

**FEDERAL MARITIME COMMISSION**

---

**DOCKET NO. 06-06**

**EUROUSA SHIPPING, INC., TOBER GROUP, INC., AND CONTAINER  
INNOVATIONS, INC. - - POSSIBLE VIOLATIONS OF SECTION 10 OF THE  
SHIPPING ACT OF 1984 AND THE COMMISSION'S REGULATIONS  
AT 46 C.F.R § 515.27**

---

**BRIEF OF THE  
BUREAU OF ENFORCEMENT  
ON REMAND**

**Peter J. King, Director  
Brian L. Troiano, Deputy Director**

**BUREAU OF ENFORCEMENT  
FEDERAL MARITIME COMMISSION  
Suite 900  
800 North Capitol Street, N.W.  
Washington, D.C. 20573  
(202) 523-5783**

**May 11, 2012**

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	i
I. <u>PROCEDURAL BACKGROUND</u>	1
II. <u>PRELIMINARY MATTERS</u>	3
III. <u>ARGUMENT</u>	5
A. <u>Section 10(b)(11) Violations</u>	5
1. <u>Inferences and Presumptions Are Permissible Under Worldwide</u>	5
2. <u>Consistent With The Worldwide Decision, Certain Inferences and</u> <u>Presumptions Are Applicable In This Case</u>	7
(a) <u>Holding Out</u>	7
(b) <u>Assumption of Responsibility</u>	10
3. <u>Tober Knowingly and Willfully Accepted Cargo From Entities Acting</u> <u>As NVOCCs</u>	17
B. <u>Tober's Violations of Section 10(b)(2)(A) Were Knowing and Willful</u>	19
C. <u>Assessment of Civil Penalties</u>	22
IV. <u>CONCLUSION</u>	24

## TABLE OF AUTHORITIES

<u><b>Court Decisions</b></u>	<u><b>Page</b></u>
<u>Bryan v. United States</u> , 524 U.S. 184 (1995).....	18
<u>County of Stanislaus, v. Pac. Gas &amp; Electric</u> , 114 F.3d 858 (9 <sup>th</sup> Cir. 1997).....	22
<u>Maislin v. Primary Steel, Inc.</u> , 497 U.S. 116 1990).....	22
<u>RSM v. Herbert</u> , 466 F.2d 316 (4 <sup>th</sup> Cir. 2006).....	18
<u>United States v. Bailey</u> , 444 U.S. 394 (1980).....	18
<u>United States v. Illinois Central R. Co.</u> , 303 U.S. 239 (1938).....	17, 18
<u><b>Administrative Decisions</b></u>	
<u>American President Lines, Ltd. v. Cyprus Mines Corporation</u> , 26 S.R.R. 969 (ALJ, 1993).....	22
<u>Best Freight International Ltd. - Possible Violations of the Shipping Act</u> , 28 S.R.R.447 (ALJ, 1998).....	19
<u>Comm-Sino Ltd. - Possible Violations of the Shipping Act</u> , 27 S.R.R. 1201 (ALJ 1997).....	19
<u>EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc.- Possible Violations of Section 10 of the Shipping Act</u> , __ S.R.R. __ (FMC April 12, 2012).....	<i>passim</i>
<u>EuroUSA Shipping, Inc., Tober Group, Inc. and Container Innovations, Inc. - Possible Violations of Section 10 of the Shipping Act</u> , 31 S.R.R. 967 (ALJ 2009).....	2
<u>EuroUSA Shipping, Inc.,Tober Group, Inc. and Container Innovations, Inc. - Possible Violations of Section 10 of the Shipping Act</u> , 31 S.R.R. 540 (FMC 2008).....	2
<u>EuroUSA Shipping, Inc.,Tober Group, Inc. and Container Innovations, Inc. - Possible Violations of Section 10 of the Shipping Act</u> , 31 S.R.R. 1051 (ALJ 2009).....	2

<u>EuroUSA Shipping, Inc., Tober Group, Inc. and Container Innovations, Inc. - Possible Violations of Section 10 of the Shipping Act, 31 S.R.R. 1131 (ALJ 2009)</u> .....	2
<u>Ever Freight International Ltd. - Possible Violations of the Shipping Act, 28 S.R.R. 329 (ALJ 1998)</u> .....	19
<u>Martyn Merritt, AMG Services, et al.-Possible Violations of the Shipping Act, 26 S.R.R. 663 (FMC 1992)</u> .....	23
<u>Pacific Champion Express Co., Ltd. – Possible Violations of §10(b)(1) of the Shipping Act of 1984, 28 S.R.R. 1397 (FMC 2000)</u> .....	17, 19, 21
<u>Portman Square Ltd.-Possible Violations of 10(a)(1) of the Shipping Act of 1984, 28 S.R.R. 80 (ALJ 1998)</u> .....	17, 23
<u>Refrigerated Container Carriers Pty. Limited – Possible Violations of Section 10(a)(1) of the Shipping Act, 28 S.R.R. 799 (ALJ 1999)</u> .....	23
<u>Sea-Land Service, Inc.- Possible Violations of the Shipping Act of 1984, 30 S.R.R. 872 (2006)</u> .....	24
<u>Stallion Cargo, Inc.—Possible Violations of Section 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, 29 S.R.R. 665 (FMC 2001)</u> .....	18, 19, 21
<u>Trans-Pacific Forwarding, Inc. – Possible Violations of Section 10(b)(1) of the Shipping Act of 1984, 27 S.R.R. 409 (ALJ 1995)</u> .....	17, 21
<u>Universal Logistic Forwarding Co., Ltd.-Possible Violations of the Shipping Act, 29 S.R.R. 323 (ALJ 2001)</u> .....	24
<u>Universal Logistic Forwarding Co., Ltd.-Possible Violations of the Shipping Act, 29 S.R.R. 474 (FMC 2002)</u> .....	24
<u>Worldwide Relocations, Inc. – Possible Violations of the Shipping Act, __ S.R.R. __ (FMC, Mar. 15, 2012)</u> .....	<i>passim</i>
<u>Worldwide Relocations, Inc. – Possible Violations of the Shipping Act, 31 S.R.R. 1471 (ALJ, Aug. 16, 2010)</u> .....	4, 8, 10, 11

**Rules and Regulations**

46 C.F.R. §515.27.....1

Docket No. 10-03, Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements, 76 FR 11351 (March 2, 2011).....24

**Statutes**

Section 8 of the Shipping Act of 1984, 46 U.S.C. 40501.....1, 17

Section 10(b)(2)(A) of the Shipping Act of 1984, 46 U.S.C. 41104(2)(A).....*passim*

Section 10(b)(11) of the Shipping Act of 1984, 46 U.S.C. 41104(11).....*passim*

Section 19 of the Shipping Act of 1984, 46 U.S.C 40902..... 1, 17

46 U.S.C. 40101(1).....22

**Legislation**

H.R. REP. No. 53, Part 1, 98th Cong. 1st Sess., *reprinted in* 1984 U.S.C.C.A.N. 167.....23

Shipping Act of 1984, P.L. 98-237.....23

Pub.Law 109-304, Oct. 6, 2006.....1

**Miscellaneous**

Federal Rule of Evidence 406.....6

Pursuant to the Order of Chief Administrative Law Judge Clay G. Guthridge (ALJ), served April 19, 2012, the Bureau of Enforcement (BOE) files this Brief addressing issues raised in the Commission's Order Vacating Initial Decision in Part, Reversing in Part and Remanding For Further Proceedings, served April 12, 2012 in EuroUSA Shipping Inc., Tober Group, Inc., and Container Innovations, Inc.- Possible Violations of Section 10 of the Shipping Act, \_\_\_ S.R.R. \_\_\_. (April 12 Order or Tober Order).

### **I. PROCEDURAL BACKGROUND**

This proceeding was instituted by an Order of Investigation and Hearing, served May 11, 2006, to determine: (1) whether respondents EuroUSA, Inc. (EuroUSA), Tober Group, Inc. (Tober), and Container Innovations, Inc. (CI) violated section 10(b)(11) of the Shipping Act of 1984, 46 U.S.C. §41104(11), (the Shipping Act) and the Commission's regulations at 46 C.F.R. §515.27, by knowingly and willfully accepting cargo from or transporting cargo for the account of an ocean transportation intermediary (OTI) that did not have a tariff and a bond as required by sections 8 and 19 of the Shipping Act<sup>1</sup>, 46 U.S.C §§40501 and 40902; and (2) whether Tober and other respondents violated section 10(b)(2)(A) of the Shipping Act, 46 U.S.C. §41104(2)(A), by providing service in the liner trade that was not in accordance with the rates and charges contained in a published tariff. BOE was designated as a party to the proceeding.

Following completion of discovery, Tober filed a motion for partial summary judgment on the section 10(b)(11) issue arguing that BOE could not establish that the OTIs that tendered shipments to Tober were non-vessel-operating-common carriers (NVOCCs) and therefore could not demonstrate that Tober knowing and willfully accepted cargo in violation of the Shipping

---

<sup>1</sup> The Shipping Act was reenacted as positive law and codified in Title 46 of the U.S. Code in Pub. Law 109-304, Oct. 6, 2006. In accordance with current Commission practice, the former section reference will be used herein.

Act. BOE opposed the motion. In a Memorandum and Order served June 12, 2008, the ALJ granted the motion concluding that the evidence did not support a finding that any of the OTIs with which Tober did business acted as NVOCCs. On appeal by BOE, the Commission held that genuine issues of material fact existed which precluded a grant of summary judgment and remanded the matter with instructions to determine the common carrier status of the OTIs with which Tober did business and whether Tober accepted cargo knowingly and willfully from these entities. EuroUSA Shipping Inc., Tober Group, Inc., and Container Innovations, Inc.- Possible Violations of Section 10 of the Shipping Act, 31 S.R.R. 540, 542 (FMC 2008). The issues as to Tober were therefore returned to the ALJ for consideration at hearing.

In an Initial Decision served October 9, 2009 (Tober Initial Decision or Tober ID), the ALJ found that Tober was a licensed NVOCC and operated as a common carrier on 278 shipments that it accepted from fifteen intermediaries that did not publish tariffs or provide proof of financial responsibility in the form of surety bonds. EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc.- Possible Violations of Section 10 of the Shipping Act, 31 S.R.R. 967 (ALJ 2009).<sup>2</sup> However, he concluded that those intermediaries did not act as NVOCCs and therefore Tober did not violate section 10(b)(11) of the Shipping Act. The ALJ also found that Tober violated section 10(b)(2)(A) of the Shipping Act on the same 278 shipments by providing service in the liner trade that was not in accordance with the rates and charges in its published tariff. Notwithstanding these violations, the ALJ did not assess a civil penalty. 31 S.R.R. 1002.

---

<sup>2</sup> The initial decision addressed only respondent Tober inasmuch as the ALJ issued separate decisions with respect to EuroUSA and CI. The EuroUSA decision approved a settlement which provided, among other things, that EuroUSA was an NVOCC. 31 S.R.R. 1131 (2009). The CI decision found that Container Innovations was an NVOCC with respect to certain shipments and assessed the maximum civil penalty. 31 S.R.R. 1051 (2009).

BOE filed Exceptions on December 17, 2009, asserting that the ALJ erred in finding that Tober did not violate section 10(b)(11) of the Shipping Act; that Tober did not knowingly and willfully violate section 10(b)(2)(A); and in not assessing a civil penalty. Tober did not reply to the Exceptions.

By Order served April 12, 2012, the Commission vacated the ALJ's finding that Tober did not violate section 10(b)(11), and remanded the proceedings for reconsideration in light of the Commission's recent decision in Docket No. 06-01, Worldwide Relocations, Inc. – Possible Violations of the Shipping Act, \_\_ S.R.R. \_\_ (slip op. issued Mar. 15, 2012) (Worldwide). The Commission also vacated and reversed the ALJ's refusal to award civil penalties and remanded that issue to the ALJ for determination of the proper amount of civil penalties in light of any section 10(b)(11) violations found to exist; a revised analysis of whether violations were willful and knowing; and consideration of BOE's evidence concerning the nature, circumstances, extent, and gravity of the violations. (Tober, slip op. at 7, 9).

By Order served April 19, 2012, the ALJ directed BOE to file a supplemental brief addressing the issues raised by the Commission.

## **II. PRELIMINARY MATTERS**

This matter having been remanded to determine anew whether Tober violated section 10(b)(11) and section 10(b)(2)(A) of the Shipping Act, BOE hereby incorporates by reference its substantive filings herein, including but not limited to the Bureau of Enforcement's Response to Tober Group Inc.'s Statement of Material Facts, filed October 29, 2007; BOE's Supplemental Brief in Response to ALJ's Order for Additional Briefing, filed January 11, 2008; BOE's

Proposed Findings of Fact and Conclusions of Law with Appendix, filed May 22, 2009; and BOE's Additional Proposed Findings of Fact, Brief and Appendix, filed September 21, 2009.<sup>3</sup>

In light of the standards announced in Worldwide and the expedited briefing schedule established in the ALJ's Order of April 19, BOE has likewise re-examined the evidence submitted in this proceeding with respect to the 15 identified intermediaries that engaged in ocean transportation transactions with Tober. Those intermediaries included: Avi Moving (1 shipment); Echo Trans World, Inc. (3 shipments); Orion Consulting, LLC (3 shipments); and Tran Logistic Group, Inc. (17 shipments). In order to facilitate an early and dispositive decision by the ALJ, BOE requests withdrawal from consideration of the section 10(b)(11) issues the activities of the 4 entities named above. This action affects 24 shipments as documented in BOE Appendices 19, 27, 28, and 29, and the related proposed findings of fact (PFF) 35, 36, 38, 41, and 42. BOE submits that the evidence addressing Tober's interactions with the 11 remaining intermediaries sufficiently establishes Tober's violation of section 10(b)(11) under the Worldwide standards. In taking the above action, BOE is not, however, requesting withdrawal of any evidence as it relates to the section 10(b)(2)(A) violations by Tober. Evidence addressing the latter 24 shipments on behalf of Avi Moving, Echo Trans World, Orion Consulting and Tran Logistic Group remains for consideration with all other record evidence to demonstrate Tober's knowing and willful violations of section 10(b)(2)(A).

---

<sup>3</sup> Where the abbreviation "BOE App." or "App." is used throughout this brief, the reference is to the Appendix filed with BOE's Proposed Findings of Fact on May 22, 2009 and supplemented in its Additional Proposed Findings of Fact, filed September 21, 2009.

### **III. ARGUMENT**

#### **A. Section 10(b)(11) Violations**

##### **1. Inferences and Presumptions Are Permissible Methods of Proof**

The Commission's recent decision in Worldwide addressed acceptable methods of proving that an entity acts as an NVOCC including the subsidiary considerations of holding out as a common carrier and assuming responsibility for transportation. The issues in Worldwide required a determination of the NVOCC status of the respondent companies that were operating without licenses, tariffs, or bonds. The instant case requires the same determination, but in a different context, i.e., the NVOCC status of companies from which Tober accepted cargo (in many cases, the same companies and the same shipments already addressed by the Commission in Worldwide).

In reviewing the ALJ's initial decision in Worldwide<sup>4</sup> finding that the entities acted as NVOCCs, the Commission expressly approved the use of inferences and presumptions as supplementing and fulfilling the evidentiary standard to establish violations by a preponderance of the evidence. Significantly, the Commission recognized the practical difficulties of proof in cases where a party respondent absconds and/or shipment documentation is deemed incomplete or not adequately sponsored by testimony. In such cases, reasonable inferences may be drawn to fill in the blanks. Worldwide, slip op. at 13. The inferences must be reasonable in light of human experience generally or when based on the Commission's special familiarity with the shipping industry. Worldwide, slip op. at 14.

Presumptions are simply logical or reasonable inferences drawn from established facts that may be rebutted by evidence. Id. The Commission held that permissive presumptions may be employed to determine whether an entity operated as an NVOCC or as an ocean freight

---

<sup>4</sup> 31 S.R.R. 1471 (2010).

forwarder. Id. Permissive presumptions may be used where one party has superior access to or control of the evidence and that party has the opportunity to come forward and present evidence that would rebut the presumption. When the adverse party does not come forward to rebut the existence or correctness of the presumed fact, or the adverse party's proffered evidence fails to rebut the logical inference of the presumption, then the presumed fact may stand as proven. Id.

Inferences are also appropriate when there appears to be uniform evidence on one element, such as holding out, for a given number of shipments but no evidence on that same element for a different shipment in a given time period. The Commission observed that an inference is especially appropriate when, as here, dealing with violations where an entity's status as a common carrier is at issue and when dealing with an element that speaks to a course of conduct such as holding out. Worldwide, slip op. at 12-13. Reviewing the case before it, the Commission acknowledged that the ALJ need not analyze each shipment independently to determine whether the entity was holding out in each instance, but could look to the respondent's overall activities during the relevant time period as establishing a course of conduct with respect to the question of holding out. This approach corresponds to the use of evidence of an entity's routine practice in Federal court proceedings in order to establish the conduct of that entity on a particular occasion. Worldwide, slip op. at 13, citing Federal Rule of Evidence 406.

Inferences and presumptions also may be used to establish that an entity assumed responsibility for transportation. For example, an entity's routine practice may be relevant in determining that it assumed responsibility for a particular shipment. Worldwide, slip op. at 16. The Commission also held that it is permissible to infer or presume that an entity does what it advertises. Id. Inasmuch as the entity made the decision to advertise to the public, crafted the wording of its advertisements, and arranged to broadcast these representations for all to see, the

Commission found it reasonable and consistent with legal requirements to impute actions to its words, keeping in mind that such entity must be afforded an opportunity to refute the inference or presumption through the introduction of contrary evidence.

The Commission summarized the overall import of the Worldwide decision in establishing common carrier status in the following terms:

. . . once the presiding officer has made a finding that (1) the entity has ‘held itself out to the general public’; and (2) that vessels on the high seas or Great Lakes were utilized for part or all of that transportation, then that finding may apply to any and all shipments during the relevant time period.

\* \* \* \* \*

Second, the party with the ultimate burden of proof and persuasion must present evidence on each shipment concerning the ‘assumed responsibility’ element; however, such party may have the benefit of the above-described permissive presumption. Worldwide, slip op. at 18.

**2. Consistent with the Worldwide Decision, Certain Inferences and Presumptions Are Applicable In This Case**

On remand, the Commission directed the ALJ to reconsider the evidence as to whether the intermediaries from which Tober accepted cargo held themselves out to the general public to provide transportation by water in foreign commerce, and whether these intermediaries assumed responsibility for transportation. (Tober Order, slip op. at 5). While not revisiting or restating our trial brief in its entirety herein, we address each of these two issues separately below.

**(a) Holding Out**

In its trial brief, BOE argued that the entities transacting shipping business with Tober held themselves out as common carriers, some by the explicit language on their websites and others by way of their activities reflecting a course of conduct. In the latter category are: Infinity Moving & Storage (Infinity), Tradewind Consulting, Inc. (Tradewind), Moving Services, Inc.(Moving Services), Orion Consulting, LLC (Orion), Echo Trans World, Inc. (Echo Trans),

Tran Logistic Group, Inc. (Tran Logistic), and Avi Moving (Avi). As noted above, BOE is no longer relying on the activities of Orion, Echo Trans, Tran Logistic, and Avi, to establish violation of section 10(b)(11) by Tober. Consequently, BOE's proposed findings as related to those four entities will not be addressed here.

With respect to Tradewind and Moving Services, both companies (together with Worldwide Relocations) were respondents in the Worldwide proceeding. Following lengthy proceedings therein, the ALJ and the Commission found that all three companies were NVOCCs on the basis of their holding out and their assumption of responsibility on the same shipments that are now central in the instant proceeding. (See Worldwide ID, 31 S.R.R. 1526, 1529, 1531, and Worldwide, slip op. at 24). Attached hereto as Exhibit No. 1, is a list of the 33 shipments tendered to Tober by Worldwide Relocations, Tradewind, and Moving Services identified by customer name, Tober's reference (bill of lading) number, and the page (Bates) number in BOE's Appendices at which those shipment documents are located.<sup>5</sup> The Commission's findings in Worldwide that these entities were acting in the capacity as NVOCCs with respect to the same shipments in evidence in this proceeding are administratively final and should be given binding collateral effect in the instant case.

The Commission's guidance as to the permissible use of inferences becomes immediately instructive in addressing the 2 shipments by Tradewind and 1 shipment by Moving Services found in the Tober record that were not considered in Worldwide. As explained in Worldwide, that circumstance does not detract from the Commission's determination that these entities held themselves out as common carriers during the relevant period. It stated:

... where the ALJ reviews conduct on a number of shipments that satisfies

---

<sup>5</sup> For each of the 33 shipments, the column in Exhibit No. 1 with the heading "Cross Ref. to WWR Initial Dec./Ship.#" provides a cross reference to the specific location in the summary charts contained in the Worldwide ID.

a preponderance of evidence on an element, such as “holding out”, the ALJ may draw reasonable inferences that a person or entity acted similarly in handling another shipment when the evidence is not available on that element for that shipment. Worldwide, slip op at 13.

Having found in Worldwide that Tradewind held itself out to provide service as an NVOCC based on its consistent practice with respect to 37 shipments in evidence in Docket No. 06-01, and likewise finding that Moving Services also held itself out as NVOCC with respect to at least 125 shipments in Worldwide, it is reasonable to infer that Tradewind and Moving Services also were acting as NVOCCs with respect to these latter shipments that were not considered in Worldwide. Despite opportunity for Tober to provide countervailing evidence, nothing in this record contradicts the Commission’s findings in Worldwide that Tradewind or Moving Services held themselves out as common carriers during the relevant time period and, by extension, that such findings should also be entered in this proceeding.

There remains for consideration whether the record establishes that Infinity held itself out to the public as a common carrier to provide transportation by water in foreign commerce during the period in question. Addressing that issue, BOE relied on the affidavit of New York Area Representative Mingione and evidence as to the content of Infinity’s website. AR Mingione testified that during the relevant time period, Infinity held itself out to provide international moving services. (BOE Appendix 2, paragraph 11, at Bates No. 11). Its website proclaimed: “Infinity has a unique system of providing international relocation services that suits all your needs.” (BOE App. 11 at Bates No. 78) (emphasis added). Infinity also represented on its website that it offered comprehensive moving services for ocean transport, delivery to the port of departure, from destination port to the transferee’s new home, accompanying the process all along the way, and settling claims itself without involving a third party. Where equivalent language was employed on the websites of the respondents in Worldwide, the ALJ consistently

found such to be an indication of holding out. (Worldwide ID, 31 S.R.R. 1522, 1524, 1525, 1527, 1529, 1530, 1532).

The ALJ in Worldwide also inferred holding out from a course of conduct in accepting shipments from different individual proprietary shippers by water from the United States to a foreign country. (Worldwide ID, 31 S.R.R. 1522, 1524, 1525, 1527, 1529, 1530, 1532). The record in this case similarly shows that Infinity accepted no fewer than 126 shipments of cargo from different proprietary shippers for ocean transportation from the United States to foreign countries which Infinity tendered to Tober. (BOE App. 12, Bates Nos. 80 - 625). In addition, the record includes Infinity's acknowledgement to the NY AR that its website offered international ocean shipping services. (BOE App. 10, Bates No. 77).

While Tober might have argued that Infinity was offering service only as a freight forwarder, such a fragmentary and overly restrictive view of the record loses sight of the overall picture presented by the evidence. Under the approach favored in Worldwide, BOE submits that a natural reading of the language on the website coupled with those services actually provided by Infinity to the public, as reflected by the shipping documents accepted into the record, fully supports the conclusion that Infinity held itself out as a common carrier to provide international transportation by water from the United States. Here again, Tober was afforded ample opportunity to contest or refute this presumption through contrary evidence, but has failed to do so.

**(b) Assumption of Responsibility**

The Commission also directed the ALJ to reconsider whether the 15 entities assumed responsibility for the transportation of shipments tendered to Tober in light of the standards

approved in Worldwide.<sup>6</sup> (Tober, slip op. at 5). As discussed above, among the 278 shipments at issue are the 33 shipments identified in Exhibit No. 1 that were tendered to Tober by Worldwide Relocations, Tradewind, and Moving Services and addressed in Worldwide. ALJ Wirth concluded, and the Commission affirmed, that Worldwide Relocations, Tradewind, and Moving Services assumed responsibility for transportation on those shipments. (Worldwide ID, 31 S.R.R. 1526-7, 1530, 1531, and Worldwide, slip op. at 24). Those determinations are final and controlling here.

The same conclusions are warranted with respect to the remaining shipments of these companies that were not considered in Worldwide. A similar pattern of documentation, if not identical, exists for these additional shipments. The additional shipments as to Worldwide Relocations, are in App.31, at Bates No. 1414-1417, 1471-1477, 1478-1482, and 1487-1489; for Tradewind, see App. 25, at Bates No. 1139-1144, and 1162; and for Moving Services, see App. 26, at Bates Nos. 1184-1187. As the Commission held in Worldwide, where a pattern of conduct on a number of shipments satisfies a preponderance of evidence as to one element of a violation, the ALJ may draw reasonable inferences that a person or entity acted similarly in handling other shipments when evidence as to that element is not directly available for that shipment. (Worldwide, slip op. at 13). Consequently, the ALJ herein may properly use the findings on the 33 shipments to support the inference that Worldwide Relocations, Tradewind, and Moving Services likewise assumed responsibility for transportation of other shipments involved in the instant proceeding that were not addressed in Worldwide.

There remains for consideration whether AIOS, ATWS, Infinity, EOM, Lehigh, Sea and Air, Car-Go, and Access International also assumed responsibility for transportation of

---

<sup>6</sup> BOE's withdrawal of the 24 shipments of Orion, Echo Trans, Tran Logistic, and Avi leaves 254 shipments for consideration.

shipments that Tober accepted from them. Every shipment in this case is evidenced by, at a minimum, a Tober bill of lading and a Tober invoice.<sup>7</sup> The Tober bills of lading identify the shipper in a variety of ways, none of which, we submit, accurately reflect the true relationship of the parties. On most of the bills, a proprietary shipper was named, sometimes at its own address, sometimes at the address of the intermediary, and other times “in care of” or “c/o” the intermediary at its address. In contrast to these ambiguous and misleading identifications on the bills of lading, the Tober invoices were consistently issued directly to the intermediary and not the proprietary shipper. Its charges were typically stated as “for door to door service” or “all included”. When considered with the limited documentation available from some of the intermediaries issued to the proprietary shippers, Tober’s invoices present the more accurate picture of the relationships between the intermediaries and their customers, and as between Tober and the intermediaries.

Instructive of the current record here, the Commission addressed evidentiary problems arising from ambiguous and/or misleading descriptions in those shipping documents presented in Worldwide. For some shipments, an intermediary’s invoices were available. Those documents typically indicated that the intermediary was billing its customer at a higher charge than it paid to the downstream NVOCC, a customary practice of an intermediary acting as an NVOCC. On other shipments, however, the invoices were not available and the only documents appearing in the record were the bills of lading issued by the downstream NVOCC, which, as here, were often misleading or ambiguous by identifying the proprietary shipper’s name even though it did not directly deal with the shipper. The Commission stated in Worldwide that the ALJ could infer

---

<sup>7</sup> The record reflects somewhat of a hodgepodge of shipment documents among these entities with some having more available than others. Inasmuch as these entities were not parties to this proceeding, it is not surprising that the record contains limited documentation issued by these companies in contrast to the volume issued by respondent, Tober.

from the entity's routine practices on other shipments that the bill of lading was often misleading as to the identity of the shipper, and could conclude that the bills of lading of the downstream NVOCC might not answer whether the proprietary shipper had a relationship with the downstream carrier. Id., p. 20. This "pattern of manipulating the identity on the bill of lading" thus provided the basis for inferring that the respondent intermediaries routinely misrepresented who the shipper was on shipping documents they prepared. Worldwide, slip op. at 19-20.

While it could, of course, be argued that Tober's bills of lading identified the proprietary shipper in various formats and therefore established Tober's assumption of responsibility to the shipper, the Worldwide rationale makes clear that the evidentiary value of Tober's bills on this element should give way to other evidence reflecting the intermediaries (and Tober's) routine business practices to the contrary. In this regard, uncontradicted testimony should carry far greater weight in attempting to draw conclusions from an ambiguous or misleading document.

Testimony as to such business practices was submitted in the form of sworn affidavits on behalf of intermediaries AIOS and ATWS. Those affidavits explained each company's holding out, how it operated, the nature and extent of the relationships with customers, and the nature and extent of the relationships with Tober. (BOE App. 5, Affidavit of Joshua S. Morales and BOE App. 6, Affidavit of Daniel E. Cuadrado). Potential customers made initial contact with AIOS and ATWS to inquire of their rates and service; both companies obtained rate quotes from other common carriers, including Tober, for ocean freight and any ancillary services as well as from other sources such as destination agents if destination services were required; AIOS and ATWS would then set their own all-inclusive rate to the customer reflecting a marked up ocean rate and any other charges; the companies invoiced their customers for their charges and the customer would pay AIOS or ATWS directly; both companies furnished inventory sheets and insurance

documents to their customers; the ocean carrier or NVOCC, including Tober, invoiced AIOS or ATWS for its charges and they paid that carrier; customers contracted with and looked to AIOS and ATWS for the transportation of their goods and each company assumed responsibility for the transportation of those shipments. Importantly, both affidavits explained that the above description of their company's operations also defined their transactions with Tober. (See BOE App. 5, paragraph 6, and BOE App. 6, paragraph 6).

This testimony is further corroborated by documents the intermediaries issued to their customers. The documents submitted by BOE in Appendix 33 include rate quotations issued by All in One Shipping to shippers for international door-to-door service describing the services included in that estimate; requests from AIOS to Tober for rate quotations based on shipment information provided by the shipper to AIOS; Tober rate quotes to AIOS that were lower than the estimates that AIOS furnished to its customer; inventories prepared by AIOS; and Tober invoices to AIOS identifying it as the shipper. (See, e.g., App. 33, Bates No. 1501, 1502, 1507, 1514, 1517, 1519, 1522, 1525, 1526, 1528-1533, 1535-1541, 1543-1546, 1562). Similarly, documents in BOE Appendix 35 include ATWS requests to Tober for rate quotes on international shipments based on shipment information provided by the shipper to ATWS; Tober rate quotes to ATWS; estimates from ATWS to shippers for international moves for door to door service higher than the charges contained in Tober quotes to ATWS; Tober invoices to ATWS identifying it as the shipper for its charges on international shipments; and separate invoices to the shipper from ATWS for its charges. (See, e.g., Bates Nos. 1611-1614, 1617-1618, 1621, 1623, 1627-1630, 1633-1635, 1644-1646).

Similar documentary evidence is included in the record with respect to the other intermediaries showing that those entities dealt with proprietary shippers and assumed

responsibility for the transportation. Infinity Moving & Storage issued documents to its customers such as orders for service quoting its charges, inventories of items it picked up for transportation, shipment information that was provided by the shipper to Infinity who provided it to Tober, and customer authorizations to Infinity permitting it to export its shipment. (See, e.g., App. 12, Bates Nos. 83, 85, 88, 93, 95, 98, 100, 103, 105, 111, 114, 119, 210, 215, 227, 292, 293, 325, 334, 338, 339, 449, 490, 532, 550-553, 582-584, 593, 599, 601). Lehigh Moving & Storage issued booking requests to Tober for shipments of Lehigh's customers, provided its customers with inventories upon pick up of the shipment, and received booking confirmations from Tober. (See, e.g., App. 14, Bates Nos. 628, 632, 634, 637, 638, 639, 641, 643, 645, 646, 650, 652, 653, 655, 658, 664, 669, 672, 750, 765, 766, 790, 794). EOM Shipping issued inventory sheets to its customers when picking up shipments, routinely engaged in communicating with the shipper, received authorizations from its customers for export purposes, and provided delivery information to Tober with respect to EOM customers. (See, e.g., App. 16, Bates Nos. 812-814, 816, 820, 824, 826, 829, 830, 832, 833). Sea and Air International obtained shipment information from its customers which it provided to Tober, received customer authorizations for export purposes, and prepared and issued inventory sheets upon pickup of customer shipments. (See, e.g., App. 18, Bates Nos. 839, 841, 842, 844, 879-881, 908, 909, 924, 946, 947, 962, 966, 968, 976-979, 988). Car-Go issued booking requests to Tober for its customers' shipments, obtained shipping instructions and vehicle titles from its customers and provided the same to Tober. (See, e.g., App. 21, Bates Nos. 1018, 1020, 1026, 1027, 1030, 1031). Access International obtained shipment information from its customers and provided it to Tober, issued booking requests to Tober, prepared inventories upon pickup of its customers' shipments, and furnished delivery information to Tober. (See, e.g., App. 23, Bates Nos. 1045,

1046, 1049, 1050, 1055, 1057, 1061, 1065, 1066, 1068, 1070, 1071, 1075, 1076, 1077, 1078, 1079, 1082, 1084-1086, 1089, 1090, 1093, 1101, 1104, 1105, 1109-1113).

Significantly, the testimony on behalf of Tober itself substantiates what these documents show. According to the President of the company, Tober considered the intermediaries as its customer, not the proprietary shipper, and therefore billed those entities for its charges. (BOE App. 8, Bates Nos. 51, 52). Tober had no relationship with the proprietary shipper. (Bates Nos. 53, 54).

The Tober invoices, the documents issued by the intermediaries to the proprietary shippers, the affidavits submitted on behalf of AIOS and ATWS, and the testimony on behalf of Tober itself thus support and establish the basis for inferences that the intermediaries assumed responsibility for the transportation to their customers, notwithstanding patent attempts at misidentification on the Tober bills. On their face, the Tober bills of lading cannot overcome this conclusion inasmuch as they reflect the same “pattern of manipulating the identity” of the shippers already condemned by the Commission in Worldwide. Finally, it bears emphasis that all of this evidence and the inferences drawn therefrom are uncontroverted. Tober had the full, fair, and unrestricted opportunity to contest or rebut the evidence, but elected not to.

A preponderance of the evidence therefore militates in favor of a finding that Worldwide Relocations, Tradewind, Moving Services, EOM, Lehigh, Infinity, AIOS, ATWS, Sea and Air, Car-Go, and Access International, acted as NVOCCs by holding themselves out as common carriers during the relevant time period, and assuming responsibility to their customers for transportation of the shipments tendered to Tober, all as identified in the record herein. As previously established in BOE’s trial brief and proposed findings of fact, all of the shipments were transported by vessel from a port in the United States to a port in a foreign country.

Consequently, the NVOCC status of the 11 remaining intermediaries has been clearly established and warrants judgment thereon.

**3. Tober Knowingly and Willfully Accepted Cargo From Entities Acting As NVOCCs**

In order to find a violation of Section 10(b)(11) of the Shipping Act, the acceptance of cargo from or transportation of cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19 of the Shipping Act must be done knowingly and willfully. For the same reasons set forth in its Proposed Findings of Fact and Conclusions of Law, BOE submits that Tober's actions fully meet the tests of "knowing and willful".

The Commission has defined the phrase "knowingly and willfully" to mean "purposely or obstinately and is designed to describe the attitude of a carrier, who having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements." Trans-Ocean Pacific Forwarding, Inc. – Possible Violations of Section 10(b)(1) of the Shipping Act of 1984, 27 S.R.R. 409, 412 (ALJ 1995), *citing* United States v. Illinois Central R. Co., 303 U.S. 239 (1938). The Commission elaborated further in Pacific Champion Express Co., Ltd. – Possible Violations of §10(b)(1) of the Shipping Act of 1984, 28 S.R.R. 1397, 1403 (FMC 2000), where it stated:

In determining whether a person has violated the 1984 Act "knowingly and willfully," the evidence must show that the person has knowledge of the facts of the violation and intentionally violates or acts with reckless disregard or plain indifference to the 1984 Act. Portman Square Ltd.-Possible Violations of 10(a)(1) of the Shipping Act of 1984, 28 SRR 80, 84-85 (I.D.), finalized March 16, 1998. The Commission has further held that "persistent failure to inform or even to attempt to inform himself by means of normal business resources might mean that a [person] is acting knowingly and willfully in violation of the Act. Diligent inquiry must be exercised by [persons] in order to measure up to the standards set by the Act. Indifference on the part of such persons is tantamount to outright and active violation." [citation omitted].

Similarly, in Stallion Cargo, Inc.—Possible Violations of Section 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, 29 S.R.R. 665, 677 (FMC 2001), the Commission reiterated that: “An NVOCC must educate itself through normal business resources, and repeated failure to do so may indicate that it is acting ‘willfully and knowingly’ within the meaning of the statute.”

In RSM, Inc. v. Herbert, 466 F.3d 316 (4<sup>th</sup> Cir. 2006), the court said:

...‘willfully’ has been held to denote a mental state of greater culpability than the closely related term, ‘knowingly.’ See Illinois Central R.R., 303 U.S. at 242-43, (explaining that “ ‘[w]illfully’ means something not expressed by ‘knowingly’ ” (citation omitted)). “Knowingly” typically refers only to one's knowledge of the facts that make his conduct unlawful, not to one's knowledge of the law. See Bryan v. United States, 524 U.S. 184, 193, (1995); United States v. Bailey, 444 U.S. 394, 404, (1980) (finding that a prison escapee acted “knowingly” because he “knew his actions would result in his leaving physical confinement”). *Id.* at 320.

As a licensed forwarder since 1996 and an NVOCC since 1999, (See PFF 1), Tober is charged to know the licensing, tariff, and bonding requirements of the Shipping Act, the distinctions between forwarders and NVOCCs, and the prohibitions in the statute. Tober admitted that it accepted cargo from these entities to avoid competing directly with them. (BOE App. 8, 9, and PFF 46). It likewise revealed that in 2004 and 2005, it never refused a shipment and then lost business after ceasing to accept shipments from unlicensed entities. (BOE App. 8, 9, and PFF 54). In addition, officers of the entities for which it transported shipments attested to the fact that no employee or principal of Tober ever questioned whether they were an NVOCC, freight forwarder, or beneficial cargo owner. (BOE App. 5, 6, and PFF 22, 29).

Particularly significant is that Tober was specifically advised by BOE in a letter dated September 7, 2005, that it was dealing with unlicensed entities, including several whose shipments are included in this proceeding, *viz.*, Tradewind, AIOS, Worldwide Relocations, ATWS, and Moving Services. (BOE App. 7, Bates Nos.40-41). Tober freely acknowledged that

it accepted business from anyone and did not attempt to determine the status of the entity tendering cargo. (BOE App.8, Bates No.58, and App. 9 at Bates No. 72). Indeed, it continued to accept shipments from unbonded, untariffed entities after being advised not to do so and after commencement of this proceeding. (PFF 11).

At best, Tober was plainly indifferent to the requirements of the statute and the Commission's regulations – at worst, it intentionally disregarded them. In either case, its actions and inactions satisfy the criteria for establishing “knowing and willful” conduct. Comm-Sino Ltd. - Possible Violations of the Shipping Act, 27 S.R.R. 1201 (ALJ 1997); Ever Freight International Ltd. - Possible Violations of the Shipping Act, 28 S.R.R. 329 (ALJ 1998); Best Freight International Ltd. - Possible Violations of the Shipping Act, 28 S.R.R.447 (ALJ. 1998); Pacific Champion Express, supra; and Stallion Cargo, Inc. supra. A preponderance of the evidence establishes that Tober knowingly and willfully accepted the subject shipments from entities that were required by the Shipping Act to have a tariff and evidence of financial responsibility, and thereby violated section 10(b)(11) of the Shipping Act.

**B. Tober's Violations of Section 10(b)(2)(A) Were Knowing And Willful**

On remand, the Commission also directed that the ALJ determine whether Tober's tariff violations were knowingly and willfully committed, taking “into account any violations that continued after Tober was inarguably placed on notice by the Order of Investigation and Hearing” served May 11, 2006. (Tober, slip op. at 7).

The Commission's Order of Investigation and Hearing initiating this proceeding provided explicit notice of the issues relating to Tober's tariff compliance:

Tober is presently active as a licensed and tariffed NVOCC and OFF with a principal place of business at 185 Randolph Street, Brooklyn, New York 11237. Tober maintains an NVOCC bond in the amount of \$75,000 and an OFF bond in the amount of \$50,000. Tober publishes its electronic tariff at [www.dpiusa.com](http://www.dpiusa.com).

The single commodity covered by this tariff is “Cargo, N.O.S.” and the tariff has not been updated since its original issue on January 7, 2004.

Order served May 11, 2006, at 2.

Elsewhere, the Order framed the issue as to Tober in the following terse language:

Whether Respondent Tober violated section 10(b)(2)(A) of the Act by providing service in the liner trade that was not in accordance with the rates and charges contained in a published tariff.

Order, at 3-4.

Tober had notice of, and appeared in, the proceedings as a party. The Commission’s reference to violations occurring after issuance of its Order on May 11, 2006, was to 72 shipments that Tober had accepted and transported for Infinity Moving and Storage at rates not in accordance with its tariff after this proceeding was commenced. BOE urged that Tober’s continued departure from its tariff for these shipments after institution of this proceeding served to illustrate that the violations were knowing and willful. Although BOE identified the Appendix in which evidence of those shipments is located, it neglected to provide specific page numbers for those shipments. To cure that deficiency, BOE appends hereto as Exhibit No. 2, a list of 77 shipments tendered by Infinity to Tober after the commencement of this proceeding on May 11, 2006. Each shipment is identified by Tober’s reference (bill of lading) number, the date of its invoice, and the page (Bates) numbers in which the documents for each shipment appear.

We hasten to add that Tober’s tariff violations extended well after these shipments and started long prior to commencement of this proceeding. The record in this proceeding alone accounts for 278 violations dating between 2004 and 2007. Tober was not a newcomer to the industry. Initially licensed as an ocean freight forwarder in 1996, it became subject to the Shipping Act’s tariff requirements as an NVOCC in 1999. Tober initially complied with its tariff publication obligation in 2004. See Order served May 11, 2006, at 2. At the very least, it became

aware of tariff requirements at that time. Tober's President admitted that he knew what a tariff was and conceded that it never charged its tariff rate. (See PFF 55, App. 8, at Bates Nos. 46-48). Tober elected not to inform itself, nor to act upon its responsibility to adhere to the provisions of its tariff. The standard for a knowing and willful violation does not require evil intent to violate the law. Intentional avoidance of the statute or plain indifference to its requirements is sufficient. Trans-Ocean Pacific Forwarding, supra, 27 S.R.R. at 412. A persistent failure to inform or even attempt to inform oneself by means of normal business resources may likewise meet the standard. Diligent inquiry must be exercised in order to measure up to the standards set by the Shipping Act. Pacific Champion Express, supra, 28 S.R.R. at 1403. The repeated failure of an NVOCC to educate itself may provide the basis for finding that it acted willfully and knowingly. Stallion Cargo, supra, 29 S.R.R. 677.

Even if it is believed that Tober did not know the requirements of law, it knew that it was not charging the rates contained in its tariff. Consequently, it acted knowingly. It took no steps to inform itself by normal business means such as consulting a lawyer or a tariff publisher or others in the industry to determine the requirements of the statute. Such plain indifference constitutes willfulness. Inasmuch as the evidence of record has not been rebutted by Tober, a preponderance of the evidence establishes that Tober's tariff violations were knowingly and willfully committed. Trans Ocean-Pacific Forwarding, Inc.- Possible Violations, 27 S.R.R. at 412. Accordingly, the ALJ should find that Tober knowingly and willfully violated section 10(b)(2) of the Shipping Act in as many as 278 instances between 2004 and 2007, including (but not limited to) 72 shipments tendered by Infinity to Tober on and after May 11, 2006.

### C. Assessment of Civil Penalties

The Commission also directed the ALJ to decide the proper amount of penalties in light of: any section 10(b)(11) violations found to exist; a revised analysis of whether the tariff violations were knowing and willful; and consideration of BOE's evidence of the nature, circumstances, extent, and gravity of the violations. Tober, slip op. at 8. In this respect, the Commission held that BOE's proof that Tober never charged it tariff rates on 278 shipments over a 3 year period in fact addressed the nature, circumstances, extent, and gravity of the violations. Tober, slip op. at 7.

Tariff adherence remains a fundamental component of the regulatory scheme adopted by the Congress. See, e.g., Maislin v. Primary Steel, Inc., 497 U.S. 116 (1990), County of Stanislaus, v. Pac. Gas & Electric, 114 F.3d 858 (9<sup>th</sup> Cir. 1997). It is likewise integral to the Shipping Act. American President Lines, Ltd. v. Cyprus Mines Corporation, 26 S.R.R. 969, 973 (ALJ 1993) ("primary purpose of both the 1916 Shipping Act and of the 1984 Shipping Act is the assurance of equal treatment among similarly situated shippers. The Acts require common carriers by water to file tariffs showing all rates and charges."). Congress prohibited departure from published tariffs as necessary to achieve one of the basic purposes of the Shipping Act expressed in section 2, "to establish a nondiscriminatory regulatory process for the common carriage of goods by water". 46 U.S.C. 40101(1). Here, the gravity of the Tober's violation is compounded by the number of violations continuing over an extended period of time.

BOE previously acknowledged the existence of federal and state tax liens, other claims against Tober, and that it is no longer in business, all of which would suggest a limited, if any, ability to pay. (See Additional PFF 62, 63, 65, 66, and BOE App.36 and 37). Nevertheless, ability to pay is only one factor in determining the appropriate amount of a civil penalty.

Portman Square Ltd. – Possible Violations of Section 10(a)(1) of the Shipping Act 28 S.R.R. 80, 86 (ALJ, 1998); Refrigerated Container Carriers Pty. Limited – Possible Violations of Section 10(a)(1) of the Shipping Act, 28 S.R.R. 799, 805, note 5 (ALJ, 1999). Consequently, any mitigation resulting from this factor should be minimal.

In arriving at the appropriate amount that is tailored to the facts of the case, considers any factors in mitigation as well as in aggravation, does not impose unduly harsh or extreme sanctions, yet deters violations and achieves the objectives of the law, BOE submits that the statutory structure contemplates that a knowing and willful violation is subject to a minimum penalty – in this case, \$6,001. Congress' intent in this regard is clearly expressed in the statute. The increased penalty for knowing and willful violations of the Shipping Act was first authorized by the Shipping Act of 1984, P.L. 98-237. Its predecessor statute, the Shipping Act, 1916, authorized a singular maximum civil penalty of \$5,000 for each violation. Congress believed that the penalties imposed under the 1916 Act failed to serve as an effective deterrent to prohibited acts and that violators could simply absorb penalties in these amounts as part of the “cost of doing business.” See H.R. REP. No. 53, Part 1, 98th Cong. 1st Sess., *reprinted in* 1984 U.S.C.C.A.N. 167, 184. Accordingly, it added a separate penalty provision authorizing a penalty up to \$25,000 for each violation knowingly and willfully committed. Congress thus intended that the Commission apply a two-level structure establishing maximum penalties – one level for violations not shown to be knowing and willful and a substantially enhanced level of 5 times that amount for knowing and willful violations.

This five-to-one ratio evinces a stern Congressional intent to enhance the deterrent effects of those civil penalties assessed for the most serious violations. Martyn Merritt, AMG Services, et al.-Possible Violations of the Shipping Act, 26 S.R.R. 663, 664-665 (FMC 1992). To give

proper effect to this intent, a logical and natural reading of the statute should result in the imposition of the enhanced penalty for a knowing and willful violation that, at a minimum, exceeds the statutory threshold defining the maximum penalty amount for violations having a lesser requirement of intent or purpose, i.e., not less than \$6001 nor more than \$30,000 per violation.

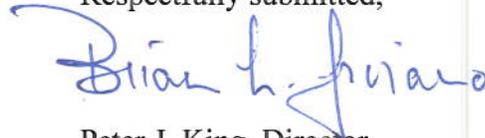
BOE acknowledges that application of the maximum penalty for both the section 10(b)(11) violations and for the 278 tariff violations might be deemed excessive, particularly in view of the Commission's present efforts to ease tariff publication requirements for NVOCCs. See, e.g., Docket No. 10-03, Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements, 76 FR 11351 (March 2, 2011).. A similar consideration was taken into account in Sea-Land Service, Inc.- Possible Violations of the Shipping Act of 1984, 30 S.R.R. 872 (FMC 2006). In this case, the number of violations would appear to justify imposition of a civil penalty at the lower end of the spectrum for knowing and willful violations. Application of the lowest end of the range, \$6,001, to the number of knowing and willful violations, and rounded off to \$1.5 million will result in a civil penalty that reflects the extensive period of knowing and willful violations, the limited factors of mitigation, the deterrent impact of the penalty, and the objectives of the law. BOE submits such a penalty amount is appropriate in the circumstances. Universal Logistic Forwarding Co., Ltd.-Possible Violations of the Shipping Act, 29 S.R.R. 323, 334 (ALJ 2001) adopted in relevant part, 29 S.R.R. 474 (FMC 2002).

#### **IV. CONCLUSION**

For the foregoing reasons, BOE respectfully requests that the ALJ issue a decision: (1) finding that Tober violated section 10(b)(11) of the Shipping Act on no less than 254 shipments;

(2) finding that Tober knowingly and willfully violated section 10(b)(2)(A) of the Shipping Act on no less than 278 shipments; and (3) assessing a civil penalty against Tober in the amount of \$1.5 million for knowingly and willfully violating the Shipping Act.

Respectfully submitted,



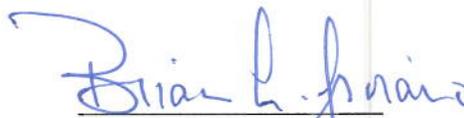
Peter J. King, Director  
Brian L. Troiano, Deputy Director

BUREAU OF ENFORCEMENT  
FEDERAL MARITIME COMMISSION  
800 North Capitol St., N.W.  
Suite 900  
Washington, D.C. 20573  
(202) 523-5783

May 11, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of May, 2012, a copy of the foregoing **Brief of the Bureau of Enforcement on Remand** has been served upon all the parties of record by first class mail.

  
Brian L. Troiano

Yonatan Benhaim  
Wenscott Management, LLC  
38 Pulaski St.  
Bayonne, NJ 07002

Yonatan Benhaim  
17815 Dalny Road  
Queens, NY 11432

**ENTITIES AND SHIPMENTS ADDRESSED IN DOCKET NO. 06-01****WORLD WIDE RELOCATIONS**

<b><u>Customer Name</u></b>	<b><u>Tober Ref. (B/L) No.</u></b>	<b><u>Bates Nos.</u></b>	<b><u>Cross Ref. to WWR Initial Dec./ Ship. #</u></b>
1. Giulia	41040932	1347-1357	31 SRR 1494, # 83
2. McLean	42040222	1358-1370	31 SRR 1496, #156
3. Jeske	41041955	1371-1393	31 SRR 1495, #113
4. Weizman	41041005	1394-1395	31 SRR 1498, #266
5. Dobkiewicz	41041058	1396-1398	31 SRR 1494, #66
6. Smith	42040315	1399-1403	31 SRR 1497, #239
7. Rooke	41041184	1404-1408	31 SRR 1497, #216
8. Bane	41041123	1409-1413	31 SRR 1493, #19
9. Donovan	41041006	1418-1423	31 SRR 1494, #67
10. Stapleton	41041059	1424-1428	31 SRR 1497, #244
11. McGarvey	42040339	1429-1433	31 SRR 1496, #154
12. Gelpi	41041172-01	1434-1439	31 SRR 1494, #81
13. Shashi	41041958	1440-1444	31 SRR 1497, #232
14. Chawla	42050009	1448-1452	31 SRR 1494, #40
15. Bitton	41050105	1453-1460	31 SRR 1493, #29
16. Zieme	42050050	1461-1466	31 SRR 1498, #276
17. Byrne	42050060	1467-1470	31 SRR 1494, #33
18. Gould	42050054	1478-1482	31 SRR 1494, #88
19. Jarecki	42050095	1483-1484	31 SRR 1495, #111
20. Eisbrich	42050071	1485-1486	31 SRR 1494, #71

**TRADEWIND CONSULTING**

<b><u>Customer Name</u></b>	<b><u>Tober Ref.(B/L) No.</u></b>	<b><u>Bates Nos.</u></b>	<b><u>Cross Ref. to WWR Initial Dec./ Ship. #</u></b>
1. Powell	42050184	1124-1138	31 SRR 1502, #27
2. Kninasat	41051128	1145-1157	31 SRR 1502, #16

**MOVING SERVICES**

<b><u>Customer Name</u></b>	<b><u>Tober Ref.(B/L) No.</u></b>	<b><u>Bates Nos.</u></b>	<b><u>Cross Ref. to WWR Initial Dec./ Ship. #</u></b>
1. Moser	41041013	1163-1164	31 SRR 1505, #115
2. Khamlich	41041118	1165-1166	31 SRR 1505, #116
3. Chew	41041302	1167-1168	31 SRR 1505, #117
4. Hazan	42040348-01	1169-1170	31 SRR 1505, #118
5. Wilkinson	41041392	1171-1172	31 SRR 1506, #119
6. Breckon	41041342	1173-1174	31 SRR 1505, #120
7. Carman	41041475	1175-1176	31 SRR 1505, #121
8. Rochford	41041400-01	1177-1178	31 SRR 1505, #122
9. Sexton	41041400-02	1179	31 SRR 1505, #123
10. Person	41041479	1180-1181	31 SRR 1505, #124
11. Rao	41041162	1182-1183	31 SRR 1505, #125

**INFINITY MOVING & STORAGE SHIPMENTS ACCEPTED AFTER MAY 11, 2006**

<u>TOBER REF. (B/L) NO.</u>	<u>INVOICE DATE</u>	<u>BATES NOS.</u>
1. 61061072	6/11/06	296-300
2. 61061152	6/11/06	301-305
3. 61061440	7/19/06	306-310
4. 61061442	7/19/06	311-316
5. 61061381	7/19/06	317-323
6. 61061439	7/19/06	324-327
7. 61061543	8/03/06	328-331
8. 61061537-04	8/08/06	332-335
9. 61061537-05	8/08/06	336-339
10. 61061537-07	8/08/06	340-344
11. 61061537-08	8/08/06	345-348
12. 61061537-12	8/08/06	349-353
13. 61061537-09	8/08/06	354-356
14. 61061537-10	8/08/06	357-360
15. 61061537-03	8/08/06	361-365
16. 61061633	8/09/06	366-370
17. 61061606-01	8/12/06	371-373
18. 61061484	8/17/06	374-381
19. 61061715-04	8/22/06	382-385
20. 61061715-03	8/22/06	386-389
21. 61061715-01	8/22/06	390-394
22. 61061715-02	8/22/06	395-398
23. 61061715-06	8/22/06	399-402
24. 61061715-07	8/22/06	403-406
25. 61061720-08	8/22/06	407-412
26. 61061720-09	8/22/06	413-416
27. 61061720-01	8/22/06	417-420
28. 61061720-02	8/22/06	421-425
29. 61061720-03	8/22/06	426-429
30. 61061720-04	8/22/06	430-434
31. 61061720-05	8/22/06	435-438
32. 61061720-06	8/22/06	439-443
33. 61061720-07	8/22/06	444-447
34. 61061715-08	8/22/06	448-451
35. 61061876	9/11/06	452-456
36. 61061973	9/27/06	457-460
37. 61062091	10/06/06	461-465
38. 61062139	10/11/06	466-469

39. 61062040-03	10/17/06	470-473
40. 61062040-04	10/17/06	474-477
41. 61062040-05	10/17/06	478-480
42. 61062040-06	10/17/06	481-484
43. 61062040-07	10/17/06	485-488
44. 61062040-08	10/17/06	489-492
45. 61062070-10	10/17/06	493-495
46. 61062070-07	10/17/06	496-498
47. 61062070-08	10/17/06	499-502
48. 61062070-09	10/17/06	503-506
49. 61062070-06	10/17/06	507-510
50. 61062070-05	10/17/06	511-514
51. 61062070-02	10/17/06	515-520
52. 61062070-03	10/17/06	521-523
53. 61062070-04	10/17/06	524-526
54. 61062040-09	10/17/06	527-530
55. 61062040-10	10/17/06	531-533
56. 61062040-11	10/17/06	534-538
57. 61062040-01	10/17/06	539-541
58. 61062040-02	10/17/06	542-544
59. 61062070-01	10/17/06	545-547
60. 61062112-01	10/24/06	548-553
61. 61062057	10/20/06	554-558
62. 61062434-02	12/12/06	559-563
63. 61062434-03	12/12/06	564-568
64. 61062434-04	12/12/06	569-572
65. 61062434-05	12/12/06	573-576
66. 61062434-06	12/12/06	577-580
67. 61062434-07	12/12/06	581-584
68. 61062434-01	12/12/06	585-589
69. 61070056-04	1/17/07	590-593
70. 61070056-03	1/17/07	594-597
71. 61070056-05	1/17/07	598-601
72. 61070056-06	1/17/07	602-605
73. 61070056-07	1/17/07	606-610
74. 61070039	1/17/07	611-613
75. 61070056-02	1/17/07	614-617
76. 61070106	1/17/07	618-622
77. 61070056-01	1/17/07	623-625