

No. 38297-1-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

**APL Limited, American President Lines, LTD.,
and Eagle Marine Services, LTD**

Appellants,

v.

Washington State Department of Revenue,

Respondent.

Brief of Appellants

Scott M. Edwards, WSBA No. 2645
D. Michael Young, WSBA No. 639
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Attorneys for Appellants

STATE OF WASHINGTON
BY CM
DEPUTY

09 FEB 23 PM 2:22

FILED
COURT OF APPEALS
DIVISION II

Table of Contents

Assignments of Error..... 1

Issues Presented..... 1

Statement of the Case 1

A. The Terminal 5 Container Cranes 1

B. Procedural History.....5

Argument7

A. The Superior Court improperly based its summary judgment ruling on two erroneous factual inferences it made against the non-moving party; The Terminal 5 Container Cranes do not move between terminals and are not removed to permit cruise ships to dock there.7

B. The Terminal 5 Container Cranes are annexed to Terminal 5.....10

Conclusion..... 15

APPENDIXA-1

Table of Authorities

Cases

<i>Chase v. Tacoma Box Co.</i> , 11 Wash. 377, 39 Pac. 639 (1895).....	13, 15
<i>Dep't of Labor and Industries v. Davison</i> , 126 Wn. App. 730, 109 P.2d 479 (2005)	12
<i>Dep't of Revenue v. The Boeing Co.</i> , 85 Wn.2d. 663, 538 P.2d 505 (1975)	12, 13, 14
<i>Fleming v. Smith</i> , 64 Wn.2d 181, 390 P.2d 990 (1964)	8
<i>Hall v. Dare</i> , 142 Wash. 222, 252 P. 926 (1927)	11, 13, 15
<i>Mostrom v. Pettibon</i> , 25 Wn. App. 158, 607 P.2d 864 (1980).....	8
<i>Nearhoff v. Rucker</i> , 156 Wash. 621, 287 P.2d 1231 (1930).....	11, 13, 15
<i>Seatrain Terminals of Calif. Inc. v. Alameda County</i> , 147 Cal. Rptr. 578 (Cal. Ct. App. 1978).....	14, 15
<i>Security State Bank v. Burk</i> , 100 Wn. App. 94, 995 P.2d 1272 (2000).....	6, 8
<i>Strain v. Green</i> , 25 Wn.2d 692, 172 P.2d 216 (1946).....	11
<i>Snedeker v. Warring</i> , 12 N.Y. 170 (N.Y. 1854).....	14
<i>Voorde Poorte v. Evans</i> , 66 Wn. App. 358, 832 P.2d 105 (1992).....	8
<i>Western Ag Land Partners v. Dep't of Revenue</i> , 43 Wn. App. 167, 716 P.2d 310 (1986)	5, 13, 14, 15
<i>Wilson v. Steinbach</i> , 98 Wn.2d 434, 656 P.2d 1030 (1982).....	8

Statutes

RCW 82.32.180 5
RCW 82.32.410 11

Other Authorities

1 George W. Thompson, *Commentaries on the Modern
Law of Real Property*, §55 (1964) 10
Washington Department of Revenue Determination No. 89-
55, 17 Wash. Tax Determinations 151 (1989)..... 11

Assignments of Error

1. The trial court improperly based its grant of summary judgment on factual inferences that were (a) adverse to the non-moving party, (b) contrary to the record, and (c) wrong.
2. The trial court erred in ruling that the Terminal 5 Container Cranes are not annexed to Terminal 5.

Issue Presented

1. Whether a grant of summary judgment may be based on erroneous factual inferences adverse to the non-moving party?
2. Whether the five Terminal 5 Container Cranes are annexed to Terminal 5 under the specific circumstances of this case: (a) the cranes were specially designed, built for, and installed as an integral part of Terminal 5 by the terminal's owner (the Port of Seattle); (b) the cranes are essential to the Terminal's functioning for its sole purpose as a container terminal; and (c) the cranes are installed on steel rails embedded in a concrete apron, held in place by their massive 800-ton weight, and hard-wired to a dedicated high voltage electrical substation?

Statement of the Case

A. The Terminal 5 Container Cranes.

In late 1985 the Port of Seattle ("Port") entered a 30-year lease ("Lease") with appellants (collectively "APL"), for a state-of-the-art

marine facility the Port would build at Terminal 5 to load and unload shipping containers from container ships (the “Terminal 5 Facility”). CP 35 (Lease, p. 1). As the functional centerpiece of the new facility, the Lease required the Port to construct four container cranes designed specifically for Terminal 5, and granted APL the option for a fifth crane, which option APL exercised. CP 36. These five cranes are collectively referred to as the “Terminal 5 Container Cranes.”

The Port and APL developed specifications for the Terminal 5 Container Cranes to function as integral components of Terminal 5, tailored to the dimensions of Terminal 5’s apron, its weight-bearing capacity, the dimensions of the container ships it serves, and other characteristics. CP 201. Just as for buildings and other permanent structures, design criteria for the Terminal 5 Container Cranes included storm wind loads, seismic (earthquake) loads, and ambient temperatures. CP 229.

Key components of the Port’s Terminal 5 Facility are: (1) berths to load and unload container ships; (2) the container crane system, whose major parts are (a) the Terminal 5 Container Cranes, (b) a dedicated high-voltage electrical system that powers the Terminal 5 Container Cranes, (c) steel crane rails embedded in a concrete apron, and (d) the apron itself, which was constructed to support the Terminal 5 Container Cranes; and

(3) the container yard. CP 199. The container crane system is an essential and integral component of the Terminal 5 Facility, necessary to perform the Terminal's sole function of moving cargo containers from ships to rail cars and truck chassis, and vice versa. CP 200. The berth, apron, cranes, crane rails, and wharf were designed and built exclusively for the purpose of servicing container ships, and the Terminal 5 Container Cranes were designed specifically for loading and unloading containers at Terminal 5. CP 201.

To support and operate the Terminal 5 Container Cranes, the Port had to embed a new landside crane rail in the concrete apron 100 feet from the waterside rail, upgrade the waterside rail, and make major structural improvements to the wharf to enable it to support the massive weight of the Terminal 5 Container Cranes. CP 228. The crane rails are embedded in the wharf and extend approximately 2,900 feet parallel to the three end-to-end Terminal 5 berths, each designed to accommodate container ships up to 1,000 feet long. CP 205, 112. Thus, contrary to the lower court's "finding" on summary judgment (RP 27, lines 2-4), the crane rails do not even run the full length of the Terminal 5 berths or the terminal itself let alone connect Terminal 5 to any other terminal.¹ Rather the function of the crane rails is to enable the Terminal 5 Container Cranes to access the

¹ As can be seen from the map at CP 213, Terminal 5 is not even contiguous with any of the Port's other terminals. A color copy of CP 213 is provided at A-1.

thousands of shipping containers stacked up to 6 high above deck and 16 rows deep along the length of the up to 1,000-foot long container ships that call on Terminal 5. CP 217.²

The Terminal 5 Container Cranes are steel structures 198 feet tall, 85 feet wide, and more than 370 feet long. They are taller than a 15-story building with the boom lowered (or a 24-story building when the boom is raised) and are longer than a football field. CP 227. The Cranes weigh over 800 tons (equivalent to eight houses) each. *Id.* They are powered by a dedicated high-voltage (4,160 volt) electrical power system, including a substation built specifically for the Terminal 5 Container Cranes, to which they are wired by cables that are more than two inches thick. *Id.* With a peak power load of 1,000 kilowatts each, the five Terminal 5 Container Cranes have a power load equivalent to about 4,000 single-family homes. CP 227, 235. The photographs at CP 220-23 show the mass of the Terminal 5 Container Cranes – the 18-wheeler tractor-trailer rig that looks tiny in the first photo provides a point of reference. In the photos, the Port of Seattle’s logo is painted on the crane’s machinery house, which alone is 41 feet long by 27 feet wide by 15 feet tall – about the same footprint as a single-family home.

² Terminal 5 services cargo ships with a capacity of up to 6,600 TEU’s (twenty foot container equivalent units, a measure based on standard cargo containers 20 feet long by 8 feet wide by 8 ½ feet high. CP 217.

After the components for the Terminal 5 Container Cranes were manufactured, they were barged to Terminal 5, where they were constructed in place, installed on the Terminal 5 crane rails, and hard wired to the dedicated high-voltage electrical substation. CP 202, 217, 229. Consistent with the terms of the Lease and the Port's strategy for and investment in Terminal 5, the Terminal 5 Container Cranes have been in continuous service at Terminal 5 since their construction there over 20 years ago. CP 38, 202, 206, 217, 229. Contrary to the lower court's "finding" on summary judgment (RP 27, lines 4-7), the Terminal 5 Container Cranes have *never* been removed from their crane rails to accommodate cruise ships. CP 112, 199, 206, 229.

B. Procedural history.

APL filed this suit under RCW 82.32.180 for a refund of sales tax paid on the Terminal 5 Container Cranes, which are part of the Port's Terminal 5 Lease to APL. CP 5. Because sales tax does not apply to real property, APL's refund claim turns on whether the Terminal 5 Container Cranes are fixtures (real property) or personal property.

Whether an article is real property or personal property is a mixed question of fact and law. *Western Ag Land Partners v. Dep't of Revenue*, 43 Wn. App. 167, 170, 716 P.2d 310 (1986). Consequently, APL expected that this case would proceed to trial following the completion of

discovery. The Department, however, filed a motion for summary judgment seeking dismissal of APL's complaint. CP 9.

The parties agree that, as a matter of law, the most important factor determining whether an article is real or personal property is the owner's *intent* with respect to the article. CP 182. As the Department itself explained "the cranes could be either personal property or fixtures constituting real property depending on the intent of the Port at the time the cranes were affixed to the real property." CP 21.

Possibly in recognition of this Court's holding that summary judgment is not warranted when different inferences can be drawn from the evidence regarding ultimate facts such as intent, *Security State Bank v. Burk*, 100 Wn. App. 94, 102, 995 P.2d 1272 (2000) (discussed at CP 181), the judge below stated that he was "troubled" by the parties' agreement regarding the primary importance of intent in determining whether the Terminal 5 Container Cranes are fixtures. RP 25, lines 18-21.

Although the parties' briefs and oral argument focused on the dominant issue of intent, the lower court expressly declined to address that issue and instead ruled that the Terminal 5 Container Cranes are not annexed to Terminal 5, a ruling expressly based on two erroneous factual inferences drawn adverse to APL, the non-moving party. RP 27-29. This appeal follows.

Argument

The lower court's entry of summary judgment against APL, the non-moving party, was based on two erroneous factual "findings" inferred by the trial court judge. The court's inferences were not only contrary to the evidence in the record, but contrary to the fundamental principles governing summary judgment. The lower court also applied the wrong legal standard to the sole question it decided on summary judgment – whether the Terminal 5 Container Cranes are annexed to Terminal 5.

The undisputed facts unequivocally establish that the Port annexed the 800-ton Terminal 5 Container Cranes as an integral part of the Terminal 5 Facility, essential to perform the container loading and unloading for which Terminal 5 was built. They were specifically designed for Terminal 5; constructed and installed on site on crane rails embedded in concrete in a specially reinforced apron; and hardwired to a specially-built, dedicated high-voltage electrical substation.

A. The Superior Court improperly based its summary judgment decision on two erroneous factual inferences it made against the non-moving party; The Terminal 5 Container Cranes do not move between terminals and are not removed to permit cruise ships to dock there.

In deciding a summary judgment motion, "[t]he court must consider all facts submitted and all reasonable inferences from the facts in the light most favorable to the nonmoving party" – in favor of APL in this

case. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

“Any doubts as to the existence of a genuine issue of material fact are resolved against the moving party.” *Voorde Poorte v. Evans*, 66 Wn. App. 358, 361, 832 P.2d 105 (1992). Summary judgment is not proper “if reasonable minds could draw different conclusions” from the evidence. *Security State Bank v. Burk*, 100 Wn. App. 94, 102, 995 P.2d 1272 (2000).

The Court is not permitted to weigh the evidence or resolve any factual issues in ruling on a motion for summary judgment. *Fleming v. Smith*, 64 Wn.2d 181, 185, 390 P.2d 990 (1964). Instead, the Court “must deny a motion for summary judgment if the record shows any reasonable hypothesis that entitles the non-moving party to relief.” *Mostrom v. Pettibon*, 25 Wn. App. 158, 162, 607 P.2d 864 (1980).

Contrary to these fundamental precepts, the trial court based its summary judgment decision adverse to APL on two erroneous factual inferences. The first was a “finding” that the Terminal 5 Container Cranes are “on a rail system that allows their movement from one terminal to another.” RP 27, lines 2-4. There is no such evidence in the record and the statement is false. Contrary to the trial court’s factual inference, the Terminal 5 crane rails do not extend beyond the three end-to-end berths that are entirely within Terminal 5. The crane rails do not even run to Terminal 5’s boundary, let alone connect with crane rails at any other

terminal. In fact, as reflected on the map at CP 213, Terminal 5 is not even contiguous to any other terminal. The function of the Terminal 5 crane rails is to permit the Terminal 5 Container Cranes to access the containers stacked along the length of the container ships that dock at Terminal 5, ships that are up to 1,000 feet long. CP 217, 228. Thus, the Terminal 5 crane rails are approximately 2,900 feet long to service the three end-to-end container ship berths at Terminal 5. CP 112, 205.³

Moreover, the Terminal 5 Container Cranes are not self-powered. They are hard-wired with two inch thick electrical cables to an electrical substation at Terminal 5. CP 217, 228. Even if the crane rails extended beyond Terminal 5 (which they don't) the Terminal 5 Container Cranes could not move from Terminal 5 since they are hard-wired to the dedicated electrical substation at Terminal 5 and are dependent on that substation for their power.

The trial court also based its summary judgment on a second erroneous factual inference adverse to APL, "finding" that "if a cruise ship comes in at a particular part of the dock for that cruise ship to dock at, the crane has to be moved back away from the dock." RP at 27 lines 4-7. Once again, what the court "found" is not in the record, and is not true.

³ Photographs published on the Port's website depicting Terminal 5's end-to-end berths and the length of the Terminal 5 crane rails alongside those berths are provided in the Appendix at A-2 and A-3.

Terminal 5 has *never* been used for cruise ship operations in the nearly quarter century of APL's lease, and the Terminal 5 Container Cranes have not been moved away from the dock to permit a cruise ship to dock there.⁴ CP 112, 199, 206, 229.

The lower court's grant of summary judgment based on these erroneous inferences, adverse to non-moving party, was improper and should be reversed.

B. The Terminal 5 Container Cranes are annexed to Terminal 5.

The lower court's reliance on its erroneous factual inferences to support its ruling below also demonstrates that the court applied an erroneous legal standard. Whether an article is capable of being moved is not determinative of whether it is a fixture. Most fixtures are capable of being moved. As a leading hornbook explains, although a fixture becomes part of the realty to which it is attached, a fixture will revert to personal property if it is severed from the realty. 1 Thompson, *Real Property*, §55 at 174 (1964) ("It is ordinarily a characteristic of a fixture that although it becomes realty, it retains its separate identity and may under certain

⁴ There are not any crane rails at Terminal 5 that could enable such a move; the Terminal 5 crane rails run parallel to the berths, not perpendicular. In drawing its erroneous inference, the court below may have confused Terminal 5 with Terminal 30, which the Port converted into a cruise ship terminal in 2003. It cost the Port \$185,000 to decommission three older cranes at Terminal 30, severing them from the Terminal 30 crane rails and moving them back 100 feet from the berths there; it was projected to cost well in excess of \$1 million to remove them from that terminal. The decommissioning of Terminal 30 was a long-term move to use Terminal 30 as a cruise ship facility. CP 142.

circumstances be removed and become personalty again.”). In fact, fixtures cases oftentimes involve items that, unlike the Terminal 5 Container Cranes, have actually been removed from the realty.

For example, the flag pole that the Supreme Court held was a fixture in *Hall v. Dare*, 142 Wash. 222, 227, 252 P. 926 (1927), had been removed from its foundation and moved to another location.⁵ The Supreme Court specifically discussed the ease with which the flag pole could be (and actually was) removed in holding that it nevertheless was annexed. As the Department itself has acknowledged (in a determination the Department published as one of its precedent under RCW 82.32.410), whether an item is capable of being removed without damage is “not significant” in determining whether an article is a fixture. DOR Determination No. 89-55, (copy at CP 237) (holding that a one-ton printing press set on a reinforced concrete foundation was a fixture notwithstanding the ease with which it would be possible to remove the press). Similarly, in *Nearhoff v. Rucker*, 156 Wash. 621, 625, 287 P.2d 1231 (1930), the Washington Supreme Court held that a monorail and trolley were fixtures. (The trolley moved on an overhead rail comparable to the Terminal 5 Container Cranes’ movement on the crane rails on which

⁵ And in *Strain v. Green*, 25 Wn.2d 692, 698-700, 172 P.2d 216 (1946), the Washington Supreme Court held that a chandelier one party had installed and removed from three prior houses was nevertheless a fixture in the fourth house in which it had been installed.

they are installed).

The lower court's error is further demonstrated by its citation to *Dep't of Revenue v. The Boeing Co.*, 85 Wn.2d. 663, 538 P.2d 505 (1975), as "instructive" on the issue of annexation. RP 28, lines 10-11. In *Boeing*, the Department conceded that the assembly jigs at issue were annexed under the first prong (85 Wn.2d at 668, n.3); consequently, *Boeing* does not even address the annexation prong of fixture law. The *sole* issue discussed in *Boeing* was "the third prong, i.e. the intent of Boeing" regarding the assembly jigs, the very factual issue the lower court expressly did not reach in the present APL case (RP 29, lines 11-12). 85 Wn.2d at 668.⁶

Western Ag, not *Boeing*, is the leading Washington case addressing the annexation prong of the fixtures test. In *Western Ag*, the Court

⁶ There is irony in the lower court's application of the wrong legal standard when trying to dispose of this case solely on the basis of the annexation prong of fixture analysis to avoid the issue of intent that Washington courts have held is the most important factor. In his ruling from the bench the judge proclaimed that "the most frustrating case I ever handled as far as an outcome on appeal" was one in which he was overruled for having applied the common law of fixtures even though "neither side argued to me common law fixture law" RP 23, l. 23; RP 24, ll. 11-12. The judge explained that the "Court of Appeals three to zero said I was wrong ... that fixture law didn't apply." RP 24, lines 15-17. Yet, despite correctly noting that he was overruled for applying the wrong standard, the judge nevertheless incorrectly describes that earlier case as "an example of a court looking at what is a fixture and what isn't." RP 25, ll 1-2. In that case, this Court held "the trial court's conclusion that fixture law controlled its decision was error." *Dep't of Labor and Industries v. Davison*, 126 Wn. App. 730, 736, 109 P.2d 479 (2005). Since *Davison* is not a common law fixture case, the "frustrating" and apparently confusing experience of the judge below in *Davison*, should not have influenced the judge's ruling in the present case.

explained, “the first prong, annexation, is often considered in light of the actual relationship of the object to the realty – whether the article is ‘in use as an essential part’ of the overall use of the property.” 43 Wn. App. at 172.⁷ Citing *Nearhoff*, among other cases, the Court explained that an article is annexed under Washington fixture law when “it is specially fabricated for installation or because it is a necessary functioning part of or accessory to an object which is a fixture.” *Western Ag*, 43 Wn. App. at 172. Thus the Court held that the center pivot irrigation system at issue in that case was annexed to the realty because the system was “an indispensable addition since the normal use of the semi-arid farm land requires additional watering. Further, the record indicates the CPIS were specifically adapted to the particular farmland, commensurate with the size and topography of the land.” 43 Wn. App. at 173.

The record in this case is undisputed that the Terminal 5 Container Cranes were specially fabricated for Terminal 5. CP 201, 229. It is also undisputed that the Terminal 5 Container Cranes are essential for Terminal 5 to function for its sole purpose as a marine container facility. CP 201,

⁷ On this point, *Western Ag* follows the Washington Supreme Court’s teaching in *Chase v. Tacoma Box Co.*, 11 Wash. 377, 380-81, 39 Pac. 639 (1895), that the “question of whether chattels are to be regarded as fixtures depends less upon the manner of their annexation to the freehold than upon their own nature and their adaptation to the purposes for which they are used. ... the nature of the article, and its use as connected with the use of the freehold, should not be lost sight of; but the annexation may be either actual or constructive.” As noted in *Boeing*, 85 Wn.2d at 667, the common law test of fixtures was “originally imported into the law of Washington in *Chase v. Tacoma Box*.”

206. The wharf, apron, structural support, crane rails, and dedicated electrical substation, each of which is undisputedly part of the realty, were all built for the purpose of supporting the Terminal 5 Container Cranes. As the Port's former Executive Director explained, "The Terminal 5 Container Cranes are essential to Terminal 5's operation as a marine container facility and so were required by the Lease and an integral part of Terminal 5. Without its cranes, which perform the actual loading and unloading of ship-board containers, Terminal 5 would cease to function for the purpose for which the Port designed and built it." CP 201.

In discussing annexation under Washington law, the Court of Appeals also cites *Seatrain Terminals of Calif. Inc. v. Alameda County*, 147 Cal. Rptr. 578, 582 (Cal Ct. App. 1978) for its holding that "750-ton dockside cranes are fixtures." *Western Ag*, 43 Wn. App. at 172. The *Seatrain* Court notes that very heavy objects, including "heavy machinery" can be "of such weight that the mere retention in place by gravity is sufficient" for annexation. 147 Cal.Rptr. at 582. The Washington Supreme Court has reached the same conclusion. *Hall v. Dare*, 142 Wash. at 227.⁸

⁸ Since Washington has adopted the same common law of fixtures "followed by most American Courts" (*Boeing*, 85 Wn.2d at 668), it is not surprising that the Washington Supreme Court likewise cited decisions from other state courts in reaching its conclusion that an article can be a fixture "though held in place by gravity alone." *Hall v. Dare*, 142 Wash. at 227 (citing *Snedeker v. Warring*, 12 N.Y. 170 (1854)).

While the trial court casually dismissed *Seatrain* with the simplistic statement that it is “not binding precedent” in Washington, the trial judge failed to acknowledge either (1) the Washington Court of Appeals’ favorable citation of *Seatrain* on the issue of annexation, (2) the Washington Supreme Court’s own holding that heavy objects may be annexed by gravity alone due to their weight. 142 Wash. at 227. The Washington Supreme Court has noted that many frame buildings, which merely rest on their foundations, are annexed by their weight. *Id.* (“Gravity is the only force that holds practically every wooden building to its foundation.”).

Even if one ignored the *Seatrain* court’s pertinent analysis of the very same annexation standard as followed by the Washington courts, the Port of Seattle here annexed the Terminal 5 Container Cranes as part of Terminal 5 under the annexation standard established by the controlling decisions of the Washington Supreme Court and Washington Court of Appeals in *Hall v. Dare*, *Nearhoff*, *Tacoma Box*, and *Western Ag* discussed above.

Conclusion

For the reasons specified above, the trial court’s grant of summary judgment was improperly based on erroneous inferences the lower court made adverse to the non-moving party, inferences that are also contrary to

the record and factually wrong. The Terminal 5 Container Cranes are annexed to Terminal 5 by virtue of having been specially designed for and built on Terminal 5 as an integral part of the Terminal 5 Facility, essential to its function of moving shipping containers. Accordingly, appellants APL respectfully request that the lower court's summary judgment be vacated and the case remanded for trial or such other further proceedings as this Court deems proper to resolve the substantive legal issue whether the Terminal 5 Container Cranes are fixtures under Washington's three-prong common law test of fixtures.

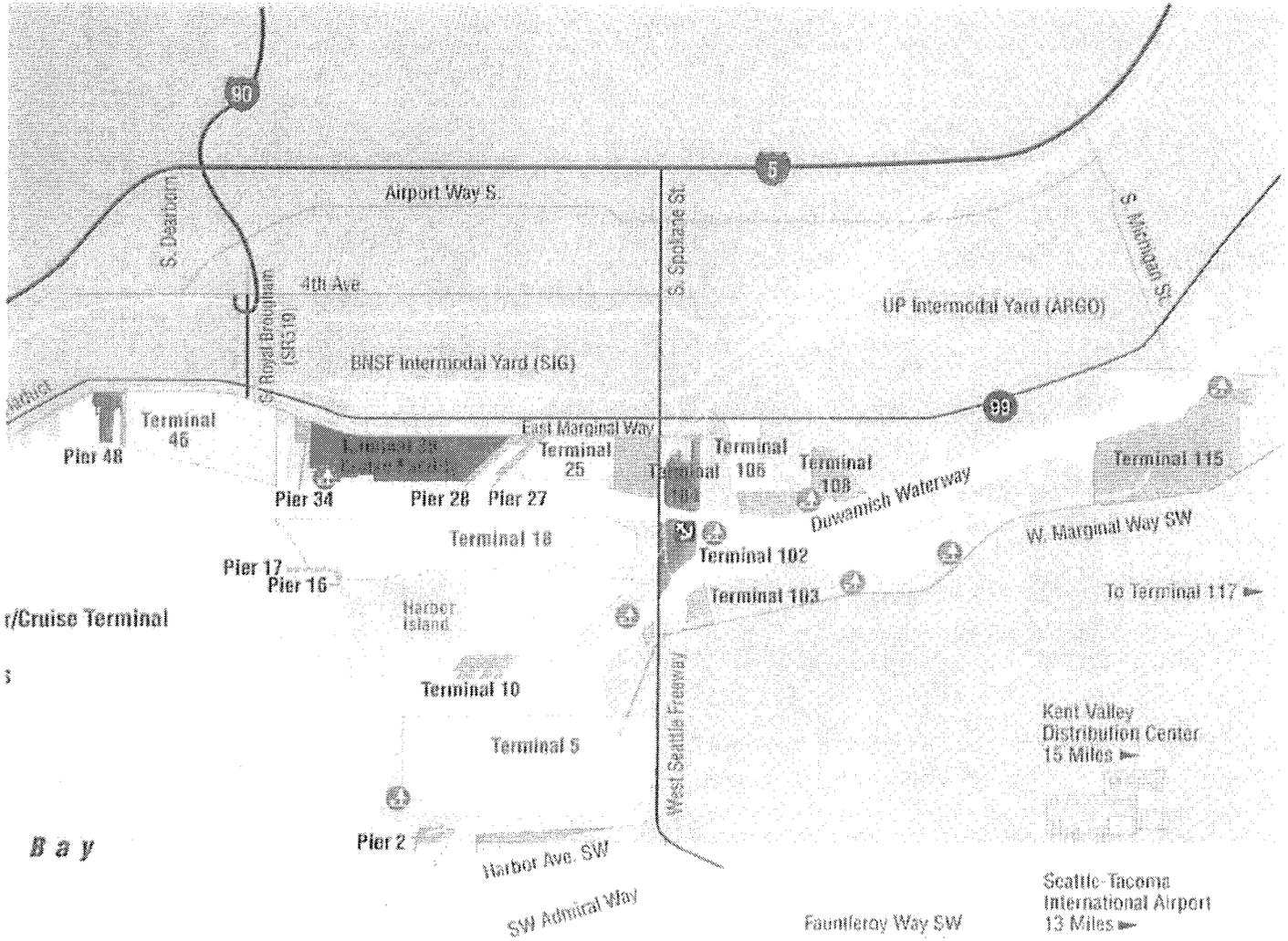
DATED: February 23, 2009

PERKINS COIE LLP

By: 
Scott M. Edwards, WSBA No. 26455
SEdwards@perkinscoie.com
D. Michael Young, WSBA No. 6391
MikeYoung@perkinscoie.com
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

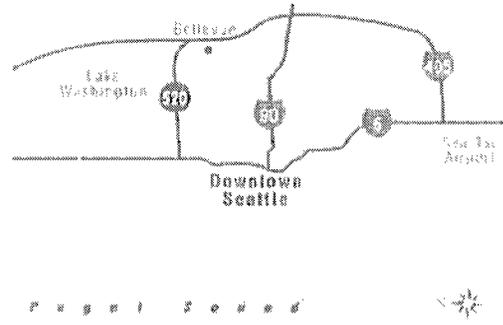
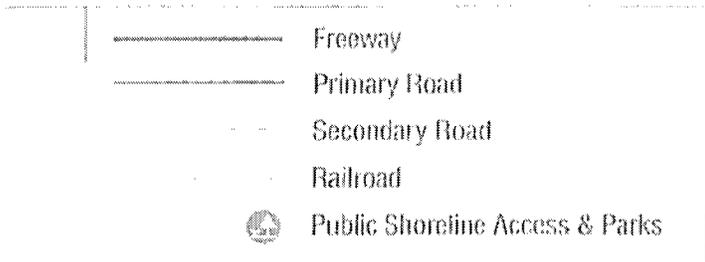
Attorneys for Appellants
APL Limited, American President Lines,
Ltd., and Eagle Marine Services, Ltd.

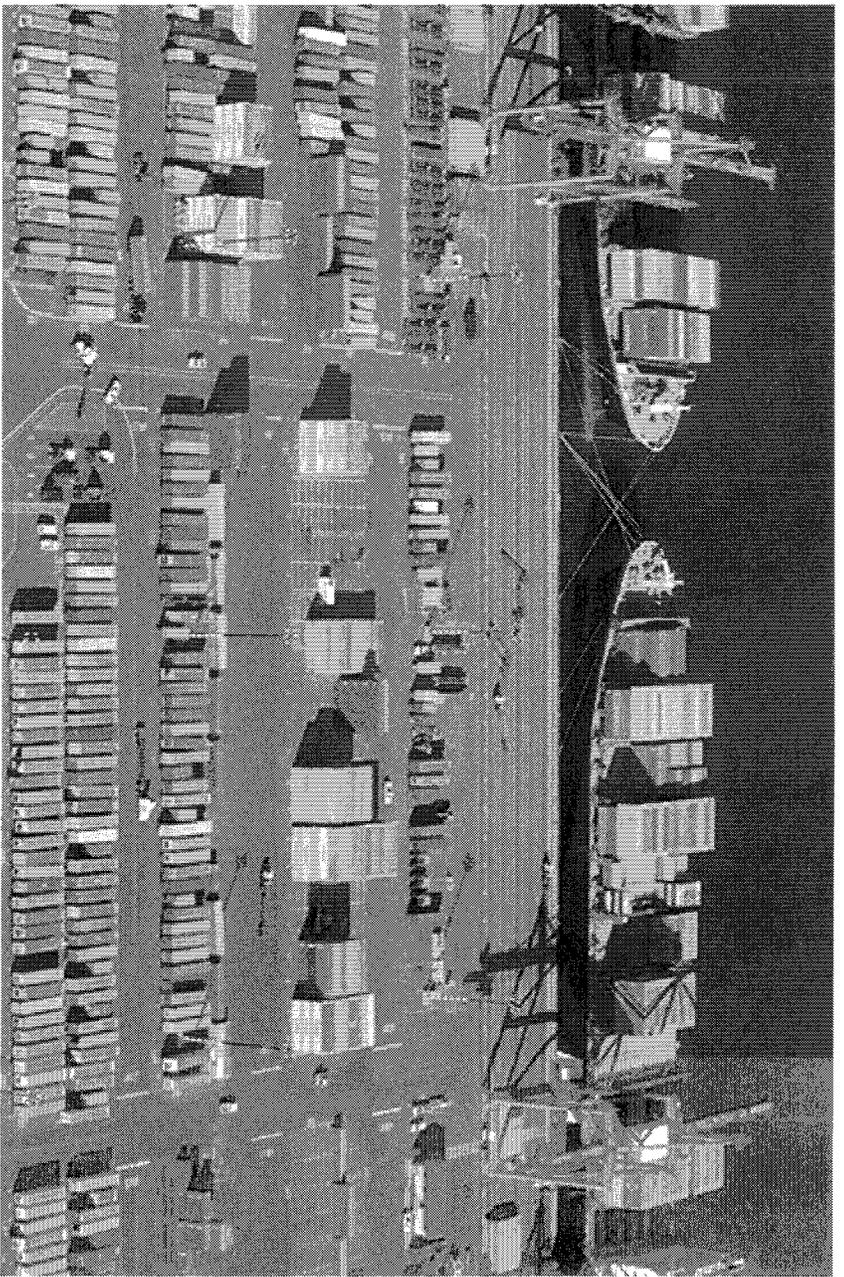
APPENDIX



Bay

and







No. 38297-1-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

**APL LIMITED, AMERICAN PRESIDENT LINES,
LTD., AND EAGLE MARINE SERVICES, LTD.,**

Appellants,

v.

**WASHINGTON STATE DEPARTMENT OF
REVENUE,**

Respondent.

CERTIFICATE OF SERVICE

FILED
COURT OF APPEALS
DIVISION II
09 FEB 23 PM 2:22
STATE OF WASHINGTON
BY DEPU V

Scott M. Edwards, WSBA #26455
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
(206) 359-8000

Attorney for Appellants
APL LIMITED, AMERICAN PRESIDENT
LINES, LTD., AND EAGLE MARINE
SERVICES, LTD.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Brief of Appellants was sent via electronic mail and hand delivered this day by legal messenger on the following address:

David M. Hankins
Assistant Attorneys General
Attorney General of Washington
Revenue Division
7141 Cleanwater Drive SW
Olympia, WA 98504-0123

Electronic address: David.Hankins@atg.wa.gov

DATED this 23rd day of February, 2009.


Theresa A. Trotland