

THOMPSON COBURN LLP

cc OS GC

Suite 600  
1909 K Street, N.W.  
Washington, D.C. 20006-1167  
202-585-6900  
FAX 202-585-6969  
www.thompsoncoburn.com

RECEIVED

NOV 13 2008 3:59 PM  
FEDERAL MARITIME COMMISSION

Warren L. Dean Jr.  
direct dial 202-585-6908  
direct fax 202-508-1011  
wdean@thompsoncoburn.com

NOV 13 2008  
11/13/08  
1160  
241  
Received [Signature]

November 13, 2008

Via Hand Delivery

Karen V. Gregory, Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Room 1046  
Washington, D.C. 20573

Re: In the Matter of Global Link Logistics – FMC Docket No. ~~08-07~~ -08 --07

Dear Ms. Gregory:

On behalf of Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P. ("Petitioners") and pursuant to the Federal Maritime Commission's Rules, enclosed please find one (1) original and fifteen (15) copies of Petitioners' Emergency Petition for Declaratory Order, Rulemaking or Other Appropriate Relief in Voluntary Disclosure Investigation. In addition, please find the applicable filing fee of \$241 made payable to the Federal Maritime Commission.

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

Very truly yours,  
[Signature]  
Warren L. Dean, Jr.

Enclosures

Karen V. Gregory, Secretary  
Federal Maritime Commission  
November 13, 2008  
Page 2 of 2

cc: Vern W. Hill, Director  
George A. Quadrino, Deputy Director  
Federal Maritime Commission  
Bureau of Enforcement  
800 North Capitol Street, N.W.  
Washington, D.C. 20573

4836026

RECEIVED

Pub

---

BEFORE THE FEDERAL MARITIME COMMISSION  
FEDERAL MARITIME COMMISSION

In the matter of:

GLOBAL LINK LOGISTICS, INC.

FMC Docket No. 03 - 08 - 04

**EMERGENCY PETITION FOR DECLARATORY ORDER, RULEMAKING OR  
OTHER APPROPRIATE RELIEF IN VOLUNTARY DISCLOSURE  
INVESTIGATION**

Lewis R. Clayton  
Andrew Gordon  
Colin C. McNary  
Paul, Weiss, Rifkind, Wharton &  
Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Telephone: 212-373-3543  
Facsimile: 212-492-0543

Attorneys for Petitioners Olympus  
Growth Fund III, L.P., Olympus  
Executive Fund, L.P.

Warren L. Dean, Jr.  
Robert A. Shapiro  
Sean McGowan  
THOMPSON COBURN LLP  
1909 K Street, N.W.  
Suite 600  
Washington, D.C. 20006  
Telephone: 202-585-6900  
Facsimile: 202-585-6969

Attorneys for Petitioners Olympus  
Growth Fund III, L.P., Olympus  
Executive Fund, L.P.

November 13, 2008

---

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

In the matter of:

GLOBAL LINK LOGISTICS, INC.

FMC Docket No. ~~8~~ - 08 - 07

**EMERGENCY PETITION FOR DECLARATORY ORDER, RULEMAKING OR  
OTHER APPROPRIATE RELIEF IN VOLUNTARY DISCLOSURE  
INVESTIGATION**

Pursuant to Rules 51, 68 and 69 of the Federal Maritime Commission's ("Commission") Rules of Practice and Procedure, 46 C.F.R. §§ 502.51, 68, and 69, Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P. (hereinafter referred to as "Olympus" or "Petitioners") hereby petition the Commission to issue a Declaratory Order, initiate a rulemaking or grant any other appropriate relief to confirm that a common industry practice involving domestic inland movements is not a violation of Section 10(a)(1) of the Shipping Act.

Pursuant to Commission Rules 61 and 72, 46 C.F.R. §§ 502.61 and 72, Petitioners request alternatively that the Commission initiate a docketed proceeding and grant Petitioners leave to intervene in the investigation by the Commission's Bureau of Enforcement ("BOE"). There is currently pending an informal investigation that was initiated by a self-serving voluntary disclosure filed by Global Link Logistics, Inc. ("Global Link") on May 21, 2008 in an effort to influence a private arbitration. In addition, the Commission should stay any action by BOE with respect to Global Link's voluntary disclosure pending Commission action in response to this Petition.

## I. Background

This Petition arises out of the sale of Global Link, a Non-Vessel Operating Common Carrier (“NVOCC”), by Petitioners, and an attempt, years later, by the purchasers and their successors, including Global Link, to undo the transaction in arbitration. The purchasers’ claims in the arbitration are based, in part, on their assertion that Global Link’s practice of re-routing the **domestic inland transportation** leg of a “through” shipment violated the Shipping Act’s Section 10(a)(1) proscription against obtaining “**ocean transportation**” for property at less than the rates or charges that would otherwise be applicable, *see* 46 U.S.C.S. § 41102(a)(emphasis added). Through this allegation, the purchasers seek to establish a violation of the stock purchase agreement governing Global Link’s sale.

Faced with the fact that the Commission has never brought an enforcement action against a shipper for re-routing the domestic inland portion of a through shipment, Global Link sought to establish the precedent that it needs to prevail in the commercial arbitration by voluntarily disclosing the practice as a “violation” to the BOE. Global Link thus hopes to use the informal and largely private voluntary disclosure proceeding to obtain from BOE an “expert” opinion for use in the commercial arbitration that it was unable to obtain by other means.

Entirely aside from the serious issues raised by Global Link’s improper endeavor to use the Commission’s staff to influence the outcome of private arbitration, the Commission must clarify its views on the proper scope of Section 10(a)(1) of the Shipping Act. The use of an informal proceeding to declare a practice unlawful raises

very serious questions where the illegality of the practice is not clear from the language of the statute or regulations and the Commission has not previously established that such behavior is unlawful. All parties involved in the international transportation and sale of goods, including U.S. shippers and motor carriers, must be given the opportunity to understand, and comment on any proposed change to their rights and responsibilities in these transactions. This includes whether these parties can be penalized by the Federal Maritime Commission for domestically re-routing goods shipped on a “through bill” of lading.

## **II. Argument**

### **A. The Attempt to Rewrite the Shipping Act, and Assert Jurisdiction Over Transactions Between Shippers and Motor Carriers, Contradicts the Shipping Act, Legislative History, and Applicable Regulations.**

The BOE appears to be prepared to find that the practice of re-routing the domestic inland portion of a “through” transportation violates Section 10(a)(1) of the Shipping Act, in spite of the plain language of the statute to the contrary<sup>1</sup> and the complete lack of Commission precedent to that effect. Such a finding by the BOE – that re-routing of inland transportation represents a violation of the Shipping Act – would have far-reaching adverse effects on commerce and on competition among domestic motor carriers at a time of grave economic uncertainty. It would prevent U.S. NVOCCs and other shippers from obtaining the most favorable rates possible from the U.S. motor carriers with which they do business, unless they first obtain the consent (and make a

---

<sup>1</sup> Section 10(a)(1) proscribes certain activities with respect to ocean transportation only.

payment to) foreign ocean common carriers. It would create a windfall for these foreign ocean carriers, which enjoy antitrust immunity, to the detriment of U.S. commerce, consumers, and motor carriers, by entitling those foreign ocean carriers to profit from their own inefficiency in negotiating inland divisions with motor carriers. Lastly, it would expand the reach of the Shipping Act of 1984 to assert jurisdiction over the activities of domestic motor carriers, a result never intended by Congress. Such a finding by the BOE would be contrary not only to the plain and unambiguous language of the Shipping Act itself, but also to the well recognized legal rights of both shippers and consignees under other federal and state laws.<sup>2</sup> A memorandum addressing these issues, which has already been shared with the BOE, and which sets forth the information required by the Commission's regulations regarding petitions, accompanies this Petition at Exhibit A, and is incorporated herein by reference.

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. As currently contemplated, BOE will create wholly new regulatory requirements at the urging of Global Link, without the benefit of hearings, notice and comment or any other adversarial proceeding that is the hallmark of due process. The novel interpretation of the Shipping Act proposed by Global Link and under consideration by BOE would have the effect of altering the seemingly plain language of the statute, creating liability where it was not

---

<sup>2</sup> See Exhibit A.

previously thought to exist, and would create substantial uncertainty in the well recognized rights of parties to import bills of lading, including U.S. shippers, NVOCCs, consignees and motor carriers. These parties are entitled to both notice and an opportunity to comment on such an important and novel change in the interpretation of the Shipping Act.<sup>3</sup>

For these reasons, and the reasons set forth in more detail in Exhibit A, the Commission should grant Petitioners' Petition for Declaratory Order or Rulemaking.

- B. Global Link's Proceeding Should be Subject to a Formal Docketed Proceeding and a Clear and Convincing Showing Exists to Warrant Granting Petitioners' Petition for Leave to Intervene as a Matter of Right.

Global Link's voluntary disclosure of a "violation" of the Shipping Act, is apparently proceeding under the Commission's rules regarding compromises of penalty under informal compromise procedures. Such informal compromise procedures take place outside of the Commission's formal docketed proceedings. Commission Rule 602(c) and 604. Global Link's voluntary disclosure, which is premised upon a novel and untested interpretation of the Shipping Act proposed by Global Link should be the subject a formal docketed proceeding. Unlike a more ordinary disclosure situation where the declaring party is interested in arguing that their "potential violations" should not be

---

<sup>3</sup> See 5 U.S.C. § 553; *Alaska Prof'l. Hunters Ass'n v. FAA*, 177 F.3d 1030, 1035 (D.C. Cir. 1999) (quoting Holmes, *Holdworth's English Law*, 25 LAW QUARTERLY REV. 414 (1909))("Those regulated by an administrative agency are entitled to 'know the rules by which the game will be played.'"); *Nat'l Family Planning & Reprod. Health Ass'n*, 979 F.2d at 235 (quoting *Homemakers North Shore, Inc. v. Bowen*, 832 F.2d 408, 412 (7<sup>th</sup> Cir. 1987))("When an agency gets out the Dictionary of Newspeak and pronounces that for purposes of its regulation war is peace [or in this Global Link case, "ocean transportation" is "through transportation" or "inland transportation"], it has made a substantive change for which the APA may require procedures.")

considered to be violations for various reasons, Global Link is more interested in having BOE determine that re-routing is a violation. Global Link and the other purchasers are seeking tens of millions of dollars in damage in the arbitration. These damages, which Global Link can only obtain if the arbitration panel finds that re-routing is illegal, far exceed any penalty that is likely to be assessed by BOE.

Due to the adversarial relationship between Global Link and the Petitioners, and the fact that Global Link stands to gain financial benefit as a result of the adoption of this interpretation of the Shipping Act, a formal docketed assessment proceeding under Rule 603 and the Commission's Rules of Practice, complete with notice, opportunity for hearing, and opportunity to intervene, must be instituted. The Commission has the authority to institute a formal docketed assessment proceeding at any time after the initiation of informal compromise procedures. 46 C.F.R. §§ 502.61(a) and 502.603(c).

Petitioners request emergency relief because the BOE has stated that it intends to proceed *ex parte* in this matter, notwithstanding the fact that Petitioners clearly have a cognizable interest in this proceeding. Under 46 C.F.R. § 502.72, petitions for leave to intervene as a matter of right will be granted upon a clear and convincing showing that:

- (i) The petitioner has a substantial interest relating to the matter which is the subject of the proceeding warranting intervention; and
- (ii) The proceeding may, as a practical matter, materially affect the petitioner's interest; and
- (iii) The interest is not adequately represented by existing parties to the proceeding.

46 CFR § 502.72(b)(1). The use of informal proceedings by the BOE should not be used to deprive Petitioners of their intervention rights under the Commission's rules.

Petitioners have a significant and substantial interest in the proceeding because the conduct being challenged occurred while Petitioners owned the NVOCC. In addition, Global Link's intent to use the voluntary disclosure proceeding in the commercial arbitration, demonstrates that the proceeding, and the results thereof, will have a material effect on Petitioners' interests. Finally, Petitioners' interests are not adequately represented by Global Link since Global Link has no interest in a careful investigation but only a collusive interest in a finding that the practice of domestic re-routing is a Shipping Act violation to further its claim against Petitioners.

For these reasons, the Commission should institute a formal docketed proceeding and grant Petitioners' Petition for Leave to Intervene.

### **III. Conclusion**

For the foregoing reasons, Petitioners respectfully request that the Commission either: (1) issue a declaratory order clarifying that the practice of re-routing domestic inland points in an intermodal movement by NVOCCs or other shippers does not violate the 1984 Act; or (2) initiate a rulemaking or other proceeding to consider these issues; and/or (3) initiate a docketed proceeding and grant Petitioners (and any other interested party) leave to intervene and be treated as a party in the Commission's investigation concerning Global Link's voluntary disclosure. Lastly, Petitioners respectfully request that the Commission stay the informal proceedings before the BOE pending action by the Commission itself.

Respectfully submitted,



Warren L. Deaff, Jr.

Robert A. Shapiro

Sean McGowan

THOMPSON COBURN LLP

1909 K Street, N.W.

Suite 600

Washington, D.C. 20006

Telephone: 202-585-6900

Facsimile: 202-585-6969

Attorneys for Petitioners

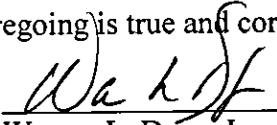
Lewis R. Clayton  
Andrew G. Gordon  
Colin C. McNary  
Paul, Weiss, Rifkind, Wharton &  
Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Telephone: 212-373-3543  
Facsimile: 212-492-0543

Attorneys for Petitioners

DATE: November 13, 2008

**Verification**

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Warren L. Dean, Jr.  
Attorney for Petitioners

**Certificate of Service**

I hereby certify that on November 13, 2008, I served the foregoing Emergency Petition for Declaratory Order, Rulemaking or Other Appropriate Relief in Voluntary Disclosure Investigation on the following individual(s) by overnight courier:

David P. Street, Esq.  
Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C.  
1054 Thirty-First Street, NW  
Washington, DC 20007-4492  
Telephone: 202-342-5200  
Facsimile: 202-342-5219  
E-mail: DSTREET@GKGLAW.COM

William H. Stallings, Assistant Chief  
Transportation, Energy & Agriculture Section  
Department of Justice  
450 Fifth Street, NW  
Room 4052  
Washington, DC 20530  
Telephone: 202-514-9323

Tracey D. Chambers  
Transportation, Energy & Agriculture Section  
Department of Justice  
450 Fifth Street, NW  
Room 4652  
Washington, DC 20530  
Telephone: 202-305-3283

  
Sharon L. Simmons

**SECURING COMPETITIVE RATES FOR DOMESTIC INLAND MOVEMENTS:  
THE PRACTICE OF RE-ROUTING**

**INTRODUCTION**

Complainants in an arbitration are seeking a refund of the price they paid in connection with the purchase of a Non-Vessel Operating Common Carrier (NVOCC) by asking the Federal Maritime Commission (FMC) to rule on an *ex parte* basis, and for the first time, that the domestic inland routing practices of the NVOCC are illegal. Specifically, they now assert that the NVOCC's method of obtaining the most competitive rate for the domestic inland portion of a through rate violates the Shipping Act of 1984. Their position is incorrect as a matter of law. If adopted by the FMC without the benefit of notice and comment, it would severely curtail competition among domestic motor carriers, over which the FMC has no regulatory authority, curtail the rights of both shippers and consignees under negotiated bills of lading, and potentially restrict the ability to sell goods that are in-transit pursuant to a "through" bill of lading.

An NVOCC is a shipper in its contractual relationship with the ocean common carrier. On an in-bound shipment, the NVOCC is generally the consignee in its contractual relationship with the ocean common carrier, and is so identified in the ocean common carrier's master bill of lading. Under both federal and state law, and as confirmed in ocean carrier tariffs, the consignee has the right to re-route the cargo. If the cargo is in the custody of the ocean carrier, the ocean carrier must honor the request for a diversion, but may charge a fee therefor. If the cargo is in the custody of a motor carrier in the case of an intermodal movement, the motor carrier may be responsible for the diversion.

The practice of re-routing allows NVOCCs to take advantage of their rights as consignee to shop for the best available intermodal rates from the ocean common carrier, and then re-route

the cargo, if necessary, to another destination by paying a supplemental fee directly to the motor carrier. The ocean common carrier is completely compensated for the amount declared on the master bill of lading. Any supplemental fee for inland freight is negotiated directly by the consignee/NVOCC and the motor carrier.

This practice, which is common in the industry, allows U.S.-based NVOCCs to obtain access to competitive rates for purely domestic services offered by a U.S. motor carrier. The motor carrier in question is nominated by the NVOCC and accepted by the ocean carrier. The practice prevents ocean common carriers from becoming a bottleneck, or clearing house, through which NVOCCs must pass before they can obtain access to those competitive rates. It also prevents ocean common carriers from using their antitrust immunity and discussion authority in a manner that would substantially reduce competition among domestic motor carriers.

As explained below, the practice does not violate Section 10 or any other provision of the Shipping Act of 1984. Because it involves domestic motor carriers, there is a substantial question about the extent of the FMC's jurisdiction over this area. The FMC should proceed cautiously, after public notice and comment, if it believes the practice requires regulation. Otherwise, it risks causing serious effects not intended by the Congress when it gave the Commission regulatory authority over intermodal services offered by ocean common carriers.

#### **I. A Description of Re-Routing.**

Re-routing is a common business practice whereby the final U.S. inland destination of cargo is re-routed by NVOCCs who facilitate "through" transportation on behalf of their shipper customers. An NVOCC ships cargo under a service agreement it enters with an ocean common carrier relating to the delivery of containers from points outside the U.S. to certain inland points within the U.S. To facilitate intermodal movements, the ocean carrier issues a master bill of

lading to the NVOCC specifying the final destination, the modes of transportation to bring the goods to their final destination and an overall or “through” rate for the entire movement. The NVOCC pays the through rate to the ocean carrier which, in turn, pays any port and inland transportation costs required to deliver the goods in accordance with the master bill of lading. The NVOCC recommends to the ocean carriers certain domestic trucking companies as the domestic inland transportation providers for the shipments subject to the master bills of lading. At the direction of the NVOCC, the trucking companies deliver shipments to inland destinations other than those specified in the master bill of lading. The final inland destination is identified in the house bill of lading issued by the NVOCC to its customer, the beneficial owner of the goods. In the industry, this practice is variously referred to as “diversion,” “alternative routing,” “triangulation,” or “re-routing.”

Re-routing is common in the industry.<sup>1</sup> See Expert Report of Steve Barnett; Export Report of Wayne R. Schmidt, attached. In order to satisfy customer demands in the highly competitive freight forwarding business, NVOCCs engage in the practice of re-routing for a wide range of legitimate business reasons, including when the service contract under which a shipper operates does not contain a current negotiated rate for the intended destination but does contain a negotiated rate for a nearby point. This practice allows NVOCCs to access frequently changing market rates for inland freight transportation, or to accommodate the sale of merchandise while it is in transit. As explained below, Congress never intended that ocean common carriers—the vast majority of which are foreign corporations—should become a bottleneck that would prevent U.S. NVOCCs and other shippers from obtaining the benefit of competitive and constantly changing rates and services from U.S. motor carriers for the domestic inland movement of goods in

---

<sup>1</sup> See Mitsui O.S.K Lines Ltd. Tariff # 001729, *supra* at 7.

through intermodal services. Re-routing allows NVOCCs and shippers to obtain competitive rates but does not violate the proscriptions of the 1984 Act.

Federal and state law, the contractual terms of the bill of lading and the applicable tariff rules authorize and anticipate the need of consignees to re-route goods from the destination shown on the face of the bill of lading, to another destination.

## **II. The Practice of Re-Routing is Consistent with Federal and State Transportation Law and the Contractual Obligations of the Parties.**

### **A. Federal and State Statutory Provisions.**

#### *1. Uniform Commercial Code.*

The Uniform Commercial Code ("UCC") anticipates that the consignee will, and can re-route a shipment. The UCC's provisions specifically limit the liability of the carrier for following the instructions of the consignee. UCC § 7-303 (a) provides in pertinent part:

Unless the bill of lading otherwise provides, **a carrier may deliver the goods to a person or destination other than that stated in the bill** or may otherwise dispose of the goods, without liability for misdelivery, **on instructions from**

**the consignee** on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

**the consignee** on a non-negotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(emphasis added).

As discussed further below, bills of lading do not generally restrict the ability of the consignee to re-direct the cargo. Rather, the terms of the bill of lading and the applicable tariff anticipate such activity.

2. *State law generally follows the UCC terms with respect to the re-direction of goods shipped pursuant to a bill of lading.*

A survey of state law suggests that most states have adopted the UCC language laid out above. *See, for example*, ALA. CODE § 7-7-303 (2008); 810 ILL. COMP. STAT. 5/7-303 (2008); GA. CODE ANN., § 11-7-303; Tex. Code Ann § 7.303 (2008); VA. CODE ANN. § 8.7-303 (2008). Some other states have gone a step further to codify, in more specific language, the course of action that a carrier must take in delivering the goods.

As to delivery of the freight, the carrier shall comply with the directions of the consignee, unless the consignor has specifically forbidden the carrier to receive orders from the consignee inconsistent with the consignor's own.

*See, for example*, MONT. CODE ANN. § 69-11-402 (2007); N.D. CENT. CODE § 8-03-04(2007); S.D. CODIFIED LAWS § 49-16A-28 (2008).

3. *The Federal Bill of Lading Act governs the inland bills of lading in the United States and specifically recognizes the right of the Consignee to re-direct the delivery of goods.*

The Federal Bill of Lading Act,<sup>2</sup> 49 U.S.C §§ 80101-80116, which covers the inland portion of a through shipment, *see* 49 U.S.C. § 80102, echoes these rules. Recognizing that the consignee has the ability to direct the delivery of the goods, the statute affirmatively states that the common carrier must deliver goods on demand of the consignee. 49 U.S.C. § 80110(a). The shipper and holder of a straight bill of lading has a right to re-consign or divert a shipment from its original destination. *See Chicago M., St. P. & P.R. Co. v. Flanders*, 56 F.2d. 114 (8<sup>th</sup> Cir. 1932); *see also Clock v. Missouri- Kansas-Texas R.R. Co.*, 407 F. Supp. 448 (E.D. Mo. 1976).

---

<sup>2</sup> As a technical matter, the Federal Bill of Lading Act does not govern an import master bill of lading. *See* 49 U.S.C. § 80102 (The Federal Bill of Lading Act applies for the transportation of goods "from a place in a State to a place in a foreign country.")

**B. The terms of the bill of lading recognize the right of the consignee to re-direct the delivery of the goods.**

*1. Place of Delivery is Broadly Defined.*

As a general matter, "Place of Delivery" is broadly defined in bills of lading as "a place so named overleaf **or any other place** where the goods are delivered by the Carrier to the Merchant in accordance with the terms hereof." The term "Merchant" includes, Shipper, Holder of the Bill of Lading, Consignee, Receiver of the Goods, any Person owning or entitled to the possession of the Goods or of the Bill of Lading, and anyone acting on behalf of such Person.

The phrase, "any other place" suggests that the parties to the bill of lading anticipate the possibility for the goods to be delivered to a destination other than that indicated on the actual bill. The terms of the bill of lading also recognize that the carrier may be commanded to deliver goods to another destination.

*2. The Carrier May Comply with Any Orders of Any Person With the Right to Give Such Orders.*

As a general matter, bills of lading allow for unilateral redirection of delivery by the Carrier and full compliance by Carrier with **any** orders or recommendations of persons, not privy to the bill of lading. For example, section 16 of the Mitsui O.S.K. Lines Bill of Lading provides in pertinent part:

The Carrier may at any time and without notice to the Merchant:

Load and unload the goods at any place or port (whether or not such port is named overleaf as the port of loading or port of discharge) and store the goods at any such port or place.

Comply with any orders or recommendations given by any . . . person acting or purporting to act as or on behalf of such government or authority, or having under the terms of any insurance on any conveyance employed by the Carrier, the right to give orders or directions.

Thus, not only may the Carrier redirect delivery of the goods, but the terms of the bill of lading permit other persons, not privy to the contractual relationship established by the bill of lading, to give any orders or recommendations to the Carrier.

3. *Published Tariffs Recognize the Right of the Consignee to Redirect the Delivery of Goods*

As further proof of the permissibility of the re-routing of cargo by the consignee, tariff rules anticipate such a change. For example, the tariff rules of Mitsui O.S.K. Lines, Ltd. ("MOL") pertaining to the diversion of cargo, reveals that the diversion of cargo, by a consignee, is permissible under the shipper's tariff.

Cargo moving under a non-negotiable Bill of Lading may be diverted at the request of shipper or consignee.

See Tariff Number 001729, Rule 104.

**III. The Practice of Re-routing Domestic Inland Transportation Does Not Violate the Shipping Act.**

**A. Section 10(a) of the 1984 Act is limited to ocean transportation.**

The practice of re-routing does not violate Section 10(a)(1) of the 1984 Act because the practice does not involve ocean transportation. To avoid discrimination, the 1984 Act restricts shippers from using fraudulent means to obtain lower rates for **ocean transportation**. Section 10(a)(1) of the 1984 Shipping Act prohibits any person from "knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain **ocean transportation** for property at less than the rates or charges that would otherwise apply." 46 U.S.C. § 41102(a) (emphasis added). In this regard, proscriptive laws must be construed narrowly to prevent any uncertainty as to what conduct is unlawful. See, e.g., SUTHERLAND STATUTORY CONSTRUCTION, at § 57:959:1, 59:3.

By the express language of the statute, any means used to lower a shipper's inland portion of the through rate, but which does not impact the **ocean transportation** portion, does not violate Section 10(a)(1). The geographic limitation on the Section 10(a)(1) prohibition to the ocean transportation portion was not new to the 1984 Act. **Indeed, it is based, nearly verbatim, on the language of Section 16 of 1916 Act, as amended in 1936.**<sup>3</sup> Congress implemented that language in 1936—long before the advent of intermodal services. There is no question that Section 16 of the 1916 Act did not prohibit any actions that related to the domestic inland portions of international shipping movements. Carrying this language through to Section 10(a) of the 1984 Act without significant amendment, it is clear Congress did not intend to include, within the scope of prohibited conduct, conduct relating solely to domestic inland transportation. Indeed, Congress implemented the 1984 Act in recognition of the development of intermodal movements. *See* H.R. Rep. No. 98-53, pt. 1, 98<sup>th</sup> Cong., at \*13 (1983). If Congress had deemed it appropriate to expand this prohibition and apply it to any portion other than the ocean portion, it could have used the term “through rate” (a defined term in the 1984 Act) in section 10(a)(1) of the Shipping Act. It did not do that. In fact, Congress sought to minimize Government

---

<sup>3</sup> In 1936, Congress amended the prohibitory acts of the 1916 Act to add the following introductory paragraph:

That it shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to **obtain transportation by water** for property at less than the rates or charges which would otherwise be applicable. ...

*See* Pub. L. No. 74-685, 49 Stat. 1919-1936 (1936) (emphasis added). Under the 1984 Act, this language now reads:

A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to **obtain ocean transportation** for property at less than the rates or charges that would otherwise apply.

46 U.S.C. § 41102(a) (emphasis added).

intervention in the shipping industry, not expand its reach. *See* H.R. Rep. No. 98-53, pt. 1, 98<sup>th</sup> Cong., at \*5 (1983) (“The entire method of regulation is changed to minimize government involvement in shipping operations. The Primary role of the FMC would be to review conduct in order to protect carriers, shippers, and ports from unfair or discriminatory shipping practices....”).

As long as the ocean carrier receives full compensation for the ocean portion of a through rate, the practice of re-routing does not violate section 10(a)(1). What this means in practical terms is that the direction of a shipment to a different inland point after it is discharged at the designated destination port cannot, by definition, be unlawful under the 1984 Act. To find otherwise would subject shippers, carriers and ocean transportation intermediaries to regulatory liability in those instances where competitive developments, business needs, emergencies, or other foreseen or unforeseen circumstances require goods to be re-routed after arrival at the U.S. destination port. *See* 46 CFR § 530.12. Bills of lading (the contracts of carriage) are, and are intended to be, fully negotiable instruments. They may be instruments of title that permit the transfer of the listed goods from one party to another. Accordingly, the holder of the bill of lading must have the right to direct the goods to a different destination. Any restriction on that flexibility could adversely affect their negotiability and would impact not only transportation but general commerce – the ability to buy and sell goods.

In re-routing a shipment, an NVOCC will issue a house bill of lading that reflects the inland destination where the shipment will ultimately be delivered. If the cost, to the trucker, of taking the shipment to the destination listed on the house bill of lading exceeds the amount offered by the ocean carrier for delivering the shipment to the destination on the master bill of lading, the NVOCC would pay the excess to the trucker. At the same time, ocean carriers are

fully compensated for the services they have contracted to provide under the master bills of lading and the terms of the applicable service contracts. This practice, which allows NVOCCs and other shippers to obtain the most favorable rates for the domestic inland movement (especially in consideration of the collective rate setting enjoyed by the ocean common carriers as discussed below), does not violate the 1984 Act. In fact, the ocean common carrier is fully compensated for the ocean transportation provided under the contract.

**B. The 1984 Act is a regulatory regime that extends antitrust immunity to ocean transportation and must be narrowly construed.**

Ocean common carriers have antitrust immunity under the Shipping Act of 1984, and they use their immunized discussion authority to share information on service contracts they offer to NVOCCs. They also compete with NVOCCs, that have no antitrust immunity, for those cargoes. If the FMC finds that the practice of re-routing is illegal, it will allow ocean common carriers to deny U.S.-based NVOCCs access to competitive rates from U.S.-based motor carriers for domestic inland movements. That is not what Congress intended.

To understand why the practice of re-routing domestic inland movements does not violate the 1984 Act or is subject to the jurisdiction of the Commission, it is necessary to understand the purpose for which Congress passed the 1984 Act. Ocean common carriers have enjoyed immunity, from antitrust laws, to collectively discuss and set rates for ocean transportation since the enactment of the 1916 Act. The 1916 Act attached a regulatory regime to oversee this grant of antitrust immunity in order to prevent abuse by the maritime transportation industry. *See Puerto Rico Ports Authority v. FMC*, 919 F.2d 799, 807 (1<sup>st</sup> Cir. 1990); *Plaquemines Port, Harbor and Terminal Dist. v. FMC*, 838 F.2d 536, 542-43 (D.C. Cir. 1988).

By the early 1980s, consolidation and containerization of cargo had permitted goods to be shipped by sea from one inland point to another inland point without the need for the goods to be

loaded or unloaded from the container. This technology resulted in the revolutionary development of integrated, intermodal transportation systems that provided, from the shipper's standpoint, seamless international transportation services under "through" bills of lading from point of pick-up to point of destination. "Through" rates permitted carriers to charge for all aspects of such movements including foreign inland transportation, foreign terminal services, ocean transportation, U.S. terminal services, and U.S. inland transportation services, regardless of the party actually performing the services.

The 1984 Act responded to these important changes in international ocean transportation services. The 1984 Act replaced the 1916 Act, as it applied to U.S. foreign commerce, in order to alleviate uncertainty regarding antitrust enforcement against ocean common carriers and others involved in international ocean transportation, reconcile U.S. shipping policy with foreign transportation practices, and restrict the application of U.S. law abroad to the changing industry.<sup>4</sup> The remainder of the 1916 Act, as will be explained below, was later repealed, leaving the 1984 Act as the only regulatory regime administered by the FMC. Consequently, the 1984 Act was structured to harmonize U.S. regulation of international ocean shipping with the policies of our major trading partners, and to facilitate the intermodal movements favored by both carriers and shippers. As such, it continued and confirmed the historical policy of the 1916 Act to immunize common carriers engaged in ocean transportation from antitrust liability. Ocean common carriers have used this immunity to discuss and set rates under service contracts with NVOCCs, as discussed further below.

---

<sup>4</sup> H.R. Rep. No. 97-611, pt. 2, 97th Cong., at 22 (1982); S. Rep. No. 97-414, 97th Cong., at 7-8 (1982); S. Rep. No. 98-3, 98th Cong., at 7 (1983).

Recognizing the new and beneficial realities of intermodal transportation, Congress took a more comprehensive approach to antitrust immunities in the 1984 Act, addressing the application of the antitrust laws to all of these activities: foreign inland transportation services were exempted by section 7(a)(4); foreign terminal services by section 7(a)(5); ocean carriage by sections 7(a)(1) and (a)(2); and U.S. marine terminal services under sections 7(a)(1) and (a)(2). 46 U.S.C. § 40307(a). However, Congress and the Reagan Administration were careful to avoid any extension of these policies to domestic inland transportation services, which were in the process of being deregulated subject to the operation of the antitrust laws. Accordingly, Congress specifically withheld antitrust immunity for domestic inland services under section 7(b). 46 U.S.C. § 40307(b).

The 1984 Act was written so that only those U.S. activities that were subject to the regulatory oversight of the FMC were exempted from the antitrust laws. *See United States v. Gosselin Worldwide Moving*, 411 F.3d 502 (4th Cir. 2005) (reviewing Shipping Act history and purpose); *Puerto Rico Ports Authority v. FMC*, 919 F.2d 799, 806-07 (1st Cir. 1990) (same); *A & E Pacific Constr. Co. v. Saipan Stevedore Co.*, 888 F.2d 68 (9th Cir. 1989) (same). Congress drafted the 1984 Act to ensure that U.S. conduct that was immunized from the antitrust laws by the new legislation would be subject to FMC regulation. H.R. Rep. No. 98-53 pt. 1, at 3 (1983), reprinted in 1984 U.S.C.C.A.N. 167, 168 (noting primary purpose of antitrust immunity is “to exempt from the antitrust laws those agreements and activities subject to regulation by the Federal Maritime Commission”); H.R. Conf. Rep. 98-600, at 37 (1984), reprinted in 1984 U.S.C.C.A.N. 283, 293; *see also* S. Rep. No. 98-3, at 29 (1983) (Act extends immunity “to agreements of ocean common carriers . . . and to other activities regulated under provisions of the bill”). In consideration of this, Congress did not extend the 1984 Act and its antitrust

immunity to the U.S. inland portion of through rates. 46 U.S.C. § 40307(b). Congress did so because any extensions of the antitrust protection provided by the 1984 Act to inland transportation services would have interfered with the U.S. policy of deregulating those services.<sup>5</sup> Since the enactment of the 1984 Act, courts and the Department of Justice have recognized that the FMC's jurisdiction is coextensive with and limited to the activities excepted from the antitrust laws by the Act.

Because the 1984 Act is an antitrust immunity regime, it must be interpreted narrowly. Beginning with the 1916 Act, and carrying through to the 1984 Act and its subsequent amendment by the Ocean Shipping Reform Act of 1998 ("OSRA"), it has been well-established that the 1984 Act and its exemptions from the antitrust laws are to be strictly construed. *FMC v. Seatrain Lines, Inc.*, 411 U.S. 726, 733 (1973); *Carnation Co. v. Pacific Westbound Conf.*, 383 U.S. 213, 216-17 (1966); *Puerto Rico Ports Auth.*, 919 F.2d at 806-807; *United States v. Gosselin Worldwide Moving*, 411 F.3d 502, 509 (4th Cir. 2005).<sup>6</sup> Indeed, the Department of Justice has prosecuted NVOCCs for antitrust law violations by construing the immunities of the 1984 Act narrowly. *See generally Brief for the United States as Appellant*, at 12-13, *United*

---

<sup>5</sup> Congress took a similar approach to the deregulation of air transportation services eliminating anti-trust immunity and economic regulation of domestic air services while preserving it for international air services. *See generally* Civil Aeronautics Board Sunset Act of 1984, Pub. L. 98-443, 98 Stat. 1703.

<sup>6</sup> Even where a statute confers immunity for certain regulated activities, any activities that go beyond the scope of the regulated exemption lose immunity. *Carnation v. Pacific Westbound Conf.*, 383 U.S. 213, 216-17 (1966) (actions taken pursuant to agreement filed with FMC were immune, but activities implementing unfiled conference agreements were not); IA P. AREEDA & H. HOVENKAMP, *ANTITRUST LAW* ¶ 244f (2d ed. 2000) (activities beyond scope of explicit antitrust exemptions remain subject to antitrust law enforcement); *see also Ass'n of Cruise Passengers v. Cunard Line*, 31 F.3d 1184, 1185-86 (D.C. Cir. 1994).

*States v. Gosselin Worldwide Moving*, 411 F.3d 502 (4th Cir. 2005) (Nos. 04-4752, 04-4876, 04-4877).<sup>7</sup>

In part for this reason, courts have interpreted the scope of the prohibited acts in section 10 of the 1984 Act to be coextensive with the scope of the activities exempted from the antitrust laws by the Act. *See Gosselin Worldwide Moving*, 411 F.3d, at 509. In this regard, the prohibited acts set forth in section 10 were designed to police the carriers' use of the antitrust immunity. The legislative history of the 1984 Act makes clear that Congress intended for the Act to be so interpreted. The Senate Commerce Committee, in considering S. 1593, a precursor bill to the 1984 Act, was aware that the antitrust exemption it proposed was subject to potential abuse, including even predatory conduct, and insisted that the 1984 Act's remedies would be substituted for the antitrust remedies displaced by its "blanket" immunity. The Committee explicitly stated its intent to ensure "that the prohibited acts and the sanctions for violation were sufficiently drawn to assure adequate protection against abuses" and not "to relieve any class of agreement from complying with section 12 [Prohibited Acts]." S. Rep. No. 97-414, 97<sup>th</sup> Cong., at 28-29 (1982). Thus, the prohibited acts were designed primarily to police the carriers that enjoy antitrust immunities.

While NVOCCs are not themselves afforded immunity from the antitrust laws, their conduct is covered by the prohibited acts to the extent they deal with common carriers for services that are afforded immunity. However, the prohibited acts do not extend to services that are not otherwise protected from the antitrust laws, such as the U.S. inland portion of through transportation. There is no need to regulate these activities as a substitute for the protections

---

<sup>7</sup> The Department of Justice's briefs in *U.S. v. Gosselin World Wide Moving N.V. and the Pasha Group* are available at <http://www.usdoj.gov/atr/public/appellate/appellate.htm#2003>.

provided by the antitrust laws, and Congress specifically intended that those services remain subject to the antitrust laws.

An examination of the specific language of the 1984 Act confirms that it is expressly limited to the activity exempted from the antitrust laws: ocean transportation. Section 2 of the 1984 Act states that the purpose of the Act is to regulate the common carriage of goods *by water* with a minimum of government intervention and regulatory costs. 46 U.S.C. § 40101 (emphasis added). It further states that the purpose is to “provide an efficient and economic transportation system in the *ocean commerce* of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices.” *Id.* With this purpose, the 1984 Act regulates international ocean transportation by requiring certain agreements between or among ocean common carriers and agreements between or among marine terminal operators or ocean common carriers to be published or filed with the FMC. *Id.* at § 40302.

The FMC’s jurisdiction over ocean transportation, including through transportation, does not give it regulatory authority over the domestic inland movement, which is not exempt from the antitrust laws. The 1984 Act specifically excludes the ocean portion from the defined term “inland portion.” *See* 46 U.S.C. § 40102(12) (defining inland portion as “the charge to the public by a common carrier for the non-ocean portion of through transportation”). “Through transportation” is defined as “continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a (ocean) common carrier, between a United States port or point and a foreign port or point.” 46 U.S.C. § 40102 (25). The term “through rate” means “the single amount charged by a common carrier in connection with through transportation.” 46 U.S.C. § 40102 (24). The ocean portion is separate from the domestic inland portion in through transportation. The FMC has

limited regulatory authority over through rates and the ocean portion thereof.<sup>8</sup> It has no authority over the rate for the domestic inland movement.

Other provisions of the 1984 Act also confirm that the U.S. inland transportation is excluded from the Act's reach. With limited exceptions, each common carrier is required to publish tariffs that show all of its "rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established." 46 U.S.C. § 40501(a). The 1984 Act does not require the common carrier to publish the inland divisions of the applicable through rate. *Id.*

The 1984 Act's treatment of service contracts reinforces the point that U.S. inland transportation falls outside the reach of the Act. Congress made substantial changes to the 1984 Act under the OSRA by emphasizing a shift in the regulatory scheme from the tariff-based common carriage to a more contract-based system. Under OSRA, the 1984 Act permits a more flexible use of service contracts between shippers and ocean common carriers as an alternative to transportation under filed tariff terms. As amended, the 1984 Act allows ocean common carriers, either individually or collectively through agreements or conferences, to negotiate and execute service contracts with one or more shippers or shippers' associations. 46 U.S.C. § 40502(a); 46 CFR § 530.2.<sup>9</sup> The ocean common carrier or conference must file the service contract with the FMC, but the contract remains confidential. 46 U.S.C. § 40502(b); 46 CFR § 530.4. The carrier or conference, however, must publish a concise statement of certain contract terms, i.e.,

---

<sup>8</sup> Congress did not give the FMC what is often described as traditional "rate authority" in the 1984 Act, whereby a regulatory agency has the authority either to disapprove or establish specific rates. The Commission's authority under the 1984 Act is generally limited to policing adherence to rates properly established by the carriers themselves.

<sup>9</sup> Under these service contracts, shippers make a commitment to provide a certain volume or portion of cargo over a fixed period of time, and the carriers commit to a specified rate and a defined service level. 46 U.S.C. § 40102(20) 46 CFR 530.3(q).

commodity or commodities involved, minimum volume or portion, duration, and origin and destination port ranges. 46 U.S.C. § 40502(d); 46 CFR § 530.12. The required publication of these terms are limited to the focus of the FMC's regulatory responsibility—ocean transportation. Notably, the service contract's essential terms, that are made public, do not include the inland destinations. *See id.*

**C. The FMC does not have jurisdiction over domestic inland transportation services and re-routing of the U.S. inland destination.**

Consistent with the history of the Shipping Act, the 1984 Act regulates ocean transportation and does not purport to regulate inland U.S. transportation. Any assertion of jurisdiction by the FMC in a matter that relates solely to the inland domestic U.S. portion of a “through” shipment would be beyond the scope of its authority under the 1984 Act.

Congress specifically repealed two statutes that gave the FMC authority over domestic transportation. Under the 1916 Act, the FMC held concurrent jurisdiction with the Interstate Commerce Commission (“ICC”) over intermodal transportation. With the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (“ICC Termination Act”), Congress repealed the remaining provisions of the 1916 Act, and the Intercoastal Shipping Act, 1933, formerly 46 U.S.C. §§ 843-848, both of which granted the FMC concurrent jurisdiction with the ICC over domestic transportation. In abolishing the ICC, Congress transferred exclusive jurisdiction over operations in the domestic trade to the Surface Transportation Board (the successor to the ICC), thus ending the bifurcation of jurisdiction between the ICC and the FMC. *See* 49 U.S.C. §§ 13501, 13521. The ICC Termination Act furthered the deregulation of the domestic transportation industry by removing federal economic regulatory oversight from the domestic railroad, trucking and bus industries. Put simply, it was Congress's intent to leave domestic transportation alone. The 1984 Act offers no exception to this policy.

The practice of re-routing falls outside the FMC's jurisdiction because it concerns only U.S. domestic transportation. Indeed, an NVOCCs re-routing of the U.S. inland destination does not alter the ocean portion of the through transportation in any way. As long as the ocean carriers are fully compensated for the ocean transportation services they provide under the master bills of lading and the ocean transportation services fall within the terms of the applicable service contracts, this practice falls outside the FMC's jurisdiction. This is so because the only modification to the through transportation in a re-route involves the final U.S. inland destination. As noted above, Congress did not intend to prevent U.S. shippers (including NVOCCs) from obtaining timely access to competitive rates from U.S. rail and motor carriers. Indeed, this would subject U.S. shippers to the discretion of a tariff clerk in Singapore rather than allow shippers to obtain the benefit of competitive and constantly changing rates and services for the domestic inland movement of through intermodal services.

Further, the FMC has not investigated or brought an enforcement action against an NVOCC, or any other shipper for that matter, for a violation of the 1984 Act by altering the U.S. **inland portion** of the through rate, let alone a violation for re-routing the final U.S. inland destination, despite the fact that the practice is common in the industry. On the other hand, the FMC has found that an NVOCC violated Section 10(a)(1) of the 1984 Act for a variety of acts that involve the ocean portion of intermodal transportation.<sup>10</sup> The lack of enforcement actions

---

<sup>10</sup> For example, the FMC has investigated or brought enforcement actions against NVOCCs for activities such as (1) intentional misdescription of cargo carried on the vessel to obtain lower rate from ocean common carrier, see *Ariel Maritime*, FMC Docket 84-38, *Olympic Int'l Freight Forwarders, Inc.*, Docket 94-27, *Ever Freight Int'l, Ltd.*, FMC Docket 97-04; (2) acceptance of rebates from the ocean common carrier, see *Banfi Products Corp.*, FMC Docket 87-14, *I Chen "Jenny" Chiang*, FMC Docket 99-03, *Imex Shipping, Inc.*, FMC Docket 99-17; (3) equipment substitution by using a larger container than reported to obtain lower rate from ocean common carrier, see *Sea-Land Service, Inc.*, FMC Docket 98-06, *Direct Container Line*, FMC Docket 99-06; and (4) unlawful access to service contracts for the entire through rate offered by ocean common carrier, see *California Shipping Line*, FMC Docket 88-15, *Owens Refrigerated Freight Ltd.*, FMC Docket 98-19, *Gstaad, Inc.*, FMC Docket 99-20, *Hudson Shipping*

against shippers or NVOCCs for activities relating solely to domestic inland transportation confirms the FMC is without regulatory authority over this practice.

**D. At most, re-routing is a matter of interpretation of the applicable service contract.**

As noted above, service contracts offer an alternative to transportation under filed tariff terms. Contract flexibility enables carriers to tailor their transportation services to the specific commercial and operational needs of shippers. *See* FMC Report, The Impact of the Ocean Shipping Reform Act of 1998 (September 2001), at 63 (“FMC Report”). With the enactment of OSRA, the industry witnessed a dramatic increase in the use of service contracts. Key to this increase was the prohibition on conferences and ocean common carrier agreements from restricting the right of their members to independently negotiate and enter into individual service contracts. 46 U.S.C. § 40303(a)(1)(A). Moreover, agreements cannot require members to disclose their individual service contract negotiations or unpublished terms, nor adopt mandatory rules affecting such contracts. *Id.* at § 40303(a)(1)(B). Today, most shippers negotiate one-on-one with individual carriers for confidential service contracts, instead of negotiating with rate-setting conferences or groups of carriers, and a vast majority of liner cargo moves under service contracts rather than tariffs. *See* FMC Report, at 2. The confidentiality of service contracts has spurred commercial innovations and brought greater efficiencies in the movement of cargo. Overall, the use of service contracts has continued to increase significantly due primarily to the efficiency, flexibility, and confidentiality of one-on-one negotiation of contracts between shippers and carriers.

---

*(Hong Kong) Ltd.*, FMC Docket 02-06. It is not difficult to see that these practices concern the NVOCCs attempt to manipulate the ocean portion of the through transportation.

Whether the practice of re-routing is consistent with the terms of the applicable service contract between the NVOCC and the ocean carrier is essentially a question of contract interpretation. Service contracts, tend to favor simplified terms, are short in duration and the trend has been towards expanding the scope of the contracts. It would be inconsistent with OSRA to treat this practice as a potential violation of the 1984 Act where (a) the split routing falls clearly within the U.S. trades specified in the contract; (b) the parties treat the movements as within the scope of the contract; and (c) the contract is renewed without complaint. The practice of the parties is instructive when it comes to interpreting the meaning of any contract, and service contracts offer no exception to this rule.

### **CONCLUSION**

The practice of re-routing does not violate Section 10 of the 1984 Act because the practice does not affect ocean transportation. Further, the FMC has no regulatory authority over the practice of re-routing by NVOCCs because the practice relates only to U.S. inland transportation services, which are beyond the Commission's jurisdiction under the laws it administers. The validity of re-routing is further confirmed by federal and state law, as well as the contractual terms of the bill of lading and the applicable tariff rules that expressly authorizes consignees to divert cargo. A finding that re-routing violates the Shipping Act would be in direct contravention to the express legal and contractual recognition and acceptance of this practice.

**Thompson Coburn LLP**  
**November 6, 2008**

In the Matter of the Arbitration Between

Global Link Logistics, Inc., GLL Holdings,  
Inc., and Golden Gate Logistics, Inc.,

Claimants,

v.

Olympus Growth Fund III, L.P., Olympus  
Executive Fund, L.P., Louis J. Mischianti,  
L. David Cardenas, Keith Heffernan, Chad  
J. Rosenberg, CJR World Enterprises, Inc.,  
Gerald Benjamin, CBW Key Employee  
Capital II, LLC, Jewish Federation of  
Greater Atlanta for Gerald R. and Vicki S.  
Benjamin Philanthropic Fund, and Edward  
R. Casas, M.D.,

Respondents.

Case No. 14 125 Y 01447 07

**EXPERT REPORT OF STEVE BARNETT**

## **I. SCOPE OF ASSIGNMENT**

1. I have been retained by the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul, Weiss"), as counsel to Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P., Louis J. Mischianti, L. David Cardenas, and Keith Heffernan, to provide expert advice and testimony concerning (1) the practice referred to in this arbitration as "split routing" or "re-routing," (2) the terms of the May 29, 2006 service contract between Hecny Shipping Ltd. ("Hecny") and Maersk Lines ("Maersk") (as reflected in a "rate sheet" provided by Hecny to Global Link Logistics, Inc. ("GLL")), and (3) the ocean transportation business in general.

2. I am being compensated for my services in connection with this arbitration at a rate of \$250 per hour plus expenses.

## **II. BASIS OF OPINION**

3. My expert opinion is based on the knowledge I have gained during my twenty-seven years of experience in the ocean transportation industry. During that time, I have worked for a number of different ocean carriers, including Hapag-Lloyd, Maersk Lines, and Wan Hai Lines, in a variety of capacities including sales and marketing, service contract negotiations, regulatory compliance, and general management. A copy of my curriculum vitae is attached as Exhibit 1.

4. My opinion is also based on my review of documents provided to me by Paul, Weiss. A list of these documents is attached as Exhibit 2.

## **III. SUMMARY OF OPINION**

5. Based on my experience and review, I have formed the following expert opinions:

- (a) Split routing is an ongoing practice in the ocean transportation business;
- (b) Split routing does not deprive ocean carriers of any profits, and does not otherwise impact ocean carriers so long as (i) no illegal rebates or kick backs are paid, (ii) empty containers are returned to appropriate locations within the allotted time, and (iii) shippers or customers do not attempt to hold ocean carriers liable for damage to cargo that occurred while cargo was being split routed; and
- (c) The May 29, 2006 service contract between Hecny and Maersk contains inland rates that are fixed for the life of the contract.

#### IV. OPINION

##### A. Split Routing

6. Split routing is a practice in the ocean transportation industry in which a shipper, such as an NVOCC, (1) contracts with an ocean carrier for the intermodal transportation of cargo to a "door" destination, and (2) then directs a motor carrier to deliver the cargo to a destination other than the destination identified on the ocean carrier bill of lading ("OBL").

7. It is my opinion that split routing is an ongoing practice in the ocean transportation industry that is not uncommon. Ocean carriers are generally aware of the practice but are usually not aware of each instance of the practice.

8. I am aware that GLL engaged in split routing in a variety of circumstances until on or about June 1, 2007. I am also aware that Claimants in this arbitration have claimed that GLL's practice of split routing injured ocean carriers by depriving them of profits they would have otherwise earned.

**B. Split Routing Does Not Impact Ocean Carrier Profits**

9. It is my opinion that split routing does not, as a general matter, injure ocean carriers and/or reduce their profits. This opinion is based on four major considerations.

10. *First*, so long as the ocean carrier is paid for the services it contracted with the shipper to provide, the ocean carrier has received all of the revenue to which it is entitled. Split routing does not reduce that revenue or require the ocean carrier to perform any additional services.

11. *Second*, split routing is not likely to impact ocean carrier profit margins because any impact of split routing is limited to the inland portion of intermodal movements and ocean carrier margins on such movements are minimal or nonexistent. The difference in profit margins between one inland destination and another is likely be minimal or nonexistent as well, especially if the inland destinations are near one another.

12. *Third*, it is very unlikely that split routing will cause an ocean carrier's costs to increase. Ocean carriers attempt to price rates for inland transportation to cover the costs to the ocean carrier of arranging for inland transportation (these costs include such things as rail, truck, repositioning, and overhead). When a shipper engages in split routing, the shipper generally chooses to funnel cargo to lanes where inland rates are lower and ocean carriers have lower costs. Even if split routing did cause an ocean carrier to route a shipment to a higher cost destination, it is still unlikely that there would be an effect on the ocean carrier's margins because ocean carriers generally pass the entire cost of the inland portion along to the shipper.

13. *Fourth*, ocean carriers zealously guard their own interests. I am confident that if ocean carriers believed that split routing negatively impacted their

profits, that they would promptly seek compensation from shippers who engaged in split routing, including GLL, by litigation if necessary, and would curtail or terminate their relationship with such shippers.

**C. Ocean Carriers Have Three General Concerns About Split Routing**

14. Ocean carriers do, however, have three general concerns about split routing:

15. *First*, ocean carriers disfavor split routing when it involves illegal rebates or kick-backs paid to beneficial cargo owners, NVOCCs or other parties. Such illegal rebates or kick-backs can create liability for the ocean carrier with the FMC.

16. *Second*, ocean carriers disfavor split routing when it involves the return of empty containers to locations other than the locations originally agreed to by the shipper or NVOCC. Ocean carriers involved in the TransPacific trade incur substantial expense to ensure that empty containers are returned to locations where they can be loaded with cargo for a return trip to Asia or efficiently transported to Asia as empty containers. When split routing results in the return of empty containers to locations other than those originally agreed upon, it can create additional costs for ocean carriers.

17. *Third*, ocean carriers do not want to be liable for damage to cargo that occurs when a trucker deviates from the OBL as part of a split shipment. In general, when cargo that is shipped under an OBL is damaged en route, an ocean carrier is liable for that damage.

18. So long as split routing does not involve kick-backs or rebates, result in the return of empty containers to locations other than the locations that were originally agreed upon, or a claim for damage to cargo that occurred during a split routing, ocean carriers are indifferent to the practice.

19. In my 28 years of ocean carrier experience I am not aware of any instances in which split routing has negatively impacted the relationship between an ocean carrier and shipper. I am also not aware of any circumstance where in the FMC or any other regulatory body has sanctioned a carrier or shipper due to split routing.

**B. Hecny/Maersk Service Contract**

20. I have reviewed the "rate sheet" for Service Contract No. 117790, which was entered into between Maersk and Hecny on May 29, 2006, that were provided to GLL by Hecny by email on May 30, 2006.<sup>1</sup> Based on this rate sheet, it is my belief that this Service Contracts provided Hecny with fixed U.S. inland rates for the term of the contract.

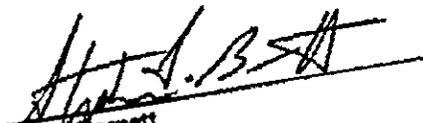
**V. CONCLUSION**

21. Based on my experience and investigation, it is my opinion that split routing is an ongoing practice in the ocean transportation industry that does not injure ocean carriers and is tolerated by them. Ocean carriers do care that no kickbacks or rebates be paid, empty containers be returned to an appropriate location in a timely fashion, and that they are not asked to bear the cost of cargo that was damaged during a split route. It is also my opinion that the May 29, 2006 Service Contract between Maersk and Hecny contains fixed inland rates for the term of the contract.

---

<sup>1</sup> GLL 330003-5.

Dated: August 1, 2008  
Rumson, New Jersey

  
Steve Barnett

## EXHIBIT 1

### Expert Report of Steve Barnett

#### Curriculum Vitae

#### STEPHEN F. BARNETT

2 North Cherry Lane  
Rumson, NJ 07760  
732.450.0404 Home  
732.904.0879 Cell  
[barnett111@aol.com](mailto:barnett111@aol.com)

#### Business Experience

October 2000 – Present

**Wan Hai Lines America LTD.** Little Silver, NJ  
*General Manager – Eastern Region*

Established presence on the East Coast for new, independent carrier in the Trans-Pacific trade. Territory encompasses eastern U.S. from Maine to Florida and west to the Mississippi River. Opened office, interviewed and hired staff, identified target account base and established contact with same. Direct reports include Regional Sales Manager and Customer Service Manager with overall responsibility for sales, marketing and contract negotiation. Customer base includes major retailers, NVOCC and Shippers Associations. The primary objective is the opening of an East Coast All-Water service.

January 1991 – August 2000

**Maersk Lines**

*General Manager – Regulatory Affairs* Madison NJ July 1999 – August 2000  
Created the regulatory group following shipping reform (OSRA). Responsibilities included representation at all Pacific and Middle Eastern Discussion Agreements, tariff and contract management, and regulatory affairs. Liaison with all Discussion Agreement carrier member representatives as well as corporate counsel. Also managed the Maersk-Sealand transition of all world-wide FMC agreements.

*General Manager – Pacific Conferences* San Francisco, CA Nov. 1997 – July 1999  
Represented Maersk Lines at senior level conference meetings for ANERA and TWRA. Liaison with all conference members and conference management company. With OSRA looming, analyzed independent tariff requirements in conjunction with all U.S. line departments, hired outside tariff management vendor and created internal tariff management department. Also responsible for handling the elimination of the Pacific Conference staff and department in San Francisco.

*Regional Manager* San Francisco, CA July 1996 – November 1997

Territory encompassed Northern California, Colorado, Idaho and Utah including 2 offices with a sales budget of \$120 million. Reorganized sales, marketing and customer service functions targeting improved account coverage and support as well as staff morale and efficiency. Focused on the reefer industry, global accounts and the high-tech industry.

*Regional Manager – International Sales, Maersk Hong Kong*  
Sept. 1993 – July 1996

Manage sales and service activity of key accounts throughout Asia. Focus on global multi-national shippers requiring global transportation packages, information systems and ancillary services. Maintain personal contact with senior management staff of both Asia and U.S. corporate offices. Identify clients' transportation requirements and implement solutions i.e., establish feeder operations, contract with truck and rail companies and with port and warehouse operators. Assist clients with buying terms and assemble global contracts.

Travel throughout Asia including local staff meetings, review of sales plans, establish sales strategies, set objectives, procedures and measurements, and meet with clients. Vendor/factory meetings assisted in identifying global service requirements included in global service packages. Frequent travel to the U.S. to meet with corporate transportation managers.

*Sales Manager, New York Madison NJ* January 1991 – September 1993

Manage sales and support staff responsible for the development of import cargo from Asia with an annual budget of \$65 million. Territory includes New Jersey, New York City and Long Island with focus on department stores, the fashion industry, e-goods, footwear and toys. Directly responsible for the training and development of the sales staff, calculation and assignment of revenue and production plans, and coordination of sales activity. Active participation in account development. Report trends, market information and results to regional and corporate management. Develop company-wide sales and pricing strategies with corporate line management.

January 1988 – January 1991

*American President Lines, Jersey City, NJ*  
*Eastbound Sales Manager*

Managed an annual sales budget of \$43 million with concentration in the fashion industry. Consulted with clientele in the process of negotiating/signing contracts accounting for 60% of sales budget. Managed a sales staff of five.

October 1979 – December 1987

*Hapag-Lloyd America, Staten Island, NY*

*District Sales Manager New York, NY* August 1986 – December 1987

Territory consisted of New York City and Long Island. Managed a sales staff of six with focus on the import and export Atlantic market. Accountable for sales production, travel

and entertainment budget and daily sales activity. Liaison between sales office and pricing, operations and corporate management. Developed business plans and strategies. Active participation in account development.

*District sales Manager, Fairfield, CT May 1984 - July 1986*

Territory consisted of Connecticut and eastern New York State. Managed a staff of three. Developed carrier market share to the number 1 position for the Atlantic export market.

*Account Executive Fairfield, CT October 1979 - April 1984*

First to enter the Hapag-Lloyd sales management training program. Following one year of internal training, promoted to sales executive responsible for the development and maintenance of the Connecticut territory. Consistently provided annual sales production increases.

#### **Education**

Bachelor of Science, Business Administration, Stonehill College, North Easton, MA

**EXHIBIT 2****Expert Report of Steve Barnett****Documents Reviewed**

5/10/04	MOL S/C No. 5159351A04	GLL 11730
5/11/04	MOL S/C No. 5159351A04	GLL 11743
6/1/04	Rate sheet for P&O Nedlloyd S/C No. 04-0257	GLL 338735
2005	Rate sheet for Maersk S/C No. 22076, Am. 2	GLL 12395
2005	Rate sheet for Maersk S/C No. 22076, Am. 19	GLL 12452
5/5/05	Rate sheet for P&O Nedlloyd S/C No. 04-0257, Am. 49	GLL 359271
5/16/05	Rate sheet for P&O Nedlloyd S/C No. 05-037	GLL 348389
5/01/05	MOL S/C No. 5159351A05	GLL 11792
12/9/05	Rate sheet for P&O Nedlloyd S/C No. 05-037, Am. 40	GLL 335680
1/06	Global Link Logistics, Inc. Confidential Information Memorandum	GLL 194513
2005-2006	Rate sheet for Maersk S/C No. 33740, am. 22	GLL 12459
2005-2006	Rate sheet for Maersk S/C No. 33740, am. 25	GLL 12466
2/20/06	MOL S/C No. 5159351A06	GLL 11835
5/20/06	Stock Purchase Agreement	N/A
5/30/06	Email from Stella Zhou attaching rate sheet for Maersk S/C No. 117790	GLL 330003-5
6/6/07	Claimants' Notice of Claim	N/A
8/9/07	Claimants' Notice of Arbitration	N/A
10/17/07	Claimants' Amended Statement of Claim	N/A
10/18/07	Expert Report of Edward M. McDonough	GLL 21886-22327
1/11/08	Respondents' Amended Answering Statement	N/A
5/21/08	Claimants' Second Amended Statement of Claim	N/A
6/30/08	Edward R. McDonough's Supplemental Expert Report	N/A

**In the Matter of the Arbitration Between**

**Global Link Logistics, Inc., GLL Holdings,  
Inc., and Golden Gate Logistics, Inc.,**

**Claimants,**

**v.**

**Olympus Growth Fund III, L.P., Olympus  
Executive Fund, L.P., Louis J. Mischianti,  
L. David Cardenas, Keith Heffernan, Chad  
J. Rosenberg, CJR World Enterprises, Inc.,  
Gerald Benjamin, CBW Key Employee  
Capital II, LLC, Jewish Federation of  
Greater Atlanta for Gerald R. and Vicki S.  
Benjamin Philanthropic Fund, and Edward  
R. Casas, M.D.,**

**Respondents.**

**Case No. 14 125 Y 01447 07**

**EXPERT REPORT OF WAYNE R. SCHMIDT**

## **I. SCOPE OF RETENTION**

1. I have been retained by the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul, Weiss"), counsel to Respondents Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P., Louis J. Mischianti, L. David Cardenas, and Keith Heffeman, to provide expert advice and testimony on behalf of Respondents regarding the ocean transportation industry, Non-Vessel Operating Common Carriers ("NVOCCs"), ocean carrier service contracts, and the practice referred to in this arbitration as "split routing" or "re-routing." In particular, I have been asked to provide an opinion concerning the mechanics of split routing, the prevalence of split routing in the ocean transportation industry, if and how split routing impacts ocean carriers, whether a service contract entered into between Hecny Shipping Ltd. ("Hecny") and Maersk Lines ("Maersk") on May 29, 2006 included fixed rates for inland transportation, and the reasons why Maersk consolidated its rate offering for inland destinations in 2006 and 2007.

2. I am being compensated for my services in connection with this arbitration at a rate of \$312.50 per hour plus expenses.

## **II. BASIS OF OPINION**

3. My opinion in this arbitration is based on two things: (1) my forty years of experience in the ocean transportation industry, including experience working as an executive for Non-Vessel Operating Common Carriers ("NVOCCs"), ocean carriers, freight forwarders, and as a shipping industry consultant (a copy of my curriculum vitae is attached as Exhibit 1); and (2) my investigation of the practice referred to as split routing or re-routing in this arbitration.

4. As part of my investigation, I have reviewed documents, including documents provided to me by Paul, Weiss (a list of these documents is set out in the chart attached to this report as Exhibit 2). I have also interviewed numerous persons, including (1) Chad Rosenberg, Jim Briles, Phillip Ousley and Mark Kwan; (2) executives and regional managers from a number of NVOCCs; and (3) executives and managers from a number of ocean carriers and motor carriers. (A list of all interviewees is attached as Exhibit 3.)

### III. SUMMARY OF OPINION

5. Based on my experience and my investigation, I have formed the following opinions:

- (a) Split routing is a common practice in the ocean transportation industry;
- (b) Split routing does not negatively impact ocean carriers;
- (c) Ocean carriers are largely indifferent to and occasionally supportive of split routing;
- (d) Prior to my involvement in this arbitration, I had never heard it suggested that split routing is unlawful;
- (e) The May 29, 2006 service contract between Hecny Shipping Ltd. ("Hecny") and Maersk Lines ("Maersk") did not require Hecny to accept "floating" rates for inland transportation; and
- (f) Maersk's 2006 and 2007 program to consolidate and reduce its offering of inland U.S. destinations was intended to reduce Maersk's costs related to inland transportation in the U.S.

### IV. OPINION

#### A. Definition of Split Routing

6. Split routing is a practice in the ocean transportation business, for both import and export cargo, in which (1) a shipper, including an NVOCC, enters into

an intermodal shipping contract with an ocean carrier for the delivery of cargo, (2) the ocean carrier transports the cargo across the ocean and arranges for the inland delivery of the container by rail and/or truck, and (3) the shipper makes a separate arrangement with the motor carrier to deliver the cargo to a final destination point that is different from the destination point specified in the through bill of lading issued by the ocean carrier ("ocean bill of lading" or "OBL").<sup>1</sup>

7. Based on my experience and investigation, it is my expert opinion that split routing is a common and accepted practice in the ocean transportation business, including the TransPacific import trade. I have personally been aware of and participated in split routing since the 1970s as an executive at several different NVOCCs and ocean carriers.

**B. Federal Maritime Commission and Split Routing**

8. As an executive and consultant with NVOCCs and ocean carriers, I have always been extremely careful to seek legal counsel concerning the requirements of federal law, including the rules and regulations of the FMC, and to take steps to comply with such laws, rules and regulations. Although NVOCCs and ocean carriers I have worked for engaged in split routing, I have never heard any suggestion, from counsel or other sources, that this practice might violate federal law.

---

<sup>1</sup> When an NVOCC contracts with an ocean carrier for the shipment of cargo (intermodal or otherwise) there will always be significant differences between the OBL and the bill of lading issued by the NVOCC to its customer (the "house bill of lading" or "HBL"). In particular, an OBL and HBL will often list different information concerning: (1) the identity of the shipper, (2) the identity of the consignee, (3) the door destination, (4) the freight rates, and (5) on occasion, the cargo description.

**C. Ocean Carriers and Split Routing**

9. Based on my experience and investigation, it is my opinion that ocean carriers know that shippers, including NVOCCs, engage in split routing and that ocean carriers are largely indifferent to and occasionally supportive of the practice. Ocean carriers are largely indifferent to or supportive of split routing because it can help them increase their shipping volume, eliminate the need to re-issue shipping documents and the associated costs, split routing does not reduce their profits, and it usually does not increase their costs.

10. Split routing is a commercial practice that can function as a low cost method for an ocean carrier to increase its shipping volume to a particular geographic area. Rather than create multiple service offerings within a geographic area (and bear the costs of such multiple offerings), an ocean carrier can establish a favorable door rate for an NVOCC with the understanding that the NVOCC will use that door rate to service multiple nearby destinations via split routing. The NVOCC will sell to its customers based on that favorable door rate (plus any additional delivery costs that the NVOCC must pay to motor carriers) and will develop cargo volume for the ocean carrier to that particular geographic area.

11. I believe that split routing does not impact ocean carrier profits because split routing only impacts inland transportation and ocean carriers generally do not make any profits on inland transportation. It is standard industry practice for ocean carriers to price the inland portion of intermodal transportation in an attempt to cover the ocean carrier's cost for inland transportation, including repositioning costs. Historically, however, ocean carriers have been unsuccessful in recovering inland transportation costs in North American.

12. Split routing might impact an ocean carrier's costs when a shipper delivers the cargo so far from the destination listed in the OBL that it is unable to return the ocean carrier's empty containers to a destination designated by the ocean carrier for repositioning in a timely fashion. So long as empty containers are returned in a timely fashion to the specified location, split routing does not impact ocean carrier costs.

13. Based on my experience and investigation, it is my opinion that ocean carriers themselves do not believe that split routing deprives them of any profits or generally causes their costs to increase. If ocean carriers thought that split routing did so, it is my strong belief that they would take immediate steps to halt the practice and obtain compensation.

**D. Maersk**

14. I have reviewed the "rate sheet" that Hecny provided to GLL by in a May 30, 2006 email that sets out rates and terms for Service Contract No. 117790. This service contract was entered into by Hecny and Maersk on May 29, 2006.<sup>2</sup> Based on my review of this rate sheet, it is my opinion that Service Contract No. 117790 contains fixed inland rates for the life of the contract.

15. In 2006 and 2007, Maersk took steps to consolidate and reduce its service to inland destinations in the United States. As a result of this process, Maersk went from offering intermodal rates for 250,000 inland destinations in the United States to offering intermodal rates for 50,000 inland destinations. It is my

---

<sup>2</sup> GLL 3300003-5.

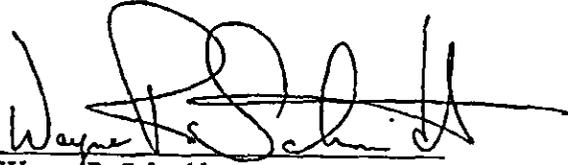
opinion that Maersk undertook this process in order to reduce costs associated with inland transportation in the United States, especially rail costs and the cost of repositioning equipment for export or an empty return trip to Asia.

## **VI. CONCLUSION**

16. With respect to split routing, it is my expert opinion that split routing is a common, legal practice in the ocean transportation industry. Ocean carriers are aware of split routing and occasionally support it.

17. With respect to Maersk, it is my expert opinion that the service contract which Hecny entered into with Maersk on May 29, 2006 contained fixed inland rates. Moreover, it is my opinion that Maersk's 2006 and 2007 program to reduce service to inland points in the United States was not related to split routing.

Dated: July 31, 2008  
New York, NY



Wayne R. Schmidt

## EXHIBIT 1

### Expert Report of Wayne R. Schmidt

#### Curriculum Vitae

### WAYNE R. SCHMIDT

4648 Tuscana Drive, Sarasota Florida 34241

Telephone: 941-923-2071

wrschmidtusa@aol.com

---

#### SUMMARY

Senior level ocean transportation industry General Management, Consulting and Operations Executive with hands-on operational experience in over eighty countries on six continents as an: ocean carrier; NVOCC; and freight forwarder. Extensive FTL/LTL carrier, and consulting services achievements both domestic and international. Demonstrated skills and success negotiating and dealing with organized labor (ILA), regulatory agencies (FMC), ocean carriers, and third-party sales organizations (3PL's).

#### PROFESSIONAL EXPERIENCE

W.R. SCHMIDT & ASSOCIATES, NJ

Since 1997

*Maritime Consultant & Founding Principal*

Ocean transportation & freight logistics general management and operations consulting company with assignments in Fortune 500 and Private Companies.

*Major Clients/Projects include:*

- DREWRY SHIPPING CONSULTANTS, LTD. / DREWRY SHIPPING CHAIN ADVISORS  
*Contract Consultant (2005 to Present)*
  - Port operations and pricing.
  - U.S. intermodal structure and pricing.
  - Panama canal and pricing by ocean carrier.
  - Service contract analysis and negotiations.
  
- BDP TRANSPORT LLC, Philadelphia, PA  
*President (2000 - 2003)*

Joint Venture between Dupont and BDP International Inc. Multi-million dollar import and export logistics company and NVOCC.

  - Created the structure and implemented the business plan driving export growth to over 39% in the first year, while maintaining yield/operating margins in excess of budget projections.
  - Established strategy and executed same to create a cost competitive import (Asia) service to facilitate the business plan and objectives to expand the services of the joint venture.
  - Import growth exceeded 59% over 20-month time frame.

- **CARO TRANS INTERNATIONAL, Inc., Union, NJ**  
*President (1997 - 2000)*
  - Reorganization of International subsidiary of Fortune 100 domestic unionized LCL/FCL motor carrier, into an independent corporation, with new equity owners.
  - Eliminated and sold non-profitable U.S. and international offices while restructuring International Agency Network to achieve profitable growth.

**PAUL F. RICHARDSON ASSOCIATES, Inc., Holmdel, NJ** **1992 to 1997**  
 Provider of consulting services to ocean carriers, port authorities, labor unions, shipping associations and motor carriers with emphasis on economic impact analysis in market strategies, operational port alternatives, intermodal routing and labor productivity.  
*Senior Maritime Consultant*  
*Paul F. Richardson Associates, Inc. (Cont.)*

***Clients/Projects included:***

- **Port Authorities**
  - ◆ New York
  - ◆ Baltimore
  - ◆ Charleston
  - ◆ Rotterdam
  - ◆ Amsterdam
  - ◆ Dubai
- **Ocean Carriers**
- **Motor Carriers**
- **Terminal Operators**
  - ◆ APM
  - ◆ Maher
  - ◆ P&O Ports
  - ◆ Global Marine Terminal
  - ◆ Howland Hook Terminal
- **Forwarders/Consolidators**
- **ILA**

**VOTAINER USA, Inc., Cranford, NJ** **1986 to 1992**  
*President*  
 Responsible for the reorganization of USA operation of multinational NVOCC, employing in excess of 200. Developed and managed overseas agents in Australia and South/Central America, implemented advertising campaign to support corporate objectives.

- Successfully negotiated settlement of 50-Mile rule litigation on behalf of worldwide Votainer organization.
- Negotiated service contracts with TACA, PCATB, ANERA and numerous independent lines worldwide.

- Established CFS operation and motor carrier networks to support same in California, Florida, South Carolina, Texas, Illinois and New Jersey.
- Negotiated purchase of Unimodal USA, Inc. and integrated USA and Australia operations.

***Prior Employment includes:***

**HAPAG-LLOYD (America), Staten Island, NY**

***Director of Sales***

**S.G.S. CONTROL SERVICES, Inc., New York, NY**

**INDEPENDENT CARGO SERVICES, Inc., New York, NY**

***Vice President and General Manager***

**ALLTRANS INTERNATIONAL, Inc., Secaucus, NJ**

***Vice President and General Manager***

**ZIM ISRAEL NAVIGATION COMPANY, New York, NY**

***Midwest Regional Manager***

**EDUCATION**

***Management Systems Certification, Nyenrode Business Universiteit (Nijenrode), Netherlands, 1991***

***Advanced Management Program Certificate, Wharton School, University of Pennsylvania, 1992***

**BA, Fairleigh Dickinson University, 1969**

**EXHIBIT 2****Expert Report of Wayne R. Schmidt****Documents Reviewed**

N/A	Various GLL shipping files	GLL 1-10723
N/A	Various GLL Service Contracts and rate sheets for Hecny service contracts.	GLL 10724-13564
N/A	Neil Mayer Presentation "Legal and Regulatory, Doing it Right: Rules for Success"	HMC 38
8/5/03	Transcript of 8/5/03 Presentation by Neil Mayer to GLL	GLL 968520
1/06	GLL Confidential Information Memorandum	OLYMPUS 7786-7871
2/21/06	GLL Standard Operating Procedures, Draft Wayne Martin	GLL 384522
3/28/06	Report of Jon Monroe Consulting regarding Due Diligence	GLL 328109
4/17/06	GTCR Investment Committee Memorandum	GLL 327696
4/24/06	GTCR Investment Committee Memorandum	GLL 22526
5/20/06	Stock Purchase Agreement and Schedules	GLL 19077
1/07	Presentation regarding Maersk Project Velocity	GLL 986752
3/19/07	GTCR Investment Committee Memorandum	GLLM 968723
4/07	Presentation "NAM Velocity Update"	N/A
6/6/07	Claimants' Notice of Claim	N/A
6/14/07	Letter from L. David Cardenas in response to Notice of Claim	N/A
6/15/07	GTCR Investment Committee Memorandum	GLLM 968860
8/2007	Management Discussion & Analysis	GLLM 1074985

	Presentation	
8/9/07	Claimants' Notice of Arbitration	N/A
10/17/07	Claimants' Amended Statement of Claim and Exhibits	NA
10/18/07	Expert Report of Edward R. McDonough	GLL 21886-22327
10/29/07	Respondents Answering Statement to Claimants' Notice of Arbitration and Amended Statement of Claim	NA
11/2007	Management Discussion & Analysis Presentation	GLLM 1108699
3/2008	Management Discussion & Analysis Presentation	GLLM 1108685
4/29/08	Transcript of Deposition of Molly Jaworski	N/A
6/4/08	Transcript of Deposition of Jim Briles	N/A
6/25/2008	Transcript of Deposition of Mark Kwan	N/A
7/2/08	Transcript of Deposition of Phillip Ousley	N/A
7/11/08	Transcript of Deposition of Constantine Mihas	N/A
7/15/08	Transcript of Deposition of Edward Feitzinger	N/A
7/16/08	Transcript of Deposition of John Rocheleau	N/A
7/18/08	Transcript of Deposition of John Williford	N/A
7/25/08	Transcript of Deposition of Christine Callahan	N/A

**EXHIBIT 3****Expert Report of Wayne R. Schmidt****List of Interviewees**

[REDACTED]			
Alagna, Joe	Vice President, Sales	China Shipping	Ocean Carrier
Bashkow, Jack	Director of Transp.	Samuel Shapiro & Co.	OTI
Barnett, Steve	General Manager, East Coast Region	Wan Hai Lines	Ocean Carrier
Bennett, David	VP Sales & Development	Globe Express Services, Ltd.	OTI
Bitter, Leuder	VP, Western Region	CaroTrans Int'l, Inc.	OTI
Briles, Jim			Former GLL Employee
DelPretti, Vinny	VP, Imports	OOCL	Ocean Carrier
Gold, Don	Terminal Manager	American Trans Freight	Motor Carrier
Donohoe, Terry	VP	DB Schenkers	OTI
Frederick, James	VP	Frederick Ace	Motor Carrier
Freeman, Jack	VP	Jack Freeman Trucking	Motor Carrier
Gargaro, Mike	Retired VP	UPS Supply Chain	OTI
Giba, Joe	Baltimore Branch Manager	DHL/Danza	OTI
Hitchcock, Keith	San Francisco Manager	DB Schenkers	OTI

Hove, Thorkil	Manager Key Accounts & Past Director NVOCC Sales	Maersk Lines	Ocean Carrier
Howard, Gregg	President	CaroTrans Int'l, Inc.	OTI
Jones, Ann	Terminal Manager	Eagle Systems	Motor Carrier
Keller, Peter	Chief Operating Officer	NYK Lines North America	Ocean Carrier
Kwan, Mark			Former GLL Employee
Matthews, Diane	Owner	Precise Transp. Services	Motor Carrier
Milone, Ron	VP, Imports	Mediterranean Shipping Co.	Ocean Carrier
Munson, Angie	Founder & Director	Bicycle Small Shippers Ass'n	OTI Ass'n
Osterbach, Gary	VP, Western Region	Shipco Transport, Inc	OTI
Ousley, Phillip			Former GLL Employee
Overby, Billy	Int'l Marketing Manager	Empire Trucking Lines	Motor Carrier
Pouderion, Cass	Senior VP, Ocean Products	DHL/Danza	OTI
Rodriguez, Jessie	VP, Import	Streamline Shippers & Associates	OTI
Rosenberg, Chad			Former GLL Owner
Rosenberg, Neil	President	Rose Container Line, Inc.	OTI

<b>Saggese, Joe</b>	<b>Executive Director</b>	<b>North Atlantic Alliance Ass'n (NAAA)</b>	<b>OTI Ass'n</b>
<b>Sailing, Tim</b>	<b>Executive VP</b>	<b>APEX</b>	<b>OTI</b>
<b>Sauter, Tinamarie</b>	<b>Chief Operating Officer</b>	<b>Mallory Alexander</b>	<b>OTI</b>
<b>Schopper, Katie</b>	<b>Customer Service</b>	<b>Road Link</b>	<b>Motor Carrier</b>
<b>Williams, Shelly</b>	<b>Terminal Manager</b>	<b>Heartland Express / Intermodal AKA I.S.I.</b>	<b>Motor Carrier</b>