

**BEFORE THE
FEDERAL MARITIME COMMISSION**

OL USA, LLC,)	
)	
Complainant,)	
)	
v.)	DOCKET NO. 24-11
)	
MAERSK A/S,)	
)	
Respondent.)	
)	

**MAERSK A/S’ RESPONSE TO OL USA LLC’S REQUEST FOR
OFFICIAL NOTICE IN SUPPORT OF ITS MOTION TO DISMISS**

U.S. District Judge Engelmayer’s April 19, 2024 Opinion and Order (“Order”) in *OL USA LLC v. Maersk A/S* pending in the United States District Court for the Southern District of New York (“NY Action”) is irrelevant to the issues before Commission.

In the NY Action, the Complainant’s First Amended Complaint (“FAC”) pleads a single cause of action against MAERSK A/S (“MAERSK”) for conversion of the subject containers. MAERSK moved under Fed. R. Civ. P. 12(b)(6) to dismiss: (1) the FAC on the ground that it fails “to plead cognizable damages,” and (2) the claim for punitive damage contending the FAC fails to plead sufficient facts to “justify its claim for punitive damages” (Order, p.5).

The Court denied MAERSK’s motion to dismiss the FAC for failing to plead cognizable damages on the narrow ground that “under New York law, a plaintiff is not required to plead damages to state a claim for conversion” (p. 6) because a successful plaintiff on a conversion claim may recover *nominal* damages. The Court further held that, although the FAC did not seek nominal damages, a “complaint need not include a prayer for nominal damages to preserve such a

claim” (Opinion, p. 7, n. 5). The Court denied MAERSK’s motion to dismiss the punitive damages claim on the ground that it was “procedurally premature” (Order, p. 9). The Court did not address whether OL USA sufficiently alleges, or can prove, its claims for lost profits, equitable detention/demurrage charges under MAERSK’s Tariff or other damages.

The NY Action Order stands for the limited proposition that OL USA may be entitled to nominal damages if it can prove the elements of its conversion claim. The Opinion has no bearing on the instant action. The Opinion has no relevance to MAERSK’s pending dismissal motion based on Complainant’s failure to produce sufficient evidence supporting its claims for lost profits and container detention charges. These issues have not yet been addressed in the NY action.

Dated: August 8, 2024

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of August, 2024, the foregoing Maersk A/S's Response to OL USA's Request for Official Notice in Support of its Motion to Dismiss was served via electronic mail on:

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