

BEFORE THE
FEDERAL MARITIME COMMISSION

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FEDERAL MARITIME COMM

Docket No. 09 - 01

MITSUI O.S.K. LINES LTD.

COMPLAINANT

v.

GLOBAL LINK LOGISTICS, INC., OLYMPUS PARTNERS, L.P., OLYMPUS
GROWTH FUND III, L.P., OLYMPUS EXECUTIVE FUND, L.P., LOUIS J.
MISCHIANI, DAVID CARDENAS, KEITH HEFFERNAN, CJR WORLD
ENTERPRISES, INC. AND CHAD J. ROSENBERG

RESPONDENTS

COMPLAINT

I. Complainant

A. Complainant Mitsui O.S.K. Lines, Ltd. ("MOL"), is a corporation organized and existing under the laws of Japan. MOL is a vessel operating common carrier operating in the U.S. foreign trades.

B. MOL's mailing address is 1-1 Toranomon 2-chome, Minato-ku, Tokyo, Japan.

II. Respondents

A. Respondent, Global Link Logistics, Inc. ("Global Link") is a corporation organized under the laws of Delaware. Global Link's mailing address is Lakeside Center, 1990 Lakeside Parkway, Suite 300, Tucker, Georgia 30084. Global Link is a licensed ocean

transportation intermediary (“OTI”) that operates as a non-vessel operating common carrier (“NVOCC”).

B. Respondent Olympus Growth Fund III, L.P. (“OGF”) is a Delaware limited partnership having a registered agent at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801 and its principal place of business at Metro Center, One Station Place, Stamford, CT 06902. OGF was an owner of the respondent Global Link during periods relevant to this complaint.

C. Respondent Olympus Executive Fund, L.P. (“OEF”) is a Delaware limited partnership having a registered agent at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801 and its principal place of business at Metro Center, One Station Place, Stamford, CT 06902. OEF was an owner of the respondent Global Link during periods relevant to this complaint.

D. Respondent Olympus Partners L.P. (“Olympus Partners”) is a Delaware limited partnership having a registered agent at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801 and its principal place of business at Metro Center, One Station Place, Stamford, CT 06902. Olympus Partners is a private equity firm affiliated with OGF and OEF.

E. Respondents Louis J. Mischianti, David Cardenas, and Keith Heffernan are the partners in Olympus Partners, with a business address at Metro Center, One Station Place, Stamford, CT 06902, and were officers and directors of Global Link during periods relevant to this complaint.

F. Respondent CJR World Enterprises, Inc. (“CJR”) is a Florida corporation having a registered agent at Florida Filing and Search Services, Inc., 155 Office Plaza Drive, Suite A,

Tallahassee, FL 32301 and its principal place of business at 6025 Sandy Springs Circle, Atlanta, Georgia. CJR was an owner of Global Link during periods relevant to this complaint.

G. Respondent Chad Rosenberg has a business address at 6025 Sandy Springs Circle, Atlanta, Georgia. Chad Rosenberg is the owner of CJR and was an officer and director of Global Link during periods relevant to this complaint.

III. Jurisdiction

This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301. MOL is seeking reparations for injuries caused to it by Global Link, OGF, OEF, Olympus Partners, Louis J. Mischianti, David Cardenas, Keith Heffernan, CJR, and Chad Rosenberg (collectively “the Respondents”) as a result of their violations of Sections 10(a)(1) and 10(d)(1) of the Shipping Act, 46 U.S.C. §§ 41102(a), 41102(c). As more particularly alleged below, the Respondents knowingly and willfully engaged in a scheme to fraudulently obtain ocean transportation for property for less than the rates and/or charges that would otherwise apply. Moreover, as demonstrated by these practices, including the preparation of false documents and provision of false information to MOL in violation of 46 C.F.R. § 515.31(e), the Respondents failed to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, and delivering property.

The activities giving rise to this complaint first came to MOL’s attention in 2008, when MOL was contacted in connection with an arbitration proceeding between Respondent Global Link and Respondents Olympus Partners, OEF, OGF, Mischianti, Cardenas, Heffernan, CJR, Rosenberg, and others.

IV. Statement of Facts and Matters Complained Of

A. MOL began doing business with Global Link on or about May 11, 2004.

B. Since May of 2004, MOL has entered into 5 service contracts with Global Link, having the following service contract numbers: 5159351A04, 5159351A05, 5159351A06, 5159351A07, and 5159351A08.

C. The service contracts provided both port-to-port rates and port-to-door or through rates to inland destinations in the United States. At the time each service contract was negotiated, Global Link had an opportunity to negotiate rates to any inland destination required by its customers. The service contracts could also be amended to add new rates if additional destinations were required at any time. Indeed, the contracts were amended on numerous instances. More specifically, SC # 5159351A04 was amended 32 times; SC # 5159351A05 was amended 33 times; SC # 5159351A06 was amended 19 times; SC # 5159351A07 was amended 24 times; and SC #5159351A08 was amended 6 times.

D. The service contracts entered into between MOL and Global Link were subject to various tariff rules including the rules relating to diversion (defined as a change in the original billed destination). At all times relevant to this complaint, MOL's tariff rules required shippers to request any diversion of cargo in writing and required the payment of a diversion charge as well as the difference in price between the original and new destinations.

E. From 2004 through at least 2006, Global Link engaged in a scheme to defraud MOL and obtain ocean transportation at rates lower than the applicable service contract or tariff rates, by booking cargo to false inland destinations while intending to deliver the cargo to different inland destinations. Global Link referred to this practice with various names including "split routing," "mis-booking," and "re-routing."

F. This scheme was carried out with the full knowledge and participation of Respondents Olympus Partners, OEF, OGF, Mischianti, Cardenas, Heffernan, CJR, and Rosenberg.

G. In order to carry out its scheme, Global Link would provide MOL with false information regarding the ultimate destination of the cargo. The through bill of lading issued by MOL would reflect the false destination provided by Global Link. Inland transportation by truck would be arranged by MOL from the port of entry or rail container yard to the false destination. The through rate for transportation to the false destination would be billed by MOL and paid by Global Link.

H. Without MOL's knowledge, however, Global Link would issue a second bill of lading showing the true inland destination. Global Link would provide this bill of lading to the trucking company and tell the trucking company to disregard the instructions received from MOL.

I. Global Link would divert the cargo in this manner without submitting a request to MOL in accordance with the service contract and applicable tariff and without paying MOL the difference in rate or the applicable diversion charges. MOL would not even be notified of the diversion or the true destination of the cargo. Thus, despite MOL's issuance of a through bill of lading, MOL would have no information regarding the actual destinations of the cargo or its containers.

J. The true destinations that were hidden from MOL were either points with higher negotiated contract rates than the true destinations, or points with no negotiated rates that Global Link did not seek to add to the contracts. In either instance, the rates paid to MOL for transportation to the sham destinations were less than the rates that were applicable to the actual

destinations and that should have been paid to MOL by Global Link. Obtaining the lower rates was the reason for the practice and for the concealment of Global Link's activities from MOL.

K. In order to conceal the true destinations from MOL, Global Link employees created false invoices, addresses, and bills of lading. Global Link employees were often trained and reminded not to tell representatives of MOL of the true destination of goods that were diverted, and in fact, they were trained to lie if they were asked. Moreover, Global Link employees were taught how to find real addresses in the false destination cities to avoid tipping off carriers that the destinations provided to the carriers were phony.

L. The purpose and result of Global Link's false booking practice was to obtain shipping services from ocean carriers, including MOL, at rates better than the rates which Global Link was otherwise required to pay. Global Link's scheme resulted in MOL being underpaid by hundreds of dollars per container for thousands of containers, causing MOL to suffer damages of no less than \$4.5 million.

M. In August of 2008, MOL received a subpoena from Global Link seeking testimony about the split routing practices in connection with Global Link's arbitration with Olympus Partners, OEF, OGF, Mischianti, Cardenas, Heffernan, CJR, Rosenberg, and others. At that time, MOL spoke with counsel for Global Link about the practices and MOL advised Global Link that if such practices occurred, they would have been at MOL's expense. MOL accordingly requested a full accounting of the amounts that were improperly billed and recovery of same. Global Link has not provided such an accounting and has not compensated MOL for its damages.

V. Violations of the Shipping Act of 1984

A. As described in Part IV above, the Respondents engaged in a willful and deliberate fraudulent scheme to obtain ocean transportation for property for less than the rates and/or charges that would otherwise apply in violation of Section 10(a)(1) of the Shipping Act, 46 U.S.C. § 41102(a).

B. The Respondents' fraudulent actions and willful efforts to conceal information from MOL in an effort to obtain better rates constituted a failure to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, and delivering property in violation of Section 10(d)(1) of the Shipping Act, 46 U.S.C. § 41102(c).

C. Respondents' fraudulent practices, including the provision of false information and documents to MOL, violated 46 C.F.R. § 515.31(e), which prohibits the making or provision of false or fraudulent claims or false information.

VI. Injury to MOL

A. As a direct result of the violations of the 1984 Act by the Respondents, MOL was underpaid by hundreds of dollars per container, causing MOL to suffer damages of no less than \$4.5 million. The full extent of damages can only be determined after obtaining discovery and thereby securing information about the containers, destinations, and rates involved.

VII. Prayer for Relief

A. Statement Regarding ADR Procedures: Alternative dispute resolutions procedures were not used prior to filing the complaint and complainant has not consulted with the Commission Dispute Resolution Specialist about utilizing alternative dispute resolution.

B. WHEREFORE, MOL prays that the Respondents be required to answer the charges in this Complaint; that after due hearing and investigation an order be made commanding the Respondents to cease and desist from the aforementioned violations of the Shipping Act and Commission regulations and to establish and put in force such practices as the Commission determines to be lawful and reasonable; that an order be made commanding Respondents to pay MOL reparations for violations of the Shipping Act, plus interest, costs, and attorney's fees, and any other damages to be determined; and that such other and further relief be granted as the Commission determines to be proper, fair, and just in the circumstances.

C. MOL requests a hearing on this matter, and further requests that the hearing be held in Washington, D.C.

Respectfully submitted,


By: Tsuyoshi Yoshida
Title: Executive Vice-President/Chief Operating Officer
MOL (America) Inc.
For and on behalf of
Mitsui O.S.K. Lines, Ltd.


By: Marc J. Fink
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Attorneys for Mitsui O.S.K. Lines, Ltd.

Dated: May 5, 2009

VERIFICATION

State of California)
County of Contra Costa) ss:

Tsuyoshi Yoshida, being first duly sworn on oath, deposes and says that he is the Executive Vice President and Chief Operating Officer of Complainant and is the person who signed the foregoing Complaint; that he has read the Complaint and that the facts stated therein, upon information received from others, he believes to be true.

Tsuyoshi Yoshida
Tsuyoshi Yoshida

Subscribed and sworn to before me by Tsuyoshi Yoshida proved to me on the basis of satisfactory evidence to be the person who appeared before me, in Concord, CA this 4th day of May, 2009.

Mary J. Stafford
NOTARY PUBLIC
For the State of California.
County of Contra Costa

My Commission expires: November 19, 2010

