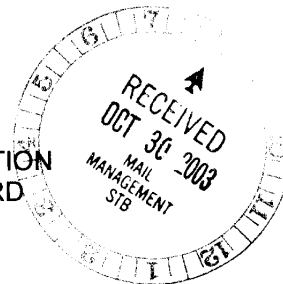


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PUBLIC VERSION

U.S. DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD



DHX, INC.,

Complainant,

v.

STB Docket No. WCC-105

ENTERED
Office of Proceedings

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Public Record

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

Defendants.

COMPLAINANT'S OPENING STATEMENTS

VERIFIED STATEMENT OF BRADLEY J. DECHTER

Submitted By

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DHX, INC.

Dated 28 October 2003

(Subject to Confidentiality Order)
U.S. DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

DHX, INC.,

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STB Docket No. WCC-105

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

Defendants.

Verified Statement of Bradley J. Dechter

1. My name is Bradley J. Dechter. I am the President of DHX, Inc. and have served in that position since January 3, 1991. Prior to that, beginning January 1, 1983, I was the Corporate General Manager of DHX, Inc. My business address is 19201 S. Susana Rd, Rancho Dominguez, California, 90221. As President, I am in charge of DHX's sales, marketing, pricing, customer service, operations, accounting, public relations, "stakeholder" relations and competitive strategies. As a result, I am familiar with the development of DHX's business policies, procedures and strategic focus, as well as the industries in which we compete.

2. I am authorized to submit this statement on behalf of DHX, Inc.

MY RESUME

3. The below is a synopsis of my background:

May, 1974: Took and passed the Certified Public Accountants exam

June, 1974: University of Southern California – Bachelors of Science Degree in Business,
Emphasis in Accounting

June 1974 – 1979: Arthur Andersen & Co – Staff and Senior Auditor, Los Angeles, CA

1979 – 1982: Arthur Andersen & Co – Manager, Audit Division, Denver Co

1983 – 1990: DHX, Inc. – Corporate General Manager, Chief Financial and Operating Officer

1991 – Present: DHX, Inc. – President

1994: Pepperdine University, Masters Degree in Business, Presidents and Key Executives Program 90

4. In 1977 the business was founded by Ron Massman, our current Chairman. It was incorporated in 1980. Ron went into the freight forwarding business not knowing it, and during the course of learning domestic freight forwarding discovered that there were FAK (Freight all Kinds) rates which were used by the Forwarding Industry, and other rates, commodity based, used by other shippers. Ron realized that commodity based rates were ultimately less costly and started using them to reduce DHX's costs whenever it made sense.
5. I joined DHX as a consultant in October, 1982 and as its General Manager and Controller on January 1, 1983. I too recognized the importance of the potential cost savings realized by using commodity based rates and mixed shipment rules, and started working with our operations personnel and salespeople to expand their knowledge and abilities, thereby increasing our profitability. In 1984 and 1985, I supervised the loading of all containers at our dock to ensure training of our dock personnel on tariff matters and maximum ocean cost savings. In 1988 I took over responsibility for our Corporate sales efforts and implemented "new hire" tariff training for all sales personnel, a practice we still follow today. This training allows our salespeople to recognize new business opportunities and to quote rates based on commodity based ocean rating as opposed to FAK based ocean rating.

Between 1982 and 1990, DHX grew at a pace that was much greater than its competitors. When I started at DHX, we were the number 3 or 4 carrier (in terms of number of containers shipped). By 1990, our combination of competitive pricing and excellent service had moved us into the number 1 position. This increase was primarily a result of the competitive advantage we had gained in both costing and pricing due to our tariff knowledge as well as our pursuit of being recognized for the top quality of our service.

6. In 1994 I wrote my Masters thesis, an approximately 130 page document plus Exhibits. The thesis was titled "A Marketing Plan for DHX". It included a complete analysis of the Hawaiian freight forwarding market, the ocean carriers, a strengths, weaknesses, opportunities and threats (SWOT) analysis for DHX, and helped make me extremely knowledgeable of the Hawaii freight forwarding industry. Because of my C.P.A. certificate and advanced degree, Sealand/CSX used my services in 1998 as an expert witness in its lawsuit against Fleming Foods and Atlantic Pacific International (API). I was retained due to my expertise in the freight forwarding industry and for the purpose of providing an expert opinion on the impact, if any, of shipper owned or leased equipment on carrier rates and costing.

I have been a part of this industry for over 20 years and have analyzed what has happened within it since 1994 with continuity.

GENERAL

7. The following is being written to document a chronology of events that culminated in DHX filing a complaint against Matson Navigation Company (Matson) and Sealand/CSX Services, Inc. (Sealand/CSX) with respect to unfair/destructive business practices against DHX, Inc. in the Hawaii trade lane. One of the major purposes of the initial complaint was to request the Surface Transportation Board ("The Board") remedy certain actions of the ocean carriers in order that

DHX be allowed to compete against those carriers with respect to obtaining and retaining full containerload business. As of this writing however, over 3 years has passed since the initial filing of the complaint and DHX has lost a significant portion of the involved full containerload business. Without The Boards understanding of what has been allowed to transpire, those unjust business practices utilized by the ocean carriers to remove DHX, and other forwarders, as competition from the full containerload business will go unanswered, in my opinion to the detriment of the shipping public and definitely to the detriment of DHX.

8. Reference is made to those Affidavits previously filed by myself as Exhibit C of the initial complaint and as a Sworn Statement in response to the issues and concerns discussed in a Verified Statement of Paul E. Stevens. Those documents are included herein as Exhibits 1 and 2 to this statement. This affidavit has been written based on a time line and chronology of events (see Exhibit 4 for a summary of significant events). To that end, there is certain theorization on my part as to the intention of the ocean carriers. Notwithstanding that, my intention is to lead The Board to the conclusion that the ocean freight carriage market to Hawaii evolved into a dysfunctional state in about 1996, and because of the ocean carriers unfair/destructive practices subsequent thereto, DHX and certain of its then customers subsequently suffered great harm and damage. In fact, the actions of the ocean carriers in all but eliminating the forwarders' ability to quote competitive rates on full containerload cargoes, including DHX, has had an industry wide impact. These carrier practices were and are detrimental to all forwarders conducting business in the Hawaii trade. The negative effect on DHX however, is greater due to the size and nature of DHX's operations and business in the Hawaii trade.

9. As The Board can see by the previous affidavits filed, there are basically two underlying strategies being "worked" by the ocean carriers. The first strategy is to take back full

containerload business from the commodity based forwarder community in general, and more specifically, DHX. Mr. Paul Stevens, Executive Vice President of Matson, stated in his original affidavit filed with The Board “Over the years, however, freight forwarders such as DHX have moved beyond their essential functions of LCL consolidators, and have begun to manipulate Matson’s tariff provisions, including the overflow rule, to employ those rules in ways that were not originally intended, drawing business away from Matson”. (Both Matson or Sealand/CSX end up with the business in any event – there is no other carrier – they simply want more revenue per container than we would be paying.) The Board needs to understand that in the other domestic water trade lanes, Alaska and Puerto Rico, freight forwarders provide full containerload service and less-than-containerload (LCL) service as functions essential to the trade lanes. Matson management, in its own mind, has limited the role of the freight forwarder to “essential functions of LCL consolidators”, and has done everything in its power, over the last 10 years, to ensure its view of the freight forwarder is superimposed on the Hawaii trade lane. DHX would also request The Board realize that we use Matson’s Tariff provisions as written – we don’t “manipulate” them.

10. The other strategy not so pronounced but definitely present and being forced on the forwarding community is the future basis on which competition in the forwarding community would be based. As past history, in the 1960’s and 1970’s, most freight forwarders used only one tariff item when shipping with Matson – the Freight-All-Kinds (FAK) item. In the late 1970’s, when DHX first shipped in the industry, it started an evolution by using commodity based rates and rules that were offered to all the shipping public. This evolution started a downward spiral in the ocean carrier’s average revenue per forwarder container, as well as providing a mechanism for the forwarder to solicit full containerloads of freight. (See Exhibit 3 discussed later in this

affidavit, which acknowledges this.) The actions taken by Matson and Sealand/CSX are an attempt to not only take the forwarder out of the full containerload business, but to raise commodity rates to the point that eventually the forwarders will be declaring the bulk of their cargo as FAK and the tariff expertise/competitive advantage that a company such as DHX developed over a 25 year period will become meaningless. This, again, has previously been voiced by a Matson representative, Southern California Sales Manager, Tom Good, in terms of Matson attempting to "level the playing field" between commodity based freight forwarders and national trucking companies that provide forwarding services who historically have used the FAK rates. Targeting the commodity-based forwarders (of which DHX is by far the largest) and eliminating their cost saving expertise and tariff related competitive advantage is part of that long-term strategy.

11. Lastly, I have two final comments for you prior to continuing:

- 1) As The Board knows, these proceedings have been subject to a highly restrictive protective order. As such, in attempting to "prove" our Complaint, no one from DHX, other than the Attorney representing us, has seen any materials supplied by the defendants, either in support or denial of the contentions mentioned in our Complaints. Although I believe our legal representation to be top quality, I liken our situation to being in a fist fight with one hand tied behind ones back. I am not in a position to review documentation which may support our allegations, or use my expertise to prove our Complaint. As a result, from our standpoint, we have been denied putting forward the best possible effort to prove our Complaint.
- 2) I wish to thank The Board for its patience and consideration in dealing with our Complaint.

HISTORY OF UNFAIR/DESTRUCTIVE PRACTICES

12. In retrospect, the first time there was an issue between members of Matson management and members of DHX management with respect to full containerload business was in 1989. At sometime during that year, Glenn Rogers (a top Matson executive, Vice President of Sales) met with Ron Massman (DHX President in 1989) and myself (DHX General Manager in 1989) and requested we stop using a tariff item (Cargo NOS, Item 5) as a means of taking full containerload business from Matson. Mr. Rogers indicated that he believed our use of the item was an improper interpretation of the item and that they had good business reasons for not wanting to change the item or draw attention to it. As a result, he requested we voluntarily not use the item so Matson wouldn't have to change it. We agreed in a "gentlemen's agreement" to not use the item.
13. In February 1992 we determined Matson was allowing certain competitor's of DHX to use the Cargo NOS item in moving full containerload business. We then informed Matson we would start using the item and again start to solicit full containerload business. Their response was to change the item as written and eliminate the benefits we had been able to gain. As of July 12, 1992 the item was rewritten and therefore removed as a means of our growing our full containerload business. From a less-than-containerload freight standpoint, as rewritten, the item would increase the freight forwarders cost and generate more revenue for Matson.
14. Unbeknownst to us at the time, Matson on June 18, 1992 filed tariff 2034, effective July 1, 1992. This tariff became the "hiding place" for Matson to file tariff items that effectively were contracted rates between the ocean carrier and shippers. (As of April 18, 2002, Tariff 2034 is not on the Pricing Departments list of Tariffs published on Matson's website for "Internet

Tariffs Print Version". It is still a "hidden" tariff.) Thus, the changing of the Cargo NOS item primarily hurt DHX and its ability to declare containerloads of freight under the item, while some of the items previously shipped under the Cargo NOS item had rates established for shippers other than DHX in the non publicized Tariff 2034. As is discussed in our amended Complaint, Tariff 2034 has now become Matson's primary method or tool for manipulation of market pricing. Matson Tariff 2034 has duplicating and conflicting rates with artificial limitations contained in almost all of the items in that tariff. Any "open" items are usually published at uncompetitive higher rates than those rates contained in the restricted items. I have deemed these limitations or restrictions as "artificial" as they do not represent legitimate transportation factors in establishing rates. For example, rates for named shippers have always been considered to involve "non-transportation factors". The effect of these artificial limitations is two fold: first, it involves an unreasonable and destructive practice because the tariffs (Matson Tariff 2034 and Sections 0500 and 0600 of Sealand/CSX Tariff 468) are actually contract rate tariffs with massive discrimination in pricing among customers in a private/nonpublic/hidden manner; and secondly, their basic structure, where each item that actually has a competitive rate, has some form of limitation restricting access to that rate and operates to EXCLUDE freight forwarders, such as DHX, from those competitive rates. The tariff structure isolates freight forwarders into rate items that ensure that forwarders cannot quote, nor provide any rates that are competitive on the multitude of commodities that are reflected in the hundreds of rate items found in Matson Tariff 2034 and Sealand/CSX Tariff 468, sections 0500 and 0600 series.

15. Once Matson knew DHX was really interested in the full containerload business, they started consistently telling us that full containerloads were their business, not ours. Sealand/CSX (at the

time Sealand Services, Inc.) also followed that philosophy. The philosophy really was one of wanting to control their customer base and eliminating a “middleman” like DHX from being able to impact the flow of freight (and profits) to/from them. As many times as I requested volume related price incentives, which I believed was reflective of our volumes, I was told, “we don’t do volume pricing in this trade – the tariff is your contract”. By not giving us a rate incentivized volume agreement, the ocean carriers were absolutely precluding us from going after higher rated containerload freight – we received the same tariff rate as the shipper shipping one container a month to Hawaii. They were also not doing for DHX what they were doing for other shippers through the use of Matson Tariff 2034 or the Sealand/CSX Tariff 468, series 0500 and 0600 rate items.

16. I believed and relied upon the representations that Matson and Sealand/CSX sales personnel made to me about the availability of volume pricing in the Hawaii trade. Both carriers told me, many times, that they did not engage in any form of volume pricing including contracts. I was told all of the rates and terms and conditions were “in the tariff”. I later learned that those “no volume contracts” representations were not correct. In 2001, I was told about the existence of “Memorandums of Understanding” (called “MOUs”) which existed between the carriers and large proprietary shippers (which included shippers with “named rate items”) in the Hawaii trade. I learned from Mr. Thomas Good, an employee at Matson, that MOUs were a device to facilitate volume pricing on a secret or “confidential” basis. I am now of the opinion that there are many, many such agreements in existence. The unexplained disparities in some of the rate items in the carriers’ tariffs in both Matson Tariff 2034 and Sealand/CSX Tariff 468, can only be explained by such arrangements. In fact, there are so many shipper named items, street

address limitations, even zip codes to 9 digits that these MOUs are the only explanation. In April 2002, I was provided with copies of two sworn affidavits one each from Matson and Sealand/CSX personnel. These affidavits were filed with the Board by Mr. Peter Wilson of Matson and Mr. Daniel Downes of CSX Lines in a rate case filed on behalf of the Government of Guam. The affidavits speak of rates dependent upon volumes of cargo tendered and name specific shippers that supposedly have special arrangements. I have attached those affidavits hereto and have identified Mr. Wilson's affidavit as Exhibit 11 and Mr. Downes' affidavit as Exhibit 12. These affidavits are relevant as DHX has an extensive forwarding operation to Guam. It appears that Matson and CSX lines are providing volume pricing to proprietary shippers, such as Proctor and Gamble, while all the time denying even the existence of such agreements or arrangements to DHX. Whenever I would make a request for such volume rates, which I did on many occasions to both carriers, I was always told that such volume pricing was NOT possible. It is ironic that DHX ships more cargo than some of the shippers listed in the affidavits, yet DHX has been denied the proper benefit of the volume of its own cargoes. I do not believe it is appropriate, and certainly cannot be considered a "reasonable practice" for a carrier to either mislead or engage in misrepresentation to either its customers or the public in general. Such business practices cannot be and, under California law at least, would not be found to be proper in any circumstances. There should be no less nor lower standard just because there is a federal statute involved.

17. In mid 1993, Matson brought on a new Sales Manager for Southern California, Dave Hoppes. In our first meeting, Mr. Hoppes indicated to me that he "knew nothing about the forwarding industry, but he did know that we were the largest and that we preferred to use Sealand". He

indicated to me that he was "hungry" to reverse that trend, and asked me to teach him about our business, with the goal being for him to work with Matson and DHX to find a way to bring the business back to Matson, which was a "win/win" since Matson had more sailings and overall better service. (At that time Sealand/CSX's tariff and Matson's tariff still had significant rate/pricing differences. DHX had started giving Sealand/CSX more of the business in 1991 and thereafter since their tariff resulted in lower overall charges. Although Sealand/CSX had substantial performance problems, because DHX had its own trucking operation on Oahu (no other major competitor had its own trucking operation), DHX could react and manage Sealand/CSX performance problems and make the service work for DHX and its customers.)

18. As a result of this offer, I spent time teaching Mr. Hoppes how DHX did things, why overflows were important to our profitability and competitive advantage, why Matson's tariffs weren't competitive in many instances from a commodity standpoint, etc.
19. In August 1993, Mr. Hoppes and I had a long conversation discussing my issues and how Matson could/would get around them. In September, 1993 Hoppes handed me the copy of Exhibit 3, which included an explanation of why they didn't want anymore freight channeled into the existing overflow system, and how they would get around the tariff expansion issues by putting commodity rates in the rules and restricting the freight rates in the rules to a limited number of overflows. Matson was willing to put in tariff items matching Sealand/CSX items but at a slightly higher rate, because, as Hoppes explained it, Matson had more sailings and were the better carrier. In exchange, they wanted more of our business, but didn't want the use of these items to affect our ability to go after full containerload business. Additionally, they didn't want the general public to be aware of these rates since use of them would result in lower revenues to the ocean carrier through a reduction in the use of the Cargo NOS item (a very high rated pricing

category). As a result, they published the rates in 1994, as part of the rules (they believed the public doesn't look at the rules) as Rule 30C4. (My understanding is that Matson did not automatically re-rate declared items from Cargo NOS to Rule 30C4 when it resulted in lower charges to the shipper, even though their stated practice has been to re-rate charges to the customer when changes they notice result in lower charges to the customer. The logic they used was that they were applying lower rates, but not any lower charges found in Rules, because Rules weren't rates.)

20. The attached proposal given to DHX by Matson in 1993 summarizes Matson management's view of DHX's business in 1993. As can be seen by the attached Exhibit 3, pages 3 and 4, in 1994 the use of commodity rates as opposed to FAK, and the use of overflow containers caused Matson management "Heartburn". That is a quote! Page 6 indicates Matson's revenue per TFEU (Twenty Four-Foot equivalent unit) was not raising at a fast enough rate over a 4-year period, and in fact was stagnant, explaining why Matson had such "Heartburn". The attitude portrayed in this Exhibit 3 became the prevailing point of view for future actions by Matson management. My question to The Board is simple – if you have heartburn, don't you try to get rid of it? Later actions in 1998 and 1999 show that Matson wanted to and did.
21. In Rule 30C4 Matson restricted the use of containers loaded with Rule 30 freight to "1-½ overflows per vessel for each seven calendar days beginning on Sunday and ending on Saturday". Additionally, the term shipper was redefined to include "a person or entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by or is under common control with the shipper". The above restriction meant that to use the less expensive Rule 30C4 rates in an overflow container was severely restricted and from a practicality standpoint, DHX was precluded from using Rule 30C4 for much full containerload

overflow freight. Considering there was still unlimited overflow containers on Tariff 14 freight, and we could control most but not all of what we loaded in which containers (some partial loads were shipper load and count), and from a less-than-containerload use of freight standpoint the overflow limitation for the most part wasn't an issue. We still had 3 "Rule 30" overflows a week to work with. But that eliminated the use of Rule 30 overflows from a full containerload sales standpoint - none were available if they were all used loading LCL. (As a side note, much of the Rule 30C4 freight was light density top freight that was needed to completely fill a container, and thus would work well in a LCL overflow container.)

22. At this point it should be noted that a lot of Matson's reaction in the "containerload" marketplace was directed at the larger forwarders such as DHX. DHX was also the only forwarder who actively sold containerload business, who treated the containerload business as a separate business segment and actually had a separate division established to sell and service full containerloads. Most other forwarders handled a nominal number of full containerloads. But, they were handling them for an account in which they handled their less-than-containerload, or had found a niche with a single shipper, etc.. They didn't consider full containerloads as a separate division or line of business DHX did consider and operated a separate full containerload division. We were competition. By taking over an account that shipped one container a week, and either moving it over to the other carrier in the trade lane or using our tariff expertise to reduce the ocean carrier's revenue on the container, we could save the shipper anywhere from \$75,000 to \$200,000 per annum for that single account. DHX could also move what previously had been Matson business over to Sealand/CSX, and make use of the different tariff provisions, ultimately saving the consumer money and hurting Matson's business. With Matson having a 70% share of the total market, it didn't take Matson long to figure out DHX was a threat to their

profitability and they needed to stop the DHX full containerload activity.

23 In 1993, Matson also attacked DHX's full containerload business in a more subtle manner. DHX had a major account – Baxter Healthcare (Baxter). Baxter packed 6 to 10 containers a week consisting of a variety of medical and hospital supplies and drugs and medicines, and did not generate a detailed manifest, bill of lading or packing list delineating what goods were in each container. In DHX declarations to the ocean carriers (we used both carriers), DHX always declared the containers as Drugs and Medicine, the highest rated item in the container since there was no breakdown of the goods in the container. Many of the containers did not meet the tariff weight requirements and they qualified as overflows.

24 DHX had obtained the business by charging Baxter \$200 per container less than Matson. (It had been an exclusive Matson account.) By declaring them as overflows, we'd make approximately \$800 per container. By using them as lead containers, we'd lose \$200. Thus, on every lead/overflow pairing, we could make an average of \$300 per container and save Baxter \$200 per container. (It is my understanding that Matson never charged Baxter based on the overflow rule. Baxter was unaware of it and because it was in the rules, not the rates, Matson never gave them the benefit of rerating it to the less expensive overflow minimum.)

25 In retrospect, it is my opinion that Matson saw the decline in their revenues from Baxter, saw the DHX FCL business growing larger and larger, and I believe it scared them. Thus, when a competitor of ours approached Matson about the Baxter business, Matson (Dave Hoppes) worked with them and structured a verbal arrangement with them to allow them to declare the goods in each container, whether correct or not, based on the weighted average of all the goods shipped by Baxter in an average container. The competitor then went to Baxter and dropped the rate \$100 a container to obtain the business. Matson's average revenue per container may have

increased or may have actually declined. (I don't know since this was all done verbally, with no tariff filings, no documentation changes by Baxter, etc.) Their goal, at this point, was to remove DHX as a competitor for the Baxter full containerload business, and work with other forwarders who didn't give Sealand/CSX much, if any, business. (We were giving a portion of the Baxter loads to Sealand.)

26. While Hoppes (and Matson) worked with me and learned our business, DHX was having trouble from the standpoint our competitors were also learning about our business and the way we used the tariffs. We didn't know where this leak of confidential information about DHX was coming from, but our belief was that the Matson Sales Representative who was handling our account was disseminating information about us to other freight forwarders he was calling on. When that Sales Representative left Matson at the end of 1993, I requested that the future Sales Representative assigned to our account call on no other forwarders. (This practice is still being followed today.) I believed information about the way we did business was being "leaked" to the forwarding community – in retrospect I now believe Mr. Hoppes was the one disseminating the information, but have no proof. Further, helping the other forwarders compete against DHX was a direct way of shifting business from Sealand/CSX to Matson. What is clear now however, is that Mr. Hoppes had been tasked with the recovery of cargo volumes from Sealand/CSX and he had to find ways to increase cargo volumes. Under such circumstances, carriers often forego revenue levels to build or in this case, rebuild market share.
27. Why do I believe Mr. Hoppes was disseminating DHX proprietary information? Because Rule 30C of Matson Tariff 14 was published, it became obvious to me that Hoppes had been talking to numerous other forwarders. Hoppes had told me he was going to "hide" the rates in the rules. As a result, I felt it was supposed to be a small item and requested 2 items only – toys and

wearing apparel, including shoes. The list as originally published included over 20 items, and was a "wish list" from other forwarders as well. Hoppes had been talking to them all. (The Board should note that I didn't realize this until approximately 2001, while working with the Complaint.)

28. I have attached hereto and identified as Exhibit 10 a copy of Rule 646 Mixed Shipments from Matson Tariff 2016-D. DHX attempted to obtain a copy of the original Hoppes Rule 30C which was published in Tariff 14 but was unable to do so. Matson Tariff 14 was a tariff that had been filed with the Federal Maritime Commission. As a substitute, I have attached the contemporaneous filing in Matson Tariff 2016-D. Matson Tariff 14 Rule 30C and Tariff 2016-D Rule 646 were the same. A comparison of the contents of Rule 646 of Matson Tariff 2016-D with the draft rate item contained in Exhibit 3 reflects that they are also the same except for the number of commodities identified. Rule 646 of Matson Tariff 2016-D was filed on October 12, 1993 which also corresponds with the time frame that Mr. Hoppes and I worked on the format, structure and contents of Tariff 14, Rule 30C.

29 Our Full Containerload/Intermodal Division was established in 1994, before the reality of what Hoppes had been doing was realized. Hoppes was actually offered a position with DHX as the Vice President in charge of the Full Containerload Division before it was established. After a couple months of negotiation he turned down the position and Ross Trester, our Corporate Sales Manager was promoted to Vice President of the Full Containerload/Intermodal Division and a separate containerload coordinator was hired to administrate the loads. I firmly believe that my sharing with Hoppes what we were planning to do from an FCL standpoint was the beginning of the end. (I believe he used our information to make himself look good to his superiors at Matson,

and then subsequently plotted DHX's demise in the FCL market.) As will be seen later in the narrative, because of actions taken by Matson/Sealand/CSX in 1997, 1998 and 1999, our Full Containerload Division was disbanded during late 1999.

30. During 1995 and 1996 actions taken to limit DHX's ability to solicit full containerload business continued to occur. Sealand/CSX and Matson increased use of tariff provisions in specialized side tariffs (Tariff 2034 and the Sealand/CSX 0500 and 0600 tariff series) that precluded DHX from availing itself of a rate. Basically through the use of a zip code, an ownership interest clause, or a routing number, rates were made available to others and we were precluded from using them. In one extreme instance, in 2001, a competitor whose office is across the street from ours went into a full containerload customer of ours, took the business at a lower, unprofitable rate, went to Matson and asked them for a different rate to make the business profitable (and received the rate) and had a 9 digit zip code qualifier put on the rate (The normal 5 digit zip code qualifier used wouldn't work – DHX and the competitor were in the same zip code.) This 9-digit zip qualifier allowed them to use the rate but precluded us from using the rate. Matson basically aided this forwarder competitor in diverting the business from us through the manipulation of the tariff. Again, they viewed DHX as a threat - as opposed to the other forwarders who did not focus on this segment of business as a separate line of business and gave the business only to Matson where we might route it through Sealand/CSX. In certain instances, general or retail merchandise rates were made available to smaller-than-DHX shippers that owned the merchandise in the container that were \$1000 cheaper than rates available to DHX – for moving the same or similar type cargo. These types of pricing actions were aimed at retaining control of proprietary shipper business which was normally full containerload business and further aimed at rendering forwarders, such as DHX, unable to quote any type of competitive rates on such

cargoes.

31. In late 1995, I made the decision that the overflow limitations on Rule 30 freight were still costing us too much money on our LCL freight operations. This was because after use of the 3 Rule 30 overflows we were allowed, we still had LCL freight in overflow containers that we ended up declaring at the much higher cargo NOS rate, since we could no longer declare it under the overflow limitations imposed by Rule 30. As a result of the increased cost, as well as the fact that I discovered Matson was lending a major competitor of ours \$3,000,000 to \$4,000,000 by “floating” that forwarders accounts receivable for more than 90 days, DHX management made a decision to move more of our LCL freight back to Sealand/CSX. ¹(Matson was still receiving 30% to 40% of our LCL business after the change.) Knowing how upset we were with Matson management and their tariff manipulations and the loans to our competitor, Matson then took an “anti DHX” stand and changed the FAK rate downward in 1996 by \$450 in Tariff 2034 and revised Rule 30 in July 1997 to allow 5 overflows for each 7 days. Since the bulk of our freight was by then moving with Sealand/CSX, the affect of this change was really to help our LCL competitors reduce their costs – Matson was attacking us through the guise of trying to make it easier for us to do business with them. If DHX wouldn’t give them the business, they’d make it easier for our competition to compete against us (more “leveling of the playing field”). The change obviously would not help DHX substantially since we’d moved the bulk of our cargo to Sealand/CSX. However, it would expose DHX to the possibility of less profit through price cutting within the industry by our forwarder competitors. By reducing our competitors costs and enabling them to go after our accounts (we were the largest and had the most to lose) they were attacking DHX’s competitive position in the forwarder community.

¹ Reference Appendix A

32. Matson virtually did the same thing with substitute service (Subservice) containers. After the bulk of our business shifted over to Sealand/CSX, who had no Rule 30 limitations and, who allowed subservice containers, Matson opened up this service option within their tariff. We had asked Matson for these changes for at least 2 years prior to the actual change and they'd told us no. Thus, the change helped DHX competitors and hurt DHX. We had moved the bulk of our business to Sealand/CSX and now Matson was making tariff changes that aided the other forwarders in competing against DHX. Now, to our detriment, items we'd previously requested were made available by Matson to our competitors and were working against us.
33. The point is, it was becoming a war – and Matson made all the boundaries, selected all of the battlefields, and wrote all of the rules. The more/longer we gave business to Sealand/CSX the easier Matson made it for our LCL competitors to compete against us and why not? DHX is the major commodity based forwarder and signaling us to behave and “play” by their rules or pay the price is exactly what you'd anticipate from someone who believed the trade lane was their universe and they controlled it with impunity. (The old adage “there by the grace of God go I” could be modified for the Hawaii forwarding trade. It should have read “there by the grace of Matson go the freight forwarders” - at least in Matson's thought processes.)
34. At the end of 1996 I made the decision to stop requesting major Matson tariff changes personally, since all requests I made were being continuously turned down. After 1996, such requests were to be made by Ralph Merolla our Oakland Terminal Manager, because of his knowledge and relationship with the Pricing Department at Matson.
35. At some point during late 1997 or early 1998, it is my opinion Matson management decided the relationship with DHX could not/would not be tolerated in its current state (love the LCL / hate the FCL / don't like the company) and made a conscientious decision to remove us as a

competitor/threat in the full containerload business forever. Factors in Matson's decision could have included continuous rumors about Sealand/CSX being sold or split up (in which case Sealand's management would want their profits higher), as well as a decline in the market (Matson reduced its fleet from 8 vessels to 6 vessels in August 1998), a decline in Matson's operating profits as a percentage of sales from 1993 through 1996, and a change in the Sealand/CSX marketing strategy from one of aggressively growing their market share in the Hawaii trade lane to one of peaceful coexistence with Matson in an effort to improve bottom line profits.

36. The last item occurred because Matson, in approximately 1995, had started changing its strategy toward dealing with Sealand/CSX pricing changes. In 1995 (and prior years) if Sealand/CSX wanted the business of an account it lowered the rate. Matson generally refused to follow, since it had other customers using the same item and the overall impact of dropping the rate was larger. By 1996 Matson apparently had lost enough business to Sealand/CSX and/or DHX. The Alexander & Baldwin (Matson's owner) ocean business segment (primarily Matson) showed that operating profits, as a percentage of sales (per the Alexander & Baldwin Securities and Exchange Commission 10K filing for each of the years) were declining as follows during these key years: 1993 - 16.5%, 1994 - 16.1%, 1995 - 14.8%, 1996 - 12.3%). After 1996, in Sealand/CSX's case, virtually every time Sealand/CSX lowered rates, Matson lowered their rate and ensured that if Matson wanted the business, through sales efforts and price matching, they retained the business. (They now started using Tariff 2034 as a means of reducing pricing to specific customers without lowering pricing to the general shipping public.) Sealand/CSX eventually realized lowered rates wasn't getting them the business and was destroying the profitability in the trade lane. Thus, they opted for "peaceful coexistence" and higher profits

through a policy of parallel pricing.

37. This, in turn, allowed Matson to pursue the elimination of forwarders competitors in the full containerload market in the Hawaii trade. Knowing Sealand/CSX would virtually follow all their tariff moves and Sealand/CSX wouldn't be working with forwarders from a pricing standpoint to assist them in keeping their full containerload business, (Sealand/CSX knew DHX's management looked at Matson's actions against DHX with disdain and also mentioned, on numerous occasions, the full containerload business was their business, not DHX's), Matson was now in the position to take back what they considered theirs – full containerloads. And they did so in the open marketplace, with no impunity, because there was no one to stop them, and there was virtually no competition with respect to the full containerloads. (The purported competition between the two ocean carriers, who had “settled” into a de facto market sharing arrangement where each maintained an acceptable market share, simply ceased to exist.)

38. The theme of no competition, at least with respect to full containerloads was reinforced in December 1997 when Matson/Sealand/CSX signed their formal reciprocal agreement with respect to helping each other out in an “emergency” situation. This agreement, (which in my opinion became the basis for the 2001 agreement for CSX Lines sharing space on Matson's vessel), allowed each carrier to ship on the other carrier's vessel at unpublished rates. In 2001, this agreement became a modified “vessel sharing agreement” in a two carrier trade lane. With the 2001 agreement, in a dysfunctional trade lane with no real full containerload competition, Sealand is now able to obtain a confidential, and obviously reduced rate from its former competitor and then “vender”, Matson. Sealand/CSX now essentially functions as a freight forwarder when it shares the vessel. How was it possible for Sealand/CSX to get a volume-incentivized agreement, if it's truly Matson's competitor, when DHX, one of Matson's largest

customers, has been asking for one for years and cannot? The answer is easy. As long as Sealand/CSX doesn't really compete with Matson, Matson will reward them. Sealand/CSX also benefits by reducing their costs through removal of a vessel from service while retaining 100% of its tariff rates. Further, both companies benefit from the reduction in capacity and competition which has occurred.

39. (The Board needs to know that Sealand/CSX rates cannot/should not be based on Sealand/CSX owning their own equipment. During 2000, prior to this "vessel sharing agreement", I requested shipper owned equipment discounts/rates from Tom Good at Matson and received a negative response. Tom indicated that the cost of tracking and being accountable for shipper owned containers was cost prohibitive to Matson. How then, does Sealand/CSX, Matson's largest competitor, qualify for the aforementioned or any other discounted rates when Matson's own customers are refused this type of rate arrangement? .
40. DHX's complaint, filed in 1999, now has the added benefit of looking forward over 3 years in the trade lane. Sealand/CSX, Matson's only vessel operating competitor, now ships on Matson as a customer, basically fulfilling a freight forwarder role with full containerload business only. Sealand/CSX has a volume-incentivized contract. DHX's Full Containerload Division is out of business. DHX does not have a volume-incentivized contract. In the meantime however, the rates the forwarders pay Matson and Sealand/CSX continue to go up. For commodities based forwarders, the per hundred weight rates went up 18.65% between September 1998 and April 2002. That percentage is before consideration of the general "hidden" prices Matson gained by increasing overflow container rates by 17.5%, elimination of the "Note Kits", and changing the definition of "shipment". DHX, as example, was forced to pass along the costs of these "hidden" increases to our customers. DHX's general rate increases caused by these cumulative

tariff changes totaled 33.7% during the same period. Where is the justice?

41. Effective September 6, 1998 Matson took the following actions to reduce the freight forwarders' effectiveness to solicit full containerloads and market the same:

- 1) Increased the minimum overflow rates by 10%
- 2) Redefined shipment from a "one week" to a "one vessel" time parameter, thereby reducing flexibility by DHX to match potential overflows with lead containers.
- 3) Deleted the notes within specific tariff items which allowed the shipment of certain commodities as a percentage of a shipment weight or at the rate of a different commodity, thereby reducing DHX's ability to declare a full containerload of the commodity at the cheaper rate/item previously allowed by Matson tariff.

42. The change in the percentage footnotes item in 1998 really hurt our full containerload business. The following item changes in Matson's Tariff resulted in big rate increases to our customers that immediately led to the customers leaving DHX for cheaper alternatives (the ocean carriers) or led to the customer searching for less expensive alternatives, which included reducing DHX profit margins or eventually leaving DHX.

REDACTED

REDACTED

REDACTED

43. As The Board can see by the graphs included as Exhibit 4 and 5, the affect of Matson's various changes to the tariff notes, footnotes and rules, and their actions, affected both the DHX volumes and cost percentages in a negative way from DHX Management's stand point. From the

public/consumers standpoint, the change was an extremely large increase in what it paid for shipping services. Mr. Eric Sean Burns, a DHX Senior Rate Analyst, conducted a brief review of the impact of the tariff changes that Matson and Sealand/CSX imposed from September 1998 through April 2002. He also has provided copies of tariff materials which, on their face, show that named shipper rates (which are now obviously understood to be part of MOUs, in my opinion) certainly have not gone up 18%+. The disproportionate increases not only impact the forwarders, but the customers of the forwarders as well. Those customers can include the "mom and pop" and mid-sized businesses which are already at a very distinct disadvantage to the Sears, Wal-Marts, Sam's Clubs and the like. These small businesses, if the current pricing trends continue, will eventually fade away.

44. On November 18, 1998 the Rule 30C4 rates were deleted and Matson's tariff for the most part conformed to Sealand/CSX's with respect to rates. To me, the above actions confirmed the lack of competition within the trade as well as the two parties working together to eliminate a potential competitor. The benign neglect shown us by Sealand/CSX during the above period (knowing how it would hurt our business) indicated they too wanted to eliminate forwarders from the full containerload business. Indeed, Sealand/CSX's continuous statements to DHX management over a lengthy period of time confirmed that. Otherwise, they could've offered us long-term incentives in exchange for the bulk of our business (I'd requested price/volume agreements previously). They knew how upset we were with Matson. But what incentive did they have? Matson's actions were basically forcing the business over to Sealand/CSX in any event.
45. Another abuse of Matson's power and common carrier responsibility can be shown with the entry of The Home Depot into the Hawaii Marketplace. In 1998 The Home Depot announced

they were going to be building stores in Hawaii. We requested to be, and were eventually requested to, participate in the bidding process by The Home Depot. Matson used its subsidiary, Matson Logistics, (for reasons that will become obvious shortly) to coordinate the bidding of the ocean rates on its behalf with The Home Depot. Although DHX was asked to bid on the business, and asked Matson and Sealand/CSX for rates, Matson (specifically Dave Hoppes, President, Matson Logistics at the time) indicated to me that because of all of the concerns about DHX soliciting the full containerloads of The Home Depot vendors, Matson would not discuss the pricing of the containers with DHX (me) until they had a verbal agreement from me that DHX would not pursue any full containerload business of The Home Depot vendors. Matson and Matson Logistics were so concerned about DHX getting this business and continuing to grow in the FCL market that it made an attempt to “partner” with The Home Depots’ LCL consolidator in Puerto Rico bringing them into the Hawaii market. Fortunately, The Home Depot liked DHX as the consolidator and selected the consolidator prior to selecting the ocean carrier. Once Matson Logistics realized DHX had the business and they didn’t, they negotiated ocean rates as part of tariff 2034 but only with The Home Depot – not with DHX. DHX was given authority to use the rate but was not “allowed” to participate in the negotiations. To this day, in exchange for us being able to participate in this rate, we have not solicited any of The Home Depot vendors for their non Home Depot full containerloads. Our fear is that if we did so, Matson could/would eliminate us from the rate. It should be pointed out that DHX does not use this Home Depot rate for any of its customers other than Home Depot.

46. In 2001, the Traffic Manager of Custom Building Products, a Home Depot vendor and Matson customer, called me. We’ve known each other over 10 years. He asked me if we could handle all his FCL, because even at the same rate as Matson, our service was better. We hadn’t solicited

the business and I wasn't breaking my word to Matson, so I said yes. We started handling the account and it became one of our Top 20 accounts. By 2003, Matson had figured out they had lost the business directly. They called on Custom Building Products and told them that under the terms of Matson's agreement with The Home Depot, Custom Building Products couldn't use DHX for its non Home Depot FCL. The Traffic Manager, not wanting to upset The Home Depot, switched the business back to Matson. I recently received a letter from Custom Building Products regarding this situation and have attached that letter hereto and identified that letter as Exhibit 9. If there was ever any argument that these "MOUs" were not considered "binding" contracts, I think the position regarding Custom Building Products taken by Matson would clearly dispel any doubt about these MOUs as involving contract rates.

47. On February 14, 1999 Matson and Sealand/CSX implemented a 2.5% General Rate Increase (GRI) on all commodity items. This increase did not apply to the overflow minimums, and a GRI was published on all other containerload rates at 2.5%. DHX implemented a similar increase – its second increase in a 6 month period for total increases of 17.5%.
48. On October 17, 1999, Matson again increased the minimum overflow provision, another 7.5%, putting another nail in the coffin of DHX's now soon-to-be-dead Full Containerload Division. For LCL freight, DHX was forced to absorb this ocean carrier increase, since it did not apply to the entire shipping public, and would have substantially impacted DHX in terms of our pricing credibility in the market place.

SUMMARY

49. At this point, I would ask The Board to look at the information contained in the years of hindsight since the complaint was initially filed:

A) We have a situation wherein both ocean carriers eliminated or significantly changed

tariff provisions used by forwarders to move full container shipments.

B) We have a tariff structure which limits rates to specific shippers and where DHX has to "request" to use a rate (the 2034-E Matson tariff and Sealand/CSX 0500/0600 tariff series).

C) We have a pricing structure that includes service contracts and unfilled terms and conditions.

D) We have a carrier pricing structure that imposes on per hundred weight commodity items charges that are either not imposed or otherwise absorbed for proprietary shippers.

E) We have a price/rate structure which affords forwarders few actual rate options in the movement of full containerload cargoes, except at per container rates that are, on the average, approximately \$1,000 per container higher in costs than a variety of shipper specific rates for the movement of the same or similar commodities; and

F) We have a pattern of rate increases that have been disproportionately imposed on the rate items under which forwarders operate.

50. 1)The effect of A, B, C, D, E and F above, which is very important, is to preclude forwarders like DHX from using the "best" rates as well as making the underlying costs of the forwarders high enough that the forwarder can not offer a competitive rate on full containerload business except at a LOSS or virtually no profit. The key point here is that the new involved tariff structure is ANTI-COMPETITIVE in its impact. The limitations are not contained in the tariffs to "obtain" business, but have the effect of providing a discriminatory rate and precluding the forwarder from that rate. The tariff likewise imposes extra charges on forwarders (wharfage as example) which go to the intent to render the forwarders' cost high enough that the forwarder is

not competitive. The changes made to get the tariffs to this point certainly are destructive business practices towards DHX and the commodity based forwarders as a group.

51. 2) DHX has lost the bulk of its full container load business. It has disbanded its Intermodal/Full Containerload Division and now treats full containerloads as a byproduct of its LCL sales efforts (as other forwarders do – we’ve been put back in our place).
52. 3) Sealand/CSX is now shipping full containerloads weekly on Matson. In this respect they are functioning no different than DHX would. However, they have gotten from Matson the volume-incentivized agreement DHX has continuously/repeatedly asked both Matson and Sealand/CSX for. What incentive is there for either of them to work with DHX on full containerload business or volume-incentivized business? If DHX ships with Sealand/CSX it may end up on Matson’s ship. Sealand/CSX may charge DHX over \$4000 for a container it pays much, much less for transportation to Matson.. Since there is no competition, neither one is willing to bargain with DHX for the bulk of the volume. Why? One or the other will get it anyway at much higher rates. Why kill the “golden goose”?
53. 4) In the past 10 years, Matson has changed its tariff and virtually made it impossible for anyone to compete against it in the Hawaii trade lane. Its current competition in their trade lane now (Sealand/CSX) isn’t a competitor – it’s a customer. And the actions of these two “would be competitors” in the public, in terms of making rate changes within a week of each other, eliminating differences in their tariffs, eliminating competition in the full containerload business to help each other maximize profits, clearly cannot be in the best interest of the shipping public to Hawaii.
54. 5) The fact that after the September 6, 1998 rules/rates changes DHX and the rest of the commodity based forwarding industry was forced to raise its published tariff LCL rates to the

shipping public by 15% in order to survive says it all. Neither Matson nor Sealand/CSX could care less about its responsibility to the public in this highly uncompetitive trade lane. What has transpired in the 3 years since DHX's initial complaint bears out the gravamen of the complaint. Illicit actions coupled with unfair/destructive business practices were used by Matson and Sealand/CSX to eliminate DHX as a competitor in the full containerload marketplace and to manipulate underlying cost within the LCL industry, with the ultimate goal being to force higher prices on the consumers within that shipping lane, through higher usage of the FAK rates. (In Elaine Griggs deposition, for which I was present as a Company officer, Sealand/CSX Attorney Leonard Fleisig had randomly selected one week of DHX shipment declarations to review with Ms. Griggs. Those declarations were virtually all FAK containers except for a couple, and support my arguments that the ocean carriers are doing just what they wanted to do – removing the lower rated commodity based pricing and therefore forcing higher prices on the forwarders through use of the FAK item and ultimately higher prices on the consumers in the State of Hawaii.)

55. 6) Additionally, the above actions, when taken in the proper context, show Matson in particular used its power within the trade lane to single out fast growing, aggressive and innovative DHX and make them a lesson to all by sending a message – work with us, we'll work with you – when its convenient. Focus on what we (Matson) consider our base business – we can certainly focus on yours. The major difference is they controlled the trade lane, made the rules, then changed them to the detriment of DHX when DHX became a competitor in the full containerload marketplace, and changed the rules to the detriment of the public at large by trying to hoist higher costs on the commodity based forwarders.

56. 7) We have shown:

-
- A. The changes made to the tariff structure and the impact on DHX,
 - B. that the changes eliminated DHX's ability to compete at levels previously established on FCL business,
 - C. that in 1998 and 1999 the motive of the ocean carriers was certainly to reduce or eliminate forwarder competition on FCL's,
 - D. that those remaining rates in the tariff do not enable DHX to compete for FCL business, on a scale similar to that prior to the changes, on a profitable basis,
 - E. that tariff restrictions preclude DHX from use of rate items except through the process of requesting a rate, in which instance there is no guarantee our request will be granted,
 - F. that the shipper specific rates (based on "beneficial ownership") are lower than the rates made available to the forwarders, including DHX,
 - G. and that a system of Memorandums of Understanding exists, which contain rates, terms and conditions which are not contained in the ocean carriers filed tariff, and make it virtually impossible for DHX to compete on similar terms and conditions.

- 57. 8) I ask The Board to review all the facts and evidence presented and to put an end to the carrier's unfair/destructive practices now. DHX is a family owned, medium sized business which has been treated unfairly by its vendors, the vessel operating common carriers Matson Navigation Company and Sealand/CSX. We deserve to be compensated for their destruction of our FCL Division, which was accomplished through a variety of means, including deceit, tariff gimmickry and aiding our competitors in the marketplace.
- 58. 9) I ask The Board to also compensate DHX for lost business, profits and overcharges for the different categories of damages we have delineated, as well as provide punitive damages to DHX for time and resources spent.

59. 10) I also request The Board order the Carriers to give DHX a volume incentive or loyalty contract that reflects our stature as the single largest non-vessel operating commercial shipper in the country into Hawaii, at rates better than those smaller customers who currently enjoy better full containerload rates than DHX does. This would place us in a position similar to other forwarders in the Alaska and Puerto Rico Trades. The only difference in the trade lanes is the lack of true competition among the ocean carriers.

60. Damage Calculations

We have calculated damages in 5 different categories, as follows:

1. Damages for lost business / profits on full containerload business.
2. Damages for the difference in ocean/wharfage costs between what certain smaller volume customers pay the ocean carriers for shipping "like items" under contractual rates which contain artificial and unlawful tariff restrictions as opposed to what DHX has paid.
3. Damages for the wharfages paid by DHX under full tariff rates but not paid by smaller volume customers to the ocean carriers (absorbed by the ocean carriers) moving shipments under contractual rates.
4. Damages for the overpayment of rates charged by both defendants under mislabeled port to port rates as 'through proportional rates'.
5. Damages for unreasonable practices based upon carrier misrepresentation and deceit regarding the availability of volume pricing and the carriers' use of MOUs.

I will discuss the methodology used in the lost business / lost profits calculations below. (See Exhibit 5 for calculations and supporting detail.) The other categories of damages are discussed by Mr. Paul B. Chun in his Verified Statement. Mr. Chun, who is the Assistant Controller, has provided a Claims Summary Schedule as well as the supporting informational reports. Mr.

Chun's Summary reflects total monetary damages by the defendants' conduct as a total of \$XXX as improperly imposed wharfage charges and \$XXX as damages for the defendants' unreasonable practices, including the deceit and failure to publish and provide all of the carriers terms and conditions relating to the rates they did publish, the maintenance of rate structures that result in the exclusion of freight forwarders from the full containerload market. In addition, DHX is seeking damages for the intentional mislabeling of port rates as proportional rates to mislead the public and DHX. As to Sealand/CSX, DHX is seeking damages for the mislabeling of duplicate and conflicting rates as "joint rates" and for the intentional omission of participating carriers and routings on cargoes shipped with that defendant..

61. Damage Calculations - Growth Rates

The growth rate used was the actual revenue growth rate experienced from January, 1983 until the Ocean Carrier's first changed the overflow pricing in September, 1998. Revenue was used since actual volume statistics were not available (the results would have been similar and the time and effort to attempt to reconstruct close to 20 years of data would be almost insurmountable). The period in question was used because, over the long term period, it showed the growth trend/pattern that DHX management was capable of sustaining in its full containerload business. The 19 year period also does not allow for variances that could potentially skew the results that occur due to short term economic fluctuations on either the high side or the low side.

62. Damage Calculations - Historical Profit Margin

The historical profit margin was computed from the inception of the full containerload division in 1994 to the date of the overflow pricing change in September, 1998. This made sense, since the division had an infrastructure and cost structure and was treated as a separate line of

business. Thus, it could be easily compared to the subsequent period on an “apples to apples” basis. (If DHX had used the period from January 1, 1983 to September, 1998, the cost percentage would have been XXX%, instead of the XXX% used, which would have worked to our benefit in terms of these calculations. However, this would have been comparing “apples to oranges” from a cost structure basis.)

REDACTED

REDACTED

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REDACTED

VERIFICATION

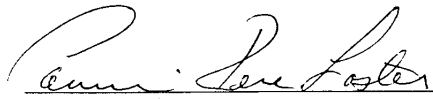
State of California
County of Los Angeles

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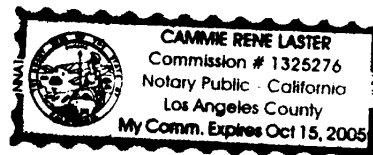
Bradley J. Dechter being duly sworn deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

Signed 

Subscribed and sworn to before me this 21st day of October 2003.


Notary Public

My commission expires 10-15-05



VERIFIED STATEMENT OF BRADLEY J. DECHTER
APPENDIX "A"

Appendix A

As a side matter, Matson had a long and friendly relationship with a competitor of DHX-Honolulu Freight Service ("HFS"). HFS was one of the very first Hawaiian LCL consolidators in the late 1960's or 1970's. They led the way into containerization within the freight forwarding industry in Hawaii. When DHX incorporated in 1980, HFS was an FAK shipper of LCL containers who, as a rule, worked with Matson and did not use commodity rates, overflows or solicit full containerloads. In 1980, HFS's market share in the Hawaii Freight Forwarding industry may have been as high as 70% to 80%. They had worked with Matson for a number of years and represented what I believe was the model on which Matson management based its paradigms or view of what a freight forwarder should do and be within the Hawaii Forwarding industry.

But the relationship goes further. Michael Wausac, former President of Matson during most of the 1980's, was the former General Manager of HFS prior to becoming President with Matson. Brad Mulholland the current President of Matson, was Southern California Sales Manager during the 1970's. Brad is approximately the same age as Michael Biedelman, the President and CEO of HFS. Brad has called on Michael for over 30 years. They are friends. The relationship between Matson and HFS was so close that for over 15 years both companies had guest condominiums in the same building in Hawaii, and HFS was one of, if not the, largest Matson accounts.

HFS was slow to adapt to the evolution in the forwarding industry, and still relied heavily on FAK rates during the 1980's and early 1990's. Thus, by the mid 1990's, it is my belief HFS was not competing cost wise and therefore was not paying its ocean bills in a timely manner. Matson and Sealand/CSX both allowed HFS to "string out" their payables for quite sometime. (It could be that the ocean carrier's management felt responsible for HFS problems for not communicating to HFS what was going on in the industry because of impact on the ocean carrier's bottom line.) Eventually, a Matson employee felt that the treatment being afforded HFS was so different than that being given to DHX that the Matson employee faxed DHX management a copy of the HFS aging. (To this day I do not know who that employee was.)

Upon receipt of this aging from a DHX subordinate, I called every Matson manager I knew to confront them. All of them claimed a lack of knowledge with the exception of Matsons President, Brad Mulholland, their Vice President of Sales and Marketing Paul Stevens and Matsons Chief Financial Officer (I do not remember his name.) This indicated to me a concerted effort on the part of the top management at Matson to hide the problems of their friend at HFS from the middle management at Matson. Why? Because rumor might get out as to financial problems and cause HFS's ultimate downfall (which would have helped DHX during the elongated Hawaii recession of the 1990's). Why? Because it might explain the attitude top Matson management had towards DHX and the way DHX management ran their business and put that attitude in a different light - a light in which Matsons' top management was seen as inept - backing an archaic

concept, a dinosaur, a dead horse, etc. This, of course, would be very unflattering for Matsons' top management.

Matson has since refused to discuss their business with HFS with me. It is my understanding Sealand/CSX put them on a cash basis shortly afterward and lost all the business to Matson. I also understood Matson and HFS made arrangements for a long-term payment plan. I was shocked when shortly after hearing about Matson coming to terms with HFS, the Biedelman Family Trust secured all of the HFS assets, instead of the major creditor Matson putting a lien on those assets. In the meantime, Matson started changing all the tariff rules. This no doubt helped their long time friend HFS stay in business and aided HFS's capability to pay back Matson. And, changing the rules hurt DHX. A win/win from Matsons standpoint.

VERIFIED STATEMENT OF BRADLEY J. DECHTER
EXHIBIT 1 - Affidavit September 30, 1999

01/10/99

12:02

TRANSITAINER NZ LTD + 0012129520345

9-30-1999 7:53PM

FROM NOURSE AND BOWLES 212 952 0345

NO. 449 D02

P. 3

08/30/98 THU 16:15 FAX 310 537 1400

DHX INC.

@004

Exhibit 1

AFFIDAVIT

I, Bradley J. Dechter, am President of DHX, Inc. The purpose of this affidavit is to outline certain business practices undertaken by the Matson Navigation Co. ("Matson"), and Sealand Services Inc. ("Sealand"), which, when taken into consideration with recent increases in the rates of the tariff provisions dealing with "overflow" containers, show a variety of destructive practices aimed at the freight forwarding industry as a whole, as well as a large, unreasonable "de facto" rate increase.

The business practices I will initially undertake discussing have occurred since September 1998. They include the following:

- 1) Elimination of numerous footnotes in specific tariff items (under the guise of "tariff simplification").
- 2) Redefining of the term Shipment on a Bill of Lading.
- 3) 5% increase in Commodity Container rates.

I also briefly mention the overflow rate increases and summarize events since 1998 in the "Midpoint Summary". Additionally, in a separate "Additional Background" section below, items showing a similar trend prior to 1998 will be discussed.

1.) Elimination of Footnotes

In September 1998, under the guise of "tariff simplification", Matson and Sealand removed numerous footnotes from the specific tariff items. The effect of removing these footnotes was to force freight forwarders with tariff knowledge to pay more freight charges to move the same items (with a resulting negative impact on rates to consumers), since using the footnotes in the declaration of goods on Bills of Lading tendered to the steamship lines was no longer an option. Two (2) examples (among numerous) are as follows:

A) Canned Goods

In the case of Canned Goods, Matson and Sealand both had provisions in their tariff which allowed any party to pay the Canned Goods rate for up to 15% of non-canned goods merchandise put into a container which held over 36,000 pounds of canned goods. Therefore,

Exhibit "C"

9-30-99

9-30-1999 7:53PM

TRANSMITTER NZ LTD → 0012129520345

FROM NOURSE AND BOWLES 212 952 0345

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P. 4

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09/30/99 THU 16:15 FAX 310 537 1400

DNX INC.

Exhibit 1

normally high cost tariff items could be shipped at a low cost rate. (Historically in the Hawaii trade lane food stuffs and canned goods carried low rates.) By eliminating this footnote, the steamship lines effectively caused canned goods shippers/ consignees, including freight forwarders, to pay higher rates, for two reasons. In the case of canned goods shippers/ consignees, the "sharing" relationship they had with forwarders that had evolved over the years was no longer necessary from the forwarders perspective. As a result, forwarders like DNX raised their rates to these shippers and consignees. Forwarders could also then not apply their cheaper costs to the more expensive merchandise shipped under these tariff notes. As a result, pricing was increased to a large number of DNX customers - both those shipping canned goods and those shipping other, more expensive commodity items (e.g., electronics). In certain instances, DNX and other forwarders lost this canned goods business to the steamship lines.

B) Reproduction Paper

Both Matson and Sealand had a tariff item which allowed machinery to be shipped under the paper item and rate as long as certain criteria were met. Because of DNX's expertise in the tariff we were able to ship numerous containerloads of primarily machinery at the paper rate. When this item was eliminated, DNX's costs of moving machinery increased and its competitive advantage in this area of expertise was decimated. Again, ultimately the consumer paid the charges through higher shipping prices, to either the steamship lines directly, or ourselves.

The above two are examples of the types of changes that the steamship lines made to their tariff in September 1998 that hurt the freight forwarding industry to Hawaii as well as the general consumer in Hawaii. Because of the 1998 tariff note changes, DNX was forced to increase its general rates to the public approximately 15%, as follows:

CUBIC FEET	RATE PER CUBIC FOOT	
	AUGUST 1998	SEPTEMBER 1998
0-399	\$2.65	\$3.05
400-799	\$2.51	\$2.89
800+	\$2.43	\$2.79

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DXH INC.

0008

Exhibit I

By increasing rates charged to the general public 15%, DXH was able to merely pass through the increased costs it had experienced - it did not increase its profit. Thus, one would have to conclude that the September 1998 rules changes were more than that - they were a de facto rate increase of major proportion.

2.) Shipment Definition

Prior to September 1998, the steamship lines' basic paraphrased definition of a shipment included any container(s) tendered for a specific port on a calendar day between Sunday at 0001 and Saturday at 2400 hours. In September 1998 this definition was changed to include, "In order for the provisions of this rate to apply, all containers in the shipment must be tendered to and loaded to the same vessel/ voyage". The effect of this change was to reduce the number of overflow containers one could declare, since the forwarder was limited to one vessel's containers as opposed to one week's containers (At the time there were 2 sailings per week). This change, similar to the above mentioned footnote changes, caused those forwarders tendering multiple containers (for example, to an outer island) to increase their costs dramatically, since the cost savings due under the overflow scenario disappeared if the lead container and overflow container were tendered for different sailings. These cost increases were also considered as part of DXH's 15% general rate increase discussed above.

3.) 5% Increase in Commodity Container Rates

In February 1999, the steamship lines implemented a 5% increase on all commodity based container rates (as opposed to Containerload rates), but exempted the overflow provision from this increase. Given the rate increases taken in September 1998, DXH was only able to increase its rates to its customer base by the amount of the historical level of rate increases to the industry, or 3 percent. Again, not all containerload rates were affected; just those to which commodity rates apply.

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DNX INC.

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Exhibit I

4.) Midpoint Summary

At this point, it is important to look at the trend that has been developing:

1. All percentage footnotes in tariff items deleted or refined effective September 6, 1998.
- *2. 10% increase in minimum overflow effective September 6, 1998.
3. Vessel declaration per Bill of Lading effective September 6, 1998.
4. 5% GRI for Commodity container rates effective February 14, 1999.
- *5. 7.5% increase in minimum overflow effective October 17, 1999.

*These items are the main issue in the petition which this affidavit supports.

The above changes have been heavily weighted to eliminating many of the niches and competitive advantages the freight forwarders have developed in order to compete against steamship lines on full containerload business. On more than one occasion representatives from each of the steamship lines have indicated to me that the freight forwarders should not be in the full containerload business - that's the steamship line business, not forwarder business. As a result, the above changes, which have resulted in increases to both less-than containerload customers and full containerload DNX customers, cannot, in my opinion, be in the public good. They represent specific actions taken by an opinionated few who believe they are doing what's in the best interest of their employer - not the public. Most significantly, they represent de facto unreasonable rates in this market controlled by Matson and Sealand.

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DMX INC.

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Exhibit I

5.) Additional Background

Matson currently has an approximate 70% share of the ocean freight market to Hawaii. Sealand Services Inc. holds the other 30%. In every single change discussed above, it is Matson that has filed for the tariff changes initially - Sealand has followed. On at least 2 separate occasions different Matson Navigation company officials, Paul Stevens, Executive Vice President Marketing and Dave Hoppes, then Corporate Sales Manager, have each told me outright that we shouldn't be in the full containerload business - "That's Matson business - Not DMX business".

Matson has also done other things aimed at weakening the "commodity based forwarders" industry, in an effort to reduce its competition in the full load arena which, again has a critical impact on what rates will be in this market.

Activities done to weaken the industry prior to 1998 include:

1. Reducing the FAK (Freight of All Kinds) Containerload rate used by national trucking companies because they could not compete with the commodity based forwarders in terms of tariff expertise or knowledge. This change was specifically made to "level the playing field between forwarders and truckers" per Tom Good, Matson Southern California Sales Manager. On February 14, 1999, those FAK rates were, again, not increased.
2. Matson, between 1995 and 1998, allowed a major competitor of DMX, one of the 2 largest forwarders serving Hawaii, a commodity based forwarder, to consistently pay its freight charges more than 60 days late (and delay payments even more the closer the date moved towards today's date). This competitor basically used the cashflow to reduce its current rates, and by doing so increase its market share, which eventually weakened the entire commodity based forwarder market. It is my understanding that Sealand is suing this same competitor for monies owed them. Matson management has now allowed numerous others, including DMX, to pay their bills on terms more favorable than those

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DXH INC.

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Exhibit I

shown in their tariff. I believe there is no uniformity in how the forwarders are each being treated. I also believe Sealand may have issues similar to Matson in this area, but have no proof.

3. Although I have previously approached Matson about their "divide and conquer" tactics regarding the freight forwarding industry (keep them all weak through reduced industry profits and infighting), they have always indicated verbally they supported a strong forwarding community. Yet they have consistently made rate agreements with individual shippers and inserted items into the tariff based on an "ownership interest" in the goods being shipped, therefore precluding forwarders from using the same rates.
4. In the past month and a half I have asked Matson to quote me discounted rates based on DXH's use of shipper-owned containers (as opposed to the "free" ones Matson provides). Matson, to this date, has ignored my request and not responded.

6.) Summary

Since the mid-1990's, Matson and Sealand made consistent attempts to reduce the effects of commodity based tariff rates on its charges, thereby increasing its revenue per container. This has been done through eliminating items found in the tariffs or substantially increasing other tariff provisions by which freight forwarders could have freighted goods at a savings to consumers.

The results have been two-fold:

1. A significant de facto rate increase (and profit increase) for Matson and Sealand, and
2. Elimination of the freight forwarders as competition for Matson/Sealand business by a "hidden" restructuring and re-focusing of its tariff.

Obviously, even as a follower Sealand has benefited by allowing these changes to take place and incurring the same beneficial results. It is in the best interest of the consumer that this all be stopped. Competition is being eliminated and rates in a stagnant market based on a

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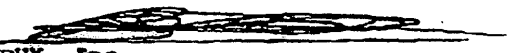
Exhibit I

stagnant Hawaiian economy have been rapidly rising since September 1998.

CONCLUSION

The foregoing are examples of matters I have been personally involved with which show that recent increases in overflow container rates are unreasonable.

I, Bradley J. Dechter, President of DRX, Inc., declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Furthermore, I certify that I am qualified and authorized to file this document.


DRX, Inc.
Bradley J. Dechter
President
MBA, CPA

September 30, 1999
(Date)

VERIFIED STATEMENT OF BRADLY J. DECHTER
EXHIBIT 2 - Affidavit December 3, 1999

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DHX, Inc.

Plaintiff,

v.

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

Defendants.

Docket No. WCC-105

SWORN STATEMENT OF BRAD DECHTER

State of California

County of Los Angeles

s.s.:

Brad Dechter, being duly sworn, deposes and states as follows:

The recent responses of both Matson Navigation Company ("Matson") and Sealand Services, Inc. ("Sealand") require further discussion and clarification on the part of DHX, Inc.

I am submitting this statement in support of DHX's complaint with respect to certain unreasonable rate actions taken by both Matson and Sealand (the "Carriers"). Matson's recent response included a "Verified Statement of Paul E. Stevens." It is my intention to respond to the issues and concerns brought forth in Mr. Stevens' statement, as well as provide additional perspective for The Board to consider.

Mr. Stevens' Statement

1. We agree that the tariffs on which the current rate complaints focus are Matson's Tariff 14 and Sealand's Tariff 468. However, certain of Matson's anti-competitive actions are evidenced in Matson's Tariff 2034 and we are requesting The Board consider those as well.
2. At the bottom of page 3 of Mr. Stevens' statement, he notes, "the 'product' that Matson sells is essentially container sized blocks of the finite cubic cargo space on its ships."

DHX agrees with Mr. Stevens' assessment. DHX requests The Board to view a container ship as just that – numerous blocks (or containerloads) of finite cubic cargo space. Now, for each block of finite cubic cargo space which DHX is filling with an "overflow" container, DHX requests The Board understand that DHX is now paying 17.5% more for that space than it was paying in September 1998.

3. On page 5 of his statement, Mr. Stevens indicates:

"In essence, therefore, the overflow rule exempts the last, partially-full container of a multi-container shipment from the otherwise-applicable minimum weight requirement for that container, and permits the container to move at a rate lower than the full-container rate that otherwise would apply under the straight tariff provisions. The purpose of the rule was, and is, to attract the business of shippers who would ship multiple containers at a time, by providing a price break on the last fractional container in a particular multiple-container shipment."

Mr. Stevens' statement might reflect some original intent of the rule as in the 1960's or 1970's. However, it does not reflect the business practices of Matson for at least the last 22 years or Sealand since they entered the trade lane. In fact, the overflow

container provisions have been used by DHX for the past 22 years, with full acquiescence of the trade lane carriers.

4. On page 5, 6, and 7, Mr. Stevens attempts to define "the role of freight forwarders." I would like The Board to realize that part of this is nothing more than what Matson would like the role of the freight forwarder to be, and part of it is simply not true.

Mr. Stevens indicates, "Over the years, however, freight forwarders such as DHX have moved beyond their essential function as LCL consolidators, and have begun to manipulate Matson's tariff provisions, including the overflow rule, to employ those rules in ways that were not originally intended, drawing business away from Matson. They would do this by seeking out shippers of multiple-container shipments (the very shippers the overflow rule was intended to attract to Matson) and gathering and manipulating the shipments of different shippers - breaking them up and recombining them in different ways - to artificially increase the number of partial containers that would qualify for the lower rates available under the overflow rule." Also, "But unlike the economically beneficial role forwarders play in consolidating less-than-containerload shipments into full containers that the underling ocean carrier can transport more efficiently, the breakup and manipulation of various shippers previously full containers to create new, artificial overflow containers does not create efficiencies in the transportation of the goods. Indeed, it introduces inefficiencies by requiring the breakup, mixing, and reassembly of containers that otherwise would stay intact, and forces the inefficient allocation of cargo space on the underlying carrier's ships because it is forced to carry an artificially high number of overflow containers, that, by definition, are only partially full. Indeed, that is the forwarders' goal which is to break up efficiently transportable full containers and create extra space wasting partially full overflow containers from which they can profit."

First and foremost, overflow containers shipped by DHX, unlike those shipped by Matson and Sealand, are normally full containerload overflow containers, not partially full, as Matson would lead one to believe.

By contrast, the Carriers have built-in inefficiencies as shown by their Substitution Service ("Sub-service") Rule. Under this Rule, the Carrier allows the forwarders to load a 40' container partially full but only charges for a smaller container size (e.g. a 20' container). The Carriers do not mind this inefficiency because the rate is based on a higher FAK (Freight-All-Kinds) rate level, as opposed to the commodity-based overflow. My point is, the Carriers allow hundreds of sub-service containers per year. These represent a totally inefficient use of vessel space with partially loaded containers. Yet, in February 1999, Matson increased their customers' sub-service usage substantially by: a) putting in a 20' container sub-service rate, and b) making sub-service rules available for all containers, not just those containers being loaded at the original port of origin (now sub-service was available on both Wednesday and Saturday).

Second, Matson misdescribes "lead" and "overflow" containers shipped by DHX. These may be containers actually "stuffed" by DHX with break bulk cargo received, or may be containerloads "restuffed" by DHX as described below (both representing roughly 80% of our total containers), or may be full containers received as also described below. When DHX "stuffs" break bulk cargo, it is in our best interest to maximize the cubic feet loaded into these containers -- by maximizing cubic feet loaded, we ultimately minimize our per cubic foot freight charges and related costs. In certain instances, it may not make economic sense to load a particular piece (or shipment) into a particular container (e.g. a commodity based container or a "Freight All Kinds" container) because it will increase the cost associated with those goods, but usually we have other cargo available on our dock to fill the space. Our ultimate goal is to maximize the use of cubic space within a container loaded by DHX and minimize freight costs. Obviously, the Carriers' goals will not be congruent with ours.

The benefits of us loading break bulk cargo in containers are fairly obvious: a) we maximize physical usage of the container, thereby minimizing inefficient use of space on board the Carriers' vessel, b) the Carrier receives the full tariff rate, which in many cases is more than the minimum revenue required for the container, and c) the consumer gets the cheapest rate (additional value) as well as the full menu of services (including pickup and delivery) that DHX as an NVOCC can offer.

In less than 10% of the cases, DHX receives full containers of heavy cargo (steel, concrete, tile) where 44,000 pounds will only fill one third to one half of the container but because of legal weight restrictions, the container cannot be fully loaded. In these instances, DHX will unload the container and mix the heavier commodity with lighter commodities to fill the cubic space in the container. As a result, where Matson might have received six container loads of various heavy and light goods from different shippers, it may only receive five containerloads of the same exact quantities of goods from DHX. This is due to DHX's more efficient use of the container space. Obviously, there are savings to the consumer and a more efficient use of space on board the Carriers' vessels. The "manipulation" Matson describes to create artificially lower rated overflow containers is untrue. Overflow containers are never a goal by themselves; it is only in this case of heavy and light cargo that there is a mixing and matching process by DHX to most efficiently utilize cubic space within a container. As a result, there is a more efficient use of space within the container (and, therefore, fewer containers for the Carriers.)

Ultimately, in this example as well, the consumer benefits in these "restuffing" cases by using a forwarder. Consumers paying for heavier type cargoes pay the forwarder for the space they use (as opposed to a "weighed out" partially full containerload) and consumers with lighter cargoes pay the forwarder for the weight they ship (as opposed to the minimum weights the Carriers impose). Not only do the consumers costs decrease, but they get a larger choice in sailings (we use both Carriers) and a through service where they deal with one company point to point.

Third, for full containerloads received by DHX for shipment with Carriers (i.e. containerload business generated by a single shipper or consignee that are not "stuffed" or "restuffed" by DHX) that DHX ships (up to 20% of our business) we do not, as alleged, break out this freight to make overflow boxes. For the most part, these are continuing customers we have developed which prefer our service. We create value for the customer (and the customer benefits) from use of our service. In many instances, for example, the customer relies on us to make the choice of which Carrier

to use. They know our expertise will help to ensure that their container will be directed to the next available vessel (as opposed to the next available Matson vessel, which is what Matson would sell them, or the next available Sealand vessel, which is what Sealand would sell them). They also know our expertise will help them by us selecting the Carrier with the least amount of labor problems (therefore greater assurance the container will make the vessel) the least amount of chassis problems in Hawaii (so the container can be picked with a minimal amount of delay time), and/or the least amount of equipment shortage issues (because of our size, usually DHX will have the equipment available, while on any given day either Matson or Sealand may be out of a given piece/size of equipment). Our focus ensures our customers get the best service available – not the best Matson service, not the best Sealand service, simply the best service.

The Board must understand this: we add value in these full container load cases by giving the ultimate consumer (shipper or consignee) a choice and a “watchful eye” working on their behalf, at a competitive rate. Matson and Sealand do not like this because they lose the ability to control this freight. It means they actually have to provide the consumer with a better quality product than their competitor if they are to receive the freight. It is not theirs by default – DHX makes a decision based on the current service quality and service issues the Carriers may face.

As a result, Matson and Sealand are trying to eliminate DHX as a competitor. (To quote Mr. Stevens in conversations he has had with me in prior years, “full loads are our business, not DHX’s”). Obviously, the easiest way to do that is to manipulate the tariff – eliminating notes within tariff items thereby increasing the rate of those items, redefining the definition of a shipment to substantially increase forwarder costs and make forwarders non-competitive in the pricing of certain containerloads, and of course substantially raising the minimum revenue required by an overflow container, reducing the difference between the price of a full container and the overflow container, thereby reducing the profit differential and reducing the incentive for a forwarder to “sell” this type of service.

As examples to ensure The Board understands the full rate impact of changing certain tariff footnotes, we call your attention to the rates DHX would have paid for specified commodities before and after the footnote changes effective as of September, 1998.

These commodities/rates, all used by DHX in the normal course of business, were/are as follows:

	<u>Old Rate</u>	<u>New Rate</u>
<u>40' Container</u>		
Machinery	\$2,440	\$3,940
KD Boxes	\$2,688	\$3,525
Garment Hangers	\$2,261	\$3,353
Hospital Supplies	\$2,941	\$3,713

As The Board can see, simply by deleting a few tariff note items, Matson and Sealand were able to increase their charges to us much more than the 7.5% Zone of Reasonableness. In some instances, our costs increased over 50%.

Similarly, by redefining a shipment to only include containers on a single vessel out of a single port, many more of our overflow containers ended up being declared as "stand alone" containers with weight minimums applicable – another substantial increase in our costs well beyond 7.5%.

I believe freight forwarders, like DHX, offer important efficient transportation alternatives to those the Carriers have in place. Again, we request The Board look past Matson's incorrect allegations about freight forwarders. Encouraging use of sub-service rules/containers negates the thrust of their arguments. It should also help The Board to realize that what the Carriers are doing is not by chance – there is a willful intent to focus on and discriminate against a distinct group of customers – the commodity-based forwarder.

One other item of an anti-competitive nature is the Carriers use of an "ownership interest" clause within a different tariff, in Matson's case, tariff 2034. Within this tariff, Matson has, in certain instances, reduced rates to specific shippers and consignees based on their having an "ownership interest" in the goods. This "ownership interest" clause precludes DHX from competing with the Carriers for that business, and allows those customers using these items to, in many instances, gain an unfair advantage over DHX customers who may be shipping similar, if not identical, goods. This is again, an instance where the Carriers have used their tariffs to eliminate competition from within the forwarding community.

Overview and Recent History in the Trade Lane

5. As President of DHX, Inc., I believe The Board may need some background as to what history has transpired in the Hawaii Trade Lane. I believe I am uniquely qualified to do that. Prior to my joining DHX, I was an Audit Manager with Arthur Andersen & Company (I am a Certified Public Accountant). In 1994, I wrote my masters thesis, "A Marketing Plan for DHX," while receiving my M.B.A. from Pepperdine University. This thesis included an economic analysis of the Hawaii Trade Lane, an analysis of the competition in the trade lane and a S.W.O.T. (Strengths, Weaknesses, Opportunities, and Threats) analysis of DHX's state within the trade lane. I have monitored the Carriers' actions, strategies, etc. over the past 18 years. I consider myself an expert in our industry. I believe Sealand does also since they have engaged my services as an expert witness in an anti-trust case filed against them in the state of Hawaii.
6. During the 1980's, Hawaii as a vacation industry was growing strongly. Fueled by strong Japanese and California economies, the 1980's represented a period of unprecedented growth for the state of Hawaii. In 1990, however, both the Japanese and California economies started suffering. As a result, Hawaii's economy entered the beginning of a long, unprecedented recession. In 1998, the Hawaii economy still had not pulled out of its stagnation. Some schools of thought now believe that as a

vacation destination, the Hawaii tourism industry has matured and the economy will continue to stagnate or grow slowly.

7. Prior to 1987, when U.S. Lines was competing against Matson in Hawaii, Matson virtually had no competition. U.S. Lines service was considered poor (along with its overall management) which was one of the major reasons they went out of business. Sealand took over from U.S. Lines in 1987, and it is my opinion that for the next three years, the primary function of the gentleman running Hawaii for Sealand was one of loss prevention (in terms of losing market share). Bill Kenwell headed Sealand's efforts in Hawaii, and Sealand's new customer base consisted of previous U.S. Lines customers who had no loyalty to Sealand. Mr. Kenwell's efforts were spent primarily in public relations and dealt with keeping existing U.S. Lines customers in place while ironing out operational issues and problems any new carrier in the trade lane would have. Matson did not really have any effective competition due to Sealand's struggles and the unprecedented growth in the trade lane. Matson was growing, was extremely profitable for a steamship company and enjoying the fruits of their long history in Hawaii.
8. In approximately 1990, Sealand's strategy changed from one of "loss prevention" to one of aggressive growth in the trade lane. Jack Sutherland was brought in to replace Bill Kenwell and head the team that would make Sealand a more competitive carrier in the trade lane. Sutherland and Sealand were much more aggressive in terms of lowering pricing to obtain a specific customer or group of customers. The timing of Sealand's aggressiveness in Hawaii was good - coupled with the recession in effect, shippers and consignees were looking for ways of reducing costs. Sealand was an answer.

Some of the competitive changes made by Sealand affected DHX. DHX would then go to Matson, who at the time was DHX's primary carrier, and ask Matson to match Sealand's rate, so DHX would not be at a competitive disadvantage. For the most part, Matson initially refused to match Sealand's changes on the premise that they had

the whole market to worry about, and Sealand's rate action would cost them a lot more, and that they would rather lose a little business then carry more business at lower rates.

In the meantime, more of Matson's business was going over to Sealand. Between 1990 and 1995, it is my belief that Matson's market share declined 6 points, from 73% to 67%. This decline was due to a variety of reasons, one of which was the use of Sealand more and more by the commodity-based forwarders, including DHX. My position as President of DHX basically was that if DHX did not use some of the more attractive items in Sealand's tariff, we could not compete against those that did.

9. Matson eventually realized that Sealand methods had caused serious erosion in its market share. Eventually, Matson started using a competitive strategy that had been used in other trade lines (e.g. airlines) with great success. Basically, it involved matching (or echoing) whatever changes Sealand made in its tariffs and ensuring Matson retained the business by offering a better level of service. The goal was to ensure Sealand got the message that tariff reductions would no longer work as an incentive to obtain business – once price was taken out of the equation, both would compete on service. This strategy was implemented in approximately 1995 and by the end of 1996, Sealand had gotten the message. There were no more large tariff cutting measures being done by Sealand.

Based on this history, The Board can understand why the DOT, in its report to Congress on transportation in the "Non-Contiguous Domestic Maritime Trades" (printed in March 1997) could conclude from data from the early and mid 1990's that there was competition in this trade and downward pressure on rates. The situation since then has changed drastically. With this history, The Board can now understand how/why the trade lane has changed.

10. Eventually, Matson's "echo" strategy succeeded and rate cutting between the Carriers stopped, as did any effective price competition between them. Matson also decided

(and Sealand followed) that one way to generate higher revenues and to secure a long term foothold with a higher revenue per container based group of customers, was to help those that had been loyal to Matson (and generated higher revenues per container). A classic example of this is the "reward" Matson gave the national truckers who ship to Hawaii and use Matson, (primarily FAK shippers - "Freight All Kinds," which is a higher rate than the commodity based rates used by freight forwarders), was to reduce the FAK rate in a separate point to point tariff (Tariff 2034) by approximately \$450 in 1996 while at the same time planning to delete footnotes in tariff items applicable to commodity rates, raise overflow minimum rate requirements, change the definition of a shipment, etc. These were all done to hurt the commodity based forwarders and help the national truckers like Yellow, Roadway, and Consolidated Freight, who were unsophisticated in terms of the Hawaiian Tariffs and basically loaded FAK containers.

The crux of the matter is that Matson controls the market, and for all intents and purposes, without some regulatory body ensuring the safety of the small businessman and the commodity based forwarders who provide vital services and real competition and efficiencies in this trade, Matson will be able to eventually put the commodity based forwarder out of business or force them to adopt a strategy that Matson will dictate to them (as it is trying to do now through all of the recent anti-forwarder tariff changes).

11. The state of the Hawaii Surface Transportation Industry today is that there is virtually no price competition. By way of recent example, I had my Pricing Manager check the last 57 tariff pricing changes on commodity items commonly used by DHX made by Matson effective October 17, 1999. In all 57 cases, Sealand made virtually identical changes. Furthermore, Sealand has been considerably weakened operationally by its recent breakup (the domestic Hawaii trade operational decisions are currently being made by Maersk, who recently took over Sealand's international trade lanes and are running Sealand's westcoast terminal operations), and Matson continues to grow stronger in terms of its hold over the Hawaii Surface Transportation trade lane due to a

total lack of real competition in both pricing and operational matters. The Board is well aware, of course that the Jones Act poses a very real barrier to outside competition.

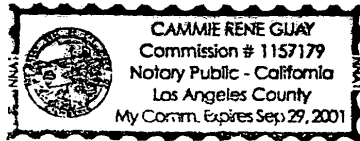
12. Matson's Operating Income, as disclosed in the Alexander & Baldwin 10Q (Quarterly Reports) filed with the Securities and Exchange Commission, have indicated the following increases in quarterly profits since these tariff changes have been made:

	<u>% Increase</u>
1 st Quarter 1999	5.1
2 nd Quarter 1999	50.8
3 rd Quarter 1999	35.1

13. My goal is filing this complaint with The Surface Transportation Board is simple: to try to save my business from an onslaught of various unreasonable rate changes that have been imposed by the Carriers through their monopoly power. Again, I believe that forwarders like DHX provide valuable services, efficiencies and competition. The Carriers have made tariff changes that caused the commodity based forwarding community to raise their rates to the general public by 15% in September 1998 alone. The recent change in the minimum overflow rate in October 1999, is aimed directly again at the commodity based forwarder (who Matson admits ships 98% of all such containers). It means that for the same container that DHX shipped in September 1998, in November 1999, it is now paying 17.5% more. This, coupled with the note changes in the individual tariff items and the change in the definition of a shipment, increased our overall commodity-based ocean costs (and the Carriers' freight revenues) substantially more than 7.5%. DHX requests relief from this unfair burden and asks The Board to ensure that as the overseer of the trade lane in question, Matson as a leader and Sealand as a follower, are not allowed to abuse their monopolistic power now and in the future.

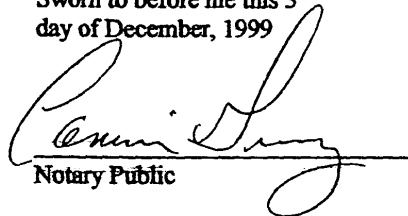
Exhibit 2

Thank you in advance for your consideration.




Bradley J. Dechter
President

Sworn to before me this 3rd
day of December, 1999


Notary Public



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CaliforniaCounty of Los AngelesOn December 3, 1999 before me, Cammie Rene Guay

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Bradley J. Dechter

Name(s) of Signer(s)

☒ personally known to me – OR – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Cammie Rene Guay
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

VERIFIED STATEMENT OF BRADLEY J. DECHTER
EXHIBIT 3 - "WIN-WIN PROPOSAL" - September 1993



Exhibit 3

OBJECTIVE

FINALIZE THIS WIN - WIN PROPOSAL

Page 1 of 8

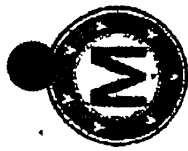


hibit 3

A REVIEW OF DHX NEEDS

- ABILITY TO SHIP MIXED COMMODITY LOADS ON A CWT BASIS
- LEAD/OVERFLOW CAPABILITY

pg 2



Feb 6, 1961-3

WHY THE HEARTBURN BY MNC

EXAMPLE 1 (MIXED COMMODITY CONTAINER VERSUS FAK)

40'C

<u>COMMODITY</u>	<u>WT</u>	<u>RATE</u>	<u>EXTENDED</u>
DRUGS	10,000	6.96	\$ 696.00
INK	9,000	4.80	432.00
ELECTRICAL	5,000	8.83	441.50
PAPER	2,000	8.75	175.00
WEARING APPAREL	1,000	8.35	83.50
IRON & STEEL	13,000	4.57	<u>594.10</u>

\$2,422.10

REDUCTION IN REVENUE TO MNC \$980.90

P93



Exhibit 3

WHY THE HEARTBURN BY MNC

EXAMPLE 2 (OVERFLOW)

TOYS AND GAMES	\$3,332
TOYS AND GAMES @ OVERFLOW	<u>1,700</u>
REDUCTION IN REVENUE TO MNC	\$1,632

Pg 4



410173

MATSON NAVIGATION COMPANY'S VALUE

- **CARGO AVAILABILITY**
ON TIME ARRIVALS IN HONOLULU (measured within 4 hours of
scheduled time)

MNC 96%

SEALAND 74%

- **CARGO RECEIVING HOURS**
MNC
WEDNESDAY DEPARTURE + 22 HOURS
SATURDAY DEPARTURE + 6 HOURS

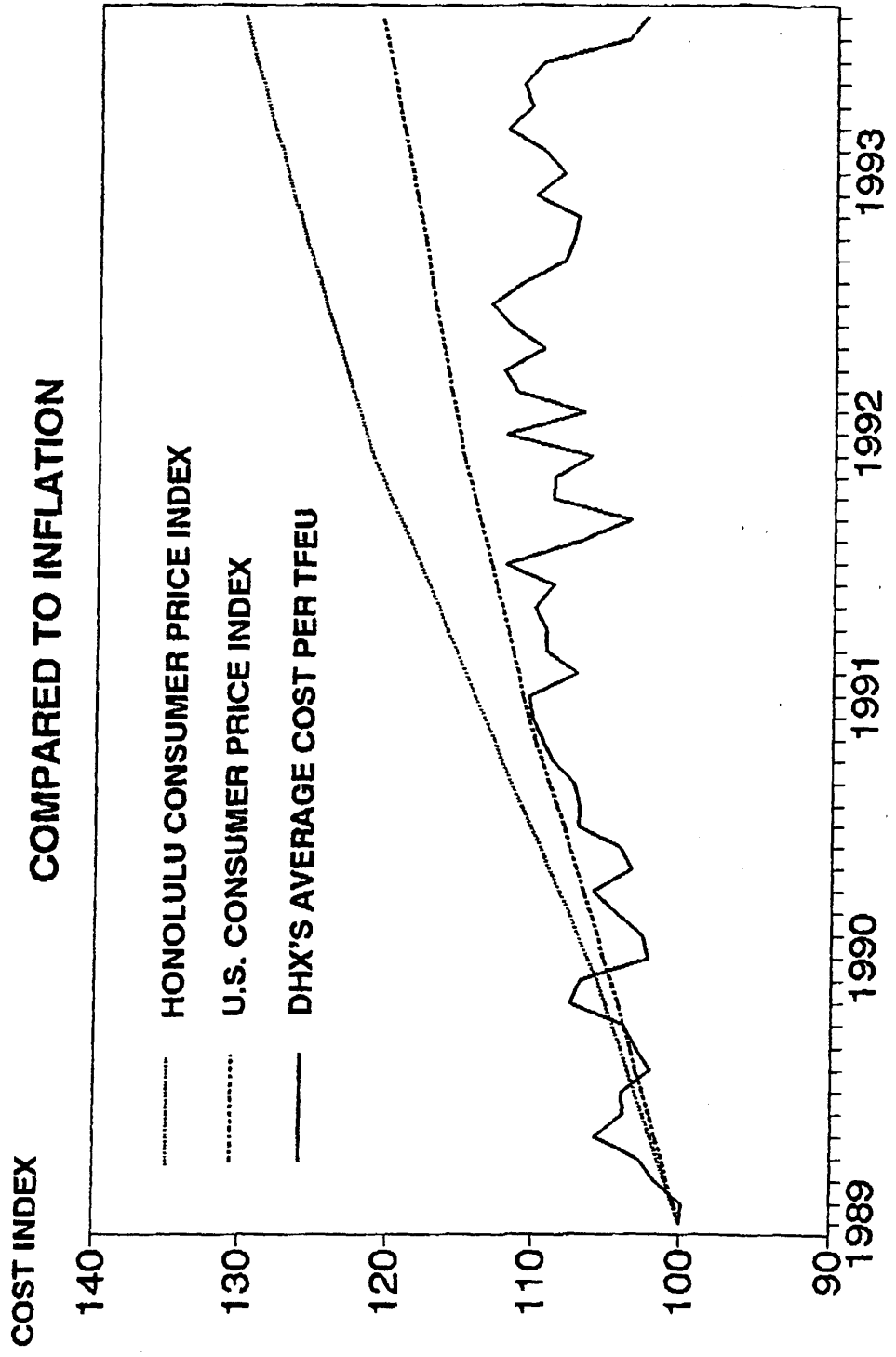
- **NO OVER - THE - ROAD**
- **EASY TO DO BUSINESS WITH**

P95

Exhibit 3

DEPENDABLE HAWAIIAN EXPRESS

OCEAN TRANSPORTATION COST COMPARED TO INFLATION



DRAFT ONLY

27/6/1 5

MATSON NAVIGATION COMPANY, INC. FREIGHT TARIFF NO. 14-F, FMC-F NO. 34		ORIGINAL/REVISED 5th Revised	PAGE 49
		CANCELS 4th Revised	PAGE 49
FROM: PACIFIC COAST PORTS		TO: HAWAII PORTS	
EFFECTIVE DATE			
Draft Only			
		CORRECTION NO.	XXX

SECTION 1 - RULES AND REGULATIONS

RULE 30: MIXED SHIPMENTS

(a) Two or more articles rated on a weight basis may be included in one container as a mixed shipment except as provided in an individual rate item and will be assessed a freight charge equal to:

- (1) Subject to Rule 31, and paragraph (a)(2) of this rule and, except as provided in an individual rate item, each article in a mixed shipment shall be rated separately on the basis of the total weight within the container. The minimum weight of the shipment shall be the minimum weight of the predominant commodity by weight provided for any of the rates used in computing the charges. Any deficiency between the actual weight of the shipment and the applicable minimum weight shall be charged for at the rate applicable to the weight of the predominant commodity by weight in the container.
- (2) The total weight of a mixed shipment consisting of both non-refrigerated and refrigerated cargo will not be used to determine applicable rates. The rates under Sections 2 and 4 will be assessed based only upon the weight of the cargo to be rated under each section.

(b) Two or more articles rated on a per container basis may be included in one container as a mixed shipment except as provided in an individual rate item and will be assessed a freight charge equal to:

- (1) Subject to Rule 50 and except as provided in an individual rate item, the highest of those rates for the commodities in the mixed containerload.

(c) Two or more articles with one or more rated on a weight basis and one or more rated on a per container basis may be included in one container except as provided in an individual item and will be assessed a freight charge equal to the higher of (1) or (2) below unless (3) or (4) below results in a lower freight charge.

- (1) The highest of the applicable per-container rates, or
- (2) The highest charge for a containerload of any weight-rated commodity in the mixed containerload, computed on the basis of the minimum weight associated with such rate or the actual weight of the commodity if greater.
- (3) Except for shipments moving in (1) trailers or (2) containers exceeding 40-feet in length if the charge for the mixed containerload can be reduced by so doing, an alternation will be allowed whereby one or more of the articles rated on a weight basis may be rated pursuant to paragraph (a) above and the articles rated on a per-container basis may be rated at \$1.94 per cubic foot or \$5.25 per cwt whichever produces the greater revenue for dry cargo (other than dangerous cargo), \$3.68 per cubic foot or \$8.06 per cwt whichever produces the greater revenue for dangerous cargo and \$2.48 per cubic foot or \$12.33 per cwt whichever produces the greater revenue for refrigerated cargo. If cube is not provided, a rate of \$36.37 per cwt for dry cargo (other than dangerous cargo), \$61.41 per cwt for dangerous cargo and \$19.35 per cwt for refrigerated cargo will be applied. The minimum weight provision in (a) above will apply, or

(Continued on next page.) [C]

For explanation of abbreviations and reference marks, see Page 26

DRAFT ONLY

94

EXHIBIT

MATSON NAVIGATION COMPANY, INC. FREIGHT TARIFF NO. 14-F, FMC-F NO. 34		ORIGINAL/REVISED Original	PAGE 49-A
FROM: PACIFIC COAST PORTS		TO: HAWAII PORTS	EFFECTIVE DATE "Draft Only"
		CORRECTION NO.	XXX

SECTION 1 - RULES AND REGULATIONS

RULE 30: MIXED SHIPMENTS - continued (C)

(4) Except for shipments moving in (1) trailers or (2) containers exceeding 40-feet in length if the charge for the mixed containerload can be reduced by so doing, an alternation will be allowed whereby one or more of the articles rated on a weight basis may be rated pursuant to paragraph (a) above and the articles rated on a per-container basis may be rated as follows:

(1) Wearing Apparel, viz.: Clothing, including Boots, Shoes, Footwear, Purse, Wallets, Watchbands, and Gloves; Excluding: Millinery. For purposes of determining the predominant minimum weight of the container the minimum weight of the Wearing Apparel shall be 30,000 lbs. per 24C or 24H, 38,000 lbs. per 40C and 42,000 lbs. per 40H. \$8.35 per cwt

(2) Toys or Games \$9.19 per cwt
 For purposes of determining the predominant minimum weight of the container, the minimum weight of the Toys or Games shall be 28,000 lbs. per 24C or 24H, 32,400 lbs. per 40C and 36,000 lbs. per 40H.

The minimum weight provision in (a) above will apply. The minimum weight of the shipment shall be the minimum weight of the predominant commodity by weight; provided for any of the rates used in computing the charges. Any deficiency between the actual weight of the shipment and the applicable minimum weight shall be charged for at the rate applicable to the weight of the predominant commodity by weight in the container.

Except as otherwise permitted in individual rate items, for each vessel/voyage, a shipper may include no more than one overflow container under provisions of this Rule 30(c)(4).

(d) Unless specifically permitted in an individual rate item, the provisions of this rule will not apply to shipments in tank containers.

For explanation of abbreviations and reference marks, see Page 26

VERIFIED STATEMENT OF BRADLEY J. DECHTER
EXHIBIT 4 - "EVENTS" CHRONOLOGY

DHX "Events" Chronology

1960's

Most freight forwarders are using FAK as the only tariff item when shipping with Matson.

1977

DHX begins using commodity based rates and rules that were offered to all the shipping public.

1989

Matson requests DHX to not use tariff item 5 (Cargo NOS, item 5) with the overflow provision on FCL business as a gentlemen's agreement.

1990

Under Jack Sutherland's management, Sealand/CSX begins aggressive growth strategy as opposed to market share protection or loss prevention strategy maintained by Bill Kenwell, Sutherland's predecessor and Regional Manager since 1986 (when Sealand took over the traffic lane from U.S.Lines).

1992

As a result of certain DHX competitors using the Matson Cargo NOS item, DHX begins using tariff item 5 (Cargo NOS) again in February 1992.

On June 18, 1992, Matson files tariff 2034, the "hiding place" tariff, effective July 1, 1992. DHX is not made aware of this tariffs' existence.

Effective July 12, 1992, Matson tariff item 5 Cargo NOS was rewritten therefore removing DHX's means of growing its FCL business and causing DHX to lose some of its existing full containerload business.

1993

Matson structures a verbal agreement with a DHX competitor that allows the competitor to underbid the Baxter Healthcare/DHX rate, thus stealing Baxter Healthcare from DHX and keeping the business with Matson. (DHX was giving Sealand some of the business.)

1994

DHX establishes the Full Containerload/Intermodal division.

1995

Effective 1/23, Matson filed Rule 30C4 which allowed for 1-1/2 overflows per vessel for each 7 calendar days. (Rule 30c4 made a change in the definition of a shipper in order to limit users to move no more than the 3 overflows allowed per week in conjunction with using the rule.)

Matson begins matching Sealand rates as a strategy to counter Sealand's 1990 implemented aggressive growth strategy.

Special rates in tariff 2034 (the "hidden" tariff) utilizing a special "zip code" qualifier and/or ownership feature are implemented.

1996

It is learned that Matson is extending favorable credit terms to a DHX competitor estimated to be \$3 to \$4 million.

DHX moves freight to Sealand/CSX because Matson overflow limitation (Rule 30C4) is too costly and Matson is aiding DHX's competition.

Sealand/CSX goes "price passive" with Matson and their aggressive growth policy stops.

1997

Matson and Sealand/CSX implemented a 3.5% GRI in February.

Effective 7/10, Rule30C4 changed to allow 5 overflows for each 7 calendar days.

1997 (continued)

Matson and Sealand/CSX agree to furnish emergency assistance to each other at a flat rate, much less than that charged to any other shipper per container, to ship on each other's vessel.

1998

No GRI in 1998 for either Matson or Sealand/CSX.

Matson begins enforcement of "shipper" definition precluding DHX from doing Rule 30 business that Matson is allowing DHX's competitors to do.

Matson reduces fleet from 8 to 6 vessels.

Effective September 6, Matson files a 10% increase in minimum overflow charge and a 5% increase to commodity rated items. Sealand/CSX follows.

Effective September 6, 1998, "shipment" is redefined from "any container tendered between Sunday at 0001 and Saturday 2400 hours" to include "in order for the provision to apply, all containers in the shipment must be tendered to and loaded to the same vessel/voyage" except on some tariff items like - FAK & beneficial ownership tariffs (tariff 2034).

September 6, 1998, Matson and Sealand/CSX remove numerous footnotes from specific tariff items.

Effective November 18, 1998, Matson's Rule30C4 rate item pages are deleted.

DHX increases rates by 15% in order to merely cover increased shipping costs as a result of footnote and shipment definition changes.

1999

Effective February 14, 1999 Matson and Sealand/CSX implemented a 2.5% GRI and publicizes it as a GRI but exempt the overflow provision from this increase. DHX increases its rates 2.5% to its customers – its second increase (a total of 17.5%) in a 6 month period

In February 1999, Matson increases its sub-service usage substantially by implementing a 20' sub-service rate and making sub-service rules available for all containers, again having the effect of aiding DHX competitors, since DHX has been giving Sealand/CSX more of its business.

A 7.5% rate increase in minimum overflow is implemented effective October 17, 1999 along with a 7.5% increase in Cargo, NOS.

In November 1999, DHX disbands its FCL division and files its complaint with the STB.

2000

Matson and Sealand/CSX implement a 3.9% GRI in February (the overflow was exempted from this increase).

2001

Matson and Sealand/CSX implemented a 3.5% GRI in February (overflow took increase).

Sealand/CSX and Matson modify their 1997 "Emergency Assistance" agreement to "vessel sharing agreement" - basically Sealand/CSX becomes a freight forwarder on FCL when sharing a vessel with Matson

2002

Matson and Sealand/CSX implement a 2.75% GRI in April. They both also implement a hazardous materials surcharge in March.

2003

Matson and Sealand/CSX/Horizon Lines implement a terminal handling charge of \$200 per container in January as well as increasing the hazardous materials surcharge and "stop in-transit" charges.

VERIFIED STATEMENT OF BRADLEY J. DECHTER
EXHIBIT 5 - DESCRIPTION OF DAMAGE CALCULATIONS
FOR LOST PROFITS CLAIM

HIGHLY CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER
STB NO. WCC-105

REDACTED

VERIFIED STATEMENT OF BRADLEY J. DECHTER
EXHIBIT 6 - Computation of Lost Profits on Full Container Load
EXCLUDING ROSS STORES

HIGHLY CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER
STB NO. WCC-105

REDACTED

VERIFIED STATEMENT OF BRADLEY J. DECHTER
EXHIBIT 7 - CONSOLIDATED YEARLY FULL CONTAINER LOAD
AVERAGE CUBE PER MONTH ANALYSIS
(EXCLUDING ROSS STORES)

HIGHLY CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER
STB NO. WCC-105

REDACTED

HIGHLY CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER
STB NO. WCC-105

VERIFIED STATEMENT OF BRADLEY J. DECHTER
EXHIBIT 8 - CONSOLIDATED YEARLY FULL CONTAINER LOAD
AVERAGE COST PERCENT ANALYSIS
(EXCLUDING ROSS STORES)

REDACTED

CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER
STB NO. WCC105

VERIFIED STATEMENT OF BRADLEY J. DECHTER
EXHIBIT 9 - Letter October 8, 2003
CUSTOM BUILDING PRODUCTS

REDACTED

VERIFIED STATEMENT OF BRADLEY J. DECHTER
EXHIBIT 10 - MATSON RULE 646 MIXED SHIPMENTS
DATED OCTOBER 12, 1993

9th Revised Page 56

MATSON NAVIGATION COMPANY, INC.

ICC MATS 2016-D

Cancels

8th Revised Page 56

WESTBOUND JOINT CONTAINER FREIGHT TARIFF NO. 2016-D

SECTION 1 - RULES AND REGULATIONS

RULE 646: MIXED SHIPMENTS [C] (R)

- (a) Two or more articles rated on a weight basis may be included in one container as a mixed shipment except as provided in an individual rate item and will be assessed a freight charge equal to:
- (1) Subject to Rule 884, and paragraph (a)(2) of this rule and, except as provided in an individual rate item, each article in a mixed shipment shall be rated separately on the basis of the total weight within the container. The minimum weight of the shipment shall be the minimum weight of the predominant commodity by weight provided for any of the rates used in computing the charges. Any deficiency between the actual weight of the shipment and the applicable minimum weight shall be charged for at the rate applicable to the weight of the predominant commodity by weight in the container.
 - (2) The total weight of a mixed shipment consisting of both non-refrigerated and refrigerated cargo will not be used to determine applicable rates. The rates under Sections 2 and 4 will be assessed based only upon the weight of the cargo to be rated under each section.
- (b) Two or more articles rated on a per container basis may be included in one container as a mixed shipment except as provided in an individual rate item and will be assessed a freight charge equal to:
- (1) Subject to Rule 180 and except as provided in an individual rate item, the highest of those rates for the commodities in the mixed containerload.
- (c) Two or more articles with one or more rated on a weight basis and one or more rated on a per container basis may be included in one container except as provided in an individual item and will be assessed a freight charge equal to the higher of (1) or (2) below unless (3) or (4) below results in a lower freight charge.
- (1) The highest of the applicable per-container rates, or
 - (2) The highest charge for a containerload of any weight-rated commodity in the mixed containerload, computed on the basis of the minimum weight associated with such rate or the actual weight of the commodity if greater.
 - (3) Except for shipments moving in (1) trailers or (2) in containers exceeding 40-feet in length if the charge for the mixed containerload can be reduced by so doing, an alternation will be allowed whereby one or more of the articles rated on a weight basis may be rated pursuant to paragraph (a) above and the articles rated on a per-container basis may be rated at \$1.94 per cubic foot or \$5.25 per cwt whichever produces the greater revenue for dry cargo (other than dangerous cargo), \$3.68 per cubic foot or \$8.06 per cwt whichever produces the greater revenue for dangerous cargo and \$2.48 per cubic foot or \$12.33 per cwt whichever produces the greater revenue for refrigerated cargo, if cube is not provided, a rate of \$36.57 per cwt for dry cargo (other than dangerous cargo), \$61.41 per cwt for dangerous cargo and \$19.35 per cwt for refrigerated cargo will be applied. The minimum weight provision in (a) above will apply, or

(Continued on next page.) [C]

For explanation of abbreviations and reference marks, see Rule 115

ISSUED: October 12, 1993

EFFECTIVE: October 13, 1993

CORRECTION NO.: 1357

ISSUED BY:

Ronald T. Keimach, Manager of Pricing [C]
P.O. Box 7452, San Francisco CA 94120

9th Revised Page 56

MATSON NAVIGATION COMPANY, INC.

ICC MATS 2016-D

Cancels

8th Revised Page 56

WESTBOUND JOINT CONTAINER FREIGHT TARIFF NO. 2016-D

SECTION 1 - RULES AND REGULATIONS

RULE 646: MIXED SHIPMENTS (C) (R)

- (a) Two or more articles rated on a weight basis may be included in one container as a mixed shipment except as provided in an individual rate item and will be assessed a freight charge equal to:
- (1) Subject to Rule 884, and paragraph (a)(2) of this rule and, except as provided in an individual rate item, each article in a mixed shipment shall be rated separately on the basis of the total weight within the container. The minimum weight of the shipment shall be the minimum weight of the predominant commodity by weight provided for any of the rates used in computing the charges. Any deficiency between the actual weight of the shipment and the applicable minimum weight shall be charged for at the rate applicable to the weight of the predominant commodity by weight in the container.
 - (2) The total weight of a mixed shipment consisting of both non-refrigerated and refrigerated cargo will not be used to determine applicable rates. The rates under Sections 2 and 4 will be assessed based only upon the weight of the cargo to be rated under each section.
- (b) Two or more articles rated on a per container basis may be included in one container as a mixed shipment except as provided in an individual rate item and will be assessed a freight charge equal to:
- (1) Subject to Rule 180 and except as provided in an individual rate item, the highest of those rates for the commodities in the mixed containerload.
- (c) Two or more articles with one or more rated on a weight basis and one or more rated on a per container basis may be included in one container except as provided in an individual item and will be assessed a freight charge equal to the higher of (1) or (2) below unless (3) or (4) below results in a lower freight charge.
- (1) The highest of the applicable per-container rates, or
 - (2) The highest charge for a containerload of any weight-rated commodity in the mixed containerload, computed on the basis of the minimum weight associated with such rate or the actual weight of the commodity if greater.
 - (3) Except for shipments moving in (1) trailers or (2) in containers exceeding 40-feet in length if the charge for the mixed containerload can be reduced by so doing, an alternation will be allowed whereby one or more of the articles rated on a weight basis may be rated pursuant to paragraph (a) above and the articles rated on a per-container basis may be rated at \$1.94 per cubic foot or \$5.25 per cwt whichever produces the greater revenue for dry cargo (other than dangerous cargo), \$3.68 per cubic foot or \$8.06 per cwt whichever produces the greater revenue for dangerous cargo and \$2.48 per cubic foot or \$12.33 per cwt whichever produces the greater revenue for refrigerated cargo. If cube is not provided, a rate of \$36.57 per cwt for dry cargo (other than dangerous cargo), \$61.41 per cwt for dangerous cargo and \$19.35 per cwt for refrigerated cargo will be applied. The minimum weight provision in (a) above will apply, or

(Continued on next page.) (C)

For explanation of abbreviations and reference marks, see Rule 115

ISSUED: October 12, 1993

EFFECTIVE: October 13, 1993

CORRECTION NO.: 1357

ISSUED BY:

Ronald T. Keimach, Manager of Pricing (C)
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1st Revised Page 56-A

MATSON NAVIGATION COMPANY, INC.

ICC MATS 2016-D

Cancels

Original Page 56-A

WESTBOUND JOINT CONTAINER FREIGHT TARIFF NO. 2016-D

SECTION 1 - RULES AND REGULATIONS

RULE 646: MIXED SHIPMENTS - continued [C][R]

- (4) Except for shipments moving in (1) trailers or (2) containers exceeding 40-feet in length if the charge for the mixed containerload can be reduced by so doing, an alternation will be allowed whereby one or more of the articles rated on a weight basis may be rated pursuant to paragraph (a) above and the articles rated on a per-container basis may be rated as follows:

ARTICLES	RATE	MINIMUM WEIGHT
• Automobile Parts & Accessories NOS; • Batteries, Electric Storage, Assembled Proprietary; • Antifreeze or Engine Coolant Preparations • Tires or Tubes, Pneumatic	\$11.78	30,000 24 C/H 44,000 40 C/H
• Cable or Wire, Electric: Aluminum, Brass, Bronze, or Copper, Covered, Insulated or Plain, or Steel Armored, Lead Covered, With or Without Steel Cores, Also Copper Clad Wire • Cable, Fiber Optic • Cable Plant Accessories • Compounds, Solvents, Cleaners • Connectors • Electrical Equipment, N.O.S. • Porcelain and Epoxy Products, Electrical • Safety Equipment, Electrical • Testing Equipment, Electrical • Tools, Electrical • Fixtures, Lighting, including Fluorescent • Fuses, Cutouts, Meters • Insulators, Glass - As described in NMFC Item 103700 • Junction Boxes • Light Towers, Portable - On Wheels • Meters, Water or Gas • Power Products, Miscellaneous Electrical • Pole Line Hardware • Signs, Electric, as described in NMFC Item 176050 through 176320 • Splicing Material • Telephones, Keysets	\$9.27	34,000 24 C/H 36,000 40 C 40,000 40 C/H
• Foodstuffs, For Human Consumption, including Bakery Goods, Cookies, and Stuffing, NOS	\$10.69	27,000 24 C/H 30,000 40 C 35,000 40 H
• Iron or Steel Articles	\$4.80	40,000 40 C/H

(Continued on next page.)

(Rules 670 and 710 transferred to page 56-E.) [C]

For explanation of abbreviations and reference marks, see Rule 115

ISSUED: October 12, 1993

EFFECTIVE: October 13, 1993

CORRECTION NO.: 135B

ISSUED BY:

Ronald T. Keimach, Manager of Pricing [C]
P.O. Box 7452, San Francisco CA 94120

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1st Revised Page 56-A

MATSON NAVIGATION COMPANY, INC.

ICC MATS 2016-D

Cancels

Original Page 56-A WESTBOUND JOINT CONTAINER FREIGHT TARIFF NO. 2016-D

SECTION 1 - RULES AND REGULATIONS

RULE 646: MIXED SHIPMENTS - continued [C][R]

- (4) Except for shipments moving in (1) trailers or (2) containers exceeding 40-feet in length if the charge for the mixed containerload can be reduced by so doing, an alternation will be allowed whereby one or more of the articles rated on a weight basis may be rated pursuant to paragraph (a) above and the articles rated on a per-container basis may be rated as follows:

ARTICLES	RATE	MINIMUM WEIGHT
• Automobile Parts & Accessories NOS; • Batteries, Electric Storage, Assembled Proprietary; • Antifreeze or Engine Coolant Preparations • Tires or Tubes, Pneumatic	\$11.78	30,000 24 C/H 44,000 40 C/H
• Cable or Wire, Electric: Aluminum, Brass, Bronze, or Copper, Covered, Insulated or Plain, or Steel Armored, Lead Covered, With or Without Steel Cores, Also Copper Clad Wire • Cable, Fiber Optic • Cable Plant Accessories • Compounds, Solvents, Cleaners • Connectors • Electrical Equipment, N.O.S. • Porcelain and Epoxy Products, Electrical • Safety Equipment, Electrical • Testing Equipment, Electrical • Tools, Electrical • Fixtures, Lighting, including Fluorescent • Fuses, Cutouts, Meters • Insulators, Glass - As described in NMFC Item 103700 • Junction Boxes • Light Towers, Portable - On Wheels • Meters, Water or Gas • Power Products, Miscellaneous Electrical • Pole Line Hardware • Signs, Electric, as described in NMFC Item 176050 through 176320 • Splicing Material • Telephones, Keysets	\$9.27	34,000 24 C/H 36,000 40 C 40,000 40 C/H
• Foodstuffs, For Human Consumption, including Bakery Goods, Cookies, and Stuffing, NOS	\$10.69	27,000 24 C/H 30,000 40 C 35,000 40 H
• Iron or Steel Articles	\$4.80	40,000 40 C/H

(Continued on next page.)

(Rules 670 and 710 transferred to page 56-E.) [C]

For explanation of abbreviations and reference marks, see Rule 115

ISSUED: October 12, 1993

EFFECTIVE: October 13, 1993

CORRECTION NO.: 1358

ISSUED BY:

Ronald T. Kelmach, Manager of Pricing [C]
P.O. Box 7452, San Francisco CA 94120

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Original Page 56-B

MATSON NAVIGATION COMPANY, INC.

ICC MATS 2016-D

WESTBOUND JOINT CONTAINER FREIGHT TARIFF NO. 2016-D

SECTION 1 - RULES AND REGULATIONS

RULE 646: MIXED SHIPMENTS - continued (C) (R)

ARTICLES	RATE	MINIMUM WEIGHT
• Advertising or Printed Matter, NOS • Paper or Pulpboard • Albums or Scrapbooks, Paper or Pulpboard • Bags, Paper • Bands, Elastic, as described in NMFC Item 156630 • Belts, Sanitary • Binding as described in NMFC Item 49020, Sub 1 • Blotting • Blueprint or Reproduction, NOI, in Pkgs. • Bottles or Cans, Fiberboard, Paper or Pulpboard, SU Bodies Nested • Cabinets, Dispensers or Holders as described in NMFC Item 39480 • Carbon, NOS • Cards, NOS, including Printed Greeting Cards • Cards, Index, as described in NMFC Item 152320, Sub 2 • Cash Register tape • Circulars, NOS • Chopsticks, Wooden • Clothing and Wearing Apparel • Covers, Diac Filler, Partitions, NOS, not corrugated, Fiberboard, Flat, KD Flat, Folded Flat, Nested Solid Crepe Paper • Cups, Dishes, Pans, Plates or Trays, NOS, Foil or Sheet, as described in NMFC Item 13374 • Cups, Paper or Pulpboard • Diapers or Bedding Pads as described in NMFC Item 57260 • Dishes, Plates, or Trays, NOS, Pulpboard or woodpulp, plain or plastic coated, with or without foil, nested. • Document Manila • Doilies • Drapes; Sheets; Pillowcases; gowns; Towels; or Washcloths, disposable, as described in NMFC Item 5610 • Drawing; and Enamored, Glazed or Surface Coated, NOS • Envelopes or Papeteries • Egg Case Fillers or Flaps, Pulpboard or Woodpulp, Flat, Folded Flat or KD • Fillers, Loose Leaf Book, ruled or not printed, plain • Filters, Paper, other than engine filters	\$9.19	30,000 24 C/H 32,400 40 C 36,000 40 H

(Continued on next page.)

For explanation of abbreviations and reference marks, see Rule 115

ISSUED: October 12, 1993

EFFECTIVE: October 13, 1993

CORRECTION NO.: 1359

ISSUED BY:

 Ronald T. Keimach, Manager of Pricing
 P.O. Box 7452, San Francisco CA 94120

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Original Page 56-B

MATSON NAVIGATION COMPANY, INC.

ICC MATS 2016-D

WESTBOUND JOINT CONTAINER FREIGHT TARIFF NO. 2016-D

SECTION 1 - RULES AND REGULATIONS

RULE 646: MIXED SHIPMENTS - continued [C] (R)

ARTICLES	RATE	MINIMUM WEIGHT
• Advertising or Printed Matter, NOS • Paper or Pulpboard • Albums or Scrapbooks, Paper or Pulpboard • Bags, Paper • Bands, Elastic, as described in NMFC Item 156630 • Belts, Sanitary • Binding as described in NMFC Item 49020, Sub 1 • Blotting • Blueprint or Reproduction, NOS, in Pkgs. • Bottles or Cans, Fiberboard, Paper or Pulpboard, SU Bodies Nested • Cabinets, Dispensers or Holders as described in NMFC Item 39480 • Carbon, NOS • Cards, NOS, including Printed Greeting Cards • Cards, Index, as described in NMFC Item 152320, Sub 2 • Cash Register tape • Circulars, NOS • Chopsticks, Wooden • Clothing and Wearing Apparel • Covers, Blac Filler, Partitions, NOS, not corrugated, Fiberboard, Flat, KD Flat, Folded Flat, Nested Solid Crepe Paper • Cups, Dishes, Pans, Plates or Trays, NOS, Foil or Sheet, as described in NMFC Item 13374 • Cups, Paper or Pulpboard • Diapers or Bedding Pads as described in NMFC Item 57260 • Dishes, Plates, or Trays, NOS, Pulpboard or woodpulp, plain or plastic coated, with or without foil, nested. • Document Manila • Doilies • Drapes; Sheets; Pillowcases; gowns; Towels; or Washcloths, disposable, as described in NMFC Item 5610 • Drawing; and Enamored, Glazed or Surface Coated, NOS • Envelopes or Papeteries • Egg Cas; Fillers or Flaps, Pulpboard or Woodpulp, Flat, Folded Flat or KD • Fillers, Loose Leaf Book, ruled or not printed, plain • Filters, Paper, other than engine filters	\$9.19	30,000 24 C/H 32,400 40 C 36,000 40 H

(Continued on next page.)

For explanation of abbreviations and reference marks, see Rule 115

ISSUED: October 12, 1993

EFFECTIVE: October 13, 1993

CORRECTION NO.: 1359

ISSUED BY:

Ronald T. Keimach, Manager of Pricing
P.O. Box 7452, San Francisco CA 94120

- 56-B -

WESTBOUND JOINT CONTAINER FREIGHT TARIFF NO. 2016-D

SECTION 1 - RULES AND REGULATIONS

RULE 646: MIXED SHIPMENTS - continued [C] [R]

ARTICLES	RATE	MINIMUM WEIGHT
• Foil, as described in NMFC Item 71720 • Freezer Tape, Paper • Games and Toys • Ground Wood • Mats, Paper, NOS, Printed, as described in NMFC Item 98375 • Handkerchiefs • Index Guides • Ink, Printing, NOS • Knives, Hard Fiber or Wood • Matrix, Other than sensitized • Mats, Bath or Car • Napkins, Paper • Napkins or Pads, Sanitary, External Type • Napkins or Pads, Sanitary, Internal Type, NOS • Neck Strips • Packing Pads, Excelsior • Paper Goods, NOS, flat or folded flat • Pencils, Penholders Childrens School Pencil or Penholder Sets, NOS • Pens, Ink • Photographic Paper, sensitized, in boxes • Placemats • Printing Paper, other than Newsprint or Carbonized Print • Pulpboard or Fiberboard, NOS; corrugated or not corrugated • Racks, Store Display, NOS, KD flat or Folded Flat • Ribbon, Gift Wrapping • Rope, Cordage or Twine, NOS • Seals, box strapping, as described in NMFC 93540 • Shelf Paper, decorative, not corrugated or fluted • Shields, Garment Hanger • Spoons or Forks, Hard Fiber or Wood • Stationery, NOS; and Stereotype • Strapping, Box, Synthetic Fiber • Straws, Drinking, Paper • Tablecloths, Paper • Tissue, Facial Cleansing • Toilet Paper or Toilet Seat Covers • Towels or Toweling, Paper • Wrapping Paper, Including Corrugated Wrapping Paper	\$9.19	30,000 24 C/M 32,400 40 C 36,000 40 H

(Continued on next page.)

For explanation of abbreviations and reference marks, see Rule 115

ISSUED: October 12, 1993

EFFECTIVE: October 13, 1993

CORRECTION NO.: 1360

ISSUED BY:

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- 56-C -

WESTBOUND JOINT CONTAINER FREIGHT TARIFF NO. 2016-D

SECTION 1 - RULES AND REGULATIONS

RULE 646: MIXED SHIPMENTS - continued [C] [R]

ARTICLES	RATE	MINIMUM WEIGHT
Restaurant Supplies, as listed below • Aluminum Foil, in Rolls or Sheets • Bags, Paper or Plastic • Boxes, Paper KD • Brushes, NOS • Cleaning Supplies or Articles • Containers, NOS • Glassware or Earthenware • Glucose • Grill Cloth • Kitchen Equipment and Food Preparation • Machinery • Matches, Safety, of wooden or Cardboard • Manufacture • Milk Fat Stabilizer • Mopheads • Napkins • Paper or Plastic Articles, VIZ: Cups, Forks, Knives, Lids, Plates, Spoons, Straws • Polywrap • Promotional Materials, including Decals and Signs • Restaurant Uniforms • Shakers, Salt & Pepper • Squeegees • Stationery Items • Sterno • Towels, Paper • Trays • Utensils, Kitchen • Wearing Apparel or Materials thereof, for Retail Use	\$10.43	36,000 24 C/H 40,000 40 C/H

The minimum weight provision in (a) above will apply. The minimum weight of the shipment shall be the minimum weight of the predominant commodity by weight provided for any of the rates used in computing the charges. Any deficiency between the actual weight of the shipment and the applicable minimum weight shall be charged for at the rate applicable to the weight of the predominant commodity by weight in the container.

Except as otherwise permitted in individual rate items, for each vessel/voyage, a shipper may include no more than an average of one and one half overflow containers for two consecutive voyages from a single Pacific Coast port under provisions of this Rule 646(c)(4).

The alternating provisions of this Rule 646(c)(4) shall apply only when shipping document, containing bill of lading information as provided in Rule 360(h), makes reference to this Rule 646(c)(4).

(d) Unless specifically permitted in an individual rate item, the provisions of this rule will not apply to shipments in tank containers.

For explanation of abbreviations and reference marks, see Rule 115

ISSUED: October 12, 1993

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CORRECTION NO.: 1361

ISSUED BY:
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- 56-D -

WESTBOUND JOINT CONTAINER FREIGHT TARIFF NO. 2016-D

SECTION 1 - RULES AND REGULATIONS

RULE 646: MIXED SHIPMENTS - continued [C] [R]

ARTICLES	RATE	MINIMUM WEIGHT
Restaurant Supplies, as listed below	\$10.43	36,000 24 C/H
• Aluminum Foil, in Rolls or Sheets		40,000 40 C/H
• Bags, Paper or Plastic		
• Boxes, Paper KD		
• Brushes, NOS		
• Cleaning Supplies or Articles		
• Containers, NOS		
• Glassware or Earthenware		
• Glucose		
• Grill Cloth		
• Kitchen Equipment and Food Preparation		
• Machinery		
• Matches, Safety, of wooden or Cardboard		
• Manufacture		
• Milk Fat Stabilizer		
• Mopheads		
• Napkins		
• Paper or Plastic Articles, VIZ: Cups,		
Forks, Knives, Lids, Plates, Spoons, Straws		
• Polywrap		
• Promotional Materials, including Decals		
and Signs		
• Restaurant Uniforms		
• Shakers, Salt & Pepper		
• Squeegees		
• Stationery Items		
• Sterno		
• Towels, Paper		
• Trays		
• Utensils, Kitchen		
• Wearing Apparel or Materials thereof,		
for Retail Use		

The minimum weight provision in (a) above will apply. The minimum weight of the shipment shall be the minimum weight of the predominant commodity by weight provided for any of the rates used in computing the charges. Any deficiency between the actual weight of the shipment and the applicable minimum weight shall be charged for at the rate applicable to the weight of the predominant commodity by weight in the container.

Except as otherwise permitted in individual rate items, for each vessel/voyage, a shipper may include no more than an average of one and one half overflow containers for two consecutive voyages from a single Pacific Coast port under provisions of this Rule 646(c)(4).

The alternating provisions of this Rule 646(c)(4) shall apply only when shipping document, containing bill of lading information as provided in Rule 360(h), makes reference to this Rule 646(c)(4).

- (d) Unless specifically permitted in an individual rate item, the provisions of this rule will not apply to shipments in tank containers.

For explanation of abbreviations and reference marks, see Rule 115

ISSUED: October 12, 1993

EFFECTIVE: October 13, 1993

CORRECTION NO.: 1361

ISSUED BY:

Ronald T. Keimach, Manager of Pricing
P.O. Box 7452, San Francisco CA 94120

WESTBOUND JOINT CONTAINER FREIGHT TARIFF NO. 2016-D

SECTION 1 - RULES AND REGULATIONS

RULE 670: OVERDIMENSION FREIGHT

There are no additional charges applicable based on the length of individual packages or pieces. Charges are assessed, however, in certain instances when the cargo extends beyond the length or width of the trailer used or when the trailer itself exceeds forty feet in length. See Rule 160(k), Rule 170 (a)(6) and (7), and Rule 180.

RULE 710: PALLETS, PLATFORMS OR SKIDS

- (a) No charge will be made for the weight of any pallets, platforms, racks or skids loaded in a container moving under weight or measurement rates, provided that the weight of such pallets, etc., does not exceed five percent of the total weight within the container. If the weight of the pallets, etc. exceeds five percent of the total weight within the container, they will be rated under Item 1275 or the otherwise applicable rate item and Rules 200 and 646 will apply if otherwise applicable.
- (b) For each eight containerloads of palletized cargo shipped in 24-foot containers under Item 370 of this tariff, shipper may return one 24-foot containerload of pallets via the reverse route to Pacific Coast CY at a containerload freight charge of \$264. The returned pallets must be shipped within 90 days of the dates of shipments of the eight enabling containerloads. Rate only applies when shipping document states that the pallets are shipped under provisions of Rule 710(b), MNC Tariff 2016-D, ICC MATS 2016-D, shipper must produce evidence of compliance upon request.

(Rules 670 and 710 transferred from page 56-A.) [C]

For explanation of abbreviations and reference marks, see Rule 115

ISSUED: October 12, 1993

EFFECTIVE: October 13, 1993

CORRECTION NO.: 1362

ISSUED BY:

Ronald T. Keimach, Manager of Pricing
P.O. Box 7452, San Francisco CA 94120

- 56-E -

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WESTBOUND JOINT CONTAINER FREIGHT TARIFF NO. 2016-D

SECTION 1 - RULES AND REGULATIONS

RULE 670: OVERDIMENSION FREIGHT

There are no additional charges applicable based on the length of individual packages or pieces. Charges are assessed, however, in certain instances when the cargo extends beyond the length or width of the trailer used or when the trailer itself exceeds forty feet in length. See Rule 160(k), Rule 170 (a)(6) and (7), and Rule 180.

RULE 710: PALLETS, PLATFORMS OR SKIDS

- (a) No charge will be made for the weight of any pallets, platforms, racks or skids loaded in a container moving under weight or measurement rates, provided that the weight of such pallets, etc., does not exceed five percent of the total weight within the container. If the weight of the pallets, etc. exceeds five percent of the total weight within the container, they will be rated under Item 1275 or the otherwise applicable rate item and Rules 200 and 646 will apply if otherwise applicable.
- (b) For each eight containerloads of palletized cargo shipped in 24-foot containers under Item 370 of this tariff, shipper may return one 24-foot containerload of pallets via the reverse route to Pacific Coast CY at a containerload freight charge of \$264. The returned pallets must be shipped within 90 days of the dates of shipments of the eight enabling containerloads. Rate only applies when shipping document states that the pallets are shipped under provisions of Rule 710(b), MNC Tariff 2016-D, ICC MATS 2016-D, shipper must produce evidence of compliance upon request.

(Rules 670 and 710 transferred from page 56-A.) [C]

For explanation of abbreviations and reference marks, see Rule 115

ISSUED: October 12, 1993

EFFECTIVE: October 13, 1993

CORRECTION NO.: 1362

ISSUED BY:

Ronald T. Keimach, Manager of Pricing
P.O. Box 7452, San Francisco CA 94120

- 56-E -

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VERIFIED STATEMENT OF BRADLEY J. DECHTER
EXHIBIT 11 - VERIFIED STATEMENT OF PETER P. WILSON
DATED APRIL 17, 2002 FILED WITH STB
IN DOCKET WCC-101

VERIFIED STATEMENT OF PETER P. WILSON

My name is Peter P. Wilson. I am General Manager Pricing of Matson Navigation Company, Inc. and have held that position since 1990. My responsibilities include setting the rates that Matson charges to transport cargo and supervising the tariffs, exempt circulars and government tenders through which Matson's rates are published. I have been employed by Matson since 1969. I began my career with Matson in the Law Department as a regulatory law attorney and became Manager Pricing in 1983. Prior to my employment with Matson, I was employed at the Federal Maritime Commission from 1965 to 1969. I have a B.A. degree in History and a law degree.

The offshore domestic trade to Guam is highly competitive. The only attempt by a carrier to take a general rate increase in recent years occurred in 1994, before Matson entered the trade, when APL filed a general rate increase. Sea-Land did not follow, forcing APL to withdraw the increase. Matson has not taken a general rate increase in the Guam trade.

Section 407 of the Interstate Commerce Commission Termination Act of 1995 required the Department of Transportation to prepare a report on competition in the noncontiguous domestic maritime trades. In its Report to Congress, completed in March of 1997, the Department concluded that aggregate freight revenue per container for the U.S. mainland to Guam trade in 1995 was less than 80 percent of the 1990 level, after adjusting for inflation. The Department also reported that there is fluid exit and entry into the Guam trade, partly due to the fact that there is no requirement that U.S.-built vessels be used to carry cargo to Guam from the U.S. mainland as there is in the other offshore domestic trades. Since 1972, seven carriers have entered the trade and five have exited.

The carriers in the Guam trade must match each other's rates in order to remain competitive. When Matson entered the trade in 1996, it adopted the rates published by American President Lines, Ltd. ("APL") and then made selective rate cuts in order to gain customers from the established carrier in the trade, Sea-Land Services, Inc. (now renamed CSX Lines) ("CSX"). Since entering the trade in 1996, Matson has taken approximately 3,400 separate rate actions. The vast majority of these rate actions have resulted in rate reductions. (Any increases were often merely passing through increased drayage and other expenses incurred by Matson to perform the service.) For example, on September 21, 1996, Matson reduced its rate for refrigerated containers by \$200 and reduced its rate for mixed groceries by \$100 on 20-foot containers and \$250 on 40 and 45-foot containers. Matson has continued to reduce rates over the entire time that it has been in the Guam trade, either on its own initiative in attempt to gain cargo or in response to rate reductions by CSX. As examples, Matson reduced its rate for beer from \$96 to \$91.50 per 2000 pounds on September 28, 1996 and reduced its rate for non-alcoholic beverages from \$85 to \$80 per 2000 pounds on October 11, 1996. CSX matched the rate reductions that Matson initiated.

Competition is so strong in the Guam trade that Matson must match any rate reductions taken by CSX in order to retain cargo. Similarly, CSX is forced to match all rate reductions taken by Matson or lose the cargo. As a result, cargo often moves from one carrier to the other and then back again when the rate is matched. Matson is continually negotiating rates with its customers. CSX negotiated a rate with the military to carry U.S. Department of Defense cargo to Guam. Matson matched the rate in its Tariff 2048. Other examples of Matson matching a rate charged by CSX include the rate for animal feed moving out of Portland, Oregon. Matson added pet food to the items included in its foodstuffs, all kinds rate in order to be competitive with

CSX. Similarly, Matson matched CSX's rate and the items included in horticultural supplies. Matson matched CSX's rate action on household appliances in order to retain the business. Matson and CSX both have lowered the rate for various commodities at different times and temporarily gained the cargo until the other carrier matched the rate. Matson matched a CSX rate for paint, lacquer and, in turn, published a new rate for paint, lacquer that CSX then matched. Matson published point rates from several locations for mixed groceries and restaurant supplies, including foodstuffs, that were matched by CSX. CSX also matched Matson's rate for plastic pipe, while Matson matched CSX's rate for salt in bags and resin.

Matson publishes two tariffs in the Guam trade, Tariff Nos. 2045 and 44, which are filed with the Surface Transportation Board (STB), and two exempt circulars, Circular Nos. 7800 and 7600. In September, 1996, the STB-filed tariffs contained 292 separate commodity items, and the two exempt circulars contained 283 separate commodity items. The rates that Matson charges to carry dry cargo to Guam vary enormously. In September 1996, those rates ranged from \$1,655 for moving a 40-foot container of for printing paper westbound to \$14,000 for moving a container of PCB waste eastbound.

Many factors determine where within that range the rate for a particular commodity will fall. One obvious factor is the demand for the transportation. Another is the rates and services offered by other carriers in the trade for the same or similar commodities. Other factors include the cost of providing the services, the volume of cargo to which customers can commit and the value of the commodity. Matson generally charges more to carry valuable commodities, such as furniture or machinery, than it does to carry lower value commodities, such as animal feed or rice. All of these factors vary greatly from commodity to commodity, and many of them can change quickly over relatively short periods of time. For example, demand for different services

or commodities has fluctuated tremendously with changes in tourism, U.S. military operations and general economic conditions. Since 1996, demand has generally declined, which has been reflected in the many rate reductions Matson has effected, described earlier.

Matson offers a variety of modes of service, from exclusively ocean carriage (container yard to container yard or CY-CY for short) to intermodal moves involving vessel and one or more other modes of transportation, such as rail or truck. In setting intermodal rates, Matson must consider the ocean freight rate that Matson currently charges for a similar commodity, wharfage charges at the applicable ports, the rail or motor carrier cost, origin drayage cost and any fuel surcharges. Many customers prefer that drayage from their warehouse to the terminal yard be included as part of the through rate. In that case, there is no longer a recognizable CY-CY charge but, instead, the participating carriers each receive a division of the through rate.

As noted earlier, the volume of cargo to which a customer can commit is also important in the rate setting process. Large shippers use their large volume of cargo to negotiate lower freight rates. A customer may commit business to Matson in order to receive a lower rate. Large volume shippers who have received favorable rates based on a volume commitment include Macy's (department store merchandise), Morrico (vehicles), Bensen-Do-It-Best (building materials), Xerox (duplicating machines), Ross (department store merchandise) and Dewitt (packing material). CSX has also been successful in securing the cargo of large shippers. Matson lost the Payless account to CSX last year and also lost the vast majority of the cargo shipped by Cost U Less. CSX carries all the Procter & Gamble shipments to Guam.

Matson frequently offers project rates for shippers who supply goods to a particular project, basing the rate on the size of the project and the projected number of containers that will be offered for transport. This is a highly competitive aspect of the Guam trade. Examples of

projects for which Matson has offered special rates include the Anderson Air Force Base Pipeline Project, the Dodea Schools Project, the Anderson Air Force Base 102 Unit Housing Project, the Army National Guard Armory Project and the Army Reserve Project. Matson lost the Tycom Project after CSX undercut the rates that Matson had negotiated.

Third parties, such as freight forwarders, can often obtain lower rates than the beneficial cargo owner could on his own because the freight forwarder has the ability to mix and match various commodities that he receives from his own customers. Shippers of over-dimensional cargo usually ask for a reduced rate and Matson will tailor a rate for a specific piece of equipment that will expire after the piece has been shipped.

The status of the customer can affect the rate that Matson charges. For example, the U.S. Department of Defense places limitations on rates. The U.S. Postal Service requires carriers to submit blind bids for cargo.

In my 37 years of experience, I have never known General Order 11 to be used to examine existing rate levels but only to assess proposed general rate increases.

VERIFICATION

I, Peter P. Wilson, verify under penalty of perjury, that the foregoing statement is true and correct. I further certify that I am qualified and authorized to file this statement.

Executed this 17th day of April, 2002.

Peter P. Wilson
Peter P. Wilson

VERIFIED STATEMENT OF BRADLEY J. DECHTER
EXHIBIT 12 - VERIFIED STATEMENT OF DANIEL DOWNES
DATED APRIL 23, 2002 FILED WITH STB
IN DOCKET WCC-101

VERIFIED STATEMENT OF DANIEL DOWNES

My name is Daniel Downes. I am employed as the Director of Marketing for CSX LINES, LLC's ("CSX") Hawaii - Guam Service.

OPERATIONAL INFORMATION, SCHEDULING AND ROTATION OF VESSELS IN THE HAWAII/GUAM SERVICE.

CSX operates five vessels in its service from the mainland to Guam. The five vessels operate on two strings. The first vessel string, designated the Pacific Express Service ("TP1") operates on a fixed weekly schedule with direct sailings from Tacoma every Sunday and Oakland every Wednesday. TP1 string vessels then sail to Honolulu (arriving the following Sunday). Vessels depart Honolulu the following Tuesday and arrive in Guam seven days later. The vessels then depart Guam and sail to Hong Kong and Taiwan before returning to Tacoma. Cargo loaded in the United States for ports beyond Guam in Asia is transported by Maersk-Sea-Land Lines and not by CSX. For example, the M/V CSX RELIANCE, voyage RG127W is scheduled to depart from Tacoma on June 23, 2002 and Oakland on June 26, 2002.¹ The vessel is scheduled to arrive in Honolulu on June 30 and in Guam on July 9, 2002. The M/V CSX RELIANCE is scheduled to depart from Guam on July 10 and will arrive in Hong Kong on July 13, 2002. The vessel will proceed to Kaohsiung, Taiwan on July 15, 2002 and is scheduled to return to Tacoma on July 26, 2002.

The second string designated the California Hawaii Express Service ("CHX") operates on a fixed weekly schedule with sailings from Oakland (every Wednesday) and Long Beach every

Saturday. CHX string vessels arrive in Honolulu every Wednesday where cargo destined for Guam is unloaded and relayed to TP1 string vessels for delivery to Guam and Saipan. The CHX vessel then returns to Oakland. For example, the M/V CSX Navigator voyage 167S is scheduled to depart from Oakland on June 12, and Long Beach on June 15. Cargo destined for Guam will be unloaded from the vessel upon its arrival in Honolulu on June 21, 2001. Subsequently, the Guam cargo will be loaded upon the M/V CSX RELIANCE, voyage RG127W, and track the schedule set out above. After unloading all its cargo in Honolulu, the M/V CSX Navigator will load any cargo destined from Hawaii to the mainland and will sail back to Oakland.

Additionally, CSX purchases space from Matson for CSX cargo moving from Long Beach to Guam. This service, which departs from Long Beach every Wednesday is, designated the mid-week express ("MWX") services. Cargo destined for Guam and Saipan is unloaded in Honolulu and relayed to the next Guam-bound TP1 vessel. CSX neither owns nor operates these vessels. A typical shipment from Long Beach is loaded in Long Beach on Wednesday and arrives in Guam 13 days later. For example, CSX cargo loaded on the M/V EVA, voyage EU171S will depart from Long Beach on June 26 and arrive in Honolulu on June 30, 2002. It will then be relayed to Guam on the M/V CSX RELIANCE, voyage RG127W, and arrive on July 9, 2002.

In each situation described above CSX is required to deal with a differing set of operational and ownership circumstances. In its TP1 string CSX transports cargo directly from the mainland to Guam without relay. Consequently, containers destined for Guam are only loaded and unloaded once from the vessel. This is the cargo equivalent of a direct flight. However, due to the nature of its agreement and chartering relationship with Maersk-Sea-Land

¹ CSX also accepts intermodal cargo from CSX rail and motor terminals throughout the mainland. These points include: Elizabeth, New Jersey; Jacksonville, Florida; Chicago, Illinois; Memphis, Tennessee; New Orleans,

"Maersk Lines"). CSX is only involved in the transportation of cargo to Guam, Saipan, Tinian and Rota. All cargo loaded on TP1 string vessels for non-U.S. destinations are transported by and for the account and expense of Maersk Lines. CSX does not transport cargo beyond Guam except for cargo that is transshipped by barge from Guam to Saipan, Tinian, and Rota.

Cargo moving to Guam on the CHX string is subject to unloading and relay in Honolulu. This is the cargo equivalent of changing planes at hubs in Atlanta, Chicago, or Charlotte. The cargo loaded on CHX string ships are, with the exception of cargo moving under slot charter with Matson to Hawaii, for the account of CSX. CSX is not involved in any long term chartering or vessel sharing agreement with Maersk Lines for vessels sailing between the mainland and Hawaii and back on this string. However, once CHX-string cargo is relayed to a TP1 string vessel for on carriage to Guam, that cargo is commingled with cargo moving subject to the economic and operational factors inherent in CSX's commercial relationship with Maersk Lines.

Cargo moving on the MWX is loaded onto a vessel on the mainland that is neither owned nor operated by CSX. Consequently, the economic factors inherent in the first leg of the voyage are those typically found in a simple slot chartering agreement. However, cargo destined to move beyond Hawaii for Guam is subject to relay on a TP1 string vessel at CSX's terminal in Honolulu.

Consequently, cargo shipped by CSX to Guam is shipped in a number of different ways on vessels that are subject to a wide array of operational and ownership scenarios.

Lastly, and as indicated above, CSX, not unlike most other carriers in the domestic and foreign liner trades have transitioned from a purely port-to-port service to a fully integrated intermodal point-to-point service. CSX accepts container loads of cargo for Guam at many intermodal points in the United States. An indication of the comprehensive nature of CSX's

Louisiana; Houston, Texas; and St. Louis, Missouri.

intermodal service is contained in the exemplar sailing schedules set out in Attachment A to this Statement.

TARIFF AND PRICING INFORMATION

As with any trade, the CSX tariff governing shipments from the United States to Guam contains a wide array of commodities. CSX does, in fact, transport a diverse cargo mix to Guam. A typical vessel will include containers of canned goods (including meats, fruits, and vegetable), snack foods, beverages (soda, beer, and fruit juice), automobiles and Sport Utility Vehicles, appliances, dry goods, building and construction material and household good and personal effects. Given the multitude of U.S.-origin points for cargo moving to Guam each active item in the CSX tariff is likely to reference a range of rates for each commodity depending upon the load point. For example, CSX maintains a port-to-port container rate for canned goods as well as numerous point-to port rates for container loads of canned goods original in, for example, Chicago, Seattle, Kansas City, Oklahoma City, and Cincinnati. Similarly, CSX maintains a multitude of point-to port intermodal rates for many commodities, whether rice, construction materials, lumber and building supplies that moves regularly in the trade or from that point.

Given the ever-changing intermodal locations, changing rail, and local truck rates, and various trade-wide conditions to which any carrier is subject (inconsistent demand, seasonal fluctuations in cargo volume, and economic down and up swings) the CSX lines tariff is consistently changing and evolving. In effect it is a dynamic document that reflects market trends, competition in the trade, sudden demands for space, large-volume cargo offerings and economic changes in general.

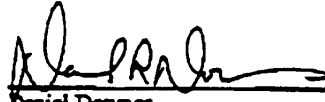
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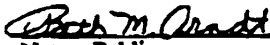
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T-910 P.005/008 P.2/2
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Daniel Downes

Subscribed and sworn to before me

this 23rd day of April, 2002


Beth M. Grant
Notary Public

My Commission expires on March 29, 2004

