

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 23-12

**20230930-DK-BUTTERFLY-1, INC. v.
MSC MEDITERRANEAN SHIPPING COMPANY, S.A.**

**ANSWER OF RESPONDENT
MSC MEDITERRANEAN SHIPPING COMPANY, S.A.**

Respondent MSC Mediterranean Shipping Company, S.A. (“Respondent” or “MSC”) hereby answers the Complaint in this proceeding as follows:

INTRODUCTION

1. The allegations in this paragraph constitute legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations therein.
2. Admitted to the extent that MSC is a member of the 2M Alliance with Maersk. MSC lacks sufficient information to admit or deny the remainder of the allegations in this paragraph because the terms “largest,” “top,” “major,” “control,” and “power” are not defined and are vague and ambiguous.
3. Admitted as to the first sentence. Admit that Complainant filed a Chapter 11 bankruptcy petition on April 23, 2023, but deny all of the remaining allegations in this paragraph.

4. Admitted to the extent that Bed Bath and Beyond, Inc. (“BBBY”) entered into service contracts with MSC, the terms of which speak for themselves. The remaining allegations in this paragraph are denied.
5. Respondent denies that it breached its service commitments.. Respondent admits it was named as a party to the proceeding *MCS Industries, Inc. v. COSCO SHIPPING lines Co. et al*, FMC Docket No. 21-05. Statements made by the presiding officer in that proceeding speak for themselves. Respondent lacks sufficient information to respond to allegations regarding the actions of other ocean carriers and further denies the remaining allegations in this paragraph.
6. Denied.
7. Denied.
8. Denied.
9. Admitted to the extent that MSC added vessels to its fleet between July 1, 2020, and November 30, 2021. The remaining allegations in this paragraph are denied.
10. Admit that *Il Messagero* published information purporting to show certain MSC financial information. Deny the remaining allegations of this paragraph.
11. MSC denies the allegations contained in the first and second sentences. The report referenced by Complainant in this paragraph speaks for itself.
12. Denied.
13. The allegations in this paragraph constitute legal conclusions to which no response is required. To the extent a response is required, Respondent denies the allegations therein.

THE COMPLAINANT

14. MSC lacks sufficient information to admit or deny the allegations in this paragraph.

THE RESPONDENT

15. Admitted.

JURISDICTION AND LEGAL AUTHORITY

16. Denied.
17. Admitted.
18. MSC neither admits nor denies the allegations in this paragraph, which purports to quote, characterize, paraphrase or describe various provisions of the Shipping Act or FMC regulations.
19. Denied.
20. Denied.
21. Denied.
22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. Denied. This allegation has been resolved in favor of Respondent under the Presiding Officer's March 25, 2024, Order Granting Respondent's Partial Motion to Dismiss.

THE MATTERS COMPLAINED OF (ALLEGED FACTS)

27. Admitted to the extent that two service contracts were entered into between MSC and BBY and that a minimum quantity commitment ("MQC") was included in each contract.

28. Denied.
29. Admit that MSC carried a volume of cargo equaling or exceeding the MQC in the 2020 Service Contract during the term thereof. Denied as to the remaining allegations in the first and last sentences in this paragraph. Neither admit nor deny the remaining allegations which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
30. Neither admit nor deny the allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
31. Denied as to the allegations in the first sentence in this paragraph. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
32. Denied as to the first sentence in this paragraph. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties and/or other documents, and refer the Commission to the actual email correspondence and documents referred to therein.

33. Denied as to the allegations in the first and second sentences in this paragraph. MSC lacks sufficient information to admit or deny the remainder of the allegations in this paragraph.
34. Denied as to the allegations in the first sentence in this paragraph. Neither admit nor deny the remaining allegations which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
35. Admit that BBY and MSC entered into the 20-572WW-999 premium rates contract, and refer the Commission to the actual provisions of that contract referred to therein. MSC lacks sufficient information to admit or deny the rest of the allegations in Paragraph 35.
36. Denied as to the allegations in the first and last sentences in this paragraph. Neither admit nor deny the allegations in the second sentence of this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
37. Denied as to the allegations in the first sentence of this paragraph. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
38. Denied as to the allegations in the first sentence in this paragraph. MSC lacks sufficient information to admit or deny whether BBY was confused by the

situation in the second sentence in this paragraph. Neither admit nor deny the remaining allegations in the second, third, and sixth sentences in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein. MSC lacks sufficient information to admit or deny the fourth, fifth, and last sentences which purports to quote from an unidentified email.

39. Denied as to the allegations in the first sentence of this paragraph. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
40. MSC lacks sufficient information and specificity to admit or deny the allegations in the first sentence in this paragraph. Denied with respect to the second sentence in this Paragraph. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
41. Denied with respect to the allegations in the first sentence of this paragraph. MSC lacks sufficient information to admit or deny the remainder of this allegation which purports to quote from an unidentified email.
42. Denied as to the allegations in the first and fourth sentences of this paragraph. Neither admit nor deny the allegations in the second and third sentences of this

paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.

43. Denied as to the allegations in the first sentence of this paragraph. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
44. Denied as to the allegations in the first sentence of this paragraph. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
45. Denied as to the allegations in the first and last sentences of this paragraph. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
46. Denied as to the allegations in the first sentence of this paragraph. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.

47. Denied as to the allegations in the first sentence of this paragraph. MSC neither admits nor denies the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
48. Denied as to the allegations in the first sentence of this paragraph. Neither admits nor denies the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
49. Denied.
50. Neither admit nor deny the allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
51. Admitted to the extent that MSC carried a volume sufficient to satisfy the MQC in the 2020 Service Contract between MSC and BBY. The remaining allegations of this paragraph are denied.
52. Denied.
53. Admitted that the initial MQC included in the 2021 Service Contract was 4,240 FEUs but that the MQC was amended to 4,615 TEUs (or 2,307.5 FEUs) upon request by BBY. The remaining allegations in this paragraph are denied.
54. Denied.

55. Denied.
56. MSC lacks sufficient information to admit or deny the allegation that BBY made clear its frustrations in the first sentence of this paragraph. Deny the allegation that MSC failed to provide contracted space to BBY. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
57. MSC lacks sufficient information to admit or deny the allegations in the first sentence of this paragraph. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
58. Denied.
59. Admitted that MSC is a member of the 2M Alliance to the extent that the phrase “second largest shipping alliance” in the third sentence is referring to same. MSC can neither admit nor deny the allegations in the first and last sentences because they are vague, ambiguous, and include subjective conclusions rather than factual allegations. MSC can neither admit nor deny the second sentence and remaining allegations of the third sentence because it is unclear what measure is meant by the terms “largest,” and “second-largest,” or by the allegations.
60. Denied.
61. Denied.

62. Denied. This allegation has been resolved in favor of Respondent under the Presiding Officer's March 25, 2024, Order Granting Respondent's Partial Motion to Dismiss.
63. Denied.
64. Denied.
65. Denied.
66. Admitted as to the first sentence. Neither admits nor denies the second sentence, which purports to quote, characterize, paraphrase or describe a statement by the FMC Chairman, and refer the Commission to the Chairman's actual statement.
67. Neither admits nor denies the allegations in this paragraph, which purport to quote, characterize, paraphrase or describe a statement by the FMC Chairman, and refer the Commission to the Chairman's actual statement.
68. Denied as to the allegations in the first sentence of this paragraph. Neither admits nor denies the second sentence, which purports to quote, characterize, paraphrase or describe a press release, and refer the Commission to the actual press release.
69. Denied that MSC imposed the alleged charges. MSC lacks sufficient information to admit or deny the remaining allegations.
70. Denied.
71. MSC lacks sufficient information to admit or deny this allegation.
72. MSC lacks sufficient information to admit or deny this allegation.
73. MSC lacks sufficient information to admit or deny this allegation.
74. MSC lacks sufficient information to admit or deny this allegation.
75. MSC lacks sufficient information to admit or deny this allegation.

76. MSC lacks sufficient information to admit or deny the allegations in the first sentence of this paragraph. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
77. MSC lacks sufficient information to admit or deny this allegation.
78. MSC lacks sufficient information to admit or deny this allegation.
79. MSC lacks sufficient information to admit or deny this allegation.
80. MSC lacks sufficient information to admit or deny this allegation.
81. Neither admit nor deny the allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
82. MSC lacks sufficient information to admit or deny the allegations in the first and second sentences of this paragraph. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in email correspondence between the parties, and refer the Commission to the actual email correspondence referred to therein.
83. MSC lacks sufficient information to admit or deny this allegation.
84. Denied that MSC assessed inappropriate charges against BBY. MSC lacks sufficient information to admit or deny the remaining allegations.
85. MSC lacks sufficient information to admit or deny this allegation.

86. Deny that any demurrage and detention charges were unreasonable and unfair. Neither admit nor deny the remaining allegations in this paragraph which purport to quote, characterize, paraphrase or describe provisions captured in correspondence between the parties, and refer the Commission to the actual correspondence referred to therein.
87. Neither admit nor deny the allegations in this paragraph, which purport to quote, characterize, paraphrase or describe the report in FMC Fact Finding Investigation No. 29, and refer the Commission to the actual report.
88. Neither admit nor deny the allegations in this paragraph, which purport to quote, characterize, paraphrase or describe an FMC rulemaking, and refer the Commission to the actual rulemaking.
89. Denied.
90. MSC lacks sufficient information to admit or deny the allegations in this paragraph.
91. MSC lacks sufficient information to admit or deny the allegations in this paragraph.
92. Denied.
93. Denied.
94. Denied.
95. Denied.
96. Denied.
97. Denied.
98. Denied.
99. Neither admit nor deny the allegations contained in the first sentence of this paragraph, which purport to quote, characterize, paraphrase or describe a decision

issued by an administrative law judge in another proceeding, and refer the Commission to the actual decision. Deny the remaining allegations in this paragraph, which are speculative rather than factual in nature.

100. Denied as to the allegations in the first sentence. MSC neither admits nor denies the allegations in the second sentence of this paragraph, which purport to quote, characterize, paraphrase or describe a provision of the Shipping Act, and refer the Commission to the actual statute. Moreover, these allegations have been resolved in favor of Respondent under the Presiding Officer's March 25, 2024, Order Granting Respondent's Partial Motion to Dismiss.

CAUSES OF ACTION

101. MSC repeats and realleges paragraphs 1 through 100 of this Answer with the same force and effect as if set forth at length herein, in response to paragraph 101 of the Complaint.
102. Denied.
103. MSC repeats and realleges paragraphs 1 through 102 of this Answer with the same force and effect as if set forth at length herein, in response to paragraph 103 of the Complaint.
104. Denied.
105. MSC repeats and realleges paragraphs 1 through 104 of this Answer with the same force and effect as if set forth at length herein, in response to paragraph 105 of the Complaint.
106. Denied.

107. MSC repeats and realleges paragraphs 1 through 106 of this Answer with the same force and effect as if set forth at length herein, in response to paragraph 107 of the Complaint.
108. Denied.
109. MSC repeats and realleges paragraphs 1 through 108 of this Answer with the same force and effect as if set forth at length herein, in response to paragraph 109 of the Complaint.
110. Paragraph 110, mislabeled as a second Paragraph 101 is denied.¹ This allegations has been resolved in favor of Respondent under the Presiding Officer's March 25, 2024, Order Granting Respondent's Partial Motion to Dismiss.
110. Denied.
111. Denied.
112. Denied.
113. Denied.

REPARATIONS SOUGHT/COMPLAINANT'S DAMAGES

114. Denied.
115. Denied.
116. Denied.
117. Neither admit nor deny the allegations in the first sentence of this paragraph, which purport to quote, characterize, paraphrase or describe a decision issued by an administrative law judge in another proceeding, and refer the Commission to the

¹ Due to this numbering error, paragraphs will follow with 110 despite the inclusion of a second Paragraph 101 shown in between Paragraphs 109 and 110 of the Complaint.

actual decision. The second sentence states a conclusion of law which requires no response.

118. MSC lacks sufficient information to admit or deny the allegations in this paragraph.
119. MSC lacks sufficient information to admit or deny the allegations in this paragraph.
120. MSC lacks sufficient information to admit or deny the allegations in this paragraph.
121. Denied.
122. Denied.
123. Denied that charges were “unjustly and unreasonably assessed” by MSC. MSC lacks sufficient information to admit or deny the remaining allegations in this paragraph.
124. MSC lacks sufficient information to admit or deny the allegations in this paragraph.
125. Denied. Moreover, this request has been resolved in favor of Respondent under the Presiding Officer’s March 25, 2024, Order Granting Respondent’s Partial Motion to Dismiss.

AFFIRMATIVE DEFENSES

1. Complainant fails to state a claim for which relief can be granted.
2. The Commission lacks subject matter jurisdiction over the matters alleged in the Complaint.
3. Complainant failed to take reasonable steps to mitigate its damages.
4. Complainant’s claims are barred, limited and/or otherwise subject to the provisions contained in the bills of lading, tariffs, and /or service contracts governing the shipments which are the subject of the Complaint.

5. Complainant's own negligent conduct, and not any negligence or fault of MSC, caused the injuries complained of, and as such, Complainant is barred from recovery in this action.
6. In the event of the Carrier's failure to meet the annual Minimum Quantity Commitment, the Service Contract provided for specific remedies which do not include or support the claims for loss now asserted in the Complaint.
7. MSC's conduct, practices, and policies were neither unjust nor unreasonable.
8. MSC's conduct, practices, and policies were not the proximate cause of Complainant's alleged injuries.

Respectfully submitted,

By: /s/ Wayne R. Rohde
Wayne R. Rohde
Christopher Raleigh
Kathryn Sobotta
Rachel Schwartz
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Suite 300
Washington, DC 20036
(202) 463-2507

Dated: April 4, 2024

VERIFICATION

VERIFICATION OF RESPONDENT MSC MEDITERRANEAN SHIPPING COMPANY, S.A.

I, Nicholas Hargreaves, hereby verify as follows:

1. I am the General Manager, Legal Department, of MSC Mediterranean Shipping Company, S.A.
2. I am authorized to make this verification on behalf of MSC Mediterranean Shipping Company, S.A.
3. I declare under penalty of perjury under the laws of the United States that the foregoing answer is true and correct to the best of my knowledge, information, and belief.

Dated: April 4, 2024



Name: Nicholas Hargreaves
Title: General Manager, Legal Department

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 2024, a true and correct copy of the foregoing Respondent MSC Mediterranean Shipping Company S.A.'s Answer was served via electronic mail on:

Karl C. Huth
Matthew J. Reynolds
Gregory A. Crapanzano II

huth@huthreynolds.com
reynolds@huthreynolds.com
gcrapanzano@huthreynolds.com

A handwritten signature in black ink, appearing to read "Kathryn Sobotta", is centered on the page. The signature is written in a cursive style.

Kathryn Sobotta