

B. Nippon Yusen Kaisha is an ocean common carrier FMC Organization No. 001573 with principal offices at 32 Marunouchi 2 Chome Chiyoda-Ku Tokyo 100-0005 Japan.

C. Kawasaki Kisen Kaisha Co., Ltd. is an ocean common carrier, FMC Organization No. 001466, with principal offices at Hibiya Central Building 2-9, Nishi-Shinbashi 1-chome, Minato-ku, Tokyo 105-8421.

D. Yang Ming Marine Transport Corporation is an ocean common carrier, FMC Organization No. 000138, with principal offices at 271 Ming De 1st Road, Chidu District, Keelung 20646, Taiwan (R.O.C.).

E. United Arab Shipping Company (S.A.G.) is as an ocean common carrier FMC Organization No 006256 with principal offices at P.O. Box 3636 Safat 13037 Kuwait.

II. Respondent

Respondent The Port Authority of New York and New Jersey (the “Port”) is a body corporate created by Compact as a bi-state port district between the states of New York and New Jersey with consent of Congress. The Port owns and/or operates marine terminal facilities in the New York and New Jersey area, including leased marine terminal facilities and public berths. The Port’s principal offices are at 225 Park Avenue South, New York, New York 10003.

III. Jurisdiction

A. The Port is a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C. § 40102(14) (FMC Organization No. 002021). The Port leases most of its terminal facilities to private terminal operators who operate the container terminals

located at the Port and who provide marine terminal services and facilities to ocean common carriers and other vessel operators regularly calling at the Port in the transportation of cargo in United States foreign and domestic commerce. The Port also maintains and operates public terminals. Vessels transporting wheeled cargoes coming into and out of the Port are handled at the Port's public terminals. The Port publishes what it calls a "Tariff," PAMT FMC No. PA-10 (properly a rate schedule) containing Rules and Regulations, published March 2013 (the "Rate Schedule").

B. Each of the Complainants is an ocean common carrier within the meaning of the Shipping Act, 46 U.S.C. §§ 40102(6) and (17). Each Complainant regularly calls at the Port's facilities and has a long-term contract with a marine terminal operator at the Port. At all times material to this complaint, each Complainant has operated as an ocean common carrier in the United States foreign commerce subject to the provisions of the Shipping Act. No Complainant has any contract for vessel services with the Port, nor does any Port "Tariff" or rate schedule specify a vessel service to be furnished in consideration for payment of the CFC.

C. The Federal Maritime Commission ("Commission") has jurisdiction over this Complaint because the Port is a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C. § 40102(14); each Complainant is an ocean common carrier within the meaning of the Shipping Act, 46 U.S.C. §§ 40102(6) and (17); this Complaint is filed pursuant to the Shipping Act, 46 U.S.C. § 41301; and the Port has violated the Shipping Act, 46 U.S.C. § 41102(c), as particularly set forth below.

IV. Statement of Facts and Matters Complained of

Introduction

A. Complainants, ocean common carriers, seek relief and redress from actions of the Port that have violated, and continue to violate, the Shipping Act, 46 U.S.C. §§ 41102(c). Complainants seek a cease and desist order, reparations, interest and attorneys' fees because the Port, through adoption and implementation of its published Tariff's provisions has failed and continues to fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

B. The Port's actions violate the foregoing provisions more particularly through the Port's adoption, application and implementation of Section H of its Rate Schedule, which establishes and enforces the Port's "Cargo Facility Charge" that the Rate Schedule imposes on Complainants and other carriers whose vessels call at the Port. The Cargo Facility Charge is unlawful because the Port does not provide a discrete service to the Complainants' vessels as consideration for the CFC and because the CFC and the rules applying it provide for discontinuance of service to Complaints' container vessels by marine terminals operated by private lessee terminal operators for Complainants' failure to pay the CFC to the Port.

The Facts

C. The Port adopted, issued, published and implements its Rate Schedule, which includes the "Tariff" charge, identified as the Cargo Facility Charge ("CFC"), and its implementing subrules contained in its Section H, Subrules, 34-1200 through 34-1220. (Exhibit 1, hereto). The CFC became effective March 14, 2011. The Port publishes the "Tariff" at the Port's website at <http://www.panynj.gov/port/tariffs.html>.

D. The CFC “appl[ies] to all cargo containers discharged from or loaded onto vessels at Port Authority leased berths.” Section H, Subrule 34-1200.

F. The CFC container cargo rate is currently \$4.95 per TEU. Section H, Subrule 34-1210. The non-container rate currently is \$1.11 per cargo unit.

G. The CFC is assessed against a terminal “user,” defined as “a user of cargo handling services”; and The Port interprets “user” to mean any carrier calling at any terminal, leased or public, at the Port. “Terminal operator” means a “leased berth operator.” Section H, Subrule 34-1220.

H. At leased berths all container vessel operators are made responsible for payment of the CFC, which applies to handling of all containers, loaded or empty. Section H, Subrule 34-1220, 3. (a), ii.

I. The container terminal operator is required to collect the CFC from each vessel operator incurring the charge and to forward the payments to the Port.

J. Container terminal operators must send a monthly Vessel Activity Report (“Report”) to the Port detailing all vessel activity at their terminals. The Report must identify vessel operators from which the terminal operator did not receive the CFC charges stated in Port invoices submitted to the terminal operator. Section H, Subrule 34-1220, 3. (b), ii.

K. The Port issues monthly invoices to each container terminal operator and to each user of a public berth. Invoices to terminal operators are based on the prior month’s Report. Section H, Subrule 34-1220, 3. (b), i. If a “user” does not pay the CFC charges contained in an invoice for two consecutive Report periods, Section H directs the

Port to require all terminal operators to cease service to the vessels of the operator that did not pay the CFC charges. Section H, Subrule 34-1220, 3. (b), iii.

L. Vessel operators will be denied service by terminal operators to all leased container terminals as a penalty for nonpayment of the CFC at one terminal. No terminal operator shall provide service to a vessel operator that did not pay the CFC. A vessel operator denied service at one Port terminal for non-payment would thereafter be denied service at all Port terminals. Section H, Subrule 34-1220, 3. (b), iii.

M. The Port leases all of its containership terminal facilities under long-term leases. The private terminal operators publish tariffs covering the rates and conditions of service at their leased facilities. <http://www.panynj.gov/port/tariffs.html>.

N. Each Complainant through a contract with its respective marine container terminal operator obtains terminal services and facilities at specified rates, terms and conditions for containers loaded on or discharged from vessels owned, chartered, space chartered and/or operated by each Complainant or containers that each Complainant's vessel carries that belong to another carrier under a space charter.

O. Each of the Complainants regularly calls at the Maher container terminal and Complainant Kawasaki calls at public berths. Each Complainant has loaded and/or discharged, and continues to load and/or discharge, at the Maher terminal prior to and subsequent to March 14, 2011, the effective date of the CFC.

P. Since March 14, 2011, each Complainant has been and continues to be invoiced by Maher Terminal for the CFC on containers. Each Complainant has been and continues to be invoiced for the CFC as to its own containers carried on its own vessels

or its own loaded or discharged containers carried on other carriers' vessels under slot charters at the Maher terminal. Section H, Subrule 34-1220, 3. (a), ii.

Q. Since March 14, 2011, the Port has invoiced and continues to invoice Complainants for the CFC as to their cargoes loaded and discharged at public berths.

R. If a Complainant fails to pay the CFC invoiced by the lessee container terminal operator for two consecutive billing periods, the Port will issue a directive to every terminal operator to bar service to the non-paying Complainant at every Port terminal. Section H, Subrule 34-1220, 3. (b), iii.

S. Non-payment for two consecutive billing periods will result in such Complainant's vessel being denied service at any container terminal within the Port.

T. The CFC, including its barring penalty, constitute unreasonable practices in connection with receiving, handling, storing or delivering property in violation of the Shipping Act, 46 U.S.C. § 41102(c).

V. Violations

As a direct result of the foregoing Sections I-IV of this Complaint, which are fully incorporated in this Section V, the Port has violated and continues to violate the Shipping Act, 46 U.S.C. § 41102(c). The Port's adoption, application, implementation and enforcement of its Rate Schedule, and in particular Section H, including the unlawful exaction of fees with no discrete service provided to the vessel in return therefor, and the threat of barring private terminal services to container vessels at all Port facilities, impose unreasonable, undue and unlawful detriment, prejudice and harm on Complainants.

VI. Injury to Complainants

As a direct result of the foregoing Sections I-V of this Complaint, which are fully incorporated in this Section VI, Complainants have suffered and sustained and will continue to suffer and sustain (unless the cease and desist order requested is granted), substantial economic damage, harm and injury in an amount to be determined, consisting at minimum and not exclusively of CFC payments to the Port.

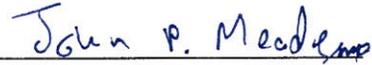
VII. Relief Sought

Wherefore Complainants pray that Respondent be required to answer the charges herein; that an order be made declaring Respondent's CFC and Section H to be unlawful, and commanding Respondent: to cease and desist from the aforesaid violations; to establish and put in force such practices as the Commission determines to be lawful and reasonable; to pay to Complainants by way of reparations for the unlawful conduct hereinabove described a sum to be determined, with interest and attorney's fees and such other sums as the Commission may determine to be proper as an award of reparations; and that such other and further order or orders be made as the Commission determines to be proper in the premises.

The parties have not engaged in mediation or consulted the Commission's Office of Consumer Affairs and Dispute Resolution, as Respondent has refused to do so.

Dated: August 8, 2013

Respectfully submitted,



John P. Meade

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**Counsel for Kawasaki Kisen
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Counsel for Complainants

VERIFICATION

State of New Jersey)
County of Hudson)

ss:

Robert Shabab, being first duly sworn on oath deposes and says that he is Director, Legal of NYK LINE (NORTH AMERICA) INC. as Agent for NIPPON YUSEN KAISHA and that he has read the Complaint and that the facts stated therein, upon information received from others, are believed to be true.

Robert Shabab

Subscribed and sworn to before me, a notary public in and for the State of New Jersey, County of Bergen this 8th day of August, 2013.

Jacob K. Lee
NOTARY PUBLIC

My Commission expires: March 7, 2016

JACOB K. LEE
NOTARY PUBLIC, State of New Jersey
No. 2320044
Qualified in Bergen County
Commission Expires March 07, 2016

VERIFICATION

_____))
State of Virginia))
City))
County of Richmond))
_____)

ss:

Thomas Kessery, being first duly sworn on oath deposes and says that he is
Officer of "K" LINE AMERICA, INC. as Agent for KAWASAKI KISEN
KAISHA CO., LTD. and that he has read the Complaint and that the facts stated therein, upon
information received from others, are believed to be true.



Subscribed and sworn to before me, a notary public in and for the State of
Virginia, City of Richmond this 7th day of August, 2013.


NOTARY PUBLIC 363497

My Commission expires: December 31, 2013



VERIFICATION

State of New Jersey
County of Hudson

ss:

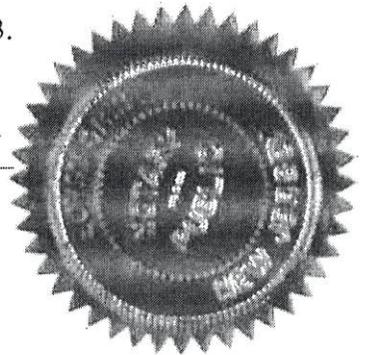
Taman Choi, being first duly sworn on oath deposes and says that he is Corporate Counsel for YANG MING (AMERICA) CORP. as Agent for YANG MING MARINE TRANSPORT CORPORATION and that he has read the Complaint and that the facts stated therein, upon information received from others, are believed to be true.

[Handwritten Signature]

Subscribed and sworn to before me, a notary public in and for the State of NJ, County of Bergen this 7th day of August, 2013.

[Handwritten Signature]
NOTARY PUBLIC

EUNMI SHIN
Commission # 2303035
Notary Public, State of New Jersey
My Commission Expires
March 26, 2014



My Commission expires: _____

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Amended Complaint to be served this 8th day of August, 2013, via e-mail and UPS, upon the following:

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Counsel for Respondent



Matthew J. Thomas