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BEFORE THE
FEDERAL MARITIME COMMISSION

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JAN 29 2013

Docket No. 09-01

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

ORIGINAL

MITSUI O.S.K. LINES, LTD.,

COMPLAINANT,

v.

GLOBAL LINK LOGISTICS, INC.; OLYMPUS PARTNERS, L.P.;
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.

RESPONDENT AND CROSS COMPLAINANT GLOBAL LINK LOGISTICS, INC.'S
PROPOSED FINDINGS OF FACT IN SUPPORT OF CONTRIBUTION CLAIM AGAINST
ROSENBERG AND OLYMPUS RESPONDENTS

Global Link and Service Contracts

1. Global Link is a non-vessel operating common carrier ("NVOCC") licensed by the Federal Maritime Commission ("FMC" or "Commission") that provides ocean transportation services. *See* Christine Callahan Dec. at ¶ 2. January 29, 2013, attached as Exhibit A (GLL App. 1).¹

2. CJR World Enterprises, Inc. and Chad J. Rosenberg (collectively, the "Rosenberg Respondents") and Olympus Partners, L.P., Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P., Louis J. Mischianti, David Cardenas and Keith Heffernan (collectively, the "Olympus Respondents") were defendants in an arbitration proceeding (the "Arbitration")

¹ Although some of the attached Exhibits were previously marked as Confidential or Attorney's Eyes Only, Global Link has consulted with the parties and they have not identified any information in those Exhibits as containing Confidential material.

initiated by Global Link's current ownership. The Arbitration was predicated upon the Rosenberg and Olympus Respondents having fraudulently failed to disclose the split routing practices that were ongoing at Global Link prior to the current ownership's purchase of the company. *See* American Arbitration Association, Commercial Arbitration Tribunal Partial Final Award (Case No. 14 125 Y 01447 07, February 2, 2009) ("Arbitration Award") attached hereto as Exhibit B (GLL App. 4-66).

3. The Arbitration Panel had seven days of hearings and received pre and post hearing written submissions and oral argument. Arbitration Award at 1, Exh. B (GLL App. 4).

4. The Arbitration Panel heard the live testimony of 12 witnesses, including Chad Rosenberg, and the parties submitted excerpts from 14 depositions, including videotapes of eight depositions. *Id.* at 4 (GLL App. 7).

5. The Arbitration Panel determined that it would have been impractical for the new owners of Global Link, who acquired the company in 2006 to have attempted to end split routing all at once. *Id.* at 15 (GLL App. 18).

6. Respondent Chad Rosenberg incorporated Global Link in 1997. Chad Rosenberg Dep. at 99:18-19, October 7, 2008, attached as Exhibit C (GLL App. 82).

7. Rosenberg served as President and Chief Executive Officer of Global Link from 1997 through 2006. *Id.* at 235:2-7, 294:2-8, Exh. C (GLL App. 86, 88).

8. Rosenberg was a member of Global Link's Board of Directors. Arbitration Award at 3, Exh. B (GLL App. 6).

9. Rosenberg remained the principal owner of the company until 2003, when he sold approximately 80% of the company to Olympus Partners ("Olympus"), a private equity firm, and

minority shares to several individuals and entities, keeping approximately 20% for himself. *Id.* at 3 n.1., and 12, Exh. B (GLL App. 6, 15).

10. Rosenberg sold a portion of Global Link to Olympus in 2003 for \$20 million in cash. *Id.* at 3 n.1, Exh. B (GLL App. 6)

11. Subsequently, Rosenberg was a director, officer and sole shareholder of CJR World Enterprises, through which he held an approximate 20% interest in Global Link. *Id.* at 3, Exh. B (GLL App. 6).

12. Upon the Olympus Respondents' acquisition of 80% of Global Link, they installed a new management team at Global Link. *Id.* at 12 (GLL App. 15). Although Rosenberg continued to run the company, the new management team included Gary Meyer, initially as Chief Financial Officer and then promoted to Chief Operating Officer, and Jim Briles, who headed the Trade Group, which was responsible for routing shipments. *Id.* at 12-13 (GLL App. 15-16).

13. Upon the subsequent sale of Global Link to current ownership in 2006, CJR World Enterprises, of which Rosenberg was the sole shareholder, received an additional \$20.9 million. *Id.* at 14 (GLL App. 17); *see also* Arbitration Award at 25 (GLL App. 28) ("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 interest ...").

**The Rosenberg Respondents' Participation and Knowledge of Split Routing
Deposition Testimony of Chad Rosenberg**

14. Rosenberg was very familiar with the routings and operations at Global Link. Rosenberg Dep. at 54:19-22, attached as Exh. C (GLL App. 76).

15. Rosenberg personally conducted split routings at Global Link. *Id.* at 20:15-21:12 (GLL App. 68).

16. Most of the Global Link moves when he was there were split routing; approximately 60 percent of the moves were splits. *Id.* at 27:13-20 (GLL App. 69).

17. Split routing was an important part of Global Link's operations when Rosenberg was the Chief Executive Officer. *Id.* at 28:21-29:2 (GLL App. 69).

18. Every company Rosenberg had ever worked for did split routing. *Id.* at 40:12-13 (GLL App. 72).

19. He first became familiar with the practice in 1994. *Id.* at 92:2-9 (GLL App. 81).

20. Rosenberg provided incorrect information to steamship lines for their bills of lading and in Global Link's delivery orders when he was doing routing of shipments. *Id.* at 247:1-25 (GLL App. 87).

21. Rosenberg taught Jim Briles how to conduct split routings. *Id.* at 159:2-4 (GLL App. 84).

22. Subsequently, Briles taught other staffers Global Link's routing strategies, including how to do split routings. James Briles Dep. at 55:13-15, 137:7-24, June 4, 2008, attached hereto as Exh. D (GLL App. 91, 96).

23. Rosenberg was copied on most of Global Link's communications in regard to routings. Rosenberg Dep. at 170:9-20, Exh. C (GLL App. 85).

24. Even through 2006, up until the time the company was sold to current ownership, Rosenberg still received email related to routing issues and still communicated regularly with Gary Meyer, Global Link's Chief Financial Officer, and other staff at Global Link. *Id.* at 294:5-12 (GLL App. 88).

25. During his tenure at Global Link, Rosenberg was the Qualifying Individual for the company's FMC license. *Id.* at 77:25-78:3 (GLL App. 78, 79). In his capacity as the Qualifying

Individual for Global Link, Rosenberg never reviewed the Commission's rules and regulations. *Id.* at 81:19-25 (GLL App. 79).

26. Rosenberg was unaware that the FMC has regulations prohibiting licensees from knowingly imparting false information relative to an ocean transportation transaction. *Id.* at 83:16-25 (GLL App. 80).

27. The Arbitration Panel, after reviewing extensive documentation and following seven days of hearings, concluded that Rosenberg founded Global Link and brought with him from former employment the practice of split-routing, which he refined and supervised before turning over the responsibility to subordinates. Arbitration Award at 33, Exh. B (GLL App. 36).

Deposition of Jim Briles

28. Jim Briles was the Vice President of Trade & Operations at Global Link. *See* Jim Briles Dep. at 62:1-6, Exhibit D (GLL App. 93).

29. When Briles was hired by Global Link, the routing strategies were already established. *Id.* at 52:5-10 (GLL App. 90).

30. Split routing was incorporated into Global Link's standard operating procedures. *Id.* at 135:8-11 (GLL App. 96).

31. Rosenberg walked Briles through how Global Link routed transactions. *Id.* at 53:3-6 (GLL App. 90).

32. Rosenberg was always copied on routing communications for as long as Rosenberg was with the company. *Id.* at 58:9-17 (GLL App. 92).

33. Subsequently, Briles taught other staffers Global Link's routing strategies, including how to do split routings. Briles Dep. at 55:13-15, 137:7-24, Exh. D (GLL App. 91, 96).

34. Briles communicated with Rosenberg and Gary Meyer as to whether split routing was legal. *Id.* at 140:10-143:24 (GLL 97-98).

Respondent OGF

35. Respondent Olympus Growth Fund (“OGF”) is a private equity investment fund organized as a Delaware limited partnership. *See* Olympus Respondents’ Motion for Summary Judgment Statement of Uncontroverted Facts at ¶ 2, and supporting documentation attached as Exhibit E (GLL App. 106)

36. In May 2003, OGF purchased 74.51 percent of the shares in GLL Holdings, Inc. (“Holdings”), the company that owned Global Link. *Id.* at ¶ 3 (GLL App. 106).

37. OGF sold its interest in Holdings to Global Link’s current owners pursuant to a stock purchase agreement dated May 20, 2006. *Id.*

38. The sale closed on June 7, 2006. Arbitration Award at 5, Exh B (GLL App. 8).

39. The current ownership purchased Global Link for \$128.5 million. *Id.*

40. The sellers of the company received net proceeds of \$108,439,961, of which the two Olympus Funds received \$83.1 million. *Id.* at 14 (GLL App. 17).

Respondent OEF

41. Respondent Olympus Executive Fund (“OEF”) also is a private equity investment fund organized as a Delaware limited partnership. Olympus Respondents’ MSJ SoF at ¶ 4, Exh. E (GLL App. 106).

42. In May 2003, OEF purchased 0.49 percent of the shares in Holdings. *Id.* at ¶ 5 (GLL App. 106)

43. On June 7, 2006, OEF sold its minority interest in Holdings to GLL Sub Acquisition, Inc. under the May 20, 2006 stock purchase agreement. *Id.*

44. The practice of split routing existed before OGF and OEF invested in Global Link and continued after they purchased the company. Arbitration Award at 15, 33, Exh. B (GLL App. 18, 36).

Respondents Heffernan, Cardenas and Louis Mischianti

45. Louis Mischianti, Keith Heffernan and David Cardenas were all principals of Olympus Partners and were officers or directors (or both) of Global Link. Arbitration Award at 3, Exh. B (GLL App. 6); *see also* Keith Heffernan Dep. at 131:8-23, July 31, 2008, attached as Exhibit F (GLL App. 128) (Heffernan, Cardenas and Mischianti were directors of Global Link.)

46. Heffernan and Cardenas were officers of Olympus. Keith Heffernan Dep. at 131:20-23), Exh. F (GLL App. 128).

**Olympus Respondents Knowledge of and Participation in Split Routing
Testimony of David Cardenas**

47. David Cardenas, one of the Olympus Respondents, was a director and officer of Global Link during the relevant time period. *See* David Cardenas Dep. at 44:13-15, August 6, 2008, Exh. G (GLL App. 147).

48. Beginning in 2003, Cardenas had a practice of communicating with the management at Global Link on a regular basis in person, by phone and by email. *Id.* at 54:17-55:6 (GLL App. 148).

49. Cardenas and Keith Heffernan had weekly phone calls with management. *Id.* at 165:12-17 (GLL App. 156).

50. Cardenas traveled to Hong Kong and south China with the Global Link management team to meet with Global Link's customers and vendors, including representatives of Hecny. *Id.* at 188:17-23 (GLL App. 157); *see also*, Eric Joiner Dep. at 102:1-23, October 10, 2008, Exhibit H (GLL App. 161) (discussing Cardenas meeting with P&O in Hong Kong about

getting container space and being treated as a preferential customer during customer peak season).

51. Hecny was Global Link's partner in Asia and the parties performed services for each other at origin and destination for shipments to the United States under both Hecny and Global Link service contracts. Arbitration Award at 6, Exh. B (GLL App. 9).

52. At Olympus, Cardenas developed expertise in logistics and the transportation industry, along with Keith Heffernan and Louis Mischianti. Cardenas Dep. at 66:4-67:5, Exh. G (GLL App. 149).

53. Cardenas was actively involved, along with Chad Rosenberg in identifying and recruiting Global Link's management team. *Id.* at 94:10-95:22 (GLL App. 150).

54. One of the employees that Cardenas hired, Eric Joiner, Global Link's Chief Operating Officer, brought to the Global Link Board of Director's attention, and Cardenas' attention personally, a number of regulatory and operational issues with the company, including differences between where containers were being booked as opposed to where they were being delivered, *i.e.*, split routing. *Id.* at 96:12-97:10 (GLL App. 150).

55. Shortly thereafter, Eric Joiner was terminated by the Board. *Id.* at 117:3:15 (GLL App. 151); *see also* Keith Heffernan Dep. at 136:16-24, Exh. F (GLL App. 130) ("I don't remember if he was fired *per se*; he was terminated.")

56. Cardenas and Heffernan had a phone call with Chad Rosenberg, Eric Joiner and Gary Meyer to discuss split routing in the summer of 2003. Cardenas Dep. at 116:2-12, 122:3-4, Exh. G (GLL App. 151, 152).

57. The Global Link management team informed him that there was a question about whether it was appropriate to deliver containers to destinations other than where they were booked. *Id.* at 154:3-9 (GLL App. 154).

58. Cardenas did not indicate to Global Link management that he had a concern about the split routing practice that was described. *Id.* at 157:12-158:20 (GLL App. 154-155).

59. He also did not suggest that they get a second opinion as to whether split routing was legal or suggest taking any other steps in that regard. *Id.* at 158:3-8 (GLL App. 155).

60. As best as he can recall, Cardenas never followed up on the issue with anyone else. *Id.* at 158, 162:17-163:6 (GLL App. 155, 156).

61. Mr. Cardenas testified that even if management knew split routing was contrary to FMC regulations, he would not necessarily have wanted them to tell him. *Id.* at 161:2-23 (GLL App. 155).

62. Although Cardenas testified that at the time he was not shown the legal opinion from counsel -- which stated that "the practice of changing destinations without notice to the ocean carrier exposes Global Link to possible Shipping Act violations" -- such an opinion would not have surprised him. *Id.* at 235:2-13 (GLL App. 159).

Testimony of Keith Heffernan

63. Heffernan and Cardenas were both involved with Global Link from the time of Olympus' purchase of the company in 2003 until its sale to current ownership in 2006. Heffernan Dep. at 153:8-15, Exh. F (GLL App. 133) ("We were both involved from beginning to end.")

64. Heffernan regularly communicated with all the members of Global Link's senior management team. *Id.* at 135:18-136:11 (GLL 129-130).

65. Heffernan and Cardenas received weekly flash reports from Global Link, as well as monthly financial statements. *Id.* at 138:5-25 (GLL App. 131).

66. Heffernan and Cardenas played a role in doing due diligence on IT systems, like a “track and trace system” in regard to shipments, which helped Global Link keep track of where containers were in the course of their shipment. *Id.* at 151:8-12, 295:2-21 (GLL App. 132, 145).

67. Heffernan learned that Global Link was handling shipments for which the final destination of the container was different than how it was booked with the steamship line in the summer or fall of 2003, shortly after Olympus acquired Global Link. *Id.* at 88:2-25, 92:2-9, 188:14-189:10 (GLL App. 124, 126, 140-41). Either Eric Joiner or Gary Meyer brought it to Olympus’s attention. *Id.* at 89:7-12 (GLL App. 125).

68. Heffernan was aware that management consulted with an attorney in regard to the practice. *Id.* at 93:2-25 (GLL App. 127). Heffernan had consulted with Global Link’s attorneys on compliance issues, including C-TPAT. *Id.* at 156:3-25 (GLL App. 134).

69. When asked whether as a director of Global Link in 2003 he wanted to know if there was a company practice that was exposing Global Link to possible Shipping Act violations, Heffernan stated that that he was not sure that is something he would have wanted to know or something that would have been important to him. *Id.* at 171:18-172:2 (GLL App. 135).

70. Heffernan admitted that he did not necessarily want to know that the FMC had “gone after” an entity for having cargo dropped off at a destination different than what was reflected on the bill of lading. *Id.* at 174:3-176:6 (GLL App. 137-139)

Testimony of Chad Rosenberg in Regard to the Olympus Respondents

71. Chad Rosenberg, the founder of Global Link, testified that he had a telephone conversation with Keith Heffernan and David Cardenas around July of 2003, after they had

received a call from Eric Joiner, who had raised questions about split routing. *See* Chad Rosenberg Dep. at 32:3-34:12, Exh. C (GLL App. 70-71).

72. Heffernan and Cardenas called Mr. Rosenberg to discuss split routing and asked him to walk them through a specific example of split routing, which he did. *Id.* at 34:10-23 (GLL App. 71). As a result of the call, Heffernan and Cardenas understood how the process worked. *Id.* at 34:24-36:20 (GLL App. 71).

73. Mr. Rosenberg recalls that they were going to follow up on the matter with Eric Joiner and dig deeper into the issue. *Id.* at 40:19-41:8 (GLL App. 72).

74. After consulting with a maritime attorney, Mr. Rosenberg testified he had another telephone call with Keith Heffernan and David Cardenas to discuss split routing. *Id.* at 43:1-44:1 (GLL App. 73).

75. Rosenberg does not recall Heffernan or Cardenas ever asking him for emails or other communications from the lawyer addressing the legality of split routing. *Id.* at 44:18-45:4 (GLL App. 73).

76. Rosenberg testified that no effort was made to hide split routing from Olympus. *Id.* at 48:19-25 (GLL App. 74).

77. Heffernan and Cardenas knew that the alternative to split routing was to renegotiate new door points to a contract because Rosenberg explained it to them. *Id.* at 49:1-18 (GLL App. 74).

78. Heffernan attended a board meeting in 2005 at which the issue of Maersk making split routing more difficult was addressed. *Id.* at 50:24-51:24 (GLL App. 75).

79. Cardenas and Heffernan hired Eric Joiner to the Chief Operations Officer at Global Link. *Id.* at 72:4-21 (GLL App. 77).

Testimony of Eric Joiner

80. As reflected above, Cardenas hired Eric Joiner as Global Link's Chief Operating Officer. Joiner testified that when he learned of the split routing, he believed it was illegal. *See* Eric Joiner Dep. at 191:2-4, Exh H (GLL App. 162).

81. Joiner testified that Global Link's counsel confirmed the practice was illegal and that Joiner not only told that to Global Link's management at the time, he also told Olympus the practice was illegal.

Q. Did you have conversations with anyone at Olympus about the practice's legality?

A. Yes.

Q. Who did you have those conversations with?

A. Dave Cardenas.

Id. at 191:12-17, Exh. I (GLL App. 162).

82. Joiner testified that he told Cardenas that Global Link was not complying with the Shipping Act and that it was a serious regulatory issue. *Id.* at 193:3-13, 196:6-18 (GLL App. 162, 163).

83. One of the reasons Joiner had that discussion with Cardenas was that he wanted to have a lawyer make a presentation to Global Link on compliance with the Shipping Act for training purposes and Cardenas needed to authorize such an expenditure. *Id.* at 198:1-10 (GLL App. 164).

84. Joiner believed that such training would mitigate the FMC's likelihood of imposing significant monetary damages if it discovered Global Link's ongoing split routing practices. *Id.* at 198:11-199:3 (GLL App. 164).

85. Despite Joiner's statements to Cardenas, the split routing practices at Global Link continued. *Id.* at 196:19-22 (GLL App. 163).

The Olympus Respondents Admissions as Part of Its Statement of Uncontroverted Facts in Support of Summary Judgment Motion

86. Respondent Louis J. Mischianti served as a board director of Holdings and Global Link from May 2003 until June 2006. Olympus Respondents' Statement of Uncontroverted Facts at ¶ 11, Exh. E (GLL App. 107).

87. Respondent David Cardenas served as a board director and officer of Holdings and Global Link from May 2003 until June 2006. *Id.* at ¶ 13 (GLL App. 108).

88. Respondent Keith Heffernan served as a board director and officer of Holdings and Global Link from May 2003 until June 2006. *Id.* at ¶ 16 (GLL App. 108).

89. Cardenas and Heffernan learned about Global Link's split-routing practices after OGF and OEF acquired their interests in Holdings. *Id.* at ¶ 19 (GLL App. 109).

90. Mr. Cardenas was first advised about Global Link's split-routing practices in a brief telephone conversation with Global Link management in the summer of 2003. *Id.* at ¶ 20 (GLL App. 109).

91. Rosenberg, Global Link's founder and then-President, explained split routing to Cardenas and Heffernan. *Id.* at ¶ 19 (GLL App. 109).

Global Link's Current Ownership and Management

92. In June, 2006, Global Link was acquired by its current owner, Golden Gate Logistics, LLC ("Golden Gate"). *See* August 1, 2011 Commission Order, Docket No. 09-01 (91) at 33 n.4.

93. Shortly after Golden Gate acquired Global Link, the company was informed by a former employee that she had been fired due to her refusal to engage in split routing or split

deliveries whereby shipments from Asia would be delivered to inland locations in the United States that were not those reflected on the master bill of lading and not destinations specified in service contract with the steamship line. Arbitration Award at 14, Exh. B (GLL App. 17).

94. When Global Link's current management learned of the practice of split routing, in July of 2006, through this former employee, it conducted an investigation and contacted maritime counsel. *Id.* at 14-15 (GLL App. 17-18). It took Global Link until early 2007 to ascertain the extent of the practice. *Id.* at 15 (GLL App. 18)

95. Upon advice of counsel, when Global Link's existing contracts with shippers expired, in May of 2007, it renegotiated the contracts so as to eliminate the possibility of split routing. *Id.* Global Link later self-reported the split routing practices to the FMC. *Id.*

Arbitration Panel Findings

96. The Arbitration Panel made findings holding the Rosenberg and Olympus Respondents liable for their failure to disclose split routing practices to current ownership of Global Link. Arbitration Award at 38 (GLL App. 41). The Panel also found that they made a material misrepresentation to Global Link's current owner in asserting that Global Link was in compliance with the rules and regulations of the Federal Maritime Commission and the Shipping Act. *Id.* at 39, 42 (GLL App. 42, 45).

97. The Arbitration Panel found that Chad Rosenberg, David Cardenas and Keith Heffernan fraudulently omitted to disclose the Company's reliance on split-routing, and made a deliberate effort to keep the purchasers of Global Link from learning of the existence, extent and significance of the split-routing practices during the due diligence process. *Id.* at 23 (GLL App. 26).

98. The Arbitration panel found that Keith Heffernan, who was responsible for gathering and passing along information to Global Link purchaser's agent, deleted a reference in a Confidential Information Memorandum which might have led Global Link's current management to be aware of split routing practices. *Id.* at 23-24 (GLL App. 26-27).

99. The Panel concluded that the motivation to conceal Global Link's reliance on split-routing was not difficult to identify, as the Olympus Respondents were eager to turn a profit on their three-year old investment in Global Link by reselling the Company and Chad Rosenberg stood to reap an additional \$20 million (in addition to \$80 million already obtained) by reselling the Company to current Global Link ownership. *Id.* at 25 (GLL App. 28).

100. The Panel further concluded that disclosure of split routing by Olympus and Rosenberg would have generated questions about the legality, business prudence and sustainability of the split routing practices. *Id.* at 26 (GLL App. 29).

101. Split routing was discussed at a Board meeting in November of 2005, Arbitration Award at 35 (GLL App. 38); *see also* Chad Rosenberg Dep. at 50:24-51:12, Exh. C (GLL App. 75) (issue of split door moves with Maersk addressed at 2005 Board meeting).

102. The Arbitration Panel affixed direct liability on the Olympus Respondents and CJR as shareholders. Arbitration Award at 38 (GLL App. 41).

103. This finding of direct liability of the Olympus Respondents and CJR was not predicated upon piercing the corporate veil; instead the Panel found the two Olympus and CJR World Respondents liable "under established agency law as principals on whose behalf and whose request Global Link management made fraudulently inadequate disclosures that were found to have been fraudulently inadequate." *Id.*

104. The Panel also squarely addressed the relative culpability of the current owner of Global Link, and of the Rosenberg and Olympus Respondents. The Rosenberg and Olympus Respondents asserted that Global Link, under the doctrine of *in pari delicto*, should be precluded from asserting a claim against them due to the failure to immediately terminate split routing when it purchased the company in June of 2006. *Id.* at 45-46 (GLL App. 48-49). In rejecting that defense, the Panel recognized that in order for the doctrine to apply, the plaintiff must be an active, voluntary participant in the unlawful activity that is the subject of the suit and no such showing could be made under the evidence in the record. *Id.* at 46 (GLL App. 49).

Claimants [Global Link's current owner] unknowingly inherited a practice, which they continued until it was feasible to end the practice across the board, as they were advised by counsel would be a reasonable course. It is a stretch to call Claimants' continuation of split-routing until the next ocean carrier contract reset "voluntary," and to the extent Claimants may be considered culpable, their culpability does not rise to that of the Respondents who defrauded them.

Id. at 46 (GLL App. 49), citation omitted.

Current Global Link Owners Attempt to End Split Routing Ownership and Efforts to Terminate Split Routing

105. In June of 2006, Global Link was acquired by its current owner, Golden Gate Logistics, LLC ("Golden Gate"). *See* August 1, 2011 Commission Order, Docket No. 09-01 (91), 33 n.4; *see also* Williford Declaration ¶ 2, February 21, 2013, attached as Exhibit I (GLL App. 165). After Golden Gate acquired the company, a former employee made a complaint alleging questionable routing practices. Williford Dec. ¶ 4, Exh. I (GLL App. 165).

106. As a result, Golden Gate asked Gary Meyer, the President of Global Link, and James Briles, Global Link's Vice President of Transportation, to investigate the issue. *Id.* at ¶ 5 (GLL App. 165).

107. Initially, the allegations of questionable routing practices were not viewed as significant. *Id.* at ¶ 5. Global Link was unable to quantify the extent of the split routing practice until early 2007. Arbitration Award at 15 (GLL App. 18). Over the course of time, however, Global Link learned of the seriousness of the split routing practices at issue and the fact that they constituted violations of Federal Maritime Commission regulations. Williford Declaration ¶ 6, Exh. I (GLL App. 165).

108. Most of the contracts being used belonged to the Hecny Group, a Hong Kong-based logistics company, and Global Link could not amend them. *Id.* at ¶ 7 (GLL App. 165). Further, service contracts between carriers and NVOCCs run from May 1st to April 30th and Gary Meyer and Jim Briles, who negotiated Global Link's contracts, stated it would be impossible to accomplish these significant amendments to the contracts in mid-term. *Id.* Ultimately, after consulting with its then legal counsel, it was determined that Global Link would negotiate new service contracts in the May, 2007 negotiating season, which would eliminate any incentive to engage in split routing in the future. *Id.*

109. MOL is one of the steamship lines with which Global Link had service contracts. *Id.* at ¶ 8 (GLL App. 166).

110. Christine Callahan was hired by Global Link and instructed to ensure that it complied with FMC regulations and to put an end to Global Link's split routing practices. *Id.* at ¶ 9 (GLL App. 166).

111. Global Link informed MOL that the split routing practices needed to be terminated. *Id.* at ¶ 10 (GLL App. 166).

112. Global Link's current owners, Golden Gate, took every reasonable step to terminate split routing with MOL in a timely fashion. *Id.* at ¶ 11 (GLL App. 166).

113. Golden Gate suffered significant losses as a result of the actions of the prior owners of Global Link and of MOL in encouraging and engaging in split routing. *Id.* at ¶ 12 (GLL App. 166).

114. Early in the year 2007, Christine Callahan was hired by Global Link as the new Chief Operations Officer and instructed to ensure that Global Link complied with FMC regulations and to put an end to Global Link's split routing practices. Callahan Dec. at ¶ 4, Exh. A (GLL App. 1).

115. Soon after her arrival at Global Link, Ms. Callahan entered into negotiations with steamship lines in regard to service contracts for the upcoming year (May 1st to April 30th). Christine Callahan Dec. at ¶ 5 (GLL App. 1). One of the steamship lines with which she negotiated was MOL. *Id.*

116. Ms. Callahan's primary contact at MOL for these negotiations was Paul McClintock. *Id.* at ¶ 6 (GLL App. 1).

117. Paul McClintock was the Vice President/General Manager of the Southeastern Region of the United States for MOL. He was Global Link's primary contact because of Global Link's location in that region. MOL handled a large number of shipments to the United States for Global Link. *Id.* at 7 (GLL App. 1).

118. Pursuant to instruction from Ms. Callahan, in March of 2007, Jim Briles of Global Link informed MOL that Global Link wanted to change its service contract from having only a limited number of door points to adding more door points and using container yard [CY] and port rates. *See* Jim Briles Dep. at 129:7-19, Exh. D (GLL App. 95).

119. Subsequently, Paul McClintock and Rebecca Yang of MOL came to Global Link's offices to discuss the new contract and Global Link's desire to get away from the split

routing practices, which involved only a handful of door points. *Id.* at 128:10-129:19 (GLL App. 95).

120. MOL told Global Link it would not cease split routing because it was too time-consuming to negotiate individual delivery points. *Id.* Jim Briles further testified that when he requested that a different door point be added to the MOL-Global Link service contract for a particular shipment, Rebecca Yang, through McClintock, requested that Global Link instead move the shipment as a split. *Id.* at 124:20-125:4 (GLL App. 94).

121. Hessel Verhage, the President of Global Link, and Christine Callahan had lunch with Paul McClintock and Rebecca Yang of MOL in which it was explained that Global Link could no longer engage in split routing with MOL. *See* Verhage Dec. at ¶ 4, January 24, 2013 attached as Exhibit J (GLL App. 167). At that lunch, Ms. Yang and Mr. McClintock expressed disappointment that Global Link was no longer willing to do split routing. *Id.*

122. In June of 2007, when MOL still had not provided the information for the new contract necessary to eliminate the split routings, Christine Callahan, wrote McClintock that Global Link could not continue to use the existing methodology in the contract and the parties needed to get the CY rates in place as quickly as possible. *See* June 05, 2007 email correspondence from Christine Callahan to Paul McClintock, attached as Exhibit K (GLL App. 168-169).

123. When almost three weeks later, MOL still had not responded, Ms. Callahan wrote again:

“Although you explained to us the challenges you have internally at MOL regarding the change in methodology to CY moves vs. *the split door service MOL has historically provided*, we haven’t been advised of any change.

We’ve waited as long as we possibly can. Therefore, I have advised both Jim and Molly that *we must discontinue supporting MOL on the split moves* as we do not have

MOL CY rates in place that will allow us to arrange our own trucking. This instruction has been given with immediate effect.”

See June 20, 2007 email from Christine Callahan to Paul McClintock, Exh. K (GLL App. 168) (emphasis supplied).

124. Although Paul McClintock suggested in his deposition testimony that he did not know what was meant by the term “split door service,” at no point did he ever ask Ms. Callahan what was meant by the term or indicate any uncertainty as to its meaning. *See* Christine Callahan Dec. at ¶ 13, Exh. A (GLL App. 2).

125. On July 17 and 18, 2007, Rebecca Yang of MOL and Jim Briles of Global Link corresponded in regard to the shipment of cargo to Bentonville, Arkansas. *See* email attached as Exhibit L (GLL App. 170-1). In the correspondence, despite having been told on numerous occasions that Global Link was no longer willing to engage in split routing, and knowing that Global Link’s customer was bringing its containers into Bentonville, Arkansas, Rebecca Yang suggested a split routing whereby Global Link would use the Fort Smith, Arkansas rate rather than the Bentonville, Arkansas rate because Bentonville rates were higher. *Id.*

126. Jim Briles responded that Global Link could no longer engage in split routing, *i.e.*, “cannot use alternative doors.” *Id.* Rebecca Yang’s response of “SIGH” reflected MOL’s disappointment that Global Link was no longer willing to engage in split routing. *Id.*

127. On July 26, 2007, less than ten days later, MOL again corresponded with Global Link in regard to a split routing proposal in which goods would move under a Monroe, Louisiana door rate but actually go to Winnsboro, Louisiana with MOL contributing to the extra trucking costs from the service contract point to the actual destination. In response, a clearly exasperated Global Link states “Why is MOL accepting these if not in the contract????” *See* July 26, 2007 correspondence attached as Exhibit M (GLL App. 172). In this instance, Paul McClintock had

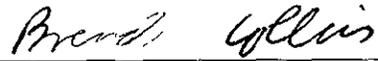
increased the fuel allowance for truckers so as to make the split routing more enticing. “So now Paul increased the fuel allowance for Monroe to \$200 from \$125.” Once again, however, Jim Briles informed Rebecca Yang and Lauren Estrada of MOL that “for vineyard to Winnsboro, la – I cannot book there anymore since we have Monroe LA door and you know the whole situation.” *Id.*

128. Despite Global Link’s continued insistence that it would not engage in split routing, MOL’s resistance to moving away from split routing was so entrenched that months after Global Link had told MOL that it refused to engage in split routing, on August 6, 2007, Jim Briles wrote to Rebecca Yang and Paul McClintock requesting a meeting about getting Global Link’s rates changed to CY rates because “we have not had any movement on this as of yet.” *See* August 6, 2007 email attached as Exhibit N (GLL App. 173).

129. Ultimately, MOL did provide Global Link with CY rates but Global Link’s business with MOL was reduced as compared to the volume of business it did with them when the parties were engaging in split routing. *See* Christine Callahan Dec, at ¶¶ 12, Exh. A (GLL App. 2).

130. Global Link incorporates by reference MOL’s Proposed Findings of Fact at ¶¶s 115-163.

Respectfully Submitted,



David P. Street
Brendan Collins
GKG LAW, PC
1054 Thirty-First Street, NW
Washington, DC 20007
Telephone: 202/342-5200
Facsimile: 202/342-5219
Email: dstreet@gkglaw.com
bcollins@gkglaw.com

Attorneys for Respondent
GLOBAL LINK LOGISTICS, INC.

DATE: March 1, 2013

CERTIFICATE OF SERVICE

I do hereby certify that I have delivered a true and correct copy of the foregoing document to the following addressees at the addresses stated by depositing same in the United States mail, first class postage prepaid, and/or via email transmission, this 1st day of March, 2013:

Marc J. Fink
David Y. Loh
COZEN O'CONNOR
1627 I Street, NW – Suite 1100
Washington, DC 20006
Email: mfink@cozen.com
dloh@cozen.com

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

Ronald N. Cobert
Andrew M. Danas
GROVE, JASKIEWICZ AND COBERT, LLP
1101 17th Street, N.W., Suite 609
Washington, DC 20036
Email: rcobert@gjcobert.com
adanas@gjcobert.com

Benjamin I. Fink
Neal F. Weinrich
BERMAN FINK VAN HORN, PC
3423 Piedmont Road, NE – Suite 200
Atlanta, GA 30305
Email: bfink@bfvlaw.com
nweinrich@bfvlaw.com

Attorneys for CJR World Enterprises, Inc. and Chad Rosenberg

Warren L. Dean
C. Jonathan Benner
Harvey Levin
Kathleen E. Kraft
THOMPSON COBURN, LLP
1909 K Street, NW – Suite 600
Washington, DC 20006
Email: wdean@thompsoncoburn.com
jbenner@thompsoncoburn.com
hlevin@thompsoncoburn.com
kkraft@thompsoncoburn.com

Andrew G. Gordon
PAUL WEISS RIFKIND WHARTON & GARFISON LLP
1285 Avenue of the Americas
New York, NY 10019
Email: agordon@paulweiss.com

*Attorneys for Olympus Growth Fund III, LP; Olympus Executive Fund, LP;
Louis J. Mischianti; David Cardenas; and Keith Heffernan*

