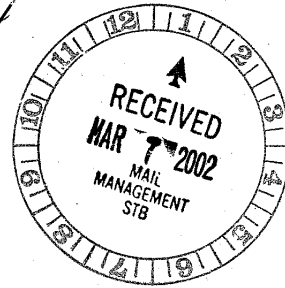


204924



BEFORE THE
SURFACE TRANSPORTATION BOARD

DHX, INC.,

Complainant,

v.

STB Docket No. WCC-105

MATSON NAVIGATION COMPANY
and
SL SERVICES, INC.
a.k.a
SEA-LAND SERVICE, INC.,

Defendants.

COMPLAINANT'S REPLY TO DEFENDANTS'
MOTION FOR PROCEDURAL SCHEDULE
AND
TO REQUIRE AMENDED COMPLAINT

ENTERED
Office of the Secretary

MAR 08 2002

Part of
Public Record

Submitted By:

RICK A. RUDE, Esq.
Suite 103
207 Park Avenue
Falls Church, VA. 22046
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Attorney For Complainant
DHX, INC.

Dated: 7 March 2002
Due : 7 March 2002

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Introduction

Defendants, by motion filed February 15, 2002, submitted to the Board a demand that Complainant be required to file and serve an amended complaint. The Defendants further included the point that they would then be permitted to file new answers to the amended complaint. While the motion is captioned as a "Motion ... For A Procedural Schedule", the contents demonstrate that it is a back-door motion more properly reviewable pursuant to Rule 1111.5, 49 CFR (2000 ed.) of this Board's Rules of Practice and Procedure.

The motion is patently inconsistent with proper procedure, controlling law, and is most of all untimely. The defendants have already filed answers to the original complaint and have even submitted motions for dismissal/summary judgment. This new motion is a collateral attack and reargument of the Board's decision in this case as served on December 21, 2001. The Board, in its December 21st decision and order, reviewed the complaint, the motions, the affidavits, the supplemental filings, and then denied defendants' motions (Sea-Land conveniently submitted a letter concurrence to the Matson documents/pleadings).

It appears that the defendants have finally come "face-to-face" with the fact that their actions in the U.S./Hawaii trade will be scrutinized. In order for the Board to more clearly recognize the circumstances of this proceeding, Complainant will note the following basic and key facts:

2.

- 1) Matson and Sea-Land "split" the U.S./Hawaii trade on a 70/30 basis.
- 2) Matson and Sea-Land maintain pricing and rate structures that, on the surface, mirror one another.
- 3) Matson and Sea-Land have a pattern of reciprocal rate filings which result in identical rates and both carriers refuse to engage in any form of volume pricing with freight forwarders.
- 4) Matson and Sea-Land maintain excessively high "port to port" rates which are the only rates made available to freight forwarders.
- 5) Matson and Sea-Land both maintain separate rate structures (to include a separate rate tariff for Matson) that are made available to and are used by full container load shippers.
- 6) Matson and Sea-Land have a reciprocal service agreement that permits each carrier to "protect" their business from any issues of service failures and which work to eliminate "service competition" as an element of overall competition in the U.S./Hawaii trade.
- 7) The Matson and Sea-Land reciprocal service agreement is provided under rate structures that are not filed with the Board.
- 8) Matson and Sea-Land's full container load rate tariffs are clearly "part" tariff publication and "part" unfiled contract agreements--none of which appear to be under §§14101(b).
- 9) Freight Forwarders represent the only real and true competition for either Matson or Sea-Land in the U.S./Hawaii trade.
- 10) The exclusion of Freight Forwarders from the full container load market constitutes an unreasonable practice and a patent activity in violation of the National Transportation Policy.

3.

The above factual summary is further compounded by the actions of defendants, through a series of tariffed and un-tariffed actions, to isolate freight forwarders from the ability to handle or participate in full container load cargoes. The defendants are working in concert to raise the shipping costs of freight forwarders and thereby render forwarders uncompetitive for any full load business. These concerted activities included rules changes involving tariff items only used by forwarders; secondly, revising or eliminating tariff items and language that were beneficial to forwarders; and rate increases on cargoes shipped by forwarders. In fact, Mr. Paul Stevens stated in his affidavit that 98% of the users of the overflow rule were forwarders. Accordingly, changes to that rule impacted only the freight forwarders. Such disparate impact is the essence of an unreasonable practice.

As noted above, defendants' motion is really for a more definite statement under Rule 1111.5. Defendants only give lip service to the intended and stated purpose of the motion--to set a schedule. Complainant will first address the proposed procedural schedule.

(I)
ARGUMENT

The Procedural Schedule

The purpose of the Board's order was to jointly have the parties agree to and set a procedural schedule in order to move this proceeding forward. Complainant, by separate motion, did

4.

propose a reasonable schedule which was also consistent with appropriate judicial schedules in the District of Columbia. Defendants have proposed a massive six week period between the filing of an amended complaint and the filing of Complainant's Opening Statements. Such a proposal is ridiculous. It is also noted that defendants have declined to participate in discovery without the demanded amended complaint. The abbreviated time frame proposed by defendants is very similar to that contained in Rule 1111.8 to comply with the statutory deadlines that are contained in 49 U.S.C. §§10704(c). There is no such statutory deadline in the present case. Further, under Rule 1111.8 the parties begin exchanging discovery materials at the time the complaint is filed.^{1/}

Defendants' motion states that their proposed schedule is "fully adequate for a just adjudication of the issues". (Motion at page 6). This represents nothing more than a self serving conclusion. Defendants proposed to "give DHX six weeks" from the date of the defendants "new" answers to file Complainant's initial evidence and argument. Such a matter is so preposterous-- it does serve to support the fact that Defendants are seeking to avoid and evade discovery in this case. The Board, which now relies upon public complaints to enforce the ICCTA, can not approve such a schedule. It is

1/

There is no doubt that Complainant will have filed a motion to compel compliance with discovery before the Board even issues a decision in the instant motion. The records in dockets WCC-102 and WCC-104 reflect the splenetic nature of cases in the domestic trades. The carriers delayed the Guam Rate case 13 years!

submitted that in addition to an appropriate discovery schedule the Board can save time by immediately assigning the case to an administrative law judge to address the upcoming refusals by the defendants to co-operate in discovery.

The Motion To Require Amended Complaint

This issue represents the "real" purpose of defendants' motion. Defendants, make the following statements in their joint motion:

- Page 4 - "The need for an amended complaint in this proceeding is the crux of the dispute between the parties in their attempt to agree on a procedural schedule".
- Page 3 - "DHX must file and serve a complaint that identifies the multi-container shipment rates that DHX is challenging. Without that clarification, the carriers will not have fair notice of the claims against them, cannot know how to answer the complaint, and cannot know whether any discovery that DHX may seek is relevant and within the scope of what is being investigated".
- Page 3 - "For the same reasons, the complaint must clarify whether it is alleging an unreasonable practice case (see Decision at 6) and if so, identify the specific practices it is challenging".

The above statements are made by counsel for defendants AFTER counsel filed BOTH answers and motions to dismiss/summary judgment. The record contains much in the way of correspondence, pleadings, affidavits, and the like which placed defendants on notice of the issues. Matson, who can now hardly claim lack of notice of the issue, repeated the contention of DHX that Matson was attempting to "eliminate" the business of the freight forwarders---NOT ONCE BUT THREE TIMES(See Matson motion at page 18, footnote 9). Matson's counsel, at page 21 of the

same motion references "alleged practices" contained in the affidavit of Mr. Dechter which are alleged to constitute unreasonable business practices (Motion at page 21-22). The same motion likewise notes that Mr. Dechter speaks to various actions that are weighted heavily "to eliminating many of the niches and competitive advantages" of freight forwarders which were used to "compete against steamship lines on full containerload business"(Id.) Further, attached hereto and identified as Attachment Nos. 7, 8 and 9, are copies of a supplemental statement filed by DHX, Matson and Sea-Land's letter Oppositions(No. 8) and a publication set forth by Matson Navigation Company regarding the scope of its services. Attachment No. 7 reflects the further complaint of DHX that the carriers were refusing to engage in service contracts with DHX but were doing so with shippers in other trades. Specifically Puerto Rico and Alaska. Matson, on July 7, 2000 via counsel, denied that Matson operated in the Puerto Rico trade. The letter states

"Matson does not operate in the Puerto Rico trade; it operates only in the Hawaii and Guam trades." (Attachment No. 8, pg. 1)

A quick review of the advertisements (web-site) which is posted by Matson reflects that Matson holds itself out to provide service in both the Alaska and Puerto Rico trades.^{2/} In addition,

2/

This material is not submitted to impugn counsel for Matson but to underscore the gross inaccuracy of the representations that are made. It would be very interesting to see what that Web-site noted in July 2000. However, the point of this reference is they have long had notice of the issues in this case.

to the references to the service contracts in the other domestic trades, again Matson states the "gist" of the DHX complaint. In the July 7, 2000 letter, it is stated:

"In any event, DHX's complaint in this case relates only to tariff actions taken by Matson and Sea-Land, and the gist of the complaint is that as a result of those actions, DHX is no longer able to use the carriers' tariffs as profitably"

Quite frankly, it is one thing to say "I don't understand" then, but after the pleadings and correspondence, it is an entirely different thing to say "I don't understand now".

Counsel, as an effort of courtesy and being under no obligation to do so, provided correspondence to defendants in which he set forth the "areas" of unreasonable practices which he noted from the files that he had reviewed as of that date (January 31, 2002). These areas were based upon matters raised in the pleadings, affidavits and correspondence. Counsel also noted that any questions or perceived short comings in the matter could be very easily remedied by simply issuing interrogatories to Complainant. It was further noted that Complainant would more than likely be identifying further matters during the discovery process which would be the result of discovery from defendants. It is most ironic that Complainant went so far as to "educate" defendants on the legal definition of and standards for unreasonable practices--including controlling case citation. (See Exhibit G to defendants' motion). It may very well be that defendants have filed the instant motion due to the point that counsel for Complainant pointed out that the Overflow Rule which defendants

published is more properly identified as a Freight Classification Rule and that inclusion of rates in "rules" is not an accepted publication technique. (See counsel's letter of February 11, 2002 to counsel for defendant which is attached to defendants' motion as Exhibit G).

The Board, at page 5 of its December 19, 2002 decision, as the Board likewise stated earlier, defendants may "have engaged in unreasonable practices in an effort to put consolidators such as DHX out of business".^{3/} The actions of the defendants in this regard include (1) isolation of forwarders in the carriers rate structures by way of multiple tariffs, (2) reduction or removal of tariff provisions which were used by forwarders to compete with defendants, (3) coordination of and/or cooperation between defendants in simultaneous alignment of forwarder pricing/rate structures, (4) refusing forwarders access to intermodal tariff rates under which the defendants conduct business with full container load shippers, (5) contract rates and unfiled rates/terms/conditions which work to protect defendants full container load business from any competition by forwarders, (6) publication and application of conflicting provisions which are construed against the for-

^{3/}

It can not go unnoticed that defendants make very loose use of certain terms. As example, "rates applicable on multi-container shipments" is different from "multi-container rates". Multi-container rates are more properly volume rates which vary with the quantities of cargo shipped. In the present case, defendants not only appear to provide contract or off-tariff rates, BUT publish tariff provisions which permit multiple container shipments under a single rate WITHOUT any volume or quantity commitment. However, such rates almost always involve "side-agreements" containing terms and conditions that are intentionally not published. This type of 'secret' arrangement works to exclude forwarders from use of such rates. Operating under unfiled rates is an unreasonable practice as well as failures to file rates.

warders, (7) refusals to deal in that the carriers refuse to afford forwarders service contracts, time-volume rates, true multiple container rates that are determined on the basis of quantities of cargo/containers shipped rather than based upon some non-transportation factor or condition, (8) coordination of carrier services such that neither carrier is subject to any form of service competition based upon 'performance' or failure to perform. The above items are matters that are apparent on the face of the pleadings to date. In the litigation of such matters, it is the experience of counsel that when such things are open and obvious there are undoubtedly much further such matters that are "under the rug". With the above points in mind, Complainant will further address defendants' request for a more definite statement.

A. DEFENDANTS ARE IMPROPERLY USING THE
DEMAND FOR AN AMENDED COMPLAINT AS
A FORM OF DISCOVERY.

A review of the defendants' motion reflects the claim that "clarification" is needed as to the identify of the 'multi-container rates' being challenged and 'specific practices'. (Motion at page 3). The defendants expose the improper purpose of their motion when they stated that they need that information to

"...know whether any discovery that DHX may see, is relevant and within the scope of what is being investigated". (Id.)

"...clarification of these issues is necessary to permit Matson and Sea-Land to properly answer the complaint and determine the relevance(or not) of any DHX discovery requests". (Motion at page 4)

Defendants certainly understood the issues raised in the complaint such that defendants were able to answer (both have already filed answers and affirmative defenses) and were further able to prepare and file requests for dismissal/summary judgment. The provisions of Rule 11.5 are similar to those contained in Rule 12(e) of the Federal Rules of Civil Procedure and should be construed in the same manner. The courts, in response to motions for a more definite statement have held that such a motion is ONLY appropriate when the complaint is "so vague and ambiguous" that the defendants can NOT frame a responsive pleading. Compare, Berry v. Hitachi Home Electronics(America), Inc., 157 F.R.D. 477, 480 (D. Cal. 1993) wherein the court further noted that

"In addition, the Moving Defendants have attempted to use their Rule 12(e) motion to elicit additional information regarding specific claims of the '734 patent which are allegedly infringed. Where the information sought is available through the discovery process, a Rule 12(e) motion should be denied. See Famolare, Inc., 525 F.Supp. at 949. In this court's opinion, as the identity of the specific claims of the '734 patent which allegedly have been and continue to be infringed can readily be ascertained through the liberal federal discovery procedures, the instant action does not warrant a more definite statement".

The court in Wheeler v. United States Postal Service, 120 F.R.D. 487, 488 (D. Pa. 1987), in a similar situation also held that a motion for a more definite statement was not to be used as a tool for discovery. In that case, the court stated:

"A motion for a more definite statement is not a substitute for the discovery process. ... The specific information which the defendant seeks ... can be obtained through discovery. We also believe ... the extent and nature of the plain-

"cont.

tiff's FLSA claims is within defendant's knowledge. See Barret v. National Malleable and Steel castings Co., 68 F.Supp. 410 (W.D. Pa. 1946). Therefore, since we find that the defendant's motion for a more definite statement is not warranted, we will deny the motion."

See also, FRA S.p.A. et al. v. Surg-O-Flex of America, Inc., 415 F.Supp. 421, 427 (S.D. NY. 1976)(Rule 12(e) cannot be invoked to usurp the ordinary channels of pre-trial discovery).^{4/} and U.S. v. Metro Development Corp., 61 F.R.D. 83, 87 (N.D. Ga. 1973)(probing for greater detail or specificity of the plaintiff's charges is more properly within the realm of discovery provisions of the federal rules).

The defendants in this proceeding are free to issue discovery to complainant. Complainant is more than willing to respond. The obvious purpose of the motion herein is to delay, permit a renewed attack on Complainant's claims, improperly restrict discovery to matters presently known which do come within the rates and practices issues, and obstruct and unduly limit discovery. Discovery disputes should be resolved as matters of discovery NOT through the improper tactics presently being used by defendants.

B. DEFENDANTS ARE ON NOTICE OF THE ISSUES
AND ARE ABLE TO RESPOND TO THE ISSUES
RAISED AND THAT IS ALL THAT IS REQUIRED
UNDER THE FEDERAL ADMINISTRATIVE PROCESS.

It appears that defendants have a mis-conception regarding the nature of administrative proceedings. The Board is not bound by the specifics of a complaint but may look to the

4/

Defendants are more than aware of the actions that they have taken to eliminate forwarders from the full container load market. See Matson Motion to Dismiss at pages 21-22 wherein they claimed that the actions were legitimate competitive actions. Motions for a More Definite Statement are denied when the information is within the defendant's knowledge. Cf. Lert v. A.C. Nielson Co., 1993 U.S. Dist. LEXIS 4235, (N.D. Ill. 1993) as example.

gravamen of the issues raised. The court, in Chesapeake & O. Ry. Co. v. United States, 11 F.Supp. 588, 592 (S.D.W.Va. 1935) made the following observation regarding complaints and procedures before the Interstate Commerce Commission. In that case the court stated:

"Under paragraph 1, §13, of the Interstate Commerce Act (49 U.S.C.A. §13, par.1), after a complaint is filed before the commission, it becomes the duty of the commission to investigate the complaint and take proper action upon its own motion. ... its power is not restricted by the issues raised in the complaint, provided, of course, that the railway alleged to have committed the violation of the act had full opportunity to make defense against such charge. Here the railway had such an opportunity and the issue of unjust discrimination, as to the rates in effect for transshipment by river, was fully discussed in the hearing before the commission and evidence was offered on this point. It cannot be said that the railroad had no opportunity to make defense against the charge.

It is the duty of the commission to look to the substance of the complaint rather than its form and it is not limited in its action by the strict rules of pleading and practice which govern courts of law (citations omitted)."

The Board is likewise permitted to interpret a complaint to get to the "gist" of the matter and is not bound by the same types of 'specificity' rules as are courts. For example, in Pittsburgh And Lake Erie Railroad Co. v. Interstate Commerce Commission, 796 F.2d. 1534 (D.C. Cir. 1986), the court affirmed the decision of the Commission which involved the Commission's treatment of a practices claim as a request for rate prescription. 796 F.2d. at 1539. The court noted that the Commission's treatment of the claim was consistent with and in accordance with the National Transportation Policy. 796 F.2d. at 1541. They

duly noted that the Commission had the discretion (which it has employed in the instant case) to 'interpret' any proceeding in a manner consistent with the NTP and that is all that is required. 796 F.2d. at 1541. The court also stated:

"The commission's willingness to read the complaint as though it were filed under the appropriate provision can therefore by no stretch of the imagination be characterized as a denial of due process". (796 F.2d. at 1542, n. 2)

The question of administrative process and 'pleading' (as to complaints) is governed by the standards restated by the court in Aloha Airlines, Inc. v. Civil Aeronautics Board, 598 F.2d.

250, 262 (D.C. Cir. 1979) wherein the court stated:

"We are not persuaded by Aloha's procedural argument. Pleadings in administrative proceedings are not judged by the standards applied to an indictment at common law. It is sufficient if the respondent 'understood the issue' and 'was afforded full opportunity' to justify its conduct during the course of the litigation. NLRB v. Mackay Radio & Telegraph Co., 304 U.S. 333, 350, 58 S.Ct. 904, 82 L.Ed. 1381 (1938)(additional citations omitted).

The above has been a long standing legal axiom for practice and procedure before the Commission and now this Board. Cf. Nash Spokane Co. v. Director General, 100 I.C.C. 223, 224, wherein it is stated:

"It is not essential to specify by number or to use the specific words of the section of the act which is alleged to have been violated if from the context of the complaint it becomes apparent that defendants are apprised of the nature of the violation they are called upon to answer".

The defendants are free to employ the Board's discovery procedures but apparently do not want to do so. Under defendants' grossly abbreviated schedule, they would provide themselves a total of 22 days for discovery after the date of their 'new' answers to the complaint. This simple fact underscored the disingenuous nature of the instant motion.

C. DEFENDANTS, BY THEIR CONDUCT, HAVE
WAIVED ANY RIGHT TO MAKE A MOTION
FOR MORE DEFINITE STATEMENT.

Complainant has noted above that Rule 1111.5 governs this motion. A motion to make more definite is permitted to be filed at the time an answer is filed. Defendants, if they did not understand the nature of the claims, were free to and could have filed such a motion. Instead, defendants not only answers with affirmative defenses, but "added" to the record in this case by way of affidavits and a motion for summary judgment. Once they lost the motion to dismiss/summary judgment, they can not say that the claims or complaint is so vague and ambiguous that they can not respond--the fact is they did respond. The court, in Minkoff v. Stevens Jrs., Inc., 260 F.2d. 588, 589 (2nd Cir. 1958), noted that the answering of a complaint was "sufficient evidence" that a defendant had adequate notice of the issues raised. See also, Fed.R.Civ.Proc. 12(g) which requires a consolidation of defenses (including for a more definite statement) or such non-jurisdictional defenses are waived. The same approach should be applied in this case. Repetative motions by defendants should not be permitted nor sanctioned less indefinite delays in litigation result.

Defendants refer the Board to the decision in West Texas Utilities Co. v. Burlington Northern R.R. Co., ICC Docket No. 41191 (Served Feb. 14, 1995). Defendants' reliance on that case is misplaced. The facts are inopposite to those of in this case. In West Texas Utilities the defendant railroad filed its motion for a more definite statement at the same time that it filed its answer. This was consistent with the requirements of Rule 111.5. There was no issue of waiver and further more, the case involved a specific point railroad rate from a given location. It is interesting to note that the Commission, in addressing the complainant's claims, noted that a carrier's "refusal to deal"/"refusal to publish rates" came within the four corners of an unreasonable practice claim.

Wherefore, it is submitted that defendants have waived any right to demand a more definite statement after having filed a motion to dismiss, or in the alternative for summary judgment in this proceeding.

Conclusion

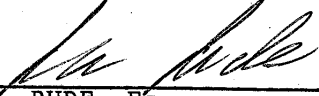
It is hereby respectfully requested that defendants' motion for a procedural schedule and for more definite statement be denied; And that the Board enter such other and further order as it deems just and appropriate in the circumstances.



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Attorney For Complainant
DHX, INC.

Certificate Of Service

I hereby certify that a copy of the above and foregoing document has been served, by first class mail, postage prepaid, upon counsel for defendants this 7th day of March 2002.



RICK A. RUDE, Esq.

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ATTACHMENT NO. 7

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June 30, 2000

VIA FEDERAL EXPRESS

Ms. Anne Quinlan
Office of the Secretary
Surface Transportation Board
Case Control Unit
1925 K Street NW
Washington, D.C. 20423

Re: **DHX, Inc. v. Matson Navigation
Company and Sea-Land Service, Inc.
Docket No. WCC-105**

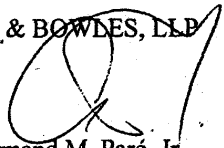
Dear Ms. Quinlan:

We refer to our brief and sworn statement of Brad Dechter, President of DHX, sent with our letter of December 3, 1999. Mr. Dechter has asked that we supplement his statement with the attached letter (and 10 copies) from him. Please let us know if you would like this notarized.

Very truly yours,

NOURSE & BOWLES, LLP

By:


Armand M. Paré, Jr.

AMP:cmc
Encs.

cc: **VIA FEDERAL EXPRESS**
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Robert S. Zuckerman, Esq.
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bcc: VIA MAIL
Mr. Brad Dechter
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DHX

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June 29, 2000

Mr. Armand M. Paré, Jr
Nourse and Bowles
One Exchange Plaza
At 55 Broadway
New York, New York 10006

Dear Jay:

The abuses of power which are currently taking place by Matson Navigation Company and Sealand Services Inc. (now CSX Lines) in the Hawaii ocean trade lanes continue to occur. As an example, both carriers currently have confidential contracts with customers in other domestic trade lanes (Matson in Puerto Rico and CSX Lines in Puerto Rico and Alaska).

I have requested from each of them that they negotiate such a contract with DHX, Inc. Both carriers have responded to me, verbally only, that "this is something we don't do in the Hawaii or Guam trade lanes, and we don't want to start". If they do it to Alaska and Puerto Rico, and they do it with freight forwarders, NVOCC's and Third Party Ocean Intermediaries, then why don't they allow it in Hawaii? The answer is simple - no competition, no regulation. They can do virtually whatever they want whether or not it is in the overall public good.

Sincerely,

Bradley J. Dechter
President

Dedicated to Delivering Perfection

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July 7, 2000

BY HAND

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**Re: DHX, Inc. v. Matson Navigation Company, Inc. and Sea-Land
Service, Inc., Docket No. WCC-105**

Dear Secretary Williams:

I am writing to respond on behalf of Defendant Matson Navigation, Inc. ("Matson") to the letter filed on June 30, 2000 by Armand M. Pare, Jr., counsel for DHX, Inc., which attached a letter from DHX's President, Brad Dechter, to Mr. Pare. This submission by DHX amounts to a second reply to the motions of Matson and Sea-Land Services, Inc. (now CSX Lines) to dismiss DHX's complaint and is clearly not permitted by the Board's rules. Furthermore, Mr. Dechter's letter is factually inaccurate, at least as to Matson, and, more importantly, completely irrelevant to DHX's contentions in this case and to the reasons advanced by Matson and Sea-Land as to why the complaint is legally groundless and should be dismissed.

Mr. Dechter is incorrect in asserting that Matson has confidential transportation contracts in the Puerto Rico trade. Matson does not operate in the Puerto Rico trade; it operates only in the Hawaii and Guam trades. Matson has a minority, non-controlling interest in one of the carriers operating in the Puerto Rico trade, but does not itself operate in that trade.

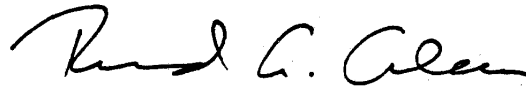
In any event, DHX's complaint in this case relates only to tariff actions taken by Matson and Sea-Land, and the gist of the complaint is that as a result of those actions, DHX is no longer able to use the carriers' tariffs as profitably as it once could. Nothing in the complaint relates to contracts or suggests any desire by DHX to enter into contracts.

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

Vernon A. Williams
July 7, 2000
Page 2

In sum, DHX's submission is unauthorized, inaccurate and irrelevant and should be disregarded by the Board.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard A. Allen". The signature is fluid and cursive, with the first name "Richard" being more prominent and the last name "Allen" following in a similar style.

Richard A. Allen

cc: Armand M. Pare, Jr., Esq.
Robert S. Zuckerman, Esq.

SL Service, Inc.

SL Service, Inc.
2101 Rexford Road
Suite 350 West
Charlotte, NC 28211

ROBERT S. ZUCKERMAN
Deputy General Counsel &
Corporate Secretary
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July 13, 2000

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

RE: DHX, Inc. v. Matson Navigation Company, Inc. and
Sea-Land Service, Inc. - STB Docket No. WCC-105

Dear Secretary Williams:

Please note the following regarding this Docket:

1. Sea-Land Service, Inc. is now known as SL Service, Inc. and its address is:
2101 Rexford Road, Suite 350 West, Charlotte, North Carolina 28211
2. SL Service, Inc. supports the positions taken by Matson in counsel's letter dated
July 7, 2000 that the letter filed on June 30, 2000 by counsel for DHX, Inc. is
irrelevant, and inaccurate and should be disregarded by the Board.

Sincerely yours,



Robert S. Zuckerman
Deputy General Counsel
SL Service, Inc.

cc: Armand M. Pare, Jr., Esq.
Richard A. Allen, Esq.

ATTACHMENT NO. 9



Matson

Ocean Transportation



History of
Innovation

Versatile
Fleet

'One Call
Does It All'

Online
Transactions

Intermodal
Service

Specialized
Services

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As a leading U.S. domestic carrier with over a century of service, Matson's expertise in providing a full array of transportation services is among the best in the industry.

History of Innovation

Matson has been serving the Pacific since 1882 and is recognized as an industry leader. The company's impressive array of firsts include the introduction of a cold storage plant for cargo, shipboard electric lights and an oil burning cargo vessel in the Pacific. Matson's historic introduction of containerization in the Pacific in 1958 launched the development of a container freight system that became a model for carriers worldwide. The company continues to move forward with innovations in transportation services, including Automatic Equipment Identification (AEI), remote refrigerated container monitoring and world-class customer service capabilities.

Versatile Fleet

Matson's fleet of containerships, barges and tugs are equipped to handle virtually any type of cargo for each of our domestic services. The company's long-haul vessels provide service frequency that allows customers scheduling flexibility. Matson's barge fleet is designed specifically for the island economies they serve.

'One Call Does It All'

Matson offers state-of-the-art customer support which simplifies the entire freight process. By calling one toll-free number, customers can quickly and easily obtain information pertaining to any aspect of doing business with Matson, including rate quotations, booking, billing, schedules, equipment needs, shipment status and problem resolutions.

Online Transactions

For added convenience, Matson offers a Virtual Customer Support Center online, allowing customers to utilize today's technology to book, track and handle their shipment information needs. Through the use of customized booking templates, customers can complete a booking with a minimal amount of "clicks." Shipment tracking features allow customers to track the status of a container throughout its movement. Other online features include account balance information, tariffs, vessel schedules, submission of billing instructions, and retrieval of billing documents. The site also gives customers the option of contacting a "live" customer support representative while online to assist with a transaction.



Matson

Ocean Transportation

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Puerto Rico Service

As a leading U.S. domestic carrier with over a century of service, Matson's expertise in providing a full array of transportation services is among the best in the industry. Our "one call does it all" Customer Support Center allows customers to handle virtually any transportation need with only one call, regardless of whether it pertains to booking, shipment tracking, equipment, billing, e-commerce or vessel schedules. We are ready to help you make all of your transportation arrangements from any point in the U.S. to Puerto Rico. Please call 1-888-962-8766.