

(S E R V E D)
(AUGUST 12, 2011)
(FEDERAL MARITIME COMMISSION)

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

V.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

NOTICE OF FILING OF COMPLAINT AND ASSIGNMENT

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) 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, hereinafter "Complainants," against the Port Authority of New York and New Jersey, hereinafter "Respondent". Complainants are each ocean common carriers. Complainants allege that Respondent is a marine terminal operator that "owns and

operates marine terminal facilities in the New York and New Jersey area, including leased marine terminal facilities and public berths.”

Complainants allege that Respondent violated the Shipping Act of 1984, 46 U.S.C. 41102(c) and 41106(2) because through adoption and implementation of its published Tariff’s provisions the Port “(a) has failed and continues to fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property; and (b) has given and continues to give undue and unreasonable preference and advantage or impose undue or unreasonable prejudice or disadvantage with respect to persons.” In particular, Complainants allege that the Port has adopted a “Cargo Facility Charge” (CFC) which is “unlawful because Complainants do not receive services commensurate with the fee; because it severely and unreasonably prejudices Complainants while unduly preferring other users of the Port’s facilities; and because the Cargo Facility Charge and the rules applying it provide for unlawful expulsion of Complainants from the Port.” Complainants request that the Commission issue an order “declaring Respondent’s CFC and Section H [of Respondent’s tariff] to be unlawful, and commanding Respondent: to cease and desist from the aforesaid violations; to establish and put in force such practices as the Commission determines to be lawful and reasonable; to pay to Complainants by way of reparations for the unlawful conduct herein described a sum to be determined, with interest and attorney’s fees and such other sums as the Commission may determine to be proper as an award of reparations; and that such other and further order or orders be made as the Commission determines to be proper in the premises.” The full text of the complaint can be found in the Commission’s Electronic Reading Room at www.fmc.gov.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 C.F.R. 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 C.F.R. 502.61, the initial decision of the presiding officer in this proceeding shall be issued by August 13, 2012 and the final decision of the Commission shall be issued by December 11, 2012.

Karen V. Gregory
Secretary