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October 2, 2009

Karen Gregory
Office of the Secretary
Federal Maritime Commission
800 N. Capitol St. NW, Suite 1046
Washington, DC 20573

VIA FEDERAL EXPRESS

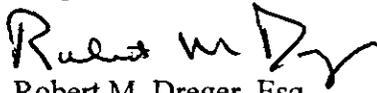
Re: Docket No. 06-01

Dear Ms. Gregory:

In accordance with the Commission Rules of Practice and Procedure, enclosed please find an original and fifteen (15) copies of the following documents that have been electronically filed on behalf of Respondents Martin McKenzie and Megan McKenzie (nee Karpick) in the above referenced matter:

- 1) Respondents Martin McKenzie and Megan McKenzie (nee Karpick) Motion to Strike Sworn Statement of Ronald Murphy, including Exhibits A and B; and
- 2) Respondent Martin McKenzie and Megan McKenzie (nee Karpick) Motion to Strike Sworn Statement of Andrew Margolis, including Exhibits A and B.

Respectfully,


Robert M. Dreger, Esq.

Cc: Martin McKenzie (via email only w/o attachments)
Megan McKenzie (via email only w/o attachments)

Enclosures



ORIGINAL

cc: OS
GC
BOE
ALJ(?)
Rob

FEDERAL MARITIME COMMISSION

DOCKET NO. 06-01

Worldwide Relocations, Inc., Boston Logistics Corp., Tradewind Consulting, Inc., Global Direct Shipping, Megan K. Karpick (a.k.a. Catherine Kaiser, Kathryn Kaiser, Catherine Karpick, Megan Kaiser and Alexandria Hudson), Martin J. McKenzie, Patrick John Costadoni, Sharon Fachler, and Oren Fachler, et al. -- Possible Violations of Sections 8, 10 and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. §§ 515.3, 515.21 and 520.3

RESPONDENTS MARTIN MCKENZIE AND MEGAN MCKENZIE's
COMBINED MOTION TO STRIKE
THE STATEMENT OF ANDREW MARGOLIS

To: Secretary,
Federal Maritime Commission
Washington, D.C. 20573-0001

Respondents, MARTIN MCKENZIE and MEGAN MCKENZIE (formerly Megan Karpick)¹ by and through their Attorneys, Law Firm of R. M. Dreger, P.C. hereby present their combined Motion To Strike the Statement of Andrew Margolis, and in support thereof, state as follows:

1. On January 11, 2006, The Bureau of Enforcement ("BOE") filed an Order of Investigation ("Order of Investigation") against several defendants, including Respondent Martin McKenzie and Megan K. McKenzie.
2. In the Order of Investigation, the BOE alleges that Respondent Martin McKenzie may have violated § 8, 10 and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. §§ 515.3, 515.21 and 520.3.
3. In the Order of Investigation, the BOE alleges that Respondent Megan McKenzie may have violated § 8, 10 and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. §§ 515.3, 515.21 and 520.3.

¹ Megan shall be referred to hereinafter as Megan McKenzie

4. The BOE submitted, pursuant to Order, a Proposed Findings of Fact and Conclusions of Law on June 19, 2009 ("BOE Proposed Findings").
5. The BOE Proposed Findings rely heavily upon the sworn testimony of Andrew Margolis ("Margolis"), set forth a sworn statement identified as BOE App. 2 (the "Margolis Sworn Statement"), and attached hereto as Exhibit "A".
6. The Margolis Sworn Statement is, however, replete with: a) inadmissible opinion testimony; b) conclusory legal allegations that are unsupported by the documents referenced therein; c) multiple levels of inadmissible hearsay; and d) statements lacking proper foundation.
7. Pursuant to established federal law, the improper evidence contained in the Margolis Sworn Statement should not be taken into consideration by the Commission, as such proposed evidence is inadmissible.
8. Accordingly, these inadmissible statements must be disregarded in their entirety, and the Margolis Sworn Statement should be stricken.

STATEMENT OF LAW

Standard of Review

9. To the extent that situations arise in the course of FMC adjudications "which are not covered by a specific Commission rule," the FMC's own Rules of Practice and Procedure specifically provide that "the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice." § 502.12. *FMC v. S.C. State Ports Auth.*, 535 U.S. 743, 759 (U.S. 2002)
10. Unless inconsistent with the requirements of the Administrative Procedure Act and [the FMC's Rules of Practice and Procedure], the Federal Rules of Evidence [are] applicable" in

FMC adjudicative proceedings. 46 CFR § 502.156 (2001). *FMC v. S.C. State Ports Auth.*, 535 U.S. 743 (U.S. 2002).

Hearsay and Exceptions, Generally

11. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. USCS Fed Rules Evid R 801(c). *Royall v Nat'l Ass'n of Letter Carriers*, 507 F Supp 2d 93 (DC Dist. Col, 2007) (various statements concerning employer's purported employment practices were inadmissible hearsay under Fed. R. Evid. 801(c) to extent that such statements were offered for truth of matter asserted).

Hearsay in Government Investigations

12. Hearsay testimony offered for its truth by government agents, including those involved in enforcement activities and investigations, is to be excluded. SEE such as *United States v Evans* (DC Circ., 2000) 342 US App DC 189, 216 F3d 80, cert den (2000) 531 US 971, 148 L Ed 2d 317, 121 S Ct 411; rehearing denied, 531 US 1060, 121 S Ct 673 (2000) (testimony of FBI agent that government had received information that defendant was involved in drug trafficking was hearsay because finder of fact was told that testimony could be used for its truth); *Lewis v City of Phila.* (E.Dist. Pa, 2004) 65 Fed Rules Evid Serv 1086 (motion in limine to exclude testimony of police officer without personal knowledge of events was granted, as testimony based on hearsay evidence which could not be admitted to prove facts asserted in statement).

Reports of Government Investigations

13. Conclusory hearsay statements contained in government reports are inadmissible. *Bradford v City of Seattle*, 557 F Supp 2d 1189 (WD Wash., 2008) (Report by Office of

Professional Accountability comprised of conclusory hearsay statements of persons with no personal knowledge of underlying circumstances, and lacking foundation for admissibility, was not admissible). SEE also *United States v Walthour*, 2006 US App LEXIS 26284 (unpublished opinion) (11th Circ. 2006) (Police report, which contained information about statements individual made to police officer, was hearsay within hearsay).

14. Reports include affidavits by enforcement officers in support of an investigation. *State Farm Mut. Auto. Co. v Knerr (In re Knerr)* 361 BR 858 (Bank Ct, ND Ohio, 2007). (Statement in police officer's affidavit that stated what witness told police investigators was inadmissible hearsay under Fed. R. Evid. 801(c) and was stricken from record when court considered opposing party's motion for summary judgment).

Hearsay and Business Records

15. Documents prepared for purposes of litigation are hearsay under Rule 803(6), notwithstanding that party may maintain other records that are maintained for other purposes. SEE such as *United States v Grossman* 614 F2d 295, (1st Circ. 1980); *United States v Bohrer*, 807 F2d 159 (10th Circ. 1986) (Business records exception of Rule 803(6) is not applicable to documents prepared for ultimate purposes of litigation when offered by party maintaining documents, and thus trial court erred in admitting IRS contact card which was maintained, at least in part, for purpose of prosecuting defendant for willfully refusing to file federal income tax returns).
16. Under Rule 803(6) testimony of custodian or other qualified witness who can explain record-keeping procedure is essential, and if witness cannot vouch that requirements of rule have been met, entry must be excluded. *Liner v J. B. Talley & Co.* 618 F2d 327 (5th Circ. 1980); reh. den., 623 F2d 711 (5th Circ. 1980).

17. To comply with requirements of authentication under Rule 803(6), it was insufficient that plaintiffs' attorneys and another witness testified merely to existence of document, with no proof shown of origination or source of document. *Coughlin v Capitol Cement Co.* 571 F2d 290 (5th Circ. 1978).
18. Letter from customer complaining of way he was treated by employee was improperly admitted as business record under Fed. R. Evid. 803(6) in employee's sex discrimination claim for failure to promote because employer did not prepare letter, and it was not prepared in course of regularly conducted business activity. Even if letter was considered as part of larger business record, it constituted double hearsay problem that would still require that letter qualify under one of hearsay exceptions or that employer demonstrate standard verification procedures for customer complaints for purposes of Fed. R. Evid. 805. *Rowland v Am. Gen. Fin., Inc.*, 340 F3d 187 (4th Circ. 2003)
19. Even where documents are allegedly self-authenticating, a party will be precluded from offering into evidence because not-very-daunting requirements in FRE 803(6) and 902(11) were not met. *Rambus, Inc. v Infineon Techs. AG*, 348 F Supp 2d 698, 66 Fed Rules Evid Serv 16 (E.D. Va, 2004).
20. Hearsay evidence may not be used to lay foundation for admission of business records; rule explicitly provides that foundational requirements must be shown by testimony of custodian or other qualified witness. *Tongil Co. v The Vessel "Hyundia Innovator"* (1992, 968 F2d 999, (9th Circ. 1992).

Hearsay and Public Records

21. Rule 803(8), hearsay exception pertaining to public records and reports, is designed to allow admission of official records and reports prepared by agency or government office for

purposes independent of specific litigation. *United States v Stone*, 604 F2d 922 (5th Circ. 1979).

22. Rule 803(8)(B) imposes twofold duty requirement, observation must have taken place pursuant to legally imposed duty and matters themselves must have been subject of reporting duty; Rule 803 permits introduction of public record only if it was made from matters within personal knowledge of public official making report or someone with duty to report matter to public official; accordingly, any government report based on evidence from numerous nonofficial sources not under duty imposed by law to report information is not admissible as hearsay exception under Rule 803(8)(B). *Wetherill v University of Chicago*, 518 F Supp 1387 (ND Ill, 1981).
23. It would be incongruous to hold that while given compilation of data lacked sufficient trustworthiness for admission as business records under Rule 803(6) it is nonetheless properly introduced into evidence as public report pursuant to Rule 803(8). *Cleveland v Cleveland Electric Illuminating Co.*, 538 F Supp 1257 (ND Ohio 1980).

Expert Testimony

24. Under Rule 803(6) which expressly provides for exclusion of business record if source of information indicates lack of untrustworthiness, trial judge, in exercise of his or her discretion, may exclude from evidence record of opinion of expert whose qualifications are seriously challenged. *United States v Licavoli*, 604 F2d 613, (9th Circ.1979), cert den (1980) 446 US 935, 64 L Ed 2d 787, 100 S Ct 2151 and (criticized in *Gray v State* 368 Md 529 (2002)).
25. Rule 803(8)(C) applies only to investigative reports based on factual findings and any report based on assessment and discussion of literature coupled with personal opinions of

members of task force and consultants which never undertook to make factual investigation is inadmissible as hearsay exception, especially where there was presence of interested parties on consulting staff. *Wetherill v University of Chicago* 518 F Supp 1387 (ND Ill, 1981).

Rule 702 Expert Opinion Testimony, Generally

Legal conclusions or opinions excluded

26. An expert may not testify as to legal effect of conduct, such as legal effect of contract, since this is matter for judge. *Loeb v Hammond*, 407 F2d 779 (7th Cir. 1969).
27. Expert advising court on questions of law instead of assisting jury to determine issue of fact is grounds to exclude testimony. *Marx & Co. v Diners' Club, Inc.* 550 F2d 505 (2nd Circ. 1977), cert den (1977) 434 US 861, 98 S Ct 188, 54 L Ed 2d 134.
28. Where witness's report contained numerous legal conclusions, most of which pertained to plaintiff's theory that defendant was obligated to follow UCC § 9-406, appellate court found that legal conclusions not only invaded province of trial judge, but constituted erroneous statements of law. *Nationwide Transp. Fin. v Cass Info. Sys.*, 523 F3d 1051 (9th Circ. 2008)

LEGAL ARGUMENT

29. Only paragraphs 4, 16, and 17 of the Margolis Sworn Statement relate to Respondents Martin McKenzie and/or Megan McKenzie. (See Exhibit "A")
30. Numbered Paragraphs 4, and 16-17 of the Margolis Sworn Statement each contain individual statements that are improper under the Federal Rules of Evidence, and therefore inadmissible as evidence.

31. Respondents Martin McKenzie and Megan McKenzie's specific objections to the Margolis Sworn Statement are set forth more fully in the table attached hereto as Exhibit "B".
32. The inadmissible nature of the substantive assertions contained in the Margolis Sworn Statement requires that the Margolis Sworn Statement be stricken in its entirety.
33. Alternatively, the inadmissible statements may be stricken individually.

WHEREFORE, Respondents MARTIN MCKENZIE and MEGAN MCKENZIE pray that their Motion To Strike the Statement of Andrew Margolis be granted, and that an order be entered that states as follows:

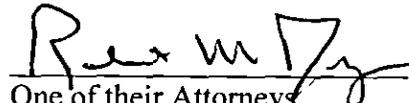
1. The Statement of Andrew Margolis is stricken as a matter of law.
2. Such other and further relief is granted as the Court finds to be just and equitable.

Respectfully Submitted,

MARTIN MCKENZIE, and

MEGAN MCKENZIE

By:


One of their Attorneys

LAW FIRM OF R.M. DREGER, P.C.
410 South Michigan Avenue, Suite 310
Chicago, Illinois 60605
DuPage County Attorney No. 15635
312.322.0955

EXHIBIT "A"

BOE App. 2

FEDERAL MARITIME COMMISSION

DOCKET NO. 06 - 01

Worldwide Relocations, Inc., All-in-One Shipping, Inc., Boston Logistics Corp., Around the World Shipping, Inc., Tradewind Consulting, Inc., Global Direct Shipping, Megan K. Karpick (a.k.a. Catherine Kaiser, Kathryn Kaiser, Catherine Kerpick, Megan Kaiser and Alexandria Hudson), Martin J. McKenzie, Patrick John Costadoni, Elizabeth F. Hudson, Sharon Fachler, and Oren Fachler, et al. -- Possible Violations of Sections 8, 10 and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. §§ 515.3, 515.21 and 520.

STATEMENT OF ANDREW MARGOLIS

1. My name is Andrew Margolis. I am one of two Federal Maritime Commission ("Commission") Area Representatives assigned to the South Florida field office. I have served in the capacity of Area Representative in Florida for thirteen years. In my capacity as an Area Representative, I have investigated numerous cases of unlicensed, unbonded and untariffed ocean transportation intermediaries ("OTIs") as well as counseled numerous entities seeking advice on the licensing, fiduciary responsibility and tariff requirements of the Shipping Act.
2. As an Area Representative, I often receive and follow up on information that a company may be operating as a non-vessel-operating common carrier ("NVOCC") without being licensed, bonded or tariffed. As part of my duties, I investigated seven companies operating as unlicensed, unbonded and untariffed NVOCCs in the South Florida area, who contracted with various common carriers to move their shipments. Further details of my investigation are provided below.
3. A number of the companies discussed in this affidavit maintained websites where they held themselves out to the public to provide ocean transportation for consumers'

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household goods between the U.S. and another country and took responsibility for the transportation from the port or point of receipt to the port or point of delivery. (BOE App. 8, 18, 24, 27, Website printouts of Worldwide Relocations, Inc; Global Direct Shipping, Boston Logistics Corp and Tradewind Consulting, Inc.). As with licensed NVOCCs, the services advertised by these companies included shipment of full container load and less than container load shipments, and origin to destination services, including door to door and port to port services. Some of these companies would also pay fees to web sites for sales leads of individuals searching for international movers.

4. Beginning in late 2003, the Commission began receiving complaints from shippers stating they had hired household goods moving companies to transport their personal effects and vehicles from various locations in the United States to foreign destinations. These companies were primarily located in the South Florida area and the South Florida office began investigating the activities of these companies. Among the companies under investigation between 2004 and 2006 were Worldwide Relocations, Inc., Moving Services, L.L.C., Global Direct Shipping, Boston Logistics Corp. and Tradewind Consulting, Inc, International Shipping Solutions, Inc., and Dolphin International Shipping, Inc.. (hereinafter "Respondents"). The information obtained during the investigation as well as documents obtained from the common carriers who provided service to Respondents shows that Respondents held themselves out to the public to provide ocean transportation to foreign destinations from the United States and assumed responsibility for the transportation from port or point of receipt to the port or point of destination. None of the Respondents ever maintained a bond or surety or provided proof of financial responsibility, none obtained a license from the Commission and none published a tariff as required by Sections 8 and 19 of the Shipping Act.

5. As a result of complaints received by the Commission from shippers, I became aware of the activities of Worldwide Relocations, Inc., (“WWR”), a Florida corporation. A review of WWR’s website in November 2004 showed WWR advertised themselves as “an international moving company” offering port to port and door to door services through their “international agents” and noting that they were able to “govern [the shipper’s] services from origin to destination”. (BOE App. 8, Website printout of Worldwide Relocations, Inc.). Documents received shows that WWR operated as an NVOCC for 280 shipments during the period from February 2003 and May 2005. (BOE App. 9, Summary of shipments made by Worldwide Relocations, Inc. and BOE App. 10, Shipment files for Worldwide Relocations, Inc.). These shipments were primarily less than container load (“LCL”) shipments of household goods.
6. As a result of my investigation into other companies operating in South Florida as well as complaints received by the Commission, I became aware of the activities of Moving Services, Inc., a Florida corporation. Documents received from common carriers shows that Moving Services, Inc. operated as an NVOCC for 125 shipments during the period from May 2004 to February 2005. These shipments were primarily LCL shipments of household goods. On June 24, 2004, Moving Services International, LLC, submitted an FMC-18 to the Commission for an NVOCC license. The FMC-18 was signed by Sharon Fachler under penalty of perjury and listed Bogdan Koszarycz as the company’s qualified individual. While the FMC-18 was being processed, CADRS began receiving complaints about the ocean transportation activities of Moving Services and Moving Services International, L.L.C. and the FMC-18 for Moving Services International, L.L.C. was withdrawn on September 20, 2004. (BOE App. 13, Summary of shipments made by Moving Services, Inc. and BOE App. 14, Shipment files of Moving Services, Inc.).

7. As a result of my investigation into other companies operating in South Florida as well as complaints received by the Commission, I became aware of the activities of Global Direct Shipping, a company that is not incorporated in any state. A review of Global Direct Shipping's website in December 2005 shows that they offered full door or port to door or port services and provided shipment internationally from origin to destination. (BOE App. 18, Website printout of Global Direct Shipping). A review of documents received from common carriers shows that Global Direct Shipping operated as an NVOCC for 154 shipments during the period from December 2004 to December 2005. (BOE App. 19, Summary of shipments made by Global Direct Shipping and BOE App. 20, Shipment files of Global Direct Shipping). These shipments were primarily LCL shipments of household goods. Some shipment files also contain documentation showing payment of charges by a company that Global Direct Shipping used to conduct business in the United States, Billing and Payment Systems, Inc. ("BPS").
8. The bank statements for two Bank of America accounts controlled by Sharon Fachler via BPS shows that between December 2004 and March, 2006, hundreds of thousands of dollars, primarily the proceeds of the shipments made by GDS, were deposited into and withdrawn from the two accounts. Between January 13, 2005, and January 25, 2006, a total of \$292,000.00 was transferred by wire to an account at an Israeli bank for the benefit of Moving Network, Ltd. Sharon Fachler was the manager of a similarly named Florida limited liability corporation, Discount Moving Network, LLC, which was established on September 26, 2002.
9. Sharon Fachler was also involved in the establishment and operation of two other NVOCCs subsequent to the commencement of this proceeding. On April 24, 2006, the Commission became aware of the existence of a company named Shippex Shipping

Express. Shippex Shipping Express maintained a web site at www.shippex.net where it held itself out as an NVOCC.

10. The Shippex.net website indicated that Shippex.net had an office at 20533 Biscayne Boulevard, Suite 203, Aventura, Florida 33180. This address is in fact a Mailboxes, Etc. store and Suite 203 is Private Mailbox #203. Private Mailbox #203 was opened on January 30, 2006, by Arick Fachler on behalf of a company called GDL. On the Mailboxes Etc. application, Arick Fachler provided a company address for GDL of 19490 E. Country Club Drive, Aventura, Florida. This is the same address listed on GDL's bank records.
11. GDL was incorporated by The Delaware Company on February 9, 2006. According to GDL's articles of incorporation, Arick Fachler is the President of GDL. According to shippers and vendors, Shippex Shipping Express utilized GDL as an agent for the collection and remittance of its invoices and ocean freight payments. Shippex Shipping Express customers were instructed to make payment to GDL via a personal check or electronic deposit. Arick Fachler received these checks and deposited them in the GDL bank account at a Bank of America branch office in Aventura, Florida. GDL also made payments from this account to common carriers on behalf of Shippex Shipping Express. GDL provided the same services for Shippex Shipping Express as BPS did for GDS.
12. In early September, 2007, due to complaints, the Commission became aware of the existence of a company named Coral Sea Shipping. Coral Sea Shipping maintained a website at www.coralseashipping.com where it held itself out as an NVOCC and which listed business phone numbers in the United States, France, the United Kingdom and Canada. The website indicated they are headquartered in Antwerp, Belgium and have been in business since 1995.

13. Shippers were provided with the following information regarding their U.S. presence:

They had an office at 757 S.E. 17th St. Suite 404, Fort Lauderdale, FL and a fax number with a New York area code. I visited the U.S. address of Coral Sea Shipping which is a Mailboxes, Etc. store. Suite 404 is actually Private Mailbox #404. Staff at the Mailboxes, Etc. store indicated the mailbox was rented by Arick Fachler. Payments were directed to Wachovia Bank, State Road 84 Financial Center, 1100 W. State Road 84, Fort Lauderdale, FL 33315. The account was in the name of GDL (General Distribution and Logistics). The bank account in the name of GDL at Wachovia Bank was opened at the direction of Sharon Fachler. GDL also maintained an account at Le Credit Lyonnais in Villeurbanne, France.

14. As a result of my investigation into other companies operating in South Florida, I became aware of the activities of Boston Logistics Corp., a Florida corporation. A review of Boston Logistics Corp's website in September 2005 shows that they offered comprehensive shipping services including door to door, door to port, as well as less than container load, full container load and auto shipping. (BOE App. 24, Website of Boston Logistics Corp.). A review of documents obtained from common carriers and Boston Logistics Corp. shows that Boston Logistics Corp. operated as an NVOCC for 12 shipments during the period from May 2005 to October 2005. (BOE App. 25, Summary of shipments made by Boston Logistics Corp. and BOE App. 26, Shipment files for Boston Logistics Corp.).

15. As a result of my investigation into other companies operating in South Florida, I became aware of the activities of Tradewind Consulting, Inc. a New York corporation. A review of Tradewind Consulting, Inc.'s website in September 2005 shows that they described themselves as a consulting firm rather than an international shipping company. (BOE

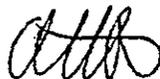
App. 27, Website of Tradewind Consulting, Inc.). However, the documentation obtained from common carriers and Tradewind Consulting, Inc. shows that Tradewind Consulting, Inc. contracted with their shippers to provide full service for LCL shipments for a figure higher than what they were charged by the common carriers. (BOE App. 29, Shipment files of Tradewind Consulting, Inc). A review of documents received shows that Tradewind Consulting, Inc. operated as an NVOCC for 45 shipments during the period from April 2005 to September 2005. (BOE App. 28, Summary of shipments made by Tradewind Consulting, Inc. and BOE 29, Shipment files for Tradewind Consulting, Inc.).

16. As a result of my investigation into other companies operating in South Florida as well as complaints received by the Commission, I became aware of the activities of International Shipping Solutions, Inc., a Florida corporation. A review of documents received from common carriers shows that International Shipping Solutions, Inc. operated as an NVOCC for 42 shipments during the period from January 2004 to October 2004. (BOE App. 35, Summary of shipments made by International Shipping Solutions, Inc. and BOE App. 36, Shipment files for International Shipping Solutions, Inc.).

17. As a result of my investigation into other companies operating in South Florida as well as complaints received by the Commission, I became aware of the activities of Dolphin International Shipping, Inc., a Florida corporation. A review of documents received from common carriers and two shippers shows that Dolphin International Shipping, Inc. operated as an NVOCC for 10 shipments during the period from May 2004 to November 2004. (BOE App. 37, Summary of shipments made by Dolphin International Shipping, Inc. and BOE App. 38, Shipment files for Dolphin International Shipping, Inc.).

operated as an NVOCC for 10 shipments during the period from May 2004 to November 2004. (BOE App. 37, Summary of shipments made by Dolphin International Shipping, Inc. and BOE App. 38, Shipment files for Dolphin International Shipping, Inc.).

I declare, under penalty of perjury, that the foregoing statements are true and correct.



Andrew Margolis

Executed this 18th day of June, 2009.

EXHIBIT "B"

Exhibit, and Location of Statement	Nature of Objection	Authority for Objection
BOE 2, Paragraph 4, Sentence 4	<p>(1) Improper Legal Conclusion; (2) Lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation; (3) Lack of foundation to authenticate purported business records, and therefore no admissible factual support affidavit's testimony; (4) Hearsay - improperly relies on information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay</p>	<p>(1) USCS Fed Rules Evid ("FRE") 702. See Loeb, supra; see Marx and Co., supra; see Nationwide Transp. Fin., supra. (2) FRE 801(c). See Royall, supra; United States v Evans, supra; United States v Phila., supra; Bradford, supra; State Farm Mut. Auto. Walthour, supra; (3) FRE 803(6) State Farm Mut. Co. v Knerr, supra; see Liner, supra; See Rowland v Am. Gen. Fin., Inc., supra. See Coughlin, supra. See Rowland v Am. Gen. Fin., Inc., supra.</p>
BOE 2, Paragraph 16, Sentence 2	<p>(1) Improper Legal Conclusion; (2) Lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation; (3) Lack of foundation to authenticate purported business records, and therefore no admissible factual support affidavit's testimony; (4) Hearsay - improperly relies both upon: a) BOE Appendix 35, a document created in anticipation of litigation and therefore inadmissible as hearsay; and b) BOE Appendix 36, containing information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.</p>	<p>(1) USCS Fed Rules Evid ("FRE") 702. See Loeb, supra; see Marx and Co., supra; see Nationwide Transp. Fin., supra. (2) FRE 801(c). See Royall, supra; United States v Evans, supra; United States v Phila., supra; Bradford, supra; United States v Walthour, supra; (3), (4)(b) FRE 803(6) State Farm Mut. Co. v Knerr, supra; see Liner, supra; See Rowland v Am. Gen. Fin., Inc., supra; (4)(a) See United States v Grossman, supra; see United States v Bohrer, supra; see United States v. Stone, supra.</p>
BOE 2, Paragraph 17, Sentence 2	<p>(1) Improper Legal Conclusion; (2) Lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation; (3) Lack of foundation to authenticate purported business records, and therefore no admissible factual support affidavit's testimony; (4) Hearsay - improperly relies both upon: a) BOE Appendix 37, a document created in anticipation of litigation and therefore inadmissible as hearsay; and b) BOE Appendix 38, containing information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.</p>	<p>(1) USCS Fed Rules Evid ("FRE") 702. See Loeb, supra; see Marx and Co., supra; see Nationwide Transp. Fin., supra. (2) FRE 801(c). See Royall, supra; United States v Evans, supra; United States v Phila., supra; Bradford, supra; United States v Walthour, supra; (3), (4)(b) FRE 803(6) State Farm Mut. Co. v Knerr, supra; see Liner, supra; See Rowland v Am. Gen. Fin., Inc., supra; (4)(a) See United States v Grossman, supra; see United States v Bohrer, supra; see United States v. Stone, supra.</p>



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FEDERAL MARITIME COMMISSION

DOCKET NO. 06-01

Worldwide Relocations, Inc., Boston Logistics Corp., Tradewind Consulting, Inc., Global Direct Shipping, Megan K. Karpick (a.k.a. Catherine Kaiser, Kathryn Kaiser, Catherine Karpick, Megan Kaiser and Alexandria Hudson), Martin J. McKenzie, Patrick John Costadoni, Sharon Fachler, and Oren Fachler, et al. -- Possible Violations of Sections 8, 10 and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. §§ 515.3, 515.21 and 520.3

RESPONDENTS MARTIN MCKENZIE AND MEGAN MCKENZIE's
COMBINED MOTION TO STRIKE
THE STATEMENT OF RONALD D. MURPHY

To: Secretary,
Federal Maritime Commission
Washington, D.C. 20573-0001

Respondents, MARTIN MCKENZIE and MEGAN MCKENZIE (formerly Megan Karpick)¹ by and through their Attorneys, Law Firm of R. M. Dreger, P.C. hereby present their combined Motion To Strike the Statement of Ronald D. Murphy, and in support thereof, state as follows:

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2. In the Order of Investigation, the BOE alleges that Respondent Martin McKenzie may have violated § 8, 10 and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. §§ 515.3, 515.21 and 520.3.
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4. The BOE submitted, pursuant to Order, a Proposed Findings of Fact and Conclusions of Law on June 19, 2009 ("BOE Proposed Findings").
5. The BOE Proposed Findings rely heavily upon the sworn testimony of Ronald D. Murphy ("Murphy"), set forth a sworn statement identified as BOE App. 1 (the "Murphy Sworn Statement"), and attached hereto as Exhibit "A".
6. The Murphy Sworn Statement is, however, replete with: a) inadmissible opinion testimony; b) conclusory legal allegations that are unsupported by the documents referenced therein; c) multiple levels of inadmissible hearsay; and d) statements lacking proper foundation..
7. Pursuant to established federal law, the improper evidence contained in the Murphy Sworn Statement should not be taken into consideration by the Commission, as such proposed evidence is inadmissible.
8. Accordingly, these inadmissible statements must be disregarded in their entirety, and the Murphy Sworn Statement should be stricken.

STATEMENT OF LAW

Standard of Review

9. To the extent that situations arise in the course of FMC adjudications "which are not covered by a specific Commission rule," the FMC's own Rules of Practice and Procedure specifically provide that "the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice." § 502.12. *FMC v. S.C. State Ports Auth.*, 535 U.S. 743, 759 (U.S. 2002)
10. Unless inconsistent with the requirements of the Administrative Procedure Act and [the FMC's Rules of Practice and Procedure], the Federal Rules of Evidence [are] applicable" in

FMC adjudicative proceedings. 46 CFR § 502.156 (2001). *FMC v. S.C. State Ports Auth.*, 535 U.S. 743 (U.S. 2002).

Hearsay and Exceptions, Generally

11. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. USCS Fed Rules Evid R 801(c). *Royall v Nat'l Ass'n of Letter Carriers*, 507 F Supp 2d 93 (DC Dist. Col, 2007) (various statements concerning employer's purported employment practices were inadmissible hearsay under Fed. R. Evid. 801(c) to extent that such statements were offered for truth of matter asserted).

Hearsay in Government Investigations

12. Hearsay testimony offered for its truth by government agents, including those involved in enforcement activities and investigations, is to be excluded. SEE such as *United States v Evans* (DC Circ., 2000) 342 US App DC 189, 216 F3d 80, cert den (2000) 531 US 971, 148 L Ed 2d 317, 121 S Ct 411; rehearing denied, 531 US 1060, 121 S Ct 673 (2000) (testimony of FBI agent that government had received information that defendant was involved in drug trafficking was hearsay because finder of fact was told that testimony could be used for its truth); *Lewis v City of Phila.* (E.Dist. Pa, 2004) 65 Fed Rules Evid Serv 1086 (motion in limine to exclude testimony of police officer without personal knowledge of events was granted, as testimony based on hearsay evidence which could not be admitted to prove facts asserted in statement).

Reports of Government Investigations

13. Conclusory hearsay statements contained in government reports are inadmissible. *Bradford v City of Seattle*, 557 F Supp 2d 1189 (WD Wash., 2008) (Report by Office of

Professional Accountability comprised of conclusory hearsay statements of persons with no personal knowledge of underlying circumstances, and lacking foundation for admissibility, was not admissible). SEE also *United States v Walthour*, 2006 US App LEXIS 26284 (unpublished opinion) (11th Circ. 2006) (Police report, which contained information about statements individual made to police officer, was hearsay within hearsay).

14. Reports include affidavits by enforcement officers in support of an investigation. *State Farm Mut. Auto. Co. v Knerr (In re Knerr)* 361 BR 858 (Bank Ct, ND Ohio, 2007). (Statement in police officer's affidavit that stated what witness told police investigators was inadmissible hearsay under Fed. R. Evid. 801(c) and was stricken from record when court considered opposing party's motion for summary judgment).

Hearsay and Business Records

15. Documents prepared for purposes of litigation are hearsay under Rule 803(6), notwithstanding that party may maintain other records that are maintained for other purposes. SEE such as *United States v Grossman* 614 F2d 295, (1st Circ. 1980); *United States v Bohrer*, 807 F2d 159 (10th Circ. 1986) (Business records exception of Rule 803(6) is not applicable to documents prepared for ultimate purposes of litigation when offered by party maintaining documents, and thus trial court erred in admitting IRS contact card which was maintained, at least in part, for purpose of prosecuting defendant for willfully refusing to file federal income tax returns).
16. Under Rule 803(6) testimony of custodian or other qualified witness who can explain record-keeping procedure is essential, and if witness cannot vouch that requirements of rule have been met, entry must be excluded. *Liner v J. B. Talley & Co.* 618 F2d 327 (5th Circ. 1980); reh. den., 623 F2d 711 (5th Circ. 1980).

17. To comply with requirements of authentication under Rule 803(6), it was insufficient that plaintiffs' attorneys and another witness testified merely to existence of document, with no proof shown of origination or source of document. *Coughlin v Capitol Cement Co.* 571 F2d 290 (5th Circ. 1978).
18. Letter from customer complaining of way he was treated by employee was improperly admitted as business record under Fed. R. Evid. 803(6) in employee's sex discrimination claim for failure to promote because employer did not prepare letter, and it was not prepared in course of regularly conducted business activity. Even if letter was considered as part of larger business record, it constituted double hearsay problem that would still require that letter qualify under one of hearsay exceptions or that employer demonstrate standard verification procedures for customer complaints for purposes of Fed. R. Evid. 805. *Rowland v Am. Gen. Fin., Inc.*, 340 F3d 187 (4th Circ. 2003)
19. Even where documents are allegedly self-authenticating, a party will be precluded from offering into evidence because not-very-daunting requirements in FRE 803(6) and 902(11) were not met. *Rambus, Inc. v Infineon Techs. AG*, 348 F Supp 2d 698, 66 Fed Rules Evid Serv 16 (E.D. Va, 2004).
20. Hearsay evidence may not be used to lay foundation for admission of business records; rule explicitly provides that foundational requirements must be shown by testimony of custodian or other qualified witness. *Tongil Co. v The Vessel "Hyundia Innovator"* (1992, 968 F2d 999, (9th Circ. 1992).

Hearsay and Public Records

21. Rule 803(8), hearsay exception pertaining to public records and reports, is designed to allow admission of official records and reports prepared by agency or government office for

purposes independent of specific litigation. *United States v Stone*, 604 F2d 922 (5th Circ. 1979).

22. Rule 803(8)(B) imposes twofold duty requirement, observation must have taken place pursuant to legally imposed duty and matters themselves must have been subject of reporting duty; Rule 803 permits introduction of public record only if it was made from matters within personal knowledge of public official making report or someone with duty to report matter to public official; accordingly, any government report based on evidence from numerous nonofficial sources not under duty imposed by law to report information is not admissible as hearsay exception under Rule 803(8)(B). *Wetherill v University of Chicago*, 518 F Supp 1387 (ND Ill, 1981).
23. It would be incongruous to hold that while given compilation of data lacked sufficient trustworthiness for admission as business records under Rule 803(6) it is nonetheless properly introduced into evidence as public report pursuant to Rule 803(8). *Cleveland v Cleveland Electric Illuminating Co.*, 538 F Supp 1257 (ND Ohio 1980).

Expert Testimony

24. Under Rule 803(6) which expressly provides for exclusion of business record if source of information indicates lack of untrustworthiness, trial judge, in exercise of his or her discretion, may exclude from evidence record of opinion of expert whose qualifications are seriously challenged. *United States v Licavoli*, 604 F2d 613, (9th Circ.1979), cert den (1980) 446 US 935, 64 L Ed 2d 787, 100 S Ct 2151 and (criticized in *Gray v State* 368 Md 529 (2002)).
25. Rule 803(8)(C) applies only to investigative reports based on factual findings and any report based on assessment and discussion of literature coupled with personal opinions of

members of task force and consultants which never undertook to make factual investigation is inadmissible as hearsay exception, especially where there was presence of interested parties on consulting staff. *Wetherill v University of Chicago* 518 F Supp 1387 (ND Ill, 1981).

Rule 702 Expert Opinion Testimony, Generally

Legal conclusions or opinions excluded

26. An expert may not testify as to legal effect of conduct, such as legal effect of contract, since this is matter for judge. *Loeb v Hammond*, 407 F2d 779 (7th Cir. 1969).
27. Expert advising court on questions of law instead of assisting jury to determine issue of fact is grounds to exclude testimony. *Marx & Co. v Diners' Club, Inc.* 550 F2d 505 (2nd Cir. 1977), cert den (1977) 434 US 861, 98 S Ct 188, 54 L Ed 2d 134.
28. Where witness's report contained numerous legal conclusions, most of which pertained to plaintiff's theory that defendant was obligated to follow UCC § 9-406, appellate court found that legal conclusions not only invaded province of trial judge, but constituted erroneous statements of law. *Nationwide Transp. Fin. v Cass Info. Sys.*, 523 F3d 1051 (9th Cir. 2008)

LEGAL ARGUMENT

29. Numbered Paragraphs 4-12 of the Murphy Sworn Statement each contain individual statements that are improper under the Federal Rules of Evidence, and therefore inadmissible as evidence.
30. Respondents Martin McKenzie and Megan McKenzie's specific objections to the Murphy Sworn Statement are set forth more fully in the table attached hereto as Exhibit "B".
31. The inadmissible nature of the substantive assertions contained in the Murphy Sworn Statement requires that the Murphy Sworn Statement be stricken in its entirety.

32. Alternatively, the inadmissible statements may be stricken individually.

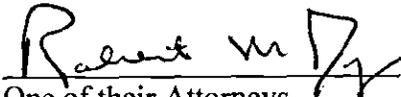
WHEREFORE, Respondents MARTIN MCKENZIE and MEGAN MCKENZIE pray that their Motion To Strike the Statement of Ronald D. Murphy be granted, and that an order be entered that states as follows:

1. The Statement of Ronald D. Murphy is stricken as a matter of law.
2. Such other and further relief is granted as the Court finds to be just and equitable.

Respectfully Submitted,

MARTIN MCKENZIE, and

MEGAN MCKENZIE

By: 
One of their Attorneys

LAW FIRM OF R.M. DREGER, P.C.
410 South Michigan Avenue, Suite 310
Chicago, Illinois 60605
DuPage County Attorney No. 15635
312.322.0955

EXHIBIT "A"

BOE App. 1

FEDERAL MARITIME COMMISSION

DOCKET NO. 06 – 01

**Worldwide Relocations, Inc., All-in-One Shipping, Inc., Boston Logistics Corp.,
Around the World Shipping, Inc., Tradewind Consulting, Inc., Global Direct
Shipping, Megan K. Karpick (a.k.a. Catherine Kaiser, Kathryn Kaiser,
Catherine Kerpick, Megan Kaiser and Alexandria Hudson), Martin J.
McKenzie, Patrick John Costadoni, Elizabeth F. Hudson, Sharon Fachler, and
Oren Fachler, et al. – Possible Violations of Sections 8, 10 and 19 of the
Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. §§ 515.3,
515.21 and 520.**

STATEMENT OF RONALD D. MURPHY

1. My name is Ronald D. Murphy. I am the Director of the Federal Maritime Commission's Office of Consumer Affairs & Dispute Resolution Services ("CADRS"). I was appointed to this position effective August 23, 2004. Prior to assuming my current position, from February 2000 to August 2004, I served as Deputy Director of the Commission's Bureau of Complaints, Certification and Licensing ("BCCL"). I have been an employee of the Commission for more than 36 years, serving in a variety of positions. In preparing this affidavit, I reviewed copies of the documents contained in the Bureau of Enforcement's Appendices.
2. CADRS provides complaint resolution services to parties experiencing shipping difficulties, including complaints from consumers shipping personal effects or household goods ("HHG") by common carriers to other countries.

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The staff of CADRS includes four attorneys and two transportation specialists who are devoted to dispute resolution. As part of our complaint resolution services, my staff and I review shipping documents, including bills of lading or other contracts of carriage, invoices, dock receipts and other documents chronicling the history of a particular shipment.

3. Between January 2004 and December 2006, CADRS handled approximately 665 complaints involving the shipment of HHG and approximately 513 complaints involving other cargo matters. The 665 HHG complaints received by CADRS included 280 complaints against six of the seven companies remaining as Respondents in this proceeding; to wit:

Moving Services, Inc. -	34 complaints
Global Direct Shipping, -	40 complaints
Worldwide Relocations, Inc. -	154 complaints
International Shipping Solutions -	6 complaints
Dolphin International Shipping -	40 complaints
Tradewind Consulting, Inc. -	6 complaints

4. The above named companies, as with many companies which have generated shipper complaints to CADRS, operated without a license, bond or tariff. They advertised and offered the same services as licensed non-vessel-operating common carriers. ("NVOCCs") Since they were not licensed, however, they maintained no bond to provide consumer protection, and they published no tariff. In all other respects, their operations were the same as licensed NVOCCs. As described further below, these entities held themselves out as the company providing transportation, advertising their

services on the internet and using third party portals to generate business. They undertook responsibility for shipping the goods from origin to destination points. They issued contracts which provided terms of service or carriage – the equivalent of bills of lading. They arranged for inland transportation when necessary.

5. Based on my experiences, particularly over the past five years, the ability to solicit business via the internet has contributed to an increase in the number of unlicensed, unbonded and untariffed companies offering NVOCC services. These NVOCCs primarily solicit business from individual consumers by means of sophisticated websites advertising themselves as international moving companies and describing the services they provide. Examples of such websites are provided by BOE App. 8, 18, 24, 27, which contain the website printouts of Global Direct Shipping, Worldwide Relocations, Inc., Boston Logistics, Inc. and Tradewind Consulting, Inc. Through these types of websites, these NVOCCs hold themselves out to provide ocean transportation for consumers' HHG between the U.S. and another country and take responsibility for the transportation from the port or point of receipt to the port or point of delivery. As with licensed NVOCCs, services advertised typically include shipment of full container load and less than container load shipments, and origin to destination services, including door to door and port to port services. Based on my experience reviewing copies of shipping documents, including those of the respondents and licensed

NVOCCs, the NVOCC industry has evolved to the point where many NVOCCs do not issue bills of lading in the traditional, standard format. Instead, they issue individual contracts identifying the terms and conditions of carriage and the services provided. Whether an NVOCC is licensed or unlicensed, these contracts of carriage usually are issued electronically, via e-mail or fax, and in all practical respects substitute for a bill of lading.

6. CADRS has encountered numerous instances where a shipper is unable to resolve shipment problems and disputes with an unlicensed NVOCC. This occurred with Respondents. The Respondents named herein advertised their services via the internet, held themselves out to the public to provide through service to foreign destinations, quoted rates and charges for such shipments, contracted to provide door to door through service to foreign destinations, accepted payment for such service, arranged for personal effects to be picked up from the origin point, and had them delivered to other, licensed NVOCCs ("the secondary NVOCC"). They made arrangements with the secondary NVOCC for shipment to the foreign destination, but often failed to pay the secondary NVOCC. Accordingly, the secondary NVOCC would refuse to deliver the shipment until paid. Meanwhile, storage charges would accrue. In most cases, the owner of the goods never realized that there was a secondary NVOCC. As far as they were concerned, they had contracted with the primary NVOCC, (one of the six Respondents) for pickup, shipment and delivery of their goods.

7. Typically, by the time a shipper finds its way to CADRS, serious problems have developed. Often, the shipper has been unable to contact the primary NVOCC with whom it contracted. In the majority of HHG cases received by CADRS, and as occurred with Respondents, the primary NVOCC does not inform the shipper that it utilizes a secondary NVOCC or the name of the VOCC to be used. Consumers often are surprised by the involvement of another NVOCC in the transaction. Shippers that used Respondents' services were often frustrated by an inability to communicate with Respondents to discuss their problems or find a solution. Respondents frequently would fail to return phone calls or respond to email inquiries.
8. In my experience, unlicensed NVOCCs routinely route their cargo through a licensed secondary NVOCC, as did Respondents. This may be because the licensed NVOCC has a service contract with an ocean common carrier that provides better rates and/or because the ocean common carriers refuse to provide service directly to these unlicensed entities as they are prohibited from doing so by the Shipping Act of 1984. Since shippers do not know the primary NVOCC has used another NVOCC to ship their cargo, the shippers often are unable to locate their cargo when problems arise. The consumer pays the primary NVOCC a figure greater than the actual ocean freight and other services charged by the secondary NVOCC to the primary NVOCC. That figure includes profit as well as other multimodal transportation, packing and insurance charges.

9. Most of the individuals hiring entities to ship their household goods to a foreign destination are inexperienced shippers. In a majority of cases, it is the first time they have shipped any property overseas. These shippers are unaware of what documentation exists with regard to the shipment. The majority of them are satisfied by receiving proof of the amount they paid for the shipment and some sort of documentation showing the goods shipped (usually an inventory list) and the final destination. As noted above, they are usually not aware of the involvement of another NVOCC in the transaction and do not ask for copies of the documentation issued by the secondary NVOCC.
10. Most of the complaints against Respondents involved the failure to pay the secondary NVOCC for its services, causing the shipment to be put on hold, and a demand of the shipper for additional payment. The volume of complaints and lack of effective response by Respondents required that CADRS staff personnel intercede to persuade the secondary NVOCC holding the shipper's HHG to carry forward with the shipment, having accepted the shipment from the primary NVOCC. Initially, secondary NVOCCs would refuse to deal with the consumer, citing the primary NVOCC as the true shipper controlling the shipment, regardless of whether the primary NVOCC or the consumer appeared as the shipper on the secondary NVOCCs bill of lading. Secondary NVOCCs would advise that their "contract" is with the primary NVOCC and thus a release from the primary NVOCC would be

required in order to release the shipment at destination. Despite requests to see such "contracts," they were not provided. Ultimately, despite the fact that the secondary NVOCC had made arrangements only with the primary NVOCC, we were able in most instances to persuade the secondary NVOCC to complete the shipment, but only after the consumer paid the secondary NVOCC to complete the transportation, thus paying twice for the same shipment.

11. There appears to be no difference between licensed and unlicensed international moving companies with respect to their services and method of operation. The only differences appear to be that licensed entities hold a license, post a bond and publish a tariff. Both licensed and unlicensed NVOCCs hold themselves out as the company providing transportation, increasingly using internet advertisements. They undertake responsibility for shipping the goods from origin to destination points. Although many licensed NVOCCs still issue traditional bills of lading, many do not. Instead, they issue contracts of service or carriage – the equivalent of bills of lading. They arrange for inland transportation when necessary. In many cases, they have direct dealings with origin agents.
12. Both licensed and unlicensed NVOCCs operate in a different manner from an ocean freight forwarder ("OFF"). They have no fiduciary duty to the shipper and do not subject themselves to shipper control, as would a true agent of the shipper, such as an OFF. Most important, they undertake total responsibility

for moving the shipment, and they control the shipment and release of the HHG. In contrast, OFFs owe a fiduciary duty to shippers and are bound to keep them informed with respect to their shipment. As such, OFFs and brokers do not conceal the identity of the actual carrier during the transaction and carriers deal with both the OFF and the original shipper when necessary. The bill of lading, which is the contract of carriage, reflects the shipper and not the OFF as the shipper. OFFs do not issue bills of lading or other contracts of carriage.

I declare, under penalty of perjury, that the foregoing statements are true and correct.


Ronald D. Murphy

Executed this 19th day of June, 2009.

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EXHIBIT "B"

Exhibit, and Location of Statement in Exhibit	Nature of Objection	Authority for Objection
BOE 1, Paragraph 4, Sentence 1	(1) Improper Legal Conclusion; (2) Lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation; (3) Lack of foundation to authenticate purported business records, and therefore no admissible factual support affiant's testimony; (4) Hearsay - improperly relies on information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.	(1) USCS Fed Rules Evid ("FRE") 702. See <i>Loeb, supra</i> ; see <i>Marx and Co., supra</i> ; see <i>Nationwide Transp. Fin., supra</i> . (2) FRE 801(c). See <i>Royall, supra</i> ; <i>United States v Evans, supra</i> ; <i>Lewis v City of Phila., supra</i> ; <i>Bradford, supra</i> ; <i>United States v Walthour, supra</i> ; (3) FRE 803(6) <i>State Farm Mut. Auto. Co. v Knerr, supra</i> ; see <i>Liner, supra</i> ; See <i>Tongil Co. supra</i> . See <i>Coughlin, supra</i> .
BOE 1, Paragraph 4, Sentence 2	(1) Improper legal conclusion; alternatively, (2) lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation, that would support assertions of fact or support opinion; (3) improper reliance upon business records that lack foundation.	(1) USCS Fed Rules Evid ("FRE") 702. See <i>Loeb, supra</i> ; see <i>Marx and Co., supra</i> ; see <i>Nationwide Transp. Fin., supra</i> . (2) FRE 801(c). See <i>Royall, supra</i> ; <i>United States v Evans, supra</i> ; <i>Lewis v City of Phila., supra</i> ; <i>Bradford, supra</i> ; <i>United States v Walthour, supra</i> ; (3) FRE 803(6) <i>State Farm Mut. Auto. Co. v Knerr, supra</i> ; see <i>Liner, supra</i> ; See <i>Tongil Co. supra</i> . See <i>Coughlin, supra</i> .
BOE 1, Paragraph 4, Sentence 3	(1) Improper legal conclusion; alternatively, (2) lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation, that would support assertions of fact or support opinion; (3) improper reliance upon business records that lack foundation.	(1) USCS Fed Rules Evid ("FRE") 702. See <i>Loeb, supra</i> ; see <i>Marx and Co., supra</i> ; see <i>Nationwide Transp. Fin., supra</i> . (2) FRE 801(c). See <i>Royall, supra</i> ; <i>United States v Evans, supra</i> ; <i>Lewis v City of Phila., supra</i> ; <i>Bradford, supra</i> ; <i>United States v Walthour, supra</i> ; (3) FRE 803(6) <i>State Farm Mut. Auto. Co. v Knerr, supra</i> ; see <i>Liner, supra</i> ; See <i>Tongil Co. supra</i> . See <i>Coughlin, supra</i> .
BOE1, Paragraph 4, Sentence 4	Improper legal conclusion.	USCS Fed Rules Evid ("FRE") 702. See <i>Loeb, supra</i> ; see <i>Marx and Co., supra</i> ; see <i>Nationwide Transp. Fin., supra</i> .

Exhibit, and Location of Statement in Exhibit	Nature of Objection	Authority for Objection
BOE 1, Paragraph 4, Sentence 5	<p>(1) Improper legal conclusion; alternatively, (2) lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation, that would support assertions of fact or affiant's opinion; (3) improper reliance upon business records that lack foundation.</p> <p>(1) Improper Legal Conclusion; (2) Lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation; (3) Lack of foundation to authenticate purported business records, and therefore no admissible factual support for affiant's testimony; (4) Hearsay - improperly relies on information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.</p>	<p>Authority for Objection</p> <p>(1) USCS Fed Rules Evid ("FRE") 702. See Loeb, supra; see Marx and Co., supra; see Nationwide Transp. Fin., supra. (2) FRE 801(c). See Royall, supra; United States v Evans, supra; United States v Phila., supra; Bradford, supra; United States v Walthour, supra; (3) FRE 803(6) State Farm Mut. Auto. Co. v Knerr, supra; see Liner, supra; See Rowland v Am. Gen. Fin., Inc., supra</p> <p>(1) USCS Fed Rules Evid ("FRE") 702. See Loeb, supra; see Marx and Co., supra; see Nationwide Transp. Fin., supra. (2) FRE 801(c). See Royall, supra; United States v Evans, supra; United States v Phila., supra; Bradford, supra; United States v Walthour, supra; (3) FRE 803(6) State Farm Mut. Auto. Co. v Knerr, supra; see Liner, supra; See Tongil Co. v Knerr, supra; see Coughlin, supra.</p>
BOE 1, Paragraph 4, Sentence 6	<p>(1) Improper legal conclusion; alternatively, (2) lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation, that would support assertions of fact or support for affiant's opinion; (3) improper reliance upon business records that lack foundation.</p>	<p>(1) USCS Fed Rules Evid ("FRE") 702. See Loeb, supra; see Marx and Co., supra; see Nationwide Transp. Fin., supra. (2) FRE 801(c). See Royall, supra; United States v Evans, supra; United States v Phila., supra; Bradford, supra; United States v Walthour, supra; (3) FRE 803(6) State Farm Mut. Auto. Co. v Knerr, supra; see Liner, supra; See Tongil Co. v Knerr, supra; see Coughlin, supra.</p>
BOE 1, Paragraph 4, Sentence 7		

Exhibit, and Location of Statement in Exhibit	Nature of Objection	Authority for Objection
BOE 1, Paragraph 5	(1) Improper Legal Conclusion; (2) Lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation; (3) Lack of foundation to authenticate purported business records, and therefore no admissible factual support for affiant's testimony; (4) Hearsay - improperly relies on information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.	(1) USCS Fed Rules Evid ("FRE") 702. See <i>Loeb, supra</i> ; see <i>Marx and Co., supra</i> ; see <i>Nationwide Transp. Fin., supra</i> . (2) FRE 801(c). See <i>Royall, supra</i> ; <i>United States v Evans, supra</i> ; <i>Lewis v City of Phila., supra</i> ; <i>Bradford, supra</i> ; <i>United States v Walthour, supra</i> ; (3) FRE 803(6), and/or FRE 803(8)(C) <i>State Farm Mut. Auto. Co. v Knerr, supra</i> ; see <i>Liner, supra</i> ; See <i>Tongil Co. supra</i> . See <i>Coughlin, supra</i> . See <i>Rowland v Am. Gen. Fin., Inc., supra</i> ; see <i>Wetherill, supra</i>
BOE 1, Paragraph 6, Sentences 2-6	(1) Improper Legal Conclusion; (2) Lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation; (3) Lack of foundation to authenticate purported business records, and therefore no admissible factual support affiant's testimony; (4) Hearsay - improperly relies on information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.	(1) USCS Fed Rules Evid ("FRE") 702. See <i>Loeb, supra</i> ; see <i>Marx and Co., supra</i> ; see <i>Nationwide Transp. Fin., supra</i> . (2) FRE 801(c). See <i>Royall, supra</i> ; <i>United States v Evans, supra</i> ; <i>Lewis v City of Phila., supra</i> ; <i>Bradford, supra</i> ; <i>United States v Walthour, supra</i> ; (3) FRE 803(6) <i>State Farm Mut. Auto. Co. v Knerr, supra</i> ; see <i>Liner, supra</i> ; See <i>Tongil Co. supra</i> . See <i>Coughlin, supra</i> . See <i>Rowland v Am. Gen. Fin., Inc., supra</i> .
BOE 1, Paragraph 6, Sentences 7-8	Improper opinion testimony based on speculative mental impressions of others. improperly relies on information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.	FRE 803(6), and/or FRE 803(8)(C) <i>State Farm Mut. Auto. Co. v Knerr, supra</i> ; see <i>Liner, supra</i> ; See <i>Tongil Co. supra</i> . See <i>Coughlin, supra</i> . See <i>Rowland v Am. Gen. Fin., Inc., supra</i> ; see <i>Wetherill, supra</i>
BOE 1, Paragraph 7 Sentence 1-2	Opinion testimony for which there is a lack of foundation.	FRE 801(c). See <i>Royall, supra</i> ; <i>United States v Evans, supra</i> ; <i>Lewis v City of Phila., supra</i> ; <i>Bradford, supra</i> ; <i>United States v Walthour, supra</i> ; FRE 803(6) <i>State Farm Mut. Auto. Co. v Knerr, supra</i> ; see <i>Liner, supra</i> ; See <i>Tongil Co. supra</i> . See <i>Coughlin, supra</i> . See <i>Rowland v Am. Gen. Fin., Inc., supra</i> .

Exhibit, and Location of Statement in Exhibit	Nature of Objection	Authority for Objection
BOE 1, Paragraph 7 Sentence 3	Lack of foundation. Improper opinion testimony based on speculative mental impressions of others. Improperly relies on information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.	FRE 801(c). See <i>Royall</i> , supra; <i>United States v Evans</i> , supra; <i>Lewis v City of Phila.</i> , supra; <i>Bradford</i> , supra; <i>United States v Walthour</i> , supra; FRE 803(6) <i>State Farm Mut. Auto. Co. v Knerr</i> , supra; see <i>Liner</i> , supra; See <i>Tongil Co.</i> supra. See <i>Coughlin</i> , supra. See <i>Rowland v Am. Gen. Fin., Inc.</i> , supra.
BOE 1, Paragraph 6, Sentences 4-5	Lack of foundation.	FRE 803(6), and/or FRE 803(8)(C) <i>State Farm Mut. Auto. Co. v Knerr</i> , supra; see <i>Liner</i> , supra; See <i>Tongil Co.</i> supra. See <i>Coughlin</i> , supra. See <i>Rowland v Am. Gen. Fin., Inc.</i> , supra; see <i>Wetherill</i> , supra
BOE 1, Paragraph 7 Sentence 6	Lack of foundation.	FRE 801(c). See <i>Royall</i> , supra; <i>United States v Evans</i> , supra; <i>Lewis v City of Phila.</i> , supra; <i>Bradford</i> , supra; <i>United States v Walthour</i> , supra; FRE 803(6) <i>State Farm Mut. Auto. Co. v Knerr</i> , supra; see <i>Liner</i> , supra; See <i>Tongil Co.</i> supra. See <i>Coughlin</i> , supra. See <i>Rowland v Am. Gen. Fin., Inc.</i> , supra.
BOE 1, Paragraph 8, Sentence 1	(1) lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation, that would support assertions of fact or support opinion; (2) improper reliance upon business records that lack foundation. Improper opinion testimony based on speculative mental impressions of others. Improperly relies on information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.	(1) FRE 801(c). See <i>Royall</i> , supra; <i>United States v Evans</i> , supra; <i>Lewis v City of Phila.</i> , supra; <i>Bradford</i> , supra; <i>United States v Walthour</i> , supra; (2) FRE 803(6) <i>State Farm Mut. Auto. Co. v Knerr</i> , supra; see <i>Liner</i> , supra; See <i>Tongil Co.</i> supra. See <i>Coughlin</i> , supra.
BOE 1, Paragraph 8, Sentence 2	Improper opinion testimony based on speculative mental impressions of others. Improperly relies on information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.	FRE 803(6), and/or FRE 803(8)(C) <i>State Farm Mut. Auto. Co. v Knerr</i> , supra; see <i>Liner</i> , supra; See <i>Tongil Co.</i> supra. See <i>Coughlin</i> , supra. See <i>Rowland v Am. Gen. Fin., Inc.</i> , supra; see <i>Wetherill</i> , supra
BOE 1, Paragraph 8, Sentences 3-5	Improper opinion testimony based on speculative mental impressions of others. Improperly relies on information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.	FRE 803(6), and/or FRE 803(8)(C) <i>State Farm Mut. Auto. Co. v Knerr</i> , supra; see <i>Liner</i> , supra; See <i>Tongil Co.</i> supra. See <i>Coughlin</i> , supra. See <i>Rowland v Am. Gen. Fin., Inc.</i> , supra; see <i>Wetherill</i> , supra

Exhibit, and Location of Statement in Exhibit	Nature of Objection	Authority for Objection
BOE 1, Paragraph 9	<p>Improper opinion testimony based on speculative mental impressions of others. Improperly relies on information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.</p> <p>(1) lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation, that would support assertions of fact or support opinion; (2) improper reliance upon business records that lack foundation.</p>	<p>FRE 803(6), and/or FRE 803(8)(C) State Farm Mut. Auto. Co. v Knerr, supra; see Liner, supra; See Tongil Co. supra. See Coughlin, supra. See Rowland v Am. Gen. Fin., Inc., supra; see Wetherill, supra</p>
BOE 1, Paragraph 10, Sentences 1-3	<p>(1) lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation, that would support assertions of fact or support opinion; (2) improper reliance upon business records that lack foundation.</p>	<p>(1) FRE 801(c). See Royall, supra; United States v Evans, supra; Lewis v City of Phila., supra; Bradford, supra; United States v Walthour, supra; (2) FRE 803(6) State Farm Mut. Auto. Co. v Knerr, supra; see Liner, supra; See Tongil Co. supra. See Coughlin, supra.</p>
BOE 1, Paragraph 11	<p>(1) lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation, that would support assertions of fact or support opinion; (2) improper reliance upon business records that lack foundation.</p>	<p>(1) FRE 801(c). See Royall, supra; United States v Evans, supra; Lewis v City of Phila., supra; Bradford, supra; United States v Walthour, supra; (2) FRE 803(6) State Farm Mut. Auto. Co. v Knerr, supra; see Liner, supra; See Tongil Co. supra. See Coughlin, supra.</p>
BOE 1, Paragraph 12	<p>(1) Improper Legal Conclusion; (2) Lack of foundation as to basis of personal knowledge of extent, content, or results of any particular investigation; (3) Lack of foundation to authenticate purported business records, and therefore no admissible factual support affiant's testimony; (4) Hearsay - improperly relies on information provided by third parties, including interested parties, for which no foundation has been established and is itself also inadmissible hearsay.</p>	<p>(1) USCS Fed Rules Evid ("FRE") 702. See Loeb, supra; see Marx and Co., supra; see Nationwide Transp. Fin., supra. (2) FRE 801(c). See Royall, supra; United States v Evans, supra; Lewis v City of Phila., supra; Bradford, supra; United States v Walthour, supra; (3) FRE 803(6) State Farm Mut. Auto. Co. v Knerr, supra; see Liner, supra; See Tongil Co. supra. See Coughlin, supra. See Rowland v Am. Gen. Fin., Inc., supra.</p>