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FEDERAL MARITIME COMM.

**BEFORE THE**
**FEDERAL MARITIME COMMISSION**

**Docket No. 10-05**

**AMERICAN STEVEDORING, INC.**

**COMPLAINANT**

**v.**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**RESPONDENT**

# ANSWER

Respondent The Port Authority of New York and New Jersey (the "Port Authority") by and through its undersigned counsel, respectfully submits this Answer in response to the Complaint filed by American Stevedoring, Inc. ("ASI"). To the extent not specifically admitted herein, all allegations of the Complaint are denied. Furthermore, the section headings contained herein are included only for purposes of clarity and organization, and the Port Authority does not admit, but rather hereby specifically denies, any factual or legal allegations in the headings used in the Complaint.

## The Parties

1. The Port Authority is without information sufficient to form a belief as to whether ASI is a corporation organized and existing under the laws of the State of New York and accordingly denies the allegations contained in paragraph 1 of the Complaint.

2. To the extent the allegations contained in paragraph 2 of the Complaint constitute legal conclusions, no response is required. To the extent that a response is required, the Port Authority is without information sufficient to form a belief as to whether ASI is a marine terminal operator under 46 U.S.C. 40102(14) and accordingly denies the allegations contained in paragraph 2 of the Complaint.

3. The Port Authority is without information sufficient to form a belief as to ASI's commercial operations and therefore denies the allegation.

4. The Port Authority is without information sufficient to form a belief as to ASI's commercial operations and therefore denies the allegation.

5. The Port Authority is without information sufficient to form a belief as to ASI's commercial operations and therefore denies the allegation.

6. The Port Authority is without information sufficient to form a belief as to ASI's commercial operations and therefore denies the allegation.

7. The Port Authority is without information sufficient to form a belief as to ASI's commercial operations and therefore denies the allegation.

8. The Port Authority is without information sufficient to form a belief as to ASI's commercial operations and therefore denies the allegation.

9. The Port Authority is without information sufficient to form a belief as to ASI's commercial operations and therefore denies the allegation.

10. The Port Authority admits that it is 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 admits that, among other reasons, it 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 admits that its principal place of business is 225 Park Avenue South, New York, New York 10003.

**Jurisdiction**

13. To the extent the allegations contained in Paragraph 13 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 13 of the Complaint.

**Background - The Cross-Harbor Barges**

14. The Port Authority is without information sufficient to form a belief as to ASI's marine cargo operations and therefore denies the allegation. To the extent paragraph 14 of the Complaint alleges that ASI began marine cargo operations at Brooklyn-Port Authority Marine Terminal and Red Hook Container Terminal at the unilateral request of the Port Authority, the Port Authority denies the allegation.

15. The Port Authority admits that ASI has conducted marine cargo operations at 138 Marsh Street, Port Newark in Newark, New Jersey. The Port Authority is without information sufficient to form a belief as to ASI's marine cargo operations and therefore denies the remainder of the allegations asserted in paragraph 15 of the Complaint.

16. The Port Authority is without information sufficient to form a belief as to ASI's marine cargo operations and therefore denies the allegation.

17. The Port Authority admits that Port Authority-owned barges have been used to transfer containers from Brooklyn to Port Newark. The Port Authority denies the remaining allegations contained in paragraph 17 of the Complaint.

18. The Port Authority neither admits nor denies the allegations contained in paragraph 18 of the Complaint, to the extent that they consist of ASI's interpretations of its leases with the Port Authority, and respectfully refers the Court to those agreements for the true contents thereof in proper context. The Port Authority denies the remaining allegations of paragraph 18.

19. The Port Authority neither admits nor denies the allegations contained in paragraph 19 of the Complaint, to the extent that they consist of ASI's interpretations of various federal and other laws and programs, and respectfully refer the Court to those laws and programs for the true contents thereof in proper context. The Port Authority denies the remaining allegations of paragraph 19.

20. The Port Authority neither admits nor denies the allegations contained in paragraph 20 of the Complaint, to the extent that they consist of ASI's interpretations of various federal laws and programs, and respectfully refer the Court to those laws and programs for the true contents thereof in proper context. The Port Authority denies the remaining allegations of paragraph 20.

21. The Port Authority admits that it has participated in federal transportation project and program funding laws to offset the costs of operating the cross-Harbor barges. The Port Authority denies the remaining allegations of paragraph 21.

22. The Port Authority neither admits nor denies the allegations contained in paragraph 22 of the Complaint, to the extent that they consist of ASI's interpretations of

various federal laws and programs, and respectfully refer the Court to those laws and programs for the true contents thereof in proper context. The Port Authority denies the remaining allegations of paragraph 22.

23. The Port Authority is without information sufficient to form a belief as to the assertions made in paragraph 23 and therefore denies the allegations.

24. The Port Authority denies the allegations contained in paragraph 24 of the Complaint.

25. The Port Authority is without information sufficient to form a belief as to the assertions made in paragraph 25 and therefore denies the allegations.

26. The Port Authority is without information sufficient to form a belief as to the assertions made in paragraph 26 and therefore denies the allegations.

27. The Port Authority neither admits nor denies the allegations contained in paragraph 27 of the Complaint, to the extent that they consist of ASI's interpretations of various federal laws and programs, and respectfully refer the Court to those laws and programs for the true contents thereof in proper context. The Port Authority denies the remaining allegations of paragraph 27.

28. The Port Authority denies the allegations made in paragraph 28.

29. The Port Authority denies the allegations made in paragraph 29.

30. The Port Authority denies the allegations made in paragraph 30.

31. The Port Authority is without information sufficient to form a belief as to the assertions made in paragraph 31 and therefore denies the allegations.

32. The Port Authority denies the allegations made in paragraph 32.

33. The Port Authority denies the allegations made in paragraph 33.

34. The Port Authority denies the allegations made in paragraph 34.

35. The Port Authority denies the allegations made in paragraph 35.

36. The Port Authority is without information sufficient to form a belief as to the assertions made in paragraph 36 and therefore denies the allegations.

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

37. The Port Authority denies the allegations made in paragraph 37.

38. The Port Authority admits that ASI has failed to pay its rent as required under its leases with the Port Authority. The Port Authority denies the remaining allegations contained in paragraph 38.

39. The Port Authority is without information sufficient to form a belief as to the assertions made in paragraph 39 and therefore denies the allegations.

40. The Port Authority is without information sufficient to form a belief as to the assertions made in paragraph 40 and therefore denies the allegations.

41. The Port Authority denies the allegations made in paragraph 41 of the Complaint.

42. The Port Authority denies the allegations made in paragraph 42 of the Complaint.

43. The Port Authority admits that it began negotiating a lease with ASI in and about January 2008 to discuss its lease for the Port Newark facility, and for Pier 8 at the Brooklyn-Port Authority Marine Terminal, and Piers 9 (A and B) and 10 at Red Hook Container Terminal. The Port Authority denies the remaining allegations in paragraph 43.

44. The Port Authority admits that it sent ASI term sheets in or about February 2008, but denies the remaining allegations in paragraph 44.

45. The Port Authority denies the allegations made in paragraph 45 of the Complaint.

46. The Port Authority denies the allegations contained in paragraph 46 of the Complaint.

47. The Port Authority denies the allegations contained in paragraph 47.

48. The Port Authority denies the allegations contained in paragraph 48.

49. The Port Authority admits that ASI is obligated to pay unpaid rents due by it under its leases with the Port Authority and has failed to do so. The Port Authority denies the remaining allegations of paragraph 49.

50. The Port Authority denies the allegations contained in paragraph 50 of the Complaint.

51. The Port Authority neither admits nor denies the allegations contained in paragraph 51 of the Complaint, to the extent that they consist of ASI's interpretations of an email and respectfully refer the Court to that email for the true contents thereof in proper context. The Port Authority denies the remaining allegations of paragraph 51.

52. The Port Authority denies the allegations in paragraph 52 of the Complaint.

53. The Port Authority admits that ASI's chief executive signed the leases in question but denies the remaining allegations of paragraph 53 of the Complaint.

54. The Port Authority admits that it executed the leases in question on or around February 2009 but denies the remaining allegations of paragraph 54 of the Complaint.

55. The Port Authority denies the allegations contained in paragraph 55 of the Complaint.

56. The Port Authority is without sufficient knowledge and therefore denies the allegations contained in paragraph 56 of the Complaint.

57. The Port Authority without knowledge sufficient to form a belief as to ASI's customers and therefore denies the allegations contained in paragraph 57 of the Complaint.

58. The Port Authority denies the allegations contained in paragraph 58 of the Complaint.

59. The Port Authority is without sufficient knowledge and therefore denies the allegations contained in paragraph 59 of the Complaint.

60. The Port Authority denies the allegations contained in paragraph 60 of the Complaint.

61. The Port Authority admits that an audit determined that ASI owed, pursuant to its leases with the Port Authority, additional charges but denies the remaining allegations in the Complaint, including that such charges were paid out of the Bi-State Dredging Fund. Such charges remain unpaid.

62. The Port Authority denies the allegations contained in paragraph 62 of the Complaint.

63. The Port Authority denies the allegations contained in paragraph 63 of the Complaint.

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

64. The Port Authority denies the allegations contained in paragraph 64.

65. The Port Authority admits that $3.7 million was credited on behalf of ASI and American Warehousing of New York Inc. The Port Authority denies the remaining allegations contained in paragraph 65 of the Complaint, including that ASI's rent was paid through March or April 2009.

66. The Port Authority admits that in or around June 2009, it made a written demand for rent under the Port Newark lease due to ASI's failure to pay rent as obligated under its leases with the Port Authority. The Port Authority denies the remaining allegations contained in paragraph 66 the Complaint.

67. The Port Authority admits that it filed an action in New Jersey Superior Court, Landlord Tenant Court in Newark, seeking to evict ASI from its Port Newark leasehold for unpaid rent. The Port Authority denies the remaining allegations contained in paragraph 67 of the Complaint.

68. The Port Authority admits that it issued a Request for Expressions of Interest ("RFEI") and respectfully refers the Court to that document for the true contents thereof in proper context. The Port Authority denies the remaining allegations of paragraph 68.

69. The Port Authority admits that it distributed the RFEI document to, and met with, marine terminal operators in the port district, including, but not limited to, Maher Terminals, APM Terminals, New York Container Terminal, and Port Newark Container Terminal. The Port Authority denies the remaining allegations contained in paragraph 69 of the Complaint.

70. The Port Authority is without knowledge sufficient to form a belief as to ASI's knowledge of the RFEI and accordingly denies the allegations contained in paragraph 70 of the Complaint.

71. The Port Authority denies the allegations contained in paragraph 71 of the Complaint.

72. The Port Authority admits the allegations contained in paragraph 72 of the Complaint.

73. The Port Authority denies the allegations contained in paragraph 73 of the Complaint.

74. The Port Authority denies the allegations contained in paragraph 74 of the Complaint.

75. The Port Authority denies the allegations contained in paragraph 75 of the Complaint.

76. The Port Authority denies the allegations contained in paragraph 76 of the Complaint.

77. The Port Authority admits the allegations contained in paragraph 77 of the Complaint.

78. The Port Authority denies the allegations contained in paragraph 78 of the Complaint.

79. The Port Authority denies the allegations contained in paragraph 79 of the Complaint.

80. The Port Authority denies the allegations contained in paragraph 80 of the Complaint.

81. The Port Authority denies the allegations contained in paragraph 81 of the Complaint.

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

82. The Port Authority admits that it has made and continues to make capital investments in and to provide other support and services to some marine terminals, including at Staten Island, Newark and Elizabeth but denies the remaining allegations contained in paragraph 82 of the Complaint.

83. The Port Authority admits that it has invested in its marine terminal facilities and connecting railroads and highways to prepare the Port to handle increasing trade volumes. The Port Authority admits the allegations contained in subparagraphs A, B, and E, and denies the remaining allegations contained in paragraph 83.

84. The Port Authority admits that it invested in or supported improvements to rail and highway connections to some of its other marine terminals, thus allowing cargo and containers to be moved to their inland destinations more efficiently but denies the remaining allegations contained in paragraph 84 of the Complaint.

85. The Port Authority denies the allegations contained in paragraph 85 of the Complaint.

86. The Port Authority denies the allegations contained in paragraph 86 of the Complaint.

87. The Port Authority denies the allegations contained in paragraph 87 of the Complaint.

88. The Port Authority denies the allegations contained in paragraph 88 of the Complaint.

89. The Port Authority denies the allegations contained in paragraph 89 of the Complaint.

**COUNT I**
**VIOLATION OF 46 U.S.C. 41106(3)**

90. The Port Authority incorporates paragraphs 1-88 of this Answer.

91. The Port Authority admits that it is a "marine terminal operator" as that term is defined in the Shipping Act, 46 U.S.C. 40102(14).

92. The Port Authority admits the allegations contained in paragraph 92 of the Complaint.

93. To the extent the allegations contained in paragraph 93 of the Complaint constitute legal conclusions, no response is required. To the extent that a response is required, the Port Authority denies the allegations contained in paragraph 93 of the Complaint.

94. The Port Authority denies the allegations contained in paragraph 94 of the Complaint.

95. The Port Authority denies the allegations contained in paragraph 95 of the Complaint.

96. The Port Authority denies the allegations contained in paragraph 96 of the Complaint.

97. The Port Authority denies the allegations contained in paragraph 97 of the Complaint.

98. The Port Authority denies the allegations contained in paragraph 98 of the Complaint.

99. The Port Authority denies the allegations contained in paragraph 99 of the Complaint.

100. The Port Authority denies the allegations contained in paragraph 100 of the Complaint.

**COUNT II**
**VIOLATION OF 46 U.S.C. 41106(2)**

101. The Port Authority incorporates paragraphs 1-99 of the Answer by reference.

102. The Port Authority admits the allegations contained in paragraph 102 of the Complaint.

103. The Port Authority denies the allegations contained in paragraph 103 of the Complaint.

104. The Port Authority denies the allegations contained in paragraph 104 of the Complaint.

105. The Port Authority denies the allegations contained in paragraph 105 of the Complaint.

106. The Port Authority denies the allegations contained in paragraph 106 of the Complaint.

107. The Port Authority denies the allegations contained in paragraph 107 of the Complaint.

## ADDITIONAL OR AFFIRMATIVE DEFENSES

### First Additional or Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted.

### Second Additional or Affirmative Defense

The Port Authority's actions were justified because it acted in accordance with the Shipping Act.

### Third Additional or Affirmative Defense

The Complaint is barred in whole or in part by the doctrines of laches, acquiescence, waiver, estoppel and other equitable and/or claim preclusion doctrines.

### Fourth Additional or Affirmative Defense

The acceptance of benefits arising from ASI's continued possession of the premises constitutes accord and satisfaction of any obligation of the Port Authority or corresponding right of ASI.

**Fifth Additional or Affirmative Defense**

ASI's claims are barred in whole or in part by the doctrine of unclean hands.

**Sixth Additional or Affirmative Defense**

Some or all of their claims may be barred by the applicable statute of limitations.

**Seventh Additional or Affirmative Defense**

ASI is not entitled to the relief sought because ASI materially breached its obligations under the ASI lease.

**Eighth Additional or Affirmative Defense**

To alter ASI's leases either retroactively or prospectively would alter the investment backed expectations of the Port Authority and its bond holders and would thus violate the Constitutions and laws of New Jersey, New York and the United States.

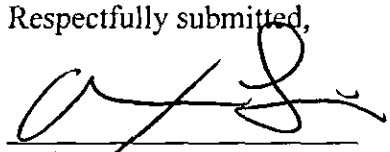
**Ninth Additional or Affirmative Defense**

ASI has failed to comply with the conditions prerequisite to suit against the Port Authority as set forth in the Port Authority's Compact at N.J.S.A. 32:1-157 et seq. and N.Y. Unconsol. Laws Section 7101 et seq.

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

Dated: June 17, 2010

Respectfully submitted,



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## VERIFICATION

The undersigned declares and certifies under the penalty of perjury that the statements set forth in this instrument are true and correct.

Patricia Keough
Manager, Business Services
Port Commerce Department
The Port Authority of New York & New Jersey
225 Park Avenue South – 11th Floor
New York, NY 10003

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the person listed below in the matter indicated, a copy to each such person.

***Via Email and Federal Express***
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Dated at Washington, DC
this 17th day of June, 2010

Alexander O. Levine