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March 13, 2009

## Via Hand Delivery

Karen V. Gregory, Secretary  
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Washington, D.C. 20573

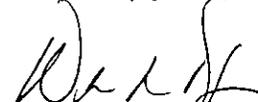
Re: FMC Docket No. 08-07

Dear Ms. Gregory:

On behalf of Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P. ("Petitioners"), enclosed please find one (1) original and fifteen (15) copies of Petitioners' Response to Replies and Comments.

Kindly date stamp the extra copy of this letter and the Response and return the same to our courier. Thank you.

Very truly yours,



Warren L. Dean, Jr.

Enclosures

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BEFORE THE  
FEDERAL MARITIME COMMISSION

Petition of Olympus Growth Fund III, L.P.  
and Olympus Executive Fund, L.P. For  
Declaratory Order, Rulemaking or Other  
Relief

Docket No. 08-07

**RESPONSE TO REPLIES AND COMMENTS**

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March 13, 2009

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

In the matter of:

GLOBAL LINK LOGISTICS, INC.

Docket No. 08-07

**RESPONSE TO REPLIES AND COMMENTS**

Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P. (hereinafter referred to as “Olympus” or “Petitioners”), hereby respectfully submit this Response to the Federal Maritime Commission’s (“FMC” or “Commission”) Request for Comments and to the views and arguments submitted in response to the Commission’s earlier Notice of Filing of Petition. This Response incorporates by reference, in its entirety, the Petitioners’ Emergency Petition for Declaratory Order, Rulemaking or Other Appropriate Relief in Voluntary Disclosure Investigation (“Petition”), which was submitted to the Commission on November 13, 2008. The Petitioners hereby reiterate their request for action by the Commission to remove uncertainty with respect to a common industry practice involving domestic inland movements and confirm that such movements are not violations of Section 10(a)(1) of the Shipping Act.

This Response addresses (1) certain errors made by Global Link, BOE, and ABS Consulting (“ABS”); and (2) pertinent issues regarding the merits and certain procedural aspects of this matter that will assist the Commission in reviewing the Petition and narrowing the focus of the issues in this Docket.

## **I. Procedural History**

On November 13, 2008, the Petitioners filed the Petition to confirm that a common industry practice involving domestic inland movements was not a violation of Section 10(a)(1) of the Shipping Act. On November 26, 2008, Global Link submitted a Reply to the Emergency Petition (“Reply”). On December 23, 2008, the Commission served a Notice of Filing of Petition (“Notice”). In that Notice, the FMC requested that the persons named in the Petition, Global Link and the BOE, submit views or arguments in reply to the Petition by January 9, 2009. On January 9, 2009, the BOE filed its Reply and Global Link filed a supplement to its original Reply brief.<sup>1</sup> On February 25, 2009, the FMC published a Request for Comments (“Request”) inviting interested persons to submit views or arguments in reply to the Petition by March 13, 2009.<sup>2</sup> The Commission stated that it was particularly interested in comments regarding the rulemaking aspects of the Petition. As of the date of this writing, only ABS Consulting has filed comments in response to the Commission’s Request.

## **II. Discussion**

This is a matter of first impression for the Commission. The BOE has been engaged in conversations with Global Link regarding the issuance of a Notice and

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<sup>1</sup> The supplemental Reply largely reiterates Global Link’s Reply dated November 26, 2008, and includes a new section II.B.2 entitled, “Through Transportation, Including the Inland Portion, is Subject to Antitrust Immunity and the Commission’s Regulatory Jurisdiction.” *See* Global Link’s Reply dated January 9, 2009 at 7-8.

<sup>2</sup> *See* Petition of Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P. for Declaratory Order, Rulemaking or Other Relief; Request for Comments, 74 Fed. Reg. 8541 (Feb. 25, 2009).

Demand Letter (“NDL”) or a Compromise Agreement based on violations of Shipping Act Section 10(a)(1) on the unproven theory that the re-routing of the domestic inland transportation leg of a movement involving through transportation allowed it to obtain “ocean transportation” at less than the rates or charges that would be otherwise applicable. *See* BOE Reply. BOE does not cite to any precedent for finding a violation of Section 10(a)(1) based on the re-routing of the domestic transportation leg of a through shipment, and we have been unable to find any precedent for such action.

To support its theory of liability, BOE must alter the plain meaning of the unambiguous language of the statute to include inland transportation in the definition of “ocean transportation” in Section 10(a)(1). In effect, BOE proposes to rewrite the statute through the use of informal and private processes. For the reasons outlined in Petitioners’ Petition, and as explained further below, it is inappropriate as a matter of both law and policy to effect substantive changes in a regulatory regime without open and transparent public comment and participation.

***A. The Practice of Re-Routing***

As an initial matter, there is apparently some disagreement about whether the practice of re-routing (as it is referred to in this docket) is a common one.<sup>3</sup> Under the practice, U.S. shippers exercise their contractual right to alter the domestic inland destination of cargo that enters the country on an intermodal through bill of lading. Not

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<sup>3</sup> Most recently, ABS filed comments in which it stated that the practice of re-routing is by no means a common practice or legal under the Shipping Act of 1984. ABS, of course, failed to provide any legal precedent or expert opinion in support of its position.

surprisingly, the only evidence on this issue, submitted with the Petition, demonstrates that it is a common practice.<sup>4</sup>

The practice was considered in some detail in the Report of Working Group III (Transport Law) on the Work of the Twenty-First Session of the United Nations Commission on International Trade Law, which produced the Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (“Draft Convention”).<sup>5</sup> The United States Government participated in the work that led to the development of the Draft Convention. On July 3, 2008, the United Nations Commission on International Trade Law (“UNCITRAL”) approved the Draft Convention and submitted the same to the United Nations General Assembly for adoption.<sup>6</sup> On December 11, 2008, the United Nations General Assembly adopted the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (“Convention”) and authorized the opening for signature of the Convention at a signing ceremony, which is to take place in Rotterdam, the Netherlands, on September 23, 2009.<sup>7</sup> The General Assembly further recommended that the rules set forth in the Convention be

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<sup>4</sup> See Petition Exhibit A at 2-4 and Expert Reports of Steve Barnett and Wayne R. Schmidt attached thereto.

<sup>5</sup> United Nations Commission on International Trade Law, 41st Sess., Report of Working Group III (Transport Law) on the Work of its Twenty-first Session (Vienna, 14-25 January 2008), U.N. Doc. A/CN.9/645 (June 16 through July 11, 2008), distributed by U.N. General Assembly (January 30, 2008), available at <http://daccessdds.un.org/doc/UNDOC/GEN/V08/507/44/PDF/V0850744.pdf?OpenElement>.

<sup>6</sup> See *General Assembly Adopts Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, United Nations Information Service UNIS/L/125 (December 12, 2008) available at <http://www.unis.unvienna.org/unis/pressrels/2008/unisl125.html>.

<sup>7</sup> *Id.*

known as “The Rotterdam Rules.” This new treaty will modernize and unify the law that has been created by COGSA, Hague-Visby and the Hamburg Convention,<sup>8</sup> and create a uniform set of international rules for ocean transportation comparable to those applicable to international air transportation.

During the development of the Draft Convention, the Working Group considered a practice which it described generally as “merchant haulage.”<sup>9</sup> In that practice, the shipper/consignee arranges the final leg of the transport to an inland destination, notwithstanding the fact that the cargo may be entered under a single transport document.<sup>10</sup> While a draft article 13 to the Convention specifically addressing that practice was not agreed to, it was made clear by the *travaux preparatoires* that nothing in the Convention was intended to prohibit this “long-established commercial practice.”<sup>11</sup>

The practice of merchant haulage, or split routing as it is described here, is a reflection of the well-recognized right of the shipper/consignee to control the disposition and final destination of its cargo.<sup>12</sup> The shipper/consignee is the customer, the carrier is

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<sup>8</sup> For a description of the history and operation of this fragmented liability regime, see Robert Rendell, *Report to House of Delegates Regarding International Conventions Relating to Ocean Shipping*, A.B.A. Section of International Law and Practice (June 2, 1987).

<sup>9</sup> United Nations General Assembly Official Records, 63rd Sess., Supp. 17, Report of the United Nations Commission on International Trade Law, 41st Sess., U.N. Doc. A/63/17 at 10 (June 16 through July 3, 2008), available at <http://daccessdds.un.org/doc/UNDOC/GEN/V08/555/08/PDF/V0855508.pdf?OpenElement>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 11.

<sup>12</sup> See Petition, Exhibit A at 4-5.

the service provider. As such, the customer has the right to purchase whatever services it deems necessary, appropriate or commercially advantageous from an ocean common carrier, and purchase such additional services as it deems appropriate from other sources, including domestic motor carriers. The plain language of the Shipping Act does not alter that fundamental relationship, or allow the ocean common carrier to prohibit such arrangements between U.S. shippers and U.S. motor carriers.

There is nothing in the Shipping Act, its legislative history, its amendments, Commission precedent, or even Congressional oversight over the last 25 years to suggest that the limited intermodal authority granted ocean common carriers and their conferences is an exclusive grant of authority that was intended to divest U.S. shippers of their pre-existing and long-standing rights to enter into their own arrangements with inland motor carriers. Notwithstanding that fact, BOE's Reply suggests that the shipper/consignor's right to control the destination of cargo that enters the country on a through bill of lading is in all cases subject to the approval of the ocean common carrier. There is no authority whatsoever provided for this sweeping suggestion. Simply put, the Shipping Act was never intended to regulate, much less proscribe, transportation arrangements between U.S. shippers and U.S. motor carriers under any circumstances.

***B. Petitioners Meet the Procedural Requirements for Declaratory Order and/or Rulemaking.***

Contrary to the assertions of Global Link and the BOE (collectively referred to hereinafter as the "Respondents"), Petitioners' Petition meets the standards for a

declaratory order and/or rulemaking under Rules 68 and 51 of the Commission's Rules of Practice and Procedure, 46 C.F.R. §§ 502.68 and 502.51, respectively.

Under Rule 68, use of the petition for declaratory order is available to "persons." The term "person" is not limited by the statute or the regulations to mean ocean transportation entity or intermediary. Indeed, the common understanding of the term "person" generally includes, but is not limited to, individuals, corporations, partnerships and associations. Petitioners are clearly "persons" within the meaning of Rule 68 and are, therefore, eligible to file a Petition under Rule 68. Through their prior participation in the ocean transportation industry, Petitioners have demonstrated an interest in the industry, and have indicated a likelihood of future involvement in the same.

Since it is apparent that a Commission entity, BOE, is examining the permissibility of re-routing, Petitioner, as a "person" with a history in the ocean transportation industry and a user of ocean transportation services, must be permitted to inquire and seek a declaratory order that the practice of re-routing is lawful, or under what circumstances, if any, the practice would be a prohibited act under Section 10(a)(1) of the Shipping Act. Such declaratory order will enable Petitioners to "act without peril" going forward.

Notwithstanding Petitioners' keen interest in this matter, the potential outcome of BOE's investigation – a Compromise Agreement based on the theory that the re-routing of the domestic transportation leg of a through shipment violates Section 10(a)(1) of the Shipping Act – has far reaching implications potentially affecting shippers, consignees, trucking companies and all other participants in through movements, as any of these

persons could effectuate a re-routing of the domestic transportation leg of a through transportation in potential violation of the theory developed by BOE. Therefore, any person who may own, receive, ship or otherwise engage in the international movement of property has a cogent interest in this matter.

BOE's assertion that the Commission is "reluctant to engage in a proceeding for a declaratory order if 'it involves past and present conduct which may entail violations of the Shipping Acts'", *See* BOE Reply at 3 *citing* *Petition of South Carolina State Ports Authority for Declaratory Order*, 27 S.R.R. 175, 181 (FMC 1995), misunderstands this policy position. The Commission's use of the term "reluctant" does not suggest a prohibition against using declaratory orders in cases involving past conduct. Indeed, the Commission explained that its reluctance in *South Carolina State Ports Authority* ("SCSPA") was apparently due to the fact that the practices for which the SCSPA sought the declaratory order were the subject of a prior informal request for an FMC-initiated investigation of the practices of SCSPA and three other ports, which request had been rejected by the Commission's Managing Director. *Id.* at 181. Here BOE is proceeding with an investigation, and the development of a rule that must be established by BOE to find liability against Global Link (namely that "ocean transportation" includes the domestic inland transportation leg of a through shipment) is an issue of first impression with far-reaching future implications for all participants in international trade by water. There have been no prior investigations or Commission rulings with respect to re-routing. Since Petitioners meet the requirements for a declaratory order, and the Commission has not previously spoken on the substantive issue, a declaratory order is warranted.

Under Rule 51, “any interested party” may file with the Commission a petition for the issuance of an “amendment, or repeal of a rule designed to implement, interpret or prescribe law, policy, organization, procedure, or practice requirements of the Commission.” See Rule 51, 46 C.F.R. §502.51.<sup>13</sup> As discussed above and in more detail in the Petitioners’ Petition, Petitioners are interested parties with respect the apparent intent of the BOE to extend its Section 10(a)(1) enforcement authority. Petitioners stated that they sought a rule confirming that the common industry practice involving the re-routing of domestic inland movements is not a violation of Section 10(a)(1) and further clarifying the scope of Section 10(a)(1). Petitioners provided facts, views and arguments “deemed relevant by petitioner,” in accordance with the regulations, in its Petition and Exhibits in support of its Petition.

Based on the above, Petitioners have met the requirements for submission of a declaratory order and/or petition for rulemaking. Therefore, Respondents’ request for denial or rejection of the same must be denied.

***C. The Meaning of “Ocean Transportation” is Clear and Unambiguous.***

It is a basic tenet of statutory interpretation that “[w]hen a statute’s ‘language is plain on its face, courts do not ordinarily resort to legislative history.’” *Public Citizen, Inc. v. Rubber Mfrs. Ass’n*, 382 U.S. App. D.C. 338, 346 (D.C. Cir. 2008) (quoting *Saadeh v. Farouki*, 107 F.3d 52, 57 (D.C. Cir. 1997)). This principle is especially relied

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<sup>13</sup> The Petitioners’ Petition was verified by Olympus’s attorney on November 13, 2008 and further supported by the expert opinions of Steve Barnett and Wayne R. Schmidt. Further verification, as asserted by Global Link Logistics, Inc. (“Global Link”) and the Bureau of Enforcement (“BOE”), is not required.

upon by courts where “resort to the legislative history is sought to support a result contrary to the statute’s express terms.” *ACLU v. FCC*, 823 F.3d 1554, 1568 (D.C. Cir. 1987); *cert. denied* 485 U.S. 959 (1988).<sup>14</sup> Further, the D.C. Circuit has recognized that while the “plain meaning” rule may have limitations, there is “no mandate in logic or in case law for reliance on legislative history to reach a result contrary to the plain meaning of a statute.” *Id.* (quoting *United Airlines, Inc. v. CAB*, 569 F.2d 640, 647 (D.C. Cir. 1977).

Section 10(a) (1) of the Shipping Act provides that “No person may (1) . . . obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable.” The term “ocean transportation for property” is clear on its face, referring to the movement of property on the ocean, *i.e.* the high seas.

It is difficult to understand that Congress would have intended the term “ocean transportation” to refer to the domestic inland movement of property. When Congress intended to refer to the broader aspects of the potentially intermodal international transportation of goods it did so. For example, Congress did not limit the scope of section 10(b)(1) to “ocean transportation.” That section covers the more expansive concept of “transportation for property”, generally. “[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Am. Forest & Paper Ass’n v. FERC* 2008 U.S. App.

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<sup>14</sup> Here there is not even any legislative history that would support BOE’s theory. The legislative history, in fact, contradicts it. *See* Petition Exhibit A at 8-19.

LEXIS 25853, \*2 (D.C. Circuit 2008) (quoting *Rusello v. United States*, 464 U.S. 16, 23 (1983)). Since Congress did not include the terms “through rate,” “through transportation,” or “port or point,” in Section 10(a)(1), and indeed narrowed Section 10(a)(1) to refer only to the “ocean transportation for property” and not the broader “transportation for property” contained in 10(b)(1), it intended to narrow the scope of 10(a)(1) to its terms, “ocean transportation”, and exclude domestic inland movements from its scope.

BOE’s reading of the statute would extend the enforcement authority to domestic motor carriers, contradicting the very authority upon which it relies. BOE relies on statements in *Application of Pacific Westbound Conference and Mitsui O.S.K. Lines, Ltd. for the Benefit of Mitsubishi Int’l Corp.*, 22 S.R.R. 1290 (ALJ 1984) for the supposition that “the general provisions of the 1984 Act . . . give jurisdiction over ‘through transportation’”. BOE Reply at 6, n. 4. In that decision, the ALJ also stated, however, that its position “does not mean to imply that the Commission was given jurisdiction over the underlying inland carriers performing the inland transportation nor over the ‘inland division.’” One must ask, if Section 10(a)(1) applies to “any person,” how the ALJ could reasonably determine that the Commission would not have jurisdiction over the inland carrier, clearly a “person,” unless, of course, the ALJ understood that Section 10(a)(1) is limited to “ocean transportation” and that inland carriers are not involved in “ocean transportation.”

***D. Any Interpretation of the Term "Ocean Transportation" to Include Through Transportation Requires a Public Process.***

The novel interpretation of Shipping Act Section 10(a)(1) that BOE proposes in its Reply would have the effect of altering the plain language of the statute, altering commercial behavior,<sup>15</sup> creating liability where it is not currently known to exist, and subjecting an entire domestic transportation industry to its enforcement authority. Therefore, fundamental notions of fairness and administrative due process require that the Commission provide an opportunity for notice and comment on such a significant change in the administration and application of the Shipping Act.

At a minimum, the Petition and the Replies of Global Link and BOE illustrate that there is a divergence of opinion as to the meaning of the term "ocean transportation" as it is contained in Section 10(a)(1) of the Shipping Act. Again, read literally, Section 10(a)(1) of the Shipping Act prohibits certain activities regarding "ocean transportation" only,<sup>16</sup> not domestic inland movements, (i.e. movements that do not occur on the ocean). Global Link, however, like the BOE, would have the Commission interpret the phrase to encompass the movement of goods inland rather than on the ocean. As the Commission action in defining "ocean transportation" would have an impact on the rights and duties

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<sup>15</sup> BOE's position, in essence, gives the Ocean Common Carrier the right to deny or permit the Consignee and Shipper its contractual and statutory right to re-route the goods it owns. BOE would essentially re-write years of commercial practice and provisions of the UCC. *See* Petition at 4 and Exhibit A at 4-7 attached thereto.

<sup>16</sup> Global Link appears to be confused about why the term "transportation by water" in Section 16 of the Shipping Act of 1916 was changed to "ocean transportation" in Section 10(a)(1) of the Shipping Act of 1984. The former included domestic transportation within its scope, the latter does not. Regardless of the reason, the terms do not include transportation by motor carrier.

of those participating in the transportation industry it is legislative in nature and must be done in a public manner. *Nat'l Family Planning & Reprod. Health Ass'n v. Sullivan*, 979 F.2d 227, 237 (D.C. Cir. 1992).

As the conspicuous lack of authority in Global Link's and BOE's Replies confirms, no Commission precedent exists with respect to the issue of whether the common industry practice of re-routing domestic inland movements is a violation of Section 10(a)(1) of the Shipping Act. All parties recognize, therefore, the issues raised in Global Link's voluntary disclosure and Petitioners' Petition are issues of first impression for the Commission.

At the same time, Global Link and BOE acknowledge that entities engage in the practice of re-routing domestic inland movements and this practice may be done lawfully. *See* BOE Reply at 4. Since the Commission has not studied or commented on the practice and has not entertained any case regarding what constitutes the lawfulness or unlawfulness of re-routing domestic inland movements, we can only assume that statements regarding the permissibility or impermissibility of such activities are hypothetical. For example, BOE suggests that re-routing would in all cases be subject to the approval of the ocean carrier. *See* BOE Reply at 4. That suggestion, as a general principle, is incorrect and contradicts the contractual rights of NVOCCs and other shippers under the documents that govern the carriage of the goods. *See* Petition at 4, 5, and Exhibit A attached thereto.

In essence, therefore, the Replies acknowledge: (1) the permissibility of re-routing the domestic inland portion of a through transportation is an issue of first impression for

the FMC; and (2) NVOCCs engage in re-routing the domestic inland portion of a through transportation. Assuming for the sake of argument that Global Link and BOE are correct in their assumption that re-routing of the domestic inland portion of a through transportation may be performed in a lawful manner under the Shipping Act, the documents presented by the parties demand public comment and review of the issues raised in the voluntary disclosure and Petition so that the transportation industry at large may understand any restrictions that may exist in their practice of re-routing the domestic inland portion of a through transportation.

***E. The Compromise Agreement Will have the Same Force and Effect of Law, and, Therefore, Interested Parties Must be Permitted to Participate in Notice and Comment Proceeding.***

Respondents have asserted that compromise agreements do not constitute legal precedent. Specifically, the BOE stated that any compromise agreement between the Commission and Global Link would resolve the dispute regarding the alleged violations but would not constitute legal precedent for future activities. Such a statement is mere sophistry. It is clear that the compromise agreement will have the force and effect of law. Such an agreement is intended to put the entire transportation industry on notice with respect to this newly formed rule and to influence the behavior of the industry.

While the compromise agreement would contain the statement that the respondent does not admit to any violations, under Appendix A to Subpart W of Part 502 the compromise agreements must contain a statement that civil penalties are collected from the respondent for “alleged” violations of a particular section of the Shipping Act; a

statement that the Commission believes that the respondent engaged in particular activities; a general description of the practices and time period that the respondent engaged in the practices; a statement that the respondent has terminated the practice; a statement that the respondent has implemented measures to eliminate the practices; and the dollar figure paid to the Commission in compromise of all civil penalties. These compromise agreements are then prominently displayed on the Commission's website and indicate that the compromise agreement was the result of investigation by the BOE representatives and BOE attorneys. Clearly, the unmistakable message to the industry taken from the issuance of the Global Link compromise agreement will be that the term "ocean transportation" in Section 10(a)(1) includes domestic inland transportation and persons are subject to Section 10(a)(1) Shipping Act violations for the practice of re-routing the domestic transportation leg of a through shipment. The compromise agreement, coupled with the inclusion of the monetary settlement, will send a clear signal that the industry would be well advised to adhere to the rule that is expressed in the compromise agreement. Therefore, the unmistakable outcome would be that the Global Link compromise would have the effect of establishing new Commission law.

Since the Commission has never brought an enforcement action against a shipper for re-routing the domestic inland portion of a through shipment under Shipping Act Section 10(a)(1), the compromise agreement will have the form and effect of a substantive, legislative rule that imposes new obligations and produces significant new effects on the shipping public. It must, therefore, be subjected to formal procedure and a chance for public input. *See, Nat'l Family Planning & Reprod. Health Ass'n v. Sullivan,*

979 F.2d 227, 238-40 (D.C. Cir. 1992).

Finally, it is ironic that Global Link asserts that the use of the Commission's procedures by Petitioners to obtain emergency relief via a petition for declaratory order or rulemaking is a waste of the Commission's scarce resources. Global Link is reminded that it is they who sought to abuse the Commission's valuable and scarce resources by trying to use the BOE and the Commission as a pawn to achieve a desired end in Global Link's arbitration proceeding. It was that act by Global Link that forced Petitioners into seeking the requested relief from the Commission. In fact, Global Link's attorneys informed the arbitration panel on October 23, 2008 that they expected the BOE to issue a favorable ruling regarding the legality of re-routing — i.e., one that supports Global Link's self-serving argument that its re-routing practices violated Section 10(a)(1) of the Shipping Act — sometime that week. Although Global Link asserts that the BOE compromise agreement is not considered expert opinion or Commission precedent with regard to the activities at issue, *See Reply at 9*, it is patently obvious from Global Link's own representations to the arbitration tribunal that it intends to use the compromise agreement for just this purpose. In fact, the only "sham" at issue here is Global Link's attempt to abuse BOE's voluntary disclosure process for purely private gain.

### **III. Conclusion**

For the foregoing reasons, Petitioners respectfully reiterate their request for action by the Commission to remove uncertainty with respect to a common industry practice involving domestic inland movements and confirm that such movements are not

violations of Section 10(a)(1) of the Shipping Act. Petitioners also respectfully request that the Commission deny the Respondents' requests as set out in their Replies.

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DATE: March 13, 2009

**Certificate of Service**

I hereby certify that on March 13, 2009, I served the foregoing Response to Replies and Comments on the following individual(s) by overnight courier:

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