



**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**OL USA LLC,**

**Complainant,**

**vs.**

**MAERSK A/S,**

**Respondent.**

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**DOCKET No.: 24-11**

**VERIFIED COMPLAINT**

**INTRODUCTION**

1. Complainant OL USA LLC (“OL USA” or “Complainant”), by its attorneys at Benesch, Friedlander, Coplan & Aronoff, LLP, hereby brings this Verified Complaint against Maersk A/S (“Maersk” or “Respondent”), alleging violations of the Shipping Act of 1984, 46 U.S.C. § 40101 *et seq.* (the “Shipping Act”), pursuant to the Federal Maritime Commission’s (“FMC”) authority under Section 11(a) of the Shipping Act, 46 U.S.C. § 41301(a).

2. Claimant alleges, upon information and belief, the following:

**NAMED PARTIES AND OTHER ENTITIES**

3. OL USA is a limited liability company formed and existing pursuant to the laws of the State of Delaware with its principal place of business at 265 Post Avenue, Suite 333, Westbury, NY 11590.

4. Upon information and belief, at all relevant times, Maersk was and is a foreign corporation organized and existing under the laws of Denmark, with its principal place of business at Esplanaden 50, Copenhagen, Denmark, 1098.

5. For purposes of its relationship with Maersk, OL USA is a “Shipper” as such term is defined in 46 U.S.C. § 40102(17).

6. OL USA is in the business of providing non-vessel operating common carrier services.

7. Maersk is an “Ocean Common Carrier” as such term is defined in 46 U.S.C. § 40102(18).

### **JURISDICTION**

8. The FMC has subject matter jurisdiction over this action pursuant to the Shipping Act of 1984, 46 U.S.C. § 40101 *et seq.*

9. The FMC has personal jurisdiction over Maersk as an Ocean Common Carrier as defined in 46 U.S.C. § 40101.

10. OL USA files this Verified Complaint pursuant to 46 U.S.C. § 41301 for injuries caused to OL USA by Respondent as a result of Respondent’s violations of the Shipping Act. As more particularly described below, Respondent acted unreasonably and deceptively by failing to keep open for public inspection its tariffs in an automated tariff system, as required by 46 U.S.C. § 40501 and 46 C.F.R. Part 520.

11. The FMC may award payment for reparations for actual injury caused by a violation of the Shipping Act, pursuant to the filing of a sworn complaint alleging the same and filed within three years of the claim, including an award of attorneys’ fees. 46 U.S.C. § 41301, 41305.

### **MEMORANDUM OF FACTS**

12. In November and December 2021, certain shipping containers were mistakenly delivered by a motor carrier to and accepted by a Maersk operated and controlled terminal of the Port of Savannah in Savannah, Georgia: (1) HPCU4154798; (2) HPCU4154761;

(3) HPCU4154822; (4) HPCU4154777; and (5) HPCU4154756 (the “Shipping Containers”).

13. Honour Lanes Shipping (“HLS”), a worldwide logistics company based in Hong Kong, owned the Shipping Containers, which HLS leased to OL USA.

14. OL USA was required to take responsibility for the Shipping Containers upon pick up in China and was responsible for their return to HLS.

15. At the time of acceptance, Maersk knew that it was not the owner nor the lessor of these Shipping Containers.

16. Following Maersk’s acceptance of the Shipping Containers, OL USA sent multiple communications to Maersk alerting Maersk of the error and confirming that Maersk was neither the owner nor lessor of the Shipping Containers.

17. OL USA sent these communications because it was responsible for returning the Shipping Containers to HLS after the transported goods were delivered.

18. Maersk ignored OL USA and made no effort to make the Shipping Containers available to HLS or OL USA.

19. During this time, HLS was sending OL USA invoices for per diem charges.

20. HLS gave OL USA a brief period of time to return the Shipping Containers without incurring costs, but because of Maersk’s refusal to return the Shipping Containers, OL USA was required to pay HLS to lease the Shipping Containers.

21. After nearly three (3) months of fruitless attempts to secure the Shipping Containers from Maersk, OL USA purchased the Shipping Containers for approximately \$32,500.00 on or about February 27, 2022, per HLS’s insistence.

22. OL USA never would have purchased these Shipping Containers but for Maersk’s deliberate unwillingness to relinquish possession, and it did so for the purpose of mitigating its own damages.

23. Maersk then proceeded to use the Shipping Containers for its own exports knowing full well that it did not own the Shipping Containers and was not otherwise authorized to use them.

24. Maersk admitted as much in its February 8, 2023 email regarding Shipping Container HPCU4154756 stating “this is [a] shipped owned container that *Maersk was using without authorization.*” A correct copy of this February 8, 2023 email is attached as **Exhibit A**.

25. For almost a year, OL USA has been requesting information from Maersk about the whereabouts of the Shipping Containers so that it can gain rightful possession of its property.

26. After repeated requests and demands, OL USA was able to regain possession of four (4) of the five (5) containers.

27. OL USA also filed a Complaint in the Southern District of New York to recover detention and per diem charges from Maersk to compensate for the loss caused by Maersk’s wrongful retention of the Shipping Containers. This request is grounded in equity, as the detention and per diem charges are calculated based on what Maersk would charge OL USA if the situation were reversed.

28. OL USA is also entitled to recover the lost profits it would have made if Maersk had timely returned the Shipping Containers to HLS for reuse by OL USA’s import accounts.

29. Shipping Container HPCU4154798 was returned on August 11, 2022, after being wrongfully retained by Maersk for 246 days, resulting in \$55,400.00 in detention/per diem charges.

30. Shipping Container HPCU4154761 was returned on August 16, 2022, after being wrongfully retained by Maersk for 231 days, resulting in \$52,140.00 in detention/per diem charges.

31. Shipping Container HPCU4154777 was returned on February 17, 2023, after being wrongfully retained by Maersk for 436 days, resulting in \$97,240.00 in detention/per diem charges.

32. Shipping Container HPCU4154756 was returned on May 10, 2023, after being wrongfully retained by Maersk for 514 days, resulting in \$113,080.00 in detention/per diem charges.

33. OL USA incurred \$1,910.00 in storage costs for Shipping Container HPCU4154756 before it was able to find a buyer who purchased the container for \$2,000.00.

34. Maersk refuses to return and remains in possession of the remaining Shipping Container HPCU4154822. Its last known location is Oran, Algeria, and it still appears to be in use by Maersk. Detention/per diem charges will continue to accrue until this container is returned but as of February 6, 2024, Maersk has incurred \$265,725.00 in detention/per diem charges.

35. On or about March 29, 2023, OL USA sent Maersk a demand letter demanding, among other things, the return of the remaining two (2) containers and detention and per diem charges for the returned containers.

36. On or about April 14, 2023, Maersk responded to the demand letter claiming that its wrongful possession and use of the Shipping Containers is permitted pursuant to the terms of Maersk's tariffs. Specifically, Maersk stated in its letter that its tariff expressly provides that: If Merchant returns an SOC to a Carrier Facility in contravention of this provision, the Carrier reserves the right at its discretion to use such SOC to load cargo or ship empty for Carrier's use.

37. In such case, the Merchant shall have three options: (1) Accept the export container at the foreign destination; (2) Create an empty booking with Carrier to ship it back at the consignee's expense; or (3) Allow Carrier to use the container to transport a full load back to the U.S. port of loading.

38. In light of Maersk's April 14th response, OL USA attempted to find the tariffs cited by Maersk.

39. Although Maersk maintains an online tariff platform, the platform lacks functionality, and searches for this specific provision were not located. Therefore, OL USA, and other Maersk customers, are unable to access and view Maersk's tariffs.

40. Not only could OL USA not find the tariff referenced in Maersk's response, but Maersk also never offered OL USA or HLS any of these options.

41. Maersk's failure to provide a functional online tariff platform violates 46 U.S.C. § 40501 of the Shipping Act and 46 C.F.R. Part 520, which requires a carrier to keep open to public inspection, in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established.

42. Such violation constitutes an unreasonable and deceptive act under the Shipping Act.

43. Due to Maersk's unreasonable and deceptive act, OL USA has been unable to verify Maersk's representations regarding the substance of its tariffs and has been damaged in an amount to be proven at trial.

44. Even if this provision was located in a Maersk tariff, OL USA tirelessly tried to work with Maersk to get the Shipping Containers back, and Maersk did not permit OL USA to access any of the alleged options.

45. As a result of these repeated and ongoing violations of 46 U.S.C. § 40501, OL USA has sustained financial harm.

**CAUSE OF ACTION – VIOLATION OF 46 U.S.C. § 40501 and 46 C.F.R. Part 520**

46. Maersk has violated the Shipping Act by unreasonably and deceptively failing to keep open for public inspection its tariffs in an automated tariff system, as required by 46 U.S.C.

§ 40501 and 46 C.F.R. Part 520.

47. Maersk's online tariff platform does not work, making it impossible for OL USA to access and review Maersk's tariffs.

48. OL USA repeatedly attempted to access Maersk's tariffs to verify and conform with Maersk's processes for reclaiming OL USA's property, and OL USA was repeatedly unable to do so. This failure to access Maersk's tariffs caused OL USA additional damages by being deprived of its property for additional time.

49. As a result of Maersk's violation of the Shipping Act, OL USA has been actually and materially injured by Maersk as alleged above and fully incorporated here as if rewritten, and continues to sustain injuries and damages which accrue daily.

#### **REQUEST FOR ORAL HEARING**

50. OL USA requests a hearing on this matter, and further requests that the hearing be held at the Federal Maritime Commission, 800 N. Capital St., NW, Washington, D.C. 20573-0001.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, OL USA respectfully prays for relief from the Federal Maritime Commission as follows:

- a) An Order compelling Respondent to release the Shipping Container being unlawfully held and converted by Respondent;
- b) An Order compelling Respondent to answer the charges made herein and scheduling a hearing in Washington D.C. during which the Commission may receive evidence in this matter;
- c) An Order, after due investigation and hearing, finding that Respondent has violated 46 U.S.C. § 40501, and as may be further demonstrated in this proceeding;
- d) An Order compelling Respondent to cease and desist its activities in violation of the Shipping Act, as amended and alleged herein;
- e) An Order awarding OL USA damages in an amount to be proven under 46 U.S.C. § 41305, interest under 46 U.S.C. § 41305(a), and reasonable attorneys' fees under 46 U.S.C. § 41305(e), and

f) Such further relief as the FMC determines to be just and proper.

**STATEMENT REGARDING ADR PROCEDURES**

The parties have not engaged in mediation or consulted the FMC's Office of Consumer Affairs and Dispute Resolution. Informal dispute resolution procedures were attempted prior to filing this Complaint. The Complainant has not consulted with the Commission Dispute Resolution Specialist about utilizing alternative dispute resolution.

Dated: February 9, 2024

Respectfully submitted,

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

*/s/ Eric Larson Zalud*

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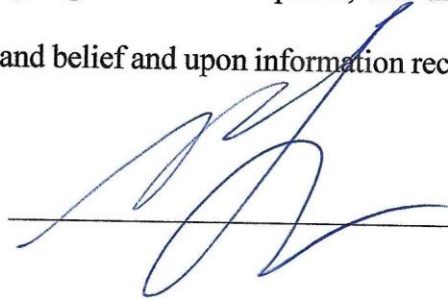




**VERIFICATION**

Mr. Plessig, being first duly sworn to oath, deposes and states that he is Vice President of OL USA LLC, that he has read the foregoing Verified Complaint, and that the facts stated therein he believes to be true on information and belief and upon information received from others.

Dated: February 9, 2024



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## EXHIBIT A

**From:** CENEQUREDMTY <CENEQUREDMTY@maersk.com>  
**Sent:** Wednesday, February 8, 2023 2:41 AM  
**To:** Jalil Ibrahim Rajiwate; Matthew Fleisig; Maersk Line UAE - Import CS; Stefton Pereira; CENEQUFLTEXE; Hemant Suryakant Waingankar; CENEQUREFULL; Redelivery FEA  
**Cc:** Thaiseer Hamza; Cherryline Feliciano; Export Dubai (Shared)  
**Subject:** RE: SOC CTNR NO: HPCU4154756 [ ref:\_00DD0n6xF\_5002o3BtC4N:ref ]  
Hi Jalil,

Could you please advise and to turn it over immediately to agents, as this is shipped owned container that Maersk was using without authorization.

**Kindly confirm a.s.a.p. with extreme urgency so they may proceed with release of the empty in the UAE.**

Thanks and regards,  
Rajkumar Pawar  
Global Equipment – NEU Offhire



A.P. Møller - Mærsk A/S Copenhagen  
| Denmark

Classification: Internal

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