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OFFICE OF THE
FEDERAL MARITIME COMMISSION

BEFORE THE
FEDERAL MARITIME COMMISSION

Mitsui O.S.K. Lines, Ltd.,

Complainant,

v.

Global Link Logistics, Inc., et al,

Respondents.

Docket No. 09-01

PUBLIC VERSION

MOL's Opening Submission dated January 11, 2013

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 09 -01

mitsui o.s.k. lines ltd.

COMPLAINANT

v.

**GLOBAL LINK LOGISTICS, INC., OLYMPUS PARTNERS, OLYMPUS GROWTH
FUND III, L.P., OLYMPUS EXECUTIVE FUND, L.P., LOUIS J. MISCHIANI, DAVID
CARDENAS, KEITH HEFFERNAN, CJR WORLD ENTERPRISES, INC. AND CHAD J.
ROSENBERG**

RESPONDENTS

**OPENING SUBMISSION OF
COMPLAINANT MITSUI O.S.K. LINES, LTD.**

Pursuant to the October 16, 2012 Order of the Administrative Law Judge and Rule 221 of the Commission's rules of practice and procedure, Complainant Mitsui O.S.K. Lines, Ltd. ("Complainant" or "MOL") hereby submits its Brief, Proposed Findings of Fact and Appendix in this case.

NATURE OF THE CASE

MOL initiated this proceeding by filing a complaint with the Federal Maritime Commission ("FMC" or "Commission") on May 5, 2009. Between 2004 and 2007, Global Link, with the participation of the other Respondents, engaged in an illegal practice with respect to MOL shipments, known as "split routing," which involves booking cargo with an ocean common carrier for shipment to one inland destination within the United States, while arranging for

delivery, via a preferred trucker, to a different inland destination. This massive fraudulent conduct engaged in by Respondents was pervasive and involved tens of thousands of containers booked with MOL to fictitious destinations. MOL has suffered significant monetary damages as a result of Respondents' "split routing" practices and is entitled to reparations.

In response to MOL's complaint, Global Link asserted a counterclaim against MOL, and cross claims against Respondents, Olympus Growth Fund III, L.P.; Olympus Executive Fund, L.P.; CJR World Enterprises, Inc.; and Chad Rosenberg.

PROPOSED FINDINGS OF FACT

The Action:

1. On May 5, 2009, MOL commenced an action against Respondents Global Link Logistics, Inc.; Olympus Partners; Olympus Growth Fund III, L.P.; Olympus Executive Fund, L.P.; Olympus Executive Fund, L.P.; Louis J. Mischianti; David Cardenas, Keith Heffernan, CJR World Enterprises, Inc. and Chad J. Rosenberg. (Complaint, annexed hereto as Exh. D (App. 985)).¹
2. Respondents can be divided into three (3) distinct groups: (a) Global Link Logistics, Inc., referred to as "Global Link"; (b) Olympus Partners; Olympus Growth Fund III, L.P. ("OGF"); Olympus Executive Fund, L.P. ("OEF"); Louis J. Mischianti; David Cardenas and Keith Heffernan, collectively referred to as "Olympus" or "Olympus Respondents"; and (c) CJR World Enterprises, Inc. and Chad J. Rosenberg, collectively referred to as "CJR" or "CJR Respondents." (Complaint (Exh. D) (Appx. at 985-87)).

¹ The documents cited have been compiled into the accompanying Appendix. Page numbers in the Appendix are cited as App. #.

3. Respondents, jointly and severally, violated Sections 10(a)(1) and 10(d)(1) of the Shipping Act, 46 U.S.C. §§ 41102(a), 41102(c), as well as 46 C.F.R. § 515.31(e) by engaging in false and fraudulent practices and conduct, referred to as “split routing.” (Complaint and Amended Complaint, annexed hereto as Exhs. D and F (App. 985-84 and 999-1008, respectively)).

The Parties:

4. At all material times, MOL was an ocean common carrier that maintained a published tariff in accordance with the Shipping Act of 1984, as amended, and FMC regulations. Said tariff contained a sample copy of MOL’s Bill of Lading as required by FMC regulations.
5. Respondent Global Link Logistics, Inc. (“Global Link”) was at all material times an ocean transportation intermediary (“OTI”), licensed with the Federal Maritime Commission and operating as a non-vessel operating common carrier (“NVOCC”). (Global Link’s Verified Answer and Affirmative Defenses to Mitsui O.S.K. Lines Ltd.’s Complaint, Counterclaim and Cross Claims (“Global Link Answer”) at 2, annexed hereto as Exh. N (App. 1145), and Order Denying Appeal of Olympus Respondents, Granting in Part Appeal by Global Link, and Vacating Dismissal of Alleged Violations of Section 10(d)(1) in June 22, 2010 Memorandum and Order on Motions to Dismiss (“Order Denying Appeal”) at 3, annexed hereto as Exh. H (App. 1032)).
6. Olympus Respondents were owners, officers and/or directors of Global Link during the period when the alleged violations of the Shipping Act occurred, and benefited from concealing the existence of “split routing” scheme. (Transcript of Deposition of Chad

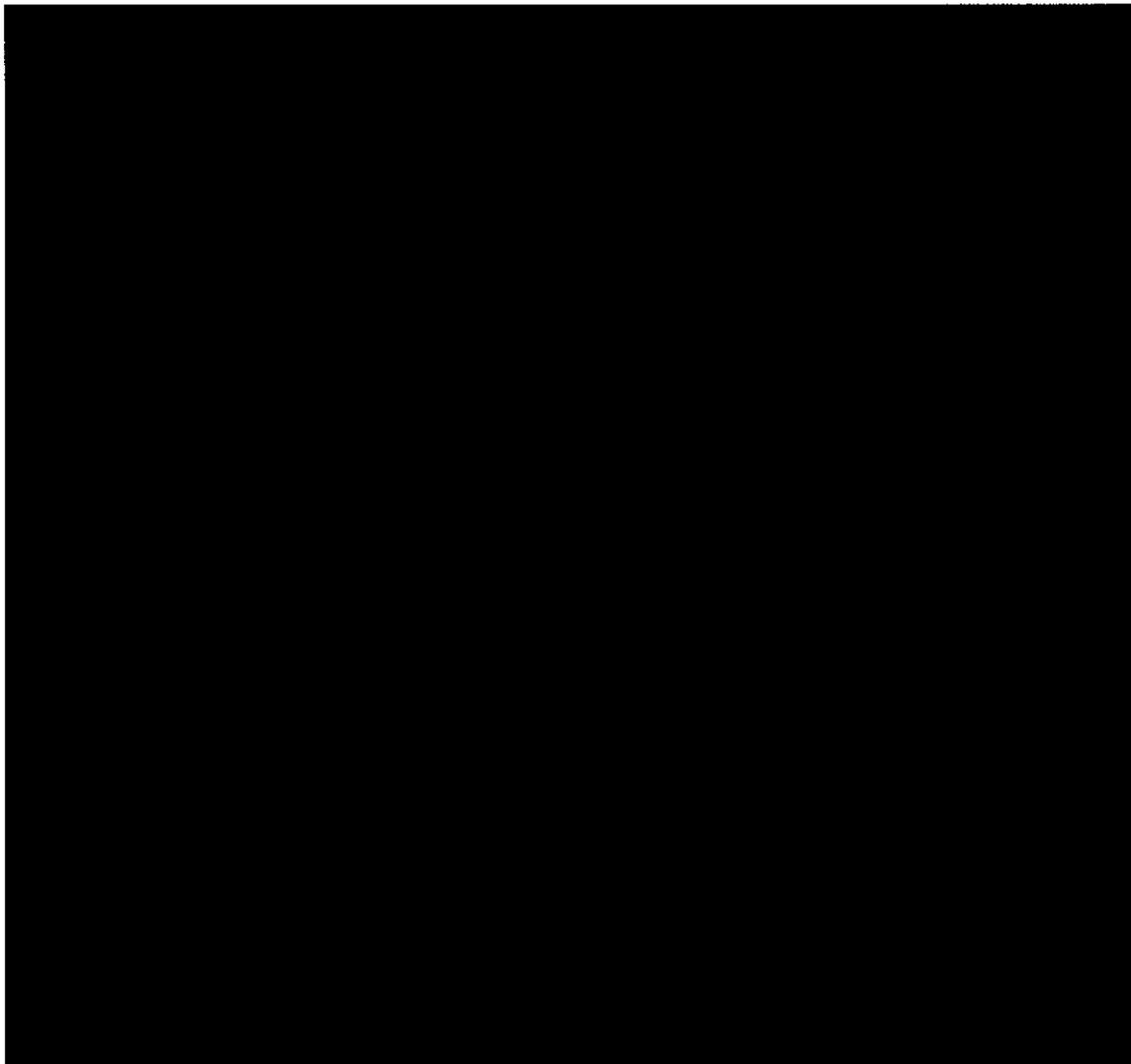
Rosenberg dated October 7, 2008 (“Rosenberg Dep.”) at page 29, lines 9-21, annexed hereto as Exh. O (App. 1171); Order Denying Appeal (Exh. H) at 4 (App. 1033); and Global Link Voluntary Disclosure dated May 21, 2008 (“Global Link Voluntary Disclosure”) at ¶ 14, annexed hereto as Exh. C (App. 116)).

7. CJR Respondents were owners, officers and/or directors of Global Link during the period when the alleged violations of the Shipping Act occurred. They also benefited from the split routing scheme. (Order Denying Appeal (Exh. H) at 3 and 4 (App. 1032 and 1033)).
8. From 2003 through 2006, OGF owned 74.9% of the shares of Global Link Holdings, Global Link’s parent. From 2003 through 2006, OEF owned .49% of the share of Global Link Holdings, and CJR Respondents owned 20.64% of Global Link Holdings. (Global Link Answer (Exh. N) at 14-15, ¶ 6 (App. 1057-58) and Order Denying Appeal (Exh. H) at 33, fn. 4 (App. 1062)).
9. As a licensed NVOCC, Global Link is obligated to comply with all applicable rules and regulations of the FMC, including Sections 10(a)(1) and 10(d)(1) of the Shipping Act and Commission regulation 46 C.F.R. Sec. 515.1(e) . (Order Denying Appeal (Exh. H) at 13 and 32 (App. 1042 and 1061) and Global Link’s Amended Statement of Claim in Arbitration dated October 17, 2007 (“Global Link Amended Statement”) at ¶¶ 49 and 68 (App. 1448 and 1457), annexed hereto as Exh. AG (“Global Link believes it is material compliance with all known federal, state, and local regulations. Global Link has procedures in place to ensure compliance with such regulations.”)).
10. As officers and directors of Global Link, the Respondents Louis Mischianti, David Cardenas, Keith Heffernan and Chad Rosenberg are charged with the responsibility of

ensuring that Global Link, a licensed NVOCC, complied at all relevant times, with the rules and regulations under the Shipping Act. (Global Link Amended Statement (Exh. AG) at ¶¶ 49 and 68 (App. 1448 and 1457)).

The Service Contracts:

11. MOL began doing business with Global Link on or about May 11, 2004. (Global Link Answer (Exh. N) at 4, ¶ A (App. 1147)).





15. The service contracts entered into between MOL and Global Link were subject to various tariff rules, including a rule relating to diversion (defined as a change in the original billed destination). At all relevant times, MOL's tariff rules required shippers to request any diversion of cargo in writing and required the payment of a diversion charge as well as the difference in price between the original and new destinations. (Global Link Answer (Exh. N) at 5, ¶ D (App. 1148)). MOL's tariff rule on diversion which is incorporated by reference in these service contracts is attached hereto as Exh. CA (App. 1901-36).

16. From 2004 through at least 2006, Respondents engaged in a systematic scheme to defraud MOL and obtain ocean transportation at rates and charges different and lower than the applicable service contract and/or tariff rates by booking cargo to false inland destinations while arranging to have the cargo delivered by its preferred truckers to different inland destinations. (Global Link Answer (Exh. N) at 5, ¶ E (App. 1148) and Global Link Voluntary Disclosure (Exh. C) at ¶¶ 8, 10-18 (App. 111, 113-20)).

Global Link voluntarily discloses an illegal scheme known as "split routing":

17. On May 21, 2008, Global Link voluntarily disclosed to the Commission that since at least 2004 it had engaged in a methodical and illegal enterprise known as "split routing" which

“was based on falsely routing cargoes” (Global Link Voluntary Disclosure (Exh. C) at ¶ 10 (App. 113-14)).

18. Global Link referred to this practice with various names including “splits,” “split routing,” “split shipping,” “mis-booking,” and “re-routing.” (CJR Respondents’ Verified Answer and Affirmative Defenses to Amended Complaint dated July 9, 2010 (“CJR Respondents Answer”) at 8, ¶ E, annexed hereto as Exh. P (App. 1194) and Global Link Answer (Exh. N) at 5, ¶ E (App. 1148)).

19. Global Link admitted that “split routing” was carried out as follows:

. . . Pursuant to the “split delivery” procedures, shipments from Asia would be consigned to Hecny [or later to Global Link] on the ocean carrier’s master bill of lading to inland points in the United States that were not the actual locations where Global Link’s customers were located or to which their shipments were to be delivered. Rather, these points were chosen by Global Link because the transportation rates to them were cheaper than to the actual delivery points. **The destination shown on the ocean carrier’s master bill of lading would be the false destination chosen for its low transportation rate. The destination shown on the house bill of lading would be the true delivery location.**

(Global Link Voluntary Disclosure (Exh. C) at ¶ 8 and ¶ 4 (App. 111-12 and 109-10) (emphasis added)).

20. Global Link further described the “split routing” as:

The “split delivery” scheme was based on falsely routing cargoes and worked as follows. Global Link, primarily Jim Briles and his staff, would analyze service contracts to identify particularly low-rated points. Global Link would then instruct Hecny [and later its own staff] to book shipments to those low-rated points and show them as destinations on the ocean carrier’s master bills of lading. The house bills of lading, however, would show the actual destinations where Global Link’s customers were located. The shipments would then be transported by the ocean carrier to the port or rail ramp for the booked—but fictional—destination where the container would be picked up by a motor carrier for the final leg

of the transportation movement to the actual destination. It was also important for the false routing scheme that Global Link be able to designate its "preferred truckers" to be used by the ocean carriers. This is because it was necessary to find motor carriers who would be willing to deliver the ocean containers to a different destination than the one shown on the master bill of lading and the carrier's freight release. . . .

(Global Link Voluntary Disclosure (Exh. C) at ¶ 10 (App. 113) (emphasis added)).

21. In addition to causing master bills of lading to be issued with false final destinations, Global Link also arranged to issue two (2) sets of delivery orders for each shipment. This practice was confirmed by the testimony of Dee Ivy, an employee of Global Link, who testified as follows:

Q. Okay. Are you familiar with a practice that's called split shipments or rerouting in this case?

A. Yes.

Q. What do you understand it to mean?

A. Split shipments for Global Link was when we would create a delivery order, two delivery orders actually. **One delivery order would go to the steamship line that showed the actual delivery location per the booking, and then a second delivery order would be sent to our trucker with the delivery address of our actual customer.**

So a split shipment to us meant that we had a shipment coming in that was going—where my customer was not where it was booked with the steamship line.

Q. Okay. Is a delivery order different from a bill of lading?

A. Yes.

Q. What is a delivery order?

A. **A delivery order is the actual delivery instructions to the trucker or to the carrier to say this container is to be delivered to XYZ.**

Q. Is that created by GLL?

A. Yes.

(Deposition of Dee Ivy dated August 21, 2008 (“Ivy Dep.”) at page 11, line 21-page 12, line 21, annexed hereto as Exh. V (App. 1248) (emphasis added)).

22. The Arbitration Partial Final Award further delineated the differences between the two (2) sets of delivery orders as follows:

Just as there were two bills of lading, there were separate delivery orders: a “truckline” delivery order showing the actual destination, and a “shipline” delivery order showing the false destination used in the master bill of lading.

(Exh. A (App. 8, fn. 11)).

23. The “split routing” scheme did not end with the issuance of false transportation documents. Full implementation of the “split routing” scheme involved use of the ocean carrier’s trucking payment and was explained by Global Link as follows:

. . . [O]cean carriers establish trucking allowances to compensate motor carriers for the drayage of containers from ports or rail ramps to final destinations. **If the trucking allowance for the fictional destination would not cover the trucking move to the actual destination, Global Link would pay the motor carrier the difference. To avoid this, which would obviously reduce Global Link’s profit on these shipments, Global Link tried to find cheap destination points with high trucking allowances from the ocean carriers.** When the cargo arrived in the United States, Global Link would create two delivery orders. One delivery order, entitled “Shipline,” would be sent to the ocean carrier showing the name of the preferred trucker and the fictional destination from the ocean carrier’s master bill of lading. The other delivery order, called the “Truckline,” would be sent to the motor carrier. The Truckline delivery order would be identical to the Shipline order except for the destination, which would be the actual destination to which the motor carrier would deliver the container.

(Global Link Voluntary Disclosure (Exh. C) at ¶ 10 (App. 114)).

24. In summary, Global Link's "split routing" scheme consisted of the following: Global Link would book containers to fictitious final inland destinations. These fictitious destinations would be set forth on the master bills of lading ("MBL") issued by MOL to Global Link and on "shipline" delivery orders prepared by Global Link and sent to MOL. The freight and charges for transportation to these fictitious destinations were less than the freight and charges applicable to the actual destinations to which the containers were in fact transported by Global Link's preferred truckers. The actual final inland destinations were set forth in "truckline" delivery orders prepared by Global Link and given to its "preferred truckers" and in the house bills of lading ("HBL") issued by Global Link to its customers. By Global Link's own admission, the final destination given to the ocean carrier was totally false. Global Link also would, whenever possible, book containers to fictitious final destinations with high trucking payments, thus earning "credits" with the truckers. These "credits" could then be used in those instances where the actual final destinations were more distant and required a trucking payment that exceeded the amount paid by the ocean carriers for transportation to fictitious destinations. (Global Link Voluntary Disclosure (Exh. C) at ¶ 8 and 10 (App. 111 and 114)).

25. This "credit/debit" system was confirmed by Eric Joiner of Global Link. Mr. Joiner described the practice as follows:

Q. What did you mean by debit and credit?

A. In other words, if there was additional on carriage expense to be carried forward, in other words, the point was -- let's say -- further but they were going to have to charge us the difference, then we would pay for that, and I refer to that as a debit, as opposed to a credit where the

container went to a place where there was -- it cost the trucker less, and then the trucker would somehow give us money back.

(Transcript of Deposition of Eric Joiner dated October 10, 2008 ("Joiner Dep.") at page 76, line 18—page 77, line 2, annexed hereto as Exh. BA (App. 1540)).

26. Global Link admitted "actively t[aking] steps to conceal the false routing scheme from . . . ocean carriers." (Global Link Voluntary Disclosure (Exh. C) at ¶ 16 (App. 117)).

27. Global Link's active concealment of the "split routing" scheme "belies [any] assertions . . . that the carriers were aware of the misroutings." (Global Link Voluntary Disclosure (Exh. C) at ¶ 16 (App. 117)).

28. "Split routing" was nothing more than a euphemism for "lying [to ocean carriers] about where shipments are going." (Transcript of Deposition of John Williford dated July 18, 2008 ("Williford Dep.") at page 59, lines 11-20, annexed hereto as Exh. BO (App. 1691a and b)). In particular, Mr. Williford, a former executive at Global Link, testified as follows:

Q. Whatever you want to—

Do you use a particular phrase?

A. I don't like split routing, because it's a euphemism. I usually call it lying about where shipments are going.

Q. Who—who was being lied to?

A. The carriers.

Q. Carriers.

Is it your testimony sitting here under oath that none of the carriers knew that GLL was engaged in split or rerouted shipments?

A. That's not my testimony. My—I don't know whether they knew or not.

I was told they knew. Then, you know, it became clear that at least—at least big portions of the companies didn't know, but, you know, I don't—I don't—whether the company itself knew or didn't know, it's a complicated issue.

Q. Well, no, sir, I disagree. It's not so complicated. Did—

You're saying that somebody was lied to. Who—what carriers do you believe were lied to?

A. Maersk.

Q. OK. Anybody else?

A. MOL.

(Williford Dep. (Exh. BO) at page 59, line 14—page 60, line 19 (App. 1691a and b)).

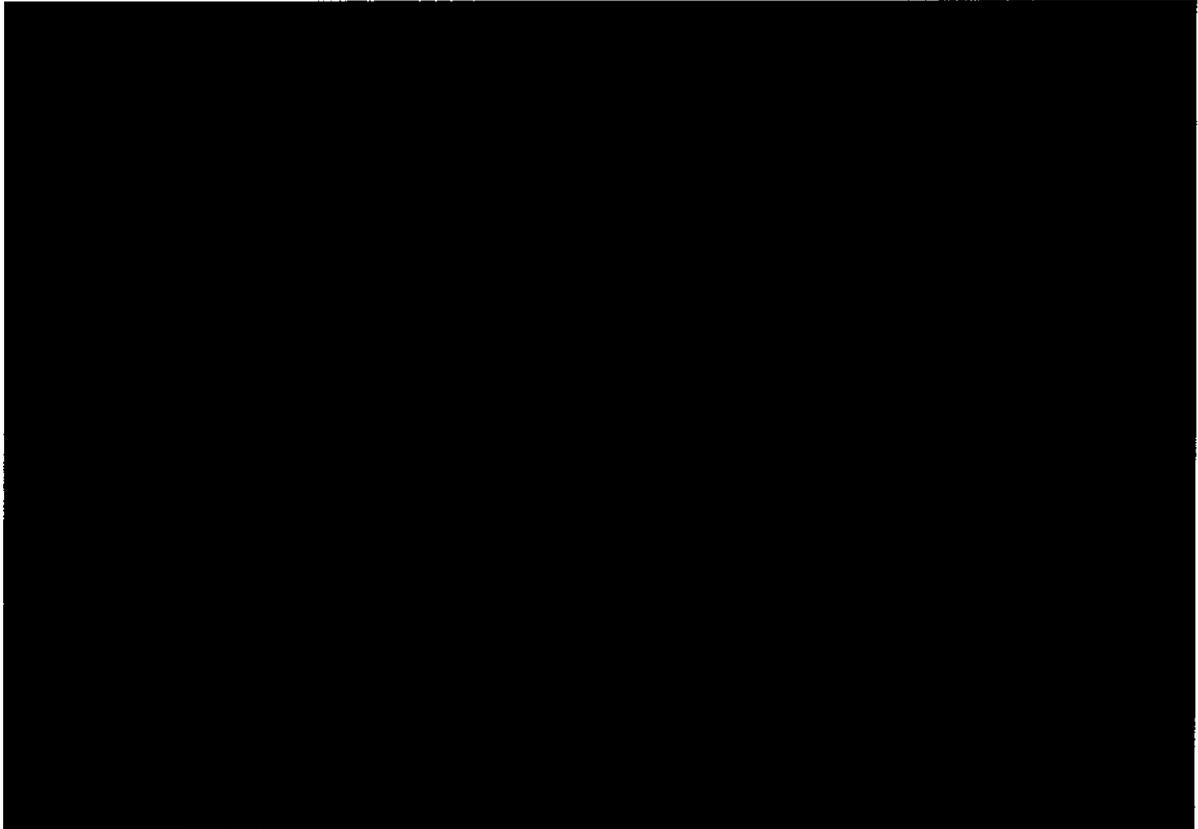
29. Global Link knew it was lying to MOL about where its shipments were going. (Williford Dep. (Exh. BO) at page 59, line 22—page 60, line 19 (App. 1691a and b)).

30. “[T]hese illegal practices consisted of “split delivery” procedures that had been employed by Global Link for years to lower its shipping rates.” (Global Link Voluntary Disclosure (Exh. C) at ¶ 16 (App. 117)).

Discovery of Global Link's “split routing” and commencement of FMC action:



² On or about May 20, 2006, Global Link and its new owners, Golden Gate Logistics, commenced an arbitration under the auspices of the American Arbitration Association (“AAA”) against the Olympus and CJR Respondents,



34. As a result of its discovery of “split routing” practices, MOL demanded Global Link provide an accounting of all of its shipments with MOL. (Complaint and Amended Complaint (Exhs. D and F) at 6, ¶¶ M (App. 990 and 1004)).

35. Because Global Link refused to comply with MOL’s request, MOL commenced this action against Global Link and the other Respondents. (Complaint and Amended Complaint (Exhs. D and F) at 6, ¶¶ M (App. 990 and 1004)).

the prior owners of Global Link, alleging among other things that the Olympus and CJR Respondents defrauded Global Link’s purchasers by not revealing “split routing” as the source for Global Link’s profit margin. The new owners of Global Link successfully recovered in excess of \$20 million from the Olympus and CJR Respondents. (Arbitration Partial Final Award (Exh. A (App. 58-59)) and Order of Court of Chancery of the State of Delaware dated October 8, 2008, annexed hereto as Exh. E (App. 995)).

36. MOL commenced this action within three (3) years of discovery of the illegal and fraudulent “split routing” scheme by Respondents. (Complaint and Amended Complaint (Exhs. D and F) at 6, ¶ M (App. 990 and 1004)).

Global Link’s illegal “split routing” scheme was complex and required numerous steps to keep it hidden:

37. Jim Briles, a Vice President and shareholder at Global Link, explained that the goal of Global Link’s “split routing” practice was to find the most cost-effective routing possible on a given shipment. (Transcript of Deposition of Jim Briles dated June 4, 2008 (“Briles Dep.”) at page 49, line 3—page 50, line 9, annexed hereto as Exh. T (App. 1217)).
38. Most cost-effective meant the lowest “landed cost,” or the lowest cost in total transportation charges for a particular shipment, including ocean, rail and trucking. (Briles Dep. (Exh. T) at page 49, line 3—page 50, line 9 (App. 1217)).
39. Jim Briles further explained the lowest “landed cost” included finding and implementing “low-cost split moves.” (Briles Dep. (Exh. T) at page 166, line 15—page 168, line 16 (App. 1229)).
40. Mr. Briles also explained that “split routing” required that different information be inserted in transportation documents involving the ocean carrier as compared to the documents given to Global Link’s customers and truckers. With respect to master and house bills of lading, Mr. Briles testified:

- Q. Focusing on a split move, is there any information on it, on the bill of lading about a destination in the United States?
- A. Focusing on the split, on the master [bill of lading], yeah, there’s the contract final destination point.

- Q. "Contract final destination point," could you explain what you mean by that?
- A. It's where the container's booked to with the steamship line, based on the contract rate.
- Q. And, again, focusing on a split move, is there similar information or the same information on the house bill of lading?
- A. There is some similar information, and there is some same information.
- Q. Is the final destination point the same?
- A. On a split move?
- Q. Correct.
- A. No.
- Q. Why is that?
- A. The house bill is the receipt between our customer and us, and so it's based on the point we have in our contract with our customer.

(Briles Dep. (Exh. T) at page 109, line 23-110, line 23 (App. 1221)).³

41. With respect to delivery orders, Mr. Briles testified:

- Q. And in the split move situation, the information on the delivery order that goes to the ship line and the delivery order that goes to the trucking firm have some different information, correct?
- A. On a split move, yes.

³ With respect to its "split routing" scheme, Global Link regularly maintained two (2) sets of records or books for every transaction. David Donnini, a director of the new owners of Global Link, confirmed the existence of fraudulent and deceptive practice as follows:

- Q. Two sets of books? What do you mean by that?
- A. The company has two bills of lading and maintains different sets of records for every transaction.
- Q. All right.
- A. Very unusual.
- Q. You say that based on your enormous knowledge of how the freight-forwarding industry works?
- A. I say that based on my 17 years of experience doing financial due diligence and sitting on the boards of companies.

Q. And what is the different information?

A. The information on the DO to our trucker matches the house bill. The information on the DO to the steamship line matches the master bill.

Q. And why do you send a delivery order to the steamship line? What do they care?

A. They have to release the container to us.

Q. And they release the container to you based on a delivery order that has an address that's not where the container is going; is that correct?

A. On the split moves?

Q. Yes.

A. Yes.

(Briles Dep. (Exh. T) at page 113, line 4—page 114, line 1 (App. 1222)).

42. In an email exchange on July 14, 2005 with Mr. Briles, Respondent Rosenberg specifically noted that “split routing” involved false booking that benefits Global Link to the detriment of ocean carriers. In particular, Respondent Rosenberg advised Mr. Briles:

Don't try to get the carriers to use logic Don't forget why we mis-book, because the carriers don't make sense. So let's use it to our advantage—and not push for low ipi's in areas where we already have 1 good ipi.

(Email from Chad Rosenberg to Jim Briles dated July 12-15, 2005, annexed hereto as Exh. AI (App. 1472) (emphasis added)).

43. Respondent Rosenberg specifically directed Mr. Briles to repeatedly “mis-book” shipments to the final inland destination with the lowest cost for a particular region.

(Email from Chad Rosenberg to Jim Briles dated July 12-15, 2005, annexed hereto as Exh. AI (App. 1472)).

44. "Split routing" did not only involve locating favorable freight rates and charges on certain routings. "It was also important for the false routing scheme that Global Link be able to designate its "preferred truckers" to be used by ocean carriers. This is because it was necessary to find motor carriers who would be willing to deliver the ocean containers to a different destination than the one shown on the master bill of lading and carrier's freight release." (Global Link Voluntary Disclosure (Exh. C) at ¶ 10 (App. 113-14)).
45. "Split routing" required locating a "preferred trucker" with the lowest or best cost in transporting the last leg of the transit. (Email exchange between Wayne Martin, Jim Briles and Gary Meyer dated February 24, 2005, annexed hereto as Exh. S (App. 1213-14)).
46. Even after the routing was confirmed and in place with the proper steamship line (often referred by Global Link as an "SSL") and preferred trucker, Global Link's "split routing" scheme also required additional accounting by which Global Link would deduct the trucking payment provided by the steamship line from the total cost charged by the preferred trucker, and then, if necessary, Global Link would arrange to pay for the difference in price. (Email exchange between Jim Briles, Chad Rosenberg, Joanne Picardi, Shayne Kemp and Gary Meyer dated March 1, 2006, annexed hereto as Exh. R (App. 1210)).
47. Global Link also kept track of those instances where the trucker delivered the shipment to a destination, lesser in distance from the booked location, by creating a "credit" or "debit" practice with its preferred truckers. As explained in the Arbitration,

When the actual destination was more distant from the port or container yard (“CY”) than the destination on the ocean carrier-issued MBL, the carrier would have given the trucker an allowance for trucking from the port or CY to the MBL destination, and Global Link would pay the trucker an additional amount to compensate the trucker for driving the additional distance to the actual destination. Where the actual destination was nearer than the MBL destination to the port or CY, a situation colloquially referred to as “short-stopping,” . . . **Global Link would book a credit for the “savings” realized by the trucker, having traveled a shorter distance than that for which it had received an allowance from the ocean carrier, and GLL would offset that “credit” again the amount (“debit”) owed to a trucker when it took containers on a different shipment to a destination further than the one for which the trucker had received an allowance from the ocean carrier.**

(Arbitration Partial Final Award (Exh. A) (App. 9) (emphasis added)).

48. Global Link’s illegal “split routing” practice of fictitious bookings was a commonplace occurrence. For example, Jim Briles stated:

This is what I meant yesterday when I said I did not want to be compared to other managers here . . . **perfect example of people not understanding our business—how does a group manager not understand splits . . . its ALL we do!!!!**

(Email from Jim Briles to Chad Rosenberg dated March 1, 2006, annexed hereto as Exh.

R (App. 1210) (emphasis added)).

49. It is undisputed:

. . . [T]he false routing practices were widespread and covered multiple steamship lines, Global Link customers, destination points, and motor carriers.

(Global Link Voluntary Disclosure (Exh. C) at ¶ 13 (App. 116)).

50. Global Link admitted misusing its service contracts with MOL. (Global Link Voluntary Disclosure (Exh. C) at ¶ 18 (App. 119)).

Documents and Details of Sample Split Routing Shipments:

51. In accordance with the ALJ's October 16, 2012 Procedural Order and Briefing Schedule (Exh. L at 3 (App. 1140)), MOL is submitting documentation for eight (8) sample shipments which were previously identified in its Statement in Response to August 16, 2012 Order to Submit Status Reports, annexed hereto as Exh. U (App. 1230), and the Public Version of MOL's March 5, 2012 letter to Judge Guthridge, annexed hereto as Exh. BN at 4-5 (App. 1643-44). Each representative shipment consists of the following documents:

- A. Master bill of lading;
- B. House bill of lading;
- C. screen shot of relevant HBL shipment details from the Datamyne database;
- D. copy of relevant page from applicable service contract;
- E. copy of relevant page from applicable tariff;
- F. Shipline delivery order;
- G. Truckline delivery order;
- H. Import Transportation Order Sheet a/k/a "TPO"
- I. Arrival Notice, if available;
- J. Truck accounting papers, including truck invoices and MOL payments.

52. These sample shipments are representative of the false and fraudulent "split routing" practices used by the Respondents in connection with the many thousands of shipments booked by Global Link with MOL.

53. The destination in the master bill of lading is a fictitious destination requested by Global Link. The destination in the house bill of lading issued by Global Link to its customer shows the actual destination for the shipment. This latter destination was given by Global Link to its preferred trucker and hidden from MOL.
54. As shown by the relevant page from the applicable service contract and/or tariff for each sample shipment, the rate to the booked destination was lower than the rate to the actual destination.
55. A master bill of lading is included in each sample shipment to show the (fake) place of delivery Global Link requested. The house bill of lading is included in prove that Global Link intended from the beginning to deliver the shipment to an entirely different inland destination.
56. The shipline and truckline delivery orders show that Global Link prepared separate transportation documents in order to perpetuate its fraudulent scheme and to keep MOL from knowing that Global Link was not delivering the shipment to the booked final destination. The shipline delivery order containing the false final destination was sent by Global Link to MOL. The truckline delivery order containing the actual or "correct" final destination was tendered by Global Link to its "preferred" trucker.
57. Global Link would also prepare an arrival notice which is included with each sample shipment, with the true or "correct" final destination.
58. Based upon Global Link's false booking destination, MOL would in turn prepare an Import Transportation Order or "TPO" which is included with each sample shipment.

MOL sent the TPO to the trucker to complete the final leg of the movement. Upon confirmation of completion of the final inland movement, MOL would then arrange payment for the trucker based upon the supposed delivery to the false booking location.

59. Each sample shipment is organized by master bill of lading number.

60. Annexed hereto as Exh. AE (App. 1429)⁴ is a spreadsheet prepared by MOL which provides details pertaining to the eight (8) sample shipments. The rate applicable to transportation of the shipment to the fictitious destination (as shown in the MOL master bill of lading) is set forth in black. The rate applicable to the transportation of the shipments to the actual destination (as shown in Global Link's house bill of lading) is set forth in red. In each instance, the rates and charges for transportation to the fictitious booked destination as per the applicable service contract are less than the rates and charges for transportation to the actual destination for the shipment.

61. MOL audited a total of 9,562 shipments for 2004 through 2006, involving roughly 75,000 TEUs. MOL selected these eight (8) sample shipments because they all involved delivery to the following actual destinations: Statesville, NC; Lynchburg, VA; Atlanta, GA; Colonial Heights, VA; Rocky Mount, VA and Carol Stream, IL. These actual final destinations represent a total of 1,390 shipments or approximately 15% of the total number of shipments booked by Global Link during the relevant time period. (Public

⁴ This spreadsheet and a courtesy copy of the underlying transportation documents were provided to Respondents on March 5, 2012. While Respondents objected to sampling altogether, Respondents failed to specifically object to any details related to MOL's proposed sampling contrary to the ALJ's instructions at the February 17, 2012 hearing. (Public Version of MOL's March 5, 2012 letter to Judge Guthridge, annexed hereto as Exh. BN (App. 1640)). If Respondents now object to Complainant's calculations or sample shipments, MOL will have been denied any opportunity to examine or challenge the basis of their objections. Respondents' purposeful intransigence should not now be rewarded. *See Merchant v. Ruhle*, 740 F.2d 86, 89 (1st Cir. 1984) ("To countenance [a latent objection which could have and should have been raised earlier] would place a premium on agreeable acquiescence to perceivable error as a weapon of . . . advocacy."). Having failed to raise any specific objections to MOL's proposed shipments as instructed by the ALJ, Respondents have waived their right to object now.

Version of MOL's March 15, 2012 letter to Judge Guthridge at 6, annexed hereto as Exh. BN) (App. 1640).

62. MOL master bill of lading No. MOLU482974483, and associated transportation documents, is annexed hereto as Exh. W (App. 1260-77). Through Global Link's "split routing" practices, MOL was damaged in the amount of \$621.
63. MOL master bill of lading No. MOLU449860016, and associated transportation documents, is annexed hereto as Exh. X (App. 1278-97). Through Global Link's "split routing" practices, MOL was damaged in the amount of \$390.
64. MOL master bill of lading No. MOLU450178040, and associated transportation documents, is annexed hereto as Exh. Y (App. 1298-1321). Through Global Link's "split routing" practices, MOL was damaged in the amount of \$3,663.
65. MOL master bill of lading No. MOLU450178063, and associated transportation documents, annexed hereto as Exh. Z (App. 1322-41). Through Global Link's "split routing" practices, MOL was damaged in the amount of \$3,648.
66. MOL master bill of lading No. MOLU532657607, and associated transportation documents, is annexed hereto as Exh. AA (App. 1342-63). Through Global Link's "split routing" practices, MOL was damaged in the amount of \$1,840.
67. MOL master bill of lading No. MOLU451923539, and associated transportation documents, is annexed hereto as Exh. AB (App. 1364-93). Through Global Link's "split routing" practices, MOL was damaged in the amount of \$452.

68. MOL master bill of lading No. MOLU449742001, and associated transportation documents, is annexed hereto as Exh. AC (App. 1394-1412). Through Global Link's "split routing" practices, MOL was damaged in the amount of \$615.
69. MOL master bill of lading No. MOLU449742491, and associated transportation documents, is annexed hereto as Exh. AD (App. 1413-28). Through Global Link's "split routing" practices, MOL was damaged in the amount of \$1,470.
70. Each of these representative samples illustrates booking of a fictitious final destination, and the payment to a "preferred trucker" by MOL based upon the false final destination, not the actual final destination traveled by the preferred trucker at Global Link's (secret) request. (Exhs. AE (App. 1429) and W-AD (App. 1260-1428)).
71. Annexed hereto as Exh. AF (App. 1430)⁵ is a second spreadsheet concerning the same eight (8) sample shipments prepared by MOL which compares (i) the distance for inland transportation from the destination port to the false destination booked with MOL to (ii) the distance for inland transportation from the destination port to the actual destination traveled by Global Link's preferred trucker. (Exh. AF (App. 1430) and Public Version of MOL's March 15, 2012 letter to Judge Guthridge at 5, annexed hereto as Exh. BN (App. 1640)).
72. Exh. AF (App. 1430) is organized by MOL master bill of lading numbers. The columns are organized to show the routing each shipment traveled from origin load port to final destination. The columns show the load port, followed by the discharge port. The

⁵ This spreadsheet was also provided to Respondents on March 5, 2012 and Respondents never objected to its contents or formulation, and chose not to propose their own alternatives for consideration by the ALJ.

columns then show the inland movement of the shipments from discharge port to the rail ramp, and then final leg via truck. The final distance is calculated by comparing the distance traveled from the rail head to the false final destination and the distance traveled from the rail head to the actual final destination. The difference in mileage is then multiplied by the cost per mile (based on the TPO rate) to calculate the total amount overpaid by MOL for each shipment.

73. As shown in Exh. AF (App. 1430), the distance actually traveled by the truckers was often less than the distance they would have traveled from the ramp to the fictitious destination. As a result, in each of these sample shipments, Global Link's preferred truckers were overpaid since MOL paid the truckers for transportation to further points than to where they actually traveled.

74. With respect to MOLU482974483, MOL overpaid for trucking by \$234.63. (Exh. AF (App. 1430)).

75. With respect to MOLU449860016, MOL overpaid for trucking by \$37.50. (Exh. AF (App. 1430)).

76. With respect to MOLU450178040, MOL overpaid for trucking by \$116.80. (Exh. AF (App. 1430)).

77. With respect to MOLU450178063, MOL overpaid for trucking by \$116.80. (Exh. AF (App. 1430)).

78. With respect to MOLU532657607, MOL overpaid for trucking by \$210.14. (Exh. AF (App. 1430)).

79. With respect to MOLU451923539, MOL overpaid for trucking by \$405.52. (Exh. AF (App. 1430)).
80. With respect to MOLU449742001, MOL overpaid for trucking by \$603.82. (Exh. AF (App. 1430)).
81. With respect to MOLU449742491, MOL overpaid for trucking by \$314.50. (Exh. AF (App. 1430)).
82. As a result of Global Link's "split routing" scheme, MOL lost money in two (2) ways: first, it lost revenue as a result of Global Link's use of false destinations, and second, it overpaid Global Link's "preferred trucker" for inland movements that did not occur.

Global Link repeatedly sought to keep "split routing" a secret from MOL:

83. In addition to the preparation and issuance of many thousands of false transportation documents, there are numerous admissions from Global Link that they sought to keep "split routing" a secret from MOL and other steamship lines.
84. On July 16, 2006, Eileen Cakmur, an employee of Global Link, sent an email to officers of Global Link admitting that Global Link engaged in "split routing" and actively sought to keep "split routing" a secret from steamship lines for years. (Email from Eileen Cakmur to John Williford of Global Link dated July 16, 2006, annexed hereto as Exh. Q (App. 1206)). In particular, Ms. Cakmur wrote:

GLOBAL LINK books the shipments with SSL [steamship line] to a destination where the rate is lower than the real destination; therefore, the final destination on the house bill of lading does not match with the final destination on the master bill of lading. 80% of GLOBAL LINK

shipments go to a different destination than what shows on MBL. GLOBAL LINK calls these types of moves "split delivery" or "split moves." This is also explained in GLOBAL LINK's Manual Section 8 under Trucking Procurements and Management. It is also in GLOBAL LINK Silver Bullet. Let's say on MBL final destination is Tulsa, OK but it is actually going to Oklahoma City, OK. What I used to do everyday was send a delivery order where we put our preferred trucker to SSL with a made up address telling them this container was going to Tulsa, OK. SSL releases the container to GLOBAL LINK preferred trucker. I also send a delivery order to the preferred trucker with the right address which is Oklahoma City, OK in this case. Trucker takes the container to the right address. SSL gives an allowance to a trucker and most of the time GLOBAL LINK does have trucking cost. If the allowance does not cover it, trucker charges GLOBAL LINK the difference. If you see the bookings, it shows HBL destination is different than MBL destinations.

GLOBAL LINK has been practicing these illegal activities for years. If any of the SSL kn[ew] that they have been [de]fraud[ed] all these years, GLOBAL LINK will close their doors. Doing this kind of risky business, GLOBAL LINK should re consider (sic) how to treat their employees. Every single one of them knows what kind of crime GLOBAL LINK commits every day. (emphasis added).

85. Eileen Cakmur, who has been identified as a whistle-blower, not only admitted Global Link knew the "split routing" scheme was illegal, but confirmed Global Link had successfully prevented steamship lines from being aware of its illegal "split routing" scheme. (Email from Eileen Cakmur (Exh. Q (App. 1206)) and Transcript of Deposition of David Donnini dated April 16, 2008 ("Donnini Dep.") at page 17, line 13---page 18, line 10, annexed hereto as Exh. BS (App. 1673-74)).

86. In the early stages of its implementation of the "split routing" scheme, Global Link had to repeatedly advise, train and admonish its employees on the specific details of the scheme, in particular that the true final destination of the shipments differed from destination booked with steamship lines. (Email string between Tommy Chan, Emily So, Respondent Chad Rosenberg and Jim Briles dated May 25, 2004, annexed hereto as Exh.

AH (App. 1466-68) and Email string between Respondent Rosenberg and Jim Briles dated July 12, 2005, annexed hereto as Exh. AI (App. 1473-73)).

87. Global Link often had to re-explain the specific steps needed to prevent ocean carriers from understanding the full nature and extent of the fraud and misrepresentations concerning Global Link's "split routing" or "mis-booking" of thousands and thousands upon shipments. (Exhs. AH (App. 1466-68) and AI (App. 1472-73)). For example, on May 25, 2004, Tommy Chan corresponded with Emily So of Global Link about confusion on exactly how "split routing" worked. (Exh. AH (App. 1466-68)).

88. In particular, Mr. Chan advised Ms. So as follows:

We understood the final destination for physical delivery, but it's not the routing decision for Loading Port's operation—which MBL destination should be arrange[d], you can see the samples [have been] relayed to you—final destination is to A, but we have to arrange the MBL destination to B for most cases. (sic) You may refer to Chad the reason for this kind of special arrangement.

(Email string between Tommy Chan, Emily So, Respondent Rosenberg and Jim Briles dated May 25, 2004 (Exh. AH) (App. 1466)).

89. The phrase "special arrangement" was Global Link's euphemism for "split routing." (Exh. AH (App. 1466)).

90. On September 20, 2005, Dee Ivy, an employee of Global Link, expressed frustration and guilt concerning Global Link's repeated misrepresentations made to steamship lines about "split routing." (Email string from Dee Ivy to her Global Link colleagues dated September 16-20, 2005, annexed hereto as Exh. AK (App. 1479)).

91. In particular, Ms. Ivy wrote:

Lena from Maersk just called me regarding the below 3 containers on J.W. Watson's yard. She wanted to know why they have not delivered to customer on D.O., and I told her that my customer has not gotten the O.K. to delivery to customer on D.O.

She wanted to confirm that we know we will be charged storage/demurrage/per diem for them. My reply was "yep".

I have a bunch of Maersk containers sitting on yards, and it's only a matter of time before they start questioning them all.

I don't like having to constantly lie and make up excuses as to why/where these containers are going, or not going.

I personally think we as a company need to revisit our policy on split shipments. The extra hassle/lies we have to tell is not fair to us CAMs [customer account managers], and it does not fit within our new Mission Statement.

I just had to get that off my chest.

(Email string from Dee Ivy to her Global Link colleagues dated September 16-20, 2005

(Exh. AK) (App. 1479) (emphasis added)).

92. In order to maintain the fiction that the shipments were in fact traveling to the booked location, Global Link trained its employees to create a fake delivery address so as to avoid MOL's detection of "split routing" and allow Global Link to continue misrepresenting the final destination of its shipments. (Email from Wayne Martin to various Global Link employees dated June 24, 2005 (App. 1478), annexed hereto as Exh. AJ.

93. On June 24, 2005, Wayne Martin, another Global Link employee, wrote to his co-workers and described how to create a false delivery address in order to deceive MOL on

the true final destination of shipments. In particular, Mr. Martin advised his team as follows:

When dispatching split moves to MOL Norfolk be sure you use and (sic) actual address for the manifested city and use our phone number.

(Email from Wayne Martin to various Global Link employees dated June 24, 2005 (Exh. AJ) (App. 1478)).

94. In other words, Mr. Martin advised his fellow Global Link employees to obtain an actual street address when booking to a false final destination with MOL, but use a Global Link telephone number so that if MOL would call about releasing the container from the ramp, a Global Link employee could intercept and ensure MOL did not find out Global Link never intended to deliver the shipment to the booked location. (Exh. AJ (App. 1478)).
95. On September 19, 2005, Jim Briles of Global Link emailed his co-worker, Gary Meyer to advise that Global Link's operations people should not meet with a steamship line's sales personnel because such meetings only served to "illustrate that [Global Link was] not routing to the correct door [destination]." (Email from Jim Briles to Gary Meyer dated October 19, 2005 at 1, annexed hereto as Exh. AL (App. 1482)).
96. Global Link continued to instruct its employees to use Google to create a fake address for the final destination on the master bill of lading. (Email dated April 3, 2006 from Wayne Martin to various Global Link employees, annexed hereto as Exh. Q (App. 1207)).
97. In particular, in response to a question about how to create a fictitious destination to give to the ocean carrier when booking a "split" shipment, Mr. Martin instructed his fellow employees:

Dec

These are all very good questions.

How are you finding a real address for ea. door location? Are you just picking from a phone book?

Answer: I Google a furniture company (in most cases) located in the city that the MSK MBL is manifested, I use our customers name and that companies address. This has been covering me when MSK queries the address as a valid address, in the manifested town.

We would have to remember to use the exact same address per customer & door ea. time. Otherwise, [Maersk] will notice we have the same deliver to company, but with different "real" addresses all the time.

(Email dated April 3, 2006 from Wayne Martin to various Global Link employees (Exh. Q) (App. 1207) (emphasis in original).

98. On August 11, 2005, Joanne Picardi, a Global Link employee, learned that Evans Delivery could no longer be Global Link's "preferred trucker" for MOL shipments through Norfolk, VA. (Email string between Joanne Picardi, Jim Briles, Emily So and Shayne Kemp of Global Link dated August 11, 2005, annexed hereto as Exh. BR (App. 1667). In particular, MOL was contacting Global Link's preferred trucker to verify whether Global Link shipments were being delivered to destinations other than the booked location. (Exh. BR (App. 1668)). As a result of MOL's inquiries, Global Link's preferred trucker refused to perform "split routing" for fear of spoiling its on-going relationship with MOL. (Exh. BR (App. 1667)). Ms. Picardi communicated with Mr. Briles about the problem with its preferred trucker. (Exh. BR (App. 1667)).
99. On August 15, 2005, in response to questions posed by MOL, Jim Briles admonished his Global Link co-workers to do a better job concealing "split routing" so that MOL would be led to believe Global Link shipments were being delivered as originally booked.

(Email from Jim Briles to Global Link staff dated August 15, 2005, annexed hereto as Exh. AM (App. 1484)).

100. In particular, Mr. Briles cautioned his team:

Attention Operators:

If anybody has a shipment on the above mentioned routing, please be informed that the MOL Norfolk office is carefully scrutinizing the final destination and will not release the dispatch to your preferred truckers if they find out that container is not going to [M]artinsville [V]a. Please check with Joanne asap for a list of truckers we can use for this trade lane. If anyone from MOL (especially Laci) contacts and/or harasses you for a correct final destination, please do not mention not routing to the correct door and simply tell them the container is going to Martinsville, VA. Please adv if you have any questions.

(Email from Jim Briles to Global Link staff dated August 15, 2005 (Exh. AM) (App. 1484) (emphasis added).

101. On March 9, 2006, Jim Briles again admonished Global Link employees to prevent MOL from learning the true final destination. (Email dated March 9, 2006 from Jim Briles to GLOBAL LINK staff, annexed hereto as Exh. AN (App. 1485)).

102. In particular, Mr. Briles directed Global Link employees as follows:

Ops,

Please let me stress again, we can never tell the SSL that we [are] not delivering to the master bill of lading final destination. An operator in our office told MOL Chicago that a container routed to Fishers, IN was not going there mo[s]t times goes somewhere else and MOL Chicago decided they were over paying allowances and now all cntrs on this routing MUST be returned to Indianapolis, IN. I am working with Rebecca to get this to 10-15 F's per week (that is their export amount from Indianapolis each week). Please note that for the 10-15 cntrs a week that will have to be returned to Indianapolis will cost us \$500-600 each (\$5K per week) This is, needless to say, very costly for GLL and

inexcusable. Going forward I now will not book on MOL to Fishers and we must use Maersk to service this area.

Pls distribute to your team and pls take the time to make sure everyone understands split shipments and the importance of keeping this info private.

(Email dated March 9, 2006 from Jim Briles to GLOBAL LINK staff, annexed hereto as Exh. AN (App. 1485) (emphasis added).

103. Mr. Briles further instructed his co-workers not to reveal that Global Link was arranging for delivery of shipments to destinations different from the MOL master bill of lading destination. (Exh. AN (App. 1485)).

104. Mr. Briles' co-workers responded positively to his instructions and admonitions, confirming that it was Global Link's formal policy to never reveal to MOL that shipments were not being delivered to the master bill of lading destination. (Email dated March 9, 2006 from Dorothy Thomas to various Global Link employees, annexed hereto as Exh. AO (App. 1486); Emails dated March 9, 2006 from Shayne Kemp to her team at Global Link and their responses thereto, annexed hereto as Exh. AP (App. 1487-92); and Email dated March 9, 2006 from Damon Amos to Jim Briles, annexed hereto as Exh. AQ (App. 1493)).

105. In particular, on March 9, 2006, Dorothy Thomas of Global Link advised Mr. Briles that her team would:

discuss on Friday morning to make sure everyone completely understand [sic] that **we do not discuss the true destination**. I am sure this [is] not anyone in our group.

(Email dated March 9, 2006 from Dorothy Thomas to various Global Link employees (Exh. AO) (App. 1486) (emphasis added)).

106. On March 9, 2006, Ms. Shayne Kemp of Global Link also forwarded Jim Briles's email to her co-workers. In accordance with the instructions from Jim Briles, Ms. Kemp wrote to her team as follows:

Team

Please note below email regarding MOL; **this really hurts.**

Please advise that you understand not to tell the ssl where shipments are really going?

(Emails dated March 9, 2006 from Shayne Kemp to her team at Global Link and their responses thereto (Exh. AP) (App. 1487) (emphasis added)).

107. Ms. Kemp then obtained written confirmation that everyone on her team understood they were never to reveal the true final destination to MOL. (Exh. AP (App. 1487)).

108. Damon Amos of Global Link responded to Jim Briles's email by explaining that MOL learned that its containers were not being delivered to Fishers, Indiana because a new employee at Global Link "received a call from MOL and was caught off guard." (Email dated March 9, 2006 from Damon Amos to Jim Briles, annexed hereto as Exh. AQ (App. 1493)).

109. Mr. Amos advised that he responded to MOL's inquiries about the final destination of its containers as follows:

I emailed MOL and explained it was a miscommunication and the containers were to be delivered as booked. At no point did I ever verbally speak to MOL and I absolutely never told them, or even remotely

insinuated, “a container routed to Fishers, IN was not going there mo[s]t times goes somewhere else.” Also, please note Mitsui’s desire to have empties returned to Indianapolis is not a consequence of their phone conversation with [a preferred trucker] since their desire preceded it. It was simply a matter of supply and demand.

(Exh. AQ. (App. 1493) (emphasis added)).

110. Global Link’s standard operating procedure was to routinely deliver shipments to a destination different from that initially booked with MOL, to consistently provide false documentation and mis-information about the final destination of these shipments, and to actively take steps to conceal the “split routing” scheme. (Exhs. AO (App. 1486), AP (App. 1487) and AQ (App. 1493)).

Global Link constantly vetted “preferred truckers” in furtherance of “split routing”:

111. In order to maintain the fiction that its shipments were being delivered to MOL master bill of lading destinations, Global Link repeatedly sought out inland carriers who would be willing to serve as “preferred truckers” and help advance the “split routing” scheme. (Global Link Voluntary Disclosure (Exh. C) at ¶ 10 (App. 113-14)).

112. As explained in the Voluntary Disclosure,

. . . . It was also important for the false routing scheme that Global Link be able to designate its “preferred truckers” to be used by the ocean carriers. **This is because it was necessary to find motor carriers who would be willing to deliver the ocean containers to a different destination than the one shown on the master bill of lading and the carrier’s freight release.** A February 8, 2006 email from a Global Link customer account manager to a representative of a motor carrier that was being recruited into the false routing scheme explained the process as follows:

You will be delivering to Norcross, GA where Brakes USA is located. **What I meant was we book this with P&O as if they were going to Chattanooga, TN but they are not going there. They will be delivered to Norcross, GA.**

P&O is not supposed to know about Norcross, GA. Please do not mention anything to them. When you receive the work order or freight release from them, it will show Chattanooga, TN as a delivery destination but you will be delivering to Norcross, GA. They will be paying you as if they are going from Austell [presumably, the rail ramp location] to Chattanooga, TN. That's where you make your money. We call this "split delivery." If there was a difference in mileage, Global Link Logistics will pay the difference but in this case the mileage is way covered. Please let me know if this does not make sense to you.

. . . . As this email notes, ocean carriers establish trucking allowances to compensate motor carriers for the drayage of containers from ports or rail ramps to final destinations. If the trucking allowance for the fictional destination would not cover the trucking move to the actual destination, Global Link would pay the motor carrier the difference. **To avoid this, which would obviously reduce Global Link's profit on these shipments, Global Link tried to find cheap destination points with high trucking allowances from the ocean carriers. . . .**

(Exh. C at ¶ 10 (citing Exh. AV) (App. 113-14) (emphasis added)).

113. Global Link carefully vetted motor carriers before agreeing to use them as part of its "split routing" scheme against MOL because they wanted to be certain their truckers would not reveal that the shipments were not being delivered to the master bill of lading destinations. (Email from Jim Briles to Shayne Kemp dated July 27, 2005, annexed hereto as Exh. AR (App. 1494); Email exchange between Wayne Martin and Respondent Rosenberg dated January 30, 2006, annexed hereto as Exh. AS (App. 1495); Email exchange between Erin Brown and Joanne Picardi, Global Link employees, dated July 26, 2005, annexed hereto as Exh. AT (App. 1496)).

114. Global Link recruited motor carriers explaining that by not delivering shipments to the master bill of lading destinations they stood to make more money through the

trucking payment offered by steamship lines. (Email dated February 8, 2006 from Eileen Cakmer of Global Link to Lorne Tritt, annexed hereto as Exh. AV (App. 1498-99)).

Respondent Chad Rosenberg was the creator, architect and promoter of the “split routing” scheme:

115. Global Link was founded by Respondent Rosenberg in 1997. (Global Link Amended Statement (Exh. AG) at ¶ 24 (App. 1438) and Arbitration Partial Final Award (Exh. A) at 5 (App. 110)).

116. Respondent Rosenberg was the qualifying individual listed by Global Link in the application filed with the FMC to obtain a license to operate as a non-vessel-operating common carrier. (Rosenberg Dep. (Exh. O) at page 77, line 8-16 (App. 1181)). The qualifying individual represents and warrants his understanding of applicable Commission regulations and requirements. *See* 46 C.F.R. § 515.11.

117. CJR Respondents admit “split routing” involved:

provid[ing] MOL with a destination other than the ultimate destination of the cargo. CJR and Rosenberg admit that the bill of lading issued by MOL would reflect the destination provided by Global Link.”

(CJR Respondents Answer (Exh. P) at 9-10, ¶ G (App. 1195-96)).

118. Respondent Rosenberg always intended for “rerouting” or “split routing” to mean having a different destination on the ocean or master bill of lading than the house bill of lading. (Rosenberg Dep. (Exh. O) at page 11, line 19—page 12, line 3 and page 12, lines 20-25 (App. 1168-69)).

119. Respondent Rosenberg designed “split routing” so that the shipment would be delivered not to the destination stated on the ocean or master bill of lading, but to the

- destination stated on the house bill of lading. (Rosenberg Dep. (Exh. O) at page 17, lines 9-22 (App. 1168-69)).
120. “Split routing” worked by booking a shipment through an ocean carrier’s “regional door point” which typically had the lowest cost point regardless of the shipment’s actual destination. (Rosenberg Dep. (Exh. O) at page 37, lines 14-18 (App. 1177)).
121. Since starting Global Link, as a licensed NVOCC, Respondent Rosenberg immediately instituted “split routing” for the majority of its shipments. (Rosenberg Dep. (Exh. O) at page 99, line 12—page 101, line 24 (App. 1182)).
122. Respondent Rosenberg was responsible for “routings” at Global Link. (Joiner Dep. (Exh. BA) at page 170, lines 11-17 (App. 1541)).
123. Until selling a majority interest in Global Link to the Olympus Respondents in 2003, Respondent Rosenberg was personally responsible for arranging the specific routings, including the selection of the false final destination on the master bill of lading. (Briles Dep. (Exh. T) at page 114, line 19—page 115, line 1 (App. 1222)).
124. After selling a majority interest in Global Link to the Olympus Respondents, Respondent Rosenberg personally trained Jim Briles on “split routing.” (Briles Dep. (Exh. T) at page 53, line 3-18 (App. 1218) and page 114, line 19—page 115, line 1 (App. 1222)).
125. CJR Respondents admit that due to “split routing” the “rates paid to MOL for transportation to the location provided to MOL were lower than the rates to the actual

location where the shipment was delivered the location where the shipment was delivered was a point with no negotiated rate in the service contract and which Global Link did not seek to add to the contract.” (CJR Respondents Answer (Exh. P) at 11-12, ¶ J (App. 1197-98)).

126. Global Link employees knew “split routing” was not commonplace in the industry and did not need an attorney to tell them the practice was illegal. Eric Joiner, a former employee of Global Link, testified as follows:

Q. Chad Rosenberg was the individual at the company responsible for handling routings when you were employed by the company, correct?

A. With the exception of the two-week period in which Michelle Roller did it.

Q. Okay, but you didn’t have any involvement in that at any time during your employment with the company, correct?

A. No. Absolutely not. Like I said, the way that that worked was Chad would call—and he did this from the start of business. He would call Asia at night from home because of the time differences, which is 12 hours. He would call and talk to them during their business day and from nighttime at his own house. So that activity did not take place within the office.

Q. Did you—did you at that time have any understanding as to why the company, to use your term, misrouted, when it was routing shipments?

A. It would have been an opportunity to try and make more money and achieve new customers.

Q. Well, what do you base that testimony on? Is that what your understanding was, or is that something that Mr. Rosenberg told you?

A. That’s my understanding.

Q. And what do you based that understanding on?

A. Because that’s what happens when you do that.

Q. Okay. Mr. Rosenberg never told you that was the reason that it was done, correct?

A. I never had—no. I mean, to be honest, I didn't have to ask. I knew it.

Q. And how did you know it?

A. Well, after 25 years in the business or 20 years at that time, if people are going to use a bullet rate that way, that's what they would have done.

Q. Because it was a common practice in the industry, correct?

A. **No. It was not a common practice. It was an illegal practice.** It happens, okay, and there are people that have gotten FMC fines for having done that, but it's not a practice that I would say is a condoned practice that's an everyday event.

(Joiner Dep. (Exh. BA) at page 170, line 11—page 172, line 19 (App. 1541) (emphasis added)).

127. Eric Joiner told Respondent Rosenberg that “split routing” was illegal but Mr. Rosenberg continued “split routing” as a practice because—in Mr. Rosenberg's opinion—no one was going to turn Global Link in to the FMC. (Joiner Dep. (Exh. BA) at page 193, line 14—page 194, line 11 (App. 1542-43)).

128. Eric Joiner testified:

Q. Did you tell Mr. Rosenberg that [split routing was illegal]?

A. **I told Mr. Rosenberg that what was going on wasn't legal.** Okay. I didn't render any legal opinions. **It was like my experience is this is not something you're allowed to do. We need to find a different way to do it.** Okay. A different way to route the cargo correctly that allows us to be competitive as a company.

(Joiner Dep. (Exh. BA) at page 197, lines 2-9 (App. 1543) (emphasis added)).

129. Respondent Rosenberg, a qualifying individual, was not aware of any written document from Global Link communicating to any of its employees the importance of maintaining compliance with all FMC rules and regulations. (Rosenberg Dep. (Exh. O) at page 294, line 18—page 295, line 2 (App. 1185-86)).

130. Respondents Rosenberg and Global Link failed to maintain a proper program to ensure Global Link's compliance with FMC rules and regulations. (Rosenberg Dep. (Exh. O) at page 292, line 7—page 295, line 14 (App. 1183-86)).

131. Respondent Chad Rosenberg, a qualifying individual, was the trainer-in-chief, creator and architect of the fraudulent scheme known as "split routing." (Joiner Dep. (Exh. BA) at page 197, lines 2-9 (App. 1543); Briles Dep. (Exh. T) at page 52, line 5—page 53, line 11 (App. 1217-18) and Global Link Voluntary Disclosure (Exh. C) at ¶ 14 ("The false routing scheme was used by Global Link from its beginning in 199[7].") (App. 116)).

Olympus Respondents actively participated in "split routing" scheme:

132. Olympus Respondents admit they knew Global Link "engaged in a practice called 'split-routing'" (Verified Answer of Respondents Olympus Growth Fund III, L.P.; Olympus Executive Fund, L.P.; Louis J. Mischianti; L. David Cardenas and Keith Heffernan to Amended Complaint ("Olympus Respondents Answer") at ¶ 15, annexed hereto as Exh. AW (App. 1508)).

133. The Olympus Respondents were aware that Global Link engaged in “split routing” on a regular basis. (CJR Respondents Answer (Exh. P) at 9, response to ¶ F (App. 1195)).
134. Olympus Respondents purchased a majority interest in Global Link on or about April 4, 2003. (Selected Pages from Asset Purchase Agreement by and Among GLL Acquisition, Inc., GLL Holdings, Inc., Global Link Logistics, Inc. and Chad J. Rosenberg dated April 4, 2003, annexed hereto as Exh. BQ (App. 1665-66)).
135. After joining the new Global Link management team, Mr. Eric Joiner became aware that Global Link was routing shipments to destinations which had not been previously agreed to by the steamship lines. (Joiner Dep. (Exh. BA) at page 32, lines 13-19 (App. 1539)).
136. During the summer of 2003, someone from the new management team—either Eric Joiner or Gary Meyers—advised Respondent Heffernan that Global Link was booking containers to a different destination on the master bill of lading as compared to the house bill of lading. (Deposition of Keith Heffernan dated September 21, 2008 (“Heffernan Dep.”) at page 87, line 25—page 88, line 21 (App. 1522-23); page 89, lines 6-12 (App. 1524); and page 91, line 25—page 92, line 5, annexed hereto as Exh. AX (App. 1525)).
137. Mr. Joiner also spoke with Respondent Cardenas about the legality of transporting containers to a destination not set forth on the master bill of lading or previously agreed by the steamship line. (Joiner Dep. (Exh. BA) at page 191, lines 12-25 (App. 1542); page 193, line 23—page 194, line 9 (App. 1542-43)).

138. Mr. Joiner cautioned Respondent Cardenas that Global Link's arranging of container movements to destinations not previously agreed to by the steamship lines was illegal and presented serious regulatory issues. (Joiner Dep. (Exh. BA) at page 193, lines 8-13 and page 196, lines 6-18 (App. 1542-43)).
139. Respondent Heffernan explained that the reason this information was brought to his and Respondent Cardenas's attention was that Gary Meyers and/or Eric Joiner were getting up to speed on Global Link's business practices, and they had a question about the practice of delivering the cargo to a destination different from what was booked with the steamship line, and whether this practice was OK. (Heffernan Dep. (Exh. AX) at page 92, lines 10-18 (App. 1525)).
140. At the time of being informed of this practice in the summer of 2003, Respondents Heffernan, Cardenas and Mischianti were directors of Global Link. (Heffernan Dep. (Exh. AX) at page 95, lines 8-19 (App. 1529) and Global Link Amended Statement (Exh. AG) at ¶ 35 (App. 1442)).
141. Eric Joiner explained to Respondents Heffernan and Cardenas the nature and extent of Global Link's "split routing" scheme in extensive detail. (Heffernan Dep. (Exh. AX) at page 66, lines 13-15 (App. 1520); Joiner Dep. (Exh. BA) at page 191, lines 12-25 (App. 1542) and Transcript of Deposition of David Cardenas dated August 6, 2008 ("Cardenas Dep.") at page 115, line 20—page 116, line 8, annexed hereto as Exh. BE (App. 1610-11)).
142. Respondent Rosenberg also explained in detail the intricacies of "split routing" to both Respondents Heffernan and Cardenas on at least one occasion in July of 2003.

(Rosenberg Dep. (Exh. O) at page 32, line 16—page 33, line 10 (App. 1172-73); page 34, line 24—page 35, line 4 (App. 1174-75) and page 36, line 23—page 37, line 2 (App. 1176-77); and Heffernan Dep. (Exh. AX) at page 66, lines 13-15 (App. 1520)).

143. Mr. Joiner specifically warned Respondent Cardenas that “split routing” was illegal and that Global Link should be trained so that bookings with ocean carriers would be performed properly and in accordance with FMC rules and regulations. (Joiner Dep. (Exh. BA) at page 192, lines 4-23 (App. 1542)).

144. Mr. Joiner obtained approval from Olympus Respondents during the summer of 2003 to hire an outside lawyer, Neal Mayer, to train Global Link personnel about proper routing/booking procedures for containerized cargo. (Joiner Dep. (Exh. BA) at page 192, lines 4-23 (App. 1542)).

145. On July 15, 2003, Paul Coleman, an attorney with Hoppel, Mayer & Coleman in Washington, D.C., wrote the following legal advice to Gene Mayer, Eric Joiner and Respondent Rosenberg:

When Global Link changes the ultimate destination and does not inform the ocean carrier, which has issued a bill of lading to another destination and would have needed to issue a corrected bill of lading to the new destination and adjust the charges for the water/motor movement, there are several problems which Global Link needs to consider. First, if the cargo is damaged or lost enroute to the new destination in the motor carriage portion of the movement, Global Link would have no right to go after the ocean carrier for the loss or damage because the goods are no longer traveling under the ocean carrier’s bill of lading which included motor carriage to a certain point, but instead moved under an informal arrangement with the trucker. Global Link then will have to look to the trucker whose resources may not be substantial for compensation, under uncertain terms for claims.

Second, what occurs sometimes in these arrangements is that the cargo goes to a destination short of its original destination, and the motor carrier has collected more or a different amount from the ocean carrier than it is entitled. This is called "shortstopping", with often the shipper receiving from the trucker part or all of the amount saved or getting a credit on a later shipment. This is a fraud on the ocean carrier who has paid the trucker more than the trucker was entitled, and an illegal rebate to the shipper because any return of compensation to the shipper without being allowed by the ocean carrier's tariff or service contract is a violation of section 10(a)(1) of the Shipping Act.

Third, if as you noted in your example, the trucker sometime[s] takes the cargo to a destination beyond the original final destination and Global Link pays the trucker more money, it still may be unlawful under the Shipping Act if this allows Global Link to be charged less by the ocean carrier than it would have charged to that destination, and as we have noted before, leaves Global Link to look to the motor carrier only in case of loss or damage to cargo.

In sum, a practice of changing destinations without notice to the ocean carrier exposes Global Link to possible Shipping Act violations but just as importantly, to an uncertain claims procedure in case of loss or damage to the cargo. If the concern is that the ocean carrier will learn the identity of the beneficial cargo owner, it would be better to have the ocean carrier issue a port-to-port bill of lading to Global Link and Global Link issue an intermodal bill and arrange the trucking.

(Email string between Paul Coleman and various Global Link employees, including Respondent Rosenberg dated July 15-21, 2003, annexed hereto as Exh. BP (App. 1663) (emphasis added)).

146. The Olympus Respondents and CJR Respondents ignored the legal advice of outside counsel, Paul Coleman. (Olympus Respondents' Answering Statement to Global Link's Notice of Arbitration and Amended Statement of Claim dated October 29, 2007 ("Olympus Answering Statement") at 12, paras. 30, 46-51, annexed hereto as Exh. BB (App. 1556, 1562-64), and Global Link's Amended Statement of Claim dated October

17, 2007 in Arbitration (“Global Link Amended Statement”) at 12, annexed hereto as Exh. AG (App. 1442)).

147. Global Link has explained the rationale of ignoring the advice of Mr. Coleman:

. . . Cardenas and other principals of Olympus Partners, presumably Heffernan and Mischianti at least, knew what Coleman wrote to [Gene] Meyers and Rosenberg in his emails of July 2003. **But, despite that knowledge and despite Coleman’s warning that the FMC had fined others for Rosenberg’s longstanding “practice of diverting cargo to [destinations] other than what’s on the original [ocean bill of lading],” the directors of Olympus Partners placed on the Boards of Global Link 2003 and Holdings 2003, including Mischianti, Cardenas and Heffernan (who was licensed as a CPA), permitted Rosenberg to continue it.** Apparently, they agreed with Rosenberg that the “real-life risks” of that longstanding “practice” were not likely enough or severe enough to derail their plans to use their capital to expand Rosenberg’s freight-forwarding business and then cash in by selling GLL Holdings 2003 and its subsidiaries to an unwitting buyer.

(Global Link Amended Statement (Exh. AG) at ¶ 35 (App. 1442)).

148. Global Link further revealed:

The purpose of these material misrepresentations was obtaining transportation of container from ports in Asia to destinations in the United States at rates that were less than those the ocean carriers would have rightfully charged under their contracts and tariffs if . . . **officers of Global Link 2003 had not concealed the true destinations for those shipments. . . .**

(Global Link Amended Statement (Exh. AG) at ¶ 43 (App. 1446) (emphasis added)).

149. Respondents Heffernan and Cardenas understood that “split routing” avoided the necessity of re-negotiating door points with steamship lines, thereby exposing Global Link to higher landed costs on a per shipment basis. (Rosenberg Dep. (Exh. O) at page

49, line 1—page 50, line 1 (App. 1179-80) and page 35, line 5—page 36, line 22 (App. 1175-76)).

150. Respondents Heffernan and Cardenas also knew that “split routing” could have been eliminated by having Global Link book its shipments to the container yard or rail ramp, rather than a door point. (Rosenberg Dep. (Exh. O) at page 35, lines 15—page 36, line 22 (App. 1175-76)).

151. Olympus Respondents took no action to terminate or modify Global Link’s “split routing” following receipt of Mr. Coleman’s advice that such practices were illegal and violated the Shipping Act. (Heffernan Dep. (Exh. AX) at page 163, lines 15-25 (App. 1530); Email string between Paul Coleman, Respondent Chad Rosenberg and Gene Mayer dated July 16, 2003, annexed hereto as Exh. BC (App. 1585-88)).

152. Although they were shareholders, officers and/or directors of Global Link, Olympus Respondents and CJR Respondents neither ensured that the activities of their company—Global Link—conformed to the Shipping Act nor assigned someone the task of compelling Global Link’s compliance with its duties and obligations under the Shipping Act. (Heffernan Dep. (Exh. AX) at page 171, line 18—page 174, line 2 (App. 1531-33a); Cardenas Dep. (Exh. BE) at page 52, line 17—page 53, line 13 (App. 1605-06); page 157, line 12—page 158, line 8 (App. 1615-16); page 162, line 17—page 163, line 6 (App. 1617-18); page 166, lines 2-10 (App. 1619)).

153. Olympus Respondents and CJR Respondents benefitted directly from Global Link’s “split routing” scheme. (Global Link’s Voluntary Disclosure (Exh. C) at ¶ 14 (“The misrouted shipments actually increased in 2005, the time during which [Olympus

and CJR Respondents] were preparing to sell [Global Link]. Increasing the profits from false routings, of course, would increase the value of the company to prospective bidders.”) (App. 116) and Cardenas Dep. (Exh. BE) at page 78, line 25—page 80, line 20 (App. 1607-09)).

154. The Olympus Respondents deliberately engaged in the fraudulent practice of split routing in order to inflate profits and defraud the buyers of Global Link. (Transcript of Deposition of Constantine Mihas dated July 11, 2008 (“Mihas Dep.”) at page 202, lines 5-15, annexed hereto as Exh. BT (App. 1684)).

155. In particular, Mr. Mihas, a board member of the new owners of Global Link, testified as follows:

Q. You understand that the former owners and management of Global Link understood rerouting to be legal and common in the industry?

MR. BUSHOFSKY: Object to the form.

A. No. My understanding is that the former management and owners of the company were deliberately breaking the law in order to inflate profits and defraud us out of \$128 million.

(Mihas Dep. (Exh. BT) at page 202, lines 5-15 (App. 1684)).

156. The Olympus Respondents instructed their employees at Global Link not to discuss routing with potential buyers because they did not want anyone outside the company to understand that “split routing,” an illegal practice, was essential to Global Link’s profitability. (Arbitration Partial Final Award (Exh. A) (App. 23-27) and Transcript of Deposition of Eugene Winters dated July 22, 2008 (“Winters Dep.”) at page 62, line 21—page 63, line 11 (App. 1598) and page 63, line 22—page 66, page 16, annexed hereto as Exh. BD (App. 1598-99)).

157. The Partial Final Award in the arbitration concluded as follows with regard to the conduct of the Olympus Respondents and CJR Respondents on split routing:

a deliberate effort was made to keep [the buyers of Global Link] from learning of the existence, extent and significance of the split-routing practice during the due diligence process, and (ii) during the due diligence process questions were asked by representatives of [the buyers of Global Link] to which accurate and complete answers would have included disclosure and a description of split routing and its contribution to Global Link's profitability. We turn to a discussion of the evidence underlying those conclusions.

During preparation of the Confidential Information Memorandum, Keith Heffernan, who was responsible for gathering and passing along to Harris Williams comments from Olympus Partners and Global Link management on the most recent draft, deleted a reference to "highly efficient routing." Inserted in place of that phrase was the following comment explaining the deletion:

"I don't think we should get too deep into routing. I don't think we want too much diligence around this, and we don't want to give away too much either. I would stick to high-skilled contract negotiations."

* * * *

The motivation to conceal Global Link's reliance on split-routing is not difficult to identify. The Olympus Respondents were eager to turn a profit on their three-year-old investment in Global Link by reselling the Company. Chad Rosenberg, having sold an 80% interest in the Company for \$20 million three years earlier, stood to reap another \$20 million by selling his remaining 20% interest, and Company management was willing, if not eager, to assist the process, for certain members of management stood to benefit personally and substantially from a sale. **Disclosure of split-routing would almost certainly have generated questions about legality, business prudence and/or sustainability of the practice, and responding to those questions by [the buyers of Global Link]'s satisfaction might well have delayed (and conceivably might have scuttled) the transaction or altered its terms to the [Olympus and CJR Respondents]'s and management's detriment.**

(Arbitration Partial Final Award (Exh. A) (App. 23-27) (emphasis added)).

“Split routing” increased Global Link’s revenue at the expense of MOL and other Steamship Lines:

158. Global Link engaged in “split routing” in order to make more money at the expense of MOL and other ocean carriers. (Ivy Dep. (Exh. V) at page 27, lines 4-6 (App. 1252)).

159. Global Link engaged in “split routing” not because it made operations more efficient or avoided administrative tasks, but because it was highly profitable. Indeed, as stated by David Donnini, a principal of the new owners of Global Link, “split routing” was central to the company’s “financial viability.” (Donnini Dep. (Exh. BS) at page 63, line 3—page 65, line 2 (App. 1675-77)).

160. The Arbitration Partial Final Award confirmed that Global Link’s costs per container were significantly reduced as a result of “split routing” and estimated that Global Link’s gross earnings improved roughly between \$5.9 million and \$9.7 million for a single calendar year ending on May 31, 2006. (Exh. A (App. 21-22)).

161. The Arbitration Partial Final Award confirmed that Global Link’s purpose in engaging in “split routing” was “[t]o lower its costs and thereby increase its profits where competitive and attractive ocean carrier rates were not available to a particular destination. . . .” (Exh. A (App. 8)).

162. Global Link acknowledged that “split routing” resulted in a lower landed cost which resulted, in turn, in higher profit margins. (Briles Dep. (Exh. T) at page 80, lines 3-6 (“Q. . . . Do lower landed costs support higher margins? A. Sure.”) (App.1220)).

163. Global Link admitted:

The purpose of these material misrepresentations was obtaining transportation of container from ports in Asia to destinations in the United States at rates that were less than those the ocean carriers would have rightfully charged under their contracts and tariffs if . . . Rosenberg . . . had not concealed the true destinations for those shipments. . . .

(Exh. AG at 16, ¶ 43 (Global Link's Amended Statement of Claim dated October 17, 2007 in Arbitration) (App. 1446) (emphasis added)).

Respondents' concealment of "split routing" precluded MOL's prior knowledge of the scheme:

164. As demonstrated by the eight sample shipments, "split routing" was a labor intensive system consisting of many individual components. (Exhs. W-AD (eight sample shipments) (App. 1260-1428)).

165. Global Link's own employees did not like carrying out the "split routing" scheme because it required them to create additional documents and to be extra careful in the manner in which they drafted these documents. In other words, maintenance of "split routing" created additional work. (Ivy Dep. (Exh. V) at page 23, line 21—page 24, line 24 (App. 1251)).

166. In particular, Dee Ivy of Global Link testified as follows:

Q. When did [Shayne Kemp] tell you about splits when she first told you about them?

A. Well, she basically explained to me that the way Global Link routes their containers, that what a split shipment meant was we routed the container to, say, Chicago with the steamship line, but the customer that it was delivered to is actually in Indiana.

So we would have to prepare one delivery order to the carrier showing the Chicago final destination and prepare a second delivery order to whatever trucker we were using showing the Indiana final destination, and that the

reason we did these types of split shipments was because the company made more money doing it this way.

She also expressed that it's always a hassle, which it was, to do the split shipments, because, one, it created double work for the CAMs [customer account managers] because we had to prepare two delivery orders, and the truckers would always call, and if you forgot and sent the wrong delivery order to the wrong person, then you'd have to your, "Oh, yeah, you're right, I meant to send you Chicago instead of Indiana," that type of thing. So all the CAMs, when I started, it was pet peeve of all of the CAMs that we were doing split shipments.

But again, it was explained to me that we routed that way because we made more money routing that way.

* * * *

Q. When you say it's not right, do you mean ethically, legally, morally?

A. Ethically.

Q. Ethically?

A. At the least, yes.

Q. Did it make you uncomfortable?

A. Yes, at the point where the truckers are calling, or the steamship line, if we put the wrong zip code or the wrong address, the steamship line will call and question. **That's where I started to get uncomfortable, because the CAMs were put in a position where we were forced to lie to the steamship line by telling them the container was going somewhere that it wasn't.**

(Ivy Dep. (Exh. V) at page 21, line 3—page 24, line 24 (App. 1250-51) (emphasis added)).

167. As demonstrated by the various admissions by Global Link and its employees, "split routing" required constant pruning and cultivation to: (i) book to false or fictitious destinations with favorable freight rates; (ii) accurately draft and issue duplicate transportation documents—with slight differences in addresses, telephone numbers—in

order avoid suspicion from steamship lines, like MOL; (iii) properly juggle inquiries from both truckers and ocean carriers as to the “correct” false and actual final destinations; and (iv) calculate the proper trucking costs in comparison to the ocean carrier’s trucker payment which was based upon the booked destination. (Global Link Voluntary Disclosure (Exh. C) (App. 109-20)).

168. Global Link’s efforts in maintaining the “split routing” scheme were extraordinary and extensive. (Global Link Voluntary Disclosure (Exh. C) (App. 109-20)).

169. Global Link would not have concealed “split routing” from MOL if MOL had understood, condoned or participated the scheme. (Rosenberg Dep. (Exh. O) at page 17, lines 13-22 (App. 1170)).

170. “Split routing,” as implemented by Global Link, did not benefit MOL. To the contrary, the scheme caused MOL to incur substantial monetary damages.

Global Link continued to defraud MOL and other ocean carriers after discovery of the illegal “split routing” practice:

171. Although the new owners of Global Link were advised by Eileen Cakmur on July 16, 2006—shortly after closing—that Global Link regularly engaged in illegal “split routing” (Exh. Q (App. 1206)), Global Link continued to engage in “split routing” for almost an entire year until May of 2007. (Arbitration Partial Final Award (Exh. A) (App. 14-15)).

172. Global Link did not immediately cease the illegal “split routing” practice because of the negative financial impact to the company. (Donnini Dep. (Exh. BS) at page 64, line 17—page 65, line 2 (App. 1676-77) and Transcript of Deposition of John Rochelcau

dated July 16, 2008 (“Rocheleau Dep.”) at page 240, line 21—page 241, line 14, annexed hereto as Exh. BU (App. 1692-93)).

173. Global Link determined the illegal practice of “split routing” was too lucrative to stop immediately without ceasing to do business as an on-going concern. (Mihas Dep. (Exh. BT) at page 38, line 22—page 39, line 23 (App. 1681-82). See ¶ 160, *supra* (Global Link’s gross earnings improved by \$5.9 to \$9.7 million in one calendar year due to split routing).

174. In particular, Mr. Mihas—a board member of Global Link’s new owners—testified as follows:

Q. Sir, why did the board not instruct management to stop this illegal practice immediately?

A. The practice was complex and required time to evaluate just how we were going to unwind all of the illegal practices. It was not something that could be practicably or responsibly eliminated the next day.

Q. Do you have any understanding of how it was complex?

A. Not specifically.

Q. Do you have a general understanding of how it was complex?

A. Yes.

Q. Can you give us -- can you explain that understanding?

A. There are thousands of containers that are shipped on a weekly basis and they go to a lot of different destinations and are on many different carriers, and the illegal practices were interwoven throughout numerous carriers, numerous destinations, numerous trucking firms, and the practice was rampant in the organization and trying to eliminate it in one fell swoop was complex without effectively turning the lights off on the company the next day.

(Mihas Dep. (Exh. BT) at page 38, line 22—page 39, line 23 (App. 1681-82) (emphasis added)).

175. While Global Link continued to engage in “split routing”, Global Link was aware that it continued to defraud ocean carriers. (Mihas Dep. (Exh. BT) at page 43, lines 10-25 (App. 1683)).

176. In particular, Mr. Mihas testified as follows:

Q. Mr. Mihas, you testified a little bit ago that you believed the practice of split routing defrauded ocean carriers, correct?

A. Correct.

Q. All right. And split routing, as GLL continued to practice it after the board learned of the practice, also defrauded ocean carriers, didn't it?

A. For some period of time while we were getting out of the practice.

Q. Until you stopped split routing entirely, GLL continued to defraud ocean carriers?

A. For the period of time that we were getting ourselves out of it, yes.

(Mihas Dep. (Exh. BT) at page 43, lines 10-25 (App. 1683) (emphasis added)).

177. Global Link continued to engage in “split routing” even though “split routing” constituted “lying” to ocean carriers or perpetrating a “fraud” upon ocean carriers. (Rocheleau Dep. (Exh. BU) at page 240, lines 9-19 (App. 1692)).

178. While Global Link continued to engage in “split routing,” Global Link knew it was causing damages to ocean carriers. (Mihas Dep. (Exh. BT) at page 323, line 21—page 324, line 18 (App. 1686-87)).

179. In particular, Mr. Mihas testified as follows:

Q. Why -- if the ocean carrier believes they've been defrauded by Global Link, they have a claim against Global Link. Now, they can approach Global Link and say, You owe us this amount of money. Now, you can come back to them and say, We don't have any money, you know, go jump in the lake. But the ocean carriers haven't done that, have they?

MR. BUSHOFSKY: Object to the form.

A. As far as I know they haven't yet. I wouldn't be surprised if they did.

Q. They haven't done so because they haven't been damaged by the practice at all?

MR. BUSHOFSKY: Object to the form. I think he answered that question already.

A. I think it's pretty clear they've been damaged by the practice. If we had told them the appropriate destinations, we clearly would have paid them more. So I think there are millions and millions of dollars of damages they've suffered for many years.

(Mihas Dep. (Exh. BT) at at page 323, line 21—page 324, line 18 (App. 1686-87)).

180. Having continued to engage in "split routing," Global Link understood ocean carriers may elect to pursue recovery of its damages from Global Link. (Rocheleau Dep. (Exh. BU) at page 262, line 7—page 263, line 22 ("And in the end, I think the [ocean] carriers will be happy that we stopped this practice because now they are making the money that they weren't making before [due to split routing]. If they want to come after [Global Link] for damages, they can do that.")(App. 1693-93a)).

LEGAL ARGUMENT

Introduction

This action is brought pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301, which provides that “[a] person may file . . . a sworn complaint alleging a violation of this part”. The Commission has jurisdiction to consider complaints alleging violations of the Shipping Act in connection with intermodal through transportation, irrespective of the part in the transportation during which the violations are alleged to have taken place.⁶ Thus, the Presiding Officer has jurisdiction to determine the legality of the “split routing” scheme.

MOL is seeking reparations for injuries caused to it by the Respondents as a result of their violations of Sections 10(a)(1) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. §§ 41102(a), 41102(c). As shown above, the Respondents knowingly and willfully engaged in a scheme to fraudulently obtain ocean transportation of property for less than the rates and/or charges that would otherwise apply. Moreover, as demonstrated by these practices, including the preparation of false documents and provision of false information to MOL in violation of 46 C.F.R. § 515.31(e), the Respondents failed to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, and delivering property.

This is a unique case in that Global Link, one of the Respondents, has admitted engaging in fraudulent practices for the purpose of obtaining lower freight rates from MOL and other ocean carriers. Indeed, Global Link filed a detailed voluntary disclosure with the Commission describing the specific acts undertaken to deceive MOL and others. Although the new owners of

⁶ *Mitsui O.S.K. Lines Ltd. v. Global Link*, 33 S.R.R. 126, 129-133 (F.M.C. 2011)(Order Denying Appeal of Olympus Respondents, Granting in Part Appeal of Global Link, and Vacating Dismissal of Alleged Violations of Section 10(d)(1) in June 22, 2010 Memorandum and Order on Motions to Dismiss), annexed hereto as Exh. H (App. 1030)).

Global Link were advised as early as July of 2006 that “split routing” was illegal under FMC rules and regulations, Global Link—by its own admission—continued its “split routing” scheme through May of 2007. *See* Statement of Facts, ¶¶ 171-180. All Respondents were fully involved in the unlawful acts and all benefitted therefrom, to the detriment of MOL.

The activities giving rise to this complaint first came to MOL’s attention in 2008. The complaint was filed within the three year period following accrual, on May 5, 2009.

Section 10(a)(1):

Section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. § 44102(a) provides:

A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report or weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.⁷

Section 10(a)(1) carries forward using essentially identical language what was previously the initial paragraph of Section 16 of the Shipping Act of 1916, as amended, 46 U.S.C. § 815 (1983).⁸ Section 16, initial paragraph, provided:

⁷ Section 10(a)(1), as previously set forth at 46 U.S.C. App. § 1709(a)(1), provided:

No person may (1) knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable.

The Shipping Act was codified by Pub. L. No. 109-304 on October 6, 2006 as part of the completion of the codification of title 46, United States Code. In the codification of title 46, the Congressional intent is to conform to the understood policy, intent, and purpose of the Congress in the original enactments. Pub. L. No. 109-304, at § 2, 120 Stat. 1485 (2006).

⁸ *China Ocean Shipping Co. v. DMV Ridgeview, Inc.*, 26 S.R.R. 50, 53 (ALJ 1991), *reconsideration denied*, 26 S.R.R. 200 (F.M.C. 1992)(“*China Ocean*”) As explained in *China Ocean*, “Congress did not expand the substantive scope of the old Section 16, initial paragraph, but essentially carried forward that law into the 1984 Act, using virtually identical language.” *Id.* at 55.

[I]t shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.⁹

The Congressional intent in enacting Section 16, initial paragraph, was to “protect both carriers and honest shippers from the dishonest practices of dishonest shippers.”¹⁰

The purpose of this legislation is to extend to the common carriers by water protection similar to that extended to common carriers by land against the use of false billing, false labeling, false or misclassification of freight, or other means or devices used by shippers for the purpose of securing from the carrier a lower rate for the transportation of property by water than that currently in force by the carrier. Similar provisions protecting the rail carrier from the practice of unscrupulous shippers are found in para. (3) of Section 10 of the Interstate Commerce Act, and it will no doubt be recalled that similar protection was afforded motor truck carriers in the motor truck bill which passed the Congress last year.¹¹

In applying Section 10(a)(1), the Commission continues to analyze Section 16, initial paragraph, its legislative history and case law.

As discussed earlier, the legislative history to Section 16, initial paragraph, 1916 Act, shows that Congress intended to give carriers and honest shippers protection against dishonest, unscrupulous shippers who were using various devices to cheat carriers. The portions of the hearings quoted earlier show one type of device that Congress had in mind, namely the shipper's furnishing carriers with false railroads bills which were used to obtain lower rates. Congress mentioned other types of dishonest behavior by shippers and set them forth in the new law, namely “false billing, false classification, false weighing, false report of weight, or by any

⁹ 46 U.S.C. § 815 (1983)(emphasis added). Any “person” may be found guilty of a violation of Section 10(a)(1), which would necessarily include, as was the case under Section 16, initial paragraph of the Shipping Act of 1916, a shipper or “any officer, agent or employee thereof.” At all relevant times Respondent Global Link, as an NVOCC, was a “shipper” in its relationship with MOL. 46 U.S.C. § 40102(16) and (22)(E). Respondents Rosenberg, Hefferman, Cardenas and Mischianti were officers, agents and/or employees of Global Link.

¹⁰ *Cari-Cargo Int'l, Inc.*, 23 S.R.R. 1007, 1017 (ALJ 1986).

¹¹ Report of the Committee on Merchant Marine and Fisheries, No. 2205, House of Representatives, on S.3467, 74th Congress, 2d Sess., at 1. See also, Hearings before the Committee on Merchant Marine and Fisheries, House of Representatives, 74th Congress, 2d Sess. S.3467 at 5.

other unjust or unfair device or means. . .” A long history of administration of this law shows that it was directed against dishonest shippers who were engaging in conduct involving fraud, falsehood, or concealment. Thus, in *Pacific Far East Lines – Alleged Rebates*, 11 FMC 357, 362 [10 S.R.R. 1] (1968), affirmed on other grounds sub nom. *PFEL v. FMC*, 410 F2d 257 [8 S.R.R. 20,351] (DC Cir 1969), the Commission referred to Section 16, initial paragraph, and its companion law prohibiting carriers from allowing shippers to obtain transportation under false circumstances, Section 16 Second, 1916 Act, as follows:

These subsections are aimed at protecting competing shippers and carriers from shippers who attempt to obtain (or succeed in obtaining) transportation at reduced rates through devices or representations involving fraud, falsehood or concealment.¹²

To prove a violation of Section 10(a)(1), it is necessary “to show that the accused person knowingly and willfully employed an unjust device or means to avoid payment, something akin to false claims, fraud, deception, etc., with or without the knowledge of a carrier.”¹³ Factors in a Section 10(a)(1) violation include “some element of falsification, deception, fraud, or concealment”,¹⁴ “evidence of bad faith or deceit”,¹⁵ or “shipper misrepresentation of its ability to pay.”¹⁶ Examples of what the Commission has found to constitute an “unjust or unfair devices or means” include where the shipper’s behavior indicated that it “never had any intention of paying

¹² *China Ocean*, 26 S.R.R. at 55 (emphasis added).

¹³ *Banfi Products Corp. – Possible Violations of Section 16, Initial Paragraph, of the Shipping Act, 1916, and Section 10(a)(1) of the Shipping Act of 1984*, 26 S.R.R. 307 (F.M.C. 1992)(citing *China Ocean*; *Equality Plastics Inc. and Loading Forwarders Inc., etc.*, 17 F.M.C. 217 (1973)). In *Equality Plastics Inc. and Loading Forwarders Inc. etc.*, the Commission found that the meaning of “knowing and willful” includes “plainly indifferent” which it interpreted to mean “something more than casual indifference, and equates with a wanton disregard from which an inference can be drawn that the conduct was in fact purposeful; a standard somewhat analogous to the tort concept of ‘gross negligence’.” 17 F.M.C. at 226-227.

¹⁴ *Unpaid Freight Charges*, 26 S.R.R. 735, 737 (F.M.C. 1993)(citing *Pacific Far East Lines – Alleged Rebates*, 11 F.M.C. 357, 364 (1968)).

¹⁵ *Unpaid Freight Charges*, 26 S.R.R. at 740. See also *Capitol Transportation Inc. v. United States*, 612 F. 2d 1312, 1324 (1st Cir. 1979); *United States v. Open Bulk Carriers*, 727 F. 2d 1061, 1065 (11th Cir. 1984)(“The means through which lower rates are obtained must include fraud or concealment”).

¹⁶ *Id.*, at 739-740.

the lawful charges due for the shipment at issue,”¹⁷ or where the shipper “attempted to avoid payment of lawful freight due the carrier by raising questionable defense without furnishing evidence”.¹⁸

MOL has met its burden of proof that each Respondent knowingly and willfully, directly or indirectly, by means of an unjust or unfair device or means, obtained ocean transportation of property at less than the rate or charges that would otherwise be applicable.¹⁹ The statement of facts shows by a preponderance of the evidence that:

- Global Link admitted its violation to the Commission in a voluntary disclosure.
- The split routing scheme was knowingly and willfully carried out by all Respondents.
- The Respondents vetted “preferred truckers” who would help conceal split routing from the ocean carriers.
- The Respondents undertook great efforts to conceal and hide the split routing scheme.
- Respondent Global Link never had any intention of paying the lawful charges due under the service contracts.
- By the device of split routing, Respondent Global Link used fraud and deception to obtain ocean transportation at less than applicable rates.
- All Respondents were aware that split routing violated the Shipping Act.
- Respondents Rosenberg, Hefferman, Cardenas and Mischianti, all officers, agents, and/or employees of Global Link, actively participated in the split routing scheme.
- All Respondents benefitted from the split routing scheme.

¹⁷ See *Nordana Lines AS v. Jamar Shipping, Inc.* 27 S.R.R. 233, 236 (ALJ 1995)(quoting *Waterman Steamship Corporation v. General Foundries, Inc.*, 24 S.R.R. 1424, 1429 (F.M.C. 1994)).

¹⁸ See *Nordana Lines AS*. 27 S.R.R. at 236, n.4 (citing *Bank Line Limited v. Jet Set Marine, Inc.*, 26 S.R.R. 380 (ALJ 1992)).

¹⁹ As recently stated by the Commission, “[a] complainant alleging a violation of the Act has the initial burden of proof.” *DSW Int’l, Inc. v. Comm. Shipping, Inc.*, 32 S.R.R. 765 (F.M.C. 2012)(citing 5 U.S.C. § 556(d), 46 C.F.R. § 502.155)). “In order to prevail, a claimant must substantiate his or her allegations by a preponderance of the evidence or show that it is more probable than not that the allegations are true.” *Id.* (citing *Hale v. Dep’t of Transportation*, 772 F.2d 882, 885 (Fed. Cir. 1985)).

- The new owners of Global Link continued the scheme.

The Respondents actions are essentially on “all fours” with the dishonest conduct specifically forbidden by Section 10(a)(1), its predecessor statute, the legislative history, and Commission case law.²⁰

Section 10(d)(1):

Section 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. § 44102(c) provides that:

A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, steering or delivery cargo.²¹

Global Link, an NVOCC, is an ocean transportation intermediary.²² The Olympus Respondents and CJR Respondents are also subject to §10(d)(1) as they acted as an NVOCC through their active participation in the split routing scheme.²³ Respondent Rosenberg, a qualifying individual, was the architect of the split routing scheme. (Statement of Facts, ¶¶ 115-

²⁰ While all Respondents are equally culpable, Respondent Rosenberg, as a qualifying individual, and Respondent Global Link, as a licensed ocean transportation intermediary, had an even higher duty to comply with Shipping Act requirements. See e.g., 46 U.S.C. § 40901, 46 C.F.R. § 515.11. See also *Nordana Lines AS*, 27 S.R.R. at 237 (“An important matter to be considered in determining an applicant’s fitness is the fact that the prospective licensee will be a fiduciary for clients and, in addition, will occupy a unique position of trust in dealing with carriers and the public. Hence, it must appear that as licensee, applicant will maintain a standard of professional conduct reflecting the highest degree of business responsibility and integrity, not only with clients, but also with carriers and with the public.”)(quoting *License Application – Guy G. Sorrentino*, 15 F.M.C. 127, 134-135 [12 S.R.R. 921] (1972)) (emphasis in original).

²¹ Prior to the codification of 46 U.S.C. App., Section 10(d)(1) provided:

No common carrier, ocean transportation intermediary, or marine terminal operator may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

See footnote 7, *infra*.

²² 46 U.S.C. § 40102(19). The NVOCC retains its common carrier status even when assuming the role of shipper vis-a vis an ocean common carrier. See *Mitsui O.S.K. Lines Ltd. v Global Link*, 33 S.R.R. at 139-141 (Order Denying Appeal of Olympus Respondents, Granting in Part Appeal of Global Link, and Vacating Dismissal of Alleged Violations of Section 10(d)(1) in June 22, 2010 Memorandum and Order on Motions to Dismiss), annexed hereto as Exh. H (App. 1030).

²³ *Id.*

131). Respondents Hefferman, Cardenas and Mischianti continued the "split routing" practices in order to maximize the profits and value of Global Link. (Statement of Facts, ¶¶ 132-157).

Section 10(d)(1) of the 1984 Act derives from the second paragraph of Section 17 of the 1916 Act.²⁴ Quoting an earlier decision under Section 17, the Commission noted that:

Section 17 requires that the practices of terminals be just and reasonable. "Reasonable" may mean or imply "just, proper," "ordinary or usual," "not immoderate or excessive," "equitable," or "fit and appropriate to the end in view." Black's Law Dictionary, Fourth Edition. It is by application to the particular situation or subject matter that words such as "reasonable" take on concrete and specific meaning. As used in section 17 and as applied to terminal practices, we think that "just and reasonable practice" most appropriately means a practice, otherwise lawful but not excessive and which is fit and appropriate to the end in view.

The justness or reasonableness of a practice is not necessarily dependent upon the existence of actual preference, prejudice or discrimination. It may cause none of these but still be unreasonable. To conclude otherwise is to make the second portion of section 17 merely redundant of other sections of the Shipping Act, a result not readily ascribed to Congress.²⁵

Examples of violation of Section 10(d)(1) include failure to remit payments to vessel-operating common carriers, false statements as to non-payment, providing false information, patterns of deception, and patterns of misinformation.²⁶ Other examples include failure to fulfill

²⁴ See *Distribution Services, Ltd. v. Transpacific Freight Conference of Japan*, 24 S.R.R. 714, 721 (F.M.C. 1988). The second paragraph of Section 17 of the 1916 Act provided:

Every such carrier and every other person subject to this chapter shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the Board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice." 46 U.S.C. § 816 (1983).

²⁵ *Distribution Services, Ltd.*, 24 S.R.R. at 721 (quoting *Investigation of Free Time Practices-Port of San Diego*, 7 S.R.R. 307, 329 (F.M.C. 1966)).

²⁶ See, e.g., *Eastern Mediterranean Shipping Corp. - Possible Violation of the 1984 Act*, 28 S.R.R. 791, 795 (ALJ 1999); *Nordana Lines AS*, 27 S.R.R. at 237; *Miller v. French International Movers, Inc.*, Docket No. 1834(I), 28 S.R.R. 1495, 1497 (Settlement Officer 2000), *J&D Services Int'l, Inc. v. Ocean Eagle Container Line, Inc.*, Informal Docket No. 1818(I), 27 S.R.R. 1062, 1063 (Settlement Officer 1997).

NVOCC obligations.²⁷ Not surprisingly, Commission precedent indicates that attempts to obtain transportation at less than applicable rates through an “unjust or unfair device or means” within the meaning of Section 10(a)(1) can also constitute a failure to establish and observe “just and reasonable . . . practices” as contemplated by Section 10(d)(1).²⁸

The Respondents’ conduct was not “proper”, “ordinary”, “equitable”, “otherwise lawful”, or “reasonable”. The actions of the Respondents which violated Section 10(a)(1), also violated Section 10(d)(1).

46 C.F.R. § 515.31(e):

At all relevant times, Global Link was an ocean transportation intermediary, or licensed NVOCC. 46 U.S.C. §§ 40102(19); 40901 *et seq.* As such, Global Link violated 46 C.F.R. § 515.31(e), which provides:

(e) False or fraudulent claims, false information. No licensee shall prepare or file or assist in the preparation or filing of any claim, affidavit, letter of indemnity, or other paper or document concerning an ocean transportation intermediary transaction **which it has reason to believe is false or fraudulent, nor shall any such licensee knowingly impart to a principal, shipper, common carrier or other person, false information relative to any ocean transportation intermediary transaction.**²⁹

The Olympus Respondents and CJR Respondents also violated this regulation by acting as a licensed NVOCC through their participation in the split routing scheme.³⁰ For the reasons

²⁷ See *Bimsha International v. Chief Cargo Services Inc. and Kaiser Apparel, Inc.*, 31 S.R.R. 353, 374-375 (ALJ 2011)(citing *Houben v. World Moving Services, Inc.*, 31 S.R.R. 1400, 1405 (F.M.C. 2010)).

²⁸ See *Transworld Shipping (USA), Inc. v FMI Forwarding (San Francisco), Inc.*, 29 S.R.R. 418, 421 (ALJ 2001) (finding that “the same pattern of conduct” established a violation of both 10(a)(1) and 10(d)(1); *Nordana Lines AS*, 27 S.R.R. at 236-237 (same).

²⁹ 46 C.F.R. § 515.31(e)(emphasis added).

³⁰ *Mitsui O.S.K Lines Ltd v. Global Link*, 33 S.R.R. at 141 (Order Denying Appeal of Olympus Respondents, Granting in Part Appeal of Global Link, and Vacating Dismissal of Alleged Violations of Section 10(d)(1) in June 22, 2010 Memorandum and Order on Motions to Dismiss), annexed hereto as Exh. H (App. 1030).

the Respondents violated Sections 10(a)(1), and 10(d)(1), they also violated 46 C.F.R. § 515.31 by submitting false and fraudulent documents and false information to MOL, a common carrier.

The Three Year Statute of Limitation:

An FMC complaint must be filed within three years after the claim accrues.³¹ Specifically, the Commission applies the discovery rule and holds that a Complainant's "cause of action accrued when it knew or should have known that it had a case against [a respondent]."³²

There are compelling reasons suggesting that a flexible approach to the accrual of a cause of action is the better course of action. The Commission has an interest in the precedent established by its adjudication of alleged Shipping Act violations—such adjudication is a form of private enforcement of the rights established by Congress in the statute. Based on this understanding of the Act, a flexible rule permitting the inclusion of complaints that would otherwise be dismissed under a more strict approach would allow the Commission to pass on the legality of allegedly injurious conduct. **Also, application of a stricter rule would exonerate certain respondents even if their conduct were unlawful, simply because a potential complainant was unable to identify the existence of its cause of action.** This is, of course, to be distinguished from a case in which a complainant is aware of a cause of action but merely fails to act on that knowledge.³³

MOL commenced this action on May 5, 2009 within three (3) years of its discovery of the illegal and fraudulent "split routing" scheme. As shown by a preponderance of the evidence, MOL did not know and could not have known about Respondents' widespread split routing scheme prior to its receipt of the subpoena issued in 2008 in connection with the arbitration case.

- MOL was unaware that the MBL and HBL had different destinations.
- MOL was unaware that the "shipline" and "truckline" delivery orders, both prepared by Global Link, had different destinations.
- The Respondents lied about where the shipments were going.

³¹ 46 U.S.C. § 41301(a).

³² See, e.g., *Inlet Fish Producers, Inc. v. Sea-Land Service, Inc.*, 29 S.R.R. 306, 313 (F.M.C. 2001).

³³ *Id.* (emphasis added).

- The Respondent employed “preferred truckers” who would be willing to accept from MOL instructions and payment to deliver shipments to the master bill of lading place of delivery, while at the same time diverting them to a different destination as directed by Global Link without telling MOL.
- The Respondents employed an elaborate system of “credits” and “debits” to preferred truckers without the knowledge of MOL.
- Global Link employees were frequently admonished not to tell MOL and other steamship lines about the split routings
- The cover up of the split routing scheme was elaborate and labor intensive.
- The Respondents developed a scheme for using a combination of fictitious and actual business addresses in certain cities, often with Global Link telephone numbers to avoid detection by MOL of the true final destination of shipments.
- Global Link’s employees were instructed that “if anyone from MOL. . . contacts and/or harasses you for a correct final destination, please do not mention not routing to correct destination and simply tell them the container is going to Martinsville, Va.”
- Global Link’s employees in connection with a discovery made by MOL Chicago were instructed “[please] take the time to make sure everyone understands split shipments and the importance of keeping this information private”.

All of these elaborate schemes, concoctions, accounting practices, admonishments, warnings and creation of false documents would not have been unnecessary had MOL known or condoned the widespread “split routing” scheme. Substantial evidence shows that the Respondents successfully hid their unlawful method of obtaining ocean transportation at less than applicable rates from MOL.

Conclusion

The Respondents have violated Section 10(a)(1) and 10(d)(1) of the Shipping Act, as well as 46 C.F.R. § 515.31(e). The Presiding Officer should proceed to determine the damages to MOL from the "split routing" scheme.

Respectfully submitted,



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Dated: January 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the following individual(s) via electronic mail:

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**VIA EMAIL (secretary@fmc.gov),
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DELIVERY**

Karen V. Gregory, Secretary
Office of the Secretary
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Re: Mitsui O.S.K. Lines, Ltd. v. Global Link Logistics, et al.
Federal Maritime Commission: Docket No. 09-01
Our file: 275609

Dear Ms. Gregory:

We are attorneys representing Complainant Mitsui O.S.K. Lines, Ltd. in the above captioned matter currently pending in the Federal Maritime Commission.

We have received no objections from Respondents and now enclose an original and five (5) copies of the PUBLIC VERSION of MOL's Opening Submission, including Proposed Findings of Fact, Appendix and Brief.

We also are providing an original and five (5) copies of the PUBLIC VERSION of all exhibits referenced in MOL's Opening Submission.

For the sake of good order, the following exhibits have been redacted:

Exh. BM: Declaration of Kevin J. Hartmann dated February 17, 2012;

Exh. BV: Service Contract No. 5159351A04;

Exh. BW: Service Contract No. 5159351A05;

Exh. BX: Service Contract No. 5159351A06;

Exh. BY: Service Contract No. 5159351A07;

Exh. BZ: Service Contract No. 5159351A08; and

Exh. CB: Declaration of Thomas W. Kelly dated January 11, 2013

A PDF of the Proposed Findings of Fact and Brief has been emailed to both secretary@fmc.gov and judges@fmc.gov. A hard copy of the Appendix and all Exhibits, along with a CD with a PDF of the remaining filing, is enclosed herewith.

Unless requested to do so, we will not serve another set of exhibits on opposing counsel.

Kindly stamp a conformed copy and return same to our messenger who has been instructed to wait.

We thank the Commission for its attention and courtesies, and remain,

Sincerely,

COZEN O'CONNOR



By: David Y. Loh

DYL/pc
Enclosures

Karen V. Gregory
January 18, 2013
Page 3

cc:

VIA EMAIL ONLY (w/ encls.)

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