

ZUCKERT SCOUTT & RASENBERGER, L.L.P.
ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone (202) 298-8660 Fax (202) 342-0683
www.zsrlaw.com

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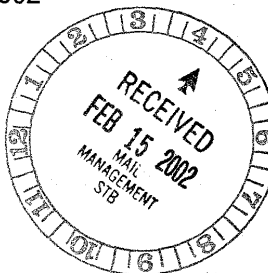
SCOTT M. ZIMMERMAN

February 15, 2002

DIRECT DIAL (202) 973-7929

BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street
Washington, D.C. 20423



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

Dear Secretary Williams:

Enclosed for filing in this proceeding are the original and 10 copies of the Motion Of Matson And Sea-Land For A Procedural Schedule, as well as a 3.5" computer disk containing the text of the motion in WordPerfect 5.0 format.

Please date-stamp and return to our messenger the three additional enclosed copies of this pleading.

Many thanks. Please feel free to call if you have any questions.

ENTERED
Office of the Secretary
FEB 15 2002
Part of
Public Record

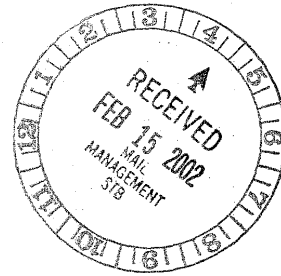
Sincerely,

Scott M. Zimmerman

Enclosures

204783

Before the
SURFACE TRANSPORTATION BOARD



DHX, Inc.

Complainant,

v.

Matson Navigation Company, Inc. and
Sea-Land Service, Inc.,

Defendants,

Docket No. WCC-105

ENTERED
Office of the Secretary

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Public Record

MOTION OF MATSON AND SEA-LAND FOR A PROCEDURAL SCHEDULE

In its decision served December 21, 2001, the Board directed the parties to confer and jointly propose a procedural schedule for this case. (The due date for that proposal initially was January 30, 2002, but later changed, at DHX's request, to today, February 15, 2002.)

Matson and Sea-Land have conferred with DHX regarding the procedural schedule, and the two sides have exchanged written proposals. Despite the parties' efforts, however, no agreement has been reached. Moreover, it appears unlikely that further negotiation will produce an agreement. *See* correspondence between counsel for the parties, attached as Exhibits A - G.

Matson and Sea-Land, therefore, propose the following procedural schedule and ask that the Board adopt it:

- | | |
|-----------------------|---|
| March 1, 2002 | DHX files a revised complaint setting forth its claims with adequate specificity. |
| March 21, 2002 | Matson and Sea-Land file answers to the revised complaint. |
| May 2, 2002 | DHX files its opening statement and evidence. |

June 13, 2002 Matson and Sea-Land file their responsive statements and evidence.

July 25, 2002 DHX files its rebuttal statement.

In support of this proposed schedule, Matson and Sea-Land state as follows:

First, Matson and Sea-Land submit that any procedural schedule must begin with the submission by DHX of an amended and more particularized complaint. *See* 49 C.F.R. § 1111.5. The Board, in its December 21, 2001 decision, agreed with the carriers' contention that, as drafted, DHX's complaint is "fundamentally flawed" in focusing on the rates for overflow containers separate from the lead containers upon which they are dependent. December 21, 2001 decision ("Decision") at 5. The Board held that "for purposes of a rate reasonable assessment, overflow rates are not separate rates, but are components of the rates applicable to multi-container shipments," *id.*, and a complaint that seeks to "challenge overflow rates as if they are separate rates . . . cannot succeed." *Id.*

As drafted, however, the complaint filed by DHX does precisely what the Board found "cannot succeed"—it challenges overflow provisions as if they were stand-alone rates. The entire complaint is premised on that presumption. *See* Complaint, ¶¶ 6-13. The only "rates" that DHX identifies in its complaint are September 6, 1998 and October 17, 1999 increases in overflow container charges that the Board has found are not separate rates at all and cannot be individually challenged.

Furthermore, the Board in its decision rejected the assertion in the complaint that rate increases are *per se* unreasonable if they exceed the Zone of Reasonableness ("ZOR") of 49 U.S.C. § 13701(d)(1). The Board concluded: "DHX must, to support a rate reasonableness complaint, indicate which particular multi-container rates it is challenging and why those rates, if outside of the ZOR, are unreasonable." Decision at 5 (footnotes omitted). If DHX does not

amend its complaint and state the particular multi-container rates it is challenging, then the rate complaint portion (including the “overflow” portion of the rate) of DHX’s complaint should be deemed stricken.

In light of the Board’s decision, it is unclear whether DHX has any basis to challenge any of Matson’s or Sea-Land’s rates at all. But if DHX is to proceed, Matson and Sea-Land submit that, at a minimum, 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. *See West Texas Utilities Co. v. Burlington Northern R.R. Co.*, No. 41191, 1995 ICC Lexis 15 (served Feb. 14, 1995) (requiring rate complaint to be amended to identify then-unspecified origins or geographic territories from which rate prescriptions were sought). *See also* Decision at 4 (“[W]e cannot say that the concerns DHX has raised, *if properly pled*, could not under any circumstances provide a basis for investigation and action.”) (emphasis supplied).

For the same reasons, the complaint must clarify whether it is alleging an unreasonable practices case (*see* Decision at 6) and if so, identify the specific practices it is challenging. Although the present complaint attaches, as Exhibit C, an affidavit by Bradley J. Dechter that discusses a number of alleged unfair actions by Matson and Sea-Land, it appears that these alleged unreasonable practices are simply window dressing to do what the Board has said is improper—to “bolster a weak rate case.” *Id.* Mr. Dechter concludes his affidavit by asserting that the alleged practices he discusses are merely “examples of matters I have been personally involved with which *show that recent increases in overflow container rates are unreasonable.*” Complaint, Exhibit C at 7 (emphasis supplied). *See also id.*, Exhibit C at 1 (the referenced

business practices, “*when taken into consideration with recent increases in the rates of the tariff provisions dealing with ‘overflow’ containers show a variety of destructive practices aimed at the freight forwarding industry as a whole, as well as a large, unreasonable ‘de facto’ rate increase.*”) (emphasis supplied).

Even if DHX intends to advance an unreasonable practices case, Mr. Dechter’s affidavit suggests that DHX has in mind other alleged “unreasonable practices” that it may press before the Board but has chosen not to disclose. *See* Complaint, Exhibit C at 1 (identifying only two examples of allegedly unfair footnote changes “among numerous” others). Clearly, the defendants are entitled to know, at the complaint stage of this proceeding, the other unreasonable practices that DHX intends to allege but has chosen not to disclose.

In short, DHX has failed to fully and clearly identify the practices that it believes will support an “unreasonable practices” showing (apart from simply improperly seeking to bolster its rate case.) Again, 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.

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. In response to the defendants’ request that DHX amend the complaint, counsel for DHX offered a letter expressing his views of the case. *See* Exhibit D. The letter stating counsel’s opinions regarding the case is an inadequate substitute for an amended complaint. Counsel’s views on the case are not binding on the complainant. Moreover, counsel’s letter shares many of the deficiencies of the original complaint. It does not clearly and concisely set forth (1) the multi-container rates that DHX intends to challenge, (2) the specific practices that DHX alleges are “unreasonable,” and (3) the

essential ground for each claim. Finally, counsel's letter alleges violations of the National Transportation Policy ("NTP") found in 49 U.S.C. § 13101 as the sole statutory violation of the defendants. However, the Board precedent is clear that the NTP does not raise a separate cause of action and is only a policy guideline for other legitimate counts. *Trailer Bridge, Inc. v. Sea Star Lines, LLC*, STB Docket No. WCC-104 (STB served Dec. 10, 1999).

The "clarifying" letter from DHX's counsel serves only to clarify DHX's intention in this matter to subject the defendants to a protracted and burdensome investigatory discovery process, mainly in order to fish for additional charges to level against the defendants. *See* Exhibit D. ("I am sure that the discovery process will 'flesh-out' the rest."). It is clear from Exhibit D and DHX counsel's other correspondence that complainant seeks an unjustifiably lengthy discovery process unburdened by the issue-framing discipline of a well-drafted complaint.

Defendants acknowledge the Board's broad discovery rules on relevant discovery. However, those rules assume that the complainant has defined what is relevant in a clear and concise complaint. Furthermore, even within the Board's broad discovery rules, the Board ought not invite a complainant to throw out some "poorly pled" and "fundamentally flawed" allegations and then permit the complainant (who also is a competitor of the defendant carriers) to engage in burdensome discovery that appears calculated to rummage through defendants' records in search of new claims against the defendants. Compare *Caribbean Shippers Association, Inc. v. Surface Transportation Board, et al.* 145 F.3d 1362, 1364 n.1, 1365 (D.C. Cir. 1998) (Affirming the STB's dismissal of the complaint and denial of discovery by a freight forwarder, which the court agreed was a competitor of the carriers, because the discovery was seen as unlikely to affect the decision and instead might be useful to the competitor freight forwarders for "other reasons.") and *Trailways Lines, Inc. v. Interstate Commerce Commission*,

et al., 766 F.2d 1537, 1546 (D.C. Cir. 1985) (In this “age of discovery run riot,” the ICC was “simply not required to allow a dragnet, expensive exercise of discovery.”).

For these reasons, as an initial procedural step, Matson and Sea-Land move the Board to require DHX to file an amended complaint that clearly and concisely (1) sets forth the multi-container rates, if any, that DHX alleges are unreasonable and eliminates any challenge to overflow rates standing alone, (2) identifies the specific practices that DHX alleges support an “unreasonable practices” claim, and (3) identifies the essential grounds, factual and legal, for each claim.

Once an amended complaint is filed, the procedural schedule here offered by defendant carriers calls for answers within the standard 20 days. *See* 49 C.F.R. § 1111.4(b). The schedule would then give DHX six weeks to file its initial evidence and argument, Matson and Sea-Land six weeks to respond, and DHX another six weeks for rebuttal. Matson and Sea-Land submit that this schedule, providing nearly 21 weeks from the filing of a proper, well-pleaded complaint to the close of evidentiary submissions, is fully adequate for a just adjudication of the issues.

CONCLUSION

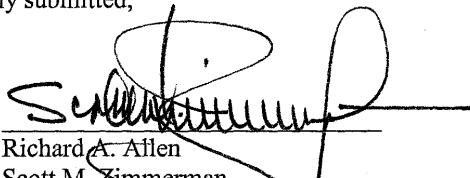
Matson and Sea-Land request that the Board adopt the procedural schedule set forth above.

Respectfully submitted,



C. Jonathan Benner
Leonard L. Fleisig
Sandra Brown
TROUTMAN SANDERS LLP
401 Ninth Street, NW
Suite 1000
Washington, D.C. 20004
(202) 274-2880

Counsel for Sea-Land Service, Inc.



Richard A. Allen
Scott M. Zimmerman
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 Seventeenth Street, NW
Suite 600
Washington, D.C. 20006
(202) 298-8660

Counsel for Matson Navigation Company, Inc.

Dated: February 15, 2002

EXHIBIT A

Telephnum (202) 223-5900
(703) 536-3053
Telefax (703) 536-4841

Rick A. Rude
Attorney at Law

207 Park Avenue
Suite 103
Falls Church, Virginia 22046
30 January 2002
Via FAX

Mr. Richard A. Allen
ZUCKERT, SCOTT & RASENBERGER
888 - 17th Street, N.W.
Suite 600
Washington, D.C. 20006

Mr. C. Jonathan Benner
TROUTMAN SANDERS
401 - 9th Street, N.W.
Suite 1000
Washington, D.C. 20004

Re: DHX, Inc. advs. Matson Navigation Company and SL
Services, Inc. dba Sea-Land Service, Inc.
STB Docket WCC-105
Proposed Procedural Schedule

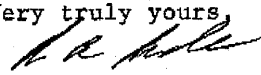
Dear Sirs:

The Board has granted the extension request in which to submit a proposed procedural schedule. The time for submission is now extended to February 15, 2002.

I have reviewed the documents in the file on this case and have likewise met with DHX personnel and discussed the proceeding. I am attaching a proposed schedule which I do believe is appropriate to the case and the issues involved. The issues include not only those raised by the complaint and the affidavits filed by DHX and Matson, but further do include my review and clarification of the matters raised. I will shortly be forwarding correspondence in which I will outline the issues.

If there are any suggested revisions to the attached proposed schedule, please advise. Awaiting your response, I remain,

Very truly yours,


Rick A. Rude
Counsel for DHX, Inc.

RR/mp
encl.

STB DOCKET WCC-105 PROPOSED PROCEDURAL SCHEDULE

- 1) discovery to run for a period of 180 days from the date of the issuance of/service of the procedural order. The service date provides a date 'certain' from which to measure the period.
- 2) If there is a discovery dispute, resulting in a motion to compel or protective order, the above discovery period is to be extended in an amount of time equal to the delay that results from the involved motion. This precludes any 'obstruction' from being used to 'run-the-clock'.
- 3) Documents and information that is realistically considered to be 'confidential business information' shall be identified by way of a 'Vaughn Index' and be accompanied by a proposed protective order. Any proposed order shall include a provision that the recipient may object to the designation of confidentiality and that upon motion by the recipient the producing party retains the full burden of proof as to the need for confidentiality and that the documents or information actually qualify as privileged under the Board's Rules and Fed.R.Civ.Proc. 26(c).
- 4) That at the close of the discovery period, the parties prepare and file a Joint Pretrial Stipulation of Undisputed Facts. This is to be filed 30 days after the close of discovery.
- 5) Complainant, 40 days after the submission of the Joint Stipulation shall file its Opening Statement(s) and Argument.
- 6) Defendants, 40 days after the filing of Complainant's Opening Statement(s) and Legal Argument shall submit their Reply Statements and Legal Argument.
- 7) Complainant shall file its Rebuttal Statement(s) and Legal Argument within 30 days of receipt of Defendants' Statements.
- 8) Any party may submit a Request for Oral Hearing within 20 days after the filing of Complainant's Rebuttal but such Oral Hearing shall be limited to cross-examination of witnesses and their Statements.
- 9) In the event there is oral cross-examination, the parties shall submit Proposed Findings of Fact within 30 days after receipt of any hearing transcript.
- 10) Any and all of the above may be revised or extended upon a showing of good cause by any party.
- 11) Dispositive motions may be filed at any time after the close of discovery but not so as to interfere with the filing of any party's Opening Statements.

ZUCKERT SCOUTT & RASENBERGER, L.L.P.
ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone [202] 298-8660 Fax [202] 342-0683
www.zsrllaw.com

RICHARD A. ALLEN

DIRECT DIAL (202) 973-7902
raallen@zsrllaw.com

February 1, 2002

BY FACSIMILE AND U.S. MAIL

Rick A. Rude, Esquire
207 Park Avenue
Suite 103
Falls Church, Virginia 22046

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

Dear Mr. Rude:

Matson has considered the proposed procedural schedule you sent us on January 30, 2002 and submits the following in response.

Given the Board's decision served December 21, 2002, Matson believes that a schedule for the remainder of this proceeding must begin with DHX filing a revised complaint that sets forth with much greater clarity and particularity the specific rates of Matson (and Sea-Land) that DHX contends are unlawful, the specific practices it contends are unlawful and, in each case, the essential grounds for the claim.

In its December 21, 2001 decision, the Board agreed with the carriers that the complaint filed by DHX is "fundamentally flawed," both in focusing on the rates for overflow containers and in asserting that rates are unreasonable because they exceed the ZOR. For those reasons, the Board said: "DHX must, to support a rate reasonableness complaint, indicate which particular multi-container rates it is challenging and why those rates, if outside of the ZOR, are unreasonable." As the Board also indicated, the complaint does not make clear the extent to which DHX is challenging the carriers' practices, which practices are being challenged, and the bases for those challenges. Unless the complaint is revised to make those matters reasonably clear, it fails to give the carriers adequate notice of the claims against them and fails to provide any meaningful basis for determining whether discovery requests are proper.

Accordingly, Matson proposes a schedule that requires DHX to file a revised and particularized complaint by March 1, 2002 and requires Matson and Sea-Land to file their

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

Rick A. Rude, Esq.
February 1, 2002
Page 2

respective answers by March 21, 2002. Once a revised complaint and answers are filed, we see no reason for extending discovery beyond what is normally contemplated by the Board's rules or otherwise protracting the proceeding. We also do not think requiring the parties to file a joint stipulation of undisputed facts would be useful, but would in fact only produce needless delays. The parties will be free to argue in their submissions what is or is not disputed.

We therefore propose the following procedural schedule:

March 1, 2002	DHX files a revised complaint setting forth its claims with adequate specificity.
March 21, 2002	Matson and Sea-Land file answers to the revised complaint.
May 1, 2002	DHX files its opening statement and evidence.
June 10, 2002	Matson and Sea-Land file their responsive statements and evidence.
July 22, 2002	DHX files its rebuttal statement.

We propose the foregoing schedule on the understanding that any party will remain free to file dispositive and other motions (*e.g.*, motions pertaining to discovery) at any time and to request the Board to adjust the schedule as may be appropriate in light of such motions.

We look forward to your response.

Sincerely,



Richard A. Allen
Counsel for Matson Navigation, Inc.

cc: Armand M. Pare, Esq.
Kevin C. O'Rourke, Esq.
C. Jonathan Benner, Esq.

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

401 9TH STREET, N.W. - SUITE 1000
WASHINGTON, D.C. 20004-2134
www.troutmansanders.com
TELEPHONE: 202-274-2950

C. Jonathan Benner
jonathan.benner@troutmansanders.com

Direct Dial: 202-274-2880
Fax: 202-654-5647

February 1, 2002

VIA FACSIMILIE and REGULAR MAIL

Mr. Rick Rude
Attorney at Law
207 Park Avenue, Suite 103
Falls Church, VA 22046

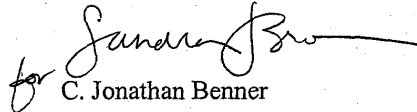
Re: DHX, Inc. v. Matson Navigation Company and Sea-Land Service, Inc.,
STB Docket No. WCC-105

Dear Rick:

Thank you for your letter of January 30, 2002 in which you propose a procedural schedule for the above referenced proceeding. I am not enthusiastic about an attenuated discovery schedule. Moreover, I do not want to commence discovery before the issues have been framed by an exchange of a revised, clearly focused complaint and the answers of respondents. The Surface Transportation Board's December 21, 2001 decision regarded the pending complaint as "fundamentally flawed" with "substantial shortcomings." Thus, an amended complaint must be the first order in any proposed procedural schedule.

I have communicated with Matson's counsel, Dick Allen, on a procedural schedule and it is my understanding that he will suggest an alternative schedule.

Yours very truly,


for C. Jonathan Benner

cc: Richard A. Allen, Esq. (via fax only)
Robert S. Zuckerman, Esq. (via fax only)

EXHIBIT D

Telephone (202) 223-5900
(703) 536-3063
Telefax (703) 536-4841

Rick A. Rude
Attorney at Law

207 Park Avenue
Suite 103
Falls Church, Virginia 22046
1 February 2002
Via FAX

Mr. Richard A. Allen
ZUCKERT, SCOUTT & RASENBERGER
888 - 17th Street, N.W.
Suite 600
Washington, D.C. 20006

Re - DHX v. Matson Navigation et al.
STB Docket No. WCC-105

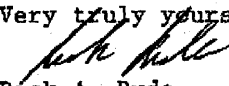
Dear Dick:

I have received Matson's proposed schedule. I can not agree to such a time table. As an initial matter, I do not expect any cooperation out of either carrier. This is especially true considering the nature of the case.

As I indicated to you, I would be forwarding a letter in which I have expressed my views of the case. I am attaching hereto the letter which went out. Please review this correspondence and forward to Kevin O'Rourke. The schedule which I sent represents the minimum amount of time I believe that I will need. Please don't forget, we have the issues in WCC-101 due in April. This does not address other cases and matters. As I have indicated, I do not expect much cooperation as the past track records involve delay as a litigation tactic.

Please review the attached and reconsider. I remain,

Very truly yours,


Rick A. Rude

encl.
RR/mp

cc: C. Jonathan Benner, Esq.

Rick A. Rude
Attorney at Law

207 Park Avenue
Suite 103
Falls Church, Virginia 22046
31 January 2002

Telephone (202) 223-5900
(703) 536-3063
Telefax (703) 536-4841

Mr. Richard A. Allen
ZUCKERT, SCOUTT & RASENBERGER
888 - 17th Street, N.W.
Suite 600
Washington, D.C. 20006

Re - DHX v. Matson, STB Docket No. WCC-105

Dear Dick:

This correspondence is a follow up to our conversation regarding my review of the complainant's contentions in the above referenced proceeding. By this correspondence it is my intent to clarify, but not unduly limit, Complainant's contentions.

I have read the documents in the file and it is apparent that Matson does understand the gist of the complaint. However, I wish to make it clear that the complaint, based only on the documents presently available, involves the following matters:

- 1) Carrier Business Practices which unfairly impact on and/or discriminate against forwarders as both shippers and competitors in the Hawaii trade.

This includes the use and manipulation of carrier tariffs to arbitrarily exclude forwarders from any type of business or cargo. This manipulation includes the use of rules, regulations and classifications which result in discrimination against forwarders.

This includes the insertion, modification, or removal of tariff provisions, items, notes etc. that either raise the cost of shipping for forwarders or exclude forwarders from use of any rate items.

Mr. Richard A. Allen
31 January 2002
Page Two

2) Carrier competition in the Hawaii/Guam trade.

This includes but is not limited to price matching, advance notice tariff filings/signals, reciprocal service arrangements, failure or refusal to provide volume rates or contract pricing, concerted rate increases with narrow or defined impact.

3) Carrier justification, or lack thereof, for rate increases or 'exceptions' with the focus on the perceived impact or detriment on freight forwarders.

4) The actions of the carriers in attempting to exclude or render uncompetitive forwarder competition for full containerload cargoes, including the use of tariffed and untariffed incentives or arrangements for general freight carrier 'non-participation' in FCL business.

The above matters are all within the scope of the 'gist' of the complaint as they involve destructive business practices and violations of the National Transportation Policy Provisions 13101(a)(1)(A), (B), (D) and 13101(a)(4).

I note in my review that both Matson and DHX bring up a 5% GRI that occurred in early 1999. To the extent that carrier operating costs or expenses are used to justify any of the involved rules or regulation changes, carrier operating revenues and expenses will also be in issue. While I note that both Matson and Sea-Land have not raised carrier costs as a defense, should the matter arise, then I would expect that the full scope of costs/revenues/rate of return etc. will become an issue.

I note in the Answers that both Matson and Sea-Land have represented that they are subject "for some purposes" (Matson ¶3). They are subject to STB jurisdiction. The scope of the carriers activities will be examined at length regarding the use of 'off-tariff' or untariffed operations, pricing, etc. to accomplish the carriers' goals to render forwarder service on FCL services (and LTL services for that matter) either uncompetitive or ineffective.

As example of the above, and since Matson has already expressed its position on the Overflow Rule, I can clarify the legal point. Simply, while the complaint articulates and identifies the matter in dispute, it was less than clear on the fact that what is involved is not a "rate" but it is

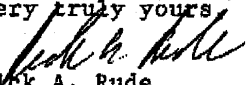
Mr. Richard A. Allen
31 January 2002
Page Three

actually a rule of classification. I need not get into the legal issue of whether or not carriers are supposed to use 'rules' to publish rates, but that what is involved is an abuse of the tariff to engage in unjust and unfair practices. The caselaw is more than clear on the point that the facts of a situation can and often do violate more than one provision of a federal act or statutory structure. As example, the legal point that the overflow provision is actually a rule of cargo classification negates the entire argument that the minimum revenue per container does nor does not exceed the zone of rate reasonableness. While the complaint may not have been presented in the 'proper' terminology, the issue is the substance of the complaint. The STB's decision on the Matson motion takes that approach.

I did note that Mr. Dechter provided two affidavits in which he articulated areas in which he believed unfair business practices existed. These ran the gamut from discriminatory rate items, to illegal credit, to untariffed rates, to the use of tariff rules and notes which unfairly impacted freight forwarders. The parallel pricing that is involved raises additional matters all on its own. I am sure that DHX will identify further matters during the course of discovery in this matter. The pattern of intentionally restricting or limiting forwarder access to common carriage and the associated rates and services, as admitted by Mr. Stevens, is the very type of improper activity which the unreasonable practices statute was intended to address.

I trust this correspondence serve to explain and to clarify my view of the matters raised in this case. I am sure that the discovery process will 'flesh-out' the rest. I remain,

Very truly yours,


Rick A. Rude

cc:
C. Jonathan Benner, Esq.
Bradley J. Dechter

EXHIBIT E

Telephone (202) 223-5900
(703) 536-3063
Telefax (703) 536-4844

Rick A. Rude
Attorney at Law

207 Park Avenue
Suite 103
Falls Church, Virginia 22046

11 February 2002
Via Telefax

Mr. Richard A. Allen
ZUCKERT, SCOUTT & RASENBERGER
888 - 17th Street, N.W.
Suite 600
Washington, D.C. 20006

Mr. C. Jonathan Benner
TROUTMAN SANDERS LLP
401 - 9th Street, N.W.
Suite 1000
Washington, D.C. 20004

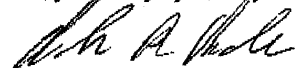
Re: DHX, Inc. v. Matson Navigation et al.
STB Docket No. WCC-105

Gentlemen:

On February 1, 2002 I forwarded my response to the counter-proposal by defendants regarding a joint scheduling order in the above case. I further provided my views as to the issues. I requested a response from defendants regarding this matter but have not received a reply.

The proposed scheduling order is directed to be filed on or before February 15th. Unless I am advised otherwise, I must consider your proposals of February 1st as the only proposals which defendants intend to make regarding this matter. Under such circumstances, the appropriate motion and proposed schedule will be filed. I remain,

Very truly yours,



Rick A. Rude
Counsel for DHX, Inc.

RR/mp

EXHIBIT F

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

401 9TH STREET, N.W. - SUITE 1000
WASHINGTON, D.C. 20004-2134
www.troutmansanders.com
TELEPHONE: 202-274-2950

C. Jonathan Benner
jonathan.benner@troutmansanders.com

Direct Dial: 202-274-2880
Fax: 202-654-5647

February 11, 2002

VIA FACSIMILE

Rick A. Rude, Esquire
207 Park Avenue
Suite 103
Falls Church, VA 22046

RE: *DHX, Inc. v. Matson Navigation, et al.*
STB Docket No. WCC-105


Dear Mr. Rude:

Thank you for your letter of the instant date. I share your expressed interest that an appropriate schedule be established.

My views on your proposal remain those conveyed in my letter of 1 February 2002. I concluded after studying your letter of the same date and hearing from my colleague, Sandra Brown, about a roughly contemporaneous telephone conversation she had with you that your enthusiasm for a protracted discovery period is unabated and that you are averse to the filing of an amended complaint. If these conclusions are incorrect, please let me know.

I continue to believe that the recognized deficiencies of the original complaint indicate the wisdom and necessity of its amendment before undertaking what appears to be from your perspective potentially massive discovery. I suspect the dispute, to the extent there is a justiciable dispute, is relatively narrow and I therefore hope that every effort will be made by the parties and the Board to fashion a schedule that discourages lengthy discovery quests by either side. I further believe that an amended complaint might be of great assistance not only to respondents and the Board, but also would advantage your efforts to promote expeditious resolution of whatever disputes may exist between your client and the carriers.

If you feel the gap between us on amending the complaint and limiting the time for discovery is "bridgeable," please let me know. Otherwise, your suggestion today that the parties submit separate scheduling motions to the Board strikes me as being constructive.

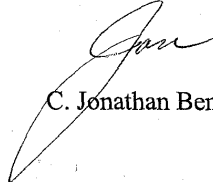
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Mr. Rick A. Rude
February 11, 2002
Page 2

I have been away from the office a good deal lately while my wife recovers from surgery. If you cannot reach me on my office number, please feel free to call on a mobile number of 202 262 4702.

Yours very truly,



C. Jonathan Benner

cc: Richard Allen, Esquire
Robert S. Zuckerman, Esquire

EXHIBIT G

Telephone (202) 223-5900
(703) 536-3063
Telefax (703) 536-4841

Rick A. Rude
Attorney at Law

207 Park Avenue
Suite 103
Falls Church, Virginia 22046

11 February 2002
Via FAX

Mr. C. Jonathan Benner
TROUTMAN SANDERS LLP
401 - 9th Street, N.W.
Suite 1000
Washington, D.C. 20004

Re - DHX, Inc. v. Matson Navigation et al.
STB Docket No. WCC-105
Proposed Discovery Schedule

Dear Jon:

I am in receipt of your correspondence and am responding in writing to avoid any misunderstanding of our communications. I have been involved in several other complaint cases before the STB and have found, in each case, a high level of delay. The 'objections' were either immaterial or di minimus in nature. As I indicated in my cover letter of February 1st, I do not anticipate that the instant proceeding will be any different from the others. I proposed a schedule that I believed would permit enough time for discovery. I can not permit myself to be placed at a serious disadvantage in obtaining discovery from the carriers. The 'problem' in the instant matter appears to be that the carriers want to 'eat-up' discovery time by having the complainant refile an amended complaint. I reviewed the documents that were filed, and I did indeed spend the time to consider whether or not the carriers understood the gist of the complaint. The complaint really involves a pattern of business practices which result in discriminatory costs and prices to the forwarders. Mr. Dechter complained of a wide variety of things (tariffed and untariffed). Since the carriers contend that Hawaii is a "tariff" trade, I rather doubt that the 'deals' that exist will be readily and easily admitted.

Part of the difficulty of this case is that business practices is a broad term. It includes any and all matters which impact the costs to or prices paid by the shipper. I did not want to address the 'legal' issues but it seems that I must if there is any mutual resolution of this schedule. These

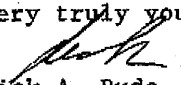
Mr. C. Jonathan Bener
11 February 2002
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matters are generally "in-house" and only exposed by way of discovery. It has been represented to DHX by Matson that DHX should not be in the full containerload business. The pricing actions, both tariffed and apparently off tariff inducements, are intended to exclude forwarders from the full load market. CSX Lines has an admitted policy of price parallelism. The effect is that Matson only need 'publish' and CSX will match. That is not 'competition' as it deprives the public of a 'choice'. The inter-action between Matson and CSX will be a focal point as it involves the question of whether or not there is really a competitive market and the mirrored pricing actions again go to the motivation involved.

I did speak with Ms. Brown and found her to be quite knowledgeable on this matter. However, I am getting the distinct impression that somehow the defendants believe that I am unfamiliar with procedure and would agree to redoing a complaint based upon a question would be procedurally addressed through discovery at this stage. I have spoken with Dick Allen and have expressed to him my concerns that I can not conduct my discovery within the time frames suggested by defendants. Since we are talking about carrier business practices, including unfiled/unpublished rates, I have not found carriers to be forth coming about those matters. As a side point, I did refer Dick Allen to the court's opinion in Northern Pacific Railway Co. v. United States, 41 F.Supp. 439 (D. Mn. 1941) as containing the elements of carrier unreasonable or unfair practices. I consider that case to set the limits on the practice issue but the actions which tend to exclude forwarders from the full containerload business are also covered by the National Transportation Policy as applied to the specific statute.

I indicated to Dick Allen that I was of the opinion that there are a number of activities and actions that have taken place which are discriminatory as applied to specific groups of shippers. These actions were not taken for legitimate transportation reasons. I am of the understanding from Dick Allen that he is not ready to modify the position taken in his letter of February 1st. However, I have not obtained your position. I remain,

Very truly yours,


Rick A. Rude

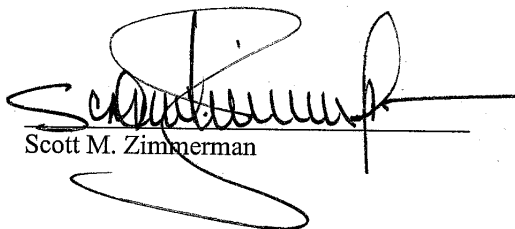
RR/mp
cc
Richard A. Allen, Esq.
Bradley J. Dechter

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2002 a copy of the foregoing Motion of Matson And Sea-Land For A Procedural Schedule was served by overnight delivery on the following counsel for DHX, Inc.:

Rick A. Rude
Attorney At Law
207 Park Avenue
Suite 103
Falls Church, Virginia 22046

Armand M. Pare
NORSE & BOWLES, LLP
One Exchange Plaza
at 55 Broadway
New York, New York 10006



Scott M. Zimmerman