



IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE

BUCKEYE PARTNERS, L.P., and
BUCKEYE PT TERMINALS LP,

Plaintiffs,

v.

GT WILMINGTON USA, LLC,

Defendant.

C.A. No. _____

VERIFIED COMPLAINT

Plaintiffs Buckeye Partners, L.P., and Buckeye PT Terminals LP (collectively, “Buckeye” or “Plaintiffs”), by and through their undersigned counsel, state their complaint against defendant GT USA Wilmington, LLC in its capacity as commercial operator of the Port of Wilmington (“GT” or “Defendant”) for injunctive relief and damages for breach of contract, breach of the implied covenant of good faith and fair dealing, tortious interference with contractual relations, tortious interference with business relations, and declaratory relief that Buckeye owes GT no fees and that GT be enjoined from preventing Buckeye from accessing Buckeye’s real property, as follows:

NATURE OF THE ACTION

1. In an attempt to extract price concessions to which it is not entitled, GT USA Wilmington, LLC has blocked Buckeye’s customers from accessing the Port of Wilmington, Delaware (the “Port”) because Buckeye refuses to capitulate

to GT's demands. Buckeye owns fuel storage tanks ("Tanks") adjacent to the Port which serve critical businesses deemed "essential" amidst the current COVID-19 pandemic, such as Wawa Wholesale Fuels, LLC, the distributor of gas to Wawa gas stations and convenience stores throughout Pennsylvania, New Jersey, Delaware, Maryland, and Virginia. GT's blockade of the Port immediately disrupts the fuel supply chain to well over 200 retail gas stations throughout the five-state region. As a result, Buckeye is immediately and irreparably harmed: the core service it provides to its customers—access to the gas which the customers own and which Buckeye stores for them in the Tanks—is effectively blocked, threatening Buckeye's customer relationships, goodwill, and commercial reputation. GT's has also threatened to lock out Buckeye's employees—leaving gas tanks holding 1.6 million barrels of hazardous materials unattended, posing dire safety risks in contravention of Buckeye's safety commitments to the federal government. More disturbing—and likely the reason GT has pointed a proverbial gun at Buckeye's head at this time—is the harm to the public interest if essential fuel supply chains for approximately 200 gas stations are disrupted during the throes of a global pandemic.

2. The history of this dispute makes plain the inequities and bad faith of GT. Buckeye—a distributor of petroleum in the East and Midwest of the country that manages over 6,200 miles of petroleum pipelines, as well as over 100 truck-

loading terminals—only acquired the Wilmington facilities and gas storage business two weeks ago on March 20, 2020. Prior to March 20, 2020, the real property wherein the Tanks are located and the lease from the Port giving Buckeye rights to a shipping dock and pipeline easements which are connected to the Tanks, was owned by Magellan Midstream Partners, L.P. (“Magellan”). GT, which manages the Port on behalf of Diamond State Port Corporation (“DSPC”) made the same extortion attempt against Magellan over Labor Day weekend in August 2019—threatening to barricade Magellan and its customers’ access to the Tanks unless Magellan capitulated to GT’s demands for payment of additional dock-usage fees that GT was attempting to unilaterally impose outside of the Lease, the same purported fees GT now claims Buckeye owes. At that time, Magellan refused GT’s demands, and GT backed down. GT nonetheless continued to insist on the payments, and Magellan entered into negotiations with GT in an attempt to bring an orderly resolution. Those negotiations ultimately failed, and accordingly, Buckeye became aware of the unresolved dispute in connection with its entering into an agreement to purchase 100% of the equity in Magellan in January 2020. Buckeye did the commercially reasonable thing—a representative had a conversation with GT’s General Counsel, Greg Iannarelli, a few weeks before the transaction was scheduled to close on March 20, 2020. Evan Hofmann, on behalf of Buckeye, informed Mr. Iannarelli that Buckeye was

generally aware that there was a dispute and would engage in good-faith negotiations towards its resolution after the deal closed. Mr. Iannarelli appeared pleased by the overture and agreed. At no time did Mr. Iannarelli or GT inform Buckeye that it would block access for Buckeye and its customers absent capitulation to GT's fee demand.

3. The deal closed on March 20, 2020, just as the gravity of the COVID-19 crisis began to shut down non-essential services in various communities nationwide, Delaware and the surrounding states included. The ink was barely dry on the signature pages when Buckeye received its first communication from GT on April 1, thirteen days after the deal closed. GT's introductory missive was hardly welcoming—GT informed Buckeye that, due to the purported unpaid fees totaling nearly \$1,000,000, which had been the subject of discussion between GT and Buckeye's predecessor for the past seven months, GT would block access to Buckeye's Tanks three business days later on April 6, 2020. GT then took it upon itself to communicate the same message to Buckeye's customers, with whom GT has no contractual relationship.

4. Buckeye was blindsided, as it had understood from conversations with Mr. Iannarelli that the parties would engage in discussions about the fees, yet none had occurred. Having closed on its acquisition less than two weeks prior, contemporaneous with the escalating disruption of COVID-19 and Buckeye's

need to provide uninterrupted fuel supply, there was hardly time to have conducted such negotiations. GT had not reached out to have a discussion, nor did GT hint that it was planning to wall off Buckeye and its customers from the property it had owned for only thirteen days.

5. Even more perplexing was how GT believed it had the right to do so. Critically, GT has no legal interest in the real estate that Buckeye gained in its acquisition, the very property where the Tanks are located and where Buckeye's customers would retrieve their fuel, held for their benefit by Buckeye. While the road to the Tank is private, Buckeye's deed to its landlocked property unsurprisingly grants to the owner "the right to use the private lanes from said lot to a public road." Even if GT had, in the abstract, the right to block access to the Port, nothing gives it the right to interfere with a commercial property owner's deeded rights to pass through that Port from a public way. Indeed, the source of GT's claimed right is the Port of Wilmington Terminal Tariff ("Tariff")—a document governing the rules and fees associated with the Port's tenants use of the Port—not adjacent private property. The Port's legal interests concerning Buckeye extend only to Buckeye's lease of a shipping dock and easements for a liquid pipeline—not the property that Buckeye owns in fee simple.

6. With respect to the Port itself, GT's claimed right to block access for nonpayment purportedly arises from the "Tariff"—a publicly available

compilation of regulations concerning the Port. Per the terms of Buckeye's Lease and as a matter of law, however, Buckeye's express contractual rights in its Lease override anything to the contrary in the Tariff. Critically, Buckeye's Lease expressly provides that Buckeye may enjoy ingress and egress to its leasehold interests, remedies for a default are plainly spelled out, and nothing in the Lease says that any commercial operator can block access to the Port.

7. On April 2, 2020, Buckeye responded with a letter explicating the parties' contractual rights, demonstrating that the unilaterally imposed fees were clearly not owed, and demanding that GT retract its threat both to Buckeye and its understandably distraught customers. GT responded on Friday, April 3 at 4:10 p.m. Tellingly, GT's response did not even attempt to address Buckeye's analysis of the parties' contractual rights and obligations. Instead, GT attempted to shift blame for its threat to Buckeye, demanding that Buckeye "put forth a proposed resolution and demonstrate steps to assure GT Wilmington that Buckeye Wilmington is negotiating in good faith." GT concluded by indicating that it would close the Port to Buckeye unless it made a "good faith proposal." Buckeye responded at 7:12 p.m. with an eminently reasonable compromise, rooted in the fact that it can hardly be expected to make a proposal for resolution when GT had yet to communicate the basis by which it believed it was entitled to the fees at issue. Accordingly, Buckeye proposed to enter into a standstill agreement, taking

the “nuclear” threat of closing the Port off the table while the parties negotiated to reach a commercially reasonable resolution.

8. At 9:13 p.m., GT responded, ignoring the proposed standstill agreement, and simply repeating its demand that Buckeye make an “economic proposal.” Without an explanation from GT as to why it believed it was owed nearly \$1,000,000, and unwilling to negotiate with a proverbial gun to its head in the dark, Buckeye made the only proposal it could in good faith—to abide by the terms of its Lease for a dock at the Port of Wilmington until and unless GT could explain the basis for its claimed entitlement to the disputed fees. Buckeye closed by indicating it would be seeking injunctive relief, and GT never responded. On April 6, 2020, GT prevented Wawa Fuels’ trucks from entering the Port.

THE PARTIES

9. Plaintiff Buckeye Partners, L.P. is a Delaware limited partnership with its principal place of business at 1 Greenway Plaza, Houston, TX 77046. Buckeye Partners, L.P. provides logistics services for liquid petroleum products in the East Coast, Midwest and Gulf Coast regions of the United States as well as in the Caribbean. Buckeye Partners, L.P. owns and operates over 6,200 miles of petroleum pipelines, as well as over 100 truck-loading terminals.

10. Plaintiff Buckeye PT Terminals, LP is a Delaware limited partnership with its principal place of business at 1 Greenway Plaza, Houston, TX 77046.

Buckeye PT Terminals LP is wholly owned by Buckeye Partners, L.P. and owns and operates a terminal adjacent to the Port of Wilmington.

11. Defendant GT Wilmington USA, LLC is a Delaware limited liability company with its principal place of business at 1 Hausel Road, Wilmington, DE, 19801. GT Wilmington USA, LLC commercially operates the Port of Wilmington pursuant to an agreement with a quasi-governmental entity of the state of Delaware, which owns the Port.

RELATED PARTIES

12. Wawa, Inc. (“Wawa”) is a Delaware corporation with its principal place of business at 260 W. Baltimore Pike, Wawa, PA 19063. Wawa is an American chain of convenience stores and gas stations located along the East Coast of the United States.

13. Wawa Fuels, LLC (“Wawa Fuels”) is a Delaware limited liability company with its principal place of business at 260 W. Baltimore Pike, Wawa, PA 19063. Wawa Fuels is a wholly owned subsidiary of Wawa and delivers fuel to Wawa gas stations in the five state region of Delaware, Pennsylvania, New Jersey, Maryland, and Virginia.

14. Wawa Fuels fills on average 150 truckloads of fuel from the Tanks every day and is dependent on its use of the Tanks to deliver fuel throughout the region.

JURISDICTION AND GOVERNING LAW

15. This Court has subject matter jurisdiction over the claims in this Complaint under 10 *Del. C.* § 341 *et seq.* because Buckeye seeks injunctive relief and under 10 *Del. C.* § 6501 *et seq.* because the underlying relief sought is equitable in nature.

16. The Court has personal jurisdiction over GT because:

- a. GT is formed in the state of Delaware, and its principal place of business is in the state of Delaware;
- b. GT operates the Port of Wilmington, located in the state of Delaware;
- c. GT has tortiously interfered with the contracts and business relations of Buckeye, a Delaware limited partnership;
- d. GT has threatened to cause harm to Buckeye, a Delaware limited partnership; and/or
- e. GT has caused harm to Buckeye, a Delaware limited partnership.

FACTS

A. The Real Property and the Tanks

17. Since September 1, 2005, Magellan Terminals Holdings, L.P. (“Magellan”) has owned in fee simple the real property where its fuel tanks are located on the real estate commonly known as 1050 Christiana Avenue, City of

Wilmington, Delaware (the “Tanks”). A true and correct copy of the Deed to the Tanks (the “Deed”) is attached hereto as Exhibit A.

18. The Tanks are not within the bounds of the Port of Wilmington. They are adjacent to the Port. However, they can only be accessed via roads through and controlled by the Port, as is depicted in the following map.

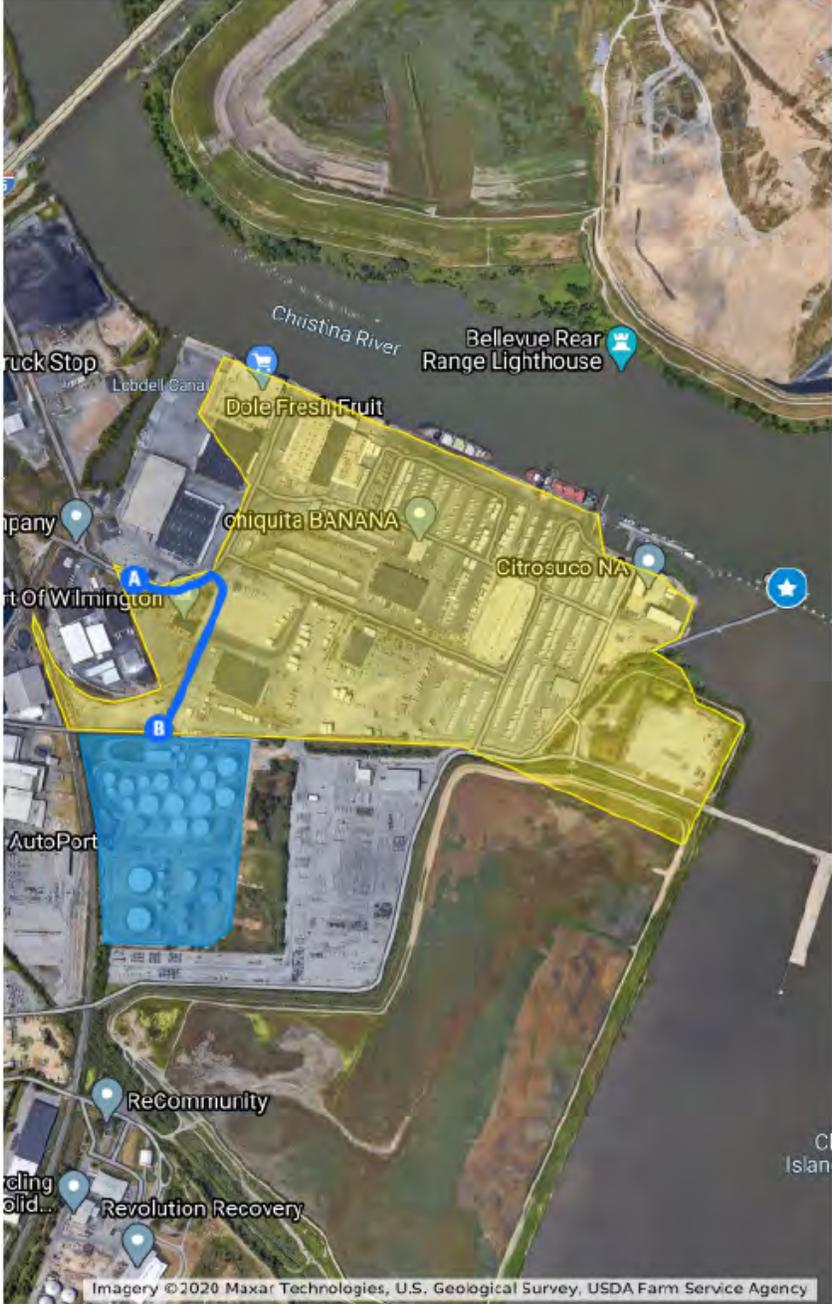
Buckeye Terminal Adjacent to Port of Wilmington

Legend

- Port Property
- Buckeye Property
- Leased Dock

1,200-foot Tanker Truck Route

- Port Entrance
- Buckeye Entrance



19. Unsurprisingly, then, per the terms of the Deed, Magellan received “the right to use the private lanes from [the Tanks] to a public road.” Exhibit A at 2.

B. The Lease

20. On March 25, 2008, almost three years after it purchased the Tanks, Buckeye Wilmington entered into a Lease Agreement (the “Lease”) with Diamond State Port Corporation (“DSPC”) to lease a dock at the Port and obtain an easement for fuel pipelines, effective April 1, 2008. A true and correct copy of the Lease is attached hereto as Exhibit B. The Lease has been renewed through July 23, 2021. A true and correct copy of the renewal is attached hereto as Exhibit C.

21. The Lease grants Buckeye the right to access its leased property. In particular, Section 2 of the Lease provides that Buckeye leases from Defendant “approximately 1,160 linear feet of docking space together with full rights of access for ingress and egress to the dock, walkway, and if available, reasonable parking space at the dock, and ingress and egress over existing roads owned or controlled by Landlord for access to the dock.” Notably, no provision of the Lease gives GT the right to block Buckeye from accessing its leased property under any circumstances.

22. The Lease makes express that the terms of the Tariff (GT’s claimed source of a right to block access, explained below) apply only to the extent not

covered by the Lease. In particular, Section 27(e) of the Lease states: “*Except as otherwise provided herein*, all terms and conditions of 1229 the Port of Wilmington, Delaware Terminal Tariff FMC No. 21 publishing Rules and 1230 Regulations and Rates and Charges at the Port of Wilmington, Delaware issued by the Diamond 1231 State Port Corporation, as amended from time to time, will apply to this Lease.” (emphasis added).

23. The Lease expressly provides for fees based upon the volume of fuel Buckeye moves through the Port. Section 5(c) of the Lease governs any “fee based on the total number of barrels of oil, petroleum products, hydrocarbons and their derivatives crossing the dock entering into the Premises plus the total number of barrels of oil crossing the dock exiting from the Premises annually throughout the term of this Lease.”

24. The Lease provides that all rent, fees, and charges due constitute “Lease Rental.” Exhibit B at § 5(e) & 5(g).

25. The Lease also expressly provides GT’s remedy should Buckeye fail to pay the Lease Rental. Section 5(h) provides that “In the event Tenant fails to pay any amount of Lease Rental when due, in addition to Landlord’s other remedies hereunder and at law or in equity subject to any limitations herein expressly contained, Tenant shall pay to Landlord interest on such late payment at the rate of twelve percent (12%) per annum (‘Default Rate’) compounded

annually from the date due until paid. The provisions of this paragraph in no way relieve Tenant of the obligation to pay Lease Rental on or before the date on which it is due, nor do the terms of this paragraph in any way affect Landlord's remedies pursuant to this Lease in the event Lease Rental is unpaid after the date due."

26. The Lease also covers the parties' rights and obligations in the event of default. Section 13(h) of the Lease provides that in the event of a "default event"—defined to include failure to make a payment of a sum payable when due—the "Tenant shall be provided a thirty (30) calendar day period after receipt of written notice from Landlord to cure any default."

C. The Concession Agreement and GT's Obligation to Abide by the Lease

27. On September 28, 2018, DPSC and GT entered into a Concession Agreement with an effective date of October 10, 2018, whereby GT obtained the right to commercially operate the Port of Wilmington. A true and correct copy of the Concession Agreement is attached hereto as Exhibit D.

28. Appendices 1 and 10 of the Concession Agreement delineate the specific premises that GT may operate. The Tanks are not physically located within that specific premises.

29. In Section 2.3(b) of the Concession Agreement, GT agreed to “be subject to and faithfully obey and comply with all existing leases and agreements with” DSPC. The Lease is such an agreement.

30. Section 2.10 of Concession Agreement requires that DSPC assign, *inter alia*, the lease to GT, and that GT “shall assume all of the obligations thereunder.”

31. Upon information and belief, DSPC has assigned the Lease to GT.

D. The Tariff

32. Pursuant to 46 C.F.R. § 525.2(a), “A marine terminal operator, at its discretion, may make available to the public, subject to section 10(d) of the Act (46 U.S.C. 41102(c), 41103, 41106), a schedule of its rates, regulations, and practices.” Such a schedule is typically referred to as a “tariff.”

33. On December 1, 2018, GT unilaterally imposed a new Tariff. A true and correct copy of that Tariff is attached hereto as Exhibit E (the “2018 Tariff”).

34. Specific contractual provisions—including rates and fees—in an actual contract between a marine terminal operator and another party supersede similar provisions in a general tariff according to applicable Federal Maritime Commission regulations. *See* 46 C.F.R. § 525.2(a)(3)

35. As a result, the Tariffs in this case cannot constitute additional implied contractual obligations for Buckeye to make payments to GT given that GT (as the

commercial operator) already has a contract with Buckeye—*i.e.*, the Lease—that already provided for fees associated with terminal usage—*i.e.*, the fees for barrels crossing the dock.

36. In any case, the 2018 Tariff imposed a new “Terminal Usage Fee” that, upon information and belief, was absent from all previous tariffs imposed by DSPC.

37. The “Terminal Usage Fee” is defined in the 2018 Tariff as “a charge, separate from Wharfage, against the Stevedore for fees related to the public private partnership agreement.” Exhibit E at 2.

38. The 2018 Tariff does not define the term “Stevedore” but the act of “[s]tevedoring” is defined to mean “the physical handling of Container(s) or Cargo between the Vessel and the [Container Yard].” Exhibit E at 7.

E. The GT/Magellan Dispute over Newly Imposed “Terminal Usage Fees” in the Tariff

39. On August 22, 2019, GT demanded by letter that Magellan pay the Terminal Usage Fee or GT would block access to the Tanks—property that is not even within the boundaries of the Port of Wilmington—by blocking access to the road that connects the Tanks to the public roads. A true and correct copy of GT’s August 22, 2019 letter is attached hereto as Exhibit F.

40. On August 26, 2019, Magellan sent a response letter to GT, explaining why Magellan believed a Terminal Usage Fee—a charge “against the Stevedore”—is not owed. A true and correct copy of Magellan’s August 26, 2019 letter is attached hereto as Exhibit G.

41. In particular, Magellan’s August 26, 2019 response explained that Magellan did not then (and Buckeye does not now) use Stevedores. Obviously, Magellan could not have been liable for fees for employing a Stevedore when Magellan did not utilize Stevedores.

42. In its response, Magellan also noted the Lease “already specifically includes a mechanism for GT USA Wilmington to assess a fee against Magellan for the receipt and delivery of barrels of product to and from the Premises, the same activity for which GT USA Wilmington is attempting to charge the additional Terminal Usage Fee.” Magellan cited to Section 5(c) of the Lease, which requires that Magellan pay a “fee based on the total number of barrels of oil, petroleum products, hydrocarbons and their derivatives crossing the dock entering into the Premises plus the total number of barrels of oil crossing the dock exiting from the Premises annually throughout the term of this Lease.”

43. Upon information and belief, GT attempted to invoke Section 5(d)(iii) of the Lease. Section 5(d)(iii) provides “Tenant will bear, pay, and discharge prior

to delinquency as Additional Rent . . . all other costs arising directly or indirectly from Tenant's use and occupancy of the Premises.”

44. GT's newest argument was unavailing. As Magellan noted in its August 26, 2019 letter:

Section 5(d)(iii), the provision upon which you base your demand, does not change this fact, [i.e. that the Tenant already pays a barrel-based fee under Section 5(c)] and to interpret that section [5(d)(iii)] to require a fee for barrels transferred into or out of the Premises per the recently implemented Terminal Usage Fee would render Section 5(c) redundant. . . . Moreover, Section 5(d)(iii) is inapplicable. Section 5(d) pertains to Impositions, which are taxes, assessments, permitting and licensing fees, utility charges, governmental levies, and other third-party charges for which the Landlord might be held liable, and which consequently may diminish the value of the Lease to the Landlord. In fact, the very sentence upon which you base your assertion makes clear that “it [is] the intention of the parties hereto that the rents reserved herein shall be received and enjoyed by Landlord as a net sum free of all such Impositions.” GT USA Wilmington will receive and enjoy the rents reserved in the Lease regardless of whether Magellan pays the improperly demanded Terminal Usage Fee.

45. Buckeye is unaware of any attempt by GT to rebut any of Magellan's arguments regarding the interpretation of the Lease. GT's failure to even attempt to rebut those arguments speaks volumes about the lack of support for its demand.

46. Upon information and belief, rather than rebutting Magellan's arguments, GT began attempting to negotiate a potential resolution. Upon information and belief, on November 6, 2019, GT presented an entirely new proposal to Magellan, and the parties engaged in subsequent discussions, but no

resolution was reached. Upon information and belief, at no time throughout the negotiation process was GT able to provide a principled explanation as to why Magellan owed Terminal Usage Fees.

47. The fact that GT was previously willing to negotiate and accept something less than what it alleges is owed strongly suggests GT recognized at an early point the weakness of its position.

48. GT unilaterally modified the Tariff again on January 1, 2020 (the “2020 Tariff”). The 2020 Tariff that is currently in force also includes a “Terminal Usage Fee,” though it is defined as “[a] separate charge assessed against the Stevedore.” A true and correct copy of the 2020 Tariff is attached hereto as Exhibit H.

F. Buckeye Purchases Magellan and Contacts GT About the Dispute

49. On January 17, 2020, Magellan entered into an Equity Purchase Agreement with Buckeye, with an anticipated closing date during the first calendar quarter of 2020.

50. On January 29, 2020, Evan Hofmann, Vice President and Deputy General Counsel of Buckeye, first contacted Gregory V. Iannarelli, General Counsel of GT, to notify him of the Equity Purchase Agreement.

51. The parties spoke on February 3, 2020. During the call, Mr. Hofmann expressed Buckeye’s desire and intention to negotiate a commercially

reasonable resolution to the dispute over the alleged Terminal Usage Fees purportedly due under the Tariff, but he explained that because the transaction had not yet closed, and due to Buckeye's and Magellan's desire to comply with federal antitrust laws restricting communications between Buckeye and GT, Buckeye could not begin negotiating in furtherance of such a resolution prior to the closing.

52. During that February 3, 2020 conversation, Mr. Iannarelli explained that he understood those laws and the resulting impact on the parties' ability to negotiate prior to the closing. Further, at no time did Mr. Iannarelli reject Mr. Hofmann's proposal. To the contrary, Mr. Iannarelli expressed enthusiasm towards the idea of reaching a commercially reasonable resolution with Buckeye.

53. On February 10, 2020, Mr. Hofmann received an email from Mr. Iannarelli in which GT demanded payment of all outstanding invoices from Buckeye. Mr. Hofmann responded on February 12, 2020, reminding Mr. Iannarelli, "[a]s we discussed last week, due to antitrust laws and other competitive sensitivities, Buckeye will not engage in substantive discussions with GT Wilmington USA, LLC regarding contract or commercial matters prior to the closing of the Magellan-Buckeye transaction." However, Mr. Hofmann also stated "[w]e remain willing to address these matters promptly after closing, and are hopeful a long-term commercial resolution can be reached." Mr. Iannarelli did

not respond. A true and correct copy of this email exchange is attached hereto as Exhibit I.

54. On March 13, 2020, GT sent a letter *to Magellan* that included a list of all alleged outstanding payments due to GT under the Tariff. At no time, however, did GT advise Buckeye of an intention to eschew negotiations and demand that Buckeye agree to price concessions or face the threat of a blockade. A true and correct copy of this March 13, 2020 letter is attached hereto as Exhibit J.

55. On March 20, 2020, the transaction between Magellan and Buckeye closed, and Buckeye took over ownership of Magellan's rights and responsibilities under the Lease.

G. GT's Unreasonable Demand

56. Contrary to Mr. Iannarelli's representations and in stark contrast with Buckeye's expectations (induced by Mr. Iannarelli's statements on the February 3, 2020 call), on April 1, 2020, GT sent Buckeye a letter demanding payment of all alleged outstanding fees and a further deposit. A true and correct copy of this letter (the "Demand") is attached hereto as Exhibit K.

57. The Demand purports to give notice that "[a]s Magellan Terminals Holdings, L.P. failed to submit the deposit required and pay in advance as set forth in the tariff, pursuant to Section 34.22 (E) of the tariff, effective April 6, 2020, you

and anyone seeking access on your behalf are hereby denied access to the Port of Wilmington until all past due accounts are paid.” Exhibit K at 1.

58. GT’s Demand was shocking to Buckeye, as Buckeye was under the impression the parties were going to negotiate in good faith. At no time since the February 3, 2020 discussion has Mr. Iannarelli or anyone else at GT communicated to Buckeye that GT would refuse to engage in negotiations and instead threaten to block Buckeye’s and its customers’ access to Buckeye’s real property unless the disputed fees and security deposit were immediately paid. Even the February 10, 2020 communication, in which Mr. Iannarelli explained “that GT USA Wilmington, LLC will require payment in full of all outstanding invoices with interest within the next ten calendar days,” lacked such a stark ultimatum.

59. Notably, the Tanks are not subject to the Lease, any tariff, or any other agreement with GT and/or DSPC. Those agreements all relate to the dock and an easement for a pipeline to the Tanks. Yet the gravity of GT’s threat was not to deny Buckeye and its customers access to the dock; it was to block Buckeye and its customers access to the Tanks, despite the fact that the Deed grants Buckeye “the right to use the private lanes from [the Tanks] to a public road.” Exhibit A at 2.

H. Buckeye's Response

60. The next day, Buckeye responded with a letter on April 2 explicating the parties' contractual rights, demonstrating that the fees were clearly not owed. A true and correct copy of that letter is attached hereto as Exhibit L.

61. In particular, Buckeye explained that it did not owe any "Terminal Usage Fees" given that these fees were assessed solely to conduct of stevedores and Buckeye does not employ stevedores at the Port.

62. Buckeye further explained that the Lease already provided for payment based on petroleum barrels coming into and out of the Port and that it was impermissible for GT to try and double-charge Buckeye for this using both the applicable Lease provision and an inapplicable provision regarding Stevedore usage from the 2018 and 2020 Tariffs.

63. In the April 2 letter Buckeye also responded to GT's previous claim that Section 5(d) of the Lease—pertaining to "Additional Rent" including "all other costs all other costs arising directly or indirectly from Tenant's use and occupancy of the Premises"—somehow entitled Defendant to nearly a million dollars to cover activities already contemplated in the Lease.

64. Specifically, in the April 2 letter, Buckeye explained that Section 5(d) of the Lease pertained to Impositions—*i.e.*, the category of costs related to foreseen and unforeseen taxes, assessments, permitting and licensing fees, utility

charges, governmental levies, and other third-party charges for which the Landlord might be held liable—and was thus irrelevant to the question of whether GT could double-recover Terminal Usage Fees.

65. GT responded on Friday, April 3 at 4:10 p.m. The most telling feature of GT’s response is what is absent therefrom: GT’s response did not even attempt to address Buckeye’s analysis of the parties’ contractual rights and obligations. Instead, GT attempted to shift blame for its threat to Buckeye, demanding that Buckeye “put forth a proposed resolution and demonstrate steps to assure GT Wilmington that Buckeye Wilmington is negotiating in good faith.” GT concluded by indicating that it would close the Port to Buckeye unless it made a “good faith proposal.” A true and correct copy of this letter is attached hereto as Exhibit M.

66. Buckeye responded at 7:12 p.m. with an eminently reasonable compromise, rooted in the fact that it can hardly be expected to make a proposal for resolution when GT had yet to communicate the basis by which it believed it was entitled to the fees at issue. Accordingly, Buckeye proposed to enter into a standstill agreement, taking the “nuclear” threat of closing the Port off the table while the parties negotiated to reach a commercially reasonable resolution. A true and correct copy of this communication is attached hereto as Exhibit N.

67. At 9:13 p.m., GT responded, ignoring the proposed standstill agreement, and simply repeating its demand that Buckeye make a proposal. A true and correct copy of this communication is included in Exhibit O.

68. Unwilling to negotiate against itself with a proverbial gun to its head, Buckeye made the only proposal it could in good faith: to abide by the terms of its Lease for a dock at the Port of Wilmington—the only contractual relationship Buckeye has with GT—until and unless GT could explain the basis for its claimed entitlement to the disputed fees. Buckeye closed by indicating it would be seeking injunctive relief, and GT never responded. A true and correct copy of Buckeye’s proposal is included in Exhibit O.

I. GT Cannot Prevail under the Lease

69. The plain language of the Lease demonstrates that Buckeye need not pay any volume-based Terminal Usage Fee under either the 2018 Tariff or 2020 Tariff.

70. The Lease provides that the terms and conditions of the Tariffs apply “[e]xcept as otherwise provided herein.” Exhibit B at § 27(e).

71. Where, as here, there is a provision of the Lease applicable to a given activity, then the Tariffs do not apply.

72. Section 5(c) of the Lease governs any “fee based on the total number of barrels of oil, petroleum products, hydrocarbons and their derivatives crossing

the dock entering into the Premises plus the total number of barrels of oil crossing the dock exiting from the Premises annually throughout the term of this Lease.”

Exhibit B at § 5(c).

73. As such, there is no basis under the terms of the Lease for GT to recover double-payment for the barrels of oil, petroleum products, hydrocarbons and their derivatives that are loaded or unloaded at the Port, especially in view of Section 27(e) of the Lease (“*Except as otherwise provided herein*, all terms and conditions of 1229 the Port of Wilmington, Delaware Terminal Tariff FMC No. 21 publishing Rules and 1230 Regulations and Rates and Charges at the Port of Wilmington, Delaware issued by the Diamond 1231 State Port Corporation, as amended from time to time, will apply to this Lease.”) (emphasis added).

74. The “Terminal Usage Fees” set forth in the 2018 and 2020 Tariffs also do not constitute an additional contractual right that GT can enforce.

75. The Tariffs constitute schedules of rate, regulations, and practices.

76. Under Federal Maritime Commission regulations, the Tariffs’ Terminal Usage Fees thus cannot constitute an additional payment obligation given that GT—as the marine terminal operator—cannot impose additional fees from those already set forth in the Lease.

77. Thus, the 2018 and 2020 Tariffs do not constitute additional implied contracts because the Lease already covers the services offered by GT as the marine terminal operator.

78. The “Terminal Usage Fees” are also inapplicable to Buckeye given that Buckeye has not ever and does not now employ Stevedores—entities or individuals hired to load or unload vessels—at the Port.

79. The plain language of the 2018 and 2020 Tariffs mandates that Terminal Usage Fees are only due for activities of Stevedores.

80. These customers retrieve fuel from Tanks on the land that Buckeye owns.

J. GT Cannot Rely on Tariff Remedies when Remedies Are Already Articulated in the Lease

81. Further, the Terminal Usage Fees constitute “Additional Rent,” part of the “Lease Rental,” under Sections 5(c) and 5(g) of the lease. Per Section 5(h), GT’s remedies are specified in the Lease, rendering any purported remedy in the Tariff irrelevant:

In the event Tenant fails to pay any amount of Lease Rental when due, in addition to Landlord's other remedies hereunder and at law or in equity subject to any limitations herein expressly contained, Tenant shall pay to Landlord interest on such late payment at the rate of twelve percent (12%) per annum ("Default Rate") compounded annually from the date due until paid. The provisions of this paragraph in no way relieve Tenant of the obligation to pay Lease Rental on or before the date on

which it is due, nor do the terms of this paragraph in any way affect Landlord's remedies pursuant to this Lease in the event Lease Rental is unpaid after the date due.

82. GT therefore already has remedies available to it in Section 5 of the Lease if Buckeye does not pay any amount of the Lease Rental. GT cannot rely on additional remedies provided under the Tariff, such as denying access, when the remedies are already specifically identified in the Lease.

K. GT Cannot Block Buckeye and Its Customers from Accessing the Tanks

83. Buckeye owns its property and the Tanks in fee simple and has a right-of-way easement to access the public roads that provide egress to the Tanks. *See Exhibit A.*

84. The Tanks can be accessed solely by using public roads that run through the Port.

85. The Tanks are not located on the sole part of the Port that Buckeye leases—the dock.

86. GT has no right to block access to the public roads necessary to access the Tanks.

L. GT Threatens Buckeye's Customers

87. Also on April 1, 2020, Dave Harris of GT contacted Brian Schaller, Senior Vice President at Wawa, Inc. (“Wawa”), to inform him that Wawa’s

wholly owned subsidiary Wawa Wholesale Fuels, LLC (“Wawa Fuels”) would have no access to the Tanks beginning Monday, April 6, 2020 due to an unresolved payment issue with Buckeye.

88. Wawa owns a chain of convenience stores and gas stations located along the East Coast of the United States. Wawa has convenience stores and gas stations operating in Pennsylvania, New Jersey, Delaware, Maryland, and Virginia.

89. Wawa provides fuel to its gas stations via Wawa Fuels.

90. Wawa Fuels entered into a Terminalling Agreement with Magellan Terminals Holding, L.P. (“Magellan”) on April 8, 2019, as amended on February 22, 2020, pursuant to which Magellan agreed to provide terminalling services to Wawa Fuels at the Tanks. A true and correct copy of this Agreement is attached hereto as Exhibit P.

91. “Terminalling services” in this context means providing a storage facility (the Tanks) to which Wawa Fuels transfers its fuel from the PBF Del City and Monroe Trainer refineries via a pipeline connected to the Tanks or via barges and ocean-going vessels, until such time that Wawa Fuels can retrieve its fuel from the Tanks via tanker trucks. Essentially, the Tanks serve as a storage facility where Wawa Fuels can store and access its product.

92. On March 27, 2020, Wawa Fuels entered into an “Amendment II” to its Terminalling Agreement with Buckeye PT Terminals LP, whereby Buckeye PT Terminals LP agreed to allocate to Wawa Fuels 1,139,000 barrels of segregated shell capacity for the storage Wawa Fuels’ product in the Tanks. A true and correct copy of Amendment II is included in Exhibit P. This amounts to approximately 85% of Buckeye’s business at the Tanks.

93. Every day Wawa Fuels arranges for fuel trucks to drive to the Tanks, load fuel into the trucks, and distribute that fuel to Wawa’s gas stations in the following five state region: Delaware, Pennsylvania, New Jersey, Maryland, and Virginia.

94. Pursuant to Section VII of the Terminalling Agreement, Wawa Fuels is required to “throughput” an annual average minimum of 25,000 barrels of fuel a day, measured semi-annually, from the Tanks to its gas stations in Delaware, Pennsylvania, New Jersey, Maryland, and Virginia. “Throughput” means fuel being moved into (via pipeline and shipping) and out of (via fuel delivery trucks) the Tanks. Accordingly, per the terms of the Terminalling Agreement, at least 25,000 barrels of fuel on average must move in and out of the Tanks every day. However, on average Wawa Fuels exceeds this minimum and throughputs an average of 27,000 barrels of fuel per day.

95. A typical fuel delivery truck holds 180 barrels of fuel. By moving 27,000 barrels a fuel per day, approximately 150 truckloads of fuel are filled from the Tanks every day. An average Wawa gas station requires a delivery of an entire truckload of fuel every day.

96. BP and Exxon also receive gas that is stored in the Tanks and use it to supply their gas stations throughout the state of Delaware. The average amount of product throughput for BP and Exxon is approximately 5,000 barrels per day. In total, Buckeye's customers throughput approximately 200 truckloads of fuel per day.

97. On average, gas stations in the region will require replenishment of their fuel supplies daily, meaning Buckeye's Tanks source fuel for approximately 200 gas stations per day.

98. To access the Tanks, Wawa Fuels' fuel trucks must enter the Port at the security gate and drive 1,200 feet before leaving the port and entering Buckeye's property.

99. Upon learning that GT planned to block Wawa Fuels' access to the Tanks, Mr. Schaller sent the following email to Buckeye, a true and correct copy is attached hereto as Exhibit Q:

Thanks for your time today. As discussed, Dave Harris from GulfTainer called Wawa this afternoon and informed us that Wawa would have no access to the terminal beginning Monday

morning due to an unresolved payment that is due them. Obviously, given the current emergency order that we are working through with the COVID-19 virus, Wawa is deemed an “essential provider” for both fuel and food in the five (5) Mid-Atlantic states of New Jersey, Pennsylvania, Delaware, Maryland and Virginia. All of those states are supplied fuel in some part from Wilmington so the phone call obviously raised a great deal of angst for us. We have never had any contact with Gulftainer and quite honestly, this communication has caused us great concern. With only two (2) business days remaining before Monday, are you and Buckeye confident that Wawa won’t have any issue accessing the terminal on Monday morning? If you are not in a position to do so with 100% certainty, can you kindly let me know when you will be in that position? Wawa has supply and exchange agreements that are anchored to the truck rack at the Wilmington terminal and our ability to adjust in 48 hours is nil.

Appreciate your partnership.

100. As explained in an accompanying Declaration of Brian Schaller, filed along with Buckeye’s Opening Brief supporting its motion for a temporary restraining order and incorporated herein by reference, if Wawa Fuels is denied access to its fuel stored in the Tanks, there will be disruptions in the supply chain for fuel to approximately 150 Wawa gas stations that are replenished with fuel daily in Delaware, Pennsylvania, New Jersey, Maryland, and Virginia. If it is not possible for Wawa Fuels to throughput its fuel through the Tanks, the PBF Del City and Monroe Trainer refineries may need to shut down until arrangements to bring their products to another terminal can be made. Such arrangements could take weeks or even months to make, and Wawa Fuels and the refineries would have to overcome

several obstacles to prevent product containment issues. Wawa Fuel's trucks would have to travel additional distances to out of state terminals to bring fuel back into the state of Delaware.

M. Buckeye Faces Irreparable Harm

101. Buckeye is currently Wawa Fuel's largest petroleum terminalling provider in the U.S., and it is actively looking to attract more business from Wawa Fuel.

102. Buckeye is in the "terminalling" business. Buckeye's core value for its customers is its ability to provide efficient, reliable access to the customers' fuel supplies, at a reasonable price.

103. Buckeye just purchased the Wilmington terminal 15 days ago and has just started marketing the facility to help grow the business at this newly acquired terminal. If this terminal is shutdown at a nascent stage, potential customers will likely refrain from putting their business at risk with Buckeye, particularly during a time at which many of these customers' businesses are distressed as a result of a national emergency. Failure to service these customers under these unprecedented circumstances further deteriorates Buckeye's ability to market itself as a reliable operator and service provider.

104. Buckeye's terminal network has grown significantly over the past 15 years, with much of that growth through acquisitions. Because the vast majority of

companies divesting of terminals continue to be a customer at the terminal following the sale, they want to ensure that the buyer of the terminal has a stellar reputation for providing exceptional customer service through safe, reliable, and efficient operations. If Buckeye's reputation for providing this high level of service were to be damaged, then it would impact Buckeye's ability to successfully expand its business through acquisitions in the future.

105. As of April 6, 2020, GT is prohibiting Wawa's fuel trucks from entering the Port. This is causing damage to Buckeye's commercial relationships that cannot be measured.

106. Further evidencing the irreparable harm that ensues from GT's actions, GT has threatened to deny access to Buckeye's employees, which would put Buckeye in contravention of federal law and Buckeye's previous commitments to the Environmental Protection Agency ("EPA"). Buckeye is mandated under federal law and regulations promulgated by the EPA pursuant to the Clean Water Act to commit to certain safety measures in order to mitigate the risk of petroleum products leaking into navigable waters. Not having access to the property would put Buckeye at serious risk of breaching those commitments, which could lead to fines, penalties, or worse—real danger to the navigable waters that neighbor Buckeye's tanks.

107. First, the EPA and applicable regulations mandate that certain facilities that store oil adjacent to navigable waters or adjoining shorelines—like Buckeye's

Wilmington terminal—prepare and implement a Spill Prevention Control and Countermeasure Plan (“SPCC Plan”). 40 C.F.R. §§ 112.3, 112.7. As part of Buckeye’s SPCC, Buckeye has committed to performing daily inspections of the storage tanks, pipelines, pumps and other ancillary equipment to ensure there are no potential leaks. Because Buckeye stores over one million barrels of petroleum in its tanks and in extensive piping, it is not just prudent but vital that Buckeye employees have access to the site to monitor the tanks—both for compliance with its commitments to the federal government pursuant to federal law as well as for basic safety purposes. Should a spill or leak occur on Buckeye’s premises without Buckeye employees present to react in a timely and professional manner, catastrophe would likely follow.

108. Additionally, pursuant to Buckeye’s Facility Response Plan—as required pursuant to 40 C.F.R § 112.20—Buckeye has committed to the EPA that terminal facility fuel storage tanks will be supervised by Buckeye personnel at all times of the day, seven days a week. If Defendant blocks Buckeye’s access to its property, then those employees whose presence at the facility is necessary would be blocked as well, again placing Buckeye at considerable risk of flouting its

obligations under its Facility Response Plan and posing a grave danger to the surrounding area.¹

N. GT's Actions Harm the Public Interest Amid a Pandemic

109. Delaware is currently operating under a state of emergency as a result of the COVID-19 pandemic. Governor John Carney has ordered all non-essential businesses to close. *See* <https://governor.delaware.gov/health-soe/fourth-state-of-emergency/> (last accessed April 4, 2020).

110. Per Governor Carney's order, the fuel supply chain—which includes Wawa's gas stations, Buckeye's Tanks, and the refineries—comprises an essential business in Delaware. *See* State of Delaware's Fourth Modification Of The Declaration Of A State Of Emergency For The State Of Delaware Due To A Public Health Threat at Section 6(d)(2) (Mar. 22, 2020), *available at* <https://governor.delaware.gov/wp-content/uploads/sites/24/2020/03/Fourth-Modification-to-State-of-Emergency-03222020.pdf>.

111. First responders, doctors, nurses, and delivery truck drivers rely on Wawa gas stations to fuel their vehicles. GT's actions threaten these Wawa customers' abilities to have convenient access to fuel so that they may commute to their jobs.

¹ As of April 6, 2020, GT has not denied access to Buckeye's employees, but it has not withdrawn its Demand, which explicitly threatens to do so.

COUNT I
Declaratory Relief Under 10 Del. C. § 6501

112. Buckeye repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

113. A clear controversy exists between Buckeye and GT as to whether Buckeye owes GT any fees under the Tariff and whether GT has any rights to block access to the Tanks in view of the Lease and the Deed.

114. The controversy involves the rights or other legal relations of Buckeye, and this action is asserted against GT, who has an interest in contesting the claim and has contested the claims.

115. The controversy is between parties whose interests are real and adverse, and the issues involved are ripe for judicial determination.

116. A declaratory judgment is necessary and proper in order to determine whether Buckeye owes GT any volume-based fees under the Tariff and whether GT has the legal right to block Buckeye and its customers from accessing the Tanks.

COUNT II
Breach of Contract

117. Buckeye repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

118. Buckeye PT Terminals LP (then known as Magellan Terminals Holdings L.P.) is a signatory to the Lease.

119. On March 20, 2020 Buckeye assumed all rights and responsibilities under the Lease.

120. DSPC is a signatory to the Lease. By operation of the Concession Agreement, DSPC assigned the Lease to GT.

121. Under the Concession Agreement, GT is “subject to and must faithfully obey and comply with all existing leases and agreements with” Diamond State Port Corporation. The Lease is such an agreement. Exhibit D at Section 2.3(b).

122. Therefore, Buckeye and GT have a contractual relationship.

123. By levying “Terminal Usage Fees” against Buckeye despite the fact Buckeye does not use Stevedore, threatening to block Buckeye from accessing the Tanks, and blocking Buckeye’s customers from accessing the Tanks, GT has materially breached the Contract.

124. As a direct and proximate result of such actions, Buckeye has suffered, and continues to suffer, injury in fact and has lost money, property, and/or goodwill in an amount which will be proven at trial.

COUNT III
Breach of Implied Covenant of Good Faith and Fair Dealing

125. Buckeye repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

126. Buckeye PT Terminals LP (then known as Magellan Terminals Holdings L.P.) is a signatory to the Lease.

127. DSPC is a signatory to the Lease. By operation of the Concession Agreement, DSPC assigned the Lease to GT.

128. Under the Concession Agreement, GT is subject to and must faithfully obey and comply with all existing leases and agreements with” Diamond State Port Corporation. The Lease is such an agreement. Exhibit D at Section 2.3(b).

129. Therefore, Buckeye and GT have a contractual relationship.

130. By levying “Terminal Usage Fees” against Buckeye despite the fact Buckeye does not use Stevedore, threatening to block Buckeye from accessing the Tanks, and blocking Buckeye’s customers from accessing the Tanks, GT has breached the implied covenant of good faith by acting arbitrarily and/or unreasonably, thereby frustrating the fruits of the bargain that Buckeye reasonably expected in the Lease.

131. As a direct and proximate result of such actions, Buckeye has suffered, and continues to suffer, injury in fact and has lost money, property, and/or goodwill in an amount which will be proven at trial.

COUNT IV
Tortious Interference with Contractual Relations

132. Buckeye repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

133. Buckeye and Wawa Fuels have a contractual relationship.

134. GT was aware of the contractual relationship between Buckeye and Wawa Fuels and both demonstrated this knowledge and intentionally interfered with this contractual relationship by notifying Wawa, Wawa Fuels' parent corporation, on April 1, 2020 that beginning April 6, 2020, Wawa Fuels' would no longer have access to the Tanks. GT has also denied Wawa Fuels' trucks access to the Tanks as of April 6, 2020.

135. Wawa has threatened to claim that Buckeye breached its contract with Wawa and sue for damages.

136. As a direct and proximate result of such actions, Buckeye has suffered, and continues to suffer, injury in fact and has lost money, property, and/or goodwill in an amount which will be proven at trial.

COUNT V
Tortious Interference with Business Relations

137. Buckeye repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

138. Buckeye and Wawa Fuels have a valid business relationship.

139. GT was aware of the business relationship between Buckeye and Wawa Fuels and both demonstrated this knowledge and intentionally interfered with this business relationship by notifying Wawa, Wawa Fuels' parent corporation, on April 1, 2020, that beginning April 6, 2020, Wawa Fuels would no longer have access to the Tanks. GT has also denied Wawa Fuels' trucks access to the Tanks as of April 6, 2020.

140. Wawa has threatened to claim that Buckeye breached its contract with Wawa and sue for damages.

141. As a direct and proximate result of such actions, Buckeye has suffered, and continues to suffer, injury in fact and has lost money, property, and/or goodwill in an amount which will be proven at trial.

PRAYER FOR RELIEF

Wherefore, Buckeye prays for judgment against GT as follows:

A. For declaratory judgment that:

- (1) Buckeye does not owe GT any volume-based fees under the Tariff;
- (2) Buckeye and its customers have a right to access Buckeye's property and the Tanks; and
- (3) GT has no right to prevent Buckeye from accessing the Tanks;

B. For judgment that:

- (1) GT has breached the parties' contract;
- (2) GT has breached the implied covenant of good faith and fair dealing;
- (3) GT has tortiously interfered with Buckeye's contractual relationships; and
- (4) GT has tortiously interfered with Buckeye's business relationships;

C. For preliminary and permanent injunctive relief restraining and enjoining GT, its agents, servants, officers, employees, and all those acting under their control and/or on their behalf and/or in concert with them, from:

- (1) Threatening to deny Buckeye and/or its customers from accessing the Tanks;
- (2) Denying Buckeye and/or its customers from accessing the Tanks; and

- (3) Communicating with Buckeye's customers;
- D. That GT be required to pay to Buckeye:
 - (1) punitive damages in a sum to be determined by the trier of fact in light of the egregious behavior of GT as described herein; and
 - (2) Buckeye's costs, disbursements, expenses, and attorneys' fees.
- E. That Buckeye shall have such other and further relief as is just and proper.

Dated: April 6, 2020

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