

205516

U.S. DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD



DHX, INC.,

Complainant,

v.

STB Docket No. WCC-105

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

ENTERED
Office of the Secretary

JUN 03 2002

Part of
Public Record

Defendants.

MOTION TO COMPEL DISCOVERY

COMES NOW, Complainant, DHX, Inc., by and through its counsel, pursuant to Rule 1114.31(a), 49 CFR (2000 ed.), and moves this Board for an Order directing defendant SL Service, Inc. to comply with Complainant's First Interrogatories and Request For Production of Documents. Attached hereto and identified are as follows -

Attachment C - Complainant's Initial Discovery To
Defendant SL Service, Inc. f/k/a
Sea-Land Service, Inc.

Attachment B - A letter from counsel for Complainant to
counsel for Defendant requesting proper
signature execution of proposed responses
and objections dated May 9th (by e-mail)

Attachment A - Copy of an E-mail from counsel for Defen-
dant to counsel for Complainant in which
it is noted that the material is proposed
only and would be shortly revised with an
original signature page.

Complainant has not attached the e-mailed material as such a document does not constitute the formal answer to the involved initial discovery. It is not executed either by defendant's counsel nor by the proposed affiant.

2.

The Board, in its Order served March 27, 2002, stated that the parties were to "cooperate with each other in providing discovery material and any other information required for the prompt, efficient disposition of this proceeding". (Slip Op. at pages 2-3). The parties have been acted as expeditiously as possible on this matter to the extent that appropriate discovery materials have been issued. Defendant Matson Navigation Company began to provide materials under cover of May 15, 2002. Defendant, SL Service, Inc. f/k/a Sea-Land Service, Inc. has not provided any formal discovery but only proposed objections, (likewise unsigned).

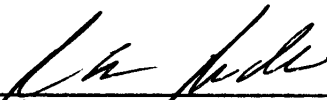
The Board's Rules of Procedure provide for a motion to compel when a party fails to comply with discovery. Cf. Duke Energy Corporation v. CSX Transportation, STB Docket No. 42070, (SEC) served March 4, 2002 (ordering production of customer contracts), and Trailer Bridge, Inc. v. Sea Star Lines, LLC, STB Docket No. WCC-104 (EB) served October 27, 2000.

Wherefore, it is hereby respectfully requested that the Board enter an Order directing defendant to answer the involved interrogatories and produce the requested documents; further, that defendant immediately provide or waive any objections which it may have to the involved discovery;^{1/} and for such other relief as the Board deems just in the circumstances. Defendant has totally obstructed Complainant's ability to obtain relevant materials, documents and information necessary to Complainant's case.

1/ Complainant has attempted to work with defendant's counsel in good faith and has requested proper responses, objections and all. However, the Board's admonishment to work with opposing counsel should not result in prejudice to Complainant as is the situation in the present case.

3.

Respectfully submitted,



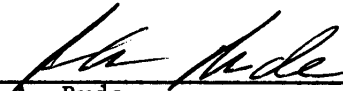
RICK A. RUDE, Esq.
Suite 103
207 Park Avenue
Falls Church, VA. 22046
(AC 703) 536-3063
Counsel For Complainant

Dated - 3 June 2002

Certificate Of Service

I hereby certify that a copy of this document has been served, by hand delivery of a copy of the same, upon the below listed counsel for record for defendants in this proceeding.

Dated this 3rd day of June 2002 at Falls Church, VA. 22046



Rick A. Rude

Mr. Richard A. Allen
Mr. Scott M. Zimmerman
888 - 17th Street, N.W.
Suite 600
Washington, D.C. 2006

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

ATTACHMENT "A"

Dear Rick:

Enclosed for your use and information are the initial responses of defendant Sea-Land Service to DHX's Interrogatories. As mentioned in our telephone call this morning, these responses, being transferred electronically, have not been signed by Sea-Land's witnesses (for interrogatory responses) or counsel (for objection). They are thus sent as a draft text that has been labelled "Highly Confidential." Upon receipt of the original signature pages, we will send you hard copy that contains an original signature page and will narrow our use of the "highly confidential" designation.

Regards,

Jon

C. Jonathan Benner
Troutman Sanders LLP
401 Ninth Street, NW
Washington, D.C. 20004
202 274 2880 (direct telephone)
202 262 4702 (mobile telephone)
202 654 5647 (telecopier)

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5/23/2002

ATTACHMENT "B"

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
27 May 2002
Via FAX

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

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

Dear Mr. Benner:

I have looked over the e-mail proposed responses to DHX's initial discovery to defendant Sea-Land Service, Inc. a/k/a SL Service, Inc. Your cover message indicated that you would be shortly forwarding an executed copy of the involved material. I do note that there may be a "shortage" of SL Service personnel to sign the involved document. I know that Bob Zuckerman has NO personal knowledge regarding many of the matters listed and it is very problematic to attempt to depose him as I believe he has offered legal advice to other SL Service (ex-employees) and this raises privilege issues.

While I have an obvious opinion as to what has transpired, that is a matter to be developed by the record. The first order of business however, is to hereby request that SL Service, Inc. provide the involved discovery. While I do appreciate our efforts at cooperation, and I have not attempted nor will I, raise any procedural obstacles, I must make this request/demand. If we can not do this, I must file a motion to compel to protect my client and the file. I remain,

Very truly yours,


Rick A. Rude

RR/mp

ATTACHMENT "C"

U.S. DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

DHX, INC.,

Complainant,

v.

STB Docket No. WCC-105

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

Defendants.

COMPLAINANT'S FIRST INTERROGATORIES AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT SL SERVICE, INC.

TO: C. Jonathan Benner
Counsel for Defendant

RETURNABLE: May 2, 2002 at the offices of DHX, Inc.
Rancho Domingues, California, 1 P.M.

Complainant, DHX, Inc., pursuant to Rules 1114.21(a), 21(b), 1114.26(a), 1114.30(a) of this Board's Rules of Practice hereby requests that defendant answer the following interrogatories and produce the requested documents. The identified documents shall be produced in such form as required by rule and shall be made available for inspection and photocopy. The interrogatories shall be signed by an individual(s) that are authorized representative(s) of defendant, NOT to include the General Counsel, that have personal knowledge regarding the contents of the Answers and who may be made the subject of a deposition in this proceeding. Further, terms, conditions and governing instructions of this discovery request are contained in Attachment "A" hereto and incorporated herein.

FIRST INTERROGATORIES

1) State the place and date of incorporation of defendant, to include any and all name changes from the date of incorporation to the date of these interrogatories. Identity each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

2) Identify "CSX Lines, LLC" and describe in detail the legal relationship or affiliation of that entity to defendant. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

3) Identify Sea-Land Motor Freight, Inc. and describe in detail the legal relationship or affiliation of that entity to defendant. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

4) Identify Sea-Land Freight Service, Inc. and describe in detail the legal relationship or affiliation of that entity to defendant. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

3.

5) Identify CSX Transportation and describe in detail the legal relationship or affiliation of that entity to defendant. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

6) Identify the corporate officers and directors of defendant as such individuals held those position for the period of time as noted in the instructions hereto. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

7) If the individuals identified in response to interrogatory number 6 above hold positions as officers or directors of any other corporation, identify these other corporations. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

8) Describe in detail all offices and terminal facilities that are under the ownership of defendant. If defendant does not own any such facilities, identify all office locations and terminal facilities that are used by defendant for the conduct of business or the performance of any transportation services in the United States Hawaii Trade.

4.

9) Identify "Maersk Sea Land" and describe in detail the legal relationship, if any, between that entity and defendant. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

10) If Maersk SeaLand provides any facilities, equipment, or services to defendant, identify such services and activities and describe in detail. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

11) Describe in detail the ocean terminals used by or through which defendant moves containers and cargo in the United States Hawaii Trade. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

12) If Matson Navigation Company or Matson Terminals, Inc. provides any terminal facilities or terminal services to defendant, identify all such terminal facilities, terminal services, rates and charges paid to either company. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

5.

13) If defendant's response to interrogatory number 12 above is in the affirmative, state all terms and conditions of service, including lease or sub-lease of space, of the agreement or agreements for such services and facilities. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

14) Identify all vessels on which defendant has caused cargo to be transported between points or ports in California, Oregon or Washington, on the one hand, and Hawaii on the other. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

15) For each such vessel as is identified in response to interrogatory number 14 above, provide all vessel specifications as provided to any agency of the United States Government; to any State authority, or provide to any labor union for any contractual matters involving such union. This interrogatory includes the total number of TEUs (twenty foot equivalent units) which such vessels are designed to transport, by dry and refrigerated container cargoes, the amount of such TEUs that such vessels actually carry with regard to weight, loading, configuration and capacity of each such vessel. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

6.

16) Identify all persons that defendant has designated or is defined by defendant to be a "manager" or management employee and for each such person identified provide the job title, description of duties performed, the officer(s) to which such person reports or is otherwise supervised, and the length of time in such management position.

17) Identify each and every equipment pool location whereat such location is also the location of a shipper, receiver, drayage service company, railroad facilities, and state the terms of the arrangement or agreement between defendant and such other person(s) or entities for the establishment, operation and/or management of such equipment pool. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

18) Identify the total vessel capacity, by day and vessel sailing, which is provided by defendant each week in the United States Hawaii Trade. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

19) State in detail, all information, data, or matter in the possession or control of defendant which relates to or in any manner reflects the total service capacity, by day and by vessel sailing provided by Matson Navigation Company in the United States Hawaii Trade. Identify each and every document used by or referred to by defendant's in preparation of its response to this interrogatory.

7.

20) Does defendant conduct services as a freight forwarder, as defined in Attachment "A", in the United States Hawaii Trade. If so, describe in detail such services. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

21) Does defendant conduct services as a freight forwarder, as defined in Attachment "A", in any other domestic offshore trade of the United States. If so, describe in detail such services. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

22) State whether or not Matson Navigation Company charges defendant wharfage in the transportation of defendant's cargoes between the United States and Honolulu, Hawaii. If not, state why Matson does not charge defendant such wharfage charges. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

23) Describe in detail, and list, all commodities that are contained in the National Motor Freight Classification Guide that are permitted to be tendered for and transported by Matson Navigation Company pursuant to the transportation contract or agreement between Matson and defendant.

8.

24) Identify all commodities that defendant considers to be included in the term "Consolidated LTL Cargo". Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

25) Identify all commodities that defendant considers to be included in the term "Freight All Kinds". Identify each and every document used by or referred to be defendant in the preparation of defendant's response to this interrogatory.

26) State whether or not there is any overlap of commodities between those commodities identify by defendant in response to interrogatories numbers 24 and 25 above. If so, state which commodities are reflected by such overlap.

27) State whether or not the commodities listed in Attachment "C" hereto would be included within the definition of Freight All Kinds and defendant's response to interrogatory number 25 above. If not, state the reasons for defendant's negative response.

9.

28) State the total number of TEUs (further expressed as full containers or FEUs, if more easily provided) transported by defendant, or caused to be transported by defendant, in each of the below listed domestic offshore trades:

- A) Hawaii Trade
- B) Guam Trade
- C) Alaska Trade
- D) Puerto Rico Trade

29) For each of the trades listed in interrogatory number 28 above, Identify the number of TEUs (or FEUs) that are transported by defendant pursuant to each of the following:

- A) contracts pursuant to 49 USC §§14101(b); or provisions
- B) common carrier tariffs; or
- C) unfilled contracts or memoranda of agreement(s); or
- D) motor carrier contracts; or
- E) space sharing agreements.

Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

30) State the policy of defendant regarding defendant's participation in contracts pursuant to 49 USC §§14101(b) for each of the domestic offshore trades as identified in interrogatory number 28 above. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

10.

31) State the policy of defendant regarding defendant's publication of and participation in time volume rate agreements (as defined by 49 USC §§13702(b)(4) and instructions in Attachment "A") for each of the domestic offshore trades as identified in interrogatory number 28 above. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

32) State the policy of defendant regarding defendant's participation in "loyalty" agreements as defined in the Shipping Act of 1984, 46 App.U.S.C. §§1702(13)(1999) for each of the domestic offshore trades as identified in interrogatory number 28 above. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

33) Describe in detail all agreements between defendant and Atlantic Pacific International, Inc. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

34) Describe in detail all agreements between defendant and Honolulu Freight Services. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

11.

35) Identify all marketing studies, volume of business activity studies, business plans, sales reports or analysis, sales projections or any other document, in which defendant, or any related entity, discusses, notes or in any manner makes reference to any or all of the domestic offshore trades identified in interrogatory number 28 above. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

36) Identify all reports, analysis, studies, abstracts, or memoranda or any other document in which the defendant's business and activities in the United States Hawaii Trade is discussed or otherwise noted. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

37) Identify "TAG" a/k/a TAG/ICIB Services, Inc. and "The Adherence Group" and state in detail the business relationship between defendant and that entity. Identify each and every document used by or referred to in the preparation of defendant's response to this interrogatory.

38) Identify all communications between TAG and defendant regarding the services provided to defendant by TAG and any instructions, directions, advice provided by defendant to TAG regarding the interpretation(s) to be made of the contracts, memorandums of agreement or tariffs of defendant. Identify each and every document used by or referred to by defendant

Interrogatory number 38 continued.

in the preparation of defendant's response to this interrogatory.

39) Defendant in its answer to the original complaint in this proceeding submitted that defendant was subject to the jurisdiction or regulation of the Surface Transportation Board "for some purposes". State in detail and identify each and every fact upon which this statement was made by defendant and identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

40) Identify all communications between defendant and co-defendant regarding the matters contained in the complaint filed in this proceeding. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

41) Identify all personnel employed by defendant or contracted by defendant that were or are involved in the presentation and sales of defendant's services in the United States Hawaii Trade.

42) To the extent not otherwise identified in response to interrogatory numbers 35 and 36 herein, state in detail all sales and marketing plans, proposal, reports of other documents which in any manner reflect or relate to the business activity

Interrogatory number 42 continued.

of freight forwarders as defined herein and which in any manner reflect or relate to the competitive situation between defendant and such freight forwarders for customers and cargo in each of the below listed domestic offshore trades:

- A) Hawaii Trade; or
- B) Guam Trade; or
- C) Alaska Trade; or
- D) Puerto Rico Trade.

Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

43) Describe in detail the transportation services that are held out in the United States Hawaii Trade under each of the following services:

- A) Port to Port (CY to CY);
- B) Joint Motor Water;
- C) Proportional Services; and
- D) Port to Port with provision of motor carrier pickup and delivery.

44) State in detail the physical differences between defendant's joint motor water services and defendant's port to port service with the provision of motor carrier pickup and delivery services. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

14.

45) State in detail the physical difference, if any, between defendant's services under defendant's published port to port rates and defendant's proportional rates. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

46) Identify all standards, facts or criteria that are employed by defendant in the decision as to which type of services that defendant will provide to a shipper in the United States Hawaii Trade. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

47) State whether or not the trucking or drayage charges that are assessed under defendant's tariff are the same as the trucking division of revenue payments that are used by defendant as a component of defendant's joint motor water rates. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

48) If defendant's response to interrogatory number 47 is that such trucking or drayage charges are not the same, then state in detail and explain any and all differences between the amounts paid to truckers as their "division" of the joint rate and the amounts paid to such truckers as local drayage charges. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

15.

49) Identify the "overflow" freight or cargo rules in each tariff that defendant has published to or from points in the United States on the one hand, and Hawaii on the other. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

50) For each such provision identified in response to interrogatory number 49 above, state as follows:

- A) the tariff designation and description of services offered by that tariff;
- B) the rule number, text of the rule, page number(s) wherein such rule is contained;
- C) any changes, amendments, republications of such rules, from the date the rule was first published to the date of these interrogatories;
- D) the reason(s) for such amendments, changes, modifications or republications; and
- E) any studies, analysis, or reports which in any manner reflect, relate to or otherwise mention such overflow freight or cargo rules or provisions and any such amendments, changes, modifications or republications.

Identify each and every document used by or referred to by defendant in the preparation of defendant's response(s) to this interrogatory.

51) Identify each shipper, receiver(s) or freight forwarder that has tendered cargo to defendant and declared such cargo to be subject to defendant's Overflow freight provisions (whether published in a tariff rule or as a note in a rate item) and the total number of shipment containers declared. For each

Interrogatory number 51 continued.

such person identified further state as follows:

- A) Whether or not there is any common ownership or corporate relationship between those persons identified, and if so, which persons or entities;
- B) Whether such person or entity was considered a beneficial owner of the subject cargo or whether such person was a freight forwarder;
- C) Whether such person was charged on the basis of the actual weight of the overflow cargo or whether such person was charged pursuant to a minimum revenue charge/rate;
- D) The factors and criteria employed by defendant to determine the status of the cargo and the shipper and those factors or criteria that were also used to determine the applicable rate or charge; and
- E) Whether or not such Overflow cargo was loaded by any person other than defendant and whether or not such fact is an element or a factor in determining the amount of the charges under such Overflow provisions.

Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

52) State whether or not it was the purpose and policy of defendant to publish and or amend defendant's Overflow Cargo (further identified as Overflow Containers in tariff 468, Rule 882 and subparts) so that defendant's tariff rules would be the same as those published by Matson Navigation Company. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

17.

53) Identify each and every fact and state in detail the reason(s) that defendant filed any amendments, changes or modifications to defendant's Overflow Container rules. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

54) Identify each and every fact and state in detail the reason(s) that defendant filed any amendments, changes or modifications to defendant's definition of "Shipment" as contained in defendant's tariff 468. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

55) Identify each and every transportation cost factor that was used by or referred to by defendant to justify or otherwise effectuate the increases in the minimum revenue charges contained in defendant's Overflow Container (Overflow cargoes) provisions in tariff 468. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

56) Identify all shippers that tender cargoes to defendant and such cargoes are rated under the commodity "Consolidated LTL Cargo". For each such shipper so identified, state all terms and conditions of service, including all agreements between such persons and defendant. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

18.

57) State in detail and identify all facts used by defendant in the establishment of defendant's pickup and delivery charges as stated in defendant's tariff 468. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

58) State in detail and identify all facts used by defendant in the establishment of defendant's wharfage charges as contained in defendant's tariff 468. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

59) State in detail and identify all factors, circumstances and criteria used by defendant in the decision to include or otherwise incorporate the following restrictions in rate items contained in tariff 468:

- A) Ownership of the cargo; or
- B) Zip Code address codes; or
- C) Originating at named street address locations; or
- D) Named shippers.

Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

19.

60) State in detail and identify all factors, circumstances and criteria used by defendant in the decision to publish proportional rates in tariff 468. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

61) Identify each shipper or receiver for which defendant has published a proportional rate in defendant's tariff 468. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

62) For each such shipper or receiver identified in response to interrogatory number 61 above, state the terms and conditions of service and all agreements between defendant and such shippers or receivers. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

63) Identify each and every document which supports the contention that defendant's joint motor water rates and proportional rates "include wharfage". Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

64) State the routing that is applicable to each and every rate item that defendant has designated as a proportional rate. Identify each and every document used by or referred to by defendant in the

Interrogatory number 64 continued.

preparation of defendant's responses to this interrogatory.

65) Identify all persons that participated in or negotiated the service agreement between Matson Navigation Company and defendant, including any amendment thereto. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

66) Identify all documents that in any manner relate to or discuss the issue of carrier competition, including that of freight forwarder service, in the domestic offshore trade from or to Hawaii. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

67) Identify what is described as a "Shipper Profile" and state the purpose for which such documents or information is created. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

68) State whether or not there is any duplication of commodities between the rate items which defendant has made subject to joint motor water rates and proportional rates.

21.

69) If defendant's response to interrogatory number 68 is in the affirmative, identify each and every commodity duplication, both by rate item and specific commodity description and state whether or not there is a rate disparity between the specifically identified items.

70) For each rate disparity identified in response to interrogatory number 69 above, state such disparity and state defendant's reason or reasons for such disparity. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

71) Identify the thirty five (35) largest customers of defendant in the United States Hawaii Trade, by volume of containers that are shipped from the United States to Hawaii. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

72) For each such shipper customer identified in response to interrogatory number 71 above, state as follows (for the time periods noted in Attachment "A"):

- A) the total dollar revenues such customer provides to defendant;
- B) the total number of containers, stated by way of container size as well;
- C) a break down of the number of containers that are moved from each port to Hawaii;
- D) all terms of service as defined in Attachment "A";
- E) whether such terms of service are included in defendant's filed tariff;
- F) the rate item(s) wherein such rates and terms of service can be found; and
- G) the type of service, ie. CY to CY or joint motor water.

Interrogatory number 72 continued.

Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

73) State whether or not defendant reduced or removed any vessel(s) from operation in the Hawaii Trade as a result of defendant's agreement to place cargo on Matson's ships from the west coast United States to Hawaii.

74) If defendant's answer to interrogatory number 73 is in the affirmative, identify the vessel involved and all service or capacity reductions made by removal of that vessel from operation. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

75) State whether or not complainant has requested that defendant provide time volume rates or any other type of volume rate in the United States Hawaii Trade.

76) If defendant's response to interrogatory number 75 is in the affirmative, state all details and identify all documents which reflect such service requests. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

23.

77) Identify the total number of container, by quantity and size, (i.e. 20 ft, 40ft) that were transported by defendant as tendered by freight forwarders for the following listed west coast ports to Hawaii for the time period identified in Attachment "A" (stated month by month, year by year for each port):

- A) Los Angeles/Long Beach, CA.;
- B) Oakland, CA.;
- C) Portland, OR.;
- D) Tacoma, WA.; and
- E) Seattle, WA.

Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

78) Identify the fifteen most often used tariff rate items for cargoes tendered to defendant by the following entities:

- A) freight forwarders; or
- B) shipper's agents; or
- C) motor carriers; or
- D) beneficial owners.

Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

24.

79) State the pricing policy of defendant in regard to the provision of volume pricing on full containerload business to freight forwarders in the Hawaii Trade and to complainant in particular. Identify each and every document used by or referred to by defendant in the preparation of defendant's response to this interrogatory.

80) Identify each and every expert witness that defendant intends to submit evidence in this proceeding. As to each such expert witness state as follows:

- A) the name and qualifications of such expert(s);
- B) the subject matter in which he/she is expected to testify or submit evidence;
- C) the substance of the facts and opinions as to which he/she is expected to testify or submit as evidence; and
- D) the factual grounds for each such opinion or evidence.

REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant is hereby directed to produce the following documents for inspection, review and photocopy at the time and place identified below.

Time - 1 P.M.

Place- 19201 Susana Road, Rancho Dominguez, CA. 90221.

Production Requests

- 1) All documents identified in response to Complainant's interrogatories numbers 1 through 80 above.
- 2) All concurrences for the carriers listed and identified as participating carriers in tariff 468.

25.

- 3) All Shipper Profiles for the 35 largest shippers, by volume, in the Hawaii Trade.
 - 4) All documents, reports, memoranda which identifies any freight forwarders and their services in the Hawaii Trade.
 - 5) All reports, memoranda, documents that reference of identify Complainant and Complainant's services in the Hawaii Trade.
 - 6) All agreements, correspondence and communications between defendant and each participating carrier in tariff 468 in which the assent of that participating carrier is asked and provided with regard to defendant's general rate increases or any increases in Consolidated LTL Cargo rates.
 - 7) All documents which in any manner mention or reflect freight forwarder competition for full containerload business in the United States Hawaii Trade.
 - 8) All documents which in any manner mention, discuss or otherwise reflect defendant's pricing practices and pricing strategies in the United States Hawaii Trade.
 - 9) All documents which in any manner mention, discuss or otherwise reflect the pricing practices or pricing strategies of Matson Navigation Company in the United States Hawaii Trade.
- Dated: 13 April 2002

Respectfully submitted,

RICK A. RUDE, Esq.
Suite 103
207 Park Avenue
Falls Church, VA. 22046
(703) 536-3063
Attorney For Complainant
DHX, INC.

Certificate of Service

I hereby certify that a copy of these interrogatories and document production requests have been served, by first class mail, postage prepaid, upon the below listed persons.

Dated this 13th day of April 2002 at Falls Church, VA.

Mr. Richard A. Allen
Zuckert, Scoutt & 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

ATTACHMENT A

Additional Instructions

1. The references to defendant Sea-Land Service, Inc. or SL Services, Inc., including all successor entities and further specifically include the following commonly owned corporations which are - (a) Sea-Land Motor Freight, Inc., (b) Sea-Land Freight Service, Inc., (c) CSX/Sea-Land Intermodal, Inc., and CSX Lines, LLC.
2. The term 'agreement' includes any and all contracts, including 'motor contract carriage agreements', 'contracts of affreightment', 'agreements for contract carriage', 'service contracts' and includes any oral or written statement(s, arrangements, understandings, or other documents which in any manner reflect any written or oral understandings between Matson Navigation Company and any other entity or person as identified in this discovery request.
3. The term 'document' shall mean any medium upon which intelligence or information can be recorded or retrieved and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, publication, article(s), brochure, manual, letter, correspondence, journal, memorandum (including any memorandum or report of a meeting or conversation), invoice, bill, bill of lading, order form, receipt, voucher, check, financial statement, accounting entry, instruction, schedule, record, report, shop order, diary, calendar, telex, telegram, telefax, cable, minutes, notice(s), drafts, demands, chart(s), paper, print, laboratory record, drawing or sketch, diagram, form, graph(s), index, list, tape, photograph(s), microfilm, data sheet(s), data processing card(s), or any other written, recorded, transcribed, punched, taped, filmed, electronically recorded, or graphic matter, however produced or reproduced, that is in your possession, custody or control or over which you have any right of possession or control and in the possession and control of any third party. The term further shall include and mean exact copies of any tangible written, typed, printed or other form of recorded or graphic matter of every kind and description, however produced or reproduced, whether mechanically or electronically recorded, draft, final, original, revised, reproduction, signed or unsigned, sent, received, redrafted, or executed.
4. The time frames covered by these admission requests and document production requests, unless otherwise specified in a particular request, shall be from January 1, 1996 to the date of service of this discovery request. Defendant is under a continuing obligation to supplement or amend any responses given or produced pursuant to Rule 1114.29, 49 CFR (2000 ed.)

5. The term 'communication' means any oral, written or electronic statement, dialogue, colloquy, discussion or conversation, and also means any transfer of thoughts or ideas between persons by means of documents and includes any transfer of data from location to another by electronical or similar means.

6. The term 'relates to' shall mean directly or indirectly, refer to, reflect, describe, pertain to, arise out of or in connection with, or in any way legally, logically, or factually connected with the matter discussed.

7. The term 'complainant' refers to DHX, Inc., including any other person or entity acting or purporting to act on its behalf or under its control.

8. The words 'and' and 'or' shall be construed either disjunctively or conjunctively as necessary to bring within the scope hereof any documents or communications which might otherwise be construed to be outside the scope hereof.

9. If not expressly stated, 'control' means in your possession, custody, or control or under your direction, and includes in the possession, custody, or control of those under the direction of you, your employees, subordinates, counsel, accountants, consultant(s), expert(s), parent or affiliated corporation, and any person purporting to act on your behalf.

10. 'Identify' when used in reference to a natural person means to state his/her full name, present residential address, telephone number, present business title, present business address and affiliation if known. If the above are not known, such information as was last known and his/her residential address and telephone number, business title, business affiliation and business address at the time in question.

11. 'Identify' when used in reference to a document means to state the type of document (e.g. letter, memorandum, contract, e-mail, etc.) or some other means of identifying it, its date, author(s), addressess or addressees, if any, and its present location or custodian. Such request shall include any and all matter in what form so ever maintained by defendant(s), including computer discs, tapes, hard-drives, e-mail repositories and the like. If any such document is no longer in the possession of the defendant(s) or subject to the control of defendant(s), 'identify' also means to state what disposition was made of it and the date(s) of such disposition.

12. 'Identify' when used in reference to an act, occurrence, transaction, decision, statement(s), communications, or conduct (hereinafter referred to collectively as 'act'), means to describe in substance, unless specificity is requested, the event or events constituting such act, what transpired, the place and date thereof, and to identify the person(s) present, the persons involved and the documents referring or relating thereto.

13. All documents and records produced pursuant hereto are to be produced as they are kept in the usual course of business or shall be organized and labeled (without permanently marking the item produced) so as to correspond with the categories or each numbered request hereof.
14. If any privilege is claimed as to any document, state the nature of the claimed privilege and the basis for claiming the privilege as to each specified document or point of information, identifying the document by date, general subject matter, the person(s) that signed or issued the document(s), the person(s) to whom such document was directed, circulated or distributed. All such claims of privilege shall be further identified/summarized and listed in a list of claimed documents subject to privilege which may then be made the subject of a protective agreement or order or otherwise such disposition of documents as is appropriate to this proceeding.
15. To the extent not otherwise defined or described herein, the terms: rates, charges, terms of service, increases, decreases, changes, publication, filing, and the like shall have the same scope and meaning as those terms are defined in the Board's tariff regulations, 49 CFR Part 1312 (1999 ed.)
16. The term 'freight forwarder' is defined to include: freight forwarders as defined under the ICC Termination Act of 1995; Ocean Transportation Intermediaries as defined under the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998; and to further include all persons that tender cargo for transport by defendants that do not have legal title to the cargo tendered and to not come within defendants' term "Beneficial Owner" or that do not have "Beneficial Ownership" of the cargo so tendered to defendants. This term includes all persons that act as shipper's agents or 'third party logistical service providers' whether or not so registered or licensed with any State, Federal or other governmental authority.
17. The term "VOCC" or vessel operating ocean common carrier includes all persons that operate any vessels in the United States ocean trades wheresoever located or with which defendants have any form or arrangement or agreement for the performance of any services, facilities or equipment that may be included in the definition of 'transportation' as stated in the ICC Termination Act of 1995. This specifically does include any and all VOCCs no matter whether such services are provided or received pursuant to any contract, charter, or agreement of any nature whatsoever as defined herein.

COMMODITIES

commercial refrigeration equipment
toys, paper, aluminum articles
dishes/ plates/ trays, paper
small appliances
large household appliances
machinery
wearing apparel, clothing/shoes
audio/video/television equipment
video tapes, DVD discs
auto parts
batteries
beverages, non-alcoholic
beverages, alcoholic
foodstuffs, canned or preserved
foodstuffs, for human consumption
cement or plaster
chemicals, nos
drug store merchandise
retail or general merchandise
department store merchandise
drugs, nos
hospital supplies
hotel supplies
hardware
wood products, including flooring
food preparations
bakery goods
dried fruits
light fixtures
electrical equipment
transformers
air conditioners and parts
reproduction machines
office supplies
office furniture
household goods in Van Paks or crated
paint, nos
paper, paper products
plastic articles, including bubble wrap
animal food, pet foods
petroleum products
pet store merchandise
kitchen cabinets, furniture nos
grocery store merchandise
cleaning compounds, soap, bleach
toilet preparations
tile nos
tea/ cigarettes, coffee
plaster, sand, blasting grit
building materials
office equipment, computers, printers
computer software programs
refrigerated cargo, nos

ATTACHMENT "C"