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Docket Entries

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
L-26861-73

UNITED TRUST COMPANY OF NEW YORK,
Plaintiff,

—vs—

STATE OF NEW JERSEY
(Brendan T. Byrne),
Defendant.

Apr.	30	1974	Complaint \$60.00
June	30	1974	Order Ex. Time
July	16	1974	Ans. & C. Cl.
Aug.	2	1974	Ans. to Cl. Cl.
Oct.	24	1974	Order for Class Action
Oct.	24	1974	Affidavit
Nov.	15	1974	Affidavit
Dec.	10	1974	Order for Consolidation (L-2642-71)
Jan.	9	1975	Notice of Deps.
Mar.	27	1975	Order as to Deps. etc.
May	19	1975	Opinion
May	16	1975	Copy of Notice of Appeal, Meyner. L & V 5.00

Dated: 12 July, 1976

I hereby certify that the foregoing is a true copy of the original on file in my office.

Signature Illegible

Clerk

Docket Entries

SUPREME COURT OF NEW JERSEY

From Superior Ct. Law Div.

Trial Docket #L-26861-73

Docket # 11,498

PM

United States Trust Co., of N. Y. v:
Meyner, Landis & Verdon, Esqs.

Attorneys

State of N. J., Brendan T. Byrne, Governor of N. J., etal
Murray Laulich, Esq.
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Theodore W. Kheel, Esq.
Howard Stern, Esq.
Patrick Falvey, Esq.

Attorneys

5/16/75 Notice of Motion for Direct Certification &
Expedition.

5/16/75 Statement in lieu of Brief in Support of
Motion.

5/16/75 Afft. in Support of Motion-J. Sinclair Arm-
strong.

5/16/75 Afft. in Support of Motion-John F. Thompson

5/16/75 Afft. of Service; Rec'd App. Div. Opinion

5/20/75 Cross Motion for Certification-Atty Gen.

5/16/75 Checklist M-824-74 Motion for Direct Cert. is
Granted and Appellants Brief due 6-6-75
Respondents Brief due 14 days after Reply
Brief 7 days after (if any).

5/28/75 Motion for Certification—Shavick, Esq. \$5.00
Paid and Cert. of Serv.

5/28/75 Checklist: M-837-74 Motion for Cross Motion
is granted (def-resp.)

5/28/75 M-847-74 Checklist Motion for Certification
Granted 5-0.

Docket Entries

- 6/ 6/75 Appendix and Brief of Cross Appellant
- 6/11/75 Daniel M. Gaby, Esq.—Shavick, Esq.
Afft. Serv. Shavick, Esq.
- 6/ 6/75 Appellant's Brief—Appendix 4 copies deposition of J. Sinclair Armstrong: 9 copies of S. C. Briefs—findings of fact Meyner, Esq.
- 6/17/75 Afft. of Serv. Reiner, Esq. (Meyner, Esq.)
- 6/20/75 Brief of Def- resp. Cross App. State of N. J., Brendan T. Byrne—Wm. Hyland, Atty Gen. (Murray J. Laulicht, Esq.)
- 6/20/75 Rec'd Defendant's Trial Memorandum, Rec'd Defendant's Post Trial Memorandum, Rec'd Defendant's Proposed Findings of Fact, Rec'd Defendant's Reply Brief and Appendices, (Atty Gen.) Murray J. Laulicht, Esq.
- 6/20/75 Transcripts—6 vol @ 4 copies each
- 6/20/75 Brief for Intervening Defendant-Respondent, U. S. Trust Company of New York, Robert B. Meyner, Esq.
- 6/23/75 Brief for Port Authority Respondents, Francis A. Mulhern, Port Auth.
- 6/26/75 Notice of Motion to Strike defendants supplemental exhibits or in the alternative to supplement the record, and to supplement the record, Meyner, Esq.
- 6/26/75 Reply Brief for Appellants and brief on cross appeal, Meyner, Esq.
- 6/26/75 Memorandum in Support of Motion, Meyner, Esq.
- 7/ 1/75 Afft. of Service—Meyner, Esq. (U. S. Trust Co.) Gaby vs. Port of N. Y. Authority.

Docket Entries

- 7/ 1/75 Afft. of Service—Meyner, Esq. (U. S. Trust Co.) U. S. Trust vs. State, etc., etal.
- 7/ 3/75 Memorandum in Opposition to Motion, Atty Gen.
- 7/ 3/75 Notice of Motion for Leave to file oversized brief and ext. time to file reply brief, Atty Gen.
- 7/ 7/75 Notice of Motion to Relax Page Limitations Statement in Lieu of Brief in Support of Motion—Afft. in Support, Afft. Serv., Meyner, Esq.
- 7/11/75 Reply Brief, Lowenstein, Esq.
- 7/14/75 Plaintiffs' Reply Memorandum—Meyner, Esq.
- 7/22/75 Notice of Motion to Suppress Points I and II of Reply Brief of def-resp. and Cross-Appellants.
- 7/22/75 Memorandum in support of motion.
- 7/22/75 Afft. of Serv., Meyner, Landis & Verdon, Esqs.
- 7/29/75 Memorandum in Opposition to Motion to Suppress Points 1 and 2 of Reply Brief—Atty Gen.
- 9/ 2/75 Joint Appnx. Vol. VI—Meyner, Landis & Verdon, Esqs.
- 9/ 2/75 Checklist M-1067-74 Motion to strike is denied.
- 9/ 2/75 Checklist M-1068-74 Motion to supplement the record is granted.
- 9/ 2/75 Checklist M-1069-74 Motion for extension of time is granted.
- 9/ 2/75 Checklist M-1070-74 Motion to file oversized reply brief is granted.
- 9/ 2/75 Checklist M-1071-74 Motion to file oversized brief is granted.

Docket Entries

- 9/ 2/75 Checklist M-1072-74 Motion to suppress points 1 and 2 of reply brief is denied.
- 10/ 1/75 Supplemental Letter—Meyner, Landis & Verdon.
- 10/ 7/75 Afft. of Service of suppl. letter—Meyner, Landis.
- 2/25/76 Opinion—6-1-P.C.—Affirm—8 Pg. Pashman—Conc. Part—Diss Part.
- 3/ 8/76 Motion for Counsel Fees with Afft. & Brief & Shavick, Stern, Schotz, Steiger & Croland, Esqs. \$5.
- 3/10/76 Afft. of Service on Motion for Counsel Fees—Shavick, Stern, Schotz, Steiger & Croland, Esqs.
- 3/11/76 Supp. Letter to Motion for Counsel Fees—Shavick, Esq.
- 3/22/76 Brief for Port Authority in Opposition to Motion for Counsel Fees—Mulhern, Esq.
- 4/19/76 Response to Motion for Counsel Fees—Mulhern.
- 4/26/76 Suppl. Letter—Howard Stern, Esq.
- 5/ 4/76 Motion for Counsel Fees *Denied*; M-925-75; 6-1.
- 5/14/76 Notice of Appeal to the U.S. Supreme Ct.
- 5/14/76 Afft. of Service—Meyner, Landis & Verdon, Esqs.
- 5/24/76 Notice of Appeal to the U.S. Supreme Ct.
- 5/24/76 Afft. of Service—Shavick, Stern, Schotz, Steiger & Croland, Esqs.

Complaint

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION — BERGEN COUNTY

UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee
for The Port Authority of New York and New Jersey
Consolidated Bonds, Fortieth and Forty-First Series; on
its own behalf and on behalf of all holders of Consoli-
dated Bonds of The Port Authority of New York and
New Jersey and all others similarly situated,

Plaintiff,

against

THE STATE OF NEW JERSEY; BRENDAN T. BYRNE, Governor
of The State of New Jersey; and WILLIAM F. HYLAND,
Attorney General of The State of New Jersey,

Defendants.

Plaintiff, United States Trust Company of New York
(hereinafter referred to as the "Trust Company"), a corpo-
ration organized and existing under the laws of the State
of New York, having its principal place of business at
45 Wall Street, New York, New York, for its complaint
against the defendants says:

FIRST COUNT

1. The Trust Company is the Trustee for The Port
Authority of New York and New Jersey (hereinafter
referred to as "The Port Authority") Consolidated Bonds,
Fortieth and Forty-First Series, and is also the holder, for
its own account and as a fiduciary, of Consolidated Bonds
of The Port Authority.

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2. Defendant The State of New Jersey along with the State of New York, is a party to a contract with bondholders (including the plaintiff) made by the Legislatures of New Jersey and New York through concurring legislation becoming effective in 1962 and set forth in N.J.S.A. 32:1-35.55 and N.Y. Unconsol. Laws §6606, all as hereinafter described.

3. Defendant Brendan T. Byrne is the Governor of the State of New Jersey and in such capacity possesses the power to appoint Commissioners, to veto any and all action taken at meetings of The Port Authority by the Commissioners appointed by the Governor and generally to establish the policy, planning, guidance and direction for the operations of The Port Authority.

4. Defendant William F. Hyland is the Attorney General of the State of New Jersey and in such capacity is charged with the duty to uphold the Constitution of the State of New Jersey and the United States Constitution.

5. The Trust Company brings this action as the Trustee for The Port Authority Consolidated Bonds, Fortieth and Forty-First Series, pursuant to Section 8 of the Resolution Establishing the Fortieth Series of Consolidated Bonds, due 2008 adopted May 10, 1973 and the Resolution Establishing the Forty-First Series of Consolidated Bonds, due 2008 adopted September 13, 1973.

6. Pursuant to such Section 8 of the respective Resolutions adopted by The Port Authority the Trust Company is "authorized to act in its discretion to assure that all of the rights of and obligations to the holders of bonds of [such] Series are unconditionally recognized, protected and fulfilled." Such Resolutions also permit the Trust Company "to institute any action on behalf of the holders of bonds of

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[such] Series against [The Port Authority] or others which it shall in its sole discretion deem advisable . . .”

7. The Trust Company also brings this action on its own behalf as the holder (in its own account, as custodian and in its several fiduciary capacities) of approximately \$96,000,00 principal amount (as of April 15, 1974) of the Consolidated Bonds of The Port Authority and on behalf of all of the holders of Consolidated Bonds of The Port Authority who have an undivided interest in the revenues of The Port Authority and the reserve funds securing such Consolidated Bonds.

8. As of April 15, 1974, approximately \$1,600,000,000 principal amount of Consolidated Bonds of The Port Authority were outstanding and held by banks, trust companies, other financial institutions, pension funds and private individuals.

9. The members of the class of persons whose interests will be affected by the outcome of this action are so numerous that joinder of all members is impracticable.

10. The questions of law and fact raised by this action are common to all of the members of the class and the claims made by the Trust Company are typical of the claims of the class.

11. The Trust Company will fairly and adequately protect the interests of the class.

12. Inconsistent or varying adjudications with respect to individual members of the class would establish incompatible standards of conduct for parties opposing the class or substantially impair or impede their ability to protect their interests.

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13. An adjudication with respect to the issues raised by the Trust Company will as a practical matter be dispositive of the interests of the other members of the class.

14. The defendants in this action have acted on grounds generally applicable to the class, thereby making appropriate declaratory and other relief with respect to the class as a whole.

15. This Court has jurisdiction over the claims asserted herein under N.J.S. 2A:16-50 et seq., the New Jersey Uniform Declaratory Judgments Act.

16. The Port Authority is a municipal corporate instrumentality of the State of New Jersey (N.J.S.A. 32:1-1 to 24) and of the State of New York (N.Y. Unconsol. Laws §§6401-6423), created in 1921 by compact between the two states with the consent of the Congress of the United States (Public Resolution No. 17, 67th Congress, First Session (42 Stat. 174)), pursuant to Article 1, Section 10, clause 3 of the United States Constitution.

17. The Compact between the States of New Jersey and New York in 1921 which created The Port Authority (the "Port Compact") stated that the development of the Port "will require the expenditure of large sums of money and the cordial cooperation of the States of New York and New Jersey in the encouragement of the investment of capital. . . ." Article VI authorized The Port Authority "to borrow money and secure the same by bonds or by mortgages." Article VII provided that "[The Port Authority] shall not pledge the credit of either state except by and with the authority of the legislature thereof." Article XV provided that "Unless and until the revenues from operations conducted by [The Port Authority] are adequate to meet all expenditures," the States would each appropriate up to

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\$100,000 a year to finance its operations. Thus the Port Compact, to which Congress consented, intended The Port Authority to be a self-supporting agency of State government.

18. The Port Authority secures the funds necessary for its various authorized projects primarily through the issuance of bonds. Since 1952 The Port Authority has issued 41 Series of Consolidated Bonds secured by the full faith and credit of The Port Authority, a pledge of the net revenues of all existing facilities of The Port Authority, the net revenues of new facilities financed through Consolidated Bonds, a general reserve fund and a consolidated bond reserve fund.

19. In 1962 the Legislatures of New Jersey and New York adopted concurring legislation (the "1962 Covenant") providing that:

"The two states covenant and agree with each other and with the holders of any affected bonds, as hereinafter defined, that so long as any of such bonds remain outstanding and unpaid and the holders thereof shall not have given their consent as provided in their contract with the port authority, (a) the two states will not diminish or impair the power of the port authority (or any subsidiary corporation incorporated for any of the purposes of this act) to establish, levy and collect rentals, tolls, fares, fees or other charges in connection with any facility constituting a portion of the port development project or any other facility owned or operated by the port authority of which the revenues have been or shall be pledged in whole or in part as security for such bonds (directly or indirectly, or through the medium of the general reserve fund or otherwise)

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or to determine the quantity, quality, frequency or nature of the service provided in connection with each such facility; and (b) neither the states nor the port authority nor any subsidiary corporation incorporated for any of the purposes of this act will apply any of the rentals, tolls, fares, fees, charges, revenues or reserves, which have been or shall be pledged in whole or in part as security for such bonds, for any railroad purposes whatsoever other than permitted purposes hereinafter set forth.

'Affected bonds' as used in this section shall mean bonds of the port authority issued or incurred by it from time to time for any of the purposes of this act or bonds as security for which there may or shall be pledged, in whole or in part, the general reserve fund or any reserve fund established by or pursuant to contract between the port authority and the holders of such bonds, or the revenues of the world trade center, Hudson tubes, Hudson tubes extensions or any other facility owned or operated by the port authority any surplus revenues of which would be payable into the general reserve fund, or bonds both so issued or incurred and so secured.

'Permitted purposes' as used in this section shall mean purposes in connection with (i) the Hudson tubes as authorized and limited on the effective date of this covenant and agreement, (ii) railroad freight transportation facilities or railroad freight terminal facilities, (iii) the construction, installation and maintenance of railroad tracks and related facilities on vehicular bridges owned by the port authority and (iv) any other railroad facility established, acquired, constructed or otherwise effectuated by the port authority (including but not limited to Hudson tubes

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extensions) as to which the port authority shall have first certified either that said other railroad facility is self-supporting as hereinafter defined or, if not, that at the end of the preceding calendar year the general reserve fund contained an amount equal to one-tenth of the par value of bonds of the port authority which were outstanding at said year end and which were legal for investment as defined in the general reserve fund statutes and that the group of facilities consisting of such other railroad facility and of all prior other railroad facilities will not produce deficits in excess of permitted deficits as hereinafter defined. 'Prior other railroad facilities' at the time of any certification by the port authority hereunder shall mean all the railroad facilities described in subdivisions (i) and (iv) of this paragraph which were theretofore established, acquired, constructed or otherwise effectuated by the port authority any surplus revenues of which at such time would be payable into the general reserve fund.

An other railroad facility shall be deemed to be 'self-supporting' as of the time of any certification hereunder if the amount estimated by the port authority for the ensuing ten years to be the average annual net income (computed without deduction for debt service) derived from or incidental to such facility equals or exceeds the amount estimated by the port authority for such ten years to be the average annual debt service upon bonds for purposes in connection with such proposed facility.

'Deficits' of a group of railroad facilities, as used in this section, shall mean the amount estimated by the port authority for the ensuing ten years to be the average annual combined debt service upon

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bonds for purposes in connection with the railroad facilities of such group less the amount estimated by the port authority for such ten years to be the average annual combined net income (computed without deduction for debt service) derived from or incidental to such railroad facilities or plus the amount estimated by the port authority for such ten years to be the average annual combined net losses (computed without deduction for debt service) sustained from or incidental to such railroad facilities; the estimate of deficits thus arrived at shall not be effective unless and until concurred in, in writing, by the governors of the said two states.

'Permitted deficits' of a group of railroad facilities as used in this section, shall mean deficits as of the time of any certification hereunder which do not exceed (A) such amount or amounts of deficits as of the time of any certification hereunder for the payment of which one or both of the two states, in connection with the proposed other railroad facility as to which the certification is made and in connection with prior other railroad facilities, has made adequate, secure and effective provision for the duration of the period for which the port authority is liable for such deficits, plus (B) the greater of the following two amounts: (1) an amount equal to one-tenth of the amount in the general reserve fund at the end of the preceding calendar year, diminished by an amount equal to one per cent of the principal amount of all bonds of the port authority outstanding at the end of said preceding calendar year the proceeds of which shall have been applied for purposes in connection with the facilities of such group or (2) an amount equal to the sum of one-tenth of the

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diminished one-tenth amount calculated under clause (1) of this sentence, plus one percent of the equity, at the end of the said preceding calendar year, of the port authority in its vehicular bridges and tunnels and in all other facilities owned and operated by it (not including railroad cars financed by state-guaranteed bonds) except those of the aforesaid group of railroad facilities. Equity of the port authority in facilities as to which any calculation of equity shall be made shall mean the principal amount of bonds of the port authority retired from port authority revenues or reserves or both which have been derived from the operation of its facilities and the investment of its funds and not from governmental or other subsidy payments, the proceeds of which retired bonds shall have been applied for purposes in connection with such facilities.

Each certification by the port authority hereunder shall be made at the time of the issuance of its first bonds for permitted purposes in connection with a proposed other railroad facility which bonds would be secured in whole or in part by the aforesaid pledged rentals, tolls, fares, fees, charges, revenues or reserves, or at such time, prior to such issuance, as any application of such pledged rentals, tolls, fares, fees, charges, revenues or reserves for purposes in connection with such proposed other railroad facility would otherwise be permitted or required. Anything herein to the contrary notwithstanding, any such certification by the port authority hereunder shall not be effective unless and until affirmatively concurred in, in writing, by the governors of the said two states." N.J.S.A. 32:1-35.55; N.Y. Unconsol. Laws § 6606.

Complaint

20. The 1962 Covenant set forth in paragraph 19 of this Complaint was enacted into law since in the early 1960's it was proposed that The Port Authority be authorized to assume the responsibility for a commuter rail line by acquiring the deficit generating operations of the Hudson & Manhattan Railroad Company (now called, and referred to herein as the "PATH System"). This interurban electric railroad system has termini in Newark, Hoboken and Manhattan.

21. In connection with the legislation which authorized The Port Authority to assume responsibility for the PATH System, The Port Authority had advised the New York and New Jersey Legislatures that the credit of The Port Authority would be impaired by such an undertaking of an anticipated continuing deficit facility unless the States would enter into an enforceable contract with The Port Authority bondholders which would protect bondholders against dilution of already pledged revenues and reserves by any additional passenger rail deficits beyond those of the basic PATH System. The 1962 Covenant was the legislation finally adopted.

22. The Port Authority advised potential investors of the existence of and protection afforded by the 1962 Covenant in Official Statements distributed in connection with each of the following Consolidated Bond financings:

a) \$35,000,000 Consolidated Bonds Twentieth Series, Due 1993 (First Installment) April 24, 1962;

b) \$25,000,000 Consolidated Bonds Twenty-First Series, Due 1993 (First Installment) October 3, 1962;

c) \$25,000,000 Consolidated Bonds Twenty-Second Series, Due 1993 (First Installment) December 12, 1962;

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- d) \$25,000,000 Consolidated Bonds Twenty-Third Series, Due 1994 (First Installment) May 7, 1963;
- e) \$25,000,000 Consolidated Bonds Twenty-Fourth Series, Due 1994 (First Installment) October 16, 1963;
- f) \$30,000,000 Consolidated Bonds Twenty-Fifth Series, Due 1965-1984, February 13, 1964;
- g) \$35,000,000 Consolidated Bonds Twenty-Sixth Series, Due 1995 (First Installment) May 26, 1964;
- h) \$25,000,000 Consolidated Bonds Twenty-Seventh Series, Due 1995 (First Installment) November 10, 1964;
- i) \$25,000,000 Consolidated Bonds Twenty-Eighth Series, Due 1996 (First Installment) January 11, 1965;
- j) \$25,000,000 Consolidated Bonds Twenty-Ninth Series, Due 1996 (First Installment) May 27, 1965;
- k) \$25,000,000 Consolidated Bonds Thirtieth Series, Due 1998 (First Installment) October 27, 1965;
- l) \$100,000,000 Consolidated Bonds Thirty-First Series, Due 2002 (First Installment) March 22, 1967;
- m) \$100,000,000 Consolidated Bonds Thirty-Second Series, Due 2003 (First Installment) February 26, 1968;
- n) \$100,000,000 Consolidated Bonds Thirty-Third Series, Due 2003 (First Installment) July 31, 1968;
- o) \$100,000,000 Consolidated Bonds Thirty-Fourth Series, Due 2003 (First Installment) December 17, 1968;
- p) \$100,000,000 Consolidated Bonds Thirty-Fifth Series, Due 2005 (First Installment) August 26, 1970;
- q) \$50,000,000 Consolidated Bonds Thirty-Sixth Series, Due 2005 (First Installment) November 24, 1970;

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r) \$100,000,000 Consolidated Bonds Thirty-Seventh Series, Due 2006 (First Installment) February 18, 1971;

s) \$100,000,000 Consolidated Bonds Thirty-Eighth Series, Due 2006 (First Installment) October 13, 1971;

t) \$150,000,000 Consolidated Bonds Thirty-Ninth Series, Due 2007 (First Installment) February 2, 1972.

23. The Port Authority's advice to potential investors described in paragraph 22 of this Complaint, was substantially equivalent to the following disclosure, contained in the Official Statement for the Thirty-Ninth Series Consolidated Bonds:

“In connection with the legislation which authorized the Port Authority to assume responsibility for the Hudson Tubes System, the Port Authority had advised the Legislatures of both States that the credit of the Port Authority would be impaired by such an undertaking of an anticipated perpetual deficit facility unless the States would enter into an enforceable contract with the Port Authority bondholders which would grant assurances against dilution of already pledged revenues and reserves by any additional passenger rail deficits beyond those of the basic Hudson Tubes system. The legislation as finally adopted includes such statutory covenants. The covenants are between the two States and with the holders of certain described ‘affected’ bonds which include all Consolidated Bonds including those of the present offering. The contract prohibits the application of any revenues or reserves pledged to such bonds (which includes all existing revenues, other than rentals under the New York State’s Com-

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muter Railroad Car Program described on pp. 18-19, and all existing reserves) for any additional passenger railroad purpose beyond the basic Hudson Tubes, as defined, without the consent of the holders of such affected bonds as provided in their contract with the Authority unless the Port Authority shall have first certified the eligibility of such additional railroad, whether it be a Hudson Tubes extension, as defined, or new railroad facility. To be eligible the Port Authority must determine either that the proposed additional passenger railroad facility is self-supporting or, if not, that at the end of the preceding calendar year the General Reserve Fund contained the full statutory amount and that for the ensuing ten years the estimated average annual deficits from the proposed additional passenger railroad facility and any then existing Port Authority passenger railroad facility (including the basic Hudson Tubes) would not in the aggregate exceed an amount equal to one-tenth of the amount in the General Reserve Fund at the prior year end. Certain adjustments to this figure are provided by the statute. For example, the amount equal to one-tenth of the General Reserve Fund is to be diminished by an amount equal to 1% of the principal amount of Port Authority bonds the proceeds of which shall have been applied for passenger railroad purposes; this prevents the enlargement of deficit capacity by bonds issued in connection with a deficit passenger railroad facility. Furthermore, if at some time in the future the adjusted 10% of the General Reserve Fund should be exceeded by an amount equal to 1% of the Port Authority's equity, as defined in the statutes, augmented by 1/10 of that

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adjusted 10%, then the augmented 1% of the equity may be used as the limiting figure instead of the percentage of the General Reserve Fund. Section 6 of the 1962 legislation (See Appendix III) should be studied for the exact terms of the statutory covenant.”

24. Purchasers of Consolidated Bonds of The Port Authority following enactment of the 1962 Covenant relied on the 1962 Covenant in making their purchase.

25. The legislation embodying the 1962 Covenant was amended effective May 10, 1973 by the States of New Jersey and New York (Ch. 208, Laws of New Jersey 1972, Ch. 1003, Laws of New York 1972, Ch. 318, Laws of New York 1973), to limit the application of the 1962 Covenant to obligations of The Port Authority issued before May 10, 1973. Since Consolidated Bonds issued prior to that date have varying maturity dates from 1993 to 2007, the 1962 Covenant remains binding on The Port Authority, and, thereby, affords protection through 2007 for the bonds of the Fortieth Series and subsequent issues even though it does not specifically apply to such bonds.

26. The Port Authority advised potential investors of the existence of and continued protection afforded by the 1962 Covenant in Official Statements distributed in connection with the Fortieth and Forty-First Series of Consolidated Bonds as follows:

“The statutory covenant against dilution of pledged revenues and reserves by additional passenger railroad facilities, which is discussed in the paragraph quoted above, remains in effect with respect to affected bonds, and remains binding on the Authority although it does not apply to the bonds

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of the present offering. The legislation which authorized the Port Authority to assume responsibility for the Hudson Tubes system was amended, effective May 10, 1973, by the States of New York and New Jersey (Ch. 1003, Laws of New York 1972, Ch. 318, Laws of New York 1973; Ch. 208, Laws of New Jersey). The New Jersey amendment, when introduced in the New Jersey Assembly, was accompanied by a statement that the bill was intended to preclude the application of the covenant to holders of bonds newly issued after its effective date, while maintaining in status quo the rights of the holders of the bonds issued after March 27, 1962 (the effective date of the covenant legislation) but prior to the effective date of the amendment.”

27. Purchasers of Consolidated Bonds of The Port Authority following the prospective repeal of the 1962 Covenant relied on the continued protection afforded by the 1962 Covenant in making their purchase.

28. On April 30, 1974, defendant Byrne signed into law an Act of the Legislature of the State of New Jersey (Assembly Bill No. 1304) (the “Act”).

29. The Act purports to repeal the 1962 Covenant retroactively to the date of its enactment, to be effective upon the passage of concurring legislation by the State of New York.

30. Although effectiveness of the Act is conditioned upon concurring action by the State of New York, as a result of the expressed intent of defendant Byrne and the Legislature of the State of New Jersey to pass the Act and as a result of the passage of the Act the contract between the States of New York and New Jersey and holders of

Complaint

Consolidated Bonds has been impaired and the secondary market for Consolidated Bonds of The Port Authority has been and will continue to be adversely affected to the detriment of the Trust Company and all holders of Consolidated Bonds of The Port Authority.

31. The 1962 Covenant constitutes a contract as that term is used in Article 4, Section 7, paragraph 3 of the New Jersey Constitution.

32. The passage of the Act alleged in paragraph 28 of this Complaint constitutes an impairment of the contract among the States of New Jersey and New York and all holders of Consolidated Bonds of The Port Authority, in violation of Article 4, Section 7, paragraph 3 of the New Jersey Constitution.

SECOND COUNT

1. The Trust Company repeats and realleges paragraphs 1 through 30 of the First Count of this Complaint as if set forth fully herein.

2. The 1962 Covenant constitutes a contract as that term is used in Article 1, Section 10, Clause 1 of the United States Constitution.

3. The passage of the Act alleged in paragraph 28 of this Complaint constitutes an impairment of the contract among the States of New Jersey and New York and all holders of Consolidated Bonds of The Port Authority, in violation of Article 1, Section 10, Clause 1 of the United States Constitution.

THIRD COUNT

1. The Trust Company repeats and realleges paragraphs 1 through 30 of the First Count of this Complaint as if set forth fully herein.

Complaint

2. The 1962 Covenant is property as that term is used in Article 1, paragraphs 1 and 20 of the New Jersey Constitution.

3. The passage of the Act alleged in paragraph 28 of this Complaint constitutes a taking of property of the holders of Consolidated Bonds of The Port Authority for public use without just compensation in violation of Article 1, paragraph 1 and Article 1, paragraph 20 of the New Jersey Constitution.

FOURTH COUNT

1. The Trust Company repeats and realleges paragraphs 1 through 30 of the First Count of this Complaint as if set forth fully herein.

2. The 1962 Covenant is property as that term is used in the Fifth and Fourteenth Amendments to the United States Constitution.

3. The passage of the Act alleged in paragraph 28 of this Complaint constitutes a taking of private property of the holders of Consolidated Bonds of The Port Authority without just compensation in violation of the Fifth Amendment and the Fourteenth Amendment to the United States Constitution.

WHEREFORE, The Trust Company demands:

(a) A declaratory judgment that the enactment of Assembly Bill No. 1304 was in violation of Article IV, Section 7, paragraph 3 of the New Jersey Constitution and that as a consequence thereof Assembly Bill No. 1304 was not lawfully enacted, is void and is of no consequence or effect.

(b) A declaratory judgment that the enactment of Assembly Bill No. 1304 was in violation of Article I, Section

Complaint

10, Clause 1 of the United States Constitution and that as a consequence thereof Assembly Bill No. 1304 was not lawfully enacted, is void and is of no consequence or effect.

(c) A declaratory judgment that the enactment of Assembly Bill No. 1304 was in violation of Article I, paragraphs 1 and 20 of the New Jersey Constitution and that as a consequence thereof Assembly Bill No. 1304 was not lawfully enacted, is void and is of no consequence or effect.

(d) A declaratory judgment that the enactment of Assembly Bill No. 1304 was in violation of the Fifth and Fourteenth Amendments to the United States Constitution and that as a consequence thereof Assembly Bill No. 1304 was not lawfully enacted, is void and is of no consequence or effect.

(e) Such other and further relief as the Court may deem just and proper.

Dated: Newark, New Jersey
April 30, 1974

MEYNER, LANDIS & VERDON
Attorneys for Plaintiff

By ROBERT B. MEYNER
Robert B. Meyner

Of Counsel:
CARTER, LEDYARD & MILBURN
2 Wall Street
New York, New York 10005

Answer and Counterclaim

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—BERGEN COUNTY

UNITED STATES TRUST COMPANY OF NEW YORK, etc.,
Plaintiff,

—vs—

THE STATE OF NEW JERSEY, et als.,
Defendants.

Defendants, answering plaintiff's complaint, say:

FIRST COUNT

1. They admit that The Trust Company is The Trustee for the Fortieth and Forty-First Series of Port Authority Consolidated Bonds and they deny knowledge or information sufficient to form a belief with respect to the truth of the allegation that The Trust Company is the holder of Consolidated Bonds of The Port Authority.

2. They deny the allegations of paragraph 2, except that they admit that the concurring legislation referred to therein was enacted by the respective Legislatures of New Jersey and New York.

3. They deny the allegations of paragraph 3, except that they admit that defendant Byrne is the Governor of the State of New Jersey and in such capacity possesses the power to appoint six Commissioners of The Port Authority by and with the advice and consent of the Senate of New Jersey and to veto action taken by the Commissioners appointed from New Jersey and recited in minutes of Port Authority meetings.

Answer and Counterclaim

4. They admit the allegations of paragraph 4.
5. They admit that plaintiff purports to bring this action on the basis alleged.
6. They admit the allegations of paragraph 6.
7. They deny knowledge or information sufficient to form a belief with respect to the truth of the allegations of paragraph 7, except that they admit that the plaintiff purports to bring this action on the basis alleged.
8. They deny knowledge or information sufficient to form a belief with respect to the truth of the allegations of paragraph 8.
9. They admit the allegations of paragraph 9.
10. They admit that the questions raised by this action, including the counterclaim, are common to all members of the class or classes and that the claims made by plaintiff are typical of the claims of the class or classes.
11. They admit on information and belief the allegations of paragraph 11.
12. They admit the allegations of paragraph 12.
13. They admit on information and belief that adjudication with respect to the issues raised by the complaint and counterclaim will as a practical matter be dispositive of the interests of the other members of the class or classes.
14. They admit the allegations of paragraph 14.
15. They admit the allegations of paragraph 15.
16. They admit the allegations of paragraph 16 and they allege that the consent of the Congress was also given pursuant to Article 1, Section 8, Clause 3 of the Constitution of the United States.

Answer and Counterclaim

17. They admit that the Compact contains the provisions alleged in the first four sentences contained in paragraph 17, but they refer to the entire Compact for the full terms and legal effect thereof. They deny the last sentence of paragraph 17.

18. They deny the first sentence of paragraph 18 and admit the second sentence of paragraph 18.

19. They admit the allegations of paragraph 19.

20. They deny the first sentence of paragraph 20 and admit the second sentence of paragraph 20.

21. They deny the allegations of paragraph 21, except that they admit that the advice alleged therein was given to the Legislatures of New York and New Jersey by certain members of the then management of The Port Authority and they refer to the entire testimony for the full terms and effect thereof.

22. They deny the allegations of paragraph 22, except that they admit that the Official Statements listed therein refer to the 1962 Covenant and they refer to the entire Official Statements for the full terms and effect thereof.

23. They deny the allegations of paragraph 23, except that they admit that a statement similar in substance to the alleged statement was contained in the Official Statements referred to in paragraphs 22 and 23 and they refer to the entire Official Statements for the full terms and effect thereof.

24. They deny the allegations of paragraph 24.

25. They deny the allegations of paragraph 25.

26. They deny the allegations of paragraph 26, except that they admit that the Official Statements referred to

Answer and Counterclaim

therein contained the statement quoted therein and they refer to the entire Official Statements for the full terms and effect thereof. Further answering paragraph 26, they allege that the Official Statements referred to therein explicitly stated that the statement quoted in paragraph 23 of the complaint "*does not apply to bonds of the present offering*" (emphasis in original).

27. They deny the allegations of paragraph 27.

28. They admit the allegations of paragraph 28.

29. They deny the allegations of paragraph 29.

30. They deny the allegations of paragraph 30, except that they admit that the effectiveness of the Act (Chapter 25 of the Laws of New Jersey 1974, hereinafter "the 1974 Act") is conditioned upon concurring action by the State of New York and they allege that New York has taken such concurring action by enacting Chapter 993 of the Laws of New York 1974, which is substantially identical to the 1974 Act.

31. They deny the allegations of paragraph 31.

32. They deny the allegations of paragraph 32.

SECOND COUNT

1. They repeat and reallege, as if set forth herein at length, their answer to paragraphs 1 through 30 of the First Count.

2. They deny the allegations of paragraph 2.

3. They deny the allegations of paragraph 3.

Answer and Counterclaim

THIRD COUNT

1. They repeat and reallege, as if set forth herein at length, their answer to paragraphs 1 through 30 of the First Count.
2. They deny the allegations of paragraph 2.
3. They deny the allegations of paragraph 3.

FOURTH COUNT

1. They repeat and reallege, as if set forth herein at length, their answer to paragraphs 1 through 30 of the First Count.
2. They deny the allegations of paragraph 2.
3. They deny the allegations of paragraph 3.

FIRST SEPARATE DEFENSE

The complaint fails to state a claim for relief against Governor Byrne or Attorney General Hyland.

SECOND SEPARATE DEFENSE

The 1974 Act constitutes a reasonable exercise of the police powers of the State of New Jersey to protect the health, safety and welfare of its citizens. These police powers are fundamental to the sovereignty of the State and cannot be abdicated.

THIRD SEPARATE DEFENSE

1. Pursuant to the Interstate Commerce and Interstate Compact clauses of the Constitution of the United States, Congress consented to the Port Authority Compact and Comprehensive Plan.

Answer and Counterclaim

2. The Preamble to the Port Authority Compact, to which Congress consented, provided:

“It is confidently believed that a better coordination of the terminal, transportation and other facilities of commerce in, about and through the port of New York, will result in great economies, benefiting the nation, as well as the states of New York and New Jersey.”

3. Subparagraph b of the 1962 Covenant (which was repealed by the 1974 Act) violated the provisions of the Port Authority Compact because it substantially precluded participation by The Port Authority in the field of passenger railroad operations other than the PATH system and thereby impeded the ability of The Port Authority to effect “a better coordination of the terminal, transportation and other facilities of commerce in, about and through the port of New York”.

4. Subparagraph b of the 1962 Covenant was unconstitutional and invalid because Congress never consented to the limitations imposed by this provision upon The Port Authority or the burden imposed by this provision upon interstate commerce in the Port District.

FOURTH SEPARATE DEFENSE

1. The 1974 Act repealed only that part of the 1962 Covenant (subparagraph b) which substantially precluded The Port Authority’s participation in passenger railroad operations other than the PATH system.

2. The 1974 Act does not purport to repeal or impair the primary obligation of The Port Authority to its bondholders, which is to pay interest and principal when due.

Answer and Counterclaim

3. The 1974 Act does not purport to repeal or impair that part of the 1962 Covenant (subparagraph a) which provides that the States of New Jersey and New York

“will not diminish or impair the power of the port authority (or any subsidiary corporation incorporated for any of the purposes of this act) to establish, levy and collect rentals, tolls, fares, fees or other charges in connection with any facility constituting a portion of the port development project or any other facility owned or operated by the port authority of which the revenues have been or shall be pledged in whole or in part as security for such bonds (directly or indirectly, or through the medium of the general reserve fund or otherwise), or to determine the quantity, quality, frequency or nature of the service provided in connection with each such facility.”

4. The 1974 Act does not purport to repeal or impair Section 3 of the Consolidated Bond Resolution (prohibiting the issuance of Consolidated Bonds unless revenues are at least 1.3 times debt service) or Section 7 of the Resolutions authorizing specific series of Consolidated Bonds (prohibiting the issuance of bonds secured by the General Reserve Fund for any additional facility unless the Authority certifies that the issuance “will not . . . materially impair the sound credit standing of the Authority or the investment status of Consolidated Bonds or the ability of the Authority to fulfill its commitments . . . including its undertakings to the holders of Consolidated Bonds”).

5. The 1974 Act does not, therefore, impair the obligation of a contract or take property within the meaning of the Constitutions of the United States or New Jersey.

Answer and Counterclaim

FIFTH SEPARATE DEFENSE

1. Bonds issued by The Port Authority do not refer to the 1962 Covenant. Rather, the bonds state that they are issued "in conformity with the Compact . . . and the various statutes of [New Jersey and New York] amendatory thereof and supplemental thereto."

2. Article VII of the Port Authority Compact, as approved by the Congress, provides:

"The port authority shall have such additional powers and duties as may hereafter be delegated or imposed upon it from time to time by the action of the legislature of either state concurred in by the legislature of the other."

3. Port Authority bonds were purchased with notice that the Legislatures of New Jersey and New York reserved the powers to impose additional duties upon The Port Authority.

4. The 1974 Act constitutes a permissible exercise by the States of New Jersey and New York of their specifically reserved powers to impose additional duties upon The Port Authority.

SIXTH SEPARATE DEFENSE

1. The Port Authority's powers and responsibilities pursuant to the Port Authority Compact include provision of passenger transportation facilities within the Port District. In exercising those powers and responsibilities to date, The Port Authority has been principally concerned with providing facilities for vehicular traffic. Such vehicular traffic has occasioned and is integrally related to health, energy, environmental, traffic, and transportation

Answer and Counterclaim

crises within the State of New Jersey and the Port District generally.

2. Because of these crises, the Legislature of the State of New Jersey concluded that The Port Authority must undertake larger responsibilities for alternative modes of transportation, to assure balanced transportation within the Port District. That legislative determination was both reasonable and in no way prohibited by the 1962 Covenant which purported to limit Port Authority activity as to passenger railroads only.

3. In light of the aforesaid legislative judgment, and the paramount importance of transportation to the health, economic vitality and environment of the citizens of the State, it was reasonable for the Legislature further to determine, as it did in adopting the 1974 Act, that the decision as to what transportation systems and combinations thereof are best suited to relieve the crises referred to in paragraph 1 ought not be prejudiced by the preclusion of further Port Authority financing for passenger railroad systems.

SEVENTH SEPARATE DEFENSE

1. The 1962 Covenant was enacted as part of substantially identical New Jersey and New York statutes entitled "An Act to provide for the financing and effectuation by the Port of New York Authority of a port development project, consisting of the Hudson tubes, the Hudson tubes extensions and a world trade center, for co-ordinating, facilitating and promoting the transportation of persons and the flow and exchange of trade and commerce in and through the Port of New York District, and agreeing with the State of New York with respect thereto."

Answer and Counterclaim

2. Pursuant to the 1962 legislation, The Port Authority assumed for the first time a significant role in the operation of a passenger railroad facility (now the PATH system) and embarked upon the development, construction and operation of the World Trade Center.

3. Since the adoption of the 1962 legislation, including the Covenant contained therein, The Port Authority has accumulated considerable experience in the operation of a passenger railroad facility, construction of the World Trade Center (at a total projected cost of about \$850,000,000) has been substantially completed and The Port Authority has completed many other projects, including substantial redevelopment projects at the Authority's three major airports. These developments have materially increased the assets, reserves and revenues of The Port Authority from what they were in 1962.

4. Since 1962, New Jersey and New York generally, and the Port District in particular, have experienced severe health, energy, environmental, traffic and transportation crises resulting from excessive use of motor vehicles that were not foreseen when the 1962 legislation, referred to in paragraph 1, was enacted. These crises were particularly acute in the latter part of 1973 and the first quarter of 1974—immediately prior to the adoption of the 1974 Act—as a result of the extreme shortage of motor gasoline, which seriously impaired the physical and economic stability of the Port District.

5. By reason of the changed conditions since 1962 referred to in paragraphs 3 and 4, the Legislature of the State of New Jersey could reasonably have concluded that the continued prohibition, embodied in subparagraph (b) of the 1962 Covenant, of further participation by the Port Authority in passenger railroad facilities and operations

Answer and Counterclaim

had become contrary to the public policy of this State and that this part of the 1962 Covenant should be repealed, as it was by the 1974 Act.

WHEREFORE, defendants demand judgment dismissing the complaint.

COUNTERCLAIM

Defendant The State of New Jersey, counterclaiming against plaintiff and the class of Port Authority bondholders represented by it, says:

1. This is a counterclaim for a declaratory judgment that Chapter 25 of the Laws of New Jersey 1974 (the 1974 Act challenged herein by plaintiff) and the substantially identical Chapter 993 of the Laws of New York 1974 are in all respects valid and constitutional.

2. This counterclaim is brought as a class action against plaintiff and the class or classes represented by it, consisting "of all of the holders of Consolidated Bonds of The Port Authority who have an undivided interest in the revenues of The Port Authority and the reserve funds securing such Consolidated Bonds." Class action treatment of this counterclaim is appropriate for the reasons alleged in paragraphs 8 through 14 of the complaint and the answer thereto, which are incorporated herein by reference.

3. Defendant repeats and realleges, as if set forth herein at length, each of the allegations of the Second through the Seventh Separate Defenses of the answer.

4. The statutes referred to in paragraph 1 of this counterclaim do not impair the obligation of any contract with or take the property of plaintiff or the class or classes

Answer and Counterclaim

represented by it and do not otherwise violate any provision of the Constitutions of the United States, New Jersey or New York.

WHEREFORE, the State of New Jersey demands:

(a) A declaratory judgment that Chapter 25 of the Laws of New Jersey 1974 and Chapter 993 of the Laws of New York 1974 are in all respects valid and constitutional; and

(b) Such other and further relief as the Court may deem just and proper.

WILLIAM F. HYLAND
Attorney General of the
State of New Jersey
Attorney for Defendants

By: Michael I. Sovern
Murray J. Laulicht
Harold Edgar
Special Counsel for
Defendants

Dated: July 15, 1974

[Certificate of service omitted in printing]

Answer to Counterclaim

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—BERGEN COUNTY

UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee
for The Port Authority of New York and New Jersey
Consolidated Bonds, Fortieth and Forty-First Series; on
its own behalf and on behalf of all holders of Consoli-
dated Bonds of The Port Authority of New York and
New Jersey and all others similarly situated,
Plaintiff,

vs.

THE STATE OF NEW JERSEY; BRENDAN T. BYRNE, Governor
of the State of New Jersey; and WILLIAM F. HYLAND,
Attorney General of the State of New Jersey,
Defendants.

Plaintiff, United States Trust Company of New York,
by way of Answer to the Counterclaim of defendant, The
State of New Jersey, says:

1. Plaintiff denies that Chapter 25 of the Laws of New Jersey 1974 is valid and constitutional. Plaintiff further denies that this Court has jurisdiction to determine the validity of Chapter 993 of the Laws of New York 1974.

2. Plaintiff admits that it represents a class consisting “of all of the holders of Consolidated Bonds of The Port Authority who have an undivided interest in the revenues of The Port Authority and the reserve funds securing such Consolidated Bonds” and that class action treatment of this counterclaim is appropriate.

Answer to Counterclaim

3. As to the allegations of the Second through Seventh Separate Defenses repeated and realleged by defendant The State of New Jersey in Paragraph 3 of its Counterclaim plaintiff says:

AS TO THE SECOND SEPARATE DEFENSE

1. Plaintiff denies the allegations contained therein.

AS TO THE THIRD SEPARATE DEFENSE

1. Plaintiff admits that Congress consented to the Port Authority Compact and Comprehensive Plan pursuant to the Compact Clause of the Constitution of the United States. Plaintiff denies that Congressional consent was required or given pursuant to the Interstate Commerce Clause of the Constitution of the United States.

2. Plaintiff admits that the Preamble to the Compact contains the provision as set forth by the defendant but refers to the entire Preamble and the entire Compact for their full terms and legal effect.

3. Plaintiff denies the allegations contained in Paragraph 3 of the Third Separate Defense.

4. Plaintiff denies the allegations contained in Paragraph 4 of the Third Separate Defense.

AS TO THE FOURTH SEPARATE DEFENSE

1. Plaintiff denies the allegations contained in Paragraph 1 of the Fourth Separate Defense but admits that the 1974 Act repealed only Subparagraph b of the 1962 Covenant.

2. Plaintiff denies the allegations contained in Paragraph 2 of the Fourth Separate Defense.

Answer to Counterclaim

3. Plaintiff admits the allegations contained in Paragraph 3 of the Fourth Separate Defense and refers to the 1974 Act for its terms and legal effect.

4. Plaintiff admits the allegations contained in Paragraph 4 of the Fourth Separate Defense and refers to the 1974 Act for its terms and legal effect.

5. Plaintiff denies the allegations contained in Paragraph 5 of the Fourth Separate Defense.

AS TO THE FIFTH SEPARATE DEFENSE

1. Plaintiff refers to the bonds issued by the Port Authority, the Official Statements published by the Port Authority, the Compact and the various statutes of New Jersey and New York amendatory thereof and supplemental thereto for their terms and legal effect.

2. Plaintiff admits that Article VII of the Port Authority Compact contains the provision as set forth by the defendant but refers to the entire Compact and amendatory and supplemental legislation for their full terms and legal effect.

3. Plaintiff denies the allegations contained in Paragraph 3 of the Fifth Separate Defense.

4. Plaintiff denies the allegations contained in Paragraph 4 of the Fifth Separate Defense.

AS TO THE SIXTH SEPARATE DEFENSE

1. With respect to the first sentence of Paragraph 1 of the Sixth Separate Defense, plaintiff refers to the Compact for its full terms and legal effect. Plaintiff denies the allegations contained in the second sentence of Paragraph 1 of the Sixth Separate Defense. Plaintiff denies knowledge

Answer to Counterclaim

or information sufficient to form a belief with respect to the allegations contained in the third sentence of Paragraph 1 of the Sixth Separate Defense.

2. Plaintiff denies the allegations contained in Paragraph 2 of the Sixth Separate Defense.

3. Plaintiff denies the allegations contained in Paragraph 3 of the Sixth Separate Defense.

AS TO THE SEVENTH SEPARATE DEFENSE

1. Plaintiff admits the allegations contained in Paragraph 1 of the Seventh Separate Defense and refers to the said statutes for their terms and legal effect.

2. Plaintiff admits that the 1962 legislation permitted the Port Authority to embark upon the development, construction and operation of the World Trade Center and to assume a significant role in the operation of a passenger railroad facility (now the PATH system) but denies knowledge or information sufficient to form a belief as to whether this legislation was the first time that the Port Authority assumed a significant role in the operation of a passenger railroad facility.

3. Plaintiff denies knowledge or information sufficient to form a belief with respect to the allegations contained in Paragraph 3 of the Seventh Separate Defense.

4. Plaintiff denies knowledge or information sufficient to form a belief with respect to the allegations contained in Paragraph 4 of the Seventh Separate Defense.

5. Plaintiff denies the allegations contained in Paragraph 5 of the Seventh Separate Defense.

4. Plaintiff denies the allegations contained in Paragraph 4 of the Counterclaim.

Answer to Counterclaim

AFFIRMATIVE DEFENSES TO COUNTERCLAIM

FIRST AFFIRMATIVE DEFENSE

The State of New Jersey is estopped from challenging the validity of the 1962 Covenant since during the twelve years subsequent to the enactment of this legislation over one billion dollars of Port Authority obligations were issued by the Port Authority pursuant to the provisions of the 1962 Covenant and were purchased by plaintiff and the class it represents based upon the Covenant.

SECOND AFFIRMATIVE DEFENSE

The State of New Jersey is barred from attacking the validity of the 1962 Covenant based upon laches due to its failure to assert its claim for twelve years.

THIRD AFFIRMATIVE DEFENSE

The State of New Jersey is barred from attacking the validity of the 1962 Covenant based upon waiver.

MEYNER, LANDIS & VERDON
Attorneys for Plaintiff

ROBERT B. MEYNER
Robert B. Meyner

Of Counsel:

CARTER, LEDYARD & MILBURN, Esqs.
2 Wall Street
New York, New York 10005

[Certificate of Service omitted in printing.]

Consent Order

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—BERGEN COUNTY

UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee
for the Port Authority of New York and New Jersey
Consolidated Bonds, Fortieth and Forty-First Series; on
its own behalf and on behalf of all holders of Consoli-
dated Bonds of the Port Authority of New York and New
Jersey and all others similarly situated,

Plaintiff,

vs.

THE STATE OF NEW JERSEY: BRENDAN T. BYRNE, Governor of
the State of New Jersey; and WILLIAM F. HYLAND, Attor-
ney General of the State of New Jersey,

Defendants.

This matter being opened to the Court by Meyner, Landis
& Verdon, attorneys for the United States Trust Company
of New York (Trust Company); and the Court having con-
sidered the Affidavits of J. Sinclair Armstrong and Edwin
C. Landis, Jr.; and it appearing to the Court that the Trust
Company, Trustee for the 40th and 41st Series of Consoli-
dated Bonds of the Port Authority of New York and New
Jersey (Port Authority), is also the holder of a significant
amount of all Series of Consolidated Bonds of the Port
Authority; and it further appearing to the Court that the
Trust Company presents claims and defenses which are
typical of the class of holders of Consolidated Bonds of the
Port Authority and that the Trust Company and its coun-
sel are fully competent to fairly and adequately protect the

Consent Order

interests of the class; and the Court having reviewed the provisions of R. 4:32-3(b) and other due process considerations; and the Court having noted the widespread publicity given to this action and the absence of intervening bondholders; and it appearing that all parties have consented to this order, it is

ORDERED that this action shall be maintained and defended as a class action under Rule 4:32-1(b)(1) and (b)(2) by the Trust Company as representative on behalf of a class consisting of all holders of all Series of Consolidated Bonds of the Port Authority; and it is

FURTHER ORDERED that notice of this class action be deemed to have been given to members of the class of bondholders via the media publicity given to this class action.

GEORGE B. GELMAN,
J.S.C.

Dated: October 24, 1974

Consent Order

The within Order is hereby consented to as to form and substance.

MEYNER, LANDIS & VERDON
Gateway I—Suite 2500
Newark, New Jersey 07102

By: ROBERT B. MEYNER

CARTER, LEDYARD & MILBURN
Two Wall Street
New York, New York 10005

By: DEVEREUX MILBURN
Attorneys for plaintiff,
U. S. Trust Company

WILLIAM F. HYLAND
Attorney General of the
State of New Jersey

By: MICHAEL L. SOVERN

By: MURRAY J. LAULICHT

By: HAROLD EDGAR
Attorneys for defendants,
State of New Jersey,
Brendan T. Byrne, and
William F. Hyland

**Affidavit of Edwin C. Landis, Jr.
Sworn to October 23, 1974**

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—BERGEN COUNTY

[TITLE OMITTED IN PRINTING]

STATE OF NEW JERSEY }
COUNTY OF ESSEX } ss.:

EDWIN C. LANDIS, JR., of full age, being duly sworn according to law, upon his oath, deposes and says:

1. Many newspaper and other periodical reports and comments regarding this lawsuit have been published since the complaint was filed on April 30, 1974. I have assembled those listed below and attach them as indicated.

a. "For Mass Transit"—New York Post, New York City, New York, April 30, 1974

b-1. "Bondholders Counter Byrne Transit Bid"—Post, Paramus, New Jersey, May 1, 1974

b-2. "Byrne signs bill lifting PA bonding restriction"—The Record, Hackensack, New Jersey, May 1, 1974

b-3. "Byrne signs PA transit-\$ pact in Jersey; NYC bank files suit to block move"—Long Island Press, Jamaica, New York City, New York, May 1, 1974

b-4. "Byrne signs Port legislation"—The News Tribune, Woodbridge, New Jersey, May 1, 1974

b-5. "Byrne Signs Transit Legislation"—Paterson News, Paterson, New Jersey, May 1, 1974

b-6. "Covenant repealer now law"—The Herald-News, Passaic, New Jersey, May 1, 1974

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b-7. "Jersey Sued Over Agreement"—Paterson News, Paterson, New Jersey, May 1, 1974

b-8. "Law Dismays Municipal-Bond Dealers"—New York Times, New York City, New York, May 1, 1974

b-9. "New York Bank challenges P.A. move"—The Star Ledger, Newark, New Jersey, May 1, 1974

b-10. "N.Y. transit action awaited by Byrne"—Burlington County Times, Willingboro, New Jersey, May 1, 1974

b-11. "PA Mass Transit Bill Becomes Law"—The Daily Register, Red Bank—Middletown, New Jersey, May 1, 1974

b-12. "Port Panel Backs Move On Transit"—New York Times, New York City, New York, May 1, 1974

b-13. "Suit attacks Port Authority legislation"—The Jersey Journal, Jersey City, New Jersey, May 1, 1974

b-14. "Suit Is Filed Over Use Of Port Authority Funds"—The Wall Street Journal, New York City, New York, May 1, 1974

b-15. "US Trust Seeks to Void NJ Threat to Bonds"—American Banker, New York City, New York, May 1, 1974

c-1. "Albany Votes Bill to Free Port Unit for Mass Transit"—New York Times, New York City, New York, May 2, 1974

c-2. "Clearing the Tracks"—Asbury Park Evening Press, Asbury Park, New Jersey, May 2, 1974

c-3. "Hunterdon Legislators Support PA Repealer"—Hunterdon County Democrat, Flemington, New Jersey, May 2, 1974

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c-4. "The Predicted Consequences"—Daily News, New York City, New York, May 2, 1974

c-5. "The state welshes"—The Herald-News, Passaic, New Jersey, May 2, 1974

c-6. "Wilson Gets Bill to Have PA Pay for Mass Transit"—Daily News, New York City, New York May 2, 1974

d. "Transit turnabout"—The Citizen Register, Ossining, New York, May 3, 1974

e. "Port Authority's Future: Will It Be In Mass Transit?"—New York Times, New York City, New York, May 5, 1974

f-1. "Dishonest, too"—The Herald-News, Passaic, New Jersey, May 6, 1974

f-2. "PA on the Right Track"—The Dispatch, Union City, New Jersey, May 6, 1974

f-3. "Word and Bond"—Barron's National Business and Financial Weekly, New York City, New York, May 6, 1974

g-1. "Set Pretrial Session In PA Transit"—The Dispatch, Union City, New Jersey, May 7, 1974

g-2. "Suit Aims to Kill PATH Law"—Paterson News, Paterson, New Jersey, May 7, 1974

h. "PATH Hearing In July"—Paterson News, Paterson, New Jersey, May 8, 1974

i. "The Editor's Corner"—The Daily Bond Buyer, New York City, New York, May 13, 1974

j. "Keeping Faith With Investors"—The Journal of Commerce, New York City, New York, May 15, 1974

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k. "Municipal Forum Fights Repeal of PA Covenant"—*American Banker*, New York City, New York, May 8, 1974

l. "Wilson Is Urged To Sign Repeal of PA Bond Covenant"—*The Daily Bond Buyer*, New York City, New York, May 29, 1974

m. "Club opposes auto tax . . . and joins N. J. AAA in toll rate protest"—*New York Motorist*, New York City, New York, May 1974

n. "Freeing the P.A."—*New York Times*, New York City, New York, June 1, 1974

o. "P.A. rule hinges on Wilson"—*Sunday Star Ledger*, Newark, New Jersey, June 2, 1974

p. "GREEN LIGHT: Wilson signs bill putting P.A. on mass transit track"—*Sunday Star Ledger*, Newark, New Jersey, June 16, 1974

q-1. "Bank's N.Y. Suit Would Bar P.A. Aid for Mass Transit"—*Paterson News*, Paterson, New Jersey, June 17, 1974

q-2. "Looks Like Big Wait for Transit Aid From PA"—*Daily News*, New York City, New York, June 17, 1974

q-3. "N.Y. bank is filing suit as Wilson frees PA funds"—*The Record*, Hackensack, New Jersey, June 17, 1974

q-4. "New York Governor Signs Port Authority Mass-Transit Measure"—*The Wall Street Journal*, New York City, New York, June 17, 1974

q-5. "Plans Suit to Upset Transit Role by PA"—*The Dispatch*, Union City, New Jersey, June 17, 1974

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q-6. "PA TRANSIT LAW FACES 2d SUIT, Big Bondholders to Sue On PA Transit Action"—Daily News, New York City, New York, June 17, 1974

q-7. "Sue To Halt PA Shift"—The Daily Journal, Elizabeth, New Jersey, June 17, 1974

q-8. "Wilson, Dubious of Effect, Signs Port-Bond Measure"—New York Times, New York City, New York, June 17, 1974

r-1. "VIEWPOINT—Grudging Approval"—The Star Ledger, Newark, New Jersey, June 18, 1974

r-2. "PA Mulls Assistance For Transit"—The Dispatch, Union City, New Jersey, June 18, 1974

r-3. "Suit filed to keep P.A. out of transit"—Staten Island Advance, Staten Island, New York, June 18, 1974

r-4. "U.S. Trust Files Suit Over Port Authority's Mass-Transit Funding"—The Wall Street Journal, New York City, New York, June 18, 1974

r-5. "U.S. Trust Sues to Void N.Y. Repeal of PA Covenant; Wilson Concedes Law Overturns State's Pledge"—The Daily Bond Buyer, New York City, New York, June 18, 1974

s. "Closer and closer"—The News Tribune, Woodbridge, New Jersey, June 19, 1974

t-1. "Hearing scheduled for P.A. July 25 on mass transit"—The Jersey Journal, Jersey City, New Jersey, June 20, 1974

t-2. "Opposing Sides on PA Covenant Will Debate July 25 in N.J. Court"—The Daily Bond Buyer, New York City, New York, June 20, 1974

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- u. "Suits to test PA transit covenant"—The Herald-News, Passaic, New Jersey, June 26, 1974
- v. "N.J. Judge Revises Dates For Arguments and Briefs on 2 PA Covenant Suits"—The Daily Bond Buyer, New York City, New York, June 28, 1974
- w. "Columbia dean to argue P.A. bond suit"—Sunday Star Ledger, Newark, New Jersey, June 30, 1974
- x. "Hyland Calls for Help"—The Dispatch, Union City, New Jersey, July 1, 1974
- y-1. "N.J. answers suit, defends repeal of PA bond covenant"—The Herald-News, Passaic, New Jersey, July 16, 1974
- y-2. "PA covenant repeal defended"—The Daily Register, Shrewsbury, New Jersey, July 16, 1974
- y-3. "PA Says Bond Move Legitimate"—Asbury Park Evening Press, Asbury Park, New Jersey, July 16, 1974
- y-4. "State answers suit on P.A. pact repealer"—Star Ledger, Newark, New Jersey, July 16, 1974
- y-5. "State Argues For Repeal Of PA Ban"—Paterson News, Paterson, New Jersey, July 16, 1974
- z. "PA contradicts commitment to mass transit"—The Record, Hackensack, New Jersey, July 17, 1974
- aa. "Pesin to Byrne: Act on P.A. in transit"—The Jersey Journal, Jersey City, New Jersey, July 18, 1974
- bb. "Standard operating procedure"—The Sunday Record, Hackensack, New Jersey, July 21, 1974
- cc. "Port Authority Defends Legal Fees for Trustee"—The Daily Bond Buyer, New York City, New York, July 22, 1974

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2. The ABC circulation figure cited for each following newspaper is the figure from the Audit Bureau Circulation Report of September 30, 1973.

3. The Asbury Park Evening Press is a newspaper published daily in Asbury Park, New Jersey, and has an ABC circulation list of 89,764 Monday through Saturday and 110,173 for Sunday. It is distributed throughout Monmouth and Ocean Counties.

4. Barron's National Business and Financial Weekly is a newspaper published weekly in New York City, New York, and has an ABC circulation list of 221,321. It is distributed nationally.

5. The Burlington County Times is a local newspaper published daily in Willingboro, New Jersey, and has an ABC circulation list of 37,132 Monday through Saturday and 24,807 for Sunday.

6. The Citizen Register is a local newspaper published Monday through Saturday in Ossining, New York, and has an ABC circulation list of 9,068. It is distributed only in Ossining and several small surrounding towns.

7. The Daily Bond Buyer is a newspaper published Monday through Friday, in New York City, New York. It is distributed nationally throughout the community of purchasers and sellers of bonds.

8. The Daily Journal is a newspaper published Monday through Saturday in Elizabeth, New Jersey, and has an ABC circulation list of 66,063 Monday through Friday and 60,540 for Saturday. It is distributed throughout three New Jersey counties: Essex, Middlesex, and Union.

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9. The Daily News is a newspaper published daily in New York City, New York, and has an ABC circulation list of 2,120,549 Monday through Saturday and 2,933,182 for Sunday. It is circulated throughout the Northeast region of the United States.

10. The Daily Register is a newspaper published Monday through Friday in Shrewsbury, New Jersey, and has an ABC circulation list of 31,202. It is distributed throughout northern Monmouth County.

11. The Hudson Dispatch is a local newspaper published Monday through Saturday in Union City, New Jersey, and has an ABC circulation list of 53,576.

12. The Herald-News is a newspaper published Monday through Saturday in Passaic, New Jersey, and has an ABC circulation list of 93,372 Monday through Friday and 93,338 for Saturday. It is distributed throughout the entire northern New Jersey area.

13. The Hunterdon County Democrat is a newspaper published weekly in Flemington, New Jersey, and has an ABC circulation list of 19,160.

14. The Jersey Journal is a newspaper published Monday through Saturday in Jersey City, New Jersey, and has an ABC circulation list of 86,368 Monday through Friday and 81,382 for Saturday. It is distributed throughout Hudson County, New Jersey.

15. The Journal of Commerce is a financial newspaper published Monday through Friday in New York City, New York, and has an ABC circulation list of 23,296. It is distributed nationally.

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16. The Long Island Press is a newspaper published daily in Jamaica, New York City, New York, and has an ABC circulation list of 355,046 Monday through Saturday and 335,127 for Sunday. It is distributed throughout the Long Island area.

17. The New York Motorist is a newspaper published by the Automobile Club of New York in New York City, New York. It is published monthly and distributed throughout the more than 416,500 members of the AAA club of New York for the fourteen southern-most counties.

18. The New York Post is a newspaper published daily excluding Sunday and has an ABC circulation list of 626,713 Monday through Friday and 375,607 for Saturday. It is distributed nationally.

19. The New York Times is a newspaper published daily in New York City, New York, and has an ABC circulation list of 4,505,949. It has wide national and international distribution.

20. The News Tribune is a newspaper published Monday through Saturday in Woodbridge, New Jersey, and has an ABC circulation list of 54,153. It is distributed throughout Middlesex and Monmouth Counties.

21. The Paterson News is a local newspaper published Monday through Saturday in Paterson, New Jersey. It has an ABC circulation list of 29,581 Monday through Friday daily, 44,638 Monday through Friday evening, and 69,627 for Saturday. It is distributed in the Paterson area of Passaic County.

22. The Post is a local newspaper published on Sunday and Wednesday in Paramus, New Jersey, and has an ABC

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circulation list of 9,572 for Sunday and 28,009 for Wednesday. It is distributed throughout North Bergen County.

23. The Record is a newspaper published daily, excluding Saturday, in Hackensack, New Jersey, and has an ABC circulation list of 152,140 Monday through Friday and 181,995 for Sunday. It is distributed mainly throughout Bergen County, with some distribution in Passaic County, New Jersey, and Rockland County, New York.

24. The Star-Ledger is a newspaper published daily in Newark, New Jersey, and has an ABC circulation list of 356,306 Monday through Friday, 335,839 for Saturday, and 560,261 for Sunday. It is circulated throughout the entire New Jersey area.

25. The Staten Island Advance is a newspaper published daily in Staten Island, New York, and has an ABC circulation list of 68,690 Monday through Friday, 64,440 for Saturday, and 69,086 for Sunday. It is distributed principally in Staten Island.

26. The Wall Street Journal is a financial newspaper. Four editions of this newspaper are published daily, excluding Saturday and Sunday. The Eastern edition is published in White Oak, Maryland; South Brunswick, New Jersey, and Chicopee Falls, Massachusetts; and has an ABC circulation list of 515,824. The Midwest edition is published in Chicago and Hyland, Illinois, and Cleveland, Ohio, and has an ABC circulation list of 390,711. The Pacific Coast edition is published in Riverside and Palo Alto, California, and has an ABC circulation list of 223,417. The Southwest edition is published in Dallas, Texas, and has an ABC circulation list of 121,592. The articles noted above as appearing in the Wall Street Journal in fact

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appeared in each of the four editions except the June 18th article which did not appear in the Midwest edition.

27. I am advised by the Port Authority of New York and New Jersey that of the approximately \$1,600 million in outstanding Consolidated Bonds of all series, approximately \$76 million are held in registered form. I am further advised that the balance of approximately \$1,524 million are held in bearer form by owners unknown to the Port Authority or its paying agents. I am further advised that the list of owners of registered bonds contains approximately 2800 names, some of which are duplications.

EDWIN C. LANDIS, JR.

(Sworn to October 23, 1974.)

[Jurat and attachments omitted in printing.]

**Affidavit of J. Sinclair Armstrong
Sworn to October 24, 1974**

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—BERGEN COUNTY

[Title omitted in printing]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

J. SINCLAIR ARMSTRONG, being duly sworn, deposes and says:

1. I am an Executive Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation (the "Trust Company"), with its principal office at 45 Wall Street, New York, New York. I am fully familiar with the matters set forth in this affidavit.

2. The Trust Company instituted this action as the Trustee for The Port Authority Consolidated Bonds, Fortieth and Forty-First Series, pursuant to Section 8 of the Resolution Establishing the Fortieth Series of Consolidated Bonds, due 2008 adopted May 10, 1973 and the Resolution Establishing the Forty-First Series of Consolidated Bonds, due 2008 adopted September 13, 1973.

3. Pursuant to such Section 8 of the respective Resolutions adopted by The Port Authority the Trust Company is "authorized to act in its discretion to assure that all of the rights of and obligations to the holders of bonds of [such] Series are unconditionally recognized, protected and fulfilled." Such Resolutions also permit the Trust Company "to institute any action on behalf of the holders of bonds of [such] Series against [The Port Authority] or others which it shall in its sole discretion deem advisable . . ."

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4. The Trust Company also brings this action on its own behalf as the holder (in its own account, as custodian and in its several fiduciary capacities) of approximately \$96,780,000 principal amount (as of July 13, 1974) of the Consolidated Bonds of The Port Authority and on behalf of all of the holders of Consolidated Bonds of The Port Authority who have an undivided interest in the revenues of The Port Authority and the reserve funds securing such Consolidated Bonds.

5. As of July 13, 1974, approximately \$1,600,000,000 principal amount of Consolidated Bonds of The Port Authority were outstanding and held by banks, trust companies, other financial institutions, pension funds and private individuals.

6. As of July 13, 1974 the Trust Company held (in its own account, as custodian and in its several fiduciary capacities) the following Consolidated Bonds issued by The Port Authority of New York and New Jersey in the following amounts:

<u>Name of Bond Issue</u>	<u>Principal Amount</u>
First Series Consolidated Bonds	\$ 1,120,000
Second Series Consolidated Bonds	778,000
Fourth Series Consolidated Bonds	1,498,000
Fifth Series Consolidated Bonds	811,000
Sixth Series Consolidated Bonds	1,848,000
Seventh Series Consolidated Bonds	1,011,000
Eighth Series Consolidated Bonds	1,912,000
Ninth Series Consolidated Bonds	55,000
Tenth Series Consolidated Bonds	1,545,000
Eleventh Series Consolidated Bonds	896,000
Twelfth Series Consolidated Bonds	15,000
Thirteenth Series Consolidated Bonds	390,000

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<u>Name of Bond Issue</u>	<u>Principal Amount</u>
Fourteenth Series Consolidated Bonds	\$1,045,000
Fifteenth Series Consolidated Bonds	199,000
Sixteenth Series Consolidated Bonds	680,000
Seventeenth Series Consolidated Bonds	195,000
Eighteenth Series Consolidated Bonds	600,000
Nineteenth Series Consolidated Bonds	860,000
Twentieth Series Consolidated Bonds	1,071,000
Twenty-First Series Consolidated Bonds	933,000
Twenty-Second Series Consolidated Bonds	531,000
Twenty-Third Series Consolidated Bonds	1,231,000
Twenty-Fourth Series Consolidated Bonds	1,067,000
Twenty-Fifth Series Consolidated Bonds	682,000
Twenty-Sixth Series Consolidated Bonds	986,000
Twenty-Seventh Series Consolidated Bonds	925,000
Twenty-Eighth Series Consolidated Bonds	868,000
Twenty-Ninth Series Consolidated Bonds	242,000
Thirtieth Series Consolidated Bonds	1,201,000
Thirty-First Series Consolidated Bonds	5,005,000
Thirty-Second Series Consolidated Bonds	5,045,000
Thirty-Third Series Consolidated Bonds	6,150,000
Thirty-Fourth Series Consolidated Bonds	5,175,000
Thirty-Fifth Series Consolidated Bonds	9,685,000
Thirty-Sixth Series Consolidated Bonds	3,500,000
Thirty-Seventh Series Consolidated Bonds	6,380,000
Thirty-Eighth Series Consolidated Bonds	10,405,000
Thirty-Ninth Series Consolidated Bonds	11,410,000
Fortieth Series Consolidated Bonds	3,710,000
Forty-First Series Consolidated Bonds	5,120,000

7. Under Section 2 of each of the Agreements of Trust between the Port Authority and the Trust Company, the Port Authority is obligated to pay to the Trust Company

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“reasonable compensation for extraordinary services and reimbursement for such reasonable expenses, charges, counsel fees and other disbursements previously incurred by the Trustee for which provision is made for payment in Section 8 of the Resolution and for which payment has not been made by the Authority”. Section 8 of the Resolutions establishing Series 40 and Series 41 provides that, among other things, the Port Authority shall pay to the Trustee from time to time reasonable compensation for all services rendered and shall also pay to the Trustee all of its reasonable expenses, charges, counsel fees and other disbursements incurred in the performance of its powers and duties under the Resolution. One of the duties of the Trustee under the Resolution is to institute lawsuits on behalf of bondholders if it deems such lawsuits advisable in order to protect their interests.

Section 6-7 of the Model Debenture Indenture promulgated by the American Bar Foundation similarly provides for the payment to a trustee by an obligor of reasonable compensation for services rendered and the reimbursement of a trustee by an obligor for all reasonable expenses, including the compensation and expenses of its counsel. Accordingly, the payment of compensation to the Trust Company and the reimbursement of its expenses, including counsel fees, by the Port Authority in connection with the prosecution of the above-captioned lawsuit is in consonance with the usual and customary arrangement and practice between an obligor and trustee under a trust agreement. The Trust Company has initiated, prosecuted and will continue to prosecute this lawsuit independently of the Port Authority.

J. SINCLAIR ARMSTRONG

(Sworn to October 24, 1974.)

[Jurat omitted in printing.]

**Decision of the Superior Court of New Jersey,
Law Division, Bergen County**

UNITED STATES TRUST COMPANY OF NEW YORK, ETC.,
PLAINTIFF, v. THE STATE OF NEW JERSEY, *ET AL.*,
DEFENDANTS .

DANIEL M. GABY, PLAINTIFF, v. THE PORT OF NEW YORK
AUTHORITY, *ET AL.*, DEFENDANTS.

Superior Court of New Jersey
Law Division

Argued April 8, 9, 1975—Decided May 14, 1975.

SYNOPSIS

Consolidated actions were brought concerning constitutional validity of legislation creating, and later repealing, a covenant between the States of New Jersey and New York and holders of bonds issued by the Port Authority of New York and New Jersey. Defendants filed counterclaim for declaration of validity of repealing legislation. The Superior Court, Law Division, Gelman, J. S. C., held that legislative enactments, such as the 1962 covenant whereby the States and Authority were precluded from applying Authority revenues and reserves for passenger railroad purposes unless permitted by criteria set forth in the covenant, can constitute a contract within meaning of the contract clauses of the State and Federal Constitutions, that not every impairment of a contract obligation or security for its performance runs afoul of the contract clause, that a State's inherent power to protect the public welfare may be validly exercised under the contract clause even if it impairs a contractual obligation so long as it does not destroy it, and that in view of emergent problems of air pollution, crises in mass transit and energy problems repeal legislation was a reasonable and valid exercise of the State's police power and was not prohibited by the contract clause of either the Federal or State Constitution.

Complaints dismissed; judgment for defendants on counterclaim.

Mr. Robert B. Meyner and Mr. Devereux Milburn (of the New York Bar) for plaintiff United States Trust Company (*Messrs. Meyner, Landis & Verdon*, attorneys; and *Messrs. Carter, Ledyard & Milburn*, attorneys; and *Mr. Donald J. Robinson* (of the New York Bar) *Messrs. Hawkins, Delafield & Wood*, attorneys).

Mr. Michael I. Sovern (of the New York Bar) and *Mr. Murray J. Laulicht*, special counsel for defendants (*Mr. William F. Hyland*, Attorney General of New Jersey, attorney; *Mr. Harold S. H. Edgar* (of the New York Bar) on the brief).

Mr. Theodore W. Kheel (of the New York Bar) and *Mr. Howard Stern* for plaintiff Daniel M. Gaby (*Messrs. Battle, Fowler, Stokes & Kheel*, attorneys, and *Messrs. Shavick, Stern, Schotz, Steiger & Croland*, attorneys).

Mr. Joseph Lesser (of the New York Bar) for defendant Port Authority of New York and New Jersey (*Mr. Francis A. Mulhern*, attorney); and *Mr. Patrick J. Falvey* (of the New York Bar), *Ms. Isobel E. Muirhead*, *Mr. Arthur P. Berg* (of the New York Bar), (*Mr. Vigdor D. Bernstein*, of counsel).

GELMAN, J. S. C. These are consolidated actions which have as their common subject matter the constitutional validity of legislation of this State creating, and later repealing, a covenant between the States of New Jersey and New York and the holders of bonds issued by the Port Authority of New York and New Jersey (Port Authority).¹ The

¹Under the terms of the Compact of 1921 creating the Port Authority, *N. J. S. A. 32:1-1 et seq.*, legislative action taken by one state

first legislative act in question, *chapter 8 of the Laws of 1962, N. J. S. A. 32:1-35.50* (the 1962 covenant), authorized the Port Authority to construct the World Trade Center and to acquire and operate the Hudson & Manhattan Railroad Company. As part of the 1962 legislation the two States enacted a statutory covenant with each other and with the holders of certain Port Authority bonds whereby the States and the Port Authority were precluded from applying the Authority's revenues and reserves for passenger railroad purposes unless permitted by the criteria set forth in the statute. *N. J. S. A. 32:1-35.55*.

The 1962 covenant was repealed by chapter 25 of the *Laws of 1974*.² The complaint filed by the United States Trust Company challenges the constitutionality of the repeal act of 1974, and the Gaby complaint attacks the validity of the 1962 covenant. We turn, then, to the procedural history of these actions and the issues projected by the respective pleadings.

Procedural History

1. The Gaby Action

On May 16, 1972 plaintiff Daniel Gaby filed a class action complaint for a declaratory judgment that the 1962 covenant violated the Federal and State Constitutions. The complaint named as defendants the Port Authority, its commissioners and executive director, and the then Governor of New Jersey, William T. Cahill. On October 25, 1972, on

affecting the powers and duties of the Port Authority is not effective until concurred in by the legislature of the other. *N. J. S. A. 32:1-8*. Statutory citations in this opinion will be limited to the applicable New Jersey statutes unless the context otherwise requires.

²In 1972 the Legislature had repealed the 1962 covenant as to all bonds of the Authority issued after the effective date of the act. *L. 1972, c. 208; N. J. S. A. 32:1-35.55a*. The act became effective upon the adoption of concurrent legislation by the State of New York on May 10, 1973. *Laws of N. Y. 1973, c. 318*. The validity of this legislation is not in issue in these proceedings.

the motion of the Attorney General of New Jersey, the complaint was dismissed as to former Governor Cahill. The Attorney General also moved to dismiss the complaint for failure to name as an indispensable party the Port Authority's bondholders. No disposition appears to have been made of the motion at that time.

The Gaby complaint alleges, among other things, that the residents of the State of New Jersey are dependent upon mass transit facilities and are adversely affected by the deterioration of such facilities within the District serviced by the Port Authority (the Port District). It is alleged that the Port Authority was created by the Compact of 1921 and consented to by the United States Congress³ to assure "cooperation of the two states in the future development" of transportation facilities within the Port District, and that by virtue of the 1962 covenant, restricting the Port Authority's power to acquire or operate passenger rail transit facilities, the two states entered into a new "Compact" without the consent of Congress and in violation of *U. S. Const.*, Art. 1, § 10. The complaint further alleges that the 1962 covenant constitutes an unconstitutional surrender by the State of its sovereign powers "to protect the health, general welfare and safety of the people," and that it has impaired and obstructed existing facilities for the transportation of goods in interstate commerce, in violation of *U. S. Const.*, Art. 1, § 8.

Gaby asks for multifarious relief. Aside from seeking a declaration as to the unconstitutionality of the 1962 covenant, he asks the court to declare the covenant to be subject to repeal, and to direct the Port Authority to formulate and submit to the court a plan for the development of mass transit facilities within the Port District.

The Gaby action was pretried on February 22, 1973, at which time it was stipulated that the action could proceed

³*Pub. Res. No. 17, 67th Cong., 1st Sess. (42 Stat. 174).*

as a class action without formal notice to the class represented by plaintiff. Thereafter both sides moved for summary judgment, and oral argument on the motions was heard on September 26, 1973. At the conclusion of the argument the court directed the parties to submit further briefs on the constitutional issues and on the question whether the bondholders were necessary parties to the Gaby action. Following conferences between counsel and the court, it was agreed the United States Trust Company should be permitted to intervene in the Gaby action as a party defendant to represent the interests of the bondholders in that action. An order to such effect was entered on December 18, 1973, and arguments were rescheduled on the motions for summary judgment.

Prior to the date fixed for the argument the prospects for the adoption of the repeal act became apparent, and further action in the Gaby case was stayed pending future legislative developments.

2. The United States Trust Company Action

The New Jersey Legislature completed action on the repeal act on April 22, 1974, and Governor Brendan T. Byrne signed the bill into law on April 30, 1974. On the same day United States Trust Company (U. S. Trust) filed its complaint on behalf of itself as the holder of Port Authority bonds, as trustee for certain designated issues of Port Authority bonds, and on behalf of all holders of consolidated bonds issued by the Port Authority. The complaint names as defendants the State of New Jersey, Governor Byrne and the Attorney General of New Jersey, and seeks a declaratory judgment that the repeal act violated the Federal and State Constitutions.

U. S. Trust alleges that it is the holder (for its own account and in a fiduciary capacity) of \$96,000,000 of consolidated bonds issued by the Port Authority; that the Port Authority was intended, under the terms of the Compact approved by Congress, to be a self-supporting public

agency whose obligations were to be and are payable from its net revenues and certain reserve funds; that the 1962 covenant was enacted to protect the Port Authority's existing and future bondholders from the diversion of pledged revenues and reserves to finance deficit mass transit facilities and further to preserve the Port Authority's credit standing; that the Port Authority notified prospective purchasers of its bonds of the existence of the 1962 covenant and purchasers relied on the covenant in purchasing bonds issued by the Port Authority, and that the secondary market for the Port Authority consolidated bonds has been adversely affected by the repeal act.

The complaint alleges that the repeal act violates the "impairment" and "taking" provisions of the Federal Constitution, *U. S. Const.*, Art. I, § 10 and Amends. V and XIV, and the equivalent provisions of the New Jersey Constitution, *N. J. Const.* (1947), Art. IV, § VII, par. 3; Art. I, pars. 1 and 20.

The answer filed by defendants asserts several defenses among which the following may be briefly noted: (1) the repeal act constitutes a reasonable exercise of the police power by the State; (2) the 1962 covenant itself violated the Federal Constitution because of lack of congressional consent; (3) the repeal act does not constitute an "impairment" of the contract since the obligation of the Port Authority to pay its bondholders remains intact; (4) the bondholders were on notice of the reserved powers of the State to repeal the 1962 covenant, and (5) the repeal act was adopted as a police power measure to meet a transportation crisis affecting the health, safety and welfare of persons residing within the District. Finally, the answer asserts a counterclaim for a declaratory judgment that the repeal act is constitutional.

A consent order was entered pursuant to *R.* 4:32-1 in the *U. S. Trust* action directing that the action be maintained and defended as a class action by *U. S. Trust* on

behalf of all holders of consolidated bonds of the Port Authority, and that notice to the class be deemed to have been given by means of the media publicity which was disseminated when the action was instituted. On December 10, 1974 the Gaby and U. S. Trust actions were consolidated by order of the court.

The parties to the U. S. Trust action have filed a 366-page stipulation of facts, accompanied by exhibits covering all phases of the case with the exception of two issues: (1) whether the purchasers of consolidated bonds issued by the Port Authority after the adoption of the 1962 covenant relied in fact upon the existence of the covenant, and (2) whether the repeal of the 1962 covenant adversely affected the secondary market for Port Authority bonds. These issues were the subject of a trial on February 4, 5, 6, 7 and 11, 1975, and the court's findings on the issues will be set forth *infra*.

*The Formation, Facilities and Financial Structure
of the Port Authority.*

1. *Formation and Facilities.*

In 1917 the States of New Jersey and New York established the New York, New Jersey Port and Harbor Development Commission (the Commission) to study the facilities and problems of the Port of New York and to recommend a plan for the future development of the Port.⁴ The Commission filed its *Report*⁵ on December 16, 1920

⁴The enabling legislation directed the commissioners to negotiate and agree upon a joint report recommending a policy for the states "to the end that said port shall be efficiently and constructively organized and furnished with modern methods of piers, rail and water and freight facilities * * *." The Commission was to work out "a comprehensive and adequate interstate and Federal port policy, to meet commercial needs in times of peace and the protection of the harbor and adjacent localities in times of war." L. 1917, c. 130.

⁵*Joint Report with Comprehensive Plan and Recommendations*, New York, New Jersey Port and Harbor Development Commission, 1920 (hereafter cited as the *Report*).

setting forth its findings, conclusions and recommendations. The core recommendation of the Commission was the creation by the two states of a common public agency by means of which the states would cooperate in the future development of the facilities of the Port in accordance with the comprehensive plan recommended by the Commission.⁶ *Report* at 436. In discussing the legal precedents for the establishment by the States of an agency having a substantial impact on interstate commerce, the *report* stated:

Permissive or restrictive, as the case may be, the power of Congress over the instrumentalities of interstate traffic is exclusive, when in a specific case it has been exercised. But this latter limitation, coupled with the broad police power of the State and its control of intrastate commerce, has left to New York and New Jersey a broad field within which they may act without express Federal consent. It is hoped, of course, by securing congressional approval of any plan which may be adopted, to avoid future conflict with the Federal authority over interstate unification and control of the Port. But for the present the States may act alone. [*Report* at 446]

Prophetically the Commission noted that

[o]ur port problem is primarily a railroad problem. * * * Therefore the comprehensive plan to evolve which this Commission was created is essentially a railroad plan. With the proper network of rail facilities, the development of other terminal facilities can follow along rational lines * * *. A complete reorganization of the railroad system is the most fundamental physical need of the Port of New York. [*Report* at 3]

However, the railroad problem upon which the Commission focused was not that of passenger transit but the handling and distribution of freight and cargo into and out of the Port District, and the comprehensive plan recommended by the Commission addressed itself exclusively to the transportation and distribution, not of persons but of freight

⁶The recommendation for a Compact between the States was originally contained in the Commission's preliminary report submitted in 1918.

and cargo by rail, and to a lesser extent by ship and motor truck. In its 474 pages plus appendices the only significant discussion of passenger traffic in the *Report* is contained in the section dealing with ferries and vehicular tunnels. After noting that the bulk of interstate passenger traffic was accommodated by the Hudson River ferries and that the impact of the Holland Tunnel (started in 1920) could not be forecast, the *Report* opined:

Vehicular tunnels offer little promise as a means of conveying passengers, and the one rapid-transit facility in existence between the two States, while operated to near capacity, is not sufficiently profitable to warrant optimism that others will be built. [*Report* at 330]

Following the submission of the Commission's *Report*, the Port of New York Authority⁷ was created pursuant to an interstate compact, signed April 30, 1921, between the States of New Jersey and New York. *N. J. S. A.* 32:1-1 *et seq.* The consent of Congress "to each and every part and article" of the Port Authority Compact was obtained effective August 23, 1921. *Pub. Res. No. 17*, 67th Cong. 1st Sess. The preamble of the Port Authority Compact states that "a better coordination of the terminal, transportation and other facilities of commerce in, about and through the port of New York, will result in great economies, benefiting the nation, as well as the states of New York and New Jersey," and that "the future development of such terminal, transportation and other facilities of commerce will require the expenditure of large sums of money, and the cordial co-operation of the States of New York and New Jersey in the encouragement of the investment of capital, and in the formulation and execution of the necessary physical plans."

Article I of the Compact contains the agreement and pledge by the two states of their "faithful co-operation in

⁷The name of the Port of New York Authority was changed to the Port Authority of New York and New Jersey on July 1, 1972. *N. J. S. A.* 32:1-4.

the future planning and development of the port of New York, holding in high trust for the benefit of the nation the special blessings and natural advantages thereof". Article II defines the Port of New York District, comprising an area of about 1500 square miles in both states within a radius of about 25 miles from the Statue of Liberty. Article III establishes the Port Authority as "a body corporate and politic, having the powers and jurisdiction hereinafter enumerated, and such other and additional powers as shall be conferred upon it by the legislature of either state concurred in by the legislature of the other, or by act or acts of congress." Article VI vests in the Port Authority "full power and authority to purchase, construct, lease and/or operate any terminal or transportation facility within [the Port] district"; to make charges for the use of such facilities, and "to borrow money and secure the same by bonds or by mortgages upon any property" held by the Port Authority. Article VII provides that the Port Authority "shall have such additional powers and duties as may hereafter be delegated to or imposed upon it from time to time by the action of the legislature of either state concurred in by the legislature of the other," and mandates that the Port Authority shall not pledge the credit of either State except with the consent of its legislature. Article XI requires the Port Authority to make plans for the development of the Port District supplementary to or amendatory of any plan theretofore adopted, and Article XII authorizes the Port Authority to "make recommendations to the legislatures of the two states or to the congress of the United States, based upon study and analysis, for the better conduct of the commerce passing in and through the port of New York."

Article XXII of the Compact defines "transportation facility" to include "railroads, steam or electric * * * and every kind of transportation facility now in use or hereafter designed for use for the transportation or carriage of per-

sons or property", and defines "railroad" as "includ[ing] railways, extensions thereof, tunnels, subways, bridges, elevated structures, tracks, poles, wires, conduits, power houses, substations, lines for the transmission of power, car barns, shops, yards, sidings, turnouts, switches, stations and approaches thereto, cars and motive equipment."

In 1922 the states, with the consent of Congress, adopted a Comprehensive Plan for the development of the Port of New York. *N. J. S. A. 32:1-25 et seq.; Pub. Res. No. 66, 67th Cong., 2d Sess.* The Comprehensive Plan sets forth the development program initially envisioned by the Commission for implementation by the Port Authority.

In the Plan, like the *Report* upon which it was based, unification of terminal operations and facilities, consolidation of shipments, adaptation and coordination of existing facilities, improvement of commercial rail, truck and water facilities and other freight handling improvements are set forth as principles to govern the development of the Port Authority. The Comprehensive Plan proposed to establish direct rail freight connections between New Jersey and Manhattan to furnish "the most expeditious, economical and practical transportation of freight especially meat, produce, milk and other commodities comprising the daily needs of the people." *N. J. S. A. 32:1-29.* Section 8 of the 1922 Comprehensive Plan statute denies to the Authority the power to levy taxes or assessments, and provides that the bonds or other securities issued by the Port Authority shall at all times be free from taxation by either state. *N. J. S. A. 32:1-33.* Finally, it should be noted that the power was reserved to the states to add to, modify or change any part of the Plan. *N. J. S. A. 32:1-26.*

Pursuant to the Compact, the Comprehensive Plan and subsequent amendments and supplements thereto, the Port Authority operates all of the interstate vehicular tunnels and bridges in the Port District, which include the Holland

Tunnel⁸, the Lincoln Tunnel, the George Washington Bridge, the Bayonne Bridge and the Arthur Kill Bridges. In addition, the Port Authority owns and/or operates the following facilities: Newark International Airport, Teterboro Airport, LaGuardia Airport, John F. Kennedy International Airport and two heliports; Port Newark, the Hoboken Port Authority Marine Terminal, the Elizabeth Port Authority Marine Terminal, the Columbia Street Marine Terminal, the Erie Basin Port Authority Marine Terminal and a Mid-Manhattan Consolidated Passenger Ship Terminal; the Port Authority Bus Terminal, the George Washington Bridge Bus Station and the Newark and New York Union Motor Truck Terminals; the Port Authority Trans-Hudson system (operated for the Port Authority through its wholly-owned subsidiary, the Port Authority Trans-Hudson Corporation) and the World Trade Center.

Excluding the 1921 Compact and the 1922 Comprehensive Plan, the Legislatures of New Jersey and New York have adopted 39 separately enacted, concurrent statutes authorizing the construction and financing of the foregoing facilities, the issuance of bonds and notes by the Authority, the regulation of suits against it, and the establishment of a general reserve fund for the payment of the Authority's obligations. None of these 39 statutes received specific Congressional consent.

2. The Financial Structure of the Port Authority

Under the terms of the Compact the power to levy taxes or to pledge the credit of either state was expressly withheld from the Authority. From its inception, with the exception of monies advanced as loans by the states, the Authority was

⁸The Holland Tunnel had been constructed by state commissions pursuant to a compact between the states which received the consent of Congress. In 1930 the Holland Tunnel was transferred to the Port Authority in order to enable it to honor its obligations to bondholders in the face of deficits incurred in connection with the Arthur Kill, George Washington and Bayonne Bridges. *L. 1930, c. 247.*

required to finance its facilities solely with money borrowed from the public and to be repaid out of the revenues derived from its operations. By reason of these financial limitations two concepts initially emerged which have played an important role in the realization of the purposes for which the Authority was created: first, the specific projects undertaken by the Authority should be self-supporting, *i. e.*, the revenues of each should be sufficient to cover its operating expenses and debt service requirements; and second, since the Authority is a public agency over which its creditors have no direct control, the bondholders should be protected by covenants with the Authority and with the states which have ultimate control over its operations.

The first facilities constructed by the Authority were vehicular spans linking Staten Island and New Jersey — the Arthur Kill Bridges — which were opened to traffic in 1928. A third Staten Island-New Jersey crossing, the Bayonne Bridge, was placed in operation in 1931. In that same year the George Washington Bridge was opened to traffic. With respect to each of these facilities the Port Authority was authorized to and did issue bonds in separate series to pay for the cost of acquisition of lands and construction. The revenues and tolls from each facility were statutorily pledged as security for the repayment of the series bonds issued in conjunction with the specific facility involved. *N. J. S. A.* 32:1-39, 62, 86. The States of New Jersey and New York advanced additional moneys to pay for the costs of construction, and the funds so advanced were accorded a subordinated status to the funds raised by the Authority from the sale of its own bonds to the public. *N. J. S. A.* 32:1-60, 63, 81, 87. The statutory authorizations for each project and its funding were declared to be “a contract or agreement between the two states for the benefit of those lending money to the port authority.” *N. J. S. A.* 32:1-65, 89.

The first bonds issued to the public by the Authority were “closed-end” bonds based on the estimated costs of each facility, and the Authority was prohibited from issuing more

bonds than the amount initially authorized for the project. See *Goldberg, A History of the Port of New York Authority Financial Structure* (1964), at 3 (hereafter cited as *Goldberg*). The gross revenues from each bridge were applied first to the payment of expenses of operation and maintenance of the bridge, then to the payment of debt service on its bonds, and the surplus, if any, was to be deposited in a separate reserve fund available only to the bondholders of that series. *Goldberg*, at 4.

As noted earlier, the initial facilities were not self-sustaining, and in 1930 the states transferred the control, operation and the revenues of the Holland Tunnel to the Port Authority to help place the Port Authority on a self-sustaining basis. *N. J. S. A.* 32:1-119. Simultaneously, the states enacted legislation, commonly called the General Reserve Fund Act, *N. J. S. A.* 32:1-142, and by the terms of that act the surplus revenues derived by the Authority from all facilities built with the proceeds of sale of its bonds are pooled so as to create a general reserve fund in an amount equal to 10% of the par value of all bonds issued by the Authority. The act pledges the general reserve fund as security for the payment of interest and principal on all bonds theretofore or thereafter issued by the Authority. Surplus moneys of the Authority in excess of the general reserve fund requirements may be used for any purpose authorized by the states.

The general reserve fund thus becomes available to bondholders to pay the debt service requirements of facilities which were not self-supporting. By this device the surplus revenues of the Holland Tunnel were used to pay the debt service requirements of the Arthur Kill and Bayonne Bridges and the George Washington Bridge. The general reserve fund was also envisioned as a security device to induce the public to invest in future facilities such as the then contemplated Lincoln Tunnel project. See *Goldberg*, at 7.

Following the enactment of the General Reserve Fund Act the Port Authority issued additional series of bonds to finance the construction of the Inland Terminal Building and to repay

the states for the amounts expended by them to construct the Holland Tunnel. *Goldberg*, at 5. In 1935 the Authority commenced the issuance of a new series of bonds, known as general and refunding bonds, the proceeds of which were used to refund all of the original bridge bonds issued by the Authority and to finance the initial construction of the Lincoln Tunnel. These bonds were secured by a pledge of the net revenues of all of the Authority's then existing facilities and by the general reserve fund. Under the terms of the resolution authorizing the issuance of general and refunding bonds the Authority also contracted to create a special reserve fund into which would be paid all net revenues in excess of those required to pay the operating expenses of the Authority's facilities, the debt service requirements for the general and refunding bonds, and to maintain the general reserve fund at its prescribed level. *Goldberg*, at 11. The authorizing resolution imposed limitations on the use of the special reserve fund for the benefit of the bondholders.

In 1947 the Authority commenced the issuance of air terminal and marine terminal bonds, the proceeds of which were used for the acquisition and construction of various airport and marine terminal facilities. These bonds were secured by a pledge of the revenues of the specific facilities financed thereby, as well as by a call upon the general reserve fund to the extent that revenues from the facilities were insufficient to pay operating expenses and debt service requirements. As in the case of the general and refunding bonds, the air and marine terminal bond resolutions provided for their own special reserve funds for the benefit of the bondholders of each of these series.

In 1952 the Commissioners of the Port Authority embarked upon a new scheme for future financing which abandoned the practice of earmarking specific facility revenues as security for its bonds. On October 9, 1952 the Authority adopted the Consolidated Bond Resolution (the CBR), authorizing the issuance of consolidated bonds to serve as the medium for financing its activities in furtherance of any purpose for

which the Authority is authorized to issue bonds secured by a pledge of the general reserve fund.⁹ Consolidated bonds constitute general obligations of the Authority, and all such bonds are equally and ratably secured by a pledge of the net revenues of all existing facilities and any additional facilities which may be financed in whole or in part by the issuance of consolidated bonds.¹⁰

With the adoption of the CBR the "self-supporting" facility concept which had governed earlier authority financing ceased to have the significance previously attached to it; for under the CBR the Authority's financial structure is based on a unitary enterprise concept and all revenues from all facilities are pooled. Individual facilities are not financed independently of the rest of the Authority. The facilities contribute their revenues for debt service on all Authority bonds according to their earning power and without regard to the amount of bonds issued for the construction of any particular facility.

While some facilities may not yield sufficient revenues to pay operating expenses and/or debt service requirements, what is of paramount concern to bondholders under the CBR is whether the total revenues of the Authority are sufficient to satisfy all of its obligations to bondholders. And in order to ensure that the abandonment of the "facility-by-facility" approach would not lead to a dilution of pledged revenues and reserves, the CBR contains covenants with the bondholders with respect to future operations and activities of the Authority and the issuance of bonds secured by a pledge of its revenues and reserves.

⁹The Authority covenanted, by the CBR, that no additional general and refunding, air terminal or marine terminal bonds shall be issued.

¹⁰As noted *infra*, although general and refunding, air and marine terminal bonds are still outstanding, the Authority has fully funded its obligations to those bondholders and the consolidated bonds presently have a first call upon all revenues of the Authority.

One of the principal protections afforded bondholders by the CBR is the so-called "1.3 test" contained in section 3.¹¹ The 1.3 test prohibits the issuance of new consolidated bonds unless the best one-year net revenues of all of the Port Authority's facilities equal or are greater than 1.3 times the prospective debt service for the calendar year during which the debt service of all outstanding and proposed new bonds secured by a pledge of the general reserve fund would be at a maximum.¹² The 1.3 test is thus an equation in which one component consists of the Authority's net revenues from all facilities, and the other component is the maximum annual debt service required to be paid on all Authority bonds, including the new bonds to be issued. The maximum annual debt service component is readily calculable from the requirements set forth in the resolutions authorizing the bond issues.

[1] The annual net revenue component of the equation consists of the Authority's historical net revenues from existing facilities¹³ plus the estimated average annual net revenues of the facility to be acquired or constructed with the issuance

¹¹While section 3 of the CBR provides alternate conditions for the issuance of consolidated bonds, in practice the 1.3 test described above is the least restrictive and has been the only one employed by the Port Authority since the adoption of the CBR. *Goldberg*, at 19.

¹²There is a dispute between the parties to this litigation whether a projected operating deficit of a facility to be acquired by the issuance of consolidated bonds must be deducted from net revenue for the purpose of determining whether the 1.3 test has been met. Under the terms of the CBR, if the facility to be acquired has been in operation for at least 36 months prior to the issuance of consolidated bonds, the annual operating deficit of the facility would be deducted from historical Authority net revenues in applying the 1.3 test. However, according to an Authority witness, if the facility to be acquired has not been in operation for at least 36 months, its projected operating deficit can be ignored. This view is contrary to the position of the Authority in statements made and testimony given to the Farley Committee. See *infra*, pages 152, 155-156.

¹³For this purpose the Authority is permitted to select any consecutive 12-month segment out of the 36-month period preceding the date of issuance of new consolidated bonds.

of new bonds.¹⁴ While the 1.3 test speaks only of estimated net revenues and not of "deficits," it is evident from the purpose of the 1.3 test as well as Authority practice in arriving at historical net revenues that the estimated average annual *deficits* of a new facility must be charged against historical revenues in determining whether the 1.3 test has been met. The purpose of the 1.3 test is to protect existing bondholders against dilution of pledged revenues and reserves; if consolidated bonds are issued to acquire or construct a substantial deficit operation whose drain on Authority revenues is not included in the earning's component, the 1.3 test would be meaningless. Further, it is to be noted that in calculating historical net revenues of existing facilities the Authority arrives at one pooled figure which takes into account the deficits of such facilities.

Section 5 of the CBR directs the application of the pledged revenues to the payment of debt service upon all consolidated bonds, with the remaining balance to be paid into the consolidated bond reserve fund except to the extent necessary to be paid into the general reserve fund to maintain it at the level prescribed by statute.

Section 6 of the CBR provides that the payment of debt service upon all consolidated bonds "shall be further secured equally and ratably by the General Reserve Fund." Moneys in the general reserve fund may not be used for any purpose if there are other moneys of the Port Authority available for that purpose, unless there are sufficient funds available to the general reserve fund to pay debt service upon outstanding bonds during the ensuing 24 months, in which event such excess moneys could be used for any purpose permissible under the General Reserve Fund Act, whether or not other moneys were available for that purpose.

Section 7 of the CBR establishes a consolidated bond reserve fund into which all net revenues pledged as security

¹⁴The estimated average annual net revenue is based on estimated revenues for the first 36 months of operation of the new facility.

for consolidated bonds (after payment of debt service on all consolidated bonds and of amounts necessary to bring the general reserve fund to its statutory level) are required to be paid. The moneys in the consolidated bond reserve fund may be used only for the payment of: (a) consolidated bonds at maturity, retirement or redemption; (b) debt service upon outstanding consolidated bonds; (c) the deficit of any facility the net revenues of which were pledged as security for consolidated bonds, and (d) "any other additional purposes for which the Authority is now or may hereafter be authorized by law to expend the revenues of its facilities." The pledge of the net revenues of the Authority and of the moneys in the Consolidated bond reserve fund is subject to the right of the Authority to apply the revenues and the reserve fund as provided in section 7, and the right to issue bonds, other than consolidated bonds, secured by the reserve fund if such other bonds "are issued solely to fulfill obligations to or for the benefit of the holders of consolidated bonds and if such other bonds are also secured by a pledge of the General Reserve Fund."

Since the adoption of the CBR, capital expenditures of the Authority have been financed by the issuance of 41 series of consolidated bonds and short term notes. New facilities and improvements to existing ones have been funded without regard to the individual project's ability to generate income. This has enabled the Port Authority to undertake projects which would not be financially feasible alone but are possible because of the surplus revenues generated by its other facilities.¹⁵ New projects undertaken since 1952 include the acquisition and/or construction of two heliports, the Brooklyn, Erie Basin, Elizabeth and Hoboken Marine Terminals, the Port Authority Trans-Hud-

¹⁵For the calendar year 1973, of the 22 facilities operated by the Authority, 14 were operated at a deficit, i. e., the gross revenues were not sufficient to cover operating expenses and debt service requirements.

son (PATH) System, a bus terminal and the World Trade Center.

With respect to each series of consolidated bonds issued, the Authority adopts an authorizing resolution. Section 7 of each series resolution prohibits the issuance of any additional consolidated bonds or any other bonds to be secured by a pledge of the general reserve fund with respect to any facility or group of facilities as to which the Authority has not previously issued bonds unless

* * * the Authority shall certify at the time of issuance its opinion that the issuance of such Consolidated Bonds or that such pledge of the General Reserve Fund as security for such bonds other than Consolidated Bonds will not, during the ensuing ten years or during the longest term of any of such bonds proposed to be issued (whether or not Consolidated Bonds), whichever shall be longer, in the light of its estimated expenditures in connection with such additional facility or such group of additional facilities, materially impair the sound credit standing of the Authority or the investment status of Consolidated Bonds or the ability of the Authority to fulfill its commitments, whether statutory or contractual or reasonably incidental thereto, including its undertakings to the holders of Consolidated Bonds; and the Authority may apply monies in the General Reserve Fund for purposes in connection with those of its bonds and only those of its bonds which it has theretofore secured by a pledge of the General Reserve Fund in whole or in part.

Each consolidated bond states that it "is issued pursuant to and in full conformity with the Compact between the States of New York and New Jersey creating the Authority, and the various statutes of said two States amendatory thereof and supplemental thereto, for purposes provided in said Compact and statutes". No specific statute is mentioned in the bonds.

On December 31, 1970 the Authority placed in trust with the First National City Bank, as trustee, \$60,749,000 from the Authority's special reserve fund, air terminal reserve fund and marine terminal reserve fund to secure fully, unconditionally and absolutely the Authority's obligation to provide for the redemption as scheduled and the payment of interest until redemption on the Authority's outstanding

general and refunding bonds, air terminal bonds and marine terminal bonds. After the establishment and during the maintenance of these trusts no further payments are required to be made into such reserve funds. As a result the pledge of Authority revenues and reserves to secure repayment of consolidated bonds is no longer subject to the prior lien in favor of the earlier series of bonds. The maintenance of the reserve funds in trust permits the application of all net revenues and reserves of the Authority to the payment of the consolidated bonds.

As of December 31, 1974 the issued and outstanding consolidated bonds of the Authority totaled \$1,668,584,000,¹⁶ the general reserve fund contained \$173,487,000 and the consolidated bond reserve fund \$46,800,000. Gross and net operating revenues for 1974 were \$410,412,000 and \$156,118,000, respectively. After debt service and sinking fund requirements were met the Authority had available for transfer to its reserve funds \$67,018,000, resulting in a net increase in its reserves of \$18,293,000 for the year.¹⁷

The Legislative History of the 1962 Covenant.

So far as the record reveals, the history of New Jersey's involvement with mass transit begins with the enactment of *chapter* 104 of the *Laws of 1922*. The Legislature there established the North Jersey Transit Commission¹⁸ to study

¹⁶This total includes \$200,000,000 of bonds issued as the 40th and 41st series following the prospective repeal legislation of 1973, which are not "affected bonds" and hence not covered by the terms of the 1962 covenant.

¹⁷As at December 31, 1974 the Authority owed to various banks on short term loans \$255,000,000. During 1974 the banks were repaid \$40,000,000, plus interest, from the consolidated bond reserve fund, which accounts for the difference between the amount available for transfer to the reserve fund and the actual increase in the reserve fund balance at the end of the year.

¹⁸The preamble to the North Jersey Transit Commission Act of 1922, see *infra*, notes that the Port Authority Comprehensive Plan

and report upon plans for providing a comprehensive scheme of rapid passenger transit¹⁹ between northern New Jersey communities and New York City. In its 1925 and 1926 reports this Commission noted both the urgent need for and complexity of a rapid transit plan for the northern New Jersey area which would furnish direct access to the midtown New York City area.

In 1927 the New Jersey Legislature authorized and directed the Port Authority to make plans to provide for rapid passenger transit between the states and within the Port District. Similar legislation was adopted in New York but was vetoed by Governor Alfred E. Smith, who in his veto message noted his unwillingness to have the Port Authority diverted from its principal objective of solving the freight distribution problems within the District. Governor Smith's veto to all intents and purposes ended any legislative effort to involve the Port Authority in an active role in commuter transit for the next 30 years.²⁰

The years between 1928 and 1958 were devoted to largely fruitless efforts by numerous groups, agencies and commissions to devise a solution for mass transit within the metropolitan New York-New Jersey area. No useful purpose would be served in cataloging their failures — which were not failures of purpose, effort or imagination, but the failure to find the source of funds required to implement any plan. In the meantime the financial position of existing com-

“does not include the problem of passenger traffic in the territory covered by said port development plan.” *L. 1922, c. 104.*

¹⁹For the purpose of this opinion the term “rapid passenger transit” has reference to transportation of passengers by railroad and will be used interchangeably with the terms “commuter transit” and “mass transit,” although the latter terms conceivably could involve means of conveyance other than by railroad.

²⁰In 1936 the states requested the Port Authority to report on interstate and suburban passenger transportation. *Jt. Res. No. Laws of 1936.* The Port Authority filed its report in 1937, which disclaimed its financial ability to undertake a solution to the transit problems of the District.

muter transit facilities continued to deteriorate. By 1955 the Hudson and Manhattan Railroad had filed a petition for reorganization under the federal bankruptcy laws,²¹ and the private railroads were petitioning the Interstate Commerce Commission for permission to abandon ferry service across the Hudson and to discontinue various passenger services because of substantial operating deficits.²²

In 1958 the Metropolitan Rapid Transit Commission²³ issued a report to the states of New Jersey and New York setting forth a proposal for the construction of a trans-Hudson loop commuter transit system at an estimated capital cost of almost \$500,000,000. The report noted the need to coordinate and to achieve a balance between highway and rail transportation systems. The Commission pointed out:

That balance does not exist today. The automobile drivers and the bus operators make use of roadways, tunnels, bridges and central area terminals which are tax free and are either publicly maintained or publicly developed out of user taxes and user fees. Private railroad companies must raise the capital (and pay the interest on it) to build their rights-of-way and provide the operating facilities, and must maintain them and pay taxes on them. Since 1930, billions of public dollars have been spent, and are still being spent, by federal, state and local governments in the development of highways, bridges and other facilities for vehicular traffic, but no public funds whatever have been spent during the same period in promoting or improving

²¹As of this date the four private companies which operate commuter railroad services in New Jersey are all being reorganized under federal bankruptcy laws.

²²By 1959 the four commuter railroads operating in northern New Jersey sustained a total passenger operating deficit of \$58,300,000. The New York commuter railroads had an aggregate deficit from commuter operations estimated at between \$10,000,000 and \$15,000,000 for 1960. The Staten Island Ferry operated at a loss of about \$6,000,000 for the year, and the New York City Transit System had an operating deficit of \$20,000,000, exclusive of debt service charges of \$87,000,000.

²³The New Jersey Metropolitan Rapid Transit Commission was created pursuant to *L. 1952, c. 194* and was consolidated with its New York counterpart by *L. 1954, c. 44*.

mass transportation by rail between the New York and New Jersey portions of the Metropolitan Area.

The imbalance has resulted in a constant and relentless deterioration of suburban rail service. Ferries are being abandoned, train service is reduced, petitions are filed for abandonments, cars are getting older without being replaced. Repeated increases in fares in an effort to match rising costs and to establish earnings which can be used to improve the properties are resisted by public regulatory bodies. The result is more constriction of service by railroads, with consequent further congestion of highway facilities. One very grave consequence has been the creation of a stupendous cycle of traffic congestion in the streets, constantly calling for still further enormous expenditure of public funds for still further vehicular traffic.

Obviously, the people and the governments within this New York-New Jersey Metropolitan area are now face to face with this looming crisis, and can no longer avoid it by conveniently looking the other way.

Capital for the construction of the trans-Hudson loop must be raised by a public agency and bonds issued by it must have some measure of public guarantee to be saleable. Revenue bonds for transit purposes have a bad reputation in the bond market because of the financial history and condition of transit systems. While it would be desirable that the users of the loop would pay through fares the full capital and operating cost all experience conclusively demonstrates otherwise. On the other hand, the public interest requires that the fares be established at a level to foster maximum usage and utility of the system and provisions must be made for possible deficits. In addition, it must be recognized that capital for construction and equipment cannot be secured merely by evidence that revenues will equal costs.

A study which had been prepared for the Commission on the financial structure of the proposed commuter transit system had suggested that "financing would not be available from any of the existing public authorities since this action would in some cases impair the obligations of the authorities' covenants with bondholders and would seriously affect the ability of the authorities to discharge the responsibilities for which they were established." Nevertheless, during the 1958 session of the New Jersey Legislature a bill was introduced (Assembly Bill No. 16) which provided that the Port Authority take over and financially develop, improve and operate interstate passenger rail transportation between

New Jersey and New York. The Port Authority submitted a statement to the Legislature in response to this bill in which it said, among other things:

This opposition is based on the conclusion of the Commissioners that: (1) It is legally, financially and contractually impossible for the Port Authority to assume the railroads' increasingly heavy deficits from commuter operations or the cost of developing a new and comprehensive rail rapid transit system; and (2) The assumption of rail transit deficits by the Port Authority, the self-supporting agency of the two States, would immediately cripple and very quickly destroy the program of the two States now under way for the continued development of their essential public port and harbor facilities, airports, and interstate arterial systems.

* * * * *

In addition to the General Reserve Fund, various special reserve funds have been created as a result of contractual commitments with bondholders in support of the various issues of Port Authority bonds. As in the case of the General Reserve Fund, the Authority may apply moneys in the Special Reserve Funds for purposes relating only to those of its bonds secured by a pledge of the General Reserve Fund, including purposes relating to facilities financed by such General Reserve Fund Bonds.

All Port Authority revenues not applied to operation and maintenance and debt service *must* be paid into one or another of these reserve funds. There are no excess revenues which are free of this contractual commitment to bondholders.²⁴ [Emphasis supplied]

In its statement to the 1958 Legislature the Authority suggested that even if it were possible to ignore legal restrictions on the use of Authority net revenues to finance commuter rail deficits, such a course of action would impair the Authority's credit standing and adversely affect the ability of the Authority to carry out its then existing programs. To reinforce this view the Authority solicited and included in its statement similar expressions of opinion from members of the investment banking community.

In January 1959 a joint report was issued on Assembly Bill No. 16 by the New Jersey Assembly Committees on

²⁴In view of recent developments it should be noted that in its statement the Authority also opposed an increase in tolls for the Hudson River crossing since this would constitute an "unfair tax" upon motorists to subsidize rail transit.

Highways, Transportation and Public Utilities, and on Federal and Interstate Transportation. This report concluded that the Port Authority could not be called upon to undertake the entire rail passenger transit obligation because (1) no one could estimate the size of the deficit operation the Authority would be undertaking, and (2) while the Authority could absorb some deficit, its operations, taken as a whole, must be self-supporting.

Pressures for financial aid to and Port Authority involvement in commuter transit continued to mount, and in 1960 the New Jersey Senate created a committee (known as the Farley Committee) to study the financial structure and operations of the Authority. One of the principal subjects investigated by the Farley Committee was the Authority's role in commuter transit. At the time the Committee's hearings commenced its immediate concern was to find a means to continue the operations of the bankrupt Hudson & Manhattan Railroad (H & M). The bankruptcy reorganization proceedings involving the H & M had reached the point where, in 1959, the District Court had left the H & M with sufficient cash for operations to continue for only two years. See *In re Hudson & Manhattan Railroad Co.*, 174 *F. Supp.* 148 (S. D. N. Y. 1959), *aff'd sub nom. Spitzer v. Stichman*, 278 *F. 2d* 402 (2 Cir. 1960). The Authority's Executive Director, Austin Tobin, testified before the committee concerning his discussions with New Jersey Highway Commissioner Dwight Palmer to have the Port Authority acquire and operate the H & M. Tobin testified in September 1960:

Faced with these legal and contractual commitments [to the Authority's bondholders], which are the whole basis of the Authority's credit, Commissioner Palmer and the Port Authority have been examining, beginning with our initial exploration of the possibility on last February 15, whether bi-state legislation could be fashioned under which the Authority might even acquire and finance the bankrupt and deficit-ridden Hudson & Manhattan properties and finance its modernization by the Port Authority as a new Port Authority facility.

In other words, could any legal and financial plan be worked out that would meet the foregoing contracts with investors and, from the standpoint of maintaining the Port Authority's credit, guarantee that the Authority would not thereupon become generally or further involved in the deficits of the commuter railroads, both in New York and in New Jersey? Obviously, unless such a covenant could be established no Port Authority bonds could be sold either for the acquisition of the Hudson & Manhattan properties or for any other Port Authority purpose.

Thus the core of the problem is whether or not the two States could, to use a phrase about it, 'build a statutory fence around' the Hudson & Manhattan by guaranteeing to investors that the Authority would not and could not become involved in the large and increasing deficits of the New York and New Jersey commuter railroads, which with the New York subways total a deficit of something like \$150,000,000 a year.

In January 1961 Commissioner Palmer appeared before the Farley Committee and expressed his conclusion that the Port Authority should purchase and operate the H & M provided limitations were placed upon the Authority's role in mass transit. On this subject he testified:

The Port Authority in my opinion must make money and accumulate reserves for the rainy day if it is to be equipped to meet the needs of our two states of New York and New Jersey. It does not have general taxing powers. Its only taxes are the tolls it collects from the users of its facilities. Its shareholders are the public, you and I, and the institutions that buy the bonds. Since the cost of financing often determines the feasibility of a project it stands to reason that you and I get more for our toll dollar in the way of modern and safe facilities if we make certain that the credit rating of the Authority remains intact.

Now most of us realize that the matter of credit is not an exact science. The credit of an organization depends on quite a few factors; past performance, efficient management and calibre of personnel and markets for the product the institution has to sell; and last but not least — what investors think of the operation, as a financial risk. It is, in the final analysis, the practical assessment of being repaid money that they lend to it.

Relating specifically to what ultimately became the 1962 covenant, Senator Wayne Dumont questioned Commissioner Palmer as follows:

Q. Commissioner, when the Port Authority made its proposal in September, at our hearings then, to take over the Hudson & Manhattan Tube, they surrounded their proposal with certain restrictions which, so far as I could tell were designed to eliminate any real obligation on the part of the Port Authority beyond taking over the Hudson & Manhattan Tubes, at least so far as the railroad field was concerned. Do you consider those restrictions that they surrounded this proposal with as reasonable ones? A. Yes, I do. And I have so stated in my proposal and I do it purely on the basis of what experience I may have had in the field of finance and industry, and of what we are hoping to obtain and acquire in the future in the expansion of facilities that the Port can supply.

* * * * *

And it seems impossible, from all of my direct — and not through any other channels — direct contacts, to observe that money could be loaned for even the acquisition of the H&M in the event there was not some assurance that this just wasn't one bite of the cherry and that further transportation business was all to be pulled together. I think it's simply a question of whether the investor says yes or no, and at the present time my observation is the investor says no unless he has that limitation.

The following day the Port Authority's Vice-Chairman, James C. Kellogg, III, testified concerning the Authority's H & M plans. He emphasized that only by adopting what became the 1962 covenant could the Port Authority acquire and rehabilitate the H & M.

There is, of course, no possibility whatsoever that either the Port Authority or any one else could operate the H&M on a self-supporting basis. The bankrupt H&M has not paid a dividend since 1932; it has not been able to meet the interest on its bonded indebtedness and has been in receivership since 1954.

* * * * *

On this estimate of the H&M losses [\$5 million annually], and if we are able to satisfy prospective investors by statutory assurances that this proposal will not involve the Authority's General Reserve Fund in any other or further commuter deficit operations, we believe we can conscientiously certify, as we must under our indentures, that this financing will not impair the Port Authority's credit. On the other hand, if we are not in a position to cite such statutory assurances to those from whom we will have to borrow the money, and therefore, we are not in a position to make such a certification, we obviously would not be in a position to borrow money for the acquisition, let alone the improvement, of the H&M.

* * * * *

All Port Authority revenues not applied to operation and maintenance and debt service *must* be paid into one or another of these

reserve funds. There are no excess revenues which are free from this contractual commitment to bondholders.

The most important pledges that the Port Authority has made to its bondholders are those relating to the issuance of bonds for new projects. These pledges were necessary since otherwise the security could be diluted, not only through the raiding of revenues and reserves, but just as disastrously by the unlimited issuance of bonds which have such revenues and reserves as their primary source of repayment.

It is because of this that the Port Authority had to covenant with its bondholders not to issue Consolidated Bonds supported by the General Reserve Fund for any new facility unless it can be demonstrated that, *including the new facility*, net revenues will be sufficient to cover by at least 1.3 times the maximum interest and principal payments due in any future year. Furthermore, bonds for a new facility cannot be issued with a pledge of the General Reserve Fund unless the Port Authority Commissioners certify that the issuance of the new bonds will not materially impair the sound credit standing of the Authority, the investment status of the Authority's bonds, or the ability of the Authority to fulfill its commitments and undertakings. Such protections for investors under open-end revenue bond issues are not uncommon.

Applied to the H&M proposal, I would like to make it clear that the question of whether or not we can borrow the \$83,500,000 which is required, is not simply a question of whether or not we would have to pay a higher rate of interest on these funds. We can only submit to you the unanimous view of the Commissioners of the Port Authority that there is no possibility whatsoever of borrowing the money at all without a statutory assurance to investors that any future Port Authority responsibilities in the field of commuter rail transport over and above the present and existing interstate Hudson and Manhattan railroad system will not involve a pledge of the Port Authority's General Reserve Fund.

I say to you as a New Jersey Commissioner, and with all the sincerity that I can command, that there is nothing arbitrary or doctrinaire about this conclusion. It simply represents the Port Authority's credit. My business is investment financing and I say to you gentlemen that I could not sell a single Port Authority bond without such an assurance. If my responsibility were on the other side of the table, I would not buy a Port Authority bond that did not contain such an assurance. [Emphasis supplied]

Following Kellogg's prepared statement he was questioned by Senators Farley and Cowgill as to the binding effect

which the proposed covenant legislation could have on a subsequent legislature. The questioning proceeded as follows:

BY SENATOR FARLEY:

Q. Mr. Kellogg, I noticed in the latter part of your statement, you said you must be given assurance by the Legislature that if they directed the Port to proceed to purchase this property, they must make a pledge to the bondholders there be no further projects involving rail. Now I appreciate that if the Legislature directs you to enter into a contract involving the issuance of bonds, there will be no impairment of obligations of contract, but I must call to your attention and the members of your Commission that one Legislature cannot bind a subsequent Legislature involving policy. If, perchance, may I illustrate — ten, fifteen, twenty years from now the respective legislatures of New York and New Jersey importune your Port Authority Commission to do something in addition involving public service, one legislature cannot bind another involving policy. Do you follow me? A. I do.

Q. I appreciate the legal end of it involving obligation of contract, but in your statement that you be given assurance that no further services should be required of you involving rail forever hereafter — and how this legislature could bind a subsequent legislature I do not know. A. We'd have to say that to the bondholders, the ones that were going to purchase the new bonds, that we as Commissioners believe that this would not endanger the 1.3 ratio.

* * * * *

BY SENATOR COWGILL:

Q. I want to clear one thing up. I got a little confused there for a minute on that policy business — in the event that the H&M were acquired on the basis of statutes passed by New Jersey and New York, they would not be called upon, that is, the Port Authority would not be called upon, to go into any further commuter problems of other roads. If bonds were issued under such legislation, you would not be able to issue any further bonds for anything else unless you were willing to certify that it would not — A. That's correct. It wouldn't say that the bonds couldn't be issued with a state guarantee later on for something else or something of that type, freight or anything else.

Q. It seems to me on that basis, that you enter a contract on the basis of legislation passed, that contract is going to stand and some later legislature is not going to be able to change it. A. That's right.

SENATOR FARLEY:

My question, Senator, was — and I appreciate we cannot impair obligations: In effect, would any commitment with the present legis-

lature estop or attempt to estop any legislation involving public needs in the future? [No answer was given at this point].

Commissioner Clancy of the Port Authority followed Commissioner Kellogg to the stand and the following colloquy took place directed to the same point:

SENATOR FARLEY:

I say to you as a commissioner representing New Jersey we too have a responsibility of making sure that this is done thoroughly, intelligently and in a way that would be feasible and practical. It was testified today by Mr. Kellogg that the Port should not be bound by any other demand from the State Legislature relative to rail service. I pointed out to him — and may I say to you as a lawyer — we well appreciate that any direction we give you by enacting legislation, we could not impair any obligation such as contracts of bond issues. Likewise, you as a lawyer know that one legislature cannot bind the other involving policy five, ten, or twenty years hence. A. I appreciate that.

Q. So that when this Committee makes its report, we are not exonerating the Port from any responsibility for any demand for future public service by either the New York or New Jersey legislature. I want you to appreciate that fact. A. I appreciate that fully and I am aware of the fact if a situation such as that would arise in the future, that would be a matter that we would have to discuss on its own merits with a future Governor and future legislature.

Q. That's right.

* * * * *

MR. TOBIN:

May I say something?

SENATOR FARLEY:

I want to call you, Mr. Tobin, relative to this situation. If you want to interject something at this time, we will be very happy to have you do so.

MR. TOBIN:

You might want to know that this legislative assurance, as Commissioner Kellogg pointed out, would only apply to future commuter

operations and only limits the use of the pledge of the general reserve fund. It only limits the pledge of the general reserve fund, nothing else. It would not typically bar Port Authority participation where some other scheme of guarantee of the bonds or something like that —

SENATOR FARLEY :

That would have to depend on its own merit or demerit and then be considered. But I call to your attention as a Commissioner the problem of the Legislature.

I am aware of the problem, but, of course, the action that is taken now with reference to the Hudson and Manhattan would not necessarily of itself bar future participation in the problem generally. It would, however, not be possible if that future participation involved any impairment of this reserve fund.

While the Farley Committee hearings were in progress the New York Legislature adopted legislation directing the Port Authority to acquire and operate the H&M, *Laws of N. Y. 1961, c. 312*, without any covenant against or limitation upon future Authority involvement in passenger rail transit. This legislation was not acceptable to the New Jersey Legislature because "the absence of such a covenant * * * endangered the future utility of the Port Authority to the two States." *Report of Senate Investigation Committee Under Senate Resolution Number 7 of the Year 1961*, at 23. The Committee's report, which was issued in 1963, notes that it sponsored the 1962 covenant legislation so as to limit

* * * by a constitutionally-protected statutory covenant with Port Authority bondholders the extent to which the Port Authority revenues and reserves pledged to such bondholders can in the future be applied to the deficits of possible future Port Authority passenger railroad facilities beyond the original Hudson & Manhattan Railroad system. [*Id.* at 24]

The 1962 covenant legislation was passed unanimously by both houses of the New Jersey Legislature on February 13, 1962 and Governor Hughes signed the bill on the same day. The New York Legislature followed suit on March 7, 1962, *Laws of N. Y. 1962, c. 209*, and the covenant legislation be-

came effective upon Governor Rockefeller's signature on March 27, 1962.

L. 1962, c. 8, authorized the Port Authority to proceed with the acquisition, construction and operation of a port development project which would include the World Trade Center and the H&M. *N. J. S. A. 32:1-35.52*. For this purpose the Authority was authorized to issue bonds for the project secured by a pledge of the general reserve fund. *N. J. S. A. 32:1-35.53*. The preamble of the act reflects the following legislative findings relevant to the H&M acquisition:

The States of New York and New Jersey hereby find and determine:

(1) that the transportation of persons to, from and within the Port of New York and the flow of foreign and domestic cargoes to, from and through the Port of New York are vital and essential to the preservation of the economic well-being of the northern New Jersey-New York metropolitan area;

(2) that in order to preserve the northern New Jersey-New York metropolitan area from economic deterioration, adequate facilities for the transportation of persons must be provided, preserved and maintained and that rail services are and will remain of extreme importance to such transportation of persons;

(3) that the interurban electric railway now or heretofore operated by the Hudson & Manhattan Railroad Company is an essential railroad facility serving the northern New Jersey-New York metropolitan area, that its physical plant is in a severely deteriorated condition, and that it is in extreme financial condition;

(4) that the immediate need for the maintenance and development of adequate railroad facilities for the transportation of persons between northern New Jersey and New York would be met by the acquisition, rehabilitation and operation of the said Hudson & Manhattan interurban electric railway by a public agency, and improvement and extensions of the rail transit lines of said railway to permit transfer of its passengers to and from other transportation facilities and in the provision of transfer facilities at the points of such transfers;

* * * * *

(8) that the Port of New York Authority (hereinafter called the port authority), which was created by agreement of the 2 States as their joint agent for the development of the transportation and terminal facilities and other facilities of commerce of the port district and for the promotion and protection of the commerce of their port, is the proper agency to act in their behalf (either directly or by or through wholly-owned subsidiary corporations) to effectuate, as

a unified project, the said interurban electric railway and its extensions and the [World Trade Center] * * * [N. J. S. A. 32:1-35.50]

The operative provisions of the covenant are contained in the first paragraph of § 6 of *chapter 8, N. J. S. A. 32:1-35.55*, and they are as follows:

The 2 States covenant and agree with each other and with the holders of any affected bonds, as hereinafter defined, that so long as any of such bonds remain outstanding and unpaid and the holders thereof shall not have given their consent as provided in their contract with the port authority, (a) the 2 States will not diminish or impair the power of the port authority (or any subsidiary corporation incorporated for any of the purposes of this act) to establish, levy and collect rentals, tolls, fares, fees or other charges in connection with any facility constituting a portion of the port development project or any other facility owned or operated by the port authority of which the revenues have been or shall be pledged in whole or in part as security for such bonds (directly or indirectly, or through the medium of the general reserve fund or otherwise), or to determine the quantity, quality, frequency or nature of the service provided in connection with each such facility; and (b) neither the States nor the port authority nor any subsidiary corporation incorporated for any of the purposes of this act will apply any of the rentals, tolls, fares, fees, charges, revenues or reserves, which have been or shall be pledged in whole or in part as security for such bonds, for any railroad purposes whatsoever other than permitted purposes hereinafter set forth.

“Affected bonds” are defined as including all bonds secured in whole or in part by the general reserve fund or any other reserve fund established by contract between the Authority and the holders of its bonds. Since all consolidated bonds are secured by a pledge of the general reserve fund, as well as the consolidated bond reserve fund, all outstanding consolidated bonds, with the exception of those of the 40th and 41st series,²⁵ are affected bonds under the terms of the covenant.

“Permitted purposes” as defined in the statute include: (1) the H&M as it existed on the effective date of the legislation;

²⁵See *infra* at 179-180.

(2) any railroad freight facilities owned by the Authority; (3) railroad tracks on vehicular bridges owned by the Authority; and (4) passenger railroad facilities (other than the H&M) only if one of two conditions is met: (i) the Authority certifies that such other railroad facility is self-supporting, or (ii) if the general reserve fund contains the required statutory amount (10% of all outstanding Authority bonds) and the Authority certifies that the deficit of such other facility, together with the deficits of all other passenger railroad facilities owned by the Authority, will not exceed "permitted deficits" as thereafter defined.

A passenger railroad facility may be certified as "self-supporting" if its estimated average annual net operating income for the first ten years of operations is at least equal to the estimated average annual debt service on bonds issued in connection with the facility.

A passenger railroad "deficit" is defined as the average estimated annual debt service upon the bonds issued for passenger railroad purposes over the first ten-year period of operations less the average estimated annual net operating income of the railroad facility, or plus the average estimated annual net loss of the railroad facility. To illustrate: If the average annual debt service requirement is \$10,000,000 and the average annual net operating income is \$5,000,000, the statutory deficit is \$5,000,000. If it is estimated that an average annual net loss of \$5,000,000 will be incurred from operations, the statutory deficit would be \$15,000,000.

A "permitted deficit" is a deficit which does not exceed (A) the amount of the passenger railroad deficit the payment of which one or both states is willing to guarantee for the period for which the Authority would be liable for such deficit, plus (B) the greater of (1) an amount equal to 10% of the general reserve fund at the end of the preceding calendar year less an amount equal to 1% of the Authority's bonds outstanding at the end of the preceding calendar year which were issued for passenger rail purposes (including the H&M), or (2) an amount equal to 10% of the amount

calculated under clause (1) plus 1% of the Authority's equity in all facilities other than passenger rail facilities.

Thus, assuming the States of New York and New Jersey enter into an agreement with the Authority to pay the deficit of a proposed passenger railroad facility, the deficit of such facility is a permitted deficit under the 1962 covenant and the Authority is authorized to issue its bonds for such purpose. In the absence of a guarantee by the states to pay any part of the deficit, the maximum permitted deficit must be calculated under (B) as reflected in the following illustration: Assuming the general reserve fund contains \$175,000,000 and the Authority has outstanding bonds issued for the H&M and other passenger railroad purposes in the amount of \$150,000,000, clause (1) permits the Authority to issue bonds secured by the general reserve fund if the estimated average annual deficits of all its passenger rail facilities, including the proposed facility, do not exceed \$16,000,000 (\$17,500,000 - \$1,500,000). Assuming the same facts and an Authority equity in nonrailroad facilities of \$1,200,000,000, under clause (2) the permitted deficit would be \$13,600,000 (\$1,600,000 + \$12,000,000). Hence, on the assumed facts, since the amount calculated under clause (1) is greater, the permitted deficit would be \$16,000,000²⁶.

On September 1, 1962, following enactment of the 1962 covenant legislation referred to above, the Port Authority, through a wholly-owned subsidiary (Port Authority Trans-Hudson Corporation or PATH), assumed ownership and operating responsibilities over the H&M. The Commissioners' 1962 certification with respect to the acquisition of the PATH System was made on the basis of an opinion of A. Gerdes Kuhbach, the Director of Finance of the Port Authority,

²⁶Since the annual deficits of the H&M (operated by the Authority under the acronym PATH) are substantially in excess of the permitted deficits calculated under 1963 covenant formula, the covenant prohibits the Authority from issuing any bonds for passenger rail purposes which would be secured by a pledge of the reserve funds of the Authority. See *infra* at 165.