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**BEFORE THE
FEDERAL MARITIME COMMISSION**

ORIGINAL

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

**RESPONDENTS CJR WORLD ENTERPRISES, INC. AND CHAD J. ROSENBERG'S
PROPOSED FINDINGS OF FACT**

Pursuant to the October 16, 2012 Order of the Administrative Law Judge and Rule 221 of the Commission's rules of practice and procedure, Respondents CJR World Enterprises, Inc. ("CJRWE") and Chad J. Rosenberg (collectively, "CJR Respondents") hereby submit their Proposed Findings of Fact:

CJR RESPONDENTS' PROPOSED FINDINGS OF FACT

Mr. Rosenberg Learns the Practice of "Split Routing" from Other Carriers in the Logistics Industry

1. Mr. Rosenberg began working in the shipping and logistics industry in 1994.
(Declaration of Chad Rosenberg, dated February 26, 2013 ("Rosenberg Dec."), at ¶ 2, annexed hereto as Exhibit A) (CJR Respondents' Appendix ("CJR App."), at p. 2).
2. Between 1994 and 1997, Mr. Rosenberg worked for two non-vessel operating common carriers ("NVOCCs"), Scanwell Freight Express ("Scanwell") and Worldlink Logistics ("Worldlink"). (Rosenberg Dec., at ¶ 3) (CJR Exh. A) (CJR App., at p. 2).
3. It is undisputed that at both Scanwell and Worldlink Mr. Rosenberg was exposed to and learned of the practice of split routing. (Rosenberg Dec., at ¶ 4) (CJR Exh. A) (CJR App., at p. 2).
4. It is undisputed that based on Mr. Rosenberg's experiences at Scanwell and Worldlink, he believed that split routing was commonplace in the shipping industry, that many NVOCC's used split routing, and that steamship lines were aware that many NVOCC's used split routing. (Rosenberg Dec., at ¶ 5) (CJR Exh. A) (CJR App., at p. 2); (*see also* MOL's Exh. BP) (MOL's Appendix ("MOL's App."), at p. 1662) ("... We need to get more clarity as it's very difficult to get all the points in our contract, especially since Hecny is the contract signer. *It seems all or most of hecny's agents book to the closest*

point and all the companies I've ever worked for did same the same practice. . . .")

(emphasis added).

5. According to Mr. Rosenberg, he did not believe that the practice was in any way illegal. (Rosenberg Dec., at ¶ 6) (CJR Exh. A) (CJR App., at p. 2).

Mr. Rosenberg Founds GLL

6. Mr. Rosenberg founded GLL in 1997. (Rosenberg Dec., at ¶ 7) (CJR Exh. A) (CJR App., at p. 2).
7. Mr. Rosenberg does not dispute that he introduced the practice of split routing at GLL. (Rosenberg Dec., at ¶ 8) (CJR Exh. A) (CJR App., at p. 2).

Mr. Rosenberg Sells a Majority Interest in GLL to Olympus and GLL Seeks and Obtains Legal Advice Regarding the Practice of Split Routing

8. In 2003, Mr. Rosenberg sold approximately 80% of the shares of GLL to private equity funds owned and managed by Olympus. (Rosenberg Dec., at ¶ 9) (CJR Exh. A) (CJR App., at p. 2).
9. Shortly after the 2003 sale, the company sought and obtained legal advice from its maritime counsel related to the practice of split routing. (Rosenberg Dec., at ¶ 10) (CJR Exh. A) (CJR App., at p. 3); (*see also* MOL's Exh. BP) (MOL's App., at p. 1663-1664).

10. In providing advice regarding the practice of split routing, GLL's maritime counsel acknowledged that the practice of split routing was common in the industry: "This is not an easy issue as I understand that the practice is common . . .". (MOL's Exh. BP) (MOL's App., at p. 1662).
11. It appears that the maritime counsel's legal advice regarding the practice was primarily focused on potential liability for damaged goods in connection with GLL's practice of changing the final destinations, rather than any possible FMC violations: "While I do not discount the FMC aspect, I actually have more concern on the liability side." (MOL's Exh. BP) (MOL's App., at p. 1662).
12. When the managers of GLL, including Mr. Rosenberg, received the legal advice from GLL's maritime counsel, the evidence shows that they understood it to mean that the practice of split routing was legal but the practice of shortstopping may be illegal. Based on this advice, they instructed GLL to stop the practice of shortstopping, to the extent it was occurring. (Rosenberg Dec., at ¶ 11) (CJR Exh. A) (CJR App., at p. 3); (*see also* MOL's Exh. BI. (August 10, 2003 E-mail from Mr. Rosenberg to Eric Joiner, Gary Meyer, and Gene Winters)) (MOL's App., at p. 1624) ("It now sounds to me like having the o b/l and h b/l destination different is ok, just not debits and credits.").¹

¹ While statements by the Panel in the arbitration styled *Global Link Logistics, Inc. et al. v. Olympus Growth Fund III, L.P. et al.*, American Arbitration Association, Case No. 14 125 Y 01447 07 (the "Arbitration"), are not admissible evidence in this proceeding, the Panel's conclusion regarding the advice received by GLL is telling. *See* Partial Final Award in the Arbitration, MOL's Exh. A (MOL's App., at p. 20) ("The advice on legality provided by Coleman and Mayer was explicit on only one subject: the illegality of accepting a rebate or discount from a tracker in the case of 'short-stopping.' As noted above, Global Link ended that practice upon receipt of the advice."); *see also* *Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc., et al.*, FMC No. 09-01, at 76 (FMC Aug. 11, 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 Motion to Dismiss) (the

CJR World Enterprises, Inc.

13. After the 2003 sale, CJRWE owned the remaining shares of GLL that Mr. Rosenberg had previously owned. (Rosenberg Dec., at ¶ 12) (CJR Exh. A) (CJR App., at p. 3).
14. CJRWE was thus a shareholder of GLL. There is no evidence that CJRWE was ever involved in the business or management of GLL. (Rosenberg Dec., at ¶ 13) (CJR Exh. A) (CJR App., at p. 3).
15. There is no evidence that CJRWE ever entered into any service contracts with any ocean carriers, including MOL. (Rosenberg Dec., at ¶ 14) (CJR Exh. A) (CJR App., at p. 3).
16. Mr. Rosenberg is the President of CJRWE and has been since 2003. There is no evidence that Mr. Rosenberg communicated with or had contact with MOL regarding GLL on behalf of CJRWE. (Rosenberg Dec., at ¶ 15) (CJR Exh. A) (CJR App., at p. 3).
17. There is no evidence that CJRWE ever contracted for the ocean transportation of property with any ocean carriers, including with MOL. (Rosenberg Dec., at ¶ 16) (CJR Exh. A) (CJR App., at p. 4).

“August 1, 2011 Commission Order”) (Commissioner Khouri, dissenting) (“It is worth noting that Global Link consulted an attorney about the practice and modified its own usage to conform to counsel’s advice.”).

18. There is no evidence that CJRWE ever obtained or attempted to obtain ocean transportation for property, at any price. (Rosenberg Dec., at ¶ 17) (CJR Exh. A) (CJR App., at p. 4).
19. There is no evidence that CJRWE ever obtained or attempted to obtain ocean transportation of property for less than the rates that would otherwise apply. (Rosenberg Dec., at ¶ 18) (CJR Exh. A) (CJR App., at p. 4).
20. There is no evidence that CJRWE ever paid MOL for the ocean transportation of property. (Rosenberg Dec., at ¶ 19) (CJR Exh. A) (CJR App., at p. 4).
21. There is no evidence that CJRWE ever acted as an NVOCC with respect to any GLL shipments. (Rosenberg Dec., at ¶ 20) (CJR Exh. A) (CJR App., at p. 4).

Mr. Rosenberg's Involvement with GLL Following the 2003 Sale

22. Mr. Rosenberg became a director of GLL after the 2003 sale. (Rosenberg Dec., at ¶ 21) (CJR Exh. A) (CJR App., at p. 4).
23. After the sale, Mr. Rosenberg was a director, as well as an officer of the company in title. However, the evidence shows that he became less and less active and involved in running GLL. (Rosenberg Dec., at ¶¶ 22, 23, 39) (CJR Exh. A) (CJR App., at pp. 4-5, 7).

24. While Mr. Rosenberg appears to have still played some role following the sale in maintaining GLL's relationships with its customers, with the steamship lines and with vendors, the unrebutted evidence demonstrates that Mr. Rosenberg was not directly or actively involved in the day-to-day operations of GLL or in decision-making with respect to the routing of shipments. (Rosenberg Dec., at ¶¶ 23, 39) (CJR Exh. A) (CJR App., at pp. 4-5, 7); (*see also* Declaration of Jim Briles ("Briles Dec."), at ¶ 48, dated February, 26, 2013, annexed here to as Exhibit B) (CJR App., at p. 20).²
25. There is no evidence that Mr. Rosenberg ever personally entered into any service contracts with any ocean carriers, including with MOL, before or after the 2003 sale. (Rosenberg Dec., at ¶ 24) (CJR Exh. A) (CJR App., at p. 5).
26. There is no evidence that Mr. Rosenberg ever personally contracted for the ocean transportation of property with any ocean carriers, including with MOL. (Rosenberg Dec., at ¶ 25) (CJR Exh. A) (CJR App., at p. 5).
27. There is no evidence that Mr. Rosenberg ever personally obtained or attempted to obtain ocean transportation for property, at any price. (Rosenberg Dec., at ¶ 26) (CJR Exh. A) (CJR App., at p. 5).

² While statements by the Panel in the Arbitration are not admissible, the Panel concluded that "by 2005 Rosenberg was becoming less and less active in running Global Link." (MOL's Exh. A) (MOL's App., at p. 33).

28. There is no evidence that Mr. Rosenberg ever personally obtained or attempted to obtain ocean transportation of property for less than the rates that would otherwise apply.

(Rosenberg Dec., at ¶ 27) (CJR Exh. A) (CJR App., at p. 5).

29. There is no evidence that Mr. Rosenberg ever personally paid MOL for the ocean transportation of property. (Rosenberg Dec., at ¶ 28) (CJR Exh. A) (CJR App., at p. 5).

30. There is no evidence that Mr. Rosenberg ever acted as an NVOCC with respect to any GLL shipments. (Rosenberg Dec., at ¶ 29) (CJR Exh. A) (CJR App., at p. 5).

The 2006 Sale

31. GLL was sold to its current owners in June of 2006. (Rosenberg Dec., at ¶ 30) (CJR Exh. A) (CJR App., at p. 6).

32. This sale closed on June 7, 2006. (Rosenberg Dec., at ¶ 31) (CJR Exh. A) (CJR App., at p. 6).

33. Mr. Rosenberg resigned as an employee and as a director of GLL prior to the sale. (Rosenberg Dec., at ¶ 32) (CJR Exh. A) (CJR App., at p. 6).

34. CJRWE sold all of its shares of GLL in the 2006 sale. (Rosenberg Dec., at ¶ 33) (CJR Exh. A) (CJR App., at p. 6).

35. There is no evidence that Mr. Rosenberg was in any way involved with GLL following the 2006 sale. (Rosenberg Dec., at ¶ 34) (CJR Exh. A) (CJR App., at p. 6).

36. There is no evidence that Mr. Rosenberg had any knowledge of or participation in any GLL shipments at issue in this proceeding which occurred after the date of the 2006 sale. (Rosenberg Dec., at ¶ 35) (CJR Exh. A) (CJR App., at p. 6).

GLL's Relationship with MOL and Paul McClintock and Rebecca Yang's Familiarity with Split Routing at GLL

37. GLL entered into its first service contract with MOL in May of 2004. (Rosenberg Dec., at ¶ 36) (CJR Exh. A) (CJR App., at p. 6); (Briles Dec., ¶ 8) (CJR Exh. B) (CJR App., at p. 14).

38. Paul McClintock, who was MOL's Vice President of Sales, was GLL's primary contact at MOL. Rebecca Yang, who worked for Mr. McClintock as a sales representative, was also a primary contact. (Rosenberg Dec., at ¶ 37) (CJR Exh. A) (CJR App., at p. 6); (Briles Dec., ¶ 10) (CJR Exh. B) (CJR App., at p. 14).

39. GLL was a sizable customer for MOL and for Mr. McClintock and Ms. Yang. (Rosenberg Dec., at ¶ 38) (CJR Exh. A) (CJR App., at p. 6); (Briles Dec., ¶ 11) (CJR Exh. B) (CJR App., at p. 14).

40. After MOL and GLL entered into the service contract, Mr. McClintock and Ms. Yang quickly grew familiar with GLL's business. (Rosenberg Dec., at ¶ 40) (CJR Exh. A) (CJR App., at p. 7); (Briles Dec., ¶ 12) (CJR Exh. B) (CJR App., at p. 14).
41. There is substantial evidence that Mr. McClintock and Ms. Yang became aware of GLL's practice of using split routing on door moves. (Rosenberg Dec., at ¶¶ 41-43) (CJR Exh. A) (CJR App., at p. 7); (Briles Dec., ¶¶ 13-17) (CJR Exh. B) (CJR App., at pp. 14-15).
42. Mr. Briles spoke to Mr. McClintock and Ms. Yang regularly between 2004 and 2007. (Briles Dec., ¶¶ 14-15) (CJR Exh. B) (CJR App., at pp. 14-15).
43. Mr. Briles spoke to one or both of them approximately two times a month during that period. (Briles Dec., ¶ 15) (CJR Exh. B) (CJR App., at p. 15).
44. As a significant percentage of GLL's shipments with MOL involved "splits", there is significant evidence that the practice of split routing was discussed in many of the conversations Mr. Briles had with Mr. McClintock and Ms. Yang. (Briles Dec., ¶ 16) (CJR Exh. B) (CJR App., at p. 15).
45. There is also evidence that Mr. Rosenberg discussed the practice of split routing at GLL with Mr. McClintock and Ms. Yang on occasion. (Rosenberg Dec., at ¶ 42) (CJR Exh. A) (CJR App., at p. 7).

46. Mr. McClintock and Ms. Yang were thus aware of GLL's practice of split routing.

(Rosenberg Dec., at ¶¶ 41-43) (CJR Exh. A) (CJR App., at p. 7); (Briles Dec., ¶¶ 13-17) (CJR Exh. B) (CJR App., at pp. 14-15).

47. Mr. McClintock and Ms. Yang encouraged the practice. (Rosenberg Dec., at ¶ 44) (CJR Exh. A) (CJR App., at p. 7); (Briles Dec., ¶ 18) (CJR Exh. B) (CJR App., at p. 15).

48. Mr. McClintock and Ms. Yang's testimony to the contrary is not credible in light of all of the other evidence of their knowledge and encouragement of the practice.

GLL's Service Contract with MOL and Mr. McClintock and Ms. Yang's Encouragement of Split Routing

49. Mr. McClintock and Ms. Yang's encouragement of re-routing appears to have resulted from the structure of GLL's service contract with MOL. (Rosenberg Dec., at ¶ 45) (CJR Exh. A) (CJR App., at p. 7); (Briles Dec., ¶ 19) (CJR Exh. B) (CJR App., at p. 15).

50. The service contract included only a limited number of door points. (Rosenberg Dec., at ¶ 46) (CJR Exh. A) (CJR App., at p. 8); (Briles Dec., ¶ 20) (CJR Exh. B) (CJR App., at p. 15).

51. Mr. Briles would often ask Mr. McClintock and Ms. Yang if MOL would add additional door points to the service contract for the locations of specific GLL customers. (Briles Dec., ¶ 21) (CJR Exh. B) (CJR App., at p. 15).

52. Mr. Rosenberg would also on occasion ask Mr. McClintock and Ms. Yang if MOL would add additional door points to the service contract for the locations of specific GLL customers or for the locations of new GLL customers. (Rosenberg Dec., at ¶ 47) (CJR Exh. A) (CJR App., at p. 8).
53. Mr. McClintock and Ms. Yang were always reluctant to negotiate new door points for GLL's customers. (Rosenberg Dec., at ¶ 48) (Exh. A) (CJR App., at p. 8); (Briles Dec., ¶ 22) (CJR Exh. B) (CJR App., at p. 16).
54. Mr. McClintock and Ms. Yang could not unilaterally agree to provide GLL rates for additional points, and they told Mr. Rosenberg and Mr. Briles that negotiating numerous additional door points was time consuming, administratively burdensome and inconvenient for them. (Rosenberg Dec., at ¶ 49) (CJR Exh. A) (CJR App., at p. 8); (Briles Dec., ¶ 23) (CJR Exh. B) (CJR App., at p. 16).
55. On one specific occasion Mr. McClintock said to Mr. Briles that he was not interested in contracting for "thousands of door points". (Briles Dec., ¶ 24) (CJR Exh. B) (CJR App., at p. 16).
56. According to Mr. Briles, Ms. Yang on several occasions advised Mr. Briles to book shipments to the regional points that had already been negotiated in the service contract.

rather than to request additional points. That is, she expressly encouraged GLL to engage in split moves. (Briles Dec., ¶ 25) (CJR Exh. B) (CJR App., at p. 16).

57. According to Mr. Rosenberg, Mr. McClintock and Ms. Yang told Mr. Rosenberg that MOL preferred that GLL engage in split routing because the use of regional points saved MOL from the inconvenience and burden of having to negotiate numerous additional door points. (Rosenberg Dec., at ¶ 50) (CJR Exh. A) (CJR App., at p. 8).

58. According to Mr. Rosenberg, Ms. Yang expressed her appreciation to Mr. Rosenberg that GLL engaged in split routing. She told Mr. Rosenberg that it was more convenient for her and MOL if GLL engaged in split routing. Ms. Yang thus unequivocally encouraged GLL to do split moves. (Rosenberg Dec., at ¶ 51) (CJR Exh. A) (CJR App., at p. 8).

Mr. McClintock and Ms. Yang Encouraged GLL to Hide Split Routing from MOL's Operations Staff

59. The ALJ finds it is more likely than not that Mr. McClintock and Ms. Yang knew of and blessed GLL's practice of split routing. (Rosenberg Dec., at ¶ 52) (CJR Exh. A) (CJR App., at p. 9); (Briles Dec., ¶ 26) (CJR Exh. B) (CJR App., at p. 16).

60. Mr. McClintock and Ms. Yang also encouraged GLL to keep inter-company discussions regarding split routing limited to management-level employees at GLL and MOL.

(Rosenberg Dec., at ¶ 53) (CJR Exh. A) (CJR App., at p. 9); (Briles Dec., ¶ 27) (CJR Exh. B) (CJR App., at p. 16).

61. According to Mr. Rosenberg and Mr. Briles, Mr. McClintock and Ms. Yang said they did not want MOL's operations staff to know of GLL's split routing. (Rosenberg Dec., at ¶ 54) (CJR Exh. A) (CJR App., at p. 9); (Briles Dec., ¶ 28) (CJR Exh. B) (CJR App., at p. 17).

62. According to Mr. Rosenberg and Mr. Briles, Mr. McClintock and Ms. Yang said they were specifically concerned about logistical issues and issues with shipping paperwork if MOL's operations staff learned GLL was split routing shipments. (Rosenberg Dec., at ¶ 55) (CJR Exh. A) (CJR App., at p. 9); (Briles Dec., ¶ 29) (CJR Exh. B) (CJR App., at p. 17).

Mr. Briles's Emails to GLL Employees

63. While Mr. Briles was employed with GLL he sent e-mails which could be interpreted to suggest that GLL was trying to hide the practice of split routing from MOL. MOL interprets the e-mails this way in MOL's Opening Submission. However, the ALJ finds that MOL's interpretation is not the most reasonable interpretation of the e-mails based on the other evidence in the record.

64. While GLL was attempting to conceal split routing *from MOL's operations staff at Mr. McClintock and Ms. Yang's encouragement*, it does not appear that GLL was attempting to conceal the practice of split routing *from MOL's management and sales representatives (i.e., Mr. McClintock and Ms. Yang)*. (Briles Dec., ¶ 31) (CJR Exh. B) (CJR App., at p. 17).

65. To the contrary, the evidence demonstrates that Mr. McClintock and Ms. Yang were aware of the practice and they encouraged GLL to keep it hidden from MOL's operations staff. (Briles Dec., ¶¶ 8 - 32) (CJR Exh. B) (CJR App., at pp. 14-17).

66. According to Mr. Briles, when he sent the e-mails, he did not believe that the practice of split routing was improper or illegal. (Briles Dec., ¶ 33) (CJR Exh. B) (CJR App., at p. 18).

67. Mr. Briles also did not believe that MOL disapproved of the practice of split routing. (Briles Dec., ¶ 34) (CJR Exh. B) (CJR App., at p. 18).

68. To the contrary, the evidence demonstrates that MOL, via Mr. McClintock and Ms. Yang, knew of the practice and encouraged it. (Briles Dec., ¶¶ 8 - 35) (CJR Exh. B) (CJR App., at pp. 14-18).

69. Mr. Briles's e-mail to Ms. Yang on July 27, 2005 provides compelling evidence of Ms. Yang's knowledge of the practice. (Briles Dec., ¶ 36) (CJR Exh. B) (CJR App., at p. 18); (MOL's Exh. AR) (MOL's App., at p. 1494).

70. In this e-mail string, Shayne Kemp, an employee of GLL, had emailed Ms. Yang about a Johnson City door move. Ms. Kemp's e-mail to Ms. Yang discusses the truckers to be used for such moves. Ms. Kemp suggested MOL should choose the trucker. Mr. Briles responded to Ms. Kemp to let her know that if this e-mail had been sent to MOL's operations manager for Johnson City moves, the manager likely would have selected a trucker for all Johnson City door moves. That decision would have restricted GLL's ability to use a preferred trucker, which would have limited GLL's ability to engage in split moves. (Briles Dec., ¶ 37) (CJR Exh. B) (CJR App., at p. 18); (MOL's Exh. AR) (MOL's App., at p. 1494).

71. Mr. Briles forwarded his e-mail to Ms. Kemp to Ms. Yang and wrote "confidential..." in the body of his e-mail. The reason Mr. Briles forwarded this e-mail to Ms. Yang was to keep her in the loop and to make sure she was aware that Mr. Briles was doing his part to keep GLL's split routing practice hidden from MOL's operations staff as she had requested. (Briles Dec., ¶ 38) (CJR Exh. B) (CJR App., at pp. 18-19); (MOL's Exh. AR) (MOL's App., at p. 1494).

72. Mr. Briles's e-mail to Ms. Yang which forwarded his e-mail to Ms. Kemp plainly shows that Ms. Yang knew about GLL's split routing, given that his e-mail to Ms. Kemp discussed the use of preferred truckers and also that final destinations on GLL's house and master bills of lading did not always match. (Briles Dec., ¶ 39) (CJR Exh. B) (CJR App., at p. 19); (MOL's Exh. AR) (MOL's App., at p. 1494).

MOL's Operations Staff Learns of GLL's Split Routing

73. Notwithstanding Mr. Briles's efforts at the encouragement of Mr. McClintock and Ms. Yang to keep GLL's split routing hidden from MOL's operations staff, there is evidence that there were multiple instances where MOL's operations staff learned that GLL was "split routing" shipments. (Briles Dec., ¶ 40) (CJR Exh. B) (CJR App., at p. 19); (*see also* Declaration of Kevin Hartmann) (MOL's Exh. BM) (App., at p. 1638) ("[Mr. McClintock] said there were perhaps a half-dozen instances in which MOLAM learned of equipment being turned into wrong locations, or cargo being taken to the wrong locations...").

74. Some of these instances are reflected in e-mails that MOL attached to its Proposed Findings of Fact.

75. For example, the June 24, 2005 and August 15, 2005 e-mails attached to MOL's filing as Exhibits "AJ" and "AM" were sent because MOL's Norfolk office had learned of

instances in which GLL had re-routed. (Briles Dec., ¶ 42) (CJR Exh. B) (CJR App., at p. 19).

76. Mr. McClintock learned of at least one of the instances in Norfolk from MOL's operations staff in the Norfolk office. (Briles Dec., ¶ 43) (CJR Exh. B) (CJR App., at p. 20).

77. According to Mr. Briles, after one of these instances, Mr. McClintock called Mr. Briles and told him that if MOL operations staff continued to become aware of instances in which GLL was re-routing, it would jeopardize GLL's ability to use its preferred truckers. (Briles Dec., ¶ 44) (CJR Exh. B) (CJR App., at p. 20).

78. The March 9, 2006 e-mail attached to MOL's filing as Exhibit "AN" appears to have been sent because MOL's Chicago office had learned of an instance in which GLL had re-routed a shipment using the Fishers door point in the service contract. (Briles Dec., ¶ 45) (CJR Exh. B) (CJR App., at p. 20).

79. Thus, in addition to Mr. McClintock and Ms. Yang's knowledge of split routing, the evidence shows that members of MOL's operations staff were aware of GLL's practice of split routing. (Briles Dec., ¶¶ 8-46) (CJR Exh. B) (CJR App., at pp. 14-20).

80. MOL does not dispute that its operations staff were aware of GLL's practice of split routing, and it has presented no evidence demonstrating otherwise. (See, e.g., MOL's Proposed Findings of Fact, at ¶¶ 98, 108).

GLL's Discussions with MOL Regarding the Termination of the Split Routing Practice at GLL

81. In June of 2006, new owners purchased GLL. (Briles Dec., ¶ 47) (CJR Exh. B) (CJR App., at p. 20).

82. After the sale, the new owners of GLL decided to end the practice of split routing of GLL. (Briles Dec., ¶ 50) (CJR Exh. B) (CJR App., at p. 21).

83. In or around March of 2007, GLL's Chief Operating Office, Christine Callahan, asked Mr. Briles to inform MOL that GLL wanted to change its service contract from having only a limited number of door points to adding more door points and using container yard and port rates. (Briles Dec., ¶ 51) (CJR Exh. B) (CJR App., at p. 21).

84. Mr. Briles discussed GLL's request with Ms. Yang. (Briles Dec., ¶ 52) (CJR Exh. B) (CJR App., at p. 21).

85. Mr. Briles and Ms. Callahan also met with Ms. Yang and Mr. McClintock to discuss GLL's request and the upcoming 2007 contract season. (Briles Dec., ¶ 52) (CJR Exh. B) (CJR App., at p. 21).
86. GLL's desire to transition from its historical practice of split routing was discussed in this meeting. (Briles Dec., ¶ 52) (CJR Exh. B) (CJR App., at p. 21).
87. Mr. McClintock and Ms. Yang were reluctant to negotiate individual door points because of the time and effort involved, just as they had been previously when GLL had requested additional door points. (Briles Dec., ¶¶ 21-22, 52) (CJR Exh. B) (CJR App., at pp.15-16, 21).
88. On June 20, 2007, Ms. Callahan sent an e-mail to Mr. McClintock following up on these discussions and following up on an e-mail she had previously sent Mr. McClintock about obtaining the new rates that GLL had requested. Her follow-up e-mail referenced the "split door service MOL has historically provided [GLL]" and informed MOL that GLL "must discontinue supporting MOL on the split moves." (Briles Dec., ¶ 53; Exhibit 1 to Briles Dec.) (CJR Exh. B) (CJR App., at pp. 21, 24).
89. The June 20, 2007 e-mail is clearly referring to GLL's practice of split routing. (Briles Dec., ¶ 54; Exhibit 1 to Briles Dec.) (CJR Exh. B) (CJR App., at pp. 22, 24).

90. Mr. McClintock would have undoubtedly known what Ms. Callahan was referring to when she used these terms. (Briles Dec., ¶ 55; Exhibit 1 to Briles Dec.) (CJR Exh. B) (CJR App., at pp. 22, 24).
91. Mr. McClintock forwarded the e-mail to Ms. Yang. (Briles Dec., ¶ 55; Exhibit 1 to Briles Dec.) (CJR Exh. B) (CJR App., at pp. 22, 24).
92. Ms. Yang would have undoubtedly known what Ms. Callahan was referring to when she used these terms as well. (Briles Dec., ¶ 55; Exhibit 1 to Briles Dec.) (CJR Exh. B) (CJR App., at pp. 22, 24).
93. Despite the fact that Ms. Callahan and Mr. Briles had informed Mr. McClintock and Ms. Yang that GLL would no longer be engaging in split moves, in an email string between Ms. Yang and Ms. Briles on July 17-18, 2007, Ms. Yang proposed that GLL do a split move for a delivery to Bentonville, Arkansas. (Briles Dec., ¶56; Exhibit 2 to Briles Dec.) (CJR Exh. B) (CJR App., at pp. 22, 25-26).
94. Mr. Briles responded by reminding Ms. Yang that GLL was no longer engaging in split routing. Ms. Yang's email in response said: "SIGH". Ms. Yang's response demonstrates she was frustrated or disappointed that GLL was no longer willing to perform split routings. (Briles Dec., ¶ 56; Exhibit 2 to Briles Dec.) (CJR Exh. B) (CJR App., at pp. 22, 25-26).

95. Mr. Briles again had to remind Ms. Yang that GLL was no longer engaging in split moves a few days later. (Briles Dec., ¶ 57; Exhibit 3 to Briles Dec.) (CJR Exh. B) (CJR App., at pp. 22, 27).

The Evidence Overwhelmingly Confirms MOL's Knowledge of Split Routing

96. There is overwhelming evidence, including the contemporaneous documentary evidence discussed above as well as the contemporaneous documentary evidence discussed in GLL and the Olympus Respondents' Proposed Findings of Fact, indicating that Mr. McClintock, Ms. Yang and others at MOL encouraged or at least knew of GLL's practice of split routing.

97. It is also undisputed that MOL's operations staff was aware of GLL's practice of split routing in multiple instances.

98. While statements by the Panel in the Arbitration are not admissible, it bears noting that the Panel concluded that MOL knew of and approved the practice of split routing: "As for the carriers' knowledge, there is clear evidence that a senior sales representative of Mitsui knew that Global Link was engaged in split-routing, and Mitsui did not object – indeed, Mitsui encouraged continuation of the practice – because Mitsui preferred not to

be bothered with negotiating a multiplicity of door points.” (MOL’s Exh. A) (MOL’s App., at p. 10).

99. MOL’s contention that it did not discover or know about split routing until July of 2008 is not supported by the evidence.

100. To the extent Mr. McClintock and Ms. Yang testified that they did not know the extent of the practice of split rerouting at GLL, their testimony is not credible.

101. The fact that Mr. McClintock and Ms. Yang’s former employer is now claiming that a practice that they approved and encouraged is illegal may be motivating them not to be truthful regarding the extent of their knowledge of the practice of split routing at GLL. The fact that GLL was a key account that they were incentivized to maintain and please likely motivated them to look the other way at the time of the relationship if indeed they had questions or concerns about the propriety of the practice (which there is no indication they did). (Deposition of Paul McClintock (“McClintock Dep.”), at pp. 38:15-20, annexed hereto as Exhibit I) (CJR App., at p. 96). Whatever their reasons, it is abundantly clear from the evidence that Mr. McClintock and Ms. Yang knew about the practice of split routing.

102. There are also business reasons why Mr. McClintock and Ms. Yang must have known about GLL’s practice of split routing. Given GLL’s size and the number of

customers it had, Mr. McClintock, Ms. Yang and others at MOL had to be aware that GLL had customers in more locations than just the locations which were used as final destinations in the master bills of lading for door moves. It is illogical to conclude otherwise.

103. MOL contends it did not discover or know about split routing until July of 2008 when Mr. McClintock received a subpoena and disclosed it to Kevin Hartmann, MOL's General Counsel. However, there is unrebutted evidence in the record that Mr. Rosenberg's counsel in the Arbitration conducted an interview with Mr. McClintock on January 11, 2008. (Declaration of William Latham, dated February 26, 2013 ("Latham Dec."), at ¶ 4, annexed hereto as Exhibit C) (CJR App., at p. 29). During that interview, Mr. Latham and Mr. McClintock discussed a number of the issues involved in the Arbitration, including the practice of split routing at GLL and the extent of MOL's knowledge of GLL's practice. (Latham Dec., at ¶ 5) (CJR Exh. C) (CJR App., at p. 29). Mr. McClintock was indisputably aware of the practice after this interview. If Mr. Hartmann's testimony that he and MOL did not learn about split routing at GLL until Mr. McClintock received a subpoena in connection with the Arbitration in July of 2008 is credited, then Mr. McClintock must have hid from MOL and from his supervisors that he had been interviewed in connection with a legal proceeding regarding the practice of split routing – and he continued to hide that fact until he was served with a formal subpoena six months later. The most reasonable conclusion from Mr. McClintock's conduct in hiding the fact that he was interviewed is that he did not want the fact that he had approved and endorsed GLL's practice of split routing to come to light. These facts cast

further doubt on testimony by Mr. McClintock about the extent of what he knew about the practice of split rerouting at GLL.

104. MOL has gone to great lengths in this proceeding to deny that it had any knowledge regarding the practice of split routing. However, as discussed in GLL's Proposed Findings of Fact, on August 15, 2005, Ted Holt, an Operations Manager for MOL, wrote to Mr. McClintock and Laci Bass regarding instances of split routing. The e-mail exchange between Mr. Holt and Mr. McClintock, as well as Mr. McClintock's testimony, indicates that this matter was brought to the attention of Mr. Hartmann, MOL's General Counsel.

105. Mr. Hartmann vigorously denies that the issue of GLL's split routing was communicated to him in this instance or any other, in the face of evidence to the contrary. However, there is no evidence in the record indicating that MOL investigated Mr. Holt's "side of the story". More specifically, MOL produced a privilege log of eighty-eight e-mails, most of which purport to relate to MOL's investigation into the facts of this case. (MOL's Privilege Log, annexed hereto as Exhibit D) (CJR App.. at pp. 30-37). Mr. Holt's name does not appear on the privilege log. The absence of Mr. Holt's name is curious given the importance of the August 15, 2005 e-mail exchange to MOL's internal investigation regarding the extent of MOL's knowledge of the practice of split routing at GLL.

106. Furthermore, MOL presented no evidence from Mr. Holt with its Opening Submission. Had MOL spoken with Mr. Holt and discovered that his knowledge corroborated Mr. Hartmann's testimony and contradicted Mr. McClintock's testimony, surely MOL would have submitted evidence from Mr. Holt on this point with its Opening Submission. In light of the fact that MOL's Opening Submission did not include evidence from Mr. Holt, the ALJ presumes that Mr. Holt's testimony would have corroborated Mr. McClintock's testimony. *See generally Graves v. U.S.*, 150 U.S. 118, 121, 14 S. Ct. 40, 37 L.Ed. 1021 (1893) ("[I]f a party has it peculiarly within his power to produce witnesses whose testimony would elucidate the transaction, the fact that he does not do it creates the presumption that the testimony, if produced, would be unfavorable").

107. These facts suggest that Mr. Hartmann, who appears to have been leading and coordinating MOL's investigation, may have known that Mr. Holt's testimony would corroborate Mr. McClintock's and would contradict his own. Mr. Hartmann may have therefore deliberately not interviewed Mr. Holt to avoid discovering that Mr. Holt's testimony would be consistent with Mr. McClintock's. Regardless of whether Mr. Hartmann interviewed Mr. Holt, why MOL did not submit evidence from Mr. Holt in its Opening Submission, or why Mr. Holt's name does not appear on MOL's privilege log, the ALJ finds based on all of the evidence in the record that it is more likely than not that Mr. Hartmann was made aware of the practice of split routing in 2005.

108. Other entries on MOL's privilege log call into question MOL's assertion that it did not know about the practice of split routing until July of 2008. Specifically, there are

three e-mails on MOL's log dated May 17, 2007. (CJR Exh. D) (CJR App., at p. 34).

The senders and recipients of these e-mails are Mr. Hartmann, Lisa Thornburg, and Nicole Hensley. (CJR Exh. D) (CJR App., at p. 34). Ms. Hensley is an MOL Operations Manager who in 2004 encouraged GLL to engage in split routing using the Lenoir, North Carolina door point. (December 3 and 8, 2004 e-mail exchange between Nicole Hensley, Eric McColloch, and GLL Staff, annexed hereto as Exhibit E) (CJR App., at p. 38).

MOL's inclusion of these e-mails on its privilege log indicates their relevance to this case, i.e., the e-mails relate to the practice of split routing. The fact that these e-mails are from 2007 is another reason that Mr. Hartmann's testimony that MOL was not aware of the practice of split routing prior to July of 2008 is false and cannot be credited.

109. The Federal Maritime Commission investigated MOL and levied \$1.2 million in civil penalties on MOL following its investigation. *Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc. et al.*, FMC No. 09-01 (ALJ Oct. 20, 2011) (Memorandum and Order Granting in Part and Denying in Part Olympus Respondents' Motion to Compel Compliance with Outstanding Discovery) ("October 20, 2011 Order"), annexed hereto as Exhibit F, at p. 2) (CJR App., at p. 40). An article in a trade magazine discussing the penalties states that "Peter J. King, director of the FMC's Bureau of Enforcement, said his office became convinced MOL knew about some of the abuses it uncovered by non-vessel-operating common carriers or shippers." (Chris Dupin, *FMC Fines MOL \$1.2 Million*, AM. SHIPPER, May 20, 2011, a copy of which is annexed hereto as Exhibit G) (CJR App., at p. 81).

110. The Respondents served discovery requests in this case regarding the FMC's investigation into MOL. MOL objected to providing the information requested by the Respondents. After the Respondents moved to compel, the ALJ required MOL to identify all of its communications with the FMC in connection with the FMC's investigation. (October 20, 2011 Order) (CJR Exh. F) (CJR App., pp. 39-80). MOL's responses reveal that Mr. King had participated in every meeting and telephone call between MOL and the FMC. (MOL's November 23, 2011 Response to Memorandum and Order Granting in Part and Denying in Part Olympus Respondents' Motion to Compel Compliance with Outstanding Discovery, MOL's responses to Interrogatory numbers 1 and 6, annexed hereto as Exhibit H) (CJR App., at pp. 83-86). Mr. King's statement regarding the FMC's investigation into MOL, taken together with the fact that he participated in every meeting and call with MOL in connection with the FMC's investigation into MOL, is consistent with all of the other evidence indicating that MOL knew about the practice of split routing at GLL.

GLL's Practice of Split Routing Did Not Cause MOL any Damages and In Fact Benefitted MOL

111. Setting aside the fact that MOL knew of and encouraged split routing, the evidence demonstrates that MOL did not suffer any actual damages as a result of any split shipments. (Rosenberg Dec., at ¶¶ 56-66) (CJR Exh. A) (CJR App., at pp. 9-11); (McClintock Dep., at pp. 13:22-14:6, 264:15-265:10) (Exh. I) (CJR App., at pp. 88-89, 100-101).

112. As confirmed by Mr. McClintock, the cost of trucking a shipment in a door move from the port to the door is a pass-through for the ocean carrier. (McClintock Dep., at pp. 65:15-18, 88:10-14, 264:15-265:10) (CJR Exh. I) (CJR App., at pp. 98-101); (*see also* Rosenberg Dec., at ¶ 57) (CJR Exh. A) (CJR App., at p. 9).
113. That is, ocean carriers like MOL do not mark up the amount that they pay to a trucker in the rate that they provide a customer like GLL for a particular point. (McClintock Dep., at pp. 65:15-18, 88:10-14, 264:15-265:10) (CJR Exh. I) (CJR App., at pp. 98-101); (*see also* Rosenberg Dec., at ¶ 58) (CJR Exh. A) (CJR App., at p. 10).
114. Stated otherwise, MOL does not profit or attempt to profit from the inland trucking portion of a shipment. (McClintock Dep., at pp. 65:15-18, 88:10-14, 264:15-265:10) (CJR Exh. I) (CJR App., at pp. 98-101); (*see also* Rosenberg Dec., at ¶ 59) (CJR Exh. A) (CJR App., at p. 10).
115. MOL does not dispute or attempt to refute this testimony by Mr. McClintock.
116. Additionally, the practice of split routing was beneficial to MOL because it shifted substantial operational burdens to NVOCC's, such as GLL. (McClintock Dep., at pp. 14:7-20:9) (CJR Exh. I) (CJR App., at pp. 89-95).

117. According to Mr. McClintock, it was a “happy day” for MOL when GLL took over the handling of the inland transportation. (McClintock Dep., at pp. 16:15-18) (CJR Exh. I) (CJR App., at p. 91).
118. MOL was “relieved” by GLL’s willingness to do this. (McClintock Dep., at pp. 20:5-9) (CJR Exh. I) (CJR App., at p. 95).
119. Furthermore, if there are “damages” when a container is “split routed”, it is the shipper (i.e., the NVOCC) who suffers damages. (McClintock Dep., at pp. 14:7-16:22) (CJR Exh. I) (CJR App., at pp. 89-91); (Rosenberg Dec., at ¶ 60) (CJR Exh. A) (CJR App., at p. 10).
120. More specifically, for each shipment moved with MOL, GLL paid MOL to have the goods delivered to a particular destination. (Rosenberg Dec., at ¶ 61) (CJR Exh. A) (CJR App., at p. 10)
121. The amount paid by GLL to MOL included the ocean portion of the shipment and the inland trucking portion of the shipment. (Rosenberg Dec., at ¶ 62) (CJR Exh. A) (CJR App., at p. 10).
122. As noted the evidence shows that the inland trucking portion of the shipment is a pass-through. (McClintock Dep., at pp. 65:15-18, 88:10-14, 264:15-265:10) (CJR Exh. I)

(CJR App., at pp. 98-101); (*see also* Rosenberg Dec., at ¶¶ 57, 63) (CJR Exh. A) (CJR App., at pp. 9, 10).

123. Thus, if the goods were delivered to a destination that was closer than the final destination in the master bill of lading, then it appears that GLL overpaid MOL for the trucking. (Rosenberg Dec., at ¶ 64) (CJR Exh. A) (CJR App., at p. 10).

124. If the goods were delivered to a destination that was farther than the final destination in the master bill of lading, then the trucker was underpaid by MOL. However, GLL would pay the trucker the difference. (Rosenberg Dec., at ¶ 65) (CJR Exh. A) (CJR App., at p. 11).

125. In short, the practice of split routing at GLL had no financial impact whatsoever on MOL's bottom line, and MOL has not suffered any loss of profits from the practice. (McClintock Dep., at pp. 13:22-14:6) (CJR Exh. I) (CJR App., at pp. 88-89); (*see also* Rosenberg Dec., at ¶ 66) (CJR Exh. A) (CJR App., at p. 11).

126. If anything, it appears *GLL* overpaid MOL for shipments where the actual destination that the goods were delivered to was closer than the final destination in the master bill of lading. (Rosenberg Dec., at ¶¶ 64, 66) (CJR Exh. A) (CJR App., at pp. 10, 11).

127. Furthermore, for any shipments for which MOL is claiming that GLL should have paid the tariff rate, MOL's argument ignores the practical realities of the business. Mr. McClintock and Ms. Yang encouraged GLL to book shipments to regional door points in the service contract and to then engage in the practice of split routing to move the shipments to their final destination. Mr. McClintock and Ms. Yang were also reluctant to add and negotiate new points to GLL's service contracts. If Mr. McClintock and Ms. Yang had expected these shipments to be booked to their final destination and not the regional door points – and if they had still refused to add points for such final destinations and instead expected GLL to pay the tariff rate – MOL would never have been paid tariff rates or diversion fees by GLL even if GLL did not reroute. Rather, GLL would have negotiated reasonable, market rates with MOL for GLL's customers' door points. If MOL was unwilling to negotiate such rates, GLL would have worked with other carriers to service its customers at those door points. It would never have paid tariff rates or diversion charges for every shipment. Thus, putting aside that MOL is not entitled to any reparations, it is completely illogical for MOL to claim reparations for shipments that were split routed based on its tariff rates.

Respectfully submitted.



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Dated: March ____, 2013

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I hereby certify that on March 1, 2013, I have this day served the foregoing document upon the following individual(s):

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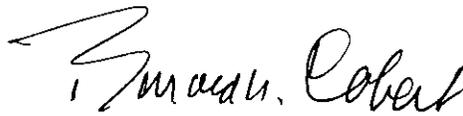
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