

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PENN WAREHOUSING &
DISTRIBUTION, INC.,

Plaintiff,

v.

SS UNITED STATES CONSERVANCY,

Defendant.

Civil Action No. 2:22-cv-02285-AB

DECLARATION OF SUSAN L. GIBBS

I, Susan L. Gibbs, pursuant to 28 U.S.C. § 1746 hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this Declaration. The statements made herein are based on my personal knowledge.

2. I am the current President of the SS United States Conservancy's Board of Directors and a founding Board member. My grandfather, William Francis Gibbs, designed the SS *United States*, and I testified as a fact witness at trial on behalf of the Conservancy.

3. On July 1, 2024, Penn Warehousing sent a letter to the Conservancy threatening: "if the Conservancy fails to move the ship by the deadline set by the court, Penn Warehousing will avail itself of all appropriate legal remedies, including seeking to have the Conservancy held in contempt of the June 14 order, as well as requiring the Conservancy to pre-pay an annual rent or service fee of \$3 million." The letter also made allegations about the condition of the bollards and protective bumpers at the Pier.

4. Being required to pay a \$3 million "service fee" would destroy the Conservancy as well as its museum collection and plans. The Conservancy's curatorial mission remains a core commitment going forward. Any sale proceeds received from selling the SS *United States* would

fund a land-based museum or exhibition honoring the ship, her builders, officers and crew, and passengers and would honor and celebrate the ship's history and legacy.

5. On July 12, 2024, the Conservancy filed a Motion for Partial Reconsideration of the Court's June 12 Final Order and Judgment in response to Penn Warehousing's threats. The Motion sought to extend the deadline for moving the SS *United States* from Pier 82 from September 12, 2024, to December 5, 2024. The Motion summarized the efforts the Conservancy was making to comply with the Court's Order, including a massive nationwide search for an alternate pier location, and serious discussions with third parties regarding alternatives such as reefing and scrapping the Ship. These included communications with Okaloosa County beginning in mid-July regarding the County's interest in deploying the SS *United States* as an artificial reef.

6. On August 19, 2024, the Court conducted a hearing on the Conservancy's Motion for Partial Reconsideration of this Court's June 12 Final Order and Judgment.

7. Following the hearing, the Conservancy continued its negotiations with Okaloosa County and continued its evaluation of other options. The Conservancy also continued its nationwide search for an alternative pier for the SS *United States*. During the negotiations, Okaloosa County conducted significant due diligence, including physical inspections and evaluations of the Ship. By mid-August, negotiations with Okaloosa County had progressed significantly, including an agreement by the County to shorten its due diligence period to fit within the September 12 deadline.

8. To meet the Court's September 12 deadline, any contract with Okaloosa County would need to be executed in short order so that any agreement could be posted on the County's agenda by the deadline of August 30 in time for consideration and ratification at the next Board of County Commissioner's meeting scheduled on September 3.

9. On August 23, 2024, the Conservancy had a call with Penn Warehousing's counsel in which I participated. During that call, the Conservancy informed Penn Warehousing that the Conservancy would meet the Court-imposed deadline of September 12 to sign a contract for the Ship's removal. We discussed that any such contract would be contingent on the purchaser reaching an agreement with Penn Warehousing thereby permitting the Ship to remain at the Pier after September 12 to allow time for the necessary preparations to remove the Ship. Penn Warehousing stated that if the Conservancy signed a contract for the Ship's removal, Penn Warehousing's demand for a \$3 million up-front payment would go away. Penn Warehousing also stated that it would not begin negotiations about an extension of time at the Pier with Okaloosa County - or any other potential purchaser - until after the Conservancy signed a contract to sell the Ship. Because of Penn Warehousing's position, any contract between the Conservancy and a purchaser would necessarily be contingent on Penn Warehousing executing an agreement to allow the Ship to remain at the Pier after September 12.

10. On August 26, 2024, the Conservancy convened a meeting of its Board of Directors. The Board reviewed its options and voted to sign a contract with Okaloosa County to reef the SS *United States* in tandem with a land-based museum, which the Ship's sale proceeds would help support.

11. On August 27, 2024, the Conservancy and Okaloosa County finalized and signed a Purchase and Sale Agreement for reefing the Ship. The only material contingency in the contract was Okaloosa County reaching an agreement with Penn Warehousing establishing the terms governing the Ship remaining at the Pier after September 12 while the County finalized all necessary preparations to remove the Ship from the Pier.

12. The Purchase and Sale Agreement was posted on the County's website on August 30, 2024, in time for it to be placed on the agenda for formal approval by the Board of County Commissioners at its next meeting on September 3.

13. On August 29, 2024, to prepare for the Okaloosa Board of County Commissioners meeting, Okaloosa County representatives began negotiations with Penn Warehousing regarding an agreement to permit the Ship to remain at Pier 82 for a brief period after September 12. The County was not able to do this earlier because Penn Warehousing refused to negotiate until the contract between the Conservancy and the County was signed.

14. On August 30, 2024, Okaloosa County officials informed the Conservancy that on August 29, Penn Warehousing demanded \$3 million in dockage fees from the County, with that payment covering a term of up to 90 days (i.e., if the Ship remained at the pier on September 13, the payment would still be \$3 million). Penn Warehousing also demanded payment for the alleged and unproven damages to the Pier. Penn Warehousing rejected out-of-hand the County's offer to pay Penn Warehousing's increased rental rate of \$1,700 per day, the rate the Court refused to allow Penn Warehousing to impose retroactively on the Conservancy, and instead demanded dockage fees that are almost twenty times greater than even the inflated rent that Penn Warehousing sought to impose on the Conservancy.

15. This turn of events shocked the Conservancy, particularly given the representations that Penn Warehousing made to the Court at the August 19 Hearing, the Court's direction at the Hearing that the Conservancy and Penn Warehousing work to resolve this matter, and the further reassurances made by Penn Warehousing during the August 23 call with the Conservancy.

16. Because of Penn Warehousing's unreasonable demands, Okaloosa County informed the Conservancy that the Purchase and Sale Agreement would not be presented for

approval at the Board of Commissioners' agenda for the September 3 public meeting. Since the Purchase and Sale Agreement executed on August 27 was contingent on the Commissioner's approval at the September 3 public meeting (to meet the Court's September 12 deadline), this effectively voided the Agreement as written. The County also informed the Conservancy that the agreed-upon reefing project could not move forward until the Conservancy resolved Penn Warehousing's intransigent position.

17. Remarkably, in a statement to the *Philadelphia Inquirer*, Penn Warehousing's counsel, who negotiated directly with both the County and the Conservancy, stated he had "no insight on what Okaloosa County is doing."

18. The Conservancy has also recently learned that Penn Warehousing had been engaged in separate and undisclosed negotiations beginning sometime early in 2024 with the County regarding the potential sale of the *SS United States to Okaloosa County by Penn Warehousing*. In June, 2024, Penn Warehousing, through its counsel, transmitted a draft purchase and sale agreement to the County under which the County would purchase the Ship from Penn Warehousing for \$2.5 million (*see* ¶ 12 of the Affidavit of Craig Coffey, Deputy County Administrator for Okaloosa County).

19. The Conservancy was not aware of these negotiations between Penn Warehousing and the County until very recently. The Conservancy did not authorize Penn Warehousing to conduct any discussions with any party regarding the sale or disposition of the *SS United States*. Thus, Penn Warehousing was secretly negotiating the sale of an asset that it did not own presumably for its own financial benefit.

20. In simple terms, the Conservancy and Okaloosa County have acted in good faith, expending significant resources to execute a contract before September 12 to effectuate the

removal of the Ship from Pier 82 as expeditiously as possible. Penn Warehousing, however, has refused to negotiate with the County or the Conservancy in good faith, instead demanding an upfront payment of \$3 million (which it represented it would not seek if the Conservancy entered into a contract with Okaloosa County) to keep the Ship at the Pier for even one day beyond September 12. Penn Warehousing's bad faith is the sole reason that the Sale and Purchase Agreement was not on the Okaloosa County's Board of Commissioner's agenda for approval during its September 3 meeting.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this, the 11th day of September, 2024, in Washington, D.C.

Dated: September 11, 2024

Susan L. Gibbs

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