

**BEFORE THE FEDERAL MARITIME COMMISSION  
WASHINGTON, D.C.**

**MARINE REPAIR SERVICES  
OF MARYLAND, INC.,**

\*

**Complainant,**

\*

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v.

**DOCKET NO. 11-11**

\*

**PORTS AMERICA CHESAPEAKE, LLC,**

\*

**Respondent.**

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**ANSWER OF RESPONDENT TO COMPLAINT**

Respondent Ports America Chesapeake, LLC (hereinafter “Ports America”), by and through its attorneys, JoAnne Zawitoski, Alexander M. Giles, and Semmes, Bowen & Semmes, in answer to the Complaint filed herein by Complainant, Marine Repair Services of Maryland, Inc. (“Marine Repair”), states as follows:

1. Answering Paragraph 1 of the Complaint, Ports America admits that Marine Repair is in the business of repairing chassis and dry box containers and inspecting and maintaining temperatures of refrigerated (“reefer”) containers, but Ports America is without information or knowledge sufficient to form a belief as to the truth of the remaining matters stated therein, as such matters relating to the incorporation and business of Marine Repair are exclusively within the knowledge of the Complainant.

2. Answering Paragraph 2 of the Complaint, Ports America admits that it is a limited liability company organized under the laws of the state of Delaware and authorized to do business in Maryland. Ports America further admits that its principal place of business is in Maryland at the Port of Baltimore. Ports America further admits that it is in the business of providing stevedoring

services and a broad range of marine terminal services in the Port of Baltimore, as more fully set forth is the Schedule of the Baltimore Marine Terminal Association, of which Ports America is a member.

3. Answering Paragraph 3 of the Complaint, Ports America states that this paragraph contains jurisdictional allegations to which Ports America is not required to respond. In further answer to Paragraph 3, Ports America specifically denies the remaining matters stated therein, including but not limited to, allegations that Ports America has violated any provision of the Shipping Act of 1984, as amended, in this matter.

4. Answering Paragraph 4 of the Complaint, Ports America states that it is without information or knowledge sufficient to form a belief as to the truth of the matters stated therein, as such matters relating to the ownership and business of Marine Repair are exclusively within the knowledge of the Complainant.

5. Answering Paragraph 5 of the Complaint, Ports America admits that it or its related or predecessor companies have served the Port of Baltimore for almost 90 years, but Ports America denies the remaining allegations contained therein.

6. Answering Paragraph 6 of the Complaint, Ports America admits that Seagirt and Dundalk are two of the five public marine terminals in the Port of Baltimore, that Seagirt opened in 1990 and is presently owned by the Maryland Port Administration, and that there is a bridge between Dundalk and Seagirt known as the Colgate Creek Bridge. Ports America denies that Seagirt and Dundalk are the only terminals at the Port of Baltimore equipped to accept containers, including reefers. Ports America admits that ACL, Nordana, Grimaldi, Hapag-Lloyd and NSCSA all continue to use Dundalk for their reefer/dry container work, for reasons unique to each such steamship line. Ports America states that it is without information or knowledge sufficient to form a belief as to the

truth of the remaining matters stated therein, as such matters relating to the ownership of Dundalk, and the plans of the Maryland Ports Administration with respect to Dundalk are exclusively within the knowledge of the Maryland Port Administration.

7. Answering Paragraph 7 of the Complaint, Ports America denies that Marine Repair's main repair facility is located on property at the far east side of Dundalk Marine Terminal, and further states that it is without information or knowledge sufficient to form a belief as to the truth of the remaining matters stated therein, as such matters relating to the business of Marine Repair are exclusively within the knowledge of the Complainant.

8. Answering Paragraph 8 of the Complaint, Ports America denies the allegations contained therein.

9. Answering Paragraph 9 of the Complaint, Ports America denies the allegations contained therein.

10. Answering Paragraph 10 of the Complaint, Ports America states that it is without information or knowledge sufficient to form a belief as to the truth of the matters stated therein, as such matters relating to the business of Marine Repair are exclusively within the knowledge of the Complainant.

11. Answering Paragraph 11 of the Complaint, Ports America denies the allegations contained therein.

12. Answering Paragraph 12 of the Complaint, Ports America admits that it does not monitor reefers and that Marine Repair in the past, as well as currently, competes with Multimarine Services, Inc. ("Multimarine") for reefer work at Seagirt and Dundalk. However, Ports America denies the remaining allegations contained therein.

13. Answering Paragraph 13 of the Complaint, Ports America admits that on December 16, 2009, it executed a fifty year Lease and Concession Agreement for Seagirt (the “Master Lease”) with the Maryland Port Administration and the Maryland Transportation Authority and further states that the terms of that Master Lease speak for themselves. However, Ports America denies the remaining allegations contained therein.

14. Answering Paragraph 14 of the Complaint, Ports America denies the allegations contained therein.

15. Answering Paragraph 15 of the Complaint, Ports America admits that it has a lease with the Maryland Port Administration/Maryland Transportation Authority for the Canton Warehouse Property, an area adjacent to Seagirt, under the terms of the Master Lease. Ports America further admits that in May 2011, it advised Marine Repair that Ports America would be moving all chassis repairs off-dock from Seagirt and that Ports America would be performing chassis repairs itself at the Canton Warehouse Property. Ports America further states in answer to Paragraph 15 that the May 27, 2011 email from Mark Montgomery to Shawn Olshefski of Marine Repair referenced therein speaks for itself, but Ports America denies the negative implications given to that email by Marine Repair. Ports America states that the email was not intended to preclude Marine Repair from performing its own off-site chassis repair work at its own off-dock repair facility on Broening Highway. Further answering Paragraph 15, Ports America denies the remaining allegations contained therein.

16. Answering Paragraph 16 of the Complaint, Ports America admits that it has precluded Marine Repair—or any other vendor at Seagirt—from draying any chassis across the Colgate Creek Bridge to Dundalk without first obtaining a Trailer Inspection Report, or TIR, which is the means established by Ports America to maintain safe and secure inventory control over all equipment leaving Seagirt. Ports America further states that, prior to the filing of this suit, Marine Repair has

refused to follow this TIR inventory procedure. Further answering Paragraph 16, Ports America denies the remaining allegations contained therein.

17. Answering Paragraph 17 of the Complaint, Ports America states that the emails of June 6, 2011 and June 7, 2011 referenced therein speak for themselves, but Ports America denies the negative implications given to those emails by Marine Repair. In further answer to Paragraph 17, Ports America admits that it would not allow Marine Repair (or any other vendor) to take chassis out of Seagirt without following established TIR inventory procedures, however Ports America denies the remaining allegations contained therein.

18. Answering Paragraph 18 of the Complaint, Ports America states that the emails of June 8, 2011 and June 9, 2011 referenced therein speak for themselves, but Ports America denies the negative implications given to those emails by Marine Repair. Further answering Paragraph 18, Ports America denies the remaining allegations contained therein.

19. Answering Paragraph 19 of the Complaint, Ports America denies the allegations contained therein.

20. Answering Paragraph 20 of the Complaint, Ports America admits that Marine Repair has leased 10 acres of land less than a quarter mile from the Canton Warehouse Property, but it denies the remaining allegations contained therein.

21. Answering Paragraph 21 of the Complaint, Ports America specifically denies each and every allegation contained therein.

22. Answering Paragraph 22 of the Complaint, Ports America specifically denies each and every allegation contained therein.

23. Answering Paragraph 23 of the Complaint, Ports America specifically denies each and every allegation contained therein.

24. Answering Paragraph 24 of the Complaint, Ports America specifically denies each and every allegation contained therein.

25. Answering Paragraph 25 of the Complaint, Ports America specifically denies each and every allegation contained therein and denies the applicability and meritoriousness of the remedies sought thereunder.

### **AFFIRMATIVE DEFENSES**

26. Any matters complained of by Complainant in its Complaint that pre-date July 8, 2008 are barred by the applicable statute of limitations and/or by laches.

27. The rights and powers of Ports America with respect to the operation of Seagirt and the Canton Warehouse Property are contained within its Master Lease with the Maryland Port Administration and the Maryland Transportation Authority, which grants to Ports America “the exclusive right to use and operate the Premises,” and the rates and rules governing Ports America’s Marine terminal operations are contained within the Baltimore Marine Terminal Association Schedule, of which Ports America is a member.

28. Complainant has failed to add a necessary party or parties to this suit (the Maryland Port Administration and the Maryland Transportation Authority) in whose absence complete relief cannot be granted.

29. Complainant lacks standing to bring this suit.

30. Complainant has unclean hands to seek equitable relief in this matter.

31. The Complaint fails to state a claim against Ports America upon which relief can be granted and should therefore be dismissed.

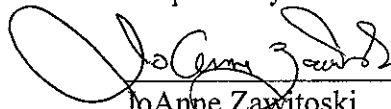
32. Ports America asserts the benefit of all other applicable defenses contained in the BMTA Schedule, under maritime law, and/or under the laws of the State of Maryland.

WHEREFORE, for the reasons stated above, Respondent Ports America respectfully requests that the Complaint be dismissed, with prejudice, and that Complainant be ordered to reimburse Ports America for its attorneys fees and costs incurred in defense of this action.

**PLACE OF HEARING**

Respondent Ports America respectfully requests that this matter be heard in Baltimore, Maryland, where both Complainant and Respondent, and all of their witnesses, are located and where the marine terminal facilities at issue are located.

Respectfully submitted,



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*Counsel for Respondent, Ports America  
Chesapeake, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of August, 2011, I served a copy of the foregoing Answer to Complaint by email and by placing it in the first class mail for delivery upon Dale. A. Cooter, Esq, Donna Mangold, Esq., Karen Karas, Esq. and Fernando Amarillo, Esq, Cooter, Mangold, Deckelbaum & Karas, LLP, 5301 Wisconsin Avenue, NW, Suite 500, Washington, D.C. 20015.



JoAnne Zawitoski  
*Counsel for Respondent, Ports America  
Chesapeake, Inc.*