

# FEDERAL MARITIME COMMISSION

20230930-DK-BUTTERFLY-1, INC., *Complainant*

v.

MSC MEDITERRANEAN SHIPPING COMPANY SA,  
*Respondent.*

**DOCKET NO. 23-12**

Served: November 28, 2023

## NOTICE OF FILING OF COMPLAINT AND ASSIGNMENT

Notice is given that a complaint has been filed with the Federal Maritime Commission (the “Commission”) by 20230930-DK-Butterfly-1, Inc. (the “Complainant”) against MSC Mediterranean Shipping Company SA (the “Respondent”). Complainant states that the Commission has subject matter jurisdiction over the complaint pursuant to the Shipping Act of 1984, as amended, 46 U.S.C. 40101 *et seq.*, and has personal jurisdiction over Respondent as an “ocean common carrier” that has entered into a “service contract”, as these terms are defined in the Shipping Act at 46 U.S.C. 40102.

Complainant is a corporation existing under the laws of New York with a mailing address in Union, New Jersey. Prior to filing a change of name certificate to its present name, the Complainant’s corporate name was Bed Bath & Beyond Inc. For the purposes of the allegations of the complaint, the Complainant was a “shipper” as this term is defined by 46 U.S.C. 40102(23).

Complainant identifies Respondent MSC Mediterranean Shipping Company SA as a company existing under the laws of Switzerland with a principal place of business located in

Geneva, Switzerland and as a vessel-operating “ocean common carrier” as this term is defined by 46 U.S.C. 40102(18).

Complainant alleges that Respondent violated 46 U.S.C. 41102(c), 41102(d), 41104(a)(2), 41104(a)(10) and 46 CFR 545.5 regarding a failure to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering property; a failure to provide service in the liner trade that is in accordance with a service contract; an unreasonable refusal to deal or negotiate; and retaliation against a shipper. Complainant alleges these violations arose from a condition on performance requiring the payment of extracontractual prices and surcharges, such as peak season surcharges, and amendments or premium rate addenda to service contracts prior to full performance of its service commitments; a failure to allocate space as agreed upon and instead, allocating space to shippers willing to pay higher freight prices; an unreasonable assessment of demurrage and detention charges during periods of congestion and shortages of equipment at ports; and a refusal to accommodate requests for a full or partial refund of demurrage and detention charges.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at <https://www2.fmc.gov/readingroom/proceeding/23-12/>. This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by November 28, 2024, and the final decision of the Commission shall be issued by June 12, 2025.

*Amy Strauss*  
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Acting Secretary