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CARRS

BEFORE THE FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

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2011 JUL 11 PM 4:40

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

MARINE REPAIR SERVICES OF)
MARYLAND, INC.)
2700 Broening Hwy.)
Shed 1702A-Doorway F)
Baltimore, MD 21222,)

Complainant,)

v.)

PORTS AMERICA CHESAPEAKE, LLC)
1209 Orange Street)
Wilmington, DE,)

Please Serve:)

The Corporation Trust Inc.)
351 West Camden St.)
Baltimore, MD 21201)

Respondent.)

Docket No: 11-11



COMPLAINT

Complainant, Marine Repair Services of Maryland, Inc., by and through its undersigned counsel, hereby brings its Complaint against Respondent Ports America Chesapeake, LLC and states as follows:

PARTIES

1. The Complainant is Marine Repair Services of Maryland, Inc. ("Marine Repair"), a corporation organized under the laws of the state of Maryland. Marine Repair's principal place of business in Maryland is 2700 Broening Highway, Shed 1702A - Doorway F, Baltimore, Maryland 21222. Marine Repair conducts business at

the Port of Baltimore. Marine Repair is in the business of maintaining and repairing chassis and containers for various steamship lines, and inspecting and maintaining temperatures of refrigerated containers.

2. The Respondent is Ports America Chesapeake, LLC (“PAC”), a limited liability company organized under the laws of the state of Delaware, and authorized to do business in Maryland. PAC’s principal place of business in Maryland is at the Port of Baltimore. PAC is a marine terminal operator.

JURISDICTION

3. This Complaint is filed pursuant to the Shipping Act of 1984, as amended and codified at 46 U.S.C. §§41301 *et seq.* (the “Act”). The Complaint alleges numerous statutory violations by Respondent PAC, including, *inter alia*, that PAC has unreasonably refused to deal with Marine Repair and has unreasonably prejudiced and disadvantaged Marine Repair in its business operations. The Complaint seeks both reparations and orders directing Respondent to comply with the requirements of the Act and Federal Maritime Commission (“Commission”) regulations in connection with the matters described herein.

FACTS

4. Marine Repair is a corporation solely owned by the Vincent and Elaine Marino Family Limited Partnership. The Marino family has been in the marine repair services for forty years and has served the Port of Baltimore since 1974.

5. PAC is a subsidiary of Ports America Group. Ports America Group, through its subsidiaries, serves as terminal operator and/or stevedore in more than 40 ports and 84

marine terminals throughout the United States. PAC, and/or related or predecessor companies, has served the Port of Baltimore for almost 90 years.

6. Seagirt Marine Terminal (“Seagirt”) and Dundalk Marine Terminal (“Dundalk”) are two of five public terminals at the Port of Baltimore. Dundalk is owned by the Maryland Transportation Authority. Seagirt, although formerly owned by the Maryland Transportation Authority, is now owned by the Maryland Port Administration. Dundalk, which opened in 1961, and Seagirt, which opened in 1990, are connected by an inner connector bridge, the Colgate Creek Bridge. Seagirt and Dundalk are the only terminals at the Port of Baltimore equipped to accept containers, including refrigerated shipping containers (“reefers”). Although the Maryland Port Administration has shifted the focus at Dundalk away from containers toward automobiles, a small presence of containers, including reefers, remains at Dundalk. In fact, one steamship line, ACL, has not yet been able to make the shift to Seagirt for its container and reefer work because of the nature of its cargo business and therefore the container and reefer work has remained at Dundalk.

7. Marine Repair has conducted operations at Dundalk and Seagirt since 1974 and 1990, respectively. These operations have included inspecting, maintaining and repairing chassis and containers for various steamship lines, and inspecting, repairing and maintaining temperatures of reefers owned by various steamship lines. Marine Repair’s main repair facility is located on property at the far east side of Dundalk.

8. Until the events complained of herein, steamship lines would hire Marine Repair to inspect, repair and/or maintain the containers and reefers being off-loaded from

ships at Seagirt and Dundalk. If the containers or reefers needed repairs, Marine Repair either repaired the containers and reefers on-site at Seagirt or transported the containers and reefers by chassis to Dundalk via the Colgate Creek Bridge and performed the repairs at its Dundalk repair facility. If the chassis itself was not in proper working condition, Marine Repair would either fix the chassis on-site at Seagirt or would arrange for a yard hustler to dray the chassis over the Colgate Creek Bridge to Marine Repair's Dundalk repair facility. Marine Repair would then repair the chassis for the chassis pool and/or their steamship line customers.

9. Accessing its Dundalk repair facility required Marine Repair, once on the Dundalk side of the Colgate Creek Bridge, to cross over a small area of land leased to PAC from the Maryland Ports Administration ("Cross-Over Area"). Although there was no formal written agreement between PAC and Marine Repair regarding Marine Repair's use of the Cross-Over Area for access to its repair facility, there was an informal agreement permitting the access.

10. Over approximately the last twelve years, Marine Repair's approximate net profits from its inspection, maintenance and repair operations at Dundalk and Seagirt have averaged \$800,000-\$900,000 annually.

11. Beginning in or about 2007, PAC, which operates Dundalk on behalf of The Maryland Ports Administration, prohibited Marine Repair from access to its Dundalk repair facilities by prohibiting Marine Repair from utilizing the Cross-Over Area. Thus, PAC has privatized Dundalk even though it is a public terminal at the Port of Baltimore.

12. As stated above, PAC is primarily a marine terminal operator and stevedore. It does not inspect, maintain or repair reefers. In the past, Marine Repair has competed with Multimarine Services Inc. ("Multimarine") for the reefer work at Seagirt and Dundalk. Beginning in or about June 2009, however, PAC partnered with Multimarine to perform the reefer work for Compania Sud Americana de Vapores, S.A. ("CSAV"), one of the three largest lines calling at Seagirt. That reefer work was tied to a pricing package that included maintenance and repair services by PAC on CSAV's dry containers. PAC has also offered a pricing package (tying stevedoring with reefer services) to Mediterranean Shipping Company, another of Marine Repair's reefer customers. PAC's actions unreasonably disadvantage Marine Repair by eliminating Marine Repair as a competitor for the reefer work. As noted above, with respect to Dundalk, although the business at that terminal has been shifting to automobiles, there is still container and reefer work to be done, including for ACL, from which Marine Service has been excluded. PAC has permitted only Multimarine to perform ACL's reefer work. In fact, Marine Repair has been excluded from the ACL work for approximately three years.

13. Approximately six months after entering into its pricing package arrangement with Multimarine, PAC entered into a fifty year Lease and Concession Agreement with the Maryland Ports Administration dated December 16, 2009 pursuant to which PAC took over the day-to-day operations of Seagirt ("Master Lease"). Publicly available documents describe the lease as granting to PAC complete control of the operations and cargo development at Seagirt. The Master Lease, PAC's role as

stevedore, and PAC's arrangement with Multimarine have all afforded PAC a vehicle by which to further its unreasonable practices at Seagirt and Dundalk and systematically run Marine Repair out of business.

14. Beginning in 2010, soon after entering into the Master Lease with The Maryland Ports Administration, PAC began to restrict Marine Repair's access to Seagirt for conducting its business operations. For example, in or about August 2010, PAC interfered with Marine Repair's business relationship with Mediterranean Shipping, one of Marine Repair's largest customers, by offering a significant decrease in rates for maintaining and repairing containers. By tying its stevedoring services to its chassis and container inspection, maintenance and repair services, PAC is monopolizing the market.

15. PAC's business practices have grown more monopolistic and anti-competitive over time. There is an area adjacent to Seagirt known as the Canton Warehouse Property ("Canton") which is leased to PAC by the Maryland Ports Administration under the terms of the Master Lease. Since approximately December 2009, when the Master Lease was signed, PAC has stated not only to Marine Repair, but also to the customers of Marine Repair, that although all chassis operations would shift to Canton from Seagirt, Marine Repair would continue to be a chassis vendor and would have space at Canton to service chassis for its customers. Recently, however, Marine Repair learned that PAC intends to privatize Canton, as it has done to both Seagirt and Dundalk, so that Marine Repair will be denied the opportunity to lease space on Canton. In May 2011, PAC advised Marine Repair that it was taking over all maintenance and repair of chassis at Seagirt and moving all chassis to Canton. Mark Montgomery, PAC's

president, confirmed this in a May 27, 2011 email to Shawn Olshefski of Marine Repair (copy of 5/27/11 email attached as Exhibit 1). As the May 27, 2011 email states:

“[PAC] will be moving all chassis to the Canton Warehouse Property and will assume all [maintenance and repair] for chassis activity on Seagirt proper as well as [Canton].”

16. PAC has misused its control over Seagirt by using its guards and giving union employees monetary incentives, over and above their approved wage rates, to impact the inspection, maintenance and repair services at Seagirt. PAC’s guards prohibit any chassis from passing through the guarded gates until the chassis has been inspected by ILA longshoremen who are taking instruction and direction from PAC. The inspections are perfunctory and chassis are passing inspection to eliminate repair work for Marine Repair. Moreover, PAC has prohibited Marine Repair from draying any chassis across the Colgate Creek Bridge to Marine Repair’s maintenance facility at Dundalk, even where the steamship lines and chassis pools have approved Marine Repair to undertake the necessary chassis repairs.

17. By June 2011, PAC had prohibited access by Marine Repair to the Colgate Creek Bridge between Seagirt and Dundalk. In one event, on June 6, 2011, Marine Repair attempted to dray a damaged Direct ChassisLink chassis to Dundalk for repairs but was prohibited from doing so by PAC. These restrictions were confirmed by PAC in an email to Marine Repair dated June 6, 2011 (copy attached hereto as Exhibit 2) stating: “[a]s per our conversation starting June 6, 2011 chassis cannot be drayed out of Seagirt Marine Terminal to Dundalk Marine Terminal via the inner connector bridge. Please return all units to Seagirt that are currently at Dundalk after repairs have been

completed.” Then, however, PAC would not even permit Marine Repair to dray the chassis back to Seagirt after the repairs. In a June 7, 2011 email (copy attached as Exhibit 3), PAC instructed Marine Repair to send to PAC a list “with locations of units [Marine Repair had] repaired” and stating that PAC would “return [the units] to Seagirt.” PAC issued these directives notwithstanding the fact that The Maryland Ports Administration owns and controls the Colgate Creek Bridge. Control over the bridge is not within the scope of PAC’s authority granted to it under the terms of its lease with The Maryland Ports Administration.

18. By early June 2011, PAC was “handling all drayage to and from Seagirt[.]” 6/8/11 email from Bayard Hogans to several recipients including Shawn Olshefski of Marine Repair (attached as Exhibit 4). In a June 9, 2011 email (attached as Exhibit 5), PAC confirmed to Marine Repair (and others, including at least one customer of Marine Repair) that PAC, not Marine Repair, would repair certain itemized units located at Seagirt which APL had intended for Marine Repair to repair at Dundalk.

19. The fact that PAC is allowing Marine Repair to use the Colgate Creek Bridge to dray bomb carts holding damaged containers is meaningless. Marine Repair has use of sufficient area on Seagirt itself to repair damaged containers. Rather, it is the prohibition of draying damaged chassis across the Bridge that impacts Marine Repair’s business because it deprives Marine Repair of the chassis repair business.

20. Because of its exclusion from Canton and from Dundalk, Marine Repair has had to lease other land from the Maryland Ports Administration for its repair facility. Marine Repair has leased 10 acres of land less than a quarter mile from Canton. If the

chassis is defective, PAC requires Marine Repair to transport the defective chassis on a flatbed trailer and tow it on Broening Highway to Marine Repair's 10 acre property. Because PAC controls Canton by virtue of the Master Lease, PAC is able to dray its chassis directly from Seagirt to Canton without having to travel on the Broening Highway. PAC obtains significant savings in costs and time, putting Marine Repair at a competitive disadvantage.

21. Marine Repair recently learned that as of September 30, 2011, PAC intends to prohibit Marine Repair from performing *any* reefer services for *any* steamship line calling at Seagirt. PAC intends to allow only one provider, Multimarine, to perform such services.

COUNT I

22. Based on the above allegations and other facts that will be established at a hearing, Respondent PAC has violated, and continues to violate various provisions of the Act including 46 U.S.C. Section 41106(2) by, *inter alia*:

- a. Giving undue and unreasonable preference to itself, to the unreasonable and undue disadvantage and prejudice of Marine Repair, in the inspection, maintenance and repair of chassis at the Seagirt and Dundalk terminals;
- b. Giving undue and unreasonable preference to itself, to the unreasonable and undue disadvantage and prejudice of Marine Repair, in the inspection, maintenance and repair of containers at the Seagirt and Dundalk terminals;
- c. Giving undue and unreasonable preference to itself, to the unreasonable and undue disadvantage and prejudice of Marine Repair, by controlling

the Seagirt and Dundalk terminals and using its guards and giving union employees monetary incentives, over and above their approved wage rates, to impact the inspection, maintenance and repair services at Seagirt and Dundalk.

- d. Giving undue and unreasonable preference to itself, to the unreasonable and undue disadvantage and prejudice of Marine Repair, in the use of the Colgate Creek Bridge, Dundalk and Seagirt, and the Canton Warehouse Property for use in its business operations at Seagirt and Dundalk;
- e. Giving undue and unreasonable preference to Multimarine, to the unreasonable and undue disadvantage and prejudice of Marine Repair, in the inspection, maintenance and repair of refrigerated containers at the Seagirt and Dundalk terminals;
- f. Imposing undue and unreasonable disadvantage on the steamship lines calling at Seagirt and Dundalk by restricting the vendors available for the inspection, maintenance and repair of chassis and containers (including refrigerated containers).

23. PAC's actions have caused and continue to cause a loss of revenues to Marine Repair and if the actions are continued, Marine Repair's business will be totally destroyed resulting in significant monetary loss to Marine Repair and the termination of the employment of approximately 20 employees.

COUNT II

24. Based on the above allegations and other facts that will be established at a hearing, Respondent PAC has violated, and continues to violate various provisions of the Act including 46 U.S.C. Section 41106(3) by, *inter alia*:

- a. Unreasonably refusing to deal and negotiate with Marine Repair by refusing to permit it to continue to provide inspection, maintenance and repair services (on chassis, containers and refrigerated containers) at Seagirt and Dundalk;
- b. Unreasonably refusing to deal and negotiate with Marine Repair by refusing to give it access to the Colgate Creek Bridge, Dundalk and Seagirt, and the Canton Warehouse Property for the operation of its business;
- c. Unreasonably refusing to deal and negotiate with Marine Repair by refusing to approve it as a vendor for the provision of services at Seagirt and Dundalk.

25. PAC's actions have caused and continue to cause a loss of revenues to Marine Repair and if the actions are continued, Marine Repair's business will be totally destroyed resulting in significant monetary loss to Marine Repair and the employment termination of approximately 20 employees.

WHEREFORE, Complainant Marine Repair Services of Maryland, Inc. requests that Respondent Ports America Chesapeake LLC be required to answer the charges herein; that after due hearing, an order be made commanding Respondent Ports America

Chesapeake LLC: (1) to cease and desist from the aforesaid violations of the Shippers Act of 1984 (as amended and codified); (2) to establish and put in force such practices as the Commission determines to be lawful and reasonable; (3) to pay to Complainant Marine Repair Services of Maryland, Inc. by way of reparation for the unlawful conduct described above in an amount of no less than \$900,000.00, with interest and attorneys fees or such other sum as the Commission may determine to be proper as an award of reparation; and (4) that such other and further order or orders be made as the Commission determines to be proper in the premises.

PLACE OF HEARING

The Complainant requests that this matter be heard in Washington, D.C.

STATEMENT REGARDING ALTERNATIVE DISPUTE RESOLUTION

The Complainant states that informal dispute resolution procedures were not used prior to filing the Complaint and the Complainant did not consult with the Commission Dispute Resolution Specialist about utilizing alternative dispute resolution (“ADR”) under the Commission’s ADR program.

Dated at Washington, D.C., this 8th day of July, 2011

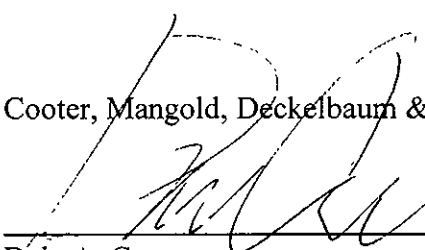
Marine Repair Services of Maryland, Inc.
2700 Broening Hwy.
Shed 1702A, Doorway F
Baltimore, Maryland 21222

By: _____


Shawn Olshefski

Its: General Manager

Cooter, Mangold, Deckerbaum & Karas, LLP



Dale A. Cooter
5301 Wisconsin Avenue, NW
Suite 500
Washington, DC 20015
Tel. 202-537-0700
Fax 202-364-3664

Attorneys for Complainant

VERIFICATION

Washington
District of Columbia, ss:

Shawn Olshefski, being first duly sworn on oath deposes and says that he is the General Manager of the Complainant 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 Washington in the District of Columbia, this 8th day of July, A.D., 2011.

[SEAL]



Michele M. Terry, Notary Public

Michele Terry
Notary Public District of Columbia
My Commission Expires 07-14-2012

My commission expires 7-14-2012 .

Shawn Olshefski

From: Mark Montgomery [Mark.Montgomery@portsamerica.com]
Sent: Friday, May 27, 2011 3:49 PM
To: Shawn Olshefski
Cc: John J. Roeckell; Mark Schmidt
Subject: Seagirt Chassis Work

Shawn, as we have discussed previously Ports America will be moving all chassis to the Canton Warehouse Property and will assume all M&R for chassis activity on Seagirt proper as well as the CWP. We wanted to give you some time to plan for this move out of the roadability area at Seagirt and organize your equipment prior to next weekend.

Mark Schmidt will work with you on the footprint you currently pay us for land and will follow up with you next week.

Thank you for the service you have provided the Seagirt Terminal over the years and our best wishes to get your off dock yard up and running.

Regards,

Mark Montgomery
President and CEO
Ports America Chesapeake, LLC
410-631-5950 (O)
443-250-5982 (C)
410-631-7425 (F)

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Shawn Olshefski

From: Bayard Hogans <Bayard.Hogans@portsamerica.com>
Sent: Monday, June 06, 2011 10:11 AM
To: Steve Rhone; Shawn Olshefski
Cc: John J. Roeckell; Mark Montgomery; Mark Schmidt; Shawn Vencill
Subject: Chassis Repairs

Shawn/Steve,

As per our conversation starting June 6, 2011 chassis cannot be drayed out of Seagirt Marine Terminal to Dundalk Marine Terminal via the inner connector bridge. Please return all units to Seagirt that are currently at Dundalk after repairs have been completed. Thank you.

Rgds,

Bayard Hogans
Asst. Terminal Manager
Ports America Chesapeake
2600 Broening Hwy
Baltimore, MD. 21224
(410)631-1884 - Office
(410)736-0872 - Cell
Bayard.Hogans@portsamerica.com
www.portsamerica.com

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Shawn Olshefski

From: Bayard Hogans <Bayard.Hogans@portsamerica.com>
Sent: Tuesday, June 07, 2011 3:37 PM
To: Shawn Olshefski; Steve Rhone
Cc: John J. Roeckell; Mark Montgomery; Mark Schmidt; Shawn Vencill
Subject: Re: Chassis Repairs

Shawn,

Please advise if we need to dray any units back tomorrow.

Rgds,

Bayard Hogans
Asst. Terminal Manager
Ports America Chesapeake
2600 Broening Hwy
Baltimore, MD. 21224
(410)631-1884 - Office
(410)736-0872 - Cell
Bayard.Hogans@portsamerica.com
www.portsamerica.com

----- Original Message -----

From: Bayard Hogans
To: 'solshefski@mrs-cmc.com' <solshefski@mrs-cmc.com>; 'srhone@mrs-cmc.com' <srhone@mrs-cmc.com>
Cc: John J. Roeckell; Mark Montgomery; Mark Schmidt; Shawn Vencill
Sent: Tue Jun 07 12:17:13 2011
Subject: Re: Chassis Repairs

Shawn,

That is correct. Send us a list by 14:30 daily with locations of units you have repaired and we will return to Seagirt.
Thanks.

Rgds,

Bayard Hogans
Asst. Terminal Manager
Ports America Chesapeake
2600 Broening Hwy
Baltimore, MD. 21224
(410)631-1884 - Office
(410)736-0872 - Cell
Bayard.Hogans@portsamerica.com
www.portsamerica.com

----- Original Message -----

From: Shawn Olshefski <solshefski@mrs-cmc.com>

To: Bayard Hogans; Steve Rhone <srhone@mrs-cmc.com>
Cc: John J. Roeckell; Mark Montgomery; Mark Schmidt; Shawn Vencill
Sent: Tue Jun 07 11:34:34 2011
Subject: RE: Chassis Repairs

Just to clarify.
You don't want us to dray after repairing?
Typically we dray after Tim post inspects.

I'll await your response,
Shawn

-----Original Message-----
From: Bayard Hogans [<mailto:Bayard.Hogans@portsamerica.com>]
Sent: Monday, June 06, 2011 5:04 PM
To: Steve Rhone; Shawn Olshefski
Cc: John J. Roeckell; Mark Montgomery; Mark Schmidt; Shawn Vencill
Subject: RE: Chassis Repairs

Shawn/Steve,

Please supply a list daily by 14:30 and we will dray back from DMT. Thank you.

Rgds,

Bayard

Bayard Hogans
Ports America Chesapeake
Seagirt Marine Terminal
Asst. Terminal Manager
(410)631-1884 - Office
(410)288-8649 - Fax
(410)736-0872 - Cell
Bayard.Hogans@portsamerica.com - e-mail www.portsamerica.com - website

-----Original Message-----
From: Bayard Hogans
Sent: Monday, June 06, 2011 10:11 AM
To: 'srhone@mrs-cmc.com'; 'solshefski@mrs-cmc.com'
Cc: John J. Roeckell; Mark Montgomery; Mark Schmidt; Shawn Vencill
Subject: Chassis Repairs

Shawn Olshefski

From: Bayard Hogans <Bayard.Hogans@portsamerica.com>
Sent: Wednesday, June 08, 2011 11:10 AM
To: 'TMichel@tracintermodal.com'; Greg Ackerman; Baltimore; #DL-ILA-DMT; #DL-ILA-SMT; John Fick; 'Ivicari@tracintermodal.com'; Shawn Olshefski; John J. Roeckell
Subject: Re: units repaired 6-7-11 Metro

Tim,

We are handling all drayage to and from Seagirt from this point forward.

Rgds,

Bayard Hogans
Asst. Terminal Manager
Ports America Chesapeake
2600 Broening Hwy
Baltimore, MD. 21224
(410)631-1884 - Office
(410)736-0872 - Cell
Bayard.Hogans@portsamerica.com
www.portsamerica.com

From: Tim Michel <TMichel@tracintermodal.com>
To: Bayard Hogans; gackerman@mrs-cmc.com <gackerman@mrs-cmc.com>; baltimore@mrs-cmc.com <baltimore@mrs-cmc.com>; #DL-ILA-DMT; #DL-ILA-SMT; John Fick; Louis Vicari <Ivicari@tracintermodal.com>; solshefski@mrs-cmc.com <solshefski@mrs-cmc.com>; John J. Roeckell
Sent: Wed Jun 08 10:50:14 2011
Subject: RE: units repaired 6-7-11 Metro

Bayard, why would you be bringing them back to Seagirt ????

From: Bayard Hogans [mailto:Bayard.Hogans@portsamerica.com]
Sent: Wednesday, June 08, 2011 10:42 AM
To: 'gackerman@mrs-cmc.com'; 'baltimore@mrs-cmc.com'; #DL-ILA-DMT; #DL-ILA-SMT; John Fick; Louis Vicari; 'solshefski@mrs-cmc.com'; Tim Michel; John J. Roeckell
Subject: Re: units repaired 6-7-11 Metro

Greg,

Are these the units we need to dray back to Seagirt? If so please let me know where they are located and we will get them picked up. Thanks.

Rgds,

Bayard Hogans
Asst. Terminal Manager
Ports America Chesapeake
2600 Broening Hwy
Baltimore, MD. 21224
(410)631-1884 - Office
(410)736-0872 - Cell
Bayard.Hogans@portsamerica.com
www.portsamerica.com

From: Greg Ackerman <gackerman@mrs-cmc.com>
To: Baltimore <baltimore@mrs-cmc.com>; #DL-ILA-DMT; #DL-ILA-SMT; John Fick; Louis Vicari
<lvicari@tracintermodal.com>; Shawn Olshefski <solshefski@mrs-cmc.com>; TJM@SEACASTLEINC.COM
<TJM@SEACASTLEINC.COM>
Sent: Wed Jun 08 10:17:02 2011
Subject: units repaired 6-7-11 Metro

METZ430951 TIRES ONLY
METZ194414
METZ194414
METZ196309 FHWA
METZ196309 FHWA
METZ142994 FHWA
METZ128548
METZ128548
METZ3414306
METZ191058 FHWA

Gregory Ackerman

Marine Repair Services
Ph: 410-633-5100
Fx: 410-633-6140



Shawn Olshefski

From: Bayard Hogans <Bayard.Hogans@portsamerica.com>
Sent: Thursday, June 09, 2011 9:14 AM
To: Greg Ackerman
Cc: Marc Campolongo; Shawn Olshefski; Steve Rhone; John J. Roeckell; Shawn Vencill; Mark Montgomery; Dave Bugda
Subject: Re: APL Approvals

Greg,

As per our conversation with Marc yesterday Ports America will repair these units.

Rgds,

Bayard Hogans
Asst. Terminal Manager
Ports America Chesapeake
2600 Broening Hwy
Baltimore, MD. 21224
(410)631-1884 - Office
(410)736-0872 - Cell
Bayard.Hogans@portsamerica.com
www.portsamerica.com

From: Greg Ackerman <gackerman@mrs-cmc.com>
To: Bayard Hogans
Cc: Marc Campolongo; Shawn Olshefski <solshefski@mrs-cmc.com>; Steve Rhone <srhone@mrs-cmc.com>
Sent: Thu Jun 09 09:03:13 2011
Subject: APL Approvals

Bayard,

Conversation that I had this morning with Shawn Olshefski, he advises that you and Marc Campolongo of APL agreed yesterday to allow us entry into Seagirt to pick up approval units for repair at our DMT shop. Once repaired we will notify you for pick up and return to Seagirt. Joe Cavanaugh will be coming over to pick up the following APL approvals:

APLZ174168
NOLZ220447
APLZ139342
APLZ152661
APLZ152825
APLZ154373

Regards,

Gregory Ackerman

Marine Repair Services
Ph: 410-633-5100
Fx: 410-633-6140



ORIGINAL

BEFORE THE FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

RECEIVED
2011 JUL 11 PM 3:10
OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

MARINE REPAIR SERVICES OF)
MARYLAND, INC.,)
)
Complainant,)
)
v.)
)
PORTS AMERICA CHESAPEAKE, LLC,)
)
Respondent.)
_____)

Docket No: 11-11



COMPLAINANT'S FIRST SET OF INTERROGATORIES
TO RESPONDENT PORTS AMERICA CHESAPEAKE, LLC

Complainant Marine Repair Services of Maryland, Inc. ("Marine Repair"), by and through its undersigned counsel, hereby requests that Respondent Ports America Chesapeake, LLC ("Ports America") answer the following interrogatories fully and separately in writing and under oath pursuant to the schedule established under 42 CFR §502.201.

Part I - Definitions and Instructions

As used herein:

1. "You" and/or "your" refers to Respondent Ports America, and any agents, employees, servants or representatives and, unless privileged, attorneys.
2. "Documents" shall mean, unless otherwise indicated, the original and copies of any written, typed, printed, photocopied, photographic or tape recorded matter of any kind in your possession or known by you to exist, no matter how produced, recorded, stored, or reproduced, whether produced or stored on paper, cards, tapes, discs, belts, charts, film, computer storage devices, microfilm, magnetic and electronic

recordings, sound recordings, computer printouts or records; including, but not limited to, all letters, correspondence, e-mail, facsimiles, books, periodicals, contracts, telegrams, paper communications, tabulations, charts, memoranda, handwritten notes, charts, drafts, records, memoranda or transcriptions by a mechanical device, by longhand or shorthand recording, tape recorder or by other means, inter- and intra-office communications, microfilm, lists, bulletins, calendars, circulars, desk pads, ledgers, minutes, journals, diaries, invoices, account histories, balance sheets, profit and loss statements, income projections, pamphlets, studies, notices, summaries, reports, analyses, teletype or telecopy messages, work sheets, and all other graphic materials, writings and instruments, however produced or reproduced, including computer-generated or stored matter, including e-mail transmissions and optically stored documents. Said definition shall include, inter alia, recordings, transcripts, and/or summaries of oral communications, telephonic or otherwise.

3. The phrase "all documents" shall mean each and every document within a stated category known to you, and/or documents reasonably subject to identification, and/or documents which can be located on premises owned or controlled by you and/or elsewhere. Documents located on premises other than your premises are specifically included.

4. "Communication" means any writing, telephone conversation, oral conversation or electronic communication.

5. "Person" means any natural person, any business entity (whether partnership, association, cooperative or corporation), and governmental entity or

department, agency, bureau or political subdivision thereof.

6. a. "Identify" or "identification" when used in reference to a natural person means to state his or her full name, date of birth, present residential address, present telephone number(s), present business affiliation, business title, business phone number, and present business address, or if the above are not known, such information as was last known, or his or her residential address, business title, business affiliation and business address at the time in question.

b. "Identify" or "identification" when used in reference to a corporation, partnership or any legal entity other than a natural person means to state its full name, form of organization, address or principal place of business at the time in question.

c. "Identify" or "identification" when used in reference to a document means to state the type of document (e.g., letter, bill, memorandum, contract, telegram, etc.) or some other means of identifying it, its author or authors, addressee or addressees, if any, and its present location or custodian. If any such document is no longer in your possession or subject to its control, "identify" or "identification" also means to state what disposition was made of it and the date of such disposition.

d. "Identify" or "identification" when used in reference to an act, job, occurrence, transaction, decision, payment, statement, discussion, conversation, communication, or conduct (hereinafter collectively referred to as "act") means to describe in substance the event or events constituting such act, describe what transpired, state the exact words spoken, state the place and date thereof and identify the persons

present, the persons involved and the documents referring or relating thereto.

7. a. When knowledge or information in possession of Respondent is requested, such request includes knowledge of Respondent's agents, representatives, experts and all persons consulted concerning any factual matters or matters of opinion relating to any of the facts or issues involved in this action and, unless privileged, Respondent's attorneys.

b. With respect to any answer or portion of any answer to any of the following interrogatories not made on present knowledge of the person signing and swearing to such answer, identify each person from whom information was obtained on which such answer or part thereof was based.

c. To the extent that Respondent considers any of the following interrogatories objectionable, it should answer or respond to so much of each interrogatory and each part thereof as it deems to be not objectionable, and Respondent should separately state that part of each interrogatory as to which he raises objection and explicitly set forth each ground for each such objection.

d. If Respondent objects to any interrogatory or any part thereof on the claim of privilege, it should identify each statement for which the privilege is claimed together with the following information with respect to each such statement: (1) date, (2) names of persons present, and (3) the basis upon which the privilege is claimed.

e. These Interrogatories are considered to be continuing in character. Accordingly, Plaintiff is required to file supplementary answers if additional information is obtained that is responsive to these interrogatories.

Part II - Interrogatories

1. Identify each person having knowledge or information relating to the allegations asserted by Marine Repair against you in the Complaint filed herein and for each person identified, set forth the allegations about which such person has knowledge or information.
2. State whether you contend that Marine Repair is not (or in the future will not be) permitted or authorized to remove chassis from the Seagirt Marine Terminal ("Seagirt") to the Dundalk Marine Terminal ("Dundalk") via the inner connector bridge, known as the Colgate Creek Bridge, located in the Port of Baltimore and, if you do so contend, state each fact supporting such contention.
3. State whether you contend that the July 19, 2010 Lease and September 9, 2010 License Agreement between you and Marine Repair for space leased at Seagirt are terminated and, if you do so contend, state each fact supporting such contention.
4. State the name and address of each person who has been contacted or supplied information in responding to these interrogatories, identifying in your response the particular interrogatories for which each person was contacted or supplied information.
5. Identify all persons with knowledge of facts concerning this action or its subject matter and state the subject matter as to which each person has knowledge.
6. Identify each person having discoverable information that tends to support a position that you have taken or intend to take in this action, and state the subject matter of the information possessed by that person.
7. Identify each person you expect to call as an expert witness at the hearing, state

the subject matter on which the expert is expected to testify, state the substance of the findings and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and attach to your answers any written report made by the expert concerning those findings and opinions.

8. If you contend that Complainant (or anyone acting on its behalf) has made any admissions or declarations against interest which pertain to the matters alleged in the Complaint, describe each such admission or declaration against interest, include the identity of each such person, the date it was made, and identify all documents relating or referring to such admission or declaration against interest.

9. Identify each customer calling at the Port of Baltimore for whom you provide chassis or container (including refrigerated containers) inspections, maintenance and/or repairs.

10. Identify each employee and agent of the Maryland Ports Administration with whom you have communicated regarding the management, operation and control of Seagirt, Dundalk, the Colgate Creek Bridge and the Canton Warehouse Property.

11. Identify each employee and agent of Multimarine Services Inc. with whom you have communicated since January 2010 regarding the inspection, maintenance and/or repairs of refrigerated containers unloaded at Seagirt and Dundalk.

12. Identify each employee and agent of any steamship line calling at the Port of Baltimore with whom you have communicated since January 2010 regarding the inspection, maintenance and/or repairs of containers, including refrigerated containers, unloaded at Seagirt and Dundalk. Include in your identification the name of the employee

or agent's steamship line.

13. Identify each employee and agent of any steamship line calling at the Port of Baltimore with whom you have communicated since January 2010 regarding the inspection, maintenance and/or repairs of chassis used for the movement of containers (including refrigerated containers) unloaded at Seagirt and Dundalk. Include in your identification the name of the employee or agent's steamship line.

14. Identify each employee and agent of each chassis pool with whom you have communicated since January 2010 regarding the inspection, maintenance and/or repairs of chassis used for the movement of containers (including refrigerated containers) unloaded at Seagirt and Dundalk. Include in your identification the name of the employee or agent's chassis pool.

COOTER, MANGOLD, DECKELBAUM
& KARAS, L.L.P.



Dale A. Cooter
5301 Wisconsin Avenue, N.W.
Suite 500
Washington, D.C. 20015
(202) 537-0700
(202) 364-3664 (Fax)

Dated: July 11, 2011
Washington, D.C.

*Counsel for Complainant
Marine Repair Services of Maryland, Inc.*

ORIGINAL

BEFORE THE FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

RECEIVED

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

MARINE REPAIR SERVICES OF
MARYLAND, INC.,

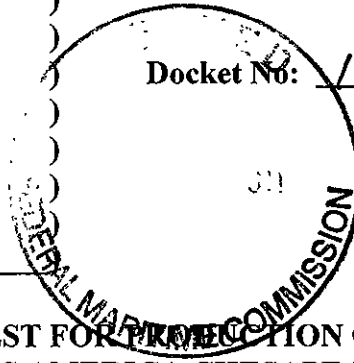
Complainant,

v.

PORTS AMERICA CHESAPEAKE, LLC,

Respondent.

Docket No: 11-11



**COMPLAINANT'S FIRST REQUEST FOR PROTECTION OF
DOCUMENTS TO RESPONDENT PORTS AMERICA CHESAPEAKE, LLC**

Complainant Marine Repair Services of Maryland, Inc. ("Marine Repair"), by and through its undersigned counsel, hereby requests that Respondent Ports America Chesapeake, LLC ("Ports America") serve a written response to this Request, and produce and permit Complainant's counsel to inspect and copy the requested documents at the offices of Cooter, Mangold, Deckelbaum & Karas, LLP, 5301 Wisconsin Avenue, NW, Suite 500, Washington, D.C. 20015, pursuant to the schedule established under 42 CFR §502.201.

DEFINITIONS AND INSTRUCTIONS

1. The phrase "all documents" shall mean each and every document within a stated category known to you, and/or documents reasonably subject to identification, and/or documents which can be located on premises owned or controlled by you and/or elsewhere. Documents located on premises other than your premises are specifically included.

2. This request is continuing in character, so as to require you to file supplemental

responses if you obtain further or different documents prior to or during a hearing.

3. Unless otherwise indicated, this document production request refers to the time, place, and circumstances of the occurrences mentioned in the pleadings filed herein.

4. As used in this request, the term "documents" shall mean, unless otherwise indicated the original and copies of any written, typed, printed, photocopied, photographic, optically recorded or tape recorded matter of any kind in your possession or known by you to exist, no matter how produced, recorded, stored, or reproduced, whether produced or stored on paper, cards, tapes, discs, belts, charts, film, computer storage devices, microfilm, optical, magnetic and electronic recordings, sound recordings, computer printouts or records; including, but not limited to, all letters, correspondence, e-mail, facsimiles, books, periodicals, contracts, telegrams, paper communications, tabulations, charts, memoranda, handwritten notes, charts, drafts, records, memoranda or transcriptions by a mechanical device, by longhand or shorthand recording, tape recorder or by other means, inter- and intra-office communications, microfilm, lists, bulletins, calendars, circulars, desk pads, ledgers, minutes, journals, diaries, invoices, account histories, balance sheets, profit and loss statements, income projections, pamphlets, studies, notices, summaries, reports, analyses, teletype or telecopy messages, work sheets, and all other graphic materials, writings and instruments, however produced or reproduced, including computer-generated or stored matter, including e-mail transmissions and optically stored documents. Said definition shall include, inter alia, recordings, transcripts, and/or summaries of oral communications, telephonic or otherwise.

5. The phrase "all documents" shall mean each and every document within a stated category known to you, and/or documents reasonably subject to identification, and/or documents which can be located on premises owned or controlled by you and/or elsewhere. Documents located on premises other than your premises are specifically included.

6. "Respondent" and/or "You" or "your" shall mean Ports America and any person, agent or representative purporting to act on its behalf, including, unless privileged, its counsel.

7. "Complainant" or "Marine Repair" shall mean Marine Repair and any person and/or agent or representative purporting to act on its behalf.

8. "Maryland Ports Administration" shall mean the Maryland Ports Administration and any person and/or agent or representative purporting to act on its behalf.

9. To the extent that you consider any of the following requests objectionable, respond to so much of each request and each part thereof as is not objectionable in your view and separately state that part of each request as to which you raise objection and each ground for each such objection.

10. For purposes of interpreting or construing the scope of these requests, the terms used shall be given their most expansive and inclusive interpretation unless otherwise specifically limited in the request itself. This includes, without limitation, the following:

- (1) construing the words "and" and "or" used in any request in the

disjunctive and conjunctive, as necessary, to make the request more inclusive;

- (2) construing the words “any” and “all” used in any request to mean “any and all”, as necessary, to make the request more inclusive;
- (3) construing the singular form of any word to include the plural and vice versa;
- (4) construing the past tense of a verb to include the present tense and vice versa; and
- (5) construing the masculine form to include the feminine form and vice versa.

11. Where documents in Respondent’s possession, custody or control are requested or inquired of, such request or inquiry includes documents within the possession of Respondent’s agents, employees, officers, directors, representatives or other persons acting or appearing to act on Respondent’s behalf, and unless privileged, Respondent’s attorneys.

12. If you claim any privilege as a basis for refusing to produce any of the documents requested herein, identify any and all documents that are being so withheld by identifying the author of each document, the date of each document, a description of the type of document (e.g. letter, memorandum, report, etc.), the parties to each document, the subject matter of each document, the identity of all persons who have seen or have knowledge of each document, and the specific basis for the assertion of the privilege as to each such document. If the privilege is being asserted as to only a portion of a document requested, provide so much of the document as is not privileged.

DOCUMENT REQUESTS

1. All documents regarding, referring or relating to the allegations asserted by Marine Repair in the Complaint filed against you herein.
2. All documents regarding, referring or relating to your instruction prohibiting Marine Repair from removing chassis from the Seagirt Marine Terminal ("Seagirt") to the Dundalk Marine Terminal ("Dundalk") via the inner connector bridge, known as the Colgate Creek Bridge, located in the Port of Baltimore.
3. The December 16, 2009 Lease and Concession Agreement between you and the Maryland Port Administration ("Master Lease").
4. All documents regarding, referring or relating to the Master Lease.
5. The July 19, 2010 Lease ("7/1910 Lease") between you and Marine Repair for space leased at the Seagirt Marine Terminal in the Port of Baltimore.
6. All documents regarding, referring or relating to the 7/19/10 Lease.
7. The September 9, 2010 License Agreement between you and Marine Repair ("9/9/10 License Agreement").
8. All documents regarding, referring or relating to the 9/9/10 License Agreement.
9. All documents regarding, referring or relating to the termination of the 7/19/10 Lease.
10. All documents regarding, referring or relating to the termination of the 9/9/10 License Agreement.
11. All documents regarding, relating to, referring to, representing or containing

oral or written communications which are related in any way to the subject matter of this litigation (including but not limited to e-mail correspondence) between you and Marine Repair and any person and/or agent or representative purporting to act on its behalf.

12. All documents regarding, relating to, referring to, representing or containing oral or written communications which are related in any way to the subject matter of this litigation (including but not limited to e-mail correspondence) between you and the Maryland Port Administration, and any person and/or agent or representative purporting to act on its behalf.

13. All documents regarding, relating to, referring to, representing or containing oral or written communications which are related in any way to the subject matter of this litigation (including but not limited to e-mail correspondence) between you and anyone other than Marine Repair or the Maryland Port Administration.

14. All correspondence regarding, referring or relating to the facts alleged in the Complaint.

15. Notes of any telephone conversations regarding, referring or relating to the facts alleged in the Complaint.

16. Notes of any meetings which you attended regarding, referring or relating to the facts alleged in the Complaint.

17. All documents to which you referred in answering Complainant's First Set of Interrogatories, or which support your answers to those Interrogatories.

18. All documents relied upon, or generated by any expert you plan to call as a witness at the hearing of this matter.

19. All documents regarding, referring or relating to the defenses raised in the Answer to the Complaint filed herein.

20. All documents or other tangible things you intend to rely upon to support a position that you have taken or intend to take in the action.

21. All documents regarding, referring to or related to services you or Multimarine have provided to steamship lines calling at Seagirt or Dundalk since 2005.

22. All documents regarding, referring to or related to payments made to you or to Multimarine by steamship lines calling at Seagirt or Dundalk since 2005.

23. All documents regarding, referring to or related to pricing and rates for services you have provided, or which have been provided by Multimarine, at Seagirt and Dundalk since 2005.

COOTER, MANGOLD, DECKELBAUM
& KARAS, L.L.P.



Dale A. Cooter
5301 Wisconsin Avenue, N.W.
Suite 500
Washington, D.C. 20015
(202) 537-0700
(202) 364-3664 (Fax)

Dated: July 11, 2011
Washington, D.C.

*Counsel for Complainant
Marine Repair Services of Maryland, Inc.*

ORIGINAL

BEFORE THE FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

RECEIVED

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

MARINE REPAIR SERVICES OF)
 MARYLAND, INC.)
 2700 Broening Hwy.)
 Shed 1702A-Doorway F)
 Baltimore Maryland 21222,)
)
 Complainant,)
)
 v.)
)
 PORTS AMERICA CHESAPEAKE, LLC)
 1209 Orange Street)
 Wilmington, DE,)
)
)
 Respondent.)
)

Docket No: 11-11

NOTICE OF APPEARANCE

Please enter my appearance in this proceeding as counsel for Complainant, Marine Repair Services of Maryland, Inc.

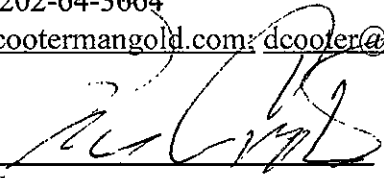
I request to be informed of service of the administrative law judge's initial or recommended decision and of the Commission's decision in this proceeding by:

telephone (In the event that I am not available when you call, appropriate advice left with my office will suffice.)

facsimile transmission

electronic mail

Dale A. Cooter
Cooter, Mangold, Deckelbaum & Karas, LLP
5301 Wisconsin Avenue, NW
Suite 500
Washington, DC 20015
Tel. No. 202-537-0700
Fax No. 202-64-3664
efiling@cootermangold.com; dcooter@cootermangold.com



Dale A. Cooter