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

RESPONDENTS

**_____
RESPONDENT GLOBAL LINK LOGISTICS, INC. OPPOSITION TO COMPLAINANT
MITSUI O.S.K. LINES, LTD. REBUTTAL PROPOSED FINDINGS OF FACT OF
_____**

Global Link Logistics Inc. ("Global Link") hereby files responses to the Rebuttal
Proposed Findings of Fact of Complainant, Mitsui O.S.K. Lines, Ltd. ("MOL").

181. The MOL service contracts dated May 11, 2004 (MOL App. 1694), May 1, 2005
(MOL App. 1734) and February 20, 2006 (MOL App. 1773) previously entered into the record
were signed by Rosenberg.

Response: Admit.

182. CJR World Enterprises, Inc. ("CJRWE") is a Florida corporation. It was the
owner of those shares of GLL not owned by some of the Olympus Respondents. Chad J.
Rosenberg was and is the sole shareholder, director and officer of CJRWE. Partial Final
Arbitration Award, p. 3 (MOL App. 3).

Response: Global Link has insufficient information to admit or deny Proposed

Finding of Fact No. 182.

183. CJRWE did not file the annual reports required by Florida law between April 20, 2003 and September 12, 2010. Under Florida law, failure to file an annual report results in the administrative revocation of the company's status. Fla. Stat §§617.1420 and 617.1421 (2012). Thus, although CJRWE filed for reinstatement of its status on November 1, 2004, May 17, 2006, September 21, 2007 and November 6, 2009, the fact that it failed to file reports in all of those years and needed to apply for reinstatement demonstrate that it was not in good standing for much of that period. MOL Exh. CC, MOL App. 1945.

Response: Global Link has insufficient information to admit or deny Proposed

Finding of Fact No. 183.

184. GLL and the other Respondents collaborated with two MOL employees, Paul McClintock ("McClintock") and Rebecca Yang ("Yang"), to keep "split routing" a secret from MOL. (Briles Dep. at 125:20 and 134:3-17; MOL Exh. "U" (MOL App. at 1225-6); Rosenberg Declaration at 52-55 (CJR Exh. A) (CJR App. at 9); Briles Declaration at 27-28, 38-39, 44 (CJR Exh. B) (CJR App. at 16, 18-19, 20); and Latham Declaration at 5 (CJR Exh. C) (CJR App. at 29)).

Response: Denied. MOL misstates the testimony and Declarations. Jim Briles testified in deposition that Paul McClintock told him that conversations in regard to split routing should be limited to "high level management of Global Link and MOL and we didn't – our operations group didn't talk about it."¹ Briles Dep. at 133-134, MOL App. at 1226 (emphasis supplied), GLL FoF 13. Similarly, the Declarations of Chad Rosenberg and Jim Briles do not say that split routing should not be discussed with anyone else at MOL. Instead, Mr. Rosenberg's sworn statement reflects that Mr. McClintock and Ms. Yang encouraged Global Link to keep inter-company discussions regard split routing limited to "management-level employees" at Global Link and MOL. Rosenberg Dec. at ¶ 53, CJR App. 009. The Declaration of Jim Briles also states that discussion regarding split routing should be between management level employees at MOL and Global Link. *Id.* at ¶ 27, CJR App. 016.

¹ Further, as discussed below, not only senior management but the operations staff as well were on notice of the ongoing split routing.

185. By their own admission, Respondent Rosenberg and Briles-an owner and senior employee of GLL-conspired with McClintock and Yang to hide the "split routing" scheme from the rest of MOL. Rosenberg Dec. at52-54 (CJR Exh. A) (CJR App. 9); Briles Dec. at 26-28 (CJR Exh. B) (CJR App. 16-17). *See also* Feitzinger Dep. at 210:6-211:5 (MOL Exh. CH, MOL App. 1997-98) (McClintock "colluded" with Briles to hide "split routing" from MOL)

Response: Denied. *See* Response to Proposed Finding of Fact 184. Global Link further submits that Edward Feitzinger's testimony is not based upon personal knowledge. *See, e.g.,* Feitzinger Dep. at 205, 206, MOL App. 1995-96 (admitting that testimony is based upon what somebody, whose name he can't recall, told him.)

186. McClintock and Yang's denials of their involvement in split routing are contradicted by the testimony of others. *See* Briles Dep. at 125:20 and 134:3-17, MOL Exh. "U" (MOL App. at 1225-6); Rosenberg Declaration at52-55 (CJR Exh. A) (CJR App. at 9); Briles Declaration at27-28, 38-39, 44 (CJR Exh. B) (CJR App. at 16, 18-19, 20); and Latham Declaration at5 (CJR Exh. C) (CJR App. at 29).

Response: Admitted.

187. McClintock and Yang told GLL not to discuss "split routing" with anyone else at MOL. Rosenberg Dec. at54-55, GLL Exh. A, GLL App. at 009; Briles Dec. at 27-28,31-32, GLL Exh. B, GLL App. at 016-17; and Briles Dep. at 134:3-17, MOL Exh. "U" (MOL App. at 1226).

Response: Denied. *See* Response to Proposed Finding of Fact 184.

188. Rosenberg and Briles state in their respective declarations that McClintock and Yang did not want MOL operations personnel to know about "split routing." Rosenberg Dec. at54; CJR App. 9 and Briles Dec. at28; App. 17).

Response: Denied. *See* Response to Proposed Finding of Fact 184.

189. There are numerous examples of McClintock and Yang acting contrary to the interests of MOL and in support of the interests of GLL. *See* Minck Declaration (MOL Exh. CS, MOL App. 2077-2149) and Declaration of Richard J. Craig (MOL Exh. CU, MOL App. 2152-2169).

Response: Denied. The evidence reflects that as the prime MOL personnel responsible for handling the Global Link account, they on occasion sought to accommodate their customer's needs but nothing in the evidence cited reflects that they were acting

contrary to the interests of MOL and in support of the interests of Global Link. Instead, they were acting to continue to grow the business between the companies and maximize MOL's profits.

190. Respondents knew that McClintock and Yang had no authority to approve of split routing and that they were acting directly contrary to the interest of MOL. Feitzinger Dep. at 205:10-206:23 (MOL App. 1995-96) ;Feitzinger Dep. at 210:6-211:5 (MOL App. 1997-98).

Response: Denied. See Response to Proposed Finding of Facts 184 and 189.

191. Because McClintock and Yang advised GLL to keep the scheme among themselves (Rosenberg Dec. at53-55 (CJR App. 009); Briles Dec. at27-29 (CJR App. 016-17), Respondents knew that McClintock and Yang had no authority to allow split routing.

Response: Denied. See Response to Proposed Finding of Fact 184.

192. Split routing was not done for the administrative convenience of MOL. Rather, the practice was wholly for the benefit of GLL. *See* Declaration of Warren Minck (MOL Exh. C'S, MOL App. 2077).

Response: Denied. See Global Link FoF 17-23.

193. MOL did not have knowledge of GLL's split routing scheme. While there were isolated instances of MOL employees receiving documents that reflected the actual destination, instead of the fictitious destination booked by GLL (e.g., delivery orders), that cannot be found to be knowledge of the massive fraudulent practice utilized by GLL for thousands of shipments. *See* Declarations of Richard J. Craig, Felicita Camacho, Warren Minck and Edward Y. Holt III (MOL Exh. CU, CT, C'S and CV; MOL App. 2152-69,2150-51,2077-2149 and 2170-74).

Response: Denied. See Global Link FoF 24-145.

Respectfully Submitted,

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DATE: May 31, 2013

CERTIFICATE OF SERVICE

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

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