

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 24-11

**OL USA LLC
COMPLAINANT,**

v.

**MAERSK A/S,
RESPONDENT.**

**OL USA LLC’S OPPOSITION TO MAERSK A/S’S
MOTION TO COMPEL DEPOSITIONS**

Maersk A/S (“Maersk”) is needlessly wasting the Federal Maritime Commission’s (“FMC”) time with this frivolous Motion to Compel Depositions because there is nothing to compel. OL USA LLC (“OL USA”) will produce the requested witnesses within its control and has never stated otherwise.¹ In fact, yesterday, OL USA provided Mr. Baer and Mr. Fleisig’s availability for their respective depositions.² (Exhibit A.) Maersk, not OL USA, is the party holding up the deposition schedule due to its recent insistence that it take depositions in a certain order.

¹ Sylvie Boualavong is a former OL USA employee. OL USA is trying to secure her attendance for a deposition but may only be able to provide her last known address and contact information. The remaining deponents are either current OL USA employees or *counsel* for OL USA and therefore OL USA can presently confirm that they will all attend their respective depositions. Additionally, Megan MacCallum is outside counsel for OL USA and, while OL USA is willing to produce Ms. MacCallum, OL USA anticipates that her testimony will be limited to topics that are not attorney-client privileged or attorney work product. OL USA raises this here so as to avoid a future motion to compel in the event OL USA is not able to get ahold of Ms. Boualavong or otherwise secure her attendance, and to the extent that Maersk seeks testimony from Ms. MacCallum that is privileged or protected.

² As of the time of this filing, Maersk has not responded to schedule their depositions.

On June 28, 2024, Maersk served a deposition notice which unilaterally scheduled the depositions of six OL USA witnesses. Without having conferred with OL USA about dates, it was unreasonable for Maersk to expect its proposed schedule could be wholesale adopted. Additionally, nowhere in the notice does Maersk indicate that the depositions must occur in a specific order. On July 9, counsel for OL USA requested that Mr. Baer's deposition be moved due to a scheduled medical procedure—something Maersk would have known had it conferred on dates with OL USA before issuing its deposition notice. Maersk agreed to postpone his deposition.

While Maersk implies that OL USA has entirely refused to discuss depositions, OL USA's counsel did reply to Maersk's July 16th inquiry regarding dates for Mr. Baer's deposition. OL USA informed Maersk that it was still working on finding suitable dates. (Exhibit B.) This may not have been the response Maersk wanted, but it was nonetheless a response, and it was a truthful statement that OL USA's counsel was still trying to find dates for that deposition.

On July 22, two days before Mr. Fleisig's scheduled deposition, and having heard nothing from Maersk regarding logistics, counsel for OL USA asked Maersk if it intended to proceed with his deposition. Maersk chose to cancel the deposition even though Mr. Fleisig and OL USA were prepared to attend. After filing this Motion, Maersk also sought to postpone Ms. MacCallum's deposition which was scheduled for July 31. Maersk's concern over maintaining the deposition schedule due to tight timelines rings hollow considering it requested that Mr. Fleisig and Ms. MacCallum's depositions be rescheduled.

Given this context, OL USA was surprised to receive the Motion to Compel Depositions late on Friday, July 26. Aside from a couple emails, Maersk made no effort to meet and confer on this issue nor did Maersk notify OL USA of its intention to file the instant Motion. Simply put, this issue was not ripe for a motion to compel. Arguably, this Motion to Compel was moot before it

was ever filed. But certainly, now that OL USA has provided dates for Mr. Baer and Mr. Fleisig's depositions, this Motion is moot. OL USA looks forward to scheduling the remaining depositions—for both parties—in the coming weeks and respectfully requests that the FMC deny Maersk's Motion to Compel Depositions.

Dated: August 2, 2024

Respectfully submitted,

**BENESCH, FRIEDLANDER, COPLAN
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Opposition to Maersk A/S's Motion to Compel Depositions* was filed on August 2, 2024.

Kelly E. Mulrane

One of the attorneys for OL USA LLC