

BEFORE  
THE FEDERAL MARITIME COMMISSION

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DOCKET NO. 24-04

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ICL USA, Inc.

*Complainant*

VS.

DEPENDABLE HIGHWAY EXPRESS, INC.,  
MEDITERRANEAN SHIPPING COMPANY S.A. and MSC  
MEDITERRANEAN SHIPPING COMPANY (USA) INC.  
as agent for Mediterranean Shipping Company S.A.

*Respondents*

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**VERIFIED ANSWER TO ICL USA INC.'S VERIFIED COMPLAINT**

Respondents, MEDITERRANEAN SHIPPING COMPANY S.A. (“MSC S.A.”) and MSC MEDITERRANEAN SHIPPING COMPANY (USA) INC. (“MSC USA”) (collectively “MSC” or “Respondents”) through its undersigned counsel, answers Complainant ICL USA, Inc.’s (“ICL” or “Complainant”) Verified Complaint (“Complaint”), upon information and belief, as follows:

**INTRODUCTORY STATEMENT**

The allegations raised in the Complaint are presented in such an ambiguously compounded way as to make it impractical, if not impossible for MSC to submit a reasonable answer. Therefore, for many of the Complaint’s allegations, MSC can only answer with general denials or lack of information sufficient to form a belief to the allegations raised in the Complaint.

## **INTRODUCTION**

1. Paragraph 1 of ICL's Complaint does not contain factual allegations against Respondents and, therefore, does not require an answer. To the extent an answer is required, Respondents deny the allegations contained in paragraph 1 of ICL's Complaint.
2. Paragraph 2 of ICL's Complaint does not contain factual allegations against Respondents and, therefore, does not require an answer. To the extent an answer is required, Respondents deny the allegations contained in paragraph 2 of ICL's Complaint.

## **PARTIES AND OTHER ENTITIES**

3. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3 of ICL's Complaint.
4. Paragraph 4 of ICL's Complaint does not contain factual allegations directed at answering Respondents and, therefore, does not require an answer. To the extent an answer is required, Respondents deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 of ICL's Complaint.
5. Admit that MSC S.A. is headquartered at Chemin Rieu 12-14, CH-1208 Geneva, Switzerland and is an ocean common carrier conducting business in the United States through its agent MSC (USA) Inc. that has an office is located at 420 5th Avenue, 8th Floor, New York, NY 10018. The remaining allegation in paragraph 5 of ICL' Complaint calls for a conclusion of law requiring no answer. To the extent an answer is required, Respondents deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5 of ICL's Complaint as stated and defer all question of law to the Commission for determination.

## **JURISDICTION**

6. Deny the allegations contained in paragraph 6 of ICL's Complaint.

7. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7 of ICL's Complaint.

8. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8 of ICL's Complaint.

9. The allegations in paragraph 9(a), (b) and (c) of ICL's Complaint call for a conclusion of law requiring no answer. To the extent a response is required Respondents deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9(a), (b) and (c) of ICL's Complaint as stated and defer all question of law to the Commission for determination.

### **FACTUAL ALLEGATIONS**

10. Admits that between September 2021 and April 2020 MSC carried ICL's cargo but except as specifically admitted deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 10 of ICL's Complaint.

11. Paragraph 11 of ICL's Complaint does not contain factual allegations directed at answering Respondents and, therefore, does not require an answer. To the extent an answer is required, Respondents deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 of ICL's Complaint.

12. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12 of ICL's Complaint.

13. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 13 of ICL's Complaint.

14. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 14 of ICL's Complaint.

15. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 15 of ICL's Complaint.

16. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 16 of ICL's Complaint.

17. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 17 of ICL's Complaint.

18. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 18(a),(b) and (c) of ICL's Complaint.

### **CAUSE OF ACTION**

#### **COUNT I**

#### **VIOLATION BY MSC OF THE SHIPPING ACT of 1998 as Amended 2022 ("the Shipping Act"), 46 USC §41104(a)(2)(A); §41102 (c) and 46 C.F.R. §545.5**

19. Respondents incorporates by reference each admission, denial or denial of knowledge or information stated in paragraphs 1 through 18 of this answer.

20. Paragraph 20 of ICL's Complaint contains a recitation of certain portion of 46 USC 41104(a)(2)(A) that do not require a response since the statute speak for itself. To the extent a response is required Respondents deny any alleged violation of the statute that may be hinted in paragraph 20 of ICL's Complaint and defer all question of law to the Commission for determination.

21. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 21 of ICL's Complaint.

22. The allegations in paragraph 22 of ICL' Complaint call for a conclusion of law requiring no response. To the extent a response is required Respondents deny the allegations contained in

paragraph 22 of ICL's Complaint as stated and defer all question of law to the Commission for determination.

23. The allegations in paragraph 23 of ICL' Complaint call for a conclusion of law requiring no response. To the extent a response is required Respondents deny the allegations contained in paragraph 23 of ICL's Complaint as stated and defer all question of law to the Commission for determination.

**COUNT II**  
**VIOLATION BY DHE OF THE SHIPPING ACT of 2022 a ("the Shipping Act"),**  
**46 USC §41104(a)(2)(A)**

24. Respondents incorporates by reference each admission, denial or denial of knowledge or information stated in paragraphs 1 through 23 of this answer.

25. Paragraph 25 of ICL's Complaint does not contain allegations against Respondents and, therefore, does not require an answer. To the extent an answer is required, Respondents deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 25 of ICL's Complaint and defer all question of law to the Commission for determination.

26. Paragraph 26 of ICL's Complaint does not contain allegations against Respondents and, therefore, does not require an answer. To the extent an answer is required, Respondents deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 26 of ICL's Complaint and defer all question of law to the Commission for determination.

27. Paragraph 27 of ICL's Complaint does not contain allegations against Respondents and, therefore, does not require an answer. To the extent an answer is required, Respondents deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 27 of ICL's Complaint and defer all question of law to the Commission for determination.

28. Paragraph 28 of ICL's Complaint does not contain allegations against Respondents and, therefore, does not require an answer. To the extent an answer is required, Respondents deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 28 of ICL's Complaint and defer all question of law to the Commission for determination.

29. Paragraph 29 of ICL's Complaint does not contain allegations against Respondents and, therefore, does not require an answer. To the extent an answer is required, Respondents deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 29 of ICL's Complaint and defer all question of law to the Commission for determination.

#### **INJURY TO BE SUFFERED BY ICL**

30. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 30 of ICL's Complaint.

31. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 31 of ICL's Complaint.

32. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 32 of ICL's Complaint.

#### **AS AND FOR AFFIRMATIVE DEFENSES TO THE CLAIMS SET FORTH IN THE COMPLAINT, RESPONDENTS ALLEGE UPON INFORMATION AND BELIEF AS FOLLOWS**

1. The Federal Maritime Commission lacks subject matter jurisdiction over the Complaint.
2. The Federal Maritime Commission lacks personal jurisdiction over Respondent MSC USA.
3. The Complaint fails to allege essential elements of a claim as provided under 46 CFR 502.62 (a)(3)(iii).
4. The Complaint fails to state a claim against Respondents on which relief may be granted.

5. MSC USA is an agent for a disclosed principal and Claimant is and was aware of that agent/principal relation.

6. MSC USA is not an ocean common carrier, marine terminal operator, or ocean transportation intermediary subject to 46 U.S.C. § 41102.

7. MSC waived, refunded (or is in in the process of refunding) or issued credits to DHE for all of the charges at issue in the Complaint for which: (a) it received from DHE request/s for waiver along with the related supporting evidence, and (b) upon review of the supporting evidence it assessed the request/s for waiver as valid.

8. The allegations in the Complaint lack a meritorious factual basis.

9. Respondents' conduct was reasonable considering the totality of the circumstances.

10. Any alleged damages sustained by the Complainant were proximately, directly, and solely caused by the acts of third persons over whom the Respondents had and has no direction or control.

11. In the alternative, and without waiver of any other defenses or affirmative defenses, Complainant has failed to mitigate its damages.

**RESERVATION OF RIGHTS TO AMEND AND TO RAISE A COUNTERCLAIM**

Respondents reserve the right to amend this Answer and to plead any additional affirmative defenses.

Respondents reserve all rights to bring a counterclaim against ICL and a crossclaim against DHE for any of the charges allegedly involved in ICL's Complaint. before the Federal Maritime Commission or any Court of competent jurisdiction.

WHEREFORE, Respondents pray that after due oral hearing to be conducted in Washington, D.C., or by video conference, an order be made dismissing the Complaint.

Respectfully submitted,

/s/Wook Chung

/s/Kaspar Kielland \_\_\_\_\_

Wook Chung

Kaspar Kielland

**Montgomery McCracken Walker & Rhoads LLP**

427 Madison Avenue, 24<sup>th</sup> Floor

New York, New York 10022

(212) 201-1931 / (212) 867-9500

Dated: March 29, 2024



VERIFICATION OF RESPONDENTS  
MEDITERRANEAN SHIPPING COMPANY S.A.  
and  
MSC MEDITERRANEAN SHIPPING COMPANY (USA) INC.

Nicholas Hargreaves herby verifies as follows:

1. I am Internal Counsel of MSC MEDITERRANEAN SHIPPING COMPANY (USA) INC.  
("MSC USA").
2. MSC USA is the agent for MEDITERRANEAN SHIPPING COMPANY S.A. ("MSC S.A.")
3. I am authorized to make this verification on behalf of both MSC S.A. and MSC USA.
4. I hereby verify that the facts contained in the foregoing answer and affirmative defenses are true and correct to the best of my knowledge, information, and belief.
5. I verify under penalty of perjury that the foregoing is true and correct.

Dated: March 29, 2024



Name: Nicholas Hargreaves  
Title: Internal Counsel for MSC USA Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of March 2024, the foregoing pleading was served via electronic mail on:

Federal Maritime Commission  
Office of the Secretary  
[secretary@fmc.gov](mailto:secretary@fmc.gov)

Federal Maritime Commission  
Presiding Administrative Law Judge Erin M. Wirth  
[judges@fmc.gov](mailto:judges@fmc.gov)

Complainant  
ICL USA, INC.  
c/o Husch Blackwell LLP  
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Respondent  
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/s/Kaspar Kielland