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July 1, 2002

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW, Rm. 704
Washington, D.C. 20423

ENTERED
Office of Proceedings

JUL 02 2002

Part of
Public Record

RE: *DHX, Inc. v. Matson Navigation and Sea-Land Service, Inc.*
STB Docket No. WCC-105

Dear Secretary Williams:

I write in my capacity as counsel to defendant SL Service, Inc. in the above-referenced proceeding. On or around 12 June 2002, we were served with "Complainant's Opposition to Defendant's Motions for Official Notice and to Dismiss Two Counts of the Amended Complaint" filed by Mr. Rick Rude, counsel to DHX, Inc.

The filings have been the subject of much internal consternation, discussion and contemplation. One of the documents replies to a motion that does not exist.¹ All of the documents are suffused with extensive theorizing about the identity of my client, an issue that has no discernible relationship to any allegation in the Amended Complaint or, as far as my colleagues and I can conjure, any element of the 23 May 2002 Motion to Dismiss to which Mr. Rude was ostensibly replying.

¹ Neither Sea-Land Service, Inc. nor any other party filed a Motion for Official Notice. Sea-Land cited authority for the proposition that the Board could refer to tariffs in the context of a Motion to Dismiss. (See SL Motion at pages 7-8) DHX's casting this authority as a separate motion is peculiar, but would be of limited consequence if DHX had bothered to address any of the cases cited. It did not do so.

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The rules of the Board forbid replies to responsive pleadings. This restriction is, at least in this situation, an unfortunate rule that prevents closure of issues and that fails to discourage exuberant irrelevancies on the part of responding counsel. We have considered a motion to strike that would address the substantial bulk of Mr. Rude's filings on grounds of irrelevance, immateriality, and impertinence. However, such an act seems likely, based on recent experience, to provoke additional filings and unproductive costs and would not move the parties closer to resolution of the merits of the DHX complaint.

I therefore submit this letter to the Docket to preserve before the Board the position that our inability under the Board's rules to reply to Mr. Rude's filings, and our admitted bafflement at what, precisely, DHX is saying and why, should not be interpreted as acquiescence in or acceptance of any of the allegations or characterizations contained therein. Presumably there will be opportunity to reply if substantive allegations are properly raised and clarified in the future.

Yours very truly,



C. Jonathan Benner

cc: All Parties of Record