

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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

**MAERSK’S MOTION FOR EXTENSION OF TIME TO SERVE  
SUPPLEMENTAL DISCOVERY ON COMPLAINANT**

**I. PRELIMINARY STATEMENT.**

Respondent, MAERSK A/S (“MAERSK”), respectfully submits this motion pursuant to 46 CFR Sec. 502.102 for a brief extension up to August 8, 2024 to serve the attached Supplemental Interrogatories and Document Requests on Complainant.

**II. PROCEDURAL BACKGROUND.**

MAERSK’s Interrogatory No. 7 broadly requests OL USA to identify all alleged business losses claimed “as a result of the unavailability of the Containers.” MAERSK’s Interrogatory No. 7 does not ask OL USA to identify only losses of business on shipments it specifically booked and designated for loading and transportation in the five (5) subject SOCs, or later cancelled because the SOCs were unavailable.

OL USA’s unsworn Supplemental Responses semantically answer Interrogatory No. 7 as follows: “...OL USA states that it does not have *specific losses* because OL USA did not *book shipments for the Shipping Containers* while they were in Maersk’s possession” (emphasis added) (Exhibit “A” hereto) (MSK-079-MSK-082). OL USA takes the liberty of re-writing MAERSK’s Interrogatory No. 7 and radically narrowing its scope to cover only losses of

allegedly involving cargo bookings that were specifically assigned to any of the subject SOCs. Interrogatory No. 7, however, unambiguously calls for OL USA to disclose any and all business revenue losses it claims resulted from the “unavailability” of the subject SOCs, whether or not the shipments were specifically pre-booked to one of the SOCs.

Moreover, OL USA’s evasive Supplemental Response to Interrogatory No. 7, is entirely at odds with an email (OL-USA000301) Complainant produced for the first time on August 1, 2024 that MAERSK received on August 5, 2024. The email, dated April 13, 2022, is from OL USA to MAERSK (“RE: OL SOC UNITS”) and states, in relevant part, “Knowing that your company is still not able to return the empty to us in the time frame that we require, it has *created tremendous damages* to our company and our customers. Those SOC were rented to move our outbound cargoes for a specific project which was cancelled at the end due to the misuse of the SOC from MSK side...” (emphasis added) (Exhibit “B” hereto) (MSK-086).

### **III. LEGAL ARGUMENTS.**

OL USA’s recently-served Supplemental Response to MAERSK’s Interrogatory No. 7 (Exhibit “A”) and its April 13, 2022 email (Exhibit “B”) are contradictory and confusing. On one hand, OL USA contends in its unsworn Supplemental Response No. 7 that it has no “specific losses” of bookings attributable to the subject containers, but its April 13, 2022 email explicitly states that it had “tremendous damages” from cancelling a “specific project” because it did not have the SOCs.

OL USA’s contradictory discovery responses justify MAERSK serving a short, targeted set of Supplemental Interrogatories and Document Requests directed to the inconsistent unsworn Supplemental Response No. 7 (Exhibit “A”) and April 13, 2022 email (Exhibit “B”). The Supplemental requests clarify and broaden MAERSK’s Interrogatory No. 7 covers any

alleged container shortage and further seeks information and documents relating to the subjects of the April 13, 2022 email (Exhibit "B").

MAERSK's basic due process rights warrant the supplemental discovery requests to OL USA to protect MAERSK from unfair surprise. Accordingly, MAERSK has today served the attached Supplemental Interrogatories and Document Requests (Exhibit "C") (MSK-087-MSK-092) on OL USA to which responses will be due on September 9, 2024.

### **III. CONCLUSION.**

MAERSK did not receive OL USA's supplemental disclosures due on August 1, 2024 until August 5, 2024. Accordingly, in the interest of justice, MAERSK respectfully requests a brief extension up to and including August 8, 2024 to serve the attached Supplemental Interrogatories and Document Requests on OL USA.

Dated: August 8, 2024

GEORGE W. WRIGHT & ASSOCIATES, LLC

By: /s/ George W. Wright  
GEORGE W. WRIGHT  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of August, 2024, the foregoing Motion For Extension to Serve Supplemental Interrogatories and Document Requests on Complainant was served via electronic mail on:

Eric Larson Zalud, Esq.  
Deana S. Stein, Esq.  
Caroline R. Hamilton  
Benesch, Friedlander, Coplan & Aronoff LLP  
Attorneys for Complainant  
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Kelly E. Mulrane, Esq.  
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([kmulrane@beneschlaw.com](mailto:kmulrane@beneschlaw.com))

/s/ George W. Wright  
GEORGE W. WRIGHT

**EXHIBIT "A"**

MSK-079

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

**DOCKET NO. 24-11**

**OL USA LLC  
COMPLAINANT,  
v.  
MAERSK A/S,  
RESPONDENT.**

**OL USA LLC'S SUPPLEMENTAL OBJECTIONS AND RESPONSES  
TO MAERSK A/S'S FIRST SET OF INTERROGATORIES**

Complainant OL USA LLC ("OL USA"), by and through its undersigned counsel, and pursuant to 46 U.S.C. §§ 502.141 and 502.145, hereby serves its Supplemental Objections and Responses to the First Set of Interrogatories (the "Interrogatories") of Respondent Maersk A/S ("Maersk").

**OBJECTIONS**

OL USA incorporates its objections from its June 17, 2024 Objections and Responses to Maersk A/S's First set of Interrogatories as if restated herein.

**SUPPLEMENTAL INTERROGATORY RESPONSES**

7. Identify each and every loss of any shipment booking, loss of business or loss of revenue alleged by You as a result of the unavailability of the Containers and with respect to each such alleged loss, provide the following:

- (A) the date of the loss;
- (B) the nature of the loss;
- (C) the actual or potential customer, shipper or consignee involved;
- (D) the dollar amount of the loss; and

(E) all documents You rely on or refer to in answering this Interrogatory.

**RESPONSE:** Objection. OL USA incorporates its general objections, and further objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, and to the extent it seeks information that is neither relevant to the above-captioned lawsuit, nor is reasonably calculated to lead to the discovery of relevant evidence as to whether Maersk maintained a tariff in compliance with the FMC Rules and The Shipping Act. Subject to and without waiving the foregoing general and specific objections, OL USA states but for Maersk's misconduct, it would not have purchased the Containers. Further answering, OL USA states that if it was able to timely recover its Containers, it could have used them for shipments or sold them.

**SUPPLEMENTAL RESPONSE:** OL USA incorporates its previous objections as though fully restated herein. Subject to and without waiving its general and specific objections, OL USA states that it does not have specific losses because OL USA did not book shipments for the Shipping Containers while they were in Maersk's possession. Rather, OL USA estimates that it could have made approximately \$128,680.00 in profits had Maersk not in-gated the Shipping Containers in Savannah so that OL USA could have used the Shipping Containers for its own purpose. Maersk retained the Shipping Containers at a time when carriers were giving discounts and guaranteed space for shippers and ocean transportation intermediaries who had their own boxes. OL USA was not able to take advantage of these discounts because Maersk was using OL USA's Shipping Containers during this time period. *See* OL-USA000331, OL-USA000333, and OL-USA000335 for calculations of OL USA's lost profits claims and back up documentation for profit margin.

8. Set forth in detail how You calculate each element of Your alleged economic losses or damages claimed in this action and with respect to each such element, provide the following:

(A) The mathematical formula used for Your calculation; and

(B) All documents You rely on or refer to for Your calculation.

**RESPONSE:** Subject to and without waiving its general objections, OL USA states that its damages include the \$32,500 it spent to purchase the Containers from Honour Lane Shipping and detention/demurrage costs using Maersk's rates at the applicable times. Additionally, OL USA seeks to recover the lost profits it could have made if Maersk had timely returned the Shipping Containers. This can be calculated by multiplying the number of trips inbound, the number of containers, and the extra margin. OL USA also seeks to recover applicable interest and its reasonable attorneys' fees. Further answering, OL USA directs Maersk to OL USA's FMC Mediation Statement, which was served on June 12, 2024, and details OL USA's damages claim. OL USA will produce all responsive, relevant documents in its possession, custody, and control responsive to this Interrogatory.

**SUPPLEMENTAL RESPONSE:** OL USA incorporates its previous objections as though fully restated herein. Subject to and without waiving its general and specific objections, OL USA states that it seeks the following damages:



- \$32,500.00 for the purchase of the Shipping Containers. *See* OL-USA000095.
- Detention and demurrage charges for the duration that Maersk improperly retained the Shipping Containers for its own use while OL USA was attempting to recover the Shipping Containers less the sale price of the Shipping Containers. OL USA previously produced a spreadsheet (OL-USA000202) which calculated these damages based on Maersk's applicable tariffs at the time. Since that production, the fifth Shipping Container has been returned. Thus, OL USA has updated this spreadsheet and is producing it herewith. *See* OL-USA000332.
- Lost profits it could have made if Maersk had timely returned the Shipping Containers. This can be calculated by multiplying the number of trips inbound, the number of containers, and the extra margin. This calculation was done based on a 45 day turn time using a closed loop environment/ shuttle service of containers moving only between Shanghai and Los Angeles. The margin is calculated using actual performance reports from the relevant time period. The spreadsheet and performance reports are being produced herewith. *See* OL-USA000331, OL-USA000333, and OL-USA000335.
- OL USA also seeks to recover applicable interest and reasonable attorneys' fees. Because this case is ongoing, these figures are subject to change. OL USA will submit its attorneys' bills if the FMC decides to award attorneys' fees. *See* OL-USA000332 which contains approximate legal fees.

Dated: August 1, 2024

Respectfully submitted,

**BENESCH, FRIEDLANDER, COPLAN  
& ARONOFF LLP**

By: /s/ Kelly E. Mulrane

Eric Larson Zalud

Caroline Hamilton

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Email: kmulrane@beneschlaw.com

*Counsel to Complainant*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Supplemental Objections and Responses to Maersk A/S's First Set of Interrogatories* were electronically served on counsel for Maersk A/S on August 1, 2024.

*Kelly E. Mulrane*

*One of the attorneys for OL USA LLC*

**EXHIBIT "B"**

MSK-085

Ashanta Blackmon  
Senior Account Executive



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Mobile Phone: +1 973 520-3167  
[www.maersk.com](http://www.maersk.com)

*PTO April 20th (half Day) and Returning April 25th*

Classification: Internal

From: Joanne Chan <[Chan.Joanne@ol-usa.com](mailto:Chan.Joanne@ol-usa.com)>  
Sent: Wednesday, April 13, 2022 3:49 PM  
To: Ashanta Blackmon <[ashanta.blackmon@maersk.com](mailto:ashanta.blackmon@maersk.com)>; Alan Baer <[alan.baer@ol-usa.com](mailto:alan.baer@ol-usa.com)>  
Cc: Angel N. Espinoza <[angel.espinoza@tts-worldwide.com](mailto:angel.espinoza@tts-worldwide.com)>; Matthew Fleisig <[matthew.fleisig@tts-worldwide.com](mailto:matthew.fleisig@tts-worldwide.com)>  
Subject: RE: OL SOC UNITS

This message was sent from outside of your organization. Please do not click links or open attachments unless you recognize the source of this email and know the content is safe.

**\*\*Without prejudice \*\*\***

Hi Ashanta

I like to run the number to you just want to make sure we are on the same page .

The detention fee is \$125 per day per container after the free time. Knowing that your company is still not able return the empty to us in the time frame that we require, it has created tremendous damages to our company and our customers. Those SOC were rented to move our outbound cargoes for a specific project which was cancelled at the end due to the misuse of the SOC from MSK side. On top of the detention fee, we are proposing MSK a purchase price of \$6500 for the each SOC and your company can keep the SOC for your own use. This might be a better solution instead of paying daily accumulating detention fee of \$125

Please see the breakdown as follows . please confirm we can deduct the money from our balance due with your company .

HPCU4154761, unloaded on 12/9/2021, 21days free container usage : 12/9 - 12/29  
Detention fee usd125 since 12/30/2021 to 4/12/2022 = USD125 X 104days = USD 13000.  
DET on top of TOTAL LOSS = USD13000+USD6500 = USD 19500

**EXHIBIT "C"**

MSK-087



- (A) the date of the alleged loss;
- (B) the nature of the alleged loss;
- (C) the name and address of the actual or potential customer, shipper or consignee involved;
- (D) the dollar amount of the alleged loss; and
- (E) all documents You rely on or refer to in answering this Interrogatory, including but not limited to documents relating to or reflecting (i) cancellation of a booking (ii) the existence of container shortage and/or (iii) OL USA's efforts to mitigate or remedy any container shortage.

2. With respect to the email (OL USA 000301), dated April 13, 2022, from OL USA to MAERSK, state the following:

- (A) last known contact information for Ms. Joanne Chan;
- (B) Joanne Chan's job title and responsibilities with OL USA on April 13, 2022;
- (C) The contractual or other source of the \$125 per day container detention fee referenced in the email;
- (D) state the total amount of any per diem container detention fees deducted by OL US from any amount owed to MAERSK;
- (E) state the amount of all alleged monetary damages and identify the customer referenced in the email; and
- (F) Identify the specific project referenced in the email including:
  - (i) the nature and location of the project;
  - (ii) produce all documents reflecting OL USA's contract for the project and reasons for its cancellation; and
  - (iii) produce all documents reflecting any OL USA efforts to avoid cancellation of the project and mitigation of the alleged damages.

Dated: August 8, 2024



/s/ George W. Wright  
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Narinder S. Parmar, Esq.  
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Columbus, OH 43215  
(kmulrane@beneschlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of August the foregoing Supplemental Interrogatories and Document Requests were served via electronic mail on:

Eric Larson Zalud, Esq.  
Deana S. Stein, Esq.  
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GEORGE W. WRIGHT

Ashanta Blackmon  
Senior Account Executive



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*PTO April 20th (half Day) and Returning April 25th*

Classification: Internal

From: Joanne Chan <[Chan.Joanne@ol-usa.com](mailto:Chan.Joanne@ol-usa.com)>  
Sent: Wednesday, April 13, 2022 3:49 PM  
To: Ashanta Blackmon <[ashanta.blackmon@maersk.com](mailto:ashanta.blackmon@maersk.com)>; Alan Baer <[alan.baer@ol-usa.com](mailto:alan.baer@ol-usa.com)>  
Cc: Angel N. Espinoza <[angel.espinoza@tts-worldwide.com](mailto:angel.espinoza@tts-worldwide.com)>; Matthew Fleisig <[matthew.fleisig@tts-worldwide.com](mailto:matthew.fleisig@tts-worldwide.com)>  
Subject: RE: OL SOC UNITS

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\*\*Without prejudice \*\*\*

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