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April 9, 2002

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 parties' Joint Motion For Protective Order, as well as a 3.5" computer disk containing the text of the pleading 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Zimmerman".

Scott M. Zimmerman

Enclosure

ENTERED
Office of the Secretary

APR 11 2002

Part of
Public Record

A circular postmark from the U.S. Postal Service. The outer ring contains numbers 1 through 12. The inner text reads: RECEIVED, APR 9 2002, MAIL, MANAGEMENT, and STR.

Docket No. WCC-105

**Part of
Public Record**

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and various CSX/Sea-Land entities. In its response, which was due and was served on March 28 (the same day the Board's Decision was served), Matson pointed out that the requested documents are competitively sensitive commercial agreements, the disclosure of which, absent a protective order, would commercially harm Matson. Matson noted that a protective order had been requested by defendants and objected to producing the requested documents in the absence of an appropriate protective order.¹

In light of the nature of the documents sought by DHX, the parties submit that entry of a protective order is no longer premature but rather is necessary to protect Matson and Sea-Land from the competitive harm that could result from the public disclosure of the requested commercial agreements and also to ensure that all parties

¹ DHX's document request, and the response served by Matson on March 28, are as follows:

1. Defendant, pursuant to the time frames identified in Attachment A hereto, shall produce, allow for inspection and copying, all contracts, documents, agreements, memorandums of understanding between Matson Navigation Company, on the one hand, and on the other, the following corporations:

- (a) Sea-Land Service, Inc.*
- (b) Sea-Land Motor Freight, Inc.*
- (c) Sea-Land Freight Service, Inc.*
- (d) CSX/Sea-Land Intermodal, Inc.*
- (e) SL Services, Inc.*
- (f) CSX Lines, LLC*

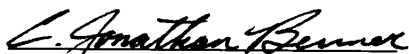
Response: Matson objects to this request insofar as it seeks the production of competitively sensitive commercial agreements between Matson and other entities, as the public disclosure of such documents would commercially harm Matson. Matson and Sea-Land have asked the Board to enter a protective order in order to facilitate discovery in this case, but DHX has sought to "strike" that request. See DHX's "Motion To Strike" dated March 12, 2002. Matson objects to the production of documents in response to this request in the absence of an appropriate protective order issued by the Board.

are similarly protected in the event that other commercially sensitive documents are sought in discovery.

CONCLUSION

The parties therefore request that the attached protective order be entered.

Respectfully submitted,



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Falls Church, Virginia 22046

Counsel for DHX, Inc.

Dated: April 9, 2002

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CONCLUSION

The parties therefore request that the attached protective order be entered.

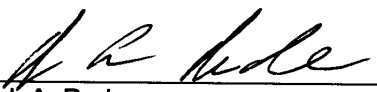
Respectfully submitted,

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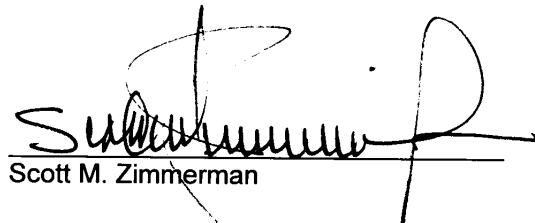
Dated: April ___, 2002

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2002 a copy of the foregoing Joint Motion For Protective Order was served by first class U.S. Mail, postage prepaid, and by facsimile, on the following :

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

C. Jonathan Benner
Sandra Brown
TROUTMAN SANDERS LLP
401 Ninth Street, NW
Suite 1000
Washington, D.C. 20004



Scott M. Zimmerman

Protective Order And Confidentiality Undertaking

1. This Order shall apply to all documents, information and other products of discovery (including testimony and transcripts of testimony taken at deposition) obtained by any party to this proceeding pursuant to discovery requests (including workpaper requests), whether directed to another party or to a person not a party to this proceeding, or submitted through evidentiary filings in this proceeding.

2. Any party or person responding to a discovery request (including a workpaper request) may designate as "Confidential Information" any response (including production of documents) or portion thereof that it in good faith contends contains confidential, proprietary or commercially sensitive information. Any party or person responding to such a request may also designate as "Highly Confidential Information" any "Confidential Information" that it in good faith contends contains such highly sensitive information (e.g., the non-public terms of transportation agreements involving any of the parties, customer-specific traffic, revenue, price or cost information, or traffic and revenue projections) that disclosure to employees or agents of another party, even subject to the restrictions of this Order governing the use and dissemination of "Confidential Information," could reasonably threaten significant economic or competitive harm to the producing party or person. Except as provided by Paragraph 5, "Confidential Information" and "Highly Confidential Information" as used herein include all such designated responses, any copies, extracts, abstracts or summaries or all or part of such responses, and all or any portion of information contained in such responses.

3. Responses to discovery requests (including workpaper requests) may be designated as "Confidential Information" or "Highly Confidential Information" as follows:

(a) Responses or portions of responses to interrogatories, written deposition interrogatories, requests for admission or workpaper requests may be designated by stamping or printing "Confidential" or "Confidential Information." or "Highly Confidential" or "Highly Confidential Information," in the front thereof and, if only portions of the response are to be so designated, clearly marking the confidential or highly confidential portions.

(b) Prior to the production of documents to the requesting party, documents may be designated by separating them from other documents and informing the requesting party that they contain "Confidential Information" or Highly Confidential Information." Copies of documents or portions of documents produced to the parties may be designated by producing such documents in separate containers clearly marked as containing "Confidential Information" or "Highly Confidential Information" or stamping "Confidential" or "Confidential Information" on each page containing "Confidential Information," or stamping "Highly Confidential" or "Highly Confidential Information" on each page containing "Highly Confidential Information," and, if only portions of a document page are to be so designated, clearly marking the confidential portions.

(c) A deponent or the attorney for a deponent may designate the deponent's entire testimony and the transcript thereof to be treated as "Confidential Information" or "Highly Confidential Information" by so requesting on the record prior to the conclusion of the deposition. Such designation shall be effective only until 15 days after the availability of the transcript of the deposition, after which portions of the deposition testimony may be designated "Confidential Information" or "Highly Confidential Information" only by informing each party in writing of the pages, and the portions thereof, that contain "Confidential Information" or "Highly Confidential Information."

4. If a party or person inadvertently fails to designate discovery or other material as "Confidential Information" or "Highly Confidential Information" in a timely fashion as provided herein, it may make such a designation subsequently by notifying the parties in writing. After receipt of such information, such materials and information shall be treated as if they had been designated in a timely fashion.

5. Any party at any time may by written notice request that the producing party or person cancel the "Confidential Information" or "Highly Confidential" designation of any transcript, document or discovery response or portion thereof. Such request should identify particularly the designated responses it contends should not be treated as "Confidential Information" or "Highly Confidential Information," provide the reasons therefor, and explicitly state that the request is made pursuant to this paragraph. Such request shall be deemed granted ten (10) days after receipt of the request, unless the producing party or person, prior to the end of the ten-day period, sends the requesting party a written denial of the request by telecopier or hand delivery. If such request is denied in whole or in part, the requesting party may file a motion with the Board to have the "Confidential Information" or "Highly Confidential Information" designation removed as to the discovery responses listed in the request. The burden of establishing that the responses should not be afforded the protections of this Order shall be on the moving party.

6. Other than as provided in Paragraph 7 below, "Confidential Information" and "Highly Confidential Information" may only be disclosed to "Authorized Persons." An "Authorized Person" is a person who, prior to the receipt of any "Confidential Information" or "Highly Confidential Information," has signed an undertaking (in the form attached to this Order) stating his or her identity, title and employer and that he or she has read and understands this Order and agrees to abide by it, and who, in the case of "Confidential Information," is:

(a) an attorney actively involved in this proceeding, or a legal assistant or clerical employee under such attorney's supervision;

(b) a person who is an employee or agent of a party and is actively involved in this proceeding;

(c) a person who is an outside consultant (that is, not a regular employee of a party) actively involved in this proceeding and who has been employed by any of the parties to provide advice, expertise or assistance in this proceeding, or an assistant or clerical employee under such person's supervision; or

(d) a reporter employed to record depositions;

or who, in the case of "Highly Confidential Information," is:

(x) an outside attorney (that is, not a regular employee of a party) actively involved in this proceeding, or a legal assistant or clerical employee under such attorney's supervision;

(y) a person who is an outside consultant (that is, not a regular employee of a party) actively involved in this proceeding and who has been employed by any of the parties to provide advice, expertise or assistance in this proceeding, or an assistant or clerical employee under such person's supervision; or

(z) a reporter employed to record depositions.

Each such undertaking by an "Authorized Person" shall be kept for the duration of this proceeding and any related court litigation or judicial appeals by the party with which such "Authorized Person" is affiliated or associated, and a copy of each such undertaking shall be served upon counsel of record for each party no later than ten (10) days after such undertaking is executed.

7. "Confidential Information" and "Highly Confidential Information" may also be disclosed to:

(a) an employee of the producing party during a deposition of such employee;

(b) a deponent employed by an organization that also employs the person who produced the "Confidential Information" or "Highly Confidential Information" to be disclosed to the deponent; or

(c) any person so authorized either (i) in writing by the party or person that produced the "Confidential Information" or "Highly Confidential Information" to be disclosed to such person, or (ii) by the Board upon motion by any party for good cause.

8. Storage, transmission or communication of "Confidential Information" and "Highly Confidential Information" must be such as to reasonably ensure that the "Confidential Information" and "Highly Confidential Information" will not be disclosed, accidentally or otherwise, to non-authorized persons.

9. No person may be present at a deposition during the discussion of "Confidential Information" or "Highly Confidential Information" who has not been authorized by this Order to review the "Confidential Information" or "Highly Confidential Information" to be discussed. If any party intends to use "Confidential" and/or "Highly Confidential" material in the course of any deposition in this proceeding, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent and all other counsel attending the deposition, and all portions of the deposition at which any such "Confidential" and/or "Highly Confidential" material is used shall be restricted to persons who may review that material under this Protective Order.

10. "Confidential Information" and "Highly Confidential Information" may be used by the receiving party, and by any "Authorized Person," solely for purposes of this proceeding and any directly related proceedings involving judicial review of any Board decision or order in this

proceeding, and not for any other purpose whatsoever (including any business or commercial purpose). "Confidential Information" and "Highly Confidential Information" may not be used in any other litigation unless obtained in that litigation.

11. All "Confidential Information" and "Highly Confidential Information" filed with the Board, and any pleading, motion, or other paper filed with the Board that contains or discloses "Confidential Information" or "Highly Confidential Information" shall be filed under seal and kept under seal until further order of the Board. If any party intends to use "Confidential" and/or "Highly Confidential" material at hearings in this proceeding, or in any judicial review proceeding arising therefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such "Confidential" and/or Highly Confidential" material to the Administrative Law Judge, the Board or the Court to (a) restrict attendance at the hearings during discussion of such "Confidential" and/or Highly Confidential" material, and (b) restrict access to the portion of the record or briefs reflecting discussion of such "Confidential" and/or Highly Confidential" material in accordance with this Protective Order.

12. All documents containing "Confidential Information" or "Highly Confidential Information" shall, at the option of the producing party/person, be destroyed or returned to the producing party/person at the termination of this proceeding, including all appeals; provided, however, that outside counsel may retain file copies of any unredacted pleadings and materials filed with the Board or a court.

13. The provisions of this Order that restrict the handling, communication and use of "Confidential Information" and "Highly Confidential Information" shall continue to be binding after the termination of this proceeding, including any related court litigation or judicial appeals, unless the Board or the producing party/person authorizes in writing alternative handling, communication or use of the information.

14. This Order shall not bar or otherwise restrict:

(a) a party or producing person from opposing production of any information under the Board's Rules of Practice;

(b) an "Authorized Person" from making copies, abstracts, digests and analyses of "Confidential Information" and "Highly Confidential Information" for use in connection with this proceeding subject to the requirement that all such copies, abstracts, digests and analyses be treated as "Confidential Information" or "Highly Confidential Information," as the case may be, and clearly marked as such;

(c) an "Authorized Person" from rendering advice or opinions with respect to this proceeding to his or her client or employer based upon his or her examination of "Confidential Information" or "Highly Confidential Information" as long as such person does not disclose the "Confidential Information" or "Highly Confidential Information" itself to a person not authorized by this Order to have access to the "Confidential Information" or "Highly Confidential Information," as the case may be;

(d) a party from using any "Confidential Information" or "Highly Confidential Information" during hearings in this proceeding, subject to any further order of the Board;

(e) a party or purchasing person from using its own "Confidential Information" or "Highly Confidential Information" in any manner it sees fit, or from revealing such "Confidential Information" or "Highly Confidential Information" to whomever it chooses, without the prior consent of any other party or of the Board; and

(f) a party or producing person from applying to the Board at any time for additional protection, or to relax or rescind the restrictions of this Order, when convenience or necessity requires.

15. If "Confidential Information" or "Highly Confidential Information" in the possession of any party is subpoenaed by any court, administrative or legislative body, or any other person purporting to have authority to subpoena such information, the party to whom the subpoena is directed will not produce such information without first giving written notice (including the delivery of a copy thereof) to the producing party/person or the attorneys for the producing party/person, within 24 hours after receipt of the subpoena. If a subpoena purports to require production of such "Confidential Information" or "Highly Confidential Information" on less than four (4) business days' notice, the party to whom the subpoena is directed shall also give immediate notice by telephone of the receipt of such subpoena.

16. Information that is obtained outside of this proceeding shall not be subject to this Order even if the same information is produced and designated as "Confidential Information" or "Highly Confidential Information" in this proceeding.

17. To the extent that "Confidential Information" or "Highly Confidential Information" is produced by a party or other person in this proceeding and held and used by the receiving party in compliance with the terms of this Order, such production, disclosure and use of such "Confidential Information" or "Highly Confidential Information" are deemed essential for the disposition of this proceeding and shall not be deemed a violation of 49 U.S.C. § 11904.

18. This Order shall be effective on the date served.

**Before the
SURFACE TRANSPORTATION BOARD**

DHX, Inc.	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. WCC-105
	)	
Matson Navigation Company, Inc. and	)	
Sea-Land Service, Inc.,	)	
	)	
Defendants,	)	
	)	

CONFIDENTIALITY UNDERTAKING

I, [Name], am [Position or Job Title], of [Company, Firm or Employer], [Address of Company, Firm or Employer]. I am:

- () an outside attorney actively involved in this proceeding, or a legal assistant or clerical employee under such attorney's supervision;
- () an attorney who is a regular employee of a party and is actively involved in this proceeding;
- () a person who is an employee or agent of a party and is actively involved in this proceeding;
- () a person who is an outside consultant (that is, not a regular employee of a party) actively involved in this proceeding and who has been employed by any of the parties to provide advice, expertise or assistance in this proceeding, or an assistant or clerical employee under such person's supervision;
- () a court reporter employed to record depositions in the captioned proceeding,

and affirm that I have read and understand the Protective Order served _____ in the captioned proceeding, and that I agree to abide by the terms of such Protective Order.

Dated: _____