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Port Hamilton Seeks Emergency Court Order to Block Scaffolding Removal from St. Croix Refinery

Port Hamilton Refining and Transportation requests a temporary restraining order against National Industrial Services, claiming unauthorized removal of millions in scaffolding materials

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PHRT pickup trucks were moved to allow the removal of scaffolding from the refinery, an action that PHRT considers illegal. By. V.I. CONSORTIUM

On Wednesday, Port Hamilton Refining and Transportation filed suit against National Industrial Services, seeking a temporary restraining order and ultimately a permanent injunction against the removal of scaffolding and related equipment from Port Hamilton Refinery or Ocean Point Terminals facilities. It is also seeking the return of, or compensation for, all such material and equipment that has already been removed.

In its lawsuit, Port Hamilton says that it has long been the practice at the refinery, stretching all the way back to the days of Hess Oil ownership, to contract with a third party for scaffolding services. In the beginning, this would necessitate a costly and time-consuming process when switching suppliers; the old contractor would have to pack up and ship literal tons of scaffolding and equipment off-island, and the new contractor would have to bring in their own materials.

At some point, the refinery decided to purchase its own scaffolding, lowering costs and overheads all around. To mitigate issues of liability, a practice developed whereby the refinery owners would sell the scaffolding to an incoming contractor for the peppercorn rate of \$1, with the stipulation that the equipment would be sold back to the refinery at the same price once the contract had come to an end. Key to this agreement was the understanding that scaffolding could not leave the refinery premises without the knowledge and approval of the refinery owners. New scaffolding, when needed, was usually acquired by the contractor, reimbursed by the refinery owner, and subject to the same conditions as the other material – to be sold back to the refinery owner for \$1 once the contractor had concluded its services. “There is well over \$6 million in scaffolding and scaffolding equipment currently within the boundaries of the oil refinery/terminal facility that is subject to these agreements,” Port Hamilton lawyers say.?

In January 2016, Limetree Bay Terminals acquired the refinery and terminal assets at the conclusion of a bankruptcy proceeding initiated by Hovensa. The following month, a new scaffolding contractor was onboarded, and as per tradition, the scaffolding owned by the refinery was sold to National Industrial Services for \$1, subject to the usual terms. Port Hamilton attorneys note that this agreement was formalized using correspondence that bore an early version of the Limetree Bay Terminals letterhead.



PHRT pickup trucks were moved to allow the removal of scaffolding from the refinery, an action that PHRT considers illegal (Credit: V.I. Consortium)

?In 2018, Limetree Bay Refinery acquired the refinery and all of its associated equipment. Following a bankruptcy auction in 2022, Port Hamilton became the owner of the refinery and all its assets, “including the right to repurchase the scaffolding within the facility,” attorneys say.

At issue is a letter bearing the signature of Paul Falterman, who worked for LBR as an independent consultant. Dated May 20, 2019, the letter, attached to a sales agreement selling the scaffolding to NIS for a dollar, omits a key provision present in previous correspondence of this nature – the clause preserving LBR’s right to repurchase the equipment for the same dollar. In effect, the letter transfers the ownership of millions of dollars worth of scaffolding from LBR to

NIS for \$1, permanently. As an independent contractor for LBR, Port Hamilton argues that Mr. Falterman had no authority to enter into that transaction. His contract with Limetree Bay, submitted as evidence in the matter, prohibits him from attempting to “offer or agree to incur or assume any obligations or commitments in the name of or on behalf of Limetree or its affiliates without the prior written consent and authorization of Limetree.”?

The representation of Mr. Falterman in the letter as a “manager” of the company is also misleading, Port Hamilton claims, as an independent consultant is not an employee of LBR. PHRT’s attorneys note several other discrepancies within the letter of May 20, including references to a non-existent bill of sale, as well as the use of the initial temporary letterhead from 2016 that had been replaced years earlier.

Port Hamilton attorneys also argue that the letter fails a test for logic. Giving away millions of dollars worth of scaffolding for such a nominal sum did not make any sense for Limetree Bay Refinery, “given that the entire refinery was undergoing a multi-billion dollar upgrade,” which would have required the use of a significant amount of scaffolding.

?Fueling scrutiny and suspicion about this letter even more, it was revealed in Mr. Falterman’s obituary following his death in November 2020 that he was the “best friend” of Jeff Nations, the owner of NIS. Mr. Falterman’s close ties to Mr. Nations are evident in the fact that the former is godfather to three of the latter’s children, PHRT attorneys argue. With the dead man unable to testify as to his motives and thought process, the discovery process will reveal whether Mr. Falterman’s signature on the “fraudulent” letter was forged, or whether he was a knowing participant in the scheme to help NIS unfairly acquire ownership of the scaffolding, according to the lawsuit.

Port Hamilton argues that Mr. Falterman’s letter was known to be invalid, as it was labeled as such in the “data room” of documents that LBR’s bankruptcy bidders were invited to peruse.

?However, even before Port Hamilton acquired the refinery, attorneys say NIS began to remove large quantities of scaffolding from the facility’s premises, starting in early 2021. Approximately 180 tons of scaffolding have been removed from St. Croix between May 2021 and November 2023, attorneys say – scaffolding that should have never been taken from the refinery without the knowledge and permission of first Limetree Bay Refining, and then Port Hamilton Refining and Transportation.?

In late July, PHRT became aware of the pending removal of another batch of scaffolding, and attempted to block it by exercising its \$1 purchase option, and barricading the trailers on which the material was being loaded. NIS reportedly moved the barricades and shifted the trailers to another location on the terminal side of the facility. PHRT says it learned that at least some of the trailers are scheduled to be shipped stateside on or around Thursday August 22.?

As a result, Port Hamilton’s attorneys have filed an emergency motion for a temporary restraining order preventing NIS from shipping out the scaffolding they have packed up, as well as a preliminary and permanent injunction against the practice. As of press time, NIS had not yet filed a response to PHRT’s motion, and presiding judge Yvette Ross-Edwards had not made a ruling.