
23   development of our harbor and the benefits our region  
24   would recognize through the trade and commerce that  
25   harbor would generate. Our community then and our

1 community now recognizes that free enterprise is  
2 geared to provide a platform where men and women have  
3 the opportunity to own and manage economic resources  
4 and to use these tools to create goods and services  
5 for sale. The sale of these items, in turn, leads to  
6 economic prosperity for our businesses, their  
7 employees, and our supporting community. Each  
8 presenter this morning and their respective  
9 organizations support our free enterprise system and  
10 the promise it holds to increase the wealth and well-  
11 being of all Charlestonians. The vast majority of  
12 our community supports the continued growth and  
13 development of our port, and the commitments that  
14 Carnival is making to build a strong cruise industry  
15 component is a contributor to the Charleston Metro  
16 economy. Carnival's commitment to our community has  
17 already resulted in increased prosperity and new  
18 jobs. Their successful bottom line will result in a  
19 successful bottom line for our regional economy, a  
20 \$37 million impact from the cruise industry. The  
21 redevelopment of the cruise passenger terminal by the  
22 Ports Authority to support Carnival will create even  
23 more jobs and strengthen community prosperity. The  
24 redevelopment of Union Pier will provide citizens and  
25 visitors who come to our area a wonderful, new

1 waterfront setting. Carnival and its operations in  
2 Charleston and the redevelopment of the Union Pier  
3 property continues a proud tradition of free  
4 enterprise and the use of one of Charleston's  
5 greatest economics assets, our port. We want to send  
6 a strong message to Carnival and the State Ports  
7 Authority that we fully support their respective  
8 efforts in strengthening our regional economy and  
9 helping to advance our community for years to come.

10 Thank you for your thoughtful interest in the  
11 betterment of our community today.

12 MAYOR RILEY: I'd now like to welcome -- we have  
13 two members of the General Assembly of South  
14 Carolina, Jim Merrill, a member of our community, a  
15 resident of Daniel Island, a great leader in the  
16 House of Representatives, and Leon Stavrinakis, a  
17 resident of West Ashley (INDISTINCT) in the city of  
18 Charleston. Jim, thank you for coming. We'd like to  
19 have you say a few words.

20 MR. MERRILL: Sure, I'd be glad to. Thank you,  
21 Mayor, so much. I will be brief, but I do want to  
22 point out, as somebody who has been both for and  
23 against the Port and fought many different battles, I  
24 wish that we had an administration that is good as  
25 the administration is now. I wish we had them ten

1 years ago. Every single thing that has been asked of  
2 them, they have done. When they ask them to address  
3 noise ordinances, they do it. When they ask them to  
4 look at pollution, they do it. When they ask about  
5 parking, they do it. Everything that has been put  
6 forward, they have done. My friends, what this is is  
7 -- this is a moving target. You never will be able  
8 to satisfy this group that is out there right now.  
9 You never will. What is happening -- really, this is  
10 going to end up being a bit of a Pyrrhic victory for  
11 them. They are going forward. They are saying they  
12 are going to go to court, and they're going to try  
13 and fight it out in court. Well, when the court  
14 turns around and unilaterally dismisses them, we will  
15 have a victory here in the city of Charleston, I  
16 promise you that.

17 The second thing that I'd like to hit on is that  
18 the idea that they would sue a client of the port is  
19 an abomination. If you want to sue somebody, sue the  
20 State of South Carolina, sue the city of Charleston,  
21 sue the SPA, but to try and sue a client to create a  
22 climate of ill will is sickening. That is a direct  
23 affront to every business here in Charleston, South  
24 Carolina and (INDISTINCT).

25 I'm proud to stand here with Ports Authority.

1 I'm proud to stand here with the mayor and all these  
2 fine citizens, and I look forward to the day we can  
3 say we beat this. Thank you.

4 MR. STAVRINAKIS: Leon Stavrakis, State House  
5 of Representatives. Representative Merrill did a  
6 great job right there, hitting a lot of very  
7 important points. I'd like to point out a couple of  
8 things so that people don't forget. Number one is  
9 that Carnival Cruise Lines made this commitment to  
10 Charleston, South Carolina, in the middle of the  
11 worst economic downturn in any of our lifetimes. I  
12 mean, when everybody else was pulling back and saving  
13 money, Carnival came here and made an investment in  
14 Charleston and showed trust in us, and I want to  
15 thank you, Mayor Riley, and the port for coming out  
16 so strongly and other business leaders coming out so  
17 strongly against this lawsuit. I think  
18 Representative Merrill, like I said, hit it really,  
19 really squarely on the head. This is dangerous when  
20 you're coming after the industries that we rely on to  
21 provide jobs and economic security for the families  
22 that live in Charleston, South Carolina. That is a  
23 dangerous precedent, and we need to strike back, and  
24 I thank them, again, for doing this today and for  
25 hitting back so forcefully.

1           In the General Assembly, I have a 90%  
2   conservation lifetime voting record; pro-  
3   conservation, 90%. So -- and Representative  
4   Merrill's is as good or better. So we have a  
5   commitment, long-term, for preserving the environment  
6   and the beautiful environmental heritage of  
7   Charleston, South Carolina. We are not standing up  
8   here as people who have been long-time enemies of  
9   environmental preservation in Charleston. We are  
10   quite the opposite, and instead of suing Carnival  
11   Cruise Lines, we want to thank them for going above  
12   and beyond the call of duty and their legal  
13   obligations to help us preserve the beautiful  
14   environmental heritage of Charleston, South Carolina.

15           MAYOR RILEY: Thank you very much, John and  
16   Bryan and Jim and Leon, and now, please, to bring up  
17   with me -- Ken, if you will come up -- a great leader  
18   in our community and I'm proud to say a dear friend  
19   who, who knows better than anyone in this room, from  
20   a direct, day-in and day-out personal relationship,  
21   the importance of Carnival Cruise Line in Union Pier  
22   redevelopment and the successful maritime industry in  
23   our city, Ken Riley, president of the International  
24   Longshoremen's Association.

25           MR. KEN RILEY: Thank you very much, Mayor Riley.

1 As president of the International Longshoremen's  
2 Association, I stand here today shoulder to shoulder  
3 with the mayor of the entire city of Charleston, the  
4 State Ports Authority, elected officials, and many  
5 other business leaders. This lawsuit that was filed  
6 against Carnival Cruise Line confirms in my mind that  
7 there's a segment of our community that will not be  
8 satisfied until every commercial maritime business  
9 has left this port city. As I scanned through the  
10 lawsuit very briefly this morning, I could not help  
11 but notice some of the complaints that will not only  
12 apply to these vessels but to every commercial vessel  
13 sailing in and out of our harbor. Ballast water,  
14 gray water, black water, invasive species are issues  
15 not only for the Union Pier facility and downtown  
16 communities. They are issues for the entire  
17 Charleston Harbor and all of its waterways. That is  
18 why the industry is so carefully regulated. What is  
19 amazing is that somehow, our opponents believe that  
20 if the cruise ships were simply to dock at Columbus  
21 Street or North Charleston that these issues would go  
22 away.

23 Having worked on the waterfront for over 35  
24 years now, and having worked the Union Pier facility  
25 throughout those years, I am confused by the

1 arguments that are now being made because for all of  
2 those years, and up to a few months ago, megaships,  
3 some which are nothing more than floating parking  
4 lots, have docked weekly south of where the terminal  
5 is now planned. Before, before that, there were  
6 cargo ships carrying pipes and steel, cotton,  
7 plywood, lumber, and many other commodities. Those  
8 vessels would dock south of where this facility would  
9 now be built. Trains and delivery trucks frequent  
10 the eastside corridor and Concord Street, but all  
11 that has now changed. No more trains, no more  
12 delivery trucks. The number of ship calls at the  
13 Union Pier facility have dropped dramatically. Why?  
14 Because what is not being told is that the number of  
15 ship calls by other cargo vessels more than doubled  
16 the number of calls that these ships will be making.  
17 But all of that business now has moved to other  
18 terminals north of the city.

19 But that should not happen in this case. That  
20 should not happen with the cruise business. The  
21 cruise business is a people business, and it should  
22 stay downtown. You don't treat people like you treat  
23 cargo. Any and everybody who comes to our city  
24 should be welcomed and should experience, firsthand,  
25 all the charms that our city has to offer. Those who

1 will examine carefully will see the continuing  
2 shifting of the issues that are being brought by the  
3 opponents, and they will realize that their first  
4 position probably was their true position. This  
5 seems to be nothing more than class warfare. It's  
6 sad, but it's true. We have been in consultation  
7 with our attorneys this morning, last night, and we  
8 will go before our membership tonight to get their  
9 approval that we, too, will look to intervene in this  
10 lawsuit.

11 MAYOR RILEY: Kenny, thank you very much. Thank  
12 all of you. Bill Sims, who is here representing the  
13 French Quarter neighborhood, which is right down  
14 there and adjacent to the harbor, and Vangie  
15 Rainsford is president of Mazyck Wraggborough. Are  
16 they, are they here, around?

17 UNIDENTIFIED MALE SPEAKER: Yeah.

18 MAYOR RILEY: I saw -- Bill, Vangie, come on up.  
19 Come on. You know, we have -- two neighborhood  
20 organizations brought the lawsuit, which, which, I  
21 will tell you, because it's true, that they were part  
22 of the grand scheme. Both of those leaders changed  
23 in an organizational coup lead by the South Carolina  
24 Coastal Conservation League, so they got -- they  
25 changed the leadership of two neighborhood

1 organizations that were wonderful neighborhood  
2 organizations, and -- representing the citizens of  
3 their neighborhoods very well, and now they are two  
4 of the plaintiffs. We have a hundred and five  
5 neighborhood councils in the city, so two out of 105,  
6 I guess isn't bad, but we have two neighborhood  
7 organizations represented here. Vangie and Bill are  
8 both wonderful, as our neighborhood people have been,  
9 neighborhood reps have been over the years. Would  
10 you all like to say anything? I know I'm catching you  
11 by surprise.

12 MS. RAINSFORD: Yes, you are. Anyway, I'm here  
13 to support what is so important for the city of  
14 Charleston. The redevelopment will completely change  
15 our neighborhood, opening the waterfront up, and at  
16 this point, do I not look like I'm headed for a  
17 cruise?

18 MAYOR RILEY: Bill.

19 MR. SIMS: Thank you. Mister Mayor, I did go  
20 attend the press conference this morning for the  
21 suit, and I was able to ask one question. I said,  
22 well, what happens if Carnival just leaves, as  
23 unfortunately happened in Mobile and happens to Union  
24 Pier? And there was no answer. Then, we had one  
25 other question from the press, and then I wanted to

1 ask just one other question, and I was cut off and  
2 said, No more questions except from the press. So it  
3 sort of tells you what it's about.

4 MAYOR RILEY: Okay. Well, any questions?

5 UNIDENTIFIED MALE SPEAKER: (INDISTINCT)

6 MAYOR RILEY: Yes, sir?

7 UNIDENTIFIED MALE SPEAKER: So you sometimes  
8 (INDISTINCT) a waste of money for the city, for the  
9 State Ports Authority. Any estimates of how much  
10 this could cost to fight this in court?

11 MAYOR RILEY: I don't have any idea, but I know  
12 this, that our citizens want us to work as hard as  
13 possible and to spend what is needed because what we  
14 have at stake is so huge: the jobs, the \$34 million  
15 annual economic impact, and the redevelopment of  
16 Union Pier. We're not going to let them win. We're  
17 going to beat them, and we're going to -- I'm sure  
18 our lawyers will move for summary judgment. This is  
19 an outrageous, abusive lawsuit that has been brought,  
20 and we will not tolerate it, and we will not rest  
21 until we win.

22 UNIDENTIFIED MALE SPEAKER: Mayor, have you  
23 received a response from Carnival Cruise Lines? Have  
24 you been talking with them? Have they responded to  
25 the city regarding the claims?

1           MAYOR RILEY: They have been in touch with the  
2 Ports Authority. I have not talked directly with  
3 them. I've seen correspondence, and they are, you  
4 know, they're very proud of being in Charleston.  
5 It's a -- and it's a very fine company. You know,  
6 all the people I've met that have come through here  
7 are just stellar people, and so I'm sure that they  
8 will be pleased to have reports of this wonderful  
9 turnout and the support that they have in our  
10 community. They, they obviously are happy being here  
11 and, and, and wanted to come, and looking forward to  
12 the new terminal, we just want to make sure that this  
13 lawsuit isn't discouraging to them, and as Jim  
14 Merrill said, I mean, that -- you have to, I mean,  
15 realize what happened in that the Coastal  
16 Conservation League, which masterminded all of this,  
17 sued Carnival. They didn't sue the city of  
18 Charleston. They didn't sue the Ports Authority.  
19 They didn't do the state -- sue the State of South  
20 Carolina. They sued Carnival. I mean, it was kind  
21 of a bullying thing to do. Let's, let's try to run  
22 them off. But, but, but Carnival is a fine company,  
23 and they're a strong company, and, and they're not  
24 going to let that happen, and we're not either.

25           UNIDENTIFIED FEMALE SPEAKER: Mayor, can you

1 talk a little bit more about the \$37 million economic  
2 impact? Is that --

3       MAYOR RILEY: That's annual. That's, that's  
4 everything. You know, it's interesting, and I've got  
5 good friends from the Convention and Visitors'  
6 Bureau, but we all know how great it is that we got  
7 Southwest Airlines, right? That was really great.  
8 Well, it was very impressive to Southwest Airlines  
9 that Carnival had come here. That was -- that meant  
10 more travel for them, bringing people in who, some  
11 who would fly by air to come. Like, you know, Bill  
12 Hall over there, his restaurant, Hall's Chophouse, he  
13 had -- they say, you know, the, the -- what Kenny  
14 mentioned about class warfare, you know, like, you  
15 know, some want to stereotype cruise passengers.  
16 Bill Hall had a family that owns a winery in Sonoma  
17 County, California, bring the whole family. Was it  
18 48 of them?

19       MR. HALL: Forty-eight of them.

20       MAYOR RILEY: Forty-eight come to Charleston.  
21 Never been to Charleston before because they knew  
22 that you could take a cruise, and they thought, Come  
23 into Charleston, spend a few days, take a cruise,  
24 come back, spend a few days, it would be a very nice  
25 thing. So it's all of that. It's the people coming,

1 spending a night before, a night after, coming back,  
2 because we all know, you come to Charleston for the  
3 first time, and no one ever says, I'm not coming  
4 back. They all say, I'm coming back. So you've got  
5 that. And then, all the people that work with Kenny  
6 Riley and all that John Hassell mentioned. I mean,  
7 it's a major -- you, you, you just, you have to go  
8 down there and just see all the people. And the  
9 security people; you go to check in. Well, those,  
10 oftentimes, you know, are retirees that need that  
11 second job, or others. And so Coburg Dairy or the  
12 ship handlers, freight forwarders, it's huge. So the  
13 30-plus million dollars is probably conservative.

14 UNIDENTIFIED FEMALE SPEAKER: Is that from that  
15 one (INDISTINCT), Carnival?

16 MAYOR RILEY: It's from, it's from, it's from  
17 the cruise activity, which, most of it now is  
18 Carnival.

19 UNIDENTIFIED FEMALE SPEAKER: Thank you.

20 UNIDENTIFIED MALE SPEAKER: Those filing suit  
21 claim that there are no standards for thee boats, so  
22 I have to ask you, are there standards? Are there --  
23 is there state code --

24 MAYOR RILEY: Yeah.

25 UNIDENTIFIED MALE SPEAKER: -- or any

1 ordinances?

2       MAYOR RILEY: The ships are regulated through  
3 federal regulations, so they are heavily regulated.  
4 And let me say this. They do not pollute the harbor,  
5 categorically. Another thing the -- right here in  
6 this room, the representative of one of the groups  
7 bringing the lawsuit said that they dump three miles  
8 out. They don't. They -- and first of all, let me  
9 say, cruise ships have sewage-treatment plants in the  
10 ships, so the shower water or waste water is all  
11 treated, as you would have a sewer treatment plant in  
12 a city. It's treated and goes through a process  
13 first. Secondly, it is not released until the ships  
14 are 12 miles out and underway, at least six knots,  
15 and then gradually released so that it is not  
16 measurable in, in the ocean water as it's going out.  
17 And so they're heavily regulated. And then, the  
18 city, we have a noise ordinance, as I said. The  
19 police department has not got one complaint yet. I  
20 know there's a resident -- I won't name her. She's -  
21 - but -- although she's in their press release -- has  
22 called and complained, and there was one ship that  
23 came in that wasn't the Carnival normal  
24 embark/debark. It was a port of call, and there was  
25 some music being played on the deck when it came in,

1 and this person heard the music, calypso music,  
2 which, you know -- didn't like calypso music.  
3 Anyway, you know, life is tough sometimes. You know,  
4 you have some calypso music, and it ruins your day.  
5 But anyway, that call came in, and the port let that  
6 company know not to play the music when you're coming  
7 in. Wait till you get out, and so -- and then, the  
8 normal -- so it's -- I mean, if we -- I, I called, I  
9 called our -- I called Dan Riccio. My city council  
10 members know Dan. He was head of Livability Court;  
11 now he's head of the Livability Division. I called  
12 him at 8:00 this morning, and I said, Dan, can you  
13 quickly (INDISTINCT) this press conference? He said  
14 he's check, and he (INDISTINCT) came back and said  
15 none, zero police complaints. They're bringing a  
16 lawsuit against Carnival Cruise Line, and one of  
17 their causes of action is violating the noise  
18 ordinance, and we haven't had one complaint. That is  
19 what we're up against. That is the disgrace and  
20 outrage action that is being brought -- really, it's  
21 not against Carnival. It's against the citizens of  
22 Charleston, it's against the South Carolina State  
23 Port, it's against Kenny Riley and the people who  
24 work for him, and it's against all these people that  
25 are connected.

1 That's what they're doing with very narrow views and  
2 a selfish -- motives. Trying to harm an industry in  
3 our city; that's what's going on.

4 UNIDENTIFIED MALE SPEAKER: So, Mayor, would you  
5 say that the cruise -- that Carnival Cruise Lines has  
6 not made any of these violations that the suit  
7 alleges?

8 MAYOR RILEY: They clearly have not. I mean,  
9 they haven't made -- if I haven't got any noise  
10 complaints, then there's been no violation. And, and  
11 the, and the stuff about the sign and the view  
12 corridor blocking and the height ordinance, I think  
13 is laughable. I mean, I really am surprised they put  
14 that in because I think they could reasonably be, you  
15 know, to be subject to being laughed at. I mean,  
16 that's, you know -- you sit down -- have the average  
17 Charlestonian sit down and say, Did you hear that  
18 group brought a suit against the city and they said  
19 that those cruise ships are violating the sign  
20 ordinance because they got the logo planted on the  
21 thing? And they'd say, Oh, you got to be kidding.  
22 You couldn't possibly be doing that. So, anyway --

23 UNIDENTIFIED MALE SPEAKER: (INDISTINCT)  
24 pollution included in (INDISTINCT)?

25 MAYOR RILEY: Absolutely. They're, they're,

1 they're in compliance, and the Coast Guard, you know,  
2 the former head of the Coast Guard, John, Captain  
3 John Cameron can, you know, sit down and tell you. I  
4 mean, they're -- these are, you know, the, the first,  
5 I guess -- the reasonable question would be, why  
6 would they? I mean, why would a business that is in  
7 the business of being a good business do that? I  
8 mean, it's not. It's not, it's not -- they don't.

9 UNIDENTIFIED FEMALE SPEAKER: I know you talked  
10 about this hurting the redevelopment of Union Pier  
11 plan. Now, if Carnival -- say they pulled out of  
12 Charleston. Would the redevelopment continue?

13 MAYOR RILEY: No. It would stop. You, you  
14 can't build a cruise terminal if you don't have a  
15 tenant. That's what they want. And the South  
16 Carolina Coastal Conservation League came up with  
17 their plan for Union Pier, which is, you can't do it  
18 because they got a built-over deck, but instead of a  
19 place where Kenny Riley's people work, they got  
20 expensive, high-end housing there. That's what they  
21 want. They want to gentrify the water's edge in the  
22 city of Charleston. They want to get rid of  
23 longshoremen and all the people who work on ships and  
24 that shipping activity. They want to make this city  
25 something it's never been. You know, today it'll be

1 said that Charleston needs to choose between being  
2 Key West of Northeast Harbor. We're neither.  
3 Obviously not Key West, but Northeast Harbor is a  
4 very nice, very exclusive, very wealthy little  
5 community in Maine. And that's, that's their vision  
6 of Charleston. But you know what? That has never  
7 been Charleston. Charleston is Charleston. It's,  
8 it's like, it's the feel of a piece of cloth that's  
9 special, and what makes Charleston special is, we've  
10 always had ships on our water's edge. We've always  
11 had longshoremen working on our waterfront. We've  
12 always had people employed in the maritime industry,  
13 and we've always had visitors coming to Charleston by  
14 ship. It's a very special city, and one of the  
15 magical parts of Charleston is that it's not a  
16 boutique, and it's not a museum. It's a wonderful,  
17 special, unusual American city that is physically  
18 beautiful and has a very high quality of life; all  
19 the while, the normal goings-on of a living, working  
20 city is here.

21 UNIDENTIFIED FEMALE SPEAKER: So how will this  
22 (INDISTINCT) effect this project? It's kind of the  
23 eleventh hour now, so where are (INDISTINCT)?

24 MAYOR RILEY: Well, our hope is it doesn't  
25 affect it at all, and that we keep going and the

1 Ports Authority continues, but if they were to  
2 interfere with Carnival coming here, then it would,  
3 it would derail it. And that's what they want. And,  
4 and, and their solution is, well, it's okay if you  
5 put it out closer to the east side; you know, put it  
6 up in Columbus Street, which, of course, Columbus  
7 Street cannot be used because that is where, as Mr.  
8 Hassell can tell you and Mr. Riley can tell you, is  
9 where the Ports Authority is seeking to maximize its  
10 capacity to handle cargo like the BMW cars and trucks  
11 and Caterpillar equipment and other break-bulk cargo.  
12 It needs to be maximally used for that purpose for  
13 job creation.

14 MR. HASSELL: Mayor, may I just have a -- just  
15 from the Ports Authority standpoint, just to concur  
16 with the mayor, the fact that this lawsuit has been  
17 filed will mean no change in the plans to move  
18 forward. The outcome is something we have to  
19 evaluate when that happens. But I'm convinced, as  
20 the mayor has said and we have all said, that this  
21 lawsuit is frivolous and that we'll be able to defeat  
22 it.

23 MAYOR RILEY: Any other questions?

24 UNIDENTIFIED MALE SPEAKER: Mayor, quickly, if  
25 could interject real fast -- if I can ask you a

1 question on a different topic. Can you comment --

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(END OF AUDIO FILE)

## 1 CERTIFICATE OF TRANSCRIPTIONIST

2 I, Kim von Keller, do hereby certify:

3 That the foregoing audio file entitled "City of  
4 Charleston Press Conference Regarding Lawsuit Against  
5 Cruise Line.wav" was transcribed; that the foregoing  
6 transcript as typed is a true, accurate and complete  
7 record of the audio file to the best of my ability  
8 under the prevailing circumstances.

9 I further certify that I am neither related to  
10 nor counsel for any party to the cause pending or  
11 interested in the events thereof.

12  
13  
14  
15 \_\_\_\_\_  
16 Kim von Keller

17 February 5, 2013  
18  
19  
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21  
22  
23  
24

# **Exhibit 34**

**From:** J. Randolph Pelzer [jrandolphpelzer@hotmail.com]

**Sent:** Monday, May 30, 2011 6:32 PM

**To:** Dana Beach; Michelle Sinkler; Katie Zimmerman

**Subject:** FW: First Draft

I would appreciate your thoughts. Perhaps we can refashion it like the summarized Petition.

---

From: jrandolphpelzer@hotmail.com

To: jennyssanford@gmail.com

CC: mtrose19@gmail.com; sgates100@gmail.com

Subject: First Draft

Date: Wed, 25 May 2011 13:00:50 -0400

Jenny,  
Elizabeth shared your email to her. I am trying to fashion an argument that will appeal to state officials and I cannot think of anyone with better experience to do so than you. I certainly have none.  
I have trying to make an appeal on economic and philosophical grounds. I do not know which economic and philosophical argument will persuade, whom each will persuade (if any), and the form that the arguments should take. Unfortunately or fortunately, we seem to have a plethora of arguments.  
I know that the following is quite an epistle, but I would very much appreciate your insight. We have a variety of visual aids, such as the ships towering over downtown, aerials showing the locations of cruise sites, pictures of Newsome in front of signs at the rally, plans for an 1,800 foot dock at Union Pier, and photos of a substantially empty Columbus Street Terminal.  
Thank you,  
Randy Pelzer

## A CALL FOR IMPOSITION OF CONSERVATIVE ECONOMIC PRINCIPLES ON S.C. STATE PORTS AUTHORITY

### PRINCIPLES OF CONSERVATIVE ECONOMICS:

1. PRIVATE ENTERPRISE PREFERRED OVER GOVERNMENT ENTERPRISE
2. PREVENT WASTEFUL ECONOMIC ACTIVITY BY GOVERNMENT
3. GOVERNMENT ASSETS SHOULD BE APPROPRIATE TO CORE ACTIVITY AND NEEDS
4. PREVENT GOVERNMENT ACTIVITY THAT IS OPPRESSIVE AND INSENSITIVE TO CITIZENS' QUALITY OF LIFE AND PROPERTY RIGHTS
5. REDUCE BUDGET DEFICIT BY SELLING STATE ASSETS NOT NEEDED FOR CORE GOVERNMENT FUNCTIONS
6. EXPAND PRIVATE TAX BASE AND SPHERE OF PRIVATE ECONOMIC ACTIVITY

THESE PRINCIPLES OF CONSERVATIVE ECONOMICS ARE ALL VIOLATED BY THE PLAN OF THE SPA TO BUILD A NEW CRUISE TERMINAL AT CHARLESTON'S UNION PIER, AT A SITE ADJACENT TO THE HISTORIC DOWNTOWN RESIDENTIAL AREA

1. PRIVATE ENTERPRISE PREFERRED OVER GOVERNMENT ENTERPRISE.  
SPA plans to build a 22 acre cruise terminal costing \$35 million at the 65 acre Union Pier Terminal next to Charleston's downtown and the Historic Ansonborough Neighborhood. Most of the site will be use as a

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**R.003778**

parking lot for passengers. The highest and best use of this property is a mixed use waterfront commercial and residential development. Plans were developed in the past by the City and SPA for the development of this waterfront property along these lines. The property is very valuable and developable prime waterfront property in the historic downtown. Indeed, even in these hard time for real estate development construction is moving forward on several big buildings just north of Union Pier and land prices have been from \$3,000,000 to \$7,000,000 per acre. The entire 65 acre Union Pier Terminal should be sold to private enterprise rather than consigning the property to a government enterprise under the auspices of the SPA. Most prominent local real estate people believe that private redevelopment of the entire 65 acres Union Pier subject to Charleston laws and to some public uses is the sensible course for the State.

## 2. PREVENT WASTEFUL ECONOMIC ACTIVITY BY GOVERNMENT.

SPA is building a new cruise terminal primarily to serve Carnival Cruise Line with whom SPA has a 3 year contract running from 2009 to 2012. Carnival provides 2/3 of the ships visits and a far greater percentage of the passenger and parking customer on whom the fees are based. No private business would build or get financing to build a specialty building with little over a year left on the contract with its primary customer and source of income. There is absolutely no solid reason to believe that Carnival will renew its contract because a new terminal has been built for them. Since just January, 2011, Carnival has pulled all its ships out of both Mobile and San Diego AFTER those ports had recently completed new terminal for it, leaving those ports in a financial hole. Carnival did so for the reasons already reported applicable to Charleston- weaknesses in ticket pricing and higher fuel costs due to new fuel regulations in 2012 especially detrimental to ports far from the Caribbean destinations. It is wasteful for the SPA to consign any part of Union Pier to a cruise terminal for such a movable tenant as Carnival, particularly when real estate professionals will tell you that it devalues the remainder of the Union Pier site to be located next to a cruise terminal with its noise, air pollution and traffic congestion from ships towering over the surroundings. IT IS ECONOMICALLY ABSURD TO USE SUCH PRIME WATERFRONT PROPERTY FOR A CRUISE TERMINAL AND PARKING LOT.

## 3. GOVERNMENT ASSETS SHOULD BE APPROPRIATE TO THE SCOPE OF ITS CORE ACTIVITY AND NEEDS.

Recent financial disclosures by the SPA reveal that its container cargo business is 60% and bulk break-bulk are 40% of what they were only 4 years ago. SPA has been losing the competition with other ports, particularly Savannah. These two components are almost 95% of SPA's total business. Obviously, with 5 terminal locations in Charleston and another large one planned at the Old Navy Base, SPA has substantial over-capacity, leading management to state in their financial statements that, even without Union Pier, SPA has capacity to meet projected demand until 2018 at the earliest, and sometime well past 2022 at the latest. This overcapacity has apparently led SPA to cease container operations out of the 155 acre Columbus Street Terminal and to carry out most cargo operations out of the large Wando and North Charleston Terminals.

Due to SPA's overall overcapacity and the availability of space at the 155 acre Columbus Street Terminal, we requested that SPA locate the new cruise terminal at the northern end of the Columbus Street Terminal next to the Ravenel Bridge and sell the entire 65 acre Union Pier Terminal for private redevelopment. SPA admittedly had never studied a cruise terminal site there; indeed, the experts from New York that it employed to determine the best cruise terminal site were told to look ONLY at a site at Union Pier.

SPA without public dialogue, discussion or further expert study flatly rejected this idea. SPA's only public response was that it recently had invested \$20 million for its BMW export business at the southern end of the Columbus Street Terminal and needed the rest of the Columbus St. Terminal for further expansion of

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that business, while also announcing the removal of 2 large post-panamex container cranes from that terminal. But it is apparent from visual observation and photographs that SPA is only using about 1/3 of the Columbus Street Terminal for BMW and has ample space to expand even with a small 22 acre cruise terminal site at the northern end. SPA also has the 110 acre Veterans Terminal as a back-up site, as it is listed by SPA as a automobile export-import facility. SPA has lost its other automobile transport business during the past 10 years, such as Porsche and even BMW import, so it is unlikely to have significant growth in competition with regional powerhouses at Brunswick and Jacksonville.

While we hope that the SPA can reverse the decline in its cargo business and understand its desires to increase its cruise business, it should deal with reality and not hopes in deciding how to use its assets. The State should not allow it to hold on to its real estate empire anymore than federal agencies reluctant to close bases or offices. For the reasons below, the Columbus Street Terminal is a better location for a cruise terminal and Union Pier is prime property for divestiture and privatization.

#### 4. PREVENT GOVERNMENT ACTIVITY THAT IS OPPRESSIVE AND INSENSITIVE TO CITIZENS' QUALITY OF LIFE AND PROPERTY VALUES.

During 2010, Charleston experienced for the first time the effects of a quantum leap in cruises resulting from Carnival's use of Charleston for embarkation and debarkation cruises. There will be almost 70 such cruises this year. At each visit, from 2,000 to 3,500 passengers arrive in the morning and leave already crowded downtown areas and another passenger group arrives later in the day for the afternoon departure, resulting in traffic jams in an already crowded residential/tourist area. Major arteries have to be closed during parts of the day to accommodate all the traffic, and traffic slows to a crawl. Locals and visitors are forced to detour around the congested east side, frustrating residents and hurting local businesses in that area. As an example, one resident had scheduled a piano to be moved on a cruise day but the mover gave up trying to reach her residence after being held up in traffic for over an hour. The resident was forced to reschedule with a much more expensive move a later time.

Further, many residents in Ansonborough report hearing ship PA systems and horns in the early morning and at other times during the day. These loudspeakers are turned out at residential areas and blare routine announcements but also salsa music and happy hour news.

Many residents feel as if they are being deprived of the quiet enjoyment of their residences. One example, a resident awoken at 6:00 A.M. New Years Day by the PA system of an arriving ship. In addition, on each arrival and departure there are numerous loud horn blasts that can be heard throughout the Charleston peninsula, unlike cargo ship which use their horns only in the fog.

Further, during their roughly 10 hours in port, the cruise ships run engines to power all systems for a small town of 3,500 to 4,500 passenger/crew. The ships burn a high sulfur bunker fuel which is hundreds of times dirtier than diesel. The result is an incredible amount of soot which dirties old houses already expensive to maintain and paint. The soot will cause health problems. In the New York area, cruise ships have been required to use onshore power because of significant increases in asthma and other health problems caused by cruise ships running engines in port. One local owner of a large office building at some distance from the present terminal reported having to clean the outside of his building because of tenant complaints about the soot.

Further, one of Charleston's charms is its skyline of church steeples and historic roofs, which the community (despite some mistakes) has largely preserved through height restrictions. As the attached picture shows, the 12 story ships and even higher winged smoke stacks tower over residential areas and impair that beauty.

It is for these reasons that the leading realtors in the City have warned of declining property values and sales in the affected areas. It is for these reasons that leading figures in the hospitality industry (restaurants and hotels) have warned against a decline in Charleston's prosperous land-based tourism due

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to the negative impact of cruise ships on the Charleston brand. As one participant at a recent forum stated, no tourist is ever happy to learn that a cruise ship is in town. And it is for these reasons that modern cruise terminals are typically not located next to residential areas, particularly historic areas that attract a sizable land-based tourist, conventions and event gathering.

Finally, it is for these reasons that the major residential areas near Union Pier have passed resolutions by large majorities (up to 20 to 1) calling for legal limitations on the size, number of cruise ship visits and their discharges and for the sale of the entire Union Pier terminal for private redevelopment with a suggested location of a cruise terminal further up the peninsula in Charleston. It is for these reasons that all major preservation and conservation organizations, as well as the city newspapers, have called for legal limitations on cruise activity and a reconsideration of the use of Union Pier for a cruise terminal. The clamor of an outraged citizenry is growing and will continue to grow, because the existing cruise activity is being rejected by the downtown body politic like a body rejecting a virus or other foreign substance. The fever is also increasing, causing the issue to be the defining one for most residents in Charleston's oldest areas. Former supporters of Mayor Riley have been abandoning him in droves over the issue. The cruise activity at Union Pier is considered by residents and local businesses to be more oppressive and damaging actions by a governmental enterprise than taxes and regulation.

#### 5. REDUCE BUDGET DEFICIT BY SELLING ASSETS NOT NEEDED FOR CORE FUNCTIONS.

The State is facing a budget deficit greater than \$1,000,000,000 and severe cuts in government services. And yet, the 65-acre Union Pier Terminal admittedly is one of the most valuable and developable tracts on the east coast, worth from \$200,000 to \$500,000. How can the State not force the SPA to sell this property into the private sector, particularly since it obviously does not need the site for core cargo operations and has an alternative site for a cruise terminal at the Columbus Street Terminal, where the negative effects are substantially mitigated and positive effects retained.

The conservative Harvard economist Nial Ferguson in an February, 2011 article in Newsweek diagnosed this problem at the federal level. He noted that the conventional wisdom is that the deficit can be reduced only by some combination of spending cuts or increased taxes. But he noted that there is another fiscal option that nobody was considering. The government "needs to do exactly what it would if it were a severely indebted company: sell off assets to balance its books." Seemingly in response to this article, the federal government a couple of weeks later announce a panel to sell of unneeded government real estate. This conservative solution to the current deficit should be applied at the state level, and Union Pier is the prime contender.

#### 6. EXPAND PRIVATE TAX BASE AND SPHERE OF PRIVATE ECONOMIC ACTIVITY.

The SPA has tried to portray opponents of a new cruise terminal at Union Pier as against job creation and economic development; as seeking to have downtown Charleston become a gated or boutique community. In fact, the plan to sell Union Pier and have a new cruise terminal at the Columbus Street terminal will maximize job creation and community development while preserving all economic benefit from cruise activity.

In the first place, the construction jobs from a new terminal will be the same at either site, as will the maritime jobs. Ancillary economic benefits from passenger, crew and cruise line spending should be about the same at other location, because a new terminal at either Union Pier or Columbus Street will shuttle passengers to area attractions and shops.

Most importantly, the redevelopment of the entire 65 acre rather than 35 currently planned would generate about twice the constructions jobs in what would be one of the most significant in fill urban

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developments on the east coast. The local property tax base would at least be double what is currently planned, as well as business taxes. The State's revenue from sales and income taxes should also be twice as great in the future. Charleston has lost substantial tax base over the past 50 due to state and federal expansions at MUSC, the College of Charleston and other facilities, and it would be equitable for the State to force the return of the maximum acreage to the tax rolls, as well as economically advantageous for the State to receive the highest price from the sale of Union Pier.

Finally, a cruise terminal at the Columbus Street Terminal using the existing entrance off Morrison Drive would spur development of hotels, restaurants and shops on Morrison Drive, a area blighted since car dealerships moved from there in the 1960's and 1970's, creating still more construction and service jobs, with tax growth.

## 7. REACTION OF THE CITY AND SPA.

To date, the Mayor and SPA have acted in total concert, offering vague, unenforceable statements that cruise activity should be about two a week and no mega-ships. But SPA only economic incentive is to increase the number of visits and ships size as revenue is based on a fee for each passenger and parking fees. It has rejected a study of the sale of the entire Union Pier and removal of a cruise terminal to The Columbus Street Terminal site on summary grounds that it needs that entire terminal for cargo operations. But it is obvious from visual inspection that it uses about 1/3 of the Columbus Street Terminal for BMW export and the rest of the 155-acre terminal is largely vacant. SPA claims that a small amount of break bulk cargo goes through that terminal, but that cargo could be handled easily in conjunction with a cruise terminal or at one of the other underutilized port terminals in the Charleston area. A independent study by the State would verify this.

SPA has publicly threatened community that if it does not get its way with a new cruise terminal at Union Pier, it will either return cargo operations to that terminal or leave it as an industrial blight in the heart of the downtown, with decaying and rusting warehouses without any substantial screening. It was reprimanded by the Post and Courier for such threatening behavior.

Further, there have been a series of newspaper pieces by port-related people playing the class card against downtown residents for trying to do what any neighborhood would do to protect their quality of life and property values from unreasonable government actions. Residents and their neighborhood associations have been accused of snobbishness, arrogance, elitism, self entitlement, and other such adjectives by persons connected to the SPA.

The Mayor has sought to further his reelection prospects by claiming that he is creating jobs in a difficult economic environment and has lent his full support to SPA. At a recent public forum, SPA sponsored a rally at which the Mayor and SPA called out their union allies in support of an effort to pack the audience so that residents would seemingly be outnumbered. A picture of SPA President Newsome with one of the many "JOBS NOT SNOBS" held by union members is attached, showing the degree to which this state agency will take its campaign against local residents. Of course, this campaign seeks to detract public attention from the legitimate objections and proposal residents and neighborhood associations.

## CONCLUSION:

For the above reasons, we ask that the State exercise its oversight authority and conduct a study of the proposal to sell Union Pier in its entirety and move the new cruise to another site

The State has recently seen another state agency in Charleston Harbor, Patriots Point, borrow \$9,000,000 from the State to refurbish the USS Laffey and then prove unable to either return the ship for display or pay back the loan. The State faces a much more costly and notorious debacle at Union Pier unless it steps

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in now as it did with SPA in 2009 in ordering the sale of Daniel Island, Port Royal, and Thomas Island.

Charlestowne Neighborhood Association Cruise Ship Task Force  
Historic Ansonborough Neighborhood Association Committee on Cruise Ships

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# **Exhibit 35**

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Carnival Corporation, d/b/a Carnival Cruise Lines; South  
Carolina State Ports Authority; and City of Charleston,  
Defendants,

v.

Historic Ansonborough Neighborhood Association,  
Charlestowne Neighborhood Association, the Coastal  
Conservation League, and Preservation Society of  
Charleston, Plaintiffs.

Appellate Case No. 2011-197486

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**ORIGINAL JURISDICTION**

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Opinion No. 27355

Heard November 19, 2013 – Filed January 22, 2014

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**JUDGMENT FOR PETITIONERS**

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Marvin D. Infinger, of Nexsen Pruet, LLC, and Philip L.  
Lawrence, of South Carolina Ports Authority, both of  
Charleston, for Petitioner South Carolina State Ports  
Authority.

Gordon D. Schreck and David M. Collins, of Womble,  
Carlyle, Sandridge, & Rice, PLLC, of Charleston, for  
Petitioner Carnival Corporation.

Corporation Counsel Charlton De Saussure, Jr., Assistant  
Corporation Counsel Susan J. Herdina, and Assistant

Corporation Counsel Frances I. Cantwell, all of Charleston, for Petitioner City of Charleston.

J. Blanding Holman, IV, of the Southern Environmental Law Center, of Charleston, for Respondents Historic Ansonborough Neighborhood Association, Charlestowne Neighborhood Association, and Coastal Conservation League.

Timothy C. Dargan, of Brown & Varnado, LLC, of Mt. Pleasant, for Respondent Historic Ansonborough Neighborhood Association.

John A. Massalon, of Wills Massalon & Allen, LLC, of Charleston, for Respondent Preservation Society of Charleston.

John C. Moylan, III, of Wyche, P.A., of Columbia, and Associate General Counsel William J. Cook, of Washington, D.C., for Amicus Curiae National Trust for Historic Preservation.

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**JUSTICE HEARN:** In this case brought in our original jurisdiction, several citizens groups filed suit against a cruise ship operator alleging nuisance and zoning claims and seeking an injunction. We hold these groups lack standing and dismiss.

#### **FACTUAL/PROCEDURAL BACKGROUND**

The plaintiffs in this case consist of four Charleston citizens' groups: the Historic Ansonborough Neighborhood Association (Ansonborough Association), the Charlestowne Neighborhood Association (Charlestowne Association), the Coastal Conservation League (League), and the Preservation Society of Charleston (Preservation Society) (collectively Plaintiffs). The Ansonborough Association is a nonprofit corporation composed of residents, property owners, and tenants of the Ansonborough neighborhood which is concerned with compliance with land use laws and threats to the quality of life in the area. Similarly, the Charlestowne Association is a nonprofit that seeks to protect the quality of life for residents of the Charlestowne neighborhood. Both the Ansonborough Association and the

Charlestowne Association are located in the Old and Historic District near the Union Pier Terminal (the Terminal) in Charleston. The League is a nonprofit corporation with a mission of conserving natural resources and protecting the quality of life in South Carolina. The Preservation Society is a nonprofit corporation headquartered in Charleston which seeks to protect the historic, architectural, and cultural character of Charleston.

Plaintiffs brought suit seeking an injunction against what they believe to be the unlawful use of the Terminal by the Carnival Corporation's cruise ship, the *Fantasy*. Plaintiffs' complaint named Carnival as the sole defendant, but the South Carolina State Ports Authority, which owns and operates the Terminal, and the City of Charleston were later permitted to intervene as defendants (collectively Defendants).

Plaintiffs' first amended complaint alleges the Terminal is used as the *Fantasy*'s home port where crew, passengers, and supplies load and unload for each voyage. The *Fantasy* is 855 feet long and more than 60 feet tall from the water line and can carry up to 2,056 passengers and 829 crewmembers. Since 2010, the Ports Authority has contracted with Carnival for the use of the Terminal as the *Fantasy*'s home port. The Terminal is within the City's Old and Historic District which is listed on the National Register of Historic Places maintained by the United States Department of the Interior.

Plaintiffs allege the *Fantasy*'s operations at the Terminal harm the Old and Historic District and them in a number of ways. They allege the *Fantasy* can be seen above the historic buildings of Charleston and that it disrupts the historic skyline. The thousands of passengers and crew allegedly cause major traffic congestion in the area as well as the closure of public roads. The *Fantasy* allegedly emits noise pollution through music and broadcast announcements and air pollution through particulates produced by its diesel engines. Plaintiffs contend expanded cruise ship operations may jeopardize the Old and Historic District's listing on the National Register of Historic Places.

Plaintiffs' complaint seeks injunctive relief based on ten claims: seven based on City ordinances, a public nuisance claim, a private nuisance claim, and a claim based on the South Carolina Pollution Control Act. The ordinance claims assert the *Fantasy*'s use of the Terminal violates the City's zoning code because it is not a permissible use within the light industrial zone applicable to the Terminal, it is an accommodations use in an area not zoned for accommodations uses, it is a tour boat use in an area not within a tour boat overlay zone, the *Fantasy* exceeds the

applicable height ordinance, and the ship blocks views of the Cooper River in violation of the applicable view corridor provisions. The complaint also alleges Carnival violates the City's sign ordinance because the *Fantasy's* smokestack is a sign and violates the City's noise ordinance because the *Fantasy* makes announcements over amplified sound systems.

Defendants initially filed motions to dismiss pursuant to Rule 12(b)(6), SCRCF, contending Plaintiffs' complaint fails to state a claim for relief because Plaintiffs lack standing, as a matter of law the ordinances do not apply to cruise ship operations at the Terminal, and to the extent the ordinances apply they are preempted by federal and state law. Before the circuit court could rule on the motions to dismiss, Defendants petitioned this Court to take the case in its original jurisdiction. The Court granted the petition, transferred the case to this Court, and appointed the Honorable Clifton B. Newman, Circuit Court Judge, as special referee to conduct a hearing and make recommendations on the motions to dismiss.

Following a hearing, Judge Newman issued a report recommending the Court grant the motions to dismiss as to all of the ordinance claims and the Pollution Control Act claim, but deny the motion as to the two nuisance claims. Generally, the report found that as a matter of law none of the ordinances apply to the *Fantasy's* use of the Terminal, the Pollution Control Act does not govern the *Fantasy's* discharges in South Carolina waters, and the complaint makes sufficient allegations to set forth both a private and a public nuisance cause of action. The report did not consider the issues of standing and preemption. Plaintiffs and Defendants filed exceptions to the report. After considering the report and the exceptions, this Court dismissed the noise ordinance, sign ordinance, and Pollution Control Act claims. This Court withheld ruling on the motions to dismiss on the five zoning and two nuisance claims and ordered the parties to brief the issues of standing, preemption, and whether the zoning ordinances apply to the *Fantasy's* use of the Terminal.

### **ISSUES PRESENTED**

- I.** Whether Plaintiffs possess standing to assert their claims?
- II.** Whether the zoning ordinances apply to the *Fantasy's* use of the Terminal?
- III.** If the zoning ordinances are applicable to the *Fantasy's* use of the Terminal, whether the zoning ordinances are preempted by federal or state law?
- IV.** Whether Plaintiffs' public nuisance claim should be dismissed for failing to

state facts sufficient to constitute a cause of action?

- V. Whether Plaintiffs' private nuisance claim should be dismissed for failing to state facts sufficient to constitute a cause of action?

### STANDARD OF REVIEW

Under Rule 12(b)(6), a defendant may move to dismiss a complaint due to its "failure to state facts sufficient to constitute a cause of action." In considering a motion to dismiss under Rule 12(b)(6), a court must base its ruling solely on the allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, dismissal under Rule 12(b)(6) is improper. *Id.*

### LAW/ANALYSIS

Defendants move to dismiss Plaintiffs' complaint in its entirety on the ground Plaintiffs lack standing to bring any of the claims contained therein. We agree.

For a plaintiff to possess standing three elements must be satisfied. First, the plaintiff must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. *Sea Pines Ass'n for the Prot. of Wildlife v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 600–01, 550 S.E.2d 287, 291–92 (2001). Second, a causal connection must exist between the injury and the challenged conduct. *Id.* Third, it must be likely that a favorable decision will redress the injury. *Id.*

Here, Defendants focus on the first, injury-in-fact element of standing, asserting Plaintiffs allege only generalized grievances suffered by the public as a whole and fail to allege any particularized harm. Reviewing Plaintiffs' complaint, we conclude Plaintiffs fail to allege a concrete, particularized harm to a legally protected interest and therefore hold Plaintiffs lack standing.

In order for an injury to be particularized, it must affect the plaintiff in a personal and individual way. *Id.* at 602, 550 S.E.2d at 292; *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 n.1 (1992). While arising from the different context of a challenge to government action, in *Lujan* the United States Supreme Court distinguished generalized injuries from those injuries sufficiently particularized as to create standing, writing: "[A] plaintiff raising only a generally

available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not" possess standing. *Lujan*, 504 U.S. at 573–74.

Additionally, a plaintiff that is an association, such as Plaintiffs here, may possess standing by virtue of associational standing on behalf of its members. An organization has associational standing "if one or more of its members will suffer an individual injury by virtue of the contested act." *Sea Pines*, 345 S.C. at 600–01, 550 S.E.2d at 291. The three part test for associational standing requires that an association's members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000), *see also Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001) (applying that test). Accordingly, to possess standing, either Plaintiffs alone must have suffered a concrete, particularized injury or their members must have suffered such an injury and the other elements of associational standing must be satisfied.

Here, Plaintiffs fail to allege a particularized injury either to themselves or their members. Rather, they assert only generalized grievances suffered by the public as a whole which are insufficient to establish standing. Specifically, Plaintiffs' allegations of harm relevant to the remaining claims consist of the following:

- "The crowds, pollution, and traffic associated with these unlawful operations create a nuisance for Charleston citizens. This lawsuit aims to protect Charleston's neighborhoods, families and the environment by having Defendant Carnival play by the longstanding rules and norms that have made—and make—Charleston a wonderful place to work, live, and visit."
- "[T]he *Fantasy* visually disrupts the historic skyline."
- "The influx of thousands of passengers, crew, and support personnel (and associated traffic) . . . cause major traffic congestion downtown and the closure of public roads."
- "The vessels emit noise pollution, including broadcast announcements and music, and the burning of diesel fuel emits visible particulate soot from ship

funnels—all adjacent to the Old and Historic District."

- "Home-porting cruise operations at an industrial scale could jeopardize the integrity, setting, and context that led to National Register designation and place maintenance of National Register status at risk."
- "On *Fantasy* embarkation and debarkation days, portions of Concord and Washington Streets—which are public streets—are closed for cruise business. Because of those closures, displacement of traffic, and the concentration of cruise traffic in a limited area for a limited time, cruise embarkations and debarkations cause increased congestion along the east side of the downtown Peninsula."
- "Cruise ships such as the Defendant's *Fantasy* also emit visible particulate soot and other pollutants, including nitrogen and sulfur oxides, which are harmful to human health when inhaled and are deposited into the surrounding waters and land."
- "Defendant's actions including noncompliance with zoning and environmental laws have injured the above Plaintiff organizations and their members by among other things reducing their use and enjoyment of the local environment and Charleston's historic assets, including their homes, neighborhoods and protected structures."
- "Cruise operations downtown and ineffective management of them cause, among other things, traffic congestion, pollution emissions, road closures, large crowds, loud noises, and obstructed views that are incompatible with the area's historic setting, scale, and residential character and impact health and the environment."

Lacking from these allegations is any claim that Plaintiffs themselves or their members have suffered a particularized harm. All members of the public suffer from and are inconvenienced by traffic congestion, pollution, noises, and obstructed views, and Plaintiffs have not alleged they suffer these harms in any personal, individual way. In short, these allegations are simply complaints about inconveniences suffered broadly by all persons residing in or passing through the City of Charleston and therefore, Plaintiffs fail to establish the first element of standing.

While a public nuisance cause of action can be used to remedy harms

suffered by the public generally, typically only the State may assert this cause of action. *See Brown v. Hendricks*, 211 S.C. 395, 400, 45 S.E.2d 603, 605 (1947) (stating that generally "a private action does not lie to abate a public nuisance"). A private person may bring a private civil suit for a public nuisance only if he suffered a special injury to his real or personal property. *See Overcash v. S.C. Elec. & Gas. Co.*, 364 S.C. 569, 575, 614 S.E.2d 619, 622 (2005); *Brown*, 211 S.C. at 400, 45 S.E.2d at 605. A special injury is "individual or specific damage in addition to that suffered by the public," *Brown*, 211 S.C. at 400, 45 S.E.2d at 605, and must be "of a special character, distinct and different from the injuries suffered by the public generally," *Bowlin v. George*, 239 S.C. 429, 433-34, 123 S.E.2d 528, 530 (1962). In other words, the public nuisance cause of action does not obviate the requirement of a particularized injury. Rather, for a private party to bring a public nuisance cause of action, the private party must have suffered a particularized injury. As previously discussed, Plaintiffs fail to set forth any injury they or their members have suffered that is different from the injury suffered by the public generally. Therefore, the public nuisance cause of action does not provide Plaintiffs with the standing they otherwise lack.

Plaintiffs also assert that as to their zoning claims, Section 6-29-950 of the South Carolina Code (2004) provides standing. While that statute does provide a legally protected interest and thereby standing for neighbors of properties violating a local zoning ordinance, we conclude Plaintiffs' complaint fails to make factual allegations sufficient to establish the applicability of section 6-29-950 here.

Section 6-29-950 provides in part:

In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land.

(emphasis added). In short, under section 6-29-950 a specially damaged, adjacent or neighboring property owner can bring an action for an injunction based on an

alleged violation of a zoning ordinance.

Section 6-29-950's requirement that a private party seeking to enjoin a zoning violation must be specially damaged incorporates the particularized injury requirement of general standing doctrine as a requirement for the statute to apply. Again, even assuming the *Fantasy* violates the City's zoning ordinances as alleged by Plaintiffs' complaint, Plaintiffs have not alleged that as a result of the violations they suffer any injury distinct from that suffered by the public generally. Additionally, section 6-29-950 only permits "an adjacent or neighboring *property owner*" to bring suit. (emphasis added). Here, Plaintiffs have made no allegations that they own adjacent or neighboring property. They do allege that the League is a tenant in a nearby property and that the Preservation Society holds a conservation easement on a nearby property. However, those interests do not make the League or the Preservation Society a "property owner" as required by the statute to bring suit. *See Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 85, 644 S.E.2d 58, 60 (2007) (holding a tenant lacked standing under a town land management ordinance using identical "adjacent or neighboring property owner" language). Therefore, because Plaintiffs fail to allege that they are or will be specially damaged or that they are a neighboring or adjacent property owner, section 6-29-950 is inapplicable and does not provide Plaintiffs with standing to assert their zoning claims.

Finally, Plaintiffs assert the public importance exception should apply to remedy any lack of standing. South Carolina courts recognize an exception to the requirement that a plaintiff possess standing where "an issue is of such public importance as to require its resolution for future guidance." *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007). Whether the exception applies in a particular case turns on whether resolution of the dispute is needed for future guidance. *ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008). While the need for future guidance generally dictates when the exception applies, the application of the exception in a particular case does not turn on a rigid formula but rather is determined by the competing policy concerns underlying the exception. *Id.* Those competing concerns are that:

Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.

*Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004).

In support of their argument that the public importance exception applies, Plaintiffs first rely on Defendants' petition for original jurisdiction and its numerous statements that this case deals with matters of "public interest." Plaintiffs contend that if the Court found the case was of sufficient public interest so as to grant the petition for original jurisdiction, *a fortiori* the case is also of sufficient public importance such that the public importance exception applies. While the Court may exercise original jurisdiction under Rule 245, SCACR, "[i]f the public interest is involved," the "public interest" standard of Rule 245 is not synonymous with the public importance necessary for the public importance exception to standing to apply. Rule 245 is concerned with whether a case should be resolved by this Court in the first instance because of the public interest involved and the need for prompt resolution, whereas the public importance exception is concerned with whether a case is of such public importance that the requirement of standing should be waived. Thus, because the two rules aim to answer different questions—whether the public interest requires expeditious resolution of a case versus whether the public interest requires resolution of a dispute for future guidance despite the lack of standing—the grant of the petition for original jurisdiction has no effect upon whether the public importance exception applies.

Fundamentally, the issues in this case are whether zoning ordinances are preempted by federal and state law, the applicability of zoning ordinances to a cruise ship, and tort liability for a public and a private nuisance cause of action. The case presents no issue of the constitutionality or legality of government action. Additionally, the claims asserted by Plaintiffs could be brought by other parties who can show the required injury. Therefore, we find the public importance exception inapplicable here.

In our constitutional system of government with its separation of powers, courts exercise the limited constitutional function of the "judicial power." S.C. Const. art. V, § 1. Accordingly, courts are limited to resolving cases and the powers inherent in that function. Courts are not bodies for the resolution of public policy and generalized grievances. Harms suffered by the public at large, like those Plaintiffs allege here, are to be remedied by the legislative and executive branches. If existing laws and regulations or their enforcement fail to protect the public from harm, it is incumbent upon the public to seek reform through their elected officials or failing that, at the ballot box.

## **CONCLUSION**

We hold Plaintiffs lack standing. Because standing is a fundamental prerequisite for instituting a legal action, we do not consider the remaining issues. Accordingly, we grant Defendants' motions to dismiss.

**TOAL, C.J., PLEICONES, BEATTY, and KITTREDGE, JJ., concur.**

# **Exhibit 36**

## **Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court**

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### **Allegation #1 – Disrupts Charleston's Skyline**

#### **Supreme Court:**

- “[T]he *Fantasy* visually disrupts the historic skyline with large, unhistorical, and impossible-to-ignore forms that detract from and diminish historic structures such as Charleston’s iconic church spires in the historic district. The sheer height, scale, and mass of the cruise ships, which act as both tour boats and hotels, dwarf everything around them and block the historic skyline and protected street views of the Cooper River and Charleston Harbor.”
  - Am. Compl., ¶10 (A).

#### **Corresponding Affidavit Allegations:**

- “I do not believe that the backdrop of an early 19th century neighborhood can coexist with a disproportionately modern behemoth of a vessel looming on the skyline, without that neighborhood losing the values and aesthetics that I appreciate. It is totally incongruous, out of character, and I feel most unacceptable....”
  - Dodd Aff. at 3.
- I felt the historic ambiance of the city being eclipsed by the disproportionately large and unsightly cruise ships as they docked in the middle of the historic downtown district.”
  - Gates Aff. at 2.
- “CNA members have suffered a real and substantial diminution in the quality of their lives from ... skyline impairment caused by the increasing operations of cruise ships within the historic downtown district.”
  - Gates Aff. at 3.

## **Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court**

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### **Allegation #2 - Traffic**

#### **Supreme Court:**

- “The influx of thousands of passengers, crew, and support personnel (and associated traffic) . . . cause major traffic congestion downtown and the closure of public roads.”
  - Am. Compl., ¶10 (B).
- “On *Fantasy* embarkation and debarkation days, portions of Concord and Washington Streets—which are public streets—are closed for cruise business. Because of those closures, displacement of traffic, and the concentration of cruise traffic in a limited area for a limited time, cruise embarkations and debarkations cause increased congestion along the east side of the downtown Peninsula.”
  - Am. Compl., ¶11.

#### **Corresponding Affidavit Allegations:**

- “With the influx of cruise traffic, I have also experienced problems with traffic congestion....”
  - Dodd Aff. at 2.
- “On days when the cruise ship is in town, between the increased automobile and pedestrian traffic, it has been very difficult to navigate and enjoy my neighborhood and community, with activities lasting many times longer than they normally would.”
  - Dodd Aff. at 2.
- “[My husband and I] used to be able to meet for lunch in downtown Charleston, but we can no longer do so when the cruise ship is in port because the travel time around the terminal is approximately an hour.”
  - Lane Aff. at 3.
- “I have [individuals] coming to my office who have expressed problems with being able to access my office due to cruise-related traffic ... In my observations, cruise-related traffic and congestion has impaired [individuals] from getting to and accessing my office.”
  - Lane Aff. at 4.
- “Beginning in 2010, when the Carnival Fantasy began home port operations in Charleston, I noticed traffic congestion becoming increasingly unmanageable and it becoming unbearable to visit the cruise terminal area on the days the Fantasy is in port.”
  - Gates Aff. at 2.
- “The main arterial street of East Bay becomes gridlocked with cruise ship traffic heading for the Union Pier terminal, diverting me and most local drivers through the surrounding small residential streets to reach our destination, and clogging the entire downtown peninsula.”
  - Gates Aff. at 2.

## **Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court**

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### **Allegation #3 – Noise Pollution**

#### **Supreme Court:**

- “The vessels emit noise pollution, including broadcast announcements and music ....”
  - Am. Compl., ¶10 (C).

#### **Corresponding Affidavit Allegations:**

- “CNA members have suffered a real and substantial diminution in the quality of their lives from ... noise ... caused by the increasing operations of cruise ships within the historic downtown district.”
  - Gates Aff. at 3.

## **Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court**

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### **Allegation #4 – Soot Deposition**

#### **Supreme Court:**

- “[T]he burning of diesel fuel emits visible particulate soot from ship funnels....”
  - Am. Compl., ¶10 (C).
- “Cruise ships such as the Defendant’s *Fantasy* also emit visible particulate soot and other pollutants, including nitrogen and sulfur oxides, which are harmful to human health when inhaled and are deposited into the surrounding waters and land.”
  - Am. Compl., ¶19.

#### **Corresponding Affidavit Allegations:**

- “I am opposed to this permit and involved in this litigation because the permit threatens my ... health....”
  - Dodd Aff. at 1.
- “I have been finding soot on the window sills inside my 1843 historic home....”
  - Dodd Aff. at 2.
- “Oily soot is now prominently found on our piazzas and outdoor furniture.”
  - Dodd Aff. at 2.
- “On more than one occasion, I have been on my terrace while the Carnival Fantasy was docked and departing and I have experienced the negative effects of the thick smoke being emitted from the ship’s smokestacks firsthand. I saw thick smoke move from the cruise ship toward my home and within seconds of breathing the emissions, my throat immediately began to hurt and I was forced to retreat indoors.”
  - Robertson Aff. at 2-3.
- “[The emissions] are also coating my home in filth. My terrace pillows, furniture and the patio itself are constantly accumulating dirty soot that is extremely time consuming and costly to clean.”
  - Robertson Aff. at 3.
- “I experienced heavy and oily soot deposits on my piazza....”
  - Gates Aff. at 2.

## **Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court**

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### **Allegation #5 – Historic Registry Status**

#### **Supreme Court:**

- “Home-porting cruise operations at an industrial scale could jeopardize the integrity, setting, and context that led to National Register designation and place maintenance of National Register status at risk.”
  - Am. Compl., ¶10 (D).

#### **Corresponding Affidavit Allegations:**

- “I am opposed to this permit and involved in this litigation because the permit threatens ... historic preservation values that I enjoy and appreciate....”
  - Dodd Aff. at 1.
- “Needless to say, I am confident that OCRM-12-054-B will detrimentally impact my enjoyment of the historically preserved setting that surrounds my home and neighborhood....”
  - Dodd Aff. at 3.
- “The colonial architecture of the historic district feeds my soul and I derive much enjoyment and pleasure viewing Charleston’s unique architecture ... The proposed new terminal is akin to killing the golden egg in that the brand of Charleston as a beautiful, small historic town will be forever lost if more and larger ships are allowed to port here, as contemplated by the permit.”
  - Lane Aff. at 3-4.
- “[S]ince the Carnival Fantasy began its home port operations, it has seriously detracted from the traditional historic feel of Charleston....”
  - Gates Aff. at 2.

## **Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court**

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### **Allegation #6 – General Use and Enjoyment**

#### **Supreme Court:**

- “Defendant’s actions including noncompliance with zoning and environmental laws have injured the above Plaintiff organizations and their members by among other things reducing their use and enjoyment of the local environment and Charleston’s historic assets, including their homes, neighborhoods and protected structures.”
  - Am. Compl., ¶33.

#### **Corresponding Affidavit Allegations:**

- “I am opposed to this permit and involved in this litigation because the permit threatens my quality of life...”
  - Dodd Aff. at 1.
- “I have already noticed a decrease in my overall quality of life.”
  - Dodd Aff. at 2.
- “[T]he cruise ship industry has had a dramatic negative effect on my quality of life and day-to-day activities since large cruise ships began docking at Union Pier in 2010.”
  - Lane Aff. at 3.
- “I enjoyed being able to meet my husband for lunch, and my enjoyment has been decreased as a result of SPA’s operation of the cruise ship terminal at Union Pier.”
  - Lane Aff. at 3.
- “These harmful emissions have become so unbearable that I can no longer open any window or enjoy my terrace while the cruise ships are in town.”
  - Robertson Aff. at 3.
- “Unfortunately, my ability to use and enjoy my property has been substantially interfered with by the adverse consequences of the cruise ship operations as they are currently functioning.”
  - Robertson Aff. at 4.
- “[S]ince the Carnival Fantasy began its home port operations ... it has interfered with my quality of life and use and enjoyment of my property....”
  - Gates Aff. at 2.

## **Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court**

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### **Allegation #7 – Property Values**

#### **Supreme Court:**

- “Cruise operations downtown and ineffective management of them cause [harm to] the area’s historic setting, scale, and residential character ... These activities and impacts hurt, harm, inconvenience, discomfort, damage or injure Plaintiffs and unreasonably interfere with the free use and enjoyment of plaintiffs’ property....”
  - Am. Compl., ¶75.

#### **Corresponding Affidavit Allegations:**

- “I am opposed to this permit and involved in this litigation because the permit threatens my ... property values....”
  - Dodd Aff. at 1.
- “I am concerned about the value of my property if the proposed new terminal is constructed as permitted ... The result [will be] a decreased quality of life in the historic district of Charleston, ultimately resulting in a decline in real estate prices.”
  - Lane Aff. at 4-5.
- “The location of cruise ship operations immediately adjacent to my home have negatively affected the investment I made when I decided to purchase property and move to Charleston.”
  - Robertson Aff. at 3.

# **Exhibit 37**

**SAMUEL DWANE THOMAS, MD**  
**2 WHARFSIDE ST. 5E CHARLESTON SC 29401-1653**

23 April 2012

SC DHEC  
Office of Coastal Resource Management,  
1362 McMillan Ave., Suite 400  
North Charleston, SC 29405

ATTN: Steven Brooks

Dear Mr. Brooks,

I am writing to comment on the movement of the terminal building of the SC State Ports Authority to a location next to the building wherein I live. This is the conversion of the building just south of Laurens Street. While moving the terminal, the existing active portion of the port will be removed and landscaped, while opening up streets.

The whole business of cruise ships visiting this, historically a maritime city, has become a kind of cause célèbre for those few but boisterous folks who seem to resist change. I remember the nonsense that spewed forth when the dilapidated warehouses and strip clubs on East Bay and Meeting Street were to be modernized and a hotel, Charleston Place, to be built. The "modernization," actually recovery of this city is largely dependent on that building alone. It brought many of the people to Charleston from away to complain about more change.

A very interesting study was presented in the Post and Courier in a letter to the editor in which the air pollution from the engines of a ship were clearly measured and compared and the author found little to worry about. I did not save that letter and the author evidently gave up in despair that scientific information was so easily disregarded. In its place, a neighbor of mine wrote a letter in which she reported she and her guests were driven in off the porch by the acrid smoke produced by the diesels of the Carnival Fantasy. That is utter nonsense. I live closer than that writer and have yet to smell smoke from that ship. Actually, the car carriers which came one and two daily and leaving the same day produced more pollution than the Fantasy and I didn't notice that either. Another writer, a woman, became ill and almost fainted on Morrison Drive when she saw the tail fins of the Fantasy. I wondered at the time if she had stopped taking her medicine!

Oddly enough, there was no complaint when the car carrying ships were docked at the same location as the new terminal, nor was there a complaint about ships of the US and Canadian navies which tied up at the same location. They run their engines all the time!

**RECEIVED**

APR 25 2012

DHEC - OCRM  
CHARLESTON OFFICE

DHEC-SCPA 000731

R.003805

I have actually taken a cruise on both the Celebrity and Carnival ships which have taken on passengers here and found in talking with other passengers that during their brief time in Charleston that they enjoyed themselves enough to return just to visit, or some delayed returning home to spend a few more days in Charleston. "Studies" suggest otherwise but I tend to believe the individual over the statistic.

The only thing disturbing to me about the Fantasy is the on board announcements preparatory to sailing preparing passengers for the possibility of an emergency. That however is required by the maritime authorities.

What we have then is a small but tightly knit group of miscreants determined to have its way in determining the fate of the cruise ship industry. Our so-called neighborhood associations have meetings with a small minority of citizens even attending the meetings to pass resolutions with a majority present even smaller than the minority attending. Historic Charleston Foundation talked to their friends at the National Trust and "arranged" that Charleston be placed on its "threatened" list. Nonsense! These folks are pulling out all the stops to exercise their will. And the beat goes on!

I have seen my city go from "too poor to whitewash" to a very lovely place which has attracted those who now would deny her a future past existing as a bedroom community.

I must support the position of the SC State Ports Authority and City of Charleston in this matter. I cannot see any damage in the immediate future due to visiting ships and I am convinced that shore provided power will be available in the near future.

I urge OCRM to permit the pile driving for elevators and other access at the new terminal and to approve the building completely.

Sincerely,



S. D. THOMAS, MD

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APR 15 2012

DHEC - OCRM  
CHARLESTON OFFICE

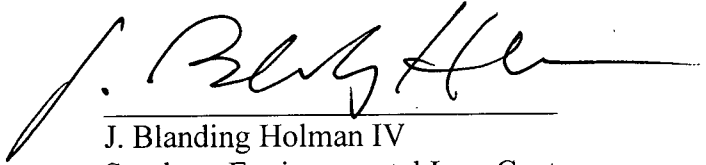
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R.003806

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The undersigned hereby certifies that the Appendix to the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 23, 2015



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*Attorneys for the Appellants*

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Appellant Case No. 2014-000847

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APR 27 2015

SC Court of Appeals

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough  
Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne  
Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston  
Communities for Cruise Control..... Appellants,

vs.

South Carolina State Ports Authority and South Carolina Department of Health and  
Environmental Control..... Respondents.

CERTIFICATE OF SERVICE

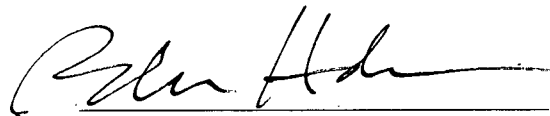
I hereby certify that on this date I served the foregoing Appendix to the Record on Appeal on  
Respondents S.C. State Ports Authority and SC DHEC by placing copies of same in the U.S.  
Mail addressed to:

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Charleston, SC  
April 23, 2015



J. Blanding Holman IV

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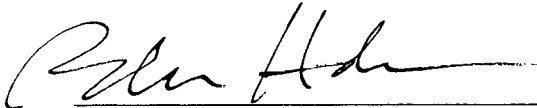
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