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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 07-01

**APM TERMINALS NORTH AMERICA, INC.
COMPLAINANT**

v.

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
RESPONDENT AND THIRD-PARTY COMPLAINANT**

v.

**MAHER TERMINALS LLC
THIRD-PARTY RESPONDENT**



THIRD PARTY COMPLAINT

Third-Party Complainant, the Port Authority of New York and New Jersey ("the Port Authority") bring this Third-Party Complaint against Maher Terminals LLC ("Maher") for violations of the Shipping Act of 1984 (46 U.S.C. § 40101 et seq.)

NATURE OF THE ACTION

1. Complainant APM Terminals North America, Inc. ("APMT") has filed against Respondent the Port Authority, a Complaint, a copy of which is attached hereto as "Exhibit A."
2. The Complaint alleges that the Port Authority violated the Shipping Act and breached its lease obligations under Lease EP-248 by failing to timely deliver 84 acres, known as the Added Premises, to APMT. The Port Authority was unable to provide the

Added Premises to APMT because Maher Terminals failed to vacate in a timely manner as required by Lease EP-249. APMT's Complaint alleges that the Port Authority violated the Shipping Act because it "refused to enforce Maher's obligation to turn over the Added Premises to APMT and permitted Maher Terminals to benefit from extended use of the Added Premises to the detriment of APMT." (APMT Complaint, Section III, paragraph K, p. 5).

3. Section 249 of Lease EP-249 specifically required Maher to turn over the Added Premises to the Port Authority so that it could deliver them to APMT, and Maher failed to do so. In addition, Lease 249 also required Maher to: (a) indemnify and hold harmless the Port Authority for any damages resulting from Maher's failure to turn over the Added Premises in a timely manner; and (b) to defend the Port Authority at Maher's sole expense for any claim arising out of its terminal operations under Lease 249.

4. On April 18, 2007, the Port Authority notified Maher of its obligations under Lease 249 with respect to the APMT Complaint before the Commission, tendered defense of the action to Maher, and demanded that Maher indemnify and hold the Port Authority harmless for any resulting damages. A copy of that tender of defense and demand letter is attached hereto as "Exhibit B."

5. On May 2, 2007, Maher responded by refusing to accept the tender of defense, and refused to acknowledge its obligations to indemnify and hold the Port Authority harmless in connection with the APMT Complaint. A copy of that refusal letter is attached hereto as "Exhibit C."

THE PARTIES

6. The Port Authority is a body corporate and politic created by Compact between the States of New York and New Jersey, with consent of the Congress of the United States and having its offices and place of business at 225 Park Avenue South, New York, NY 10003. The Port Authority is a Marine Terminal Operator (“MTO”) within the meaning of Section 3(14) of the Shipping Act of 1984 (46 U.S.C. § 40102(14))¹.

7. Maher Terminals LLC is a limited liability company organized and existing under the laws of the State of New Jersey. Maher is a Marine Terminal Operator that is engaged in the business of furnishing marine terminal services to ocean common carriers at facilities located at Elizabeth, New Jersey. Maher has its offices at 400 Connell Drive, Berkeley Heights, New Jersey, 07922.

JURISDICTION

8. The Port Authority and Maher are both Marine Terminal Operators within the meaning of 46 U.S.C. § 40102(14). The subject matter of this Complaint as well as the Complaint filed by APMT, are leases that the Port Authority entered into in 2000 with APMT’s predecessor and with Maher. These marine terminal services agreements were not required to be filed with the Commission but were nonetheless filed voluntarily. It has been, and is, the position of the Port Authority that the Commission lacks subject matter jurisdiction over the terms of these marine terminal facilities agreements since they are not required to be filed with the Commission. However, inasmuch as

¹ While the Port Authority is an MTO within the meaning of the Act, it does not concede that its MTO status confers jurisdiction upon the Commission with respect to the terms of either Lease EP-248 or Lease EP-249. To the extent, however, the Commission concurs in the opinion of Administrative Law Judge Clay G. Guthridge issued July 13, 2007 herein, that it has jurisdiction to enforce the provisions of Lease EP-248, then it must also have jurisdiction to hear this Third-Party Complaint and enforce the provisions of Lease EP-249.

Administrative Law Judge Guthridge has ruled to the contrary, the Port Authority files this Third-Party Complaint for the limited purpose of protecting itself from an ultimate ruling that these marine terminal services agreements are subject to the Commission's jurisdiction. To that extent, the failure of Maher to comply with the provisions of Lease EP-249 constitutes a violation of 46 U.S.C. § 41102(b) (2).

THE APMT LEASE AGREEMENT

9. The Complaint filed by APMT against the Port Authority in this matter is based entirely upon the alleged failure of the Port Authority to turn over to APMT the 84 acres of marine terminal land designated in Lease EP-248 as the Added Premises. The Complaint further alleges that the reason for this failure is that Maher was occupying the Added Premises and refused to vacate same in a timely manner. While the Complaint contends that the Port authority has violated various provisions of the Shipping Act, each of those alleged violations would disappear if the Added Premises had been given to APMT on or before December 31, 2007, and the Added Premises would have been given to APMT if Maher had timely vacated those 84 acres.

10. Any fair reading of leases EP-248 and EP-249 which were negotiated and entered into almost simultaneously reveals that the parties well knew that the Added Premises, then occupied by Maher might not be handed over to APMT by December 31, 2007. In fact, both Leases contain provisions as to available remedies should that transfer not occur on time. APMT Lease provides that should the Added Premises not be tendered to it by December 31, 2007, APMT is free to cancel the remainder of the 30 year Lease upon notice to the Port Authority. The Port Authority contends that this is the sole remedy available to APMT.

THE MAHER LEASE AGREEMENT

11. As with the APMT Lease, the Maher Lease Agreement anticipated that Maher might not vacate the Added Premises in a timely manner. Section 1 (d) of Lease EP-249 states:

(d)...[T]he parties hereto acknowledge and agree ... that it will be necessary for the Lessee to surrender portions of the Old Premises (the "Partial Surrender") and to lease other terminal space at the Facility. It is understood and agreed that in the event the Lessee fails to deliver the Partial Surrender in a timely manner, the Lessee shall be responsible to the Port Authority, shall hold the Port Authority harmless and shall make such payments as shall be necessary to compensate fully the Port Authority for all additional costs for delay of construction of the ExpressRail Facility (as hereinafter defined) and/or any damages or losses to the Port Authority arising out of that certain lease dated as of January 6, 2007 bearing Port Authority File Number EP-248 between the Port Authority and Maersk Container Service Company, Inc.

12. Further, because APMT's Complaint arises out of Maher's operations, the claim falls within the indemnification and insurance provisions of Lease EP-249. Specifically, Section 15 of EP-249 provides that:

(a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for ... property damages, arising out of the use or occupancy of the Premises by the Lessee or by its officers, agents, employees, or representatives, contractors, subcontractors or their employees, or by others on the Premises with the consent of any of the foregoing persons, or out of any other acts or omissions of the Lessee, its officers, agents or employees on the Premises or elsewhere at the Facility, or out of the acts or omissions of others on the Premises with the consent of the Lessee ...

(b) If so directed by the Port Authority, the Lessee shall at its own expense defend any suit based upon any such

claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) ...

(c) The Lessee, in its own name as assured, shall maintain and pay the premiums on the following described policies of liability insurance:

(i) Commercial General Liability Insurance ...

(d) ... [E]ach policy of insurance described in paragraph (c) of this Section shall include the Port Authority as an additional insured ... Each such policy shall contain a contractual liability endorsement covering the indemnity obligations of the Lessee under this Section ...

13. To the extent that the Commission has the jurisdiction to enforce the terms of marine terminal facilities agreements, and therefore the provisions of the APMT Lease EP-248, then it must likewise have jurisdiction to enforce the very clear and very specific indemnification, hold harmless and duty to defend provisions of the Maher Lease EP-249.

14. On April 18, 2007, the Port Authority tendered the APMT Complaint to Maher under both the indemnification provisions of Lease EP-249, and the duty to defend provisions as well. (See Exhibit B hereto). Maher replied by denying any obligation to indemnify or defend the Port Authority contending that it had vacated premises on schedule and had not violated the provisions of its Lease. (See Exhibit C hereto).

VIOLATIONS OF THE SHIPPING ACT BY MAHER

15. It is the position of the Port Authority that: (a) the Commission does not have subject matter jurisdiction to enforce the provisions of the marine terminal facilities agreements that are the basis of the APMT Complaint and this Third-Party Complaint; (b) to the extent however the Commission does have jurisdiction to enforce the provisions of the APMT Lease EP-248, it must have jurisdiction to enforce the provisions of the Maher Lease EP-249; (c) to the extent that the Commission finds that the right of

termination for failure to deliver the Added Premises to AMPT in a timely manner is the sole remedy available to APMT, the Port Authority would not be liable for damages to APMT and accordingly, Maher would not be responsible for indemnification. However, to the extent that the Commission finds that the Port Authority is liable to APMT under 46 U.S.C. § 41102(b) (2) for failure to comply with the provisions of Lease EP-248, it must also find that Maher has violated 46 U.S.C. § 41102(b) (2) for failing to comply with the provisions of Lease EP-249.

16. In addition to, and regardless of any other liability, to the extent that the Commission has subject matter jurisdiction to enforce the provisions of marine terminal facilities agreements, Maher has violated 46 U.S.C. § 41102(b) (2) by failing to defend the Port Authority pursuant to the provisions of Section 15 of Lease EP-249.

INJURY TO THE PORT AUTHORITY

17. As a direct result of the violations of the Shipping Act by Maher, the Port Authority could suffer substantial economic damages in the form of any damages due to APMT. In addition, the Port Authority is suffering and continues to suffer substantial costs and fees in defending this action before the Commission when Maher is obligated by the terms of Lease EP-249 to suffer those costs and legal fees.

PRAYER FOR RELIEF

Statement Regarding ADR Procedures

18. Inasmuch as this is a Third-Party Complaint and the Port Authority had previously sought to have Maher indemnify, hold harmless and defend the Port Authority, the Port Authority has not used the informal dispute resolution procedures and has not consulted with the Commission's Dispute Resolution Specialist about using

alternative dispute resolution procedures. However, inasmuch as this matter really seems to be a dispute between APMT and Maher with respect to the use of marine terminal facilities, the Port Authority would have no objection to the use of alternative dispute resolution procedures.

WHEREFORE, the Port Authority prays the Maher be required to answer the charges in this Third-Party Complaint and that after appropriate process and procedure, Maher be ordered to pay reparations to the Port Authority in the amounts of: (1) any damages and costs due to APMT as a result of the failure of the Port Authority timely to deliver to APMT the ADDED Premises set forth in Lease EP-248; and (2) pursuant to the provisions of 46 U.S.C. § 41305(c) twice the amount of the reasonable fees, costs and expenses incurred by the Port Authority in defending the APMT action.

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



Dennis Lombardi, Deputy Director
THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY
Port Commerce Department
225 Park Avenue South, 11th Floor
New York, NY 10003

Dated: August 9, 2007

Respectfully submitted,



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August 9, 2007

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BEFORE THE
FEDERAL MARITIME COMMISSION

Docket No. 06 - ____

APM TERMINALS NORTH AMERICA, INC.

COMPLAINANT

v.

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

COMPLAINT

I. Complainant

A. Complainant APM Terminals North America, Inc., formerly known as Maersk Container Service Company, Inc., ("APMT"), is a corporation organized and existing under the laws of the State of Delaware. APMT is a marine terminal operator that is engaged in the business of furnishing marine terminal services to ocean common carriers at facilities throughout the United States, including the Port Elizabeth Marine Terminal in Elizabeth, New Jersey.

B. APMT's mailing address is 6000 Carnegie Boulevard, Charlotte, NC 28209.

Exhibit A

II. Respondent

A. Respondent, Port Authority of New York and New Jersey (“PANYNJ” or “Port Authority”) is a bi-state port district, established in 1921 through an interstate compact between New York and New Jersey. PANYNJ is a marine terminal operator that owns marine terminal facilities in the New York and New Jersey area, including the Port Elizabeth Marine Terminal in Elizabeth, New Jersey.

B. The PANYNJ’s mailing address is 225 Park Avenue South, 18th Floor, New York, NY 10003.

III. Jurisdiction

APMT and the PANYNJ are both marine terminal operators within the meaning of Section 3(14) of the Shipping Act of 1984, 46 U.S.C. § 40102(14)¹. This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301. APMT is seeking reparations for injuries caused to it by PANYNJ’s violations of Sections 10(a)(3), 10(d)(1), 10(d)(3) and 10(d)(4) of the Shipping Act, 46 U.S.C. §§ 41102(b)(2), 41102(c), 41106(3), and 41106(2). As more particularly alleged below, PANYNJ has failed to operate in accordance with FMC Agreement No. 201106, dated January 6, 2000 (the “Agreement”), has failed to establish, observe, and enforce just and reasonable regulations

¹ This Complaint includes for convenience citations to the provisions of the Shipping Act of 1984, which was repealed and codified by Public Law 109-304, 120 Stat. 1485 (2006). The corresponding new provisions of the U.S. Code are also cited. Citations to a Shipping Act section should be understood to include reference to the corresponding U.S. Code section(s).

and practices relating to or connected with receiving, handling, storing or delivering property, has unreasonably refused to deal or negotiate with APMT, and has imposed unjust and unreasonable prejudice or disadvantage with respect to APMT.

IV. Statement of Facts

A. APMT under its prior name Maersk Container Service Company, Inc. and PANYNJ entered into an Agreement of Lease dated January 6, 2000, relating to terminal facilities at the Port of Elizabeth, New Jersey. The Agreement was filed with the Commission and became effective under the Shipping Act of 1984 on August 2, 2000, FMC Agreement No. 201106.

B. Pursuant to Section 1(a) of the Agreement PANYNJ was to lease to APMT certain land and facilities at the Elizabeth-Port Authority Marine Terminal as described in Exhibit A to the Agreement (referred to as the "Premises" or the "Initial Premises").

C. Pursuant to Section 1(b) of the Agreement, PANYNJ was also required to lease to APMT an additional 84 acres referred to as the "Added Premises" and as described in Exhibit A-1 to the Agreement. The Added Premises were to be delivered to APMT in whole or in contiguous portions thereof during the period between January 6, 2000 and December 31, 2003.

D. The Added Premises were an integral part of APMT's business plan and were necessary, among other things, to relieve congestion and space constraints in the Premises. In this respect, the Added Premises were required

by APMT to avoid the loss of operating space in the short term if APMT was displaced by construction projects on the Premises.

E. By the summer of 2003, APMT became aware that PANYNJ did not intend to timely deliver the Added Premises as required by the Agreement.

F. By letter of December 23, 2003, APMT notified PANYNJ of the substantial harms to APMT's operations that would result from a failure by PANYNJ to turn over the added premises by December 31, 2003 as required. These harms included, without limitation, additional container grounding costs and loss of operating revenue.

G. APMT further advised in its letter of December 23, 2003, that these damages might be mitigated with a partial turnover of the Added Premises and implored PANYNJ to make at least some of the Added Premises available in order to ease the burden on APMT.

H. Despite the terms of the Agreement and the knowledge of prospective harm to APMT, PANYNJ failed to provide any portion of the Added Premises on or before December 31, 2003.

I. As of August 23, 2005, PANYNJ still had not delivered any of the Added Premises. By letter of August 23, 2005, APMT notified PANYNJ of the continuing violation of the Agreement and made clear that harms that were predicted in APMT's letter of December 23, 2003, had, in fact, been suffered as a result of PANYNJ's continuing refusal to comply with the terms of the Agreement. APMT again demanded that PANYNJ comply with the terms of the Agreement, and requested that 80% of the Added Premises be delivered by

September 1, 2005, and that the remainder be provided no later than October 1, 2005.

J. PANYNJ again refused to comply with these requests and continued in its failure to deliver the Added Premises as required by the Agreement.

K. During the entire period that PANYNJ was improperly denying APMT access to the Added Premises, PANYNJ was permitting the facilities to be used and occupied by Maher Terminals.

L. PANYNJ refused to enforce Maher's obligation to turn over the Added Premises to APMT and permitted Maher Terminals to benefit from extended use of the Added Premises to the detriment of APMT.

M. The Added Premises were not delivered to APMT until on or about December 25, 2005, almost two full years beyond the agreed upon deadline.

N. As a result of PANYNJ's actions, APMT lost expected operating revenues from the Added Premises.

O. As a result of its inability to use the Added Premises, APMT further incurred substantial additional operations, labor, and construction costs at the Initial Premises. Without limitation, some examples of these additional costs include additional labor needed to stack containers higher due to the lack of space, the need for construction change orders, and additional costs for shifting containers to accommodate construction schedules.

P. In addition, the untimely delivery increased costs of construction at the Added Premises. Among other things, rapid and severe increases on the

costs of materials and oil resulted in construction costs that were substantially higher at the time the Added Premises were turned over in 2005 than they would have been had the work been performed in 2003 or early 2004 as anticipated by the Agreement.

Q. APMT has not been compensated by PANYNJ for any of these damages.

V. Matters Complained of

A. Contrary to the terms of the Agreement, PANYNJ failed to properly and timely perform its obligations regarding the Added Premises causing significant unreasonable delay, an exorbitant increase in operating costs, an increase in the costs of developing the Premises and the Added Premises, and a loss of revenues.

B. PANYNJ failed to cause Maher Terminals to timely vacate and deliver to APMT all of the Added Premises.

C. PANYNJ refused requests from APMT for the turnover of a portion of the Added Premises to alleviate the serious lack of terminal space confronted by APMT as a consequence of PANYNJ's failure to deliver the Added Premises.

D. In sharp contrast with its treatment towards APMT, PANYNJ allowed Maher Terminals, then the lessee of the Added Premises, to continue to occupy and use the Added Premises long after it should have been delivered to APMT.

E. PANYNJ further tolerated and acquiesced in other actions of Maher clearly intended to prevent APMT from utilizing the Added Premises. PANYNJ failed to take any action to require Maher to turn over the Added Premises.

F. PANYNJ has engaged in other unjust, unreasonable and unlawful practices, has unreasonably refused to deal or negotiate with APMT and has imposed undue or unreasonable prejudices and disadvantages in its dealings with APMT.

VI. Violations of the Shipping Act of 1984

A. The actions of PANYNJ set forth in Parts IV and V of this Complaint constitute failure of the PANYNJ to operate in accordance with the terms of the Agreement in violation of Section 10(a)(3) of the 1984 Act, 46 U.S.C. § 41102(b)(2), which failure has had an adverse effect on the development of the Premises and Added Premises, including, without limitation, increased construction and operating costs and loss of revenues.

B. The actions of PANYNJ set forth in Parts IV and V of this Complaint constitute unjust, unreasonable, and unlawful practices in violation of Section 10(d)(1) of the 1984 Act, 46 U.S.C. § 41102(c), including without limitation: the failure to turn over the Added Premises to APMT; allowing Maher to use the Added Premises; and misinforming APMT as to the timing of the turnover of the Added Premises.

C. The actions of PANYNJ set forth in Parts IV and V of this Complaint constitute an unreasonable refusal to deal or negotiate with APMT

in violation of Sections 10(d)(3) and 10(b)(10) of the 1984 Act, 46 U.S.C. §§ 41106(3) and 41104(10), including without limitation: refusing to turn over any portion of the Added Premises or find suitable alternatives.

D. The actions of the PANYNJ set forth in Parts IV and V of this Complaint constitute impositions of undue or unreasonable prejudices or disadvantages with respect to APMT in violation of Section 10(d)(4) of the 1984 Act, 46 U.S.C. § 41106(2), including without limitation: allowing Maher to interfere with APMT's operations at the Added Premises, and allowing Maher to benefit from extended occupation of the Added Premises to the detriment of APMT.

VII. INJURY TO APMT

As a direct result of the violations of the 1984 Act by the PANYNJ, APMT has suffered substantial economic damages and injury, in an amount to be determined, consisting of foregone profits, increased capital, labor, and operating expenditures and other expenditures, including interest.

VIII. Prayer for Relief

Statement Regarding ADR Procedures

As reflected above, there have been extensive discussions of the issues raised in the Complaint between Complainant and Respondent. In light of these discussions, informal dispute resolution procedures have not been used prior to filing the Complaint. Nor has the Complainant consulted with the Commission's Dispute Resolution Specialist about utilizing alternative dispute resolution with the Commission's ADR program.

WHEREFORE, APMT prays that PANYNJ be required to answer the charges in this Complaint; that after due hearing and investigation an order be made commanding PANYNJ to cease and desist from the aforementioned violations of the 1984 Act and to establish and put in force such practices as the Commission determines to be lawful and reasonable; that an order be made commanding the PANYNJ to pay APMT reparations for violations of the 1984 Act (which include up to twice the amount of actual injury caused by the PANYNJ's violations of Section 10(a)(3) of the 1984 Act (as authorized by Section 11(g) of the 1984 Act, 46 U.S.C. § 41305(c)), plus interest, costs, and attorney's fees, and any other damages to be determined; that an order be made commanding the PANYNJ to comply with all applicable provisions of the Agreement that the Commission finds as having been violated contrary to the 1984 Act; and that such other and further relief be granted as the Commission determines to be proper, fair, and just in the circumstances.

APMT requests a hearing on this matter, and further requests that the hearing be held in Washington, D.C.

Respectfully submitted,



By: JOHN N. LOEPPRICH
Title: SR. V.P. & CFO
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By:



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Attorneys for APM Terminals North
America, Inc.

December 29, 2006

VERIFICATION

State of North Carolina)
County of Mecklenburg) ss:

John Laepprich, being first duly sworn on oath, deposes and says that he is the Secretary of Complainant and is the person who signed the foregoing Complaint in his capacity as Secretary of Complainant; that he has read the Complaint and that the facts stated therein, upon information personally known to him and received from others, he believes to be true.

John A. Jaeger

Subscribed and sworn to before me by John Laepprich who is known personally to me, in Charlotte, NC this 29 day of December, 2006.

Cynthia L. Stafe
NOTARY PUBLIC
For the State of NC
County of Mecklenburg

My Commission expires: MY COMMISSION EXPIRES 11-01-2009

THE PORT AUTHORITY OF NY & NJ
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April 18, 2007

*Admitted in NY only
†Certified by the Supreme Court of New Jersey
Civil Trial Attorney

FEDERAL EXPRESS AND FACSIMILE

Maher Terminals, Inc.
4 Connell Drive
Berkeley Heights, NJ 07922

Attn: Scott H. Schley, Esq.
General Counsel and Secretary

Re: **APM TERMINALS NORTH AMERICA, INC. v. PORT AUTHORITY OF
NEW YORK AND NEW JERSEY**
FMC DOCKET NO. 07-01

Dear Mr. Schley:

Enclosed for your handling pursuant to the terms of Lease EP-249 between the Port Authority of New York and New Jersey (Port Authority) and Maher Terminals, Inc. (Maher Terminals) is a copy of a Complaint filed with the Federal Maritime Commission (FMC) by APM Terminals, North America (APMT) against the Port Authority of New York and New Jersey. The Complaint alleges that the Port Authority violated the Shipping Act and breached its lease obligations to APMT by failing to timely deliver 84 acres, known as Added Premises, to APMT. The Port Authority was unable to provide the Added Premises to APMT because Maher Terminals failed to vacate in a timely manner as required by Lease EP-249. APMT's Complaint alleges that the Port Authority violated the Shipping Act because it "refused to enforce Maher's obligation to turn over the Added Premises to APMT and permitted Maher Terminals to benefit from extended use of the Added Premises to the detriment of APMT." (See Complaint, Section III, paragraph K, p. 5).

Section 1 of Lease EP-249 required Maher Terminals to turn over the Added Premises to the Port Authority so that it could deliver them to APMT, and Maher Terminals failed to do so. In this regard, the Lease expressly provided:

Exhibit B

April 19, 2007

Page 2

(d) ...[T]he parties hereto acknowledge and agree ... that it will be necessary for the Lessee to surrender portions of the Old Premises (the "Partial Surrender") and to lease other terminal space at the Facility. It is understood and agreed that in the event the Lessee fails to deliver the Partial Surrender in a timely manner, the Lessee shall be responsible to the Port Authority, shall hold the Port Authority harmless and shall make such payments as shall be necessary to compensate fully the Port Authority for all additional costs for delay of construction of the ExpressRail Facility (as hereinafter defined) and/or any damages or losses to the Port Authority arising out of that certain lease dated as of January 6, 2000 bearing Port Authority File Number EP-248 between the Port Authority and Maersk Container Service Company, Inc.

(See Section 1 of Lease EP-249 Between The Port Authority and Maher Terminals). APMT's case is based upon the allegation that the Added Premises were not surrendered by Maher Terminals and provided to APMT in a timely manner triggering the aforementioned provisions. Accordingly, Maher Terminals is "responsible to the Port Authority, shall hold the Port Authority harmless and shall make such payments as shall be necessary to compensate fully the Port Authority for all additional costs for delay of construction of the ExpressRail Facility (as hereinafter defined) and/or any damages or losses to the Port Authority arising out of that certain lease dated as of January 6, 2000 bearing Port Authority File Number EP-248 between the Port Authority and Maersk Container Service Company, Inc." *Id.* (emphasis added).

Further, because APMT's Complaint arises out of Maher Terminal's operations, the claim falls within the indemnification and insurance provisions of Lease EP-249. Specifically, Section 15 of EP-249 provides that:

- (a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for ... property damages, arising out of the use or occupancy of the Premises by the Lessee or by its officers, agents, employees, or representatives, contractors, subcontractors or their employees, or by others on the Premises with the consent of any of the foregoing persons, or out of any other acts or omissions of the Lessee, its officers, agents or employees on the Premises or elsewhere at the Facility, or out of the acts or omissions of others on the Premises with the consent of the Lessee ...
- (b) If so directed by the Port Authority, the Lessee shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) ...
- (c) The Lessee, in its own name as assured, shall maintain and pay the premiums on the following described policies of liability insurance:

April 19, 2007

Page 3

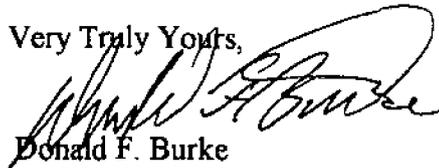
- (i) Commercial General Liability Insurance ...

- (d) "...[E]ach policy of insurance described in paragraph (c) of this Section shall include the Port Authority as an additional insured ... Each such policy shall contain a contractual liability endorsement covering the indemnity obligations of the Lessee under this Section ..."

Accordingly, please tender this claim to the appropriate insurance companies on behalf of the Port Authority pursuant to the insurance policies procured and maintained by Maher Terminals pursuant to the above quoted lease provision. If the insurance companies do not agree to defend and indemnify the Port Authority, we look to Maher Terminals for such protection pursuant to the above quoted lease provisions. In order to assure consistency, please advise us of the law office designated to defend our interests. We must approve the Answer and all other pleadings prepared and transmitted on behalf of the Port Authority and must be kept informed of all significant developments. Jurisdictional defenses and motions brought on behalf of the Port Authority should not be raised without first obtaining the consent of the General Counsel of the Port Authority.

Thank you.

Very Truly Yours,



Donald F. Burke
New Jersey Solicitor

cc: Paul Donovan, Esq.

BEFORE THE
FEDERAL MARITIME COMMISSION

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Docket No. ⁸⁷ 06 - 1

FEDERAL MARITIME COMMISSION

APM TERMINALS NORTH AMERICA, INC.

COMPLAINANT

v.

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT



COMPLAINT

I. Complainant

A. Complainant APM Terminals North America, Inc., formerly known as Maersk Container Service Company, Inc., ("APMT"), is a corporation organized and existing under the laws of the State of Delaware. APMT is a marine terminal operator that is engaged in the business of furnishing marine terminal services to ocean common carriers at facilities throughout the United States, including the Port Elizabeth Marine Terminal in Elizabeth, New Jersey.

B. APMT's mailing address is 6000 Carnegie Boulevard, Charlotte, NC 28209.

II. Respondent

A. Respondent, Port Authority of New York and New Jersey ("PANYNJ" or "Port Authority") is a bi-state port district, established in 1921 through an interstate compact between New York and New Jersey. PANYNJ is a marine terminal operator that owns marine terminal facilities in the New York and New Jersey area, including the Port Elizabeth Marine Terminal in Elizabeth, New Jersey.

B. The PANYNJ's mailing address is 225 Park Avenue South, 18th Floor, New York, NY 10003.

III. Jurisdiction

APMT and the PANYNJ are both marine terminal operators within the meaning of Section 3(14) of the Shipping Act of 1984, 46 U.S.C. § 40102(14)¹. This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301. APMT is seeking reparations for injuries caused to it by PANYNJ's violations of Sections 10(a)(3), 10(d)(1), 10(d)(3) and 10(d)(4) of the Shipping Act, 46 U.S.C. §§ 41102(b)(2), 41102(c), 41106(3), and 41106(2). As more particularly alleged below, PANYNJ has failed to operate in accordance with FMC Agreement No. 201106, dated January 6, 2000 (the "Agreement"), has failed to establish, observe, and enforce just and reasonable regulations

¹ This Complaint includes for convenience citations to the provisions of the Shipping Act of 1984, which was repealed and codified by Public Law 109-304, 120 Stat. 1485 (2006). The corresponding new provisions of the U.S. Code are also cited. Citations to a Shipping Act section should be understood to include reference to the corresponding U.S. Code section(s).

and practices relating to or connected with receiving, handling, storing or delivering property, has unreasonably refused to deal or negotiate with APMT, and has imposed unjust and unreasonable prejudice or disadvantage with respect to APMT.

IV. Statement of Facts

A. APMT under its prior name Maersk Container Service Company, Inc. and PANYNJ entered into an Agreement of Lease dated January 6, 2000, relating to terminal facilities at the Port of Elizabeth, New Jersey. The Agreement was filed with the Commission and became effective under the Shipping Act of 1984 on August 2, 2000, FMC Agreement No. 201106.

B. Pursuant to Section 1(a) of the Agreement PANYNJ was to lease to APMT certain land and facilities at the Elizabeth-Port Authority Marine Terminal as described in Exhibit A to the Agreement (referred to as the "Premises" or the "Initial Premises").

C. Pursuant to Section 1(b) of the Agreement, PANYNJ was also required to lease to APMT an additional 84 acres referred to as the "Added Premises" and as described in Exhibit A-1 to the Agreement. The Added Premises were to be delivered to APMT in whole or in contiguous portions thereof during the period between January 6, 2000 and December 31, 2003.

D. The Added Premises were an integral part of APMT's business plan and were necessary, among other things, to relieve congestion and space constraints in the Premises. In this respect, the Added Premises were required

by APMT to avoid the loss of operating space in the short term if APMT was displaced by construction projects on the Premises.

E. By the summer of 2003, APMT became aware that PANYNJ did not intend to timely deliver the Added Premises as required by the Agreement.

F. By letter of December 23, 2003, APMT notified PANYNJ of the substantial harms to APMT's operations that would result from a failure by PANYNJ to turn over the added premises by December 31, 2003 as required. These harms included, without limitation, additional container grounding costs and loss of operating revenue.

G. APMT further advised in its letter of December 23, 2003, that these damages might be mitigated with a partial turnover of the Added Premises and implored PANYNJ to make at least some of the Added Premises available in order to ease the burden on APMT.

H. Despite the terms of the Agreement and the knowledge of prospective harm to APMT, PANYNJ failed to provide any portion of the Added Premises on or before December 31, 2003.

I. As of August 23, 2005, PANYNJ still had not delivered any of the Added Premises. By letter of August 23, 2005, APMT notified PANYNJ of the continuing violation of the Agreement and made clear that harms that were predicted in APMT's letter of December 23, 2003, had, in fact, been suffered as a result of PANYNJ's continuing refusal to comply with the terms of the Agreement. APMT again demanded that PANYNJ comply with the terms of the Agreement, and requested that 80% of the Added Premises be delivered by

September 1, 2005, and that the remainder be provided no later than October 1, 2005.

J. PANYNJ again refused to comply with these requests and continued in its failure to deliver the Added Premises as required by the Agreement.

K. During the entire period that PANYNJ was improperly denying APMT access to the Added Premises, PANYNJ was permitting the facilities to be used and occupied by Maher Terminals.

L. PANYNJ refused to enforce Maher's obligation to turn over the Added Premises to APMT and permitted Maher Terminals to benefit from extended use of the Added Premises to the detriment of APMT.

M. The Added Premises were not delivered to APMT until on or about December 25, 2005, almost two full years beyond the agreed upon deadline.

N. As a result of PANYNJ's actions, APMT lost expected operating revenues from the Added Premises.

O. As a result of its inability to use the Added Premises, APMT further incurred substantial additional operations, labor, and construction costs at the Initial Premises. Without limitation, some examples of these additional costs include additional labor needed to stack containers higher due to the lack of space, the need for construction change orders, and additional costs for shifting containers to accommodate construction schedules.

P. In addition, the untimely delivery increased costs of construction at the Added Premises. Among other things, rapid and severe increases on the

costs of materials and oil resulted in construction costs that were substantially higher at the time the Added Premises were turned over in 2005 than they would have been had the work been performed in 2003 or early 2004 as anticipated by the Agreement.

Q. APMT has not been compensated by PANYNJ for any of these damages.

V. Matters Complained of

A. Contrary to the terms of the Agreement, PANYNJ failed to properly and timely perform its obligations regarding the Added Premises causing significant unreasonable delay, an exorbitant increase in operating costs, an increase in the costs of developing the Premises and the Added Premises, and a loss of revenues.

B. PANYNJ failed to cause Maher Terminals to timely vacate and deliver to APMT all of the Added Premises.

C. PANYNJ refused requests from APMT for the turnover of a portion of the Added Premises to alleviate the serious lack of terminal space confronted by APMT as a consequence of PANYNJ's failure to deliver the Added Premises.

D. In sharp contrast with its treatment towards APMT, PANYNJ allowed Maher Terminals, then the lessee of the Added Premises, to continue to occupy and use the Added Premises long after it should have been delivered to APMT.

E. PANYNJ further tolerated and acquiesced in other actions of Maher clearly intended to prevent APMT from utilizing the Added Premises. PANYNJ failed to take any action to require Maher to turn over the Added Premises.

F. PANYNJ has engaged in other unjust, unreasonable and unlawful practices, has unreasonably refused to deal or negotiate with APMT and has imposed undue or unreasonable prejudices and disadvantages in its dealings with APMT.

VI. Violations of the Shipping Act of 1984

A. The actions of PANYNJ set forth in Parts IV and V of this Complaint constitute failure of the PANYNJ to operate in accordance with the terms of the Agreement in violation of Section 10(a)(3) of the 1984 Act, 46 U.S.C. § 41102(b)(2), which failure has had an adverse effect on the development of the Premises and Added Premises, including, without limitation, increased construction and operating costs and loss of revenues.

B. The actions of PANYNJ set forth in Parts IV and V of this Complaint constitute unjust, unreasonable, and unlawful practices in violation of Section 10(d)(1) of the 1984 Act, 46 U.S.C. § 41102(c), including without limitation: the failure to turn over the Added Premises to APMT; allowing Maher to use the Added Premises; and misinforming APMT as to the timing of the turnover of the Added Premises.

C. The actions of PANYNJ set forth in Parts IV and V of this Complaint constitute an unreasonable refusal to deal or negotiate with APMT

in violation of Sections 10(d)(3) and 10(b)(10) of the 1984 Act, 46 U.S.C. §§ 41106(3) and 41104(10), including without limitation: refusing to turn over any portion of the Added Premises or find suitable alternatives.

D. The actions of the PANYNJ set forth in Parts IV and V of this Complaint constitute impositions of undue or unreasonable prejudices or disadvantages with respect to APMT in violation of Section 10(d)(4) of the 1984 Act, 46 U.S.C. § 41106(2), including without limitation: allowing Maher to interfere with APMT's operations at the Added Premises, and allowing Maher to benefit from extended occupation of the Added Premises to the detriment of APMT.

VII. INJURY TO APMT

As a direct result of the violations of the 1984 Act by the PANYNJ, APMT has suffered substantial economic damages and injury, in an amount to be determined, consisting of foregone profits, increased capital, labor, and operating expenditures and other expenditures, including interest.

VIII. Prayer for Relief

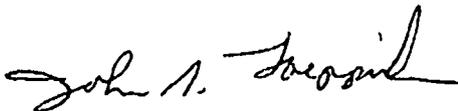
Statement Regarding ADR Procedures

As reflected above, there have been extensive discussions of the issues raised in the Complaint between Complainant and Respondent. In light of these discussions, informal dispute resolution procedures have not been used prior to filing the Complaint. Nor has the Complainant consulted with the Commission's Dispute Resolution Specialist about utilizing alternative dispute resolution with the Commission's ADR program.

WHEREFORE, APMT prays that PANYNJ be required to answer the charges in this Complaint; that after due hearing and investigation an order be made commanding PANYNJ to cease and desist from the aforementioned violations of the 1984 Act and to establish and put in force such practices as the Commission determines to be lawful and reasonable; that an order be made commanding the PANYNJ to pay APMT reparations for violations of the 1984 Act (which include up to twice the amount of actual injury caused by the PANYNJ's violations of Section 10(a)(3) of the 1984 Act (as authorized by Section 11(g) of the 1984 Act, 46 U.S.C. § 41305(c)), plus interest, costs, and attorney's fees, and any other damages to be determined; that an order be made commanding the PANYNJ to comply with all applicable provisions of the Agreement that the Commission finds as having been violated contrary to the 1984 Act; and that such other and further relief be granted as the Commission determines to be proper, fair, and just in the circumstances.

APMT requests a hearing on this matter, and further requests that the hearing be held in Washington, D.C.

Respectfully submitted,



By: John N. LOEPPRICH

Title: SR. V.P. & CFO

APM Terminals North America, Inc.

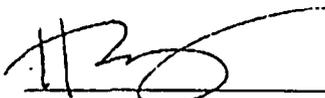
6000 Carnegie Blvd.

Charlotte, NC 28209

Tel.: (908) 558-6000

Fax: (908) 558-6481

By:



Marc J. Fink

Anne E. Mickey

Heather M. Spring

SHER & BLACKWELL, LLP

1850 M Street, N.W., Suite 900

Washington, D. C. 20036

Tel.: (202) 463-2500

Fax: (202) 463-4950/4840

Attorneys for APM Terminals North
America, Inc.

December 29, 2006

VERIFICATION

State of North Carolina }
County of Mecklenburg } ss:

John Laeplich, being first duly sworn on oath, deposes and says that he is the Secretary of Complainant and is the person who signed the foregoing Complaint in his capacity as Secretary of Complainant; that he has read the Complaint and that the facts stated therein, upon information personally known to him and received from others, he believes to be true.

John A. Tappin

Subscribed and sworn to before me by John Laeplich who is known personally to me, in Charlotte, NC this 29 day of December, 2006.

Cynthia M. Stager
NOTARY PUBLIC
For the State of NC
County of Mecklenburg

My Commission expires: MY COMMISSION EXPIRES 11-31-2010



MAHER TERMINALS, LLC
SCOTT H. SCHLEY, GENERAL COUNSEL & SECRETARY

400 CONNELL DRIVE, BERKELEY HEIGHTS, NJ 07922
(908) 665-2100 ext 5107, Fax: (908) 790-5677
Email: sschley@MaherTerminals.com

May 2, 2007

Donald F. Burke,
New Jersey Solicitor
Port Authority of New York and New Jersey
Office of New Jersey Solicitor
One Path Plaza
Jersey City, NJ 07306

Re: APM Terminals North America, Inc. v.
Port Authority of New York and New Jersey
FMC Docket No. 07-01

Dear Mr. Burke:

I am in receipt of your letter of April 18, 2007.

Maher Terminals LLC does not accept tender of defense of this matter and disputes the basis for the Port Authority's alleged claim against Maher.

The basis of APMT's claim against the Port Authority, as set forth in APMT's FMC complaint, is that the Port Authority failed to provide APMT with certain additional property on or before December 31, 2003. The basis of the Port Authority's alleged claim against Maher, as set forth at the bottom of the first page of your above referenced letter, is that "EP-240 required Maher Terminals to turn over the Added Premises to the Port Authority so that it could deliver them to APMT, and Maher failed to do so." Your letter, however, does not analyze the provisions of EP-249 dealing with the tender of property to the Port Authority, demonstrate that Maher was in breach of such provisions or show how (assuming arguendo that Maher was in breach of such provisions) Maher's breach in any way impacted the Port Authority's ability to meet its obligations to APMT or was

PORT AUTHORITY OF NY AND NJ
LAW DEPT.
2007 MAY - 8 A 11:30
LITIGATION MGMT.

Exhibit C



Donald F. Burke,
New Jersey Solicitor
May 2, 2007
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responsible for any damages which may have been sustained by the Port Authority or APMT.¹

What your letter attempts to do is to shift to Maher the problem the Port Authority created by having inconsistent and potentially conflicting provisions in two different leases. On the one hand, the Port Authority apparently had a fixed obligation to provide additional property to APMT on or before December 31, 2003 whereas there was no matching fixed obligation on the part of Maher to vacate the space in question by that time so that the space could be tendered by the Port Authority to APMT. The Port Authority put itself in a position where it could only satisfy the provisions of these two leases if the Port Authority was able to complete the reconstruction of major portions of the Port Elizabeth peninsula, including the demolition of numerous buildings, construction of an entirely new ExpressRail and the reconstruction of the old ExpressRail (all of which had to be accomplished *seriatim* in a specific sequence) within a very tight time table.

The pertinent provisions of EP-249 which govern the surrender by Maher of specific parcels of property previously leased to Maher were specifically negotiated by the parties in October 2000 (some 9 months after the Port Authority signed its lease with APMT).² While the Port Authority initially suggested

¹ The fact that APMT's complaint may allege that the Port Authority's failure to comply with the APMT lease was attributable to the Port Authority's failure to enforce Maher's obligation to vacate certain property does not alter the necessary analysis. APMT's allegation is nothing more than unsupported conjecture. It certainly is not a basis for the Port Authority to attempt to shift the burden of defense onto Maher.

Donald F. Burke,
New Jersey Solicitor
May 2, 2007
Page 3 of 6

specific dates and time parameters by which Maher had to vacate specific portions of property, this was rejected by Maher and a compromise provision negotiated - a provision which did not set specific time parameters nor give the Port Authority *carte blanche* to demand that Maher vacate any parcel of property by a date certain. It was discussed with and understood by the Port Authority that the terminal reconfiguration was going to put a major burden on and result in significant costs to Maher - Maher being forced to (in effect) construct a new factory with higher capacity and increased throughput velocity while conducting operations while minimizing the impact upon the carriers who called the Port of New York and New Jersey. In addition, it was discussed with and understood by Maher that the Port Authority had major construction obligations which it had to perform before it would be in a position to tender the property to be added to Maher's leasehold. In light of these factors it was agreed that specific dates or time parameters would be inappropriate and that what was needed and what was agreed to was a flexible swapping mechanism.

This flexible swapping mechanism was included in Section 1(d) of EP-240 which reads, in pertinent part, as follows:

For Purposes of this Agreement, it is agreed that the order of Lessee's Partial Surrender shall be as follows:

(i) the first portion of the Old Premises to be Partially Surrendered by the Lessee will be that portion of the Old Premises which constitutes Buildings 4000 and 4040 and a 50 foot working area around each such portion which shall be Partially Surrendered by the date reasonably specified by the Port Authority.

² It is noted that while dated October 1, 2000, the negotiation of EP-249 was not completed until mid October and was not signed by the Port Authority until nearly the end of November.

Donald F. Burke,
New Jersey Solicitor
May 2, 2007
Page 4 of 6

(ii) the second portion of the Old Premises to be Partially Surrendered by the Lessee will be that portion of the Old Premises which constitutes approximately fifty (50) acres to be designated by the Port Authority in the Building 4000 area which shall be Partially Surrendered by the date reasonably specified by the Port Authority which is to be subsequent to the time the Lessee is provided those portions of the Added Premises known as the 1300 series area (which constitutes approximately eighteen (18) acres) and the 2200 series area (which constitutes approximately thirty-two (32) acres) improved in a manner consistent herewith.

(iii) the third portion of the Old Premises to be Partially Surrendered by the Lessee will be that portion of the Old Premises which constitutes approximately eight (8) acres, to be designated by the Port Authority in the Building 4000 area (excepting Building 4010 and permitting Building 4010 to remain active) which shall be Partially Surrendered by the date reasonably specified by the Port Authority, which is to be at the same time or subsequent to the Partial Surrender of the fifty (50) acres referenced in (ii) above.

(iv) the fourth portion of the Old Premises to be Partially Surrendered by the Lessee will be that portion of the Old Premises which constitutes Building 4010 and the remainder of the Old Premises which will not constitute part of the Premises (approximately ninety-six (96) acres) which shall be Partially Surrendered by the date reasonably specified by the Port Authority which is to be subsequent to the time the Lessee is provided with the remainder of the Added Premises which is not then part of the Premises (principally the "old" ExpressRail facility) improved in a manner consistent herewith.

Donald F. Burke,
New Jersey Solicitor
May 2, 2007
Page 5 of 6

As you can see, nowhere in this provision is a specific date referenced nor does it provide any fixed period of time within which Maher is to vacate any specific portion or parcel of property. This language provides for the Port Authority to reasonably specify dates for the surrender of the various portions of the property to be surrendered either after the execution of the lease (Subsection (i)) or after other property was properly improved by the Port Authority and tendered to Maher (Subsections (ii) - (iv)).

It is Maher's position that it has been in compliance with this provision at all times and that it vacated each and every one of the parcels it was to surrender on the dates which were either agreed to with the Port Authority or which were reasonably specified by the Port Authority. This being the case, Maher is not responsible for the fact that the Port Authority failed to meet its obligations to APMT nor is Maher obligated to defend the Port Authority with respect to the APMT complaint or to indemnify the Port Authority for its expenses and damages related thereto.

As indicted above, your letter of April 18th assumes a breach by Maher of EP-249 without providing any explanation as to how Maher was in breach of the above noted provision of EP-249. Your letter also fails to show how (assuming arguendo that Maher was in breach of such provision) Maher's breach in anyway caused the Port Authority's failure to tender the property in question to APMT by December 31, 2003. In the event, however, the Port Authority has reason to believe that Maher was not in compliance with the above cited provision in that Maher failed to surrender any parcels either on the date which was agreed with the Port Authority or which was reasonably specified by the Port Authority, I would ask that you provide me with the specifics as to same including any correspondence between the Port Authority and Maher regarding the alleged breach, and, if the alleged breach is based upon the failure by Maher to vacate by a date set by the Port Authority, such internal and other memorandum the Port

MAHER TERMINALS, LLC
SCOTT H. SCHLEY, *GENERAL COUNSEL & SECRETARY*

Donald F. Burke,
New Jersey Solicitor
May 2, 2007
Page 6 of 6

Authority may have demonstrating (a) the factors considered by the Port Authority and (b) the reasonableness of the actions of the Port Authority in setting such date. Maher will, of course, promptly review any information so provided.

Please do not hesitate to contact me if you have any questions regarding the foregoing.

Sincerely,

MAHER TERMINALS, LLC



Scott H. Schley
General Counsel & Secretary

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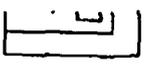


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Scott H. Schley, General Counsel & Secretary
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PO BOX 618
BERKELEY HEIGHTS, NJ 07922

To:

Donald F. Burke,
New Jersey Solicitor
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Office of New Jersey Solicitor
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**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 07-01

APM TERMINALS NORTH AMERICA, INC.

COMPLAINANT

v.

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT AND THIRD-PARTY COMPLAINANT

v.

MAHER TERMINALS LLC

THIRD-PARTY RESPONDENT

**RESPONDENT PORT AUTHORITY OF NEW YORK AND NEW JERSEY'S
FIRST REQUEST FOR ADMISSIONS, FIRST SET OF INTERROGATORIES
AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO
THIRD-PARTY RESPONDENT MAHER TERMINALS LLC**

**DEFINITIONS FOR INTERROGATORIES, PRODUCTION OF
DOCUMENTS AND REQUESTS FOR
ADMISSIONS**

As used herein:

A. "Document" or documents" means any writing or record of any type of description including, but not limited to, the original and any non-identical copy, regardless of origin or location, of any correspondence, records, tables, charges, analyses, drafts schedules,

reports, memoranda, notes, diaries or calendars, letters, telegrams, ledger sheets, statements of accounts, message (including, but not limited to, reports to telephone conversation and conferences), studies, modifications, amendments, supplements, books, periodicals, magazines, booklets, circulars, minutes or transcripts or record of meeting, bulletins, resolution, commissions and/or fee schedules, applications, certifications and other documents filed with or received from federal, state or local governments (including, but not limited to, interoffice and intra-office communications), agreements (including all draft and final version), assignments, consents to assignments, surveys, corporate documents (including certificates of incorporation, by-laws, etc.), contracts (including all draft and final versions), memoranda of agreements, notebooks, data sheets, tape recordings, wire recordings, press releases, news clippings, photographs, transcripts of records, brochures, all other written or printed matter of any kind, or any other and all other data, compilations from which information can be obtained and translated if necessary and which are in your possessions and/or to which you have access.

B. “Oral communications” or “Discussion” means any verbal conversation or other statement from one person to another, including, but not by way of limitation, any interview conference, meeting or telephone conversation that has been memorialized in any written or documentary form.

C. “Person” means natural persons, firms, proprietorships, associates, partnership, limited partnerships, corporations and their subsidiaries or related business entities and every other type of organization or entity and their officers, directors, agents, representative and employees.

D. “Identify” or “Identification” means when used in reference to:

1) A Person:

- (a) His or her full name and present address;
 - (b) Occupation; and
 - (c) Relationship to any of the parties;
- 2) A document:
- (a) Its description (e.g., letter, report, memoranda, etc):
 - (b) Its title and date, and the number of changes thereto;
 - (c) The date of preparation, receipt and/or filing or other disposition;
 - (d) Its subject matter;
 - (e) The identify of its author or signer;
 - (f) The identify of its addressee or recipients;
 - (g) The identify of each person to whom copies were sent and each person by whom copies were received; and
 - (h) Its present location and identify of its custodian. (If any such document was, but is no longer in your possession or subject to your control, state what and when disposition was made of it.
- 3) An oral statement, communication, conference or conversation means to state separately:
- (a) Its date or the place where it occurred;
 - (b) Its substance;
 - (c) The identity of each person making such statement, each person to whom such statement was made, and each person who was present when such statement was made;
 - (d) If by telephone, the identity of persons participating in the telephone call, the person making the call and the places where the persons participating in the call were located;
 - (e) The identity of all notes, memoranda or other documents memorializing, referring or relating to the subject matter of the statement.
- 4) An act, or action or event:
- (a) Its date and place where it occurred;
 - (b) Its description and particularity; and
 - (c) The identity of each person present or participating.

E. "You, your" "Maher" or "Third-Party Respondent" means the Maher Terminals LLC and any agent, servant, employee, independent contractor or attorney or other representative of Maher Terminals LLC.

F. The terms “Authority”, “Respondent”, “PANYNJ”, refer to the Port Authority of New York and New Jersey and all servants, agents and employees thereof.

G. The term “Complaint” means the Complaint filed by APMT in this Docket.

H. The term “Third-Part Complaint” means the Third-Party Complaint filed by the Port Authority in this Docket.

I. The word “document” or “documents” shall be defined in the customary and broad sense to include all written, electronic, digital, or photograph materials that are now or were formerly in Maher’s possession, custody or control, whether stored in paper files or electronically, including without limitation: reports, memoranda, correspondence, electronic mail, records, notes, summaries or records of conversations or meetings, telephone messages, drafts of any documents, copies of any document with added notations or comments, photographs, and sound or video recordings.

J. The term “FMC Rules of Practice and Procedure” means the rules of practice and procedure set forth in 46 C.F.R. Part 502.

K. The term “APMT Agreement” or “APMT Lease” means the Agreement of Lease entered into by and between the Port Authority of New York and New Jersey and APMT under its former name, Maersk Container Service Company, Inc., bearing the Port Authority reference number EP-248, dated January 6, 2000, and filed with the FMC on August 2, 2000, FMC No. 201106.

L. The term “Premises” and/or “Initial Premises” means the land and facilities let by PANYNJ to APMT pursuant to Section 1(a) of the Agreement as identified in Exhibit A to the Agreement.

M. The term “Added Premises” means the 84 acres to be let to APMT pursuant to Section 1(b) of the APMT Lease Agreement and identified in Exhibit A-1 to that Agreement.

N. The Term “Maher Agreement or “Maher Lease” means the Agreement of Lease between the Port Authority and Maher bearing the Port Authority reference number EP-249, dated October 1, 2000 and filed with the FMC of March 8, 2002, FMC 201131.

O. The term “person” means and includes natural persons, governmental entities and agencies, proprietorships, partnerships, corporations, and all other forms of organization or association.

P. Terms not otherwise defined herein shall have the meaning as set forth in the Agreement or as commonly understood.

**GENERAL INSTRUCTIONS FOR INTERROGATORIES, DEMAND FOR
PRODUCTION OF
DOCUMENTS AND REQUESTS FOR
ADMISSIONS**

A. Each interrogatory, request for documents and request for admission must be answered separately and specifically.

B. Words used herein in the singular number shall include the plural number and words used in the plural number shall refer to the singular number as well. Gender is to be wholly disregarded, the neuter referring as well to the male and female and the male referring to the female and neuter.

C. The conjunction “and” is defined to include the disjunctive “or”, and vice versa.

D. If, in answering these interrogatories and responding to these requests for admissions and requests for production of documents, or any part of them, the party responding

encounters any ambiguity in construing either the discovery request or a definition or instruction relevant to the inquiry contained within the discovery request, the party shall set forth the matter deemed “ambiguous” and set forth the construction chosen or used in answering the discovery request.

E. Unless otherwise specified, these discovery requests shall be deemed continuing so as to require additional responses if new or further information is obtained subsequent to the time any answers or documents are served, as though expressly requested by separate discovery requests.

F. Whenever a discovery request calls for the identification or production of a document or non-written communication claimed by an answering party to be privileged, separately identify each such document or non-written communication by author, date, the person or persons to whom it was addressed, the person or persons to whom it was sent, the length of the document, and a description of the type of subject matter included in the document. If a privilege is claimed, state the type of privilege claimed and the complete factual basis for the assertion of such claim

G. In each instance where you deny knowledge or information sufficient to answer an interrogatory or any part thereof, describe the effort made to locate information to answer such interrogatory or part thereof, and identify each person, if any, known or believed to have such knowledge.

H. If you produce documents for inspection you shall produce them as they are kept in the usual course of business **and as to electronically stored information, it is to be kept in its native format without any alteration or obliteration of information including metadata.**

I. Documents shall be organized and labeled to correspond with the categories in the request. In the event that you produce documents that are identified in connection with one or more interrogatories or requests for production of documents, you shall label them to reflect each interrogatory and request for production of documents to which they respond.

J. Whenever an interrogatory requests identification of an individual, provide the individual's name, title, current address, and telephone number. In the case of a company or other business entity, state the name, nature of the business entity, business address, and partners, if any.

K. If any document that you would have produced was, but no longer is, in your present possession or subject to your control or is no longer in existence, state whether such document is: (1) missing or lost; (2) destroyed; (3) transferred to others; or (4) otherwise disposed of. In any such instance, set forth the surrounding circumstances and any authorization for such disposition and state the approximate date of any such disposition, and, if known, the present location and custodian of such document.

L. Answers to these interrogatories and request for admissions are based upon all knowledge or information available to you, including, but not limited to, all knowledge or information derivable from business or other records, all knowledge or information possessed by any employee, agent, attorney, expert witness, consultant, or other advisor or other persons subject to your instruction, direction, or control.

M. If you cannot answer certain of the following discovery requests in full after exercising due diligence to secure the information to do so, answer to the extent possible and explain your inability to provide a complete answer. State whatever information you have about the unanswered portion of any request.

N. "Describe" means provide a detailed statement of all things relating to or affecting the particular subject to be described including, but not limited to, dates and places and the names and addresses of any persons involved. With respect to documents, reports, or other written matter, the term "describe" also includes a detailed statement of the substance of the facts and opinions made reference to or stated in each document, report, or written matter.

O. Where an objection is made to any discovery request or subpart thereof, pursuant to FMC Rules of Practice and Procedure, the objection shall state with reasonable specificity all grounds for the objection.

P. Documents responsive to each interrogatory or request for production shall be identified and produced by reference to the interrogatory or request for production number to which they are responsive.

Q. Each request for production of documents contained herein extends to all documents in your possession, custody or control, or the possession, custody or control of anyone acting on your behalf, including counsel, representatives, agents, servants, employees, investigators or consultants.

R. This request includes all documents generated after January 1, 1999 and shall be deemed to be continuing in nature so as to require production of all documents created or obtained by you up to the trial of this matter.

S. The demand is a continuing demand for all information which is or may hereafter come into your actual or constructive possession, custody or control.

T. If you believe that any of the following interrogatories call for information regarding communications subject to a claim of privilege, for all communication for which you

claim a privilege, set forth the date, place, time and subject matter of the communication, the names of all persons present and the subject matter of this communication.

RESPONDENT THIRD-PARTY COMPLAINANT'S FIRST SET OF INTERROGATORIES TO THIRD- PARTY RESPONDENT

Pursuant to FMC Rules of Practice and Procedure Rule 2005, Respondent Third-Party Complainant the Port Authority, by and through its undersigned counsel, requests that Third-Party Respondent Maher Terminals respond to the following Interrogatories within (30) days of service of same.

1. Identify all persons whom you know, or have reason to believe, have knowledge of any facts relevant to the issues in this proceeding including facts relevant to both the Maher Lease Agreement and the APMT Lease Agreement, and provide each person's name, home address and telephone number, business address and telephone number, their association with Maher, APMT or the Port Authority, their job description and a general description of the facts known by each such person.

2. For each expert witness you expect to call to testify on your behalf in the trial of this case, state:

- (a) the expert's name;
- (b) the expert's address and telephone number;
- (c) the subject matter on which the expert is expected to testify;
- (d) the substance of the facts and opinions regarding which the expert is expected to testify and the grounds for each such opinion ; and
- (e) the identity of all consulting experts whose opinions, beliefs, or theories form the basis, in whole or in part, for the testifying expert's opinion or will otherwise be relied upon by the testifying expert.

3. Explain the reasons for Maher's failure to vacate the Added Premises (i) on or before December 31, 2003; and (ii) prior to December 25 of 2005.

4. Describe all communications between representatives of the Port Authority and representatives of Maher during the period between October 1, 2000, and December 25, 2005, involving the subject of Maher's failure to vacate the Added Premises was discussed or otherwise communicated.

5. Describe all steps taken by Maher in an effort to vacate the Added Premises (i) prior to December 31, 2003; and (ii) between December 31, 2003 and December 25, 2005.

6. Identify all documents that support the answers provided in response to Interrogatories 1 through 5.

7. Identify all documents referred to in preparing your responses to these Interrogatories.

8. Identify all persons who participated in or assisted with the preparation of responses to these Interrogatories.

**RESPONDENT THIRD-PARTY COMPLAINT'S FIRST SET OF NOTICE TO
PRODUCE DOCUMENTS TO THIRD-PARTY RESPONDENT**

Pursuant to FMC Rules of Practice and Procedure Rule 206, Respondent Third-Party Complainant the Port Authority, by and through its undersigned counsel, requests that Third-Party Respondent Maher Terminals produce the following documents for inspection and copying within thirty (30) days of service of this Request at its office at 225 Park Avenue South, 13th Floor, New York, New York 10003.

1. Each and every document or tangible item described in the Third-Party Complaint or in Third-Party Respondent's discovery responses.

2. All documents or files pertaining to the Maher Lease in question and any allegations by Maher that the Port Authority has breached the Maher Lease.
3. Any and all statements concerning this action or the Complaint filed by APMT against the Port Authority in this Docket from all witnesses including any statement from the parties herein or their respective agents, servants or employees.
4. All photographs, videotapes, audiotapes, maps or diagrams that you contend may be pertinent to the issues in this proceeding.
5. Any and all documents containing the names and home and business addresses of all individuals contacted as potential witnesses.
6. Reports or drafts of reports of any and all experts or consultants whether or not they may testify at trial.
7. The names, home and business addresses of all experts contacted.
8. All materials reviewed or relied upon by any expert in forming his opinion.
9. All photographs, diagrams, drawings, reports, statements and each and every other item given to or examined by experts.
10. All contracts, agreements or other documents establishing terms and conditions of any agreement that you contend are relevant to this matter.
11. All drawings, plans, and/or specifications which you contend are relevant to this matter.
12. All licenses and/or permits and/or government approvals or standards which you contend are relevant to this matter.

13. To the extent not previously produced, produce all documents relied upon or identified in denying, denying in part, or qualifying any part of Third-Party Complainant's First Requests for Admissions or in stating that you cannot truthfully admit or deny the request. Produce all documents relied upon in responding to the requests for admissions and/or interrogatories.

14. Produce all reports, summaries, or other documents prepared, reviewed, relied upon, or which may be reviewed or relied upon, by any expert whom you expect to call to testify in this case.

15. Produce the resume of any person you may call as an expert witness at a deposition or in the trial of this matter.

16. Produce all documents concerning any fee arrangements, agreements for compensation or bills and invoices concerning any person you may call as a witness or an expert witness at a deposition or in the trial of this matter or to assist in the preparation of the case or for the witnesses' testimony.

17. Produce all documents related to Maher's request to remain at the Added Premises and all correspondence between AMPT and Maher related to occupancy of the Added Premises.

18. Produce all documents related to the Maher Lease Agreement, including the negotiations thereof including all drafts of the agreements and contemporaneous memoranda and correspondence regarding the negotiations and/or the meaning of any provision or term being negotiated.

19. Produce all agreements between the Port Authority and APMT relating to the Port Elizabeth Marine Terminal in Elizabeth, New Jersey, and all documents relating to such agreements including documents relating to the negotiation of such agreements.

20. Produce all minutes of meetings of the Board of Directors of Maher or any related company for the period 2000-2006 in which any issues regarding the Maher Lease Agreement, the APMT Lease Agreement or Maher Terminals' possession of property and/or the Added Premises was discussed.

21. Produce all documents and correspondence of Maher or any related company for the period 2000-2006 in which any issues regarding the Maher Lease Agreement, the APMT Lease Agreement or Maher Terminals possession of property and/or the Added Premises was discussed.

22. Produce all the plans, master plans and drawings in your possession regarding the Premises, Added Premises, and facilities leased by Maher.

24. All documents or tangible items referred to in the Third-Party Respondent's Answer to the Third-Party Complaint or in Respondent's Answers to Interrogatories or responses to Request to Admit or any other discovery device, including depositions.

25. Attach copies of your State and Federal Income Tax Returns from 1999 to present and state the amount you reported as gross and net income for each of the years. If you do not have copies or access to complete tax returns including the required attachments, attach hereto authorization for our representatives to obtain such return from the U.S. Government.

RESPONDENT THIRD-PARTY COMPLAINANT'S
FIRST SET OF REQUESTS FOR ADMISSIONS

Pursuant to the FMC Rules of Rule 207 the Respondent Third-Party Complainant the Port Authority, by and through its undersigned counsel, hereby requests that Third-Party Respondent

Maher Terminals to reply to the following Requests for Admissions within the time permitted by the applicable rule:

1. Do you admit there is a valid and enforceable Agreement of Lease in place between Maher and PANYNJ with an effective date of October 1, 2000?

Yes _____ No _____

a. If no, set forth each and every fact which supports your denial and provide the names and addresses of all witnesses with knowledge of such facts and identify all documents pertaining to such facts.

2. Do you admit that the Port Authority was not in breach of the Agreement (i) as of December 31, 2003, and/or (ii) at any time thereafter?

Yes _____ No _____

a. If no, set forth each and every fact that supports your denial and provide the names and addresses of all witnesses with knowledge of such facts and identify all documents pertaining to such facts.

3. Do you admit that Maher was and is fully aware that there is in place a Lease Agreement between the Port Authority and APMT Terminals that had an effective date of January 6, 2000?

Yes _____ No _____

a. If no, set forth each and every fact that supports your denial and provide the names and addresses of all witnesses with knowledge of such facts and identify all documents pertaining to such facts.

4. Do you admit that Maher was aware of the terms of the APMT Lease Agreement at the time it negotiated and executed the Maher Lease Agreement in 2000?

Yes _____ No _____

a. If no, set forth each and every fact that supports your denial and provide the names and addresses of all witnesses with knowledge of such facts and identify all documents pertaining to such facts.

5. Do you admit that the APMT Lease required the Port Authority to turn over to APMT 84 acres of terminal facility land by December 31, 2003, and that Maher was aware of that requirement when it negotiated and executed the Maher Lease Agreement effective October 1, 2000?

Yes _____ No _____

a. If no, set forth each and every fact that supports your denial and provide the names and addresses of all witnesses with knowledge of such facts and identify all documents pertaining to such facts.

6. Do you admit that at the time Maher executed the Maher Lease Agreement it was in possession of the 84 acres of terminal facility land, defined herein as the Added Premises, that the Port Authority was obligated to turn over to APMT pursuant to the provisions of the APMT Lease Agreement?

Yes _____ No _____

a. If no, set forth each and every fact that supports your denial and provide the names and addresses of all witnesses with knowledge of such facts and identify all documents pertaining to such facts.

7. Do you admit that Section 1 (d) of the Maher Lease Agreement obligated Maher to surrender the Added Premises to the Port Authority expressly to permit the Port Authority to turn the Added Premises to APMT pursuant to the terms of the APMT Lease Agreement?

Yes _____ No _____

a. If no, set forth each and every fact that supports your denial and provide the names and addresses of all witnesses with knowledge of such facts and identify all documents pertaining to such facts.

9. Do you admit that failure to surrender the Added Premises to the Port Authority constituted a material breach of the Maher Lease Agreement?

Yes _____ No _____

a. If no, set forth each and every fact that supports your denial and provide the names and addresses of all witnesses with knowledge of such facts and identify all documents pertaining to such facts.

10. Do you admit that Section 1 (d) of the Maher Lease Agreement requires Maher to indemnify the Port Authority and hold it harmless for any damages or losses to the Port Authority arising out of the requirement of the APMT Lease Agreement to turn over the Added Premises to APMT by December 31, 2003 should Maher fail to vacate the Added Premises by that time?

Yes _____ No _____

a. If no, set forth each and every fact that supports your denial and provide the names and addresses of all witnesses with knowledge of such facts and identify all documents pertaining to such facts.

11. Do you admit that Maher failed to vacate the Added Premises until December of 2005?

Yes _____ No _____

a. If no, set forth each and every fact that supports your denial and provide the names and addresses of all witnesses with knowledge of such facts and identify all documents pertaining to such facts.

12. Do you admit that Section 15 of the Maher Lease Agreement requires Maher to defend the Port Authority with respect to all claims by third persons including claims for damages arising out of the use or occupancy of the premises leased by Maher pursuant to the Maher Lease Agreement which included the 84 acres known as the Added Premises?

Yes _____ No _____

a. If no, set forth each and every fact that supports your denial and provide the names and addresses of all witnesses with knowledge of such facts and identify all documents pertaining to such facts.

13. Do you admit that Maher Terminals occupied and used the Added Premises until it was delivered to APMT in December of 2005?

Yes _____ No _____

a. If no, set forth each and every fact that supports your denial and provide the names and addresses of all witnesses with knowledge of such facts and identify all documents pertaining to such facts.

Respectfully submitted,



Paul M. Donovan
LAROE, WINN, MOERMAN &
DONOVAN
1250 Connecticut Avenue, NW, Suite 200
Washington, DC 20036
Telephone (202) 298-8100
Facsimile (202) 298-8200

Donald F. Burke, New Jersey Solicitor
THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY
225 Park Avenue, south, 13th Floor
New York, NY 10003

*Attorneys for the Port Authority of New York
and New Jersey*

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 07-01

APM TERMINALS NORTH AMERICA, INC.

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

CERTIFICATE OF SERVICE

I, John C. Kruesi, Jr., being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by LAROE, WINN, MOERMAN & DONOVAN, P.L.C., Attorneys for Respondent, to print this document. I am an employee of Counsel Press.

On the **9th** day of **August, 2007**, I served 2 copies of the:

1. Third-Party Complaint
2. Respondent Port Authority Of New York And New Jersey's First Request For Admissions, First Set Of Interrogatories And First Request For Production Of Documents To Third-Party Respondent Maher Terminals LLC

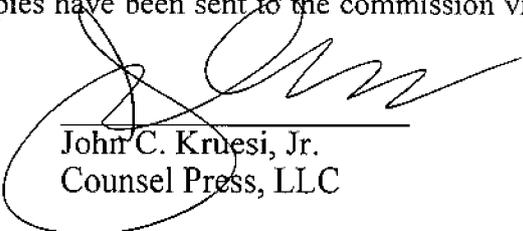
Upon:

Marc J. Fink
Anne E. Mickey
Heather M. Spring
SHER & BLACKWELL
1850 M Street, N.W. Suite 900
Washington, DC 20036
(202) 463-2500

via Hand Delivery

Unless otherwise noted, the original and 15 copies have been sent to the commission via hand delivery on the same date.

August 9, 2007



John C. Kruesi, Jr.
Counsel Press, LLC

07-01



FEDERAL MARITIME COMMISSION

**Office of the Secretary
800 North Capitol Street, N.W.
Washington, DC 20573-0001**

Phone: (202) 523-5725
Fax: (202) 523-0014
E-mail: Secretary@fmc.gov

August 14, 2007

Dennis Lombardi, Deputy Director
The Port Authority of New York and New Jersey
Port Commerce Department
225 Park Avenue South, 11th Floor
New York, NY 10003

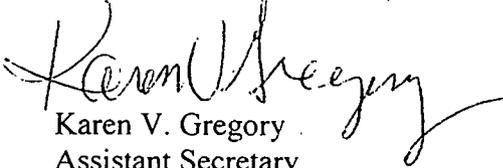
Paul M. Donovan, Esq.
Laroe, Winn, Moerman & Donovan
4135 Parkglenn Court, N.W.
Washington, D.C. 20007

Re: Docket No. 07-01 - APM Terminals North America, Inc. v. The Port Authority of New York and New Jersey (Respondent & Third-Party Complainant) v. Maher Terminals LLC (Third-Party Respondent)

Dear Sirs:

This is to advise that service of your Third-Party Complaint and Discovery in the above-numbered docket was made upon Maher Terminals LLC, as of this date and an answer is due to be filed with the Commission within twenty (20) days, unless additional time is permitted under Rule 64 of the Commission's Rules of Practice and Procedure. See also Rules 2, 41, 42, 101 and 111 to 118.

Very truly yours,


Karen V. Gregory
Assistant Secretary

cc: Office of Administrative Law Judges



FEDERAL MARITIME COMMISSION

Office of the Secretary
800 North Capitol Street, N.W.
Washington, DC 20573-0001

Phone: (202) 523-5725
Fax: (202) 523-0014
E-mail: Secretary@fmc.gov

August 14, 2007

Scott H. Schley, Esq.
General Counsel & Secretary
Maher Terminals, Inc.
400 Connell Drive
Berkeley Heights, NJ 07922

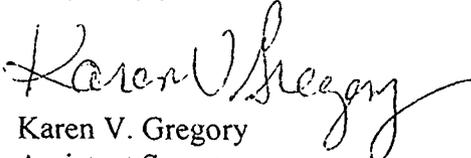
Re: Docket No. 07-01 - APM Terminals North America, Inc. v. The Port Authority of New York and New Jersey (Respondent & Third-Party Complainant) v. Maher Terminals LLC (Third-Party Respondent)

Dear Mr. Schley:

Enclosed is a copy of the above-numbered Third-Party Complaint in which Maher Terminals, LLC, is the Third-Party Respondent. Also, attached are the Port Authority of New York and New Jersey's Discovery package.

Answer to the Third-Party Complaint and Discovery are due to be filed with the Commission within twenty (20) days after the date of service stamped on the Third-Party Complaint, unless additional time is permitted under Rule 64 of the Commission's Rules of Practice and Procedure. See also Rules 2, 41, 42, 101 and 111 to 118.

Very truly yours,


Karen V. Gregory
Assistant Secretary

Enclosures

cc: Office of Administrative Law Judges