THE STATE OF SOUTH CAROLINA
In The Supreme Court
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Jasper County . . . . . **Petitioner,**

vs.

South Carolina State Ports Authority . . . . . **Respondent.**

PETITION FOR RELIEF

This is a lawsuit in which Petitioner is seeking declaratory relief, pursuant to S.C. Code Ann. § 15-53-30, to determine the rights and obligations of the parties under S.C. Code Ann. § 54-3-115, enacted in 2009, entitled "Development of port in Jasper County." Petitioner seeks an order from this Court declaring that Respondent South Carolina State Ports Authority is violating the legislative mandate of § 54-3-115 which requires the SCSPA to "expeditiously develop a port in Jasper County" by imposing a condition and delay on the development of a port until Charleston is out of capacity, which according to the Respondent would be no earlier than 2035.

PARTIES

1. Jasper County is a rural, economically disadvantaged county with an estimated population of 28,458 in the southernmost part of South Carolina, and the location of the proposed Jasper Ocean Terminal ("JOT"), a maritime container terminal on an approximately 1,500-acre site along the South Carolina side of the Savannah River. Based on this and further factual allegations set forth herein, Jasper County has a real and substantial interest in the subject matter of this action.

2. The South Carolina State Ports Authority ("SCSPA") is a state agency of South Carolina, created and operating under S.C. Code Ann. § 54-3-10, with its headquarters in Charleston,

South Carolina. The SCSPA does business in Jasper County and has been legislatively mandated to develop the JOT.

Further Factual Allegations[2]

3. In 2005, the SCSPA commenced a declaratory judgment action against Jasper County to prevent the county's development of a port.

4. This Court held that both Jasper County and the SCSPA had the power to condemn a port site and build a port but that the SCSPA had a superior power. S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 629 S.E.2d 624 (2006).

5. Following this decision, in 2007, the General Assembly passed Act 56, which directed the SCSPA to complete the condemnation action and established a comprehensive plan and timetable for the development of the port. The SCSPA has clearly disregarded the deadlines directed by the General Assembly for the actions necessary to move toward the construction phase, as well as the requisite notification to interested parties, including Petitioner.

6. A bi-state task force was then formed and commissioned studies to explore the opportunity for port development, and in 2008, the JOT Joint Project Office ("JPO") was created as the leadership of the project under an Intergovernmental Agreement between South Carolina and Georgia.[3] Despite its significant interest and efforts to participate, Jasper County was denied a voice in the Agreement.

7. In 2009, the General Assembly enacted legislation through Act 73, codified at § 54-3-115, mandating that the SCSPA expeditiously build a port in Jasper County.

---

[2] Petitioner has made every effort to cite to public authorities to support the facts listed in the Petition.

[3] Jasper Ocean Terminal, https://www.portjasper.com (last visited Oct. 20, 2018). At this time, Petitioner has access only to the First Amendment to Intergovernmental Agreement.

Section 54-3-115 provides:

> The authority shall take all action necessary to **expeditiously** develop a port in Jasper County in accordance with the Intergovernmental Agreement for Development of a Jasper Ocean Terminal on the Savannah River within the State of South Carolina that was entered into between the South Carolina State Ports Authority, the Georgia Ports Authority, and the Georgia Department of Transportation dated on January 27, 2008. In determining whether the development of a Jasper Port is proceeding in an expeditious manner, the board must consider whether timelines or benchmarks included in either the Intergovernmental Agreement or amendments to it or other agreement with a partner to develop the port have been or will be met in a timely manner. **A determination that a delay in the planning or construction of the port is reasonable must be based on an objective analysis of all available empirical data and expert opinion**, as well as a comparison of the construction timelines of ports of similar size and expected capacity. If it is determined that a partner to an agreement to develop the port is not meeting its obligations that will result in the port not being developed in an expeditious manner, then the authority must take all available and necessary action to compel the partner to meet its obligations and, if necessary, terminate the agreement and transfer to Jasper County the assets and right to develop the port. The authority also shall take all action necessary and as may be requested from time to time by the committees in the House of Representatives and the Senate in connection with the State of South Carolina and the State of Georgia to enter into an Interstate Compact to operate a Jasper Port on or before December 31, 2010, as such compact is generally outlined in the Intergovernmental Agreement. In connection with the development of a port in Jasper County, the authority shall make specific inquiries regarding the merits of using private capital to finance the construction of that port to a greater extent than historically has been used by the South Carolina State Ports Authority in connection with their existing port operations.

(Emphasis added).

8. Over the next several years, due diligence and baseline studies were prepared to develop the JOT concept further. The economic boost to Jasper County has been estimated to be enormous. A 2010 study anticipated that more than 900 jobs would result from construction alone, with the potential for one million jobs created upon completion of the terminal with $9 billion in tax revenue for South Carolina and Georgia.[4]

[4] See Zach Murdock, Game-changing Jasper port finally has a timeline, The Island Packet (Aug. 16, 2015), available at https://www.islandpacket.com/news/business/article33704286.html.

9. In March 2011, the JPO issued an update on the JOT. In addition to reporting the vast economic benefits and value the project would bring on an international scale, the JPO also reasoned why the JOT should move forward expeditiously, as required by the statute, in conjunction with the expansions and harbor deepening in Charleston and Savannah:

> But, we're not at capacity yet, so why plan the Jasper Ocean Terminal now?
>
> There are several reasons planning has begun and must continue.
>
> First, it will take eight years (or more) to plan and permit a major ocean port, two more to design it and three to buil[d] it. As a result, any delay in moving ahead with the project subjects Georgia and South Carolina to losing market share when demand is at its greatest.
>
> Also, the influx in trade is coming regardless. Emerging trade patterns from the Far East, strong export markets and population growth in the Southeastern U.S., the expansion of the Panama Canal and the increasing use of the Suez Canal as a trade route all point to increased shipping traffic on the East Coast. If forward-thinking action isn't taken now to accommodate this growth, that traffic will bypass our region and move elsewhere, putting our businesses and economy at a disadvantage.[5]

10. In November 2015, the JPO reported that the due diligence period was complete and the JOT project was submitted to the U.S. Army Corps of Engineers to formally commence the regulatory review process.[6] Although this milestone was reached, it was years behind the September 1, 2010 date of completion called for by the SCSPA and the GPA in their Intergovernmental Agreement.

11. Also in November 2015, the SCSPA and the GPA entered into a revised agreement, the so called Joint Venture Agreement, that superseded the Intergovernmental Agreement, continued

---

[5] Joint Project Office, An Update on the Jasper Ocean Terminal, March 11, 2011, available at https://dc.statelibrary.sc.gov/bitstream/handle/10827/9691/SPA_An_Update_on_the_Jasper_Ocean_Terminal_2011-3-11.pdf?sequence=1&isAllowed=y.

[6] Jasper Ocean Terminal, supra; Jasper Ocean Terminal Project EIS, www.jasperoceanterminaleis.com/DocumentLibrary.aspx (last visited Oct. 20, 2018).

the efforts to develop the JOT, and created leadership under the JOT Joint Venture Board of Directors.[7] As with the Intergovernmental Agreement, Jasper County lobbied for and was refused participation in this new agreement.[8]

12. The Joint Venture Agreement provides that phases of the JOT would **need to be "reasonably justified"** by capacity needs.[9] This contractual condition and unreasonable delay is not authorized or supported by any legislative language. **In its entirety, Section 4(g) of the Joint Venture Agreement provides:**

> **Phasing. The Jasper Ocean Terminal shall be completed in phases that must be reasonably justified based upon current capacity and container traffic demand scenarios which establish the economic viability of additional terminal capacity. The initial phase will be sequenced with improvements to or construction of facilities existing or permitted by the GPA or the SCSPA.**

13. In 2016 and 2017, environmental impact and feasibility studies were initiated.[10] Until this year, Petitioner has had reason to believe that the JOT project was progressing forward sufficiently so as to comply with the statutory directive and be operational by the mid 2020s, a timeframe which had been consistently confirmed by the Governor's office.

14. However, in March 2018, the SCSPA issued a press release stating that the JOT would not proceed until capacity is exhausted in Charleston and would not be needed until 2035 or

---

[7] Jasper Ocean Terminal, supra.

[8] Despite its requests, Jasper County has not been included on any of the leadership boards involved with the negotiation and planning of the JOT.

[9] Id.; South Carolina State Ports Authority Revenue Bonds, Preliminary Official Statement Dated May 18, 2018, available at https://www.munios.com/munios-archive.ashx?e=H0NF2; see also Stephen Fastenau, Supporters say a major Jasper Co. project needs a kick-start. Here's what's planned, The Island Packet (Jul. 10, 2018), available at https://www.islandpacket.com/news/politics-government/article214615225.htm.

[10] Jasper Ocean Terminal, supra; Jasper Ocean Terminal Project EIS, supra.

later.[11]

15. In response to the lack of progress, the General Assembly has more recently directed the SCSPA to take action with respect to the JOT by including Proviso 88.6 in the 2018-19 budget, effective July 1, 2018, stating that the SCSPA "shall comply with the directive of Section 54-3-115 of the South Carolina Code in regard to taking 'all action necessary to expeditiously develop a port in Jasper County.'" Proviso 88.6 further directs the SCSPA to furnish a detailed written report to the legislature by the first day of 2019 legislative session and another report by June 30, 2019 that describes the progress and plans for the JOT.

16. Upon information and belief, the SCSPA continues to spend tens of millions of dollars, if not hundreds of millions of dollars, on expanding the port of Charleston, and related inland support facilities, for the port of Charleston.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

17. Petitioner restates and incorporates herein each and every allegation contained in the preceding paragraphs as though fully set forth herein.

18. Pursuant to S.C. Code Ann. § 15-53-30 of the Declaratory Judgments Act, Petitioner asks this Court to determine the rights and obligations of the parties under § 54-3-115.

---

[11] South Carolina State Ports Authority Revenue Bonds, supra; see also David Wren, SC senator worries Port of Georgia expansion will kill Jasper port plans, The Post and Courier (Sept. 21, 2018), available at https://www.postandcourier.com/business/sc-senator-worries-port-of-georgia-expansion-will-kill-jasper/article_b16170b6-bd23-11e8-a7a6-eba84402e5b1.html; Maayan Schechter, SC doesn't have $5 billion for Jasper port. But that isn't what is stalling it, some say, The State (Jul. 23, 2018), available at https://www.thestate.com/news/politics-government/article215350140.html; Jamie Lovegrove, Delayed target date for Jasper Ocean Terminal rankles South Carolina state senator, The Post and Courier (Feb. 21, 2018), available at https://www.postandcourier.com/politics/delayed-target-date-for-jasper-ocean-terminal-rankles-south-carolina/article_256c7e80-172d-11e8-81c5-2743bbf27338.html.

19. Section 54-3-115 requires the SCSPA to "expeditiously develop a port in Jasper County." The SCSPA's subsequent attempt, through the Joint Venture Agreement, to delay and condition the development of the port on the capacity of another facility directly violates the legislative requirement to act "expeditiously." **Petitioner seeks an order declaring that the term "expeditiously" does not depend on the capacity of the Charleston port and that the SCSPA is violating the legislative mandate** to develop the JOT by imposing such a delay and condition.

20. While § 54-3-115 outlines criteria to assess whether a delay in planning or construction is reasonable, **the SCSPA has deliberately avoided any attempt to demonstrate that Section 4(g) of the Joint Venture Agreement is based on "an objective analysis of all available empirical data and expert opinion, as well as a comparison of the construction timelines of ports of similar size and expected capacity," as required by the statute.**

21. Instead, the SCSPA unilaterally conditioned the planning and construction of the JOT on the exhaustion of the Charleston port capacity, a factor which was not provided for by the legislative directive as a permissible reason to delay the project. The SCSPA has also failed to point to construction timelines of other ports as justification for the delay; rather, the SCSPA has made every effort to promote, publicize, fund, and bring the Wando Terminal enhancements and the Leatherman Terminal to a speedy conclusion.

22. Further, the SCSPA made the decision to delay and condition the development of the JOT without involving vitally interested parties, including Petitioner. The SCSPA then announced the delay to the surprise of the legislators and public, both of which had consistently heard from the Governor's office that the JOT would be operational by 2025.

23. Additionally, upon information and belief, the capacity condition is an anti-trust

arrangement that violates public policy; ultra vires because it conflicts with statutory law; and in derogation of Article XIV, Section 1 of the South Carolina Constitution because it effectively deprives Jasper County citizens, and all citizens of this state, of the use of any part of the commercially navigable portion of the Savannah River.

24. **In addition to lacking legislative authority,** the SCSPA's imposed condition and delay until 2035 or later ignores the rationale and consequences that the JPO itself provided in its 2011 project update, that delays in moving forward with the JOT will result in losses in market share and traffic moving elsewhere. Georgia has recently announced its consideration of other expansion options within its state, including a bridge replacement, to provide access for next-generation ships that the JOT would be able to accommodate. The extreme inertia demonstrated by the SCSPA in moving forward with the JOT leads legislators, the public, and Petitioner to conclude that the SCSPA's intent may be to delay the project indefinitely until it is rendered obsolete.

25. Upon a finding that the SCSPA is "not meeting its obligations" to "expeditiously develop a port," Petitioner respectfully requests this Court to enforce the mandate provided in § 54-3-115 to compel Respondent to take the actions necessary for expeditious development of the JOT.

WHEREFORE, Petitioner prays for an order declaring that the SCSPA is not complying with the legislative requirement of § 54-3-115 to "expeditiously develop a port in Jasper County"; the SCSPA has wrongfully imposed a condition and delay on the development of the JOT until the Charleston port has exceeded capacity; and Section 4(g) of the Joint Venture Agreement **is a legal nullity**. Upon a finding by this Court that the JOT is not being expeditiously developed (as called for by the legislation), Petitioner requests this case be

remanded to a lower court or special master for further findings and an appropriate remedy consistent with this Court's own conclusions, whatever they may be.

Respectfully Submitted,

Warren P. Johnson (SC Bar No. 71759)
Law Office of Darrell Thomas Johnson, Jr. LLC
300 Main Street
Post Office Box 1125
Hardeeville, SC 29927
Office Phone: (843)784-2142
wpj@johnsonslawoffice.com

and

Stephen A. Spitz (SC Bar No. 5287)
Irish "Ryan" Neville (SC Bar No. 76513)
Stevens & Lee, P.C.
151 Meeting Street, Suite 350
Charleston, SC 29401
Office Phone: (843) 414-5080
sasp@stevenslee.com
irn@stevneslee.com

and

David L. Tedder (SC Bar No. 7222)
Jasper County Attorney
358 Third Avenue
Ridgeland, SC 29936
Office Phone: (843) 717-3688
dtedder@jaspercountysc.gov