

**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.

**RESPONDENT AND CROSS COMPLAINANT GLOBAL LINK LOGISTICS, INC.'S
BRIEF IN SUPPORT OF ITS COUNTERCLAIM AGAINST MITSUI O.S.K. LINES**

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Having deliberately and willfully violated the Shipping Act by engaging in split routing over an extended period of time, not only with Global Link Logistics, Inc. ("Global Link"), but also with its other customers as well as, including Nintendo, Mitsui O.S.K. Lines Limited ("MOL") now seeks a windfall by suing to collect damages from Global Link for practices that MOL itself promoted. Because such a brazen act constitutes an unjust and unreasonable practice, MOL should be prohibited from seeking such relief and Global Link's current owner should be awarded reparations for having to defend against MOL's frivolous and baseless action.

The overwhelming weight of evidence establishes not only that MOL was aware of the split routing that occurred in 2004 through 2006, but that it encouraged it as a business practice because it believed it benefited MOL. This is confirmed not only by sworn testimony but also by contemporaneous documentation. The documentation includes emails produced by MOL showing that MOL explicitly agreed to pay truckers to carry goods from the destinations listed

on their bills of lading to destinations not listed on its bills of lading or in the MOL - Global Link service contracts. Evidence of MOL's knowing participation in split routing is further confirmed by the testimony of its own employees and by hundreds of shipping records reflecting that MOL was fully aware that cargo was being diverted to locations different than what was reflected in their service contracts with Global Link and to locations different than what was shown on the master bills of lading under which the goods moved. When junior employees in MOL's operations department raised concerns in regard to this practice, the MOL supervisor instructed her employees to cut fraudulent Transportation Orders reflecting delivery of the goods to a false destination. Further, the evidence is beyond cavil that when Global Link, under its current ownership, sought to discontinue the split routing practices, MOL strenuously resisted such efforts.

For MOL to collude with Global Link's former owners and management in split routing and then to seek a windfall years later by suing on the grounds that split routing constitutes a Shipping Act violation is the prototype of an unreasonable trade practice. The unfair, and discriminatory, nature of MOL's actions are further highlighted by the fact that MOL's participation in split routing was not limited to Global Link; it was common MOL practice. Nintendo was one of MOL's largest customers. Senior MOL personnel admitted under oath that MOL not only allowed split routing to occur with its Nintendo shipments, but that it *actually handled the split routing deliveries*. It was *standard operating procedure* for MOL to engage in split routing on behalf of Nintendo. Sample documents produced by MOL itself show that over 80% of the shipments handled by MOL on behalf of Nintendo were split routings. Nonetheless, MOL admits that it has never sought to re-rate the ocean freight rates to the new destinations or to assess diversion charges against Nintendo. For MOL now to seek to do so here against Global

Link – ironically, only after Global Link refused to continue the split routings -- constitutes an unfair, unreasonable and discriminatory practice.

FINDINGS OF FACT

Global Link's Proposed Findings of Fact in Opposition to MOL's Request for Relief and in Support of Global Link's Counterclaim, which are being filed separately, are incorporated herein.

Argument

Global Link's Counterclaim asserts that MOL's knowledge and encouragement of split routing practices constituted a violation of Sections 10(b)(1) and (2)(A) of the Shipping Act, 46 U.S.C. §§ 41104(1) and 2(A) and also constituted an unjust and unreasonable practice in violation of Section 10(d)(1) of the Shipping Act, 46 U.S.C. § 41102(c). *See* Global Link Verified Answer and Counterclaim, Section V, Docket No. 09-01 (9). The evidence confirms that MOL was a willing participant in the split routing at issue. Accordingly, it constitutes an unjust and unfair practice for MOL to now seek reparations for its own illegal conduct.

I. MOL Was Fully Aware of and Complicit In The Split Routing

As reflected in Global Link's Proposed Findings of Fact in Opposition to MOL's Request for Relief and in Support of Global Link's Counterclaim, ("FoF"), the evidence of MOL's knowledge and encouragement of split routing is overwhelming. This evidence consists of the sworn testimony, not only of Global Link employees, but also of MOL employees, the findings of a neutral Arbitration Panel, contemporaneous email communications, MOL's instructions to truckers, MOL's communications with its General Counsel and other Senior Personnel in regard to split routing, MOL's agreement to pay truckers to engage in split routing, MOL's issuance of fraudulent Transportation Orders in connection with split routings, MOL's charging rates

contrary to those set forth on the bills of lading under which the goods moved and contrary to its service contract with Global Link, MOL's receipt of hundreds of Shipline Orders reflecting split routing to various locations around the country, MOL's continued refusal to terminate split routing despite Global Link's current owners request that it do so, and sworn testimony and documentation establishing that it was MOL's routine practice to conduct split routing on behalf its largest customer, Nintendo.

A. MOL Employees' Testimony as to Benefits to MOL Associated with Global Link Doing Door Moves which Permitted Split Routing

Most of the shipments handled by MOL for Global Link during 2004 through 2006 were to door points, as opposed to container yards. FoF 18. One of the significant benefits to MOL of its relationship with Global Link was that Global Link took on most of the obligations in terms of actually delivering the goods from the MOL container yard to the door point. FoF 19.

The willingness of Global Link to handle the inland transportation of the goods to the door point was a significant benefit to MOL because MOL did not have to do the work involved in handling such moves and MOL no longer had the burden of providing staff to coordinate the door moves. FoF 20. During this time period, the railroads were imposing significant penalties for not timely removing containers from the rail yard. FoF 21. By having Global Link take over responsibility for the door moves, however, such detention charges were no longer MOL's responsibility. FoF 21.

B. Global Link Employees' Deposition Testimony and Sworn Declarations

Jim Briles, who was Global Link's primary contact with MOL during the relevant time period, routinely communicated with Paul McClintock, MOL Vice President and Rebecca Yang, who had primary responsibility for MOL's relationship with Global link, about split routing during the time period from 2004 through 2006. FoF 10.

Chad Rosenberg, Global Link's founder and former President/Owner testified that MOL was aware of and encouraged Global Link's split routing because it saved MOL from the inconvenience and administrative burden of having to negotiate numerous additional door points in the service contracts rather than simply shipping to regional points. FoF 17.

Rebecca Yang of MOL expressed appreciation to Chad Rosenberg for Global Link performing split routing. FoF 23. She told him that she preferred that Global Link do split routing because it was more convenient for her. *Id.*¹

C. MOL Employees' Testimony as to Knowledge of Split Routing

One of Global Link's customers was Vineyard Furniture in Winnsboro, Louisiana. FoF 24. There was no door point in the applicable MOL service contract for Winnsboro, Louisiana. *Id.* There was also no door point in the applicable MOL service contract for Bassett, Virginia, where another Global Link customer, Bassett Furniture, was located. FoF 73.

Rebecca Yang testified that when she asked Jim Briles at Global Link why certain door points were in the service contract with MOL, he told her that Global Link used the Martinsville door point for deliveries to Bassett Furniture, which is located in Bassett, Virginia. FoF 25. He also told her that Global Link had another door point for delivery of goods to Vineyard Furniture, which is in Winnsboro, Louisiana. *Id.*

Rebecca Yang testified that because the door points in a service contract do not cover all the destinations where goods are being shipped, goods would often be diverted to another destination for the convenience of the customer. FoF 26. Under those circumstances, MOL

¹ The testimony of Chad Rosenberg and Jim Briles that MOL, unlike some other carriers such as Maersk, encouraged split routing was given long before this suit was initiated by MOL. Messrs. Rosenberg and Briles, therefore, would have had no reason to differentiate between MOL and other carriers in regard to its willingness to engage in and encourage split routing.

would not charge a diversion fee and would charge the customer for the destination listed on the bill of lading. *Id.*

It was a “common occurrence” at MOL that although a bill of lading might say goods were going to one destination, such as West Monroe, Louisiana, they would actually be delivered to another location such as Winnsboro, Louisiana. FoF 27. *That would not be a surprise to her or to anyone else at MOL. Id.* (emphasis supplied.)

To Rebecca Yang’s knowledge, MOL never sought to rerate shipments or billed for diversion charges in cases of split routing where goods were delivered to a different location than what was listed on the bill of lading. FoF 28. If such diversion charges had been billed to Global Link, she would have known about it. *Id.*

D. Arbitration Panel

The Rosenberg Respondents and 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. FoF 30.

The Arbitration Panel determined that “there is clear evidence that a senior sales representative of Mitsui knew that Global Link was engaged in split-routing, and Mitsui did not object – indeed Mitsui encouraged continuation of the practice -- because Mitsui preferred not to be bothered with negotiating a multiplicity of door points.” FoF 31.

E. MOL’s Instructions to Truckers in Regard to Split Routing

In 2004, MOL informed Global Link that it wanted Global Link to use a specific trucker (All Coast) out of Savannah, Georgia for some shipments booked to Lenoir, N.C. FoF 33. In

that email, Eric McColloch of Global Link wrote that MOL had advised Global Link that “they do not care if [All Coast] is really delivering to the correct destination (we would just have to send [All Coast] the correct address).” FoF 34.

In July of 2005, four years before this action was brought, Jim Briles sent an email to Rebecca Yang in which he explicitly referenced Global Link’s practice of using house bills of lading (HBLs) which had different delivery points than did the MOL master bills of lading (MBLs). FoF 35.

In discovery, MOL produced an email dated August 11, 2005 which initially reflects that Global Link coordinated with a trucker for the delivery of a split routing in which the bill of lading and the delivery order showed Martinsville, Virginia, “but the actual del[ivery] is Beltsville, Md.” FoF 37.

Subsequently, on that same date, there was an email from the trucker summarizing a conference call in which Laci Bass from MOL and a Global Link employee participated. The email summarizes an agreement whereby MOL, Global Link and the trucker (Evans Delivery) agreed to accommodate each other’s concerns in regard to such split routings “on a case-by-case basis.” FoF 38-39.

F. MOL’S Consultation with its General Counsel and with Senior Personnel in Regard to Split Routing

On August 15, 2005 -- almost four years before this Complaint was filed -- Ted Holt, a MOL Operations Manager, wrote to Paul McClintock and Laci Bass in regard to instances where the bill of lading says the goods are going to one location but the containers are actually going to a different place and asked whether MOL should be billing diversion charges associated with such split routing. FoF 40.

In that email, Mr. Holt, wrote that: "Basically, the b/l [bill of lading] says one thing and the container goes to a different place." FoF 41.

In his written response to the email, Mr. McClintock indicated that he would discuss the matter with Kevin Hartmann, MOL's General Counsel. FoF 42.

Mr. McClintock was questioned extensively in his deposition about this email and stated that this email was forwarded to General Counsel and discussed and reviewed. FoF 43. He testified that the email was not only sent to MOL's General Counsel but to other senior MOL personnel as well, including Ted Holt's boss. FoF 43, 51. He further testified that follow-up discussions in regard to the matter occurred internally at MOL. FoF 43-53.

Despite this review, and the fact that split routing was a regular occurrence, nothing was done to prevent further split routings by Global Link. FoF 47, 56.

Mr. McClintock is absolutely certain that the August 15, 2005 email discussing whether to bill for split routing was sent up the chain of command and to MOL's General Counsel. FoF 48-49. He testified that "*I can assure you there was follow-up taken on that particular case.*" FoF 50. (emphasis supplied.)

The fact that MOL failed to produce in discovery email communications reflecting such communications in no way indicates that such communications did not occur. FoF 51-53.

Rebecca Yang testified that as of August 2005, Paul McClintock, Laci Bass, Ted Holt and MOL's General Counsel, Kevin Hartmann, knew about split routing and considered billing for diversion charges but decided not to do so. FoF 55. Rebecca Yang further confirmed that no investigation in regard to split routing was taken as a result of these communications. "At least nobody instructed [her] to investigate or anything like that," despite the fact that she was MOL's primary contact person with Global Link. FoF 56.

An accident occurred during a separate split routing of a Global Link shipment. FoF 89. Mr. McClintock testified that “just about everybody in the company [MOL] was copied on that one. *Id.* Despite the fact that “there were messages after messages flying all over about that overturned container,” FoF 89, and despite the fact that Paul McClintock, again, had a conversation with MOL’s General Counsel in regard to split routing, no steps were taken by MOL to prevent split routing. FoF 90.

G. MOL’s Agreement to Pay Trucking Costs Associated with Split Routing

West Monroe, Louisiana was a door point in the service contracts between MOL and Global Link, but Winnsboro and Baskon, Louisiana were not. FoF 57.

On December 21, 2005, Blake Shumate, the Regional Manager for Global Link wrote Paul McClintock noting that MOL was paying Vineyard Express, a trucking company, only \$75 for taking goods from the ramp in Monroe, to Baskon and Winnsboro locations despite the fact that it is a 95 mile round trip. FoF 58. Although delivery to such locations clearly constituted split routing, Global Link requested that MOL pay \$150 for round trips from Monroe to Vineyard Furniture in Baskon and Winnsboro. *Id.*

On the next day, MOL agreed to the \$150 adjustment. FoF 59. Thus, as of December of 2005, MOL agreed to increase the amount it paid truckers for draying goods for split routings from West Monroe to Baskon and Winnsboro, Louisiana. *Id.*

H. MOL’s Issuance of a Fraudulent Transportation Order in Connection with a Split Routing

On December 1, 2005, three and a half years before this Complaint was filed, one of MOL’s employees, Diane Chick, wrote to her supervisor, Jane Martin, noting that the “b/l[s [bills of lading] are showing West Monroe DOOR moves, but the delivery order I have for b/l #481637003 reads Winnsboro, LA, which is at least 30 miles south of West Monroe. We can

only deliver to where the b/l reads unless the customer wants to pay the additional drayage.”
FoF 60.

Although another MOL employee noted that “you are not supposed to do this,” a MOL supervisor wrote to five different MOL employees instructing them that they should “just cut the TPO [Transportation Order] for West Monroe and if this is to Vineyard Trucking they can work out the difference internally.” FoF 61-64.

I. MOL Charged Global Link Rates That Were Contrary to those Set Forth in its Service Contract

On October 13, 2006, Jane Martin of MOL and Glenn Nowakowski of Global Link corresponded in regard to diverting a container from Lenoir, North Carolina to Sugarland, Texas and diverting a container from Braselton, Georgia to Phoenix, Arizona. FoF 65. Although Global Link did not have door points for Sugarland or Phoenix in its service contract with MOL, Rebecca Yang of MOL informed Global Link that it should engage in split routing by using the Forney, Texas rate that was in the service contract between MOL and Global Link. *Id.*

J. Global Link Shipline Delivery Orders Provided to MOL Reflecting Split Routing

Global Link’s Proposed Findings of Fact 66-87 establish that Global Link sent MOL hundreds of Shipline Transportation Orders, to over a dozen different MOL employees, reflecting that cargo was being split routed to Winnsboro, Louisiana, Ridgeway, Virginia, Bassett, Virginia, Lynchburg, Virginia, Fort Worth, Texas, Tucker Georgia, Atoka, Oklahoma and Itasca, Illinois.

K. MOL Correspondence in Regard to Split Routing from Martinsville, Virginia to Hancock, Maryland

On March 2, 2007, Laci Bass wrote to Paul McClintock and Rebecca Yang, and cc'ed Ted Holt, in regard to Global Link cargo that was booked for Martinsville, Virginia but was

actually going to Hancock, Md. FoF 88. Just about everyone in MOL was copied on that email and Paul McClintock discussed the split routing with MOL's General Counsel, Kevin Hartmann, but no steps were taken by MOL to prevent split routing. FoF 89-90.

L. MOL's Receipt of Invoices from Truckers Showing the Delivery of Goods to Locations Different Than Those on its Bills of Lading

Although Global Link issued Shipline and Truckline Delivery Orders to Spirit Trucking with different delivery addresses, Global Link never told anyone from Spirit Trucking not to disclose to MOL where the goods actually were being delivered. FoF 91.

Global Link's Proposed Findings of Fact Nos. 91-106 reflect that Spirit Trucking sent invoices to MOL showing the actual locations where the cargo was delivered. Thus, although MOL received Shipline Delivery Orders showing destinations of Aurora, Illinois and Kentlands, Indiana, Spirit Trucking billed MOL for delivery of the goods to their actual destinations in South Holland, Illinois, Noblesville, Indiana and Dubuque, Iowa.

M. Global Link's Change of Ownership and Efforts to Terminate Split Routing

In June of 2006, Global Link was acquired by its current owner, Golden Gate Logistics, LLC ("Golden Gate"). FoF 107. After Golden Gate acquired the company, a former employee made a complaint alleging questionable routing practices. *Id.* As a result, Golden Gate investigated the issue. FoF 108.

Initially, the allegations of questionable routing practices were not viewed as significant and Global Link was unable to quantify the extent of the split routing practice until early 2007. FoF 109. 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. *Id.*

Most of the service contracts being used for Global Link's customers belonged to NVOCCs in the Hecny Group, a Hong Kong-based logistics company, and Global Link could not amend them. FoF 110. In addition, service contracts between carriers and NVOCCs run from May 1st to April 30th and Global Link determined that it would be impossible to accomplish 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.*

After Christine Callahan was hired by Global Link, she was instructed to ensure that it complied with FMC regulations and to put an end to Global Link's split routing practices. FoF 112. Consistent with that directive, Global Link informed MOL that the split routing practices needed to be terminated. FoF 113.

Global Link's current owners, Golden Gate, took every reasonable step to terminate split routing with MOL in a timely fashion. FoF 114.

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 30th). FoF 117. One of the steamship lines with which she negotiated with was MOL. *Id.*

Ms. Callahan's primary contact at MOL for these negotiations was Paul McClintock, who was the Vice President/General Manager of the Southeastern Region of the United States for MOL. FoF 118-19. He was Global Link's primary contact because of Global Link's location in that region of the country. *Id.*

In March of 2007, 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 and port rates. FoF 120.

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. FoF 121.

MOL told Global Link it would not cease split routing because it was too time-consuming to negotiate individual delivery points. FoF 122. When Global Link requested that a different door point be added to the MOL-Global Link Service Contract for a particular shipment, Rebecca Yang, and Paul McClintock requested that Global Link instead move the shipment as a split. *Id.*

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 Paul McClintock that Global Link could not continue to use the existing methodology in the contract and the parties needed to get the C[ontainer] Y[ard] rates in place as quickly as possible. FoF 124.

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."

FoF 125. (emphasis supplied.)

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. FoF 126.

Hessel Verhage, the President of Global Link, met with Paul McClintock and Rebecca Yang for lunch and informed them that Global Link could no longer engage in split routing with MOL. FoF 123. Paul McClintock and Rebecca Yang fully understood what split routing was. *Id.* MOL expressed disappointment that Global Link was no longer willing to engage in split routing. *Id.*

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. FoF 127. In the correspondence, despite having been told on numerous occasions that Global Link was no longer willing to engage in split routing, Rebecca Yang suggested a split routing whereby Global Link would use a Fort Smith, Arkansas address rather than a Bentonville, Arkansas address because Bentonville rates were higher. *Id.*

Jim Briles responded that Global Link could no longer engage in split routing, *i.e.*, “cannot use alternative doors.” FoF 8 Rebecca Yang’s response of “SIGH” reflected MOL’s disappointment that Global Link was no longer willing to engage in split routing. *Id.*

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 contracts point to the final destination. FoF 129 Although Paul McClintock had increased the fuel allowance for truckers so as to make the split routing more enticing, Global Link informed MOL that split routing was no longer allowed. *Id.*

Despite Global Link's continued insistence that it would not engage in split routing, months later, 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." FoF 131. Thus, even five months after Global Link had informed MOL that it wanted to move away from split routing, MOL refused to stop the practice. FoF 120-31.

While MOL ultimately did provide Global Link with CY rates, 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. FoF 132.

N. Nintendo Split Routing Scheme

As the Vice President/General Manager for the Southeastern Region of the United States, the regional sales, customer services and operations personnel at MOL all reported to Paul McClintock. FoF 135.

Subsequently, in 2007, Mr. McClintock assumed responsibility for MOL sales throughout the entire United States. FoF 136.

Although Nintendo had only one door point in its contract, which would be shown as the destination on all of MOL's bills of lading, MOL's practice was to actually deliver Nintendo's goods to points different than those in the MOL service contract, and the bills of lading. FoF 137. Deliveries to such locations were contrary to the terms of the service contract and constituted split routings. *Id.*

The primary function of three MOL employees was to deliver goods to sites different than what was reflected in the Nintendo service contract and presumably different than the

location reflected in MOL's bills of lading. FoF 138. It was "*standard operating procedure*" for MOL to engage in split routing on behalf of Nintendo. *Id.*

MOL submitted documents to the Commission reflecting that out of a sample of 119 containers handed by MOL on behalf of Nintendo, 82% (98 of 119) were delivered to locations different than what was on the bill of lading. FoF 141.

Despite, the fact that it was MOL's standard operating procedure to engage in split routing on behalf of Nintendo and despite the fact that this practice lasted for an extended period of time, MOL did not seek to re-rate the ocean freight rates to the new destinations. FoF 145.

MOL asserted that diversion charges should not be assessed unless the shipper requested such a diversion, and that ocean freight charges do not have to be re-rated if the location where goods are diverted is not far from the location reflected in the bill of lading, *e.g.*, from North Bend, Washington to over 110 miles away in Yakima, Washington. *Id.*

II. Section 10(d)(1) Prohibits Unjust and Unreasonable Practices

The Commission has defined a "just and reasonable practice" as one that is "otherwise lawful but not excessive and which is fit and appropriate to the end in view." *Investigation of Free Time Practices - - Port of San Diego*, 9 F.M.C. 525, 547 (1966). The practice that is not otherwise lawful and not fit and appropriate to the end in view is, therefore, an unjust and unreasonable practice in violation of Section 10(d)(1) of the Shipping Act, 46 U.S.C. § 41102(c) "Congress . . . [i]n adopting such broad and undefined terms as unfair and unjust and unreasonable . . . granted the Commission wide discretion in determining whether the circumstances in any given case violate the statutes." *Investigation of Practices of Stockton Elevators*, 8 F.M.C. 187, 200 (1964). The Commission and courts have found practices to be unreasonable in a variety of contexts. *See, e.g., Rates, Hong Kong - United States, Trade*, 11

F.M.C. 168, 176 (1967) (unreasonable practice to make a facility or service available only to persons based upon their identity as shippers or consignees of Chinese descent); *Pick Up and Delivery – Puerto Rico*, 16 F.M.C. 344, 349 (1973) (unreasonable practice to allow shippers and consignees to designate truckers to furnish pick up and delivery services which carriers are obligated under their tariffs to perform and for which they are responsible); *Total Fitness Equipment Inc. d/b/a Professional Gym v. Worldlink Logistics Inc.*, 28 S.R.R. 534, 540 (1998) (unreasonable practice to double bill a shipper for transportation); and *Volkswagenwerk A.G. v. FMC*, 390 U.S. 261, 282 (1968) (unreasonable practice to assess port users fees that are not reasonably related to benefits received).

Here, it is clear that MOL's actions constitute unreasonable practices. *First*, the practices themselves are unlawful in violation of Section 10(b)(1) and (2)(A) of the Shipping Act, 46 U.S.C. §§ 41104(1) and (2)(A) for the same reasons that MOL asserts that Global Link has violated Section 10(a)(1) of the Shipping Act; 46 U.S.C. §41103(1). *Second*, MOL's complicity in and encouragement of Global Link's split routing practices so that MOL could avoid having to negotiate multiple door points in service contracts and the administrative burden of arranging for inland transportation, was not "fit and appropriate to the end in view." *Investigation of Free Time Practices - - Port of San Diego, supra*, 9 F.M.C. at 547. Finally, MOL's attempt to collect reparations from Global Link as a result of the split routing practices in which MOL was complicit, and benefited from, is manifestly unreasonable by any standard. To engage in unlawful acts, reap the benefits from those unlawful acts, and then turn around and sue Global Link is neither just nor proper, nor ordinary or usual as reasonable practices are defined by the Commission. *Id.* It is, therefore clear, that MOL has violated - - and continues to violate - - Section 10(d)(1) of the Shipping Act.

Conclusion

MOL and Global Link's prior owners had a longstanding practice of engaging in split routing. Now, years later, after Global Link's current owners terminated the practice, MOL has decided to file suit against its former collaborators to see if it can recover a windfall as a result of its illegal actions. Because this attempt constitutes an unjust and unreasonable practice, the Commission should not countenance MOL's actions and should award Global Link's current owner reparations for having to defend against MOL's baseless action.

Respectfully Submitted,



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DATE: March 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 March, 2013:

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