



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

April 12, 2022

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INTERNATIONAL LONGSHOREMEN’S	:	
ASSOCIATION,	:	
	:	
Complainant,	:	FMC Docket No.: <u>22-12</u>
	:	
v.	:	
	:	
GATEWAY TERMINALS, LLC;	:	
CHARLESTON STEVEDORING COMPANY,	:	
LLC; PORTS AMERICA FLORIDA, INC.;	:	
CERES MARINE TERMINALS, INC.; AND SSA	:	
ATLANTIC, LLC.	:	
	:	
Respondents.	:	
-----X	:	

VERIFIED COMPLAINT

Complainant, International Longshoremen’s Association, by and through its undersigned counsel, hereby brings this Verified Complaint against Respondents, Gateway Terminals, LLC; Charleston Stevedoring Company, LLC; Ports America Florida, Inc.; SSA Atlantic, LLC, and Ceres Marine Terminals, Inc., and states as follows:

PARTIES

1. The International Longshoremen’s Association (“ILA”) is a labor organization representing longshore workers, clerks and checkers, maintenance and repair workers, and workers employed in related crafts along the East and Gulf Coasts of the United States, including the Ports of Savannah, Georgia, and Charleston, South Carolina. The ILA maintains offices at 5000 West Side Avenue, North Bergen, NJ 07047.

2. Respondent Gateway Terminals, LLC (“Gateway”) is a Georgia limited liability company with a principal place of business at 1 Greer Road, Suite 1 Rae’s Hall, Garden City, GA 31408. Gateway operates marine terminals in the Port of Savannah, Georgia. Gateway is a joint venture of Respondents Ports America, Florida, Inc. (“Ports America”); SSA Atlantic, LLC (“SSA”); and Ceres Marine Terminals, Inc. (“Ceres”), operating under FMC Agreement 201293 (the “FMC Agreement”).

3. Respondent Charleston Stevedoring Company, LLC (“CSC”) is a Delaware limited liability company with a principal place of business at 2265 Clements Ferry Road, Suite 310B, Charleston, SC 29492. CSC operates marine terminals in the Port of Charleston, South Carolina. CSC is a joint venture of Respondents Ports America, SSA, and Ceres operating under the same FMC Agreement.

4. Respondent Ports America is a Florida corporation with its principal place of business at 2150 Guy N. Verger Blvd., Tampa, FL 33602.

5. Upon information and belief, Respondent SSA is a Delaware limited liability company with its principal place of business located at 1131 SW Klickitat Way, c/o Candice M. Woods, Seattle, WA, 98134. SSA also has a place of business located at 107 Southern Blvd, Suite 201, Savannah, GA 31405.

6. Respondent Ceres is a Maryland corporation with its principal place of business located at 565 Marriott Drive, Suite 400, Nashville, TN, 37214. Ceres also has a place of business located at 2 Main St, Savannah, GA 31408.

JURISDICTION

7. The Commission has jurisdiction over this Verified Complaint pursuant to 46 U.S.C. § 41301 because it alleges violations of the Shipping Act of 1984. The Commission also has jurisdiction over this Verified Complaint pursuant to 46 U.S.C. §

41307 because the Verified Complaint alleges that Gateway, CSC, Ports America, SSA, and Ceres (together “Respondents”) operate Gateway and CSC in a manner that is by design trade restrictive and anticompetitive pursuant to 46 U.S.C. § 41102(b); because the Verified Complaint alleges that Gateway and CSCA operate contrary to the terms of the FMC Agreement; pursuant to 46 U.S.C. 41105(6) because the Verified Complaint alleges that Gateway and CSC negotiate charges and rates for covered services in an anti-competitive manner; pursuant to 46 U.S.C. 41106 because the Verified Complaint alleges that any negotiations engaged in by Gateway or CSC—as the sole terminal operator in their respective Ports and together as the sole terminal operator in the two largest Ports in the same geographical area—are illusory and prejudicial to the other party; and pursuant to 46 C.F.R. § 502.68 because the Verified Complaint demands a Declaratory Order stating that the FMC Agreement is anticompetitive and no longer effective.

8. The Commission has personal jurisdiction over Gateway because Gateway has engaged in and continues to engage in international maritime commerce of the United States, and because it has submitted to the jurisdiction of the Commission by filing agreements with the Commission as required by 46 U.S.C. §§ 40301(a), 40302. Article 13 of the FMC Agreement expressly acknowledges that the Agreement and its terms are “[s]ubject to the Shipping Act of 1984, as amended.”

9. The Commission has personal jurisdiction over CSC because CSC has engaged in and continues to engage in such international maritime commerce of the United States, and because it has submitted to the jurisdiction of the Commission by filing agreements with the Commission as required by 46 U.S.C. §§ 40301(a), 40302. Article 13 of the FMC Agreement expressly acknowledges that the Agreement and its terms are “[s]ubject to the Shipping Act of 1984, as amended.”

10. The Commission has jurisdiction over Ports America because it has engaged in and continues to engage in such international maritime commerce of the United States and because, as a terminal operator, Ports America and its agents engage in international maritime commerce of the United States at ports and inland intermodal terminals where they engage in the interchange of cargo containers and container chassis moving in such commerce. The Commission also has jurisdiction over Ports America because Article 13 of the FMC Agreement expressly acknowledges that the Agreement and its terms are “[s]ubject to the Shipping Act of 1984, as amended.”

11. The Commission has jurisdiction over Ceres because it has engaged in and continues to engage in such international maritime commerce of the United States and because, as a terminal operator, Ceres and its agents engage in international maritime commerce of the United States at ports and inland intermodal terminals where they engage in the interchange of cargo containers and container chassis moving in such commerce. The Commission also has jurisdiction over Ceres because Article 13 of the FMC Agreement expressly acknowledges that the Agreement and its terms are “[s]ubject to the Shipping Act of 1984, as amended.”

12. The Commission has jurisdiction over SSA because it has engaged in and continues to engage in such international maritime commerce of the United States and because, as a terminal operator, SSA and its agents engage in international maritime commerce of the United States at ports and inland intermodal terminals where they engage in the interchange of cargo containers and container chassis moving in such commerce. The Commission also has jurisdiction over Ceres because Article 13 of the FMC Agreement expressly acknowledges that the Agreement and its terms are “[s]ubject to the Shipping Act of 1984, as amended.”

FACTUAL ALLEGATIONS

13. Upon information and belief, Ports America, Ceres and SSA were the three marine terminal operators operating in the Port of Savannah, GA and Charleston, SC until December 31, 2019.

14. The Port of Savannah is owned by the Georgia Ports Authority, which leased the marine terminal property to Ports America, Ceres, and SSA until December 31, 2019.

15. The Port of Charleston is owned by the South Carolina States Ports Authority, which leased marine terminal property to Ports America, Ceres, and SSA until December 31, 2019.

16. The ILA and its affiliated local unions represent longshore workers, clerks, checkers, and maintenance workers in the Ports of Charleston and Savannah for the purposes of collective bargaining with their employers, including Ports America, Ceres, and SSA.

17. Ports America, Ceres, and SSA were and are parties to various collective bargaining agreements with the ILA and its affiliated local unions in various ports along the East and Gulf Coasts of the United States, including the Ports of Charleston and Savannah.

18. On March 8, 2019, Ports America, Ceres and SSA submitted a proposed cooperative working agreement, FMC Agreement No. 2019-06783 (“Proposed Agreement”), to the Commission for review pursuant to § 40301(b) of the Act.

19. When filed, the Proposed Agreement envisioned the formation of a joint venture called “NEWCO” that would serve as the sole terminal operator in both the Port of Savannah, GA and the Port of Charleston, SC.

20. NEWCO was intended to be a joint venture that would join Ports America, Ceres and SSA into one sole terminal operator in both Ports.

21. As intended under the Proposed Agreement, NEWCO and the Respondents would collaborate together to exchange pricing and logistics information between one another to establish identical or substantially similar rates and charges in the Ports of Savannah, GA and Charleston, SC.

22. NEWCO, as established in the Proposed Agreement, would become the sole terminal operator in the two largest ports along the United States' southeastern coast and the sole terminal operator in the fourth (Savannah) and ninth (Charleston) largest ports in the United States.

23. NEWCO would then force carriers and other customers to pay the rates and charges demanded by NEWCO, lest the carriers and customers decide to bring their cargo to another region of the United States altogether in order to utilize a port of similar size and cargo capacity.

24. After receiving a copy of the Proposed Agreement, the ILA filed a Comment with the Secretary of the Commission.

25. A copy of the ILA's Comment is attached hereto and incorporated herein as **Exhibit A**.

26. Within its Comment, the ILA argued that NEWCO would be anticompetitive and trade-restrictive under both the Commission's *per se* rule and the Commission's rule of reason framework.

27. Specifically, the ILA argued as follows:

“[T]he creation of Newco limits the carriers' ability to solicit bids on services in the two largest ports in the southeastern region, completely eliminating competition between the terminal operators and forcing the

carriers to pay whatever rate Newco will elect to charge them. Because the agreement fixes prices within the relevant market, the agreement violates the anti-trust laws per se.”

Exhibit A, p. 4.

28. The ILA also argued in its Comment that the Agreement would cause anti-competitive harm because the Agreement “enable[s] Newco to set and negotiate tonnage rates and to negotiate contracts with the ports, labor organizations and third parties, [and accordingly] Newco has been expressly created so that the parties could agree to a price within the relevant market.” **Exhibit A**, p. 4-5.

29. After the ILA filed its Comment, the Commission postponed the proposed effective date of the Proposed Agreement until December 31, 2019 while the Commission gathered additional information from the Respondents concerning how NEWCO would perform and operate.

30. Upon information and belief, while the Proposed Agreement was under review by the Commission, a decision was made to split NEWCO into two entities—one in Savannah and one in Charleston—at the Commission’s direction.

31. Upon information and belief, by its action, the Commission recognized that the establishment of a sole terminal operator in both Savannah and Charleston, as intended by the Proposed Agreement, was clearly trade restrictive and posed a significant harm to competition in the shipping industry.

32. NEWCO never began its operation in either of the two Ports.

33. There were never any filings for the formation or incorporation of NEWCO in the States of Georgia, South Carolina, Delaware, or—upon information and belief—any other state.

34. On December 31, 2019, a final version of the Proposed Agreement was published on the Commission's website as Agreement No. 201293.

35. CSC was formed in the state of Delaware on January 29, 2020, shortly thereafter. CSC is a joint venture of SSA, Ceres, and Ports America that is now acting as the sole terminal operator in Charleston.

36. Gateway is operated by SSA, Ceres, and Ports America as a single entity which is now the only marine terminal operator in Savannah, GA. Gateway has in effect merged SSA, Ceres, and Ports America into the sole terminal operator in the Port of Savannah, GA.

37. Gateway had been originally formed in the State of Georgia on June 20, 1995. Gateway was created as a joint limited liability company between Ceres, Carolina Stevedoring Company, Inc., and two corporate arms of Cooper/T. Smith Stevedoring to operate as a container gatehouse in the Port of Savannah.

38. Upon information and belief, Cooper/T. Smith Stevedoring was purchased and acquired by Respondent SSA prior to entering the Proposed Agreement with the other Respondents.

39. Gateway was administratively dissolved by the state of Georgia from July 29, 2005 through June 15, 2009. It maintained its registration from 2009 onward.

40. On March 30, 2021, Gateway updated its registered office address in order to begin operating in Savannah, GA, in the same joint venture capacity as originally contemplated for NEWCO in the Proposed Agreement.

41. FMC Agreement No. 201293 “Agreement”), as published on the Commission’s website on December 31, 2019, contains language identical to the language found in the Proposed FMC Agreement No. 2019-06783.

42. The FMC Agreement is the effective agreement under which Gateway and CSC operate.

43. The terms set forth in the FMC Agreement are the same terms that Gateway, CSC, and the other Respondents rely on to do business with one another.

44. Accordingly, in the following excerpts from the Agreement, NEWCO can effectively be read as either Gateway or CSC, or both entities together.

45. The Agreement, attached hereto and incorporated herein as **Exhibit B**, expressly provides as follows:

The Parties to this Agreement (each a “Party” and more than one collectively the “Parties”) are identified in Appendix A and are marine terminal operators as defined in the Shipping Act of 1984, as amended (the “Shipping Act”), 46 U.S.C. § 40102(14). Each Party operates public wharves, other marine terminal facilities, or a combination of the foregoing in connection with ocean common carriage. This Agreement covers services and activities of the Parties at the Ports.

Agreement, Article 3.

46. The Agreement provides further that:

NEWCO [now Gateway Terminals, LLC] shall provide marine terminal services and conduct container stevedoring, terminal, container freight station, and activities incidental thereto, at the Ports. Specifically, the Parties agree that, during the term of this Agreement, NEWCO will assume responsibility for providing those facilities and services currently provided by the Parties in their individual capacity in the Ports, including marine terminal gate operations and vessel loading and unloading operations, and the operation of equipment and technology related thereto.

NEWCO and the Parties expect to enter into long-term license agreements with each of the Ports for the use of facilities in those Ports. Such agreements will detail the services to be provided by NEWCO within the scope set out above, and include matters ancillary to those services, such

as development of systems, policies and procedures to enhance operational coordination between those facilities and services which will be provided by NEWCO (e.g., marine terminal gate and vessel loading and unloading operations) and those facilities and services which currently are, and will remain, under the control of the Ports (e.g., operation and manning of cranes and container yard areas), in order to provide more efficient and better quality service for users.

Agreement §§ 4.2-4.3.

47. Section 4.4 of the FMC Agreement provides, *inter alia*, that Gateway and CSC will “[e]stablish rates, charges and competitive practices” and may “[n]egotiate and enter into agreements within the scope of NEWCO’s scope with the Ports and/or any other third parties concerning marine terminal facilities and/or services, and/or agreements to provide stevedoring, and other related services, subject to any applicable governmental filing requirements.”

48. Sections 4.5 and 4.6 of the FMC Agreement permit all of the Respondents to exchange pricing and accounting information between and among one another in order to set charges and rates, to hire labor jointly, and to lease space from the Georgia Ports Authority and the South Carolina State Ports Authority.

49. Article 5.3, Discussion and Exchange of Information provides:

In furtherance of the authorities set forth above, the Parties are authorized to meet as appropriate to discuss and exchange information regarding the following subjects as related to NEWCO’s operations at the Ports:

(a) Joint or independent acquisition and utilization of marketing materials for individual customers and/or groups of customers (conferences, alliances, joint services, carrier networks, ports, and other agreements to which ocean common carriers or ports are parties) (any such entity individually a “Customer” and collectively “Customers”), shippers, beneficial cargo owners, and ocean transportation intermediaries;

(b) Commercial opportunities regarding Customers. This includes vessel calls and rotations, operational efficiencies, cost reductions, the changing shipping environment, large ship operations, supply-chain technology, stevedoring, gate, rail and yard operations, warehousing,

safety and security, customer service, and new product lines;

(c) Joint or independent acquisition, utilization, and best practices relating to operating systems and equipment;

(d) In addition, the Parties are authorized jointly to meet with and exchange information with Customers, shippers, other marine terminal operators, beneficial cargo owners, and ocean transportation intermediaries regarding operational issues and performance criteria at a Port or the Ports, subject to any limitations or filing requirements set forth in the Shipping Act and FMC regulation Agreement, Article 3. . .

Agreement § 5.3 (a)-(d).

50. In January 2020, Gateway began to operate as the sole terminal operator in the Port of Savannah, GA under the terms of the FMC Agreement.

51. In January 2020, CSC likewise began to operate as the sole terminal operator in the Port of Charleston, SC under the terms of the FMC Agreement.

52. As contemplated by the FMC Agreement, although the two joint ventures operate under separate names, they are both controlled by Respondents Ports America, SSA, and Ceres.

53. Upon information and belief, all of the Respondents continue to share information and services together as set forth in Sections 4.5, 4.6 and 5.3 of the FMC Agreement. **Exhibit B.**

54. Upon information and belief, while operating under the terms of the effective FMC Agreement, the Respondents have established single rates and charges or substantially similar rates and charges in both Ports.

55. By continuing to set rates and charges and to share information as set forth within the FMC Agreement, the Respondents have created a single terminal operator that completely controls rates, charges, and bargaining opportunities in the southeastern region's largest two Ports, Charleston and Savannah.

56. As the ILA predicted when it submitted its Comment several years ago, Gateway and CSC operate as intended by the Respondents to restrain trade and competition in the Ports of Savannah, GA and Charleston, SC.

**COUNT ONE AGAINST THE RESPONENTS
FOR RESTRAINT ON COMPETITION AND TRADE**

57. The ILA re-alleges and incorporates by reference paragraphs 1-56 as if fully started herein.

58. The Commission is expressly directed to reject agreements that are “likely to substantially lessen competition in purchasing of certain covered [Marine Terminal Operator] services.” Frank LoBiondo Coast Guard Authorization Act of 2018, Pub. L. No. 115-282, Title VII § 710.

59. Section 4.4 of the FMC Agreement states that the Respondents shall establish competitive rates and charges in the Port of Savannah and the Port of Charleston.

60. Through the express terms of the FMC Agreement and by nature of its operation as sole terminal operator in the Port of Savannah, Gateway alone sets and controls the prices that carriers will pay to load and unload cargo in the Port, requiring carriers and labor organizations to negotiate the pricing of services with Gateway alone.

61. Likewise, as sole terminal operator in the Port of Charleston, CSC alone sets and controls the prices that carriers will pay to load and unload cargo in the Port, requiring carriers and labor organizations to negotiate the pricing of services with CSC alone.

62. Upon information and belief, a carrier or cargo customer can only avoid paying the rates and charges established by Gateway or CSC by refusing to call in either

the Port of Savannah or the Port of Charleston.

63. Thus, a carrier is forced to choose between paying the arbitrary rates and charges set by Gateway or CSC or be forced to call at another port.

64. This price-fixing is made even more egregious because the only true competitor in terms of size and tonnage capacity in the southeastern region for the Port of Savannah, GA is the Port of Charleston, SC and vice versa.

65. Upon information and belief, Gateway, CSC and the remaining Respondents, which are the same three terminal operators that jointly operate both Gateway and CSC, discuss the rates and charges to be set in both of the ports which were to be covered by NEWCO under the Proposed Agreement.

66. Upon information and belief, the Respondents set rates and charges in one of the two ports either identically to or substantially similar to the rates and charges assessed in the other of the two ports.

67. In effect, in order to avoid paying the rates and charges set by Gateway in the Port of Savannah or CSC in the Port of Charleston, carriers must either pay the rates and charges demanded by Gateway and/or CSC or refuse to utilize both of the two largest ports in the southeastern region altogether.

68. Carriers must then travel to either the Port of Jacksonville, Florida or Wilmington, North Carolina to avoid the Respondents' monopoly.

69. Plainly, this total control over terminal operation and related charges and rates in the two largest ports in the southeastern region cannot be competitive.

70. By engaging in this price-fixing in the two largest ports in the southeastern United States, Gateway, CSC and the Respondents create a lock on rates and charges to access an entire region of the United States.

71. Accordingly, Gateway and CSC operate in the same trade-restrictive and anticompetitive manner that was contemplated for NEWCO within the Proposed Agreement.

72. Upon information and belief, the rates and charges imposed by Gateway and CSC from January 1, 2020 to the present have forced carriers and other cargo customers to pay inflated rates and charges for the cost of doing business with Gateway's and CSC's monopoly in as much as \$1,000,000.00, though the damages caused by Respondents may far exceed this amount in proportion to the harm caused by the Respondents.

73. To prevent further harm by the Respondents to the ocean carriers and residential customers and consumers in and around the Ports of Savannah, GA, and Charleston, SC, the ILA demands that the Commission impose monetary reparations from the Respondents, jointly and severally, in an amount to be shown.

**COUNT TWO AGAINST THE RESPONDENTS
FOR RESTRAINT ON COMPETITION AND TRADE
THROUGH THEIR MERGER**

74. The ILA re-alleges and incorporates by reference paragraphs 1-73 as if fully stated herein.

75. Ports America, Ceres and SSA were competitors in the market for marine terminal operations and stevedoring in the Port of Savannah, GA.

76. Likewise, they were competitors in the market for marine terminal operations and stevedoring in the Port of Charleston, SC.

77. Under the FMC Agreement, Gateway has assumed all of the functions of the once competitors as sole terminal operator within the Port of Savannah, GA and CSC has assumed all of the functions of the once competitors as sole terminal operator within

the Port of Charleston, SC.

78. Ports America, Ceres and SSA previously performed terminal operation and stevedoring services in competition with one another.

79. The express terms of the FMC Agreement authorize Gateway and CSC to negotiate rates, prices and enter primary and third party contracts, completely eliminating competition between and among the former competitors in both of the two large ports.

80. This elimination of competition results in what is in effect a merger between Ports America, Ceres and SSA which covers the Port of Savannah, GA and the Port of Charleston, SC.

81. Upon information and belief, the rates and charges imposed by Gateway and CSC from January 1, 2020 to the present have forced carriers and other cargo customers to pay inflated rates and charges for the cost of doing business with Gateway's and CSC's monopoly in as much as \$1,000,000.00, though the damages caused by Respondents may far exceed this amount in proportion to the harm caused by the Respondents.

82. To prevent further harm by the Respondents to the ocean carriers and residential customers and consumers in and around the Ports of Savannah, GA, and Charleston, SC, the ILA demands that the Commission impose monetary reparations from the Respondents, jointly and severally, in an amount to be shown.

**COUNT THREE AGAINST THE RESPONDENTS
FOR VIOLATIONS OF THE CLAYTON ACT**

83. The ILA re-alleges and incorporates by reference paragraphs 1-82 as if fully stated herein.

84. Section 13 of the Clayton Act prohibits any person engaged in commerce

from offering services to a customer unless the prices charged for services are on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

85. As sole terminal operator in the Port of Savannah, Gateway acts to completely block customer competition.

86. Likewise, as sole terminal operator in the Port of Charleston, CSC acts to completely block customer competition.

87. Together, the Respondents, as the sole terminal operators in either port, act to completely block customer competition.

88. Pursuant to the Agreement, customers can now only bargain to negotiate rates and charges with Gateway or CSC, which by contemplation of the FMC Agreement, set rates and charges with one another.

89. Upon information and belief, all customers which wish to ship containerized cargo through Savannah, GA must pay an identical rate and charge in order to do so. Customers must do the same if they wish to ship containerized cargo through Charleston, SC.

90. Prior to the joint venture, customers could individually negotiate rates and charges with each of the three Respondent terminal operators which were formerly competitors in each Port.

91. Carriers and customers must then factor in this rate and charge into the cost which the carrier or customer then itself charges to consumers in southeastern United States.

92. By engaging in this price-fixing for terminal operator rates and charges offered by the Respondents, the Respondents have violated Section 13(d) and (e) of the

Clayton Act, 15 U.S.C. § 13(d), (e).

93. The rates and charges imposed by Gateway and CSC from January 1, 2020 to the present have forced carriers and other cargo customers to pay inflated rates and charges for the cost of doing business in either the Port of Charleston or Port of Savannah.

94. To cover these inflated rates and charges imposed by Respondents, the carriers and cargo customers must pass the artificially inflated costs to consumers in the southeastern United States.

95. To prevent further harm by the Respondents to the ocean carriers and residential customers and consumers in and around the Port of Savannah, GA, and Charleston, SC, the ILA demands that the Commission impose monetary reparations from the Respondents, jointly and severally, in an amount to be shown.

96. To prevent further harm by the Respondents to the ocean carriers and residential customers and consumers in and around the Port of Savannah, GA and the Port of Charleston, SC, caused by the inflated rates and charges demanded by the Respondents, the ILA demands that the Commission impose monetary reparations, in an amount to be shown, in accordance with the Clayton Act, 15 U.S.C. § 15.

**COUNT FOUR AGAINST THE RESPONDENTS
FOR ENGAGING IN CONCERTED ACTION
IN VIOLATION OF § 41105(6)**

97. The ILA re-alleges and incorporates by reference paragraphs 1-96 as if fully stated herein.

98. Section 41105(6) of the Shipping Act, 46 U.S.C. § 41105(6), makes it unlawful for a common carrier to negotiate for the purchase of covered services in violation of the United States antitrust laws.

99. As set forth in more detail above, the FMC Agreement permits the Respondents to price-fix the rates and charges charged to carriers and other customers in the two largest ports in the southeastern United States.

100. This price-fixing for services is a violation of Section 13(d) and (e) of the Clayton Act, 15 U.S.C. § 13(d), (e).

101. By engaging in this price fixing for terminal operator rates and charges offered by the Respondents, the Respondents have violated Section 41105(6) of the Shipping Act.

102. Each day that Gateway and CSC have operated under the FMC Agreement since its effective date was a separate violation by the Respondents of Section 41105(6).

**COUNT FIVE AGAINST THE RESPONDENTS
FOR REFUSING TO DEAL AND NEGOTIATE**

103. The ILA re-alleges and incorporates by reference paragraphs 1-102 as if fully stated herein.

104. Section 41106(2) of the Shipping Act, 46 U.S.C. § 41106(2), makes it unlawful for a marine terminal operator to impose any undue or unreasonable prejudice or disadvantage with respect to any person.

105. Section 41106(3) of the Shipping Act, 46 U.S.C. § 41106(3), makes it unlawful for a marine terminal operator to unreasonably refuse to deal or negotiate with any person.

106. As set forth in more detail above, the Agreement permits Gateway, CSC and the other Respondents to fix the rates and charges charged to carriers and other customers in the two largest ports in the southeastern United States.

107. By engaging in this price-fixing for terminal operator rates and charges

offered by the Respondents, any rates and charges imposed by Respondents are unreasonable and disadvantage the carriers and other customers which must pay the arbitrary rates and charges established by the Respondents to utilize either the Port of Savannah, GA or the Port of Charleston, SC.

108. By engaging in this price-fixing, any negotiations with Gateway or CSC are illusory as there is no competition in the market within the Ports of Savannah or Charleston.

109. The Respondents have therefore violated Section 41106(2) and (3) of the Shipping Act and each day that either Gateway or CSC has operated under the FMC Agreement since its effective date was a separate violation by the Respondents of Section 41105(6).

**COUNT SIX AGAINST THE RESPONDENTS
FOR OPERATING CONTRARY TO THE AGREEMENT AND
FOR MODIFYING THE AGREEMENT**

110. The ILA re-alleges and incorporates by reference paragraphs 1-109 as if fully started herein.

111. Section 41102(b) of the Shipping Act prohibits any entity which has filed an agreement pursuant to Section 40302 of the Shipping Act from operating contrary to the express terms of the agreement filed with the Commission.

112. Section 41102(b) also prohibits any entity which has filed an agreement pursuant to Section 40302 from modifying the agreement as filed and approved by the Commission.

113. Section 4.4 of the Agreement provides that Gateway will “[e]stablish rates, charges and competitive practices” with all entities that it contracts its services to.

114. By nature of its status as sole terminal operator within the Port of

Savannah, Gateway cannot establish competitive rates and charges because there is no other terminal operator which customers can approach for a competitive rate.

115. Likewise, as sole terminal operator within the Port of Charleston, CSC cannot establish competitive rates and charges because there is no other terminal operator which customers can approach for a competitive rate.

116. Upon information and belief, a carrier must pay the rates and charges as set forth by Gateway, without any negotiation, because Gateway is the sole terminal operator in the Port of Savannah, GA, and must pay the rates and charges as set forth by CSC, without any negotiation, because CSC is the sole terminal operator in the Port of Charleston.

117. Upon information and belief, Respondents, through the information sharing provisions of the FMC Agreement, **Exhibit A**, Section 5.3, work together to set charges and rates consistent in both the Port of Charleston and Port of Savannah.

118. These are not competitive practices.

119. By operating contrary to the express terms of Section 4.4 of the FMC Agreement, the Respondents have individually and collectively violated Section 41102(b) of the Shipping Act.

120. Each day that Gateway or CSC operated contrary to Section 4.4 of the FMC Agreement since its effective date was a separate violation by the Respondents, jointly and severally, of Section 41102(b) of the Shipping Act.

**COUNT SEVEN AGAINST THE RESPONDENTS
FOR A DECLARATORY ORDER**

121. The ILA re-alleges and incorporates by reference paragraphs 1-120 as if fully started herein.

122. 46 C.F.R. § 502.68 of the Commission's regulations permit any person to file a petition with the Commission for a Declaratory Order to end a controversy.

123. As stated above, the Commission is expressly directed to reject agreements that operate in a trade-restrictive and anticompetitive manner under the Frank LoBiondo Coast Guard Authorization Act of 2018, Pub. L. No. 115-282, Title VII § 710.

124. By engaging in rate and charge fixing in the two largest ports in the southeastern United States and for the reasons set forth in more detail herein, Gateway and CSC operate in the same trade-restrictive and anticompetitive manner in which the Respondents intended that NEWCO would operate within the Proposed Agreement.

125. The ILA demands that the Commission issue a Declaratory Order stating that the FMC Agreement No. 201293 substantially lessens competition in the purchasing of certain covered Marine Terminal Operator services in violation of the United States' antitrust laws.

126. The ILA further demands that the Commission rescind the FMC Agreement and declare the FMC Agreement ineffective.

COUNT EIGHT AGAINST THE RESPONDENTS FOR OTHER APPROPRIATE RELIEF

127. The ILA re-alleges and incorporates by reference paragraphs 1-126 as if fully stated herein.

128. Though Ports America, SSA and Ceres continue to exist in a legal sense, they no longer perform any terminal operation services in the Port of Savannah, GA or the Port of Charleston, SC.

129. All terminal operation services in the Port of Savannah, GA, are performed by Gateway and all terminal operation services in the Port of Charleston, SC,

are performed by CSC.

130. In reality, the three former competitors have entered a merger between and amongst themselves to monopolize terminal operation services in both of the Ports.

131. The legality of a merger is to be assessed by the concurrent jurisdiction of the Federal Trade Commission and the Department of Justice rather than the Commission alone.

132. In its comment, the ILA requested the Commission to direct the Respondents to file and complete the necessary merger filings with the Federal Trade Commission in connection with the FMC Agreement before the FMC Agreement became effective. **Exhibit A**, p. 7.

133. Upon information and belief, the Respondents never filed the necessary merger filings with the Federal Trade Commission during the Commission's review period.

134. The Commission should direct the Respondents to file the necessary merger filings and declare the FMC Agreement ineffective until the Federal Trade Commission has ruled on the legality of the merger between the Respondents.

DESIGNATION OF HEARING PLACE

The ILA respectfully requests that any hearing in this matter be considered at the Federal Maritime Commission's offices, located at 800 North Capitol Street, N.W Washington, D.C. 20573, or in light of the ongoing Coronavirus Pandemic, via a video conference platform.

PRAYER FOR RELIEF

WHEREFORE, the ILA demands judgment against the Respondents as follows:

(a) As for the first and second counts, that the Commission enter an order

directing the Respondents, severally and jointly, to pay reparations in the amount of \$1,000,000 or in a manner shown to be commensurate with the harm caused by the Respondents' anticompetitive and trade restrictive practices in the Port of Savannah, GA and Charleston, SC in accordance with § 41107(a);

(b) As for the third count, that the Commission direct the Respondents to pay, severally and jointly, treble damages and interest allowable under 15 U.S.C. § 15(a);

(c) As for the fourth, fifth and sixth counts, that the Commission enter an order directing the Respondents, severally and jointly, to pay reparations in the amount of \$1,000,000 or in an amount to be shown that is commensurate with the Respondents' violations of the Shipping Act, 46 U.S.C. §§ 41102(b), 41105(6), and 41106(b) and (c) and in accordance with § 41107(a);

(d). As for the seventh count, that the Commission enter a declaratory order rescinding FMC Agreement No. 201293 and declaring FMC Agreement No. 201293 ineffective;

(e). As for the eighth count, that the Commission enter an order rescinding FMC Agreement No. 201293 and declaring FMC Agreement No. 201293 ineffective until the Federal Trade Commission has ruled on the legality of the joint venture between the Respondents in accordance with its review of mergers between former competitors;

(f). Awarding the ILA reasonable and necessary attorney fees, costs and expenses incurred in the prosecution of their claims for violations of the antitrust laws against the Respondents, pursuant to 15 U.S.C. § 15(a) and 46 U.S.C. § 41305(d); and

(g). Granting such other and further relief as the Commission deems just and proper, together with costs and disbursements of this action.

Dated: April 1, 2022

MAZZOLA MARDON, P.C.

By: 

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*Counsel to Plaintiff, International
Longshoremen's Association*

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

-----X
INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION,

Complainant,

v.

GATEWAY TERMINALS, LLC;
CHARLESTON STEVEDORING COMPANY,
LLC; PORTS AMERICA FLORIDA, INC.;
CERES MARINE TERMINALS, INC.; AND SSA
ATLANTIC, LLC.

Respondents.
-----X

FMC Docket No.: _____

VERIFICATION

I, Dennis A. Daggett, am Executive Vice President of the International Longshoremen's Association ("ILA"), located at 5000 West Side Avenue, North Bergen, NJ 07047. I have read the foregoing Verified Complaint and believe, to the best of my knowledge, information, and belief, including information received from others, that the facts stated therein are true and correct. I declare under penalty of perjury that the foregoing is, according to my knowledge, information, and belief, true and correct.

Executed on: April 1, 2022.



Dennis A. Daggett
Executive Vice President, ILA