Bankrupt Bed Bath & Beyond files $316M mega-claim against MSC

$158M in damages alleged; double sought due to 'willful retaliatory conduct'

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Bankrupt shipper alleges MSC violated the U.S. Shipping Act. (Photo: Jim Allen/FreightWaves)

The bankruptcy estate of former retail giant Bed Bath & Beyond (BBBY) continues its relentless pursuit of shipping lines for alleged damages suffered during the supply chain crisis. It has already filed $31.7 million in claims against Hong Kong shipping line OOCL and $7.7 million in claims against Taiwan's Yang Ming.

But those were just the appetizers.

The main course, filed Tuesday, is a mammoth claim against the world's largest ocean carrier, Switzerland's Mediterranean Shipping Co. (MSC). The various alleged damages add up to $158 million, plus there's a request that all reparations be doubled due to "MSC's willful retaliatory conduct."

That brings the tally to a whopping $316 million, the largest shipper damage claim, by far, against an ocean carrier since the supply chain crisis.

As in the earlier cases filed with the Federal Maritime Commission (FMC) against OOCL and Yang Ming, BBBY's estate is seeking reparations for the added cost of shipping cargo due to volume shortfalls under service contracts, alleged excess amounts paid through peak season surcharges (PSSs) and other charges, and alleged unfair detention and demurrage charges.

The new wrinkle in the MSC case is that BBBY's estate is seeking compensation for lost profits and is asking for double reparations.

Shipping costs due to contract shortfall

BBBY's estate said that MSC carried 1,686.5 forty-foot equivalent units fewer than its Minimum Quantity Commitment (MQC) in the 2021-2022 service contract.

"The additional incremental cost of replacing [the] shortfall … was at least $7,290,314 more than what [BBBY] would have paid had MSC honored its service contract."

'Astronomical' lost profits

"The lost profits sustained by [BBBY] on a per-container basis substantially exceed the excess costs incurred by … purchase of alternative carriage," said the BBBY estate.

It cited the case of OJ Commerce vs. Hamburg Sud, decided by the FMC in June, in which lost profits were equated with the average profits per container carried in the period, multiplied by the shortfall the carrier failed to carry.

It said the goods it sold in the 2020-2021 and 2021-2022 contract periods equated to an average profit of $66,924 per FEU for BBBY. Multiplying that by the shortfall under the 2020-2021 service contract, it calculated that "lost profits would have amounted to an astronomical $112,867,444."

Peak season surcharges

"MSC also engaged in a practice of coercing [BBBY], and, upon information and belief, other shippers, to pay extracontractual prices and surcharges, including PSSs, as a precondition to MSC meeting even a portion of its service commitments under the … service contracts," alleged the BBBY estate.

It claimed BBBY paid $5,523,788 above the rates it agreed to in its 2020-2021 service contract and $9,005,149 above the rates it agreed to in its 2021-2022 service contract.

Detention and demurrage charges

The BBBY estate said detention and demurrage charges were assessed "for a period of time in which [BBBY's] ability to pick up containers at ports or return empty containers promptly was constrained due to circumstances outside [its] control, such as congestion at the ports and shortage of equipment."

It said it paid a total of $23,220,491 in detention and demurrage charges to MSC in the 2020-2021 and 2021-2022 contract periods and argued that "a substantial majority of the charges … were unjustly and unreasonably assessed."

Double reparations sought

On top of the base amount of its claims, BBBY argued that "in light of MSC's willful retaliatory conduct alleged herein, complainant also requests that any award of reparations … be doubled pursuant to 46 U.S.C. Section 41305(c.)" of the Shipping Act.

The BBBY estate argued that "MSC took advantage of price inflation in the container shipping sector and unfairly exploited its customers."

It said the ocean carrier's "enormous windfall profits" allowed it to go on "a multi-billion-dollar ship-buying spree that has led to it becoming the world's largest ocean carrier."

It cited an unconfirmed report published in the Italian newspaper "Il Messaggero" that MSC had net profit of $38.4 billion in 2022 and cash reserves of $68.7 billion at the end of that year.

MSC disputes allegations 'in their entirety'

While the unprecedented scale of the alleged damages was not revealed until Tuesday, the filing of the BBBY claim against MSC was expected.

As previously reported by FreightWaves, MSC said in an Aug. 31 filing in the BBBY bankruptcy case that it received an initial demand letter from law firm Huth Reynolds on April 28, five days after the retailer's Chapter 11 filing.

BBBY, through Huth Reynolds, "accused MSC of certain violations of the Shipping Act … arising from MSC's purported failure to fulfill its service commitments and its assessment of demurrage and detention charges — allegations that MSC disputes in their entirety," said the ocean carrier.

BBBY's bankruptcy plan specifically calls out container shipping cases and sets a formula for distribution of any future court winnings. The company hired Huth Reynolds on March 23 to handle claims against shipping lines — a month prior to its Chapter 11 filing.

In a section entitled "Shipping and Price Gouging Claims," the bankruptcy plan refers to money obtained by litigating ocean carriers' alleged failure to comply with shipping regulations and laws, "including pricing practices."

Under the bankruptcy plan, 80% of any shipping and "price-gouging" judgments would go to first-lien and debtor-in-possession lenders, both administered by Sixth Street Specialty Lending, and 20% would go to the debtor or the successor entity.