

# THOMPSON COBURN

RECEIVED

2010 JUL -9 PM 4: 22

FEDERAL MARITIME COMMISSION

Thompson Coburn LLP  
Attorneys at Law

Suite 600  
1909 K Street, N.W.  
Washington, D.C. 20006-1167  
202-585-6900  
FAX 202-585-6969  
www.thompsoncoburn.com

Warren L. Dean Jr.  
direct dial 202-585-6908  
direct fax 202-585-6969  
wdean@thompsoncoburn.com

July 9, 2010

## Via Hand Delivery

Karen V. Gregory, Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Room 1046  
Washington, D.C. 20573

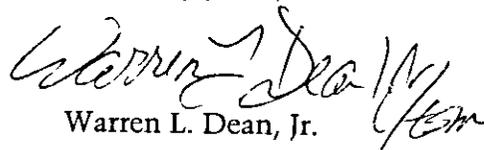
Re: Mitsui O.S.K. Lines, Ltd., v. Global Link Logistics, Inc., et al., Docket No. 09-01

Dear Ms. Gregory:

On behalf of the Olympus Respondents, enclosed please find one (1) original and fifteen (15) copies of the 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 the Amended Complaint of Mitsui O.S.K. Lines, Ltd.

Kindly date stamp the extra copy of this letter and Answer and return the same to our courier. Thank you.

Very truly yours,

  
Warren L. Dean, Jr.

Enclosures

cc: Hon. Clay G. Guthridge (via Hand Delivery)  
Service List

5071578.3

CC 0201  
GC  
ORIGINAL ALJ(2)  
Pub

RECEIVED

2010 JUL -9 PM 4: 22

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

Mitsui O.S.K. Lines, Ltd.,  
  
Complainant,  
  
v.  
  
Global Link Logistics, Inc. et al.,  
  
Respondents.

Docket No. 09-01

**VERIFIED ANSWER OF RESPONDENTS OLYMPUS GROWTH FUND III,  
L.P., OLYMPUS EXECUTIVE FUND, L.P., LOUIS J. MISCHIANI, L.  
DAVID CARDENAS, AND KEITH HEFFERNAN TO THE  
AMENDED COMPLAINT OF MITSUI O.S.K. LINES, LTD.**

Respondents Olympus Growth Fund III, L.P. ("OGF"), Olympus Executive Fund, L.P. ("OEF"), Louis J. Mischianti, L. David Cardenas, and Keith Heffernan (collectively the "Olympus Respondents"), hereby answer the Amended Complaint, dated as of June 29, 2010, filed by Complainant Mitsui O.S.K. Lines Ltd. ("Mitsui" or "Complainant").

**Preliminary Statement**

In this action, Mitsui seeks reparations for purported violations of Section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. § 41102(a).<sup>1</sup> Section 10(a)(1) prohibits any person from "knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or

<sup>1</sup> By Order dated June 22, 2010, the presiding Judge dismissed Mitsui's claims alleging violations of section 10(d)(1) of the Shipping Act and 46 C.F.R. 515.31(e). Accordingly, these claims no longer apply to the Olympus Respondents.

any 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.” 46 U.S.C. § 41102(a). Mitsui’s claims against the Olympus Respondents fail for at least five reasons.

*First*, Mitsui does not allege, and there are no facts to show, that any of the Olympus Respondents obtained, or attempted to obtain, ocean transportation. None of the Olympus Respondents have ever had any dealings with Mitsui that could conceivably substantiate a claim under Section 10(a)(1). Moreover, none of the Olympus Respondents are or have ever been shippers, NVOCCs, freight forwarders or ocean transportation intermediaries, marine terminal operators, ocean common carriers, or any other person subject to the requirements of the Shipping Act. Rather, the Olympus Respondents include two investment funds, OGF and OEF, which merely owned shares in GLL Holdings, Inc. (“Holdings”), which in turn owned Respondent Global Link Logistics, Inc. (“Global Link”), and three former officers and directors of Holdings and Global Link, Messrs. Mischianti, Cardenas and Heffernan. Mitsui cannot meet its burden to show that these former shareholders and officers and directors used any “unfair or unjust means” to “obtain or to attempt to obtain transportation for property at less than the rates or charges that would otherwise apply.” The Complaint fails to allege and Mitsui will be unable to show:

- that any of the Olympus Respondents ever entered into a service contract with Mitsui;

- that any of the Olympus Respondents obtained or attempted to obtain ocean transportation for property, at any price;
- that any of the Olympus Respondents obtained or attempted to obtain ocean transportation of property from Mitsui for less than the rates that would otherwise apply;
- that any of the Olympus Respondents paid Mitsui for ocean transportation for property;
- that any of the Olympus Respondents ever communicated with anyone from Mitsui; or
- that any of the Olympus Respondents ever contracted for the ocean transportation of property from Mitsui or any other ocean carrier.

Because the evidence will show that none of the Olympus Respondents ever dealt with Mitsui in any capacity, no cause of action can lie against the Olympus Respondents. Whatever the merits of this dispute (and we believe that there are none), this dispute itself is exclusively between Mitsui and Global Link.

*Second*, Mitsui cannot maintain a claim that the Olympus Respondents should be held vicariously liable for Respondent Global Link's purported misconduct. The Shipping Act provides no basis for the Commission to set aside the corporate form and hold OGF and OEF liable, as former shareholders of Holdings, for the purported misconduct of Holdings's subsidiary, Global Link. Moreover, Mitsui has not alleged any facts from which it could be construed that the corporate form should be set aside. Similarly, the Shipping Act provides no basis for the Commission to hold officers and directors personally liable for corporate misconduct, especially where, as in this case, the overwhelming evidence is that the officers and directors in question took no part in the corporation's purported misconduct.

*Third*, the practice of split-routing does not involve ocean transportation. The Commission, therefore, lacks jurisdiction to hear any claims arising from the practice or award reparations for such claims. The Shipping Act only restricts the means that shippers can use to obtain lower rates for **ocean transportation**. Mitsui's claims do not involve the rates for ocean transportation but arise from a widespread practice in the international shipping industry called split-routing, which exclusively concerns domestic inland transportation. As long as the ocean carrier receives full compensation for the ocean portion of a through rate—and there is no claim here that Mitsui did not receive full compensation for the *ocean* portion—the practice of split-routing does not violate Section 10(a)(1). The direction of a shipment to a different inland point after the ocean carrier discharges it at the designated destination port cannot, by definition, be unlawful under the Shipping Act.

*Fourth*, Respondent Global Link engaged in the practice of split-routing with the full consent, and whole-hearted encouragement of senior Mitsui sales personnel, including Paul McClintock and Rebecca Yang. Mitsui's knowing participation in the practice of which they now assert to be unlawful – split-routing – precludes it from recovering any reparations whatsoever based on that practice.

*Finally*, even if Mitsui could recover reparations, the Shipping Act's statute of limitations bars the vast majority of its claims against the Olympus Respondents. A cause of action for reparations must be filed within three years from when the complainant knew or had reason to know of the harm alleged. *See* 46 U.S.C. § 41305; FMC Rule 63, 46 CFR 502.63. As noted above, Mitsui knew of, consented to, and even

encouraged Global Link's split-routing practice. Because Mitsui did not file its Complaint until May 5, 2009, any alleged violations that occurred before May 5, 2006 are barred. Moreover, the Olympus Respondents sold their interest in Holdings on June 7, 2006, and cannot be held liable for any of Global Link's activities after that date.

In sum, for these reasons and others, the Olympus Respondents respectfully submit that Mitsui's claims have no merit whatsoever.

### **Specific Responses to Complainant's Allegations**

The Olympus Respondents hereby answer the specific allegations made by Mitsui in the Amended Complaint as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I.A.
2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I.B.
3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph II.A.
4. Admit the allegations contained in the first sentence in paragraph II.B.  
Deny the allegations contained in the second sentence in paragraph II.B.
5. Admit the allegations contained in the first sentence in paragraph II.C.  
Deny the allegations contained in second sentence in paragraph II.C.
6. Deny the allegations contained in paragraph II.D.

7. Deny the allegations contained in paragraph II.E, except admit that Respondents Mischianti, Cardenas and Heffernan were officers and/or directors of Holdings and/or Global Link between May 2003 and June 2006.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph II.F, except deny that CJR was an owner of Global Link during periods relevant to this complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph II.G, except admit that Chad Rosenberg was an officer and director of Global Link until June 2006.

10. Paragraph III states legal conclusions to which no response is required. To the extent that a response is required, the Olympus Respondents deny the allegations contained in paragraph III.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV.A.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV.B, except admit that Global Link has entered into service contracts with Mitsui.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV.C.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV.D.

15. Deny the allegations contained in paragraph IV.E., except admit that the Olympus Respondents became aware during the arbitration proceeding brought by Respondent Global Link, its parent Holdings, and its parent Golden Gate Logistics, Inc. against the Olympus Respondents, Respondents CJR World Enterprises, Inc., Chad J. Rosenberg and other parties (the "Arbitration") that Global Link engaged in a practice called "split-routing" with Mitsui with the full consent of Mitsui personnel, including but not limited to Paul McClintock and Rebecca Yang, in which:

- i. Global Link would enter into an intermodal shipping contract with Mitsui for the transportation of cargo from an origin point in Asia to a final destination in the United States;
- ii. Mitsui would transport the cargo across the ocean and arranged for the inland delivery of the container by rail and/or truck; and
- iii. Global Link would make a separate arrangement with the motor carrier to deliver the cargo to a final destination point that was different from the destination point specified in the bill of lading issued by Mitsui.

16. Deny the allegations contained in paragraph IV.F.

17. Deny the allegations contained in paragraph IV.G., except admit that the Olympus Respondents became aware during the Arbitration that Global Link engaged in split-routing with Mitsui with the full consent of Mitsui personnel, including but not limited to Paul McClintock and Rebecca Yang.

18. Deny the allegations contained in paragraph IV.H., except admit that the Olympus Respondents became aware during the Arbitration that Global Link engaged in split-routing with Mitsui with the full consent of Mitsui personnel, including but not limited to Paul McClintock and Rebecca Yang.

19. Deny the allegations contained in paragraph IV.I., except admit that the Olympus Respondents became aware during the Arbitration that Global Link engaged in split-routing with Mitsui with the full consent of Mitsui personnel, including but not limited to Paul McClintock and Rebecca Yang.

20. Deny the allegations contained in paragraph IV.J., except admit that the Olympus Respondents became aware during the Arbitration that Global Link engaged in split-routing with Mitsui with the full consent of Mitsui personnel, including but not limited to Paul McClintock and Rebecca Yang.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV.K., except admit that the Olympus Respondents became aware during the Arbitration that Global Link engaged in split-routing with Mitsui with the full consent of Mitsui personnel, including but not limited to Paul McClintock and Rebecca Yang.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV.L., except deny that split-routing constitutes a “false booking practice,” and admit that the Olympus Respondents became aware during the Arbitration that Global Link engaged in split-routing with Mitsui with the full consent of Mitsui personnel, including but not limited to Paul McClintock and Rebecca Yang.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV.M., except admit that third party discovery was requested from Mitsui in connection with the Arbitration.

24. Deny the allegations contained in paragraph V.A.

25. No response is necessary to the allegations contained in paragraph V.B. due to the June 22, 2010 dismissal of all claims against the Olympus Respondents arising from Section 10(d)(1) of the Shipping Act. To the extent any response is required, the Olympus Respondents deny the allegations contained in paragraph V.B.

26. No response is necessary to the allegations contained in paragraph V.C. due to the June 22, 2010 dismissal of all claims against the Olympus Respondents arising from 46 C.F.R. § 515.31(e). To the extent any response is required, the Olympus Respondents deny the allegations contained in paragraph V.C.

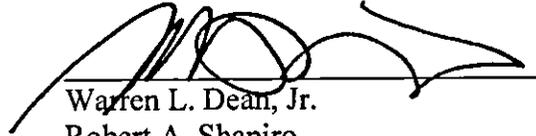
27. Deny the allegations contained in paragraph VI.A.

28. Admit the allegations contained in paragraph VII.A. to the extent that alternative dispute resolution procedures were not used prior to the filing of the Complaint and deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning Mitsui's consultation with the Commission Dispute Resolution Specialist.

29. Deny the allegations contained in VII.B.

30. Deny the allegations contained in VII.C.

Respectfully submitted,



Lewis R. Clayton  
Andrew G. Gordon  
Colin C. McNary  
Paul, Weiss, Rifkind, Wharton &  
Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
lclayton@paulweiss.com  
agordon@paulweiss.com  
cmcnary@paulweiss.com  
Telephone: 212-373-3000  
Facsimile: 212-757-3990

Warren L. Dean, Jr.  
Robert A. Shapiro  
Sean McGowan  
Ryan K. Manger  
THOMPSON COBURN LLP  
1909 K Street, N.W.  
Suite 600  
Washington, D.C. 20006  
wdean@thompsoncoburn.com  
rshapiro@thompsoncoburn.com  
smcgowan@thompsoncoburn.com  
rmanger@thompsoncoburn.com  
Telephone: 202-585-6900  
Facsimile: 202-585-6969

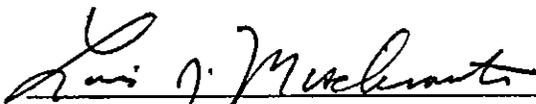
Attorneys for Respondents Olympus  
Growth Fund III, L.P., Olympus  
Executive Fund, L.P., Louis J.  
Mischianti, David Cardenas and Keith  
Heffernan

Dated: July 9, 2010

VERIFICATION

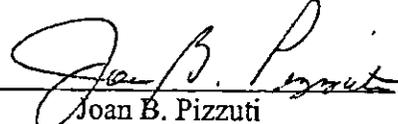
State of CONNECTICUT )  
 )  
County of FAIRFIELD ) ss:

I, Louis J. Mischianti declare under penalty of perjury that I am president of LJM Corporation, a general partner of OEF, L.P., which is the general partner of Olympus Executive Fund, L.P., have read the foregoing 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 the Amended Complaint of Mitsui O.S.K. Lines, Ltd. and that I believe the facts stated therein, based on information provided by others, are true and correct.

  
\_\_\_\_\_  
Louis J. Mischianti  
President  
LJM Corporation

State of **CONNECTICUT**  
County of **FAIRFIELD**

Subscribed and sworn before me this 9<sup>th</sup> day of July, 2010.

  
\_\_\_\_\_  
Notary: Joan B. Pizzuti

Commission Expires: 8-31-13

NOTARY  
SEAL

VERIFICATION

State of CONNECTICUT )  
 )  
County of FAIRFIELD ) ss:

I, Louis J. Mischianti, declare under penalty of perjury that I have read the foregoing 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 the Amended Complaint of Mitsui O.S.K. Lines, Ltd. and that I believe the facts stated therein, based on information provided by others, are true and correct.

*Louis J. Mischianti*  
Louis J. Mischianti

State of **CONNECTICUT**

County of **FAIRFIELD**

Subscribed and sworn before me this 9<sup>th</sup> day of July, 2010.

*Joan B. Pizzuti*  
Notary: Joan B. Pizzuti

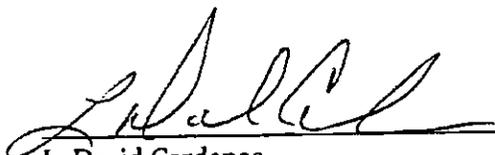
Commission Expires: 8-31-13

**NOTARY  
SEAL**

VERIFICATION

State of CONNECTICUT )  
 )  
County of FAIRFIELD )      ss:

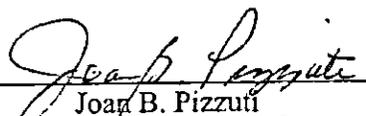
I, L. David Cardenas, declare under penalty of perjury that I am a member of OGP III, LLC, the general partner of Olympus Growth Fund III, L.P., have read the foregoing Verified Answer of Respondents Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P., Louis J. Mischianti, L. David Cardenas, and Keith Heffernan to the Amended Complaint of Mitsui O.S.K. Lines, Ltd. and that I believe the facts stated therein, based on information provided by others, are true and correct.

  
\_\_\_\_\_  
L. David Cardenas  
Member  
OGP III, LLC

State of **CONNECTICUT**

County of **FAIRFIELD**

Subscribed and sworn before me this 9<sup>TH</sup> day of July, 2010.

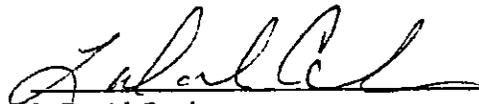
  
\_\_\_\_\_  
Notary: Joan B. Pizzuti  
Commission Expires: 8-31-13

**NOTARY  
SEAL**

VERIFICATION

State of CONNECTICUT )  
 )  
County of FAIRFIELD )      ss:

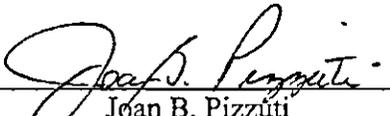
I, L. David Cardenas, declare under penalty of perjury that I have read the foregoing Verified Answer of Respondents Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P., Louis J. Mischianti, L. David Cardenas, and Keith Heffernan to the Amended Complaint of Mitsui O.S.K. Lines, Ltd. and that I believe the facts stated therein, based on information provided by others, are true and correct.

  
\_\_\_\_\_  
L. David Cardenas

State of **CONNECTICUT**

County of **FAIRFIELD**

Subscribed and sworn before me this 9<sup>th</sup> day of July, 2010.

  
\_\_\_\_\_  
Notary: Jean B. Pizzuti

Commission Expires: 8-31-13

**NOTARY  
SEAL**

VERIFICATION

State of CONNECTICUT )  
 )  
County of FAIRFIELD ) ss:

I, Keith Heffernan, declare under penalty of perjury that I have read the foregoing 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 the Amended Complaint of Mitsui O.S.K. Lines, Ltd. and that I believe the facts stated therein, based on information provided by others, are true and correct.

Keith Heffernan  
Keith Heffernan

State of **CONNECTICUT**

County of **FAIRFIELD**

Subscribed and sworn before me this 9<sup>th</sup> day of July, 2010.

Joan B. Pizzuti  
Notary: Joan B. Pizzuti

Commission Expires: 8-31-13

**NOTARY  
SEAL**

## CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2010, I served the foregoing 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 the Amended Complaint of Mitsui O.S.K. Lines, Ltd. on the following counsel of record by e-mail and U.S. first class mail:

Marc J. Fink  
Anne E. Mickey  
Heather M. Spring  
SHER & BLACKWELL, LLP  
1850 M Street, N.W., Suite 900  
Washington, D.C. 20036  
mfink@sherblackwell.com  
amickey@sherblackwell.com  
hspring@sherblackwell.com

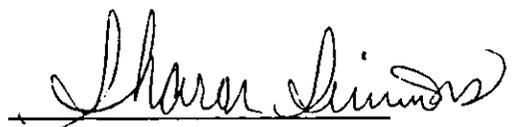
*Attorneys for Mitsui O.S.K. Lines, Ltd.*

David P. Street  
Brendan Collins  
GKG LAW, P.C.  
1054 31<sup>st</sup> Street, N.W., Suite 200  
Washington, D.C. 20007-4492  
dstreet@gkglaw.com  
bcollins@gkglaw.com

*Attorneys for Global Link Logistics, Inc.*

Carlos Rodriguez  
Zheng Xie  
Rodriguez O'Donnell  
Gonzalez & Williams, P.C.  
1250 Connecticut Avenue, N.W., Suite 200  
Washington, DC 20036  
rodriguez@rorlaw.com

*Attorney for CJR World Enterprises and  
Chad J. Rosenberg*

  
Sharon Simmons