

ORIGINAL

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

**MAHER TERMINALS, LLC
COMPLAINANT**

v.

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



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FEDERAL MARITIME COMMISSION

COMPLAINT

Complainant, Maher Terminals, LLC ("Maher") by and through the undersigned hereby files this Complaint against The Port Authority of New York and New Jersey ("PANYNJ") alleging violations of the Shipping Act of 1984, *as amended* (46 U.S.C. § 40101 et seq.) (the "Shipping Act").

I. Complainant

A. Complainant Maher is a limited liability company ("LLC") registered in the State of Delaware.

B. Maher's corporate offices are located at 1210 Corbin St., Elizabeth, New Jersey and Maher has facilities located at Elizabeth, New Jersey.

II. Respondent

A. PANYNJ is a body corporate and politic created by Compact between the States of New York and New Jersey and with the consent of the Congress and having offices at 225 Park Avenue South, New York, New York.

B. PANYNJ owns marine terminal facilities in the New York New Jersey area, including in Elizabeth, New Jersey.

III. Jurisdiction

A. PANYNJ is a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C. § 40102(14).

B. The PANYNJ and Maher are parties to agreement EP-249 filed with the Federal Maritime Commission ("Commission" or "FMC") and designated FMC Agreement No. 201131.

C. The Commission has jurisdiction over this Complaint which is filed pursuant to the Shipping Act, 46 U.S.C. § 41301.

D. The Commission has jurisdiction over this Complaint because PANYNJ is a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C. § 40102(14) and the actions and failures to act of the PANYNJ which are the subject of this Complaint are violations of the Shipping Act.

IV. Statement of Facts and Matters Complained of

PANYNJ's Unlawful Transfer/Change of Control Practices

A. PANYNJ has a practice of requiring payments and other economic consideration from marine terminal operators in order to obtain PANYNJ's consent to transfers of marine

terminal leases and changes in ownership and/or control interests of marine terminal operator tenants.

B. PANYNJ's published policy provides that "after appropriate due diligence has been conducted," the PANYNJ Executive Director "determines that the entity . . . assuming ownership or control of the lease or tenant . . . shall pay to the Port Authority such economic consideration as the Executive Director determines to be appropriate under the circumstances."

C. PANYNJ has required payments of cash and commitments of other economic considerations to obtain PANYNJ's consent to transfers and/or changes of ownership and/or control interests, including approximately \$237 million in such consideration with respect to Port Newark Container Terminal ("PNCT"), New York Container Terminal, Inc. ("NYCT") and Maher.

D. PANYNJ has in other instances consented to transfers and/or changes of ownership and/or control of interests without requiring payment of cash and/or commitments of other economic considerations to obtain PANYNJ's consent to transfers and/or changes of ownership and/or control interests with respect to other PANYNJ marine terminals.

E. PANYNJ has not fairly, uniformly or reasonably observed or enforced its policy of conducting "appropriate due diligence" or requiring "appropriate" consideration with respect to consents granted by PANYNJ to transfers and/or changes of ownership and/or control interests involving PANYNJ marine terminal operator tenants.

F. PANYNJ's practice to require entities assuming ownership or control interests of a lease to pay and/or provide economic consideration in order to obtain PANYNJ's consent to a change in ownership and/or control interests established, observed, and enforced by PANYNJ

unduly prejudices Maher by unjustly overcharging Maher for the benefit received. *Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission*, 390 U.S. 261 (1968).

G. PANYNJ's practice to require entities assuming ownership or control of a lease to pay and/or provide economic consideration in order to obtain PANYNJ's consent to a change in ownership interest and/or control established, observed, and enforced by PANYNJ unjustly and unreasonably requires economic consideration in exchange for consent for reasons unrelated to, and/or for consideration in excess of, the cost of the service provided. *Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission*, 390 U.S. 261 (1968).

H. PANYNJ's practice to require entities assuming ownership or control of a lease to pay and/or provide economic consideration to obtain PANYNJ's consent to a change in ownership interest and/or control established, observed, and enforced by PANYNJ unduly prejudices Maher by unjustly overcharging Maher as compared to other marine terminal operators. *Ceres Marine Terminal v. Md. Port Admin.*, No. 94-01, 27 S.R.R. 1251 (F.M.C. Oct. 10, 1997); *Ceres Marine Terminal v. Md. Port Admin.*, No. 94-01, 29 S.R.R. 356 (F.M.C. Aug. 15, 2001).

Unreasonable and Discriminatory Actions and Practices with Respect to Ocean Carriers
and Ocean-Carrier-Affiliated Marine Terminals

I. PANYNJ has an unreasonable practice of providing unduly preferential treatment to ocean carriers and ocean-carrier-affiliated marine terminals that has and continues to unduly prejudice Maher.

J. Until approximately on or about October 1, 2009, Mediterranean Shipping Company ("MSC"), an ocean carrier, was Maher's largest customer by container volume at its PANYNJ marine terminal.

K. Prior to on or about October 1, 2009, PNCT had sought unsuccessfully to negotiate an agreement with PANYNJ to expand the PNCT terminal.

L. On or about October 1, 2009, MSC moved its PANYNJ container business from Maher to PNCT.

M. PANYNJ was aware that PNCT did not have sufficient container handling capacity to adequately handle MSC's container volume served by Maher.

N. PANYNJ was aware that MSC's move to PNCT was not feasible in the long term without substantial expansion of PNCT's terminal.

O. Pursuant to PANYNJ's change of control/transfer of ownership interest policy and practice, MSC could not obtain an ownership interest in PCNT without obtaining PANYNJ's consent.

P. PANYNJ was aware that the loss of MSC's business to PNCT would harm Maher.

Q. Following MSC's move to PNCT, PANYNJ announced an agreement with PNCT and MSC to expand the PNCT terminal and provide other concessions to PNCT.

R. The agreement involves PANYNJ granting its consent for MSC's taking an ownership interest in PNCT, PANYNJ lowering PNCT's lease rates, PANYNJ agreeing to a terminal expansion nearly doubling the size of PNCT's terminal, providing preferential chassis storage and extending the lease approximately 20 years in exchange for PNCT investing in the terminal and purportedly guaranteeing, via rent, certain levels of MSC cargo.

S. PANYNJ did not provide the same or comparable expansion opportunities, rate reductions, lease extension, or other preferences to Maher.

T. PANYNJ did not provide for a reduction of Maher's container volume, rent or other obligations under its lease with PANYNJ.

Unreasonable Leasing Practices

U. PANYNJ has a practice of requiring lease provisions in marine terminal leases, lease extensions and/or amendments and modifications, that (i) unreasonably require tenants to provide general releases and/or waivers of claims, including to release PANYNJ from potential violations of the Shipping Act, (ii) require tenants to agree to liquidated damages provisions that are unreasonable, and which are designed to trigger if Shipping Act claims are brought against PANYNJ, and (iii) require lease rate renewal and/or extension provisions that purport to set future lease rates in advance in a manner not reasonably related to the cost of the services provided.

V. Prior to PANYNJ entering into the June 23, 2010, lease agreement with Global Terminal & Container Services, LLC (Lease No. LPJ-001) for the operation of a marine terminal facility located outside the Bayonne bridge (hereinafter the "Global Lease"), PANYNJ unreasonably excluded Maher from consideration as a prospective operator of the marine terminal that is the subject of the Global Lease.

W. PANYNJ has continued its practice of categorically excluding Maher, and other existing container terminal operators, from operating the marine terminal that is the subject of Global Lease in the future by excluding existing terminal operators from qualifying as Qualified Transferees under the Global Lease.

Unreasonable and Discriminatory Actions Regarding Capital Expenditure Obligations

X. On July 24, 2008, PANYNJ unreasonably granted to APM the undue preference, effective as of April 1, 2009, which also unduly prejudices Maher, consisting of the deferral until

2017 of APM's leasehold capital expenditure obligations valued at approximately \$50 million dollars that should have been completed by APM, but which were not completed as required.

Y. In addition to consenting to the deferral of the required work, PANYNJ approved APM's use of PANYNJ construction financing, in amounts equal to or exceeding the costs of the deferred mandatory work, for other projects, including but not limited to, a large expansion of APM's container handling capacity.

Unreasonable Refusal to Deal or Negotiate

Z. As of June 23, 2010, PANYNJ entered into a lease agreement with Global Terminal & Container Services, LLC (Lease No. LPJ-001) for the operation of a marine terminal facility (hereinafter the "Global Lease").

AA. Despite Maher's request, prior to entering into the Global Lease PANYNJ unreasonably refused to deal or negotiate with Maher with respect to the letting of the marine terminal facility which is the subject of the Global Lease.

BB. Despite Maher's request for parity, PANYNJ unreasonably refused to deal or negotiate with Maher with respect to the deferral of Maher's leasehold capital expenditure obligations or other financial obligations like the foregoing deferral granted to APM or provide other relief.

CC. PANYNJ's practice to require entities assuming ownership or control of a lease to pay and/or provide unreasonable economic consideration in order to obtain PANYNJ's consent to a change in ownership interest and/or control established, observed, and enforced by PANYNJ constitutes an unreasonable refusal to deal by PANYNJ.

V. Violations of the Shipping Act

A. As a result of the foregoing, PANYNJ violated and continues to violate the Shipping Act, 46 U.S.C. §§ 41102(c), 41106(2), 41106(3) and 41106(1) because PANYNJ:

(a) has 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;

(b) gave and continues to give an undue or unreasonable prejudice or disadvantage with respect to Maher and gave and continues to give an undue or unreasonable preference or advantage with respect to Maersk, APM, MSC, PNCT, NYCT, and Global, and other marine container terminal operators and ocean carriers;

(c) has and continues to unreasonably refuse to deal or negotiate with Maher; and

(d) has and continues to agree with another marine terminal operator or common carrier to boycott and/or unreasonably discriminate in the provision of terminal services to a common carrier.

Count I

B. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, including but not limited to,

PANYNJ's establishment, observation, and enforcement of its practices with respect to the transfer and/or change of ownership and/or control interests.

Count II

C. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, including but not limited to, PANYNJ's establishment, observation, and enforcement of its practices with respect to providing preferential treatment to ocean carriers and ocean-carrier-affiliated marine terminals.

Count III

D. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, with respect to PANYNJ's unreasonable leasing practice of requiring tenants to provide general releases and/or waivers of claims, including to release PANYNJ from potential violations of the Shipping Act, in marine terminal operator leases, lease extensions and/or amendments and modifications thereto.

Count IV

E. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, with respect to PANYNJ's

unreasonable leasing practice of requiring tenants to agree to liquidated damages provisions that are unreasonable, and which are designed to trigger if Shipping Act claims are brought against PANYNJ, in marine terminal operator leases, lease extensions and/or amendments and modifications thereto.

Count V

F. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, with respect to PANYNJ's unreasonable leasing practice of requiring lease rate renewal and/or extension provisions that purport to set future lease rates in advance in a manner not reasonably related to the cost of the services provided, in marine terminal operator leases, lease extensions and/or amendments and modifications thereto.

Count VI

G. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, including but not limited to, PANYNJ's practice of unreasonably excluding Maher and existing tenants for consideration as a leasee, operator or Qualified Transferee of the marine terminal that is the subject of the Global Lease.

Count VII

H. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, including but not limited to, PANYNJ's granting a deferral of marine terminal operator leasehold obligations, including but not limited to capital expenditures, and agreeing to providing financing allotted for mandatory projects for terminal capacity expansion projects.

Count VIII

I. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by imposing on Maher unduly and unreasonably more prejudicial requirements for payments and economic considerations for PANYNJ consent to transfer and/or change of ownership and/or control interests than required of Maersk, APM, PNCT, NYCT, and other marine terminal operators, and by providing undue preferences to other marine terminal operators.

Count IX

J. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by granting and continuing to grant to APM unduly and unreasonably preferential treatment than provided to Maher and which prejudice Maher, including but not limited to, PANYNJ granting APM a deferral until 2017 of required leasehold capital expenditures, while PANYNJ prejudices Maher

by requiring Maher to fulfill leasehold capital expenditure obligations and refusing to provide Maher deferral of its obligations or other relief.

Count X

K. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by granting and continuing to grant to APM unduly and unreasonably preferential treatment than provided to Maher and which prejudice Maher, including but not limited to, PANYNJ approving APM's use of PANYNJ construction financing allocated for mandatory projects for other projects, including but not limited to an expansion of APM's container handling capacity while not providing additional PANYNJ financing for other Maher projects, including Maher capacity expansion.

Count XI

L. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violate the foregoing provisions of the Shipping Act by unreasonably refusing to deal or negotiate with respect to the deferral of Maher's leasehold capital expenditure obligations or other financial obligations like the foregoing deferral granted to APM.

Count XII

M. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violate the foregoing provisions of the Shipping Act by unreasonably refusing to deal or negotiate with respect to the leasing and operation of the marine terminal which is the subject of the Global Lease.

Count XIII

N. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violate the foregoing provisions of the Shipping Act by unreasonably refusing to deal or negotiate with respect to PANYNJ's practice to condition PANYNJ's consent to a change in ownership interest and/or control on requiring entities assuming ownership or control of a lease to pay and/or provide unreasonable economic consideration.

Count XIV

O. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act with respect to PANYNJ's agreements with PNCT, MSC and other ocean carriers and carrier affiliated marine terminals violate the foregoing provisions of the Shipping Act by agreeing and continuing to agree with other marine terminal operators and common carriers to unreasonably discriminate in the provision of terminal services to common carriers.

The Lack of Valid Transportation Purposes

P. There is no valid transportation purpose for the foregoing undue or unreasonable prejudices against Maher and undue or unreasonable preferences advantaging other entities.

Q. If there is a valid transportation purpose, the discriminatory actions of PANYNJ exceed what is necessary to achieve the purpose.

VI. Injury to Maher

A. As a result of PANYNJ's aforementioned violations of the Shipping Act, Maher has sustained and continues to sustain injuries and damages, including but not limited to higher costs and other undue and unreasonable payments, economic considerations, restrictions on transfers and/or changes in ownership or control interests, lost business, forgone business, and

additional obligations not required of Maersk, APM, PNCT, NYCT, and other marine terminals, and other damages amounting to a sum of millions of dollars to be determined more precisely at hearing.

VII. Prayer for Relief

A. With respect to the required statement regarding alternative dispute resolution procedures, PANYNJ and Maher have been litigating other disputes since August 2007 when PANYNJ first sued Maher and Maher's repeated efforts at alternative dispute resolution have continued but have not succeeded. Therefore, Maher has not consulted with the Commission's dispute resolution specialist.

B. WHEREFORE, Complainant Maher prays that Respondent PANYNJ be required to answer the charges in this Complaint; that after investigation and due hearing in Washington, D.C. that an order be made commanding PANYNJ to cease and desist from the aforementioned violations of the Shipping Act, providing to Maher the undue preferences provided to other marine terminal operators, relieving Maher of the undue prejudices and unreasonable requirements imposed by PANYNJ, putting in force such practices as the Commission determines to be lawful and reasonable; and that an order be made commanding PANYNJ to pay Maher reparations for violations of the Shipping Act, including the amount of the actual injury, plus interest, costs and attorneys fees, and any other damages to be determined; and that the Commission order any such other relief as it determines appropriate.

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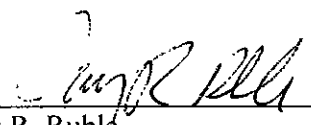
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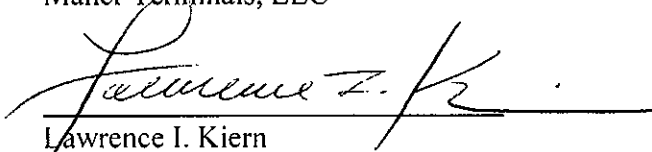
Execution Follows

Date: March 30, 2012

Respectfully submitted,



Jay R. Ruble 5/24/2012
General Counsel and Secretary
Maher Terminals, LLC



Lawrence I. Kiern
Bryant E. Gardner
Gerald A. Morrissey III
Rand K. Brothers
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817
(202) 282-5811
Email - lkiern@winston.com
Email - bgardner@winston.com
Email - gmorrissey@winston.com
Email - rbrothers@winston.com

VERIFICATION

State of New Jersey

County of Union, ss:

Jay R. Ruble, being first duly sworn on oath deposes and says that he is General Counsel and Secretary of Complainant Maher Terminals, LLC, and is the person who signed the foregoing complaint; that he has read the complaint and that the facts stated therein, upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of New Jersey,
County of Somerset this 29th day March, 2012.

MILAGROS GALARZA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/19/2014
Registered in Somerset County

[Seal] _____

(Notary Public)

My Commission expires 8/19/2014

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**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

MAHER TERMINALS, LLC

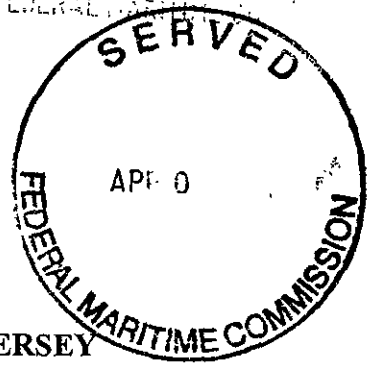
COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

OFFICE OF THE CLERK
FEDERAL MARITIME COMMISSION



**COMPLAINANT'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS
FROM THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

Complainant, Maher Terminals, LLC ("Maher"), by undersigned counsel, hereby propounds the following Requests for Production of Documents (these "Requests") upon Respondent The Port Authority of New York and New Jersey ("PANYNJ"). PANYNJ shall produce the documents requested and otherwise respond to these requests separately, fully and in writing within 30 days unless otherwise agreed by the parties in accordance with the schedule to be developed pursuant to Rule 201 of the Federal Maritime Commission ("FMC") Rules of Practice and Procedure (the "Rules"), and thereafter supplement such responses as and when required by the Rules, to be updated through the date of hearing.

INSTRUCTIONS

1. If you object to any Request or part thereof on the claim of privilege, you must nevertheless provide the following information pursuant to Federal Rule of Civil Procedure 26(b)(5).
 - a. the nature of the privilege claimed (including work product);
 - b. if the privilege is being asserted in connection with a claim or defense governed by State law, the privilege rule being invoked;
 - c. the date of the document or oral communication;
 - d. if a document: its type (correspondence, memorandum, facsimile etc.), custodian, location, and such other information sufficient to identify the document for a subpoena *duces tecum* or a document request, including where appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee;
 - e. if an oral communication: the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and
 - f. the general subject matter of the document or oral communication.
2. You are under a continuous obligation to supplement your answers to these Requests under the circumstances specified in Rule 201(j)(2).
3. To the extent that you consider any of the Requests objectionable, answer so much of each Request and each part thereof as is not objectionable in your view and separately identify that part of thereof as to which you raise objection and each ground for each such objection.
4. Where documents in the possession or control of PANYNJ are requested, each Request includes documents not only in PANYNJ's possession, but also documents over which it has

control, including documents in the possession of PANYNJ's contractors, subcontractors, agents, representatives, experts and, unless privileged, PANYNJ's attorneys.

5. Unless otherwise specified, the Requests shall be limited to documents prepared or obtained during the period 2005 to the present.

6. All documents shall be produced as they are kept in the usual course of business. Individual files shall be produced separately and labeled to identify the person from whose files it is produced.

7. All documents shall be produced with each page identified by Bates number.

8. Electronic data should be produced in the form of a TIF with metadata attached in the same format agreed by the parties in FMC Docket No. 08-03. In addition, all electronic data should be preserved in native format without alteration or deletion of data, including metadata.

DEFINITIONS

As used herein, the following definitions apply:

"Agent" shall mean: any agent, employee, officer, director, attorney, independent contractor, subcontractor, representative, or any other person acting at the direction of or on behalf of another.

"Agreement of Lease 248" or "EP-248" shall mean the agreement between PANYNJ and Maersk Container Service Company, Inc. (a/k/a APM Terminals North America, Inc., "APM" or "APMT") dated as of January 6, 2000 and filed with the Federal Maritime Commission ("FMC") as FMC Agreement No. 201106.

"Agreement of Lease EP-249" or "EP-249" shall mean the agreement between PANYNJ and Maher dated as of October 1, 2000 and filed with the FMC as FMC Agreement No. 201131.

APM Terminals North America ("APM" or "APMT") is the successor in interest to Maersk Container Service Company, Inc. and is a marine terminal operator that operates a marine terminal in Elizabeth, New Jersey pursuant to a lease agreement with PANYNJ.

A.P. Moeller-Maersk A/S ("A.P. Moeller-Maersk") is a company incorporated in Denmark, including any of its affiliates, subsidiaries, or related companies, with which PANYNJ has done business including entering into certain consent agreements and releases pertaining to among other things PNCT, APMT, and the former Sea-Land marine terminal at Elizabeth, New Jersey.

"Communication" includes, but is not limited to, correspondence, telephone calls, facsimiles, electronic mail ("e-mail"), and meetings; and records of such communications, including but not limited to transcripts, notes, records, memoranda, and recordings of such communications, in whole or in part.

"Complaint" shall mean separately and/or collectively the Complaint Maher filed in this proceeding.

"Complainant" shall mean Maher.

"Date" shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date based upon the relationship with other events.

The term "document" means any written or any other tangible thing of every kind and description, however produced or reproduced, whether draft or final, in the actual or constructive possession, custody or control of PANYNJ, original or reproduction, including but not limited to: letters, correspondence, notes, films, transcripts, telegrams, teletype messages, contracts and agreements including drafts, proposals, any and all modifications thereof, licenses, notes, transcripts and recordings of telephone conversations or personal conversations, microfilm,

microfiche, books, newspapers, magazines, advertisements, periodicals, bulletins, circulars, pamphlets, statements, notices, memoranda (including inter and intra office memoranda, memoranda for file, pencil or pen jotting, diary entries, desk calendar entries, expense accounts, recorded recollections and any other written form of notation of events thereto, draft minutes, resolutions and agendas), expressions and/or statements of policy, lists of persons attending meetings and conferences, reports, rules, regulations, directions, communications, interoffice communications, reports, financial statements, tax returns, ledgers, books of account, proposals, prospectuses, offers, orders, receipts, analyses, audits, working papers, computations, projections, tabulations, financial records, blueprints, plans, writings, drawings, graphs, charts, photographs, phono-records and other data computations from which information can be obtained (translated, if necessary, into reasonably usable form), invoices, receipts, working papers, desk calendars, appointment books, diaries, time sheets, logs, movies, tapes for visual audio reproduction, recordings, computer tapes and discs, electronic media, reports and/or summaries of investigations, opinions and/or reports of consultants, appraisals, reports and/or summaries of negotiations, proposals, presentations, "e-mail," electronic mail, voice mail or material similar to any of the foregoing, however denominated. The term "document" shall also include all copies of each document if the copies contain any additional writing or are not identical copies of the originals.

Global Terminal & Container Services, LLC ("Global") is a marine terminal operator that operates a marine terminal at Jersey City, New Jersey pursuant to a lease agreement with PANYNJ.

Maersk, Inc. is a company with which PANYNJ has done business, including but not limited to with respect to APMT and the former Sea-Land marine terminal at Elizabeth, New Jersey.

“MSC” shall mean the shipping line Mediterranean Shipping Company and its affiliates.

New York Container Terminal (“NYCT”) is a marine terminal operator that operates a marine terminal in Staten Island, New York pursuant to a lease agreement with PANYNJ, (formerly Howland Hook).

“Person” shall mean any individual, corporation, proprietorship, partnership, trust, association or any other entity.

The words “pertain to” or “pertaining to” mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evinces, shows, refutes, disputes, rebuts controverts or contradicts.

Port Newark Container Terminal (“PNCT”) is a marine terminal operator that operates a marine terminal in Port Newark, New Jersey pursuant to a lease agreement with PANYNJ.

“PNCT Restructured Lease Agreement” shall mean PANYNJ’s restructured lease agreement with PNCT announced in PANYNJ’s press release number 34-2011 dated June 14, 2011.

The term “proceeding” shall mean this proceeding before the FMC captioned above, and filed on even date herewith, titled *Maier Terminals, LLC. v. The Port Authority of New York and New Jersey*.

The term “third party” or “third parties” refers to individuals or entities that are not a party to this proceeding.

Terminal Investment Ltd. ("TIL") is a container terminal investment company affiliated with MSC.

The words "you," "yours" and/or "yourselves" means PANYNJ and any Commissioners, directors, the Executive Director, officers, employees, agents, representatives, agents, or other persons acting, or purporting to act, on PANYNJ's behalf.

The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive.

The singular shall include the plural and vice versa; the terms "and" or "or" shall be both conjunctive and disjunctive; and the term "including" shall mean "including without limitation."

Unless otherwise defined, all words and phrases used in this Request For Production of Documents shall be accorded their usual meaning as defined in the Merriam-Webster online dictionary, <http://www.merriam-webster.com>.

REQUEST FOR PRODUCTION OF DOCUMENTS

In accordance with the Instructions and Definitions set out above, PANYNJ is hereby requested to identify and produce all of the following documents:

1. All documents pertaining to your communications, deliberations, determinations, negotiations, practices, actions, inactions and omissions pertaining to the acts and allegations which are the subject of the Complaint.
2. All of your rules, regulations, procedures, and/or practices pertaining to the allegations of the Complaint.
3. All documents pertaining to establishing, observing and enforcing your rules, regulations, procedures, and/or practices that are the subject of the allegations of the Complaint.

(This request is not subject to the time limitation of 2005 to the present generally applicable to the requests.)

4. All documents pertaining to the PNCT Restructured Lease Agreement, including, but not limited to, communications, meetings, notes, proposals, term sheets, deliberations, concerns, issues, analyses, models, projections, negotiations, Board recommendations, discussions, resolutions, consents, approvals, summaries, and final agreements, including but not limited to such documents by or between PANYNJ, PNCT, MSC and TIL.
5. All documents pertaining to or referring to the movement of MSC cargo from Maher to PNCT on or about October 1, 2009 and the handling of MSC cargo at PNCT or any other PANYNJ marine terminal thereafter.
6. All documents pertaining to the letting and/or redevelopment of the marine terminal facility which is the subject of the PANYNJ lease agreement with Global Terminal & Container Services, LLC (Lease No. LPJ-001), including, but not limited to, communications, meetings, notes, proposals, term sheets, deliberations, concerns, issues, analyses, models, projections, negotiations, Board recommendations, discussions, resolutions, consents, approvals, summaries, documents related to or referenced in the Global Lease.
7. All documents pertaining to PANYNJ's alleged refusal to deal with Maher which is the subject of the Complaint concerning the letting and/or redevelopment of the marine terminal facility which is the subject of the PANYNJ lease agreement with Global Terminal & Container Services, LLC (Lease No. LPJ-001).

8. All documents pertaining to your rules, regulations, practices, and/or procedures for dealing with or refusing to deal with existing marine terminal operators, including Maher, with respect to the letting of facilities in the port, e.g. the PANYNJ lease agreement with Global Terminal & Container Services, LLC (Lease No. LPJ-001) .
9. All documents pertaining to your rules, regulations, practices, and/or procedures related to “Qualified Transferees” and existing marine terminal operators, including Maher, with respect to the letting of facilities in the port, e.g. the PANYNJ lease agreement with Global Terminal & Container Services, LLC (Lease No. LPJ-001).
10. All documents pertaining to any PANYNJ practice, policy, substantive standard, or procedure for making “appropriate recommendations for Board consideration and action” or for taking any other action or inaction, including, but not limited to, requesting or not requesting payments and/or the providing of any economic consideration to PANYNJ, with respect to transfers or changes of ownership or control interests involving marine terminal operator leases with PANYNJ prior to the February 22, 2007 adoption of PANYNJ Board Resolution “Port Facilities - Consent to Transfer of Leases and Changes of Ownership Interests.” (This request is not subject to the time limitation of 2005 to the present generally applicable to the requests.)
11. All documents pertaining to any transfer or change of ownership or control interest involving any marine terminal operator lease with PANYNJ prior to the February 22, 2007 adoption of PANYNJ Board Resolution “Port Facilities - Consent to Transfer of Leases and Changes of Ownership Interests,” including, but not limited to, any “report and appropriate recommendations for Board consideration and action,” any documents forming the basis of any such report and recommendations, documents of deliberations,

calculations, models and decisions (including decisions to approve, deny or neither approve nor deny), and documents reflecting requirements or conditions of decisions, including but not limited to any payments and/or the providing of any economic consideration to PANYNJ.

(This request is not subject to the time limitation of 2005 to the present generally applicable to the requests, and for the avoidance of doubt, includes marine terminal operator leases with respect to Sealand, Maher, Maersk, Universal Maritime (UMS), Howland Hook and PNCT prior to February 22, 2007.)

12. All documents pertaining to any PANYNJ practice, policy, substantive standard or procedure for taking any action or inaction, including, but not limited to, requesting or not requesting payments and/or the providing of any economic consideration to PANYNJ, with respect to transfers or changes of ownership or control interests involving marine terminal operator leases with PANYNJ after the February 22, 2007 adoption of PANYNJ Board Resolution "Port Facilities - Consent to Transfer of Leases and Changes of Ownership Interests."
13. All documents pertaining to any transfer or change of ownership or control interest involving any marine terminal operator lease with PANYNJ after the February 22, 2007 adoption of PANYNJ Board Resolution "Port Facilities - Consent to Transfer of Leases and Changes of Ownership Interests," including, but not limited to, any reports or recommendation for consideration or action, any documents forming the basis of any such report or recommendations, documents of deliberations, calculations, models and decisions (including decisions to approve, deny or neither approve nor deny), documents reflecting requirements or conditions of decisions, including but not limited to any

payments and/or the providing of any economic consideration to PANYNJ and all “executed . . . agreements and other documents necessary to effectuate a Tenant Facility Change.”

(For the avoidance of doubt, this request includes marine terminal operator leases with respect to PNCT, NYCT, APM, Maher and Global after February 22, 2007.)

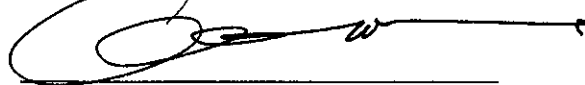
14. All documents pertaining to the regulations, rules, practices, policies, and/or procedures that you observed in establishing and/or implementing any consent or transfer fees policy.
15. All documents pertaining to any PANYNJ practice, policy or procedure for requesting, negotiating, requiring or obtaining in marine terminal leases, lease extensions and/or amendments and modifications, general releases and/or waivers of claims, including, but not limited to, releasing PANYNJ from potential violations of the Shipping Act.
16. All documents pertaining to any PANYNJ practice, policy or procedure for requesting, negotiating, requiring or obtaining in marine terminal leases, lease extensions and/or amendments and modifications, liquidated damages provisions, including any in excess of \$20,000,000.00, and further including, but not limited to, provisions designed to trigger if Shipping Act claims are brought against PANYNJ.
17. All documents pertaining to any PANYNJ practice, policy or procedure for requesting, negotiating, requiring or obtaining in marine terminal leases, lease extensions and/or amendments and modifications, lease rate renewal and/or extension provisions that establish future lease renewal or extension rates in advance.

18. All documents pertaining to PANYNJ's determination to defer APM's construction investment obligations from 2006 to 2017 as alleged in the Complaint, including, but not limited to, any valuation, analysis, or comparison of the deferral granted to APM.
19. All documents pertaining to PANYNJ's decision to not provide Maher a comparable deferral of its construction obligations, or other comparable consideration.
20. All documents pertaining to PANYNJ's decision to provide construction financing, in amounts equal to or exceeding the amounts contemplated in EP-248 for the cost of APM's deferred work, for other purposes, including further expansion of APM's container terminal capacity.
21. All documents pertaining to PANYNJ's decision to not provide construction financing, in amounts equal to or exceeding the amounts contemplated in EP-248 for the cost of APM's deferred work or otherwise, for other purposes, including further expansion of Maher's container terminal capacity.
22. All documents pertaining to your rules, regulations, practices, and/or procedures for the granting or denying of deferrals of investment or capital expenditure obligations and/or provision of additional constructing financing for terminal capacity expansion to users of your facilities, including but not limited to marine terminal operators.
23. All documents pertaining to whether or not your actions that are the subject of the Complaint in this proceeding violate the Shipping Act.
24. The resume, engagement agreement, fee arrangement, invoices, and reports, including information the expert relies upon in forming opinions, of any and all experts or consultants retained by PANYNJ pertaining to the Complaint.

25. All communications, including all documents, from or to PANYNJ, PNCT, NYCT, Global, APMT, Maersk, Inc., A.P. Moeller-Maersk A/S, MSC or TIL pertaining to the subject matter of the Complaint not covered by the foregoing requests.

March 30, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Kiern', is written over a horizontal line. The signature is stylized and extends to the right.

Lawrence I. Kiern
Bryant E. Gardner
Gerald A. Morrissey III
Rand. K. Brothers
Winston & Strawn
1700 K Street, N.W.
Washington, DC 20006-3817
(202) 282-5811
Email - lkiern@winston.com
Email - bgardner@winston.com
Email - gmorrissey@winston.com
Email - rbrothers@winston.com

ORIGINAL

cc: OS/OGC

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CADRS

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT



**COMPLAINANT'S FIRST SET OF INTERROGATORIES
PROPOUNDED ON THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

Complainant, Maher Terminals, LLC ("Maher"), by undersigned counsel, hereby propounds the following Interrogatories upon Respondent The Port Authority of New York and New Jersey ("PANYNJ"), pursuant to Rule 205 of the Federal Maritime Commission Rules of Practice and Procedure (the "Rules"). PANYNJ shall answer each Interrogatory separately and fully in writing under oath in accordance with the following instructions and definitions, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them.

The answers should include all information known by PANYNJ or available to PANYNJ directly or through agents, representatives, or attorneys as of the date of verification. Answers are due within 30 days unless otherwise agreed by the parties in accordance with the schedule to

be developed pursuant to Rule 201 and PANYNJ must thereafter supplement such responses as and when required by the Rules, to be updated through the date of hearing.

INSTRUCTIONS

1. All Interrogatories should be verified and answered on the basis of your knowledge, including that of your representatives, agents, and, unless privileged, attorneys. Each answer should identify all persons involved or assisting in the response to that interrogatory, including but not limited to the person from whom the information contained in each answer was obtained. If you cannot answer any interrogatory on the basis of your personal knowledge, please answer the interrogatory on the basis of your information and belief; all such responses, however, should indicate that the answer is based on your information and belief, rather than your personal knowledge.

2. If you cannot answer an interrogatory after conducting a reasonable investigation, please so state and answer to the extent you can, stating what information you cannot provide and stating what efforts you have made to obtain the requested information.

3. If you contend that the answer to any interrogatory is privileged, in whole or in part, or if you otherwise object to any part of the interrogatory, please identify the nature of the privilege which is being claimed; if the privilege is being asserted in connection with a claim or defense governed by State law, set forth the privilege rule being invoked; and identify each person having knowledge of the factual bases on which the privilege or other objection is asserted.

4. If you object to, or otherwise decline to respond to any portion of an Interrogatory, please answer that portion of the Interrogatory to which you do not object or to which you do not decline to answer. If you object to an Interrogatory on the ground that it is too

broad (i.e., that it requests information which is relevant to the subject matter of the action and information which is not), please answer the Interrogatory to the extent that it is concededly relevant. If you object to an Interrogatory on the ground that to answer the Interrogatory would constitute an undue burden, please answer the Interrogatory to the extent that it can be answered without undertaking an undue burden.

5. You are under a continuous obligation to supplement your answers to these Requests under the circumstances specified in Rule 201(j)(2).

6. Unless otherwise specified, the Interrogatories are intended to be limited to the period from 1997 to the present.

DEFINITIONS

As used herein, the following definitions apply:

“Agent” shall mean: any agent, employee, officer, director, attorney, independent contractor or any other person acting at the direction of or on behalf of another.

“Agreement of Lease 248” or “EP-248” shall mean the agreement between PANYNJ and Maersk Container Service Company, Inc. (a/k/a APM Terminals North America, Inc., “APM” or “APMT”) dated as of January 6, 2000 and filed with the Federal Maritime Commission (“FMC”) as FMC Agreement No. 201106.

“Agreement of Lease EP-249” or “EP-249” shall mean the agreement between PANYNJ and Maher dated as of October 1, 2000 and filed with the FMC as FMC Agreement No. 201131.

APM Terminals North America (“APMT” or “APM”) is the successor in interest to Maersk Container Service Company, Inc. and is a marine terminal operator that operates a marine terminal in Elizabeth, New Jersey pursuant to a lease agreement with PANYNJ.

A.P. Moeller-Maersk A/S (“A.P. Moeller-Maersk”) is a company incorporated in Denmark with which PANYNJ has done business including entering into certain consent agreements and releases pertaining to among other things PNCT, APMT, and the Sea-Land marine terminal at Elizabeth, New Jersey.

“Communication” includes, but is not limited to, correspondence, telephone calls, facsimiles, electronic mail (“e-mail”), and meetings; and records of such communications, including but not limited to transcripts, notes, records, memoranda, and recordings of such communications, in whole or in part.

"Complaint" shall mean the Complaint of Maher filed in this proceeding.

"Complainant" shall mean Maher.

“Date” shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date based upon the relationship with other events.

The term “describe in detail” mean as follows:

- a. When used to refer to actions, identify the principal and material facts pertaining to each action by date, persons involved, actions taken, and documents involved. For all such persons or documents, identify such persons or documents in accordance with these instructions.
- b. When used to refer to an allegation, reason, or contention, identify the principal and material facts upon which you rely and the legal basis for the allegation or contention as appropriate.

The term “document” means any written or any other tangible thing of every kind and description, however produced or reproduced, including electronic data, whether draft or final, in the actual or constructive possession, custody or control of PANYNJ, original or reproduction,

including but not limited to: letters, correspondence, notes, films, transcripts, telegrams, teletype messages, contracts and agreements including drafts, proposals, any and all modifications thereof, licenses, memoranda, notes, transcripts and recordings of telephone conversations or personal conversations, microfilm, microfiche, books, newspapers, magazines, advertisements, periodicals, bulletins, circulars, pamphlets, statements, notices, memoranda (including inter and intra office memoranda, memoranda for file, pencil or pen jotting, diary entries, desk calendar entries, expense accounts, recorded recollections and any other written form of notation of events thereto, draft minutes, resolutions and agendas), expressions and/or statements of policy, lists of persons attending meetings and conferences, reports, rules, regulations, directions, communications, interoffice communications, reports, financial statements, tax returns, ledgers, books of account, proposals, prospectuses, offers, orders, receipts, analyses, audits, working papers, computations, projections, tabulations, financial records, blueprints, plans, writings, drawings, graphs, charts, photographs, phono-records and other data computations from which information can be obtained (translated, if necessary, into reasonably usable form), invoices, receipts, working papers, desk calendars, appointment books, diaries, time sheets, logs, movies, tapes for visual audio reproduction, recordings, computer tapes and discs, electronic media, reports and/or summaries of investigations, opinions and/or reports of consultants, appraisals, reports and/or summaries of negotiations, proposals, "e-mail," electronic mail, voice mail or material similar to any of the foregoing, however denominated. The term "document" shall also include all copies of each document if the copies contain any additional writing or are not identical copies of the originals.

“FMC Agreement No. 201131” is also known as “Agreement of Lease EP-249” or “EP-249” and shall mean the agreement between PANYNJ and Maher dated as of October 1, 2000 and filed with the FMC.

Global Terminal & Container Services, LLC (“Global”) is a marine terminal operator that operates a marine terminal at Jersey City, New Jersey pursuant to a lease agreement with PANYNJ.

The terms “identify” or “state the identity of” mean as follows:

- a. When used to refer to a non-natural person, provide the entity’s full name, address of its main office or principal place of business, all addresses used by the entity, its state of incorporation, if any, phone number of its principal place of business, and phone number for each address used by the entity.
- b. When used to refer to a natural person who is not an expert witness expected to be called at hearing, provide his full name, occupation, present employer, business address and telephone number, and his home address and telephone number and a summary of the anticipated testimony from such person, if any;
- c. When used to refer to a natural person who is expected to be called as an expert witness at hearing, provide all information required of a natural person who is not an expert witness pursuant to subsection b. above, and in addition state said witness’ field of expertise and qualifications as an expert;
- d. When used to refer to a “document,” state the date of the document; its title, if any; specify the author and each person who participated in preparing the document; the person or persons to whom it is addressed; the person or persons who were intended to receive one or more copies of all or part of the document at

or about the time it was sent or delivered to its intended recipient; and specify each person who presently has possession, custody or control of the original and/or any copies of the document.

- e. When used to refer to a “communication,” state the date of the communication, the mode of communication (face-to-face discussion, telephone conversation, memorandum, letter, etc.), specify the person conveying information (the communicator), specify the person to whom the communication was directed and the persons to whom copies of the communication, if any, were sent, summarize the substance of the communication, and identify all witnesses to the communication.

“Maersk, Inc.” is company with which PANYNJ has done business, including but not limited to with respect to APMT and the former Sea-Land marine terminal at Elizabeth, New Jersey.

“MSC” shall mean the ocean carrier Mediterranean Shipping Company and its affiliates.

New York Container Terminal (“NYCT”) is a marine terminal operator that operates a marine terminal in Staten Island, New York pursuant to a lease agreement with PANYNJ.

“Person” shall mean any individual, corporation, proprietorship, partnership, trust, association or any other entity.

The words “pertain to” or “pertaining to” shall mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts controverts or contradicts.

Port Newark Container Terminal (“PNCT”) is a marine terminal operator that operates a marine terminal in Port Newark, New Jersey pursuant to a lease agreement with PANYNJ.

“PNCT Restructured Lease Agreement” shall mean PANYNJ’s restructured lease agreement with PNCT announced in PANYNJ’s press release number 34-2011 dated June 14, 2011.

The term “proceeding” shall mean this proceeding before the FMC captioned above, and filed on even date herewith, titled *Maier Terminals, LLC. v. The Port Authority of New York and New Jersey*.

The term “third party” or “third parties” refers to individuals or entities that are not a party to this proceeding.

Terminal Investment Ltd. (“TIL”) is a container terminal investment company affiliated with MSC.

The words “you,” “yours” and/or “yourselves” means PANYNJ and any Commissioners, directors, the Executive Director, officers, employees, agents, representatives or other persons acting, or purporting to act, on PANYNJ’s behalf.

The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive.

The singular shall include the plural and vice versa; the terms “and” or “or” shall be both conjunctive and disjunctive; and the term “including” shall mean “including without limitation.”

Unless otherwise defined, all words and phrases used in these Interrogatories shall be accorded their usual meaning as defined in the Merriam-Webster online dictionary, <http://www.merriam-webster.com>.

INTERROGATORIES

In accordance with the Instructions and Definitions set out above, PANYNJ is hereby requested to answer the following Interrogatories:

1. Identify and describe in detail your negotiations with PNCT with respect to expansion of the PNCT marine terminal, including, but not limited to, requests, proposals, draft terms, and the reasons that negotiations were successful or not successful.
2. Describe in detail your involvement with the relocation of MSC's ocean carrier business, i.e., its cargo, from Maher to PNCT on or about October 1, 2009, including, but not limited to, when and how you first became aware that the relocation was contemplated, any reasons provided by PNCT and/or MSC, any requests made to PANYNJ (by PNCT, MSC or Maher) or by PANYNJ (to PNCT, MSC or Maher) related to the relocation of cargo volume to PNCT, and any PANYNJ actions taken or PANYNJ consents, approvals, waivers given or requirements forborne, related to the MSC cargo or any marine terminal operator.
3. Describe in detail the effects of the relocation of MSC cargo to PNCT on and after October 1, 2009, pertaining to container terminal handling capacity, container terminal handling efficiency, terminal operator revenue, terminal operator lease covenant compliance/non-compliance, terminal industry reputation, and the container revenue rates for each of (i) Maher, (ii) PNCT and (iii) PANYNJ, including, but not limited to, any analyses or projections of future effects and any observations, analyses or conclusions of the effects that occurred.
4. Identify when PNCT was, at any time on or after October 1, 2009, in default of any of its PANYNJ leases for any reason, whether characterized as a technical or material default (whether or not notice of default was given or required, or whether or not cured or waived), and if so, describe in detail the nature of the default, its cause, any actions taken by PANYNJ or PNCT and the outcome.

5. Describe in detail your negotiations after October 1, 2009 with PNCT, MSC, and TIL, with respect to expansion of the PNCT marine terminal, a restructured marine terminal lease, and any cargo volume guarantee agreements, and including, but not limited to, requests, proposals, draft terms, approvals, and the reasons that negotiations were successful or not successful.

6. Describe in detail (i) when and how you first became aware (after the 2007 purchase of PNCT by AIG) that PNCT contemplated a change in control and or ownership interest, (ii) describe in detail the principle and material facts of each contemplated change in control and or ownership interest (including without limitation divesting ownership or control interests of AIG and MSC, TIL or others obtaining ownership or control interests of PNCT or its parent or affiliated entities), and (iii) for each contemplated change in control and or ownership interest, describe in detail the actions taken by PANYNJ to consider and consent or decline to consent, and the principle and material facts of the terms of any consent.

7. Describe in detail PANYNJ's practice, policy, substantive standard, or procedure for making "appropriate recommendations for Board consideration and action" or for taking any other action or inaction, including, but not limited to, requesting or not requesting payments and/or the providing of any economic consideration to PANYNJ, with respect to transfers or changes of ownership or control interests involving marine terminal operator leases with PANYNJ prior to the February 22, 2007 adoption of PANYNJ Board Resolution "Port Facilities - Consent to Transfer of Leases and Changes of Ownership Interests."

8. Describe in detail PANYNJ's practice, policy, substantive standard, or procedure for taking any action or inaction, including, but not limited to, requesting or not requesting payments and/or the providing of any economic consideration to PANYNJ, with respect to transfers or changes of ownership or control interests involving marine terminal operator leases with PANYNJ after the February 22, 2007 adoption of PANYNJ Board Resolution "Port Facilities - Consent to Transfer of Leases and Changes of Ownership Interests."

9. Describe in detail the purpose for your seeking, or having sought, payments and/or the providing of any economic consideration to PANYNJ with respect to transfers or changes of ownership or control interests involving marine terminal operator leases with PANYNJ before and after the February 22, 2007 Resolution.

10. Describe in detail the principal and material facts of (i) any formula, model, calculation or other basis that has been used to determine the amount of requesting payments and/or the providing of any economic consideration to PANYNJ with respect to transfers or changes of ownership or control interests involving marine terminal operator leases with PANYNJ including, without limitation, the principal elements, criteria, inputs, assumptions and/or variables of any such basis, (ii) differences in any such basis before and after the February 22, 2007 Resolution, (iii) how you apply any such basis and (iv) the principle and material facts of any determination by PANYNJ of the reasonableness under the Shipping Act of such basis and/or application.

11. Identify each transfer or change of ownership or control interest in a marine terminal operator lease since 1997 for which PANYNJ consent was requested, given, denied, or that PANYNJ contemplated requiring, and for each, (i) describe the principal and material facts of the proposed or effected change of ownership or control interest, (ii) the amount of payments and/or economic consideration committed to PANYNJ, and if no payments and/or economic consideration was committed, the reason therefore, and (iii) how such amounts are related to service provided by PANYNJ to the marine terminal operator.
12. Describe in detail the reason or reasons that you decided to negotiate and agree to PNCT's Restructured Lease Agreement.
13. Describe in detail the reason or reasons that you decided not to provide to Maher a comparable restructuring of Maher's lease.
14. Describe in detail the letting and/or redevelopment of the marine terminal facility which is the subject of the PANYNJ lease agreement with Global Terminal & Container Services, LLC (Lease No. LPJ-001), including, but not limited to, any requests, responses or negotiations with Maher and PANYNJ's alleged refusal to deal with Maher which is the subject of the Complaint.
15. Describe in detail your rules, regulations, practices, and/or procedures for dealing with or refusing to deal with existing marine terminal operators, including Maher, with respect to the letting of facilities in the port, e.g. the PANYNJ lease agreement with Global Terminal & Container Services, LLC (Lease No. LPJ-001).

16. Describe in detail (i) your rules, regulations, practices, and/or procedures related to defining a “Qualified Transferee” in a marine terminal lease, (ii) the purpose of the “Qualified Transferee” provision in the Global Terminal & Container Services, LLC (Lease No. LPJ-001), (iii) its applicability to an existing marine terminal operator such as Maher and (iv) the principal and material facts of any determination by PANYNJ of the reasonableness under the Shipping Act of such rules, regulations, practices, and/or procedures and/or application.

17. Describe in detail (i) your rules, regulations, practices, and/or procedures pertaining to requesting, negotiating, requiring or obtaining in marine terminal leases, lease extensions and/or amendments and modifications, general releases and/or waivers of claims, including, but not limited to, releasing PANYNJ from potential violations of the Shipping Act, and (ii) the principal and material facts of any determination by PANYNJ of the reasonableness under the Shipping Act of such rules, regulations, practices, and/or procedures and/or application.

18. Describe in detail (i) your rules, regulations, practices, and/or procedures pertaining to requesting, negotiating, requiring or obtaining in marine terminal leases, lease extensions and/or amendments and modifications, liquidated damages provisions, including those in excess of \$20,000,000.00, and further including, but not limited to, provisions designed to trigger if Shipping Act claims are brought against PANYNJ, and (ii) the principal and material facts of any determination by PANYNJ of the reasonableness under the Shipping Act of such rules, regulations, practices, and/or procedures and/or application.

19. Describe in detail (i) your rules, regulations, practices, and/or procedures pertaining to requesting, negotiating, requiring or obtaining in marine terminal leases, lease extensions and/or amendments and modifications, lease rate renewal and/or extension provisions that seek to establish future lease renewal or extension rates in advance and (ii) the principal and material facts of any determination by PANYNJ of the reasonableness under the Shipping Act of such rules, regulations, practices, and/or procedures and/or application.

20. Describe in detail your rules, regulations, practices, and/or procedures for the granting or denying of deferrals of investment or capital expenditure obligations and/or provision of constructing financing for terminal capacity expansion to marine terminal operators, including but not limited to, additional construction financing for terminal capacity expansion for APM and Maher after the leases EP-248 and EP-249 were executed.

21. Describe in detail (i) the basis for your determination to defer APM's construction investment obligations as alleged in the Complaint from 2006 to 2017, (ii) your valuation of the deferral granted to APM with respect to its construction obligations as alleged in the Complaint, (iii) your valuation of the consideration you received from APM in return for the deferral of APM's construction investment obligations and (iv) what steps you took, if any, to ensure that the deferral granted to APMT did not exceed the value of APM's alleged claim against PANYNJ which was the subject of FMC Docket No. 07-01.

22. Describe in detail why you decided not to provide Maher a comparable deferral of its capital expenditure obligations or other comparable consideration as that granted to APM, e.g., deferral of Maher's remaining terminal investment obligations.

23. Describe in detail your decision to provide construction financing, in amounts equal to or exceeding the amounts contemplated in EP-248 for the cost of APM's deferred work, for other purposes, including further expansion of APM's container terminal capacity.

24. Describe in detail your decision not to provide construction financing, in amounts equal to or exceeding the amounts contemplated in EP-248 for the cost of APM's deferred work or otherwise, for other purposes, including further expansion of Maher's container terminal capacity.

25. Describe in detail what steps or actions you took, or did not take, to deal with or negotiate with Maher at any time after the execution of EP-249 with respect to the deferral of Maher's leasehold capital expenditure obligations, or other financial obligations like the foregoing deferral granted to APM, and with respect to providing additional construction financing for terminal capacity expansion like the foregoing approval to use PANYNJ financing for additional terminal capacity expansion.

26. Describe in detail your rules, regulations, practices, policies and/or procedures pertaining to the just and reasonable treatment of marine terminal operators, including, but not limited to, rules, regulations, practices, policies and/or procedures to prevent the granting of undue preferences or prejudices to marine terminal operators.

27. Describe in detail any principal and material facts showing that PANYNJ's practices, policies, procedures, or lack thereof, and actions or inactions that are the subject of the Complaint in this proceeding do not violate the Shipping Act, including but not limited to, the principal and material facts of any justifications of the differences in treatment PANYNJ accorded to the marine terminal operators that are the subject of the Complaint in this proceeding, and the principal and material facts that any such justifications do not exceed what is necessary to achieve a valid transportation purpose justifying the differences.

28. Identify the PANYNJ persons known to you to have knowledge concerning the following subjects and where more than one person has knowledge concerning a subject, list all such persons and further *specify the person who is most knowledgeable*:

a. The interactions, negotiations and agreements with PNCT, MSC, and TIL that are the subject of the Complaint;

b. PANYNJ's practice, policy or procedure pertaining to financial consideration for consent for transfers or changes of ownership or control interests involving marine terminal operator leases, and PANYNJ's implementation and/or decisions regarding the same subject, that are the subject of the Complaint;

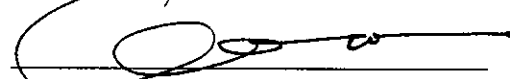
c. PANYNJ's practice, policy or procedure pertaining to deferral of required capital expenditures and approval of PANYNJ construction financing for additional terminal capacity expansion, and PANYNJ's implementation and/or decisions regarding the same subject, including, but not limited to, Maher and APM, that are the subject of the Complaint;

d. PANYNJ's practice, policy or procedure pertaining to leasing the terminal that is the subject of the Global lease, and PANYNJ's implementation and/or decisions regarding the same subject, including, but not limited to, consideration of perspective tenants, communications and consideration of Maher, and basis for excluding from the definition of Qualified Transferee entities that directly or indirectly own a controlling interest in any other PANYNJ marine terminal, that are the subject of the Complaint;

e. PANYNJ's practice, policy or procedure pertaining to the following leasing, lease renewal, and lease modification practices that are the subject of the Complaint: (i) seeking general releases and/or waivers of claims, including to release PANYNJ from potential violations of the Shipping Act, (ii) seeking liquidated damages provisions that are excessive and/or are designed to trigger if Shipping Act claims are brought against PANYNJ and (iii) seeking to establish future lease renewal and/or extension rates in advance in a manner not reasonably related to the cost of services provided, and PANYNJ's implementation and/or decisions regarding the same subject.

March 30, 2012

Respectfully submitted,



Lawrence I. Kiern
Bryant E. Gardner
Gerald A. Morrissey III
Rand K. Brothers
Winston & Strawn
1700 K Street, N.W.
Washington, DC 20006-3817
(202) 282-5811
Email -- lkiern@winston.com

Email – bgardner@winston.com
Email – gmorrissey@winston.com
Email – rbrothers@winston.com