



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BARBARA BOESE, SARAH :
GRAHAM, JOHN GRAHAM, :
SIMEON HAHN, and :
LORETTA MOONEY, :

Plaintiffs, :

v. :

C.A. No. N26C-07-

DIAMOND STATE PORT :
CORPORATION, a Delaware :
Corporation, ENSTRUCTURE :
WILMINGTON HOLDINGS, LLC, :
a Delaware Limited Liability :
Company, ENSTRUCTURE DCT :
LLC, a Delaware Limited Liability :
Company, ENSTRUCTURE LLC, a :
Delaware Limited Liability Company,:
and GT USA Wilmington, LLC, a :
Delaware Limited Liability Company,:
:

JURY TRIAL REQUESTED

Defendants. :

COMPLAINT

Plaintiffs bring this action for Declaratory Judgment against the Defendants,
based upon the following:

THE PARTIES

1. Plaintiff Barbara Boese (collectively referred to as Plaintiffs and/or taxpayers) is a Delaware resident and taxpayer, who is concerned with wasteful and unnecessary expenditure of millions of dollars by the DSPC in violation of State and Federal laws.

2. Plaintiff Sarah Graham Boese (collectively referred to as Plaintiffs and/or taxpayers) is also a Delaware resident and taxpayer who shares the same concerns.

3. Plaintiff John Graham Boese (collectively referred to as Plaintiffs and/or taxpayers) is also a Delaware resident and taxpayer who shares the same concerns.

4. Plaintiff Simeon Hahn Boese (collectively referred to as Plaintiffs and/or taxpayers) is also a Delaware resident and taxpayer who shares the same concerns.

5. Plaintiff Loretta Mooney Boese (collectively referred to as Plaintiffs and/or taxpayers) is also a Delaware resident and taxpayer who shares the same concerns.

6. Defendant Diamond State Port Corporation (“DSPC”) is a corporation of the State of Delaware established and empowered pursuant to Title 29, Section 8780 *et seq.* of the Delaware Code (the “DSPC Enabling Act”), enacted by the Delaware General Assembly, and its Certificate of Incorporation. They can be served through their registered agent located at 820 N. French Street 4th Floor, Wilmington, Delaware 19801.

7. Defendant Enstructure Wilmington Holdings, LLC (“EWH”) is a Delaware limited liability company which has offices located at 11 Hausel Road,

Wilmington, DE 19801. They can be served through their registered agent Cogency Global, Inc. located at 850 New Burton Road, Suite 201, Dover, Delaware 19904.

8. Defendant Enstructure DCT LLC (“ED”) is a Delaware limited liability company. They can be served through their registered agent Cogency Global, Inc. located at 850 New Burton Road, Suite 201, Dover, Delaware 19904.

9. Defendant Enstructure LLC (“Enstructure”) is a Delaware limited liability company which has offices located in Wellesley, Massachusetts and New York, New York. Upon information and belief, Enstructure is the parent company of EWH and ED. They can be served through their registered agent Cogency Global, Inc. located at 850 New Burton Road, Suite 201, Dover, Delaware 19904.

10. Defendant GT USA Wilmington, LLC (“GT USA”) is a limited liability company. They can be served through their registered agent Corporate Creations Network LLC located at 1521 Concord Pike, Suite 201, Wilmington, Delaware 19803.

JURISDICTION

11. This Court has jurisdiction over this action pursuant to provisions of 10 *Del. C.* §541, Article IV, §7 of the Delaware Constitution, and the Declaratory Judgment Act, Title 10, Chapter 65 of the Delaware Code.

THE FACTS

12. DSPC is the owner of approximately 177 acres of land zoned by the City of Wilmington as General Industrial (M-2) and identified as 1 Container Road, Wilmington, Delaware 19801, New Castle County Tax Parcel No. 2606700003, which is improved with the facilities, buildings and equipment known as the Port of Wilmington (the “Existing Port Property”).

13. DSPC is also the owner of approximately 113 acres of land zoned by New Castle County as Heavy Industrial (HI) and identified as 4600 Hay Road, Wilmington, Delaware 19809, New Castle County Tax Parcel No. 0615300006, which is vacant land but is the subject of plans for redevelopment into a second Port facility (the “Proposed Edgemoor Port Facility Property”). A copy of the Proposed Record Minor Land Development Plan Edgemoor Port Facility submission is attached as Exhibit “A”.

14. The Delaware Code is specific and mandatory. Title 29, Section 8784(1) of the Delaware Code mandates:

“...the Corporation shall not enter **into any agreement or transaction** to transfer, privatize, or lease all or substantially all of the Port of Wilmington to a single entity, or to a related group of entities unless:

- a. The Chair of the Board of the Corporation makes a Presentation to the Joint Committee of Capital Improvement discussing the terms of the proposed final agreement or transaction;

- b. Following the presentation, the members of the Joint Committee on Capital Improvement explain the terms of the proposed final agreement or transaction to their respective caucuses; and
- c. The General Assembly within 30 days of the presentation of the chairperson of the Board of the Corporation to the Joint Committee on Capital Improvement to the General Assembly approves by concurrent resolution the proposed final agreement or transaction in its entirety.

The Delaware General Assembly may reject by concurrent resolution the proposed final agreement or transaction in its entirety in which case the Corporation shall not enter into the proposed final agreement or transaction. Notwithstanding the foregoing, if the General Assembly does not approve or reject the proposed final agreement or transaction in its entirety by concurrent resolution within 30 days of the presentation of the proposed final agreement or transaction to the Joint Committee on Capital Improvement then the proposed final agreement or transaction shall be deemed rejected by the General Assembly and the Corporation shall not enter into the proposed final agreement or transaction. **No assignment, of any agreement or transaction that has been approved in accordance with this subparagraph, shall be valid unless such assignment is itself approved in accordance with the procedures set forth herein.”** (emphasis added)

15. Consistent with the Concurrent Resolution Requirement, DSPC sought and obtained legislative approval in Spring 2018 via House Concurrent Resolution No. 76 (149th General Assembly) (the “2018 Concurrent Resolution”) to enter into

an agreement with GT USA Wilmington, LLC (“GT”) for development and operations of facilities on the Existing Port Property and the Proposed Edgemoor Port Facility Property subject to certain key terms and conditions. A copy of the 2018 Concurrent Resolution (HCR76 released on April 24, 2018) is attached as Exhibit “B” and is herein incorporated by reference.

16. The 2018 Concurrent Resolution also had legal significance in that Title 29 Section 8784(1) specifically states that “No assignment, of any agreement or transaction that has been approved in accordance with this subparagraph, shall be valid unless such assignment is itself approved in accordance with the procedures set forth herein.”

17. On or about September 18, 2018, DSPC entered into a Concession Agreement with GT (the “Concession Agreement”) in furtherance of the conditions and terms contained in the 2018 Concurrent Resolution which was passed on April 24, 2018. A copy of the Concession Agreement dated September 18, 2018, together with Amendments 1-4 is attached hereto as “Exhibit C”.

18. On January 10, 2019, GT USA engaged into a (mortgage) transaction to obtain a \$350,000,000.00 line of credit, which was secured by their banks through a \$350,000,000.00 mortgage on all of DSPC’s properties at the Port of Wilmington.

19. Upon information and belief, issuing this mortgage, which is a transaction, was orchestrated, approved and consented to by the DSPC Chairman, Jeffrey Bullock without the DSPC's approval.

20. Upon information and belief, Chairman Bullock did not follow the requirements of Title 29 Section 8784(1) when he failed to advise the DSPC Board of Directors and/or Delaware General Assembly of the \$350,000,000.00 (mortgage) transaction.

21. Upon information and belief, GT USA began to negotiate, apply for and provide documentation to obtain this mortgage prior to the execution of the Concession Agreement, dated September 18, 2018.

22. Upon information and belief, GT USA, failed to pay rent to DSPC when due and those payments fell behind by in as much as a year and have never been cured.

23. DSPC chose not to inform the Delaware General Assembly of this accumulated failure to pay rent which is a obvious **"payment default"** pursuant to Article 10 of Concession Agreement of September 18, 2018 (page 27 of Exhibit "C"), wherein defaults are clearly defined as follows:

"The occurrence of any of the following shall constitute a default by GT USA:

- a. Payment Default. Failure by GT USA to make any payment of money due under this Agreement, including, but not limited, to pay an Concession**

**Fee or the Minimum Annual Concession Fee, if
the failure continues for ten (10) Business Days
after written notice has been give to GT US; ...”**

24. Subsequent Amendments to the Concession Agreement were accomplished pursuant to a December 31, 2019 Amendment to the Concession Agreement (the “1st Amendment”). The Delaware General Assembly was not informed about this (Amendment) transaction as per Title 29 Section 8784(1).

25. In March of 2020, DSPC submitted a development plan titled “Record Minor Land Development Plan Edgemoor Port Facility 4600 Hay Road” (the “Plan”) for the proposed development of the Edgemoor property for review and approval pursuant to the New Castle County Code. (Referred to as Exhibit A)

26. The Plan proposed to, *inter alia*, construct 250,000 square feet of Warehouse space, a 48,900 square foot office building, 56,057 square feet of canopies, a Railyard, a Container Port, and associated parking on the proposed Edgemoor Port Facility property. The Plan also proposed a 15,000 square foot Administrative Office building on a separate, nearby parcel owned by DSPC.

27. The Plan proceeded in the New Castle County (“County”) land use review and approval process (“County Process”) over the next 2 ½ years and it was also reviewed and commented on by various agencies of the State of Delaware (“State”).

28. Upon information and belief, on or about December 6, 2021, the State of Delaware Fire Marshall informed DNREC of 10,000 tons of illegal and hazardous scrap tires located at the Edgemoor Port Facility located at 4600 Hay Road, Wilmington, Delaware. Please reference to the six (6) photos contained in Exhibit “D” attached hereto.

29. Upon information and belief, the Fire Marshall informed DNREC, DSPC and GT USA of this major environmental health and safety hazard as referenced in DNREC Secretary Shawn M. Garvin’s Order, dated June 23, 2022, attached hereto as Exhibit “E”. It should be noted Secretary Garvin’s Findings and Order of June 23, 2022 were surreptitiously concealed and never made public in violation of the statute(s) until after the **environmentally hazardous and unsafely** dumped tires were discovered by the public on or about April 2023.

30. DSPC chose not to inform the Delaware General Assembly of these illegal, environmental health and safety violations which were a clear “**operations default**” pursuant to Article 10 of the Concession Agreement of 2018 (page 27 of Exhibit “C”) wherein defaults are clearly defined as follows:

“The occurrence of any of the following shall
constitute a default by GT USA: ...

**d. Operations Default. Failure to operate the
Premises in accordance with the Permitted
Operations or to main the Premises or Assets**

**in the Basic Condition and/or failure to
comply with the applicable safety and security
standards set forth in this Agreement; ...”**

31. GT USA continued in total and material “operations default” of the Concession Agreement with DSPC by allowing the illegally dumped scrap tires to cause an environmental health and safety hazard on the Edgemoor Port property through the entire calendar year of 2022 and well into the calendar year of 2023. This ongoing default/breach and no cure by GT USA rendered the Concession Agreement void and invalid *ab initio*.

32. Upon information and belief, in April 2022, the DSPC passed a resolution and paid \$2,900,000.00 for GT USA’s obligation to the International Longshoreman’s Association’s (ILA) Health Care health plan and/or premiums owed. This (health care) transaction and payment violated both the Concession Agreement of 2018, as well as the statutory mandate of Title 29 §8784(1). Furthermore, DSPC chose not to inform the Delaware General Assembly regarding this \$2,900,000.00 (health care) transaction and/or payment pursuant to Title 29 §8784(1).

33. Upon information and belief, in October of 2022, GT USA’s banks declared GT USA in default of their note and mortgage because of their failure to make adequate payments to the banks and GT USA’s non timely rental payments to DSPC.

34. In October of 2022, GT USA banks reconstituted the GT USA Board of Directors and took control of the corporation along with a representative appointed by the State of Delaware.

35. Performance bond(s) are the “insurance policy(s)” with protections for the taxpayers should there be any defaults by GT USA. Upon information and belief, The Concession Agreement specified that GT produce a letter of credit, in place of a per bond, which is typically required. Upon information and belief, GT submitted a Fifteen Million Dollar (\$15,000,000.00) line of credit which was not drawn down by the DSPC to recover any of the lost funds not paid by GT under the terms of this Agreement. This loc was the taxpayer’s sole and exclusive “insurance policy and protection” against GT’s failures and losses there from including but not limited to:

- (a) the continuous and ongoing non-payment of rent which is a continuous “payment default” as specified in the Concession Agreement;
- (b) the still uncured illegal and environmentally unsafe and hazardous dumping and storage of dangerous scrap tires which is an “operations default” as specified in the Concession Agreement; and
- (c) the unreimbursed medical premium for \$2,900,000.00 (health care transaction) made by the DSPC for GT USA’s medical premium obligations to the ILA.

Upon information and belief, none of the Defendants or the State did anything to protect its citizens and taxpayers from this gross mismanagement and financial losses.

36. In late 2022 and into 2023, DSPC began the process of “Bidding” to replace GT USA. This “bidding” was in direct violation of the Delaware’s Procurement Act Requirements.

37. On September 28, 2022, counsel for DSPC advised New Castle County that the previously submitted Plan (Exhibit “A”) for the proposed Edgemoor Port Facility Property was now exempt from the New Castle County Processes and therefore final approval from New Castle County was not legally required. Nonetheless, DSPC continued to make certain Plan submissions to New Castle County and provided responses to New Castle County comments on such submissions over the ensuing year, and DSPC participated in a Traffic Operational Analysis with the Delaware Department of Transportation.

38. Also in that same time period, DSPC made applications for various government permits and approvals needed to develop the proposed Edgemoor Port Facility Property (Exhibit “A”). In that process, DSPC utilized funds provided from, *inter alia*, the State and the United States government, including funds provided by the Federal American Rescue Plan Act (“ARPA”).

39. Upon information and belief, DSC and/or GT USA, and/or their agents, proceeded and applied for Federal funds while the project was in violation of various State and Federal environmental laws. So we are clear, we are referring to the 10,000 tons of illegal and hazardous scrap tires located at the Edgemoor Port Facility, which were a constant and ongoing “operations default” of the Concession Agreement, as well as a number of various State and Federal laws.

40. On July 28, 2023, EWH and Enstructure entered into a “Second Amendment To Concession Agreement” with DSPC (the “Second Amendment”) (Exhibit “C”) whereby the parties agreed that EWH would assume the rights and obligations of GT under the Concession Agreement and that EWH would succeed GT as concessionaire at the Existing Port Property and the proposed Edgemoor Port Facility Property (Exhibit “A”). GT also entered into an agreement with EWH that same date, which authorized and agreed to the same (the “Assignment & Assumption Agreement”).

41. This invalid “Second Amendment and the Assignment & Assumption Agreement” was in fact an Assignment -not an Amendment- of the Concession Agreement, as amended, from GT to EWH and Enstructure. However, **this alleged “Second Amendment” transaction was in fact an assignment** that occurred and was not approved by obtaining a subsequent Concurrent Resolution, in direct contravention of the mandate contained in Title 29 Section 8784(1) and such failure

to obtain a Concurrent Resolution **renders this (Second Amendment/Assignment) transaction invalid and void *ab initio*.**

42. The “Second Amendment” also, *inter alia*: (1) extended the lease term for the Existing Port Property and the proposed Edgemoor Port Facility Property contained in the Concession Agreement, (2) committed DSPC to provide EWH with funds received pursuant to ARPA to pay for certain expenses incurred by EWH in connection with the development of the proposed Edgemoor Port Facility Property, and (3) contained numerous changes to financial obligations and commitments of the parties *vis a vis* the Existing Port Property and its operations and the proposed Edgemoor Port Facility Property and its development. Such “amendments” to the Concession Agreement constitute a separate transaction, as well as this Assignment from GT to EWH and Enstructure would have required a Concurrent Resolution from Delaware General Assembly.

43. Title 29 Section 8784(1) of the Delaware Code clearly and unambiguously provides that any assignment must be reviewed and approved via a Concurrent Resolution of the Delaware General Assembly. Not having followed the mandate of the statute, this invalid “Second Amendment”/Assignment is therefore, invalid and void *ab initio*.

44. Instead of following the law and complying with the requirements of Title 29 Section 8784(1), as DSPC did initially, when it followed the law and obtained House Concurrent Resolution HCR76, DSPC chose instead to circumvent the requirements of Title 29 Section 8784(1) and to illegally rely upon an inapplicable exemption from the requirements of Title 29 Section 8784(1) by having the Delaware General Assembly hastily inserting language in the Fiscal Year 2023 State Bond and Capital Improvements Act, (“Bond Bill”), which was passed on June 30, 2022. This hastily included language in the Bond Bill occurred after GT USA was in material and repeated uncured various defaults and violations that included but were not limited to:

- a. the (mortgage) transaction that allowed the mortgage of \$350,000,000.00 to be filed against the property (DSPC chose not to inform Delaware General Assembly about this mortgage);
- b. the continuous and ongoing non-payment of rent which is a continuous “payment default” as specified in the Concession Agreement;
- c. the still uncured illegal and environmentally unsafe and hazardous dumping and storage of dangerous scrap tires which is an “operations default” as specified in the Concession Agreement; and
- d. the unreimbursed medical premium for \$2,900,000.00 (health care transaction) made by the DSPC for GT USA’s medical premium obligations to the ILA.

45. Upon information and belief, DSPC did not want to answer questions from the Delaware General Assembly about funds received, funds expended, State and Federal funds applied for, and DSPC's conduct with respect to "operations" at the Port's facilities including but not limited to the maintaining of the illegally hazardous and dangerous tires which presented an immediate threat to public safety and health.

46. Because of the invalid "Second Amendment"/Assignment brought about a Concession Agreement assignment, not just an amendment, any reliance on Section 73 of the Bond Bill of June 30, 2022 to justify avoiding the Concurrent Resolution requirement is legally misplaced, invalid and void *ab initio*.

47. Between the Spring of 2023 and Spring of 2024 various articles were written about the 10,000 tons of tires dumped on the Delaware owned land which is the site of the Proposed Record Minor Land Development Plan Edgemoor Port Facility referred to as Exhibit A. Chad Pradelli and Cheryl Mettendorf of Channel 6 ABC News wrote an article, dated May 9, 2023 titled Investigation: Questions about 10,000 tons of tires dumped on Delaware state -owned land. Channel 6 ABC News also shot video in documenting the story. Additionally, Karl Baker of Spotlight Delaware wrote an article titled "A year after a tire pile helped topple port operator, solution nears" on March 6, 2024. Clearly evidencing a large very visible pile of hazardous and environmentally unsafe tires still on the property

almost a year later, demonstratively showing that nothing of any significance has been done to remove the tires and the environmental hazard. Lastly, Karl Baker again wrote about the Port on May 27, 2026 in an article titled “Delaware officials reveal plan to close \$185M shortfall for Edgemoor Port”. Copies of these two (2) articles are attached hereto as Exhibit “F”.

48. In or about Spring of 2024, DSPC approved a Joint Development Plan proposed by EWH for the proposed Edgemoor Port Facility Property. However, this plan was and continues to be subject to the requirements of the Procurement Act(s) and Title 29 Section 8784(1) requiring DSPC to inform the Delaware General Assembly of the Joint Development Plan, proposed agreement(s), and DSPC’s obligations. A copy of the Joint Development Plan is attached hereto as Exhibit “G”.

49. On December 23, 2024, DSPC entered into a “Third Amendment To Concession Agreement” with EWH, Enstructure and ED (the “Third Amendment”) (Exhibit “C”), here again is subject to Title 29 Section 8784(1) of the Delaware Code. This “Third Amendment” sought to: extend the terms of the lease of the Existing Port Property and the proposed Edgemoor Port Facility Property; address ownership and related interests in machinery and equipment purchased and installed pursuant to the development and start of the port facilities; the subsequent operations on the proposed Edgemoor Port Facility Property; and established certain use limitations and requirements for operations post-development of the proposed

Edgemoor Port Facility Property. The “Second Amendment”/Assignment was legally invalid and void *ab initio*, thus the “Third Amendment”, which relied thereon, is also invalid and void *ab initio*.

50. On December 23, 2024, DSPC entered into the Joint Development Agreement with EWH, ED and Enstructure as referenced herein as Exhibit “G”.

51. In November of 2025, the Delaware State Auditor released a report regarding the DSPC that included serious and scathing findings of deficiencies in DSPC’s operations on the Existing Port Property. The deficiencies included: (1) lack of oversight regarding the Concession Agreement, (2) failure to timely pursue and collect millions of dollars in payments due and damages recoverable under the Concession Agreement, (3) failure to enforce the Concession Agreement and (4) failure to comply with numerous Delaware Corporate and Open Meeting Statutes and regulations and (5) properly and promptly rectifying the environmentally, unsafe and unhealthy hazards and violations caused by the illegal and ongoing acts of GT USA and its agents. Please Refer to Diamond State Port Corporation Performance Audit July 1, 2021 through June 30, 2025 together with the Auditor’s workpapers and Diamond State Port Corporation Financial Statement Audit Fiscal Year Ended June 30, 2025 attached as Exhibit “H”.

52. The State Auditor was clear and specific that DSPC and the State of Delaware failed to timely pursue collection millions of dollars in lost revenue due

to GT's failure to pay (the yet to the determined amount of) rental payments to DSPC, reimburse DSPC for (\$2,900,000,000.00) medical insurance premiums and failing to reimburse DSPC and the State for the proper and environmentally required and safe removal of the illegally stored and hazardous stock pile of tires at the Edgemoor Port Facility (ultimately \$2,000,000.00 plus which was borne by the State of Delaware Citizens and Taxpayers). All of these acts and/or failures are "transactions" which fall under Title 29 Section 8784(1).

53. Despite the Concession Agreement and The Joint Development Agreement being invalid & void *ab initio*, the DSPC Board of Directors passed Resolution 26-04 on April 20, 2026 that finally recognized the cost of the project for the Proposed Edgemoor Port Facility Property had grossly and vastly increased in cost. A copy of Resolution 26-04 passed on April 20, 2026 is attached as Exhibit "I". As a result, DSPC substantially reduced the size of the overall project for the Proposed Edgemoor Port Facility Property from its original submission to the Delaware General Assembly and also requested an additional commitment from the Delaware General Assembly of \$110,000,000.00 in funding, over the State's previously committed amount of approximately \$200,000,000.00 (in 2023/2024), towards the significantly smaller project at the Proposed Edgemoor Port Facility Property. (The additional \$110,000,000.00 in funding was just approved at the end of June 2026 by the Delaware General Assembly in the Fiscal Year 2027 Bond Bill)

A copy of Section 69 of the Fiscal Year 2027 Bond Bill is attached hereto as Exhibit “J”.

54. Because the Concession Agreement and its Amendments and the Joint Development Agreement and all of its “Amendment(s)"/Assignments are invalid and void *ab initio*, together with the material changes in the scope, size and capabilities of the Proposed Edgemoor Port Facility Property project, DSPC was legally obligated to produce and submit “a new agreement to transfer, privatize, or lease all or substantially all of the Port of Wilmington to a single entity, or to a related group of entities ...” as mandated by Title 29 Section 8784(1). Despite their efforts to continue with the Proposed Edgemoor Port Facility Property project, based on the material changes contained in the newly created DSPC Board Resolution 26-04 approved on April 20, 2026, violates all applicable State and Federal Procurement Acts and Statutes. As the project was invalid and void *ab initio* from the beginning, DSPC had the obligation to seek and receive new bids and prepare a new proposed agreement regarding the Proposed Edgemoor Port Facility Property project (*original* plot plan submission is Exhibit A) and follow the mandated requirements of Title 29 Section 8784(1) and all applicable Procurement Acts, and present said proposed new agreement to the Delaware General Assembly as they – knew they were mandated to do - as previously did with the initial agreement with GT USA and obtained the required Concurrent House Resolution HCR76 (Please refer to Exhibit “B”).

55. DSPC Board of Directors Resolution 26-05, approved on May 22, 2026, indicated, *inter alia*, that: (1) DSPC had approved a “An Amendment to Joint Development Agreement” dated December 23, 2024 with EWH, ED and Enstructure regarding development of the Proposed Edgemoor Port Facility Property (the “Joint Development Agreement”), (2) DSPC and EWH had an agreement to amend the Joint Development Agreement, and (3) authorized entry into that amendment. A copy of the DSPC Board of Directors Resolution 26-05 is attached hereto as Exhibit “K”.

56. Accordingly and as previously stated, this Joint Development Agreement with all of its “Amendment(s)"/Assumptions – is in fact an Assignment - are invalid and void *ab initio* because DSPC did not follow the Statute and comply with the mandates of Title 29 Section 8784.

57. Although the Joint Development Agreement was invalid and void *ab initio*, it nonetheless restated that the Delaware Code and Federal law(s) mandated compliance with public bidding and lowest responsive, responsible bidder requirements for construction to take place as part of the development of the Proposed Edgemoor Port Facility Property.

58. Upon information and belief, DSPC, EWH, ED and Enstructure have violated Sections 7.09, 7.10 and 7.11 of the Joint Development Agreement (Please refer to Exhibit “G”).

59. Upon information and belief, construction contracts have been entered into and “Notices to Proceed” have been issued for development of the Proposed Edgemoor Port Facility Property despite the violations of State and Federal law(s), their respective Procurement Act(s), the Concession Agreement of 2018, and the invalid and void Joint Development Agreement.

60. News reports at the end of June 2026 indicated that construction work would commence immediately at the Proposed Edgemoor Port Facility Property, now that an additional \$110,000,000.00 in State funding had just been approved by the Delaware General Assembly in the Fiscal Year 2027 Bond Bill (section 69(a)) on June 30, 2026. Further, Section 69(b) of the Fiscal Year 2027 Bond Bill (Exhibit “J”) states:

“[n]otwithstanding any provision of law or precedent to the contrary, the Secretary of the Department of Natural Resources and Environmental Control, in addition to the waiver authority provided in 7 Del. C. §7205, shall have the **exclusive authority to waive any permit or approval requirements applicable to the Delaware Container Terminal project and shall exercise such authority as necessary to timely effectuate this project.** Any waiver may be granted subject to such conditions as the Secretary deems appropriate to protect the State’s natural resources, including all conditions the Secretary may have previously imposed on the project. Such waivers and conditions shall not be subject to appeal

or review under 7 Del. C. §7210, 6008 or 6009; 29 Del. C. Chapter 101 or otherwise.”

61. Karl Baker again wrote about the Port on May 27, 2026 in an article titled “Delaware officials reveal plan to close \$185M shortfall for Edgemoor Port”. Copy of this article is attached hereto as part of Exhibit “F”.

62. Upon information and belief, DSPC urged the Delaware General Assembly to hastily and improperly adopt Section 69(b) of the Fiscal Year 2027 Bond Bill so as to allow the DNREC secretary to have “exclusive authority to waive any permit or approval requirements applicable to the Delaware Container Terminal Project ... to timely effectuate this project”. [also known as the Proposed Edgemoor Port Facility Property (Exhibit “A”)]

63. The contractors performing any construction work, and the contracts themselves, costing many millions of dollars are not known and have not been publicly disclosed, nor have they been provided, and in fact denied, to members of the Delaware General Assembly who have appropriately requested the construction contracts including but not limited to the contractor(s)’ identities, terms of the contract, costs and pay schedules.

COUNT I – DECLARATORY JUDGMENT -
THE DSPC AGREEMENTS WITH ENSTRUCURE ARE
INVALID AND VOID *AB INITIO*

64. The contents of paragraphs 1 through 63 are hereby restated and incorporated as if fully set forth herein.

65. DSPC has and continues to violate the State and Federal Procurement Act(s), by: (1) entering into and proceeding with an invalid and void *ab initio* “Second Amendment”/Assignment and the invalid and void *ab initio* Joint Development Agreement, and (2) failing to follow State and Federal Procurement Act requisites in bidding and awarding construction contracts for purposes of making improvements to the Proposed Edgemoor Port Facility Property and compliance with State and Federal Grant Applications. The other defendants are similarly subject to the State and/or Federal Procurement Act(s)’ requirements as agents of DSPC.

66. DSPC has admitted that the State Procurement Act applies to Proposed Edgemoor Port Facility Property construction contracts. Section 7.10 of the Joint Development Agreement confirms this fact. (Please refer to Exhibit “G”)

67. The Federal Procurement Act also applies to any and all transactions involving the expenditure of funds for this project. As a condition of receiving Federal Grant funds DSPC was and continues to be obligated to follow the State

Procurement Act in that the State Procurement Act is very specific for large public works projects, i.e. the Port, including but limited: (a) require a performance bond, issued by a Surety Company, equal to or greater than 100% of the value of the resulting contract; (b) specifies procedures for agencies shall use when contracting out services and construction projects and professional service agreements; (c) specifies required methods and procedures for bid advertisement; (d) contractor prequalification and bid evaluation; (e) specifies requirements for performance bonds; (f) specifies requirements for replacing contractors; and (g) requirements for revoking a performance bond as defined in Del. Code Title 29 Chapter 69 which mandates that prevailing wage requirements be in every public works project of this magnitude.

68. Upon information and belief, DSPC failed in its oversight and contract management of the original GT USA Concession Agreement, dated September 18, 2018, and all of its Amendments thereto, (Exhibit “C”) by failing to receive a 100% performance bond, in accordance with State Procurement Act covering the value of the proposed scope of the entirety of the Port project, as defined by the original GT USA Concession Agreement/contract (Exhibit “C”); failed in its contractual oversight as herein described; failed in oversight and adherence to the bidding rules and requirements as herein described; failed in following the terms of the GT USA

Concession Agreement/Contract in finding GT USA in default and recouping said funds not paid by GT USA in accordance with Concession Agreement/Contract.

69. Section 7.09 of The Joint Development Agreement mandates “Enstructure hereby covenants and agrees that it shall cause its Design-Builder to negotiate and enter into project labor agreement (PLA) on covered construction projects (“Covered Projects”).” (Refer to Exhibit “G”) Upon information and belief, DSPC violated the State and Federal Procurement Act(s) by making it a condition precedent that Enstructure agree to causing any construction contract be implemented only through Project Labor Agreements, as opposed to merely requiring that the prevailing wage requirement(s) be implemented. Furthermore, upon information and belief, these condition precedents and requirements may also have violated the requirements and conditions in their various Federal Grant applications.

70. DSPC continues violating the Federal and State Procurement Act(s) by failing to follow its requirements for any and all construction to develop the Proposed Edgemoor Port Facility Property.

71. The actions of the Defendants which violate the Procurement Act(s) are in direct contravention of the law and should be declared illegal and barred from proceeding further.

72. The “Second Amendment”/Assignment did not comply with the mandated requirements of Title 29 Section 8784(1) requiring a Concurrent Resolution authorizing such an assignment. In turn, the Joint Development Agreement, which was founded upon the invalid and void “Second Amendment”/Assignment, is legally invalid and void *ab initio*. (Please refer to Exhibits C and G, respectively)

73. Based upon the foregoing, this Court should enter a Declaratory Judgment pursuant to Title 10, Chapter 65 of the Delaware Code in favor of the Plaintiffs and against the Defendants which invalidates the Concession Agreement, “Second Amendment”/Assignment and any and all others Amendments to the Concession Agreement, as well as the Joint Development Agreement and any and all of its Amendments thereto and all contracts for construction on the Proposed Edgemoor Port Facility Property in that all of these are legally invalid and void *ab initio*. Please refer to Exhibit “C”.

COUNT II – DECLARATORY JUDGMENT –
VIOLATION OF FEDERAL REGULATIONS REQUIRING
COMPLIANCE WITH THE PROCUREMENT ACT

74. The contents of paragraphs 1 through 73 are hereby restated and incorporated as if fully set forth herein.

75. Upon information and belief, Federal funds are to be used, in part, to conduct construction for the development of the Proposed Edgemoor Port Facility Property, referred to as Exhibit “A”.

76. Title 2, Section 200.317 of the Code of Federal Regulations provides that “[w]hen conducting procurement transactions under a Federal award, a State ... must follow the same policies and procedures it uses for procurements with non-Federal funds.”

77. Section 7.10 of the invalid and void *ab initio* Joint Development Agreement admits that Section 200.317 applies to development of the Proposed Edgemoor Port Facility Property. However, the Joint Development Agreement does not specifically require that prevailing wages be paid as per State and Federal statutes.

78. Upon information and belief, the Procurement Act requirements have not been followed by the parties nor has there has been competitive bidding undertaken for the construction contracts believed to have been entered into to engage in the development of the Proposed Edgemoor Port Facility Property.

79. The Court should declare that all contracts for Proposed Edgemoor Port Facility Property be declared invalid and void *ab initio*.

COUNT III –

APPOINTMENT OF A MONITOR

80. The contents of paragraphs 1 through 79 are hereby restated and incorporated as if fully set forth herein.

81. The Plaintiffs ,and all other taxpayers similarly situated, hereby request based on the facts and contents stated herein, as well as the State Auditor’s findings (Exhibit “H”), the Court appoint a Monitor to oversee and supervise the administration and operations of the DSPC, any and all contracts, operations and day to day activities at the Port of Wilmington located at 1 Hausel Road, Wilmington, Delaware and the Proposed Edgemoor Port Facility Property and its expenditures related thereto.

82. The Monitor shall be appointed by the Court upon such terms and conditions that this Honorable Court deems just, honorable and necessary.

WHEREFORE, the Plaintiffs, and all other taxpayers similarly situated, respectfully request that this Court declare that: (1) the “Second Amendment”/Assignment (GT USA to EWH, ED, Enstructure), the Third Amendment and any and all other subsequent Amendments to the Concession Agreement of September 18, 2018 as well as the Joint Development Agreement and any and all of its Amendments and any and all transactions are invalid and void *ab initio*, (2) all contracts for construction and/or related activities on the Proposed

Edgemoor Port Facility Property are invalid and void *ab initio*, (3) require compliance with Title 29 Section 8784(1); (4) require compliance with any and all Concurrent Resolution(s) requirements; (5) require compliance with the State Procurement Act regarding any and all new agreements, their assignments; and (6) require compliance with any and all Joint Development Plans/Acts and their Amendments and Assignments in the future; (7) require compliance with the State Procurement Act and Federal Regulations for all contracts and/or Grants involving development and/or construction on the Proposed Edgemoor Port Facility Property, (8) award the Plaintiffs, and all other taxpayers similarly situated, their court costs, their expenses, their attorneys fees, and all applicable interest thereon; and (9) grant the Plaintiffs, and all other taxpayers similarly situated, such other and further relief that the Court deems just and proper. Furthermore, the Plaintiffs, and all other taxpayers similarly situated, also request this Honorable Court grant them a jury trial as to determine the full range of damages incurred by the taxpayers.

DARRELL J. BAKER, ESQUIRE, P.A.

/s/ Darrell J. Baker

Darrell J. Baker, Esquire (#2243)

1601 Concord Pike Suite 100

Wilmington, Delaware 19803

(302) 472-4900

Attorney for Plaintiffs

Dated: July 22, 2026