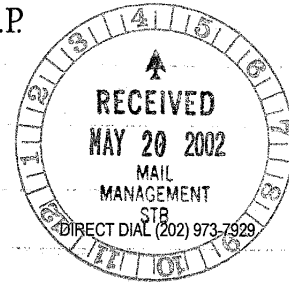


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SCOTT M. ZIMMERMAN

May 20, 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 Matson Navigation Company's Answer To The Amended Complaint, 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 two additional enclosed copies of this pleading.

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

Sincerely,

Scott M. Zimmerman

Enclosures

ENTERED
Office of the Secretary

MAY 20 2002

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



DHX, Inc.,

Plaintiff,

v.

MATSON NAVIGATION COMPANY and
SEA-LAND SERVICE, INC.,

Defendants.

Docket No. WCC-105

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MATSON NAVIGATION COMPANY'S ANSWER TO THE AMENDED COMPLAINT

Pursuant to the procedural schedule established in the Board's decision served March 28, 2002, Defendant Matson Navigation Company answers the amended complaint dated April 29, 2002 as set forth below.

GENERAL ANSWER

All allegations of the amended complaint that are not expressly admitted are denied. The numbered paragraphs below provide Matson's answer to the allegations in the correspondingly-numbered paragraphs of the amended complaint. References to "DHX" are to the plaintiff; references to "Sea-Land" are to Matson's co-defendant in this proceeding.

The amended complaint includes, at various points, discursive narrative that is not set forth in clear, numbered paragraphs. These portions of the amended complaint include (1) the first three paragraphs of the pleading, (2) the section entitled "The Market" at page 2, and (3) the section entitled "The Statutory Structure" at pp. 15 – 17.

These passages largely amount to a tangled mix of legal conclusions, argument, and factual assertions. As such, these passages are not properly part of the amended complaint, as they violate the principle that a complaint should “set forth briefly and in plain language the facts upon which it is based.” 49 C.F.R. § 1111.1(a). Matson cannot properly respond to these passages because to do so would require Matson, at the risk of misunderstanding the plaintiff’s intent, to assume the burden of, in effect, re-writing the amended complaint to attempt to identify and separate out from those spaghetti-bowl passages the strands that might be construed as allegations of fact. As a general proposition, however, to the extent that any portion or portions of these unnumbered passages in the amended complaint could be construed as factual allegations, they are not well-pleaded in a manner that permits a direct response and Matson therefore generally denies them.

Additionally, the amended complaint includes numerous paragraphs that purport to describe certain provisions of various Matson tariffs. Some of these are stated in the present tense (see, e.g., amended complaint ¶ 27), some are stated in the past tense without identifying the intended time period (see, e.g., amended complaint ¶ 30), and some refer to “all times material to this complaint” – an undefined period of time of unspecified duration (see, e.g., amended complaint ¶ 31). Matson’s tariffs are always subject to review, revision and modification over time; what a particular tariff provision says today might differ from what it said a year ago, or what it might say tomorrow. For that reason, it is neither necessary nor prudent to attempt to admit or deny the plaintiff’s numerous characterizations of Matson tariff provisions at various undefined times as set forth in the amended complaint. Rather, what a particular tariff provision says at a

certain point in time is conclusively determinable by direct reference to the tariff provision itself in effect at that time. In other words, the tariffs, as modified from time to time, speak for themselves, and for that reason Matson will respond accordingly below to those various allegations of the amended complaint. Matson generally denies all of DHX's descriptions or characterizations of Matson's tariffs that do not accurately reflect the actual terms of such tariffs.

Finally, the section of the amended complaint entitled "Prayer For Relief" makes no allegations of fact, but simply sets forth the relief requested by DHX. Because this section makes no allegations of fact, no response by Matson is required, except to note that Matson denies that DHX is entitled to any relief, whether specifically requested in the Prayer For Relief or not.

Matson now answers the numbered paragraphs of the amended complaint as follows.

ANSWER TO NUMBERED PARAGRAPHS

1. This paragraph refers exclusively to matters pertaining to DHX. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

2. This paragraph refers exclusively to matters pertaining to DHX. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

3. This paragraph refers exclusively to matters pertaining to DHX. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

4. This paragraph refers exclusively to matters pertaining to DHX. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

5. This paragraph refers exclusively to matters pertaining to DHX. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

6. Admit.

7. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." Matson admits that, for some purposes, it is a "water carrier" as defined in 49 U.S.C. § 13102(22).

8. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." The extent to which the business conducted by Matson is subject to the provisions of 49 U.S.C. §§ 13701 and 13702 is a legal conclusion to which no response is required.

9. Matson admits that it uses terminal facilities at Terminal Island, CA; 3050 7th Street, Oakland, CA; 1395 Middle Harbor Road, Oakland, CA; and 2715 11th Avenue, S.W. Suite: Terminal 18, Gate 3, Seattle, WA.

10. Admit.

11. Admit.

12. Matson admits that it uses terminal facilities at 1411 Sand Island Parkway, Honolulu, HI.

13. Admit.

14. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

15. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

16. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

17. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

18. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

19. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

20. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

21. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

22. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

23. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." To the extent that this paragraph includes allegations pertaining to DHX's business dealings with Sea-Land, Matson lacks the information sufficient to form a belief as to the truth of those allegations of this paragraph, and, accordingly, those allegations are denied. Matson admits that, from time to time, DHX has tendered freight to Matson for transportation between points in California, Oregon, and Washington, on one hand, and Hawaii and Guam, on the other.

24. Admit.

25. Matson admits that it has published and filed with the Surface Transportation Board tariff STB MATS No. 34, also referred to as Tariff 14-F. Matson avers that the content of Tariff 14-F speaks for itself.

26. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." Matson admits that it has published and filed with the Surface Transportation Board tariff STB MATS No. 34, also referred to as Tariff 14-F. Matson avers that the content of Tariff 14-F speaks for itself.

27. Matson avers that the content of Tariff 14-F speaks for itself.

28. Matson admits that it has published and filed with the Surface Transportation Board tariff STB MATS 2016-D, also referred to as Tariff 2016-D.

Matson avers that the content of Tariff 2016-D speaks for itself.

29. Matson admits that the allegations of this paragraph are generally true, but not in all cases.

30. Matson avers that the content of Tariff 2016-D speaks for itself.

31. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all times material to this complaint.” Matson admits that it has published and filed with the Surface Transportation Board Tariff 2016-D.

32. Matson avers that the content of Tariff 14-F speaks for itself.

33. Matson avers that the content of Tariff 2016-D speaks for itself.

34. Matson avers that the content of Tariff 2016-D speaks for itself.

35. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all times material to this complaint.” Matson denies that the allegation in this paragraph is universally true.

36. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all times material to this complaint.” Matson, however, generally denies that it does not negotiate the joint motor-water rates contained in Tariff 2016-D with the participating motor carriers.

37. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." Matson, however, generally denies the allegations of this paragraph.

38. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." Matson admits that it has published and filed with the Surface Transportation Board tariff STB MATS No. 2034-E, also referred to as Tariff 2034-E.

39. Matson avers that the content of Tariff 2034-E speaks for itself.

40. Matson avers that the content of Tariff 2034-E speaks for itself.

41. Matson avers that the content of Tariff 2034-E speaks for itself.

42. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." Matson avers that the content of Tariff 2034-E speaks for itself.

43. Matson avers that the content of Tariff 2034-E speaks for itself.

44. Matson avers that the content of Tariff 2034-E speaks for itself.

45. Matson avers that the content of Tariff 2034-E speaks for itself.

46. Matson avers that the content of Tariff 2034-E speaks for itself.

47. Matson avers that the content of Tariff 2034-E speaks for itself.

48. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase "at all

times material to this complaint.” Matson avers that the content of Tariff 2034-E speaks for itself.

49. Matson avers that the content of Tariff 2034-E speaks for itself.

50. Matson avers that the content of Tariff 2034-E speaks for itself.

51. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all times material to this complaint.” Matson avers that the content of Tariff 2034-E speaks for itself.

52. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all times material to this complaint.” Nevertheless, Matson avers that the content of Tariff 2034-E speaks for itself.

53. Deny.

54. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all times material to this complaint.” Matson avers that the contents of Tariff 14-F and Tariff 2016-D speak for themselves.

55. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

56. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

57. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

58. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

59. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

60. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

61. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

62. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

63. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

64. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

65. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

66. Matson avers that the relevant tariffs speak for themselves.

67. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

68. Matson avers that the relevant tariffs speak for themselves.

69. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

70. Matson avers that the content of Tariff 2034-E speaks for itself.

71. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

72. This paragraph refers exclusively to matters pertaining to Sea-Land.
Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

73. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

74. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

75. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

76. Matson cannot fully admit or deny the allegations of this paragraph

because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." Matson admits the allegations of this paragraph as of the present time.

77. Matson cannot fully admit or deny the allegations of this paragraph

because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." Matson admits the allegations of this paragraph as of the present time.

78. Matson cannot fully admit or deny the allegations of this paragraph

because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." Matson admits the allegations of this paragraph as of the present time.

79. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

80. This paragraph refers exclusively to alleged actions by Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

Complainant's Claims As To Defendant Matson Navigation Company

Count 1

81. Matson incorporates by reference its responses to paragraphs 1 through 80 of the amended complaint.

82. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." Matson avers that the content of Tariffs 14-F and 2016-D speak for themselves.

83. Matson avers that the contents of Tariffs 14-F and 2016-D speak for themselves.

84. Matson avers that the content of Tariffs 14-F and 2016-D speak for themselves.

85. Matson avers that the content of Tariffs 14-F and 2016-D speak for themselves. Matson admits that DHX has used such rules to tender consolidated containers to Matson.

86. Matson avers that the content of Tariffs 14-F and 2016-D speak for themselves.

87. Deny.

88. Deny.

89. Deny.

90. The allegations of this paragraph assert a legal conclusion to which no response is required.

91. This paragraph consists not of allegations of fact but of argument, to which no response is required.

92. Matson denies any wrongful act or omission on its part resulting in damage to DHX.

Count 2

93. Matson incorporates by reference its responses to paragraphs 1 through 92 of the amended complaint.

94. Admit.

95. Matson avers that the content of Rule 31 of Tariff 14-F speaks for itself.

96. Matson avers that the content of Rule 31(a)(1) of Tariff 14-F speaks for itself.

97. Matson avers that the content of Rule 31 of Tariff 14-F speaks for itself.

98. Matson avers that, as a matter of fact, the content of Rule 31 of Tariff 14-F speaks for itself. The assertion that Rule 31 is “discriminatory on its face” is a legal conclusion to which no response is required.

99. Deny.

100. The allegations of this paragraph assert a legal conclusion to which no response is required.

101. Matson denies any wrongful act or omission on its part resulting in damage to DHX.

Count 3

102. Matson incorporates by reference its responses to paragraphs 1 through 101 of the amended complaint.

103. The allegations of this paragraph assert a legal conclusion to which no response is required.

104. Matson avers that the content of the Uniform Freight Classification speaks for itself.

105. Matson avers that the content of the Uniform Freight Classification speaks for itself.

106. This paragraph asserts a legal conclusion to which no response is required.

107. Deny.

108. The allegation in this paragraph that "Complainant is entitled to the benefit of Rule 24 of ICC UFC 6000-H, and its successor publications" asserts a legal conclusion to which no response is required. Matson denies any wrongful act or omission on its part resulting in damage to DHX.

Count 4

109. Matson incorporates by reference its responses to paragraphs 1 through 108 of the amended complaint.

110. Matson admits that it considers DHX to be a competitor of Matson in the full truckload and full containerload markets.

111. Admit.

112. Deny.

113. Admit.

114. Matson admits that Matson tariff STB MATS 2034-E is a successor to Matson tariff ICC MATS 2034-E.

115. Deny.

116. Deny.

117. Matson avers that the content of tariff ICC MATS 2034-E speaks for itself.

118. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all times material to this complaint.” Matson avers that the content of tariff STB MATS 2034-E speaks for itself.

119. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all times material to this complaint.” Matson avers that the content of tariff STB MATS 2034-E speaks for itself.

120. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all

times material to this complaint.” Matson avers that the content of tariff STB MATS 2034-E speaks for itself.

121. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all times material to this complaint.” Matson avers that the content of tariff STB MATS 2034-E speaks for itself.

122. Deny.

123. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all times material to this complaint.” Reading paragraph 123 of the amended complaint without regard to that ambiguous and undefined phrase, Matson denies the allegations of that paragraph.

124. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all times material to this complaint.” Reading paragraph 124 of the amended complaint without regard to that ambiguous and undefined phrase, Matson denies the allegations of that paragraph.

125. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase “at all times material to this complaint.” Reading paragraph 125 of the amended complaint without regard to that ambiguous and undefined phrase, Matson admits that it has represented that Complainant would have the ability to ship cargo on Matson’s vessels utilizing the provisions of Rule 30 and Rule 31 of Tariff 14-F.

126. Deny.

127. Deny.

128. Deny.

129. Matson denies any wrongful act or omission on its part resulting in damage to DHX.

130. Matson denies any wrongful act or omission on its part resulting in damage to DHX.

Count 5

131. Matson incorporates by reference its responses to paragraphs 1 through 130 of the amended complaint.

132. Matson admits that between September 6, 1998 and October 17, 1999, Matson made certain changes to Tariff 14-F.

133. Deny.

134. Matson avers that the content of Tariff 14-F speaks for itself.

135. Deny.

136. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

137. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

138. Matson avers that the content of Tariff 14-F speaks for itself.

139. Deny.

140. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

141. Admit.

142. Deny.

143. Admit.

144. Deny.

145. Admit.

146. Deny.

147. Deny.

148. Deny.

149. Admit.

150. Deny.

151. Deny.

152. Deny.

153. Deny.

154. Matson denies any wrongful act or omission on its part resulting in damage to DHX.

Count 6

155. Matson incorporates by reference its responses to paragraphs 1 through 153 of the amended complaint.

156. Matson cannot fully admit or deny the allegations of this paragraph because it is unclear what the phrase "is obligated to and is assessed" means. Matson avers that the contents of Tariffs 14-F and 2016-D speak for themselves.

157. Deny.

158. Deny.

159. Matson denies that DHX "has been damaged" through the payment of wharfage charges.

160. Matson denies any wrongful act or omission on its part resulting in damage to DHX.

Count 7

161. Matson incorporates by reference its responses to paragraphs 1 through 160 of the amended complaint.

162. Matson avers that the content of Tariff 2034-E speaks for itself.

163. Matson avers that the content of Tariff 2034-E speaks for itself.

164. Matson avers that the content of Tariff 2034-E speaks for itself.

165. Matson avers that the contents of Tariffs 2034-E, 14-F and 2016-D speak for themselves.

166. Matson avers that the content of Tariff 2034-E speaks for itself.

167. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, in that the paragraph fails to identify what "containers tendered to Matson by Complainant" it refers to. Accordingly, those allegations are denied.

168. Deny.

169. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, in that it is unclear what shipments the paragraph refers to, what “the commodities involved” in those shipments were, and what the phrase “at all times material to this complaint” means. Accordingly, those allegations are denied.

Count 8

170. Matson incorporates by reference its responses to paragraphs 1 through 169 of the amended complaint.

171. Matson avers that the content of Tariff 2034-E speaks for itself.

172. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, in that it is unclear what DHX means by the phrase “transportation factors.” Accordingly, those allegations are denied.

173. This paragraph asserts a legal conclusion to which no response is required. Even if a response were required, Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, in that it is unclear what DHX means by the phrase “non-transportation factors.”

174. This paragraph is argumentative and asserts a legal conclusion to which no response is required.

175. Deny.

176. This paragraph asserts a legal conclusion to which no response is required.

177. Matson denies DHX's characterization of "unreasonable exclusionary provisions" in tariff 2034-E. Matson lacks the information sufficient to form a belief as to the truth of the allegations regarding the level of "rates necessary to make and sustain Complainant as a competitive alternative to Matson in the Hawaii trade," and, accordingly, those allegations in this paragraph are denied.

178. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph pertaining to any alleged "loss of Complainant's full containerload business," and those allegations therefore are denied. Matson denies that there has been any "exaction [sic] of rates and charges greater than what Matson should have assessed Complainant under the otherwise applicable tariff items in Tariff 2034-E." Matson denies any wrongful act or omission on its part resulting in damage to DHX.

Count 9

179. Matson incorporates by reference its responses to paragraphs 1 through 178 of the amended complaint.

180. Matson avers that the content of Tariff 2034-E speaks for itself.

181. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." Reading paragraph 181 of the amended complaint without regard to that ambiguous and undefined phrase, Matson admits the allegations of that paragraph.

182. Admit.

183. Deny.

184. Admit.

185. Matson avers that the content of Tariff 2034-E speaks for itself.

186. Deny.

187. Matson admits that Attachment G to the amended complaint lists shippers for which Matson has published rates specifically applicable to such shippers.

188. Matson is uncertain as to the intended meaning of this paragraph of the amended complaint, in that it is unclear how a "tariff item[]" can involve terms "not contained in the published rate items." Matson admits that in some cases, correspondence between Matson and certain of the shippers listed in Attachment G discusses matters pertaining to the transportation of the shipper's goods not published in the relevant tariff item.

189. Deny.

190. The provisions of this paragraph alleging violation of 49 U.S.C. § 13701(a) and 13702(b)(1) are legal conclusions to which no response is required. Matson denies any wrongful act or omission on its part resulting in damage to DHX.

191. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph regarding the extent to which, if at all, DHX's has lost its full containerload business, and those allegations therefore are denied. Matson denies any wrongful act or omission on its part resulting in damage to DHX.

Complainant's Claims As To Defendant Sea-Land Service, Inc.

Count 1

192. Matson incorporates by reference its responses to paragraphs 1. through 80 of the amended complaint.

193. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

194. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

195. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

196. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

197. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

198. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

199. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

200. Deny.

201. Deny.

202. Deny.

203. The allegations of this paragraph assert a legal conclusion to which no response is required.

204. This paragraph consists not of allegations of fact but of argument, to which no response is required.

205. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

Count 2

206. Matson incorporates by reference its responses to paragraphs 1 through 80 and 192 through 205 of the amended complaint.

207. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

208. Matson avers that the provisions of the National Motor Freight Classification speak for themselves.

209. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph; moreover, this paragraph asserts a legal conclusion to which no response is required.

210. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph; moreover, this paragraph asserts a legal conclusion to which no response is required.

211. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph; moreover, this paragraph asserts a legal conclusion to which no response is required.

212. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

Count 3

213. Matson incorporates by reference its responses to paragraphs 1 through 80 and 192 through 212 of the amended complaint.

214. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

215. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

216. This paragraph consists not of allegations of fact, but asserted conclusions of law, to which no response is required.

217. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

218. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

219. This paragraph appears to consist of a mixture of allegations of fact and assertions of law. To the extent it includes allegations of fact, those facts pertain solely to Sea-Land; Matson lacks the information sufficient to form a belief as to the truth of such allegations, and, accordingly, they are denied. To the extent that this paragraph asserts legal conclusions, no response is required.

220. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

Count 4

221. Matson incorporates by reference its responses to paragraphs 1 through 80 and 192 through 220 of the amended complaint.

222. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

223. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

224. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

225. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

226. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

227. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

228. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

Count 5

229. Matson incorporates by reference its responses to paragraphs 1 through 80 and 192 through 228 of the amended complaint.

230. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

231. This paragraph refers exclusively to matters pertaining to Sea-Land: Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

232. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

233. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

234. This paragraph refers exclusively to matters pertaining to Sea-Land, and asserts conclusions of law to which no response is required.

235. This paragraph refers exclusively to matters pertaining to Sea-Land, and asserts conclusions of law to which no response is required.

236. This paragraph appears to consist of a mixture of allegations of fact and assertions of law. To the extent it includes allegations of fact, those facts pertain solely to Sea-Land; Matson lacks the information sufficient to form a belief as to the truth of such allegations, and, accordingly, they are denied. To the extent that this paragraph asserts legal conclusions, no response is required.

Count 6

237. Matson incorporates by reference its responses to paragraphs 1 through 80 and 192 through 236 of the amended complaint.

238. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

239. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

240. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

241. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

242. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

243. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

244. This paragraph refers exclusively to matters pertaining to Sea-Land. Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

245. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

246. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

247. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

248. This paragraph refers exclusively to matters pertaining to Sea-Land, and asserts conclusions of law to which no response is required.

249. This paragraph refers exclusively to matters pertaining to Sea-Land.

Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

Complainant's Claim As To Both Defendants

250. Matson incorporates by reference its responses to paragraphs 1 through 80 of the amended complaint.

251. Matson admits that Matson and Sea-Land provide the only scheduled liner ship service between the mainland United States and Honolulu, Hawaii.

251. ¹ Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint." Reading this paragraph of the amended complaint without regard to that ambiguous and undefined phrase, Matson denies the allegations of that paragraph.

252. Deny.

253. To the extent that the reference to "Defendants" means Matson, Matson denies the allegations of this paragraph. To the extent that the reference to "Defendants" means Sea-Land, Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

254. To the extent that the reference to "Defendants" means Matson, Matson admits that in some instances it has offered and provided rates based upon the volume of cargo tendered over a particular period of time in the Hawaii trade. To the extent that the reference to "Defendants" means Sea-Land, Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

255. To the extent that the reference to "Defendants" means Matson, Matson admits that upon filing and publication, Matson's tariffs thereby are communicated to the public at large. To the extent that the reference to "Defendants" means Sea-Land, Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

¹ The amended complaint contains two paragraphs numbered 251.

256. Deny.

257. Matson admits that it and Sea-Land have entered into certain agreements with each other regarding the provision of transportation in the Hawaii trade.

258. Matson cannot fully admit or deny the allegations of this paragraph because the amended complaint fails to explain what is meant by the phrase "at all times material to this complaint."

259. To the extent that the reference to "Defendants" means Matson, Matson denies the allegations of this paragraph. To the extent that the reference to "Defendants" means Sea-Land, Matson lacks the information sufficient to form a belief as to the truth of the allegations of this paragraph, and, accordingly, the allegations in this paragraph are denied.

260. This paragraph asserts a legal conclusion to which no response is required.

261. This paragraph asserts a legal conclusion to which no response is required.

262. This paragraph asserts a legal conclusion to which no response is required.

263. The allegations of this paragraph assert a legal conclusion to which no response is required.

264. The allegations of this paragraph assert a legal conclusion to which no response is required.

265. This paragraph asserts legal conclusions to which no response is required. Matson denies any wrongful act or omission on its part resulting in damage to DHX.

266. This paragraph asserts legal conclusions to which no response is required. Matson denies any wrongful act or omission on its part resulting in damage to DHX.

AFFIRMATIVE DEFENSES

First. The amended complaint fails to state any claim against Matson, either singly or in conjunction with Sea-Land, upon which relief can be granted.

Second. The rates and practices of Matson are reasonable.

Third. The amended complaint is without merit insofar as it challenges rates of Matson protected under the statutory Zone of Reasonableness.

Fourth. The amended complaint is without merit insofar as it seeks relief as to claims barred by the applicable statute of limitations.

Fifth. The amended complaint is without merit insofar as it seeks relief as to matters not within the jurisdiction of the Surface Transportation Board.

REQUEST FOR RELIEF

WHEREFORE, Matson respectfully requests that:

- A. All counts of the amended complaint against Matson alone, and the count of the amended complaint against both Matson and Sea-Land, be

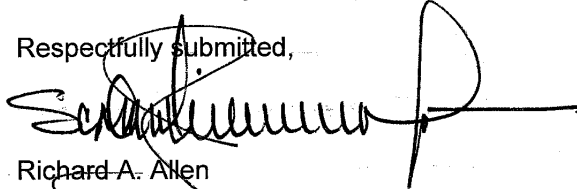
dismissed with prejudice and this matter discontinued with respect to

Matson;

B. Matson be awarded its costs and attorneys' fees incurred in defense of
this action; and

C. The Board grant such additional relief as it may deem appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard A. Allen", is written over the typed name and firm name.

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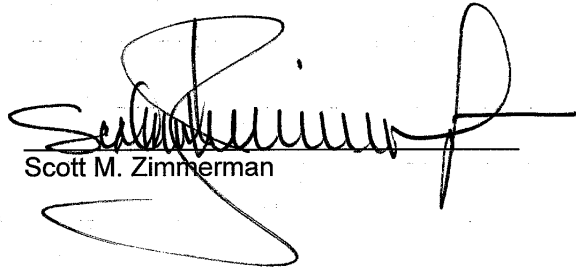
Dated: May 20, 2002

CERTIFICATE OF SERVICE

I certify that on May 20, 2002, a true and correct copy of "Matson Navigation Company's Answer to the Amended Complaint" was served by first class U.S. Mail, postage prepaid, and by facsimile, upon:

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