

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

AMENDED ANSWER

Respondent The Port Authority of New York and New Jersey (the “Port Authority”), by and through its undersigned counsel, respectfully submits this Amended Answer (“Answer”) in response to the Complaint filed by Maher Terminals, LLC (“Maher” or “Complainant”).

To the extent not specifically admitted herein, all allegations of the Complaint are denied. Furthermore, the section headings contained herein simply mirror those employed by Maher in its Complaint and are included only for purposes of clarity and organization. The Port Authority does not admit, but rather hereby specifically denies, any factual or legal allegations in the headings used in the Complaint.

I. Complainant

A. To the extent the allegations contained in Paragraph A of this subheading of the Complaint constitute legal conclusions, no response is required. To the extent that

a response is required, the Port Authority lacks information sufficient to form a belief as to Complainant's commercial operations and therefore denies the allegations in Paragraph A of this subheading of the Complaint.

B. The Port Authority lacks information sufficient to form a belief as to Complainant's commercial operations and therefore denies the allegations in Paragraph B of this subheading of the Complaint.

II. Respondent

A. The Port Authority admits that it is a body corporate and politic created by Compact between the states of New York and New Jersey and with the consent of the Congress. The Port Authority further admits that it had offices at 225 Park Avenue South, New York, New York at the time the Complaint was filed, but have since moved that office to Four World Trade Center, 150 Greenwich Street, New York, NY 10007.

B. The Port Authority admits that it owns marine terminal facilities in the New York/New Jersey Area, including in Elizabeth, New Jersey.

III. Jurisdiction

A. To the extent the allegations contained in Paragraph A of this subheading of the Complaint constitute legal conclusions, no response is required. To the extent that a response is required, the Port Authority admits the allegations in Paragraph A of this subheading of the Complaint.

B. The Port Authority admits the allegations in Paragraph B of this subheading of the Complaint.

C. To the extent the allegations contained in Paragraph C of this subheading of the Complaint constitute legal conclusions, no response is required. To the extent that

a response is required, the Port Authority denies the allegations in Paragraph C of this subheading of the Complaint.

D. To the extent the allegations contained in Paragraph D of this subheading of the Complaint constitute legal conclusions, no response is required. To the extent that a response is required, the Port Authority denies the allegations in Paragraph D of this subheading of the Complaint.

IV. Statement of Facts and Matters Complained of

PANYNJ's Unlawful Transfer/Change of Control Practices

A. The Port Authority admits that at times it has required certain economic consideration from marine terminal operators in exchange for its consent to transfer or change of ownership or control, but otherwise denies the allegations in Paragraph A of this subheading of the Complaint.

B. The Port Authority admits that it has published a document that includes the language excerpted in quotation marks in Paragraph B of this subheading of the Complaint, but otherwise denies the allegations in Paragraph B of this subheading of the Complaint.

C. The Port Authority admits that at times it has required certain economic consideration from marine terminal operators in exchange for its consent to transfer or change of ownership or control, but otherwise denies the allegations in Paragraph C of this subheading of the Complaint.

D. The Port Authority denies that it has not required economic consideration from marine terminal operators in exchange for its consent to a transfer or change of ownership or control, except where expressly prohibited by contract.

E. The Port Authority denies the allegations in Paragraph E of this subheading of the Complaint.

F. The Port Authority denies the allegations in Paragraph F of this subheading of the Complaint.

G. The Port Authority denies the allegations in Paragraph G of this subheading of the Complaint.

H. The Port Authority denies the allegations in Paragraph H of this subheading of the Complaint.

Unreasonable and Discriminatory Actions and Practices with Respect to Ocean Carriers and Ocean Carrier-Affiliated Marine Terminals

I. The allegations contained in Paragraph I of this subheading of the Complaint relate to claims that have been dismissed pursuant to the Federal Maritime Commission's ("FMC") Memorandum Opinion and Order dated December 17, 2015.

J. The allegations contained in Paragraph J of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

K. The allegations contained in Paragraph K of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

L. The allegations contained in Paragraph L of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

M. The allegations contained in Paragraph M of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

N. The allegations contained in Paragraph N of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

O. The allegations contained in Paragraph O of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

P. The allegations contained in Paragraph P of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Q. The allegations contained in Paragraph Q of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

R. The allegations contained in Paragraph R of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

S. The allegations contained in Paragraph S of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

T. The allegations contained in Paragraph T of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Unreasonable Leasing Practices

U. The allegations contained in Paragraph U of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

V. The Port Authority denies the allegations in Paragraph V of this subheading of the Complaint.

W. The Port Authority denies the allegations in Paragraph W of this subheading of the Complaint.

Unreasonable and Discriminatory Actions Regarding Capital Expenditure Obligations

X. The allegations contained in Paragraph X of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Y. The allegations contained in Paragraph Y of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Unreasonable Refusal to Deal or Negotiate

Z. The Port Authority admits that on June 23, 2010, it entered into a lease agreement with Global Terminal & Container Services, LLC ("Global"), Lease No. LPJ-001, for the operation of a marine terminal facility.

AA. The Port Authority denies the allegations in Paragraph AA of this subheading of the Complaint.

BB. The allegations contained in Paragraph BB of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

CC. The allegations contained in Paragraph CC of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

V. Violations of the Shipping Act

A. The Port Authority incorporates Sections I-IV of the Answer by reference. Furthermore, the Port Authority denies the allegations in Paragraph A of this subheading of the Complaint.

Count I

B. The Port Authority denies the allegations in Paragraph B of this subheading of the Complaint.

Count II

C. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count III

D. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count IV

E. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count V

F. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count VI

G. The Port Authority denies the allegations in Paragraph G of this subheading of the Complaint.

Count VII

H. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count VIII

I. The Port Authority denies the allegations in Paragraph I of this subheading of the Complaint.

Count IX

J. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count X

K. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count XI

L. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count XII

M. The Port Authority denies the allegations in Paragraph M of this subheading of the Complaint.

Count XIII

N. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count XIV

O. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

The Lack of Valid Transportation Purposes

P. The Port Authority incorporates Sections I-IV of the Answer by reference. Furthermore, the Port Authority denies the allegations in Paragraph P of this subheading of the Complaint.

Q. The Port Authority incorporates Sections I-IV of the Answer by reference. Furthermore, the Port Authority denies the allegations in Paragraph Q of this subheading of the Complaint.

VI. Injury to Maher

A. The Port Authority incorporates Sections I-V of the Answer by reference. Furthermore, the Port Authority denies the allegations in Paragraph A of this subheading of the Complaint.

VII. Prayer for Relief

A. The Port Authority lacks information sufficient to form a belief as to whether or not Maher has consulted with the FMC's dispute resolution specialist in

connection with its Complaint in this action. The Port Authority denies the allegation that Maher has repeatedly attempted alternative dispute resolution in other disputes with the Port Authority, other than to admit that the parties have engaged in settlement discussions over other claims with no success.

B. The Port Authority denies the allegations in Paragraph B of this subheading of the Complaint. The Port Authority denies that it is liable to the Complainant in any way or that the Complainant suffered any injury or incurred any damages by any act or omission of the Port Authority as challenged in the Complaint, and further denies that Complainant is entitled to any form of relief under any theory by means of the allegations set forth in each of the subheadings, paragraphs, and their subparts in the Complaint.

DEFENSES

FURTHER, the Port Authority asserts the following defenses and affirmative defenses to the Complaint. The Port Authority does not concede that it has the burden of proof as to any of the defenses listed below:

FIRST DEFENSE

The claims for relief asserted by Complainant, in whole or in part, fail to state facts sufficient to constitute a claim for relief against the Port Authority. The facts supporting this affirmative defense will be developed during discovery.

SECOND DEFENSE

The claims for relief asserted by Complainant are barred, in whole or in part, because the Port Authority's actions were justified since it acted in accordance with the Shipping Act. As to Counts I and VIII concerning consideration required for consent to

transfers or changes of ownership or control, any consideration was intended to compensate the Port Authority for, among other things, its own investment in the terminals and surrounding infrastructure that contributed significantly to the asset value of the Port's marine terminal operators, and also to protect itself from the risks to which it may be subjected due to changes of control, including ensuring that new owners who may have no relationship to the Port Authority are committed to continued investment and performance of their obligations under the lease.

As to Counts VI and XII concerning the Port Authority's lease with Global, much of the property subject to the Global lease was previously owned by Global, and the Port Authority considered it a priority to obtain ownership of all container terminals to effectively manage overall Port development as well as capacity demands in the harbor, and to impose uniform requirements on Port users for the sake of Port development. The Port Authority further determined that independently leasing the smaller land parcel adjacent to the Global-owned property would have been less beneficial to the region than expanding the contiguous Global terminal and, in addition, would have adversely affected another existing tenant, BMW, by eliminating its waterfront access, which was a requirement under BMW's lease. The Port Authority negotiated the "Qualified Transferee" provision as part of its purchase of Global's terminal and leaseback to Global of an expanded terminal, in order to address certain concerns of Global's lenders; and required its consent for any transfer of the Global lease to an existing marine terminal operator in order to first review any potential anticompetitive impacts.

THIRD DEFENSE

The claims for relief asserted by Complainant are barred, in whole or in part, by the applicable statute of limitations. Among other things, Counts I and VIII concerning consideration required for consent to transfers or changes of ownership or control are premised upon allegations regarding a policy adopted outside the statute of limitations and upon certain changes of control that occurred outside the statute of limitations.

FOURTH DEFENSE

The claims for relief asserted by Complainant are barred, in whole or in part, by collateral estoppel. The facts supporting this affirmative defense will be developed during discovery.

FIFTH DEFENSE

The claims for relief asserted by Complainant are barred, in whole or in part, based on Complainant's lack of standing. The facts supporting this affirmative defense will be developed during discovery.

NEED FOR A HEARING

The Port Authority respectfully submits that an oral hearing will not be necessary to dismiss Maher's remaining claims and dispose of the Complaint. To the extent any oral hearing is ordered, it may be conducted at the location of the Presiding Officer's choosing.

WHEREFORE Respondent prays that the Complaint in this proceeding be dismissed.

Dated: February 18, 2016

Respectfully submitted,



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RESPONDENT

CORPORATE VERIFICATION

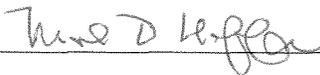
I, Andrew Saporito, declare as follows:

I am the Deputy Director of Port Commerce for The Port Authority of New York and New Jersey ("Port Authority"), and I have reviewed and am familiar with the contents of the Port Authority's Amended Answer in the above-captioned litigation. I further declare under penalty of perjury that I believe that the matters set forth in the Amended Answer are true and correct, but I do not have personal knowledge of all of the facts contained in the Amended Answer, and with respect to some facts I have been informed that they are true and I base my belief as to the accuracy of the Amended Answer on such information.



Andrew Saporito

Sworn to me on this 17 th day of February 2016

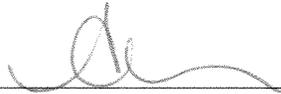


MARK D. HOFFER
Notary Public, State of New York
No. 02HO04682255
Qualified in Queens County
Commission Expires March 30, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons listed below in the matter indicated.

<p><u>Via U.S. Mail and E-mail:</u> Lawrence I Kiern Bryant E. Gardner Gerald A. Morrissey III Rand K. Brothers Brook F. Shapiro Winston & Strawn LLP 1700 K Street, N.W. Washington DC 20006-3817</p>	<p>Dated at New York, NY this 18th day of February, 2016</p>
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Alea Mitchell