

1 JOSHUA E. KIRSCH (179110)
 2 GIBSON ROBB & LINDH LLP
 201 Mission Street, Suite 2700
 San Francisco, California 94105
 Telephone: (415) 348-6000
 Facsimile: (415) 348-6001
 Email: jkirsch@gibsonrobb.com

5 Attorneys for Plaintiff
 6 XL SPECIALTY INSURANCE
 COMPANY

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

11 XL SPECIALTY INSURANCE
 COMPANY, a Delaware corporation,)

Case No. CV14-0427-CAS (Asx)

13 Plaintiff,

~~PROPOSED~~ AMENDED
 PROTECTIVE ORDER

14 v.

16 A.P. MOLLER-MAERSK A/S,
 trading as MAERSK LINE, a foreign)
 17 corporation; MAERSK LINE,
 LIMITED, a corporation; and)
 18 MAERSK INC., a corporation,

19 Defendants.
 20
 21

22 **1. PURPOSES AND LIMITATIONS**

23 Disclosure and discovery activity in this litigation are likely to involve
 24 production of confidential, proprietary, or private information for which special
 25 protection from public disclosure and from use for any purpose other than
 26 prosecuting this litigation may be warranted. Accordingly, for good cause the
 27 parties hereby stipulate to and petition the court to enter the following Stipulated
 28 Protective Order. The parties acknowledge that this Order does not confer blanket

1 protections on all disclosures or responses to discovery and that the protection it
2 affords from public disclosure and use extends only to the limited information or
3 items that are entitled to confidential treatment under the applicable legal
4 principles.

5 **2. DEFINITIONS**

6 2.1 Challenging Party: a Party or Non-Party that challenges the
7 designation of information or items under this Order.

8 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26(c).

11 2.3 Counsel (without qualifier): Outside Counsel of Record and House
12 Counsel (as well as their support staff).

13 2.4 Designating Party: a Party or Non-Party that designates information
14 or items that it produces in disclosures or in responses to discovery as
15 "CONFIDENTIAL."

16 2.5 Disclosure or Discovery Material: all items or information, regardless
17 of the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced
19 or generated in disclosures or responses to discovery in this matter.

20 2.6 Expert: a person with specialized knowledge or experience in a
21 matter pertinent to the litigation who has been retained by a Party or its counsel to
22 serve as an expert witness or as a consultant in this litigation.

23 2.7 House Counsel: attorneys who are employees of a party to this
24 litigation. House Counsel does not include Outside Counsel of Record or any other
25 outside counsel.

26 2.8 Non-Party: any natural person, partnership, corporation, association,
27 or other legal entity not named as a Party to this litigation.

28 ///

1 2.9 Outside Counsel of Record: attorneys (as well as their support staff)
2 who are not employees of a party to this litigation but are retained to represent or
3 advise a party to this litigation and have appeared in this litigation on behalf of that
4 party or are affiliated with a law firm which has appeared on behalf of that party.

5 2.10 Party: any party to this litigation, including all of its officers,
6 directors, employees, consultants, retained experts, and Outside Counsel of Record
7 (and their support staffs).

8 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
9 Discovery Material in this litigation.

10 2.12 Professional Vendors: persons or entities that provide litigation
11 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
13 and their employees and subcontractors.

14 2.13 Protected Material: any Disclosure or Discovery Material that is
15 designated as "CONFIDENTIAL." The specific document covered by this
16 protective order is a "Sales and Purchase Agreement" dated November 1, 2010,
17 and any similar materials that may contain commercially sensitive information.

18 2.14 Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20 **3. SCOPE**

21 The protections conferred by this Stipulation and Order cover not only
22 Protected Material (as defined above), but also (1) any information copied or
23 extracted from Protected Material; (2) all copies, excerpts, summaries, or
24 compilations of Protected Material; and (3) any testimony, conversations, or
25 presentations by Parties or their Counsel that might reveal Protected Material.

26 However, the protections conferred by this Stipulation and Order do not cover the
27 following information: (a) any information that is in the public domain at the time
28 of disclosure to a Receiving Party or becomes part of the public domain after its

1 disclosure to a Receiving Party as a result of publication not involving a violation
2 of this Order, including becoming part of the public record through trial or
3 otherwise; and (b) any information known to the Receiving Party prior to the
4 disclosure or obtained by the Receiving Party after the disclosure from a source
5 who obtained the information lawfully and under no obligation of confidentiality to
6 the Designating Party. Any use of Protected Material at trial shall be governed by
7 the trial judge's orders.

8 **4. DURATION**

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees
11 otherwise in writing or a court order otherwise directs. Final disposition shall be
12 deemed to be the later of (1) dismissal of all claims and defenses in this litigation,
13 with or without prejudice; and (2) final judgment herein after the completion and
14 exhaustion of all appeals, rehearings, remands, trials, or reviews of this litigation,
15 including the time limits for filing any motions or applications for extension of
16 time pursuant to applicable law.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.

19 Each Party or Non-Party that designates information or items for protection
20 under this Order must take care to limit any such designation to specific material
21 that qualifies under the appropriate standards. The Designating Party must
22 designate for protection only those parts of material, documents, items, or oral or
23 written communications that qualify - so that other portions of the material,
24 documents, items, or communications for which protection is not warranted are not
25 swept unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified or that have been made for an improper
28 purpose (e.g., to unnecessarily encumber or retard the case development process or

1 to impose unnecessary expenses and burdens on other parties) may expose the
2 Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it
4 designated for protection do not qualify for protection, that Designating Party must
5 promptly notify all other Parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations.

7 Except as otherwise provided in this Order (see, e.g., second paragraph of
8 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
9 Discovery Material that qualifies for protection under this Order must be clearly so
10 designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each
15 page that contains protected material. If only a portion or portions of the material
16 on a page qualifies for protection, the Producing Party also must clearly identify
17 the protected portion(s) (e.g., by making appropriate markings in the margins). A
18 Party or Non-Party that makes original documents or materials available for
19 inspection need not designate them for protection until after the inspecting Party
20 has indicated which material it would like copied and produced. During the
21 inspection and before the designation, all of the material made available for
22 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
23 identified the documents it wants copied and produced, the Producing Party must
24 determine which documents, or portions thereof, qualify for protection under this
25 Order. Then, before producing the specified documents, the Producing Party must
26 affix the "CONFIDENTIAL" legend to each page that contains Protected Material.
27 If only a portion or portions of the material on a page qualifies for protection, the
28 Producing Party also must clearly identify the protected portion(s) (e.g., by making

1 appropriate markings in the margins).

2 (b) for testimony given in deposition or in discovery proceedings, that
3 the Designating Party identify on the record, before the close of the deposition,
4 hearing, or other proceeding, all protected testimony.

5 (c) for information produced in some form other than documentary
6 and for any other tangible items, that the Producing Party affix in a prominent
7 place on the exterior of the container or containers in which the information or item
8 is stored the legend "CONFIDENTIAL." If only a portion or portions of the
9 information or item warrant protection, the Producing Party, to the extent
10 practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate.

12 If timely corrected, an inadvertent failure to designate qualified information
13 or items does not, standing alone, waive the Designating Party's right to secure
14 protection under this Order for such material. Upon timely correction of a
15 designation, the Receiving Party must make reasonable efforts to assure that the
16 material is treated in accordance with the provisions of this Order.

17 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 6.1 Timing of Challenges.

19 Any Party or Non-Party may challenge a designation of confidentiality at
20 any time during discovery proceedings. All challenges must be consistent with the
21 Court's scheduling, pretrial, and other orders. Unless a prompt challenge to a
22 Designating Party's confidentiality designation is necessary to avoid foreseeable,
23 substantial unfairness, unnecessary economic burdens, or a significant disruption
24 or delay of the litigation, a Party does not waive its right to challenge a
25 confidentiality designation by electing not to mount a challenge promptly after the
26 original designation is disclosed.

27 6.2 Meet and Confer.

28 The parties shall comply with Local Rule 37-1. The Challenging Party shall

1 initiate the dispute resolution process by providing written notice of each
2 designation it is challenging and describing the basis for each challenge. To avoid
3 ambiguity as to whether a challenge has been made, the written notice must recite
4 that the challenge to confidentiality is being made in accordance with this specific
5 paragraph of the Protective Order. The parties shall attempt to resolve each
6 challenge in good faith and must begin the process by conferring directly (in voice
7 to voice dialogue; other forms of communication are not sufficient) within 14 days
8 of the date of service of notice. In conferring, the Challenging Party must explain
9 the basis for its belief that the confidentiality designation was not proper and must
10 give the Designating Party an opportunity to review the designated material, to
11 reconsider the circumstances, and, if no change in designation is offered, to explain
12 the basis for the chosen designation. A Challenging Party may proceed to the next
13 stage of the challenge process only if it has engaged in this meet and confer
14 process first or establishes that the Designating Party is unwilling to participate in
15 the meet and confer process in a timely manner.

16 6.3 Judicial Intervention.

17 If the Parties cannot resolve a challenge without court intervention, the
18 Designating Party shall file and serve a motion to retain confidentiality under Civil
19 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within
20 21 days of the initial notice of challenge or within 14 days of the parties agreeing
21 that the meet and confer process will not resolve their dispute, whichever is earlier.
22 Each such motion must be accompanied by a competent declaration affirming that
23 the movant has complied with the meet and confer requirements imposed in the
24 preceding paragraph. Failure by the Designating Party to make such a motion
25 including the required declaration within 21 days (or 14 days, if applicable) shall
26 automatically waive the confidentiality designation for each challenged
27 designation. In addition, the Challenging Party may file a motion challenging a
28 confidentiality designation at any time if there is good cause for doing so,

1 including a challenge to the designation of a deposition transcript or any portions
2 thereof. Any motion brought pursuant to this provision must be accompanied by a
3 competent declaration affirming that the movant has complied with the meet and
4 confer requirements imposed by the preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the
6 Designating Party. Frivolous challenges, and those made for an improper purpose
7 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
8 expose the Challenging Party to sanctions. Unless the Designating Party has
9 waived the confidentiality designation by failing to file a motion to retain
10 confidentiality as described above, all parties shall continue to afford the material
11 in question the level of protection to which it is entitled under the Producing
12 Party's designation until the court rules on the challenge.

13 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 **7.1 Basic Principles.**

15 A Receiving Party may use Protected Material that is disclosed or produced
16 by another Party or by a Non-Party in connection with this case only for
17 prosecuting, defending, or attempting to settle this litigation. Such Protected
18 Material may be disclosed only to the categories of persons and under the
19 conditions described in this Order. When the litigation has been terminated, a
20 Receiving Party must comply with the provisions of section 13 below (FINAL
21 DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a
23 location and in a secure manner that ensures that access is limited to the persons
24 authorized under this Order.

25 Notwithstanding the above, the Parties expressly acknowledge that it may be
26 necessary for a Receiving Party to use Protected Material in foreign proceedings,
27 including London arbitration proceedings, and the parties agree that the terms of
28 this protective order shall govern the Protected Materials in such foreign

1 proceedings, even where this Court lacks jurisdiction to enforce this protective
2 order.

3 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

4 Unless otherwise ordered by the court or permitted in writing by the
5 Designating Party, a Receiving Party may disclose any information or item
6 designated "CONFIDENTIAL" only to:

7 (a) the Receiving Party's Outside Counsel of Record in this litigation,
8 as well as employees of said Outside Counsel of Record to whom it is reasonably
9 necessary to disclose the information for this litigation and who have signed the
10 "Acknowledgment and Agreement to Be Bound" that is attached hereto as **Exhibit**
11 **A**;

12 (b) the officers, directors, and employees (including House Counsel)
13 of the Receiving Party to whom disclosure is reasonably necessary for this
14 litigation and who have signed the "Acknowledgment and Agreement to Be
15 Bound" (Exhibit A);

16 (c) Experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this litigation and who have signed the
18 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff;

21 (f) professional jury or trial consultants, mock jurors, and
22 Professional Vendors to whom disclosure is reasonably necessary for this litigation
23 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
24 A);

25 (g) during their depositions, witnesses in the litigation to whom
26 disclosure is reasonably necessary and who have signed the "Acknowledgment and
27 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating
28 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits

1 to depositions that reveal Protected Material must be separately bound by the court
2 reporter and may not be disclosed to anyone except as permitted under this
3 Stipulated Protective Order.

4 (h) the author or recipient of a document containing the information
5 or a custodian or other person who otherwise possessed or knew the information.

6 (i) the Receiving Party's foreign counsel, as well as employees of said
7 foreign counsel, to whom it is reasonably necessary to disclose the information for
8 use in any foreign proceedings, including London arbitration proceedings; and

9 (j) the Owners of the vessel M/V MAERSK WESTPORT and/or their
10 counsel of record, in any foreign proceedings, including London arbitration
11 proceedings, between a Receiving Party and the Owners.

12 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
13 **PRODUCED IN OTHER LITIGATION**

14 If a Party is served with a subpoena or a court order issued in other litigation
15 that compels disclosure of any information or items designated in this litigation as
16 "CONFIDENTIAL," that Party must:

17 (a) promptly notify in writing the Designating Party. Such notification shall
18 include a copy of the subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to
20 issue in the other litigation that some or all of the material covered by the subpoena
21 or order is subject to this Protective Order. Such notification shall include a copy
22 of this Stipulated Protective Order; and

23 (c) cooperate with respect to all reasonable procedures sought to be pursued
24 by the Designating Party whose Protected Material may be affected.

25 If the Designating Party timely seeks a protective order, the Party served with the
26 subpoena or court order shall not produce any information designated in this
27 litigation as "CONFIDENTIAL" before a determination by the court from which
28 the subpoena or order issued, unless the Party has obtained the Designating Party's

1 permission. The Designating Party shall bear the burden and expense of seeking
2 protection in that court of its confidential material - and nothing in these provisions
3 should be construed as authorizing or encouraging a Receiving Party in this
4 litigation to disobey a lawful directive from another court.

5 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
6 **PRODUCED IN THIS LITIGATION**

7 (a) The terms of this Order are applicable to information produced by a
8 Non-Party in this litigation and designated as "CONFIDENTIAL." Such
9 information produced by Non-Parties in connection with this litigation is protected
10 by the remedies and relief provided by this Order. Nothing in these provisions
11 should be construed as prohibiting a Non-Party from seeking additional
12 protections.

13 (b) In the event that a Party is required, by a valid discovery request, to
14 produce a Non-Party's confidential information in its possession, and the Party is
15 subject to an agreement with the Non-Party not to produce the Non-Party's
16 confidential information, then the Party shall:

17 (1) promptly notify in writing the Requesting Party and the
18 Non-Party that some or all of the information requested is subject to a
19 confidentiality agreement with a Non-Party;

20 (2) promptly provide the Non-Party with a copy of the Stipulated
21 Protective Order in this litigation, the relevant discovery request(s), and a
22 reasonably specific description of the information requested; and

23 (3) make the information requested available for inspection by the
24 Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from this court
26 within 14 days of receiving the notice and accompanying information, the
27 Receiving Party may produce the Non-Party's confidential information responsive
28 to the discovery request. If the Non-Party timely seeks a protective order, the

1 Receiving Party shall not produce any information in its possession or control that
2 is subject to the confidentiality agreement with the Non-Party before a
3 determination by the court. Absent a court order to the contrary, the Non-Party
4 shall bear the burden and expense of seeking protection in this court of its
5 Protected Material.

6 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7 If a Receiving Party learns that, by inadvertence or otherwise, it has
8 disclosed Protected Material to any person or in any circumstance not authorized
9 under this Stipulated Protective Order, the Receiving Party must immediately (a)
10 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
11 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
12 the person or persons to whom unauthorized disclosures were made of all the terms
13 of this Order, and (d) request such person or persons to execute the
14 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
15 A.

16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
17 **PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that certain
19 inadvertently produced material is subject to a claim of privilege or other
20 protection, the obligations of the Receiving Parties are those set forth in Federal
21 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
22 whatever procedure may be established in an e-discovery order that provides for
23 production without prior privilege review. Pursuant to Federal Rule of Evidence
24 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
25 of a communication or information covered by the attorney-client privilege or
26 work product protection, the parties may incorporate their agreement in the
27 stipulated protective order submitted to the court.

28 **12. MISCELLANEOUS**

1 12.1 Right to Further Relief.

2 Nothing in this Order abridges the right of any person to seek its
3 modification by the court in the future.

4 12.2 Right to Assert Other Objections.

5 By stipulating to the entry of this Protective Order no Party waives any right
6 it otherwise would have to object to disclosing or producing any information or
7 item on any ground not addressed in this Stipulated Protective Order. Similarly, no
8 Party waives any right to object on any ground to use in evidence of any of the
9 material covered by this Protective Order.

10 12.3 Filing Protected Material.

11 Without written permission from the Designating Party, a Party may not file
12 in the public record in this litigation any Protected Material except after following
13 with the procedures for filing under seal in compliance with Civil Local Rule 79-5.
14 Protected Material may only be filed under seal pursuant to a court order
15 authorizing the sealing of the specific Protected Material at issue.

16 **13. FINAL DISPOSITION**

17 Within 60 days after the final disposition of this litigation, as defined in
18 paragraph 4, each Receiving Party must return all Protected Material to the
19 Producing Party or destroy such material. As used in this subdivision, "all
20 Protected Material" includes all copies, abstracts, compilations, summaries, and
21 any other format reproducing or capturing any of the Protected Material. Whether
22 the Protected Material is returned or destroyed, the Receiving Party must submit a
23 written certification to the Producing Party (and, if not the same person or entity, to
24 the Designating Party) by the 60 day deadline that (1) identifies (by category,
25 where appropriate) all the Protected Material that was returned or destroyed and (2)
26 affirms that the Receiving Party has not retained any copies, abstracts,
27 compilations, summaries or any other format reproducing or capturing any of the
28 Protected Material. Notwithstanding this provision, Counsel are entitled to retain

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of XL Specialty Insurance Co. v. A.P. Moller-Maersk, et al., case no. 2:14-cv-00427 CAS-ASx. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this litigation.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this litigation or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____