

Before the
SURFACE TRANSPORTATION BOARD

DHX, Inc.

Complainant,

v.

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

Defendants.

Docket No. WCC-105



ENTERED
Office of the Secretary

JUN 13 2002

Part of
Public Record

**MATSON'S RESPONSE TO SEA-LAND'S MOTION TO DISMISS TWO COUNTS OF
THE AMENDED COMPLAINT**

Defendant Matson Navigation Company, Inc., pursuant to 49 C.F.R. § 1104.13, hereby responds to Sea-Land Service, Inc.'s Motion to Dismiss Two Counts of the Amended Complaint.

Matson takes no position on Sea-Land's Motion to the extent it seeks dismissal of Count 2 against Sea-Land, as that count involves allegations pertaining to Sea-Land only and seeks relief against Sea-Land only.

Moreover, Matson agrees wholeheartedly with Sea-Land's criticism of DHX's unwarranted expansion of this proceeding through its filing of a massive, 266-paragraph amended complaint that, in Sea-Land's words, seeks to "transform this proceeding into what appears to be a review of the carriers' entire tariff, operations and commercial activities throughout the noncontiguous domestic trades." Sea-Land Mot. at 3.

Nevertheless, Matson opposes Sea-Land's motion to the extent that it seeks dismissal of the amended complaint's single count against Matson and Sea-Land jointly, contained in Part III of the Amended Complaint.

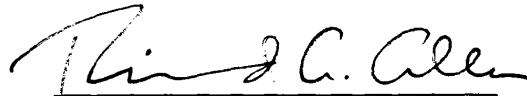
Matson believes that the alleged unlawful activity described in Part III falls within the Board's exclusive jurisdiction, pursuant to 49 U.S.C. § 13701(a), to determine the reasonableness of water carrier rates and practices. The Supreme Court has long recognized the need to protect the ability of the I.C.C. (and thus its successor, this Board) to administer the regulatory scheme entrusted to it by Congress. See *Keogh v. Chicago & Northwestern R. Co.*, 260 U.S. 156 (1922); *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409 (1986).

In sum, although DHX's claim is baseless on the merits, Matson contends that this is an issue for the Board to decide. Consistent with the policy established in *Keogh* and its progeny, the Board should not abdicate its statutory authority to determine the lawfulness of water carrier rates and practices.

CONCLUSION

For the foregoing reasons, Matson respectfully requests that Sea-Land's Motion be denied to the extent that it seeks the dismissal of the claim set forth in Part III of the Amended Complaint (paragraphs 250-266).

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richard A. Allen", written over a horizontal line.

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Dated: June 12, 2002

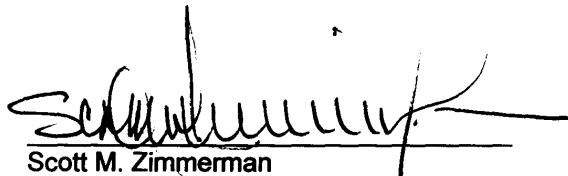
Attorneys for Matson Navigation Company, Inc.

CERTIFICATE OF SERVICE

I certify that on June 12, 2002, a true and correct copy of the foregoing "Reply of Matson Navigation Company, Inc. to Defendant Sea-Land Service, Inc.'s Motion to Dismiss Two Counts of the Amended Complaint" was served by overnight delivery upon:

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