

S E R V E D

December 11, 2012

FEDERAL MARITIME COMMISSION

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DOCKET NO. 09-01

mitsui o.s.k. lines ltd.

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**

**ORDER ON PETITION FOR COMMISSION ACTION,
RESPONSE BY COMPLAINANT, AND
MOTIONS BY COMPLAINANT AND CJR RESPONDENTS
FOR EXTENSION OF BRIEFING SCHEDULE**

I. PROCEDURAL OVERVIEW

On November 21, 2012, Respondents Olympus Partners, Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P., Louis J. Mischianti, David Cardenas, and Keith Heffernan (collectively "Olympus Respondents") filed a Petition for Commission Action ("Petition") for referral to the Commission by the presiding officer pursuant to Rule 69(a), 46 C.F.R. § 502.69(a). In the Petition the Olympus Respondents request that the Commission order me to comply with the Commission's Order of August 1, 2011,¹ or, alternatively, order me to certify the record to the Commission so that the Commission may make the findings required under its Order of August 1, 2011.

¹The Commission Order is entitled 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.

On December 5, 2012, the Complainant filed a Response to the Petition along with a motion for an extension of the briefing schedule because of commitments of counsel and difficulties in communication. In its Response the Claimant set forth its opposition to the granting of the Petition. On December 7, 2012, Respondents CJR World Enterprises, Inc. and Chad J. Rosenberg (collectively "CJR Respondents") filed a response to the Complainant's motion for an extension of the briefing schedule. The CJR Respondents have no objection to the requested extension, but, if the extension is granted, request an enlargement of the deadline for the filing of their response because of commitments by their lead counsel. I will treat the Response of the CJR Respondents as another motion for an extension.

II. DISCUSSION AND RATIONALE

During the course of this proceeding the Olympus Respondents have repeatedly argued that, in order to comply with the Commission's Order of August 1, 2011, I am obligated to conduct a separate adjudication and issue a separate decision on the issue of whether the Olympus Respondents participated in the violations of the Shipping Act alleged in the Complaint so as to subject them to liability to Complainant Mitsui O.S.K. Lines, Ltd. and to Global Link Logistics, Inc. under its crossclaims. I addressed that contention in my Order Partially Denying Motion of the Olympus Respondents to Proceed Under the Commission's August 1, 2011, Order and Amending Order to Submit Status Reports which was issued on September 5, 2012. In that Order I stated my rationale and conclusion that the Commission's Order of August 1, 2011, does not require a separate adjudication as advocated by the Olympus Respondents. Since the issuance of the Order of September 5, 2012, the Olympus Respondents have restated their contention on a number of occasions, including a motion for reconsideration, a response to an Order to Submit Status Reports, and objections to the Procedural Order and Briefing Schedule of October 16, 2012.

On November 29, 2012, the Secretary of the Commission referred the Petition to me pursuant to Rule 69(a). Rule 69(a) provides that:

In any adjudication, an application or request for an order or ruling not otherwise specifically provided for in this part must be by motion. After the assignment of a presiding officer to a proceeding and before the issuance of his or her recommended or initial decision, all motions must be addressed to and ruled upon by the presiding officer unless the subject matter of the motion is beyond his or her authority, in which event the matter must be referred to the Commission. If the proceeding is not before the presiding officer, motions must be designated as petitions and must be addressed to and ruled upon by the Commission.

Since the Petition seeks relief that is beyond my authority, it must be referred to the Commission for such further action as it deems appropriate. The same is true of the Complainant's Reply inasmuch as it addresses a matter that is properly before the Commission.

The requested extensions would not unduly delay this proceeding, and for good cause shown, I will grant the motions for extensions.

III. ORDER

For the reasons stated herein, it is **ORDERED**:

1. That the Petition for Commission Action and the Complainant's Reply to the Petition be **REFERRED TO THE COMMISSION**.

2. That the Complainants Motion for Extension of the Briefing Schedule be **GRANTED**.

3. That the *Procedural Order and Briefing Schedule of October 16, 2012*, be modified as follows. All other language of the Procedural Order and Briefing Schedule remains unchanged.

January 11, 2013: Mitsui shall file its Proposed Findings of Fact, Appendix, and Brief.

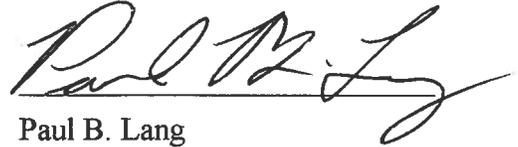
March 1, 2013: *Each of the Respondents shall file their replies to Mitsui's Proposed Findings of Fact, as well as their own Proposed Findings of Fact, Appendix, and Brief. The parties are encouraged to make joint filings to the extent possible, and may incorporate all or part of the filings of other Respondents by reference. Joint filings may include material pertaining to only some of the Respondents or to an individual Respondent.*

Global Link Logistics, Inc. ("Global Link") shall include in its filings material pertinent to its counter-complaint against Mitsui and to its cross-claims.

April 1, 2013: Mitsui shall file its replies to the Respondents' Proposed Findings of Fact. Additionally cited evidence is to be included in Mitsui's Supplemental Appendix. Mitsui may, but is not required to, file a reply to Respondents' Briefs, but shall file a reply to Global Link's counter-complaint.

Respondents other than Global Link shall file replies to documents filed by Global Link with regard to its cross-claims.

April 18, 2013: Global Link may, but is not required to, file a reply to the briefs of the other Respondents with regard to its cross-claims. Global Link may, but is not required to, file a reply to Mitsui's brief on its counter-complaint.

A handwritten signature in black ink, appearing to read "Paul B. Lang", written over a horizontal line.

Paul B. Lang

Administrative Law Judge