

ORIGINAL

cc: OS102C  
ALS(2)  
Rub

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

RECEIVED

SEP -2 PM '19

**Docket No. 11-12**

OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMMISSION

**CHINA SHIPPING CONTAINER LINES CO., LTD.;  
COSCO CONTAINER LINES COMPANY LIMITED;  
EVERGREEN LINE A JOINT SERVICE AGREEMENT;  
HANJIN SHIPPING CO., LTD.; HORIZON LINES, LLC;  
KAWASAKI KISEN KAISHA, LTD.; NIPPON YUSEN KAISHA;  
UNITED ARAB SHIPPING COMPANY (S.A.G.); and  
YANG MING MARINE TRANSPORT CORPORATION,**

**COMPLAINANTS**

v.

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

**RESPONDENT**

**ANSWER**

Respondent-Counterclaimant 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 China Shipping Container Lines Co., Ltd.; COSCO Container Lines Company Limited; Evergreen Line A Joint Service Agreement; Hanjin Shipping Co., Ltd.; Horizon Lines, LLC; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; United Arab Shipping Company (S.A.G.); and Yang Ming Marine Transport Corporation (collectively, "Complainants"). 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.

**I. Complainants**

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

B. The Port Authority lacks information sufficient to form a belief as to China Shipping Container Lines, Co., Ltd.'s commercial operations and therefore denies the allegation in paragraph B of this subheading of the Complaint.

C. The Port Authority lacks information sufficient to form a belief as to COSCO Container Lines Company Limited's commercial operations and therefore denies the allegation in paragraph C of this subheading of the Complaint.

D. The Port Authority lacks information sufficient to form a belief as to Evergreen Line A Joint Service Agreement's commercial operations and therefore denies the allegation in paragraph D of this subheading of the Complaint.

E. The Port Authority lacks information sufficient to form a belief as to Hanjin Shipping Co., Ltd.'s commercial operations and therefore denies the allegation in paragraph E of this subheading of the Complaint.

F. The Port Authority lacks information sufficient to form a belief as to Horizon Lines LLC's commercial operations and therefore denies the allegation in paragraph F of this subheading of the Complaint.

G. The Port Authority lacks information sufficient to form a belief as to Kawasaki Kisen Kaisha, Ltd.'s commercial operations and therefore denies the allegation in paragraph G of this subheading of the Complaint.

H. The Port Authority lacks information sufficient to form a belief as to Nippon Yusen Kaisha's commercial operations and therefore denies the allegation in paragraph H of this subheading of the Complaint.

I. The Port Authority lacks information sufficient to form a belief as to United Arab Shipping Company (S.A.G.)'s commercial operations and therefore denies the allegation in paragraph I of this subheading of the Complaint.

J. The Port Authority lacks information sufficient to form a belief as to Yang Ming Marine Transport Corporation's commercial operations and therefore denies the allegation in paragraph J of this subheading of the Complaint.

## **II. Respondent**

The Port Authority admits that it is a body corporate created by Compact as a bi-state port district between the states of New York and New Jersey with the consent of Congress. The Port Authority further admits that it is a large and highly diversified transportation enterprise and structure that includes an airport system, marine terminals and ports, the PATH rail transit system, six tunnels and bridges between New York and New Jersey, the Port Authority Bus Terminal and the World Trade Center and, among other things, owns and operates marine terminal facilities in the New York and New Jersey area, including leased marine terminal facilities and public berths. The Port Authority admits that its principal offices are at 225 Park Avenue South, New York, New York 10003.

### **III. Jurisdiction**

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

B. To the extent the allegations contained in Paragraph B of this subheading of the Complaint constitute legal conclusions, no response is required. To the extent that a response is required, the Port Authority lacks information sufficient to form a belief as to the remaining allegations in paragraph B of this subheading of the Complaint, which are therefore denied.

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

### **IV. Statement of Facts and Matters Complained of Introduction**

A. The Port Authority admits that Complainants purport to seek relief and redress from alleged violations of the Shipping Act, 46 U.S.C §§ 41102(c) and 41106(2), but deny that Complainants are entitled to any such relief.

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

### **The Facts**

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

D. The Port Authority admits that on December 7, 2010, its Board of Commissioners adopted a Cargo Facility Charge ("CFC"), but otherwise denies the allegations contained in Paragraph D of this subheading of the Complaint.

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

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

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

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

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

J. The Port Authority admits that monthly invoices are issued to private marine terminal operators pursuant to the Tariff, and otherwise denies the allegations contained in the first sentence of Paragraph J. The Port Authority admits the remaining allegations contained in Paragraph J of this subheading of the Complaint.

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

L. The Port Authority admits that if a terminal operator continues serving a carrier despite a prohibition of service ordered by the Port Authority that terminal operator becomes liable for the CFC charges going forward after notice has been provided by the Port Authority. The Port Authority denies the remaining allegations contained in Paragraph L of this subheading of the Complaint.

M. To the extent that Paragraph M purports to characterize the contents of a webpage address from the Port Authority website, the Port Authority denies the allegations contained in Paragraph M and respectfully refers the Presiding Officer to the webpage address for the true contents thereof in proper context. The Port Authority denies the remaining allegations in this paragraph.

N. The Port Authority lacks information sufficient to form a belief as to the allegations in Paragraph N and therefore denies all the allegations in Paragraph N of this subheading of the Complaint.

O. The Port Authority lacks information sufficient to form a belief as to the allegations in Paragraph O and therefore denies all the allegations in Paragraph O of this subheading of the Complaint.

P. The Port Authority lacks information sufficient to form a belief as to the allegations in Paragraph P and therefore denies all the allegations in Paragraph P of this subheading of the Complaint.

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

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

S. The Port Authority admits that on December 7, 2010, its Board of Commissioners adopted the CFC and eliminated the Intermodal Container Lift Fee and the Container Terminal Subscription Fee, but otherwise denies the allegations contained in Paragraph S of this subheading of the Complaint.

T. The Port Authority admits that the Rail Fee charge, most recently assessed at \$57.50 per Intermodal Container Lift, was a per-container charge for utilizations of its intermodal rail facilities, including the Express RailSystem, but otherwise denies the remaining allegations contained in Paragraph T of this subheading of the Complaint.

U. The Port Authority admits that the Truck Fee charge, assessed against the marine terminal operators on the basis of each terminal's annual TEU container volume, was used in connection with the SeaLink trucker identification system used for interchange of containers between truckers or trucking companies and container terminals subsequent to unloading from the vessel or before loading onto the vessel, but otherwise denies the remaining allegations contained in Paragraph U of this subheading of the Complaint.

V. The Port Authority lacks information sufficient to form a belief as to the allegations in the first sentence of Paragraph V of this subheading of the Complaint and therefore denies them. The allegations in the second sentence of Paragraph V are denied.

W. The Port Authority admits that the CFC accompanied the restructuring of certain fees, but otherwise denies the allegations contained in Paragraph W of this subheading of the Complaint.

X. The Port Authority lacks information sufficient to form a belief as to the allegations in Paragraph X and therefore denies all the allegations in Paragraph X of this subheading of the Complaint.

Y. The Port Authority admits that the adoption of the CFC was accompanied by the restructuring of certain fees, but otherwise denies the allegations contained in Paragraph Y of this subheading of the Complaint.

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

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

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

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

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

EE. The Port Authority admits that, in the event of non-payment of the CFC by a Complainant for two consecutive Vessel Activity Reporting periods, the Tariff calls for the Port Authority to issue a directive to every terminal operator prohibiting them from providing any service that would be subject to a CFC to the delinquent user for a period from no later than five calendar days from the date of the directive until receipt of notice from the Port Authority that such unpaid CFC have been paid, but otherwise denies the allegations contained in Paragraph EE of this subheading of the Complaint.



FF. The Port Authority admits that, in the event of non-payment of the CFC by a Complainant for two consecutive Vessel Activity Reporting periods, the Tariff calls for the Port Authority to issue a directive to every terminal operator prohibiting them from providing any service that would be subject to a CFC to the delinquent user for a period from no later than five calendar days from the date of the directive until receipt of notice from the Port Authority that such unpaid CFC have been paid, but otherwise denies the allegations contained in Paragraph FF of this subheading of the Complaint.

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

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

II. The Port Authority lacks information sufficient to form a belief as to the allegations in Paragraph II and therefore denies all the allegations in Paragraph II of this subheading of the Complaint.

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

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

LL. The Port Authority denies the allegations contained in paragraph LL of this subheading of the Complaint.

**V. Violations**

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

**VI. Injury to Complainants**

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

**VII. Relief Sought**

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

**DEFENSES**

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

### **FIRST DEFENSE**

Neither the Complaint for Cease and Desist Order and Reparations nor any claim for relief asserted therein states facts sufficient to constitute a claim for relief against the Port Authority.

### **SECOND DEFENSE**

The relief sought by Complainants is barred, in whole or in part, because the Port Authority's actions were justified since it acted in accordance with the Shipping Act.

### **THIRD DEFENSE**

The relief sought by Complainants is barred, in whole or in part, because certain of the Complainants materially breached the applicable tariff agreement by failing to pay timely.

### **FOURTH DEFENSE**

The relief sought by Complainants is barred, in whole or in part, because Complainants have 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.

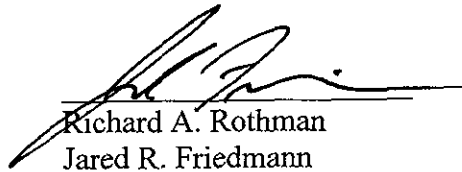
### **FIFTH DEFENSE**

To alter the Port Authority's tariffs and applicable lease agreements 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.

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

Dated: September 1, 2011

Respectfully submitted,



Richard A. Rothman  
Jared R. Friedmann  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153

Peter D. Isakoff  
Alexander O. Levine  
WEIL, GOTSHAL & MANGES LLP  
1300 Eye Street, NW  
Suite 900  
Washington, DC 20005

Ashley W. Craig  
David G. Dickman  
Lauren D. Eade  
VENABLE LLP  
575 7th Street, NW  
Washington, DC 20004

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

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

---

**Docket No. 11-12**

---

**CHINA SHIPPING CONTAINER LINES CO., LTD.;  
COSCO CONTAINER LINES COMPANY LIMITED;  
EVERGREEN LINE A JOINT SERVICE AGREEMENT;  
HANJIN SHIPPING CO., LTD.; HORIZON LINES, LLC;  
KAWASAKI KISEN KAISHA, LTD.; NIPPON YUSEN KAISHA;  
UNITED ARAB SHIPPING COMPANY (S.A.G.); and  
YANG MING MARINE TRANSPORT CORPORATION,**

**COMPLAINANTS**

**v.**

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

**RESPONDENT**

---

**CORPORATE VERIFICATION**

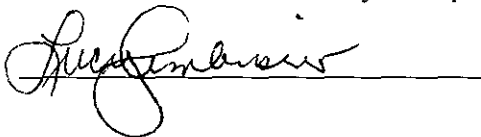
I, Richard M. Larrabee, declare as follows:

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



Richard M. Larrabee

Sworn to me on this 1st day of September 2011.

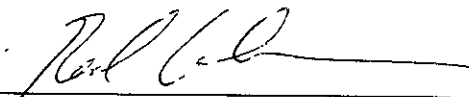


**LUCY AMBROSINO**  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 01AM6101070  
QUALIFIED IN NEW YORK COUNTY  
MY COMMISSION EXPIRES NOV. 3, 2011

**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.

<p><b><u>Via US Mail and E-mail:</u></b> John P. Meade "K" Line America, Inc. 6009 Bethlehem Road Preston, MD 21655</p> <p>Eliot J. Halperin Deana E. Rose Michael H. Seiter Manelli Seiter PLLC 2000 M Street, N.W., Suite 700 Washington, D.C. 20036</p>	<p>Dated at New York, NY this 1st day of September, 2011</p>
--	--

  
\_\_\_\_\_  
Reed Collins