

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 24-11**  
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**OL USA LLC  
COMPLAINANT,**

**v.**

**MAERSK A/S,  
RESPONDENT.**

**OL USA LLC'S RESPONSE TO MAERSK A/S'S  
SUPPLEMENTAL MOTION TO COMPEL**

Pursuant to 46 CFR § 502.150(a)(3), OL USA LLC (“OL USA”) respectfully submits this Response to Maersk A/S’s (“Maersk”) Supplemental Motion to Compel (“Motion”) filed on June 19, 2024.

On June 17, 2024, OL USA served responses to Maersk’s Interrogatories and Requests for Production and made a document production. The next day, Maersk indicated that it would file a supplemental motion to compel based on perceived deficiencies with OL USA’s production. OL USA responded that it would produce additional damages related documents on June 20, 2024, because June 19 is a federal holiday and counsel’s office was closed. Maersk proceeded to file the instant Motion on June 19, 2024. OL USA produced the additional damages documents on June 20, 2024, as promised.

First, OL USA has produced all damages related documents in its possession and sufficiently explained the basis for lost profits in its Interrogatory responses. OL USA’s lost profits claim is primarily supported by testimonial evidence, hence the relatively small universe of damages related documents. The nature of the lost opportunity is such that there are no further

documents to support it. Moreover, OL USA's President explained its claim for lost profits during the mediation on June 21, 2024. Specifically, Alan Baer presented OL USA's position that it is known to Maersk and in the ocean shipping industry that during the period of time that Maersk had OL USA's Shipping Containers in its inventory, there was a container shortage in many lanes. As a result, ocean carriers were offering discounts to parties utilizing shipper owned containers and were guaranteeing space on vessels in those lanes. Mr. Baer stated that based on his industry knowledge, OL USA would have been able to realize a greater margin when utilizing its own containers with the ocean carriers' discounts coupled with the guaranteed space on vessels in certain lanes for which OL USA had established customer demand. This is true, but the documentary evidence of the discounts being offered by carriers and the guarantee of space is within the possession, custody, and control of Maersk. OL USA did provide documentation of the shipments it booked during the time at issue to support its customers' needs during that time. Thus, at this point, Maersk has all the documents and information it needs to understand and assess OL USA's lost profits claim.

The second deficiency Maersk identifies in its Motion is its request for written instructions to access OL USA's published tariff. OL USA's tariff is not relevant to the claims pending before the Federal Maritime Commission. Moreover, OL USA is not obligated to provide such written instructions. The tariffs are published publicly and are equally accessible to Maersk as they are to OL USA. Thus, OL USA is not required to give Maersk the detailed written instructions it requests. Further, Maersk's Request for Production No. 1 simply requests "All Tariffs filed or published by You". It does not request instructions for accessing any tariff. Maersk's request for written instructions was not contained in a discovery request, but rather in an email from counsel. Even if it were proper to request written instructions or directions in a request for production, a party is

not required to create documents to satisfy a request for production. In essence, Maersk seeks to compel the creation and production of a document it did not request. That is not a proper request, nor is it a proper basis for a motion to compel. Maersk's request to compel the production of a document that was not requested and does not presently exist should be denied.

Finally, OL USA has produced responsive documents. Thus, it is unclear why Maersk takes issue with OL USA's representation that it will "produce relevant, non-privileged responsive documents to this Request, within its possession, custody, and control to the extent they exist and can be located after a diligent search and a reasonable inquiry," which is an appropriate response to a request for production.

Accordingly, OL USA respectfully requests that the Federal Maritime Commission deny Maersk's Supplemental Motion to Compel.

Dated: June 26, 2024

Respectfully submitted,

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

By: /s/ Kelly E. Mulrane

Eric Larson Zalud

Caroline R. Hamilton

BENESCH, FRIEDLANDER, COPLAN &  
ARONOFF LLP

127 Public Square, Suite 4900

Cleveland, OH 44114-2378

Telephone: (216)-363-4500

Email:

e Zalud@beneschlaw.com

chamilton@beneschlaw.com

Kelly E. Mulrane

BENESCH, FRIEDLANDER, COPLAN &  
ARONOFF LLP 41

South High Street, Suite 2600

Columbus, Ohio 43215

Telephone: (614) 223-9318

Email:

kmulrane@beneschlaw.com

*Counsel to Complainant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26<sup>th</sup> day of June, 2024, the foregoing Response to Maersk's Supplemental Motion to Compel Discovery Responses was served via electronic mail on:

George W. Wright  
gwright@wright-associate.com  
Narinder Parmar  
nparmar@wrigh-associate.com  
505 Main Street, Suite 106  
Hackensack, NJ 07601

*Counsel for Maersk A/S*

*/s/ Kelly E. Mulrane*  
*One of the attorneys for OL USA LLC*