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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
OLYMPUS 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 OLYMPUS PARTNERS, L.P.; OLYMPUS GROWTH FUND III, L.P.; OLYMPUS EXECUTIVE FUND, L.P.; LOUIS J. MISCHIANI; DAVID CARDENAS; KEITH HEFFERNAN ("Olympus Respondents") Proposed Findings of Fact ("PFF") as follows:

1. Respondent OGF is a private equity investment fund organized as a Delaware limited partnership. (Affidavit of L. David Cardenas ("Cardenas Aff.") at ¶ 3, attached hereto as Exhibit 2 (O.R. App. 8); Verified Answer of Olympus Respondents, filed July 9, 2010 ("Verified Answer of Olympus Respondents") at p. 2 (MOL App. 1503)).

RESPONSE: Admitted.

2. OGF's general partner is OGP III, LLC, a Delaware limited liability company. (Cardenas Aff. at ¶ 3 (O.R. App. 8)).

RESPONSE: Admitted.

3. OGF operates out of its office in Stamford, Connecticut. (Cardenas Aff. at ¶ 3 (O.R. App. 8)).

RESPONSE: Admitted.

4. In May 2003, OGF purchased 74.51 percent of the shares in GLL Holdings, Inc., the parent company of and holding company for Global Link ("Holdings"). (Cardenas Aff. at ¶ 4 (O.R. App. 8)).

RESPONSE: Admitted.

5. OGF also held ownership interests in several entities other than Holdings. (Cardenas Aff. at ¶ 4 (O.R. App. 8)).

RESPONSE: Admitted.

6. On June 7, 2006, OGF sold its interest in Holdings to Global Link's current owners pursuant to a stock purchase agreement dated May 20, 2006 (hereinafter "SPA"). (Cardenas Aff. at ¶ 5 (O.R. App. 9)).

RESPONSE: Admitted.

7. Respondent OEF also is a private equity investment fund organized as a Delaware limited partnership. (Affidavit of Louis J. Mischianti ("Mischianti Aff.") at ¶ 3, attached hereto as Exhibit 3 (O.R. App. 12); Verified Answer of Olympus Respondents at p. 2 (MOL App. 1503)).

RESPONSE: Admitted.

8. OEF operates out of its office in Stamford, Connecticut. (Mischianti Aff. at ¶ 3 (O.R. App. 12)).

RESPONSE: Admitted.

9. In May 2003, OEF purchased 0.49 percent of the shares in Holdings. (Mischianti Aff. at ¶ 4 (O.R. App. 12)).

RESPONSE: Admitted.

10. Holdings was one of several entities in which OEF held ownership interests. (Mischianti Aff. at ¶ 4 (O.R. App. 12)).

RESPONSE: Admitted.

11. On June 7, 2006, OEF sold its minority interest in Holdings to GLL Sub Acquisition, Inc. under the May 20, 2006 SPA. (Mischianti Aff. at ¶ 5 (O.R. App. 12)).

RESPONSE: Admitted.

12. OEF and OGF are “private equity funds that are not subject to the Commission’s jurisdiction, are not entities regulated by the Commission, and are not in a position to take action that places them in peril insofar as the Commission is concerned.” (Order in 08-07, at p. 10 (O.R. App. 24)).

RESPONSE: Denied. This statement is a legal conclusion rather than statement of fact. Moreover, the basis for this statement is the Commission’s June 15, 2009 ruling on a petition for a declaratory order. In a subsequent ruling in this proceeding, the Commission found that the Olympus Respondents may be liable for violations of Sections 10(a)(1) and/or 10(d)(1) of the Shipping Act and 46 C.F.R. § 515.31(e). See August 1, 2011 Order, pp. 32, 34 and 36 (MOL Exh. H) (MOL App. 1061, 1063 and 1065).

13. Respondent Cardenas is a member of OPG III, LLC, a Delaware limited liability company that serves as the general partner of Respondent OGF. (Cardenas Aff. at ¶ 2 (O.R. App. 8)).

RESPONSE: Admitted.

14. Mr. Cardenas served as a board director and officer of Holdings and Global Link from May 2003 to June 2006. (Cardenas Aff. at ¶ 6 (O.R. App. 9)).

RESPONSE: Admitted.

15. Respondent Mischianti is president of LJM Corporation, a Delaware corporation that serves as a general partner of Respondent OEF. (Mischianti Aff. at ¶ 2 (O.R. App. 12)).

RESPONSE: Admitted.

16. Mr. Mischianti served as a board director of Holdings and Global Link from May 2003 to June 2006. (Mischianti Aff. at ¶ 6 (O.R. App. 13)).

RESPONSE: Admitted.

17. Mr. Mischianti did not serve as an officer of either Holdings or Global Link. (Mischianti Aff. at ¶ 6 (O.R. App. 13)).

RESPONSE: Admitted.

18. Respondent Heffernan served as a board director and officer of Holdings and Global Link from May 2003 to June 2006. (Affidavit of Keith Heffernan (“Heffernan Aff.”) at ¶ 2, attached hereto as Exhibit 5 (O.R. App. 33)).

RESPONSE: Admitted.

19. None of the Olympus Respondents are or ever have been shippers, NVOCCs, freight forwarders or ocean transportation intermediaries, marine terminal operators, ocean

common carriers, or any other person subject to the requirements of the Shipping Act. (Verified Answer of Olympus Respondents at p. 2 (MOL App. 1503)).

RESPONSE: This proposed finding calls for a legal conclusion and to the extent it requires a response, it is denied. See August 1, 2011 Order, pp. 32-36 (MOL Exh. H; MOL App. 1061-65). Olympus Respondents, as owners, officers and directors of GLL from 2003 through 2006, were responsible for all actions of GLL, including actions undertaken by GLL in violation of the Shipping Act and FMC regulations. (MOL PFF 10, 132-57).

20. The Olympus Respondents did not negotiate, execute or otherwise participate in any way in any contract with MOL for ocean transportation of property on behalf of themselves or any third party, including Global Link. (Complainant's Responses to Respondent Olympus Growth Fund III, L.P.'s First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6, attached hereto as Exhibit 6 (O.R. App. 37-38); Complainant's Responses to Respondent Olympus Executive Fund, L.P.'s First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6, attached hereto as Exhibit 7 (O.R. App. 64-65); Complainant's Responses to Respondent David Cardenas's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6, attached hereto as Exhibit 8 (O.R. App. 91-92); Complainant's Responses to Respondent Keith Heffernan's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6, attached hereto as Exhibit 9 (O.R. App. 118-119); Complainant's Responses to Respondent Louis J. Mischianti's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6, attached hereto as Exhibit 10 (O.R. App. 145-146)).

RESPONSE: Admit that the Olympus Respondents did not directly negotiate or execute contracts with MOL for ocean transportation of property on behalf of themselves or any third party. Deny that Olympus Respondents did not participate in any way. Olympus Respondents knowingly permitted and/or failed to take action to prevent GLL from engaging in an unlawful split routing scheme. See MOL PFF 136 through 145; Global Link's Proposed Findings of Fact in Support of Contribution Claims against Rosenberg and Olympus Respondents, ¶¶ 47-91. See also reply to PFF 19. Further, the Olympus Respondents conspired with Rosenberg to hide the "split routing" scheme from potential buyers of GLL, thereby significantly increasing the purchase price for GLL to the benefit of the Olympus and Rosenberg Respondents. This conduct on the part of Olympus Respondents was found to be actionable in an arbitration proceeding, resulting in finding of \$12 million in liability against Olympus Respondents. MOL Exh. A; MOL App. at 000054. See also MOL Reply Br. at Section III.D.

21. The Olympus Respondents did not communicate with MOL or participate in communications with MOL in connection with Global Link's business or the ocean transportation of property in general. (Complainant's Responses to Respondent Olympus Growth Fund III, L.P.'s First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 37-38); Complainant's Responses to Respondent Olympus Executive Fund, L.P.'s First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 64-65); Complainant's Responses to Respondent David Cardenas's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 91-92); Complainant's Responses

to Respondent Keith Heffernan's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 118-119); Complainant's Responses to Respondent Louis J. Mischianti's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 145-146)).

RESPONSE: See reply to PFF 20.

22. The Olympus Respondents did not pay MOL for the ocean transportation of property. (Complainant's Responses to Respondent Olympus Growth Fund III, L.P.'s First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Request for Admission 5 (O.R. App. 38); Complainant's Responses to Respondent Olympus Executive Fund, L.P.'s First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Request for Admission 5 (O.R. App. 65); Complainant's Responses to Respondent David Cardenas's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Request for Admission 5 (O.R. App. 92); Complainant's Responses to Respondent Keith Heffernan's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Request for Admission 5 (O.R. App. 119); Complainant's Responses to Respondent Louis J. Mischianti's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Request for Admission 5 (O.R. App. 146)).

RESPONSE: See reply to PFF 20.

23. The Olympus Respondents did not book ocean transportation with MOL. (Complainant's Responses to Respondent Olympus Growth Fund III, L.P.'s First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for

Admission 1 through 6 (O.R. App. 37-38); Complainant's Responses to Respondent Olympus Executive Fund, L.P.'s First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 64-65); Complainant's Responses to Respondent David Cardenas's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 91-92); Complainant's Responses to Respondent Keith Heffernan's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 118-119); Complainant's Responses to Respondent Louis J. Mischianti's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 145-146)).

RESPONSE: See reply to PFF 20.

24. The Olympus Respondents never obtained or attempted to obtain ocean transportation for any property, at any price. (Complainant's Responses to Respondent Olympus Growth Fund III, L.P.'s First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 37-38); Complainant's Responses to Respondent Olympus Executive Fund, L.P.'s First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 64-65); Complainant's Responses to Respondent David Cardenas's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 91-92); Complainant's Responses to Respondent Keith Heffernan's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 118-119); Complainant's Responses to Respondent Louis J. Mischianti's First Set of Requests for

Admission, Interrogatories, and Requests for Production of Documents at Requests for Admission 1 through 6 (O.R. App. 145-146)).

RESPONSE: See response to PFF 20. The Olympus Respondents derived substantial benefit from the unlawful split routing scheme, a scheme that they sanctioned and/or failed to terminate. MOL Exh. A; MOL App. at 000023.

Olympus Respondents Did Not Participate In The Transactions Underlying MOL's Claims Of Shipping Act Violations:

25. The practice of split routing existed before OGF and OEF ever invested in Global Link and it continued well after OGF and OEF sold its shares in Holdings in 2006. (Cardenas Aff. at ¶ 12 (O.R. App. 10); Mischianti Aff. at ¶ 8 (O.R. App. 13); Heffernan Aff. at ¶ 8 (O.R. App. 34); American Arbitration Association, Commercial Arbitration Tribunal Partial Final Award (Case No. 14 125 Y 01447 07, Feb. 2, 2009) (the "Partial Final Award") at pp. 15, 33 (MOL App. 15, 33)).

RESPONSE: Admitted.

26. The Olympus Respondents did not know of Global Link's formulation of the practice of split routing. (Cardenas Aff. at ¶ 12 (O.R. App. 10); Mischianti Aff. at ¶ 8 (O.R. App. 13); Heffernan Aff. at ¶ 8 (O.R. App. 34)).

RESPONSE: Denied. CJR Respondents admit Olympus Respondents "were aware that Global Link . . . engaged in a business practice called 're-routing' . . . and . . . is also sometimes referred as 'split routing'." MOL Exh. P; MOL App. 1195. CJR Respondents confirm the Olympus Respondents knew about GLL's "split routing" scheme because they explained "split routing" to the Olympus Respondents. In fact, Respondent Rosenberg testified that he spoke with Olympus Respondents on at least two occasions about "split routing." Rosenberg Dep. at 32:16-33:14; 34:1-7 (MOL Exh. CE) (MOL App. 1961-62).

During these conversations, Respondent Rosenberg made it clear GLL “did not intend for the container to go to the place that was convened to the steamship line.” *Id.* at 34:24-35:8; *see* 41:2-42:22; 43:1-25; 44:5-45:25; 48:19-25; 49:19-50:1; 53:12-25 (MOL Exh. CE) (MOL App. 1963-72, 1975); *see also* MOL PFF 132-33 and 142-43.

The Olympus Respondents were also advised by Eric Joiner as to the intricacies of “split routing.” The Olympus Respondents knew “split routing” was illegal under the Shipping Act. *See* MOL PFF 132-48. *See also* reply to PFF 20, 35, 41 and 45.

Global Link asserts Olympus Respondents received legal advices from Attorney Paul Coleman who advised that “split routing” exposed GLL to possible fines from the FMC, and that Olympus Respondents did nothing in response. *See* MOL PFF 147-48. *See also* MOL Reply Brief at Section III.D.2.

27. The Olympus Respondents did not participate in Global Link’s formulation of the practice of split routing. (Cardenas Aff. at ¶ 12 (O.R. App. 10); Mischianti Aff. at ¶ 8 (O.R. App. 13); Heffernan Aff. at ¶ 8 (O.R. App. 34)).

RESPONSE: Admit that Rosenberg was the architect of GLL’s “split routing” scheme, but deny Olympus Respondents did not participate in the scheme. *See* reply to PFF 20 and 26.

28. The Olympus Respondents did not know of Global Link’s implementation of the practice of split routing. (Cardenas Aff. at ¶ 12 (O.R. App. 10); Mischianti Aff. at ¶ 8 (O.R. App. 13); Heffernan Aff. at ¶ 8 (O.R. App. 34)).

RESPONSE: Denied. *See* reply to PFF 26.

29. The Olympus Respondents did not participate in Global Link's implementation of the practice of split routing. (Cardenas Aff. at ¶ 12 (O.R. App. 10); Mischianti Aff. at ¶ 8 (O.R. App. 13); Heffernan Aff. at ¶ 8 (O.R. App. 34)).

RESPONSE: Denied. See reply to PFF 26.

30. The Olympus Respondents did not take any action or participate in any action to implement Global Link's practice of split routing. (Cardenas Aff. at ¶¶ 7, 9, 11 (O.R. App. 9-10); Mischianti Aff. at ¶¶ 7-8 (O.R. App. 13); Heffernan Dep. at ¶ 8 (O.R. App. 34)).

RESPONSE: Denied. See reply to PFF 26.

31. As is customary for OGF and OEF when investing in an enterprise, OGF and OEF appointed several of its members as directors and/or officers of Holdings and/or Global Link, but left the operational decisions to Global Link's management. (Cardenas Aff. at ¶¶ 6-7 (O.R. App. 9); Mischianti Aff. at ¶¶ 6-7 (O.R. App. 13)).

RESPONSE: Admit that several members of OGF and OEF were appointed as directors and/or officers, but deny all remaining allegations contained in PFF 31. See reply to PFF 20 and 26.

32. As directors and officers, OGF and OEF members served the limited role of representing the shareholders in protecting the value of their investment by helping the company to improve its infrastructure and challenging management to grow the company. (Heffernan Aff. at ¶ 3 (O.R. App. 33)).

RESPONSE: Denied. See reply to PFF 26. See also MOL PFF 136 through 145; Global Link's Proposed Findings of Fact in Support of Contribution Claims against Rosenberg and Olympus Respondents, ¶¶ 47-91.

33. Mr. Mischianti had no involvement in the day-to-day operations of Global Link. (Mischianti Aff. at ¶ 7 (O.R. App. 13)).

RESPONSE: Denied. See reply to PFF 20 and 26.

34. Mr. Mischianti only participated in board meetings. (Mischianti Aff. at ¶ 6 (O.R. App. 13)).

RESPONSE: Denied. See reply to PFF 20 and 26.

35. Split-routing was never addressed during the Global Link board meetings in which Mr. Mischianti participated. (Mischianti Aff. at ¶¶ 6, 8 (O.R. App. 13)).

RESPONSE: Denied. Eric Joiner brought to the Global Link Board of Director's attention 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. Cardenas Dep. at 96:12-97:10 (GLL App. 150); Rosenberg Dep. at 51:1-12, 53:12-17 (MOL Exh. CE) (MOL App. 1973, 1975). Olympus Respondents received legal advices from Paul Coleman which clearly explained that "split routing" was illegal. MOL PFF 146-48. Olympus Respondents failed to terminate "split routing" after being advised by Paul Coleman that the practice was illegal. MOL PFF 151-53. Olympus Respondents deliberately engaged in "split routing." MOL PFF 154-56.

36. Mr. Mischianti had no knowledge of Global Link's business relationship with MOL and never communicated with MOL personally. (Mischianti Aff. at ¶ 7 (O.R. App. 13)).

RESPONSE: Admit Mischianti never communicated directly with MOL, but deny the remaining allegations. See reply to PFF 20, 26 and 35.

37. Mr. Mischianti never arranged for the transportation of property on behalf of Global Link and was not involved in setting or negotiating routes of transportation or any other transportation practices. (Mischianti Aff. at ¶ 7 (O.R. App. 13)).

RESPONSE: Denied. See reply to PFF 20, 26 and 35.

38. Like Mr. Mischianti, Mr. Cardenas had no involvement in the day-to-day operations of Global Link. Global Link's management continued to make the day-to-day operational decisions. (Cardenas Aff. at ¶ 7 (O.R. App. 9)).

RESPONSE: Denied. See response to PFF 26 and 35. See also MOL PFF 136 through 145; Global Link's Proposed Findings of Fact in Support of Contribution Claims against Rosenberg and Olympus Respondents, ¶¶ 47-91.

39. The primary reason Mr. Cardenas served as an officer of Global Link was to sign documents on behalf of the company. (Cardenas Aff. at ¶ 7 (O.R. App. 9)).

RESPONSE: Deny knowledge or information sufficient to form a belief as to the allegations contained in PFF 39.

40. Although Mr. Cardenas was aware that Global Link used MOL as a carrier, he never personally communicated with MOL regarding Global Link. (Cardenas Aff. at ¶ 8 (O.R. App. 9)).

RESPONSE: Admit Cardenas never personally communicated with MOL, and deny the remaining allegations. See reply to PFF 20 and 26.

41. While Mr. Cardenas held calls/meetings with Global Link management during his tenure as a board member and officer, Mr. Cardenas did not discuss specific routing practices, including with respect to MOL, with Global Link management. (Cardenas Aff. at ¶ 8 (O.R. App. 9)).

RESPONSE: Denied. Cardenas developed expertise in logistics and the transportation industry. Cardenas Dep. at 66:4-67:5, Exh. G (GLL App. 149). Eric Joiner brought to the Global Link Board of Directors' attention, and Cardenas' attention personally, a number of regulatory and operational issues with the company, including that containers were being booked to destinations that were different than the destinations where the containers were actually delivered, i.e., split routing. Cardenas Dep. at 96:12-97:10 (GLL App. 150). *See also* Cardenas Dep. at 116:2-12, 122:3-4, Exh. G (GLL App. 151, 152) and MOL PFF 151-56. *See also* MOL Reply Brief at Section III.D.1.a.

42. Mr. Cardenas never arranged for the transportation of property on behalf of Global Link and was not involved in setting or negotiating routes of transportation or any other transportation practices. (Cardenas Aff. at ¶ 7 (O.R. App. 9)).

RESPONSE: Denied. See reply to PFF 20, 26 and 41.

43. Like Mr. Cardenas and Mr. Mischianti, Mr. Heffernan also had no involvement in the day-to-day operations of Global Link. (Heffernan Aff. at ¶ 2 (O.R. App. 33)).

RESPONSE: Denied. See reply to PFF 20, 26 and 35.

44. Although Mr. Heffernan was aware that Global Link used MOL as a carrier, he also never personally communicated with MOL regarding Global Link. (Heffernan Aff. at ¶ 5 (O.R. App. 34)).

RESPONSE: Admit Heffernan never personally communicated with MOL, but deny the remaining allegations. See reply to PFF 20 and 26.

45. While Mr. Heffernan also participated in calls/meetings with Global Link management, Mr. Heffernan did not discuss specific routing practices regarding MOL with Global Link management. (Heffernan Aff. at ¶ 5 (O.R. App. 34)).

RESPONSE: Denied. Eric Joiner brought to the Global Link Board of Directors' attention, including Heffernan, a number of regulatory and operational issues with the company, including that containers were being booked to destinations that were different than the destinations where the containers were actually delivered, i.e., split routing. Cardenas Dep. at 96:12-97:10 (GLL App. 150). *See also* Cardenas Dep. at 116:2-12, 122:3-4, Exh. G (GLL App. 151, 152) and MOL PFF 151-56. *See also* MOL Reply Brief at Section III.D.1.b.

46. Mr. Heffernan never arranged for the transportation of property on behalf of Global Link and was not involved in setting or negotiating routes of transportation or any other transportation practices. (Heffernan Aff. at ¶ 4 (O.R. App. 33-34)).

RESPONSE: Denied. *See* reply to PFF 20, 26 and 45.

47. Global Link regularly engaged in split-routing well before OGF and OEF acquired ownership interests in Holdings. (Partial Final Award at p. 33 (MOL App. 33))

RESPONSE: Admitted.

48. Mr. Rosenberg brought the practice of split-routing with him from the freight forwarders at which he had previously been employed. (Partial Final Award at pp. 9-10 (MOL App. 9-10)).

RESPONSE: Admitted.

49. Messrs. Cardenas and Heffernan did not learn about Global Link's split-routing practice until after OGF and OEF acquired their interests in Holdings. (Cardenas Aff. at ¶ 9 (O.R. App. 9); Heffernan Aff. at ¶ 6 (O.R. App. 34)).

RESPONSE: Admitted.

50. The extent of their knowledge of the practice consisted of a general explanation from Mr. Rosenberg, Global Link's founder and then-president. (Cardenas Aff. at ¶¶ 9-11 (O.R. App. 9-10); Heffernan Aff. at ¶ 7 (O.R. App. 34)).

RESPONSE: Denied. See reply to PFF 20 and 26.

51. Mr. Mischianti was not involved in this discussion. (Cardenas Aff. at ¶ 9 (O.R. App. 9)).

RESPONSE: Unable to admit or deny whether Mischianti was involved in this discussion.

52. Mr. Cardenas was first advised about Global Link's split-routing practice in a brief telephone conversation with Global Link management in the summer of 2003. (Cardenas Aff. at ¶ 9 (O.R. App. 9)).

RESPONSE: Admitted.

53. Mr. Heffernan generally recalls that Global Link management raised split-routing after OGF acquired its interest in Holdings. (Heffernan Aff. at ¶ 6 (O.R. App. 34)).

RESPONSE: Admitted.

54. Mr. Rosenberg generally explained to Mr. Cardenas that sometimes a shipment is delivered to a location other than where it has been booked with the steamship line. (Cardenas Aff. at ¶ 10 (O.R. App. 9-10)).

RESPONSE: Admitted.

55. Mr. Rosenberg advised that he had received legal advice on the practice and that he thought it was legal. (Cardenas Aff. at ¶ 10 (O.R. App. 9-10)).

RESPONSE: Unable to admit or deny what Mr. Rosenberg advised, and deny the remaining allegations.

56. Global Link management never gave Messrs. Cardenas or Heffernan any details about the communications Global Link had with the ocean carriers or with the trucking firms used to complete the split moves.¹ (Cardenas Aff. at ¶ 11 (O.R. App. 10); Heffernan Aff. at ¶ 7 (O.R. App. 34)).

RESPONSE: Denied. See reply to PFF 20, 26, 35, 41 and 45. See also Cardenas Dep. at 66:4-67:5, Exh. G (GLL App. 149); 96:12-97:10 (GLL App. 150); 116:2-12, 122:3-4, Exh. G (GLL App. 151, 152) and MOL PFF 137-45.

57. Messrs. Cardenas and Heffernan were not informed by Global Link management and did not know that different destinations were written on master bills of lading and house bills of lading. (Cardenas Aff. at ¶ 11 (O.R. App. 10); Heffernan Aff. at ¶ 7 (O.R. App. 34)).

RESPONSE: Denied. See reply to PFF 20, 26, 35, 41 and 45. See also Cardenas Dep. at 66:4-67:5, Exh. G (GLL App. 149); 96:12-97:10 (GLL App. 150); 116:2-12, 122:3-4, Exh. G (GLL App. 151, 152) and MOL PFF 137-45.

58. On June 7, 2006, Respondents OGF, OEF, and CJR World Enterprises, Inc. (“CJR”) sold Holdings, and its subsidiary Global Link, to Golden Gate Logistics, Inc. (“GGL”).² (Cardenas Aff. at ¶ 5 (O.R. App. 9)).

RESPONSE: Admitted.

¹ The Arbitration Panel also found that split-routing may have been discussed during a board meeting held in November 2005 in which Mr. Cardenas attended. (Partial Final Award at p. 35 (MOL App. 35)). However, no attendee, including Mr. Cardenas, recalls any such discussion concerning split-routing. (Partial Final Award at p. 35 (MOL App. 35)).

RESPONSE: Admit Cardenas attended the board meeting and that split routing was discussed, but unable to admit or deny what Cardenas recalled.

² GGL, nor any of its shareholders or officers, are respondents in this proceeding. (Amended Complaint (MOL App. 999-1008)).

RESPONSE: Admitted.

59. The Olympus Respondents have not held any interest in any NVOCC since that sale. (Cardenas Aff. at ¶ 14 (O.R. App. 10); Heffernan Aff. at ¶ 9 (O.R. App. 35)).

RESPONSE: Unable to admit or deny.

60. Global Link's utilization of the split-routing practice did not end when OEF and OGF sold their interests in Holdings. (Partial Final Award at p. 15 (MOL App. 15)).

RESPONSE: Admitted.

61. Global Link continued the practice until at least June 2007, when its current owners initiated an arbitration, styled *Global Link Logistics, Inc., et al. v. Olympus Growth Fund III, L.P., et al.*, Case No. 14 125 Y 01447 07, against the Olympus Respondents and other former owners of Global Link in an effort to recoup a portion of the sale proceeds (the "Global Link Arbitration"). (Partial Final Award at p. 14 (MOL App. 14)).

RESPONSE: Admitted.

62. The evidence demonstrates that the Olympus Respondents did not participate in the transactions underlying MOL's claims of alleged Shipping Act violations, the routing practices in place at Global Link that resulted in shipments being delivered to destinations other than those listed in the master bills of lading, or any other conduct at issue in these proceedings.

RESPONSE: Denied. See reply to PFF 20, 26 and 35; MOL PFF 137-45 and GLL PFF 10, 11, 15, 30-32. This statement is a legal conclusion rather than statement of fact. It is also contrary to the findings of the Arbitration Panel.

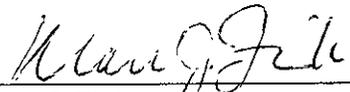
63. The evidence also demonstrates that the Commission has no jurisdiction over the Olympus Respondents because the Olympus Respondents did not participate in the transactions underlying MOL's claims of alleged Shipping Act violations.

RESPONSE: Denied. See reply to PFF 20, 26 and 35; MOL PFF 137-45 and GLL PFF 10, 11, 15, 30-32. This statement is a legal conclusion rather than statement of fact.

* * *

To the extent not expressly admitted, MOL denies each and every allegation contained in PFFs 1 thru 63.

Respectfully submitted,

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Dated: May 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 May, 2013:

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