

FEDERAL MARITIME COMMISSION

DOCKET NO. 12 - 01

**OC INTERNATIONAL FREIGHT, INC.,
OMJ INTERNATIONAL FREIGHT, INC.
AND OMAR COLLADO**

**EXCEPTIONS OF THE
BUREAU OF ENFORCEMENT
TO THE INITIAL DECISION**

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**EXCEPTIONS OF THE
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Pursuant to Rule 227 of the Federal Maritime Commission's Rule of Practice and Procedure, 46 C.F.R. § 502.227, the Bureau of Enforcement (BOE) files its Exceptions to the Initial Decision, served March 26, 2013 (Initial Decision or I.D) in Docket No. 12-01.

I. PROCEDURAL BACKGROUND

This proceeding was instituted by a combined Order For Hearing on Appeal of Denial of License and Order of Investigation and Hearing, served April 2, 2012, pursuant to sections 11 and 19 of the Shipping Act of 1984 (Shipping Act or Act), 46 U.S.C. §§ 40901, 40902, 41302 and 41304. The Order directed that an adjudicatory proceeding be instituted to determine:

(1) whether to affirm the Bureau of Certification and Licensing's (BCL) November 17, 2011 denial of the Ocean Transportation Intermediary (OTI) application of OC International Freight, Inc. (OC) and its qualifying individual, Omar Collado;

(2) whether OC International Freight, Inc. (OC), OMJ International Freight, Inc. (OMJ) and/or Omar Collado violated Section 10(a)(1) of the Shipping Act, 46 U.S.C. § 41102, by knowingly and willfully obtaining ocean transportation for property at less than the rates and charges that would otherwise be applicable through the device of permitting other persons to unlawfully access OMJ's service contracts;

(3) whether OC, OMJ and/or Omar Collado violated Section 19 (a) and (b) of the Shipping Act, 46 U.S.C. §§40901 and 40902, by acting as an ocean transportation intermediary without a license or evidence of financial responsibility;

(4) whether, in the event violations of sections 10 or 19 were found, civil penalties should be assessed against OC, OMJ and/or Omar Collado, and, if so, the amount of penalties to be assessed; and

(5) whether, in the event violations are found, appropriate cease and desist orders should be issued.

OC, OMJ and Omar Collado were duly named as Respondents. The Commission also directed that the Bureau of Enforcement (BOE) be made a party.

BOE commenced discovery on April 18, 2012, by serving Respondents with its First Interrogatories and Request for Production of Documents as well as its First Request for Admissions (RFAs). BOE 157 - 182.¹ BOE served a second set of Interrogatories and Request for Production of Documents on June 12, 2012. Mr. Collado served responses to BOE's discovery, BOE 1062, but did not respond to any of BOE's RFAs. Respondents conducted no discovery of their own at the trial level.

On July 18, 2012, BOE conducted the deposition of Mr. Collado in Miami, Florida. Collado Deposition Transcript, BOE 763 – 796 (with exhibits.) During his appearance, Mr.

¹ References are to the page number of the record below.

Collado was represented by counsel. BOE 765.

Following discovery, BOE filed its Rule 95 statement on August 13, 2012. Respondents' statement was submitted on August 28, pursuant to an extension granted by the ALJ.

BOE filed its Proposed Findings of Fact, Appendix and Opening Brief on October 12, and a 5-page Reply Brief on December 11, 2012. Respondents' Brief was filed November 21, 2012, but lacked both Proposed Findings of Fact and any evidentiary case (Appendix).

On March 26, 2013, the ALJ issued her Initial Decision. While holding that Respondents had violated section 19 by acting as an unlicensed and unbonded ocean transportation intermediary for the period after January 15, 2010, the ALJ concluded that the evidence did not support any findings that Respondents violated section 10(a)(1) of the Shipping Act. The ALJ nonetheless issued a cease and desist order with respect to all Respondents and assessed a civil penalty in the amount of \$60,000, issued jointly and severally against all Respondents for 14 knowing and willful violations of section 19 (a) and (b).

II. EXCEPTIONS

BOE excepts to the ALJ's failure to find that Respondents violated section 10 (a)(1) of the Shipping Act by allowing Island Cargo Services, Inc. (Island Cargo) to unlawfully access the rates and terms of Seaboard Service Contract No. 2008-00682.² BOE includes herein our exceptions to the ALJ's subordinate findings that there was not sufficient evidence that Respondents utilized unjust or unfair means, that Respondents received no benefit from the lower rate or that Respondents knowingly and willfully violated the Shipping Act. In reaching these conclusions, the ALJ impermissibly discounted substantial evidence produced by BOE in the form of various Requests for Admission relevant to Respondents' activities, knowledge and

² Island Cargo Services, Inc. is a foreign-based unlicensed and unbonded NVOCC. See Margolis Affidavit, ¶16 at BOE 143. See also RFA No. 15, 17; and I.D. at 7, Findings of Fact (FF) No. 24, 28.

intent in facilitating the unlawful access of Island Cargo. The ALJ's action was contrary to the requirements of the Commission's rules, 46 C.F.R. § 502.207 (b), and extensive caselaw interpreting equivalent provisions of FED. R. CIV. P. 36. Likewise, the ALJ interpreted the scope and purpose of section 10(a)(1) too narrowly, and in doing so failed to follow substantial Commission precedent finding violations of section 10 (a)(1) by shippers and those who would aid such shippers in obtaining transportation at rates to which they were not entitled.

BOE excepts also to the apparent oversight of the ALJ in failing to enter a specific finding with respect to Respondents' violation of section 19(a) and (b), i.e. that Respondents be found to have acted "willfully and knowingly" in performing unlicensed and unbonded OTI operations. Section 8 (b) of the Administrative Procedure Act, 5 U.S.C. § 557 (c)(A), mandates findings on all issues of fact, law, or discretion which are "material." See Minneapolis & St. Louis Ry. Co. v. United States, 361 U.S. 173, 193-94 (1959). BOE submits that such finding is essential and material to any civil penalty determination under section 13 of the Shipping Act, 46 U.S.C. § 41107 (a).

Finally, BOE excepts to the ALJ's failure to assess an appropriate civil penalty against Respondents. The nominal penalties assessed are inconsistent with the intent of the penalty provisions of the statute, incorrectly consider factors not enumerated in the Act or Commission regulations governing civil penalties, and fail to properly weigh the enumerated penalty factors in a penalty amount appropriate to the gravity of the violations.

III. ARGUMENT

The ALJ properly found that Respondents violated section 19(a) and (b) by acting as an unlicensed and unbonded ocean transportation intermediary after OMJ's license was revoked. Due to these violations, the ALJ assessed a minimal civil penalty and issued an appropriate cease and desist order. The ALJ then upheld BCL's determination to deny the license application of OC based on these violations as well as Mr. Collado's failure to disclose information, and for material misrepresentation, on the license application. I.D. at 28.

However, the ALJ erred in not finding that Respondents also violated section 10(a)(1). At hearing, BOE submitted evidence, including admissions, demonstrating that Respondents knowingly, willfully and fraudulently entered into a service contract with Seaboard, and then allowed Island Cargo to unlawfully access that contract. In so doing, Respondents obtained ocean transportation of property on behalf of Island Cargo for less than the rates or charges than would otherwise be applicable.

Based on Commission precedent which establishes that it is a violation of section 10(a)(1) to allow unlawful access to service contracts, the Commission should remand this proceeding to the ALJ for further proceedings with respect to section 10(a)(1) and to assess a civil penalty fully commensurate with the knowing and willful violations of both section 10(a)(1) and 19 of the Shipping Act.

A. The ALJ erred in finding that Respondents did not violate section 10(a)(1)

The ALJ's determination that Respondents did not violate section 10(a)(1) was based on her assessment that the evidence does not support findings that Respondents: (1) used an unjust or unfair means; (2) benefitted from obtaining transportation at less than the rate that would otherwise be applicable; and (3) knowingly and willfully violated the Shipping Act. In

substantial part, the ALJ concludes there is insufficient evidence of such violations precisely because she accords no weight to Respondents' admissions on the subject. Commission precedent and record evidence dictate that the ALJ is incorrect in setting aside the effect of Respondents' admissions and upon each of the ALJ's collateral findings.

The admissions at issue conclusively establish that Respondents falsely certified that OMJ would be acting as an NVOCC on the Seaboard service contract, and then knowingly and willfully allowed Island Cargo to access that service contract, which Respondents knew was unlawful under the Shipping Act. RFA Nos. 42, 43, 104,105, 140, 148, 149, 171, 172; BOE 165, 173, 178 and 179. Both at the time of executing Seaboard Contract No. 2008-00682, and at the time of all relevant shipments to be accepted by Seaboard thereunder, Mr. Collado and OMJ had represented to Seaboard that they would be the shipper "acting as Non-vessel Operating Common Carrier(s)," BOE 185. This continuing legal status was key to getting Seaboard to sign the service contract and perform any and all transport of cargo on behalf of the shipper signatory. See, e.g. 46 U.S.C. § 41104 (12) (prohibiting entering into a service contract with an unbonded NVOCC), and § 41104(11) (prohibiting transporting cargo on behalf of an unbonded NVOCC). See also 46 C.F.R. § 530.6. Mr. Collado has never denied his actions,³ nor his intent in seeking to facilitate such access for Island Cargo. Through the creation and maintenance of the fiction of OMJ as shipper signatory, Respondents also sought to directly benefit themselves, through the assessment of fees and services performed on behalf of Island Cargo and/or its customers. The ALJ, however, impermissibly discounts all such admissions by Respondents in omitting any findings of knowing and willful violations of section 10 (a)(1).

³ Upon brief, Mr Collado concedes as much: "It is undisputed that Island Cargo Services was provided access to OMJ's service contract with Seaboard Marine." Respondents' Brief, at 5. Respondents' earlier prehearing statement is likewise consistent: "The facts are not in dispute as to OC and OMJ permitting Island Cargo Services to issue the applicable house bill." OC International Freight Inc., OMJ International Freight Inc. and Omar Collado Rule 95 Statement dated August 28, 2012, at 3.

Since the ALJ's section 10(a)(1) holdings rest upon the weight assigned to the admissions, BOE first addresses the ALJ's treatment of the admissions.

1. The ALJ erred by discounting Respondents' Admissions

Commission Rule 207 provides that a request for admission is admitted unless it is denied within thirty days. 46 C.F.R. § 502.207(a)(2)(ii). Any matter admitted is "conclusively established" for purposes of the pending proceeding. 46 C.F.R. § 502.207 (b). Acting pursuant to, and in direct reliance upon Commission Rule 207, BOE served Respondents with requests for admissions. See BOE First Request for Admissions, at BOE 157 – 182. Respondents were advised therein that a failure to respond within 30 days would result in the admissions being deemed admitted. BOE 157. At deposition, Mr. Collado confirmed his receipt of the request for admissions, and that he had been advised of the effect of not answering the request. BOE 766, 797. Respondents answered all other discovery requests, but choose not to answer the admissions. Respondents' Brief, at 3.

Respondents' admissions go to the heart of BOE's case: These admissions conclusively establish that Respondents certified to Seaboard that they were acting as an NVOCC, RFA 11, 138, 139; that they knew that OMJ was not acting as an NVOCC on the Seaboard shipments since OMJ was not issuing a bill of lading or collecting ocean freight, RFA 14, 16, 78, 79, 140; that Respondents knew that Island Cargo was acting as an NVOCC with respect to the Seaboard shipments, including issuing its own bill of lading and collecting ocean freight, RFA 15, 17; that Respondents knowingly assisted Island Cargo to gain access to the rates and terms of its service contract, RFA 42, 104, 148, 171, 173; and that they knew that doing so was unlawful under the Shipping Act, RFA 43, 105, 149, 172, 174. Despite entry of these admissions into the record, the ALJ held the Respondents did not knowingly or willfully violate the Shipping Act.

Commission Rule 207 mirrors Federal Rule 36, FED. R. CIV. P. 36. As the Initial Decision herein cites neither the Commission's Rules nor other controlling authority for discounting Respondents' admissions, BOE looks first to the manner in which federal courts weigh admissions under the Federal Rules of Civil Procedure. See 46 C.F.R. § 502.12.

When drafting the rule, the advisory committee observed, “[u]nless the party securing an admission can depend on its binding effect, [the party] cannot safely avoid the expense of preparing to prove the very matters on which [the party] has secured the admission, and the purpose of the rule is defeated.” FED. R. CIV. P. 36, Advisory Committee's Note (1970 Amendment). Although acknowledging the rule's potential for possibly harsh results, i.e. failure to respond to admission may effectively deprive a party from contesting the merits of a case, courts have studiously applied the rule recognizing that it “is necessary to ensure the orderly disposition of cases.” U.S. v. L. Kasuboski, 834 F. 2d. 1345, 1350 (7th Cir. 1987). Admissions reduce trial time by facilitating proof with respect to issues that cannot be eliminated from the case, and narrow the issues by eliminating those that can. As one court has noted, to eliminate the binding effect of the rule would render Federal Rule 36 “nothing more than a paper tiger.” Equal Employment Opportunity Comm'n v. Baby Prods. Co., 89 F.R.D. 129, 132 (E.D. Mich. 1981).

In light of these sentiments, Federal courts have applied the rule so as to give full meaning to the “conclusive” nature of admissions, even in preference to other types of evidence. Thus, in a *pro se* matter involving unanswered admissions, the Seventh Circuit boldly stated that “admissions are better evidence than testimony, because admissions are incontestable.” Ho v. Donovan, 569 F.3d 677, 681 (7th Cir. 2009). In Brook Village N. Assocs. v. General Electric Co., 686 F.2d 66, 71 (1st Cir 1982), the First Circuit held that “a district court is not free to

permit amendment or withdrawal of admissions by default after trial merely because. . . the court finds more credible the evidence of the party against whom the admissions operate.”

Neither is the Commission unfamiliar with the use and strict application of its rule on admissions, both in cases involving *pro se* respondents⁴ and those where the respondent failed or declined to respond to a request for admissions. In both situations, the Commission’s rule serves equally as binding upon the presiding officer as upon the litigating parties themselves. Commission Rule 207 thus mandates that a failure to respond to a request for admissions results in the underlying matter being conclusively established. Kin Bridge Express Inc. and Kin Bridge Express (U.S.A.) Inc. - Possible Violations of Sections 8, 10(A)(1), 10(B)(1) and 23 of the Shipping Act of 1984, 28 S.R.R. 980, 985(ALJ 1999) (Judge Kline held that matters admitted against a *pro se* respondent were deemed conclusively established where responses were insufficient, incredible and not provided in good faith); Refrigerated Containers Carriers Pty. Ltd. - Possible Violations of Section 10(A)(1) of the Shipping Act of 1984, 28 S.R.R. 799 (ALJ 1999) (unanswered requests for admissions deemed conclusively established); Eastern Mediterranean Shipping Corp. d/b/a Atlantic Ocean Line and Anil K. Sharma - Possible Violations of Sections 10(A)(1), 10(B)(1) and 10(d)(1) of the Shipping Act of 1984, 28 S.R.R. 781 (ALJ 1999) (unanswered requests for admission deemed conclusively established).

Acting *sua sponte*, the ALJ herein simply sets aside the effect of Respondents’ admissions as being not “particularly persuasive” where the Respondents might not appreciate the implications of the requests for admission. I.D. at 17. Taken without identification of any legal authorities upon which she relies, this determination is both gratuitous and speculative. In

⁴ While the ALJ seems eager to bend the rules for a *pro se* litigant, “Pro se status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules....” Ogden v. San Juan County, 32 F.3d 452, 455 (10th Cir. 1994). Respondents were advised of the implications of failing to respond to the admissions, and chose not to answer. They should not now benefit from their conscious decision not to respond to BOE’s requests.

her full explanation of how she weighed the evidence, the ALJ states as following:

Moreover, where the respondents are acting *pro se*, as here, relying on the party's admissions is not particularly persuasive where it is not clear that the party understands the legal terms of art or appreciates the implications of the requests for admissions. Therefore, the undersigned relied on all of the evidence and included citations to the supporting documents, where possible. I.D at 17.

However, Respondents provided not a single page of evidence in this proceeding and the record simply does not support the ALJ's conclusions. The only substantive submission from Respondents was their trial brief, which contained only self-serving statements contradicted by other evidence in the record. In one such example, accepted uncritically by the ALJ, the respondents "defend themselves by contending that they thought their actions were permissible." I.D. at 20. Respondents' statement was not presented under oath, nor does the evidentiary record ever identify the legal advice or written authorities which caused Respondents to believe their actions in facilitating shipments by an unbonded NVOCC were nonetheless "permissible." In fact, and of record in this proceeding, in a meeting on March 9, 2009 with AR Margolis, "Mr. Collado stated that he understood that OMJ was not in compliance regarding allowing Island Cargo to utilize his service contracts." FF 37. Even after this meeting with AR Margolis, at which point it was certainly clarified that Respondents' device was unlawful, Respondents continued to do business as before, and continued to improperly certify service contracts,⁵ albeit operating under a different name (OC) and, ultimately, seeking to operate pursuant to another OTI's license (Source Consulting, Inc). RFA 175, BOE 180; FF 37, 56-67; I.D. at 21. The admissions properly capture the fact that Respondents knew that their activities were not only improper, but unlawful under the Shipping Act. RFAs 42, 43, 104, 105, 140, 148, 149, 171, 172,

⁵ On or about January 20, 2010, Mr. Collado certified on Seaboard Service Contract No. 2010-01518 that OMJ was acting as an NVOCC. BOE 1515 (submitted for the record as Supplemental Attachment 12 on February 7, 2012). This certification came well after Mr. Collado stated to AR Margolis that his actions were unlawful. FF 37.

at BOE 165, 173, 178 and 179.

While Rule 207 (b) allows a presiding officer, on motion, to permit withdrawal or amendment of an admission when doing so will not be prejudicial to the party obtaining the admission, no such motion was made by Respondents; neither does the ALJ cite such rule as the basis for her determination to discount Respondents' admissions. Inasmuch as the ALJ's action was announced for the first time in her Initial Decision, the ALJ plainly could make no credible finding that withdrawal or amendment of an admission would not be prejudicial to BOE as the party relying upon such admissions both in its evidentiary case and in its trial brief. See, Rainbolt v Johnson, 669 F.2d 767, 769 (D.C. Cir. 1981); 4A J. Moore, Federal Practice P 36.08 at 36-79 n.9 (1981).

Allowing Commission Rule 207 to be so undermined renders the rule little more than a paper tiger and forces litigants (including BOE) to proceed without benefit of the tools available to reduce the costs and uncertainties of litigation.

2. The ALJ erred in assessing whether Respondents employed concealment of their unlawful access scheme

The ALJ committed error in her assessment of the Respondents' device by too narrowly construing section 10(a)(1). The courts and this Commission generally agree that "a showing of *some kind* of fraud or concealment is required" in order to prove that a party used an unjust or unfair device or means within the meaning of section 10 of the statute. Rose Int'l, Inc. v. Overseas Moving Network Int'l Ltd., 29 S.R.R. 119, 163 (FMC 2001) (emphasis added), citing U.S. v. Open Bulk Containers, 727 F.2d 1061, 1064 (11th Cir 1984). At issue, then, is the nature of the concealment or deception. As the Commission noted in Rose Int'l, the "showing of fraud or concealment may either be based on fraud either to the underlying common carrier or to competing shippers." 29 S.R.R. at 173.

The ALJ limits section 10(a)(1) too narrowly by suggesting that Respondents “made no attempt to conceal Island Cargo’s role in the shipments.” I.D. at 20. Commission precedent generally holds that allowing improper access to service contracts constitutes an unfair device and a violation of section 10(a)(1). Hudson Shipping (Hong Kong) Ltd. d/b/a Hudson Express Lines – Possible Violations of Section 10(a)(1) of the Shipping Act of 1984, 29 SRR 1381 (ALJ 2003); Universal Logistic Forwarding Co., Ltd. - Possible Violations of Sections 10 (a)(1) and 10(b)(1) of the Shipping Act of 1984, 29 S.R.R. 325 (ALJ 2001); Rose Int’l, Inc. v. Overseas Moving Network Int’l Ltd., 29 S.R.R. 119, 173 (FMC 2001); Gstaad Inc., and Sergio Lemme - Possible Violations of Sections 10 (a)(1) and 10(b)(1) of the Shipping Act of 1984, 28 S.R.R. 1608 (ALJ 2000). Whereas the specifics of the deception or device were unique in each, the result was the same: the Commission found it unlawful under section 10(a)(1) to obtain less than applicable freight rates by providing improper access service contracts.

To flatly conclude, as the ALJ has done, that “the evidence demonstrates that there was no fraud or concealment,” I.D. at 20, is demonstrably inaccurate. The ALJ found that when Mr. Collado signed both Seaboard service contracts, he certified that the shipper signatory (Respondent OMJ) would be acting as NVOCC. RFA 11, 45, 139; I.D. at 18. However, she then ignores the admissions which establish that Respondents knew that OMJ was not acting as an NVOCC, RFA 140, BOE 178, and that Respondents knowingly, and directly assisted, Island Cargo to gain access to the rates and terms of its service contract, RFAs 42, 104, 148, 171; BOE 165, 173, 178. Viewed as a whole, Respondents deceived Seaboard by intentionally signing a service contract representing that they would be acting as an NVOCC while knowing full well

that they would not meet the ongoing qualification of remaining a shipper⁶ with respect to shipments actually transported under such contract. Respondents knew they would be acting only as a freight forwarder for those shipments, RFA 16, 18-43, 140-141, 163-170; and that Island Cargo would instead be acting as the NVOCC for all such shipments.⁷ RFA 17, 52. As discussed supra, p. 10, fn. 7, Respondents did so over multiple years and through multiple service contracts, including after meeting with Mr. Margolis where they were warned of the unlawfulness of such practice.

Respondents' certification is not only deceptive; Mr. Collado knowingly violated Commission regulations in so doing. The Commission requires shippers to certify their shipper status on service contracts pursuant to 46 C.F.R. § 530.5 (6)(a). While falsely certifying shipper status is alone a violation of Commission regulations, Respondents retained an ongoing legal obligation under the OTI regulations not to prepare or assist in preparation of any paper or document concerning an OTI transaction which it has reason to believe is false or fraudulent; and not to impart to a "principal, shipper, common carrier or other person" false information relative to any OTI transaction, 46 C.F.R. § 515.31(e). To the extent that the licensee had reason to believe the true shipper (Island Cargo) has not complied with U.S. laws,⁸ or has made any error or misrepresentation with respect to a shipment, OMJ and Mr. Collado were under an ongoing obligation to "decline to participate" in such transactions, 46 C.F.R. § 515.31(f). The present

⁶ Under 46 C.F.R. § 530.3(r), the term shipper "means a cargo owner; the person for whose account the ocean transportation is provided; the person to whom delivery is to be made; a shippers' association; or an NVOCC that accepts responsibility for payment of all applicable charges under the service contract." An entity acting as forwarder does not qualify to execute, or perform under, a service contract. Docket No. P5-98, Petition of National Customs Brokers and Forwarders Association of America, 28 S.R.R. 1042, 1050-51 (FMC, 1999).

⁷ The ALJ also ignores admissions which establish that Respondents also knew that allowing Island Cargo to access its service contracts was unlawful under the Shipping Act. RFAs 43, 105, 149, 172, at BOE 165, 173, and 179.

⁸ As one such law of the United States, violations of sections 8, 10(a)(1) and 19 of the Shipping Act would be included. See, 46 U.S.C. §§ 40501, 40102(a) and 40901-902.

case underscores why Respondents' device is unjust and unlawful under the Shipping Act and Commission regulations. It is not a mere breach of contract, whereby Seaboard arguably had notice of OMJ's actions to facilitate access to Seaboard's contract rates; it is a violation of Commission regulations and the Shipping Act for Respondents to falsely certify shipper status and to deceptively fail to remedy (or remove themselves) from such transactions. Id.

Separate and apart from deceiving Seaboard when signing the service contract and feigning OMJ's performance thereunder, Respondents' device also concealed the true nature of these shipping transactions from other shippers and stifled competition in doing so – which alone is sufficient to establish the element of concealment. The Commission has long recognized the principle that section 16 was “aimed at protecting competing shippers and carriers from shippers who attempt to obtain (or who succeed in obtaining) transportation at reduced rates....” Pacific Far East Lines – Alleged Rebates to Foremost Dairies, Inc., Connell Bros., Co., Ltd. and Advance Mill Supply Corp., 11 F.M.C. 357, 362 (1968). In Hohenberg Brothers Co. v. Federal Maritime Commission, 316 F.2d 381, 385 (D.C. Cir. 1963), while affirming a Commission decision, the Court noted that in enacting section 16, “Congress was concerned both with protection of carriers against unscrupulous shippers, and of honest shippers against unscrupulous competitors, acting independently or in collusion with a carrier.” Id. at 384-85. Similarly, in Prince Line, Ltd. v. American Paper Exports, Inc., 55 F.2d 1053, 1055 (2nd Cir 1932), Judge Learned Hand writes that where the acts of a carrier render its competitors unaware of what transpired, the “equality of treatment” between shippers is destroyed. Judge Hand observed that such equality was one of the primary purposes of the Act and that concealment from shippers was one of the evils that Congress sought to address in enacting section 16. Id.

The equality of shippers, by and through the impacts on competition of service contract abuse, is no less of a concern today than when the Shipping Act of 1916 was first passed. In Rose Int'l, the Commission found that the respondents' device of allowing access to service contracts was done "in a way that their competitors would be unaware of what had transpired." Rose Int'l, 29 S.R.R. at 173, citing Hohenberg Brothers Co., 316 F.2d at 385. Here, shippers and licensed OTI competitors of Respondents would be unaware that Respondents were providing improper access to the Seaboard contract, and that such access was allowing an unbonded and untariffed OTI to compete unfairly with its licensed U.S. counterparts. Consistent with the rationale in Rose Int'l, other competitors had no way of knowing what was transpiring.

3. The ALJ erred in finding that Respondents did not obtain transportation

The ALJ improperly holds that Respondents did not obtain any benefit from their arrangement with Island Cargo, I.D. at 21. In effect, the ALJ implies that a violation of section 10(a)(1) arises when the Respondents "obtain a benefit from accessing reduced rates," but only if the respondents were themselves the shippers. Id. As summarized in her Initial Decision, "it is not clear that the section 41102(a) prohibition against obtaining transportation for less than the applicable charges includes permitting others to obtain transportation for less than applicable charges." Id.

To the contrary, BOE submits that there is ample case law at the Commission attesting to the breadth of the prohibitions found in section 10(a)(1) of the Shipping Act. In Payments to Shippers by Wisconsin and Michigan SS Co, 1 U.S.M.C. 744 (1938), the Maritime Commission found that payments made to, and through, an intermediary who was "neither a common carrier, a forwarder nor a bona fide soliciting agent" constituted an unjust device both by the carrier and

intermediary, and broadly sketched the purpose of this provision as follows:

The Commission regards any form or device by which any part of the freight rate paid for transportation is refunded to shippers as a violation of law which cannot be too strongly condemned. 1 U.S.M.C. at 749.

In Brokerage of Ocean Freight – Max LePack et al, 5 F.M.B. 435, 439-40 (1958), the Maritime Board found a violation of section 16 of the Shipping Act of 1916 where a forwarder used an unjust device or means (its ownership relation to the corporate shippers) to obtain transportation for garment shippers at less than the regular rates, even though the forwarder did not itself utilize the transportation so obtained. In like fashion, the garment shippers were themselves found in indirect violation of the statute inasmuch as “a portion” of the rebates thus obtained were used to meet the expenses of the export shipping departments of United and Bimor. Id. at 441. Finally, in U.S. Lines and Gondrand Bros. – Section 16 Violation, 7 F.M.C. 464 (1962), the Commission expressly rejected respondent’s contention that the proscriptions of section 16 would be operative only where a shipper or consignee were involved:

Furthermore, it is clear that in enacting the first paragraph [of section 16] Congress sought parity. Section 16 Second penalized carriers for allowing any person to obtain unlawful rates and the first paragraph was designed similarly to penalize any person who obtained or attempted to obtain such rates.

7 F.M.C. at 471 n3. The term “person” in current section 10(a) is fully as broad as the words “shipper, consignor, consignee, forwarder, broker or other person” as used in the original section 16 of the Shipping Act, 1916, Gondrand Bros., 7 F.M.C. at 471; and they plainly encompasses Mr. Collado and the other Respondents.

More recent cases stand as continued authority to broadly interpret section 10(a)(1) so as to condemn Respondents’ device of allowing Island Cargo access to the rates and terms of OMJ’s service contract with Seaboard. In Hudson Shipping, supra, 29 SRR 1381, Hudson was

found to have violated section 10(a)(1) by allowing transportation entities to access to Hudson's service contracts thereby enabling NVOCCs to obtain ocean transportation at less than the applicable rates. Similar holdings are found in Universal Logistic Forwarding, *supra*, 29 S.R.R. 325 (unlawful access to service contracts amounts to an unfair device under section 10(a)(1)); Rose Int'l, *supra*, 29 S.R.R. at 173 (scheme whereby one NVOCC allows unlicensed and unbonded NVOCCs to access service contracts and offer ocean transportation to shippers is fraudulent); and Gstaad, 28 S.R.R. 1608 (misuse of service contracts whereby other shippers are allowed to obtain access to less than otherwise applicable rates contained therein is held to be a violation of section 10(a)(1)). The ALJ's concerns are therefore unwarranted. Commission precedent clearly establishes that allowing improper access to service contracts constitutes an unfair device.

BOE disputes also the ALJ's view that the "benefit" of such unjust device must be received directly by Respondents, rather than passing to any other person. I.D. at 21. In Hudson Shipping, the Commission found a violation where the respondent's benefit, as the intermediary facilitating unlawful access on behalf of other NVOCCs, was measured by Hudson's fee of \$20 per container shipped and the otherwise intangible benefit of avoiding a dead freight penalty, 29 S.R.R. at 1383. Likewise, in Rose Int'l, 29 S.R.R. at 173-76, the benefit received by members of a shippers' association was the ability to obtain more favorable rates and more favorable service contracts, through allowing unlicensed and unbonded NVOCC members to access its service contracts.

Here, Respondents devised a scheme to provide access to its service contracts to an entity that otherwise would have been unable to access such rates or transportation services. For its part, Respondents secured the ability to provide services for the cargo so shipped, and was paid

for services on cargo that it otherwise may not have secured, and also gained the intangible benefit of not incurring common carrier liability as an NVOCC. On the 24 shipments identified in the admissions as B1-24, Respondents benefitted between \$750 and \$5,278.30 per shipment, for a total of \$35,390.05 which was invoiced to and paid by Island Cargo. RFA Attachments B1-24, at BOE 190-434. For the nineteen of these twenty four shipments identified by AR Margolis in which freight was obtained at less than the applicable rate, Island Cargo paid Respondents \$23,691.75. Margolis Affidavit, at 4-7; BOE 137-140; 145. When measured against the *de minimus* benefit condemned by the Commission in Hudson Shipping, Respondents secured direct and indirect benefits in the way of fees, services and an assured stream of future (illicit) NVOCC cargo from Island Cargo sufficient to sustain findings of section 10(a)(1) violations.

4. The ALJ erred in finding that Respondents did not act knowingly and willfully

The ALJ commits error in finding that Respondents did not act knowingly and willfully when the record so clearly demonstrates otherwise. The Commission has rejected the concept that the phrase knowing and willful entails “actual or constructive knowledge that the requirements of the statute were being disregarded. Such a construction would make ignorance of the law a valid defense and substitute some subjective standard whereby actual knowledge of statutory language by a shipper would have to be established before a violation under this section could be found. Congress did not intend to impose such a novel evidentiary requirement.” Pacific Far East Lines – Alleged Rebates to Foremost Dairies, Inc., et al., 11 F.M.C. 357, 363-364 (1968). See also Union Petroleum Corp. v. United States, 376 F.2d 569, 573 (10th Cir. 1967) (“[T]he term ‘knowingly’ imports merely perception of the facts necessary to bring the questioned activity within the prohibition of the statute. The term does not require as part of its

meaning that there necessarily be knowledge or awareness that such activity is in fact prohibited.”).

The Commission has determined that the “term ‘willfully’ means that a respondent “purposely or obstinately intended to perform the unlawful act not necessarily that it did so with the intent of maliciously breaking the law.” Shipman Int’l (Taiwan) Ltd. – Possible Violations of Sections 8, 10(a)(1) and 10(b)(1) of the Shipping Act of 1984 and 46 C.F.R. Part 514, 28 S.R.R. 100, 109 (ALJ 1998). Moreover, an NVOCC is obligated to “educate itself through normal business resources, and repeated failure to do so may indicate that it is acting ‘willfully and knowingly’ within the meaning of the statute.” Stallion Cargo, Inc. - Possible Violations of Sections 10(a)(1) and 10 (b) (1) of the Shipping Act of 1984, 29 S.R.R. 665, 683-84 (FMC 2001)

In light of the above authority, the ALJ incredibly finds that “although Mr. Collado knew he should not permit Island Cargo to access his service contract, it is not clear that he understood this was a violation of the Shipping Act.” I.D. at 22. The ALJ’s own findings of fact do not support her conclusion. The record unambiguously shows that Respondents, at the very least, purposely intended to perform the acts which amount to a violation. According to FF 37, “Mr. Collado stated that he understood that OMJ was not in compliance regarding allowing Island Cargo to utilize his service contracts.” This statement plainly meets the Commission’s test for knowing and willful. See Misclassification and Misbilling of Glass Articles, 6 F.M.B. 155, 160 (1960) (“it was not necessary . . . that there should be an intentional violation of the law, but that purposely doing a thing prohibited by the statute amounted to an offense.”).

But there is more. The ALJ found that Mr. Collado certified that OMJ was acting as an NVOCC on the Seaboard service contract. FF 23. However, Respondents’ admissions conclusively establish that “Mr. Collado knew that OMJ was not acting as an NVOCC.” RFA

140, BOE 178. As discussed supra, the ALJ committed fatal error by improperly weighing admissions which *conclusively establish* that Respondents knowingly assisted Island Cargo to gain access to the Seaboard service contract, RFAs. 42, 104, 148, 171; BOE 165, 173, 178 and 179, and knew also that such access was unlawful under the Shipping Act. RFAs. 43, 105, 149, 172, at BOE 165, 173, 178 and 179.

Respondents have not proffered a single piece of evidence which refutes their admissions. What the ALJ cites as ‘testimony’ is actually their trial brief which contains no appendix and not a single shred of evidence. I.D. at 22. This ‘testimony’ amounts to nothing more than self-serving statements offered at the eleventh hour in an effort to diminish the admissions and Respondents’ earlier statements in which they admit knowing that their actions were in violation of the Shipping Act. BOE would be prejudiced by the ALJ’s reliance on untested statements contradicting the conclusively established admissions.

In light of the record and Commission authority, the ALJ must be overturned: there simply is no basis to find that Respondents did not knowingly and willfully violate the Shipping Act.

B. The ALJ failed to enter a finding that Respondents’ violations of sections 19 (a) and (b) were committed knowingly and willfully

In her Initial Decision, the ALJ tersely and accurately concludes that Respondents violated sections 19 (a) and (b) of the Shipping Act by providing ocean freight forwarding services on and after the date the OTI license of Respondent OMJ was revoked in January 2010. I.D. at 22-26. The ALJ cites record evidence of shipments booked with Crowley after January 16, 2010. I.D. at 24, citing Margolis Affidavit at 8-9, at BOE 141-142; RFA Nos. 55-66, 67, 68. Respondents’ own Rule 95 statement conceded the fact of providing ocean freight forwarding

services. I.D. at 25, quoting Respondent's Rule 95 Statement, dated August 28, 2012, at 4. The ALJ noted also evidence indicating that Mr. Collado was "warned repeatedly" that it was unlawful to operate as an ocean freight forwarder without a license, but continued providing forwarding services during the pendency of this case. I.D. at 25, citing Margolis Affidavit at 1 (BOE 134) and BCL notice of intent dated November 11, 2011 (BOE 101). See also RFA Nos. 126 and 175.

While the ALJ's discussion implicitly supports a finding that the violations of section 19 were committed "knowingly and willfully" within the meaning of section 13 of the statute, no express finding to this effect was entered. Neither is that issue explicitly addressed in the ALJ's consideration of the penalty factors. See I.D. at 32-34. The ALJ's determination is instead summarized in the ordering paragraphs of the Initial Decision, where it appears as follows:

It is FURTHER ORDERED that the respondents be jointly and severally liable for civil penalties of \$60,000 for willful and knowing violations of sections 40901 and 40902 of the Shipping Act of 1984, 46 U.S.C. §§ 40901, 40902.

I.D. at 35.

While the Commission is not required to make subordinate findings on every collateral contention advanced, I.D. at 4-5, section 8 (b) of the Administrative Procedure Act, 5 U.S.C. § 557 (c) does mandate findings on all issues of fact, law, or discretion which are "material." See Minneapolis & St. Louis Ry. Co. v. United States, 361 U.S. 173, 193-94 (1959). Accord Commonwealth of Puerto Rico v. Federal Maritime Board, 288 F. 2d 419, 420 (D.C. Cir. 1961); Stauffer Labs., Inc. v. FTC, 343 F.2d 75, 82 (9th Cir. 1965); Borek Motor Sales, Inc. v. NLRB, 425 F.2d 677, 681 (7th Cir. 1970). Such finding is material to the issue of assessing a civil penalty under section 13 (a) of the Shipping Act, 46 U.S.C. § 41107, and in determining the amount thereof, 46 U.S.C. § 41109. Inasmuch as a finding that Respondents acted willfully and

knowingly is supported by substantial evidence, BOE requests that the Commission enter a finding that Respondents' violations of sections 19 (a) and (b) of the Shipping Act were committed willfully and knowingly, or direct the ALJ to enter such finding on remand.

In her Initial Decision, the ALJ determined that one of the fifteen shipments documented by BOE with respect to the section 19 violations occurred prior to OMJ's license being revoked, and therefore did not constitute a violation of section 40901. I.D. at 26. The ALJ accordingly reduced to 14 the number of violations by Respondents for acting as an OTI after losing their license. Id. BOE concurs with the ALJ's observation that the referenced shipment (Attachment C-1, at BOE 436-469) commenced prior to license revocation. BOE requests that this shipment be withdrawn from further consideration with respect to any violations.

C. The ALJ erred in failing to assess an adequate civil penalty against Respondents Collado, OC and OMJ

Although the Administrative Law Judge found no violations of section 10(a) of the Shipping Act, she found that Respondents committed 14 violations of sections 19(a) and (b) of the Shipping Act which are subject to a civil penalty. The ALJ proceeded to assess a penalty of little more than \$4,000 per violation, for an aggregate penalty of \$60,000. Liability for that penalty is shared jointly and severally among all three Respondents.

We submit that the nominal penalties assessed against Respondents Collado, OC and OMJ are inconsistent with the purpose and intent of the penalty provisions of the statute; incorrectly consider factors not enumerated in the Act or the Commission's regulations governing civil penalties; and fail to properly weigh the enumerated penalty factors in arriving at an adequate amount appropriate to the gravity of the violations.

1. The regulatory structure for Shipping Act violations

A person who violates the Act, or regulation or order of the Commission incurs liability for a civil penalty. 46 U.S.C. § 41107(a). Liability is not discretionary – it is absolute. Until a matter is referred to the Attorney General, assessment of the amount of the penalty is entrusted to the Commission. 46 U.S.C. § 41109(a). The statute contemplates that certain violations are exponentially more serious than others and therefore should be subject to a much higher penalty. Thus a two-tiered range of penalties is provided – up to \$8,000 for each violation or, if knowingly and willfully committed, up to \$40,000 per violation. 46 U.S.C. § 41107(a).⁹

In determining the amount of a civil penalty, the Commission is required to take into account the nature, circumstances, extent, and gravity of the violation committed, and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and such other matters as justice may require. 46 U.S.C. § 41109(b). To these statutorily prescribed factors, the Commission’s regulations add the policies of deterrence and future compliance with the law. 46 C.F.R. § 502.603(b).

The primary Congressional purpose of imposing civil penalties is to deter future violations of the statute. Stallion Cargo, Inc. - Possible Violations, 29 S.R.R. 665, 681 (2001). The Commission may in its discretion determine how much weight to place on each factor and must make findings with respect to each factor. Merritt v. United States, 960 F.2d 15, 17 (2nd Cir. 1992).

2. The ALJ’s findings as to penalties are contrary to law

Upon brief, BOE addressed each of the section 13(c) factors. Based on those factors, along with a basis for finding that Respondents’ violations were willfully and knowingly committed, and the absence of any relevant mitigating factors, BOE argued that a civil penalty of

⁹ This amount reflects an adjustment for inflation pursuant to the Commission’s regulations at 46 C.F.R. Part 506.

not more than \$40,000 for each violation is appropriate. BOE Opening Brief at 39, 48. The Commission has previously ruled that additional factors considered by the ALJ in assessing a penalty amount for each of the shipments, specifically harm to shipper, are not relevant components in the penalty determination. In Stallion Cargo, *supra*, the Commission held erroneous the ALJ's refusal to assess penalties for certain violations in the absence of evidence that the shippers were harmed:

Under Commission precedent, however, whether Stallion's shipper customers or other shippers were harmed is relevant neither to the issue of whether it committed a violation, nor to that of what penalties should be assessed against it. In Commission-instituted proceedings, unlike in private complaint proceedings, it is not necessary that the violation of a statute result in harm to the public for the respondent to be liable. (Emphasis added). 29 S.R.R. at 678-679.

Notwithstanding the Commission's prior holding in Stallion Cargo, the ALJ confounds her analysis by finding that Respondent has "admitted liability and cooperated with the investigation," I.D. at 33. The ALJ also concludes that "There is no evidence that any member of the shipping public has been harmed," *Id.* These latter findings are contrary to the plain language of the statute, the Commission's regulations and Commission precedent.

In practical effect, the ALJ's penalty findings serve primarily to underscore the many inconsistencies in the ALJ's treatment of the record below. It was conclusively established below that Respondents had knowledge of and directly assisted Island Cargo to gain access to the rates and terms of Seaboard's Service Contract No. 2008-00682 in twenty-four instances; and that Respondents Collado, OC and OMJ knew that Island Cargo's access to Seaboard Service Contract No. 2008-00682 was unlawful under the Shipping Act of 1984. See RFA Nos. 42, 43, 104, 105, 140, 148, 149, 171 and 172.¹⁰ See also Margolis Affidavit, at 6-7; BOE Nos. 139-140.

¹⁰ As discussed *supra*, 46 C.F.R. 502.207(b), entitled Effect of Admissions, provides that any matter admitted under the rule is "conclusively established." Respondents have conceded that "Mr. Collado did not respond to any of BOE's RFAs," Respondent's Brief at 3.

On behalf of all Respondents, Mr. Collado did further admit that: “It is undisputed that Island Cargo Services was provided access to OMJ’s service contract with Seaboard,” Respondent’s Brief at 5.¹¹ In like fashion, it was also conclusively established that Respondents Collado, OC and OMJ did not have an Ocean Transportation Intermediary license following revocation of OMJ’s license on January 15, 2010; and that Respondents booked cargo, prepared delivery orders and bills of lading, cleared shipments in accordance with U.S. export regulations and arranged for delivery of ocean shipping containers to final destination between such date of revocation and November 17, 2011. RFA Nos. 6-9, 54-68 and 163-169, at BOE 160, 165-68, 180-82. See also Margolis Affidavit at 8-10, at BOE 141-143. While finding that Mr. Collado “has admitted liability,” I.D. at 33, the ALJ finds violations only of section 19, but no violations of section 10(a).

The ALJ also enters a finding that Mr. Collado “cooperated with the investigation,” Id. This latter statement originates with the Respondent’s Brief (at 6), where it is asserted by Mr. Collado in purported mitigation. It is neither explained nor quantified by Respondent. The ALJ makes no reference to any corroborating account attributed to BOE, as this claim is wholly self-serving on the part of Respondent. Is Respondent entitled to mitigation because Mr. Collado asserts he “answered all inquiries to the best of his ability,” Respondent’s Brief at 6, when such efforts are required as a matter of law in responding to discovery? Said another way, is the ALJ correct in concluding that Respondents had “cooperated” with the investigation when the record shows that Respondents simply continued their violative conduct after being explicitly warned to

¹¹ At page 6 of Respondent’s Brief, Mr. Collado characterizes the section 10(a) issue as follows:

The Respondent’s good faith acknowledgement that it incorrectly allowed Island Cargo to access its service contracts with both Seaboard Marine and Crowley should substantially mitigate any penalty sought to be imposed by the commission (sic). The Respondents particularly, Mr. Collado recognized his error in the interpretation of the law and admitted as such to AR Margolis and on his deposition.

discontinue? See Margolis Affidavit ¶12, at 7 (March 9, 2009 warning about service contract activities); and RFA Nos. 106, 124-125 (following warning, Mr. Collado assisted Island Cargo to access a Crowley Service Contract). See also Margolis Affidavit ¶13, at 7 (May 2010 warning about unlicensed OTI activities); and RFA Nos. 165-170, 175 (following license revocation and AR warning, Mr. Collado continued to provide forwarding services.) Little, if any, weight can be accorded to Respondents' claims of cooperation.

How each of the factors cited by the ALJ have any bearing on the civil penalty amount and what relative weight is attributed to these particular factors is left unexplained in her Initial Decision. Logic dictates that they have none. Except as found in the plain language of the statute or the Commission's regulations, the ALJ should decline to embellish upon the prescribed civil penalty factors.

Commission precedent makes clear that the main congressional purpose of imposing civil penalties is to deter future violations of the statute. Stallion Cargo, 29 S.R.R. at 681, and Portman Square Ltd. - Possible Violations of Section 10(a)(1) of the Shipping Act of 1984, 28 S.R.R. 80 (ALJ 1998). Following Congress' action raising the maximum penalties for violations from the previous \$5,000 per violation to up to \$25,000 for violations committed knowingly and willfully, the Commission instituted a number of rulemaking proceedings to implement the newly adopted Shipping Act of 1984, including Docket No. 84-20 to revise its rules and establish criteria and procedures for the handling of penalty claims. The language proposed in the Notice of Proposed Rulemaking, 49 F.R. 18874 (May 3, 1984), and adopted in then-46 C.F.R. § 505.3(b), was identical to the provision as it appears today in current 46 C.F.R. §502.603 (b), including the requirement that "the policies for deterrence and future compliance with the Commission's rules and regulations" be taken into account. Since that time, the Commission has

been unwavering in addressing the main Congressional purpose of deterrence and compliance when imposing civil penalties. Pacific Champion Express Co., Ltd. - Possible Violations of Section 10(b)(1) of the Shipping Act of 1984, 28 S.R.R. 1397 (FMC 2000) (stating that the applicable statutory factors include “the need to send an appropriate message of deterrence”); Kin Bridge Express, 28 S.R.R. at 994 (“[t]he instant task is to fix civil penalties that will send a message of punishment and deterrence”); Ever Freight International Ltd., et al – Possible Violations, 28 S.R.R. 329, 335 (ALJ 1998) (explaining that to assess less than the maximum would not serve the purpose of deterrence and would send the wrong message); and Martyn Merritt, AMG Services, et al., 26 S.R.R. 663, 664 (FMC 1992) (“In determining the amount of penalties to be imposed, it is expected that the ALJ will give due regard to . . . the Congressional purpose to deter violations by imposing greater penalties in the 1984 Act.”). Indeed, in an analogous penalty situation in which all Shipping Act violations were knowingly and willfully committed, the penalty issue was recast by the Commission as requiring the Administrative Law Judge to “address the question of why the maximum potential penalties should not be assessed.” Arctic Gulf Marine Inc., Peninsular Shippers Association, Inc., and Southbound Shippers, 24 S.R.R. 159, 160 (FMC 1987).

Certainly, the Commission’s policies for deterrence and future compliance in the context of the assessment of civil penalties have been clearly established and well settled for a quarter of a century. While Respondents Collado, OC and OMJ assert that they have only a limited ability to pay a civil penalty, financial ability is but one factor in the civil penalty calculus under section 13 (c) of the Shipping Act, and it is not controlling. Merritt v. United States, 960 F.2d at 17. As BOE already argued and demonstrated, the violations committed by Respondents Collado, OC and OMJ were knowing and willful. Therefore, the imposition of penalty amounts in a

significantly increased dollar amount, i.e. not less than \$8,000 nor more than \$40,000 per violation, against Respondents Collado, OC and OMJ is warranted in this case. Having found, however, that Respondents' violations were knowing and willful, the ALJ's penalty assessment of little more than \$4,000 per violation constitutes the cost of doing business – and is only half the amount established by the Commission for a violation that is *not* knowing and willful. The level of penalty assessed by the ALJ is an affront to the Commission's established policies of deterrence and future compliance. Accordingly, BOE submits that the Commission would be well justified to exact a greater monetary penalty, and in no case less than \$8,000 per violation under the circumstances presented here.

IV. CONCLUSION

For the foregoing reasons, BOE submits that the ALJ erred in: (1) failing to find that Respondents Collado, OC and OMJ acted willfully and knowingly in violation of section 10 (a)(1) of the Shipping Act in assisting Island Cargo in unlawfully accessing the rates and terms of Seaboard Service Contract No. 2008-00682 in 19 instances; (2) failing to enter a specific finding that Respondents Collado, OC and OMJ acted knowingly and willfully in violation of section 19 (a) and (b) of the Shipping Act in performing unlicensed and unbonded OTI operations in 14 instances; and (3) failing to assess an appropriate civil penalty against Respondents Collado, OC and OMJ. Accordingly, it is respectfully requested that after consideration of these Exceptions and the record in this proceeding, the Commission remand this matter to the Administrative Law Judge for further proceedings with respect to the section 10(a)(1) issue and to assess a civil penalty fully commensurate with the knowing and willful character of Respondents' violations of sections 10(a)(1) and 19 of the Shipping Act. The Commission should affirm the ALJ's finding with respect to denial of the OTI application of OC International Freight Inc. and related entry of cease and desist orders addressing the future conduct of these Respondents.

Respectfully submitted,



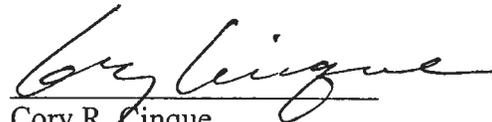
Peter J. King, Director
Brian L. Troiano, Deputy Director
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Bureau of Enforcement
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April 17, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2013 the foregoing Bureau of Enforcement's Exceptions to the Initial Decision have been served upon the Respondents by electronic mail.

Signed in Washington D.C. on April 17, 2013.


Cory R. Cinque