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**BEFORE THE
FEDERAL MARITIME COMMISSION**

Washington, D.C.

Docket No. 10-05

COMPLAINT



**AMERICAN STEVEDORING, INC. v. THE PORT AUTHORITY OF NEW
YORK AND NEW JERSEY**

Complainant American Stevedoring, Inc., pursuant to Section 11 of the Shipping Act of 1984 ("the Act"), 46 U.S.C. 41106, brings this Complaint against Respondent Port Authority of New York and New Jersey, and in support thereof states the following:

The Parties

1. The Complainant is American Stevedoring, Inc. ("American Stevedoring"), a corporation organized and existing under the laws of the State of New York.
2. American Stevedoring is a marine terminal operator. 46 U.S.C. 40102(14).
3. American Stevedoring is engaged in foreign commerce, specifically the export and import of commodities in bulk and container shipments, which commodities are

loaded onto and discharged from foreign-flag ships entering the New York Harbor at Brooklyn Marine Terminal and Red Hook Marine Terminal in Brooklyn, New York.

4. American Stevedoring loads and/or discharges commodities for ocean common carriers, non-vessel operating common carriers, ocean freight forwarders, shipping customers, and marine terminal operators.

5. In addition to tens of thousands of containers lifted and moved each year, American Stevedoring moves a major portion of the beverages arriving for sale east of the Hudson River, including liquor and beer, as well as salt for roadway de-icing, most of the lumber used for construction projects, and other commodities used in the region.

6. American Stevedoring also handles “project shipments” such as power plants, rail cars, and heavy lift vessels, which are too heavy or too large to fit into a container. American Stevedoring is the only stevedore in the New York metropolitan area that handles such over-sized cargo.

7. American Stevedoring is well suited to handle break bulk cargo because it has sheds for storage, the equipment to handle bulk cargo, and the expertise to do so. This cargo will be lost to this port region if American Stevedoring is forced out of the New York Harbor.

8. American Stevedoring employs over 250 men and women as longshore or “metro” labor, at excellent wages and generous benefits, with hundreds more relying on the secondary and tertiary economic spin-off effects of American Stevedoring’s operation in Brooklyn.

9. American Stevedoring’s principal business address is 70 Hamilton Avenue, Brooklyn, New York, 11201.

10. The Respondent is the Port Authority of New York and New Jersey (“Port Authority” or “PA”), a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of Congress of the United States of America.

11. The Port Authority was formed to provide, *inter alia*, efficient transportation and port commerce facilities and services to move goods within and to/from the New York-New Jersey region, and to provide transportation access to the rest of the nation and the world.

12. The Port Authority’s principal place of business is 225 Park Avenue South, New York, New York 10003.

Jurisdiction

13. The Federal Maritime Commission has jurisdiction over this Complaint pursuant to the Shipping Act of 1984, 46 U.S.C. 41106 because, as alleged herein, the Port Authority has violated, and continues to violate, 46 U.S.C. 41106(2) and (3), respectively.

Background – The Cross-Harbor Barges

14. In or about 1987, American Stevedoring began marine cargo operations at several piers, at Brooklyn Marine Terminal and Red Hook, at the request of the Port Authority which was seeking a new tenant to take over from the former tenant, Universal.

15. At the same time, American Stevedoring also began marine cargo operations at 138 Marsh Street, Port Newark in Newark, New Jersey.

16. The Port Newark facility was a satellite facility to the main facility in Brooklyn. The Port Newark facility consisted of approximately 30 acres including open waters,

berths for ships, and upland areas for temporary storage of bulk cargo and cargo in containers.

17. The Brooklyn piers and Port Newark facilities are connected via a cross-Harbor barge operation. The operation consists of two Port Authority-owned barges, the “New York,” and the “New Jersey,” which are used to transfer bulk cargo and containers from Brooklyn to Port Newark, whereupon the cargo is either drayed to a railhead for shipment,, or moved out via truck on the highways, to its destination.

18. A condition of American Stevedoring’s operation of the Brooklyn piers and the Port Newark facility was that the Port Authority would supply the two cross-Harbor barges for the transfer of cargo and containers to the related Port Newark facility.

19. Federal funding under various federal and other laws and programs has been and continues to be available to fund barge operations to reduce the number of diesel-fueled truck trips, including but not limited to the American Reinvestment and Recovery Act of 2009, “TIGER” grants from the U.S. Dept. of Transportation, and annual Congressional appropriations.

20. Funding was available through the Transportation Equity Act for the 21st Century (TEA-21) of 1998, and the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 for barge operations that reduced diesel-fueled truck trips. The Safe Accountable Flexible and Efficient Transportation Equity Act-A Legacy for Users (SAFETEA-LU) of 2005, through which such funding was also available, continues to be re-authorized by Congress.

21. In the past, the Port Authority applied for, cooperated with, or received the benefit of grants, funds and “earmarks” from Congress, through appropriations, or from federal

agencies, authorities, and/or other entities to offset the cost of operating the cross-Harbor barges, as part of Congestion Mitigation Air Quality (CMAQ) through the afore-cited federal transportation project and program funding laws, in concert with the federal Clean Air Act, or other laws or programs.

22. The cross-Harbor barges qualified for federal CMAQ funds because their operation removes soot exhaust from the air, which otherwise would be emitted from thousands of heavy duty, diesel-fueled truck trips annually and deposited into the local streets and neighborhoods in Brooklyn and Manhattan in New York State, and in Hudson, Essex and Union Counties in the State of New Jersey.

23. Diesel-fueled heavy duty trucks emit fine particle pollution 2.5 microns or less in size, known as particulate matter (PM 2.5), also known as soot, to the air that millions of New Yorkers and New Jerseyans breathe each day. PM 2.5 is known to cause serious health problems including aggravation of asthma and other serious respiratory ailments, especially in sensitive populations. PM 2.5 and larger-size soot particles are a suspected carcinogen.

24. Upon information and belief, through the CMAQ program and/or other funds, the Port Authority received at least \$5 million in funding for the cross-Harbor barge operation in the 1990s.

25. The U.S. Environmental Protection Agency and the Federal Maritime Commission have made "clean ports" a major environmental priority, one component of which is to replace diesel-fueled truck trips with rail and barge trips.

26. As such, there continues to be avenues of funding available for barge operations that reduce heavy duty, diesel-fueled truck trips.

27. Recently, President Obama signed a bill that directs the Federal Secretary of Transportation to “designate short sea transportation routes as extensions of the surface transportation system...” and to “designate” short sea transportation projects, along with establishment and implementation of a short sea transportation grant program to implement projects or components” of a designated project. The grant program of up to \$15 million annually is part of the federal Maritime Administration Authorization Act, which became part of the Defense Department authorization bill, at the time of passage.

28. With knowledge of the economic harm to American Stevedoring, and to the environment, the Port Authority unilaterally determined to withdraw any of its own capital or operating funding for the operation or maintenance of the cross-Harbor barges, and to refuse to participate or support others’ efforts to secure grants, appropriations and “earmarks” for such purpose.

29. The Port Authority also determined to stop assisting others in seeking funds from the federal or state appropriations processes, or from any governmental agency or authority, or their grant programs, to offset the costs of American Stevedoring’s use of the Port Authority’s cross-Harbor barges, on or before April 30, 2006.

30. Since May 1, 2006, American Stevedoring has borne the entire cost of the cross-Harbor barge operation itself, including labor, fuel and maintenance, which totals approximately \$450,000 per month.

31. Without the barge operation, American Stevedoring cannot practically move the cargo and containers that arrive in Brooklyn, to any inland destination west of the Hudson River, which requires transfer to Port Newark. To do so, American Stevedoring would have to move all of the containers or bulk cargo by truck, defeating the purpose of

a cross-Harbor barge operation, and adding significantly and unreasonably to the cost of the shipment to the customer.

32. Knowing that American Stevedoring moves approximately 75-85 percent of the cargo and containers that arrive in Brooklyn to Port Newark by barge, the Port Authority has, since 2006, refused to deal or negotiate in good faith with American Stevedoring on the barge funding issue, or to seeking funding, or assist American Stevedoring in seeking funding for the barge operation.

33. After having invited American Stevedoring to take over the Brooklyn and Port Newark marine terminal barge operation, and having paid for all or part of the barge connection operation between the two facilities, and having cooperated in finding additional funds to subsidize the barge operation, the Port Authority's actions in unilaterally refusing to deal and negotiate the barge funding issue constitutes a violation of the Shipping Act.

34. The Port Authority's failure and refusal to deal and negotiate in good faith with American Stevedoring over the cost of the barge operation, which is critical to Brooklyn's operation and, in particular, over which party shall bear that cost, in what amount and under what circumstances, terms or conditions, and the Port Authority's failure to assist in seeking funds for said operation, despite the barge operation's contribution to port and regional transportation efficiency, constitutes a continuing violation of the Shipping Act.

35. At all times, American Stevedoring has been ready, willing and able to deal with the Port Authority on the barge funding issue, and it has made all reasonable attempts to resolve difficulties and enter into negotiations with the Port Authority to assist the Port

Authority in obtaining or maintaining funding from various entities, authorities, elected officials and agencies for the cross-Harbor barge operation.

36. American Stevedoring has risked its own investment in the Brooklyn-Port Newark operation, which capital, labor and energy resulted in the growth of accounts and business there, and an increase in container volumes, and other indicia of success, including a Brooklyn bill of lading, which had never existed before American Stevedoring's operation of the Brooklyn piers.

**Background – the Leases for Port Newark, Pier 8
And Red Hook, (Piers 9 and 10)**

37. At all times including from April 24, 2008 and continuing down to the present day, the Port Authority has also failed and refused to negotiate in good faith (or at all) any consideration of an offset of rent at either Brooklyn or Port Newark, which rent was increased precipitously in 2008, to account for American Stevedoring's bearing the cost of the barge operation.

38. American Stevedoring is unable to pay the rent on its Port Newark and Brooklyn facilities because it is now bearing the full cost of the barges.

39. To conduct business and gain contracts, it is essential that American Stevedoring, as a marine terminal operator, have in place a long-term lease with reasonable terms and conditions with the Port Authority.

40. Without a long term lease for its marine terminal operations at the piers, American Stevedoring cannot, in turn, negotiate long term commitments with its shipping customers and potential customers. Customers need the assurance of a lease before they will commit to bring their cargo/containers to Brooklyn/Red Hook, and be assured that the cargo will be moved safely and efficiently to its destination.

41. Federal, state and regional agencies and authorities were unable or unwilling to make barge funding grants available from 2006 through 2009 because American Stevedoring did not have a lease in place with the Port Authority.

42. American Stevedoring had engaged in considerable effort to obtain a long term lease from the Port Authority since 2003 for its facilities.

43. In January 2008, at American Stevedoring's request, the Port Authority agreed to a meeting in the first attempt to negotiate a ten year lease for the Port Newark facility, and for Pier 8 at the Brooklyn Marine Terminal, and Piers 9 (A and B) and 10 at Red Hook.

44. Subsequently, in early February 2008 the Port Authority sent American Stevedoring simple, one page terms sheets.

45. An email followed from the Port Authority in February 2008 with lease boilerplate provisions, none of which were negotiable or negotiated, nor did they contain certain critical terms.

46. No further substantive discussions were held nor substantive lease terms negotiated between the parties until American Stevedoring suddenly received, on April 23, 2008, a full set of leases for the Port Newark, Brooklyn and Red Hook facilities, which contained terms with which American Stevedoring did not agree, and to which it had not previously agreed.

47. American Stevedoring's representative received an ultimatum that unless the leases, prepared "as is" and without revision, were signed by America Stevedoring's chief executive officer, Sabato Catucci, the following day, April 24, 2008 shortly before the Board of Commissioners of the Port Authority were to meet, the Port Authority

would not offer any leases to American Stevedoring again, effectively putting American Stevedoring out of business.

48. American Stevedoring protested the Port Authority's unilateral imposition of the lease terms and conditions, precipitously increased rent, reduction in space, and one day's time to review and sign the leases.

49. American Stevedoring was also expected to pay any back rent on its piers, as well as back rent for Pier 7, which had been in litigation, through an affiliated company, as a condition of signing the Port Authority's unilaterally drafted leases.

50. American Stevedoring's protestations over the increased rent, reduced space and time frame for review and execution of the leases based on the ultimatum were ignored by the Port Authority.

51. Subsequently, on April 23, 2008, after the close of business, American Stevedoring received via email a new set of leases for the Brooklyn, Red Hook and Port Newark facilities, which differed from the version the Port Authority had sent earlier.

52. American Stevedoring was nevertheless required by the Port Authority to sign the leases by noon on April 24, 2008, approximately 1-2 hours before the Board of Commissioners of the Port Authority were to meet.

53. Left with no choice, American Stevedoring's chief executive appeared at the Port Authority's offices on April 24, 2008 and, under extreme duress purposely exerted by the Port Authority, signed the leases, while vociferously protesting the terms thereof, including the reduction in space, and other conditions imposed by the Port Authority without negotiation.

54. Despite that the Port Authority gave American Stevedoring one day to review the leases and insisted that the leases could not be negotiated and had to be signed by American Stevedoring by noon on April 24, 2008, the Port Authority inexplicably did not execute the leases which American Stevedoring's officer signed until February 10, 2009, ten months later.

55. In the ensuing ten months, American Stevedoring was injured by the Port Authority's refusal to execute the leases it had forced upon American Stevedoring.

56. American Stevedoring's existing customers, and contract prospects, needed to know that American Stevedoring would obtain a long term lease, so that they were assured that they could reliably load or discharge ships at Brooklyn, with confidence that the stevedore they hired for the work, American Stevedoring, would be there to serve them.

57. The "lease limbo" that the Port Authority put American Stevedoring in for ten months following American Stevedoring's signing the lease injured American Stevedoring because it still could not represent to its customers that it had a "signed lease."

58. This "lease limbo" hurt American Stevedoring's business, ultimately resulting in the loss of existing customers, and two potential large customer accounts, and other opportunities, which American Stevedoring reasonably expected to gain as customers.

59. Together, the ACL and Turkon accounts would have resulted in approximately \$11 million (US) for American Stevedoring.

60. Nevertheless, during this period, the Port Authority saw to it that it was paid all back rent owed by American Stevedoring and by the affiliate, American Warehousing, in

three substantial payments totaling several million dollars (US). The Port Authority obtained most of these funds from the Harbor Dredge Mitigation Fund.

61. The Port Authority subsequently “audited” the American Stevedoring account and found an additional \$485,000 in miscellaneous charges due and owing to the Port Authority, which the Port Authority also arranged to have paid to the Port Authority out of the Harbor Dredge Mitigation Fund.

62. By reason of the facts stated in the foregoing paragraphs, to wit, the refusal to deal and negotiate over barge funding, the refusal to negotiate the terms of the leases, the ultimatum and circumstances under which the Port Authority obtained American Stevedoring’s execution of the leases, and the purposeful “lease limbo” that followed, which the Port Authority purposefully forced American Stevedoring to endure while the Port Authority made arrangements to receive millions of dollars in rent, harmed American Stevedoring’s existing accounts were harmed, and American Stevedoring largely lost its ability to attract new customers and accounts, including two accounts worth \$11 million (US).

63. American Stevedoring’s injuries are a direct result of the Port Authority’s continuing violations of the Shipping Act, 46 U.S.C. 41106(2) and (3).

**Termination of the Leases and Issuance
of Request for Expressions of Interest**

64. Although the Port Authority did not execute the leases until February 10, 2009, American Stevedoring was charged the exorbitantly increased rent by the Port Authority beginning on May 1, 2008, for the reduced space.

65. Through and with the approval of the Empire State Development Corporation (“ESDC”), American Stevedoring’s rent was paid to the Port Authority through March or April 2009. Upon information and belief, the final payment of \$3.7 million was paid in May 2009.

66. In July 2009, within two months of the final payment to the Port Authority of \$3.7 million, and after depleting the Harbor Dredge Mitigation Fund, the Port Authority then and only then issued a default notice to American Stevedoring regarding the Port Newark lease.

67. The Port Authority then filed an action in New Jersey Superior Court, Landlord Tenant Court, in Newark, seeking to evict American Stevedoring from the Port Newark facility (“New Jersey Eviction Proceeding”), knowing that eviction from either the Newark or the Brooklyn facilities would end American Stevedoring’s operation, since the nature of its operation is bi-State, encompassing barge travel across the Harbor.

68. In August 2009, well prior to the conclusion of the New Jersey Eviction Proceeding (and indeed before either party had even appeared in court), the Port Authority issued a Request for Expressions of Interest (“RFEI”) for the operation of all piers and facilities then operated by American Stevedoring in Brooklyn and Newark.

69. The Port Authority’s staff faxed the RFEI documents and spoke to and then held meetings with most of the marine terminal operators in the port district, including Maher Terminals in Elizabeth, APM Terminal in Newark, New York Container Terminal in Staten Island, and Port Newark Container Terminal in Newark.

70. American Stevedoring was given no notice of the issuance of the RFEI, and only learned of it when employees of two of the other marine terminal operators called American Stevedoring to ask about it.

71. Port Authority representatives tried to excuse its issuance of the RFEI by claiming that it was concerned that American Stevedoring's customers would be left without service, and cargo would pile up and ships would not be unloaded, however, the Port Authority had absolutely no information that American Stevedoring was not in a position to service its customers, or that such unfounded fear was an actual risk.

72. The Port Authority did not inquire of American Stevedoring as to whether it was having any difficulty servicing its customers or accounts.

73. The Port Authority had not received any complaints about American Stevedoring's serving of its customers and accounts, nor had the Port Authority received any other evidence at all that American Stevedoring's accounts were in any danger of not being serviced or that it was going out of business.

74. The Port Authority had absolutely no factual basis to issue the RFEI for American Stevedoring's piers.

75. By issuing the RFEI, the Port Authority falsely announced to all of American Stevedoring's customers and its prospective customers, that American Stevedoring was going out of business. The RFEI thus had a further destabilizing effect on American's customers and accounts, and caused it to lose business, revenue and income.

76. The August 2009 New Jersey Eviction Proceeding and issuance of the RFEI, and the meetings the Port Authority held with marine terminal operators, where the Port Authority encouraged them to take over operation of American Stevedoring's piers and

facilities and to service American Stevedoring's customers, robbed American Stevedoring of the effect of finally having a fully executed lease (as of February 2009), five months earlier, which effect was beginning to take hold in its discussions with prospective and existing customers.

77. In August, the Port Authority then delivered to American Stevedoring a notice of termination of the Brooklyn and Red Hook leases for alleged failure to pay rent, which it followed in the fall of 2009 by filing actions in the Civil Court of New York City, Kings County, for possession of those premises operated by American Stevedoring ("New York Possession Proceeding").

78. The Port Authority's actions in forcing American Stevedoring into a set of leases with exorbitant rent, reducing its space, refusing to sign the leases after forcing American Stevedoring to hastily execute them, obtaining the rent arrearages in the following months, depleting the Harbor Mitigation Dredge Fund, and issuing the RFEI publicly announcing that American Stevedoring was going out of business, without cause, were part of the Port Authority's pre-conceived plan to create conditions under which American Stevedoring would fail.

79. All of the aforesaid acts on the part of the Port Authority, and others, are part of the malicious, continuing refusal to deal and negotiate with American Stevedoring for a long term set of leases with American Stevedoring, at competitive rates and reasonable terms, with an appropriate amount of space, including conditions for funding the cross-Harbor barge operation, comparable to connecting service investments and capital improvements the Port Authority has made to other marine terminal facilities.

80. The Port Authority's aforesaid actions and violation injured, and directly caused harm, to American Stevedoring.

81. Having been so injured, American Stevedoring thus seeks an order from the Federal Maritime Commission directing the Port Authority to cease and desist from the aforesaid violations and acts; requiring the Port Authority to deal with American Stevedoring over both the terms and conditions of the leases, and over funding for the barge operation; requiring the Port Authority to negotiate in good faith toward a resolution of the disputes between the parties that have arisen; and requiring the Port Authority to pay reparations for the unlawful conduct described herein in the sum of \$16 million (US), with interest and attorneys fees, or such other sum as the Commission may determine to be proper.

**Background – Capital Investments, Repairs and Maintenance,
Operations and Opportunities**

82. The Port Authority has made and continues to make capital investments in and to provide other support and services to other marine terminals, including at Staten Island, Newark and Elizabeth.

83. For instance, the Port Authority has invested millions of dollars in its other marine terminal facilities and connecting railroads and highways to ensure that the Port is ready to handle trade volumes projected to double in the coming decade. These investments include the following:

A. The Port Authority has turned a brownfield site that once housed a Procter & Gamble plant into Howland Hook, one of the most efficient intermodal marine terminals on the East Coast. Linked by the terminal's own on-dock rail operation and ExpressRail Staten Island to transcontinental rail routes, the Staten Island terminal, operated by New York Container Terminal (NYCT), already is producing mile-long trains.

Intermodal yard expansion will further increase capabilities, as will a planned fourth berth.

B. Up Newark Bay, on the New Jersey side, Elizabeth-Port Authority Marine Terminal is benefiting from an ExpressRail Elizabeth expansion to 18 tracks and APM Terminals' addition of 84 acres, bringing its terminal site to a total of 350 acres. Other rail projects, including a new support yard, will further add to throughput capacities and efficiencies at both the Elizabeth-Port Authority Marine Terminal and Port Newark.

C. Port facilities already combine to offer a total of 10 berths with 50-foot depth - four at Maher Terminal and three at the APM Terminals complex at Elizabeth, two at PNCT's Port Newark facility, and one at the New York Container Terminal on Staten Island.

D. In another key move to build for the future, the Port Authority has acquired the former Northeast Auto-Marine Terminal in Bayonne, New Jersey. The agency plans to convert the property into a marine facility that will total 170 acres and be known as Port Jersey Container Terminal.

E. The Port Authority is advancing these redevelopment efforts with both public and private partners, each of whom has an "integral role in the development of infrastructure to serve global trade through the NY/NJ port."

F. The Port Authority assisted New York Container Terminal to build a fourth container berth, expanding NYCT's annual capacity to 950,000 boxes.

G. Maher Terminals now has 45,000 feet of on-dock track, enough capacity to accommodate four 10,000-foot trains.

H. APM Terminals now enjoys an expanded terminal area of 350 acres, up from 266.

I. Port Newark Container Terminal (PNCT) is set to receive an allocation of contiguous property to the container terminal and the construction of a permanent rail facility, which could increase capacity to 1.2 million boxes. The Port Authority also assisted with the deepening of two of its berths, so that it will have three 50-foot berths and one 45-foot berth.

84. The Port Authority also invested in or supported improvements to rail and highway connections to its other marine terminals, thus allowing cargo and containers to be moved to their inland destinations more efficiently.

85. The Brooklyn analog of these rail and highway improvements that the Port Authority has made elsewhere is the cross-Harbor barge operation.

86. The Port Authority discriminates against Red Hook Container Terminal and American Stevedoring's facility at Brooklyn Marine Terminal by continually refusing to make capital improvements or even minor upgrades, and to fund, deal and negotiate over the terms of the cross-Harbor barge operation.

87. The Port Authority gives an undue and unreasonable preference and advantage to its marine terminal operators in Newark, Elizabeth and Staten Island while discriminating against American Stevedoring and dis-advantaging it, by virtue of its differing approach to capital investments, other support and services, economic opportunities, dredging, equipment, rail and highway improvements or support, technical assistance, maintenance, and other conditions.

88. The Port Authority admitted, in a prior matter between American Warehousing of New York, Inc. and the Port Authority, that the Port Authority discriminates against Brooklyn.

89. There are no legitimate transportation factors which justify the Port Authority's discrimination against Brooklyn and Red Hook, and against American Stevedoring which operates there.

COUNT I

VIOLATION OF 46 U.S.C. 41106(3)

90. Paragraphs 1 through 88 are incorporated herein by reference.
91. Respondent, the Port Authority is a “marine terminal operator” as said term is defined in the Shipping Act, 46 U.S.C. 40102(14).
92. The Shipping Act at 46 U.S.C. 41106 prohibits marine terminal operators from unreasonably refusing to deal or negotiate.
93. Accordingly, it is unlawful for the Port Authority to “unlawfully refuse to deal or negotiate” lease terms and conditions including the amount of rent and the amount of space, with American Stevedoring. Section 10(b)(10).
94. By acting as aforesaid, the Port Authority has violated, and continues to violate, the Shipping Act, 46 U.S.C. 41106(3). The Port Authority has not provided any defense or reasonable justification for its refusal to deal or negotiate the terms and conditions of the lease renewal, its haste in forcing American Stevedoring to sign the leases on one day’s notice, and its ultimatum that the set of leases, presented on April 23, 2008 to be signed by noon the following day, if not signed, would not be presented again to American Stevedoring, and that no leases would be presented.
95. The Port Authority exacerbated its refusal by not countersigning the set of leases for another ten months.
96. This lease limbo gave American Stevedoring’s competitors at other terminals an unfair advantage, in terms of stability and opportunity, in addition to the preferences the

Port Authority shows the competitors in rent price, capital investments, and other services, support, terms and conditions.

97. The Port Authority then interfered with American Stevedoring's existing and prospective economic relationships by issuing an RFEI and encouraging competitors to take over American Stevedoring's piers and operations, and to service its customers.

98. As a result of the Port Authority's refusal to deal or negotiate, American Stevedoring has been injured, having lost valuable prospective contracts, and is now unable to enter into stable and long-term commitments or agreements with its customers and potential customers.

99. The Port Authority's refusal to deal or negotiate the terms of a long-term lease also adversely affected American Stevedoring's ability to formulate necessary long-term business forecasting, operational planning, and investments.

100. As a result, American Stevedoring has suffered and will suffer monetary damages in an amount yet to be determined, but exceeding \$16,000,000.00 per year, from diverted business, in barge costs, and unreasonable rent and other charges for reduced space, under the set of leases signed by American Stevedoring on April 24, 2008.

COUNT II

VIOLATION OF 46 U.S.C. 41106(2)

101. Paragraphs 1 through 99 are incorporated herein by reference.

102. The Shipping Act, at 46 U.S.C. 41106(2), provides: "A marine terminal operator may not – (2) give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person[.]"

103. By acting as aforesaid, the Port Authority has injured American Stevedoring.

104. The Port Authority has violated, and continues to violate, the Shipping Act, 46 U.S.C.41106(2).

105. The Port Authority has not provided any defense or reasonable justification for its refusal to negotiate the terms and conditions of the set of leases with American Stevedoring, unlike its relationships and negotiations with other marine terminal operators for lease renewals.

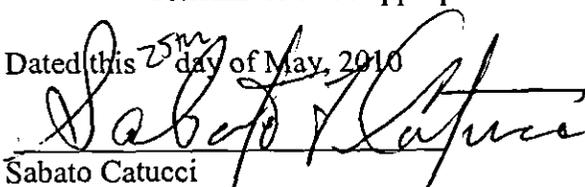
106. The Port Authority's actions have given American Stevedoring's competitors at other terminals an unfair advantage in that they have been and are able to negotiate the terms and conditions of the lease agreements, including the terms of capital investments the Port Authority undertakes, such as the provision of truck toll replacement payments, on-dock rail connections, highway improvements and other transportation connecting services, including barge operations and support, whereas American Stevedoring has been frozen out of negotiations, communications, capital investments, ordinary maintenance and repairs, and has suffered other kinds of different, discriminatory treatment, not justified by transportation factors.

107. The undue and unreasonable preference for other marine terminal operators and undue and unreasonable prejudice and disadvantage to Complainant has damaged American Stevedoring, and as a direct result, American Stevedoring has suffered damages and lost business opportunities in an amount yet to be determined, but exceeding several million dollars per year.

WHEREFORE, Complainant prays that Respondent be required to Answer the charges herein; and that after discovery and a due hearing, an order be entered commanding Respondent

- (i) to cease and desist from all actions to terminate Complainant's leasehold relationships with Complainant;
- (ii) to recommence discussions with the Complainant in good faith over the terms and conditions of the Agreements of Lease entered into on April 24, 2008 comparable to those entered into by the Port Authority for its other marine terminals including the recently reduced rent of Maher Terminals;
- (iii) to order the Port Authority to cease interfering in the economic relationships of American Stevedoring with its customers and potential customers;
- (iv) to establish and put in force such other practices as the Commission determines to be lawful and reasonable governing the relationship between the Port Authority and American Stevedoring; and
- (v) to pay the Complainant by way of reparation for the unlawful conduct hereinabove described, in an amount yet to be determined, but exceeding \$16,000,000.00, with interest and attorney's fees, or such other sum as the Commission may determine to be proper as an award of reparation;
- (vi) and that such other and further order or orders be made as the Commission so determines to be appropriate.

Dated this 25th day of May, 2010


Sabato Catucci
American Stevedoring, Inc.
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Brooklyn, N.Y. 11231


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Verification

State of New Jersey :

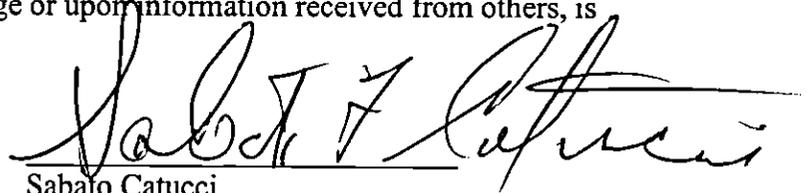
ss.

County of Monmouth :

Sabato Catucci, having been first duly sworn upon his oath, hereby deposes and states that he is

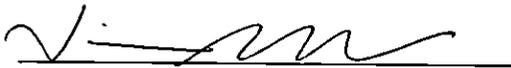
1. The chief executive officer of the Complainant herein, and that he signed the Complaint;

2. That he has read the Complaint, and that he believes that the facts stated therein, based on his own knowledge or upon information received from others, is true.



Sabato Catucci
Chief Executive Officer
American Stevedoring, Inc.

Sworn to and subscribed before me
This 5th day of May, 2010



Janine G. Bauer, Esq.
Attorney-at-Law
State of New Jersey

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Verified Complaint has been service upon the person or organizations on the following service list, this 25th day of May, 2010, in the manner indicated below:

Office of the Secretary and
Office of Legal Counsel
The Port Authority of New York
And New Jersey
225 Park Avenue South
New York, New York 10003
(by First Class Mail)



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