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FEDERAL MARITIME COMM

BEFORE THE  
FEDERAL MARITIME COMMISSION

Docket No. 09-01

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.

**COMPLAINANT MITSUI O.S.K. LINES, LTD.'S RESPONSE TO  
CJR RESPONDENTS' PROPOSED FINDINGS OF FACT  
IN FURTHER SUPPORT OF MOL'S CLAIMS AGAINST RESPONDENTS**

Pursuant to the October 16, 2012 Order and Rule 221 of the Commission's Rules of Practice and Procedure, Complainant Mitsui O.S.K. Lines, Ltd. ("MOL") hereby responds to Respondents CJR WORLD ENTERPRISES, INC.; and CHAD J. ROSENBERG ("CJR Respondents") Proposed Findings of Fact ("PFF") as follows:

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).

**RESPONSE: Unable to admit or deny.**

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).

**RESPONSE: Unable to admit or deny.**

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).

**RESPONSE: Unable to admit or deny. However, “split routing” as demonstrated in Global Link’s Voluntary Disclosure (MOL Exh. C) and Complainant’s opening and reply brief is unlawful. The fact that other NVOCCs were allegedly violating the Shipping Act with any regularity is irrelevant to the Presiding Officer’s analysis and certainly no justification for engaging in a split routing scheme to the detriment of MOL.**

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).

**RESPONSE: Unable to admit or deny what Mr. Rosenberg believed. *See also* response to PFF 3.**

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).

**RESPONSE:** Unable to admit or deny what Mr. Rosenberg believed while at Scanwell and Worldwide. *See* response to PFF 3. By GLL's own admission, the practice, which involves fictitious documents, is illegal and violates the Shipping Act. *See* Global Link's Voluntary Disclosure (MOL Exh. C, MOL App. 108-984); *see also* Reply to PFF 23.

The conduct of Rosenberg himself generally suggests that he knew the practice was improper. In the Arbitration Partial Final Award (MOL Exh. A), the panel wrote as follows:

Rosenberg may or may not have been responsible for, but he was certainly key to, the veil of secrecy surrounding the split-routing practice at Global Link. He agreed with Gary Meyer that split-routing should not be discussed with certain ocean carrier representatives and truckers. . . . Yet even though he was no longer frequently in the office, Rosenberg continued to be consulted regularly by Gary Meyer and Jim Briles on such subjects as disclosing information on split-routing to ocean carriers and truckers. Though he had little contact with GTCR (or, so far as the record shows, with other potential bidders), Rosenberg did attend the March 22 management presentation, the agenda for which contained several topics to which split-routing was highly relevant, and he must have known that a discussion of those topics would be incomplete and misleading without an exposition of the split-routing practice, its uses, variations and economic significance.

MOL Exh. A at 33-34 (MOL App. 33-34).

Rosenberg sought to hide the split routing practice through a "veil of secrecy" because he knew it was unlawful.

6. Mr. Rosenberg founded GLL in 1997. (Rosenberg Dec., at ¶ 7) (CJR Exh. A) (CJR App., at p. 2).

**RESPONSE:** Admitted.

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).

**RESPONSE: Admitted.**

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).

**RESPONSE: Admitted.**

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).

**RESPONSE: Admitted.**

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).

**RESPONSE: Denied. CJR Respondents have mischaracterized the legal advice provided. When maritime counsel stated that "I understand that the practice is common . . .," he was clearly referring to an email sent to him the previous day by Mr. Rosenberg, wherein Mr. Rosenberg said "all or most of Hecny's agents book to the closest point and all the companies I've ever worked for did the same practice." MOL App. 1662. Counsel was clearly not opining on this being a common and accepted practice in the industry or at the Commission. Indeed, counsel unambiguously advised GLL that "a practice of changing destinations without notice to the ocean carrier exposes Global Link to possible Shipping Act violations . . .". See MOL App. 1663; see also, MOL App. 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).

**RESPONSE: Denied. See reply to PFF 10. The opinion of maritime counsel was clear that split routing was contrary to the Shipping Act and that penalties had been imposed for such conduct. MOL App. 1661-1662.**

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. BL (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.")<sup>1</sup>

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<sup>1</sup> 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 trucker 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 "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.").

**RESPONSE: It does not appear that this footnote is a proposed finding of fact requiring a reply. It should be noted, however, that CJR Respondents cite to the arbitration award when they perceive some advantage.**

**RESPONSE:** Deny that GLL and Rosenberg understood the practice of split routing was legal. The legal opinions are clear and speak for themselves. *See* reply to PFF 10 and 11. If GLL and Rosenberg chose to focus exclusively on the issue of shortstopping and elected not to address the subject of split routing they were deliberately ignoring counsel's clear legal advice that "a practice of changing destinations without notice to the ocean carrier exposes Global Link to possible Shipping Act violations . . . .". *See* MOL App. at 1663.

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).

**RESPONSE:** Admitted.

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).

**RESPONSE:** Admit that CJRWE was a shareholder of GLL at all relevant times, and deny the remaining allegations. It appears CJRWE is a company formed to hold the shares that previously were owned by Rosenberg and that it had no other business activities. Rosenberg Dec. at ¶ 33 (CJR Exh. A) (CJR App. 5).

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).

**RESPONSE:** Admit. That is not, however, a basis for not holding CJRWE liable for the actions of GLL, who did enter into service contracts with MOL, where CJRWE and

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*See* MOL Exh. A, MOL App. 1-63. In any event, as shown in Complainant's Reply Brief, statements by the panel with regard to the parties to the arbitration are evidence that may be considered by the ALJ. *See* Reply Brief at Section II.B.2.c.

**Rosenberg approved of, sanctioned, and benefitted from GLL's illegal conduct. See MOL Reply Brief at Section III.C.1.**

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).

**RESPONSE: Admit that Rosenberg is the President of CJRWE and that he had no contact with MOL, other than communications with Paul McClintock and Rebecca Yang (see Rosenberg Dec. at ¶¶ 36-43, 50-51, 53-55 (CJR Exh. A) (CJR App. 6-9); and James Briles Dec. at ¶¶ 8-10, 12-17, 21, 24-25, 27-32, 36-39 (CJR Exh. B) (CJR App. 14-19)). The evidence shows that Rosenberg's dealings with McClintock and Yang were wholly contrary to the interests of MOL and to the benefit of Rosenberg, CJRWE and other Respondents. See MOL reply to GLL PFF 10-16, 122, 126 and 131.**

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).

**RESPONSE: Denied. See response to PFF 15 and 16.**

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).

**RESPONSE: Denied. See response to PFF 15 and 16.**

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).

**RESPONSE: Denied.** *See* reply to PFF 15 and 16. *See also*, Global Link's Voluntary Disclosure (MOL Exh. C) and Complainant's opening and reply briefs which confirm "split routing", i.e., the issuance of transportation documentation to false or fake final destinations, is unlawful pursuant to the Shipping Act.

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).

**RESPONSE: Denied.** *See* reply to PFF 15 and 16.

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).

**RESPONSE: Denied.** *See* reply to PFF 15 and 16.

22. Mr. Rosenberg became a director of GLL after the 2003 sale. (Rosenberg Dec., at ¶ 21) (CJR Exh. A) (CJR App., at p. 4).

**RESPONSE: Admitted.**

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).

**RESPONSE: Admit Rosenberg was an officer and director of GLL and deny the remaining allegations.** *See* reply to PFF 16. Rosenberg was the Qualifying Individual ("QI") for GLL from April 2003 through March 2007. Pursuant to 46 C.F.R. § 515.11(b)(3), a QI must be an active corporate officer of an NVOCC registered with the FMC. As the QI Rosenberg was responsible for insuring that GLL adhered to the requirements of the Shipping Act. *See* 46 C.F.R. § 515.11(b)(3). Rosenberg also was a

signatory to GLL's service contracts with MOL (*see* MOL Exhs. "BV", "BW" and "BX") until Christine Callahan was hired in 2007 (*see* MOL Exhs. "BY" and "BZ").

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).<sup>2</sup>

**RESPONSE: Denied. See replies to PFFs 16 and 23.**

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).

**RESPONSE: Denied. See replies to PFFs 16 and 23.**

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).

**RESPONSE: Denied. See reply to PFFs 16 and 23.**

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).

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<sup>2</sup> 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).

**RESPONSE: See footnote 1.**

**RESPONSE: Denied. See reply to PFFs 16 and 23.**

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).

**RESPONSE: Denied. See reply to PFFs 16 and 23. By his own admission, Rosenberg introduced “split routing” to GLL. See CJR PFF 7 and MOL reply to PFF 16. Indeed, Rosenberg, a qualifying individual, was the trainer-in-chief, creator and architect of the fraudulent scheme known as “split routing.” (Joiner Dep. (Exh. BA) at page 197, lines 2-9 (App. 1543); Briles Dep. (Exh. T) at page 52, line 5—page 53, line 11 (App. 1217-18) and Global Link Voluntary Disclosure (Exh. C) at ¶ 14 (“The false routing scheme was used by Global Link from its beginning in 199[7].”) (App. 116)).**

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).

**RESPONSE: Denied. See reply to PFF 28.**

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).

**RESPONSE: Denied. See reply to PFF 28.**

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

**RESPONSE: Admit.**

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

**RESPONSE: Admit.**

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).

**RESPONSE: Denied. See reply to PFFs 16 and 23.**

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).

**RESPONSE: Admit.**

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).

**RESPONSE: Denied. See reply to PFFs 16 and 23.**

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).

**RESPONSE: Denied. See replies to PFFs 16 and 23.**

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).

**RESPONSE: Admit.**

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).

**RESPONSE: Admit. Answering further, Paul McClintock and Rebecca Yang colluded with Rosenberg, GLL and others with regard to the split routing scheme (Briles**

Dep. at 125:20 and 134:3-17; MOL Exh. “U” (MOL App. at 1225-6); Rosenberg Declaration at ¶¶ 52-55 (CJR Exh. A) (CJR App. at 9); Briles Declaration at ¶¶ 27-28, 38-39, 44 (CJR Exh. B) (CJR App. at 16, 18-19, 20); and Latham Declaration at ¶ 5 (CJR Exh. C) (CJR App. at 29)) and they went to great lengths to hide that scheme from everyone else in MOL, particularly MOL management before and after the scheme ended. McClintock and Yang have continued to this day to deny their involvement with GLL’s “split routing” scheme and expressly denied any knowledge of split routing in their respective depositions on September 21, 2011 and October 4, 2011. (Yang Dep. at 84:2-21 and 84:22-85:21 (MOL Exh. CJ; MOL App. 2026) and McClintock Dep. at 104:22-105:2; 234:3-11; 305:19-306:6 and 235:9-237:19 (MOL Exh. CI) (MOL App. 2008, 2009, 2014-15 and 2009). By their own admission, Rosenberg and Briles conspired with McClintock and Yang to keep “split routing” a secret from the rest of MOL. Rosenberg Dec. at ¶¶ 52-54 (CJR Exh. A) (CJR App. 9); Briles Dec. at ¶¶ 26-28 (CJR Exh. B) (CJR App. 16-17). *See also* Feitzinger Dep. at 210:6-211:5 (McClintock “colluded” with Briles to hide “split routing” from MOL) (MOL Exh. CH; MOL App. 1997-98) and MOL reply to GLL PFFs 10-16, 122, 126, 132.

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).

**RESPONSE: Admit.**

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).

**RESPONSE: Admit. See reply to PFF 38.**

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).

**RESPONSE: Admit. See reply to PFF 38.**

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).

**RESPONSE: Admit. See reply to PFF 38.**

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).

**RESPONSE: No basis to admit or deny how often Briles (or Rosenberg) spoke to one or both of them. See reply to PFF 38.**

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).

**RESPONSE: Admit. See reply to PFF 38.**

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).

**RESPONSE: Admit. See reply to PFF 38.**

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).

**RESPONSE: Admit. See reply to PFF 38.**

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).

**RESPONSE: Deny that they encouraged the practice, but see reply to PFF 38.**

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.

**RESPONSE: Admit that Yang and McClintock's testimony regarding lack of knowledge of the practice is not credible. See reply to PFF 38. While McClintock and Yang had knowledge of split routing, they, together with Rosenberg, Briles and others went to great lengths to hide the existence of the practice from MOL. No one else within MOL management had any knowledge of split routing. See Hartmann Dec. (MOL Exh. BM) (MOL App. 1628-34) and Kelly Dec. (MOL Exh. CB) (MOL App. at 1937-44). McClintock advised Briles of GLL to not tell anyone at MOL about "split routing", i.e., "Keep it between us," (Briles Dep. at 134:3-17; MOL Exh. U; MOL App. at 1225). GLL knew McClintock and Yang lacked any authority to sanction the practice. See MOL reply to GLL PFF 10-16, 122, 126, 132.**

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).

**RESPONSE: Deny the structure of GLL's service contract with MOL contributed to the split routing. GLL's service contracts with MOL contained a number of door points. See MOL Exhs. "BV" through "BZ" (MOL App. 1694-1900). See also reply to PFF 38 and 48.**

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).

**RESPONSE: Denied.**

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).

**RESPONSE: Denied. Neither Briles nor Rosenberg was seeking to add new points. Instead, they wanted freedom to direct shipments to whatever locations they desired, while booking cargo to fictitious points and benefitting from the lower rates they secured in the contracts for transportation to those fictitious points. See MOL Reply Brief at Section III.E.**

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).

**RESPONSE: Denied. See reply to PFF 51.**

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).

**RESPONSE: Denied. See reply to PFF 51.**

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).

**RESPONSE: Admit that new points had to be approved by MOL trade management. Deny that it was time consuming, administratively burdensome or inconvenient to add new points. (See *infra*, reply to PFF 55). Deny the remaining allegations.**

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).

**RESPONSE: Cannot admit or deny what McClintock said to Briles. See replies to PFFs 51 and 54. Deny that MOL would refuse or not be interested in adding new door points. MOL typically negotiates and adds points to contracts on a regular basis. Adding additional door points within a service contract, i.e., the expansion of its services, is a core business and sales practice provided by MOL. See Declaration of Warren Minck dated May 1, 2013 (MOL Exh. CS; MOL App. 2077). It is also noteworthy that GLL had more door points in its contracts with MOL than it actually utilized and split routed to points that had contract rates. For example, GLL booked shipments to Martinsville, VA, a contract point, but had the trucker deliver the cargo to Bassett, VA, another contract point. GLL paid the rate to Martinsville, VA. See MOL reply to GLL PFFs 73 and 74. Such conduct demonstrates that regardless of whether a point was or was not in the service contract, GLL employed a scheme to secure rates for which it was not legally entitled. The argument that MOL used split routing because the practice enabled MOL to avoid burden**

**and expense has no merit. The true purpose of “split routing” was to unlawfully receive transportation for less than the lawful rates so that GLL’s profits would be maximized.**

**See Global Link Voluntary Disclosure (MOL Exh. C).**

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).

**RESPONSE: Unable to admit or deny what Yang advised. See reply to PFFs 16, 38, 51 and 55.**

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).

**RESPONSE: Unable to admit or deny what McClintock and Yang told Rosenberg and deny the remaining allegations. See reply to PFFs 16, 38, 51 and 55.**

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).

**RESPONSE: Unable to admit or deny what Yang told Rosenberg and deny the remaining allegations. See reply to PFFs 16, 38, 51 and 55.**

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).

**RESPONSE: Admit that it appears that McClintock and Yang knew of and blessed GLL's practice of split routing , but kept the practice a secret from the rest of MOL. See replies to PFFs 16, 38, 51 and 55.**

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).

**RESPONSE: Denied. The evidence shows that the scheme was to be kept a secret from everyone else at MOL, including MOL management. Rosenberg—and the rest of GLL—colluded with McClintock and Yang to keep the practice hidden from MOL. For example, Jim Briles testified as follows:**

**Q. Do you that [split routing] is just something that Paul McClintock and – who was the other person?**

**A. Rebecca Yang.**

**Q. Is that just the way they do business?**

**A. I don't know. I mean, it was a common practice between us and them.**

**Q. It was a common practice between Global Link and those two individuals?**

**A. Who represented MOL, yes?**

**Q. Do you deal with other people at MOL that recommended that you conduct split moves?**

- A. They were our contacts at the company.
- Q. Did you ever hear of or have contact with anyone at MOL who refused to do a split move?
- A. At that level, no.
- Q. At a different level?
- A. I know situations came up with operations, which was below it. But at that level, those were our key contacts, and they were in charge of sales and operations, no, there was no issue. They actually encouraged it.
- Q. Who encouraged it?
- A. Paul and Rebecca.

Briles Dep. 125:10-126:19 (GLL App. 53-54).

Jim Briles further confirmed that “split routing” was to be discussed only with McClintock:

- Q. Did Mr. McClintock ever tell you who you should or should not talk to about split moves?
- A. The only conversations we ever had were to keep it between us.
- Q. Keep it between whom?
- A. At the high-level management of Global Link and MOL. And we didn't – our operations group didn't talk about it.
- Q. What did you understand Mr. McClintock to mean specifically by “Keep it between us?” Who were the high-level people at Global Link and the high-level people at MOL who were permitted to speak about split moves?
- A. I guess I would back away from the word “permitted.” It was never, this is in this box. Keep it.

It was kind of Paul McClintock, who was in charge of MOL sales and operations, and then, of course, Chad knew about it. I knew about it. Gary – actually, our whole organization knew about it.

Briles Dep. at 133:19-134:17 (GLL App. 55-56).

Edward Feitzinger, Senior Vice President of Golden Gate Logistics, testified that GLL knew that McClintock was colluding with them to cheat MOL and that this had to be kept a secret from everyone else at MOL. In particular, Mr. Feitzinger testified as follows:

Q. Did you ever ask anyone why Mitsui was willing to engage in split shipments if split shipments were not proper?

A. Yes.

Q. Who did you ask?

A. I – somebody on the Global Link management team.

....

A. And so we had dialogues with the team, saying, you know, what is MOL's -- does MOL, you know, know ["split routing"] is going on and -- you know, and the answer that was given, I couldn't tell you whether it was Jim [Briles] or Gary [Meyer], again, that was two of the likely suspects, was that we had helped make Paul [McClintock] a success in MOL and that because Paul had been successful and, you know, it was -- this was something that was sort of kept on the quiet and that Paul [McClintock] -- that the people [at MOL] in Oakland who were[with] MOL Americas didn't know about ["split routing"] and that we at Golden Gate shouldn't talk to MOL.

It was a big discourse, because we were right next to MOL here, and we thought it would be good to develop a relationship with them since we're 15 minutes away. And Jim [Briles] was just adamant that we not develop a relationship with [MOL in] Oakland.

Feitzinger Dep. at 205:10-206:23. (MOL Exh. CH) (MOL App. 1995-96)

Mr. Feitzinger further described the relationship between McClintock and GLL as follows:

Q. Are split shipments, in your view – as a business person engaged in the logistics business – or at least had been engaged in the logistics business, is it a fraud on ocean carriers?

A. So I would say – I would not use that word.

**Q. Okay.**

**A. . . . Again, I'm shying away from the word "fraud" because I'm not comfortable with this bigger meaning, and I don't mean to be evasive. I'm just saying I don't -- that we were cheating -- we were cheating Maersk, I would use the word "cheating," because I'm more comfortable with that, and we were certainly doing things that I don't think the Oakland office or the Singapore office of MOL would think would be appropriate in a sense, and that if they were to know about ["split routing"] at that point, I think that they would have not looked kindly on [Paul McClintock] who was in the -- you know, in my opinion, in collusion with Jim [Briles] on [hiding "split routing" from MOL].**

**Feitzinger Dep. at 210:6-211:5. (MOL Exh. CH) (MOL App. 1997-98)**

**Finally, If there were no problems with or objections to split routing from MOL management, McClintock and Yang would have had no reason to keep MOL operations personnel or any other MOL personnel from having full information about the practice. Operations staff could have been instructed by MOL management to work with split routing.**

***See also* reply to PFF 10 and 38, as well as MOL reply to GLL PFF 10-16, 122, 126 and 132.**

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).

**RESPONSE: Admit. *See also* replies to PFFs 5, 10, 38 and 60. The proposed finding also underscores McClintock's and Yang's lack of authority to approve "split routing."**

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).

**RESPONSE: Denied. See reply to PFFs 60 and 61. The additional paperwork existed because of split routing, an unlawful scheme designed to obtain rates to which GLL was not entitled to. If this scheme was not employed there would have been no need for the creation and dissemination of multiple and fictitious transportation documents.**

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.

**RESPONSE: Admit the first two sentences, but deny the remaining allegations. The evidence shows that GLL colluded with McClintock and Yang to keep "split routing" a secret from the rest of MOL. See reply to PFFs 5, 10, 38, 60-62, as well as MOL Reply to GLL PFF's 10-16, 122, 126 and 132.**

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).

**RESPONSE: Admit that GLL did not attempt to conceal split routing from McClintock and Yang, deny that GLL, McClintock and Yang revealed the practice of split routing to other MOL management and sales representatives, and admit that GLL, McClintock and Yang concealed the split routing practice from MOL operations. See reply to PFFs 10, 38, 60-63, as well as MOL Reply to GLL PFF's 10-16, 122, 126 and 132.**

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).

**RESPONSE: Admit.**

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).

**RESPONSE: Denied. If Mr. Briles believed "split routing" was proper or legal, there is no logical or credible reason for GLL to expend significant manpower to prepare and submit two sets of transportation documents with different final destination information, and to continue to maintain the false façade to MOL that GLL was arranging for the delivery to the final destination as originally booked. See also, reply to PFF 10, 38, 60-65.**

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).

**RESPONSE: Denied. If Mr. Briles believed MOL approved “split routing,” there is no logical or credible reason for GLL to continue to keep “split routing” a secret from everyone at MOL but McClintock and Yang. See also reply to PFF 66.**

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).

**RESPONSE: Admit evidence supports McClintock’s and Yang’s knowledge of the practice and deny the remaining allegations. See replies to PFFs 38, 48, 51, 60 and 61.**

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).

**RESPONSE: Admit evidence supports Yang’s knowledge of the practice. See also, replies to PFFs 38, 48, 51, 60 and 61.**

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).

**RESPONSE: Admit. This proposed finding clearly shows that GLL sought to hide the practice from MOL because it would have interfered with it being able to continue split routing. It is a flat admission of Briles' recognition that its split routing scheme was not consented to by MOL, had to be kept a secret from everyone other than McClintock and Yang, and that McClintock and Yang had no authority to allow it. See reply to PFF 61.**

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).

**RESPONSE: Admit. See reply to PFF 60, 61 and 70. This is another admission by the CJR Respondents of the need to hide the practice from MOL.**

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).

**RESPONSE: Admit. See replies to PFFs 61, 70 and 71.**

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...”).

**RESPONSE: Admit that Briles and others at GLL sought to hide split routing from MOL operations staff. Admit that despite the Respondents’ efforts at secrecy, there were isolated instances where MOL personnel inadvertently learned of cargo being diverted. In those instances, there was appropriate follow-up. MOL PFF 98-100, 101-03, 104-09. Deny that MOL personnel, other than McClintock and Yang, had knowledge of GLL’s split routing scheme. Deny the remaining allegations of this proposed finding.**

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

**RESPONSE: Admit that some of the isolated instances where MOL personnel inadvertently learned of cargo being diverted appear to be reflected in emails that MOL attached to its Proposed Findings of Fact. See reply to PFF 73.**

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).

**RESPONSE: Admit. See reply to PFF 73.**

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).

**RESPONSE: Admit. See reply to PFF 73.**

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).

**RESPONSE: Admit. This proposed finding is a further admission by CJR Respondents that Briles and others at GLL colluded with McClintock to keep "split routing" a secret from the rest of MOL and GLL and the other Respondents knew that McClintock and Yang had no authority to approve "split routing."**

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).

**RESPONSE: Admit. See reply to PFF 73 and 77.**

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).

**RESPONSE: Denied. Knowledge of an isolated instance or instances is not knowledge of a widespread scheme involving thousands of shipments which were booked**

with MOL, and then delivered, at GLL's direction, to unauthorized destinations. It is expected that in a business as complex as international transportation, involving hundreds of thousands of movements, that there may be a limited number occasions when cargo is not delivered to the bill of lading destination. That is a far cry from an intentional scheme by a shipper, with prior knowledge and intent, to book cargo to points which it knows will not be used and direct "preferred" truckers to deliver the cargo to other destinations. MOL personnel (aside from McClintock and Yang) had no knowledge of the scheme. Hartmann Dec. (MOL Exh. BM); Kelly Dec. (MOL Exh. CB). See reply to PFF 5, 10, 38, 48, 60-64, 70, 71, 73, 77 and 101-03.

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).

**RESPONSE: Denied.** See reply to PFFs 5, 38, 48, 61, 70, 71, 73, 77, 79 and 101-03.

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

**RESPONSE: Admit.**

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).

**RESPONSE: Denied.** After the sale, the new owners of GLL continued its "split routing" scheme. See GLL Voluntary Disclosure (MOL Exh. C) (MOL App. 108-984).

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).

**RESPONSE: Unable to admit or deny what Ms. Callahan asked Mr. Briles to do. In 2007, Christine Callahan was the signatory to GLL's service contract with MOL which contained a smaller number of door points than the previous contract. See GLL Service Contracts (MOL Exhs. BY and BZ) (MOL App. 1694-1900).**

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

**RESPONSE: Unable to admit or deny as both McClintock and Yang were never forthcoming about their involvement with GLL's "split routing" scheme. See reply to PFFs 38, 48, 61, 77, 101-03.**

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).

**RESPONSE: Unable to admit or deny if this meeting took place or what was discussed. See reply to PFF 84.**

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).

**RESPONSE: Unable to admit or deny if this meeting took place or what was discussed.**

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).

**RESPONSE: Denied. McClintock and Yang did not have the authority to agree to approve individual door points without the approval of MOL trade management, and deny that adding additional door points would create extra work for MOL. See reply to PFF 55.**

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).

**RESPONSE: Admit McClintock delayed in notifying MOL trade management about changing GLL’s service contract to CY points because he did not want to tip off MOL about his involvement with GLL’s “split routing” scheme. McClintock’s inaction is consistent with his continued denial of any familiarity with “split routing” during his deposition on September 21, 2011. See reply to PFF 38. (**

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).

**RESPONSE: Admit this email appears to refer to GLL’s practice of split routing. McClintock participated in GLL’s “split routing” scheme and never advised MOL about**

**GLL's "split routing" scheme. He continued to deny familiarity with "split routing" during his deposition. See reply to PFF 38.**

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).

**RESPONSE: Admit McClintock likely knew what Ms. Callahan was referring to when she used these terms, as he participated in GLL's "split routing" scheme. See reply to PFFs 5, 10, 38, 48, 60-64.**

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).

**RESPONSE: Admit the email appears to have been forwarded to Yang and that both McClintock and Yang participated in GLL's "split routing" scheme. McClintock and Yang never advised MOL about GLL's "split routing" scheme and continued to deny familiarity with "split routing" during their respective depositions.**

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).

**RESPONSE: Admit it is likely Yang know what Ms. Callahan was referring to when she used these terms, as Yang participated in GLL's "split routing" scheme. Yang never advised MOL about the scheme and continued to maintain her denial of any familiarity with "split routing" during her deposition on October 4, 2011. See reply to PFF 38.**

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).

**RESPONSE: The email speaks for itself. Admit Yang appears to be proposing that GLL do a split move for a delivery to Bentonville, Arkansas.**

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).

**RESPONSE: The email speaks for itself. This email is a further admission that Rebecca Yang deliberately kept her involvement with "split routing" hidden and colluded with Briles and others at GLL in keeping it hidden even when it was decided to stop split routing. Yang continues to deny any familiarity with "split routing" even today, despite evidence to the contrary.**

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).

**RESPONSE: The email speaks for itself. Admit that it appears that by this date GLL was no longer engaging in split routing. See reply to PFF 94.**

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.

**RESPONSE: Admit that McClintock and Yang had knowledge of GLL's "split routing" scheme, but deny knowledge or participation on the part of anyone else at MOL. See reply to PFF 79.**

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

**RESPONSE: Denied. See reply to PFFs 5, 38, 48, 61, 70, 71, 73, 77, 79 and 101-03. This PFF is also inconsistent with the earlier proposed findings of the CJR Respondents that split routing had to be hidden from MOL's operations staff. See PFFs 60, 61 and 64, supra.**

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).

**RESPONSE:** The AAA Partial Arbitration Award speaks for itself and admit that it appears the phrase “senior sale representative at Mitsui” refers to Paul McClintock. Admit that McClintock was part of GLL’s “split routing” scheme, but deny that MOL knew of or encouraged the practice or saved time and trouble by not negotiating additional door points. *See* reply to PFF 38, 48, 61, 77, 101-03. *See* reply to footnote 1.

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

**RESPONSE:** Denied. MOL had no knowledge of split routing until Paul McClintock was served with a subpoena in July 2008 to testify in the arbitration proceeding between the former and current owners of GLL. When the subpoena was brought to the attention of Mr. Hartmann, he conducted a thorough investigation with regard to MOL’s knowledge of split routing. This included speaking with McClintock and Yang and confronting them with allegations regarding their knowledge of the practice.

More specifically, on August 1, 2008, in a telephone discussion with Mr. Hartmann, just after he was subpoenaed to testify in the arbitration, McClintock advised that the testimony of Jim Briles, asserting McClintock and Yang had encouraged “split routing” by GLL, was ridiculous. On September 16, 2008, in Atlanta, Paul McClintock was interviewed by Mr. Hartmann and during this interview he was shown Global Link’s arbitration documents and the deposition testimony of Jim Briles. McClintock said he did not know anything about GLL’s “split-routing” practices. During this interview McClintock advised that there were a handful of instances where it was discovered Global Link cargo was taken to places other than the bill of lading delivery point. In each instance, McClintock said Global Link was advised that that practice was not allowed. In a

subsequent telephone conversation with Mr. Hartmann on January 19, 2009, Mr. McClintock was advised MOL was going to sue GLL for monies stolen through “split routing” and, to do so, MOL would submit a statement it did not know of or allow “split routing.” McClintock responded by saying he was 100% certain MOL did not allow the practice. *See* Declaration of Thomas W. Kelly dated January 18, 2013 (MOL Exh. “CB”) and Declaration of Kevin J. Hartmann dated February 17, 2012 (MOL Exh. BM) (MOL App. 1937-44 and 1628-39).

Throughout his deposition on September 11, 2011, McClintock: (a) denied knowledge of the term “split routing” (McClintock Dep. at 234:3-16); (b) denied prior knowledge of the practice (McClintock Dep. at 253:10-14); (c) advised he did not have the authority to deviate from the terms of the service contract or tariff (McClintock Dep. at 255:10-23); and (d) acknowledged that any knowledge as to “split routing” had to be reported to MOL Trade and Management (McClintock Dep. at 257:19-259:8) (MOL Exh. CI) (MOL App. 2009, 2010 and 2011-12).

Yang also denied any prior knowledge of “split routing.” At her deposition, she claimed to have never heard of “split routing” until the Hartmann investigation in 2008. Yang Dep. at 29:25-30:9. She further testified that she never once used the term “split routing.” *Id.* at 14:3-11. With respect to the routing of shipments to a different destination, she testified that she would ignore emails with the heading of “truck” or “delivery order” because those matters were not part of her job. *Id.* at 49:8-20; 84:2-21 and 84:22-85:21 (MOL Exh. CJ) (MOL App. 2020-21, 2019, 2023 and 2026)

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.

**RESPONSE: Admitted. See reply to PFF 99.**

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.

**RESPONSE: Admit both McClintock and Yang knew about "split routing" and that they promoted their own personal interests, or the interests of GLL, to the detriment of MOL. Further admit both McClintock and Yang are not being truthful about their involvement with GLL's "split routing" scheme.**

**Both McClintock and Yang have no motivation to deny MOL's encouragement or involvement with GLL's "split routing" scheme unless they both knew their conduct was improper. Yang testified she was wrongly fired and made to be a scapegoat by MOL, so she had every reason to expose wrongdoing on the part of MOL (Yang Dep. at 5:1-6:23). Instead she testified on October 4, 2011 she had no knowledge of "split routing" (Yang Dep. at 29:25-30:9) (MOL Exh. CJ) (MOL App. 2017 and 2020). McClintock is a former Vice President of MOL, no longer affiliated with MOL, and without any reason to continue to deny the existence of "split routing" if it was sanctioned by management. (McClintock**

**Dep. at 234:3-11) (MOL Exh. CI) (MOL App. 2009). Both McClintock and Yang testified in this matter to conceal their personal benefit or gain, to the detriment of their employer MOL.**

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.

**RESPONSE: PFF 102 is speculative, argumentative and unsupported by the record. However, MOL admits that McClintock and Yang were aware of GLL's "split routing" practice. See reply to PFF 38 and 48. MOL denies others at MOL had knowledge of GLL's "split routing" practice. Except as specifically admitted, denies each and every remaining allegation contained in PFF 102.**

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.

**RESPONSE: Admit. The CJR Respondents' conclusion that "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" is further evidence that MOL management was unaware of the practice of "split routing".**

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.

**RESPONSE: Denied. PFF 104 is unsupported by the record. By CJR**

**Respondents' own admission, McClintock sought to hide his involvement with GLL's split routing" scheme. See PFF 99, 101-03. To suggest that McClintock would have brought "split routing" to the attention of MOL's General Counsel, all the while continuing to deny any familiarity with "split routing" during his interview with Hartmann in 2008 and subsequent conversations, and then continuing to maintain his denial during his deposition on September 21, 2011 (McClintock Dep. at 234:3-11), is simply less than credible (MOL Exh. CI; MOL App. 2009). To the contrary, all available evidence indicates that McClintock never did bring "split routing" to the attention of any management at MOL. See Declaration of Edward Y. Holt, III (MOL Exh. CV; MOL App. 2170) and Hartmann (MOL Exh. BM; MOL App. 1628-39).**

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.

**RESPONSE: Admit Mr. Hartmann denies that GLL's "split routing" scheme was communicated to him and deny all remaining allegations. PFF 105 is also unsupported by**

**the record. The absence of something is not evidence of anything. Rather, the evidence shows there were no further emails from Holt concerning this incident, or any “split routing” instances. Mr. Hartmann never received any emails from McClintock or Holt concerning this subject. See Declarations of Edward Y. Holt, III, Kevin Hartmann, and David Fernandez (MOL Exh. CV, BM and CW)(MOL App. 2170, 1628 and \_\_). MOL has not withheld any documents and is not using privilege as a shield to conceal relevant information or documents. Respondents had the opportunity to depose Holt or any other relevant employee of MOL, but they chose not to do so.**

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”).

**RESPONSE: Denied. See Declaration of Edward Y. Holt, III (MOL Exh. CV; MOL App. 2170). See also response to PFF 105.**

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.

**RESPONSE: Denied. See Declaration of Kevin J. Hartmann dated February 17, 2012 (MOL Exh. "BM") (MOL App. 1628-1629) and Declaration of Edward Y. Holt (MOL Exh. CV) (MOL App. 2170-74). See response to PFF 103 and 105.**

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.

**RESPONSE: Deny that December 3 and 8, 2004 email exchange between Nicole Hensley and Eric McColluch is evidence that MOL encouraged GLL to engage in "split**

routing.” See MOL reply to GLL PFF 33 and 34. Further deny that these emails on the privilege log relate to “split routing” as alleged by CJR Respondents.

If CJR Respondents believed MOL had improperly withheld relevant documents from its privilege log, then they had an obligation to move to compel production within a reasonable amount of time. In this case, MOL’s privilege log was produced on or about September 28, 2011 and CJR Respondents never raised any concerns or objections concerning same. Discovery has closed and the time to object has long passed. Under the circumstances, CJR Respondents should not now be allowed to draw a negative inference from MOL privilege log when no objection was ever previously lodged. See, e.g., *Carbajal v. Lincoln Ben. Life Co.*, 2007 WL 3407354 (D.Colo. 2007) (defendant had not waived privilege when adequacy of privilege log was not asserted by either side and was initially raised during court hearing).

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).

**RESPONSE: Admit the decision and article speak for themselves and deny the remaining allegations. This decision by the Commission and the associated news article have no probative value or relevance to MOL's prior knowledge of GLL's "split routing" scheme.**

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.

**RESPONSE: Admit CJR Respondents moved to compel discovery concerning an FMC investigation of MOL, but deny the remaining allegations. Whether Mr. King participated or not in meetings and calls with MOL has no relevance to any issue in this case. Mr. King's participation in meetings and calls with MOL is not evidence that MOL know about the practice of split routing at GLL.**

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).

**RESPONSE: Deny that MOL knew of and encouraged split routing and further deny that MOL did not suffer any damages. MOL lost significant revenue as a result of GLL's "split routing" scheme as demonstrated by its sample shipments. See MOL sample shipments, Exhs. "X" through "AF" (MOL App. 1260-1428). Moreover, under the Shipping Act, MOL must charge and GLL must pay the rate applicable for the transportation service provided. MOL charged, as a result of GLL's fictitious booking, the incorrect rates. GLL should have paid the rate (and charges) applicable to the actual destinations. MOL is entitled to the difference between the rates charged and the rates that should have been charged. In addition, GLL must pay a diversion fee for directing the cargo to be transported to a different destination. See Sections 10(a)(1) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. §§ 41102(a), 41102(c). MOL also has paid significantly more for trucking than it should have because of the split routing scheme. See, e.g., Declarations of Warren Minck and Declaration of Richard J. Craig (MOL Exh. CS and CU) (MOL App. 2077-2149 and 2152-2169).**

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).

**RESPONSE: Denied. GLL regularly maintained a system of credits and debits for truckers who delivered shipments to a destination nearer, and at other times to a destination further from the door point set forth on the master bill of lading. The Arbitration Partial Final held that GLL stopped this practice sometime after 2003 upon receipt of legal advices from its maritime counsel, Paul Coleman (MOL Exh. A; MOL App. 000019-20 and MOL Exh. BC; MOL App. 001585-90). However, the evidence shows that GLL continued this practice well after 2006. In her email dated February 14, 2006, Eileen Cakmur of GLL explained to a trucker named Lorne Tritt the specifics of “split routing” and in particular explained how the trucker could earn additional monies by delivering shipments to a location that was closer than the destination booked on the master bill of lading (MOL Exh. AV) (MOL App. at 001498-1501). GLL’s “credit/debit” practice was further confirmed by Jason Denton of Spirit who testified that his company would be given a credit by GLL to be applied as Spirit saw fit. See Denton Dep. at 117:15-121:11 (MOL Exh. CG) (MOL App. 1987). The weight of the available evidence is that cost of trucking was not a simple pass-through when GLL employed its “split routing” scheme.**

**By its own admission, GLL employed “split routing” in order to increase its profits to the detriment of ocean carriers like MOL. Global Link Voluntary Disclosure (MOL Exh. C). If GLL was not making money through “split routing,” then why employ all of this subterfuge to keep the practice a secret from MOL? No one, not even GLL, believes “split routing” resulted in no loss of income for MOL. GLL admitted:**

**The false routing scheme was used by Global Link from its beginning in 1998. The misrouted shipments actually increased in 2005, the time during which Global Link and Olympus were preparing to sell the company. Increasing the profits from false routings, of course, would increase the value of the company to prospective bidders**

*See Global Link Voluntary Disclosure (MOL Exh. "C"; App. at 116). See also Reply Brief at Sections III.E and IV.B.3.*

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).

**RESPONSE: Denied. See Reply Brief at p. 48, note 33.**

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).

**RESPONSE: Denied. See reply to PFF 111-12.**

115. MOL does not dispute or attempt to refute this testimony by Mr. McClintock.

**RESPONSE: Denied. See reply to PFF 111-12.**

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).

**RESPONSE: Denied.**

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).

**RESPONSE: Admit McClintock's testimony in his deposition speaks for itself, but deny the remaining allegations. See reply to PFF 99, 101-13.**

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).

**RESPONSE: Denied. See reply to PFF 117.**

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).

**RESPONSE: Denied. By GLL’s own admission, GLL engaged in “split routing” to benefit from rates which it was not lawfully entitled to have. See Global Link Voluntary Disclosure (MOL Exh. C) (MOL App. at 113-15). It defies common sense to conclude that GLL and others would engage in a split routing scheme, and incur the burden and expense of the creation of multiple fictitious documents, in order to lose money.**

**The Arbitration Partial Final Award held:**

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

**See Arbitration Partial Final Award (MOL PFF 156; MOL Exh. A; MOL App. 23-27).**

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)

**RESPONSE: Admit that GLL paid MOL to have goods delivered to a fictitious final destination, and except as specifically admitted, denies each and every remaining allegation contained in PFF 120. See GLL Voluntary Disclosure (MOL Exh. C) (MOL App. at 113-15).**

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).

**RESPONSE: Admit that GLL paid MOL to have goods delivered to a fictitious final destination, and except as specifically admitted, denies each and every remaining allegation contained in PFF 120.**

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).

**RESPONSE: Denied. See reply to PFF 111, 112 and 117.**

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).

**RESPONSE: Denied.** GLL would expect to receive a credit from the trucker which would be applied to a later shipment. See MOL Exh. "BP"; MOL App. at 1663.

Alternatively, the trucker and GLL may have shared in the excess payment by MOL.

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).

**RESPONSE: Denied.** GLL set up a system whereby MOL would regularly overpay for trucking. See MOL sample shipments, MOL Exh. X-AD, MOL App. 1246-1428. GLL also established a "credit/debit" system with its truckers whereby these overpayments would be used to provide additional compensation to its preferred truckers. See reply to PFF 112.

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).

**RESPONSE: Denied.** See reply to PFFs 111, 112, 117, 119 through 124.

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).

**RESPONSE: Denied.** See reply to PFFs 111, 112, 117-125.

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.

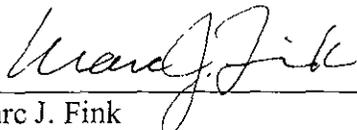
**RESPONSE: Denied. If GLL could have just as easily negotiated new “reasonable, market” rates with MOL, as suggested by CJR Respondents, then why did GLL not do so? First, having received proper legal advice from its maritime counsel concerning the illegality of “split routing” under the Shipping Act, GLL knew the practice to be wrong. See reply to PFF 10-12. Second, GLL undertook the “split routing” scheme because the practice provided favorable freight rates, and increased profitability. See Arbitration Partial Final Award (MOL Exh. A; MOL App. at 23). Third, GLL sought and obtained**

the cooperation of McClintock and Yang to implement "split routing" at MOL and to keep the practice a secret from the rest of MOL, especially management and operations. See reply to PFF 38, 70, 73, 77 and 79. Fourth, GLL's service contracts with MOL contained multiple door points and GLL could have easily negotiated additional door points. See reply to PFF 55. Fifth, GLL would not have willingly prepared two sets of transportation documents with different destinations for no reason. Clearly the fraudulent scheme was designed to deceive MOL, obtain rates to which GLL was not entitled, and cause MOL to pay excessive trucking charges which could be shared by the conspirators. See reply to PFF 61-62 and 66. See also reply to PFF 117-125.

\* \* \*

To the extent not expressly admitted, MOL denies each and every remaining allegation contained in PFFs 1 through 127.

Respectfully submitted,

By:   
\_\_\_\_\_  
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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 May, 2013:

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