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31 October 2003



ENTERED
Office of Proceedings

OCT 31 2003

Office of
Public Counsel

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

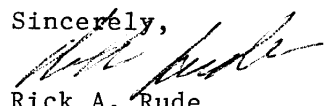
Re - DHX, Inc. v. Matson Navigation Company and SL Service,
Inc., f/k/a Sea-Land Service, Inc.
STB Docket No. WCC-105
PUBLIC VERSION OF COMPLAINANT'S STATEMENT OF FACTS AND LAW

Dear Mr. Williams,

Counsel for Matson Navigation contacted me and advised that there may be references to confidential information in Complainant's Public Version of Complainant's Statement of Facts and Law. Accordingly, that document was held until a check could be conducted. The document has been reviewed and contents discussed with counsel for Matson. We have agreed on the contents of the attached document which is submitted for filing herein. The agreement is subject to the ability of Complainant to file a motion upon which the issue of the scope of the confidentiality of the confidentiality of Complainant's Statement of Fact and Law would be resolved.

If there are any questions, please contact me. I remain,

Sincerely,


Rick A. Rude

Counsel For
DHX, Inc.

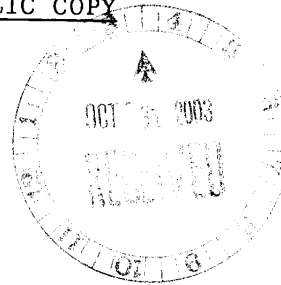
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cc-
C. Jonathan Benner, Esq.
Richard A. Allen, Esq.

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U.S. DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD



DHX, INC.,

Complainant,

v.

STB Docket No. WCC-105

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

Defendants.

COMPLAINANT'S OPENING STATEMENTS

STATEMENT OF FACTS AND LAW

ENTERED
Office of Proceedings

OCT 31 2003

Part of
Public Record

Submitted By

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Counsel For Complainant
DHX, INC.

Dated 28 October 2003

Introduction

COMES NOW, DHX, Inc., Complainant herein, by and through its counsel, and submits this its Opening Statements of Fact and Law pursuant to the Order of the Board Dated October 16, 2003. The document filings and record in this proceeding is subject to an extensive Protective Order requested by the defendants, Matson Navigation Company ("Matson") and SL Service, Inc. formerly known as Sea-Land Service, Inc. also doing business as CSX Lines, LLC ("Sea-Land/CSX"). Sea-Land/CSX has designated, with minor exception, most of its documents and witness testimony as "Highly Confidential". DHX and Matson are submitting limited amounts of Highly Confidential materials.

DHX is submitting herewith the verified statements of five witnesses for DHX as well as deposition transcripts and exhibits of individuals employed by defendants.^{1/} On April 29, 2002, DHX filed an Amended Complaint with the Board with such Amended Complaint incorporating the original Complaint to the extent not inconsistent therewith. The Board, in an order served May 14, 2003 granted a partial dismissal to Count III of the Amended Complaint and Part II subcount 2 as to Sea-Land/CSX.

^{1/} DHX is submitting the Statements of Mr. Bradley J. Dechter, Mr. Ralph T. Merolla, Mr. Eric Sean Burns, Mr. Paul B. Chun and Ms. Elaine P. Griggs. The Statements contain numerous exhibits, which if reference is made, will be identified for example as "Dechter Ex. ____" etc. DHX has submitted the deposition testimony and deposition exhibits of Mr. David L. Hoppes, Mr. Peter P. Wilson, Mr. Charles W. Brown, Mr. Paul E. Stevens and Mr. Daniel R. Downes. These transcripts will be referred to by deponent name and common exhibit number. All deposition exhibits for Matson are prefixed as "MNC" and all deposition exhibits for Sea-Land/CSX are prefixed as "CSX" for convenience. Transcript references will be identified for example as "Hoppes Ex. ____". In addition to these materials, DHX is attaching hereto confidential documents provided by defendants and included in Attachment "A" and marked "A-1" consecutively.

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The portions of the Amended Complaint that have been dismissed are in no manner involved in nor have any impact upon the facts and controlling legal principles stated herein. The Statements of DHX's witnesses are incorporated herein as if set forth in full as well as the attached deposition transcripts and exhibits.

The remaining counts of the Amended Complaint state facts which support claims for unreasonable and destructive practices in violation of Section 13701(a) as interpreted by the provisions of the applicable National Transportation Policy (Sections 13101(a)(1)(A),(B),(C),(D) and Section 13102(a)(4). The Amended Complaint further states a claim for violations of Sections 13702(b)(1), 13702(b)(2)(A), 13702(b)(2)(D), and 13702(E) as well as the provisions of the Board's tariff regulations published at 49 CFR 1312 (1999 ed.). Further, the Amended Complaint seeks overcharges for defendants mislabeling of tariff provisions resulting in duplicating and conflicting rates as well as the use of non-transportation factors in the establishment of tariff rates. Lastly, DHX seeks the benefit of the provisions of Section 14704(a)(2) and 14704(b) in an award of damages as a direct result of defendants' actions.

This proceeding represents an unusual set of factual circumstances in that the defendants have an oligopoly by reason of federal statutes that restrict competition. The defendants are vessel operating ocean common carriers "VOCCs" that conduct a transportation service between ports in California, Oregon and Washington, on the one hand, and the State of Hawaii on the other, with a beyond movement/transportation to Guam.

Complainant's witness statements set forth in factual detail the circumstances of this proceeding, including a history of the subject market (hereinafter referred to as the "Hawaii trade"). Accordingly, to more clearly articulate the significance of some of the factual averments, a brief statement of controlling law is appropriate.

APPLICABLE LAW

The ICC Termination Act of 1995 vested jurisdiction over VOCC water carrier services in the Surface Transportation Board (hereinafter "STB or "Board"). 49 U.S.C. 13521(a)(1). There is little question that the defendants are common carriers as defined by 49 U.S.C. 13102(22) as each company did file and maintain tariffs with the Board pursuant to the provisions of 49 U.S.C. 13702. The Answers filed by defendants set forth these facts (See Matson, Answer, ¶6, ¶9, ¶11, ¶13, ¶113, Sea-Land Answer, ¶55, ¶56, ¶57, ¶214). The ICC Termination Act of 1995 ("ICCTA") contains the statutory requirement that regulated carriers maintain just and reasonable rates, regulations, classifications, rules and practices. §13701(a). ICCTA Part B contains a National Transportation Policy ("NTP") which is applicable to the Board's unreasonable practice jurisdiction. In fact, the NTP's general directives set the standards under which an unreasonable practice claim is evaluated by the Board. Trailer Bridge v. Sea Star Lines, No. WCC-104, Slip op. at pg. 4 (EB), decided December 7, 1999, Freight Forwarder Restrictions, 132 M.C.C. 832, 838 (1982) wherein it was stated that the NTP sets the "tone of the regulatory structure and is the basis for determining the meaning of

statutory provisions when questions are raised as to specific content". The NTP is the compelling "source" of the Board's power and OBLIGATION TO CARRY OUT ICCTA and is the "yardstick" by which the Board's actions are judged. Cf. Schaffer Trans. v. United States, 355 U.S. 83,87-88 (1957).

The instant proceeding is an unreasonable and destructive practices case under ICCTA. The term "unreasonable practices" is not defined by ICCTA. Accordingly, it is necessary to look to NTP to determine the scope and application of unreasonable practices. The NTP, §13101(a) requires the Board ensure the development, coordination and preservation of our nation's transportation system and it is the "policy" of the Government in overseeing the various modes of transportation to

(1)(A) recognize and preserve the inherent advantages of each mode of transportation

(1)(C) encourage sound economic conditions in transportation, including sound economic conditions among the carriers

and

(1)(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or DESTRUCTIVE COMPETITIVE PRACTICES.

49 U.S.C. §§13101(a)(1)(A),(C)(D) (2002 Supp.).

It is quite clear that if a practice violates the NTP, it can be considered to be violative of §§13701(a) and therefor an unlawful and unreasonable practice. The defendants' tariffs and contracts with the shippers contained in Attachment "A"

are of the type and nature that they are considered to be an unreasonable practice PER SE. ICCTA, section 204 preserves the legal effect of all prior Interstate Commerce Commission rulings, order and decisions until such time as they are either overruled or modified. 49 Stat. 2838, §§204(a)(1). The I.C.C., in Great Lakes Ship Owners Association et al. v. Chicago And North Western Railway Company, 337 I.C.C. 287 (1970), affirmed on further hearing, 341 I.C.C. 272 (1972) had the occasion to address volume percentage contracts and the issue of destructive competition. In the Great Lake case the issue was the propriety of a percentage volume or loyalty contract under the NTP's Destructive Practices prohibition. In that case, the carrier had a shipping contract that tied upon 85% of the business. The I.C.C. properly noted that the complaining carriers under the NTP had the right to contest the defendant's rates. The I.C.C. stated that --

"The national transportation policy GUARANTEES the complainants an opportunity to compete, within fair limits, for all traffic".

The subject contract, which involved 85% of the business, was an unfair and destructive competitive practice as it was contrary to the NTP and therefor "unjust and unreasonable" in violation of section 1 of the Act. Section 1 of the Act prohibited unreasonable practices, and is the original statutory basis for the present §§13701(a). Unfair or destructive carrier pricing is unlawful. The I.C.C. looked to the effect on the other mode of transportation and held that the contract was unlawful. The Interstate Commerce Commission, on further

consideration, affirmed its earlier decision. Cf. Great Lakes Ship Owners Association, Et Al. v. Chicago And North Western Railway Co., 341 I.C.C. 272 (1972). The Commission, explaining its earlier decision stated that

"Thus, there are certain practices, such as foreclosing other modes subject to the act from competing, which because of their pernicious effect on competition and a lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore unlawful without elaborate inquiry as to the precise harm they have caused. Cf. Northern Pac. R.R. v. United States, 356 U.S. 1 (1958)."

The Commission affirmed the fact that the Commission is not permitted to ignore the policies of the antitrust laws and other statutes as a relevant factor in interpreting the objectives of the national transportation policy, citing McLean Trucking Co. v. United States, 321 U.S. 67 (1944) and further citing Coal to New York Harbor Area, 311 I.C.C. 355, 370 (1960).

The Commission's determination also relied upon the decision of the United States Supreme Court in Northern Pacific Railway Co. v. United States, 356 U.S. 1 (1958). In that case the court affirmed a lower court injunction regarding a preferential routing agreement as involving an illegal tying agreement.

These principles are applicable to the relationship between defendants and the freight forwarder community, including DHX. Defendants may not structure their tariffs so that freight forwarders can not compete nor is it lawful for the defendants to have

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DHX having been excluded

from the market is entitled to damages for this destructive practice and conduct.

There can be no argument that DHX is not a complainant that is afforded the protections of the NTP and ICCTA. DHX is a licensed forwarder and subject to regulation under ICCTA. In 1997 the Board issued its decision in STB Ex Parte No. 598, Exemption Of Freight Forwarders In The Noncontiguous Domestic Trade (EB), decided February 13, 1997. In that order, the STB discusses and notes that NVOCCs are now "freight forwarders" under ICCTA. See, Slip Op. at pg. 2. The Board recognized that the freight forwarders under ICCTA jurisdiction function in the same way as FMC NVOCCs and the Board concluded there was "no functional difference between the two" Ibid.

The Commission's concern with protecting competition between the various modes of regulated carriers has been carried forward and is a significant factor in decisions of the I.C.C. Cf. Blackstone Capital Partners L.P.--Control Exemption--CNW Corporation and Chicago and North Western Transportation Co., 5 I.C.C.2d. 1015, 1020 (1989). The Commission made it a point of the fact that they were interested in "protecting competition" rather than individual competitors. The documents in WCC-105 plainly reflect a decision and INTENT to harm the competitive status of all freight forwarders in the Hawaii trade, including DHX. Documents identified as MNC Exhibits 2, 3, and 4 provide the "smoking gun" to this anti-competitive conduct. Were the defendants' other violations not so numerous and egregious, DHX could have made its case on the three identified documents alone.

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The documents reflect the belief that freight forwarders are not entitled to handle full containerload cargoes. In order to alleviate any misconceptions regarding Less than Containerload versus Full Containerload, DHX refers the Board to the decision of the Commission in Compass Agencies, Inc., Nippon Yusen Keisha Lines, Inc. and Transmarine Navigation Corporation--Investigation of Operations, 344 I.C.C. 246 (1973). The Commission, in that case, affirmed the fact that freight forwarders are not limited in their business to less than containerload or trailer load freight. The Commission found that the loading of multiple containers on a ship, or tendering multiple containers for ocean movement, was "assembly" within the definition of forwarding. 344 I.C.C. at 268. The Commission, at pages 269-271 of that decision described in length and detail how the shipment of full containerloads of cargo constitutes and met the definition of freight forwarding. DHX's forwarding of full containerloads is protected under ICCTA's standards. Likewise, the defendants' exclusionary acts regarding full containerload is within the NTP prohibitions.

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Section 13702(b)(1) and 13702(b)(2) require the filing of all rates and any rules or privileges given. Section 13702(b)(1)(A) requires the

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that carriers filing joint rate tariffs include all carriers that are parties to the tariff. Sea-Land Tariff 468, CSX Lines 468 contains no statement of (1) participating carriers nor (2) routes for the 'through' movements. Matson's tariff purports to contain proportional rates but there are no routings nor carriers identified for such the proportional rates. Section 13702(b)(1) and (2) provide the Board with the authority to set the manner of publishing and the contents of the tariffs in greater detail than that listed in section 13702(b)(2). The Board's tariff regulations require all "service terms" be filed. 49 CFR 1312.3(a). Service Terms are defined to mean all rules and practices that "affect the rates or level of service". 49 CFR 1312.1(c) Service Terms. Collateral agreements with shippers, even if unilaterally set by the carrier must be filed. Illinois Central Gulf Railroad Company--Security Deposits, 358 I.C.C. 312 (1978). The service terms which "affect"

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The carriers have misrepresented to DHX that they do not provide volume pricing. This is not correct. It is an unreasonable practice to engage in deceit. Mar-Mol Co. and CopyCorp. v. Sea-Land Service, Inc., 27 S.R.R. 850 (ID. Dec. 1996), affirmed 27 S.R.R. 1085 (FMC 1997) (imposition and collection

of a tax to which the carrier was not subject but which it represented to its customers had to be collected and paid). The carriers likewise have mislabeled certain tariff items to make them appear to be other than what they are. Both defendants labeled port to port rates as "proportionals" even though there was no through route involved nor were there any connecting carriers. Neither the Board nor the courts are obligated to accept a "name" given by a carrier regarding any rate. The name given can not determine the legal character of the rate. Great Northern Ry. Co. v. Commodity Credit Corporation, 77 F.Supp. 780, 788-789 (D. Minn. 1948). A true proportional rate is part of a through rate and may only be used as such. Great Northern Railway co. v. Sullivan, 294 U.S. 458, 460 (1935). The defendant witnesses each testified that the proportional was published for the convenience of the shipper and therefor no through route arrangements with any connecting carrier existed.

Another form of deceit, in addition to the MOUs, joint rates and proportional rates was that the apparent reason that these activities were undertaken was so no one would truly know the arrangement with the particular shipper. This knowing departure from the filing requirements is itself an unreasonable practice. Cf. Shippers Committee, OT-5 v. The Ann Arbor Railroad et al., 5 I.C.C.2d. 856, 861 (1989). The effect of these incomplete filings is that these port "proportional" rates are available to any shipper that can show they would have applied to their shipments. Cf. Reconsideration of Special Tariff Auth-

ority Authorizing The Publication of Account Codes, No. 40888, (EC) decided April 15, 1994 (unprinted). It is well established that if there are two conflicting rates, the shipper is entitled to the lower rate. Olsen v. Alabama Great Southern Railroad, 115 I.C.C. 195, 196 (1926).

In addition, the discriminatory absorption of pass through charges is an unreasonable practice. Matson's wharfage charges are represented as a pass through pursuant to Rule 950 of Matson Tariff 2034. DHX paid Matson wharfage charges on DHX' cargoes. Matson absorbs wharfage for shippers in Tariff 2034. This is unlawful. Northern Pac. Ry. Co. v. United States, 41 F.Supp. 439, 443 (D. Minn. 1943), and Albers Bros. Milling Co. v. Great Northern Ry Co., 256 I.C.C. 491, 499 (1943).

The term "practice" under the Interstate Commerce Act has been interpreted to mean and "embrace those things that affect arbitrarily and unreasonably the purse of the shipper". Northern Pac. Ry. Co. v. United States, supra. This would not include such things as absorptions, but the MOUs terms as those terms affect the rate to be charged and paid. The Congress in the legislative history to ICCTA indicated that Congress beleived that tariff watching had become an "anticompetitivepractice". H.Conf.Rpt No. 104-422, 104th Cong. 1st Sess., Conference Report, ICC Termination Act of 1995, at page 113. The Congress directed the Boar to take what ever steps are necessary to end the practice of price-watching. Defendants' unreasonable practices are also destructive and offensive to the NTP. The Interstate Commerce Commission stated that all forms of anti-competitive conduct violate the competition policies of the Act.

See, Vista Chemical Co. v. Atchison, Topeka And Santa Fe Railway Company, 5 I.C.C.2d. 331, 335 (1989)(Relief is available for the classical categories of competitive abuse--foreclosure, refusal to deal, price squeeze "or any other recognizable form of monopolization of predation". Ibid. Defendants have not only lied to DHX but have refusal to deal with DHX regarding volume pricing, they have "squeezed" the forwarders as well. The I.C.C. stated that it would also consider evidence of excessive prices and inadequate service as evidence of abuse under the competitive standards of the Rail NTP. 5 I.C.C.2d. at 336.

The Interstate Commerce Commission determined that Memorandums of Understanding become binding upon "usage" as "usage" makes the arrangement enforceable. Cf Norfolk and Western Railway Co. et. al--Merger, Etc., 5 I.C.C.2d. 234, 238 (1989). This interpretation comports with the concept of offer and acceptance and performance, the basics of a contract.

DHX is entitled identifiable damages for Defendants' actions. This includes the improper absorptions as well as the duplication of rates and defect proportional rate filings. These items, Matson Item 2200 of Tariff 2034 is therefor an "open" item and DHX has been overcharged by Matson based upon duplication of rates. DHX is also entitled to damages for the improper non-transportation factor restrictions used by both Matson and Sealand/CSX as an unreasonable practice--these restrictions were to keep forwarders "out" of the item and not for any other reason. DHX is also entitled to damages for Lost Profits as outlined by Mr. Dechter. Cf. Louisiana Railcar, Inc. v. Missouri Pacific Railroad Co., 5 I.C.C. 542, 548-549 (1989). Mr. Dechter has

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concrete data on the calculation of the Lost Profits and Hr. Dechter, as a Certified Public Account, and as an expert in the forwarding industry, has the qualifications necessary to support his findings and conclusions.

STATEMENT OF FACTS

DHX hereby incorporates the facts as set forth in the verified statements of Mr. Dechter, Mr. Burns, Mr. Merolla, Mr. chun and Ms. Griggs. In addition, DHX hereby incorporates the testimony and exhibits for Mr. Hoppes, Mr. Downes, Mr. Stevens, Mr. Brown and Mr. Wilson. DHX further submits to the Board the attachments to this document.

This proceeding involves several very signifigant legal and factual issues. DHX will specifically note to the Board defendants' witness testimony on the question of Memorandums of Understanding, the filing of Proportional Rates, and the DHX requests for volume pricing. The additional facts will be stated thereafter.

MEMORANDUMS OF UNDERSTANDING

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The Memorandums of Understandings executed by CSX Lines contain the unfiled terms and conditions of the service and has been going on for at least eight years. (Downes, Tr. pg. 53, line 16 to line 18, and as noted on Attachment B hereto)

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(Brown, Tr. pg 80, lines 7-12). The depositions transcripts are filled with multiple references. The sample contracts are attached as Attachment "A" along with tariff pages which could be located.

DHX VOLUME RATE REQUESTS

(Brown, Tr. pg. 82, lines 12-17)(Matson Answer ¶181 to Amended Comp)

PROPORTIONAL RATES PUBLICATIONS

(Brown, Tr. pgs. 71, line 13 to pg. 73, line 21)

(Wilson, Tr. pgs 46 line 8 to pg 47 line 2, pg. 118, lines 1-18)

The documents and testimony obtained from defendants' witnesses exposed the fact that the defendants engage in tariff watching which is a practice condemned in the ICCTA Conference Report as anti-competitive practice. The Verified Statements of DHX witnesses provide a back ground from their perspective but due to protective orders, they are not privy to many of the facts now disclosed.

In 1987, Sea-Land Service entered the Hawaii trade. Sea-land was a competitive company and by 1992 had made inroads into Matson's dominant position in the market. Mr. David Hoppes, the Los Angeles Sales Manager for Matson approached Mr. Dechter of DHX for help. Mr. Dechter, in the process of responding to Mr. Hoppes' request, taught Mr. Hoppes "how" DHX conducted its business as well as rate declaration methodology. Mr. Hoppes, based upon a need to recover market share especially from freight forwarders, used the DHX information to obtain more business from other freight forwarders in the Hawaii trade. The result was that in the spring of 1994, Mr. Hoppes was promoted to Matson's

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headquarters as the General Sales Manager. DHX had a growing full containerload business and in January 1994 established a separate corporate division. Between 1994 and 1998, the business of DHX continued to grow in the full containerload division.

In the summer of 1997, Matson personnel had noticed a shift in the revenues of freight forwarder cargoes in that the forwarders did not seem to be using Freight All Kinds rates.

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Sea-Land Service

which subsequently became CSX Lines, followed Matson every step of the process. Attached hereto and identified as Attachment "C" is an announcement from sea-Land in early August 1998 which states an intent to make the same tariff revisions as were made by Matsion on July 23, 1998 effective September 6, 1998.

The Verified Statements of DHX witnesses, and numerous defendant deposition excerpts and exhibits consistently show that the intent of these rate filings were to put forwarders out of the full containerload market. Senior Sea-Land personnel openly stated that freight forwarders did not belong in the PCL business as that business belonged to the vessel operators. Mr. Pter Wilson, Pricing Manager for Matson, stated repeatedly that the July 23, 1998 changes were necessary to make Matson competitive with the forwarder. However, what has really happened is that Matson manipulated the tariff structure, which has been followed by Sea-Land/CSX Lines to create rates that do not permit forwarders to participate in the FCL business.

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In order to obtain and retain

control over FCL pricing in the Hawaii trade, Matson created a store door tariff, number 2034-E, which contained many rates that were less than the port rates which Matson provided to DHX and the other forwarders. The Tariff has restricted items on a predominant basis. There are "open" generic items that Matson has even published, without request, the street addresses of the forwarders. For a forwarder to obtain access to rates in 2034-E, the forwarder has to contact Matson and make a request. The access is controlled and Matson studies each request for its competitive impact thereby making Matson the arbitor of who gets to compete with whom and for what cargoes. Sea-Land, through out all of this has matched Matson every step of the way.

The key documents, MNC #2, MNC #3 and MNC #4, when placed side by side with the rate filings, show a pattern and intent to cripple A WHOLE SEGMENT of the transportation industry so that Matson may control pricing in the market. The tariffs contain mis-labeling of port rates as proportional rates as well as Sea-Land/CSX having a Joint Rate tariff with only one (1) participating carrier. Both defendants use cargo ownership requirements, street addresses, zip codes, shipper names, and routings as means to control access to rates and to make sure that no one other than the shipper then intend can get access to the involved rates. These tariff filings are improper not only because they are not accurate, but because non-transportation factors are used for anti-competitive purposes.

DHX conducted an analysis of its records and was able to identify not only lost customers but quantifiable lost profits, damages for overcharges, and damages for the unrea-

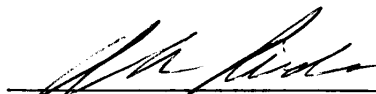
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sonable and destructive competitive practices. DHX is seeking an order from the Board requiring Matson and now Horizon Lines, LLC to cease these practices, to force the opening of competition in the Hawaii trade and for damages as determined by the analysis of Mr. Chun and Mr. Dechter.

Wherefore, DHX, Inc., Complainant hereby respectfully requests the Board to enter an order as requested and for such other and further relief as the Board deems appropriate.

Dated - October 28, 2003

Respectfully submitted,



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207 Park Avenue
Falls Church, VA. 22046
(AC 703) 536-3963 Telephone
(AC 703) 536-4841 Fax.

Counsel for Complainant
DHX, INC.

Certificate of Service

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

Dated this ~~28th~~
31st day of October 2003.



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ATTACHMENT A

REDACTED

REDACTED

ATTACHMENT B

ATTACHMENT C

SeaLand®

Sea-Land Service, Inc.
One Renton Place, Suite 600
South 555 Renton Village Place
Renton, WA 98055-3221
Tel (206) 204-6300
FAX (206) 204-6431

Dear Valued Hawaii Customer,

Sea-Land Service, Inc. filed several tariff revisions today with the Surface Transportation Board. These tariff revisions are directly related to rapidly declining revenues in certain segments of our business and trends Sea-Land has seen in the marketplace that affect its competitiveness.

The tariff changes are outlined on the attached sheet and include a 5% increase on selected tariff items. This increase is being taken on several tariff items where Sea-Land has experienced declining revenues. Other changes include modifications to tariff rules and notes in tariff items. Rule and note changes are necessary for Sea-Land to compete and to better recognize costs associated with providing basic container-load ocean transportation service. The effective date for these changes is September 13, 1998.

Sea-Land has made every effort to listen to the concerns of its shipper's while determining how to address the above mentioned issues. We were not surprised to hear that our shippers are also concerned about these same issues. We are grateful to the many of you that have been helpful in suggesting options to address them. We are hopeful that you will find these changes are in line with your long-term vision of this industry in the Hawaii trade.

Regards,

Dan Downes
Director, Pricing Hawaii/Guam/Alaska

CSX-04132

MAY 09 '02 07:31AM SEALAND PAC DIV

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Rule changes:

- Definition of a Shipment: Rule modified so that multiple containers on a single master bill of lading are required to move on one vessel. This will simplify rating and assist our systems people in developing a new documentation system.
- Heavy Packages and Pieces, Minimum Bill of Lading Charge and Mixed Shipments: Rates in rules increased 5%.
- Overflow Shipments: Overflow minimum increased 10%. Significantly increased use of this rule by shippers has resulted in per container revenues which are inadequate for the cost of service provided and well below acceptable commodity rate levels.

Rate changes:

- Section 02 per-hundred-rate items and selected per-container rates increased 5%. Increase tied to declining revenues in certain segments of Sea-Land's business.

Note changes:

- Many tariff items have notes which allow "other articles" to be shipped along with the named commodities at the rate for the named commodities. In most cases the "other articles" are defined, but in some cases they are not. Rather than perpetuate this, Sea-Land is removing these notes. In some cases, Sea-Land is adding the articles to the viz list. In other cases, they must move under another tariff item. If there is no tariff item with a per-hundred-weight rate, Sea-Land is establishing one.
- Examples of the above mentioned approach:
 - Most of the "other articles" in the Paint Item notes (0232-08-0000) and Roofing Item notes (0268-07-0000) have been taken out of the notes and added to the viz lists.
 - Other articles, such as paint, adhesives and caulking compounds, which now move under a note in the Building Boards Item (0285-36-1000) at \$5.52/cwt will move under the Paint Item (0232-08-0000) at \$5.77/cwt.
 - Machinery, which now moves under the note in the Printing Paper Item (0248-08-1100), will have a new rate of \$9.15/cwt filed in the Machinery Item (0284-00-0500).
- The Canned and Preserved Foodstuffs Item (0220-00-0000) is being revised in two phases, but ultimately in the same manner. Sea-Land is adding a \$9.00/cwt rate for the "other articles" allowed to move under this item with canned foodstuffs as an interim step towards removal of the note next January. This allows shipper's who utilize this tariff item the time to adjust their shipping patterns. Also, Sea-Land is prohibiting the use of 45' equipment under this item. Revenue levels, even with these changes, are not sufficient to support the use of this piece of equipment.

A complete listing of tariff changes is available from your local Sea-Land Sales Representative.