



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## FMC Judge Calls Time on Shipping Company

Federal Maritime Commission (FMC) Chief Administrative Law Judge Erin Wirth delivered a default US\$944,655 decision against respondent Mediterranean Shipping Company (MSC) on January 13 for “failing to produce discovery” in a case brought by MCS Industries.

In its initial action, the United States home décor supplier MCS Industries had alleged both MSC and another carrier (with which settlement was subsequently reached), had violated the United States Shipping Act of 1984. The allegation was the carriers had acted in unison to create conditions that would compel the shipper to book cargo on the vastly more expensive spot market, thereby enabling the carriers to escape contract-agreed obligations on capacity requirements.

In her 23-page judgment, Judge Wirth stated that MSC had “been warned multiple times that if it failed to produce the discovery, a default decision would be issued against it”.

“To expedite the proceeding, on May 4, 2022, the undersigned granted the parties’ proposal to file a letter of request with authorities in Switzerland pursuant to the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Convention”),” stated the judgment.

“On June 29, 2022, the Swiss court denied the request as outside the scope of the Hague Convention. MSC Mediterranean Shipping disagrees with the Swiss court’s decision and continues to refuse to produce the discovery ordered in this proceeding, despite multiple orders to do so.

“As explained more fully [in the full decision], a default decision is issued against MSC Mediterranean Shipping and it is ordered to pay reparations to complainant MCS Industries. This decision does not reach the merits of the claim but rather imposes default as a procedural consequence.”

Respondent MSC on 6 February then filed a 59-page “Exceptions to Initial Decision and Memorandum and Brief in Support” with the FMC.

In turn, MCS 22 days later filed a 56-page “Response to Respondent MSC Mediterranean Shipping Company SA’s Exceptions to Decision on Default”.

No further update appeared on the FMC website at the time of publication.

March 2023

