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BEFORE THE
FEDERAL MARITIME COMMISSION

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

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. MISCHIANTI, DAVID
CARDENAS, KEITH HEFFERNAN, CJR WORLD ENTERPRISES, INC. AND CHAD J.
ROSENBERG

RESPONDENTS

**COMPLAINANT'S REPLY TO GLOBAL LINK'S MOTION TO BE
PERMITTED TO INTRODUCE AN EXPERT WITNESS REPORT AND TESTIMONY
SHOULD THERE BE A NEED FOR EVIDENCE ON REPARATIONS**

Complainant Mitsui O.S.K. Lines Ltd. ("Complainant") hereby submits its reply to respondent Global Link Logistics, Inc.'s ("Global Link") Motion to Be Permitted To Introduce An Expert Witness Report And Testimony Should There Be A Need For Evidence On Reparations ("Motion"). For the reasons set forth below, the Motion should be denied.

Under the Commission's procedural regulations, situations which are not covered by a specific Commission rule are governed by the Federal Rules of Civil Procedure ("FRCP") "to the extent that they are consistent with sound administrative practice." 46 C.F.R. §502.12. FRCP 37(c) provides that a party which fails to identify a witness is not allowed to use that witness unless the failure was substantially justified or is harmless. The sanction is "automatic and

mandatory.” *Warfield v. City of Chicago*, 565 F.Supp.2d 948, 959 (N.D. IL 2008), citing *NutraSweet Co. v. X-L Eng’g Co.*, 227 F.3d 776, 785-786 (7th Cir. 2000). See also, *Coles v. Perry*, 217 F.R.D. 1, 4 (D.D.C. 2003).

The Presiding Officer has, either expressly or implicitly, adopted and applied the foregoing standard in this proceeding. As the Motion notes, in his October 16, 2012 Procedural Order and Briefing Schedule, the Presiding Officer ruled:

The Respondents will be permitted to submit expert testimony upon a showing as to why their expert or experts were not previously identified during discovery.

October 16, 2012 Order at p. 3. In essence, the October 16 ruling requires Global Link to make a showing as to why its failure to identify an expert witness was substantially justified or is harmless. The Motion does not address, much less meet, either of these criteria.

While the Motion goes into great detail regarding the procedural history of discovery in this proceeding, it offers no explanation whatsoever as to why Global Link’s expert or experts have not been identified to date. Thus, despite knowing for almost six months that its ability to introduce an expert is contingent upon a showing of why it has failed to identify that expert, and despite the fact that Global Link was consulting with an expert at least as early as January of 2012 (see January 23, 2012 Joint Motion for Enlargement of Time for Expert Discovery), Global Link has yet to identify its expert(s), or to offer any showing as to why said expert(s) were not identified during discovery.

In light of the foregoing, Global Link’s arguments regarding the timing of the submission of Complainant’s expert report are untimely and devoid of merit.

Global Link has failed to comply with its disclosure obligations with respect to the identity of its expert witness. It has failed to meet the conditions established by the Presiding Officer for the introduction of such a witness, which standards are wholly consistent with the FRCP. Accordingly, the Motion must be denied.

Respectfully submitted,



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Dated: May 1, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the following individual(s) via electronic mail:

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