

CC: OS  
OEC  
MSA  
Rub

RECEIVED

2013 MAY -1 PM 4:34

OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMM

BEFORE THE  
FEDERAL MARITIME COMMISSION

 ORIGINAL

Docket No. 09 -01

MITSUI O.S.K. LINES LTD.

COMPLAINANT

v.

GLOBAL LINK LOGISTICS, INC., OLYMPUS PARTNERS, OLYMPUS  
GROWTH FUND III, L.P., OLYMPUS EXECUTIVE FUND, L.P., LOUIS J.  
MISCHIANI, L. DAVID CARDENAS, KEITH HEFFERNAN, CJR WORLD  
ENTERPRISES, INC. AND CHAD J. ROSENBERG

RESPONDENTS

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

Pursuant to the October 16, 2012 Order of the Administrative Law Judge, which incorporated the requirements of the June 22, 2010 Procedural Order issued by Judge Guthridge, and Rule 221 of the Commission's Rules of Practice and Procedure, Respondents Olympus Growth Fund III, L.P. ("OGF"), Olympus Executive Fund, L.P. ("OEF"), Louis J. Mischianti, L. David Cardenas and Keith Heffernan (hereinafter collectively referred to as "Olympus Respondents")<sup>1</sup> hereby respond to Global Link Logistics, Inc.'s Proposed Findings of Fact in Support of Contribution Claim Against

<sup>1</sup> Where Olympus Respondents define a term or phrase or use a defined term or phrase herein that Respondent Global Link Logistics, Inc. ("Global Link") also has defined or used in its proposed findings of fact, Olympus Respondents refer only to their definition of the term or phrase, and do not refer to Global Link's definition of that term or phrase.

Rosenberg and Olympus Respondents.

**General Response and Objections**

1. The Olympus Respondents object on the ground that they did not participate in the transactions at issue in this proceeding, have no direct knowledge of the subject transactions and are thus limited in their ability to respond. The Olympus Respondents base their responses to Global Link's proposed findings of fact upon the record in this proceeding and the findings of the arbitration panel in the Global Link Arbitration (defined below), specifically without prejudice to the Olympus Respondents' position that they neither participated nor were involved in any of the transactions referenced herein.

2. The Olympus Respondents object to Global Link's use of arguments and evidence developed in the prior arbitration (an adversary proceeding) brought by Global Link and its purchasers against the Olympus Respondents and CJR Respondents following the sale of Global Link (the "Global Link Arbitration"). Global Link is attempting to use evidence from the Global Link Arbitration without any regard to the conclusions of the arbitration panel. Global Link must rely on direct evidence produced and developed in this proceeding. Furthermore, the Olympus Respondents object to the use of evidence from the Global Link Arbitration on the grounds that such evidence is unreliable and/or irrelevant hearsay. *See* Olympus Respondents' Reply Brief in Opposition to Complainant's Request for Relief (filed Mar. 1, 2013) at Argument, Point I.A.4.

3. The Olympus Respondents object to Global Link's proposed findings of fact to the extent that the proposed findings denote, connote, suggest or imply that the Olympus Respondents are responsible with respect to or in any way arising out of anything except proven direct, actual participation. The Olympus Respondents are not and cannot be held vicariously liable and cannot be targeted with or be compelled to respond to proposed findings suggesting otherwise. Vicarious liability is not at issue in, or a viable theory for, this proceeding. See 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 Motions to Dismiss (Aug. 1, 2011) ("FMC Order") at p. 34 (MOL App. 1062). Accordingly, the Olympus Respondents object to and on this basis deny all such proposed findings of fact by incorporating this General Objection No. 3 by reference into the responses below.

The Olympus Respondents reserve their right to respond further to Global Link's proposed findings of fact where the Olympus Respondents incorporate by reference this General Objection No. 3 should, in the judgment of the Olympus Respondents, circumstances warrant such further response.

4. The Olympus Respondents object to Global Link's proposed findings of fact that purport to excerpt, paraphrase or quote from transcripts or other larger documents. The purported excerpts (i) are out of context, (ii) are handcrafted to avoid context and to create inaccurate, incomplete and/or misleading characterizations and connotations and (iii) distort the documents from which the excerpts came. The selected

excerpts as purported findings of fact impose an undue burden on the Olympus Respondents, distort the process of proposing and responding to findings of fact, and render it impossible for the Olympus Respondents to fully respond. The Olympus Respondents incorporate this objection into their response to each proposed finding of fact in which Global Link purports to excerpt or quote from any documentary evidence submitted in this proceeding.

5. In each of the instances covered by General Objections Nos. 1-4, the Olympus Respondents are denied due process.

**Olympus Respondents' Responses**

**Global Link and Service Contracts**

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Affidavit of Louis J. Mischianti ("Mischianti Aff.") (O.R. App. 12-14);<sup>2</sup> Affidavit of L. David Cardenas ("Cardenas Aff.") (O.R. App. 8-11); Affidavit of Keith Heffernan ("Heffernan Aff.") (O.R. App. 33-35)).

2. CJR World Enterprises, Inc. and Chad J. Rosenberg (collectively, the "Rosenberg Respondents") and Olympus Partners, L.P., Olympus Growth Fund III, L.P.,

<sup>2</sup> "O.R. App." refers to the Olympus Respondents' Appendix, filed on March 1, 2013.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Admit.

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

**RESPONSE:** Admit.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

Further deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

approximately 20% for himself. *Id.* at 3 n.1., and 12, Exh. B (GLL App. 6, 15).

**RESPONSE:** Deny. OGF purchased 74.51 percent of the shares in GLL Holdings, Inc. ("Holdings") in May 2003. Cardenas Aff. at ¶ 4 (O.R. App. 8). OEF purchased 0.49 percent of the shares in Holdings in May 2003. Mischianti Aff. at ¶ 4 (O.R. App. 12).

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

**RESPONSE:** Deny. OGF purchased 74.51 percent of the shares in Holdings in May 2003. Cardenas Aff. at ¶ 4 (O.R. App. 8). OEF purchased 0.49 percent of the shares in Holdings in May 2003. Mischianti Aff. at ¶ 4 (O.R. App. 12).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

shipments. *Id.* at 12-13 (GLL App. 15-16).

**RESPONSE:** Deny and incorporate by reference General Objections above.

13. Upon the subsequent sale of Global Link to current ownership in 2006, CJR World Enterprises, of which Rosenberg was the sole shareholder, received an additional \$20.9 million. *Id.* at 14 (GLL App. 17); *see also* Arbitration Award at 25 (GLL App. 28) ("Chad Rosenberg having sold an 80% interest in the Company for \$20 million three years earlier stood to reap another \$20 million by selling his remaining interest ...").

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to

the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

22. Subsequently, Briles taught other staffers Global Link's routing strategies, including how to do split routings. James Briles Dep. at 55:13-15, 137:7-24, June 4,

2008, attached hereto as Exh. D (GLL App. 91, 96).

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

24. Even through 2006, up until the time the company was sold to current ownership, Rosenberg still received email related to routing issues and still communicated regularly with Gary Meyer, Global Link's Chief Financial Officer, and other staff at Global Link *Id.* at 294:512 (GLL App. 88).

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see

General Objection Nos. 2 and 3, incorporated herein by reference.

**Deposition of Jim Briles**

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

31. Rosenberg walked Briles through how Global Link routed transactions. *Id.*

at 53:3-6 (GLL App. 90).

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to

the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

**Respondent OGF**

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

**RESPONSE:** Admit.

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

**RESPONSE:** Admit.

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

**RESPONSE:** Admit.

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

**RESPONSE:** Admit.

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

**RESPONSE:** Admit.

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

**RESPONSE:** Admit that OEF and OGF, collectively, received \$83.1 million upon Golden Gate Logistics, Inc.'s ("Golden Gate") acquisition of Holdings. See Partial Final Award in *Global Link Logistics, Inc., et al. v. Olympus Growth Fund III, L.P., et al.*, Case No. 14 125 Y 01447 07 (Amer. Arbitration Ass'n) ("Partial Final Award") (GLL App. 17).

**Respondent OEF**

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

**RESPONSE:** Admit.

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

**RESPONSE:** Admit.

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

**RESPONSE:** Admit.

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

**RESPONSE:** Admit.

**Respondents Heffernan, Cardenas and Louis Mischianti**

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

**RESPONSE:** Deny. Cardenas is a member of OGP III, LLC, a Delaware limited liability company that serves as the general partner of OGF. Cardenas Aff. at ¶ 2 (O.R. App. 8). As is customary when OGF invested in a company, Cardenas served as a board director and officer of Holdings and Global Link from May 2003 to June 2006. *Id.* ¶ 6 (O.R. App. 9). Mischianti is the president of LJM Corporation, a Delaware corporation that serves as a general partner of OEF. Mischianti Aff. at ¶ 2 (O.R. App. 12). As is customary when OEF invests in a company, Mischianti served as a board director of Holdings and Global Link from May 2003 to June 2006. *Id.* ¶ 6 (O.R. App. 13). Mischianti did not serve as an officer of Holdings or Global Link. *Id.* Heffernan served as a board director and officer of Holdings and Global Link from May 2003 to June 2006. Heffernan Aff. at ¶ 2 (O.R. App. 33). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

46. Heffernan and Cardenas were officers of Olympus. Keith Heffernan Dep.

at 131:20-23), Exh. F (GLL App. 128).

**RESPONSE:** Deny. *See* Cardenas Aff. at ¶ 2 (O.R. App. 8). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

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

**RESPONSE:** Admit that 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). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Cardenas Aff. at ¶¶ 7-11 (O.R. App. 9-10).

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

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Cardenas Aff. at ¶¶ 7-11 (O.R. App. 9-10); Heffernan Aff. at ¶¶ 4-7 (O.R. App.

33-34).

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)). Further responding, see General Objection No. 3, incorporated herein by reference.

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

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Cardenas Aff. at ¶ 7 (O.R. App. 9).

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny. *See* Cardenas Aff. at ¶ 9 (O.R. App. 9). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

57. The Global Link management team informed him that there was a

question about whether it was appropriate to deliver containers to destinations other than where they were booked. *Id.* at 154:3-9 (GLL App. 154).

**RESPONSE:** Deny. *See* Cardenas Aff. at ¶ 10 (O.R. App. 9-10). Further responding, see General Objection Nos. 2 and 3, incorporated herein by reference.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

62. Although Cardenas testified that at the time he was not shown the legal opinion from counsel -- which stated that "the practice of changing destinations without

notice to the ocean carrier exposes Global Link to possible Shipping Act violations" -- such an opinion would not have surprised him. *Id.* at 235:2-13 (GLL App. 159).

**RESPONSE:** Deny and incorporate by reference General Objections above.

**Testimony of Keith Heffernan**

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

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Heffernan Aff. at ¶¶ 2-4 (O.R. App. 33-34).

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

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Heffernan Aff. at ¶¶ 2-4 (O.R. App. 33-34).

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Cardenas Aff. at ¶ 10 (O.R. App. 9-10).

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

70. Heffernan admitted that he did not necessarily want to know that the FMC had "gone after" an entity for having cargo dropped off at a destination different than

what was reflected on the bill of lading. *Id.* at 174:3-176:6 (GLL App. 137-139)

**RESPONSE:** Deny and incorporate by reference General Objections above.

**Testimony of Chad Rosenberg in Regard to the Olympus Respondents**

71. Chad Rosenberg, the founder of Global Link, testified that he had a telephone conversation with Keith Heffernan and David Cardenas around July of 2003, after they had received a call from Eric Joiner, who had raised questions about split routing. *See* Chad Rosenberg Dep. at 32:3-34:12, Exh. C (GLL App. 70-71).

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Cardenas Aff. at ¶ 10 (O.R. App. 9-10).

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

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Cardenas Aff. at ¶¶ 9-11 (O.R. App. 9-10).

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Cardenas Aff. at ¶¶ 9-11 (O.R. App. 9-10).

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

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Cardenas Aff. at ¶¶ 9-11 (O.R. App. 9-10).

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above..

**Testimony of Eric Joiner**

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

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

A. Yes.

Q. Who did you have those conversations with?

A. Dave Cardenas.

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

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Cardenas Aff. at ¶¶ 9-11 (O.R. App. 9-10).

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

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Cardenas Aff. at ¶¶ 9-11 (O.R. App. 9-10).

83. One of the reasons Joiner had that discussion with Cardenas was that he

wanted to have a lawyer make a presentation to Global Link on compliance with the Shipping Act for training purposes and Cardenas needed to authorize such an expenditure. *Id.* at 198:1-10 (GLL App. 164).

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Cardenas Aff. at ¶¶ 9-11 (O.R. App. 9-10).

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

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

**RESPONSE:** Admit. Further responding, see General Objection No. 3, incorporated herein by reference.

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

**RESPONSE:** Admit. Further responding, see General Objection No. 3, incorporated herein by reference.

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

**RESPONSE:** Admit. Further responding, see General Objection No. 3, incorporated herein by reference.

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

**RESPONSE:** Admit. Further responding, see General Objection No. 3, incorporated herein by reference.

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

**RESPONSE:** Admit. Further responding, see General Objection No. 3, incorporated herein by reference.

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

**RESPONSE:** Deny and incorporate by reference General Objections above. *See* Cardenas Aff. at ¶ 10 (O.R. App. 9-10).

**Global Link's Current Ownership and Management**

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

**RESPONSE:** Admit.

93. Shortly after Golden Gate acquired Global Link, the company was informed by a former employee that she had been fired due to her refusal to engage in split routing or split deliveries whereby shipments from Asia would be delivered to inland locations in the United States *that* were not those reflected on the master bill of lading and not destinations specified in service contract with the steamship line. Arbitration Award at 14, Exh. B (GLL App. 17).

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

**Arbitration Panel Findings**

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

Claimants [Global Link's current owner] unknowingly inherited a practice, which they continued until it was feasible to end the practice across the board, as they were advised by counsel would be a reasonable course. It is a stretch to call

Claimants' continuation of split-routing until the next ocean carrier contract reset "voluntary," and to the extent Claimants may be considered culpable, their culpability does not rise to that of the Respondents who defrauded them.

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

**RESPONSE:** Deny and incorporate by reference General Objections above.

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

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

106. As a result, Golden Gate asked Gary Meyer, the President of Global Link, and James Briles, Global Link's Vice President of Transportation, to investigate the issue.

*Id.* at ¶ 5 (GLL App. 165).

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

109. MOL is one of the steamship lines with which Global Link had service

contracts. *Id.* at ¶ 8 (GLL App. 166).

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

113. Golden Gate suffered significant losses as a result of the actions of the

prior owners of Global Link and of MOL in encouraging and engaging in split routing.  
*Id.* at ¶ 12 (GLL App. 166).

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

119. Subsequently, Paul McClintock and Rebecca Yang of MOL came to Global Link's offices to discuss the new contract and Global Link's desire to get away from the split routing practices, which involved only a handful of door points. *Id.* at

128:10-129:19 (GLL App. 95).

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff.

(O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

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

We've waited as long as we possibly can. Therefore, I have advised both Jim and Molly that *we must discontinue supporting MOL on the split moves as we do not have MOL CY rates in place that will allow us to arrange our own trucking. This instruction has been given with immediate effect.*"

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff.

(O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

126. Jim Briles responded that Global Link could no longer engage in split routing, *i.e.*, "cannot use alternative doors." *Id.* Rebecca Yang's response of "SIGH"

reflected MOL' s disappointment that Global Link was no longer willing to engage in split routing. *Id.*

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

127. On July 26, 2007, less than ten days later, MOL again corresponded with Global Link in regard to a split routing proposal in which goods would move under a Monroe, Louisiana door rate but actually go to Winnsboro, Louisiana with MOL contributing to the extra trucking costs from the service contract point to the actual destination. In response, a clearly exasperated Global Link states "Why is MOL accepting these if not in the contract?????" *See* July 26, 2007 correspondence attached as Exhibit M (GLL App. 172). In this instance, Paul McClintock had increased the fuel allowance for truckers so as to make the split routing more enticing. "So now Paul increased the fuel allowance for Monroe to \$200 from \$125." Once again, however, Jim Briles informed Rebecca Yang and Lauren Estrada of MOL that "for vineyard to Winnsboro, la — I cannot book there anymore since we have Monroe LA door and you know the whole situation." *Id.*

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

128. Despite Global Link's continued insistence that it would not engage in

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** Deny that the above proposed finding of fact involves or relates to the Olympus Respondents. (Mischianti Aff. (O.R. App. 12-14); Cardenas Aff. (O.R. App. 8-11); Heffernan Aff. (O.R. App. 33-35)).

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

**RESPONSE:** The Olympus Respondents incorporate by reference their responses to MOL's Proposed Findings of Fact at ¶¶ 115-163, as if fully set forth herein, together

with Olympus Respondents' General Objections to MOL's Proposed Findings of Fact  
(filed Mar. 1, 2013).

Dated: May 1, 2013

Respectfully submitted,



Lewis R. Clayton  
Andrew G. Gordon  
PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Telephone: 212-373-3543  
Facsimile: 212-492-0543

Warren L. Dean, Jr.  
C. Jonathan Benner  
Harvey A. Levin  
Kathleen E. Kraft  
THOMPSON COBURN LLP  
1909 K Street, N.W., Suite 600  
Washington, D.C. 20006  
Telephone: 202-585-6900  
Facsimile: 202-585-6969

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

**CERTIFICATE OF SERVICE**

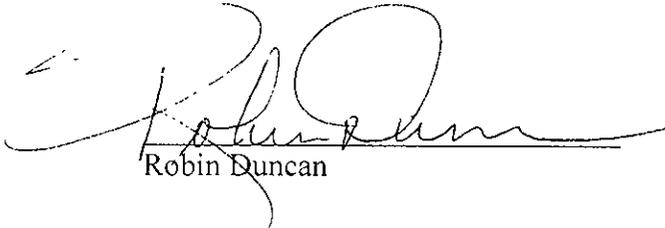
I hereby certify that on May 1, 2013, I served the foregoing document on the following individual(s) by electronic mail and regular mail:

Marc J. Fink  
David Y. Loh  
COZEN O'CONNOR  
45 Broadway Atrium, Suite 1600  
New York, NY 10006-3792  
Email: mfink@cozen.com  
dloh@cozen.com  
*Attorneys for Mitsui O.S.K. Lines*

David Street  
Brendan Collins  
GKG Law, PC  
1054 31st Street, Suite 200  
Washington, DC 20007  
Email: dstreet@gkglaw.com  
bcollins@gkglaw.com  
*Attorneys for Global Link Logistics, Inc.*

Ronald N. Cobert  
Andrew M. Danas  
Grove, Jaskiewicz and Cobert LLP  
1101 17th Street, N.W., Suite 609  
Washington, D.C. 20036  
Email: rcobert@gjacobert.com  
adanas@gjacobert.com

Benjamin I. Fink  
Neal F. Weinrich  
Berman Fink Van Horn PC  
3423 Piedmont Rd., NE, Suite 200  
Atlanta, GA 30305  
Email: bfink@bfvlaw.com  
nweinrich@bfvlaw.com  
*Attorneys for CJR World Enterprises, Inc. and  
Chad Rosenberg*



Robin Duncan