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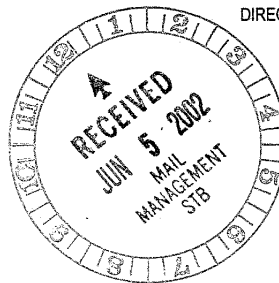
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SCOTT M. ZIMMERMAN

June 5, 2002

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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's Reply To DHX's Motion For Protective Order, as well as a 3.5" computer disk containing the text of the pleading in WordPerfect 5.0 format.

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

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

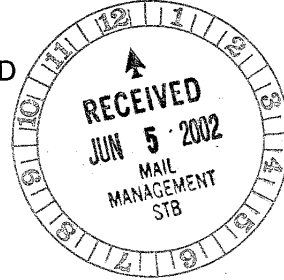
Sincerely,

Scott M. Zimmerman

Enclosures

ENTERED
Office of the Secretary
JUN 05 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

ENTERED
Office of the Secretary

JUN 05 2002

Part of
Public Record

**MATSON'S REPLY TO
DHX'S MOTION FOR PROTECTIVE ORDER**

Defendant Matson Navigation Company hereby responds to DHX's Motion For Protective Order, filed May 17, 2002, in which DHX requests that it be afforded until June 14, 2002 to respond to discovery requests propounded by Matson on May 3, 2002 and by Sea-Land on April 29, 2002 and May 14, 2002.

Matson is not opposed, in principle, to a modification of the procedural schedule based on a negotiated agreement among the parties, and indeed, the parties are working right now to reach agreement on a modification to the procedural schedule to be proposed to the Board that would facilitate the completion of discovery in a manner satisfactory to all the parties.¹

¹ Matson is hopeful that the parties shortly will reach such an agreement which, if approved by the Board, would render DHX's motion for protective order moot. Matson is filing this reply, however, as a precaution, in the event that the parties are unable to finalize an agreement and submit it to the Board before tomorrow's deadline for responding to DHX's motion.

In the absence of such an agreement, however, Matson opposes DHX's motion for protective order, which, in effect, would grant a unilateral extension to DHX that, given the current overall discovery deadline of June 19, would impair the ability of Matson and Sea-Land to adequately prepare their defense.

First, Matson takes issue with DHX's characterization of the present state of affairs. It is simply not the case that the defendants have served discovery "without due regard for the scope of the requests" in an effort to "paper" the Complaint." Motion at 2-3. DHX has filed an extraordinarily broad amended complaint that includes some 16 separate counts and 266 numbered paragraphs. Matson's single set of interrogatories and document requests, served on May 3, requests information and documents directly relevant to DHX's allegations and asserted claims. Moreover, the Board should not be left with the misimpression that the defendants are the only parties to have served discovery. DHX itself is largely responsible for the scope of this proceeding, through its massive amended complaint and also through the mass of discovery DHX has propounded, which, between the two defendants, totals to date some 86 requests for admission, 177 interrogatories (not including subparts), 20 document requests, many of them voluminous, and depositions of no fewer than 15 carrier witnesses.

DHX's assertion, *see* Motion at 3 n.1, that counsel for the defendants "failed to respond" to DHX's inquiry about extending the discovery deadline also is unfair and misleading. DHX's counsel raised this issue with Matson's counsel in a telephone conversation on Wednesday, May 15. DHX filed its motion alleging that defendants "failed to respond" to its May 15 inquiry a bare two days later, on Friday, May 17, when defendants' respective answers to DHX's massive 16-count, 266-paragraph amended

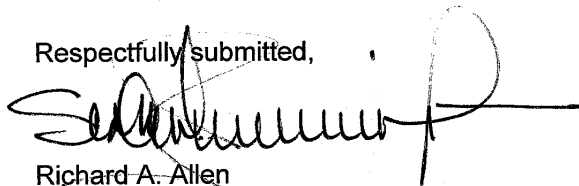
complaint were required to be filed the next business day, May 20. Any implication that defendants were negligent or dilatory in responding to DHX under the circumstances plainly is not warranted.

Aside from DHX's mischaracterizations, the relief DHX requests should not be granted. If granted, without any general adjustment procedural schedule, DHX would be permitted to "respond or otherwise plead" in regard to defendants' discovery as late as Friday, June 14, 2002, a mere 5 days before the close of the discovery period on June 19. What that means, in practice, is that the defendants are likely to have received few if any responsive documents or interrogatory answers before the close of the discovery period, and thus would have to conduct any depositions of DHX witnesses without the benefit of having responsive documents and interrogatory answers with which to prepare. The Board should not grant unilateral relief to the plaintiff that would put the defendants at such a procedural disadvantage.

CONCLUSION

For the foregoing reasons, Matson respectfully requests that DHX's motion for protective order be denied.

Respectfully submitted,



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Dated: June 5, 2002

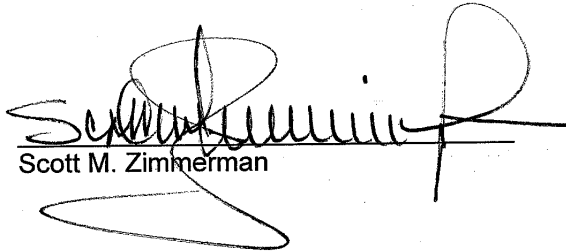
Attorneys for Matson Navigation Company

CERTIFICATE OF SERVICE

I certify that on June 5, 2002, a true and correct copy of Matson's Reply To
DHX's Motion For Protective Order was served by first class U.S. Mail, postage prepaid,
and by facsimile, upon:

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