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PUBLIC VERSION -- REDACTED

Before the
SURFACE TRANSPORTATION BOARD



DHX, Inc.

Plaintiff,

v.

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

Defendants.

Docket No. WCC-105

**REPLY STATEMENT OF
MATSON NAVIGATION COMPANY**

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INTRODUCTION AND SUMMARY OF ARGUMENT

Complainant DHX, Inc. ("DHX") is a freight forwarder engaged primarily in providing freight transportation services for its customers between the West Coast of the United States and Hawaii, mainly using the vessels of defendants Matson Navigation Company ("Matson") and Sea-Land Services, Inc. ("Sea-Land"), now Horizon Lines, Inc.¹ In 1999, DHX filed a complaint against Matson and Sea-Land claiming that certain increases by Matson and Sea-Land in their respective minimum charges for "overflow" containers were unreasonable. In response to a Board order requiring DHX to file an amended or supplemental complaint "that properly identifies the grounds for action and the relief sought," *March 28, 2002 Decision* at 3,² DHX filed an Amended Complaint on April 29, 2002, two counts of which the Board subsequently dismissed because they "appear[] to be no more than a broad ranging allegation that all of defendants' rates are discriminatory. But the discrimination remedy was repealed as to this trade in ICCTA." *May 14, 2003 Decision* at 3.³

Matson is filing this reply to the initial evidentiary statements filed by DHX on or about October 30 and 31, 2003 in support of its Amended Complaint.⁴ Identifying the contentions being advanced by DHX in those statements in order to formulate appropriate responses has

¹ For convenience, we will refer to Matson's co-defendant as "Sea-Land" throughout.

² Decisions issued by the STB in this proceeding, STB Docket No. WCC-105, shall be cited simply by reference to their service date.

³ "ICCTA" refers to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995).

⁴ In this Reply, Matson's evidence is assembled at sequentially-numbered tabs, which are cited as "Tab ____"; excerpts from deposition transcripts are cited, for example, as "Tab ____ (Wilson Tr.) at ____".)

not been easy, inasmuch as DHX's statements consist largely of a rambling melange of factual allegations and legal propositions the relevance of which is unclear. Furthermore, most of the factual allegations are asserted without citation to any supporting evidence, and many of them are inconsistent with other allegations. And while DHX's statements discuss or refer to a number of the carriers' tariff provisions, it is not clear in most cases whether they are alleged to be unreasonable or otherwise unlawful, or if so, why.

As best as Matson can determine, DHX's submission embodies three main claims of unlawful conduct against Matson and Sea-Land. The first, and apparently principal, claim is that the carriers took a number of actions in 1998 and 1999 the purpose and effect of which was to prevent all freight forwarders in the Hawaii trade, and particularly DHX, from competing with the carriers for full containerload ("FCL") business. The chief difficulty with this oft-repeated claim is that it is squarely refuted by the evidence. Not only does the evidence show that neither DHX nor any other forwarder was precluded from competing for FCL business, but it shows that DHX's FCL business [[

]]⁵ The evidence also shows that DHX's business in general [[

]] In addition, abundant other evidence refutes the claim that the carriers have acted to harm freight forwarders or prevent them from competing for business. Furthermore, as this Reply will show, there is nothing unlawful about ocean carriers taking actions intended to attract business to themselves that is handled by their

⁵ Throughout this document, information designated as "Highly Confidential" under the protective order in this case is enclosed by double-brackets.

competitors, even when those competitors are freight forwarders. That is the essence of competition, the promotion of which is a chief purpose of ICCTA.

The second main claim of DHX is that the carriers have provided rates to certain customers that they have not provided to DHX. The main difficulty with this claim is that the actions complained of are not unlawful, as the Board pointed out in its decision served May 14, 2003 granting Sea-Land's motion to dismiss two counts of the Amended Complaint. Since this claim pervades DHX's Amended Complaint and its evidentiary submissions, it is evident that DHX did not get the message.⁶ Furthermore, this claim is inconsistent with the relief DHX itself seeks in this case as well as with other statements complaining about rate or other actions taken by the carriers to "level the playing field" among freight forwarders and between freight forwarders and other kinds of shippers. This claim also ignores that DHX itself has been the beneficiary of numerous rate actions taken by Matson specifically for DHX's benefit and at its request.

The third main charge DHX levels against Matson and Sea-Land is that they have entered into transportation agreements with certain shippers that provide the shippers with certain rates over specified periods in exchange for the shippers' agreement to tender specified volumes of freight. Even though the agreed-upon rates are also disclosed in the carriers' tariffs, DHX contends that these agreements somehow violate the Board's tariff rules. Its principal complaint, however, seems to be that the carriers have declined to enter into such

⁶ It is noteworthy in this regard that DHX's President, Bradley J. Dechter, testified at his deposition on August 1, 2003 that [I

] and also that he had not read the Board's decision served May 14, 2003 dismissing two counts of the Amended Complaint. See Tab 2 (Dechter Tr.) at 86-87.

volume-incentivized agreements with DHX. In any event, DHX's claims fail to recognize that ICCTA specifically authorizes confidential transportation contracts in the domestic offshore trades (49 U.S.C. § 14101(b)(1)) and also specifically authorizes common carrier rates that "vary with the volume of cargo offered over a specified period of time." 49 U.S.C. § 13702(b)(4).

In addition, DHX's statements include a miscellany of other complaints that are unsupported in law, or in fact, or both. For example, DHX objects that Matson and Sea-Land "engage in tariff watching;"⁷ DHX apparently believes that carriers are supposed to politely avert their eyes from public information about the prices and services offered by their competitors. It also complains that, after DHX took its business to Sea-Land, Matson *lowered* some of its rates, which benefited DHX's freight forwarder competitors.⁸ DHX also describes various alleged actions in the early 1990s that long predate even the earliest arguable reach of the statute of limitations prescribed by 49 U.S.C. § 14705.⁹

Matson respectfully submits that DHX's Amended Complaint and the evidentiary statements purporting to support it are so patently lacking in legal and evidentiary substance as to amount to an abuse of the Board's process, and for that reason the Board should promptly dismiss the Amended Complaint in its entirety.

⁷ Stmt. Of Facts And Law at 11 and 14.

⁸ See *Dechter V.S.* at ¶ 31.

⁹ Under 49 U.S.C. § 14705(c), the limitations period for damages is two years. See *Government of the Territory of Guam v. Sea-Land Service, Inc.*, STB Docket No. WCC-101, ("GovGuam"), slip op. at 5-7 (decision served Nov. 15, 2001). DHX's present Amended Complaint was filed April 29, 2002. (Its original complaint, which has been superceded by and bears no resemblance to the amended one, was filed October 1, 1999.) The statute of limitations is discussed in more detail in Argument section V.E.

STATEMENT OF FACTS

Outlined here is a summary of the pertinent facts and procedural history of the case. More detailed discussions of facts pertinent to particular allegations are set forth in the Argument sections addressing those allegations.

A. Background

DHX is a freight forwarder engaged primarily in providing transportation services to its customers between the West Coast of the United States and Hawaii. According to DHX, it is the largest of approximately 28-30 freight forwarders in this trade and has an estimated 15 percent of the freight forwarder business in the trade.¹⁰ DHX's principal office is in Long Beach, California; it also has offices in Oakland, CA and Honolulu, HI. DHX was founded in 1977 by [[]]¹¹ The president and chief executive officer of the company is Bradley J. Dechter, who joined the company in 1982 and became president in 1991.

As a freight forwarder, DHX sells transportation services to its customers at unregulated rates. DHX provides transportation between the West Coast and Hawaii to its customers mainly by purchasing transportation from Matson and Sea-Land. Matson and Sea-Land have for many years operated vessels between the West Coast and Hawaii on which they provide scheduled transportation services to thousands of customers, including DHX and other freight forwarders, at rates set forth in published tariffs and subject to regulation by the Board

¹⁰ See Tab 2 (Dechter Tr.) at 10-11.

¹¹ See Tab 4 (Butterbrodt Tr.) at 26.

pursuant to 49 U.S.C. § 13701 *et seq.* Matson and Sea-Land are the only liner operators providing scheduled service between the West Coast and Hawaii.

Like other freight forwarders, DHX makes money by purchasing transportation from carriers like Matson and Sea-Land and selling it to its customers at higher rates. Since carriers' rates for small, less-than-containerload ("LCL") shipments are typically much higher than the carriers' rates for full containerload ("FCL") shipments, freight forwarders have historically made money primarily by consolidating LCL shipments into full containers, charging their customers less than the customers would have to pay the carriers and shipping the containers at the carriers' applicable full container rates. In many cases, however, freight forwarders succeed in soliciting the business of FCL shippers, who are willing to pay the freight forwarders somewhat more than the FCL rate the freight forwarder pays the carrier. FCL shippers may be willing to do so for various reasons, including additional services the forwarder may provide the customer and, in some cases, the customer's unawareness of carrier's rates that may be applicable to the shipments.¹² Over the years, DHX has become particularly adept at mastering the intricacies of Matson's and Sea-Land's tariffs and, as a result, has become very successful in obtaining not only LCL but also FCL customers, as will be discussed in greater detail presently.

As the Board and its predecessor, the Interstate Commerce Commission ("ICC") have noted, freight forwarders have a dual relationship with the carriers whose services they use: they are both customers and competitors of those carriers. In this proceeding itself, the Board has stated that "DHX maintains the dual status of carrier (vis-à-vis its shippers) and shipper

¹² See Dechter V.S. at ¶ 24.

(vis-à-vis the underlying carrier it uses);” as a carrier, “DHX competes with the defendants for traffic that defendants could themselves solicit.” *December 21, 2001 Decision* at 3. Their status as competitor to the carriers is most pronounced in the case of FCL business. As explained in the verified statement of Matson’s then-Senior Vice President, Paul A. Stevens (Tab 1),¹³ in the case of LCL business, freight forwarders generally provide a benefit to carriers by handling and consolidating small shipments, which are functions that would be more costly for the carriers to perform themselves. In the case of FCL shipments, however, freight forwarders provide no particular benefit to carriers and function principally as competitors for business that the carriers would prefer to handle directly and could do so at no additional cost. To the extent that a freight forwarder is able to derive a profit from the difference between its rates to its FCL customers and the FCL rates it obtains from the carriers, the carriers would prefer to have some or all of that profit themselves, and therefore are to some extent in competition with the freight forwarder for that business and that profit. *See* Tab 1 (Stevens V.S.) at 5-8; Tab 2 (Dechter Tr.) at 31-32, 105.

B. The Growth of DHX’s Business

Since its founding in 1977, DHX has been a very successful freight forwarder, due in large part to the energy, acumen and hard work of Mr. Dechter. DHX today is one of Matson’s largest customers.

As readily acknowledged by Mr. Dechter and other DHX witnesses, a large part of DHX’s success and growth has been due to its mastery of the carriers’ tariffs and its ability to

¹³ This verified statement accompanied Matson’s motion to dismiss DHX’s original complaint, filed on November 16, 1999.

combine shipments and cargoes of different DHX customers to take advantage of various tariff provisions to obtain the lowest possible rates for its shipments.¹⁴ Indeed, DHX's Ocean Pricing Manager, Elaine Griggs, testified in deposition that she probably knows more about the carriers' tariffs than most of the carriers' own employees.¹⁵ Mr. Dechter testified that DHX built a good part of its business on its unique knowledge of the carriers' tariffs and how to use various tariff provisions to obtain low rates and on the fact that other freight forwarders and shippers did not have that knowledge.¹⁶

One of the tariff provisions that DHX used to obtain low rates is Rule 31 of Matson's Tariff 14-F (and a corresponding provision in Rule 884 of Tariff 2016-D), which established a discount from otherwise applicable rates for so-called "overflow" containers.¹⁷ The operation of the overflow rule is explained in some detail in Mr. Stevens' verified statement. The principal point is that the rule was established many years ago to attract the business of

¹⁴ DHX's customers, of course, did not pay those rates; DHX, as the shipper, paid them. The customers paid higher rates, which they paid to DHX.

¹⁵ See Tab 3 (Griggs Tr.) at 105.

¹⁶ See Tab 2 (Dechter Tr.) at 102 ("Well, DHX had established a huge cost advantage in our industry by having tariff expertise and doing things nobody else could do.") Indeed, Mr. Dechter's verified statement discusses at some length his belief (for which he acknowledges he has no proof) that in 1994, a Matson salesman, David Hoppes, after learning DHX's methods from Mr. Dechter, explained those methods to DHX's freight forwarder competitors in order to gain favor with Matson management. See Dechter V.S. at ¶ 26. Aside from having "no proof" for his assertions, Mr. Dechter's charge that Mr. Hoppes acted to help other freight forwarders contradicts his contention that Matson has acted to harm *all* freight forwarders and put them out of the FCL business.

¹⁷ The three Matson tariffs that generally are at issue in this case are: (1) Tariff 14-F, which includes port-to-port rates for westbound traffic from West Coast ports to Hawaii ports; (2) Tariff 2016-D, which includes westbound joint motor-water rates from store-door points in California, Oregon and Washington to Hawaii ports; and (3) Tariff 2034-E, which includes joint motor-water rates and proportional rates for westbound traffic between points in the mainland United States and Hawaii ports.

shippers shipping multiple containers at a time. It provided an incentive for these shippers to tender their full containerload business to Matson by providing that, for multiple-container shipments, the last, partially-full container in the shipment would not be treated as if it were full (*i.e.*, not subject to the otherwise-applicable minimum weight requirement), but rather would be provided a discount off the otherwise-applicable full container rate. *See* Tab 1 (Stevens V.S.) at 4-5.

In recent years, by using the overflow rule in conjunction with other tariff rules that permitted containers tendered over several voyages to be considered as a single "shipment," DHX and other freight forwarders have been able to combine different shipments of their own LCL and FCL customers to create "overflow" containers and thereby obtain lower rates for the shipments of those customers, contrary to the purpose and intent of those rules. DHX made a specialty of this practice. Although these rules were intended to attract FCL shippers to Matson, Mr. Stevens estimated in his verified statement that 98 percent of Matson's revenues from overflow containers in 1999 came from freight forwarders like DHX. *See* Tab 1 (Stevens V.S.) at 8.

In 1997 Matson undertook a study of the use of its tariffs by freight forwarders. As a result of that study, Matson made a number of changes to its tariffs. The two actions that were the subject of DHX's initial complaint in 1999 were increases in the minimum charges for overflow containers taken in September 1998 (a 10 percent increase) and October 1999 (a 7.5 percent increase). In addition, Matson amended its tariffs' definition of "shipment" to include only containers shipped on the same vessel/voyage, and made changes to provisions, known as "note kits," of certain tariff items that, in general, permit the mixing of certain higher-rated

commodities with related lower-rated ones. Sea-Land took similar actions around the same time.

Although DHX repeatedly asserts that these and other tariffs changes were taken for the purpose "to put forwarders out of the full containerload markets" and had the effect of "creat[ing] rates that do not permit forwarders to participate in the FCL business," Stmt. Of Facts And Law at 17, in fact DHX's records and the testimony of its witnesses show just the opposite. []

]]

According to documentation provided by DHX in discovery, DHX's FCL business has []

]] See Tab 5.¹⁸ Of particular relevance to DHX's claims in this case, DHX's FCL revenues []

]]¹⁹ While FCL revenues in 2001, 2002 and 2003 (annualized) []

]] Moreover, DHX's own evidence shows that

¹⁸ Tab 5 includes two pages supplied by DHX in discovery, one labeled "Schedule E," which shows DHX's FCL revenues from 1983 through part of 1998, and one labeled "Schedule B," which shows FCL revenues for the remainder of 1998 through the first five (of 13) reporting periods of 2003. Annualizing the partial 2003 data produces projected 2003 FCL revenues of []

]]

¹⁹ DHX's Chief Financial Officer, Andrew Butterbrodt, confirmed []
]] in his deposition. See Tab 4 (Butterbrodt Tr.) at 63.

[[

]]

Documentation submitted by DHX in discovery shows that for the period September 1998 through May 2003, [[

]]²⁰

Other evidence provided by DHX shows that the [[

]] A DHX-prepared summary of financial

information from 1996 through April of 2002 shows that total DHX revenues [[

]] See Tab 8. Of particular relevance to DHX's claim that Matson's and Sea-Land's actions in 1998 and 1999 had the purpose and effect of harming DHX and precluding it from competing in the Hawaii trade, DHX's own figures show that its net profit specifically from the Hawaii trade [[

]]

See Tab 7.²¹

²⁰ Tab 6 includes a DHX-produced document labeled "Schedule D," which shows DHX's FCL ocean freight costs for the last 4 (of 13) reporting periods of 1998 through the first 5 reporting periods of 2003. Over that period, total FCL costs [[and total FCL revenues [[

]]

²¹ [[

(continued on next page...)

In sum, DHX's own evidence completely refutes its claim that the carriers' actions in 1998 and 1999 had any negative effect on DHX's FCL business, much less foreclosing DHX from that business altogether.

C. DHX's Initial Complaint

On October 1, 1999, DHX filed a complaint against Matson and Sea-Land (the "Initial Complaint"). The Initial Complaint asserted, in Paragraph 6: "At issue in this complaint is the reasonableness of 'overflow rates' and recent increases in those rates charged or to be charged by Matson and Sea-Land." The Initial Complaint alleged that the 10 percent increase in the overflow rate taken on September 6, 1998 and the 7.5 percent increase to be taken on October 17, 1999 were unreasonable *per se* because they exceeded the "Zone of Reasonableness" ("ZOR") of 49 U.S.C. § 13701(d) and because they allegedly "singled out" for elimination "the business of DHX, which is based largely on these overflow rates." Initial Complaint, ¶¶ 9, 10. The Initial Complaint also referred to other alleged actions of the Defendants, outlined in an appended affidavit of Mr. Dechter, which "place in further perspective, the unreasonableness of the rate increases described in the foregoing paragraphs which are the subject of this complaint." *Id.* ¶ 12.

(...continued from previous page)

at 3.

]] See Tab 8

Matson and Sea-Land filed motions to dismiss the Initial Complaint, principally on the ground that the “overflow rates” were integral parts of rates for multi-container shipments, none of which had been increased by amounts in excess of the ZOR.

D. The Board’s Decisions of December 21, 2001 and March 28, 2002.

By decision served December 21, 2001, the Board denied the Defendants’ motions to dismiss. The Board acknowledged that the motions “identify substantial shortcomings in DHX’s complaint.” *December 21, 2002 Decision* at 1. The Board also agreed with the carriers that their minimum charges for overflow containers “are components of the rates applicable to multi-container shipments, and that “[t]o the extent that DHX seeks to challenge overflow rates as if they are separate rates, its complaint cannot succeed.” *Id.* at 5. The Board, however, concluded that “it appears to us that the gravamen of DHX’s complaint is that Matson and Sea-Land have engaged in unreasonable practices in an effort to put consolidators such as DHX out of business. Although parties may not use the unreasonable practices provisions of the statute to bolster a weak rate case, *cf. Union Pacific R.R. v. ICC*, 867 F.2d 646, 649 (D.C. Cir. 1989), we cannot at this point say that DHX could not possibly prevail in an unreasonable practices complaint.” *Id.* at 6.

By decision served March 28, 2002, the Board established a procedural schedule, which called for DHX to submit “an amended or supplemental complaint that properly identifies the grounds for action and the relief.” *March 28, 2002 Decision* at 3.

E. DHX’s Amended Complaint

On April 29, 2002, DHX, represented by new counsel, filed an Amended Complaint consisting of 266 numbered paragraphs in 16 different counts plus 19 unnumbered paragraphs.

Although far from clear, the principal substantive allegations of the Amended Complaint involving Matson appear to be as follows: (1) Various provisions of the Matson's tariffs are improper in form;²² (2) Matson has discriminated against DHX by limiting the application of certain tariff provisions to shippers other than DHX;²³ (3) as a result of various changes Matson made to the overflow and other provisions of its tariff, "Complainant was excluded from competition for full containerload business and competition in the Hawaii trade," (¶ 152) and "Matson . . . has obtained an exclusion of freight forwarders from the market for full containerload business in the Hawaii trade." (¶ 153);²⁴ and (4) Matson has provided volume discounts to some shippers that Matson does not offer to DHX and contrary to representations Matson allegedly made to DHX.²⁵ The Amended Complaint makes similar allegations against Sea-Land.

Although the focus of the Initial Complaint was on the alleged unreasonableness of certain specific increases in the carriers' minimum charge for overflow containers, the only assertions in the Amended Complaint specifically alleging that the carriers' rates are unreasonably high are contained in a count, since dismissed by the Board, against Matson and

²² Paragraphs 82-92 (Count 2); 103-108 (Count 3).

²³ Paragraphs 110-130 (Count 4), 156-160 (Count 6); 162-169 (Count 7); 171-178 (Count 8). Paragraphs 163-169 could be read to suggest a claim for undercharges based on simple misapplication of tariff provisions - *i.e.*, that Matson failed to apply certain tariff provisions that applied by their terms to DHX's shipments. In fact, however, the cited tariff provisions clearly and expressly do *not* apply to shipments tendered by DHX, and DHX's real claim in this count, as in Counts 4, 6 and 8, is that Matson has discriminated against DHX by not making those provisions applicable to DHX.

²⁴ Paragraphs 132-154 (Count 5).

²⁵ Paragraphs 180-191 (Count 9).

Sea-Land jointly, in which DHX charged that that as a result of the Defendants' collective actions, DHX has been forced to pay unreasonable rates and charges.²⁶

F. The Board's May 14, 2003 Decision

Sea-Land filed a motion to dismiss one count of the complaint pertaining to certain Sea-Land tariff provisions as factually incorrect. Sea-Land also moved to dismiss the joint count against both carriers on the ground that it alleged collective behavior outside the Board's jurisdiction. By decision served May 14, 2003, the Board granted the motion to dismiss both counts. The Board agreed with Sea-Land's contentions concerning its tariff provisions. The Board also dismissed the joint count, not on jurisdictional grounds but because it concluded that "DHX's approach appears to be no more than a broad-ranging allegation that all of defendants' rates are discriminatory. But the discrimination remedy was repealed as to this trade in ICCTA. Thus DHX cannot possibly prevail in its argument that the assailed rates are unreasonable even if it did show that different shippers pay different rates for arguably similar services." *May 14, 2003 Decision* at 8.

G. DHX's Evidentiary Submission

On or about October 30 and 31, 2003, DHX filed six separately bound pleadings, each with attachments or exhibits: a "Statement of Facts and Law" and verified statements of Bradley J. Dechter, Ralph T. Merolla, Elaine P. Griggs, Sean Burns and Paul B. Chun. DHX

²⁶ Paragraphs 262-266. Count 1 against Matson in the Amended Complaint contains a confusing series of allegations apparently claiming certain deficiencies with respect to the "overflow" rules in Matson Tariffs 14-F and 2016-D. This count omits any assertion that the minimum overflow charges are too high – the main thrust of the Initial Complaint. Instead, the gist of Count 1 appears to be that it is somehow unreasonable for Matson to have established a minimum per-container charge at all. In any event, DHX's evidentiary

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filed Public and Highly Confidential versions of the Statement of Facts and Law and the verified statements of Mr. Dechter and Mr. Chun but only Public versions of the verified Statements of Mr. Merolla, Ms. Griggs and Mr. Burns. DHX also filed Public and Highly Confidential versions of the transcripts of depositions of Matson and Sea-Land witnesses.²⁷

As noted at the outset, it is far from clear from DHX's pleadings what it is contending and on what evidence it is relying. The principal focus appears to be the claim that by various actions Matson and Sea-Land have prevented DHX from competing for FCL business. DHX also asserts that Matson and Sea-Land have acted unreasonably by providing rates to some shippers that they do not provide to DHX, including volume discounts, and by entering into certain transportation agreements with some shippers but not with DHX.

As discussed below, all of DHX's claims lack legal merit, evidentiary support or both.

ARGUMENT

I. THE EVIDENCE OF RECORD CONTRADICTS DHX'S CLAIM THAT MATSON AND SEA-LAND HAVE PREVENTED DHX FROM COMPETING FOR FULL CONTAINERLOAD BUSINESS.

DHX's principal claim is that Matson and Sea-Land took actions in 1998 and 1999 "to put forwarders out of the full containerload markets" and "manipulated the tariff structure . . .

(...continued from previous page)

submission appears not to pursue any such claim, so the Board should dismiss it for lack of proof.

²⁷ The Board's rules at 49 C.F.R. § 1114.21(f) provide that, unless otherwise ordered by the Board, discovery materials "shall not be filed with the Board." Instead, "[a]ny such materials, or portions thereof, should be appended to the appropriate pleading when used to support or to reply to a motion, or when used as an evidentiary submission." DHX's burdensome and indiscriminate filing of every deposition transcript in its entirety (while actually citing to or relying upon extraordinarily little of any of them) appears inconsistent with this provision.

to create rates that do not permit forwarders to participate in the FCL business.”²⁸ This claim is repeated with varying degrees of emphasis throughout DHX’s submission. Mr. Merolla, DHX’s Executive Vice President, asserts categorically: “The rate structure has been changed to create a tiered pricing which provides that proprietary shippers obtain more favorable rates and that freight forwarders are excluded from the rates necessary to compete for full container load cargoes.”²⁹ Mr. Dechter, DHX’s President, asserts only somewhat less categorically: “DHX has lost the bulk of its full container load business.”³⁰

These extravagant claims are flatly contradicted by the evidence of record, which shows that DHX’s FCL business []

[] Furthermore, DHX’s own assertions and evidence contradict the contention that Matson and Sea-Land have acted with an intent to harm freight forwarders generally or DHX in particular or to preclude DHX or other freight forwarders from competing for any line of business.

As discussed above in the Statement of Facts, evidence produced by DHX itself, attached at Tab 5, shows that DHX’s FCL revenues []

[] Six years later, in 1998, [] [] Of particular relevance to DHX’s claim that the carriers took actions in late 1998 and in 1999 “to

²⁸ Stmt. Of Facts And Law at 17. More generally, DHX asserts that the carriers’ actions “show a pattern and intent to cripple a WHOLE SEGMENT of the transportation industry so that Matson can control pricing in the market.” *Id.* at 18 (capitalization in original).

²⁹ Merolla V.S. at 3.

³⁰ Dechter V.S. at ¶ 51. See also ¶ 40, where Mr. Dechter states: “DHX’s Full Containerload Division is out of business.” Although this bald assertion clearly implies, falsely, that DHX no longer handles FCL business, in fact it appears to describe only an

(continued on next page...)

put freight forwarders out of the full containerload markets” and that “do not permit forwarders to participate in the FCL business,” this document shows that DHX’s FCL revenues in 1999 []

[] Furthermore, despite a significant slowdown in the U.S. economy starting in 2000, DHX’s FCL revenues []

[]³¹ Indeed, DHX’s figures show that its FCL revenues in 1999, 2000, 2001 and 2002 []

[] These figures, provided by DHX itself, completely refute DHX’s claims that Matson’s and Sea-Land’s tariff actions in 1998 and 1997 had the effect of not permitting DHX to participate in FCL business.

Mr. Dechter apparently seeks to avoid the manifest inconsistency between DHX’s claims and [] [] by asking the Board to []

[] According to Mr. Dechter, DHX has been able to []

[] Mr. Dechter does not explain why []

(...continued from previous page)

organizational change (*see* Dechter V.S. at ¶ 51), not a change in the level of DHX’s FCL business.

³¹ DHX documents also show that DHX’s profit margins on its FCL business [] [], notwithstanding Mr. Dechter’s assertions to the contrary. As discussed in the Statement of Facts above, DHX’s own documentation shows that from approximately September 1998 through the Spring of 2003, DHX’s profit margin on FCL business [] [] *See* Tab 6.

]]³² but his point illustrates the absurdity of DHX's claims in this case.³³ DHX is asking the Board to find that it has been driven from the FCL market by actions of Matson and Sea-Land but at the same time asks the Board to ignore evidence proving that [[

]] Furthermore, DHX is in effect contending that the Board should find unreasonable and unlawful actions by Matson and Sea-Land that had the effect of stimulating DHX to retain business by offering better services and rates to customers instead of relying, as previously, on its expertise in the intricacies of the carriers' tariffs.

There is abundant other record evidence as well, including the statements and testimony of Mr. Dechter and other DHX witnesses, which refutes the claim that Matson and Sea Land acted to harm freight forwarders in general and DHX in particular. For example, DHX complains generally that the rates and provisions in Matson's Tariff 2034-E are applicable only to specific shippers or movements and are not "open" to other shippers generally, including

³² See Dechter V.S. (Highly Confidential version only) at ¶ 63.

³³ The absurdity of DHX's claims become even more apparent in light of the fact, not mentioned by Mr. Dechter, that [[

]] Item No. 2671 of Matson Tariff 2034-E, pertaining to certain department store merchandise, is a rate item that Matson added to the tariff specifically at the request of DHX [[
]] The origin address listed in note [1] of the Item, 30750 Wiegman Road, Hayward, CA, is the address of a DHX distribution center, meaning that only DHX may use this rate item. Although the item, as indicated, was requested by DHX for the purpose of shipping goods [[

]]

DHX. The fact is, however, that Matson has often acceded to DHX's *own* requests to establish rates in that tariff expressly applicable to DHX shipments, which rates would *not* be available to most other shippers; indeed, DHX's own witnesses acknowledge that Matson has done so.³⁴

Thus, Mr. Merolla, whom Mr. Dechter designated to be DHX's principal contact with Matson,³⁵ testified in his deposition that he is "not aware of any [Matson tariffs] that they do not allow us to participate in."³⁶ He also acknowledged many specific instances when Matson

[[

]]³⁷

He further acknowledged that Matson sometimes [[

]]³⁸ and sometimes to provide DHX with rates applicable to other freight forwarders [[

]]³⁹ and to provide [[

]]⁴⁰ In one

case, one Matson employee informed another Matson employee that Matson was [[

]]⁴¹

³⁴ See Tab 18, a table prepared by Matson and produced to DHX in discovery that identifies and summarizes various tariff changes made by Matson specifically for the benefit of DHX between June 2001 and May 2002.

³⁵ See Dechter V.S. at ¶ 34.

³⁶ Tab 9 (Merolla Tr.) at 26.

³⁷ See Tab 9 (Merolla Tr.) at 28-51, and Tab 10 (Merolla deposition exhibits 3-12).

³⁸ See Tab 9 (Merolla Tr.) at 42.

³⁹ Tab 9 (Merolla Tr.) at 36.

⁴⁰ Tab 9 (Merolla Tr.) at 46.

⁴¹ Tab 10 (Merolla deposition exhibit 5).

Mr. Merolla also described vigorous competition between Matson and Sea-Land for DHX's business, which DHX []

[]⁴² Mr. Dechter's testimony and verified statement also confirm that DHX exploited the competition between Matson and Sea-Land. For example, Mr. Dechter, in his verified statement, describes an occasion when, because of Matson's then-effective limit on overflow container usage and the resulting cost to DHX, DHX shifted "the bulk of our freight" over to Sea-Land.⁴³ According to Mr. Dechter, Matson responded to the loss of DHX business by *reducing* its "freight all kinds" rate and liberalizing the overflow rule by allowing *more* overflow containers. Instead of applauding this competitive response, however, Mr. Dechter *complains* about it, because, he says: "Since the bulk of our freight was then moving with SeaLand/CSX, the affect [sic] of this change was really to help our LCL competitors reduce their costs"⁴⁴ He also complains that Matson on one occasion assisted another competitor of DHX by extending its credit on certain accounts receivable.⁴⁵ These statements not only refute the claim that Matson has acted to harm freight forwarders and stifle

⁴² Tab 9 (Merolla Tr.) at 42.

⁴³ See Dechter V.S. at ¶ 31.

⁴⁴ Dechter V.S. at ¶ 31. Indeed, Mr. Dechter goes so far as to characterize Matson's pro-forwarder competitive response as an "anti-DHX" stand" by which Matson was secretly "attacking" DHX through the "guise" of making it *easier* for freight forwarders to do business with Matson. *Id.*

⁴⁵ See Dechter V.S. at ¶ 31.

competition, they also reveal that what DHX wants from Matson and Sea-Land are not competitive actions and lower rates generally but simply preferential treatment for DHX vis-a-vis its freight forwarder competitors.

In further refutation of the claim that Matson's actions reflect an intention to harm freight forwarders in general and DHX in particular, Mr. Dechter and Mr. Merolla both acknowledged that Matson took an action in 2001 that [[

]] Before May 2001,

Matson competed directly with freight forwarders for LCL business by operating "Container Freight Stations," which solicited, accepted and consolidated small shipments. In May 2001, Matson decided to close those stations and terminate that segment of its business. In an e-mail to DHX employees regarding this development, Mr. Dechter stated that [[

]]⁴⁶

In sum, the evidence of record provides no support, and indeed completely refutes, DHX's claim that Matson's and Sea-Land's tariff changes in 1998 and 1999 "put freight forwarders out of the full containerload markets," "do not permit forwarders to participate in the FCL business" and show an intent to harm DHX and other freight forwarders and stifle competition.

⁴⁶ Tab 11 (Merolla deposition exhibit 13); *see also* Tab 9 (Merolla Tr.) at 52-53.

II. TARIFF ACTIONS DESIGNED TO ATTRACT FULL CONTAINERLOAD BUSINESS TO THE CARRIERS ARE NOT UNREASONABLE OR OTHERWISE UNLAWFUL.

Although, as shown above, the record evidence completely refutes DHX's claim that the defendants' actions prevented it from competing for FCL business, DHX appears also to advance the alternative argument that those actions reduced the revenues and profits that DHX otherwise would have enjoyed.⁴⁷ ¶

¶ strongly suggests otherwise. More importantly, however, even if it were true, there is nothing unreasonable or otherwise unlawful about carriers taking actions having the purpose and effect of attracting more business to themselves, even if those actions reduce the revenues or profits of their competitors. That is the essence of competition.

The Board has frequently recognized that freight forwarders are not only customers but also competitors of the carriers whose services they use. It did so in its December 21, 2001 decision in this very case, when it stated: "In its capacity as a carrier, DHX competes with defendants for traffic that defendants themselves could solicit." *December 21, 2001 Decision* at 3.⁴⁸ In his deposition, Mr. Dechter acknowledged that DHX competes with the ocean carriers, and does so "predominantly in the full-container-load area."⁴⁹

⁴⁷ Cf. Dechter V.S. (Highly Confidential version) at ¶¶ 60-64, discussing DHX's calculation of its alleged damages.

⁴⁸ In that decision, the Board cited its earlier decision exempting freight forwarders in the noncontiguous domestic trades from rate reasonableness and tariff filing requirements in order to make them more competitive. *Exemption of Freight Forwarders In the Noncontiguous Domestic Trade From Rate Reasonableness and Tariff Filing Requirements*, 2 S.T.B. 48, 50 (1997).

⁴⁹ Tab 2 (Dechter Tr.) at 31.

In this case, as Paul Stevens, then Matson's Executive Vice President, explained in his deposition, the tariff actions taken by Matson that DHX complains about were simply designed to II

II See Tab 19 (Stevens Tr.) at 23-30 and 48-54; *see also* Tab 1 (Stevens V.S.) at 6-8. DHX's own submission and other record evidence amply confirm Mr. Stevens' testimony. In his verified statement, Mr. Dechter asserts that the growth of DHX's business 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."⁵⁰ He also describes an example of how DHX used Matson's overflow rule to obtain the business of one FCL customer, Baxter Healthcare, and even states his 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."⁵¹ *See also* Dechter V.S. ¶ 36, alleging a steady decline in Matson's operating profits as a percentage of sales between 1993 and 1996.

II

⁵⁰ Dechter V.S. at ¶ 5. *See also* Tab 2 (Dechter Tr.) at 102: "Well, DHX had established a huge cost advantage by having tariff expertise and doing things nobody else could do."

⁵¹ Dechter V.S. ¶¶ 23-25. Similarly, in his deposition, Mr. Dechter candidly stated that the savings DHX was able to derive from its use of the overflow rule and other tariff provisions was "money that – instead of going into Matson's pockets, was going into ours." Tab 2 (Dechter Tr.) at 104-105.

II

There is nothing unreasonable or unlawful in carriers making a competitive response to actions by their competitors in an effort to retain or recapture business that both are able to solicit. The purpose of ICCTA is not to protect carriers or other sellers of transportation from competition from each other. On the contrary, it is the central policy of the statute and the Board to encourage and promote competition among sellers of transportation services. Accordingly, the Board, the ICC and the courts have often noted that the agency's proper concern is with harm to competition, not harm to specific competitors,⁵² and they have consistently rejected claims by carriers that rate or other tariff actions by their competitors are unreasonable, "predatory," or "destructive" because they harm the complainant, exclude the complainant from participating or give the defendant a competitive advantage.

In *Adirondack Transit Lines v. Greyhound Lines, Inc.*, ICC No. 40745, 1994 MCC Lexis 114 (decision served December 2, 1994), for example, a number of bus companies

⁵² See, e.g., *Blackstone Capital Partners, L.P.—Control Exemption—CNW Corp. and Chicago and North Western Transp. Co.*, 5 I.C.C.2d 1015, 1020 (1989); *Brooke Group, Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 224-225 (1993).

challenged as unreasonable discount tariffs filed by Greyhound Lines that, contrary to longstanding industry practice, excluded the complainants from participating in the fares on an interline basis. The ICC did not dispute that Greyhound controlled 75 percent of the market and was the only nationwide carrier, and it acknowledged that “these tariffs are designed to permit Greyhound to keep traffic on its own buses (rather than its competitors’ buses) for the routes that it serves,” and that “Greyhound’s tariffs may disadvantage Greyhound’s competitors.” 1994 MCC Lexis 114 at *24. The ICC nevertheless rejected the claim that the tariffs were anticompetitive or otherwise unreasonable, and it held that it would not “stifle” Greyhound’s efforts to attract more business to itself “merely to protect the established market roles of existing competitors.” *Id.* at *27. Similarly, in *Investigation of Motor Carrier Collective Ratemaking and Related Practices and Procedures*, 7 I.C.C.2d 388 (1991), the ICC observed: “[T]he nature of free market pricing is not predatory” (*id.* at 429, n. 149) and “we have specifically rejected the contention that rate reductions to gain competitive advantages constitute destructive competitive practices.” *Id.* at 432, n. 166 (citing *Multiple Tender Allowance, Transamerican*, 352 I.C.C. 825 (1976)).

DHX, on the other hand, cites no decision or other authority remotely suggesting that the actions taken by Matson to recapture some of its historic FCL business are unreasonable or unlawful. On the contrary, DHX acknowledges that the Board’s precedents establish that the Board’s concern is with protecting competition, not individual competitors. *See Stmt. of Facts And Law* at 7, citing *Blackstone Capital Partners L.P. –Control Exemption—CNW Corp. and Chicago and North Western Transp. Co.*, 5 I.C.C. 1015, 1020 (1989).

In sum, in this case the evidence refutes the claim that Matson's actions precluded DHX from competing for FCL or any other any business and the claim that those actions were undertaken specifically to harm DHX or other freight forwarders. That they were taken to recapture business for Matson does not make them unlawful.

III. THE CARRIERS' DECLINING TO PROVIDE DHX WITH ALL RATES PROVIDED TO OTHER SHIPPERS IS NOT UNREASONABLE OR OTHERWISE UNLAWFUL.

One of the main themes permeating DHX's Amended Complaint and its evidentiary submissions is the complaint that Matson and Sea-Land make available to other shippers rates that they do not make available to DHX and that are more favorable than the rates offered to DHX.⁵³ One particular iteration of this theme is DHX's complaint that the carriers have established certain favorable rates — in Matson's case, in tariff items in Matson's Tariff 2034 — that by their terms are shipper-specific; that is, they apply only to shipments for a certain named shipper, or shipments originating at or destined for a particular address or ZIP code, or shipments in which the shipper has an ownership interest in the cargo. Indeed, much of DHX's asserted damage calculations are based on what DHX claims to be the difference between what it asserts it paid for the shipment of certain cargo and the amount DHX claims it would have paid if it had been permitted to use what DHX believes is a more favorable rate available to someone else. *See, e.g.,* Verified Statement of Paul B. Chun.⁵⁴ Another variation

⁵³ *See, e.g.,* Stmt. Of Facts And Law at 18; Dechter V.S. at ¶¶ 14, 30, 49, 50, and 56; Merolla V.S. at pp. 3-4 and numbered ¶¶ 10 and 13; Griggs V.S. at ¶¶ 3-4; Burns V.S. at p. 6.

⁵⁴ The greatest flaw in Mr. Chun's "study" is, as will be discussed in detail in this section of the argument, the conceptual flaw in the theory underlying it—that DHX is entitled to the difference between the rate it allegedly paid for a particular shipment and a different, lower rate that may have been available to another shipper for a similar movement. Because, as will

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of this theme is the assertion that Matson was specifically seeking to disadvantage DHX by taking action to *lower* certain rates that allegedly would benefit DHX's forwarder competitors, but not DHX.⁵⁵

Thus, the essential nature of much of what DHX is claiming in this case boils down to a simple claim of discrimination.⁵⁶ The necessary assumption underlying DHX's argument is that the carriers are not permitted to offer different rates or terms to different customers for similar service. DHX's view, apparently, is that the law compels Matson, in effect, to grant DHX "most-favored nation" status — in other words, that DHX is legally entitled to ship

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be discussed, such distinctions among rates offered to different shippers are not unlawful, DHX has suffered no legal harm, and the difference between the two rates is not an appropriate measure of any compensable damage. Moreover, even if the underlying theory were correct, Mr. Chun's "study" is so facially deficient as a factual matter as to have no probative evidentiary value whatsoever. For example, for the literally tens of thousands of individual containers that Mr. Chun purports to identify as the subject of his "study," nowhere are the contents of those containers identified. Thus, there is no way to confirm the rate item or items under which those containers were shipped or the alleged "cost" that DHX paid, nor is there any way to confirm that the containers contained goods that conform with the type of goods to which the allegedly more favorable rate item would apply. The study suffers from other significant deficiencies and errors as well. For example, nowhere does Mr. Chun explain how he arrived at the sum by which he arbitrarily "adjusted" the rates Item 2200 of Tariff 2034 (see *Chun V.S.* at ¶ 28); indeed, that such an "adjustment" was necessary itself indicates that the rates Mr. Chun purports to compare do not, in fact, cover comparable movements. Another flaw is the apparent double-counting of wharfage charges in his damage calculation: In Mr. Chun's "Claims Summary Schedule," (in which damages allegedly attributable to Matson are shown as the sum of Mr. Chun's Schedules 1 through 4 and 9 through 12), the sums listed for Schedules 1 through 4 include wharfage charges that are counted again in the amounts shown for Schedules 9 through 12. In sum, both the theory and execution of this "study" are fundamentally flawed and the Board should disregard it.

⁵⁵ See *Dechter V.S.* at ¶ 31.

⁵⁶ See, e.g., *Dechter V.S.* at ¶ 30 (complaining that "[i]n 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 the rates available to DHX — for moving the same or similar type of cargo.")

goods under rates and terms that are no less favorable than the “best” rates and terms given to any other Matson customer for similar service.

It is highly doubtful that the Matson tariff provisions assailed by DHX would have been found unlawful even prior to ICCTA. But the Board need not address that question, because ICCTA eliminated any possible legal basis for DHX’s discrimination claims, as the Board has squarely held in this and other cases.

Prior to ICCTA, 49 U.S.C. § 10741 prohibited “unreasonable discrimination” by common carriers providing certain transportation under ICC jurisdiction. The ICC, however, had specifically held that motor carriers could publish tariffs containing rates applicable only to named shippers and receivers or to specific addresses.⁵⁷ Such tariff provisions were common, and the ICC held that they did not necessarily constitute unreasonable discrimination.⁵⁸ Furthermore, former § 10741(b), which prohibited “unreasonable discrimination” with respect to joint motor-water transportation in the noncontiguous domestic trades, expressly provided that “subject to subsection (c) of this section, this subsection does not apply to discrimination against the traffic of another carrier providing transportation by any mode.” Inasmuch as freight forwarders are deemed to be “carriers” as well as shippers,⁵⁹ it would appear that unreasonable discrimination against the traffic of a freight forwarder was not prohibited even before ICCTA.

⁵⁷ See *Rates for a Named Shipper or Receiver*, 1984 MCC LEXIS 708 (Feb. 17, 1984) (“*Named Shipper*”) and *Pet. For Declar. Order – Discounts and Customer Account Codes*, 1991 MCC LEXIS 136 (Aug. 12, 1991) (“*Discount Codes*”).

⁵⁸ *Named Shipper* at 11; *Discount Codes* at 13-15.

⁵⁹ See, e.g., *December 21, 2001 Decision* at 3.

In any event, however, in ICCTA, which made all water transportation in the noncontiguous domestic trades subject to the STB's jurisdiction, Congress specifically eliminated the unreasonable discrimination prohibition as to all common carriers except railroads. See 49 U.S.C.A. § 10741 (West 1997 and Supp. 2003).⁶⁰ ICCTA's repeal of the discrimination provision with respect to water carriers took effect on January 1, 1996 – long before the earliest possible reach of the applicable 2-year limitation period in this case.⁶¹

The STB on more than one occasion has emphasized the repeal of the “discrimination” prohibition as to water carriers, including in this very proceeding. Moreover, the Board has expressly held that, in light of that repeal, alleged discrimination cannot form the basis of an unreasonable rate or practice claim. In *GovGuam* (served November 15, 2001), Guam argued that, despite the repeal of the discrimination prohibition vis-à-vis water carriers, “the rate reasonableness requirement in section 13701(a) encompasses discrimination, i.e., that a rate, classification, rule or practice can be unreasonable because it is discriminatory.” *Id.* at 5. But the STB squarely rejected that argument:

GovGuam's claim that “reasonableness” embraces a prohibition against discrimination is not tenable, given the fact that the pre-ICCTA provision specifically permitting claims of discrimination was eliminated for water carriers. To import the repealed provision into another section of the statute, as GovGuam would do, would plainly violate the Congressional intent. Thus, GovGuam could not prevail simply by showing that different shippers pay

⁶⁰ The legislative history of ICCTA indicates that Congress repealed the discrimination provision because it agreed with the ICC and the Department of Transportation that the provision tended to equalize rates and reduce competition between carriers. See U.S. Interstate Commerce Commission, *Study of Regulatory Responsibilities* (Oct. 24, 1994) at 30-31; U.S. Department of Transportation, *Report on the Functions of the Interstate Commerce Commission* (July 1995) at 62.

⁶¹ See 49 U.S.C. § 14705(c) and *GovGuam*, decision served November 15, 2001 at 5-7. For a more detailed discussion of the applicable limitation period, see Section V.E., below.

different rates for arguable similar services, and this aspect of its complaint will be dismissed.

*Id.*⁶² Further, in granting Sea-Land's motion to dismiss Part III of the amended complaint in this proceeding, the Board squarely reiterated that "the discrimination remedy was repealed as to this trade in ICCTA." *May 14, 2003 Decision* at 8. As a result, insofar as DHX attempts to "compare rates that one shipper pays to a carrier with those paid by another shipper to the same carrier," the Board held "DHX *cannot possibly prevail* in its argument that the assailed rates are unreasonable even if it did show that different shippers pay different rates for arguably different services." *Id.* (emphasis supplied).

Here, the fundamental claim of unreasonableness that DHX repeatedly alleges is precisely what the STB in *GovGuam*, and again in this case, held cannot succeed: a bare complaint that Matson has made available to DHX rates and terms that DHX views as less favorable than those used by other shippers, including, in some instances, DHX's forwarder competitors. But under the law, for a water carrier to establish different rates and terms tailored to different shippers with respect to similar services is not unlawful, and cannot form the basis of an unreasonable rate or practices case.

Additionally, as a factual matter, in repeatedly complaining that DHX cannot make use of certain rates in Matson's Tariff 2034 that are restricted to other specific shippers, DHX

⁶² By the same token, there is no merit to DHX's apparent attempt to import the repealed discrimination prohibition into the National Transportation Policy. See *Stmt. Of Facts And Law* at 3-4. Furthermore, provisions of the National Transportation Policy do not themselves define lawful and unlawful conduct. *DeBruce Grain, Inc. v. Union Pacific R.R.*, 983 F. Supp. 1280, 1284 (W.D. Mo. 1997).

ignores the fact that DHX itself is a significant beneficiary of shipper-specific tariff items that it has asked Matson to promulgate.⁶³

In sum, there is simply no foundation in law or fact for DHX's assertions that it is entitled to the benefit of any particular rate or rates available to any other shipper or to damages based on the difference between any such rates and rates used by DHX.

IV. MATSON'S INDIVIDUAL UNDERSTANDINGS WITH CERTAIN SHIPPERS ARE LAWFUL, AND MATSON HAS NOT VIOLATED TARIFF FILING REQUIREMENTS.

Another major set of contentions of DHX has to do with various written memoranda, referred to collectively as memoranda of understanding, or MOUs, between Matson and certain individual shippers. DHX appears to assert, first, that, to the extent such MOUs contemplate rates based on a shipper's commitment of a particular minimum volume or percentage of traffic, they are unlawful *per se*. See Stmt. Of Facts and Law at 4-5. DHX also claims that with respect to tariff items published in Matson's Tariff 2034 that pertain to the arrangements reflected in particular MOUs, those tariff items violate the applicable tariff publication requirements because they allegedly do not include certain provisions that may be reflected in the corresponding MOU, such a volume provision.⁶⁴

⁶³ Peter P. Wilson, Matson's then-General Manager of Pricing, testified on July 11, 2003 that in the last few years, he had "published a relatively large number of [tariff] items specifically for the benefit of DHX, the last one being a week ago." Mr. Wilson further testified that since 1996, Matson had published, in his estimation, "between 50 and 75 [tariff] items for the benefit of DHX" and at its request. Tab 12 (Wilson Tr.) at 120. As discussed above, the record contains numerous examples of Matson's agreement to rates and other tariff actions that DHX requested for its specific benefit. See Tab 10; Tab 18. []

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⁶⁴ DHX appears to infer that every item in Matson's Tariff 2034 that is limited by shipper name, street address, ZIP codes, or the like, is linked to a written MOU. See *Dechter V.S.* at (continued on next page...)

Both contentions are without merit, as discussed below. As an initial matter, however, it is clear from DHX's submission that DHX's real objection to Matson's volume-based MOUs is not that Matson has entered into them, nor is it that Matson has not published all the terms in its tariffs. DHX's real objection is that Matson has declined to enter into such volume-incentivized agreements with DHX. This is apparent from the *relief* DHX seeks: namely, its "request [that] the Board order the carriers to give DHX a volume incentive or loyalty contract . . . at rates better than those smaller customers who currently enjoy better full containerload rates than DHX does." Dechter V.S. at ¶ 59.⁶⁵ Thus, it is clear that DHX's objections concerning Matson's MOUs are merely a variant of its discrimination claim, which, as just discussed, is without legal foundation.

A. ICCTA Expressly Authorizes Volume Based Agreements And Rates

Like its legally baseless claims of discrimination, DHX's assertion (Stmt. Of Facts and Law at 4-5) that volume incentives are unlawful *per se* is grounded in an obsolete, pre-ICCTA view of the applicable legal framework. DHX's claim appears to rely entirely on a case involving rail rates, *Great Lakes Ship Owners Ass'n v. Chicago & N.W. Ry. Co.*, 337 I.C.C. 287 (1970), dating from a time that long pre-dates not only ICCTA but the Staggers Act as well, when railroads' rates were heavily regulated and regulated carriers required "protection"

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¶ 16 (asserting that "MOUs are the only explanation" for such items). II

II

⁶⁵ See also Dechter V.S. at ¶ 15, where Mr. Dechter complains that by "not giving us [DHX] a rate incentivized volume agreement," the carriers were "not doing for DHX what they were doing for other shippers."

from “destructive competition.” *Id.* at 293.

More importantly, DHX ignores that ICCTA expressly authorizes water carriers performing transportation subject to the Board’s jurisdiction to enter into agreements with individual shippers (other than for the movement of certain household goods) “to provide specified services under specified rates and conditions.” 49 U.S.C. § 14101(b)(1).⁶⁶ Nothing in that provision prohibits shippers and carriers from taking traffic volume into account when negotiating rates or from establishing rates based on expectations regarding traffic volume. Furthermore, ICCTA also expressly authorizes such carriers to establish common carrier rates that “vary with the volume of cargo offered over a specified period of time.” 49 U.S.C. § 13702(b)(4).

B. Matson Has Not Violated Any Tariff Publication Requirement.

DHX generally asserts that certain shipper-specific items in its Tariff 2034 violate the tariff publication requirements of 49 U.S.C. § 13702(b)(2) and 49 C.F.R. § 1312.3(a).

DHX’s specific complaint appears to be that certain items in Tariff 2034 [I

] are deficient because they do not disclose the volume level associated with those rates. *See* Stmt. Of Facts And Law at 8. DHX’s complaint is misplaced for several reasons.

⁶⁶ In relevant part, § 14101(b) provides that “[a] carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into a contract with a shipper, other than for the movement of household goods described in section 13102(1)(A), to provide specified services under specified rates and conditions. . . .”

First, DHX fails to recognize that, as discussed above, under 49 U.S.C. § 14101(b)(1) carriers and shippers are permitted to enter into individualized agreements, and it is clear from the legislative history of ICCTA that Congress intended that the terms of such agreements need not be published in the carriers' tariffs. The Conference Report on ICCTA states, with respect to § 14101, that "[t]he Conference adopts the Senate provision. Confidential contracts are currently allowed by water carriers in the noncontiguous domestic trade with Alaska. This subsection expands the trades in which confidential contracts may be used to include all of the noncontiguous domestic trades." H. R. Rep. No. 104-422 at 215.⁶⁷

Furthermore, in a rulemaking in 1997 establishing tariff-filing regulations for water carriers in the noncontiguous domestic trades, the STB stated:

We agree with Trailer Bridge that the tariff-filing requirement does not extend to contract carriage, and we will modify the proposed regulation to clarify this point. *See*, new section 1312.2(a).

Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property By or With A Water Carrier in the Noncontiguous Domestic Trade, Ex Parte 618, 2 S.T.B. 188, 189 (1997). The referenced 49 C.F.R. § 1312.2(a) of the regulations specifically excepts from tariff filing requirements "transportation or service described in § 1312.1(b)," which in turn provides: "The provisions of this part do not apply to: (1) Any transportation or service provided by a carrier pursuant to 49 U.S.C. 14101(b)"

⁶⁷ A related claim by DHX is that the carriers have committed the unreasonable practice of "deceit" by not disclosing to DHX that they may have entered into volume-dependent rates with other shippers. *See* Stmt. Of Facts and Law at 9. But it cannot be an unreasonable practice to decline to disclose to a competitor that which Congress has said can be kept confidential.

In short, if transportation is being provided pursuant to agreement with a shipper, the tariff filing requirements of the statute and the regulations simply do not apply. There is nothing in the statute or regulation that *prohibits* a carrier that is providing transportation pursuant to the terms of an agreement from also publishing the applicable rate in a shipper-specific tariff item, or from incorporating tariff provisions in the agreement. Nor does the statute require or imply that, if the carrier elects to publish a shipper's specific, negotiated rate in one of its tariffs, it must disclose every detail of the arrangement in the tariff as well. Any such implication would be contrary to Congress' clear intent that the terms of negotiated agreements may be kept confidential.

DHX relies on *Illinois Cent. Gulf R.R. Co.—Security Deposits—Payment of Demurrage Charges*, 358 I.C.C. 312 (1978) for the proposition that, in DHX's words, "[c]ollateral agreements with shippers, even if unilaterally set by the carrier must be filed." Stmt. of Facts and Law at 9. But rather than supporting DHX's argument, the *Illinois Cent. Gulf* case—a case preceding both the Staggers Act and ICCTA—demonstrates why DHX's complaint is baseless. The tariff publication requirement has its roots in the pre-Staggers, pre-ICCTA regulatory environment in which carriers were not permitted to enter into individualized transportation agreements or treat different shippers differently with respect to similar movements. As the ICC held in *Illinois Cent. Gulf*, a case concerning whether the terms of a certain security deposit program had to be published in a carrier's tariff,

[t]he purpose of statutory requirements that tariffs containing all rates and charges be filed and published is to *shut out opportunities for discrimination* and favoritism. . . . Carriers should not be allowed to strictly enforce security deposit programs against certain shippers, while absolving other favored shippers. Therefore, tariff rules must be published, and open for public inspection to insure that any security deposit regulation instituted is enforced

equitably with respect to all shippers which fail to pay lawful demurrage charges.

Illinois Cent. Gulf R.R. Co.—Security Deposits—Payment of Demurrage Charges, 358

I.C.C. 312, ____ (1978). Thus, as the ICC indicated, the essential purpose of the publication requirement was to prevent a carrier from discriminating among its customers to which a published rate would apply. But that purpose no longer applies here, since ICCTA repealed the former prohibition against discrimination by water carriers. In short, water carriers in the noncontiguous domestic trades are now allowed to treat different shippers differently with respect to similar service. Indeed, the very tariff provisions that DHX complains of are ones that have been negotiated between Matson and certain specific shippers, and are, by their terms, limited in their application (either by shipper name, origin or destination address or ZIP code, *etc.*) to the specific shipper and traffic with respect to which the rates were negotiated. Thus, DHX's complaint that Matson allegedly has not chosen to publish every provision pertaining to such rates is a meaningless one, since, by their express terms, DHX would not be entitled to the benefit of those rates anyway. Neither DHX nor any other shipper is harmed by the absence of a volume provision (or any other provision) in a particular shipper-specific rate item because no shipper other than the one to which the rate applies (and which negotiated the rate with Matson) would be entitled to use that rate item in any event.

V. DHX'S OTHER ALLEGATIONS ARE WITHOUT LEGAL AND OR EVIDENTIARY FOUNDATION.

Sprinkled throughout the documents comprising DHX's initial submission are other miscellaneous assertions regarding actions allegedly taken by Matson or Sea-Land at various times. The scattershot nature of DHX's submission makes it difficult, frankly, to discern which, if any, of these assertions DHX intends to allege constitute specific "unreasonable

practices” by Matson, Sea-Land, or both. In any event, Matson responds below to certain of those assertions that, as best Matson can tell, pertain to Matson. None of DHX’s allegations has any merit.

A. Alleged Discriminatory “Absorption” of Certain Charges.

DHX appears to allege that Matson unreasonably “absorbs” certain charges (specifically, wharfage) in connection with various tariff rate items that are available to other shippers but not DHX, while imposing such charges with respect to tariff items that are available to DHX. DHX asserts that “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.” Stmt. Of Facts and Law at 11.

The premise of DHX’s assertion—that Matson “absorbs” (*i.e.*, does not assess) wharfage charges with respect to items in Matson Tariff 2034—is factually incorrect. Rule 950 of Tariff 2034 states, in relevant part: “All rates in this tariff include wharfage as published in applicable terminal tariffs at ports through which cargo moves.” Tab 15. DHX apparently misunderstands the plain meaning of this language. Matson does not “absorb” wharfage charges with respect to rates published in Tariff 2034; as Rule 950 plainly says, Those rates *include* wharfage, even though the wharfage charge is not separately stated in the tariff.⁶⁸ ¶

⁶⁸ This fact was pointed out to DHX repeatedly in discovery. See Tab 14 (Matson’s responses to DHX Interrogatories 94 and 96); Tab 12 (Wilson Tr.) at 48. Indeed, DHX’s personnel themselves appear to understand that the items in Tariff 2034 include wharfage; DHX’s

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II

Thus, there is no “discriminatory absorption” of wharfage charges by Matson in favor of shippers using rate items in Tariff 2034 versus those using rate items in other tariffs in which wharfage charges are separately stated. Moreover, as discussed at length in Section III above, even if Matson did treat different shippers differently in assessing wharfage, that bare fact alone would not be sufficient to form the basis for an unreasonable practice claim, as the law permits carriers to treat different shippers differently with respect to similar movements.

B. “Non-Transportation Factor Restrictions.”

DHX asserts that it is entitled to damages “for the improper non-transportation factor restrictions used by both Matson and Sea-Land/CSX as an unreasonable practice—these restrictions were to keep forwarders ‘out’ of the item and not for any other reason.” Stmt. Of Facts and Law at 12.

DHX’s submission does not clearly explain what is meant by “non-transportation factors,” but what DHX appears to be referring to is that Matson, in Tariff 2034, has negotiated and published a number of rate items the application of which is limited to a specific

(...continued from previous page)

witness, Ralph Merolla, testified in his deposition that [I
II Tab 9 (Merolla Tr.) at 32.

shipper, either by expressly naming the shipper, or limiting the item to shipments having a specific origin or destination address or shipments in which the shipper has an ownership interest. Thus, the complaint about “non-transportation factors” appears simply to be another manifestation, in different words, of DHX’s complaint that Matson has published certain rates for the benefit of specific shippers and that those rates are not open to DHX. But as already discussed at length in Section III, under ICCTA, carriers are expressly permitted to negotiate different rates with different shippers; there is simply nothing unlawful about it. Moreover, as a factual matter, DHX’s complaint rings hollow because, as already pointed out, Matson on many occasions has done for DHX precisely what DHX complains about Matson doing for others: established a particular rate item for DHX’s benefit and at DHX’s request that by its terms is limited to DHX’s use. See Tab 10; Tab 12 (Wilson Tr.) at 120; Tab 18; Tab 19 (Stevens Tr.) at 131-132; and Tab 21.

C. Allegations Regarding Rate Increases By Matson

DHX’s submission appears not to include any actual claim (much less any evidence proving) that any specific Matson rate level or rate increase is unreasonable. It does contain a number of scattered references to alleged rate increases; *see, e.g.*, Stmt. of Facts and Law at 16-17; Dechter V.S. at ¶ 40 (asserting that “for commodities based forwarders, the per hundred weight rates went up 18.65% between September 1998 and April 2002”); but none are specific enough even to comprise a valid assertion of a claim of an unreasonable rate level or increase, much less prove one.⁶⁹ The most detailed references to individual Matson rate

⁶⁹ There are also a number of references to alleged increases in the minimum charge for overflow containers, *see, e.g.*, Dechter V.S. at ¶ 41; Griggs V.S. at ¶ 14. But the Board, in its decision served December 21, 2001, already has held that, for purposes of a rate

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changes appear in DHX's Verified Statement of Sean Burns, where Mr. Burns purports to summarize a series of increases in the rates in (1) Item 185 of Matson Tariff 14-F; (2) Item 3000 of Matson Tariff 14-F; and (3) Item 7000 of Matson Tariff 2034-E. That analysis, however, appears not to be for the purpose of challenging the reasonableness of the magnitude of Matson's rates or rate changes *per se*, but essentially for the purpose of asserting that increases in the rates allegedly available to freight forwarders such as DHX are "disproportionate" to increases in other rates negotiated with specific shippers. See Burns V.S. ¶¶ 14 and 17; Dechter V.S. at ¶¶ 43 and 49. In other words, it is just another variation of DHX's meritless "discrimination" claim.

Mr. Burns does state, in paragraph 15 of his verified statement, that Matson's "FAK and R&GM rates [*i.e.*, the rates in Item 3000 of Tariff 14-F and Item 7000 of Tariff 2034-E, respectively] are so high that no forwarder could consider attempting to handle any full containerload cargoes under such rates." To the extent that this bald statement conceivably could be construed as asserting an unreasonable rate claim as to those two specific rates, DHX does not *prove* such a claim; indeed, the evidence conclusively refutes it. According to DHX, what has caused those rates to be "so high" are the allegedly "disproportionate" increases in those rates over the past several years. DHX never claims, much less does it prove, that the base rates in effect before the allegedly "disproportionate" increases went into effect were unreasonably high. An examination, however, of the supposedly disproportionate increases

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reasonableness assessment, overflow minimums "are not separate rates, but are components of the rates applicable to multi-container shipments." *December 21, 2001 Decision* at 5. Thus, said the Board, "[t]o the extent that DHX seeks to challenge overflow rates as if they are separate rates, its complaint cannot succeed." *Id.*

shows that every one of them is clearly within the statutory Zone Of Reasonableness ("ZOR") under 49 U.S.C. § 13701(d).⁷⁰ Attached at Tab 16 are tables that set forth, for each of the increases that Mr. Burns references with respect to Items 185 and 3000 of Tariff 14-F and Item 7000 of Tariff 2034-E, (1) the date of the increase, (2) the rate that resulted from each increase, (3) the rate in effect 12 months prior to the increase; (4) the percentage change in the rate over that 12-month period; and (5) the ZOR, adjusted as applicable at the time of the increase. The endnotes following those tables show, in each case, how the adjusted ZOR was calculated. As the tables at Tab 16 show, every increase is within the adjusted ZOR, and thus conclusively reasonable.⁷¹

⁷⁰ 49 U.S.C. § 13701(d) provides, in relevant part:

(d) Zone of reasonableness.—

(1) In general.—For purposes of this section, a rate or division of a motor carrier for service in noncontiguous domestic trade or water carrier for port-to-port service in that trade is reasonable if the aggregate of increases and decreases in any such rate or division is not more than 7.5 percent above, or more than 10 percent below, the rate or division in effect 1 year before the effective date of the proposed rate or division.

(2) Adjustments to the zone.—The percentage specified in paragraph (1) shall be increased or decreased, as the case may be, by the percentage change in the Producers Price Index, as published by the Department of Labor, that has occurred during the most recent 1-year period before the date the rate or division in question first took effect.

⁷¹ Moreover, DHX's protests that Matson's alleged "disproportionate" rate increases have precluded DHX from competing for FCL business are belied by its own data. II

D. Alleged Mislabeling of Rates

DHX appears to assert that Matson and Sea-Land have mislabeled certain tariff items for the purpose of deceiving shippers. At page 10 of its Statement of Facts And Law, DHX alleges that “[b]oth defendants labeled port-to-port rates as ‘proportionals’ even though there was no through route involved nor were there any connecting carriers. . . . The defendant witnesses each testified that the proportional was published for the convenience of the shipper and therefor [sic] no through route arrangements with any connecting carrier existed.” *See also* Stmt. Of Facts And Law at 9 (“Matson’s tariff purports to contain proportional rates but there are no routings nor carriers identified for such the [sic] proportional rates.”) and 18 (“The tariffs contain mis-labeling of port rates as proportional rates . . .”).

It is unclear exactly what tariff items DHX is referring to, but, as to Matson, it appears that DHX may be referring to the 6000 series items in Tariff 2034 or Item 7000 in Tariff 2034, or both. *See* V.S. of DHX witness Sean Burns at ¶13 (referring to the series 6000 items) and Stmt. Of Facts and Law at 14 (citing to deposition testimony of Matson witness Peter P. Wilson pertaining to Item 7000).

Significantly, DHX does not allege, much less prove, that it has ever actually been misled by the provisions it claims are misleading, or that it has been harmed by the alleged “mis-labeling” of certain tariff items.

In any event, moreover, the rates in those items are not mislabeled or otherwise misleading. Indeed, the heading to Section 5 of Tariff 2034, which includes all 6000 series items and Item 7000, clearly states: “Rates are proportional and apply only on shipments having a prior or subsequent movement by a motor carrier and apply from origin CY and to destination CY only.” The tariff thus makes clear that the rates published in those items are,

as it says, proportional: They pertain only to the water portion (*i.e.*, the origin Container Yard to destination Container Yard) of a movement that also, in order to make use of the rate, must include a motor component. There is no motor route specified in these items because, as the description makes clear, the published rate does not include the motor carrier portion of the transportation, only the water portion.⁷² As Matson witness Peter P. Wilson explained in deposition, the motor route designation is “left blank intentionally” because “[t]here’s no motor carrier involved” in the published rate, which covers the water portion only. Tab 12 (Wilson Tr.) at 46-47.⁷³

Not only are these tariff items not “mis-labeled” or otherwise misleading, the reason for them is straightforward and reasonable as well. As Matson witness David L. Hoppes explained in deposition, such rates were established in Tariff 2034 as an accommodation to shippers that wished to have the benefit of negotiated proportional rates but perform the motor portion of the movements themselves. Publishing such a rate would permit those shippers to perform their own motor carriage and pay Matson only for the water portion of the movement, rather than having to go through the redundant process of negotiating and paying Matson a rate for the entire through movement (including the motor portion that the shipper itself performed) only to have Matson repay the motor component of the rate back again to the shipper. See Tab

⁷² Cf. 49 U.S.C. § 13702, which provides that a water carrier in noncontiguous domestic trade is not required to state separately or reveal in tariff filings the inland portion of a joint through rate.

⁷³ Indeed, one could argue that, contrary to DHX’s apparent claim, those tariff items would be rendered misleading if motor routes *were* listed, since that might tend to suggest to a reader, incorrectly, that the motor component of the movement is included in the published rate.

17 (Hoppes Tr.) at 82-83. These items, in short, far from being unreasonable, are an example of Matson's responsiveness to its customers' needs and wishes.

E. Allegations of Conduct Outside The Two-Year Limitation Period.

Under 49 U.S.C. § 14705(c), a complaint for damages arising from alleged unreasonable rates or practices must be filed within two years after the claim accrues. *See GovGuam*, decision served November 15, 2001, at 5-7. That limitation is jurisdictional. *See id.* at 7 (if an unreasonable rate complaint succeeds on the merits, "reparations *may not be awarded* for transportation provided more than 2 years before the complaint was filed." (emphasis supplied)); *Ametek, Inc.—Petition For Declaratory Order; Ametek, Inc. v. Panther Valley R.R. Corp.*, ICC No. 40663 and 40664, 1993 ICC LEXIS 13 at *20 (served January 29, 1993). Thus, as to claims arising outside the limitation period, the statute "not only bars the remedy, but also extinguishes the substantive claim and the corresponding liability," (assuming any ever existed in the first place). *Ametek*, 1993 ICC LEXIS 13 at *20 (discussing the pre-ICCTA § 11706, the predecessor to § 14705).

DHX, in its Statement of Facts and Law and more particularly in the verified statement of one of its witnesses, describes various alleged acts by Matson and its employees dating back more than a decade—indeed, back as early as 1989. *See generally*, *Dechter V.S.* at 7-21. As a factual matter, much of this discussion consists of expressions of "opinion" unsupported by evidence; *see, e.g., id.* at ¶¶ 16, 25, and 35; or unsupported speculation about Matson's "thought processes" or what Matson "believed," *id.* at ¶¶ 33, or, particularly egregiously, reckless accusations of what DHX asserts to be wrongful conduct by a Matson employee but as to which DHX admits it has "no proof." *Id.* at ¶ 26.

As with much of the rest of DHX's submission, it is never quite made clear whether, or the extent to which, these various assertions and speculations are intended to describe actual "unreasonable practices" that DHX contends are actionable against Matson. But what *is* clear, as a matter of law, is that DHX cannot assert claims or seek damages based on alleged unreasonable rates or practices by Matson prior to the applicable two-year limitation period. The limitation period, the ICC has said, serves the important function of "afford[ing] carriers a vital measure of commercial certainty," *South-West R.R. Car Parts Co. v. Missouri Pac. R.R. Co.*, ICC No. 40073, 1988 ICC LEXIS 370 at *7 (December 1, 1988). An unreasonable practice or rate case, therefore, should not serve as a forum for a party to dredge up a litany of perceived slights and wrongs extending back years—indeed, even a decade or more—before the limitation period.

DHX's Initial Complaint, dated September 30, 1999, was filed with the STB on October 1, 1999. Thus, even under the most generous interpretation, DHX cannot assert any claim or seek damages based on alleged acts or omissions occurring before October 1, 1997.

Matson submits, however, that in fact, the relevant two-year cutoff actually is later than that—specifically, April 29, 2000, the date two years before DHX filed its *Amended Complaint* on April 29, 2002. The Board's pleading rules, at 49 C.F.R. § 1111.2, provide that a party may tender an amended complaint asserting causes of action "alleged to have accrued within the statutory period *immediately preceding the date of such tender . . .*" Applying this rule, the ICC rejected the view that amended complaints should relate back to encompass the limitation period preceding the original complaint; permitting such relation back to the original complaint would "defeat the purpose underlying the statute of limitations and our implementing

rule” *South-West R.R. Car Parts Co. v. Missouri Pac. R.R. Co.*, ICC No. 40073, 1988 ICC LEXIS 370 at *6-8 (December 1, 1988).

Applying the rule and policy against “relation back” to the original complaint is particularly important and appropriate in a case, like this one, where the Board has deemed the Initial Complaint “fundamentally flawed” and the Amended Complaint bears no resemblance whatsoever to the original. DHX’s original 1999 complaint, entitled “Petition of DHX, Inc. to Declare Certain Rate Increases Unreasonable,” was a short, nine-page document consisting of 13 numbered paragraphs, the essential subject of which was a challenge to two specific increases in the carriers’ minimum charges for “overflow” containers that took effect, or were to take effect, on September 6, 1998 and October 17, 1999. *See* Initial Complaint, ¶ 6 (“At issue in this petition is the reasonableness of ‘overflow rates’ and recent increases to these rates charged or to be charged by Matson and Sea-Land.”). The Initial Complaint also included, in paragraph 12, a vague reference to “a variety of unreasonable, unfair and destructive practices” described in an affidavit attached to the complaint, which were intended to “place in further perspective, the unreasonableness of the rate increases” DHX sought to challenge. Initial Complaint, ¶ 12.

In a decision served December 21, 2001, the Board held that the Initial Complaint “appear[ed] to misconstrue the law in several respects,” *December 21, 2001 Decision* at 4, and agreed that the complaint was “fundamentally flawed in its attempt to focus on the rates for overflow containers separate from the rates for the lead containers on which they are dependent,” *id.* at 5. In sum, said the Board, any effort by DHX, as reflected in the Initial Complaint, to challenge overflow rates as if they were separate rates “cannot succeed.” *Id.*

Thereafter, in a decision served March 28, 2002, the Board, observing that it was “unclear whether DHX plans to pursue the rate reasonableness challenge contained in the original complaint,” *March 28, 2002 Decision* at 3 n.5, ordered DHX to file an amended complaint that “properly identifies the grounds for action and the relief sought.” *Id.* at 3. The resulting Amended Complaint, filed April 29, 2002, comprises some 48 pages, 16 separate counts, and 266 numbered paragraphs (and many unnumbered ones), and even a cursory comparison of it with the original shows that they bear not the slightest resemblance to one another.

Especially in a case, like this one, involving a “fundamentally flawed” Initial Complaint that failed even to “properly identif[y] the grounds for action and relief sought,” and an Amended Complaint that in both form and substance is unrecognizable as an offspring of the original, there is simply no basis whatsoever for the Board to depart from the well-established rule that the applicable limitation period is to be calculated from the date of the amended complaint, not the original. Thus, in this case, the Board should disregard as untimely any allegations of acts or omissions by Matson or its employees prior to April 29, 2000 that appear to form the basis for, or contribute to, any claim of unreasonable practices or rates on the part of Matson.

CONCLUSION

For the foregoing reasons, each of DHX's claims with respect to Matson is baseless. Matson respectfully asks that the Board so find and dismiss the Amended Complaint with prejudice in its entirety as it pertains to Matson.

Respectfully submitted,



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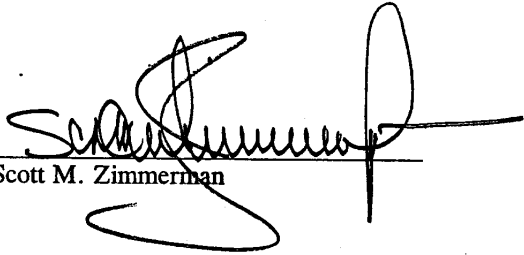
Dated: December 23, 2003

CERTIFICATE OF SERVICE

I certify that on December 23, 2003 true and correct copies of both the Highly Confidential version and the Public version of the "Reply Statement of Matson Navigation Company" were served by hand delivery upon:

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Scott M. Zimmerman

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DHX, Inc.,

Plaintiff,

v.

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

Respondents.

Docket No. WCC-105

VERIFIED STATEMENT OF PAUL E. STEVENS

My name is Paul E. Stevens. I am Senior Vice President for Matson Navigation Company, Inc. ("Matson") and have served in that position since April 27, 1995. My business address is 333 Market Street, San Francisco, California 94105. As Senior Vice President, I am in charge of Matson's sales, marketing, pricing, customer service, and public relations departments. As a result, I am familiar with the development of Matson's pricing structure in general, and in particular the development of Matson's pricing policies with respect to the noncontiguous domestic trade between the continental United States and Hawaii.

I am submitting this verified statement in support of Matson Navigation's Motion to Dismiss Complaint Or, In the Alternative, For Summary Judgment. (Previously in this proceeding I submitted an affidavit in support of Matson's Preliminary Response to DHX's Request to Suspend Rates.) I am personally familiar with the facts stated in this statement and am competent to testify about them.

The purpose of this verified statement is to describe generally the operation of Matson's tariff with respect to weight-rated commodities in the port-to-port U.S./Hawaii trade, the operation of the "overflow rule" in that tariff, which DHX challenges in this case, Matson's rate actions in the U.S./Hawaii trade and how the role of freight forwarders in that trade has evolved from the economically efficient role primarily of consolidating less-than-containerload shipments to one of competing with Matson for full containerload traffic.

Matson is a U.S. flag water carrier which for many years has provided ocean transportation in the so-called "noncontiguous domestic trades," including the trade between ports in the continental United States and ports in Hawaii. Matson provides scheduled service between the mainland United States and Hawaii in container ships. Matson is required to file, and does file, tariffs pertaining to both port-to-port transportation in the U.S./Hawaii trade and intermodal transportation in that trade. The increases in Matson's overflow container minimum charges challenged by DHX are part of Matson's port-to-port tariff. (This statement only discusses Matson's port-to-port tariff because that is the only Matson tariff referenced in DHX's complaint.)

Matson's Tariff

Matson's tariff for port-to-port transportation in the Hawaii trade, known as Tariff 14, establishes hundreds of different rates for different commodities and commodity mixes. Goods carried by Matson are assigned a rate generally in one of two ways: certain commodities are assigned a flat, per-container rate based on the nature of the commodity being shipped (these goods are "commodity-rated" goods and are listed in section 3 of Tariff 14). Others are carried based on the weight of the shipment (typically, a rate is set per 100 pounds of the commodity);

these are known as "weight-rated" goods and are listed in section 2 of Tariff 14. The "overflow rule" at issue here applies only to weight-rated dry cargo shipments.

A typical tariff provision for a weight-rated good identifies the commodity, lists the rate for the commodity (generally in cents per 100 pounds) and lists a minimum weight requirement for a single container of the commodity. Without reference to the so-called "overflow" provision, which I will discuss further below, the minimum container weight listed for the commodity, multiplied by the applicable rate, establishes the minimum charge for a container of the given commodity.

Taking a real world example, for the category "drugs or medicines" (Item No. 185 in section 2 of Tariff 14) the rate for shipment in a standard 40-foot container is 865 cents (i.e., \$8.65) per 100 pounds, and the minimum weight required per container is 34,000 pounds. If a shipper tenders a container consisting of, say, 35,000 pounds of Item 185 goods, the charge for the container would be $350 \times \$8.65$, or \$3,027.50. If, on the other hand, due to the volume of the specific items shipped, it is possible to fit only 30,000 pounds of certain Item 185 goods into a container (i.e., less than the minimum weight set for a container for Item 185 goods) the shipping price for that container would be calculated based not on the actual weight of 30,000 pounds, but on the minimum required weight of 34,000 pounds, i.e., $\$8.65 \times 340$, or \$2,941. In sum, under the straight application of the tariff, the charge applied to a container of a particular commodity is calculated based on either the actual weight of the goods in the container or the listed minimum weight required for that commodity, whichever is greater.

Application of a minimum weight requirement per container is entirely appropriate and economically rational because the "product" that Matson sells is essentially container-sized

blocks of the finite cubic cargo space on its ships. The cubic space occupied by, say, a 24-foot container is the same whether the container is empty or full.

The "Overflow" rule

The essence of DHX's complaint pertains to increases in the minimum charges pertaining to so-called "overflow" cargo, meaning, in essence, the last, partially filled container of a shipper's multi-container shipment. The overflow provision, set out in Rule 31 of Tariff 14, applies only to shipments of weight-rated commodities, and it provides that when a multi-container shipment is tendered, the last, partially filled (or "overflow") container will be assessed at the applicable containerload rate for that commodity (*i.e.*, by multiplying the number of pounds by the rate listed for that item) without regard to the minimum weight requirement, but subject to a flat minimum charge for the container. (The rule sets a different flat minimum charge for 24 foot containers, 40-foot standard containers, and 40-foot "high cube" (*i.e.*, extra tall) containers.)

To illustrate how the rule works, let us return to the example discussed above. Say a shipper of Item 185 drugs and medicines tenders a full 40-foot container containing 36,000 pounds of the Item 185 goods plus a partially full 40-foot standard container containing 30,000 pounds. As illustrated above, under the straight tariff, in the absence of the overflow rule, the partially-full, "overflow" container would be priced at the full-container rate – in this case, \$8.65 x 340, or \$2,941 (the rate times the required minimum weight of 34,000 pounds.) The overflow rule, however, permits the overflow container to move at less than the full-container rate. Under the overflow rule, the applicable charge for the overflow container would be the greater of (1) the rate derived from multiplying the actual weight of the commodity by the per-100 pound rate in the tariff (\$8.65 x 300, or \$2,595) and (2) the flat minimum overflow charge listed in the

overflow rule for a standard 40-foot container (\$2,236). Thus, the charge in this example would be \$2,595 – less than the full container rate of \$2,941 that would apply absent the overflow rule.

To take another example using the same commodity, if the weight of the overflow container were, say, 25,000 pounds rather than 30,000, the charge under the overflow rule would be the greater of (1) the rate derived from multiplying the actual weight of the commodity by the per-100 pound rate in the tariff ($\$8.65 \times 250$, or \$2,162.50) and (2) the minimum charge listed in the overflow rule for a standard 40-foot container (\$2,236). Thus, the applicable charge in that case would be the minimum “overflow” charge of \$2,236 – again, substantially less than the full container rate of \$2,941 that would apply without the overflow rule.

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 provision. 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.

The role of freight forwarders

Freight forwarders have played an important role in facilitating the movement of goods in the U.S.-Hawaii trade. A freight forwarder, such as DHX, is essentially a middleman that holds itself out to the shipping public as a carrier, but does not provide the actual carriage of the goods. Rather, it purchases the transportation from carriers like Matson and Sea-Land that actually perform the underlying carriage of the goods. Thus, in ocean-shipping parlance, freight forwarders are known as “non-vessel operating common carriers,” or NVOCCs, while ocean carriers such as Matson are known as “vessel-operating common carriers, or VOCCs. Because

they hold themselves out as carriers. forwarders such as DHX are both customers of, and competitors with, carriers such as Matson.

Historically, the essential function of freight forwarders such as DHX has been to assist shippers who typically ship less than a full containerload of goods at a time (so-called "less-than-containerload," or "LCL" shippers), by consolidating the less-than-containerload shipments of several shippers, organizing them into full containerloads, and tendering them to an ocean carrier for shipment. The freight forwarder thus would pay the ocean carrier the applicable full container rate for the cargo, and would charge the LCL shippers a rate above that full container rate but less than what the shipper would pay under the ocean carrier's tariff for an LCL shipment. In performing this function, the freight forwarder provides a valuable service to the LCL shipper and to the underlying ocean carrier. The LCL shipper obtains a cost benefit by being able to ship its LCL freight at less than an LCL rate and also an administrative benefit in having a single entity (the freight forwarder) responsible for shepherding a shipment all the way through from origin to destination and handling the associated paperwork. At the same time, the freight forwarder would also provide a valuable service to the underlying ocean carrier, in that the carrier would be freed from performing LCL consolidation itself, thus relieving the carrier of the associated administrative and logistical burdens such as maintenance of the necessary physical plant to perform consolidations (warehouses, etc), manpower, and required paperwork. In short, in acting as LCL consolidators, freight forwarders provide a valuable service to ocean carriers by obviating the need for such carriers to handle and consolidate small shipments.

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.¹ Creation of these new, essentially “artificial” overflow containers permits the forwarder to profit by charging the shipper something less than the full-container rate that otherwise would apply absent the forwarder’s manipulation, but more than the overflow rate that the forwarder must pay the underlying carrier. Because overflow containers generally are priced lower than full ones, manipulating full containers to artificially create more overflow ones works to the economic disadvantage of the underlying ocean carrier.

But unlike the economically beneficial role forwarders play in consolidating less-than-containerload shipments into full containers that the underlying 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’

¹ Other provisions of Matson’s tariffs that contribute to freight forwarders’ ability to manipulate the overflow rule and capture full-containerload business from Matson include the rules permitting the mixing of different commodities in the same container and permitting, with respect to certain pairs of commodities, a normally higher-rated commodity to be carried in a container with a lower-rated one and priced at the lower rate.

goal – to break up efficiently transportable full containers and create extra, space-wasting partially full overflow containers from which they can profit.

Through their manipulation of overflow and other tariff rules, DHX and other freight forwarders have thus become direct competitors of Matson for the business of containerload customers, and have done so to the point that I estimate that approximately 98 percent of the freight bills for shipments containing overflow containers that Matson has issued lately have been issued not to the containerload shippers whose business the rules were intended to attract, but have been issued to and paid by freight forwarders that have manipulated the rules to their own advantage (and to the detriment of efficient usage of cargo space) by obtaining full containerload shipments from various shippers, mixing and manipulating those containers to artificially create additional overflow containers from what otherwise would be full-container shipments carried at full container rates.

Rates in the Hawaii trade

DHX is challenging increases in Matson's overflow minimum charge that took effect on September 6, 1998 and October 17, 1999. Specifically, DHX complains that those increases reduced the differential, on which DHX had built up much of its business, between the rates a shipper would pay for full containers and the charges applicable to overflow containers in multi-container shipments.²

² As explained earlier, the minimum charges for overflow containers have generally been lower than the minimum charges for full containers and were instituted as an accommodation to large, multi-container shippers and to attract and maintain their business. In a few instances, the minimum charge for overflow containers has actually been greater than the minimum charge for full containers; in those cases, the latter charge applies. DHX's complaint clearly does not concern these few instances, since those instances could not have been used by DHX to attract customers or gain a competitive advantage.

DHX is correct that on September 6, 1998, the minimum charges for overflow containers under Rule 31 of Matson's Tariff 14 were increased 10% and that on October 17, 1999, those minimum charges increased 7.5%. DHX is incorrect, however, in regarding those increases as 10% and 7.5% increases in separate, stand-alone "rates" of Matson Navigation Company. The minimum charges for overflow containers set forth in the overflow rule, Rule 31, are only available in connection with shipments of two or more containers. Therefore, the minimum charge applicable to overflow containers is merely a component of the rates applicable to multi-container shipments, and cannot be viewed in isolation from those rates.

The increases in Matson's port-to-port rates in the Hawaii trade that were put into effect on September 6, 1998 and October 17, 1999 did not result in increasing any rate for a multi-container shipment to a level greater than 7.5% from the rate in effect for such a shipment in effect one year prior to those increases. In other words, all [the vast majority] of the multi-container rates in Matson's port-to-port tariffs resulting from the changes effected on September 6, 1998 and October 17, 1999 were within the "Zone of Reasonableness" established by 49 U.S.C. § 13701(d) and were therefore reasonable and lawful.

My conclusion is based on consideration of all the increases in minimum charges for overflow containers and all the general rate increases taken by Matson with respect to Tariff 14 between September 6, 1997 (one year before September 6, 1998) and October 17, 1999.

To provide some perspective, all of the general rate increases and increases in the minimum charge for overflow containers effected by Matson to Tariff 14 since January 1, 1996, when Section 13701(d)'s Zone of Reasonableness first became law, are as follows:

1996

January 28, 1996: 3.8% general rate increase; 3.8% increase in the overflow minimum charge in Rule 31.

1997

February 1, 1997: 3.5% general rate increase; 3.5% increase in the overflow minimum charge.

1998

September 6, 1998: 5% general increase in all weight-rated commodity rates; 10% increase in overflow minimum charge.

1999

February 14, 1999: 2.5% general increase in all weight-rated commodity rates; no increase in overflow minimum charge.

October 17, 1999: no general rate increase; 7.5% increase in overflow minimum charge.

The general increase in weight-rated commodity rates and the increase in the minimum charges for overflow containers made effective on September 6, 1998 did not result in an increase of more than 7.5% in any rate for any multi-container shipment. Consider a two-container shipment containing one full container and one overflow container. If the charge for a full container before September 6, 1998 had been R and if the minimum charge for an overflow container had actually been the same as the full container rate, the rate for the full two-container shipment before September 6, 1998 would have been $2R$. The rate for the same shipment on September 6, 1998 would have been $2.15 R (R + .05R + R + .10R)$, which is exactly 7.5 percent more than the rate in effect one year earlier. In almost all cases, the minimum charge for overflow containers before September 6, 1998 was less than the charge for a full container, and in those cases (the only cases DHX is complaining about), the increase in the rate for two-container shipments would have been less than 7.5 percent, and the increases in the rates for

three or more containers would have been even less. In any event, in no case was the rate for an overflow container more than the rate for a full container, so the increase in rates for multi-container shipments effected on September 6, 1998 would never have been more than 7.5 percent.³

Apart for general rate increases, Matson from time to time makes changes in weight rates for individual commodities or particular movements, both upwards and downwards. DHX's complaint has not challenged any of these individual rate adjustments. I have reviewed all of the changes of this type made since September 6, 1997, in Tariff 14. I have found no case in which, as a result of such individual changes, the rates for multi-container shipments involving overflow containers in effect after the general increases were taken on September 6, 1998 were more than 7.5 percent above the rates for those shipments in effect one year earlier. Accordingly, all of the rates for multi-container shipments involving overflow containers in effect on September 6, 1998 were not more than 7.5 percent above the rates for such shipments in effect one year earlier and were therefore conclusively reasonable under 49 U.S.C. § 13701(d).

Similarly, all of the rates for multi-container shipments involving overflow containers in effect on October 17, 1999 were not more than 7.5 percent above the rates for such shipments in effect one year earlier, and were therefore conclusively reasonable under 49 U.S.C. § 13701(d).

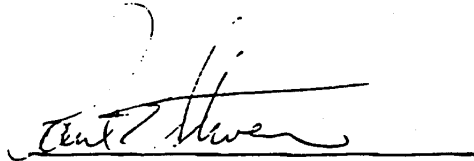
Finally, I wish to reiterate a point made in my earlier verified statement. I am personally familiar with the internal deliberations at Matson that resulted in the increases in the minimum

³ In a few instances, the specified minimum charge for overflow containers in Tariff 14 today are actually higher than the minimum weight-rated rate for a full container, and this may have also been the case on September 6, 1997, but in those instances, the shipper could have not used the overflow rule and simply applied the minimum rate for a full container to its overflow container. In no case, therefore, was the rate for shipments containing overflow shipments more than minimum weight-rated rate applicable to such shipments.

charges for overflow containers made on September 6, 1998 and October 17, 1999. Based on that personal knowledge, I can confirm that those increases were independently effected by Matson. They were not discussed, coordinated with, or planned or set in conjunction with Sea-Land Services or any other carrier, and they were not made pursuant to any agreement among carriers.

I, Paul E. Stevens, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on November 15, 1999.

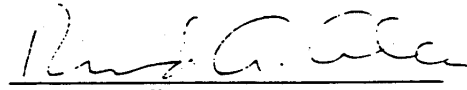
A handwritten signature in cursive script, appearing to read "Paul E. Stevens", is written over a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 1999 a copy of the foregoing Motion To Dismiss Complaint Or. In The Alternative, For Summary Judgment, was served by Federal Express overnight delivery on:

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at 55 Broadway
New York, New York 10006

Robert S. Zuckerman
SEA-LAND SERVICE, INC.
6000 Carnegie Boulevard
Charlotte, North Carolina 28209-4637


Richard A. Allen

ORIGINAL

No. 1005103

Kusar

BEFORE THE
SURFACE TRANSPORTATION BOARD

DHX, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. WCC-105
	)	
MATSON NAVIGATION COMPANY and	)	
SEA-LAND SERVICE, INC.,	)	
	)	
Respondents.	)	

. HIGHLY CONFIDENTIAL

DEPOSITION OF BRADLEY J. DECHTER

Friday, August 1, 2003

Long Beach, California

REPORTED BY: Rhonda Norberg, CSR No. 9265

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DHX, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. WCC-105
	)	
MATSON NAVIGATION COMPANY and	)	
SEA-LAND SERVICE, INC.,	)	
	)	
Respondents.	)	

Deposition of BRADLEY J. DECHTER, a
Witness, taken on behalf of
RESPONDENT CSX LINES, at One World
Trade Center, Suite 1800, Long Beach,
California 90831, commencing at
10:18 a.m., Friday, August 1, 2003,
before Rhonda Norberg, CSR No. 9265,
pursuant to Notice of Taking
Deposition.

2
Contains confidential material. Designated parts not to be used, copied, or disclosed, except as authorized by order of the court.

1 APPEARANCES OF COUNSEL:

2
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19 TROUTMAN SANDERS LLP
20 BY: LEONARD L. FLEISIG
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1 months ago.

2 Q. Do you know what the number was that he
3 developed in that exercise?

4 A. No, I really don't.

5 Q. Was that reduced to writing?

6 A. No, it was not.

7 Q. What about prior periods? Is this something
8 that's done frequently in your operations?

9 A. Periodically, we attempt to get a reading as to
10 what our market share is within the freight forwarding
11 industry; and so, you know, we'll ask who's No. 1, who's
12 No. 2, those type of things.

13 And, you know, we don't know whether the
14 carriers are giving us the truth or not, because the
15 information we get appears to be somewhat different at
16 different times; so we don't put a heck of a lot of
17 stock into it.

18 Q. Well, based on the most recent information you
19 have, who is No. 1?

20 A. We are.

21 Q. And this is in the -- this is for volumes of
22 cargo moved other than by -- under ocean carrier bills,
23 right?

24 In other words, we're talking about
25 intermediaries or forwarders' movements? Is that the

1 universe we're talking about here?

2 A. Yes, yeah, that's the universe.

3 Q. And who's No. 2?

4 A. I believe it's Honolulu Freight Service.

5 Q. What is your estimate, current estimate, of
6 your proportion of the trade, your market share?

7 A. I would estimate it to be roughly 15 percent.

8 Q. And the next highest --

9 A. Honolulu Freight is somewhere between 12 and
10 14 percent, based on what we're able to get from Matson
11 and CSX.

12 Q. How many of these intermediaries, if I can use
13 that term, form the universe of people you regard as
14 your competitors?

15 A. Well, I think right now there are 28 to 30. 28
16 to 30 different forwarding companies, which includes the
17 national motor carriers who ship to Hawaii, includes the
18 specialty guys like the guys that handle primarily Sears
19 business. But 28 to 30, in that range.

20 Q. After Honolulu Express -- did I say that right?

21 A. Honolulu Freight.

22 Q. -- Honolulu Freight, who are the next two
23 competitors, would you say, in terms of market share?

24 A. I would imagine it's Hawaiian Express, and then
25 probably either Hawaiian Ocean Transport, HOT, or Aloha

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[REDACTED]

Q. Do you view yourself as competing with the ocean carriers, Matson and CSX, for the LCL cargo?

MR. RUDE: Can we have a time frame, John?

MR. BENNER: Let's say now. Let's say presently. What I'll try to do is give you a time frame if it's anything other than now.

THE WITNESS: There was an incident -- the answer is -- the answer is yes.

BY MR. BENNER:

Q. And is that a -- is that a general -- I mean -- let me just muse out loud, which is what lawyers tend to do in depositions, but not in court. But since I have the luxury of being here, I'll do it.

A. Okay.

Q. I would have thought that generally, the competition between the OTIs or DHX, if you want to get specific, and the ocean carriers would be predominantly in the full-container-load area.

1 A. It is.

2 However, just last week, CSX Horizon Lines sent
3 out a letter to God only knows who saying that they're
4 now doing LTL referrals in their industry and that, you
5 know, you can call them for an LTL rate, and they will
6 handle the shipment. So now, all of a sudden, this
7 looks to me like they're in the LTL business.

8 This is just last week. I received the letter
9 and said, "Oh, my God. What the hell are these guys
10 doing?" And I called up and I said, "Can I have a copy
11 of whatever you're doing? I'm trying to see what's
12 going on here." And they were supposed to send me a
13 copy of, quote, "the contract," but I haven't received
14 it yet.

15 There was another situation with a large
16 account of ours where -- can I have a word with my
17 counsel?

18 MR. BENNER: Of course. We'll go off the
19 record for a moment.

20 (Brief recess taken.)

21 MR. BENNER: Back on the record.

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 Q. Okay. Now, as I'm sure you're aware, the STB
2 has issued two major decisions in this case. One two or
3 three years ago while, I believe, you had other counsel;
4 and then after that decision was rendered, Mr. Rude was
5 engaged and filed an amended complaint that is the
6 current complaint in the case.

7 A. Uh-huh.

8 Q. Did you review that amended complaint?

9 A. Yes, I have.

10 Q. And then the second -- second decision that the
11 STB rendered on May 9th of this year granting CSX's
12 motion to dismiss one count, have you read the decision
13 in that case -- that decision?

14 A. I didn't read the decision itself. I knew we
15 lost whatever it was.

16 Q. Okay. Are you aware of comments that were made
17 by board members at the voting conference when they made
18 that decision, to the effect that they hoped that that
19 decision would go a long way to resolving this case?

20 A. No.

21 MR. ALLEN: Okay. That's all I have,
22 Mr. Dechter. I very much appreciate your time and
23 patience. And I don't know whether my co-counsel have
24 any further questions.

25 MR. BENNER: No, we don't.

1 that was gleaning our business and knew -- wanted to
2 look intelligent.

3 So in 1993, when that rep left Matson, I made
4 it a point to specifically ask Matson that whoever they
5 put on our account have no other freight forwarder
6 accounts. "They can do us but no other," because I felt
7 that they were disseminating information throughout the
8 community.

9 Q. Do you believe that information that was being
10 disseminated in the community included how you were
11 rating cargo under Matson Rules 30 and 31?

12 A. Yes.

13 Q. Did that include how you used the overflow on
14 shipment rules?

15 A. Yes.

16 Q. Do you have any opinion as to the results of
17 that general dissemination of information?

18 A. Well, DHX had established a huge cost advantage
19 in our industry by having tariff expertise and doing
20 things nobody else could do. When this information got
21 out -- and it went virtually to everybody. All of a
22 sudden, they all started sharpening their pencils. At
23 least what I call the commodity-based forwarders really
24 started growing, really started focusing in and getting
25 smarter about it.

1 A. Absolutely.

2 Q. In reliance upon his encouragement, did you go
3 out and undertake to do that?

4 A. Well, based on what had transpired in the
5 tariff in the way that that business was growing,
6 because of the tools that were made available to me, you
7 bet.

8 Q. And those tools included the mixed -- mixed
9 container load Rule 30 that Mr. Hoppes and you devised?

10 A. Yes, to a small extent. More so the overflows,
11 to a larger extent.

12 Q. And the Rule 30 included a number of overflows?

13 A. Yes, it did.

14 Q. Do you have any opinion today as to why Matson
15 instituted the tariff changes that it did in July of
16 1998?

17 A. Yes.

18 Q. What is that?

19 A. They realized that -- well, this is my opinion,
20 obviously. But it's my --

21 MR. BENNER: And I object to the witness being
22 asked for opinion testimony.

23 MR. RUDE: All right. Strike that. That's
24 fine.

25 THE WITNESS: But I am an expert in the

1 industry.

2 MR. RUDE: That's all right. We'll let it go.

3 Q. Do you have any idea -- going back to Exhibit
4 No. 7, do you have any idea why Mr. Hoppes's proposal
5 used the term "heartburn by MNC"?

6 A. Sure. Well, yeah; because it allowed us to
7 rate freight other than by their concept. Their
8 concepts of a freight forwarder action, it was put by
9 Paul Stevens, was to consolidate LCL cargo, freight all
10 kinds, and ship it in a container load rate called
11 Freight All Kinds. When we did this, we saved close to
12 \$1,000 a container.

13 Q. And that was money that --

14 A. -- instead of going into Matson's pockets, was
15 going into ours.

16 MR. RUDE: I have nothing further.

17 MR. FLEISIG: Do you want to take a couple of
18 minutes, or are you ready?

19 MR. BENNER: I think both Mr. Allen and I are
20 chomping at the bit. Maybe you should give us five
21 minutes to get it sorted out.

22 (12-minute recess taken.)

23 MR. ALLEN: I just have one more question, Mr.
24 Dechter.

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DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed this ____ day of _____,
_____, at _____, California.

BRADLEY J. DECHTER

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REPORTER'S CERTIFICATE

I, Rhonda Norberg, a Certified Shorthand Reporter, holding a valid and current license issued by the State of California, CSR No. 9265, do hereby certify:

That said proceedings were taken down by me in shorthand at the time and place therein set forth and thereafter transcribed into typewriting under my direction and supervision.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto
subscribed my name on this 22nd day of
August 3, 200.

Rhonda Norberg
Certified Shorthand Reporter



Kusar

No. 1005630

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

DHX, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. WCC-105
	)	
MATSON NAVIGATION COMPANY and	)	
SEA-LAND SERVICE, INC.,	)	
	)	
Respondents.	)	

HIGHLY CONFIDENTIAL
DEPOSITION OF ELAINE P. GRIGGS
Wednesday, July 30, 2003
Long Beach, California

REPORTED BY: Rhonda Norberg, CSR No. 9265

Kusar Court Reporters & Legal Services, Inc.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DHX, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. WCC-105
	)	
MATSON NAVIGATION COMPANY and	)	
SEA-LAND SERVICE, INC.,	)	
	)	
Respondents.	)	

Deposition of ELAINE P. GRIGGS, a Witness,
taken on behalf of RESPONDENT CSX LINES,
at One World Trade Center, Suite 1800,
Long Beach, California 90831, commencing
at 2:34 p.m., Wednesday, July 30, 2003,
before Rhonda Norberg, CSR No. 9265,
pursuant to Notice of Taking Deposition.

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10 (703) 536-3063

11 For Respondent MATSON NAVIGATION COMPANY:

12 ZUCKERT SCOUTT & RASENBERGER, L.L.P.
13 BY: RICHARD A. ALLEN
14 Attorney At Law
15 888 17th Street Northwest
16 Washington, D.C. 20006
17 (202) 973-7902

18 For Respondent CSX LINES:

19 TROUTMAN SANDERS LLP
20 BY: LEONARD L. FLEISIG
21 and
22 C. JONATHAN BENNER
23 Attorneys At Law
24 401 Ninth Street Northwest
25 Suite 1000
Washington, D.C. 20004
(202) 274-2863

Also Present:

BRADLEY DECHTER

3
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1 A. -- it's become very expensive.

2 Q. But it's still used? It's still to your
3 benefit to use the overflow rule?

4 A. Yes.

5 Q. Okay. How did you -- going back a minute, how
6 did you happen to -- how did you learn all these
7 tariffs? Did you go through a training program with
8 DHX, or --

9 A. I have a ten-year-old car with 44,000 miles on
10 it. It was my favorite reading material, and favorite
11 hobby and pastime to learn.

12 Q. So you just kind of learned it on the job,
13 or --

14 A. Yes.

15 Q. Okay. Are you the most knowledgeable person at
16 DHX on the terms of all these tariffs, would you say?

17 A. On the tariffs?

18 Yes.

19 Q. You're the person that people go to when
20 they've got a question about the tariffs, generally?

21 A. Yes.

22 Q. With your experience, do you feel you probably
23 know more about the tariffs than most of the people at
24 the carriers?

25 A. Yes.

DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed this ____ day of _____,
____, at _____, California.

ELAINE P. GRIGGS

133

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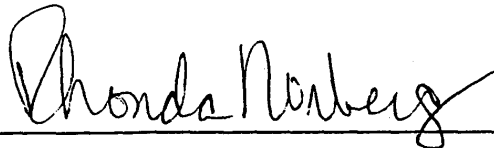
1 REPORTER'S CERTIFICATE

2
3 I, Rhonda Norberg, a Certified Shorthand
4 Reporter, holding a valid and current license issued by
5 the State of California, CSR No. 9265, do hereby
6 certify:

7
8 That said proceedings were taken down by
9 me in shorthand at the time and place therein set forth
10 and thereafter transcribed into typewriting under my
11 direction and supervision.

12
13 I further certify that I am neither
14 counsel for nor related to any party to said action nor
15 in anywise interested in the outcome thereof.

16
17 IN WITNESS WHEREOF, I have hereunto
18 subscribed my name on this 22nd day of
19 August 3, 200__.

20
21
22 
23

24 Certified Shorthand Reporter
25

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Tab 4

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Tab 5

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Kusar

No. 1005101

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

DHX, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. WCC-105
	)	
MATSON NAVIGATION COMPANY and	)	
SEA-LAND SERVICE, INC.,	)	
	)	
Respondents.	)	

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DEPOSITION OF RALPH T. MEROLLA

Wednesday, July 30, 2003

Long Beach, California

REPORTED BY: Rhonda Norberg, CSR No. 9265

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DHX, Inc.,)
)
Plaintiff,)
)
vs.) No. WCC-105
)
MATSON NAVIGATION COMPANY and)
SEA-LAND SERVICE, INC.,)
)
Respondents.)

Deposition of RALPH T. MEROLLA, a Witness,
taken on behalf of Respondent MATSON
NAVIGATION COMPANY, at One World Trade
Center, Suite 1800, Long Beach,
California 90831, commencing at 8:58 a.m.,
Wednesday, July 30, 2003, before Rhonda
Norberg, CSR No. 9265, pursuant to Notice
of Taking Deposition.

1 APPEARANCES OF COUNSEL:

2
3 For Plaintiff:

4 LAW OFFICE OF RICK A. RUDE
5 BY: RICK A. RUDE
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19 TROUTMAN SANDERS LLP
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22 C. JONATHAN BENNER
23 Attorneys At Law
24 401 Ninth Street Northwest
25 Suite 1000
Washington, D.C. 20004
(202) 274-2863

Also Present:

BRADLEY DECHTER

1 mean, know how to look things up, if that's what you're
2 asking.

3 Q. Okay. To your knowledge, are there any tariffs
4 that Matson has that Matson does not allow DHX to
5 participate in?

6 A. I'm not aware of any that they do not allow us
7 to participate in. However, they certainly don't make
8 it known that they have seven or eight filed tariffs on
9 hand, and, you know, so -- basically there are about two
10 that are more or less made aware of two us.

11 Q. Two?

12 Which two are those?

13 A. 14-F and 2034.

14 Q. There are other tariffs that you say that
15 Matson has that you're not aware of?

16 A. No, I didn't say that.

17 Q. Okay.

18 A. I said that Matson has at least seven or eight
19 tariffs on file; however, they don't publicize those.

20 Q. I'm not sure I understand what you mean when
21 you say "they don't publicize them."

22 Are you saying that -- well, why don't you
23 explain it.

24 A. Well, they have an oversize tariff, or -- so
25 that's an item that is certainly not used frequently.

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1 MR. ALLEN: Okay. Okay. I'm going to -- I'm
2 going to now go through a series of communications that
3 we've gotten from -- some from DHX's files, and some
4 from our files, which we've made available to DHX,
5 reflecting various contacts between you and others at
6 DHX and people at Matson.

7 And I'm going to ask you to tell me a little
8 about them, because I really don't know much about them,
9 and you're likely to have more information than I do
10 about them.

11 So I'm going to start with what we'll call
12 Merolla No. 3, which was incorrectly attached to --
13 maybe you could look -- I only have three of these out.

14 MR. RUDE: Sure.

15 + (Merolla Exhibit 3 was marked; attached
16 hereto.)

17 BY MR. ALLEN:

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. So would Matson generally provide -- if Matson provided one freight forwarder with a rate, would they -- would they generally provide another -- other freight forwarders with the same rate?

A. I can't speak for Matson. I will tell you that if we ask for it, at times, we would get it; other times, we wouldn't. I mean, sometimes you win, sometimes you don't, but --

Q. But if they gave it to you, you have no reason to believe they wouldn't also give it to Hawaii Express?

A. I would have no reason to think otherwise.

Q. And vice versa? That if they gave it to Hawaii Express, would you expect them to give the same rate to you?

A. Yes.

MR. ALLEN: Okay. Here's another e-mail that we'll mark as Merolla No 5.

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1 + (Merolla Exhibit 5 was marked; attached
2 hereto.)

3 MR. RUDE: Thank you, Dick.

4 BY MR. ALLEN:

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
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[REDACTED]

MR. ALLEN: Here's what -- here's another document we'll call Merolla No. 10, which is a series of e-mails on or about -- well, from December 26, 2001, to January 17, 2002, concerning noodle rates.

+ (Merolla Exhibit 10 was marked; attached hereto.)

THE WITNESS: Ah, yes.

BY MR. ALLEN:

Q. And can you tell me what this is all about?

A. Well, let me read it, first of all, because --

Q. Okay.

A. The noodle rate was a customer out of the Los Angeles area, and we went back and forth. What I do recall of it, that we went back and forth with Matson



1 particularly on this one, at least when I was involved
2 with it, and the problem was that we were properly
3 declaring this when we had the business.

4 Q. You were properly declaring it?

5 A. Properly declaring the two items that were --
6 that anybody could ship these items under particularly.
7 One of them was what is known as Matson's Item
8 Tariff 210, which is basically a preserved food item,
9 and the other portion was Item 115, where this did not
10 belong, because it specifically states in 210 that it
11 belongs in that area, in that item.

12 And we priced our product based on 210, which
13 was the legal way of describing it. Our competitors go
14 in there and basically describe it as 115.

15 Q. That's canned goods, or --

16 A. Canned goods, correct.

17 Q. Your competitors being who?

18 A. At the time, there were a couple of them, but
19 HOT is the one that comes to mind, more than anybody.
20 But there were a couple of them after that.

21 Q. HOT is Hawaiian Ocean Transport?

22 A. Correct.

23 And, again, I'm only sort of giving you what --
24 the feedback that I was getting.

25 Q. Okay.

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1 A. And the problem we had with it was that we were
2 properly describing it, and we were -- people -- other
3 competitors were pricing this predatory pricing based on
4 115.

5 Q. Yes.

6 A. And we went basically screaming back to Matson
7 and saying, "What the hell are you guys doing?"

8 Q. You mean you were complaining to Matson that
9 Matson was applying your competitor's --

10 A. To claim it as 115 instead of 210.

11 Q. So were you asking Matson to disallow your
12 competitors?

13 A. No.

14 We were asking Matson to make sure that it's
15 properly described.

16 Q. So that you could use the 115 item?

17 A. No.

18 Q. So that they could not use the --

19 A. The 115 item.

20 Q. You were asking Matson --

21 A. We wanted a level playing field. We were
22 asking for a level playing field, is what we were asking
23 for.

24 Q. And Matson complied with your request?

25 A. No.

1 Q. Why not?

2 A. That's a good question. To this day, I still
3 don't know. Because we still don't have the business,
4 and we were told -- and we were told that it was due to
5 rates.

6 Q. But this is -- this is an item -- maybe I'm
7 misunderstanding here.

8 Isn't this an item in the 2034 tariff?

9 MR. FLEISIG: If I may interject for a moment,
10 I think what Mr. Merolla said, it was Tariff 210, but I
11 think what he meant was Item 210.

12 Is that correct?

13 THE WITNESS: Item 210 in Tariff 14. And if
14 you look at the second page, the reference is "I'd like
15 to request a note addition to Item 1356, Tariff 14."

16 MR. ALLEN: Are we looking at the same
17 document?

18 MR. RUDE: Exhibit 10.

19 THE WITNESS: Are you looking at the second
20 page?

21 BY MR. ALLEN:

22 Q. "Also I'd like to request a note --" okay. I
23 gotcha. I gotcha.

24 A. And it went back and forth.

25 Q. Okay.

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1 A. This was an issue that continued for quite a
2 bit.

3 Q. Okay. So these e-mails deal with two separate
4 items; is that correct?

5 A. I think it's the same item; but, obviously,
6 what Elaine may be -- and you may want to ask her later
7 on, may be alluding to is that there may have been a
8 full-container-load rate in 2034 --

9 Q. Okay.

10 A. -- that may have made it more competitive, but
11 it would have never matched Item 115, which was --
12 really did not call for that particular item at all.

13 Q. But Elaine says to Eileen Ryan "Thanks for this
14 one."

15 A. That, I don't --

16 Q. You don't know what that references?

17 A. No, sure don't.

18 MR. ALLEN: Okay. The next is an e-mail that
19 we'll mark as Merolla No. 11, e-mails dated February 22,
20 2002. It includes an e-mail from Elaine Griggs to you.

21 + (Merolla Exhibit 11 was marked; attached
22 hereto.)

23 THE WITNESS: Uh-huh.

24 BY MR. ALLEN:

25 Q. And do you recall what this is about?

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Q. But your e-mail to her at the top says "Elaine, Pete agreed to help with the containers up to today."

A. Uh-huh.

Q. Do you remember what that was about?

A. I would be guessing, but this -- if I'm correct, this has something to do with the initial store openings. Usually what goes on is that they ship steel racking and the furnishings for the stores; and usually, it's the first portion that goes, are racks.

And if you look in Tariff 14-F, there is an item for steel racking, but there was nothing in 2034, per se. So from a full-container-load point of view, Pete may have helped, but --

Q. -- to provide a full-container-load rate?

A. Exactly, for that -- that's the only thing I can think of at the moment.

Q. Okay.

A. But, I mean, this basically already is in 14-F, so it wasn't anything that would have been different rate.

MR. ALLEN: Next is an exhibit we'll mark as

1 Merolla No. 12, which is an e-mail from you to
2 Elaine Griggs, dated November 8, 2001, regarding [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 + (Merolla Exhibit 12 was marked; attached
9 hereto.)

10 BY MR. ALLEN:

11 Q. So do you recall what this is?

12 A. The only reason I would recall something like
13 this is because it's such an unusual request on bulk
14 containers, because we usually don't get involved in
15 that. And at the time, I think it was for a particular
16 oil company that was asking us to look into it.

17 Q. So this is a case where you were shipping a
18 bulk container of oil?

19 A. Well, no. No.

20 We had requested. We never did ship it.

21 Q. Okay.

22 A. What this is basically pertaining to is what
23 Matson already has in the tariff. Because they returned
24 bulk containers for oil companies, so this is what the
25 standard rate is of return on the bulk container.

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1 Q. Okay. So this is a bulk container coming back
2 eastbound?

3 A. That's correct.

4 That's what I make out of it.

5 Q. And also to amend Tariff 2034, Item 2925, hotel
6 furnishings, to provide for a 20-foot rate ex
7 Rancho Dominguez?

8 A. What that means is there's been a hotel
9 furnishing rate in the tariff for quite a while, and
10 Matson would have a rate, all they would do is provide
11 it to the 20-foot area so it's the same rate straight
12 across the board.

13 Q. Okay. Now, does Matson compete with DHX on
14 less-than-container-load freight?

15 A. They used to.

16 Q. But no longer?

17 A. Not that I'm aware of.

18 MR. ALLEN: Let me show you several e-mails
19 which we'll mark as Merolla 13.

20 MR. FLEISIG: This is 13, two pages; is that
21 right?

22 MR. ALLEN: Two pages.

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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Q. And do you know why they got out of that business?

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Q. Was the CFS station business primarily a less-than-container-load freight business?

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A. You would have to ask them that.

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They did both, actually, at the CFS, from what I understand.

Q. Okay.

A. I have no -- I wasn't there, so --

Q. But once they closed the CFS stations, they no

1 longer did any less-than-container-load business?

2 A. At least they claimed that they did not.

3 Q. Okay. Did you have any conversations with
4 anybody at Matson about why they did that?

5 A. Yeah. Ron Barrett particularly.

6 And basically the basic answer was it was time
7 to get out of it.

8 Q. And am I correct in understanding from these
9 e-mails that DHX viewed that as a great opportunity for
10 DHX?

11 A. Well, we felt that there would be more freight
12 available, certainly.

13 Q. Okay. So we've just been through a whole
14 series of e-mails, and so forth, reflecting contacts
15 between you and people at Matson and others -- and
16 others at DHX and Matson, which I think -- is it fair to
17 say that's merely a sampling of such contacts?

18 A. I'm sure there's more, certainly.

19 Q. Okay. In all of those dealings, would you say
20 that Matson has been unfair to DHX?

21 A. Some days better than others. It's tough to
22 use the word "unfair," because in some situations, I
23 felt that both steamship companies or ocean carriers
24 were unfair, no doubt. Other times, they would match
25 what was already available. It was just a matter of

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DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed this ____ day of _____,
_____, at _____, California.

RALPH T. MEROLLA

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That said proceedings were taken down by me in shorthand at the time and place therein set forth and thereafter transcribed into typewriting under my direction and supervision.

IN WITNESS WHEREOF, I have hereunto
subscribed my name on this 18th day of
August 3, 200.

Certified Shorthand Reporter

Tab 10

Redacted

Tab 11

Redacted

PETER P. WILSON

UNITED STATES DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

DHX, INC.,

Complainant,

vs.

STB Docket No. WCC-105

MATSON NAVIGATION COMPANY and

SL SERVICE, INC., f/k/a

SEA-LAND SERVICE, INC.,

Defendants.

/

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*** HIGHLY CONFIDENTIAL ***

DEPOSITION OF PETER P. WILSON

July 11, 2003

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BROOKS & OJEDA, INC.

Certified Shorthand Reporters

1956 Webster Street, Suite 450

Oakland, California 94612

(510) 444-0200

Reported by:

Natalie Y. Botelho

CSR No. 9897

PETER P. WILSON

1 BE IT REMEMBERED THAT, on Friday, July 11,
2 2003, commencing at the hour of 9:11 o'clock a.m. of the
3 said day, at the offices of BROOKS & OJEDA, INC., 1956
4 Webster Street, Suite 450, Oakland, California, before
5 me, NATALIE Y. BOTELHO, a Certified Shorthand Reporter
6 for the State of California, personally appeared PETER
7 P. WILSON, a witness in the above-entitled court and
8 cause, who, being by me first duly sworn, was examined
9 in said cause.

10
11 APPEARANCES OF COUNSEL

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PETER P. WILSON

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FOR DEFENDANT, MATSON NAVIGATION COMPANY:

MATSON NAVIGATION COMPANY

BY: SLOAN WHITE, ASSISTANT GENERAL COUNSEL

333 Market Street

San Francisco, CA 94105

---oOo---

PETER P. WILSON

1 to Item 7000 versus Item 3000, I've had some tariff
2 pages here out of Matson 2034-E produced. Do you
3 recognize those pages?

4 A. Yes, I do.

5 Q. They're retail and general merchandising, mixed
6 shipments. Do you see that?

7 A. Yes, I do.

8 Q. And you see in the top it says a motor-water
9 rate?

10 A. Yes.

11 Q. And do you see the third line down it says it's
12 a proportional rate?

13 A. Yes.

14 Q. And so these rates are, as you've indicated,
15 container yard to container yard. Is that also the same
16 as port to port?

17 A. Yes.

18 Q. And I notice an entry here where it says,
19 "Route," and of course there's an absence of any routing
20 entry here. Is that just part of your standard format
21 of the page, or is there something missing?

22 A. The Tariff 2034 standard formatting has a
23 column for the "route" where normally we would list a
24 number indicating the participating motor carrier for
25 CY-to-CY or port-to-port rates. There's no motor

PETER P. WILSON

1 carrier involved, so therefore, it's left blank
2 intentionally.

3 Q. Okay. Now, I'm going to ask you to take a look
4 at the -- we're going down to Los Angeles, and we're
5 going to take the standard 40-foot box.

6 A. Mm-hmm.

7 Q. What's the rate as of April 14th on the 40-foot
8 box?

9 MR. ZIMMERMAN: Want a marker?

0 THE WITNESS: Just it's easier. Thanks.

1 MR. RUDE: Much easier for him to see.

2 THE WITNESS: As of April 14th, '02, the rate
3 was \$4,123.

4 MR. RUDE: Q. Now, if we compare that to the
5 overflow 40-foot rate on the same date, how would you
6 characterize the difference in the rates?

7 A. The overflow minimum as of that date was
8 \$2,372. It's not a straight apples-to-apples
9 comparison, though.

10 MR. ZIMMERMAN: I think you said, "72."

11 THE WITNESS: I'm sorry. 2,378. I apologize.
12 But the wharfage charges would -- in order to determine
13 the rate or the cost to the customer, wharfages would be
14 added to the overflow minimum, but the freight rate in
15 Item 7000 already includes wharfages at the coast and in

PETER P. WILSON

1 Honolulu.

2 MR. RUDE: Q. So, in essence, the 7000 item is
3 an all-in item?

4 A. A customer using that item today would pay in
5 addition -- assuming that this rate is still in
6 effect -- today would pay in addition a fuel surcharge
7 and a terminal handling charge.

8 Q. What's the difference between the terminal
9 handling charge that now exists and the terminal
10 wharfage charges that were imposed before?

11 A. The wharfage charges were imposed before and
12 still are imposed. Those charges that are separately
13 stated for Tariff 14 cargos but are included in the
14 freight rate for Tariff 2034 cargos are the wharfage
15 charges imposed by the port for using the facilities,
16 the port facilities. Earlier this year, we published a
17 separate terminal handling charge which was intended to
18 recover terminal costs affiliated with the movement of
19 the container through the container yard, such as
20 stevedoring and handling within the terminal.

21 Q. "Wharfage" and "terminal handling" are maritime
22 terms, aren't they?

23 A. Yes, they are.

24 Q. Wharfage is a -- and please correct me if I'm
25 wrong, but wharfage is a charge for use of the

PETER P. WILSON

1 there as the result of a request by DHX?

2 A. Yes. The request would have been made either
3 directly to me by DHX or -- that would normally be the
4 case, or there would be a few instances when the request
5 came to the pricing department through our sales
6 organization.

7 Q. Since -- let's say since the year 1996, is it
8 possible for you to give at least a rough estimate of
9 the number of items that Matson has published in its
10 2034 tariff that pertain specifically to DHX that have
11 been done for DHX's benefit?

12 A. I would guess that between 2034 and one other
13 tariff, Tariff 1, which contains rates for trucks and
14 trailers, that I -- I would guess that we have published
15 between 50 and 75 items for the benefit of DHX. I'd be
16 hard pressed to list them all at this moment, but I'm
17 guessing about eight or ten a year.

18 Q. One last question. You've been in Matson's
19 pricing department since well before 1996?

20 A. Yes, I have.

21 Q. Am I correct to say that your testimony here
22 today is based on your knowledge and experience gained
23 in your role as a member of the pricing department of
24 Matson and not in any role acting as an attorney for
25 Matson?

PETER P. WILSON

DECLARATION

1
2
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4
5 I hereby declare I am the deponent in the
6 within matter; that I have read the foregoing deposition
7 and know the contents thereof, and I declare that the
8 same is true of my knowledge except as to the matters
9 which are therein stated upon my information or belief,
10 and as to those matters, I believe it to be true.

11 I declare under the penalties of perjury of the
12 State of California that the foregoing is true and
13 correct.

14 Executed on the 28th day of August
15 2003, at San Francisco, California.

16
17
18 Peter P. Wilson
19

20 W I T N E S S

21
22 ---oOo---

ERRATA SHEET

CASE NAME: DHX, Inc. v. Matson Navigation Co. et al STB Docket No. WCC-105

DATE OF DEPOSITION: July 11, 2003

DEPONENT NAME: Peter P. Wilson

LINE #	CORRECTION FROM:	TO:
12 5	hyphen	—
14 14	seawide	CV
18 18	or	of
20 1	exempted	exempted
21 8	1799	1999
22 2	,	.
24 5	aside	Aside
24 5	.	,
26 20	mix	delete "mix"
28 24	.	delete "."
29 24	For	for
39 25	l	and
97 6	intrastate	interstate
98 17	weight	delete "weight"
108 19	or	of
119 6	the	That PW

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

Peter P. Wilson
NAME

8/28/03
DATE

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CERTIFICATE OF REPORTER

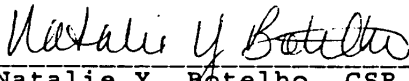
I, Natalie Y. Botelho, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause.

The said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript [X] was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: July 22, 2003


Natalie Y. Botelho, CSR No. 9897

Tab 13

Redacted

**Before the
SURFACE TRANSPORTATION BOARD**

Docket No. WCC-105

Matson Navigation Company, Inc. hereby responds as follows to Complainant's First Interrogatories And Second Request For Production Of Documents, dated April 12, 2002.

1) State the place and date of incorporation of defendant, to include the nature of defendant's corporate structure, i.e. corporation, joint venture or the like; defendant's principal place of business and the location of all offices, to include street addresses, as well as all terminal facilities used by, under the control of, or owned/leased by defendant.

Response: Matson Navigation Company, Inc. was incorporated in Hawaii on November 18, 1980. It is a corporation. Its principal place of business is located at 333 Market Street, San Francisco, California 94105. It also has offices at the following locations:

1

transportation service involving the movement of full containerload shipments between points and ports in California, Oregon, or Washington, on the one hand, and points in Hawaii on the other. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

Response: [[*REDACTED*]]

- 94) State in detail all reasons why defendant does not impose a mainland west coast wharfage charge on shippers that are rated pursuant to proportional rates contained in tariff 2034-E. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

Response: The premise of this interrogatory is incorrect. Although not stated separately, such rates do include wharfage.

- 95) Defendant's tariff 2034-E contains the statement that the rates and charges in tariff 2034-E "include wharfage". For each commodity item published in tariff 2034-E identify the wharfage charges that are represented as included. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

Response: [[*REDACTED*

]]

- 96) Defendant's tariff 2034-E reflects that defendant has absorbed wharfage charges into the commodity rates published in tariff 2034-E. State in detail all reasons used by defendant as to why defendant has chosen to absorb the warfare charges for shippers that use the rates in tariff 2034-E but defendant has chosen not to absorb the wharfage charges for shippers whose shipments are rated pursuant to the rates and provisions of defendant's tariffs 14-F and 2016-D. Identify each and every document used by or referred to by defendant in the preparation of defendant's responses to this interrogatory.

Response: The premise of this interrogatory is incorrect. Matson has not chosen to "absorb the warfare charges for shippers that use the rates in tariff 2034-E." The applicable wharfage charges are included in the respective tariff rates, but are not separately broken out..

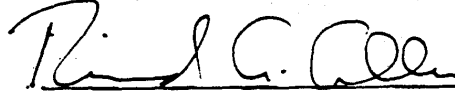
Respectfully submitted,

As to responses:



Peter P. Wilson
Matson Navigation Company
333 Market Street
San Francisco, CA 94105-2190

As to objections:



Richard A. Allen
Scott M. Zimmerman
Shannon M. Moyer
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 Seventeenth Street, NW
Suite 600
Washington, D.C. 20006
(202) 298-8660

Counsel for Matson Navigation Company, Inc.

Dated: May 7, 2002

VERIFICATION

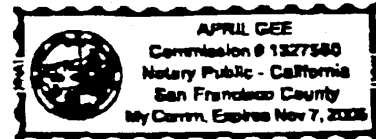
State of California,
County of San Francisco,
SS:

Peter P. Wilson, being duly sworn, deposes and says that he has read the foregoing responses to Complainant's First Interrogatories, knows the facts asserted there are true and that the same are true as stated.

Peter P. Wilson

Subscribed and sworn to before me this 7th day of MAY, 2002.

April GEE
Notary Public



My commission expires 11/7/05

ISSUE DATE	MATSON NAVIGATION COMPANY, INC STB MATS 2034-E JOINT CONTAINER FREIGHT TARIFF NO. 2034-E	ORIGINAL/REVISED	PAGE
November 13, 2003		14th Revised	38
EFFECTIVE DATE		CANCELS	PAGE
November 15, 2003		13th Revised	38
		CORRECTION NO.	12466
SECTION 1 - RULES AND REGULATIONS			Rule No.
TARIFF SUBSCRIPTION CHARGE			945
(a) Subscriptions to this tariff will be furnished subject to an annual charge of \$25.00 per copy. Such charge shall be on a calendar year basis. New subscribers will receive a complete current copy of the tariff.			
(b) Subscribers will receive by first class mail all revised pages and supplements to this tariff and any subsequent reissue of the tariff.			
TERMINAL CHARGES			950
(a) All rates in this tariff include wharfage as published in applicable terminal tariffs at ports through which cargo moves.			
(b) Terminal handling charge.			
The following charges include handling and severdore charges. Charges are in dollars per unit, except as otherwise provided, and shall be assessed as set forth in the following schedule:			
(a) Vehicles as described in items <u>5100, 5210, 5250, 5300, 9150, 9156, 9157, 9158, 9801 and 9802.</u>		\$30/vehicle	
(b) Per container or trailer		Westbound \$200	
		Eastbound \$100	
			[D]

Analysis of Specific Matson Rate Increases Alleged By DHX Witness Sean Burns

In his verified statement, DHX witness Sean Burns summarizes a series of rate increases specifically pertaining to three Matson tariff items: (1) Item 185 of Tariff 14-F; (2) Item 3000 in Tariff 14-F, and (3) Item 7000 in Tariff 2034-E. Each of the increases in each of those rates during the relevant period was clearly within the adjusted Zone of Reasonableness ("ZOR") effect at the time, and thus conclusively reasonable.

A. **Tariff 14-F, Item 185.** Mr. Burns alleges that "rates in Tariff 14-F that are used by freight forwarders have been increased five times since August 1, 1998." Burns V.S. ¶ 14 (citing to his exhibits 8 and 8-A). As shown below, however, each incremental increase to Item 185 falls within the adjusted ZOR:

Date Of Increase	Rate As Increased	Rate 12 Months Prior	Percent Change Over 12 Months	Adjusted ZOR
Sept. 6, 1998	\$8.44 CWT	8.04	5.0% ⁱ	6.5% ⁱ
Feb. 14, 1999	8.65	8.04	7.6% ⁱⁱ	7.9% ⁱⁱ
Feb. 14, 2000	8.99	8.65	3.9% ⁱⁱⁱ	11.8% ⁱⁱⁱ
Feb 14, 2001	9.28	8.99	3.2% ^{iv}	11.8% ^{iv}
April 14, 2002	9.54	9.28	2.8% ^v	5.2% ^v

B. **Tariff 2034-E, Item 7000.** Mr. Burns references, and includes with his verified statement an exhibit summarizing, increases to the rate in Item 7000 of Tariff 2034 between September 6, 1998 and April 14, 2002. See Burns V.S. at ¶ 15 and Exhibit 10. Each of those incremental increases falls within the adjusted ZOR, as shown below:

Date Of Increase	Rate As Increased (per 40-ft container from Los Angeles)	Rate 12 Months Prior	Percent Change Over 12 Months	Adjusted ZOR
Sept. 6, 1998	\$3,612	3,483	3.7% ⁱ	6.5% ⁱ
March 3, 1999	3,699	3,483	6.2% ^{vi}	8.3% ^{vi}
March 13, 1999	3,718	3,483	6.7% ^{vi}	8.3% ^{vi}
Nov. 1, 1999	3,750	3,612	3.8% ^{vii}	10.8% ^{vii}
Feb. 14, 2000	3,889	3,612	7.6% ⁱⁱⁱ	11.8% ⁱⁱⁱ
Feb. 23, 2001	4,017	3,889	3.3% ^{iv}	11.8% ^{iv}
Apr. 14, 2002	4,123	4,017	2.6% ^v	5.2% ^v

C. Tariff 14-F, Item 3000. Mr. Burns also references, and includes with his verified statement an exhibit summarizing, increases to the rate in Item 3000 of Tariff 14-F between February 14, 2000 and April 14, 2002. See Burns V.S. at ¶ 15 and his Exhibit 11. Each of those incremental increases falls within the adjusted ZOR, as shown below:

Date Of Increase	Rate As Increased (per 40-ft container)	Rate 12 Months Prior	Percent Change Over 12 Months	Adjusted ZOR
Feb. 14, 2000	\$4,030	\$3,879	3.9%	11.8% ⁱⁱⁱ
Feb 14, 2001	4,171	4,030	3.5%	11.8% ^{iv}
April 14, 2002	4,286	4,171	2.8%	5.2% ^v

The Matson tariff pages reflecting each of the foregoing rate changes are attached.

ⁱ $(\text{Base} \times \text{ZOR} \times (\text{Sept. 1998 PPI}/\text{Sept. 1997 PPI}))/\text{Base} = \text{Adjusted ZOR}$
 $(100 \times 1.075 \times (130.6/131.8))/100 = 1.065 = 6.5\%$

ⁱⁱ $(\text{Base} \times \text{ZOR} \times (\text{Feb. 1999 PPI}/\text{Feb. 1998 PPI}))/\text{Base} = \text{Adjusted ZOR}$
 $(100 \times 1.075 \times (130.8/130.2))/100 = 1.079 = 7.9\%$

ⁱⁱⁱ $(\text{Base} \times \text{ZOR} \times (\text{Feb. 2000 PPI}/\text{Feb. 1999 PPI}))/\text{Base} = \text{Adjusted ZOR}$
 $(100 \times 1.075 \times (136.0/130.8))/100 = 1.1177 = 11.8\%$

^{iv} $(\text{Base} \times \text{ZOR} \times (\text{Feb. 2001 PPI}/\text{Feb. 2000 PPI}))/\text{Base} = \text{Adjusted ZOR}$
 $(100 \times 1.075 \times (141.4/136.0))/100 = 1.1176 = 11.8\%$

^v $(\text{Base} \times \text{ZOR} \times (\text{Apr. 2002 PPI}/\text{Apr. 2001 PPI}))/\text{Base} = \text{Adjusted ZOR}$
 $(100 \times 1.075 \times (138.8/141.8))/100 = 1.052 = 5.2\%$

^{vi} $(\text{Base} \times \text{ZOR} \times (\text{March 1999 PPI}/\text{March 1998 PPI}))/\text{Base} = \text{Adjusted ZOR}$
 $(100 \times 1.075 \times (131.1/130.1))/100 = 1.083 = 8.3\%$

^{vii} $(\text{Base} \times \text{ZOR} \times (\text{Nov. 1999 PPI}/\text{Nov. 1998 PPI}))/\text{Base} = \text{Adjusted ZOR}$
 $(100 \times 1.075 \times (134.9/130.9))/100 = 1.1078 = 10.8\%$

9.2003 4:50PM

NO. 2980 P. 2
MASTER FILE**MATSON NAVIGATION COMPANY, INC.**
FREIGHT TARIFF NO. 14-F, FMC-F NO. 34

ORIGINAL/REVISED	PAGE
19th Revised	77
CANCELS	PAGE
18th Revised	77
EFFECTIVE DATE	
February 2, 1997	
CORRECTION NO.	
2330	

FROM: PACIFIC COAST PORTS

TO: HAWAII PORTS

CANCELLEDSECTION 2 - COMMODITY RATES IN CENTS PER 100 LBS.
(Except as otherwise provided)

		24D	24T	24HD	40D	40E	40HD	40T	ITEM
CORN STARCH, not for human consumption, in bags of 1400 pounds or more [1] Rate applies only in 24D.	RATE [M4]	[1] 478 40,000		478 40,000	478 42,000		478 42,000		170
DRUGS or MEDICINES, in packages SALINE SOLUTIONS [1] Rate applies only in 24D. NOTE 1: Rates also apply on in-patient kits and dental and hospital supplies, not to exceed 10% by weight of the total shipment.	RATE [M4]	[1]804 30,000		804 30,000	804 34,000		804 34,000		185
EARTH, diatomaceous, Fuller's or Infusorial in bags	RATE [M4]	1040 20,000		1040 20,000	1040 40,000	1040 40,000	1040 40,000		195
ANIMAL, FISH or POULTRY FEED and FEED INGREDIENTS, NOS WHEAT WHOLE COTTONSEED [C]	RATE [M4]	[1]76.80 30,000							
ALFALFA HAY CUBES BALED HAY or STRAW [C]	RATE [M4]	[1]76.80 30,000	[1]76.80 30,000						196

[1] Rate in dollars per 2,000 lbs.

NOTE 1: Rates apply on dry bulk or packaged feed or wheat.

NOTE 2: Rates in this item apply on livestock salt only when shipper certifies on the bill of lading that: "The salt described on this bill of lading is livestock salt and consignee by acceptance of the cargo certifies it will be used for animal feed and for no other purpose".

NOTE 3: Rates also apply in containers or trailers furnished by shipper which have a subsequent Eastbound movement under provisions of Items 1060, through 1061-A, inclusive MAT Eastbound Container Freight Tariff No. 15-F, FMC-F No. 35. The minimum charge for shipments moving under this Note shall be \$1534 for shipments in containers and \$2273 for shipments in trailers.

NOTE 4: Rates for poultry feed in this item apply only on feed for chickens, ducks, geese, turkeys, and pigeons.

NOTE 5: Each container may include the following articles comprising not more than 15% of the containerload weight: Empty feed bags, fence posts, fencing, livestock handling equipment, or tack supplies (stable gear).

NOTE 6: Shipment may include Egg Cartons and filler Flats not to exceed 5% of the total weight of cargo in a container.

MATSON NAVIGATION COMPANY, INC.

FREIGHT TARIFF NO. 14-F, STB NO. 34 [C]

ORIGINAL/REVISED	PAGE
20th Revised	77
CANCELS	PAGE
19th Revised	77

FROM: PACIFIC COAST PORTS TO: HAWAII PORTS

ISSUE DATE	EFFECTIVE DATE
July 23, 1998	September 6, 1998

CORRECTION NO. 2625

SECTION 2 - COMMODITY RATES IN CENTS PER 100 LBS. (Except as otherwise provided)

		24D	24F	24HD	40D	40F	40HD	40T	ITEM
CORN STARCH, not for human consumption, in bags of 1400 pounds or more	RATE	[1] 502		502	502			502	170
[1] Rate applies only in 24D.	[MW]	40,000		40,000	42,000			42,000	[A]
DRUGS or MEDICINES, in packages.									
SALINE SOLUTIONS	RATE	[1] 844		844	844			844	185
[1] Rate applies only in 24D.									[A]
NOTE 1: Rates in this item shall also apply on In-patient kits and Dental and Hospital supplies provided that the In-patient kits and Dental and Hospital supplies (1) do not collectively exceed 10 percent of the weight of the cargo in a container and (2) is loaded in a container with at least 28,000 pounds of other cargo as described in this item.	[MW]	30,000		30,000	34,000			34,000	
EARTH, diatomaceous, Fuller's or Infusorial in bags	RATE	1092		1092	1092	1092		1092	195
	[MW]	20,000		20,000	40,000	40,000		40,000	[A]

[C] Item 196 transferred to page 77-A.

MATSON NAVIGATION COMPANY, INC.

FREIGHT TARIFF NO. 14-F, STB NO. 34

ORIGINAL/REVISED

PAGE

22nd Revised

77

CANCELS

PAGE

21st Revised

77

ISSUE DATE

EFFECTIVE DATE

February 1, 1999

February 14, 1999

CORRECTION NO.

2868

FROM: PACIFIC COAST PORTS

TO: HAWAII PORTS

SECTION 2 - COMMODITY RATES IN CENTS PER 100 LBS. (Except as otherwise provided)

		24D	24F	24HD	40D	40F	40HD	40T	ITEM
CORN STARCH, not for human consumption, in bags of 1400 pounds or more [1] Rate applies only in 24D.	RATE	[1]							
	[MW]	515	515	515			515		170
		40,000	40,000	42,000			42,000		[A]
DRUGS or MEDICINES, in packages SALINE SOLUTIONS [1] Rate applies only in 24D.	RATE	[1] 865	865	865			865		185
	[MW]	30,000	30,000	34,000			34,000		[A]
EARTH, diatomaceous, Fuller's or Infusorial in bags	RATE	1119	1119	1119	1119	1119	1119		195
	[MW]	20,000	20,000	40,000	40,000	40,000	40,000		[A]

For explanation of abbreviations and reference marks, see Page

MATSON NAVIGATION COMPANY, INC FREIGHT TARIFF NO. 14-F, STB NO. 34		ORIGINAL/REVISED					PAGE
		23rd Revised					77
		CANCELS					PAGE
		22nd Revised					77
FROM: PACIFIC COAST PORTS TO: HAWAII PORTS		ISSUE DATE			EFFECTIVE DATE		
		January 26, 2000			February 14, 2000		
		CORRECTION NO.			3210		
SECTION 2 - COMMODITY RATES IN CENTS PER 100 LBS. (Except as otherwise provided)		24D 24F				40HD 40T	ITEM
CORN STARCH, not for human consumption, in bags of 1400 pounds or more	RATE [MW]	[1] 535 40,000	535 40,000	535 42,000		535 42,000	170 [A]
[1] Rate applies only in 24D.							
DRUGS or MEDICINES, in packages SALINE SOLUTIONS	RATE [MW]	[1]899 30,000	899 30,000	899 34,000		899 34,000	185 [A]
[1] Rate applies only in 24D.							
EARTH, diatomaceous, Fuller's or Infusorial in bags	RATE [MW]	1163 20,000	1163 20,000	1163 40,000	1163 40,000	1163 40,000	195 [A]
</							

MATSON NAVIGATION COMPANY, INC FREIGHT TARIFF NO. 14-F, STB MATS NO. 34		ORIGINAL/REVISED					PAGE
		26th Revised					77
		CANCELS					PAGE
		25th Revised					77
FROM: PACIFIC COAST PORTS		TO: HAWAII PORTS		ISSUE DATE		EFFECTIVE DATE	
				February 5, 2001		February 14, 2001	
CORRECTION NO.						3552	
SECTION 2 - COMMODITY RATES IN CENTS PER 100 LBS.		24D				40HD	
(Except as otherwise provided)		24F	24HD	40D	40F	40T	ITEM
CORN STARCH, not for human consumption, in bags of 1400 pounds or more [1] Rate applies only in 24D.	RATE	554 [1]	554	554		554	170 [A]
	[MW]	40,000	40,000	42,000		42,000	
COMPUTERS, COMPUTER PARTS and ACCESSORIES [1] Rate applies only in 24D	RATE	1180 [1]	1180	1180		1180	172 [A]
	[MW]	34,000	34,000	36,000		40,000	
DRUGS or MEDICINES, in packages SALINE SOLUTIONS [1] Rate applies only in 24D.	RATE	928 [1]	928	928		928	185 [A]
	[MW]	30,000	30,000	34,000		37,500	
EARTH, diatomaceous, Fuller's or Infusorial in bags	RATE	1204	1204	1204	1204	1204	195
	[MW]	20,000	20,000	40,000	40,000	40,000	[A]

MATSON NAVIGATION COMPANY, INC FREIGHT TARIFF NO. 14-F, STB MATS NO. 34				ORIGINAL/REVISED		PAGE	
				27th Revised		77	
				CANCELS		PAGE	
				26th Revised		77	
FROM: PACIFIC COAST PORTS TO: HAWAII PORTS				ISSUE DATE		EFFECTIVE DATE	
				April 3, 2002		April 14, 2002	
				CORRECTION NO.		3926	
SECTION 2 - COMMODITY RATES IN CENTS PER 100 LBS. (Except as otherwise provided)		[C] 24F	[C] 24D	40D	40F	40HD 40T	ITEM
CORN STARCH, not for human consumption, in bags of 1400 pounds or more [D]	RATE [MW]	[D]	569 40,000	569 42,000		569 42,000	170 [A]
COMPUTERS, COMPUTER PARTS and ACCESSORIES [D]	RATE [MW]	[D]	1212 34,000	1212 36,000		1212 40,000	172 [A]
DRUGS or MEDICINES, in packages SALINE SOLUTIONS [D]	RATE [MW] RATE [MW]	[D]	954 30,000	954 34,000		954 37,500 450 954 44,000	185 [A]
EARTH, diatomaceous, Fuller's or Infusorial in bags	RATE [MW]		1237 20,000	1237 20,000	1237 40,000	1237 40,000	195 [A]

For explanation of abbreviations and reference marks, see page 26.

MASTER FILE

1st Revised Page 113
Cancels
Original Page 113

MATSON NAVIGATION COMPANY, INC.
JOINT FREIGHT TARIFF NO. 2034-E

STB MATS 2034-E

SECTION 5 - COMMODITY RATES ON NON-REFRIGERATED CARGO - MOTOR-WATER

Rates in dollars per container to Hawaii CY unless otherwise stated.
Rates are proportional and apply only on shipments having a prior or subsequent movement by a motor carrier and apply from origin CY only and to destination CY only.

CANCELLED

FROM RATE EQUIPMENT TYPE ROUTE
RETAIL AND GENERAL MERCHANDISE, in mixed shipments (Continued)

7000

Oakland CA	[1]	2376	24D
Oakland CA	[1]	2650	24HD
Oakland CA	[1]	3393	40D
Oakland CA	[1]	3693	40HD
Oakland CA	[1]	4294	45
Oakland CA	[1]	3990	48D
Oakland CA	[1]	4438	48HD
Portland OR	[A]	[3]	2333
Portland OR	[A]	[3]	2607
Portland OR	[A]	[3]	3527
Portland OR	[A]	[3]	3830
Portland OR	[A]	[3]	4507
Portland OR	[A]	[3]	3908
Portland OR	[A]	[3]	4356
Seattle WA	[A]	[4]	2333
Seattle WA	[A]	[4]	2607
Seattle WA	[A]	[4]	3527
Seattle WA	[A]	[4]	3830
Seattle WA	[A]	[4]	4507
Seattle WA	[A]	[4]	3908
Seattle WA	[A]	[4]	4356
Los Angeles CA	[2]	2435	24D
Los Angeles CA	[2]	2709	24HD
Los Angeles CA	[2]	3483	40D
Los Angeles CA	[2]	3783	40HD
Los Angeles CA	[2]	4453	45
Los Angeles CA	[2]	4104	48D
Los Angeles CA	[2]	4552	48HD

NOTE 1: Rates in Item 3000 are specific and do not alternate with any other rates in this Tariff. Rates apply only when shipping document makes reference to this item.

NOTE 2: Each shipment must contain five or more different commodities (See Note 3), with no single commodity weighing more than 50% of the total weight of the cargo in the shipment.

NOTE 3:

(a) For the purpose of this item, any article not described under a specific rate item in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D will constitute a "different" commodity when it is described in a separate item number in the Uniform Freight Classification UFC 6000-I, FMC-F No. 17, including supplements thereto or reissues thereof.

(b) When articles are described under rate items (other than Item 5) in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D, any or all of the articles named in one rate item shall constitute only "one" commodity.

NOTE 4: Explosives, inflammable, dangerous, or hazardous articles may not be included in shipments without prior approval of carrier. If approval is granted, shipper must separately list each article and identify the container number in which it is loaded.

NOTE 5: Rate includes the return of pallets and cardboard separators from Hawaii CY to Pacific Coast CY which moved loaded to Hawaii under rates in this item. Shipper must certify that the pallets and cardboard separators so returned comply with the provisions of this Note.

NOTE 6: As an exception to Paragraph 14, Rule 110, and when a shipper tenders a shipment including a minimum of (1) five or more 20 or 24 foot Honolulu containers rated under this item, (2) three or more 40 or 45 foot Honolulu containers rated under this item or (3) the "equivalent thereof" when (a) 20, 24 or 28 foot containers and (b) 40 or 45 foot containers rated under this item are included in the same shipment, and when the final destination of a portion of the cargo in another container is Hilo, Kahului, Kawaihae, or Nawiliwili and the balance of the cargo in that container is destined to Honolulu the container may be stopped in transit in Honolulu for partial unloading subject to the conditions described in this note. For each seven calendar days commencing Sunday at 0001 and ending Saturday at 2400, shipper may not tender more than one container to each Neighbor Island port under provisions of this Note 6. For purposes of determining "equivalent thereof" one 40 or 45 foot container shall equal two 20, 24 or 28 foot containers. (Item 7000 continued on Page 114)

(For explanation of abbreviations and reference marks, see Rule 115)

ISSUED: June 18, 1998

EFFECTIVE: July 1, 1998

CORRECTION NO.: 5819

ISSUED BY:

Dana F. Cheung, Manager of Pricing
P.O. Box 7482 San Francisco CA 94120

**MASTER FILE
CANCELLED**

2nd Revised Page 113
Cancels
1st Revised Page 113

MATSON NAVIGATION COMPANY, INC.
JOINT FREIGHT TARIFF NO. 2034-E

STB MATS 2034-E

SECTION 5 - COMMODITY RATES ON NON-REFRIGERATED CARGO - MOTOR-WATER				ITEM
Rates in dollars per container to Hawaii CY unless otherwise stated				NO.
Rates are proportional and apply only on shipments having a prior or subsequent movement by a motor carrier and apply from origin CY only and to destination CY only.				
FROM	RATE	EQUIPMENT TYPE	ROUTE	
RETAIL AND GENERAL MERCHANDISE, in mixed shipments (Continued)				7000
				(A)
Oakland CA	(1) 2464	24D		
Oakland CA	(1) 2748	24HD		
Oakland CA	(1) 3519	40D		
Oakland CA	(1) 3830	40HD		
Oakland CA	(1) 4453	45		
Oakland CA	(1) 4138	48D		
Oakland CA	(1) 4602	48HD		
Portland OR	(3) 2419	24D		
Portland OR	(3) 2703	24HD		
Portland OR	(3) 3657	40D		
Portland OR	(3) 3972	40HD		
Portland OR	(3) 4674	45		
Portland OR	(3) 4053	48D		
Portland OR	(3) 4517	48HD		
Seattle WA	(4) 2419	24D		
Seattle WA	(4) 2703	24HD		
Seattle WA	(4) 3657	40D		
Seattle WA	(4) 3972	40HD		
Seattle WA	(4) 4674	45		
Seattle WA	(4) 4053	48D		
Seattle WA	(4) 4517	48HD		
Los Angeles CA	(2) 2525	24D		
Los Angeles CA	(2) 2809	24HD		
Los Angeles CA	(2) 3612	40D		
Los Angeles CA	(2) 3923	40HD		
Los Angeles CA	(2) 4618	45		
Los Angeles CA	(2) 4256	48D		
Los Angeles CA	(2) 4720	48HD		
NOTE 1: Rates in Item 3000 are specific and do not alternate with any other rates in this Tariff. Rates apply only when shipping document makes reference to this item.				
NOTE 2: Each shipment must contain five or more different commodities (See Note 3), with no single commodity weighing more than 50% of the total weight of the cargo in the shipment.				
NOTE 3:				
(a) For the purpose of this item, any article not described under a specific rate item in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D will constitute a "different" commodity when it is described in a separate item number in the Uniform Freight Classification UFC 6000-I, FMC-F No. 17, including supplements thereto or reissues thereof.				
(b) When articles are described under rate items (other than Item 5) in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D, any or all of the articles named in one rate item shall constitute only "one" commodity.				
NOTE 4: Explosives, inflammable, dangerous, or hazardous articles may not be included in shipments without prior approval of carrier. If approval is granted, shipper must separately list each article and identify the container number in which it is loaded.				
NOTE 5: Rate includes the return of pallets and cardboard separators from Hawaii CY to Pacific Coast CY which moved loaded to Hawaii under rates in this item. Shipper must certify that the pallets and cardboard separators so returned comply with the provisions of this Note.				
NOTE 6: As an exception to Paragraph 14, Rule 110, and when a shipper tenders a shipment including a minimum of (1) five or more 20 or 24 foot Honolulu containers rated under this item, (2) three or more 40 or 45 foot Honolulu containers rated under this item or (3) the "equivalent thereof" when (a) 20, 24 or 28 foot containers and (b) 40 or 45 foot containers rated under this item are included in the same shipment, and when the final destination of a portion of the cargo in another container is Hilo, Kahului, Kawaihae, or Nawiliwili and the balance of the cargo in that container is destined to Honolulu the container may be stopped in transit in Honolulu for partial unloading subject to the conditions described in this note. For each seven calendar days commencing Sunday at 0001 and ending Saturday at 2400, shipper may not tender more than one container to each Neighbor Island port under provisions of this Note 6. For purposes of determining "equivalent thereof" one 40 or 45 foot container shall equal two 20, 24 or 28 foot containers. (Item 7000 continued on Page 114)				

(For explanation of abbreviations and reference marks, see Rule 115)

ISSUED: July 27, 1998

EFFECTIVE: September 6, 1998

CORRECTION NO.: 5896

ISSUED BY:

Dana F. Cheung, Manager of Pricing

MASTER FILE

3rd Revised Page 113
Cancels
2nd Revised Page 113

MATSON NAVIGATION COMPANY, INC.

STB MATS 2034-E

JOINT FREIGHT TARIFF NO. 2034-E

SECTION 5 - COMMODITY RATES ON NON-REFRIGERATED CARGO - MOTOR-WATER				ITEM NO.
Rates in dollars per container to Hawaii CY unless otherwise stated				
Rates are proportional and apply only on shipments having a prior or subsequent movement by a motor carrier and apply from origin CY only and to destination CY only.				
FROM	RATE	EQUIPMENT TYPE	ROUTE	
RETAIL AND GENERAL MERCHANDISE, in mixed shipments (Continued)				7000 (A)
Oakland CA	(1) 2523	24D		
Oakland CA	(1) 2814	24HD		
Oakland CA	(1) 3683	40D		
Oakland CA	(1) 3922	40HD		
Oakland CA	(1) 4560	45		
Oakland CA	(1) 4237	48D		
Oakland CA	(1) 4712	48HD		
Portland OR	(3) 2477	24D		
Portland OR	(3) 2768	24HD		
Portland OR	(3) 3745	40D		
Portland OR	(3) 4067	40HD		
Portland OR	(3) 4786	45		
Portland OR	(3) 4150	48D		
Portland OR	(3) 4625	48HD		
Seattle WA	(4) 2477	24D		
Seattle WA	(4) 2768	24HD		
Seattle WA	(4) 3745	40D		
Seattle WA	(4) 4067	40HD		
Seattle WA	(4) 4786	45		
Seattle WA	(4) 4150	48D		
Seattle WA	(4) 4625	48HD		
Los Angeles CA	(2) 2586	24D		
Los Angeles CA	(2) 2876	24HD		
Los Angeles CA	(2) 3699	40D		
Los Angeles CA	(2) 4017	40HD		
Los Angeles CA	(2) 4729	45		
Los Angeles CA	(2) 4358	48D		
Los Angeles CA	(2) 4833	48HD		
NOTE 1: Rates in Item 3000 are specific and do not alternate with any other rates in this Tariff. Rates apply only when shipping document makes reference to this item.				
NOTE 2: Each shipment must contain five or more different commodities (See Note 3), with no single commodity weighing more than 50% of the total weight of the cargo in the shipment.				
NOTE 3:				
(a) For the purpose of this item, any article not described under a specific rate item in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D will constitute a "different" commodity when it is described in a separate item number in the Uniform Freight Classification UFC 6000-I, FMC-F No. 17, including supplements thereto or reissues thereof.				
(b) When articles are described under rate items (other than Item 5) in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D, any or all of the articles named in one rate item shall constitute only "one" commodity.				
NOTE 4: Explosives, inflammable, dangerous, or hazardous articles may not be included in shipments without prior approval of carrier. If approval is granted, shipper must separately list each article and identify the container number in which it is loaded.				
NOTE 5: Rate includes the return of pallets and cardboard separators from Hawaii CY to Pacific Coast CY which moved loaded to Hawaii under rates in this item. Shipper must certify that the pallets and cardboard separators so returned comply with the provisions of this Note.				
NOTE 6: As an exception to Paragraph 14, Rule 110, and when a shipper tenders a shipment including a minimum of (1) five or more 20 or 24 foot Honolulu containers rated under this item, (2) three or more 40 or 45 foot Honolulu containers rated under this item or (3) the "equivalent thereof" when (a) 20, 24 or 28 foot containers and (b) 40 or 45 foot containers rated under this item are included in the same shipment, and when the final destination of a portion of the cargo in another container is Hilo, Kahului, Kawaihae, or Nawiliwili and the balance of the cargo in that container is destined to Honolulu the container may be stopped in transit in Honolulu for partial unloading subject to the conditions described in this note. For each seven calendar days commencing Sunday at 0001 and ending Saturday at 2400, shipper may not tender more than one container to each Neighbor Island port under provisions of this Note 6. For purposes of determining "equivalent thereof" one 40 or 45 foot container shall equal two 20, 24 or 28 foot containers. (Item 7000 continued on Page 114)				

For explanation of abbreviations and reference marks, see Rule 115

ISSUED: February 16, 1999

EFFECTIVE: March 3, 1999

CORRECTION NO.: 6528

ISSUED BY:

Dana F. Cheung, Manager of Pricing
P.O. Box 7452, San Francisco CA 94120

MASTER FILE CANCELLED

4th Revised Page 113.

MATSON NAVIGATION COMPANY

STB MATS 2034-E

Cancels

3rd Revised Page 113

JOINT FREIGHT TARIFF NO. 2034-E

SECTION 5 - COMMODITY RATES ON NON-REFRIGERATED CARGO - MOTOR-WATER

Rates in dollars per container to Hawaii CY unless otherwise stated Rates are proportional and apply only on shipments having a prior or subsequent movement by a motor carrier and apply from origin CY only and to destination CY only.				ITEM NO.
FROM	RATE	EQUIPMENT TYPE	ROUTE	
RETAIL AND GENERAL MERCHANDISE, in mixed shipments (Continued)				7000
Oakland CA	[1] 2124	20	[I]	
Oakland CA	[1] 2523	24D		
Oakland CA	[1] 2814	24HD		
Oakland CA	[R] [1] 3599	40D		
Oakland CA	[R] [1] 3918	40HD		
Oakland CA	[R] [1] 4556	45		
Oakland CA	[1] 4237	48D		
Oakland CA	[1] 4712	48HD		
Portland OR	[3] 2261	20	[I]	
Portland OR	[3] 2477	24D		
Portland OR	[3] 2768	24HD		
Portland OR	[R] [3] 3736	40D		
Portland OR	[R] [3] 4059	40HD		
Portland OR	[R] [3] 4775	45		
Portland OR	[3] 4150	48D		
Portland OR	[3] 4625	48HD		
Seattle WA	[4] 2261	20	[I]	
Seattle WA	[4] 2477	24D		
Seattle WA	[4] 2768	24HD		
Seattle WA	[R] [4] 3736	40D		
Seattle WA	[R] [4] 4059	40HD		
Seattle WA	[R] [4] 4775	45		
Seattle WA	[4] 4150	48D		
Seattle WA	[4] 4625	48HD		
Los Angeles CA	[2] 2169	20	[I]	
Los Angeles CA	[2] 2586	24D		
Los Angeles CA	[2] 2876	24HD		
Los Angeles CA	[A] [2] 3718 [E]	40D		
Los Angeles CA	[R] [2] 4011	40HD		
Los Angeles CA	[R] [2] 4721	45		
Los Angeles CA	[2] 4358	48D		
Los Angeles CA	[2] 4833	48HD		

NOTE 1: Rates in Item 7000 are specific and do not alternate with any other rates in this Tariff. Rates apply only when shipping document makes reference to this item.

NOTE 2: Each shipment must contain five or more different commodities (See Note 3), with no single commodity weighing more than 50% of the total weight of the cargo in the shipment.

NOTE 3:

(a) For the purpose of this item, any article not described under a specific rate item in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D will constitute a "different" commodity when it is described in a separate item number in the Uniform Freight Classification UFC 6000-1, FMC-F No. 17, including supplements thereto or reissues thereof.

(b) When articles are described under rate items (other than Item 5) in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D, any or all of the articles named in one rate item shall constitute only "one" commodity.

NOTE 4: Explosives, inflammable, dangerous, or hazardous articles may not be included in shipments without prior approval of carrier. If approval is granted, shipper must separately list each article and identify the container number in which it is loaded.

NOTE 5: Rate includes the return of pallets and cardboard separators from Hawaii CY to Pacific Coast CY which moved loaded to Hawaii under rates in this item. Shipper must certify that the pallets and cardboard separators so returned comply with the provisions of this Note.

NOTE 6: As an exception to Paragraph 14, Rule 110, and when a shipper tenders a shipment including a minimum of (1) five or more 20 or 24 foot Honolulu containers rated under this item, (2) three or more 40 or 45 foot Honolulu containers rated under this item or (3) the "equivalent thereof" when (a) 20, 24 or 28 foot containers and (b) 40 or 45 foot containers rated under this item are included in the same shipment, and when the final destination of a portion of the cargo in another container is Hilo, Kahului, Kawaihae, or Nawiliwili and the balance of the cargo in that container is destined to Honolulu the container may be stopped in transit in Honolulu for partial unloading subject to the conditions described in this note. For each seven calendar days commencing Sunday at 0001 and ending Saturday at 2400, shipper may not tender more than one container to each Neighbor Island port under provisions of this Note 6. For purposes of determining "equivalent thereof" one 40 or 45 foot container shall equal two 20, 24 or 28 foot containers. (Item 7000 continued on Page 114)

[E] Effective with March 13, 1999.

(For explanation of abbreviations and reference marks, see Rule 115)

ISSUED: March 2, 1999

EFFECTIVE: March 4, 1999,
Except as noted

CORRECTION NO.: 6563

ISSUED BY:

Dana P. Cheung, Manager of Pricing
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CANCELLED

8th Revised Page 113

MATSON NAVIGATION COMPANY

STB MATS 2034-E

Cancels

7th Revised Page 113

JOINT FREIGHT TARIFF NO. 2034-E

SECTION 5 - COMMODITY RATES ON NON-REFRIGERATED CARGO - MOTOR-WATER

Rates in dollars per container to Hawaii CY unless otherwise stated
Rates are proportional and apply only on shipments having a prior or subsequent movement by a motor carrier and apply from origin CY only and to destination CY only.

FROM	RATE	EQUIPMENT TYPE	ROUTE	ITEM
RETAIL AND GENERAL MERCHANDISE, in mixed shipments (Continued)				7000
Oakland CA	[A] (1) 2136	20		
Oakland CA	[A] (1) 2537	24D		
Oakland CA	[A] (1) 2828	24RD		
Oakland CA	[A] (1) 3623	40D		
Oakland CA	[A] (1) 3942	40HD		
Oakland CA	[A] (1) 4584	45		
Oakland CA	[A] (1) 4265	48D		
Oakland CA	[A] (1) 4740	48HD		
Portland OR	[3] 2263	20		
Portland OR	[3] 2479	24D		
Portland OR	[3] 2770	24RD		
Portland OR	[3] 3739	40D		
Portland OR	[3] 4062	40HD		
Portland OR	[3] 4779	45		
Portland OR	[3] 4154	48D		
Portland OR	[3] 4629	48HD		
Seattle WA	[4] 2263	20		
Seattle WA	[4] 2479	24D		
Seattle WA	[4] 2770	24RD		
Seattle WA	[4] 3739	40D		
Seattle WA	[4] 4062	40HD		
Seattle WA	[4] 4779	45		
Seattle WA	[4] 4154	48D		
Seattle WA	[4] 4629	48HD		
Los Angeles CA	[A] (2) 2189	20		
Los Angeles CA	[A] (2) 2606	24D		
Los Angeles CA	[A] (2) 2896	24RD		
Los Angeles CA	[A] (2) 3750	40D		
Los Angeles CA	[A] (2) 4043	40HD		
Los Angeles CA	[A] (2) 4762	45		
Los Angeles CA	[A] (2) 4398	48D		
Los Angeles CA	[A] (2) 4873	48HD		

NOTE 1: Rates in Item 7000 are specific and do not alternate with any other rates in this Tariff. Rates apply only when shipping document makes reference to this item.

NOTE 2: Each shipment must contain five or more different commodities (See Note 3), with no single commodity weighing more than 50% of the total weight of the cargo in the shipment.

NOTE 3:

(a) For the purpose of this item, any article not described under a specific rate item in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D will constitute a "different" commodity when it is described in a separate item number in the Uniform Freight Classification UFC 6000-I, FMC-F No. 17, including supplements thereto or reissues thereof.

(b) When articles are described under rate items (other than Item 5) in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D, any or all of the articles named in one rate item shall constitute only "one" commodity.

NOTE 4: Explosives, inflammable, dangerous, or hazardous articles may not be included in shipments without prior approval of carrier. If approval is granted, shipper must separately list each article and identify the container number in which it is loaded.

NOTE 5: Rate includes the return of pallets and cardboard separators from Hawaii CY to Pacific Coast CY which moved loaded to Hawaii under rates in this item. Shipper must certify that the pallets and cardboard separators so returned comply with the provisions of this Note.

NOTE 6: As an exception to Paragraph 14, Rule 110, and when a shipper tenders a shipment including a minimum of (1) five or more 20 or 24 foot Honolulu containers rated under this item, (2) three or more 40 or 45 foot Honolulu containers rated under this item or (3) the "equivalent thereof" when (a) 20, 24 or 28 foot containers and (b) 40 or 45 foot containers rated under this item are included in the same shipment, and when the final destination of a portion of the cargo in another container is Hilo, Kahului, Kawaihae, or Nawiliwili and the balance of the cargo in that container is destined to Honolulu the container may be stopped in transit in Honolulu for partial unloading subject to the conditions described in this note. For each seven calendar days commencing Sunday at 0001 and ending Saturday at 2400, shipper may not tender more than one container to each Neighbor Island port under provisions of this Note 6. For purposes of determining "equivalent thereof" one 40 or 45 foot container shall equal two 20, 24 or 28 foot containers. (Item 7000 continued on Page 114)

(For explanation of abbreviations and reference marks, see Rule 115)

ISSUED: October 12, 1999

EFFECTIVE: November 1, 1999

CORRECTION NO.: 7306

ISSUED BY:

Dana F. Cheung, Manager of Pricing
P.O. Box 7452, San Francisco CA 94120

MASTER FILE

9th Revised Page 113

Cancels

8th Revised Page 113

MATSON NAVIGATION COMPANY, INC.

STB MATS 2034-E

JOINT FREIGHT TARIFF NO. 2034-E

SECTION 5 - COMMODITY RATES ON NON-REFRIGERATED CARGO - MOTOR-WATER

Rates in dollars per container to Hawaii CY unless otherwise stated

Rates are proportional and apply only on shipments having a prior or subsequent

movement by a motor carrier and apply from origin CY only and to destination CY only.

ITEM
NO.

FROM	RATE	EQUIPMENT TYPE	ROUTE	
RETAIL AND GENERAL MERCHANDISE, in mixed shipments (Continued)				7000
Oakland CA	(1) 2215	20		(A)
Oakland CA	(1) 2631	24D		
Oakland CA	(1) 2933	24HD		
Oakland CA	(1) 3757	40D		
Oakland CA	(1) 4088	40HD		
Oakland CA	(1) 4754	45		
Oakland CA	(1) 4423	48D		
Oakland CA	(1) 4915	48HD		
Portland OR	(3) 2347	20		
Portland OR	(3) 2571	24D		
Portland OR	(3) 2872	24HD		
Portland OR	(3) 3877	40D		
Portland OR	(3) 4212	40HD		
Portland OR	(3) 4956	45		
Portland OR	(3) 4308	48D		
Portland OR	(3) 4800	48HD		
Seattle WA	(4) 2347	20		
Seattle WA	(4) 2571	24D		
Seattle WA	(4) 2872	24HD		
Seattle WA	(4) 3877	40D		
Seattle WA	(4) 4212	40HD		
Seattle WA	(4) 4956	45		
Seattle WA	(4) 4308	48D		
Seattle WA	(4) 4800	48HD		
Los Angeles CA	(2) 2270	20		
Los Angeles CA	(2) 2702	24D		
Los Angeles CA	(2) 3003	24HD		
Los Angeles CA	(2) 3889	40D		
Los Angeles CA	(2) 4193	40HD		
Los Angeles CA	(2) 4938	45		
Los Angeles CA	(2) 4561	48D		
Los Angeles CA	(2) 5053	48HD		

NOTE 1: Rates in Item 7000 are specific and do not alternate with any other rates in this Tariff. Rates apply only when shipping document makes reference to this item.

NOTE 2: Each shipment must contain five or more different commodities (See Note 3), with no single commodity weighing more than 50% of the total weight of the cargo in the shipment.

NOTE 3:

(a) For the purpose of this item, any article not described under a specific rate item in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D will constitute a "different" commodity when it is described in a separate item number in the Uniform Freight Classification UFC 6000-I, FMC-F No. 17, including supplements thereto or reissues thereof.

(b) When articles are described under rate items (other than Item 5) in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D, any or all of the articles named in one rate item shall constitute only "one" commodity.

NOTE 4: Explosives, inflammable, dangerous, or hazardous articles may not be included in shipments without prior approval of carrier. If approval is granted, shipper must separately list each article and identify the container number in which it is loaded.

NOTE 5: Rate includes the return of pallets and cardboard separators from Hawaii CY to Pacific Coast CY which moved loaded to Hawaii under rates in this item. Shipper must certify that the pallets and cardboard separators so returned comply with the provisions of this Note.

NOTE 6: As an exception to Paragraph 14, Rule 110, and when a shipper tenders a shipment including a minimum of (1) five or more 20 or 24 foot Honolulu containers rated under this item, (2) three or more 40 or 45 foot Honolulu containers rated under this item or (3) the "equivalent thereof" when (a) 20, 24 or 28 foot containers and (b) 40 or 45 foot containers rated under this item are included in the same shipment, and when the final destination of a portion of the cargo in another container is Hilo, Kahului, Kawaihae, or Nawiliwili and the balance of the cargo in that container is destined to Honolulu the container may be stopped in transit in Honolulu for partial unloading subject to the conditions described in this note. For each seven calendar days commencing Sunday at 0001 and ending Saturday at 2400, shipper may not tender more than one container to each Neighbor Island port under provisions of this Note 6. For purposes of determining "equivalent thereof" one 40 or 45 foot container shall equal two 20, 24 or 28 foot containers.

(Item 7000 continued on Page 114)

(For explanation of abbreviations and reference marks, see Rule 115)

ISSUED: February 2, 2000

EFFECTIVE: February 14, 2000

CORRECTION NO.: 7697

ISSUED BY:

Dana F. Cheung, Manager of Pricing
P.O. Box 7452, San Francisco CA 94120

MASTER FILE

ISSUE DATE February 13, 2001		MATSON NAVIGATION COMPANY, INC STR. MATS 2034-E JOINT CONTAINER FREIGHT TARIFF NO. 2034-E CANCELLED		ORIGINAL/REVISED		PAGE	
EFFECTIVE DATE February 23, 2001				12th Revised		113	
				CANCELS		PAGE	
				11th Revised		113	
				CORRECTION NO.		8910	
SECTION 5		COMMODITY RATES ON NON-REFRIGERATED CARGO MOTOR-WATER Rates in dollars per container to Hawaii CY unless otherwise stated. Rates are proportional and apply only on shipments having a prior or subsequent movement by a motor carrier and apply from origin CY and to destination CY only.					ITEM NO.
FROM	RATE	EQUIPMENT TYPE		ROUTE			
RETAIL AND GENERAL MERCHANDISE, in mixed shipments (continued)							7000 [A]
Oakland CA	2288 [1]	20					
Oakland CA	2718 [1]	24D					
Oakland CA	3030 [1]	24HD					
Oakland CA	3881 [1]	40D					
Oakland CA	4223 [1]	40HD					
Oakland CA	4911 [1]	45					
Oakland CA	4569 [1]	48D					
Oakland CA	5077 [1]	48HD					
Portland OR	2429 [3]	20					
Portland OR	2660 [3]	24D					
Portland OR	2971 [3]	24HD					
Portland OR	4011 [3]	40D					
Portland OR	4357 [3]	40HD					
Portland OR	5127 [3]	45					
Portland OR	4458 [3]	48D					
Portland OR	4967 [3]	48HD					
Seattle WA	2429 [4]	20					
Seattle WA	2660 [4]	24D					
Seattle WA	2971 [4]	24HD					
Seattle WA	4011 [4]	40D					
Seattle WA	4357 [4]	40HD					
Seattle WA	5127 [4]	45					
Seattle WA	4458 [4]	48D					
Seattle WA	4967 [4]	48HD					
Los Angeles CA	2345 [2]	20					
Los Angeles CA	2791 [2]	24D					
Los Angeles CA	3102 [2]	24HD					
Los Angeles CA	4017 [2]	40D					
Los Angeles CA	4331 [2]	40HD					
Los Angeles CA	5101 [2]	45					
Los Angeles CA	4712 [2]	48D					
Los Angeles CA	5220 [2]	48HD					
NOTE 1: Rates in Item 7000 are specific and do not alternate with any other rates in this Tariff. Rates apply only when shipping document makes reference to this item.							
NOTE 2: Each shipment must contain five or more different commodities (See Note 3), with no single commodity weighing more than 50% of the total weight of the cargo in the shipment.							
NOTE 3:							
(a) For the purpose of this item, any article not described under a specific rate item in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D will constitute a "different" commodity when it is described in a separate item number in the Uniform Freight Classification UFC 6000-I, FMC-F No. 17, including supplements thereto or reissues thereof.							
(b) When articles are described under rate items (other than Item 5) in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D, any or all of the articles named in one rate item shall constitute only "one" commodity.							
NOTE 4: Explosives, inflammable, dangerous, or hazardous articles may not be included in shipments without prior approval of carrier. If approval is granted, shipper must separately list each article and identify the container number in which it is loaded.							
NOTE 5: Rate includes the return of pallets and cardboard separators from Hawaii CY to Pacific Coast CY which moved loaded to Hawaii under rates in this item. Shipper must certify that the pallets and cardboard separators so returned comply with the provisions of this Note.							
NOTE 6: As an exception to Paragraph 14, Rule 110, and when a shipper tenders a shipment including a minimum of (1) five or more 20 or 24 foot Honolulu containers rated under this item, (2) three or more 40 or 45 foot Honolulu containers rated under this item or (3) the "equivalent thereof" when (a) 20, 24 or 28 foot containers and (b) 40 or 45 foot containers rated under this item are included in the same shipment, and when the final destination of a portion of the cargo in another container is Hilo, Kahului, Kawaihae, or Nawiliwili and the balance of the cargo in that container is destined to Honolulu the container may be stopped in transit in Honolulu for partial unloading subject to the conditions described in this note. For each seven calendar days commencing Sunday at 0001 and ending Saturday at 2400, shipper may not tender more than one container to each Neighbor Island port under provisions of this Note 6. For purposes of determining "equivalent thereof" one 40 or 45 foot container shall equal two 20, 24 or 28 foot containers.							
(Item 7000 continues on Page 114)							
For explanation of abbreviations and reference marks, see Rule 115							

MASTER FILE 4/14

ISSUE DATE	MATSON NAVIGATION COMPANY, INC		ORIGINAL/REVISED	PAGE
April 3, 2002	STB MATS 2034-E		14th Revised	113
EFFECTIVE DATE	JOINT CONTAINER FREIGHT TARIFF NO. 2034-E		CANCELS	PAGE
April 14, 2002			13th Revised	113
			CORRECTION NO.	10507
SECTION 5 COMMODITY RATES ON NON-REFRIGERATED CARGO - MOTOR-WATER Rates in dollars per container to Hawaii CY unless otherwise stated. Rates are proportional and apply only on shipments having a prior or subsequent movement by a motor carrier and apply from origin CY and to destination CY only.				ITEM NO.
FROM	RATE	EQUIPMENT TYPE	ROUTE	
RETAIL AND GENERAL MERCHANDISE, in mixed shipments (continued)				7000 [A]
Oakland CA	2349 [1]	20		
Oakland CA	2790 [1]	24D		
Oakland CA	3110 [1]	24HD		
Oakland CA	3984 [1]	40D		
Oakland CA	4335 [1]	40HD		
Oakland CA	5041 [1]	45		
Oakland CA	4690 [1]	48D		
Oakland CA	5212 [1]	48HD		
Portland OR	2496 [3]	20		
Portland OR	2734 [3]	24D		
Portland OR	3053 [3]	24HD		
Portland OR	4121 [3]	40D		
Portland OR	4477 [3]	40HD		
Portland OR	5268 [3]	45		
Portland OR	4581 [3]	48D		
Portland OR	5104 [3]	48HD		
Seattle WA	2496 [4]	20		
Seattle WA	2734 [4]	24D		
Seattle WA	3053 [4]	24HD		
Seattle WA	4121 [4]	40D		
Seattle WA	4477 [4]	40HD		
Seattle WA	5268 [4]	45		
Seattle WA	4581 [4]	48D		
Seattle WA	5104 [4]	48HD		
Los Angeles CA	2407 [2]	20		
Los Angeles CA	2865 [2]	24D		
Los Angeles CA	3184 [2]	24HD		
Los Angeles CA	4123 [2]	40D		
Los Angeles CA	4446 [2]	40HD		
Los Angeles CA	5236 [2]	45		
Los Angeles CA	4837 [2]	48D		
Los Angeles CA	5358 [2]	48HD		
NOTE 1: Rates in Item 7000 are specific and do not alternate with any other rates in this Tariff. Rates apply only when shipping document makes reference to this item.				
NOTE 2: Each shipment must contain five or more different commodities (See Note 3), with no single commodity weighing more than 50% of the total weight of the cargo in the shipment.				
NOTE 3:				
(a) For the purpose of this item, any article not described under a specific rate item in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D will constitute a "different" commodity when it is described in a separate item number in the Uniform Freight Classification UFC 6000-I, FMC-F No. 17, including supplements thereto or reissues thereof.				
(b) When articles are described under rate items (other than item 5) in Section 2 or 3 of Matson Joint Container Freight Tariff No. 2016-D, any or all of the articles named in one rate item shall constitute only "one" commodity.				
NOTE 4: Explosives, inflammable, dangerous, or hazardous articles may not be included in shipments without prior approval of carrier. If approval is granted, shipper must separately list each article and identify the container number in which it is loaded.				
NOTE 5: Rate includes the return of pallets and cardboard separators from Hawaii CY to Pacific Coast CY which moved loaded to Hawaii under rates in this item. Shipper must certify that the pallets and cardboard separators so returned comply with the provisions of this Note.				
NOTE 6: As an exception to Paragraph 14, Rule 110, and when a shipper tenders a shipment including a minimum of (1) five or more 20 or 24 foot Honolulu containers rated under this item, (2) three or more 40 or 45 foot Honolulu containers rated under this item or (3) the "equivalent thereof" when (a) 20, 24 or 28 foot containers and (b) 40 or 45 foot containers rated under this item are included in the same shipment, and when the final destination of a portion of the cargo in another container is Hilo, Kahului, Kawaihae, or Nawiliwili and the balance of the cargo in that container is destined to Honolulu the container may be stopped in transit in Honolulu for partial unloading subject to the conditions described in this note. For each seven calendar days commencing Sunday at 0001 and ending Saturday at 2400, shipper may not tender more than one container to each Neighbor Island port under provisions of this Note 6. For purposes of determining "equivalent thereof" one 40 or 45 foot container shall equal two 20, 24 or 28 foot containers.				
(Item 7000 continues on Page 114)				
For explanation of abbreviations and reference marks, see Rule 115				

MATSON NAVIGATION COMPANY, INC FREIGHT TARIFF NO. 14-F, STB NO. 34		ORIGINAL/REVISED		PAGE			
		15th Revised		145			
		CANCELS		PAGE			
		14th Revised		145			
FROM: PACIFIC COAST PORTS TO: HAWAII PORTS		ISSUE DATE		EFFECTIVE DATE			
		January 26, 2000		February 14, 2000			
		CORRECTION NO.		3291			
SECTION 5 - COMMODITY RATES IN DOLLARS PER CONTAINER (Except as otherwise provided)		24D				40HD	
		24F	40HD	40D	40F	40T	ITEM
FREIGHT, ALL KINDS, except as otherwise provided in Note 5 and Rule 44.		2381	2690	4030	3969	4475	3000
		[2] 1978		[1] 5045			[A]
[1] Rate applicable to shipment in 45-foot dry container.							
[2] Rate applicable to shipment in 20-foot dry container.							
NOTE 1: Each shipment of one or more containers must consist of five or more different commodities (See Note 2) with no one commodity weighing more than 50% of the total shipment weight.							
NOTE 2:							
(a) For the purpose of this item, any article not described under a specific rate item in Section 2 or 3 of this tariff will constitute a "different" commodity when it is described in a separate item number in the Uniform Freight Classification UFC 6000-I, FMC-F No. 17, including supplements thereto or reissues thereof.							
(b) When articles are described under rate items (other than Item 5) in Section 2 or 3 of this tariff, any or all of the articles named in one rate item shall constitute only "one" commodity.							
NOTE 3: Rates in this item are specific, and apply only when shipping document makes reference to this item.							
NOTE 4: Explosives, inflammable, dangerous, or hazardous articles must not be loaded into MNC containers without prior approval of carrier. If approval is granted, shipper must separately list each article and identify the container number in which it is loaded.							
NOTE 5: This item will not apply on cargo requiring the use of temperature controlled containers. This item will not apply on tank containerloads of bulk liquids.							
NOTE 6: As an exception to paragraph 24(c), Definition of Technical Terms, a shipment which otherwise meets the terms and conditions of this Item may be tendered to carrier for multiple container yard delivery service for full containerload lots only at the ports of Honolulu, Hilo, Kawaihae, Kahului or Nawiliwili under separate dock receipts for each port, making reference to other dock receipts on the same vessel/voyage by shipment number, for qualification under Note 1, as applicable.							
(Continued on Page 146)							
For explanation of abbreviations and reference marks, see page 26.							

MATSON NAVIGATION COMPANY, INC FREIGHT TARIFF NO. 14-F, STB MATS NO. 34		ORIGINAL/REVISED		PAGE	
		17th Revised		145	
		CANCELS		PAGE	
		16th Revised		145	
FROM: PACIFIC COAST PORTS TO: HAWAII PORTS		ISSUE DATE		EFFECTIVE DATE	
		February 5, 2001		February 14, 2001	
		CORRECTION NO.		3633	
SECTION 5 - COMMODITY RATES IN DOLLARS PER CONTAINER	24D				
(Except as otherwise provided)	24F	24HD	40D	40F	40HD
FREIGHT, ALL KINDS, except as otherwise provided in Note 5 and Rule 44.	2464	2784	4171	4108	4632
[1] Rate applicable to shipment in 45-foot dry container.	2047		5222		
[2] Rate applicable to shipment in 20-foot dry container.	[2]		[1]		
NOTE 1: Each shipment of one or more containers must consist of five or more different commodities (See Note 2) with no one commodity weighing more than 50% of the total shipment weight. NOTE 2: (a) For the purpose of this item, any article not described under a specific rate item in Section 2 or 3 of this tariff will constitute a "different" commodity when it is described in a separate item number in the Uniform Freight Classification UFC 6000-1, FMC-F No. 17, including supplements thereto or reissues thereof. (b) When articles are described under rate items (other than item 5) in Section 2 or 3 of this tariff, any or all of the articles named in one rate item shall constitute only "one" commodity. NOTE 3: Rates in this item are specific, and apply only when shipping document makes reference to this item. NOTE 4: Explosives, inflammable, dangerous, or hazardous articles must not be loaded into MNC containers without prior approval of carrier. If approval is granted, shipper must separately list each article and identify the container number in which it is loaded. NOTE 5: This item will not apply on cargo requiring the use of temperature controlled containers. This item will not apply on tank containerloads of bulk liquids. NOTE 6: As an exception to paragraph 24(c), Definition of Technical Terms, a shipment which otherwise meets the terms and conditions of this item may be tendered to carrier for multiple container yard delivery service for full containerload lots only at the ports of Honolulu, Hilo, Kawaihae, Kahului or Nawiliwili under separate dock receipts for each port, making reference to other dock receipts on the same vessel/voyage by shipment number, for qualification under Note 1, as applicable.					
(Continued on Page 146)					
For explanation of abbreviations and reference marks, see page 26.					

MATSON NAVIGATION COMPANY, INC FREIGHT TARIFF NO. 14-F, STB MATS NO. 34		ORIGINAL/REVISED				PAGE	
		18th Revised				145	
		CANCELS				PAGE	
		17th Revised				145	
FROM: PACIFIC COAST PORTS TO: HAWAII PORTS		ISSUE DATE		EFFECTIVE DATE			
		April 3, 2002		April 14, 2002			
		CORRECTION NO.			4009		
SECTION 5 - COMMODITY RATES IN DOLLARS PER CONTAINER		[C]	[C]			40HD	
(Except as otherwise provided)		24F	24D	40D	40F	40T	ITEM
FREIGHT, ALL KINDS, except as otherwise provided in Note 5 and Rule 44.		2532	2861	4286	4221	4759	3000 [A]
[1] Rate applicable to shipment in 45-foot dry container.		2532				5366 [1]	
[2] Rate applicable to shipment in 20-foot dry container.		[3]					
[3] Rate applicable to shipment in 24-foot dry container not exceeding 8 feet 6 inches in height [C]		2103					
		[2]					
NOTE 1: Each shipment of one or more containers must consist of five or more different commodities (See Note 2) with no one commodity weighing more than 50% of the total shipment weight.							
NOTE 2:							
(a) For the purpose of this item, any article not described under a specific rate item in Section 2 or 3 of this tariff will constitute a "different" commodity when it is described in a separate item number in the Uniform Freight Classification UFC 6000-I, FMC-F No. 17, including supplements thereto or reissues thereof.							
(b) When articles are described under rate items (other than Item 5) in Section 2 or 3 of this tariff, any or all of the articles named in one rate item shall constitute only "one" commodity.							
NOTE 3: Rates in this item are specific, and apply only when shipping document makes reference to this item.							
NOTE 4: Explosives, inflammable, dangerous, or hazardous articles must not be loaded into MNC containers without prior approval of carrier. If approval is granted, shipper must separately list each article and identify the container number in which it is loaded.							
NOTE 5: This item will not apply on cargo requiring the use of temperature controlled containers. This item will not apply on tank containerloads of bulk liquids.							
NOTE 6: As an exception to paragraph 24(c), Definition of Technical Terms, a shipment which otherwise meets the terms and conditions of this item may be tendered to carrier for multiple container yard delivery service for full containerload lots only at the ports of Honolulu, Hilo, Kawaihae, Kahului or Nawiliwili under separate dock receipts for each port, making reference to other dock receipts on the same vessel/voyage by shipment number, for qualification under Note 1, as applicable.							
(Continued on Page 146)							
For explanation of abbreviations and reference marks, see page 26.							

DAVID L. HOPPE
HIGHLY CONFIDENTIAL

UNITED STATES DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

DHX, INC.,

Complainant,

vs.

STB Docket No. WCC-105

MATSON NAVIGATION COMPANY and

SL SERVICE, INC., f/k/a

SEA-LAND SERVICE, INC.,

Defendants.

/

HIGHLY CONFIDENTIAL

*** HIGHLY CONFIDENTIAL ***

DEPOSITION OF DAVID L. HOPPE

July 10, 2003

CERTIFIED COPY

BROOKS & OJEDA, INC.

Certified Shorthand Reporters

1956 Webster Street, Suite 450

Oakland, California 94612

(510) 444-0200

Reported by:

Natalie Y. Botelho

CSR No. 9897

DAVID L. HOPPES
HIGHLY CONFIDENTIAL

1 BE IT REMEMBERED THAT, on Thursday, July 10,
2 2003, commencing at the hour of 9:05 o'clock a.m. of the
3 said day, at the offices of BROOKS & OJEDA, INC., 1956
4 Webster Street, Suite 450, Oakland, California, before
5 me, NATALIE Y. BOTELHO, a Certified Shorthand Reporter
6 for the State of California, personally appeared DAVID
7 L. HOPPES, a witness in the above-entitled court and
8 cause, who, being by me first duly sworn, was examined
9 in said cause.

10
11 APPEARANCES OF COUNSEL

12
13 FOR COMPLAINANT:

14 LAW OFFICES OF RICK A. RUDE
15 BY: RICK A. RUDE, ESQ.
16 207 Park Avenue, Suite 103
17 Falls Church, VA 22046

18 FOR DEFENDANT, SEA-LAND SERVICE, INC.:

19 TROUTMAN SANDERS, LLP
20 BY: LEONARD L. FLEISIG, ESQ.
21 401 9th Street, N.W., Suite 1000
22 Washington, DC 20004-2134

23 FOR DEFENDANT, MATSON NAVIGATION COMPANY:

24 ZUCKERT, SCOUTT & RASENBERGER, LLP
25 BY: SCOTT M. ZIMMERMAN, ESQ.
888 Seventeenth Street, N.W.
Washington, DC 20006-3309

DAVID L. HOPPE
HIGHLY CONFIDENTIAL

FOR DEFENDANT, MATSON NAVIGATION COMPANY:

MATSON NAVIGATION COMPANY

BY: SLOAN WHITE, ASSISTANT GENERAL COUNSEL

333 Market Street

San Francisco, CA 94105

---oOo---

DAVID L. HOPPE
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1 A. Yes.

2 Q. So just so we're clear here, regarding the
3 wharfage, "W," slash, "C," stands for west coast
4 wharfage?

5 A. Correct.

6 Q. And "HI" is Hawaii wharfage?

7 A. Correct.

8 Q. I don't see any entry for drayage charges in
9 those items. Can you explain that for me?

10 A. Yes. Wherever you show a "term," t-e-r-m,
11 terminal island, that is a 2034 proportional rate, and
12 that means that we put a rate in there, but we made a
13 proportional and allowed -- and that would be done for a
14 company, Yellow Freight or somebody that had their own
15 truckers and wanted to do their own trucking and didn't
16 want to have us put a bill out to them so they could pay
17 us and we could pay them.

18 Q. And a proportional rate is operationally a
19 port-to-port rate, correct?

20 A. Yes.

21 Q. And so if a company had its own trucks, they
22 could get a proportional rate?

23 A. Yes.

24 Q. Okay. And would that also involve a situation
25 where -- [REDACTED] they have a house

DAVID L. HOPPE
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1 trucker. Perhaps they might say to Matson, "We don't
2 want your drayage arrangement. We want to do our own
3 drayage, but we want a proportional rate."

4 A. Yes.

5 Q. Now, I want to refer you back to Page 291. Do
6 you have that, sir?

7 A. Yes.

8 Q. And what was the average revenue that DHX was
9 paying in 1997 on a per-hundred-weight container,
10 40-foot, according to this summary?

11 MR. ZIMMERMAN: Let me just clarify. This
12 summary does not purport to deal with all of 1997.
13 There's a certain period that was covered by the study.

14 MR. RUDE: Right. He can limit his answer to
15 that period covered by the study.

16 THE WITNESS: I also don't see where it's
17 telling me here that this was per-hundred-weight
18 containers.

19 MR. RUDE: Q. Okay. Let's go to the DHX page.

20 A. Okay.

21 Q. See if we can identify that there. Bear with
22 me. That is a very thick document. It starts at Page
23 317.

24 Scott?

25 MR. ZIMMERMAN: Okay.

DAVID L. HOPPE
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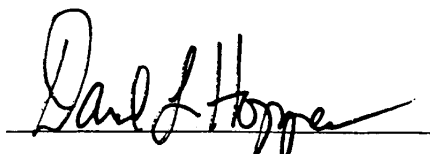
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DECLARATION

I hereby declare I am the deponent in the
within matter; that I have read the foregoing deposition
and know the contents thereof, and I declare that the
same is true of my knowledge except as to the matters
which are therein stated upon my information or belief,
and as to those matters, I believe it to be true.

I declare under the penalties of perjury of the
State of California that the foregoing is true and
correct.

Executed on the 13th day of August
2003, at SAN FRANCISCO, California.


WITNESS

---oOo---

ERRATA SHEET

NAME: DHX, Inc. v. Matson Navigation Co. et al, STB Docket No. WCC-105

DATE OF DEPOSITION: July 10, 2003

DEPONENT NAME: David L. Hoppes

LINE # CORRECTION FROM:

TO:

16	OCEAN FREIGHT SALES	OCEAN FREIGHT SERVICES
19	SALES	SERVICES
19	SPRING	STRING
11	TERM OPERATORS	TERMINAL OPERATORS
8	Solutions	Specialists
9	Solutions	Specialists
11	Sales Systems	Solution Specialists
12	MADE TO	MADE by
13	CARGO	CONTAINER

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF GEORGIA THAT THE FOREGOING IS TRUE AND CORRECT.

David L. Hoppes

8/13/03
DATE

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8 The said deposition was taken down in shorthand
9 by me, a disinterested person, at the time and place
10 therein stated, and that the testimony of said witness
11 was thereafter reduced to typewriting, by computer,
12 under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

Natalie Y. Botelho, CSR No. 9897

Tab 18

Redacted

CERTIFIED COPY

No. 1005100

sar

BEFORE THE
SURFACE TRANSPORTATION BOARD

DHX, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. WCC-105
	)	
MATSON NAVIGATION COMPANY and	)	
SEA-LAND SERVICE, INC.,	)	
	)	
Respondents.	)	

HIGHLY CONFIDENTIAL

DEPOSITION OF PAUL EDWARD STEVENS

Monday, July 28, 2003

Long Beach, California

REPORTED BY: Rhonda Norberg, CSR No. 9265

Kusar Court Reporters & Legal Services, Inc.

111 West Ocean Boulevard, Suite 1200, Long Beach, California 90802
Tel: 562.437.8485 Toll Free: 800.282.3376 Fax: 562.437.8073 E-mail: depo@kusar.com Web: www.kusar.com

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DHX, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. WCC-105
	)	
MATSON NAVIGATION COMPANY and	)	
Sea-Land SERVICE, INC.,	)	
	)	
Respondents.	)	

Deposition of PAUL EDWARD STEVENS, a
Witness, taken on behalf of the
Plaintiff, at One World Trade Center,
Suite 1800, Long Beach, California
90831, commencing at 1:15 p.m.,
Monday, July 28, 2003, before Rhonda
Norberg, CSR No. 9265, pursuant to
Notice of Taking Deposition.

2
Contains confidential material. Designated parts not to be used, copied, or disclosed, except as authorized by order of the court.

1 APPEARANCES OF COUNSEL:

2
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11 For Respondent MATSON NAVIGATION COMPANY:

12 ZUCKERT SCOUTT & RASENBERGER, L.L.P.
13 BY: RICHARD A. ALLEN
14 Attorney At Law
15 888 17th Street Northwest
16 Washington, D.C. 20006
17 (202) 973-7902

18 and

19 MATSON NAVIGATION COMPANY
20 BY: KEVIN C. O'ROURKE
21 Attorney at Law
22 333 Market Street
23 San Francisco, California 94105
24 (415) 957-4583

25 For Respondent CSX LINES:

TROUTMAN SANDERS LLP
BY: LEONARD L. FLEISIG
Attorney At Law
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Washington, D.C. 20004
(202) 274-2863

3
Contains confidential material. Designated parts not to be used, copied, or disclosed, except as authorized by order of the court.

1 documents. And they're previously identified as -- as
2 Exhibits MNC No. 2, MNC No. 3, and MNC No. 4.

3 No. 4 is an interoffice memo to you from
4 Peter Wilson and Ron Barrett from June 16, '98. No. 3
5 is a document which is entitled "Revenue Enhancement,
6 P.E. Stevens." And No. 2 is a 1997 freight forward
7 study.

8 Do you see those, sir?

9 A. Uh-huh.

10 Q. Are you familiar with those documents?

11 A. Yes.

12 Q. I'm going to ask you specifically to look at
13 No. 3. And preliminarily -- can you identify what this
14 is, sir?

15 A. It looks like a presentation that was given to
16 somebody -- I don't recall who -- about some revenue
17 enhancement initiatives that Matson was considering.

18 Q. Do you recall when that was done?

19 A. You know, no, I don't. I don't.

20 Q. Okay. Let's go to this 1997 study first.

21 When was the first time that you recall seeing
22 that?

23 A. It was sometime in 1997 when they finished it.

24 Q. Okay. Do you know why that study was
25 conducted?

1 A. Yes.

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 Q. Okay. I'm going to ask you to take a look at
17 Exhibit No. 4, sir. Take a minute and look through it.
18 I'd like to ask you just a few questions.

19 A. Okay.

20 Q. Do you have that in front of you, sir?

21 A. I do.

22 Q. This was a memorandum that's been produced by
23 your company, and I see the subject is [REDACTED]

24 [REDACTED]

25 Do you see that, sir?

1 A. I do.

2 Q. And it's dated June 16th, '98.

3 Do you recall what Matson's freight forwarder
4 strategy was?

5 MR. ALLEN: When?

6 MR. RUDE: June '98.

7 THE WITNESS: So before this was -- before this
8 study?

9 No, I don't.

10 BY MR. RUDE:

11 Q. Was there a particular strategy developed as a
12 result of the 1997 freight forwarder study?

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 Q. I'm going to direct your attention to the first
22 page of Exhibit No. 4, which is that memorandum you
23 have, sir.

24 A. Uh-huh.

25 Q. It references here that this -- that this

1 memorandum involves a -- your request, which I presume
2 to be directed to you.

3 Do you recall making that request to
4 Mr. Wilson?

5 A. Yes.

6 Q. What exactly did you request him to do, sir?

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Q. Did you ever hear any reports from your sales department that sales personnel were complaining about forwarder rates?

A. Yes.

Q. How frequently did you hear those complaints?

A. Not too frequently.

Q. Not too --

A. I didn't talk to the sales reps directly, so I would imagine the sales managers heard that more than I did.

Q. So it came back to you on an indirect fashion?

A. Yes.

Q. And who would that have come back from?

A. The general sales manager at the time, or the sales managers, or pricing, or an assortment of people.

Q. Like Mr. Hoppes or Mr. Barrett?

A. Or Mr. Wilson.

Q. Let's go to Page 2, sir, if you will. I'd like

1 in the overflow numbers in October of 1999?

2 A. No.

3 Q. Are you familiar with the Item 115, the canned
4 goods rates?

5 A. Yes.

6 Q. Is that a correct description, that it's a mini
7 FAK item?

8 A. You know, I don't know. I guess it is. I
9 mean, that's what it says. I don't recall.

10 Q. You don't recall?

11 A. No.

12 Q. You don't recall any discussions about how the
13 forwarders were using Matson's overflow rules?

14 A. Yes.

15 Q. Just generally, what was the position of Matson
16 regarding freight forwarders' handling of
17 full-container-load business?

18 A. You know, I mean, they handled
19 full-container-load business. I don't quite understand
20 the question.

21 Q. In this period, 1996 to 1998 --

22 A. Yes.

23 Q. -- which would include the period of
24 Preparation of this study, the memo, was -- or did
25 Matson have any general policy or philosophy regarding

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1 the forwarder's participation in the full-container-load
2 market?

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
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14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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[REDACTED]

Q. Wasn't it clearly understood by Matson that when they changed the rules, that it would impact the freight forwarders?

A. Yes.

[REDACTED]

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[REDACTED]

Q. Well, as Matson was allowed to compete, didn't Matson simultaneously remove or modify the rules that the forwarders were using to handle full-load business?

A. I think they still handle full-load business, so we could not have removed them. I think all we did was trying to create a level playing field to compete that Matson didn't have access to because of the nature of our tariff. So, I mean, I think the forwarders today move full-container-load business.

Q. What do you mean by "level playing field"?

A. From the perspective of Matson Navigation Company, sales reps can't get together and combine all these ships to take advantage of these rules, so what we needed to do was to modify the rules so that they would

1 be used for what they were intended to be -- for the
2 customer they were intended to be set up for.

3 Q. And those customers didn't include freight
4 forwarders?

5 A. They were not set up for freight forwarders,
6 no.

7 Q. So when you speak to issues of -- of forwarder
8 abuse of tariff rules, what exactly did you --

9 MR. ALLEN: Who speaks of such issues?

10 MR. RUDE: -- refer to?

11 We'll go to his verified statement eventually.

12 Q. But in your verified statement, you indicated
13 that forwarders were misusing Matson tariff rules.

14 Do you recall that?

15 A. You know, the forwarders used the rules. They
16 followed the rules.

17 Q. Right.

18 A. But those were not the intended consequences of
19 those rules. So to the extent that they manipulated
20 those rules to their advantage, that's right. But there
21 was no -- I mean, from my perspective they were legal to
22 do that. The rules were there, just misplaced.

23 Q. Who was it in Matson that decided what those
24 rules were intended to apply to?

25 A. This goes back to 1958 when we published our

1 first tariff, so probably an assortment of people that
2 wrote those rules and developed those -- those -- the
3 specific commodity rates over the course of time.

4 Q. So -- but, really, we're talking 40 years
5 later.

6 A. Yeah, that's --

7 Q. Isn't a matter of -- of what the Matson
8 management, in 1998, came to believe the rules that
9 we're speaking of, the overflow rule, and the note kits,
10 were intended to be used for?

11 A. I don't understand that question.

12 Q. Let's strike that question.

13 In 1998, was it your responsibility to
14 interpret how Matson's pricing was to be applied through
15 its tariffs?

16 A. No.

17 Q. Whose responsibility was that?

18 A. Pete Wilson's.

19 Q. Did Mr. Hoppes have any input?

20 A. No. That's pricing's job, to interpret that.

21 Q. I'm going to find another exhibit here for you,
22 sir. We'll put this away for the time being.

23 A. Sure.

24 Q. This is -- this was previously marked as
25 Exhibit No. 7, and I'm going to ask you to take a look

1 A. Yes, they do.

2 Q. You talked about Tariff 2034; and as I
3 understand it, and correct me if I'm wrong, Tariff 2034
4 is an intermodal tariff that provides -- let us call it
5 special rates for particular shippers.

6 Would that be accurate?

7 A. That's correct.

8 Q. And is DHX -- are there rates for DHX
9 specifically contained in Tariff 2034?

10 A. Yes, we have provided rates over the years for
11 DHX.

12 Q. At DHX's request?

13 A. At DHX's request.

14 Q. And are those rates, in those cases where you
15 have provided rates for DHX at their request -- are
16 those rates available only to DHX?

17 A. Only.

18 Q. And are they lower than rates that might be
19 available to other shippers, including other freight
20 forwarders?

21 A. Yes.

22 Q. And are some of those rates provided to DHX at
23 DHX's request specifically for straight-container-load
24 customers of DHX?

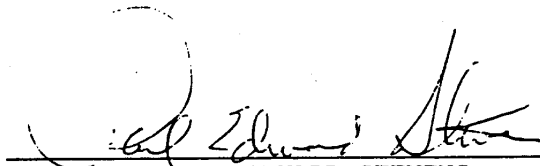
25 A. Yes.

DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed this 27 day of 2003 August, 2003, at _____, California.



PAUL EDWARD STEVENS

South LA.

CONFIDENTIAL - ATTORNEYS' EYES ONLY

ERRATA SHEET

CASE NAME: DHX v. Matson Navigation Co. et al., STB Docket No. WCC-105

DATE OF DEPOSITION: July 28, 2003

DEPONENT NAME: Paul E. Stevens

PAGE	LINE #	CORRECTION FROM:	TO:
13	25	St. Louis NYK Line	NYK Line
36	16	m BOLL	NOLL
44	4	FALLING	FALLING
121	2	American Tile	?

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.


NAME

8/26/03
DATE

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That said proceedings were taken down by me in shorthand at the time and place therein set forth and thereafter transcribed into typewriting under my direction and supervision.

I further certify that I am neither
counsel for nor related to any party to said action nor
in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto
subscribed my name on this 13th day of
August, 200³.

Phonda Norberg
Certified Shorthand Reporter

Tab 20

Redacted

ISSUE DATE
January 28, 2003
EFFECTIVE DATE
January 30, 2003

MATSON NAVIGATION COMPANY, INC

STB MATS 2034-E

JOINT CONTAINER FREIGHT TARIFF NO. 2034-E

ORIGINAL/REVISED	PAGE
21st Revised	58-D
CANCELS	PAGE
20th Revised	58-D
CORRECTION NO.	11605

SECTION 2 - COMMODITY RATES ON NON-REFRIGERATED CARGO - MOTOR-WATER Rates in dollars per container to Hawaii CY unless otherwise stated

FROM	RATE	EQUIPMENT TYPE	ROUTE	ITEM NO.
DEPARTMENT STORE MERCHANDISE, NEW, Viz.: (Subject to Note 1 and 2)				2671
Accessories, wearing apparel				
Advertising displays and material				
Bedding				
Blankets				
Cosmetics				
Clothing, children's				
Clothing, men's				
Clothing, women's				
Cutlery				
Drapery, Curtains, and Fixtures				
Fabrics, Piece Goods, Dry Goods				
Housewares				
Luggage				
Shoes, footwear				
Wearing apparel, clothing				
Hayward CA	[I] 2666 [1]	24	1293B	
Hayward CA	[I] 3900 [1]	40	1293B	
[D]				
[D]				
NOTE 1: Rate applies only on mixed shipments of the articles described above, with no one article exceeding 50 percent of the total weight or cubic content of the container.				
NOTE 2: Item applies only on shipments where consignee has an ownership interest in the cargo.				
[1] Rate applies only when origin of goods is 30750 Wiegman Road, Hayward CA 94544. Rate is a proportional rate and applies only on shipments having a prior or subsequent movement by a motor carrier. [C]				
STORE DISPLAY CASES				2680
Ontario CA	3442	24	1101B,1734B	
Ontario CA	4364	40D	1101B,1734B	
Ontario CA	4715	40HD	1101B,1734B	
San Jose CA	3379	24	1293F	
San Jose CA	4253	40D	1293F	
San Jose CA	4604	40HD	1293F	
San Jose CA	5310	45	1293F	
NOTE 1: Item applies only on shipments where shipper or consignee have an ownership interest in the cargo.				