

BEFORE THE  
FEDERAL MARITIME COMMISSION

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DOCKET NO. 23-04  
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PORTS AMERICA CHESAPEAKE, LLC,

and

MARINE TERMINALS CORPORATION-EAST

COMPLAINANTS,

v.

APS EAST COAST, INC.

RESPONDENT.  
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**RESPONDENT'S ANSWER TO COMPLAINT**

Respondent APS East Coast, Inc. (“APS East Coast”) hereby answers the Complaint of Complainants Ports America Chesapeake, LLC (hereafter referred to as “PAC”), and Marine Terminals Corporation-East (hereafter referred to as “MTCE,” and collectively with PAC, the “Complainants” or “Ports America”) upon information and belief through its undersigned counsel, with reference to the paragraph numbers in the original Complaint.

**I. COMPLAINANTS**

1. Respondent lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 1. To the extent that a response is required, Respondent denies the allegations.

2. Respondent lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 2. To the extent that a response is required, Respondent denies the allegations.
3. Respondent lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 3. To the extent that a response is required, Respondent denies the allegations.

## **II. RESPONDENT**

4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.

## **III. JURISDICTION**

9. Admitted.
10. Admitted.
11. Paragraph 11 states Complainants' intentions with regard to the pending matter; therefore Respondent lacks sufficient knowledge or information to form a belief as to the allegations set forth therein. To the extent that a response is required, Respondent denies the allegations.
12. The allegations set forth in Paragraph 12 are legal conclusions to which no response is necessary. To the extent a response is required, Respondent denies any and all allegations of violations of the Shipping Act.

#### IV. STATEMENT OF FACTS AND MATTERS COMPLAINED OF

13. Denied.
14. Respondent lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 14. To the extent that a response is required, Respondent denies the allegations.
15. Paragraph 15 sets forth various generalizations, conclusions, and characterizations concerning which Respondent lacks sufficient specific information and knowledge to form a belief as to the accuracy of the allegations. To the extent a response is required, Respondent denies the allegations.
16. Paragraph 16 sets forth various generalizations, conclusions, and characterizations concerning which Respondent lacks sufficient specific information and knowledge to form a belief as to the accuracy of the allegations. To the extent a response is required, Respondent denies the allegations.
17. Admitted.
18. Respondents lack sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 14. To the extent that a response is required, Respondents deny the allegations.
19. Admitted.
20. Admitted.
21. Admitted.
22. Respondent admits that it engaged in auto processing services for automobile manufacturing customers from 2021 to the present, which may include “Mazda, Stellantis, GM, Honda, Ram”. All other statements lack adequate specificity and are

therefore denied.

23. Respondent admits that it provides auto processing services at its AMPORTS terminals. All other allegations in Paragraph 23 consist of generalizations, conclusions, and characterizations, which are denied.
24. Respondent admits that it enters into contracts with certain entities to perform auto processing services at AMPORTS terminals. All other allegations set forth in Paragraph 24 are denied.
25. Admitted.
26. The allegations set forth in Paragraph 26 consists of generalizations, conclusions, and characterizations, about which Respondent lacks sufficient knowledge or information to form a belief, and which are therefore denied.
27. Denied.
28. Respondent lacks sufficient information to admit or deny the allegations of Paragraph 28.
29. Respondent lacks sufficient information to admit or deny the allegations of Paragraph 29.
30. Admitted as to the quoted language in Paragraph 30(a) through 30(g), but all other statements are denied.
31. Admitted.
32. Admitted as to the quoted language from the December 6, 2022 letter, but otherwise denied.
33. Admitted.
34. Admitted.
35. Admitted.
36. Respondent lacks sufficient information to admit or deny the allegations of Paragraph 36.

37. Admitted.
38. Respondent responds to the allegations Paragraph 38 accordingly:
  - a. Admitted.
  - b. Admitted.
  - c. Admitted.
  - d. Admitted.
  - e. Admitted.
  - f. Admitted.
  - g. Denied as to characterization of the statement as “cryptic”; otherwise admitted.
39. Respondent lacks sufficient information to admit or deny the allegations of Paragraph 39.
40. Admitted.
41. Paragraph 41 sets forth presumptions and speculations on the part of Complainants to which no answer is required; to the extent an answer is required, the allegations of Paragraph 41 are denied.
42. Admitted.
43. Admitted as to the quoted language but denied as the characterization of the letter.
44. Admitted.
45. Admitted as to the lack of additional response from Counsel for Ports America to Counsel for AMPORTS prior to the filing of the Complaint; otherwise denied.
46. Denied.
47. Denied.

## **V. VIOLATIONS OF THE SHIPPING ACT**

### **COUNT I – VIOLATIONS OF 46 U.S.C. § 41106(2)**

48. Paragraph 48 sets forth a shotgun pleading merely purporting to repeat and restate all prior allegations, to which Respondent repeats and restates its responses as set forth above.
49. Paragraph 49 sets forth a conclusion of law to which no answer is required. To the extent that a response is required, Complainants' conclusions of law are denied.
50. Paragraph 50 sets forth conclusions of law to which no answer is required. To the extent that a response is required, Complainants' conclusions of law are denied.
51. Paragraph 51 sets forth conclusions of law to which no answer is required; to the extent that a response is required to such conclusions of law, Complainants' conclusions of law are denied. Complainants' factual allegations in Paragraph 51 are denied.
52. Denied.
53. Denied.
54. Denied.

**COUNT II – VIOLATIONS OF 46 U.S.C. § 41102(C)**

55. Paragraph 55 sets forth a shotgun pleading merely purporting to repeat and restate all prior allegations, to which Respondent repeats and restates its responses as set forth above.
56. Paragraph 56 sets forth a conclusion of law to which no answer is required. To the extent that a response is required, Complainants' conclusions of law are denied.
57. Paragraph 50 sets forth conclusions of law to which no answer is required. To the extent that a response is required, Complainants' conclusions of law are denied.
58. Admitted.
59. Denied.

- 60. Denied.
- 61. Denied.
- 62. Denied.
- 63. Denied.

**COUNT III – VIOLATIONS OF 46 U.S.C. § 41106(3)**

- 64. Paragraph 64 sets forth a shotgun pleading merely purporting to repeat and restate all prior allegations, to which Respondent repeats and restates its responses as set forth above.
- 65. Admitted.
- 66. Admitted.
- 67. Admitted that Ports America’s performance factors were found inadequate for consideration as a preferred stevedore during the first year of selection; all other allegations of Paragraph 67 are denied.
- 68. Admitted.
- 69. Admitted.
- 70. Denied.
- 71. Admitted as to the quoted language, otherwise denied.
- 72. Denied.
- 73. Denied.
- 74. Denied.

**VI. CAUSATION AND INJURY TO COMPLAINANTS**

- 75. Denied.

**VII. ALTERNATIVE DISPUTE RESOLUTION**

76. Denied that Ports America, PAC, or MTCE has attempted to resolve this matter with Respondent prior to filing this Complaint. Respondent lacks sufficient information to admit or deny the remaining allegations of Paragraph 76.
77. Respondent lacks sufficient information to admit or deny the allegations of Paragraph 77.

### **VIII. REQUEST FOR ORAL HEARING**

78. Paragraph 78 does not contain any factual allegations and thus does not require a response.

### **IX. ADDITIONAL FACTS**

1. Respondent's Atlantic Terminal (2901 Childs Street, Baltimore, MD 21226) and Chesapeake Terminal (2000 Chesapeake Ave., Baltimore, MD 21226) are privately-owned and operated terminals.
2. The Port of Baltimore is composed of a number of facilities that handle a wide variety of commodities and cargo. Upon information and belief, there are multiple terminals within Baltimore that handle auto and/or ro-ro cargo including Atlantic Terminal, Chesapeake Terminal, TradePoint Atlantic Terminal, Dundalk Marine Terminal, Fairfield Marine Terminal, North/South Locust Point Marine Terminal, and Mid-Atlantic Terminal.
3. Upon information and belief, Ports America Chesapeake, LLC operates Seagirt Terminal under a 50-year public-private partnership agreement signed in 2010 with the Maryland Port Administration.
4. Upon information and belief, Ports America operates as the exclusive stevedores for Seagirt Terminal.

### **X. RESPONDENT'S AFFIRMATIVE DEFENSES**

1. PAC and MTCE lack standing to bring the Complaint.



2. PAC and MTCE lack standing to seek reparations.
3. The allegations in the Complaint lack a meritorious factual basis.
4. PAC and MTCE fail to state a claim upon which relief may be granted.
5. PAC and MTCE fail to include essential elements in their claim as required under 46 C.F.R. § 502.62 (a)(3), including proper verification of the Complaint.
6. PAC and MTCE fail to allege injury and damages sufficient to seek reparations in accordance with 46 C.F.R. § 502.62 (a)(4).
7. Respondent's conduct was neither unreasonable, unjust, or unlawful.
8. Any alleged difference in treatment is justified by legitimate transportation and business factors.
9. The conduct that is the subject of Complainants' Complaint does not constitute a "practice" within the meaning of 46 U.S.C. § 41102 (c).
10. The conduct which is the subject of Complainants' Complaint is neither customary nor continuous.
11. The conduct which is the subject of Complainants' Complaint is not the proximate cause of Claimants' alleged injury.
12. The conduct which is the subject of Complainants' Complaint is the same or more permissive than the conduct utilized by Ports America at Seagirt Marine Terminal.
13. PAC and MTCE failed to take reasonable steps to mitigate any alleged damages or injury.

#### **XI. RESERVATION OF RIGHTS TO AMEND AND RAISE A COUNTERCLAIM**

Respondent reserves its right to amend this Answer and plead any additional affirmative defenses. Respondent further reserves all rights to bring a counterclaim against PAC, MTCE, and any related persons or companies for any outstanding charges owed to Respondent before

the Federal Maritime Commission or any Court of competent jurisdiction as the facts may warrant.

## **XII. REQUEST FOR AN ORAL HEARING**

Respondent requests a hearing on this matter and that such a hearing be held at the Federal Maritime Commission, 800 N. Capitol St. NW, Washington, D.C. 20573.

## **XIII. PRAYER FOR RELIEF**

WHEREFORE, Respondent respectfully requests that the complaint in its entirety be dismissed with prejudice and be granted all such other and further relief as may be just and proper.

Dated: August 28, 2023

Respectfully Submitted,

By:  \_\_\_\_\_

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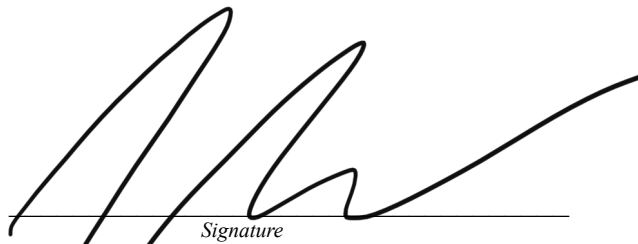
**VERIFICATION OF RESPONDENT**

**APS EAST COAST, INC.**

I, Jacob S. Brown, hereby verify as follows:

1. I am the Treasurer and Secretary of APS East Coast, Inc., which is headquartered at 10060 Skinner Lake Drive, Suite 205, Jacksonville, Florida 32246.
2. I am authorized to make this verification on behalf of APS East Coast Inc.
3. I have read and am familiar with the filings in FMC Docket No. 23-04 including the above Answer and Affirmative Defenses and hereby verify under the penalty of perjury that the foregoing statements of facts contained therein are true and correct to the best of my knowledge, information, and belief.

Dated: August 28, 2023



*Signature*

Name: Jacob S. Brown  
Title: Treasurer and Secretary  
Company: APS East Coast, Inc.  
Email: jakebrown@amports.com

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by electronic mail upon the following persons/addresses:

1. Office of the Secretary  
Federal Maritime Commission  
[secretary@fmc.gov](mailto:secretary@fmc.gov)
2. Hon. Alex M. Chintella - *Administrative Law Judge*  
Federal Maritime Commission  
[Judges@fmc.gov](mailto:Judges@fmc.gov)
3. Gerald A. Morrissey III - *Counsel for Complainants*  
HOLLAND & KNIGHT LLP  
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Dated: August 28, 2023

Respectfully Submitted,

By: 

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