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THE FEDERAL MARITIME COMMISSION'S NEW FRAMEWORK FOR OCEAN CARRIER ACCOUNTABILITY: ANALYSIS OF THE *MCS INDUSTRIES* AND *OJ COMMERCE* DECISIONS†

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This article examines two 2024 Federal Maritime Commission (FMC or "Commission") cases that significantly impact the interpretation of ocean carrier accountability under the Shipping Act of 1984:[1] MCS Industries, Inc. v. COSCO

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1 The Shipping Act of 1984, 46 U.S.C. § 41102(c) (stating that carriers "may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property"); *id.* at § 41104(a)(2)(A) (stating that carriers may not "provide service in the liner trade that is . . . not in accordance with the rates, charges, classifications, rules, and practices contained in . . . a service contract"); *id.* at § 41104(a)(3) (stating that carriers may not "unreasonably refuse cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods"); *id.* at § 41104(a)(10) (stating that carriers may not "unreasonably refuse to deal or negotiate").

Shipping Lines Co. Ltd.[2] *and* OJ Commerce, LLC v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG.[3]

This article argues that the FMC, whose mission is to "[e]nsure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices,"[4] continues to make ongoing efforts to clarify and enforce protecting shippers' rights. These efforts focus particularly on (i) service contract obligations, which require reciprocal commitments between shippers and carriers to ensure minimum cargo volumes and guaranteed space or rates;[5] and (ii) prohibiting retaliatory conduct by carriers, including "refusing, or threatening to refuse, an otherwise-available cargo space accommodation" [6] or "resort[ing] to any other unfair or unjustly discriminatory action."[7] By focusing on practical remedies, the FMC continues to develop its approach to enforcement, emphasizing practical remedies over formalistic legal distinctions.

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2 MCS Indus., Inc. v. COSCO Shipping Lines Co. Ltd., Docket No. 21-05 (F.M.C. Jan. 3, 2024), *aff'd*, Docket No. 21-05 (F.M.C. July 16, 2024).

3 OJ Com., LLC v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11 (F.M.C. June 7, 2023), *aff'd*, Docket No. 21-11 (F.M.C. Aug. 27, 2024).

4 *Mission Statement*, FED. MAR. COMM'N, https://www.fmc.gov/about [https://perma.cc/FZ6P-MDVT].

5 46 U.S.C. § 40102(21).

6 46 U.S.C. § 41102(d)(1).

7 46 U.S.C. § 41102(d)(2).

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INTRODUCTION

In the international container shipping industry, shippers pricing for ocean freight carriage has typically remained low, as chronic overcapacity has forced shipping lines to compete aggressively on price to fill unused capacity and avoid the high costs of idle assets.[8] However, the COVID-19 pandemic caused unprecedented challenges to trade and the global economy, resulting in severe container congestion at nearly all major international ports and giving ocean carriers the ability to drastically increase ocean shipping freight rates.[9] For instance, in November 2021, the Port of Long Beach in Los Angeles faced a significant bottleneck with seventy-five delayed vessels waiting to dock.[10] This was largely driven by a surge in demand for goods transported in containers, which caused trans-Pacific freight rates to skyrocket and led shipping companies to prioritize this lucrative route by chartering available ships and reallocating vessels from less critical trade routes.[11]

Surging shipping costs significantly exacerbated global inflation.[12] Research from the International Monetary Fund (IMF) estimated that the sharp increase in shipping rates during 2021 would raise global goods prices by approximately one-and-a-half percent the following year, ultimately shifting the burden onto the American public in the form of higher consumer costs.[13] Global inflation rose to crisis levels during the COVID-19 pandemic, leading to fiscal tightening through increased

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8 Sam Chambers, *Global Liners Enter Familiar Price War Territory*, SPLASH247 (Feb. 13, 2023), https://splash247.com/global-liners-enter-familiar-price-war-territory [https://perma.cc/23U6-E585]. Such overcapacity is caused by (1) an oversupply of ships and container space relative to demand; and (2) the commoditized nature of services; both have made it difficult for carriers to differentiate themselves. *Id.*

9 FED. MAR. COMM'N, EFFECTS OF THE COVID-19 PANDEMIC ON THE U.S. INTERNATIONAL OCEAN SUPPLY CHAIN: STAKEHOLDER ENGAGEMENT AND POSSIBLE VIOLATIONS OF 46 U.S.C. § 41102(c) 40–41 (2022).

10 Idha Toft Valeur, *About 75 Ships Waiting Off the Port of Long Beach*, SHIPPINGWATCH (Nov. 5, 2021), https://shippingwatch.com/Ports/article13438107.ece [https://perma.cc/EE62-VTGE].

11 Greg Miller, *Record Shattered: 73 Container Ships Stuck Waiting Off California*, FREIGHTWAVES (Sept. 16, 2021), https://www.freightwaves.com/news/record-shattered-61-container-ships-stuck-waiting-off-california [https://perma.cc/SL3T-GGNS].

12 Yan Carrière-Swallow, Pragyan Deb, Davide Furceri, Daniel Jiménez & Jonathan D. Ostry, *How Soaring Shipping Costs Raise Prices Around the World*, INT'L MONETARY FUND (Mar. 28, 2022), https://www.imf.org/en/Blogs/Articles/2022/03/28/how-soaring-shipping-costs-raise-prices-around-the-world [https://perma.cc/QM6T-6PDS].

13 *Id.*; Press Release, U.S. Int'l Trade Comm'n, USITC Analyzes Market Conditions and Outlook for Distribution Services in Annual Services Report (May 26, 2023), https://www.usitc.gov/press_room/news_release/2023/er0526_63943.htm [https://web.archive.org/web/20250117033422/https://www.usitc.gov/press_room/news_release/2023/er0526_63943.htm].

interest rates and sparking allegations that global ocean carriers failed to honor their service contract commitments and engaged in discriminatory practices while reporting record profits.[14] The effect persisted for multiple years following the onset of the pandemic, with the IMF reporting on January 24, 2023 that "[t]he 2021 surge in global shipping costs was a canary in the coal mine for the persistent rise in inflation" and estimating that "[g]iven the actual increase in global shipping costs during 2021, . . . the impact on inflation in 2022 was more than 2 percentage points—a huge effect that few central banks would dismiss."[15]

Two recent Federal Maritime Commission (FMC or "Commission") decisions—*MCS Industries, Inc. v. COSCO Shipping Lines Co., Ltd.*[16] and *OJ Commerce, LLC v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG* [17] —mark the Commission's latest response to the challenges posed by recent carrier practices in the global shipping industry. These decisions set important precedents for future disputes, reflecting the FMC's evolving approach to carrier accountability. This article argues that these rulings signal a shift toward a more pragmatic framework for assessing evidence and calculating damages, one that better accounts for the complexities of modern shipping practices and provides a clearer path for addressing misconduct in the industry.

The timing of these decisions is particularly significant, coming after several years of industry turmoil that saw unprecedented spikes in ocean freight rates and widespread allegations of carrier misconduct.[18] The decisions suggest that it is possible for the FMC to enforce meaningful consequences on carriers that fail to uphold their service commitments or engage in retaliatory conduct.

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14 *See* EFFECTS OF THE COVID-19 PANDEMIC ON THE U.S. INTERNATIONAL OCEAN SUPPLY CHAIN, *supra* note 9, at 11, 29, 41.

15 Jonathan D. Ostry, *The 2021 Surge in Global Shipping Costs Was a Canary in the Coal Mine for the Persistent Rise in Inflation*, INT'L MONETARY FUND (Jan. 24, 2023), https://www.imf.org/en/Publications/fandd/issues/2023/03/the-costs-of-misreading-inflation-jonathan-ostry [https://perma.cc/YH4D-NBS2].

16 MCS Indus., Inc. v. COSCO Shipping Lines Co. Ltd., Docket No. 21-05 (F.M.C. Jan. 3, 2024), *aff'd*, Docket No. 21-05 (F.M.C. July 16, 2024).

17 OJ Com., LLC v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11 (F.M.C. June 7, 2023), *aff'd*, Docket No. 21-11 (F.M.C. Aug. 27, 2024).

18 *See, e.g.*, EFFECTS OF THE COVID-19 PANDEMIC ON THE U.S. INTERNATIONAL OCEAN SUPPLY CHAIN, *supra* note 9, at 11, 29, 41.

I. BACKGROUND: THE SERVICE CONTRACT FRAMEWORK

A. *Historical Development*

Before the enactment of the Shipping Act of 1984, the ocean shipping industry primarily operated under a conference system: two or more carriers serving a given market collectively established freight rates and generally restricted members from engaging in independent rate-setting or other competitive actions.[19] The Shipping Act of 1984 authorized the use of service contracts, granting shippers and ocean carriers the ability to privately negotiate terms such as rates, volume commitments, and service conditions outside the confines of publicly filed tariffs.[20] This marked a significant modernization of U.S. shipping regulations, fostering greater flexibility, competition, and efficiency in the industry by allowing tailored agreements that align with the needs of both parties. To ensure fairness and compliance with antitrust laws, the Act requires that these contracts be confidentially filed with the FMC, which oversees their enforcement.[21]

B. *Pandemic Disruptions*

Shippers today secure ocean freight through two primary approaches: the spot market and service contracts, each with its own advantages and challenges.[22] The spot market offers flexibility for short-term needs, with rates that fluctuate based on current market conditions.[23] However, this approach can be unpredictable, with volatile pricing and limited capacity during peak periods.[24] Service contracts, on the other hand, provide a more stable and reliable solution. These long-term agreements, authorized under the Shipping Act of 1984, allow shippers

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19 FED. MAR. COMM'N, AN ANALYSIS OF THE MARITIME INDUSTRY AND THE EFFECTS OF THE 1984 SHIPPING ACT 3 (1989) https://www.ftc.gov/sites/default/files/documents/reports/analysis-maritime-industry-and-1984-shipping-act/198911maritime.pdf (last visited Feb. 14, 2025).

20 Shipping Act of 1984, Pub. L. No. 98-237, 98 Stat. 67 (codified as amended in scattered sections of 46 U.S.C.).

21 *Id.*

22 Jitendra Bhonsle, *Differences and Correlation Between Spot Rates and Contract Rates in Shipping*, MARINE INSIGHT (May 22, 2023), https://www.marineinsight.com/maritime-law/differences-and-correlation-between-spot-rates-and-contract-rates-in-shipping [https://perma.cc/5NN4-L4K5].

23 *Id.*

24 *Id.*

and carriers to negotiate fixed rates, capacity commitments, and service terms.[25]

Shippers tend to prefer service contracts because they provide greater flexibility, confidentiality, and the ability to negotiate tailored terms, allowing for predictable pricing and guaranteeing capacity allocation, creating a mutually beneficial relationship. [26] These agreements shield both parties from the volatility of the spot market, where rates and space availability can fluctuate dramatically due to seasonal demand, disruptions, or economic shifts.[27] For shippers, service contracts ensure consistent access to vessel space and predictable transportation costs, enabling better budgeting and supply chain planning.[28] For carriers, they offer a reliable revenue stream and help optimize fleet utilization.[29] By fostering long-term commitments, these contracts reduce risks, enhance operational efficiency, and bring greater predictability to global trade. This tension between spot market and contract carriage forms the backdrop for the decisions discussed in this article, with the FMC explicitly recognizing that spot market availability is no substitute for the certainty provided by service contracts.[30] The Commission has stated that spot premium carriage and service contract carriage "are qualitatively different products" [31] because a service contract, as "a reciprocal commitment between shipper and carrier," guarantees minimum cargo volumes for carriers and assured space or rates for shippers. [32] This arrangement provides the stability and predictability crucial for businesses planning their operations for the year ahead.[33]

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25 *See supra* notes 20–21 and accompanying text.

26 FED. MAR. COMM'N, THE IMPACT OF THE OCEAN SHIPPING REFORM ACT OF 1998 2, 8 (2001) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.fmc.gov/wp-content/uploads/2019/04/OSRA_Study.pdf (last visited Feb. 26, 2025).

27 *Id.* at 65 ("It stated that the ultimate benefits to the shipping public are increased rate and service stability, along with continued adequate levels of investment in vessels, equipment, facilities, and communication systems to meet the rapidly growing demand for ocean carriage and related logistics services.").

28 *See id.* at 19 ("The most common changes include the addition of confidentiality clauses, specific vessel space guarantees, advance booking notices, slack-season volume guarantees, and certain standard or model contract terms.").

29 *Id.* at 67 ("Carriers agreed that discussion agreements are beneficial to their operations. WSC commented that the information exchange from discussion agreements 'is an important agreement activity that helps member lines improve business planning, encourage better capacity utilization, and develop rational pricing policies as well as strengthening business confidence.'").

30 OJ Com., LLC v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11, 27 (F.M.C. Aug. 27, 2024).

31 *Id.* at 19–20.

32 *Id.* at 27.

33 *Id.*

During the COVID-19 pandemic, the international supply chain faced unprecedented disruptions, with major U.S. ports crippled by severe congestion as record-breaking import volumes overwhelmed infrastructure.[34] A global container imbalance further worsened the crisis, leading to widespread "blank sailings," where carriers canceled voyages to manage capacity, exacerbating space shortages.[35] Amid these challenges, many ocean "[c]arriers have earned high rates of return during the pandemic, with double-digit operating profits for some container carriers in 2020."[36] "Shippers have emphasized that they do not have access to empty containers for exports and face blank sailings, as well as high freight rates . . . ."[37]

In recent complaints, shippers have alleged that, by reallocating vessel space to the spot market, carriers maximized short-term profits, even at the expense of long-term contractual obligations.[38] These opportunistic behaviors disrupted supply chains; undermined the trust and stability that service contracts are designed to provide; and exposed the limitations of existing regulatory mechanisms. This prompted the FMC to investigate carriers' conduct[39] and respond to a wave of complaints from U.S. shippers regarding carriers' abusive business practices.

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34 *See supra* notes 9–14 and accompanying text.

35 EFFECTS OF THE COVID-19 PANDEMIC ON THE U.S. INTERNATIONAL OCEAN SUPPLY CHAIN, *supra* note 9, at 8–11, 22.

36 Press Release, United Nations Conf. on Trade and Dev., Container Shipping in Times of COVID-19: Why Freight Rates Have Surged and Implications for Policymakers 4 (Apr. 19, 2021), https://unctad.org/publication/container-shipping-times-covid-19-why-freight-rates-have-surged-and-implications-policy [https://perma.cc/476H-V94E].

37 *Id.*

38 *See* Complaint at 5, PKDC, LLC v. CMA CGM S.A., Docket No. 24-21 (F.M.C. May 15, 2024) ("[Carrier's] unreasonable practice of refusing space under the Service Contract was a concerted effort to take advantage of extraordinarily high spot market rates by refusing to comply with its contractual agreements in favor of shippers willing to pay a higher price than that set forth in [carrier's] Service Contract with [shipper]."); *see also* Complaint at 4, U Shippers Grp., Inc. v. Maersk A/S dba Maersk, Docket No. 22-22 (F.M.C. Aug. 30, 2022) ("Instead of providing U Shippers with the space to which it was contractually obligated, Maersk provided that volume to spot market users and newly negotiated contract holders.").

39 For example, in 2024, the FMC's Office of Enforcement, following a six-month investigation into Mediterranean Shipping Company and its agents' billing practices, sought a $63.3 million civil penalty from the carrier. *FMC Investigation Calls for MSC to Pay $63M for Shipping Act Violations*, MAR. EXEC. (Apr. 5, 2024), https://maritime-executive.com/article/fmc-investigation-calls-for-msc-to-pay-63m-for-shipping-act-violations [https://perma.cc/CWH2-8EFK]. The penalty was imposed due to what the FMC described as "unreasonable and unjust actions and inactions in violation of the Shipping Act of 1984." *Id.*

C. *Regulatory Response*

The pandemic-induced market transformations exposed a critical regulatory challenge: how to maintain the integrity of long-term contractual relationships in an environment of extreme volatility and information asymmetry.[40]

During the COVID-19 pandemic, the FMC initiated two significant fact-finding investigations to address carrier conduct: (i) Fact Finding 29[41] and (ii) Fact Finding 30.[42] The Final Report for Fact Finding 29 followed an extensive two-year investigation, during which efforts were dedicated to identifying operational solutions that could address the significant challenges posed to the cargo delivery system by the COVID-19 pandemic.[43] Similarly, the Final Report for Fact Finding 30, which concentrated on the passenger cruise sector, sought "to examine COVID-19 related impacts to the passenger cruise vessel industry" and "identify private sector initiatives that could mitigate operational and economic effects on the cruise industry."[44]

Fact Finding 29 resulted in several recommendations to address significant disruptions in the international ocean supply chain caused by the COVID-19 pandemic.[45] These recommendations included prioritizing enforceable service contracts with clear mutual obligations between carriers and shippers and aiming to enhance transparency, accountability, and fairness in commercial dealings.[46] This approach aligns with the legislative intent behind the Ocean Shipping Reform Act

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40 EFFECTS OF THE COVID-19 PANDEMIC ON THE U.S. INTERNATIONAL OCEAN SUPPLY CHAIN, *supra* note 9, at 14–16.

41 *See generally id.*

42 FED. MAR. COMM'N, COVID-19 IMPACT ON CRUISE INDUSTRY (2022).

43 *See* EFFECTS OF THE COVID-19 PANDEMIC ON THE U.S. INTERNATIONAL OCEAN SUPPLY CHAIN, *supra* note 9, at 6–8.

44 Press Release, Fed. Mar. Comm'n, Fact Finding 30 Final Report Released (Jan. 14, 2022), https://www.fmc.gov/articles/fact-finding-30-final-report-released [https://perma.cc/49GY-8ZFC].

45 EFFECTS OF THE COVID-19 PANDEMIC ON THE U.S. INTERNATIONAL OCEAN SUPPLY CHAIN, *supra* note 9, at 61 ("The Fact Finding Officer believes that the actions taken pursuant to the Interim Recommendations, and the approval and implementation of the Final Recommendations, will address a number of the challenges experienced in the international ocean supply chain as a result of COVID-19.").

46 *Id.* ("The Fact Finding Officer also believes that to address bottlenecks in the supply chain and make the ocean supply chain more efficient, it is crucial that shippers and ocean carriers move beyond vague and unenforceable rate agreements. One important thing for shippers and carriers alike would be for service contracts to entail a 'meeting of the minds' with mutual obligations and commitments that are part of enforceable commercial documents.").

of 1998, which sought to create stability and predictability in ocean freight markets.[47]

As discussed below, the regulatory response outlined in Fact Finding 29 is consistent with the Commission's decision and guidance in *MCS Industries* and *OJ Commerce*. In *MCS Industries*, the allegations of respondent COSCO prioritizing spot market customers over fulfilling service contract obligations reflect the investigation's emphasis on enforcing mutual commitments and ensuring service contracts are meaningful, enforceable agreements that provide stability for shippers.[48] Similarly, claims of unreasonable denial of service in *OJ Commerce*[49] align with Fact Finding 29's push for transparency and fairness in carrier-shipper relationships.[50]

II. ANALYSIS OF *MCS INDUSTRIES*: ESTABLISHING STANDARDS FOR MQC SHORTFALL CLAIMS

A. *Default Judgment and Discovery Obligations*

The Shipping Act requires ocean carriers to comply with discovery orders from the Commission and its administrative law judges ("ALJs"). [51] The *MCS Industries* decision underscores that non-compliance with discovery orders will result in significant consequences, as evidenced by the Commission's decision to affirm a default judgment against defendant Mediterranean Shipping Company ("Mediterranean"),

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47 *Id.* ("This is what was anticipated in the Ocean Shipping Reform Act of 1998. Mutual commercial commitments and understanding will provide protection for exporters and importers from volatile shipping rates and the forecasting that ocean carriers need to provide capacity to serve the needs of their customers.").

48 Complaint at 7, 10–11, MCS Indus., Inc. v. COSCO Shipping Lines Co. Ltd., Docket No. 21-05 (F.M.C. Jul. 28, 2021).

49 OJ Com., LLC, v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11, 22 (F.M.C. Aug. 27, 2024) (finding it unreasonable for carriers to respond to shippers' "reasonable legal notice based on [carriers'] failures [to meet their contractual commitments] . . . by cutting off access to the existing service contract and refusing to renew or expand the relationship").

50 EFFECTS OF THE COVID-19 PANDEMIC ON THE U.S. INTERNATIONAL OCEAN SUPPLY CHAIN, *supra* note 9, at 61 ("[I]t is crucial that shippers and ocean carriers move beyond vague and unenforceable rate agreements . . . Mutual commercial commitments and understanding will provide protection for exporters and importers from volatile shipping rates and the forecasting that ocean carriers need to provide capacity to serve the needs of their customers.").

51 46 U.S.C. § 41308(a).

a vessel-operating common carrier, for its refusal to comply with discovery orders.[52]

The case involved allegations by MCS Industries, a Pennsylvania-based furniture company, that container shipping company Mediterranean had violated the Shipping Act.[53] The procedural history of the case reveals multiple instances where Mediterranean failed to produce requested documents, leading to increasingly severe sanctions. [54] Specifically, despite multiple directives, including orders issued in December 2021 and July 2022, Mediterranean delayed compliance, citing concerns about Swiss legal constraints regarding the production of documents in Switzerland and requesting additional guidance from Swiss authorities. [55] The ALJ determined that Swiss law did not prevent Mediterranean from producing the required information and found that its arguments for further delays were insufficient.[56] After Mediterranean missed several deadlines and failed to provide the necessary discovery, the ALJ issued a default judgment in January 2023. [57] The ALJ's imposition of default judgment could mean a stronger commitment to enforcing discovery obligations. The FMC affirmed this decision.[58]

The Commission found that the ALJ did not abuse her discretion in imposing default as a discovery sanction, given that Mediterranean refused to comply with the ALJ's orders regarding discovery in the case and "was warned repeatedly that default was a possible sanction for its failure to produce the discovery at issue."[59] This ruling sent a powerful message to carriers that the FMC would insist on compliance with discovery obligations and ALJ discovery orders, which we anticipate will promote more complete document production by carriers, reduce carriers' ability to avoid full discovery through partial compliance, and warn all parties that there will be clear consequences for discovery violations.[60]

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52 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 11–12, 19–25 (F.M.C. July 16, 2024). Mediterranean has appealed the Commission's final decision to the D.C. Circuit Court of Appeals, which has jurisdiction over appeals from FMC decisions.

53 MCS Indus., Inc. v. COSCO Shipping Lines Co. Ltd., Docket No. 21-05, 3 (F.M.C. Jan. 3, 2024).

54 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 3–7 (F.M.C. July 16, 2024).

55 *Id.*

56 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, at 17–21 (F.M.C. Jan.13, 2023).

57 *Id.*

58 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 11–24 (F.M.C. Jan. 3, 2024).

59 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 20–21 (F.M.C. July 16, 2024).

60 *Id.* at 8–11.

B. *Damages Calculation Methodology*

The *MCS Industries* case was the first FMC complaint filed during the pandemic era alleging that carriers deliberately fell short on their contracted capacity to a shipper, resulting in a minimum quantity commitment ("MQC") shortfall.[61] A MQC shortfall claim arises when a party fails to meet the MQC specified in a service contract between a shipper and an ocean carrier, leading to disputes.[62] The FMC has established a practical and equitable framework for resolving these disputes by allowing shippers to recover the difference between the contract rates and the higher spot market rates they were forced to pay for alternative transportation.[63] This approach effectively addresses the financial burdens shippers face when carriers fail to meet their commitments.

The Commission's MQC shortfall damages approach in *MCS Industries* focused on determining what the claimant actually had to pay to secure passage on lanes that were covered by the service contract at issue.[64] This approach was designed to recognize the economic realities faced by shippers and the hardship imposed by unilateral MQC shortfalls. For shippers, this development reinforces the importance of maintaining meticulous records of contract performance, including documentation of spot market rates, alternative arrangements, and any associated costs. For carriers, this approach emphasizes the importance of complying with filed service contracts, as any profits realized by shifting space from service contract clients to spot market sales may be clawed back by aggrieved customers.

Notably, the FMC rejected the enforceability of standard service contract limitations on liability when such provisions conflict with

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61 See Complaint at 3, MCS Indus., Inc. v. COSCO Shipping Lines Co. Ltd., Docket No. 21-05 (F.M.C. Jul. 28, 2021) ("The ink was scarcely dry on those Service Contracts, however, before [carriers] began flouting their contractual service commitments, providing MCS with only fractions of the agreed allotments of space on their respective ocean vessels, and instead forcing MCS to make alternate transportation arrangements at substantially—often outrageously—higher spot market prices.")

62 *See, e.g.*, 46 C.F.R. § 530.3(q) ("Service contract means a written contract, other than a bill of lading or receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the individual ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as, assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party.").

63 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 15, 27–28 (F.M.C. July 16, 2024); *see also* U.C.C. § 2-712 (AM. L. INST. & UNIF. L. COMM'N 1977).

64 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 27 (F.M.C. July 16, 2024).

shippers' ability to recover actual damages and recognized that the claims were not for contractual damages but statutory remedies addressing violations of the Shipping Act's requirements.[65] The FMC found that boilerplate liquidated damages clauses, which are found in most service contracts and are usually skewed in favor of carriers, do not eliminate a shipper's right to seek full reparations under the Shipping Act.[66]

III. ANALYSIS OF *OJ COMMERCE*: DEFINING REFUSAL TO DEAL & RETALIATION

A. *Jurisdiction Over Service Contract Disputes*

On August 27, 2024, the Commission issued an Order Affirming Initial Decision in *OJ Commerce*.[67] The Initial Decision, rendered by the ALJ on June 7, 2023, found that respondent Hamburg, an ocean carrier owned by Danish shipping conglomerate Maersk, had knowingly and willfully violated the Shipping Act of 1984 by unlawfully refusing to deal with OJ Commerce (OJC), a Florida-based furniture importer, in violation of 46 U.S.C. § 41104(a)(10) and by retaliating against OJC in violation of 46 U.S.C. § 41104(a)(3).[68]

In *MCS Industries*, the Commission issued an Order Partially Affirming Default and Remanding for Further Proceedings in January 2024.[69] In its January 2024 order, the Commission affirmed the entry of default but remanded the case for further proceedings to consider a potential alternative basis for default and to allow the submission of

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65 *Id.* at 31 ("As the ALJ noted, 46 U.S.C. § 41305(b) states that the Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation. It is the complainant's burden to show actual damages resulting from such violations.") (internal quotation marks omitted). "That does not require absolute precision but does require evidence sufficient to reasonably infer the actual loss sustained." *Id.* (quoting MAVL Cap. Inc. v. Marine Transp. Logistics, Inc., Docket No. 16-16, 6 (F.M.C. June 10, 2022).).

66 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 28 (F.M.C. Jan. 3, 2024) ("Mediterranean asserts that because the damages here were not liquidated or otherwise sums certain, relevant FMC and federal court precedent requires an evidentiary showing even if liability is established by default. Mediterranean's argument on this point is correct. In support of the requested reparations award, MCS simply stated in its brief that it 'has calculated' the two yearly amounts above, without any explanation of how it arrived at them or any supporting evidence. That is not adequate here . . . And where the damages claimed are of that less certain nature, the general rule for courts applying the analogous Federal Rule 55 is that even where a default judgment is to be entered, the plaintiff must provide evidence to justify a damages award.").

67 OJ Com., LLC, v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11 (F.M.C. Aug. 27, 2024).

68 *Id.* at 1–2, 12; OJ Com., LLC, v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11, 2 (F.M.C. June 7, 2023).

69 MCS Indus., Inc. v. COSCO Shipping Lines Co. Ltd., Docket No. 21-05, 1–2 (F.M.C. Jan. 3, 2024).

additional evidence regarding reparations.[70] On July 16, 2024, the Commission issued a subsequent Order Affirming Decision on Remand.[71]

In both *OJ Commerce* and *MCS Industries*, ocean carriers argued that the FMC should decline jurisdiction on the basis that the claims could also be brought in court as breach of contract claims.[72] The reason for this argument was obvious; carriers believed they would have a better chance of enforcing one-sided dispute resolution and liquidated damages clauses outside of the FMC. The FMC, under the Shipping Act, is required to award reparations for damages sustained as a result of Shipping Act violations, regardless of any contractual limitations on liability. In both cases, the FMC rejected the carrier position, holding that Shipping Act claims "are distinct from breach of contract claims and entail a different analysis."[73]

By rejecting arguments that service contract disputes should presumptively be treated as private contractual matters rather than regulatory issues,[74] the FMC has clarified that it will exercise its statutory authority to oversee and enforce standards of fairness and equity in carrier-shipper relationships. This ensures that shippers can seek relief for violations of the Shipping Act, such as refusal to deal or retaliation, without being constrained by the limitations or exclusions often found in standard service contracts.[75]

This approach highlights the FMC's commitment to providing shippers with comprehensive remedies that reflect both contractual obligations and regulatory protections. It serves as a reminder to carriers that compliance with the Shipping Act is not optional, even in the context of individually negotiated service contracts.

By asserting jurisdiction over these disputes, the FMC has also preserved an important avenue for shippers to challenge systemic issues, ensuring that service contracts do not operate as a shield for conduct that violates public policy or regulatory standards. This precedent reinforces

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70 *Id.* at 2.

71 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 2 (F.M.C. July 16, 2024).

72 *See* OJ Com., LLC, v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11, 42 (F.M.C. June 7, 2023) (arguing that OJC's claims "related to alleged breaches of the service contract . . . typically would not be heard by the Commission"); *see also* MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 16 (F.M.C. Jan. 13, 2023) (arguing that "the claims are inherently breach of contract claims that should be resolved by arbitration").

73 OJ Com., LLC, v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11, 15 (F.M.C. Aug. 27, 2024).

74 *Id.* at 21.

75 *Id.* at 15.

the FMC's "long history of prioritizing protecting shippers given the imbalance of power between shippers and carriers."[76]

B. *Expanded Understanding of "Refusal to Deal"*

The decision in *OJ Commerce* emphasizes that "[r]efusal[s] to deal [or negotiate] are factually driven and determined on a case-by-case basis" and significantly broadens the understanding of what constitutes a refusal to deal, establishing several important principles.[77] The FMC held that service reductions, even without complete termination, can constitute refusal to deal.[78] Termination of contract renewal negotiations may violate the Act, particularly when motivated by retaliatory intent.[79] The FMC rejected arguments that spot market availability cures a refusal to deal regarding contract carriage.[80]

C. *Retaliation Framework*

The Commission's Statement on Retaliation clarifies that it "will interpret [46 U.S.C. § 41104(a)(3)] the anti-retaliation provision [] broadly to effectuate Congress's intent that shippers feel free to air their grievances to the Commission, and to address new shipping practices and new forms of retaliation."[81] The *OJ Commerce* decision provides helpful guidance on retaliation claims, establishing several key principles. The decision clarifies that mere threats to file FMC complaints trigger protection.[82] Internal carrier communications can evidence retaliatory intent, and reductions in service levels can constitute retaliation.[83] The FMC adopted a flexible approach to proving retaliatory intent, considering temporal proximity between protected activity and adverse action, internal carrier communications, and comparative treatment of other shippers.[84] In *OJ Commerce*, the Chief ALJ found that threats to

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76 *Id.* at 36.

77 *Id.* at 17–18 (citing Canaveral Port Authority – Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate, Docket No. 02-02, 37 (F.M.C. Feb. 24, 2003)).

78 *Id.* at 19–20.

79 *Id.*

80 *Id.*

81 *Id.* at 31–32 (quoting Federal Maritime Commission: Statement on Retaliation, 3 F.M.C.2d 201, 201 (Dec. 28, 2021)).

82 *Id.* at 31–32.

83 *Id.* at 29.

84 *See id.* at 5–8 (observing that, one day after OJC's notification of its "intention to complain to the Commission," [Hamburg's] employees internally noted that "it will be a risk to continue

file a complaint with the Commission, while not expressly included in the Commission's statement on retaliation, were part of the category encompassed in "any other reason."[85]

> Ideally, parties should be able to discuss what they think could be Shipping Act violations as soon as possible, so the parties can work toward resolving them before they become violations or lead to litigation. These conversations may be limited if "threats" to file a complaint are not included in the anti-retaliation provisions as shippers may hesitate to raise issues without the protection of the anti-retaliation provision.[86]

D. *Damages Framework*

The FMC's approach to damages in *OJ Commerce* provides further clarity on how damages are assessed in maritime disputes. By accepting per-container lost profits calculations based on historical profitability data, product-specific margin analysis, and forward-looking projections, the FMC has embraced a practical and business-oriented methodology for quantifying economic harm.[87] This approach aligns damages more closely with the actual financial consequences experienced by shippers, offering a tailored framework that accounts for the realities of modern commerce.

The FMC adopted more flexible evidentiary standards, allowing shippers to rely on summary documentation, reasonable estimates of future losses, and analyses grounded in broader industry patterns and practices. [88] This flexibility recognizes the challenges inherent in providing granular documentation in complex shipping arrangements and

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work with [OJC]" and that "[w]e should not engage in any renewal discussions with [the] customer in light of the potential litigation"); *id.* at 32 ("And if a shipper is protected in filing a complaint with the Commission—one of only two situations that Congress deemed important enough to explicitly describe—it is reasonable to protect a shipper for stating that it intends to file such a complaint, a more limited but closely related action that would serve the same goals. The ALJ's inclusion of notices of intention to file a complaint with the Commission is not a misinterpretation of the Commission's guidance."); *id.* at 20 ("The Commission concurs with the ALJ that these are qualitatively different products and that finding a refusal to deal does not require finding a carrier shut out a shipper from both types of products."); *id.* at 25–30 (noting that the ALJ appropriately considered retaliatory intent through multiple factors, including whether the shipper's intent to file a complaint was a motivating factor and whether the carrier's conduct distinguished between different types of shippers).

85 OJ Com., LLC, v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG., Docket No. 21-11, 42 (F.M.C. June 7, 2024).

86 *Id.*

87 *See* OJ Com., LLC, v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11, 63 (F.M.C. Aug. 27, 2024).

88 *See id.* at 37–42.

prioritizes the establishment of reasonable approximations of harm over unattainable levels of precision. Such a standard reduces barriers for shippers seeking relief, while still ensuring that damages claims are substantiated by credible evidence.

The FMC also addressed the circumstances under which double damages may be warranted, providing critical guidance on this punitive measure.[89] The decision emphasized that double damages are appropriate in cases involving knowing violations of the Shipping Act, internal acknowledgment of potential liability by carriers, and demonstrable awareness of regulatory requirements that were subsequently disregarded.[90] This framework underscores the FMC's commitment to holding carriers accountable for unreasonable and unjust conduct, particularly where intentional breaches or bad faith actions exacerbate the harm to shippers. In its Order Affirming Initial Decision, the Commission upheld the ALJ's finding of liability but modified the damages calculation, ultimately awarding OJC $17,563,806.14 in reparations—nearly double the amount awarded by the ALJ.[91]

By integrating these principles into its damages' framework, the FMC has established a balanced approach that not only ensures fair compensation for shippers but also incentivizes carriers to comply with both contractual obligations and regulatory standards. This evolution in damages methodology reflects a broader trend toward aligning FMC regulations with the practical needs of the industry while maintaining rigorous accountability for violations.[92]

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89 *Id.* at 44–47.

90 *Id.* at 45–47.

91 *Id.* at 64.

92 *See* Demurrage and Detention Billing Requirements, 89 Fed. Reg. 14330, 14331 (Feb. 26, 2024) (to be codified as 46 C.F.R. pt. 541) (explaining that "[a]bout 75 percent of commenters supported the rule"); Statement of Commissioner Carl W. Bentzel on the Northwest Seaport Alliance Peak Planning Session Participation and Expeditors Keynote Speech, FED. MAR. COMM'N (June 11, 2024), https://www.fmc.gov/ftdo/statement-of-commissioner-carl-w-bentzel-on-the-northwest-seaport-alliance-peak-planning-session-participation-and-expeditors-keynote-speech [https://perma.cc/A25C-MN9D] ("The focus of my remarks was industry's need for smarter infrastructure to assist in facilitating timely and accurate operational information. It is no longer possible to simply build our way out of congestion. Better and more timely operational information will lead to more efficient and resilient maritime infrastructure."); Statement by Commissioner Bentzel on MTDI FMC Commission Meeting, FED. MAR. COMM'N (May 3, 2023), https://www.fmc.gov/ftdo/statement-by-commissioner-bentzel-on-mtdi-fmc-commission-meeting [https://perma.cc/3YMZ-Q55N] ("Moving forward, the report in front of you today identifies a significant problem that the industry has brought to our attention. The problem of sharing information and speaking the same lexicon in the movement of freight has existed for a long time, but became much more pronounced during the pandemic, reaching what I would consider a crisis point in the summer of 2021.").

E. *Evidentiary Standards*

The FMC's rulings in *MCS Industries* and *OJ Commerce* clarified evidentiary standards in maritime disputes by rejecting carriers' requests to force the claimant to prove causation on a discrete, container-by-container basis when proving damages.[93] Carriers have argued that shippers should be required to establish causation and quantify losses with meticulous detail for each individual container,[94] a standard that was often impractical given the complex and dynamic nature of global shipping operations. In industry practice, day-to-day communications about cargo space requests and booking attempts often occur not directly between shippers and carriers but through their respective agents, involving phone calls, emails, online portals, and other informal methods, making it impossible for large shippers to maintain a comprehensive paper trail for every container.[95] Moreover, containerized ocean freight is fungible by design, because containers are interchangeable and identical, so there is usually no specific reason why one container of goods is carried via a service contract while another is carried via the spot market, other than the obvious fact that space for two containers was needed.

Recognizing these challenges,[96] the FMC rejected demands for container-by-container precision in proving damages, acknowledging the "complex and fluid nature" of ocean shipping arrangements and inherent limitations of granular documentation.[97] This "liberal standard[] of evidence" recognizes that "[i]t is unreasonable to expect documentation on either end of these arrangements to consistently reflect such a link as to hundreds of containers over a 15-month period."[98] By embracing a

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93 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 3, 32–33 (F.M.C. July 16, 2024); OJ Com., LLC, v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11, 58–59 (F.M.C. June 7, 2023).

94 *See, e.g.*, 46 C.F.R. § 502.203; OJ Com., LLC, v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11, 2 (F.M.C. June 7, 2023) ("[Carrier] assert[ing] that [shipper] is not entitled to any damages because of contractual limitations, damages being speculative and based on insufficient data . . . .").

95 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 31 (F.M.C. July 16, 2024) ("Although [carrier] is correct that the evidence here does not include specific links between each of [shipper's] requests to [carrier] and each of [shipper's] replacement shipments, on the whole the detailed declaration and extensive supporting documentation sufficiently establish [shipper's] injury.").

96 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 14 (F.M.C. July 16, 2024) ("[The ALJ] found that Mediterranean was advocating for an excessively high standard of proof, and she rejected its apparent claims that MCS had to tie each spot shipment to a prior request that Mediterranean carry the shipment and to show that each spot shipment could not have been made any other way.").

97 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 32–33 (F.M.C. July 16, 2024).

98 *Id.* at 33.

more practical evidentiary standard based on the economic reality of fungible, time-sensitive ocean freight, the FMC ensured that complaints alleging MQC shortfalls could not be defeated simply by unreasonable evidentiary demands.

The rulings make clear that shippers can rely on sufficient aggregate evidence to establish causation and damages, such as declarations from logistics personnel describing the shortfalls and their operational impacts; summary charts detailing replacement shipments and associated costs; and invoices that substantiate the rates paid for alternative carriage.[99]

The FMC also demonstrated a willingness to infer causation from chronic shortfalls, even in the absence of exhaustive container-specific proof.[100]

This approach not only lowers the evidentiary threshold but also provides clear guidance on what constitutes sufficient proof under these new standards. It reflects a balance between fairness and pragmatism, enabling shippers to hold carriers accountable for breaches while still requiring a reasonable level of documentation. Ultimately, the FMC's rejection of rigid container-by-container analysis underscores a broader commitment to adapting legal principles to the realities of modern shipping, fostering greater equity and accountability in the enforcement of service contracts.

IV. IMPLICATIONS FOR INDUSTRY PRACTICE

A. *Service Contract Negotiations*

These decisions significantly strengthen shippers' bargaining position in service contract negotiations. Carriers and shippers must now reconsider standard contract terms regarding liquidated damages provisions, force majeure clauses, and MQCs.[101] These clauses, often skewed in favor of carriers, now face greater scrutiny under the FMC's

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99 *Id.* at 12, 31–32.

100 *Id.* at 31.

101 *See also* Charlotte Goldstone, *Shippers Brace for Extra Costs as Carriers Invoke Force Majeure*, THE LOADSTAR (Oct. 3, 2024), https://theloadstar.com/shipper-brace-for-extra-costs-as-carriers-invoke-force-majeure [https://perma.cc/G2L2-7LC8]; Jitendra Bhonsle, *Minimum Quantity Commitment (MQC) and Liquidated Damages in Container Shipping: Concept and Relevance*, MARINE INSIGHT (Mar. 5, 2024), https://www.marineinsight.com/maritime-law/minimum-quantity-commitment-mqc-and-liquidated-damages-in-container-shipping-concept-and-relevance [https://perma.cc/MW24-MWTT].

recent rulings, as these provisions may not shield carriers from liability in cases of bad faith or clear contractual breaches.[102]

In *MCS Industries*, the FMC awarded actual damages amounting to the difference between what MCS would have paid if Mediterranean had honored the price and quantity terms in the service contract and what MCS actually paid to Non-Vessel Operators (NVOs) and other carriers at higher prices to make up for Mediterranean's shortfall.[103] *OJ Commerce* demonstrated the FMC's intolerance for discriminatory and retaliatory practices, claiming that respondent Hamburg violated the Shipping Act by refusing to honor or finalize service commitment negotiations with a shipper after the shipper announced its intention to file a case with the FMC.[104] These cases send a strong message that shippers have a right to expect carriers to honor their commitments without bias or unfair treatment and place carriers on notice that the retaliation provisions in the Shipping Act will be strictly enforced.

As a result, both carriers and shippers should exercise care when drafting and negotiating service contracts. Carriers will need to ensure that terms regarding MQCs, liquidated damages, and force majeure are specific, balanced, and defensible under the FMC's regulatory framework and should be prepared to fulfill their service contract obligations or face liability.[105] Vague or overly carrier-favorable clauses are less likely to withstand scrutiny, particularly in cases where shippers can demonstrate harm caused by carriers' bad faith actions.

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102 *See, e.g.*, Interpretive Rule on Demurrage and Detention Under the Shipping Act, 46 C.F.R. § 545.5 (2020) (reinforcing the principle that demurrage and detention charges must be reasonable and serve an incentivizing function rather than acting as punitive fees); OJ Com., LLC v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11, 58 (F.M.C. Aug. 27, 2024) ("Further, nothing at the time suggests OJC was willing to commit to such a significant increase and pay penalties if it did not ship that much cargo. If OJC agreed to an MQC with [Hamburg] of 4,700 FFE with the same liquidated damages as the 2020-2021 Service Contract, it could face over $1,000,000 in liquidated damages if OJC shipped the same number of containers as the year before.").

103 MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05, 15, 27–28 (F.M.C. July 16, 2024).

104 OJ Com., LLC, v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11, 16–18 (F.M.C. Aug. 27, 2024).

105 Chairman of the Commission, Louis E. "Lou" Sola, recently stated,

> There are many ways the Commission contributes to the competitiveness of American businesses, access to foreign markets for U.S. vessels and companies, and economic growth for the Nation. We will continue that important work while looking for more instances where applying the authorities of the Commission helps U.S. companies and consumers.

Louis E. Sola Designated Chairman of Federal Maritime Commission, FED. MAR. COMM'N (Jan. 21, 2025), https://www.fmc.gov/articles/louis-e-sola-designated-chairman-of-federal-maritime-commission [https://perma.cc/UCK2-99CG].

For shippers, these rulings underscore the importance of documenting space requests and carrier responses, both in the service contracts themselves and throughout the lifespan of the contract. Detailed documentation of these exchanges is vital for ensuring accountability and serves as critical evidence in disputes. Shippers may also consider pushing for more balanced contractual remedies for nonperformance or for contractual safeguards that prevent carriers from unilaterally altering space allocations or pricing structures during peak seasons or under unforeseen market conditions.[106] The FMC's rulings suggest that shippers are well-positioned to challenge such practices if they lack a contractual basis or appear discriminatory.

Overall, by leveraging these rulings, shippers can negotiate contracts that not only safeguard their interests but also ensure that carriers are held to higher standards of performance and compliance.

B. *Compliance Programs*

These decisions make clear that carriers should implement compliance programs capable of addressing these deficiencies. Specifically, carriers should develop systems to track space allocation and MQC performance rigorously, ensuring that decisions are transparent, equitable, and well-documented. Such information should be frequently shared with customers, to ensure all parties are on the same page in terms of where the carrier stands on fulfilling its MQC commitment. Compliance programs should also establish procedures for responding to space requests, managing customer complaints, and handling deviations from contractual commitments in ways that minimize the risk of regulatory violations. Critically, carriers must adopt and enforce strict prohibitions on retaliation against shippers who raise issues concerning compliance with the Shipping Act to avoid facing punitive "double damages" claims under the statutory prohibition on retaliation.

Training is a critical component of these programs. Carrier personnel should receive targeted training on anti-retaliation provisions, emphasizing that no shipper should face adverse consequences for asserting their rights under service contracts. Documentation requirements must also be a focal point, with staff trained to maintain comprehensive records of all space requests, allocation decisions, and communications with shippers. This ensures that carriers can substantiate their compliance efforts in the event of a dispute or regulatory review.

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106 *See generally* MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05 (F.M.C. Aug. 13, 2024); OJ Com., LLC v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11 (F.M.C. Aug. 27, 2024).

Furthermore, the rulings suggest that carriers should reassess their contract renewal processes to avoid practices that could be perceived as coercive or discriminatory.[107] For example, carriers might implement standardized renewal criteria that provide all shippers with fair opportunities to negotiate terms, reducing the risk of complaints or challenges based on unequal treatment.

By aligning their practices with the FMC's heightened standards, carriers not only mitigate legal and regulatory risks but also improve their reputation and reliability in the marketplace. These compliance measures are no longer optional but essential to navigating the evolving regulatory landscape and fostering more equitable relationships with shippers.

CONCLUSION

The significance of these rulings extends far beyond its immediate context. It potentially establishes a new normative framework for maritime commercial interactions, one that prioritizes substantive economic realities over procedural technicalities. By creating clear standards for identifying and addressing market misconduct, the Commission has contributed to a more transparent and accountable regulatory environment.

The *MCS Industries* and *OJ Commerce* decisions represent a significant development in FMC enforcement policy, establishing clearer standards for carrier liability and more practical frameworks for proving damages.[108] These decisions may lead to increased shipper claims and may fundamentally alter the dynamics of service contract negotiations in the ocean shipping industry.[109] The FMC's willingness to impose substantial damages and adopt flexible proof requirements suggests a new era of enhanced carrier accountability in U.S. ocean shipping regulation.

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107 *See* OJ Com., LLC v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11, 19 (F.M.C. Aug. 27, 2024) (finding that Hamburg "shut out" OJC by "proceeding towards a renewal of OJC's service contract, and then abruptly ceasing all renewal efforts and refusing to enter even a pared-down service contract with OJC")."

108 *See generally* MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05 (F.M.C. Aug. 13, 2024); OJ Com., LLC v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11 (F.M.C. Aug. 27, 2024).

109 *See generally* MCS Indus., Inc. v. COSCO Shipping Lines Co., Ltd., Docket No. 21-05 (F.M.C. Aug. 13, 2024); OJ Com., LLC v. Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft A/S & Co. KG, Docket No. 21-11 (F.M.C. Aug. 27, 2024).