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2 February 2004

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Office of Proceeding

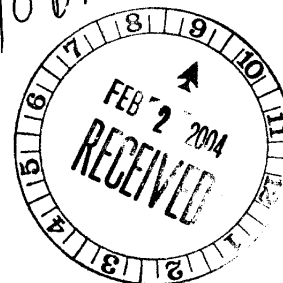
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Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

Re - DHX, Inc. v. Matson Navigation Company, et al.  
STB Docket No. WCC-105  
Complainant's Rebuttal Statements - Partial Filing

Dear Mr. Williams,

Complainant's Rebuttal Statements are not scheduled to be filed until February 3, 2004. However, it is now projected that significant adverse weather conditions will begin some time today or this evening. I am forwarding the original and 10 copies of Volumes 2 and 3 of Complainant's Rebuttal Statements. They are accompanied with appropriate Public Versions. The originals (Green Covers) are identified as Highly Confidential.

Complainant will be filing Volume 1 of 3, with the appropriate copies when due. This filing today will minimize any impact which may have otherwise occurred as result of the anticipated inclement weather. Today's filing constitutes 42 volumes of documents which are identified as the Rebuttal Verified Statement of Mr. Bradley J. Dechter and Complainant's Abstract of Undisputed and Disputed Material Facts.

Your cooperation in this matter is most appreciated. If you have any questions, please contact me at the above identified telephone numbers. Further enclosed 3 each disc copies of the involved filings.

Respectfully submitted,

*Rick A. Rude*  
Rick A. Rude

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

U.S. DEPARTMENT OF TRANSPORTATION  
SURFACE TRANSPORTATION BOARD



DHX, INC.,

Complainant,

v.

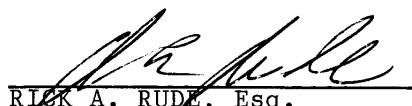
STB Docket No. WCC-105

MATSON NAVIGATION COMPANY  
and SL SERVICE, INC., f/k/a  
SEA-LAND SERVICE, INC., CSX  
LINES, LLC, Successor-In-  
Interest, and now Known as  
HORIZON LINES, LLC.,

Defendants.

CERTIFICATE OF SERVICE

COMPLAINANT, DHX, INC., hereby certifies that it has  
filed and served Volumes 2 of 3 and 3 of 3 of Complainant's  
Rebuttal Statements upon counsel for Defendants by First  
Class Mail, Postage Prepaid, this 2nd day of February 2004.

  
\_\_\_\_\_  
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DHX, INC.

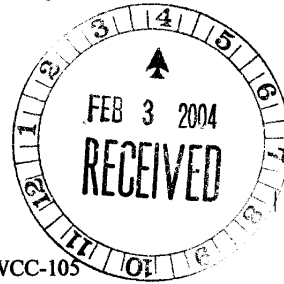
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**PUBLIC VERSION**

**U.S. DEPARTMENT OF TRANSPORTATION  
SURFACE TRANSPORTATION BOARD**



DHX, INC.,

Complainant,

v.

STB DOCKET No. WCC-105

MATSON NAVIGATION COMPANY  
And SL SERVICE, INC., f/k/a SEA-  
LAND SERVICE, INC., CSX LINES,  
LLC, Successor-In-Interest, and now  
Known as HORIZON, LINES, LLC.

Defendants.

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VOLUME 1 OF 3

**COMPLAINANT'S REBUTTAL STATEMENTS**

**STATEMENT OF FACTS AND LAW**

Submitted By:

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Counsel For Complainant  
DHX, INC.

Dated: 3 February 2004

### Introduction

DHX, Inc., Complainant herein, hereby submits this its Rebuttal Statement of Facts and Law in response to the Reply Statements filed by Matson Navigation Company ("Matson") and Horizon Lines, LLC. The original named defendant, Sea-Land Service, Inc. changed its name to "SL Service, Inc." in July 2000. SL Service was succeeded by "CSX Lines, LLC" in January 2000. In late February 2003, CSX Lines, LLC became Horizon Lines. For purposes of continuity of identification of this defendant, DHX will refer to this defendant as "Sea-Land" or generally "CSX". The parties in July 2003 agreed to the use of this acronym for Sea-Land's deposition exhibits and all of this defendant's exhibits in the depositions of Mr. Downes and Mr. Brown were so identified. In order to avoid any confusion, DHX will continue this acronym reference.

The Board's Rules of Practice and Procedure govern the submission and disposition of this proceeding. CSX makes a legal error when it submits argument based upon the Federal Rules of Evidence. The Board's Rules of Practice are, in turn, governed by the Federal Administrative Procedure Act ("APA"), including the Board's Evidence Rule--49 CFR 1114.1. All evidence which is sufficiently reliable and probative to support a decision under the provisions of the APA is admissible. This is commonly known as the "broad evidence rule". CSX appears to also rely upon an inappropriate decisional standard. The STB, as a administrative agency, is subject to the review standards of the APA. The federal

courts, including the U.S. Supreme Court, have ruled that the evidentiary standard is by the "preponderance of the evidence". The federal agencies and the courts have defined this as less than the evidentiary standard used by CSX. The standard simply means that the evidence "is sufficient to persuade the finder of fact that the proposition is 'MORE LIKELY TRUE THAN NOT'".<sup>1/</sup>

In addition to the procedural deviations identified above, CSX likewise incorrectly objects to DHX use of document and informational abstracts. The STB, which is the successor to the Interstate Commerce Commission, has continued the I.C.C.'s procedural practice of the use of document/information abstracts. The nature of proceedings involving the legal and factual issues under the Interstate Commerce Statutes address a wide variety of fact and normally involve many thousands of pages of data. STB procedural Rule 1113.11 (2002 ed.) specifically sanctions the use, indeed it encourages, of informational document abstracts. Defendants have had the opportunity to review DHX's records from which these abstracts have been adduced. There is no contention that they are not accurate, with the exception of Griggs Ex. 14, and are therefore not subject to further dispute. As will be noted below, CSX's contentions regarding DHX Griggs Ex. 14 are based upon a mis-understanding of the testimony of Mr. Ralph Merolla. Mr. Merolla clarified his testimony in an Errata Sheet which CSX has apparently overlooked. Mr. Dechter in his Rebuttal Verified Statement likewise addresses that procedural issue.

<sup>1/</sup>

See, Steadman v. S.E.C., 450 U.S. 91, 101 S.Ct. 999, 67 L.Ed.2d. 69 (1981). Standard defined in In Re Arnold, 252 B.R. 778(BAP, Cal., 9th Cir. 2000).

Case Overview

The defendants have admitted to being carriers subject to the STB's jurisdiction under the ICC Termination Act of 1995, hereinafter "ICCTA". Defendants are the only two water carriers providing vessel services as common carriers in the Hawaii non-contiguous trade. The defendants (1) admit to a duopoly on a Matson/CSX [REDACTED] basis, (2) admit to watching each other's tariffs and engaging in "rate matching" which results in parallel pricing, (3) admit to the use of "MOUs" (Memorandums of Understandings) which are alternatively defended as either (i) unenforceable or non-binding, or (ii) confidential contracts under 49 U.S.C. §14101(b), (4) admit to the publication of proportional rates that are not associated with any through route arrangement with another regulated carrier, (5) admit to the establishment of tariffs that are discriminatory against the freight forwarding industry in the Hawaii trade, and (6) the filing of rate increases and rules changes which disproportionately impact the freight forwarding industry in the Hawaii trade. Defendants also freely acknowledge that they have entered into a confidential contractual arrangement so that CSX's cargoes out of Los Angeles, California are transported on Matson's vessels. CSX likewise admits to the withdrawal of vessel service capacity from the Los Angeles ocean transportation market after Matson and CSX entered into the confidential contractual arrangement in July 2001. The confidential contract contains volume rates that are at less than [REDACTED] of the otherwise applicable tariff rates contained in Matson's published tariff-Item [REDACTED]

Matson tariff 2034-E as of April 2002. CSX has not reduced its comparable rates in its tariffs, ICC STB CSXL 468, HRZD 468, and therefore enjoyed a very substantial profit on CSX shipments transported by Matson. CSX, in this operation, conducts business as a freight forwarder and is in competition with DHX as well as all other freight forwarders in the Hawaii trade.

DHX is a freight forwarder and international cargo consolidator with terminal locations in Los Angeles, Oakland, Portland and Seattle on the West Coast United States. DHX operates terminal facilities in Hawaii and Guam. DHX is an established business and was the only freight forwarder to operate a full container-load ("FCL") Division. The DHX FCL Division operated from 1994 to 2000. The FCL Division was disbanded by DHX due to the inability to offer competitive FCL rates to the shipping public.

The initial complaint in this proceeding was filed on or about October 1, 1999. The complaint was directed at rate actions and rules changes by defendants that had occurred between July 1998 and October 1999. The gravamen of the complaint as described by the Board was that the defendants has "engaged in a variety of unreasonable, unfair and destructive practices to reduce or eliminate the effectiveness of the competitive tools that freight forwarders developed in order to compete with steamship lines in the solicitation of full-container business." (STB Order, Dec. 19, 2001, pg. 4).

On March 27, 2002 the Board directed that DHX file an Amended Complaint which contained greater detail as to the alleged unreasonable, unfair and destructive practices and to

identify rates which DHX considered to be unreasonable. On April 29, 2002 DHX filed an Amended Complaint which provided greater detail and included the benefit of circumstances which had occurred between October 1999 and April 2002. Count III of the Amended Complaint was the subject of an Order of Dismissal in May 2003. The parties conducted discovery regarding the remaining counts of the Amended Complaint. Depositions of both defendants' witnesses and DHX's witnesses occurred in July 2003. DHX filed its Opening Statements at the end of October 2003 and defendants filed their Reply Statements on or about December 23, 2003.

The pleadings and the discovery, as addressed in the Opening and Reply Statements, reveal a series of basic issues. These issues are as follows -

- (1) Whether or not defendants engaged in tariff actions which were harmful to (i) the Hawaii freight forwarders' ability (as a group) to offer FCL rates and compete for FCL business in the Hawaii trade, and (ii) whether such actions were harmful to competition in the FCL Hawaii market and therefore, unlawful practices based upon the prohibition against destructive competition contained in the National Transportation Policy established by ICCTA as applicable to carriers in the non-contiguous offshore trades.

6.

- (2) Whether defendants engaged in deceit in their representations to DHX that they did not engage in volume pricing in the Hawaii trade. Secondly, whether or not this deceit was in furtherance of alleged anti-competitive actions by defendants to exclude or deprive freight forwarders (as a group) of the ability to obtain volume pricing needed to compete for FCL business.
- (3) Whether defendants violated the tariff filing requirements of the ICCTA (§§13702). Secondly, whether or not this filing violation was in furtherance of alleged anti-competitive actions by defendants to exclude or deprive freight forwarders (as a group) for having knowledge of and therefor demanding provision of volume pricing in the FCL market in the Hawaii trade.
- (4) Whether defendants did establish and maintain tariffs which were discriminatory and which contained rate structures which precluded or excluded freight forwarders (as a group) from obtaining access and usage of tariff rates which would have made forwarders competitive with defendants for business in the FCL market in the Hawaii trade.
- (5) Whether DHX was harmed by the aforementioned activities and if so, the extent and measure of the damages. Secondly, whether the ICCTA statute of limitations should be tolled based upon defendants' fraud, deceit and misrepresentations contained in their tariffs.

SUMMARY OF REBUTTAL

Defendants do not dispute the vast majority of the facts contained in Complainant's Opening Statements ("COS"). Defendants also do not dispute the authenticity and accuracy of the testimony of their own witnesses during the July depositions.<sup>2/</sup> Defendants likewise take no issue with DHX's contentions regarding the events of July 23, 1998 through October 1999. Defendants do not dispute the contents of the exhibits attached to the deposition testimony of their witnesses.

Defendants dispute and take issue of fact with the following limited areas of DHX's direct case--(1) that DHX was put out of the FCL market to Hawaii, (2) the accuracy of the contents of Griggs Exhibit 14 (DHX Lost Customers), (3) that DHX suffered financial losses, including lost profits, and (4) that as a general proposition, forwarders are no longer able to compete for FCL cargoes in the Hawaii trade.

Defendants do raise several legal issues such as whether the Amended Complaint may related back to the date of the original Complaint. Secondly, that their actions which are admittedly discriminatory against forwarders constitute violations of ICCTA.

2/

DHX submitted the deposition testimony and exhibits, which testimony was given under oath in a manner the same as a sworn verified statement, provided by five (5) individuals on July 8-11, 2003 at Oakland, California and on July 28, 2003 at Long Beach, California. The witness testimony, which is riddled with material statements of fact, consists of the testimony of Mr. Daniel Downes, Mr. Charles Brown, Mr. David Hoppes, Mr. Peter Wilson and Mr. Paul Stevens. The Board, in its review of the depositions will obtain a much more clear understanding of this proceeding and defendants' motivations in regard to the actions which are the subject of this case.

Thirdly, that the mislabeling of tariff rates is not unlawful as shippers benefited. Fourth, that in so far as Matson is concerned, Matson's sample MOUs (See Attachments A-1 to A-3 to COS) were confidential service contracts under §§14101(b). CSX, on the other hand, simply denies that such MOUs constitute violations of the Board's tariff regulations and controlling statute. CSX, in a manner inconsistent with the COS, contends that the failure to publish and file the names and routings of carriers participating in CSX's joint rates is actually a "concurrence" issue which are not required to be filed. Lastly, that the rate increases taken on rates made available to freight forwarders are within the zone of rate freedom.

A review of the Reply Statements reflects that Defendants spend substantial portions of their pleadings recounting the original complaint, the Board's orders, the amended complaint and the procedural history. Neither defendant makes much effort to address the substance of the COS nor the Verified Statements of the DHX witnesses. The reason is quite simply, other than to take issue with Griggs Ex. No. 14 by CSX, the defendants would be required to dispute their own documents, records, reports, memoranda, e-mail messages and the like. The DHX verified statements are supported with documents which affirm what is contained in those statements.

Defendants do take issue with Mr. Dechter's financial analysis and the question of damages. As a review of the defendants' contentions show they have based their contentions

upon an incorrect interpretation, if not outright misstatement, of the facts. Mr. Dechter has provided a Rebuttal Verified Statement in which he addresses the contentions of defendants regarding the factual and legal issues that they have raised. Mr. Dechter explains that the defendants improperly and incorrectly included financial data from other DHX Divisions in order to reach the factual conclusions they make.

The defendants likewise make a series of "half-fact" arguments which are not based upon a full statement of relevant fact to the issue. The legal arguments advanced by Matson are "dated" and have no validity in the Post-ICCTA era. Matson relies upon MOTOR CARRIER POLICY precedent in order to argue that Matson has not violated the tenets of ICCTA. Defendants' arguments regarding the "purpose" to "attract FCL cargoes" is not consistent with Matson documents nor consistent with the pricing policies of CSX as described in e-mail messages. These documents and messages are part of the COS record. As will be shown in detail in the Rebuttal Statement of Facts, the INTENT of defendants was to in fact render the freight forwarding industry in the Hawaii market unable to compete for FCL cargoes. The reason for this was that both defendants were being faced with rate competition from the forwarders. The small and medium size shippers who were being required to pay "the full freight" in Matson and CSX's 'open tariffs', were moving FCL business to forwarders.<sup>3/</sup>

The evidence contained in the COS, which was not disputed by either defendant, reflects that these small and medium size shippers were able to obtain transportation at rates that were [REDACTED] below the defendants' published rates. Both of the defendants acknowledged this price competition and CSX witnesses complained about having to reduce rates to meet the price competition provided by the freight forwarders, not just by DHX.

The defendants, who are U.S. Flag "Jones Act" carriers have the Hawaii trade to themselves. There is no "other" vessel service. All cargoes go on either a Matson vessel or a CSX vessel. What Mr. David Hoppes started in earnest in 1994 had gotten out of hand in the view of Matson. The documents reflected an intent to (1) stop this forwarder price competition, (2) take the FCL cargoes 'back' at their tariff rates, and (3) establish a rate structure that assured Matson that freight forwarder price competition would be either at a minimum or totally nugatory. [REDACTED] on the other hand, saw Matson's actions as a device to increase revenue as well as impacting the forwarders ability to compete for FCL business. In fact, it was the "policy" of [REDACTED] not to afford forwarders any means, device or "tools" to enable a forwarder to compete with CSX for FCL business. The documents also go so far as to identify that (1) [REDACTED] in order to obtain FCL business, and (2) [REDACTED]

[REDACTED]

[REDACTED]. Lastly, the documents further show that even [REDACTED] [REDACTED]. Simply put, not even the [REDACTED] shippers ever truly received an independent [REDACTED] without defendants engaging in rate comparisons first.

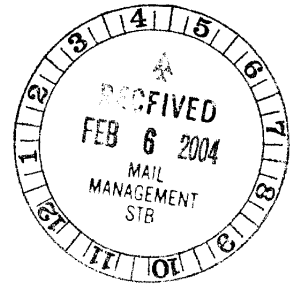
The rate actions and rules changes imposed by the defendants in July 1998 to October 1999 were anti-competitive in their intent and impact. Defendants also imposed a series of continuing rate increases in tariff items "open" to the freight forwarders. These rate increases, each year since February 1999, have worked to continually increase the forwarders' basic ocean transportation costs. Obviously, when a basic cost is continually increasing the forwarders are rendered less and less able to offer a competitive rate on FCL cargoes. In fact, Mr. Eric Burns, in his Verified Statement, indicated that DHX was now on a "tariff cost plus" basis when it came to rate quotations for FCL cargoes.

It is worthy to note that while defendants keep raising forwarder rates, they either [REDACTED] rate increases associated with [REDACTED]. Defendants actually raise these rates when they perform a general rate increase (GRI) but then the defendants reduce [REDACTED] associated rates to [REDACTED] sometimes even lower.

MOUs are essentially the same as Loyalty Contracts as defined under the Shipping Act of 1984. 46 USC Appx. §1702(13). The I.C.C. identified such contracts as "Exclusive Patronage Agreements." The I.C.C. noted that such agreements were anti-competitive and therefore unlawful as destructive practices.

12.

**REDACTED**



**REDACTED**

Matson's argument is "we got caught, now we have to claim these illegal agreements are something else".

Defendants lied to DHX about volume pricing. They would now attempt to use the ICCTA Statute of Limitations as a bar to the amount of damages claimed by DHX. As a matter of law, fraud and deceit are recognized as "tolling" any statute of limitations. Here, the deceit is part and parcel of the original ongoing scheme to exclude and deny forwarders volume pricing. Remember, volume rates, which are normally lower than the A.Q. single container rate could be "used" by a forwarder to compete for shipper business on an FCL basis. Defendants clearly will not tolerate any form of price competition. Refusing forwarders volume pricing and justifying the refusal by claiming not to provide it, is a way of avoiding volume pricing. Defendants may not use their own unlawful actions as a device to limit their liability.

REBUTTAL STATEMENT OF FACTS

The regulation of the non-contiguous offshore trades has been vested in the Surface Transportation Board on an exclusive basis since September 30, 1996.<sup>4/</sup> The Board, which superceded the Interstate Commerce Commission, has had a limited "history" in regulation of the off-shore trades. Prior to ICCTA, the Interstate Commerce Commission and the Federal Maritime Commission "shared" regulation. See, The Interstate Commerce Commission and the Federal Maritime Commission Joint ICC/FMC Policy Statement, 8 I.C.C.2d. 243 (1991).<sup>5/</sup> The instant proceeding does involve fact matters which precede STB jurisdiction. These facts are relevant and essential to the Board obtaining a full and complete grasp of the scope of and understanding of the legal and factual issues involved. The Federal Maritime Commission

<sup>4/</sup>

The STB has jurisdiction pursuant to 49 USC 10521(a)(1). The term "Noncontiguous Domestic Trade" is also known as the "domestic offshore trade" and includes transportation originating in or destined to Alaska, Hawaii, or a territory or possession of the United States. This involves water carrier services to Puerto Rico and Guam as well as between Hawaii, Guam and Alaska. It is the custom and practice in this maritime industry to refer to specific "trade lanes" by the name of the island/point destination--i.e. "Hawaii Trade", "Alaska Trade", "Puerto Rico Trade" and "Guam Trade". DHX will use this terminology herein. International ocean transportation remained under the Federal Maritime Commission pursuant to the Shipping Act of 1984.

<sup>5/</sup>

This Policy Statement was the outgrowth of a pattern of abuse of the regulatory split of jurisdiction by the carriers. E.g. Puerto Rico Maritime Shipping Authority and PRMMI Trucking, Inc.---Petition For Declaratory Order, 7 I.C.C.2d. 205 (1990), and Hemisphere Navigation Co., Inc. v. Sea-Land Service, Inc., 24 S.R.R.(Pike & Fischer) 1484 (ALJ 1988), and 25 S.R.R. 56 (FMC April 28, 1989). The Hemisphere case involved the exposure of a sham intermodal tariff and is known as "The Case of the Phantom Truck Line", 24 S.R.R. at 1484.

has dealt with issues involving vessel operating ocean common carriers ("VOCCs") and "non-vessel operating ocean common carriers" ("NVOCCs") for many years. Domestic freight forwarders in the domestic offshore trades conduct operations that are the same as conducted as NVOCCs.

In order to properly understand the importance of certain facts in this proceeding, it is necessary to have a chronology of significant events. Such a chronology also works to expose the flaws in the defendants' responses herein. Defendants control the actual physical services in the Hawaii trade. It is necessary to start from the basic irrefutable point that ALL cargo is transported by defendants. The net result is the issue of "at what price?". That is the crux of this case and of the DHX complaint. Defendants by their actions have worked to crush freight forwarder price/rate competition for FCL business. The verified statements of Elaine Griggs, Ralph Merolla and Eric Burns also disclose "how" the defendants, through their manipulation of access to their vessels via tariffs, now have obtained complete "control" over the pricing of transportation services in the Hawaii trade. The exclusion of freight forwarders from competitive rates, except to the extent permitted in a "rate-by-rate" and shipper-by-shipper by defendants is contrary to the National Transportation Policy to encourage price and rate competition in the domestic offshore trades.

### A. Chronology of Significant Events

- 1987 - Sea-Land Service replaces U.S. Lines as competitor to Matson Navigation in the Hawaii/Guam Trades
- 1987- 1992 - Sea-Land utilizes sales tactic of 'cherry picking' of lucrative cargoes, including named shipper rates, and publishing "min-FAK" rates with one for one container overflow rule.
- 1992 - Matson in response to losing business to Sea-Land publishes tariff 2034 with the I.C.C. but does not disclose existence of tariff due to fact that tariff has 'special' rates which are restricted in access and which intermodal rates are lower than the port rates in Matson's FMC filed tariff-No. 14.
- 1992- David Hoppes becomes So. California Sales Manager and seeks out help from Bradley Dechter to "teach" him the market and 'how' DHX does business.
- Sept. 1993 - Hoppes provides Brad Dechter "Win-Win Proposal" that shows how DHX has been rating cargoes on a per hundred weight basis with overflows and mixed shipments. Such information was 'taught' to Mr. Hoppes and was proprietary to DHX.
- Oct. 1993 - Matson publishes Mixed Shipment Rules and revised overflow and 'shipment' definition provisions in tariff to gain business from freight forwarders.
- Oct. 1993 - Matson Mixed Shipment Rule (VS Dechter Ex. 10) is every forwarders "wish list" as the Rule contains a list of items much longer than that provided to DHX (VS Dechter Ex. 3).
- 1994 - DHX starts Full-Container Load Division as a separate operation in DHX.
- 1994 - All major freight forwarders in Hawaii trade begin to discontinue use of FAK rates and begin to use the DHX rating/declaration methodology.
- Apr. 1994 - Hoppes promoted to General Sales Manager at "Home" Office of Matson. Hoppes in ocean sales about 1 year.

16.

1994-

1996 - Matson and Sea-Land engage in rate competition in Hawaii Trade with Sea-Land maintaining lower rates to reflect service issues.

1996 - Matson and Sea-Land begin a pattern of rate matching in the Hawaii Trade.

1994-

1998 - Freight Forwarders move away from use of FAK rates and use DHX rating methods to solicit FCL business from 'direct' shippers.

1994-

1998 - Freight Forwarders provide rate/price competition for FCL shippers in the Hawaii Trade. Such rates are at amounts less than the tariff rates of Matson and Sea-Land.

1994-

1998 - Matson and Sea-Land Sales personnel begin complaining to carrier pricing departments about freight forwarder rate competition for FCL cargoes from 'direct' shippers. Matson and Sea-Land tariff rates become 'paper rates' and defendants losing FCL customers to forwarders.

1994-

1998 - Forwarder rates are at approximately \$200-\$300 below tariff rates of Matson and Sea-Land and such rates are offered by the forwarders to small/medium size shippers that shipped small quantities of FCL containers/cargoes.

1997 -

June

1998 -

**REDACTED**

June

1998 -

**REDACTED**

July

1998 - Matson publishes changes to tariffs which eliminate provisions used by forwarders to offer FCL rates to direct shippers and also increases rates in items used by forwarders in LCL business as well as overflow rule container minimum rates/charges.

Aug.  
1998 - Sea-Land Service amends tariffs to match Matson tariff changes from July 1998, both carriers' tariffs effective September 1998.

Aug.  
1998 - Sea-Land Service takes a commodity item by commodity item rate increase which matches Matson per hundred weight increases.

Oct.  
1999 - Both Matson and Sea-Land file 7.5% increase in overflow rule minimum rates/charges, which when combined with September 1998 increase equals 17.5% for each carrier.

Feb.  
2000 - General Rate Increase in Open tariff rates.

Feb.  
2001 - General Rate Increase in open tariff rates.

Apr.  
2002 - General Rate Increase in open tariff rates.

B. Complainant's Opening Statements ("COS")

DHX, at the end of October 2003 filed its Opening Statements. The Statements were submitted by Mr. Dechter, President of DHX, Mr. Ralph Merolla, Vice President of Marketing/Sales, Mr. Eric Sean Burns, a Senior Rating Analyst, Mr. Paul Chun, Assistant Controller of DHX, and Ms. Elaine Griggs, Ocean Pricing Manager for DHX. Mr. Dechter provided a detailed factual history of how DHX came to file the original complaint as well as the factual circumstances surrounding the defendants' rate actions and rules changes. Mr. Merolla is responsible for the operation of DHX activities in Northern California, Oregon and Washington. He became Vice President of Marketing/Sales in 2000 and he provided many factual details to DHX's sales and marketing efforts with defendants--including what is involved in attempting to obtaining pricing from defendants and the defendants explanations as to "why" they have refused forwarders volume pricing.

Mr. Burns is responsible for pricing DHX service and he explained in detail the circumstances surrounding the limitations imposed by defendants in access to competitive rates in their tariffs. Mr. Burns likewise provided sample tariff matter as well as rate summary analysis and copies of all the involved rules. Mr. Burns also examined Sea-Land/CSX's tariffs in order to identify the participating carriers for the stated "joint-rates".

Mr. Chun, in conjunction with Mr. Dechter, provided a cost analysis of the impact of defendants' unreasonable practices. Mr. Chun determined an average monthly cost per container which he provided in summary form as well as identifying the amount which DHX pays because of defendants' tariff restrictions. The Schedules prepared by Mr. Chun included an analysis of wharfage charges paid and not absorbed by defendants. Wharfage in the Hawaii Trade is a "pass-through" of 3rd party marine terminal charges. Defendants do not pass through these charges when invoicing "proprietary shippers" but impose these charges on tariff items used by freight forwarders. This merely increases forwarder basic costs. The proprietary shipper rates are lower than the forwarder port rates even though most of the proprietary shipper rates can include inland trucking. Mr. Chun, using commodities items identified by Mr. Burns, compared "proportional" to "port" rates and also compared port rates to "intermodal" rates with the inland trucking factor removed to even out the analysis.

Ms. Griggs, who is Ocean Pricing Manager, described in detail the impact of the July 1998 and October 1999 tariff changes by defendants. She is also charged with the responsibility to try to obtain ocean transportation rates from defendants. She provided a description of how difficult it now has become and the extent to which DHX is limited in the rates that are made available to DHX by the defendants. Ms. Griggs provided copies of the involved tariff rules changes, sample rate items, as well as an analysis of the increased costs to FCL shippers (Griggs, Ex. 16) that were the result of defendants actions from July 1998 through February 2000. Ms. Griggs further provided a list of FCL customers lost to DHX (Griggs, Ex. 14).

Defendants' witness deposition testimony and exhibits are part of DHX's Opening Statements. They contain many admissions of fact as well as [REDACTED]. While the Amended Complaint took note of apparent defects in defendants' tariffs, what was not anticipated was that defendants would acknowledge filing port rates labeled as "proportional rates" even though there was no through route or any other carrier involved-- [REDACTED]. Defendants also disclosed the actual usage of MOUs and that such documents contained terms and conditions of service which were not published in defendants' tariffs as required by law. They further [REDACTED]  
[REDACTED]  
[REDACTED]

Defendants take issue with the sufficiency of DHX's proof and whether or not such activities constitute violations of ICCTA. The Board's Modified Procedures -- Part 1112 (49 CFR 1112, 2002 Ed.) provides that material allegations of fact contained in verified statements, which would include the involved deposition transcripts as "sworn statements", ...

"...will be considered to have admitted the truth ...unless those allegations are specifically challenged." 6/

DHX has prepared and has filed with this Rebuttal Statement of Facts and Law "Complainant's Abstract of Undisputed and Disputed Material Facts" which is further identified as "Volume 3 of 3 of Complainant's Rebuttal Statements. This Abstract contains, in sequential order, material statements of fact from Complainant's Opening Statements ("COS") and further identified the source point for each fact. A review will show that defendants do not dispute many of DHX's COS fact allegations. As per Rule 1112.6 the facts identified as Uncontested are now considered to be admitted as "truth".

Complainant's Opening Statement has documents included and identified as "Attachments". This designation was to avoid any confusion with the Exhibits attached to DHX witness Verified Statements or the Exhibits attached to the Sworn Depositions.

6/  
49 CFR 1112.6 (2002 Ed.). Under the Board's Rules and prior precedent, if a defendant fails to explain a material piece of evidence or fact, the evidence becomes "incontrovertible" by the defendant. Wakefern Food Corporation v. Southwest Freight Lines, Inc., 3 I.C.C.2d. 814, 821 (1987). The plain reading of Matson's 1997 Study, June 16, 1998 Memorandum, the Stevens "Revenue Enhancement" Power Point Presentation (Exhibits MNC#2, MNC-#3, MNC-#4) establish that it was the intent of Matson to damage forwarders' ability to compete.

The exhibits for each defendant deposition were identified by defendant designation ("MNC" for Matson and "CSX" for Sea-Land/CSX Lines) and sequentially numbered through out all of defendant witness depositions. The contents of each of those deposition exhibits and the testimony of each witness is likewise now established as correct.

C. DHX Rebuttal to Defendants Fact Contentions

The defendants' Reply spend precious little time and space on the facts of this case. Matson made some contentions but actually spent "2 paragraphs" on its recitation of the material facts. It is noted that Matson and CSX take differing positions regarding the question of the MOUs. Both defendants make the same contentions regarding the DHX financial records as well as the "discrimination case" defense. DHX has examined the Matson representations and has attached hereto and identified as Attachment "D" the DHX Rebuttal to Matson's Reply Fact Contentions.<sup>7/</sup>

Defendant CSX has submitted the Verified Statement of Mr. Daniel Downes. Mr. Downes was also deposed and his deposition testimony has been submitted to the Board for review. It must be acknowledged that Mr. Downes' Statement is an elegant piece of sophistry. It is also filed with half-truths and incorrect

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<sup>7/</sup> For purposes of consistency DHX will continue the document identification system used in the COS. Attachments A, B, and C were attached to the COS. Accordingly, documents included herewith will start with "Attachment 'D'" and so forth. DHX has also enclosed herewith the Statutes and Regulations that are involved in this proceeding and the Legislative Histories for the involved statutes and identified as such.

assumptions of fact. Mr. Downes incorrectly describes the economy of Hawaii as "stagnant". Likewise he fails to disclose that Sea-Land sold its marine terminal operations and facilities to Mearsk Lines in 1999. Mr. Downes discussion of the wharfage and marine terminal operations of CSX Lines/ Horizon Lines is mis-leading and incorrect. Mr. Downes incorrectly contends that freight forwarders have been in the Hawaii Trade for only 15 years. Freight forwarding and NVOCC type operations have been in the Hawaii Trade for over 40 years. Mr. Downes discusses the factors that CSX purportedly uses to making pricing decisions. Mr. Downes, as will be set forth below, has failed to disclose the Sea-Land/CSX pricing policies regarding freight forwarders. Mr. Downes makes the contention that CSX declines volume pricing to freight forwarders because CSX does not want to be perceived as playing 'favorites'. This is pure nonsense. While Mr. Downes contends that Sea-Land/CSX was concerned about "rate erosion" a comparison of revenue per box paid by forwarders such as DHX reflected that forwarders paid "MORE" not less than a typical proprietary shipper. How can you have "erosion" when the level of revenue is higher than the rates freely established by CSX/Sea-Land/Horizon under Memorandums of Understanding? In addition to all of the above, Mr. Downes improperly implies the overflow containers are partial loads and are "lighter" than "lead containers". Mr. Downes, in an e-mail, notes there is no such weight issue or requirement in the CSX/Sea-Land Overflow Rule.

28.

~~\_\_\_\_\_~~ CSX has refused to provide the same accommodation to DHX or any other forwarder. CSX has generally denied the scope of the impact of the rates and rules changes from July 1998 to October 1999. Matson has attempted to invoke the protections of the Zone of Rate Freedom. Attached hereto and identified as Attachment "L" are copies of Downes/Brown exhibits which reflect the size of the involved increases. This figures are consistent with the dollar sums contained in Mr. Dechter's VS Statement, Ex. #2 as well as consistent with the rate increase analysis contained in Griggs Exhibit #16.

D. The Defendants had a coordinated "strategy" to address forwarder price competition for FCL direct shipper business

Each carrier defendant has a strategy to deal with the issue of freight forwarder price/rate competition in the Full-Container Load Business.

**REDACTED**

**REDACTED**

to Complainant's Abstract (Volume 3 of 3 to Complainant's Rebuttal Statements) wherein the document is abstracted in detail. Matson was out to not only put forwarders out of business but to keep them out of the FCL market.

CSX, on the other hand, was not so open about its forwarder strategies. A review of e-mails (some [REDACTED] in all) produced by defendant reflects the documents contained in Attachment H AND the documents contained in Attachment "N" hereto (deposition exhibits CSX-#47 and CSX-#60). The strategy of CSX was simply to keep forwarders in the LCL market and keep forwarders OUT of the FCL market. The e-mail contained in CSX-#60 states [REDACTED]

revenue per box from forwarders. [REDACTED]  
[REDACTED] noted that they (CSX) should not  
give DHX 'another tool' to "go after full load freight". In  
fact, Mr. Brown called this [REDACTED] This same [REDACTED]  
[REDACTED] found in CSX-#47 where in it is noted that [REDACTED]

████████████████████ The defendants overlapped in their approach to pricing with forwarders. It is simple--a volume price to a forwarder would enable the forwarder to "sell" a spot or slot on either defendants' vessels at a price "other than" the price that defendants had decided to establish for a single container shipment. Defendants' actions are about keeping prices as high as possible. In the Guam Rate case (FMC Docket No. 89-26 and

now STB Docket WCC-101) the defendants were found to have obtained excessive profits. There is no reason to believe that the same situation does not exist in Hawaii based upon the commonality of circumstances and the commonality of the defendant participants.

In addition to the above, both defendants used "ownership interest" restrictions in their tariffs as a means of preventing the usage of rate items by freight forwarders. Attached hereto and identified as Attachment "O" is an additional copy of Downes deposition exhibit CSX-#39 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Complainant has also included in the Attachment an extra copy of Downes deposition exhibit CSX-#37. That document shows that [REDACTED] of a rate item that was published to apply from Rancho Dominguez, California. DHX has its offices and terminal at that same location. There is no doubt that CSX is not "soliciting" business with such restrictions but is actively using such restrictions for anti-competitive and exclusory reasons.

In so far as Matson is concerned, they also claim that the use of these non-transportation restrictions are to "attract" cargoes of the named shippers. This is also not correct. DHX

has included in Attachment "P" a copy of an [REDACTED]

item. The reason given was [REDACTED]  
[REDACTED]. Matson, like CSX, utilizes these non-transportation  
restrictions as part and parcel of its unreasonable and destruc-  
tive practices tactics against the freight forwarding industry  
to Hawaii.

E. CSX/Horizon Arguments Involving the Use of SBIs by DHX is premised upon a mistake by Defendant Regarding Retention of Information

Defendant CSX spends a great deal of effort contending that the continued existence of certain customer names in the DHX customer Special Billing Instructions data base means that these entities are current active customers. CSX then contends that Griggs Ex. 14 (List of Lost FCL Customers) is erroneous. CSX relied in part upon the deposition testimony of Mr. Ralph Merolla. While Mr. Dechter has responded to and has explained how this SBI system was set up and works, it appears that the defendant may not have recognized that Mr. Merolla clarified his deposition testimony in his Errata Sheet. CSX, quotes Mr. Merolla at pages 82-83 of the CSX Reply, citing Merolla deposition transcript pages 117.22 to 118.11. Attached hereto and included in Attachment "Q" is the cover letter and Errata Sheet for Mr. Merolla provided to counsel for both Defendants on October 7, 2003. CSX discussion and arguments are based upon

mistake of fact by defendant.

F. Defendants Have Not Articulated Their Real  
Motives For The Rules Changes And The Rate  
Actions Taken by Defendants in 1998-1999

Defendant Matson appears to believe that telling "half-a-tale" will pass for the compete truth. CSX, on the other hand, at least has the awareness of the signifigance of the issues this proceeding has raised. The Board has limited experience with water carrier proceedings as compared to the 70 years of experience of the Federal Maritime Commission. It is interesting that Matson freely admits that it is discriminating against freight forwarders through its tariffs. Matson's blunt response is "we are no longer prohibited from doing so". It is the position of DHX that Matson merely misapprehends controlling law.

As noted above, ALL cargoes, LCL and FCL containers are transported aboard defendants' vessels. Defendants have published some of their rates and terms of service. Defendants appear to have pushed these rates to a level of "what the market will bear" and then take periodic incremental increases in those areas of "least resistance". Such areas involve shippers and members of the public with little or no economic leverage--i.e. the small and medium size shippers as well as less-than-containerload shippers that use the services of freight forwarders.

Defendants blatantly acted to damage the ability of freight forwarders, as a group, to offer FCL services at rates that are "other than" defendants "established" rates. The elimination of

the tariff provisions used by freight forwarders had a two-fold effect. First, it reduced the level of competition in the FCL market. Secondly, and more importantly, these actions created an 'automatic' rate increase for the defendants through the elimination of the "freight forwarders' rates" which were admittedly "below" defendants tariff rates. It must be pointed out that these "forwarder FCL rates" were beneficial to the shipping public by making transportation less costly and by maintaining a "market of competitive rates" for ocean transportation services that was populated by more than just Matson and CSX. Defendants actions in July 1998 through October 1999 have been admitted by defendants to be primarily for the purpose of eliminating the forwarder rates/pricing and enabling Matson and CSX to "regain" control of all ocean rate pricing in the Hawaii Trade.

The deposition testimony of the employees of defendants plainly stated the purpose to both eliminate competition and to obtain control of market pricing. Both "goals" are contrary to the basic tenants of competition under virtually all State and federal regulatory statutes to address commercial enterprise in interstate commerce. The below quotations are contained in Complainant's Abstract (Volume 3 of 3) but are restated here for the convenience of the Board.

David Hoppes - Excerpts

Dep.Tr. 44, lines 21-23

"[REDACTED] s."

The above discussions make it clear that what the defendants sought to do was to eliminate the forwarders market based prices as established by free competition, and re-establish the defendants unilateral tariff rates as the "market" rates. Defendants when confronted with a competitive situation had the choice to either (1) reduce their rates and fairly compete, or (2) take any action necessary to "eliminate" the competition. Since all cargoes have to be transported on defendants' vessels, the defendants opted for the maximization of revenues/profits and chose the unlawful action of implementing tariff changes that eliminated the freight forwarders ability to offer competitive rates and service to FCL shippers.

#### ARGUMENT

Defendants submit lengthy Reply pleadings which do not really contain appropriate responses to the DHX COS. DHX has articulated the issues that DHX perceives to be involved in this proceeding. See, pages 5-6 *infrac*.

I. THE AMENDED COMPLAINT EXPANDS UPON THE BASIC  
AVERMENT OF THE ORIGINAL COMPLAINT TO THE  
BOARD AND PROVIDES GREATER DETAIL TO THE  
DEFENDANTS ACTIONS.

Defendants spend a great deal of time discussing the Amended Complaint. The Amended Complaint incorporated the original complaint by reference to the extent not inconsistent. The irony is that the time between the original filing and the date of the Amended Complaint permitted the full force of defendants' actions to be discerned. It is also important to note that the COS did not pursue all claims in the Amended

Complaint as some matters were subsumed within larger issues. The discovery developed the fact that defendants' tariffs contained more than minor errors regarding participating carriers and absence of necessary routings. The discovery determined that defendants have made intentional incorrect filings. These are misrepresentations to the public as well as to the Board and to DHX. Further, the existence of MOUs did not become known to DHX until sometime in 2001 when Mr. Tom Good told Mr. Dechter about those activities/agreements.

The Orders of the Board, between December 2001 and the present recognize this case as a destructive practices and unreasonable practices case. The counts I and II as to Matson are subsumed into the larger unreasonable practices claims as contained in counts IV, V, VII, VIII and IX. As to Sea-Land, count I was subsumed into the unreasonable practice claims in counts III, V, and VI. Count V is unreasonable not only as a tariff publishing violation, but by reason that the rates were intentionally misrepresented.

DHX presented its Opening Statement in which it sought damages for lost profits, unequal absorption of 3rd party wharfages as well as damages for the exclusionary tariff non-transportation restrictions. Further, on alternative grounds, that damages be awarded on grounds that the tariff limitations were unlawful and therefore unenforceable. The result was duplication of rates which must be construed against defendants and to which DHX is entitled to the benefit of the lower rate.

DHX also seeks damages for the mis-representation regarding the availability of volume pricing. Such damages would be as if DHX had been able to obtain the same rates as the sample shippers. Mr. Chun's exhibits and schedules provide the basis for these damages/amounts. Defendants may not avoid these damage claims and they have not denied that they were not honest with DHX personnel. Lastly, the [REDACTED] are also a basis for award of damages in that the failure to file was part of the scheme to keep the knowledge of the existence of volume pricing secret--a level of "deny-ability".

Defendants have missed the point that the Board has entertained two other similar complaints. See Docket WCC-101 and WCC-104. In Docket WCC-101 defendants "rate structure" is under review. in Docket WCC-104, the defendant's rate structure was also under review as "predatory" or less-than-cost. The same situation exists in this case. The complaint is that the defendants rate structures as anti-competitive and exclude freight forwarders from competition for FCL cargoes in the Hawaii Trade. The ICCTA does not contain a definition of "unreasonable practice". The I.C.C. and Board has noted that under such circumstances, the evaluation of whether or not a 'practice' is lawful or unlawful is measured by its impact. The impact in this case is anti-competitive as it has damaged competition. The National Transportation Policy which ICCTA established for the domestic offshore trades, carries forward the language from the original NTP in 1940. Destructive compet-

ition can have many facets depending upon the mode of transportation involved and the economic environment. In the dupolistic environment that exists to Hawaii, elimination of price competition would be contrary to the stated Policies and therefore is unreasonable and unlawful.

Defendants have been on notice of the facts asserted in the Amended Complaint and have had the ability to answer and meet the consolidated claims as contained in the COS. They have been afforded Notice and Due Process which is all that is required by the APA. It is a point that while defendants may claim they did not "understand" the claims, the STB did and defendants participated fully in discovery and have litigated this issues that have been raised. Any form of objection that might have existed has been waived by participation and litigation.

II. DEFENDANTS TARIFF ACTIONS IN 1998  
DAMAGED COMPETITION IN THE FCL  
MARKET AND WERE UNLAWFUL AS A  
DESTRUCTIVE COMPETITIVE PRACTICE.

Defendants, based upon the documents and the testimony, freely admit that they "did what they did". Their defense is that discrimination is not unlawful. Section 13701(a) prohibits unreasonable practices. The caselaw makes it clear that when an action is damaging to the ability of a mode of transportation to compete, it is destructive competition.

The court in Barrett Mobile Home Transport v. U.S., 381 F.Supp. 1317, 1330n.33 (D. MN. 1973) defined destructive competition under the IC Act as competition which "would tend not only to damage but to destroy competition". The ICCTA now has a specific policy for the offshore trades, in addition to the General Policies which guarantee competition. Section 13101(a) (4) states

"(4) in overseeing transportation by water carrier, to encourage and promote service and price competition in the non-contiguous domestic trade."

DHX referred the Board the Great Lakes Ship Owners decision (COS, page 5) wherein it was noted that exclusive patronage contracts (which are the same types of contract arrangements as the MOUs in this proceeding and Loyalty Contracts) were held to be unlawful. Defendants merely stated that this precedent is out of date. Defendants have not read the law. The I.C.C. in Grain by Rent-A-Train, IFA Territory, 339 I.C.C. 579, 590 (1971) explained that the Great Lakes decision was based upon the fact that the defendant railroads "engaged in destructive competition by unlawfully depriving the other modes of transportation of the ability and opportunity to compete". Id. There has been no change in the language in the General National Transportation Policies that would render the I.C.C.'s interpretation no longer valid. In fact, in D&H Railway Unilateral Joint Rate Cancellation, 2 I.C.C.2d. 631, 637 (1986) the I.C.C. held that when Congress adopts a new law that incorporates prior law, Congress is presumed to be aware of and adopt those interpretations.

Defendants have sought to avoid this issue by claiming that this complaint proceeding is simply that of individual discrimination. Defendants can see the forest for the trees. DHX, which is a member of the injured group, is the plaintiff but is permitted to advance the claim of destructive competition. The error of defendant Matson is clear by their reliance upon Rates For A Named Shipper, 367 I.C.C. 959 (1984) and upon Investigation of Motor Carrier Collective Practices, 7 I.C.C.2d. 388 (1991). IN the 1991 decision, the I.C.C. noted that the Named Shipper decision was based the National Transportation Policy that existed and applied to motor carriers--49 U.S.C. §§10101(a)(2)(B), see, 7 I.C.C. 2d at 428, note 143-144. A review of that policy statute shows that it applies today only to motor carriers. 49 U.S.C. 13101(a)(2)(D)(2002 Supp.). Defendant has failed to recognize that prior to ICCTA, the I.C.C. had no direct jurisdiction and under the Rivers Act, 49 U.S.C. §§10703 (1978 Supp.) the F.M.C. water carrier (which both defendants were) was regulated as if it were the same mode of transportation as its I.C.C. regulated connecting carrier. See, 49 U.S.C. 10703(a)(4)(D) (1978 Supp., 92 Stat. 1373), as applied by the I.C.C. in Pacific Progress Shippers Association v. Totem Ocean Trailer Express, ICC Docket MC-C-30068, (EC) decided March 14, 1988, and on petition, June 23, 1988 (EC). Defendants actions are not consistent with the "New" Transportation Policies contained in ICCTA and made applicable to these water carriers. DHX has also attached and included in Statutes and Regulations the Legislative History to the involved Statutes. It is of note that the

Congressional Reports identify "price watching" as an anti-competitive practice as well as pointing out that the Board is to discourage such practices.

Defendants are shown to have included non-transportation factors as restrictions in their tariff publications. The record shows the purpose is not what defendants contend. These restrictions are part and parcel of the scheme of anti-competitive exclusion. As such, they should be held unenforceable and DHX must be afforded the benefit of the lowest available rate.

III. DEFENDANTS CLEARLY DECEIVED DHX AND  
THE PUBLIC AS TO THE AVAILABILITY OF  
VOLUME PRICING IN HAWAII TRADE.

Matson now claims the Memorandums of Understandings are confidential contracts under section 14101(b). CSX simply says it files all rates. The underlying statute requires of all rates, charges and privileges given. 49 U.S.C. 13702(b)(2). The statute authorizes the Board to prescribe specific information to be identified in the tariffs. More importantly, this statute specifically requires the identification of all "carriers" that are parties to tariffs. §§13702(2)(A). CSX has admittedly and plainly failed to conform its filings and purported "joint rates" to section 13702(b)(2)(A). The Board at 49 CFR 1312.3(a) requires carriers to publish all rates and "service terms". Service terms are defined at 1312.1 to include all rules and practices that affect the rates and the level of service. None of the sample MOUs conform to the requirements of §§14101(b) and may not be considered under

44.

that statute.

**REDACTED**

CSX's dis-

cussion of concurrences is not germane to the issue. A review of the Abstract (see also COS, Attachment B) will show that all defendants' witnesses admit that not all terms of service are published. Defendants have no excuse for this and "benefit" of the shipper does not work. This failure to file was consistent with the scheme of deceit regarding volume pricing. Absent public knowledge of such pricing, it made it easy for the defendants to lie about it. Denial enabled the defendants to refuse forwarder requests.

The subject Memorandums are reflective of Loyalty Contracts under the Shipping Act of 1984. 46 Appx. U.S.C. 1702 (13) (2002 supp.) These are enforceable agreements. In fact no one associated with either defendant denied the effect that the shipper would provide the guaranteed freight cargoes. Defendant CSx is well aware that lies to the public are a form of unreasonable practice. See, Mar-Mol and CopyCorp v. Sea-Land Service, Inc. FMC Docket 95-11 (FMC June 5, 1997), 27 S.R.R. (Pike & Fischer) 1085. In Mar-Mol the defendant misrepresented the applicability of a tax. Defendant collected the tax from its customer shippers and then KEPT the money.

IV. DEFENDANTS ENGAGED IN SEVERAL FORMS OF MISREPRESENTATION IN THEIR TARIFFS AND TO THE PUBLIC REGARDING THE NATURE OF RATES AND SERVICES.

The discovery in this proceeding revealed that both defendants were misrepresenting port rates as protportional rates. They have acknowledged that the proportional rates were not the result of any through transportation agreement and arrangement with another carrier. They have admitted the rates were published as a matter of customer convenience. The CSX tariff Rule, Rule 800 of SEAU 468, CSX1 468 states that the proportional rates are to

"...apply only on shipments having a prior or subsequent movement by an STB certified motor carrier".

Shippers are not STB certified motor carriers. DHX, in its Opening Statements pointed out that proportional rates are part of a through route. Defendants, again by mis-representing these rates have been able to deny access by DHX and the public. In Wisconsin Cent. Ry Co. v. United States, 169 Fed. 76, 79 (1909) the court held that proportional rates that were not associated with any joint tariff, routing or arrangement with another carrier were "inaccurate" in designation. It is again an unreasonable practice to engage in deceit in any tariff filing. Cf. Mar-Mol and CopyCorp v. Sea-Land Service, Supra. Further, CSX' joint rates are not joint rates. They do not have participating or connecting carriage. The I.C.C. in ICC Docket No. 41573, Anacomp, Inc.--Petition For Declaratory Order (EC) July 31, 1995, dscribed a joint rate service as involving a joint holding out of service by carriers that were "acting as joint venturers". None of Sea-Land's joint

rates come remotely close to this requirement. Mr. Dechter in his Rebuttal Verified Statement address the issue of the alleged concurrence and negotiations for local drayage rates.

V. DEFENDANTS HAVE ESTABLISHED AND DO MAINTAIN  
TARIFF RATE STRUCTURES THAT PRECLUDE ACCESS  
TO COMPETITIVE MARKET RATES BY FORWARDERS.

Defendants contend that forwarders are still able to compete for FCL freight. It is noted that the defendants can not and did not specifically dispute Mr. Burn's Exhibit 13 which contained a list of commodity items and the rates that DHX has to pay. A comparison of those rates shows that they are much higher than the restricted rates. DHX has attached hereto and identified as Attachment "R" an review of the rates available to forwarders under Matson's port Tariff 14-F and the comparable "door rate" under Matson's 2034-E as of May 2002. The forwarder rates are clearly higher. Attached hereto and identified as Attachment "S" is a comparison of the rates that defendants have agreed to under their MOUs and the "base ocn freight costs" from Mr. Chun's Average Monthly Container Cost. Again, DHX and therefore all forwarders are paying much more than the proprietary shippers and based upon cost alone, forwarders can not compete. Neither defendant contested any of the rate increase analysis done by Mr. Burns and contained in Burns Ex. 10, 11, 8-A, or Ex. 13.

Both Mr. Dechter and Ms. Griggs provided studies of the cost increases to individual shippers that had been using forwarder rates. See, VS Dechter, pg 24 of 36, Ex. #2, pg. 7. Griggs, Ex. 16. These are ample proof of the uncompetitive

nature of the forwarder allocated rates under defendants' tariffs. It is alleged that the defendants' overflow container rates provide a discount rate. This is not correct. Attached hereto and identified as Attachment "T" is a listing of the Overflow rates obtained from Griggs, Ex. 8. A comparison of these rates with the MOU rates in Attachment "S" reveals that these Overflow Rates are higher. Again, lack of competitive pricing will keep forwarders out of the FCL market.

VI. DHX HAS SUSTAINED IT PROOF OF DAMAGES  
AND IN ANY EVENT, THE STATUTE OF LIMIT-  
ATIONS MUST BE TOLLED DUE TO CARRIER  
MISCONDUCT.

The Statement of Mr. Dechter clearly describe and provide the required detail for lost profits claims. Mr. Chun has also provided the necessary detail. The Board may aware Lost Profits and a complaint only need show the financial information is representative. A four year pre-violation analysis is sufficient. Cf. Lousiana Railcar v. Missouri Pacific Railroad, 5 I.C.C.2d. 542, 548-549 (1989). Defendants lied to DHX and filed misrepresentations in their tariffs. This constitutes fraud. The court in Riddell v. Riddell Washington Corp., provided an extensive discussion of circumstances which toll all federal statutes of limitations, Cf. 866 F.2d. 1480, 1489-1495 (D.C. Cir. 1989). In addition, amendments generally "relate back to the original complaint" and should be permitted in this case, again based upon defendants' misconduct.

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CONCLUSION

Wherefore, in consideration of the above and foregoing, it is hereby respectfully requested that the Board grant DHX the relief sought, enter an award of damages as stated in Complainant's Opening Statements, and for such other and further relief as the Board deems just and proper in the circumstances.

Dated - 3 February 2004

Respectfully submitted,

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Certificate Of Service

I hereby certify that a copy of this document has been served by first class mail, postage prepaid, upon all parties of record in this proceeding.

Dated this 3rd day of February 2004.

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STATUTES AND REGULATIONS

- 49 U.S.C. 13101 - National Transportaton Policy
- 49 U.S.C. 13702 - Tariff Requirements
- 49 U.S.C. 14101 - Providing Transportation and Service
- 49 C.F.R. 1312.1 - Scope & Definitions
- 49 C.F.R. 1312.2 - Requirement To Publish
- 49 C.F.R. 1312.3 - Tariff Contents and Standards

PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS,  
AND FREIGHT FORWARDERS

CHAPTER 131—GENERAL PROVISIONS

Sec.  
13101. Transportation policy.  
13102. Definitions.  
13103. Remedies as cumulative.

§ 13101. Transportation policy

(a) IN GENERAL.—To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and—

(1) in overseeing those modes—

(A) to recognize and preserve the inherent advantage of each mode of transportation;

(B) to promote safe, adequate, economical, and efficient transportation;

(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

(E) to cooperate with each State and the officials of each State on transportation matters; and

(F) to encourage fair wages and working conditions in the transportation industry;

(2) in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to—

(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property;

(B) promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;

(C) meet the needs of shippers, receivers, passengers, and consumers;

(D) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;

(E) allow the most productive use of equipment and energy resources;

(F) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;

(G) provide and maintain service to small communities and small shippers and intrastate bus services;

(H) provide and maintain commuter bus operations;

(I) improve and maintain a sound, safe, and competitive privately owned motor carrier system;

(J) promote greater participation by minorities in the motor carrier system;

(K) promote intermodal transportation;

(3) in overseeing transportation by motor carrier of passengers—

(A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objectives of this part;

(B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this part; and

(C) to ensure that Federal reform initiatives enacted by section 31138 and the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions; and

(4) in overseeing transportation by water carrier, to encourage and promote service and price competition in the non-contiguous domestic trade.

(b) ADMINISTRATION TO CARRY OUT POLICY.—This part shall be administered and enforced to carry out the policy of this section and to promote the public interest.

(2) THROUGH ROUTES AND DIVISIONS OF JOINT RATES.—Through routes and divisions of joint rates for such transportation or service must be reasonable.

(b) PRESCRIPTION BY BOARD FOR VIOLATIONS.—When the Board finds it necessary to stop or prevent a violation of subsection (a), the Board shall prescribe the rate, classification, rule, practice, through route, or division of joint rates to be applied for such transportation or service.

(c) FILING OF COMPLAINT.—A complaint that a rate, classification, rule, or practice in noncontiguous domestic trade violates subsection (a) may be filed with the Board.

(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.

(3) DETERMINATIONS AFTER COMPLAINT.—The Board shall determine whether any rate or division of a carrier or service in noncontiguous domestic trade which is not within the range described in paragraph (1) is reasonable if a complaint is filed under subsection (c) or section 13702(b)(6).

(4) REPARATIONS.—Upon a finding of violation of subsection (a), the Board shall award reparations to the complaining shipper or shippers in an amount equal to all sums assessed and collected that exceed the determined reasonable rate, division, rate structure, or tariff. Upon complaint from any governmental agency or authority and upon a finding of violation of subsection (a), the Board shall make such orders as are just and shall require the carrier to return, to the extent practicable, to shippers all amounts plus interest, which the Board finds to have been assessed and collected in violation of subsection (a).

#### § 13702. Tariff requirement for certain transportation

(a) IN GENERAL.—Except when providing transportation for charitable purposes without charge, a carrier subject to jurisdiction under chapter 135 may provide transportation or service that is—

(1) in noncontiguous domestic trade, except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste; or

(2) for movement of household goods; only if the rate for such transportation or service is contained in a tariff that is in effect under this section. The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning

a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device. A rate contained in a tariff shall be stated in money of the United States.

(b) **TARIFF REQUIREMENTS FOR NONCONTIGUOUS DOMESTIC TRADE.**—

(1) **FILING.**—A carrier providing transportation or service described in subsection (a)(1) shall publish and file with the Board tariffs containing the rates established for such transportation or service. The carriers shall keep such tariffs available for public inspection. The Board shall prescribe the form and manner of publishing, filing, and keeping tariffs available for public inspection under this subsection.

(2) **CONTENTS.**—The Board may prescribe any specific information and charges to be identified in a tariff, but at a minimum tariffs must identify plainly—

(A) the carriers that are parties to it;

(B) the places between which property will be transported;

(C) terminal charges if a carrier provides transportation or service subject to jurisdiction under subchapter III of chapter 135;

(D) privileges given and facilities allowed; and

(E) any rules that change, affect, or determine any part of the published rate.

(3) **INLAND DIVISIONS.**—A carrier providing transportation or service described in subsection (a)(1) under a joint rate for a through movement shall not be required to state separately or otherwise reveal in tariff filings the inland divisions of that through rate.

(4) **TIME-VOLUME RATES.**—Rates in tariffs filed under this subsection may vary with the volume of cargo offered over a specified period of time.

(5) **CHANGES.**—The Board may permit carriers to change rates, classifications, rules, and practices without filing complete tariffs under this subsection that cover matter that is not being changed when the Board finds that action to be consistent with the public interest. Those carriers may either—

(A) publish new tariffs that incorporate changes, or

(B) plainly indicate the proposed changes in the tariffs then in effect and make the tariffs as changed available for public inspection.

(6) **COMPLAINTS.**—A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

(c) **TARIFF REQUIREMENTS FOR HOUSEHOLD GOODS CARRIERS.**—

(1) **IN GENERAL.**—A carrier providing transportation described in subsection (a)(2) shall maintain rates and related rules and practices in a published tariff. The tariff must be available for inspection by the Board and be made available for inspection by shippers upon reasonable request.

(2) **NOTICE OF AVAILABILITY.**—A carrier that maintains a tariff under this subsection may not enforce the provisions of the tariff unless the carrier has given notice that the tariff is

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available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to the tariff.

(3) REQUIREMENTS.—A carrier that maintains a tariff under this subsection is bound by the tariff except as otherwise provided in this part. A tariff that does not comply with this subsection may not be enforced against any individual shipper.

(4) INCORPORATION BY REFERENCE.—A carrier may incorporate by reference the rates, terms, and other conditions of a tariff in agreements covering the transportation of household goods.

(5) COMPLAINTS.—A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

(d) INVALIDATION.—The Board may invalidate a tariff prepared by a carrier or carriers under this section if that tariff violates this section or a regulation of the Board carrying out this section.

**§ 13703. Certain collective activities; exemption from anti-trust laws**

**(a) AGREEMENTS.—**

(1) AUTHORITY TO ENTER.—A motor carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into an agreement with one or more such carriers to establish—

- (A) through routes and joint rates;
- (B) rates for the transportation of household goods;
- (C) classifications;
- (D) mileage guides;
- (E) rules;
- (F) divisions;

(G) rate adjustments of general application based on industry average carrier costs (so long as there is no discussion of individual markets or particular single-line rates); or

(H) procedures for joint consideration, initiation, or establishment of matters described in subparagraphs (A) through (G).

(2) SUBMISSION OF AGREEMENT TO BOARD; APPROVAL.—An agreement entered into under subsection (a) may be submitted by any carrier or carriers that are parties to such agreement to the Board for approval and may be approved by the Board only if it finds that such agreement is in the public interest.

(3) CONDITIONS.—The Board may require compliance with reasonable conditions consistent with this part to assure that the agreement furthers the transportation policy set forth in section 13101.

(4) INDEPENDENTLY ESTABLISHED RATES.—Any carrier which is a party to an agreement under paragraph (1) is not, and may not be, precluded from independently establishing its own rates, classification, and mileages or from adopting and using a noncollectively made classification or mileage guide.

**(5) INVESTIGATIONS.—**

(A) REASONABLENESS.—The Board may suspend and investigate the reasonableness of any rate, rule, classifica-

posing any insurance filing requirements or fees that are for the same purposes as filings or fees the Secretary requires under the new system under subsection (a). The Secretary may not take any action pursuant to this subsection unless—

(1) fees that will be collected by the Secretary under subsection (c) and distributed in each fiscal year to the States will provide each State with at least as much revenue as that State received in fiscal year 1995 under section 11506, as in effect on December 31, 1995; and

(2) all States will receive from the distribution of such fees a minimum apportionment.

(e) DEADLINE FOR CONCLUSION; MODIFICATIONS.—Not later than 24 months after January 1, 1996, the Secretary—

(1) shall conclude the rulemaking under this section;

(2) may implement such changes under this section as the Secretary considers appropriate and in the public interest; and

(3) shall transmit to Congress a report on any findings of the rulemaking and the changes being implemented under this section, together with such recommendations for legislative language necessary to conform this part to such changes.

## CHAPTER 141—OPERATIONS OF CARRIERS

### SUBCHAPTER I—GENERAL REQUIREMENTS

Sec.

14101. Providing transportation and service.

14102. Leased motor vehicles.

14103. Loading and unloading motor vehicles.

14104. Household goods carrier operations.

### SUBCHAPTER II—REPORTS AND RECORDS

14121. Definitions.

14122. Records: form; inspection; preservation.

14123. Financial reporting.

### SUBCHAPTER I—GENERAL REQUIREMENTS

#### § 14101. Providing transportation and service

(a) ON REASONABLE REQUEST.—A carrier providing transportation or service subject to jurisdiction under chapter 135 shall provide the transportation or service on reasonable request. In addition, a motor carrier shall provide safe and adequate service, equipment, and facilities.

(b) CONTRACTS WITH SHIPPERS.—

(1) IN GENERAL.—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(10)(A), to provide specified services under specified rates and conditions. If the shipper and carrier, in writing, expressly waive any or all rights and remedies under this part for the transportation covered by the contract, the transportation provided under the contract shall not be subject to the waived rights and remedies and may not be subsequently challenged on the ground that it violates the waived rights and remedies. The parties may not

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waive the provisions governing registration, insurance, or safety fitness.

(2) REMEDY FOR BREACH OF CONTRACT.—The exclusive remedy for any alleged breach of a contract entered into under this subsection shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

#### § 14102. Leased motor vehicles

(a) GENERAL AUTHORITY OF SECRETARY.—The Secretary may require a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 that uses motor vehicles not owned by it to transport property under an arrangement with another party to—

(1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;

(2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;

(3) inspect the motor vehicles and obtain liability and cargo insurance on them; and

(4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.

(b) RESPONSIBLE PARTY FOR LOADING AND UNLOADING.—The Secretary shall require, by regulation, that any arrangement, between a motor carrier of property providing transportation subject to jurisdiction under subchapter I of chapter 135 and any other person, under which such other person is to provide any portion of such transportation by a motor vehicle not owned by the carrier shall specify, in writing, who is responsible for loading and unloading the property onto and from the motor vehicle.

#### § 14103. Loading and unloading motor vehicles

(a) SHIPPER RESPONSIBLE FOR ASSISTING.—Whenever a shipper or receiver of property requires that any person who owns or operates a motor vehicle transporting property in interstate commerce (whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135) be assisted in the loading or unloading of such vehicle, the shipper or receiver shall be responsible for providing such assistance or shall compensate the owner or operator for all costs associated with securing and compensating the person or persons providing such assistance.

(b) COERCION PROHIBITED.—It shall be unlawful to coerce or attempt to coerce any person providing transportation of property by motor vehicle for compensation in interstate commerce (whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135) to load or unload any part of such property onto or from such vehicle or to employ or pay one or more persons to load or unload any part of such property onto or from such vehicle; except that this subsection shall not be construed as mak-

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shall be in large print and posted in a conspicuous place. In addition, the carrier shall, upon request, make its tariffs available at that location as soon as possible but not later than within 20 days, or provide the sought information orally if satisfactory to the requester.

(e) Any publication referred to in a tariff must be maintained with that tariff.

(f) If any tariff maintained pursuant to paragraph (b) of this section has not been used for a substantial length of time, the availability of that tariff, including its reissues, may be discontinued at that office until such time as it is again requested. It shall then be made available within 20 days.

### § 1310.6 Furnishing copies of tariff publications.

(a) Copies of tariffs, specific tariff provisions or tariff subscriptions shall be provided upon request to any interested person.

(b) Except for providing to shippers the full text of tariff terms incorporated by reference into the bill of lading or other document embodying the contract of carriage for the transportation of household goods, as described in § 1310.4(a)(1), carriers may assess charges for furnishing copies of tariff publications to interested persons. If a charge is made, the charge must be reasonable, and identical for the same publications and delivery service.

## PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS FOR THE TRANSPORTATION OF PROPERTY BY OR WITH A WATER CARRIER IN NON-CONTIGUOUS DOMESTIC TRADE

Sec.

1312.1 Scope; definitions.

1312.2 Requirement to publish and file a tariff.

1312.3 Tariff contents and standards; Essential criteria.

1312.4 Filing of tariffs.

1312.5 Amendments to tariffs.

1312.6 Advance notice required.

1312.7 STB tariff designation.

1312.8 Identification of tariff publication.

1312.9 Statement of tariff application and other title page requirements.

1312.10 Notification of tariff changes and nature of changes.

1312.11 Special notification for ordered matter.

1312.12 Posting requirements.

1312.13 Furnishing copies of tariff publications.

1312.14 Powers of attorney and concurrences.

1312.15 Change of carrier or agent.

1312.16 Substitution of service.

AUTHORITY: 49 U.S.C. 721(a), 13702(a), 13702(b) and 13702(d).

SOURCE: 62 FR 19058, Apr. 18, 1997, unless otherwise noted.

### § 1312.1 Scope; definitions.

(a) *Applicability.* The provisions of this part address the requirements in 49 U.S.C. 13702 that carriers subject to the Board's jurisdiction under 49 U.S.C. Chapter 135 and providing transportation or service for the movement of property (except bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste) by or with a water carrier in noncontiguous domestic trade shall publish and file with the Board tariffs containing the rates for such transportation.

(b) *Exceptions.* 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); or

(2) The transportation of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission (FMC) or the Interstate Commerce Commission under Federal law in effect on November 1, 1995.

(c) *Definitions.* For the purposes of this part:

*Act* means part B of subtitle IV of title 49 of the United States Code.

*Agent* means a person, association or corporation authorized to publish and file rates and provisions on behalf of one or more carriers in tariffs published in the agent's name.

*Agent's tariff* means a tariff filed in the name of an agent.

*Board* means the Surface Transportation Board.

*Bound tariff* means a tariff consisting of two or more sheets bound at the left edge in pamphlet or book form or a single-sheet tariff.

# § 1312.2

*Carrier* means a motor carrier, water carrier or freight forwarder subject to the Board's jurisdiction under 49 U.S.C. Chapter 135.

*Carrier's tariff* means a tariff filed in the name of a carrier.

*Collectively established tariff matter* means a rate, charge, rule or other tariff provision established pursuant to 49 U.S.C. 13703.

*Independently established tariff matter* means any rate, charge, rule or other tariff provision not established pursuant to 49 U.S.C. 13703.

*Item* means a tariff provision of any kind bearing an item number designation.

*Joint rate* means a rate that applies over the lines or routes of two or more carriers made by an agreement between the carriers and effected by a concurrence or power of attorney.

*Joint tariff* means a tariff that contains joint rates or provisions affecting joint rates.

*Local rate* means a rate that applies only to one carrier.

*Local tariff* means a tariff that contains local rates or provisions affecting local rates.

*Looseleaf page* means a single page published as part of a new or reissued looseleaf tariff or as an amendment to such a tariff.

*Looseleaf tariff* means a tariff consisting of looseleaf pages.

*Noncontiguous domestic trade* means transportation subject to jurisdiction under 49 U.S.C. Chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

*Original tariff* means a bound or looseleaf tariff as originally filed excluding amendments.

*Page* means that portion of a tariff or supplement printed on one side of a sheet.

*Post* refers to making filed tariffs available to the public.

*Publication* means a bound tariff, a tariff supplement, or a looseleaf tariff page.

*Rate* means a rate or charge.

*Service terms* mean all classifications, rules and practices that affect the rates or level of service.

*Supplement* means a single sheet, or two or more sheets bound at the left

edge in pamphlet or book form, identified as a supplement and published to amend or cancel a bound or looseleaf tariff.

*Tariff* means an issuance (in whole or in part) bearing designations required by this part and containing rates, rules, regulations, classifications or other provisions published and filed with the Board for compliance with 49 U.S.C. 13702.

[62 FR 19058, Apr. 18, 1997, as amended at 64 FR 5195, Feb. 3, 1999]

## § 1312.2 Requirement to publish and file a tariff.

(a) *Requirement for tariff.* Except when providing transportation for charitable purposes without charge, or when providing transportation or service described in § 1312.1(b), carriers subject to the Board's jurisdiction under 49 U.S.C. Chapter 135 may provide transportation or service described in § 1312.1(a) only if the rates, and related rules and practices, for such transportation or service are contained in a published tariff that is on file with the Board and in effect under this part.

(b) *Adherence to tariff.* The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device. The carrier shall keep such tariffs available for public inspection and shall make such tariffs available to subscribers as required in this part.

(c) *Other information.* Provisions for information purposes only may be included in a tariff, provided they are clearly identified as such. Such provisions may include rates and service terms covering transportation not subject to regulation by the Board, and advertising and promotional material.

(d) *Effect of filing.* The tender of a tariff and its receipt and acceptance by the Board do not relieve a carrier of liability for violations of the Act, other laws, the Board's regulations, or any decision of the Board or a court, or have any effect on the rights of persons

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to file complaints for substantive violations of the Act or the Board's regulations.

(e) *Tariff relief.* Relief from the provisions of this part may be sought. Requests for such relief shall be submitted in duplicate and accompanied by the appropriate fee (see 49 CFR part 1002). Packages containing applications for relief shall be prominently marked "SPECIAL TARIFF AUTHORITY APPLICATION." The application shall cite all pertinent tariff matter and shall provide complete information regarding applicant's justification, purpose and manner of relief sought.

(f) *Invalidation of tariffs.* Tariffs that violate section 13702 of the Act, or a regulation of the Board carrying out that section, may be invalidated by the Board. When a tariff is invalidated, the party that filed it will be furnished a written explanation of the reasons for such action. Tariffs issued in lieu of invalidated tariffs shall so state.

### § 1312.3 Tariff contents and standards; Essential criteria.

(a) *Contents.* Tariffs filed with the Board must include an accurate description of the services offered to the public; must provide the specific applicable rates (or the basis for calculating the specific applicable rates) and service terms; and must be arranged in a way that allows for the determination of the exact rate(s) and service terms applicable to any given shipment (or to any given group of shipments).

(b) *Use of multiple tariffs.* All information necessary to determine applicable rates and service terms for a given shipment need not be contained in a single tariff, but if multiple tariffs are used to convey that information, the tariff containing the rates must make specific reference (by STB tariff designation) to all other tariffs required to determine applicable rates and service terms, and the carrier(s) party to the rates must participate in all of the tariffs so linked.

(c) *Clarity.* Tariff information must be presented in a way that facilitates the determination of the prices and services offered, and the related service terms. Ambiguous terms and complex methods of presentation shall not be used.

(d) *Explanations.* Reference marks and abbreviations, other than commonly used abbreviations, shall be explained either in the item in which they are used or in a separate item.

### § 1312.4 Filing of tariffs.

(a) *Filing requirements.* (1) Tariffs shall be filed in English with rates explicitly stated in U.S. dollars and cents. Two copies of each tariff publication shall be filed with the Board. Packages containing tariff filings should be prominently marked "TARIFF FILING" and addressed to: Section of Tariffs, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

(2) A tariff filing must be accompanied by an authorized document of transmittal identifying each publication filed, and by the appropriate filing fee (see 49 CFR part 1002). Acknowledgment of Board receipt of a tariff filing can be obtained by enclosing a duplicate transmittal letter and a postage-paid, self-addressed return envelope. Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

(i) The assigned alpha code of the issuing carrier or agent;

(ii) The number of pages transmitted;

(iii) The filing fee enclosed, the account number to be billed, or the credit card to be charged;

(iv) The transmittal number if the filer utilizes transmittal numbers; and

(v) If the filing fee is charged to a credit card, the credit card number and expiration date, and an authorized signature.

(b) *Paper size.* Tariffs shall be printed on paper not larger than 8½ x 11 inches.

### § 1312.5 Amendments to tariffs.

(a) *Manner of making changes.* An amendment is a change in, addition to, or cancellation of part of a tariff. Supplements are the tariff publications used to amend bound tariffs, and new or revised pages are the tariff publications normally used to amend looseleaf tariffs, although looseleaf tariffs can also be amended by supplements. Tariffs can also be canceled by new or reissued tariffs (see § 1312.7).

ICC TERMINATION ACT of 1995, P.L. 104-88 (Dec. 29, 1995)  
LEGISLATIVE HISTORY PROVISIONS

HOUSE REPORT NO. 104-311, ICC TERMINATION ACT of 1995,  
104th Cong. 1st Session, title page, page 113,  
Section 13702 - Tariff Requirements For Certain Transportation

HOUSE CONFERENCE REPORT NO. 104-422, ICC TERMINATION ACT  
of 1995, 104th Con. 1st Session, title page, pages 199,  
Section 13101, and pages 205-206, Section 13702

104TH CONGRESS  
1st Session

HOUSE OF REPRESENTATIVES

REPORT  
104-311

# ICC TERMINATION ACT OF 1995

## REPORT

OF THE

COMMITTEE ON TRANSPORTATION  
AND INFRASTRUCTURE  
HOUSE OF REPRESENTATIVES

ON

H.R. 2539

TOGETHER WITH

MINORITY AND ADDITIONAL VIEWS

(Including cost estimate of the Congressional Budget Office)



NOVEMBER 6, 1995.—Committed to the Committee of the Whole House  
on the State of the Union and ordered to be printed

104TH CONGRESS }  
1st Session }

HOUSE OF REPRESENTATIVES {

REPORT  
104-311

## ICC TERMINATION ACT OF 1995

NOVEMBER 6, 1995.—Committed to the Committee on the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

### REPORT

together with

### MINORITY AND ADDITIONAL VIEWS

[To accompany H.R. 2539]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2539) to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "ICC Termination Act of 1995".

## TITLE I—ABOLITION OF INTERSTATE COMMERCE COMMISSION

#### SEC. 101. ABOLITION.

The Interstate Commerce Commission is abolished.

#### SEC. 102. RAIL PROVISIONS.

(a) AMENDMENT.—Subtitle IV of title 49, United States Code, is amended to read as follows:

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ments by or with a water carrier in noncontiguous trade. The section maintains the current basic rate reasonableness requirements for those two limited areas and transfers the regulatory authority to the Panel to prescribe a rate when the carrier's rate is not reasonable.

The requirement for noncontiguous domestic trade includes rates for both port-to-port movements by water carriers or intermodal movements by water or motor carriers. Currently, port-to-port movements are regulated by the Federal Maritime Commission under the Intercoastal Shipping Act of 1933 and the Shipping Act of 1916. This bifurcated jurisdiction has created much legal confusion and promoted forum shopping. By consolidating the regulation of these trades in a single panel, a more consistent and efficient transportation policy can be achieved. Under section 13702(b)(3), a carrier may increase or decrease a base rate by not more than 10 percent of the base rate in effect one year before that date and the new rate is considered reasonable. This 10 percent zone may be increased or decreased based on the change in the Procedures Price Index in the prior year period. However, this zone of reasonableness for rate increases does not mean that the base rate cannot be challenged as unreasonable.

*Sec. 13702. Tariff requirement for certain transportation*

This section narrows the requirement to maintain tariffs to only two categories of traffic; rates for movements by or with a water carrier in noncontiguous domestic trade and movements of household goods paid for by the householder. Tariff filings with the Panel are required only for a movement by or with a water carrier in noncontiguous domestic trade and the requirements for the comparison of tariff are streamlined and clarified. Carriers providing transportation of household goods paid for by the householder must publish tariffs and maintain such tariffs for inspection, are bound by the terms of its tariffs, and transportation without a tariff is prohibited. This section also precludes the possibility of any future undercharges by eliminating future tariff filings and precluding any remaining filed tariffs from creating undercharges.

A carrier providing intermodal services in this trade is not required to state separately or otherwise reveal in tariff filings the inland divisions of a through rate. This section consolidates the current ICC and Federal Maritime Commission tariff filing system for the noncontiguous domestic trades into a single tariff filing system. This tariff filing is maintained to ensure that similarly situated shippers are treated the same by carriers based on the type and volume of cargo. It is not to be used for anticompetitive purposes such as "price-watching," where carriers tend to follow the rates of the highest priced carrier. The Panel should take whatever steps are necessary to ensure that the tariff filing system is not used for anticompetitive practices such as this.

*Sec. 13703. Certain collective activities; exemption from antitrust laws*

This section streamlines and reforms the current authority to exempt carriers from the antitrust law. The section authorizes the Panel to approve agreements between motor carriers and confer

## ICC TERMINATION ACT OF 1995

DECEMBER 18, (legislative day, DECEMBER 15), 1995.—Ordered to be printed

Mr. SHUSTER, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 2539]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2539), to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the “ICC Termination Act of 1995”.

(b) *TABLE OF CONTENTS.*—

Sec. 1. *Short title; table of contents.*

Sec. 2. *Effective date.*

#### TITLE I—ABOLITION OF INTERSTATE COMMERCE COMMISSION

Sec. 101. *Abolition.*

Sec. 102. *Rail provisions.*

Sec. 103. *Motor carrier, water carrier, and freight forwarder provisions.*

Sec. 104. *Miscellaneous motor carrier provisions.*

Sec. 105. *Creditability of annual leave for purposes of meeting minimum eligibility requirements for an immediate annuity.*

Sec. 106. *Pipeline carrier provisions.*

#### TITLE II—SURFACE TRANSPORTATION BOARD

Sec. 201. *Title 49 amendment.*

Sec. 202. *Reorganization.*

Sec. 203. *Transfer of assets and personnel.*

*Conference substitute*

Section 11908 clarifies that specific criminal penalties are the exclusive criminal penalties for violations of Part A, notwithstanding 18 U.S.C. 3571.

**SEC. 103. MOTOR CARRIER, WATER CARRIER, BROKER, AND FREIGHT FORWARDER PROVISIONS.**

This section creates a new Motor Carrier Act by amending Subtitle IV of title 49. It inserts after chapter 117 a new Part B relating to motor carriers, water carriers, brokers, and freight forwarders. Part B is administered by the Secretary except for those provisions which specifically provide for administration by the Board.

**Chapter 131—General Provisions****TRANSPORTATION POLICY***House bill*

Sec. 13101. Transportation policy. This section maintains the current national transportation policy for the Motor Carrier Act.

*Senate amendment*

Sec. 13101 (Transportation policy) sets out the national transportation policy from existing 49 U.S.C. 10101, and adds a water policy for noncontiguous domestic trade.

*Conference substitute*

The Conference adopts the House provision with the Senate addition and includes a public interest consideration.

**DEFINITIONS***House bill*

Sec. 13102. Definitions. This section maintains existing motor and water carrier definitions that apply to part B. Revisions have been made to the definition of household goods to deregulate office and trade show moves, and the definition of foreign motor carriers is modified as requested by the Department of Transportation to conform to the NAFTA treaty.

*Senate amendment*

Sec. 13102. (Definitions) imports those definitions from existing 49 U.S.C. 10102 that would be applicable to Part B. The definitions of foreign motor carriers and foreign motor private carriers, which are needed for enforcement of the provisions of the North American Free Trade Agreement (NAFTA), are imported from existing 49 U.S.C. 10530. The definition of residential household goods is subdivided between those transported for the individual householder (for which contract rates are precluded) and those transported under an arrangement with a third party (which are not so restricted). The definition of "transportation" was expanded to include "arranging for", "packing", and "unpacking" passengers and property as part of services related to transportation.

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## Chapter 137—Rates and Through Routes

### REASONABLE RATES

#### *House bill*

Sec. 13701. Requirements for rates, classifications, through routes, rules, and practices for certain transportation. This section virtually eliminates existing ICC motor carrier rate regulation by limiting the rate reasonableness requirement only to household goods movements, a movement by or with a water carrier in non-contiguous domestic trade and collective rates, rules and classification under an agreement pursuant to section 13709. The section maintains the current basic rate reasonableness requirements for these three limited areas and transfers the regulatory authority to the Panel to prescribe a rate when the carrier's rate is not reasonable. Zone of reasonableness provisions for water carriers are included.

#### *Senate amendment*

Sec. 13701 (Requirements for rates, classifications, through routes, rules, and practices for certain transportation) retains rate regulation for two categories of traffic under Part B: (1) residential household goods movements and (2) joint-rate water-motor movements in non-contiguous domestic trade. For the two categories of traffic for which rates would be regulated, subsection (a) would import the basic rate reasonableness requirement from existing 49 U.S.C. 10701, while subsection (b) would import from existing 49 U.S.C. 10704 and section 10705 the regulatory authority to prescribe a rate when the carrier's rate is unreasonable. The responsibility for administering these provisions would be placed with the Board. Subsection (d) set forth the requirements for reasonable rate determination for noncontiguous domestic trade.

#### *Conference substitute*

The Conference adopts the House provision modified by the Senate language in subsection (d) establishing a "zone of reasonableness" of 7.5 percent (adjusted by the change in the Consumer Price Index) above or 10 percent below the rate in effect one year prior to the proposed rate for motor carriers and port-to-port movements by water carriers in the noncontiguous domestic trades.

### TARIFF REQUIREMENTS

#### *House bill*

Sec. 13702. Tariff requirement for certain transportation. This section narrows the requirement to maintain tariffs to two categories of traffic: noncontiguous domestic trade and movements of household goods paid for by the householder. Tariff filings with the Panel are required only for noncontiguous domestic trade and certain requirements for the composition of tariffs are streamlined and clarified. Carriers providing transportation of household goods must publish tariffs and maintain such tariffs for inspection, are bound by the terms of the tariffs, and transportation without a tariff is prohibited. This section also precludes the possibility of any future undercharges.

*Senate amendment*

Sec. 13702 (Tariff requirement for certain transportation) retains a tariff requirement only for the same two limited categories of traffic: (1) joint rates for motor-water movements in noncontiguous domestic trade and (2) residential movements of household goods. Subsection (a) imports from existing 49 U.S.C. 10761 the requirement for a tariff and the prohibition against charging an amount different from that contained in the tariff. Subsections (b) through (e) imports the applicable tariff filing requirements of existing 49 U.S.C. 10762 for joint-rate movements in the non-contiguous domestic trade. The tariffs for such movements would be filed with the Board. Subsection (f) requires household goods carriers to maintain tariffs applicable to those residential moves, but does not require that those tariffs be filed with the Board. Rather, those tariffs are required to be published and kept open and available for inspection. The carrier is bound by the terms of its tariffs, and is prohibited from transporting residential household goods movements for individual householders without a tariff. The Board is charged with administering and enforcing these requirements.

*Conference substitute*

The Conference adopts the House provision, modified in subsection (a) to exempt transportation for charitable purposes without charge. Subsection (b) of this section allows the Board to prescribe the form and manner of publishing and filing tariffs. In prescribing the method for making tariffs available for public inspection, the Board is urged to continue the FMC's practice of allowing carriers to file their tariffs electronically.

**COLLECTIVE ACTIVITIES***House bill*

Sec. 13703. Certain collective activities; exemption from anti-trust laws. This section streamlines and reforms the current authority to exempt carriers from the antitrust law. The section authorizes the Panel to approve agreements between motor carriers and confer antitrust immunity for establishing through routes and joint rates, rates for the movement of household goods, classifications and mileage guides and certain other activities. Agreements may be approved only if the Panel finds it is in the public interest and the approval would expire three years after the approval date. Approvals may be renewed unless renewal is not in the public interest.

*Senate amendment*

Sec. 13703 (Certain collective activities: exemption from anti-trust laws), imported from existing 49 U.S.C. 10706, provides for Board approval of, and concomitant antitrust immunity for, certain motor carrier collective activities. Subsection (d) would make Board approval effective only for a 3-year period; an approval would expire at the end of the 3-year period if not reapproved at the request of the carriers. Subsection (e) would contain a "grandfather" provision allowing existing approved agreements to continue in effect (unless earlier withdrawn or revoked) for an initial 3 years (at the

end of which the renewal requirement would preclude the approval of coll basis for an undercharge claim and charge claim could not be based s tion established pursuant to that s ify the existing ICC requirement, rier must participate in a mileage proved collective-action agreement using such a guide.

*Conference substitute*

The conference adopts the Ho to subsection (g)(2) to clarify that formulated under an agreement a other published mileage guide th ested person upon reasonable req

**HOUSEHOLD***House bill*

Sec. 13704. Household good service. This section incorporate goods carriers to use binding est delivery times. Oversight is tran

*Senate amendment*

The Senate amendment con

*Conference substitute*

The Conference adopts the THROUGH ROUTE

*House bill*

Sec. 13705. Requirements riers of passengers. This sect that intercity but companies each other and such through izes the Panel to prescribe thr which they are operated when for rate reasonableness. This disputes between but carriers

*Senate amendment*

The Senate amendment

*Conference substitute*

The Conference adopts t

**LIABIL***House bill*

Sec. 13706. Liability f serves current law regardi or consignee, for payment f

ATTACHMENT "E"  
DHX REBUTTAL STATEMENT OF FACTS AND LAW

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#### HOURS OF SERVICE CHANGE

An error in the newly issued Hours of Service regulations was detected by the Federal Motor Carrier Safety Administration (FMCSA) involving Part 395.1(o) which covers two extra hours (to 16 hours) of on duty time with certain provisions.

Remember that the new rules go into effect on December 4, 2004 and only affect property carriers. Passenger carriers will continue to utilize the old rules: yes, that means two sets of rules in the book.

The erroneous section reads:

"3) The driver has not taken this exemption within the previous 7 consecutive days, except when the driver has begun a new 7- or 8- consecutive day period with the beginning of any off duty period of 34 or more consecutive hours as allowed by Sec. 395.3(c)."

FMCSA is correcting the erroneous reference to "the previous 7 consecutive days" to "the previous 6 consecutive days." The exemption will therefore be available once a week, as originally intended.

FMCSA's intent was to give short-haul drivers one 16-hour on-duty limit in a 7-day period. This option allows short haul and local drivers (drivers who sleep at home all evenings and who have limited range of operations) the

flexibility to work up to 16 hours up to one day per work week.

#### HAWAII FORECAST UP

Hawaii's economic outlook for 2004 is projected for a 2.8% increase in real Gross State Product, (GSP) and a 6% increase in arrivals according to the State Department of Business, Economic Development and Tourism (DBEDT).

The forecast also calls for increases in new jobs (2%) and growth in personal income (3.4%) in 2004.

DBEDT expects we will end 2003 with a 2.9% growth in the GSP, and a 2.2% increase in wage and salary jobs. Tourism performance has also been strong: visitor days is expected to be 3.8% over last year, along with total visitor spending up by 4.8%.

While the mainland market has rebounded, the important Japanese market has only recently shown improvements. However, since domestic visitors stay longer, the net effect has been a gain in expenditure and visitor days.

Most economic indicators have been positive for the first three quarters of 2003 compared to the same period last year: personal income rose 5% in the second quarter.

#### PARKING SPACE NEEDED!

Meadow Gold Dairies is looking for a secured location to store some vehicles.

If you have a site that is available, please contact Mark Tonini, Distribution Manager, at 542-4352!

# THE FLEETING VIEW



**HAWAII TRANSPORTATION ASSOCIATION**  
P.O. Box 30166  
Honolulu, Hawaii 96820

VOLUME XXVI JANUARY 5, 2004 6 Pages, 1 Attachment

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## NEW WEBSITE DOCUMENTS (Members' Section)

PUC New Applications  
-----

## HARBORS SECURITY MEETING

HTA's January Members' Meeting features the State DOT's Harbors Division discussing security measures they are, and will be, taking to safeguard our maritime facilities.

The meeting is on Wednesday, January 28, 2004 starting at 11:30 a.m. at the Honolulu Country Club. Cost is \$25 per person. A registration form is attached, or you can access one via our website.

## FEE MIRACLE SHORT LIVED

Mayor Jeremy Harris "Grinched" the vehicle weight fee miracle calling the City Council into hearing on Christmas Eve to pass Bill 69 and increase passenger vehicle weight fees from 1.25 cents per pound to 2 cents per pound, and for commercial vehicles from 2 cents to 2.5

cents per pound.

The Council had earlier recommitted Bill 69 to the Budget Committee. Committee Chair Ann Kobayashi voted in favor of the bill stating it now sports a provision to terminate the increase if funds are found elsewhere.

## BUCKLE UP

Nothing new for commercial drivers right? Use of seat belts have been required in the motor carrier safety regulations forever right? No problem right?

All are right except for the last statement. A recent U.S. DOT study showed that only 48% of truck drivers wear their seat belts.

U.S. Secretary of Transportation, Norman Mineta, made a point to challenge the trucking industry to keep drivers safe by enforcing the rule within their companies.

Hawaii's office of the Federal Motor Carrier Safety Administration will have seat belt use as one of their priorities in their new safety plan.

## SIX WEEK CALENDAR

|            |                                                                                   |
|------------|-----------------------------------------------------------------------------------|
| Jan. 10    | Oahu Driver Improvement Program class, 7:00 a.m. - 3:30 p.m., HTA Classroom.      |
| Jan. 13    | Oahu Forklift Training Class, 9:00 a.m. - 12 noon, HTA Classroom.                 |
| Jan. 14    | Legislature Opens.                                                                |
| Jan. 14-15 | Oahu Hazardous Materials Training class, 5:30 p.m. - 9:30 p.m., HTA Classroom.    |
| Jan. 19    | HTA office closed in observance of Martin Luther King Day.                        |
| Jan. 21-22 | Oahu Driver Improvement Program class, 5:30 p.m. - 9:30 p.m., HTA Classroom.      |
| Jan. 28    | HTA Members' Meeting, 11:30 a.m., Honolulu Country Club.                          |
| Jan. 28-29 | Maui Driver Improvement Program class, 5:30 p.m. - 9:30 p.m., Maui Beach Hotel.   |
| Jan. 31    | Maui Hazardous Materials Training class, 7:30 a.m. - 4:00 p.m., Maui Beach Hotel. |
| Feb. 4-5   | Kauai Driver Improvement Program class, 5:30 p.m. - 9:30 p.m.                     |
| Feb. 7     | Kauai Hazardous Materials Training class, 7:00 a.m. - 3:30 p.m.                   |
| Feb. 11-12 | Oahu Driver Improvement Program class, 5:30 p.m. - 9:30 p.m., HTA Classroom.      |
| Feb. 16    | HTA office closed in observance of President's Day.                               |
| Feb. 18-19 | Oahu Hazardous Materials Training class, 5:30 p.m. - 9:30 p.m., HTA Classroom.    |

ATTACHMENT "F"  
DHX REBUTTAL STATEMENT OF FACTS AND LAW

## Record revenue for Matson

Updated 12:01 p.m. ET, Fri Jan 23, 2004

The JOURNAL of COMMERCE ONLINE

Operating profit for Matson Navigation (schedules) more than tripled in the fourth quarter of 2003, on the way to record full-year revenue on improved volumes in general cargo and automobiles.

Revenue totaled \$199.3 million for the three months ending Dec. 31, up 14 percent from \$174.7 million in the year-ago quarter. Operating profit climbed to \$32.4 from \$9.2 million.

Matson, a Jones Act carrier specializing in the Hawai'i trade, carried 42,200 containers in the quarter, up 15 percent from 36,800 a year ago. Automobiles shipments grew 29 percent to 36,200 from 28,000.

The fourth-quarter included a one-time gain of \$16.7 million from a change in pension plans. The company said that even without the gain, the quarter was marked by a return to a more normal level of profitability following the West Coast port shutdown that depressed results in the fourth quarter of 2002. Also contributing to the improvement were higher freight and automobile volumes in the Hawaii service and rate actions taken during 2003.

Matson in the fourth quarter initiated a significant change in its carriage of automobiles, adding considerable roll-on/roll-off capacity to its fleet through the operation of a chartered vessel and modifications to another vessel. Also, marine terminals dedicated to vehicles were established in Oakland and Honolulu. This change addresses customers' preference for roll-on/roll-off stowage of autos. The new service improves delivery times and includes direct calls to the island of Maui, as well as to Oahu.

For the year, Matson's ocean transportation revenue was \$776.3 million, a gain of 13.6 percent from \$686.9 million in 2002. Operating profit totaled \$92.8 million, from \$42.4 million.

Hawai'i container traffic totaled 162,400 containers, an increase of 6 percent from 152,500 the previous year. Matson hauled 145,200 automobiles, up 20 percent from 120,500.

Matson said financing for its new container vessel, delivered in the third quarter of 2003, added \$55 million to long-term debt.

Matson Integrated Logistics saw record revenue of \$68.5 million in the fourth quarter, up 31 percent from \$52.4 million the previous year. Operating profit doubled to \$1.4 million from \$700,000. The company credited increased volume in domestic, international and highway activity.

<http://www.joc.com/cgi-bin/Printable.asp>

1/30/2004

In December, MIL acquired TransAmerica Transportation Services, Inc., a third-party logistics company. TTS offers various intermodal brokerage services and presently handles about 50,000 shipments annually, Matson said.

For the year, logistics revenue was \$237.7 million, up 22 percent from \$195.1 million in 2002. Operating profit was \$4.7 million, a gain of 52 percent from \$3.1 million.

**JoC Online Archive**

[Matson](#)

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## The Journal of Commerce **ONLINE**

Press the Print button on browser  
to print this page

### Matson profit back to 2000 levels

Updated 4:24 p.m. ET, Fri Oct 24, 2003

The JOURNAL of COMMERCE ONLINE

Matson Navigation operating profit was \$25.1 million in the third quarter, up 49 percent from \$16.9 million in the same quarter a year ago.

Revenue totaled \$191.6 million, up 6 percent from \$181.2 million for the quarter ending Sept. 30 on gains in container traffic.

Matson parent, Alexander & Baldwin, said that Matson's operating profit has returned to mid-2000 levels, prior to the effects of the Sept. 11 attacks and the West Coast labor disruptions late in 2002.

"Third quarter performance was strong, a reflection of excellent performance at both Matson and A&B Properties," said Allen Doane, president and chief executive officer of Honolulu-based A&B, in a statement. "These two businesses represent about 90 percent of A&B's assets. Matson has regained its operating momentum, returning to profitability levels necessary for long-term investment in the business."

Container volume in Matson's U.S.-Hawaii trade totaled 41,300 TEUs, up 4 percent from 39,900 TEUs a year ago. Automobile shipments slipped 8 percent, to 29,000 units from 32,400 units.

In September, Matson deployed the MV Manukai, the first new containership in its fleet in more than a decade.

Matson's parent said the improved results came on stronger rates in 2002 and 2003; higher freight volumes in the Hawaii and Guam services (schedules); an improved mix of freight, and improved results from the operations of joint ventures. A&B noted that improvements were offset partially by increased operating costs, including the expense of operating an eighth vessel in the Hawaii service and higher pension costs, as well as lower automobile volume.

Operating profits at Matson Integrated Logistics were flat at \$1.4 million as revenue increased 13 percent, to \$60.8 million from \$53.8 million a year ago.

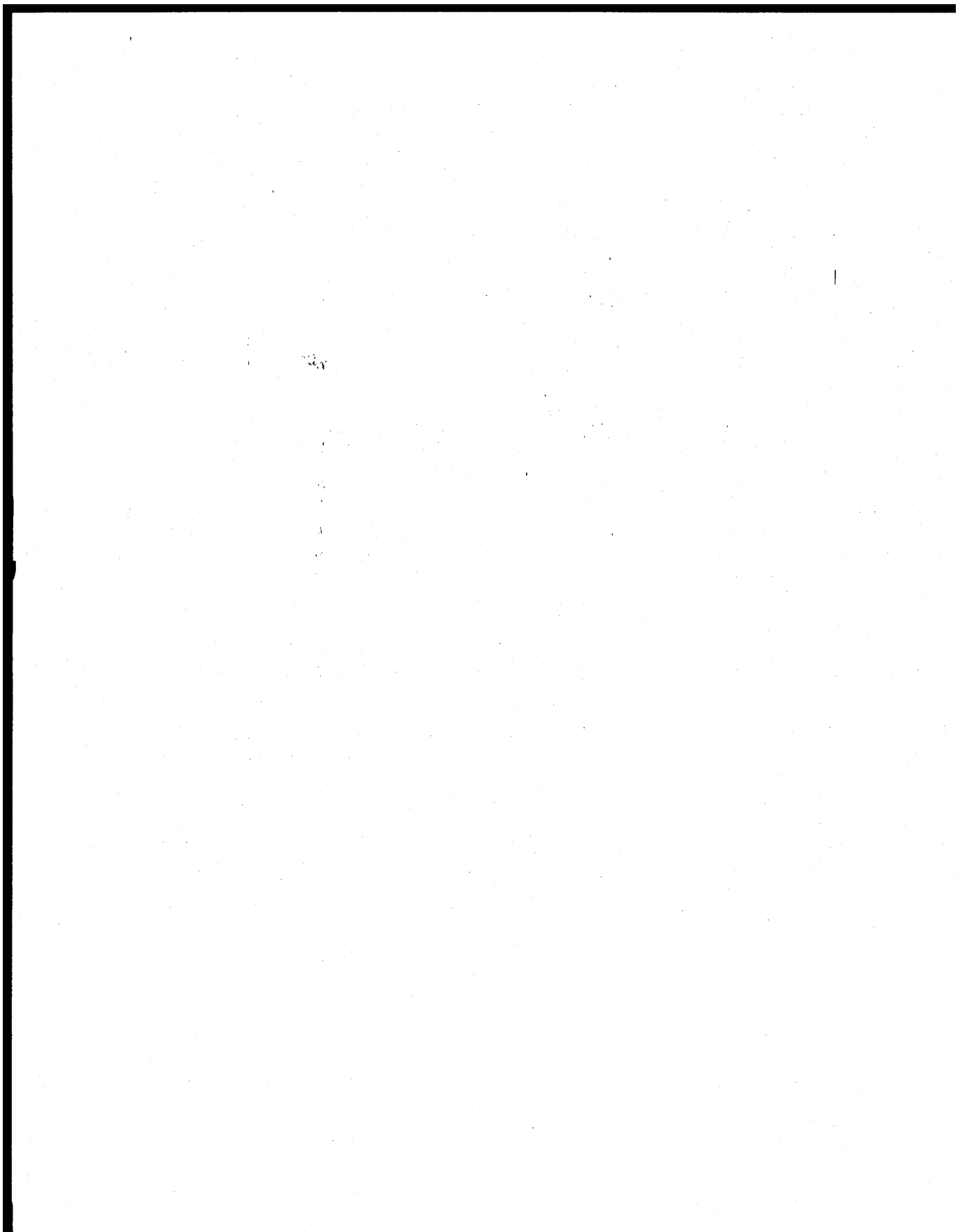
Greater customer volume drove revenues, A&B said, especially in international and highway activity.

JoC Online Archive

Matson

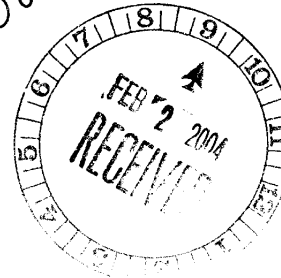
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10/25/2003



**PUBIC VERSION**

**U.S. DEPARTMENT OF TRANSPORTATION  
SURFACE TRANSPORTATION BOARD**



DHX, INC.,

Complainant,

v.

STB DOCKET No. WCC-105

MATSON NAVIGATION COMPANY  
And SL SERVICE, INC., f/k/a SEA-  
LAND SERVICE, INC., CSX LINES,  
LLC, Successor-In-Interest, and now  
Known as HORIZON, LINES, LLC.

Defendants.

VOLUME 2 OF 3

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COMPLAINANT'S REBUTTAL STATEMENTS

REBUTTAL VERIFIED STATEMENT OF BRADLY J. DECHTER

Submitted By:

RICK A. RUDE  
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Counsel For Complainant  
DHX, INC.

Dated: 3 February 2004

## **PUBLIC VERSION**

### **REBUTTAL VERIFIED STATEMENT OF BRADLEY J DECHTER**

#### **GENERAL**

My name is Bradley J. Dechter and I am the same individual that submitted a verified statement previously in this proceeding. I am President of the Complainant and I am authorized to submit this Rebuttal Statement. I have read the public versions of the responses of both Matson Navigation Company ("Matson") and Sea-Land/CSX/Horizon Lines ("Sea-Land/CSX"). These responses really don't dispute key facts, although they do manipulate them. (I would note however, that the responses do contain errors of fact as well as misstating DHX's contentions in this proceeding.)

DHX's Opening Statements (hereinafter referred to as "COS") are consistent with the analysis of the Board in that the gist of our complaint is specifically that the ocean carriers, through their improper conduct, have damaged the ability of all forwarders to compete with the ocean carriers for full containerload traffic (hereinafter referred to as "FCL") in the Hawaii trade. The amended complaint provides further detail and notice of additional actions undertaken by the ocean carriers in furtherance of their initial actions to maintain control of ocean service competition in the Hawaii trade. Such unlawful manipulation of competition is damaging not only to the forwarder community as a whole, but to the shipping public and the public entitlement to a competitive environment in the providing of ocean transportation services. The fact is, this case is about the Hawaii ocean carriers restructuring their tariffs thereby eliminating the freight forwarders ability to compete for FCL business. This tariff restructuring involved a variety of destructive business practices implemented starting July 1998 and continuing to date.

## PUBLIC VERSION

DHX, particularly me, has attempted to convey to the Surface Transportation Board ("The Board") the events based on the evidence available to me (virtually all of the carriers' evidence submitted to DHX's counsel by the ocean carriers was classified as highly confidential and therefore not available to me). It is a chronology of the ability of one ocean carrier (Matson) to control competition in a shipping lane, and use its influence and market control to destroy its competitors' attempts to grow in the shipping industry to Hawaii. It is also an example of what results when the only other carrier alternative (in this case CSX/Sea-Land) decided to put its own corporate interests for additional profit ahead of its duties and obligations to the shipping public.

I request The Board look at the industry on a "Macro" basis. Since 1985, Matson Navigation has had 2 competitors in the Hawaii ocean carriage industry – US Lines and Sea-Land/CSX, recently renamed Horizon Lines, LLC. At no time have there ever been 3 ocean carrier competitors in the Hawaii ocean trade at the same time – only Matson and one other service provider at any one time. None of Matson's "competitors" has ever been able to change their market share to any great degree. Between 1985 and 2003, Matson's market share has always hovered somewhere between 65% and 72%. And when American President Lines, Ltd. (APL) attempted to enter the Hawaii market in 1988, Matson and Sea-Land fought successfully to keep APL out of the Hawaii ocean trade.

Why is this important? Because, as we have shown, since 1998, in virtually every public tariff filing, the two competitors have had similar if not identical filings, and most differences between their tariff rates have been eliminated. The goals of the ocean carriers were similar – Matson's was to eliminate the forwarding community as

## **PUBLIC VERSION**

competition in the full containerload business thereby increasing shipper rates as well as increasing Matson's profits, while Sea-Land/CSX's goals were primarily to increase profits in a large segment of their customer base without any adverse customer reactions. Both carriers were afraid of giving freight forwarders volume incentivized pricing, given what they had seen and experienced in the other domestic offshore markets of Puerto Rico and Alaska (where there are 3 or more ocean carriers) and there is actually competition among the Vessel Operators as well as between the Vessel Operators and the freight forwarders, who do have volume incentivized pricing both by way of time volume tariff rates and confidential shipping contracts.

This is truly an issue of National Transportation Policy.

**REDACTED**

Why are large shippers in the Hawaiian ocean trade lane, who happen to be freight forwarders, denied volume incentivized pricing, while smaller "proprietary" shippers have reduced tariff rates and are given such rates based on non-transportation restrictions, such as name, street address and zip code? Why are the business practices of the ocean carriers in 2 of the domestic offshore trade lanes the same, while the third is different?

The answer is REAL COMPETITION (because there are 3 carriers in each of the other 2 markets). In the Alaska trade there is Totem Ocean Transport as well as Sea-

## PUBLIC VERSION

Land/CSX and various barge lines. In Puerto Rico there is Crowley Liner Services, Sea-Land/CSX as well as Sea Star Line and various barge lines. In the Hawaii trade, there is only Sea-Land/CSX and Matson with no effective "third" competitor and therefore a distinct lack of competition. The result is a duopoly that, given the benefit of the doubt, admits to, at a minimum, engaging in conscious price parallelism.

We have shown you how the 2 carriers, for whatever their reasons:

1. Structured tariff rates and in fact entire tariffs, reflecting obvious "side agreements" **REDACTED** at rates below those available to the freight forwarders, thereby precluding the forwarders from these FCL rate items and tariffs and utilization of such "market rates" to compete with the carriers for FCL business.
2. In 1998 and 1999 substantially changed tariff terms, rules and rates, effectively and purposefully lessening the ability of the forwarder to compete for FCL business.
3. Have repeatedly denied requests (from me and probably from other forwarders) for a volume-incentivized pricing (as is found in other domestic offshore trades) to allow DHX or any other forwarder (as a forwarder) to compete against them. (Either one could have negotiated a time volume rate agreement or confidential contract with DHX, or it's forwarder competitors, but both have chosen not to, because, I believe, they perceive there is no incentive or advantage to – one or the other has to carry the business, and depending on the day of the week it is tendered to Horizon Lines, in Los Angeles it may be placed on a Matson vessel anyway.)

## PUBLIC VERSION

4. Have worked together, through tariff signaling and "matching", to keep pricing in the Hawaii shipping lanes extraordinarily high.

### AMENDED COMPLAINT

When DHX first filed this complaint we believed that the extraordinarily high cost increases forced on us by the ocean carriers were going to hurt our business – we did not at the time of the initial filing of the original complaint in October 1999 know exactly how it would affect us, just that it was unjust and unfair to "hoist" these additional costs on our customers and that the carriers' tariff actions were very damaging to our ability to continue to compete for and handle FLC business. By the time we filed the amended complaint, we had become much more aware of the full impact of these tariff modifications and what these actions had done to DHX's full container business (as well as others in the forwarding community) in terms of precluding us from competing with the carriers for full containerload business. The time between filing the initial complaint and the amended complaint gave us the buffer we needed to pinpoint how the ocean carriers had worked "in synch" to minimize us and other forwarders as full containerload competitors, through the combination of severely limiting our pricing mechanism on full containerloads, **REDACTED** It was also ironic in that the passage of time likewise exposed the ocean carriers' implementation of a pattern of general rate increases on freight forwarder traffic, which in retrospect were obviously intended to make forwarders even more uncompetitive through increases in the forwarders' basic costs of ocean transportation. Thus, when Matson and Sea-Land/CSX requested we restate our complaint, we had the benefit of our experience to help us determine more fully what had occurred.

## **PUBLIC VERSION**

Prior to providing my response to the public versions of the ocean carrier's statements, I must point out that the ocean carriers commit several fundamental factual errors. While I will provide a more detailed discussion below, the carriers have erred in representing or implying to the Board the following:

1. That the FCL rates charged by the freight forwarders were "higher" than the FCL rates charged by the ocean carriers during the 1994 to 1998 period.
2. That the DHX complaints are simply "individual discrimination" claims.
- 3.

## **REDACTED**

With respect to Item 1 above, the verified statements of Eric Sean Burns and Elaine P. Griggs contained information that supports the above fact as well as reflecting the immediate "results" of the ocean carriers' actions on the FCL market rates (See VS Griggs, Ex. 16). Ms. Griggs' documents show that the FCL market rates were less than the ocean carriers' tariff rates for the DHX customers identified in Exhibit 16. Ms. Griggs also shows the immediate impact on these FCL shippers by the ocean carriers' actions.

With respect to item 2 above, I must point out the Board that the COS, and all of the verified statements of DHX employees reflect that what is at issue is not only the ability of DHX to compete for FCL business but that the tariff structures that resulted from the ocean carriers' actions PRECLUDE all forwarders from competition with the ocean carriers for FCL business. When an industry segment of an industry is subjected to grossly discriminatory conduct, the result of which is to seriously damage, if not destroy

## PUBLIC VERSION

the competitive market, then it is a matter of destructive competition. The ocean carriers' actions were patently anti-competitive regarding the entire forwarding industry.

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**REDACTED**

The Board should also realize the ocean carrier's, in their Replies, fail to maintain the distinctions which DHX has shown between "forwarders as 'shippers'" as a group and what the ocean carriers call "proprietary shippers" or "beneficial owner shippers". Again, the failure to maintain these overriding general distinctions results in the ocean carriers misstating DHX facts and contentions.

### Rebuttal Reply to Matson Navigation Company

#### Freight Forwarding Study

The Reply Statement of Matson Navigation Company on page 9 indicates "Matson undertook a study of the use of its tariffs by freight forwarders." It indicates that this study was the basis for a number of changes it made to its tariffs. The Board must have a copy of this study – I have not seen it, but I ask the Board 2 simple questions –

First, why was it necessary for Matson to engage a study of the use of its tariffs by forwarders? In 1993 I taught Mr. David Hoppes "how" the Matson tariff provisions were being used. In October 1993, Mr. Hoppes, as General Sales Manager for Matson, had

## PUBLIC VERSION

Matson publish some of the provisions which Mr. Hoppes and I discussed at length.

Matson used the freight forwarding community to generate substantial business from 1994 to 1998 and in fact, the freight forwarder rates on FCL generally became the "market" rates.

**REDACTED**

It is my belief that

Matson's real purpose in its tariff changes eliminating freight forwarder competition was to thereby eliminate the existing competitive market rates. Certainly, Matson's tariff rates were too high in 1998 to attract and "hold" FCL business. The elimination of the forwarder competitive rates, which David Hoppes already "knew" and understood, forced all shippers to incur immediate rate/cost increases. It is also again ironic that these massive rate/costs increases were accompanied by a reduction in the quality of services offered to the shipping public.

Second, Sea-Land/CSX knew how upset DHX and other forwarders were when these tariff changes took place. Did Matson share this study with them? If not, why did Sea-Land/CSX also make the changes, when by just leaving their tariffs as they were, they would have gained significant business from the forwarding community? (Paragraph 70, 71 and 76 in Dan Downes Verified Statement show that Sea-Land/CSX understands the ability of the forwarder to shift freight between the ocean carriers. In spite of this understanding, Sea-Land/CSX chose to echo the tariff changes Matson signaled when in fact they could have gained substantial forwarder business by doing nothing.) Common sense tells me that they knew they were eliminating the forwarders as full containerload competition – and by matching Matson, they could also automatically

## PUBLIC VERSION

increase their profits on a "substantial portion of their business". The changes were a win-win proposal for the 2 ocean carriers - they increase their revenue to the actual prejudice of the forwarder community

**REDACTED**

, and they substantially reduce, if not eliminate, competition from the forwarders as competitors in the Hawaii Trade.

### Scope of 1998/1999 Tariff Changes

On page 9 of its Reply, Matson notes that their Executive Vice President, Paul Stevens, said: "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."

Thus, tariff changes implemented in 1998 and 1999 such as increasing the overflow rates, changing the definition of a shipment (to reduce the number of overflows), changing the "Note Kits" - these changes, made in 1998 and 1999 were all primarily aimed at affecting one class of customer - the freight forwarder.

On page 2 of their Reply, Matson notes "there is nothing unlawful about ocean carriers taking actions intended to attract business to them that is handled by their competitors, even when those competitors are freight forwarders." (Underscore added for emphasis.) On page 23, Matson indicates "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

## PUBLIC VERSION

competition.” (Underscore added for emphasis.) I believe this is what is called the “Microsoft Defense”.

I would like first to point out the intention of Matson and Sea-Land/CSX was not to attract business. The intention was for Matson and Sea-Land/CSX to protect their business by precluding/excluding others (the freight forwarding community) from fairly competing for this business, primarily by changing their pricing structures. These changes resulted in higher, not lower, prices to the ultimate customer. We just could not compete with the ocean carriers once the pricing mechanisms they provided were eliminated and they refused to afford forwarders a legitimate alternative means of volume pricing.

How did they do this? Through manipulating their service offerings and publishing these protective measures in public filings of their tariffs over a period of time. On page 4, Matson notes “DHX apparently believes that Carriers are supposed to politely avert their eyes from public information about the prices and services offered by their competitors.” Matson, on page 35, then states “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 Board needs to realize that neither Matson nor Sea-Land/CSX filed the terms of their MOU’s (Memorandums of Understanding) and “confidential” contracts in their public tariffs. Further, that they also had ‘quasi-secret’ tariffs not generally noticed and available to the shipping public (the “secret tariffs” which were discussed in previous affidavits), but were available to each other (their competitor). If there is no need legally

## PUBLIC VERSION

to publish the various contract terms including pricing, then why give such information to a competitor, unless you are working to keep prices for specific types of goods or services high, and need to maintain a relationship of trust regarding pricing within the industry that's built up over the years. If there is no need to file this information legally, then why do so and give it to your single competitor? Why would the competitor then file that same rate in its tariff, given they weren't getting the business? The answer is simple - they are signaling each other, and communicating through tariff filings. There is no real competition in the Hawaii ocean trade at this time! The ocean carrier's patently anti-competitive actions are certainly destructive practices as they have seriously damaged the level of market competition. They have in fact, crippled competition if not eliminated competition all together.

### Rebuttal Reply to Sea-Land/CSX/Horizon Lines LLC

#### Change in Defendant

It is noted that Horizon Lines, LLC now indicates that it is the successor in interest to Sea-Land Service, Inc. In May 2002, they denied this factual point. I believe that if DHX had not filed a separate lawsuit against CSX Lines, LLC in August 2002, there would be no such "admission" by Sea-Land/CSX in this case. CSX Lines convinced the court that CSX Lines was a defendant in the proceedings before this Board and that the court suit was a duplication of the DHX Board Amended Complaint. DHX filed a separate action specifically because it appeared that we were faced with a "run away defendant".

## PUBLIC VERSION

### Competition in the Trade

On page 26 of their Reply, Sea-Land/CSX indicates "If the cargo is being offered by a shipper or forwarder who is currently moving cargoes with Matson, Mr. Downes indicates that Horizon might be more inclined to try to accommodate the rate request in order to gain market share from Matson. Alternatively, Horizon will look to determine whether the volume of cargo "promised" by the shipper or forwarder is sufficient to warrant a reduction from the current tariff rate. Obviously, in a two water-carrier trade, Horizon would expect an aggressive competitor like Matson to behave similarly."

In 1998 and 1999, had Sea-Land/CSX not made the tariff changes that Matson had made, Sea-Land/CSX would have received substantially more cargo from DHX as well as many of the other forwarders that were participating in the FCL market. All Sea-Land/CSX had to do was to take no action – and they would have benefited with a large increase in volume. Why did they follow Matson and make the changes? The Board needs to see through the lack of competition (or dysfunctional competition) in the ocean carriage trade to Hawaii and how these 2 carriers worked to destroy competition from the forwarding group for full containers of shippers' freight. Sea-Land/CSX pays great lip service to being a competitor of Matson, but the actions in this case speak louder than the words. It is also interesting to note that Mr. Downes talked about "promises" of shippers to tender cargo volumes and thereby obtain a lower rate. When DHX has approached Mr. Downes, whether he was an employee of Sea-Land Service, CSX Lines, LLC or now Horizon Lines, LLC for volume pricing, he has consistently declined to provide such pricing. Mr. Downes representations in his Verified Statement are inconsistent with his own actions and those of his company. Mr. Ralph Merolla pointed out that Mr. Downes

## **PUBLIC VERSION**

told him that CSX Lines would not provide forwarders with volume pricing because of what could occur based upon the experience in the other trades. The "experience" was an increase in competition for business which resulted in a reduction in the overall rate structures of the carriers. Mr. Downes is obviously against competition. I would also say in passing that their argument regarding business judgment does not "hold water". Application of this "business judgment" analysis would sanction monopolies, racketeering and even theft. For example, it is definitely in the best interests of a monopolist to drive out all competition as the result is greater profits which inure to the monopolists' financial well being and "bottom line". Mr. Downes has confused individual corporate "benefit" with the basic public obligation to follow the law. Sea-Land/CSX, at every opportunity, has undertaken increases in its rates and revenues from freight forwarders even in the absence of any associated increase in Sea-Land/CSX costs.

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## PUBLIC VERSION

### Manufacture of Evidence

Freight Forwarding is a high volume, low margin business. DHX has over 20 competitors in the Hawaii Trade and has been successful in the past by, among other things, continuously working to minimize its administrative overhead.

**REDACTED**

The preparation of informational summaries is not the "manufacture of evidence". It is highly inappropriate for Sea-Land/CSX to make such unfounded allegations. DHX provided Sea-Land/CSX with access to many thousands of pages of documents and financial information, including the underlying documents from which all of the informational summaries were prepared. The information was segregated and filled an entire conference room as well as many boxes of records at our warehouse (over 700,000 pieces of information in all). Interestingly enough, I can estimate that the counsel for the ocean carriers spent only about 8 hours over a two day period examining these documents at length. They had more than adequate time to make any comparisons between the underlying records and the informational summaries and personnel were available to point out documents and records as marked, as well as make any copies requested. The ocean carriers could have summarized the same information from our records, but chose instead to attack what we provided.

**PUBLIC VERSION**

**REDACTED**

Use of Dechter Pricing Memorandum

This memorandum was written in mid 2000, after the ocean carrier's had already eliminated the pre-1998 freight forwarder FCL rate structure. In July 2000, we were really starting to understand how the rate, rules and note kits changes were affecting our Full Containerload business. The impact of our higher charges were now affecting our customers more and more and many of them were out shopping rates and putting our business out to bid. We did not want to lose such accounts nor take on business that given the new rates, rules and lack of note kits would, under the new current tariff structure, be unprofitable.

This Memorandum cuts to the crux of the issue. As forwarders, at one point, we were providing market rates and "making the market".

**REDACTED**

**PUBLIC VERSION**

The July 2000 memorandum reflects that Matson/Sea-Land/CSX effectively  
"broke" the market.

**REDACTED**

Full Containerload Division

The Full Containerload Division was run out of our Los Angeles facility.

**REDACTED**

Our complaint focuses  
primarily on Matson/Sea-Land/CSX destroying our FCL business – and the freight  
forwarders continuing ability to compete for this business - in this case those containers  
handled by a separate Full Containerload Division which had to be disbanded in FY  
2000.

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**PUBLIC VERSION**

**REDACTED**

The Win-Win proposal that David Hoppes prepared and provided to me shows that he and Matson understood the involved tariff provisions and how they were applied. Matson pricing personnel also were fully aware of the utilization of these items as they even expanded the usage by publishing the "forwarders rate/commodity 'wish list'" in October 1993. (See VS Dechter, Ex. Nos. 3, 4, and 10).

Growth Rates

Sea-Land/CSX, through Mr. Downes (in his statement) talks about the Hawaii market being a "mature" market. Mr. Downes was employed to make pricing decisions and I question his experience and expertise to give his opinion on the economy of the State of Hawaii or its potential for growth. On the other hand, in 1994 I wrote my Masters Thesis on the Freight Industry to Hawaii, including a section specifically dealing with Hawaii's economy. And I have been named as an expert in these proceedings. Mr. Downes opinion would have been my opinion prior to September 11, 2001. However, since September 11, 2001 we have seen a resurgence of Americans traveling to Hawaii, and I believe his view is antiquated.

Hawaii had unprecedented growth in the 1980's and the state entered a recession in the early 1990's – an offshoot of the banking crisis in Japan. Currently, the Japanese still come to Hawaii – they just spend less and stay shorter periods. Anyone reading the Wall Street Journal knows that they have been struggling with banking and other economic issues for the past 12-13 years, but it appears they are now finally starting to come out of their economic quagmire. As they do, their travel back to Hawaii will

## **PUBLIC VERSION**

increase substantially, and that, coupled with the resurgence in tourism from America, will make Hawaii a growth market for years to come.

The following article is copied from the January 5, 2004 "The Fleeting View", a monthly publication of the Hawaii Transportation Association:

### **"HAWAII FORECAST UP"**

"Hawaii's economic outlook for 2004 is projected for a 2.8% increase in real Gross State Product (GSP) and a 6% increase in arrivals according to the State Department of Business, Economic Development and Tourism (DBEDT).

The forecast also calls for increases in new jobs (2%) and growth in personal income (3.4) % in 2004.

DBEDT expects we will end 2003 with a 2.9% growth in the GSP, and a 2.2% increase in wage and salary jobs. Tourism performance has also been strong: visitor days is expected to be 3.8% over last year, along with total visitor spending up by 4.8%

While the mainland market has rebounded, the important Japanese market has only recently shown improvements. However, since domestic visitors stay longer, the net effect has been a gain in expenditure and visitor days.

Most economic indicators have been positive for the first three quarters of 2003 compared to the same period last year: personal income rose 5% in the second quarter".

The above article supports my opinion as an Expert that Hawaii does have long term growth potential, and the tragic events in 2001 have aided its resurgence.

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Sea-Land/CSX would have the Board believe that Hawaii is a mature market with no or limited growth, and my use of a historical growth rate based on past experience is unwarranted. I am firmly of the belief that being an American state, and having the safety of the travel and other Homeland security measures implemented by the U.S. Government, Hawaii will become more and more popular as a vacation destination as U.S. Citizens become more and more security conscious. Thus, I firmly believe the growth rate I've used is appropriate.

### Error in CSX/Horizon Lines Reply

Mr. Merolla, whose title is Executive Vice President of Sales and Marketing – Hawaii and Guam, was promoted to the position in 2000.

Mr. Merolla took over approval of all pricing for Hawaii and Guam in 2001. As a result of this as well as the fact Mr. Merolla has been domiciled in Oakland since starting with DHX in 1981, he was not personally involved in most of this business when it was lost, and he does not have knowledge on how prior to 2001.

This is important because Sea-Land/CSX's Reply, from pages 82 to 90, is simply wrong and should be ignored/deleted.

**REDACTED**

I approved all changes personally, and it was a "read only" file that only I (and my assistant) had access and could change.

**REDACTED**

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REDACTED

REDACTED

Tariff Participation Concurrences

Sea-Land/CSX have provided to the Board a copy of a document that was executed by me and represented that the document reflects that DHX concurs in Sea-Land/CSX tariffs. The Sea-Land/CSX Reply misstated the DHX claim. The DHX claim is that the tariff (SEAU-468 and thence CSXL-468, which are the same tariff and which were discussed by Eric Sean Burns in his verified statement) contain misrepresentations. These misrepresentations are that the tariff contains joint rates and proportional rates. Mr. Burns pointed out that there have been no participating carriers in SEAU-468 nor CSXL-

## PUBLIC VERSION

468 (except Sea-Land Service and then CSX Lines) since November 1999. It is not an issue of the existence of "concurrences". The concurrence that Sea-Land/CSX produced is part of an equipment interchange contract and is a document that is required by Sea-Land/CSX in order that any trucking company be permitted to remove equipment/containers from Sea-Land/CSX's equipment terminals. There is no "agreement" between Sea-Land/CSX for any joint services, including joint rates or proportional through rates and routes. The document is signed and returned because it is necessary to get access to equipment. DHX does negotiate local drayage rates but such rates have nothing to do with any joint services. I would like to point out that the document itself states that it is only "effective as of the effective date of the Motor Carrier's participation in the tariffs of CSX Lines, LLC". Since no DHX company is listed as a participating carrier in the subject tariffs, the "concurrence" is irrelevant in any event. I am attaching hereto a copy of the January 2000 "Equipment Interchange Agreement" package that was sent to DHX dated January 10, 2000.

### CSX Lines/Horizon Lines LCL Competition

As is noted that in the public version of the verified statement of Daniel Downes, he states that Horizon does not compete with forwarders in the Less-Than-Container load business ("LCL"). That representation, like other material facts, is not correct. CSX Lines/Horizon operates an entity that is known as WWW.Shipmystuff.Com. DHX recently received a copy of a solicitation from "Horizon Service Group" which also operates out of Horizon Line's offices in Dallas, Texas. A copy of that sales solicitation is likewise attached hereto. As you can see, Horizon solicits LCL cargo through "partners" and all of this LCL is to be moved on Horizon Lines (solicitation page 2,

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footnote 1). It is a continuing pattern of "slight-of-fact" as the cornerstone of Sea-Land/CSX/Horizon's defense of their actions in this proceeding.

Damages

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REDACTED

DHX RESPONSE

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Lastly, I must comment on the allegation that DHX is "misrepresenting" its records and "puffing" upon its claims against Horizon. As I have indicated, DHX has not puffed its claims as to Sea-Land/CSX/Horizon. The issue of misrepresentation appears to be a mistake on behalf of Sea-Land/CSX. In addition to the explanation of the that I have provided, I would also point out that Mr. Merolla issued an Errata Sheet to his deposition testimony in which he clarified and corrected the matter. Sea-Land/CSX conveniently have failed to disclose that Errata Sheet correction by Mr. Merolla. The question this Board should ask of Sea-Land/CSX is "Why not disclose the existence of the correction?"

### Damages

## REDACTED

Who should pay the damages? Since we are dealing with 2 companies who acted in the same manner, they should be jointly and severally liable for the losses and damages to DHX. Their contention that it is possible to allocate lost customers between them is specious. They know that on any given week a full container load customer's cargo might move on a Matson vessel or a Sea-Land/CSX vessel. Sea-Land/CSX is a culpable as Matson as Sea-Land/CSX could have avoided this entire matter by simply doing nothing

## PUBLIC VERSION

and accepting the increase in freight forwarder business that would have resulted from Matson's actions. Instead, Sea-Land/CSX became an active participant and is now equally responsible for the results—the loss of a total operating division of DHX.

### Final Summary

Let me restate our case:

1. On page 7 of its Reply, Matson notes "In the case of FCL shipments however, freight forwarders provide no particular benefit to carriers (underscore added for emphasis) and function principally as competitors". The Board should note that the Forwarder did provide benefit to the marketplace. For Example, the container could be scheduled on the first available vessel for either carrier, or an equipment shortage of either carrier could enable the Forwarder to still service the marketplace while the carrier couldn't.
2. Matson Navigation and Sea-Land/CSX cumulatively worked to eliminate the freight forwarding industry as competitors for full containerload business to Hawaii.
  - A. They set up a system of unfiled rates, terms and conditions and of "confidential" contracts to proprietary shippers at rates lower than that of the forwarders, then exchanged these rates in such a manner that they could control the pricing in the market place.
  - B. They eliminated the freight forwarders mechanism in their tariffs that they provided freight forwarders to compete on the full containerloads by increasing the rates on overflow containers 17 ½ percent in 13 months,

## PUBLIC VERSION

changing the definition of a shipment, and eliminating "Note Kits" under which full containerloads could be shipped.

- C. In doing "B" above, they basically forced us, the forwarding community, to raise rates to avoid losing money on specific commodities of containerloads or reduce margins on full containerloads. Our raising rates forced the ultimate consumers back out into the marketplace to shop for cheaper pricing, in both the full containerload and less than containerload marketplaces. This full container load business ended up with Matson or Sea-Land/CSX at their tariff rates.
- D. They established an exclusionary tariff by means of non-transportation related restrictions which include a) shipper names, b) street addresses, c) limited inland carrier routings, d) limited terms (short term rates) and e) limiting forwarders to intermodal open tariff rates which are at levels which are "higher" than rates made available to full containerload/straight load proprietary shippers.
- E. Additionally, remembering previous documentation submitted to the Board,
  - (i.) Matson deceptively came to us under the guise of working together, only to use their knowledge to harm us (and other forwarders).
  - (ii.) Both carriers lied to DHX about the use of volume/contract pricing.

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- (iii.) Both carriers mislabeled (thereby misrepresenting the truth to the shipping public) tariff rates as a means of deception and to facilitate the lying about volume rates and MOU's.
  - (iv.) Where the carriers did publish pricing and certain terms found in Memorandums of Understanding and volume contracts, they left out other relevant terms, like waiving hazardous materials charges or detention, cargo volumes, and the like, so that even if a forwarder bid on the business it would not be a competitive bid.
3. Hawaiian ocean carriage is the only domestic offshore ocean trade without volume-incentivized pricing for freight forwarders. Other offshore trades, where there are more than 2 ocean carriers have such volume pricing. Where there are 3 ocean carriers there is REAL COMPETITION. Matson and Sea-Land/CSX have worked together to ensure that such pricing tools are not available to forwarders shipping to Hawaii, since it would obviously increase competition for the full containerload business. Ocean carrier claims about perceived neutrality in their dealings with customers and competitive sensitivities about the relationships between those rates and the shippers and forwarders who use them are poppycock. The contracts are/can be confidential. The market is supposed to determine pricing, not 2 carriers communicating by tariff filings, who, due to a lack of competition, are capable of keeping rates of large volume shippers (like DHX) outlandishly high, given much lower rates they have published for much smaller shippers.

**PUBLIC VERSION**

We hope the Board sees the folly of letting Matson and Sea-Land/CSX/Horizon control the pricing as a single unit in a single market. They are fully responsible for their violation of public trust and their absolutely anti-competitive behavior and destruction of the forwarding industry's ability to compete for full containerload business.

Finally, DHX wishes to thank the Board for its time and efforts.

PUBLIC VERSION

\_\_\_\_\_  
Bradley J. Dechter

STATE OF California

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County of Los Angeles

On January 28, 2004, Cammie Rene Laster, Notary Public, personally appeared Bradley J. Dechter, President of DHX, Inc. proven to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Cammie Rene Laster

Commission Expires: 10-15-2005



Bradley J. Dechter

STATE OF California

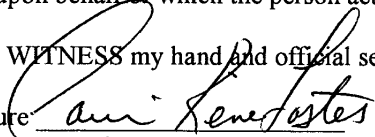
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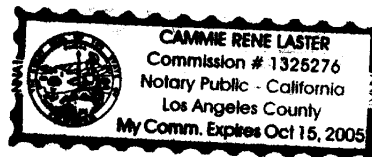
County of Los Angeles

On January 28, 2004, Cammie Rene Laster, Notary Public, personally appeared Bradley J. Dechter, President of DHX, Inc. proven to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

  
Cammie Rene Laster



Commission Expires: 10-15-2005

ATTACHMENTS TO REBUTTAL STATEMENT OF

BRADLEY J. DECHTER

DOCUMENTS

NUMBER

Copy of Griggs Exhibit No. 16  
to October 28, 2003 Verified  
Statement of Elaine P. Griggs

1

CSX LINES, LLC Correspondence and  
EQUIPMENT INTERCHANGE AGREEMENT  
Dated January 10, 2000

2

CSX/HORIZON SERVICES GROUP  
Correspondence and Web-Site  
Information for HORIZON LINES  
Hawaii trade "partner" known  
as "WWW.SHIPMYSTUFF.COM"

3

REBUTTAL VERIFIED STATEMENT OF BRADLEY J. DECHTER  
ATTACHED DOCUMENT NUMBER 1  
VS Griggs, Exhibit No. 16

VERIFIED STATEMENT OF MS. ELAINE P. GRIGGS  
COST ANALYSIS - DHX NOTE CUSTOMERS LOST  
CUSTOMER SUBSEQUENT RATE COSTS  
EXHIBIT 16

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

**REDACTED**

**REDACTED**

**REDACTED**

REBUTTAL VERIFIED STATEMENT OF BRADLEY J. DECHTER  
ATTACHED DOCUMENT NUMBER 2  
CSX LINES EQUIPMENT INTERCHANGE AGREEMENT



January 10, 2000

Dear Interchange Holder:

As a result of the sale of Sea-Land Service's International division to Maersk, Inc., your existing Intermodal Interchange Agreement with Sea-Land Service, Inc. will be null and void effective January 24, 2000. After January 24, 2000, all carriers hauling "international freight" will be required to have an Interchange Agreement with Maersk-Sea-Land. Carriers hauling "domestic freight" (freight originating out of or ultimately destined for Hawaii, Guam, Puerto Rico or Alaska) will be required to have an Interchange Agreement with CSX Lines, LLC.

Attached is a copy of the CSX Lines, LLC Interchange Agreement. Please complete pages 2 - 4 of the Agreement. You may fax the 3 pages, along with the other information discussed below, to this department at 972-716-2106. However, please return the original pages to this office. Pages 6-8 of this agreement are duplicate signature pages that you can retain, as well as the hard copy of the Agreement.

We also need to know your U.S. Customs Bond Number, if bonded. Please include this information in your cover letter when you return the other items.

Finally, if your insurance company has not already done so, we will need them to send an original of your current insurance certificate (the standard ACORD form), with CSX Lines, LLC as the "Certificate Holder" at the following address: 4100 Alpha Road, Suite 700, Dallas, TX 75244, Attn: Interchange Agreements; this must also show Automobile Liability coverage of at least \$750,000, and Motor Truck Cargo Liability of at least \$100,000 per container, as per the requirements of the CSX Lines, LLC Interchange Agreement. Please note that the Certificate of Insurance must be faxed and/or mailed directly to us by your Insurance Company.

Once all the information is received, it will be updated in our system to show that your company has met all requirements and does have a valid Interchange Agreement with CSX Lines, LLC.

If you have any questions, please feel free to contact me at 972-716-4404.

Sincerely,

*Sharon Reed*

Sharon Reed  
Fleet Administration Rep



Date:

To:

**Interchange Agreement Instructions**

1. Complete **pages 3 - 5** of the Agreement and fax to (972) 813-5746. However, please mail the original pages to this office at the below address and keep a copy for your records. Pages 7 - 9 are duplicate copies and should be retained for your records.

Address: **CSX Lines, LLC  
Attn: Interchange Agreements  
4100 Alpha Road, Suite 700  
Dallas, TX 75244**

2. Your insurance company must fax or mail your current insurance certificate (the standard ACORD form), listing the following items:

- 1) Certificate Holder must read:

**CSX Lines, LLC  
Attn: Interchange Agreements  
4100 Alpha Road, Suite 700  
Dallas, Texas 75244**

- 2) Business Automobile Liability
- 3) Motor Truck Cargo Liability
- 4) Statutory Workers' Comp Policy

**Min. Requirement - \$1,000,000  
Min. Requirement - \$ 100,000  
If your company is required by law to provide Worker's Compensation, you must provide proof of this coverage. This policy must also waive subrogation against CSX Lines, LLC, to the extent permitted by law. If you are not required by law to provide Worker's Compensation, please send us a letter on your company's letterhead stating the reason for the exemption for our records.**

**Please note that all of the above items must be received in our office in order to satisfy CSX Lines, LLC's insurance requirements. Interchange Agreements without complete Certificates of Insurance will not be processed. Certificates may be faxed to (972) 813-5746, with the original mailed to the above address. Please also note that the Certificate of Insurance must be faxed and/or mailed directly to us by your Insurance Company.**

For Questions: 972-813-5351

E-mail Us: [DallasFleetAdmin@CSXLines.com](mailto:DallasFleetAdmin@CSXLines.com)

CSXL IIA Rev. 8.03.01

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# **CSX LINES, LLC**

## **INTERMODAL INTERCHANGE**

### **AGREEMENT**

**CSX LINES, LLC  
INTERMODAL INTERCHANGE AGREEMENT  
PREAMBLE**

CSX Lines reserves the right to terminate this Agreement upon fourteen (14) days advance notice in writing, in the event the Carrier fails to maintain satisfactory credit ratings, is delinquent in making payment, and/or Carrier performance issues exist that impact on service to CSX Lines' customers.

Carrier: \_\_\_\_\_

**Business Address:** \_\_\_\_\_

| No. | Street | City |
|-----|--------|------|
|-----|--------|------|

| County | State | Zip Code |
|--------|-------|----------|
|--------|-------|----------|

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Type of Organization: \_\_\_\_\_  
(individual, partnership or corporation)

If a Corporation:

State in which organized: \_\_\_\_\_

Date of incorporation: \_\_\_\_\_

If a Partnership: \_\_\_\_\_

Date of formation of partnership: \_\_\_\_\_

Name of all partners: \_\_\_\_\_

I.C.C./Federal Highway Administration/Federal Motor Carrier Safety Administration/U.S.  
Department of Transportation Operating Authority and Identification numbers (list all  
applicable): \_\_\_\_\_

SCAC Alpha Code: \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By Michael R. Mitchell  
Manager, Fleet Administration  
CSX Lines, LLC

Address: 4100 Alpha Rd.  
Suite 700  
Dallas, TX 75244

## CONCURRENCE

\_\_\_\_\_  
[MOTOR CARRIER NAME]  
(Hereafter referred to as "Motor Carrier")

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City, State, Zip)

Date: \_\_\_\_\_

This is to certify that Motor Carrier assents to and concurs in all freight tariffs and supplements thereto, filed by CSX Lines, LLC or its tariff publishing agents in which the undersigned carrier is shown as a participant, and the undersigned carrier hereby makes itself a party thereto and bound thereby insofar as such tariffs apply from, to, via or at points on its lines or in its territory. This Concurrence shall remain in effect until terminated by either party giving not less than 30 days' written notice to the other party. This Concurrence is effective as of the effective date of the Motor Carrier's participation in the tariffs of CSX Lines, LLC.

CSX Lines, LLC

By: Michael R. Mitchell  
Manager, Fleet Administration

[MOTOR CARRIER NAME]

By: \_\_\_\_\_  
[SIGNATURE]

Its: \_\_\_\_\_  
[TITLE]

SCAC Alpha Code: \_\_\_\_\_

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**CSX LINES, LLC  
INTERMODAL INTERCHANGE  
AGREEMENT**

**CSX LINES, LLC  
INTERMODAL INTERCHANGE AGREEMENT  
PREAMBLE**

The parties to this Agreement are CSX Lines, LLC (herein referred to as "CSX Lines" or "Owner") and the Carrier named below (herein referred to as "Carrier"). The Carrier owning or operating Equipment for intermodal interchange service, agrees, jointly and severally, to be bound by each and all the provisions of this Agreement and subsequent amendments or revisions thereof, governing the interchange and use of, repairs to, and settlement for, Equipment used in intermodal interchange service.

CSX Lines reserves the right to terminate this Agreement upon fourteen (14) days advance notice in writing, in the event the Carrier fails to maintain satisfactory credit ratings, is delinquent in making payment, and/or Carrier performance issues exist that impact on service to CSX Lines' customers.

IN WITNESS WHEREOF, this agreement has been signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the duly authorized representative of the Carrier hereinafter designated.

Carrier: \_\_\_\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_  
(Signature)

Business  
Address: \_\_\_\_\_  
No. Street City

County State Zip Code

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Type of Organization: \_\_\_\_\_  
(individual, partnership or corporation)

If a Corporation:

State in which organized: \_\_\_\_\_

Date of incorporation: \_\_\_\_\_

If a Partnership:

Date of formation of partnership: \_\_\_\_\_

Name of all partners: \_\_\_\_\_

I.C.C./Federal Highway Administration/Federal Motor Carrier Safety Administration/U.S.  
Department of Transportation Operating Authority and Identification numbers (list all  
applicable): \_\_\_\_\_

SCAC Alpha Code: \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By **Michael R. Mitchell**  
Manager, Fleet Administration  
CSX Lines, LLC

Address: 4100 Alpha Rd.  
Suite 700  
Dallas, TX 75244

## CONCURRENCE

\_\_\_\_\_  
[MOTOR CARRIER NAME]  
(Hereafter referred to as "Motor Carrier")

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City, State, Zip)

Date: \_\_\_\_\_

This is to certify that Motor Carrier assents to and concurs in all freight tariffs and supplements thereto, filed by CSX Lines, LLC or its tariff publishing agents in which the undersigned carrier is shown as a participant, and the undersigned carrier hereby makes itself a party thereto and bound thereby insofar as such tariffs apply from, to, via or at points on its lines or in its territory. This Concurrence shall remain in effect until terminated by either party giving not less than 30 days' written notice to the other party. This Concurrence is effective as of the effective date of the Motor Carrier's participation in the tariffs of CSX Lines, LLC.

CSX Lines, LLC

[MOTOR CARRIER NAME]

By: Michael R. Mitchell  
Manager, Fleet Administration

By: \_\_\_\_\_  
[SIGNATURE]

Its: \_\_\_\_\_  
[TITLE]

SCAC Alpha Code: \_\_\_\_\_

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## DEFINITION OF TERMS

Where the following terms appear in this Agreement they shall have the meaning indicated:

- |                       |                                                                                                                                                                    |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. AGREEMENT          | - A term referring to the CSX Lines Intermodal Interchange Agreement.                                                                                              |
| 2. SUBSCRIBER         | - A Carrier that is a signatory to an Intermodal Interchange Agreement with CSX Lines.                                                                             |
| 3. EQUIPMENT          | - Trailers, containers, generator sets, chassis, bogies and component parts thereof.                                                                               |
| 4. USER               | - A Carrier that is a party to an Intermodal Interchange Agreement with CSX Lines and is in possession of Equipment.                                               |
| 5. DELIVERING CARRIER | - A User offering Equipment to another Carrier whether or not a Subscriber.                                                                                        |
| 6. RECEIVING CARRIER  | - A User accepting Equipment from another Carrier whether or not a Subscriber.                                                                                     |
| 7. USE CHARGE         | - The charges to be paid for Equipment by Users to CSX Lines pursuant to this Agreement.                                                                           |
| 8. INTERCHANGE POINT  | - An agreed location where two or more Carriers or a User and CSX Lines receive and/or deliver Equipment.                                                          |
| 9. INTERCHANGE        | - The transfer of Equipment pursuant to this Agreement, consummated when the Equipment interchange receipt and safety inspection report form is properly executed. |
| 10. OWNER             | - CSX Lines, LLC (which is also referred to as "CSX Lines").                                                                                                       |
| 11. PORT-TO-PORT MOVE | - A truck move using CSX Lines operated Equipment where the move is not contracted with or paid for by CSX Lines.                                                  |
| 12. INTERMODAL MOVE   | - A truck move using CSX Lines operated Equipment where the move is contracted with and/or paid for by CSX Lines.                                                  |

**PART I**  
**TERMS AND CONDITIONS**

**SECTION 1. GENERAL**

- 1.1 These Terms and Conditions shall govern the interchange and use of, repairs to, and settlement for Equipment whenever such Equipment is being used and interchanged pursuant to this Agreement.
- 1.2 If a Subscriber interchanges Equipment with a non-Subscriber, the Subscriber will be responsible for the performance of all Terms and Conditions of this Agreement in the same manner as if the Equipment were in the possession of the Subscriber.
- 1.3 In this Agreement, the Carrier which is a signatory party hereto may also be referred to as Subscriber, User, Receiving Carrier, and Delivering Carrier.

**SECTION 2. RECEIPTS AND REPORTS**

- 2.1 At the time of Interchange an authorized representative of each party shall execute in multiple copies as the interchanging parties may require, an Equipment interchange receipt and safety inspection report form, and the parties shall be bound by the notations thereon.

**SECTION 3. LIABILITY FOR AND USE OF EQUIPMENT**

- 3.1 Responsibility of User.
  - a) User shall be fully liable for, and have the right of complete inspection, control supervision and/or rejection of Equipment while in its possession and shall be responsible for returning or interchanging the Equipment in the same condition as received, ordinary wear and tear excepted, and with all dunnage, debris and similar items having been removed.
  - b) In the absence of instructions from CSX Lines, or agreement to the contrary, when Equipment in interchange service is unloaded, it will be the responsibility of the User to promptly return such Equipment to CSX Lines at the point received.
  - c) CSX Lines will promptly accept the return of empty Equipment.
  - d) The cost of decontaminating Equipment that has been loaded with contaminating commodities shall be the responsibility of the User who loaded, or arranged for the loading or unloading of, such Equipment.

- e) User warrants that it possesses and will continue to possess for the duration of this Agreement all requisite Authorities to use and operate Equipment received under this Agreement. User agrees that Equipment received under this Agreement shall be operated in conformity with all applicable Federal, State and local government Statutes and Regulations, including those of the U.S. Customs Service, and, further agrees to indemnify and hold CSX Lines harmless for any violations resulting from User's failure to comply with such Authorities, Statutes, and Regulations, whether or not such violation is intentional.

### 3.2 Adjustment or Transfer of Lading

- a) Adjustment or transfer of cargo being transported in the Equipment shall be the responsibility of the Delivering Carrier.
  - 1. When required at point of interchange due to defective Equipment which cannot be readily repaired;
  - 2. When due to overload in violation of Item 4, Section A, of Part II of this Agreement.
- b) If the Delivering Carrier fails to adjust or transfer cargo where required, Receiving Carrier may cause transfer to be made at expense of Delivering Carrier.

## SECTION 4. DAMAGE, REPAIRS, MAINTENANCE AND BILLING

- 4.1 In the event Equipment is damaged after being received in Interchange, the User in possession at the time the damage occurred shall, at its sole expense, return the Equipment to a condition that meets CSX Lines' standards. Any material applied must be of similar quality and type as material removed and all repairs, when completed, are subject to acceptance by CSX Lines. In the event of failure of the User to make such repairs it shall, nevertheless, be responsible for the cost thereof.
- 4.2 In the event a Subscriber delivers Equipment to a non-Subscriber, the Subscriber will remain responsible to CSX Lines for any damage to the Equipment until its return to CSX Lines or its interchange with another Subscriber.
- 4.3 In the event Equipment shall require repairs before being accepted in interchange, Delivering Carrier shall be responsible for the cost of repairs. Receiving Carrier may cause repairs to be made and bill Delivering Carrier for the cost thereof. If estimated cost of foregoing repairs exceeds \$100, consent of Delivering Carrier shall be obtained before Receiving Carrier causes repairs to be made.
- 4.4 In the event of repairs necessitated by defective Equipment, User shall make such repairs that do not exceed \$100 as may be necessary. User shall secure the approval of Owner before making any repairs, the estimated cost of which will exceed \$100. When the cost of repairs exceed \$100, the Owner shall be responsible for the entire cost thereof and User shall be promptly reimbursed. Owner may request return or replace parts whenever cost of repairs exceeds \$100.

- 4.5 In the event the User returns Equipment to the Owner in a damaged condition, Owner shall take appropriate exception on the Equipment Interchange Receipt, and, before making repairs, Owner shall notify the User if the estimated cost thereof will exceed \$100. User shall respond to Owner's notification within three (3) working days following receipt of the notification. Owner shall bill the User for the cost of the repairs within ninety (90) days of receipt of notification from the User. Billing must include Owner's marks or alpha code and Equipment number, chassis number and an itemized repair list.
- 4.6 Ordinary maintenance and other service adjustments occasioned by ordinary use in interchange will be:
- a) Absorbed by User when cost thereof does not exceed \$100.
  - b) Billed to and borne by Owner in entirety when cost exceeds \$100.
  - c) Authorized by the Owner prior to commencement of repairs when estimated cost exceeds \$100.
  - d) Billed to the Owner by User within ninety (90) days after repairs have been completed, unless otherwise agreed upon. Billing must include owner marks or alpha code and Equipment number, chassis number, date and location where repaired, and all details concerning items of repair.
- 4.7 Unless otherwise provided, material used in making repairs shall be charged at current market prices, which shall be the invoice price plus commercial freight. However, when repairs are made in commercial shops or outside repair facilities, the actual amount invoiced for such material and labor must be used.
- 4.8 When repairs are made by User, labor shall be charged on the basis of actual time consumed in making repairs but shall not exceed the labor rates then prevailing in the area.
- 4.9 Equipment owned or leased by parties other than Owner, which is utilized by User under this Agreement, may be subject to additional terms and conditions (e.g., road service policies or other similar terms and conditions) which are incorporated herein by reference and which are made a part of this agreement and which may result in additional charges to the User.
- 4.10 Improper Repairs
- a) Where Owner ascertains that improper repairs have been made, the User responsible must assume full cost of correcting improper repairs. Owner must furnish to User a list of improper repairs and cost estimate prior to initiating corrective repairs. If User does not respond within ten (10) days after notification, informing Owner of acceptance of estimate or the name of representative authorized to make inspection of alleged improper repairs, Owner may proceed with repairs at User's sole cost and expense.
  - b) Where serviceable material not standard to Equipment is removed by Owner and, upon notification, the Carrier responsible for the improper repairs so elects such material may be treated as scrap.
- 4.11 Payment in full for repairs made under this Section shall be made by the responsible party within sixty (60) days after receipt of billing from Owner.

## SECTION 5. SETTLEMENT FOR LOST, STOLEN OR TOTALLY DESTROYED EQUIPMENT

- 5.1 In the event Equipment is lost, stolen or totally destroyed while in possession or control of User, the User agrees to reimburse Owner on the basis of the current replacement cost of the Equipment, Special Equipment and accessories, less depreciation, as calculated in accordance with this Section (but not less than the replacement value or the stipulated cost set forth in any applicable Equipment lease between Owner and underlying lessor, whichever is applicable) as of the date of notification that the Equipment was lost, stolen or totally destroyed.
- 5.2 Owner shall, within thirty (30) days after receipt of such written notification, secure and furnish to the User a written statement showing the date of acquisition and the Depreciated Total Replacement Cost of the lost, stolen or totally destroyed Equipment calculated in accordance with this Section 5.
- 5.3 Whenever replacement cost is the basis for fixing the value of the Equipment, it shall be computed as follows:

### EXAMPLE:

#### Container at 5 Years Age

|    |                                                                                                                                  |          |
|----|----------------------------------------------------------------------------------------------------------------------------------|----------|
| 1. | Replacement Cost of Equipment                                                                                                    | \$10,000 |
| 2. | Replacement Cost of Special Equipment and Accessories other than Mechanical Refrigeration Units (Sum of 2.c. plus 2.d.)          | \$ 172   |
| a. | Invoice Price                                                                                                                    | \$ 100   |
| b. | Commercial Freight Charges                                                                                                       | \$ 50    |
| c. | Subtotal of 2.a. and 2.b.                                                                                                        | \$ 150   |
| d. | 15% of Subtotal of 2.a. and 2.b.                                                                                                 | \$ 22    |
| 3. | Replacement Cost of Equipment and Special Equipment and Accessories other than Mechanical Refrigeration Units (Sum of 1. and 2.) | \$10,172 |
| 4. | Depreciation for Equipment and Special Equipment and Accessories other than Mechanical Refrigeration Units - 5 years.            | \$ 3,387 |
| 5. | Depreciated Replacement Cost of Equipment and Special Equipment and Accessories other than Mechanical Refrigeration Units        | \$ 6,785 |
| 6. | Replacement Cost of Mechanical Refrigeration Unit                                                                                | \$ 2,000 |

|    |                                                                                                                                                                              |          |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| 7. | Depreciation for Mechanical Refrigeration Unit – 5 years                                                                                                                     | \$ 1,000 |
| 8. | Depreciated Replacement Cost of Mechanical Refrigeration Unit                                                                                                                | \$ 1,000 |
| 9. | Depreciated Total Replacement Cost of Equipment, Special Equipment, Accessories, and Mechanical Refrigeration Unit ("Depreciated Total Replacement Cost") (Sum of 5. And 8.) | \$ 7,785 |

- a) In determining the replacement cost of special Equipment and accessories, other than mechanical refrigeration units, the current market price shall be used. The current market price shall be the invoice price plus commercial freight charges plus fifteen (15%) percent.
  - b) Replacement cost of Special Equipment and accessories other than mechanical refrigeration units shall be added to the replacement cost of the Equipment, and this sum shall be depreciated pursuant to Paragraph 5.4 in order to determine the Depreciated Replacement Cost of the Equipment and Special Equipment and Accessories other than Mechanical Refrigeration Units, at the time of notification.
  - c) In determining the replacement cost of a mechanical refrigeration unit, the manufacturer's current market price for a similar unit with all component parts, including the fuel tank or bottles, depreciated by the age of the damaged unit (using the rate shown in Paragraph 5.4b) shall be calculated and added to the Depreciated Replacement Cost of the Equipment, Special Equipment and Accessories other than Mechanical Refrigeration Units.
- 5.4 Trailers or containers, Special Equipment and accessories, generator sets, and mechanical refrigeration units shall be depreciated on straight line basis, as follows:
- a) Chassis, or containers (new or rebuilt), Special Equipment and accessories, other than mechanical refrigeration units, at five-sixths of one percent (5/6%) per month - six and two-thirds percent (6-2/3%) per annum -- applied to age of Equipment, with maximum depreciation limited to fifty (50%) percent.
  - b) Mechanical refrigeration units with all components parts, including fuel tanks or bottles, at ten percent (10%) per annum applied to age of units with maximum depreciation limited to fifty (50%) percent.
  - c) Age of chassis or container, Special Equipment and accessories, other than mechanical refrigeration units and parts, shall be determined by subtracting year and month in which originally built from year and month in which notification is made with no fractional part of a month being considered.
  - d) Age of mechanical refrigeration units with all component parts, including fuel tanks, shall be determined in the same manner as outlined in Paragraph 5.4 c., using date of original installation and date originally built.
- 5.5 Salvage value of chassis or container, Special Equipment and accessories shall be computed as follows:

- a) All chassis or containers, regardless of type or construction, including all Special Equipment and accessories other than mechanical refrigeration units, at \$100 per chassis, plus \$53 for each usable tire.
- b) Mechanical refrigeration units and all component parts including fuel tanks at \$225 per unit.

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5.6 Settlement shall be made within sixty (60) days after User has been furnished a written statement of the Depreciated Total Replacement Cost of the Equipment lost, stolen or totally destroyed.

## SECTION 6. USE CHARGES

- 6.1 User shall be fully responsible for the payment of all use charges and all other charges and claims properly assessed under this Agreement, and in Attachment "A", by Owner, as well as for any court costs, expenses, reasonable attorney's fees, and reasonable interest charges resulting from User's failure to pay such charges and claims as is provided herein.
- 6.2 When Equipment is damaged and reported to Owner under Section 4 of this Agreement, use charge will cease from date of original notification until repairs are authorized or other disposition is directed by Owner.
- 6.3 If Owner requests Equipment be returned for repairs, User will, unless otherwise agreed upon between the parties, initiate return of Equipment within five (5) days after notice is received; otherwise, use charges shall be reinstated.
- 6.4 Use charges shall not be paid by an intermediate User on Equipment returned under Section 6.2. Equipment returned under this Section shall be so indicated on the movement document.
- 6.5 If, on receipt from Owner of depreciated replacement value, User decides to repair or send the Equipment to Owner for repairs, the use charges shall continue from date of original written notification to Owner as lost, stolen, destroyed, or damaged.
- 6.6 User shall be responsible to the Delivering Carrier from whom it received the Equipment for the performance of this Agreement by itself and by all other persons into whose possession such Equipment may go until its proper return to Owner or to the Delivering Carrier.
- 6.7 A Subscriber to this Agreement, failing to accept promptly from another Subscriber Equipment billed to or via that Subscriber, shall be responsible for use charges on Equipment so held for delivery. The Subscriber in possession of Equipment shall notify the delinquent User daily prior to midnight, through the designated representatives at the point where Equipment is offered, of the total number of units so held for it, and within forty-eight (48) hours from midnight of the day Equipment is offered, furnish the alpha prefix and number of Equipment so held.
- 6.8 In case a Subscriber to this Agreement delivers Equipment to a carrier not a party to this Agreement, the Subscriber will remain primarily responsible for the payment of all resultant use charges.
- 6.9 When Equipment has been reported to Owner as lost, stolen or totally destroyed, under Section 5 of this Agreement, the use charges shall cease on the date Owner is properly notified.

- 6.10 Payment in full of a proper claim presented by Owner shall be made by the responsible party within sixty (60) days from the date of receipt. In the event a claim presented by Owner is not so paid, use charges shall continue until receipt of payment, unless otherwise agreed upon.

#### **SECTION 7. INDEMNITY**

- 7.1 The User, releases and agrees to defend, indemnify and hold harmless Owner and its agents, employees, officers, directors, affiliates, parent corporation, and the owner (where applicable) and assigns from and against all claims, demands, losses, damages, fines, penalties, liabilities, or expenses, including punitive damages and, attorney's fees, arising out of or in any way connected to injury to or death of persons or loss of or damage to property, including but not limited to cargo transported in the Equipment, and/or injury to or death of any User, User's employees or damage to User's Equipment where alleged to be a result of or in any way connected to User's use, operation, maintenance custody or possession of the Equipment regardless of Owner's alleged or actual negligence.
- 7.2 The User, releases and agrees to defend, indemnify and hold harmless Owner and its agents, employees, officers, directors, affiliates, parent corporation, and the owner (where applicable) and assigns from and against all claims, demands, losses, damages, fines, penalties, liabilities, or expenses, including punitive damages and, attorney's fees, arising out of or in any way connected to User having had custody of or having operated the Equipment, including, but not limited to, citations for illegal parking or overweight or oversize loads, towage charges, and impoundment fees.

#### **SECTION 8. INSURANCE**

- 8.1 A Subscriber shall have in effect a Business Automobile Liability Policy of Insurance, covering its legal liability, including any liability assumed under the provisions of Paragraph 7, with available combined limits of not less than \$1,000,000 for Bodily Injury and Property Damage. A Subscriber shall have in effect a Motor Truck Cargo Liability Policy with a minimum of \$100,000 of coverage. A Subscriber shall also have an applicable Statutory Workers' Compensation Policy for those states in which they anticipate operations (if such Policy is required by law). Subscriber shall ensure that copies of such required policies and endorsements be provided by Subscriber or its insurance carrier to Owner at:

**Fleet Administration Department  
CSX Lines, LLC  
4100 Alpha Road, Suite 700  
Dallas, TX 75244  
Fax # (972) 813-5746**

- 8.2 Subscribers shall maintain insurance coverage as described above for the entire term of this Agreement. Subscriber's insurance carrier shall give at least thirty (30) days advance written notice of cancellation or major changes of such coverage to Owner. Subscriber shall also cause their required Workers' Compensation Insurer and any company insuring their Equipment to waive subrogation by endorsement, to the extent such waiver is permitted by law.
- 8.3 Subscribers' liability shall not be limited to the amount of insurance required herein.

8.4 Subscriber's Business Automobile policy shall be endorsed to be primary of any other insurance that may be applicable.

**MISCELLANEOUS PROVISION:** For purposes of the Agreement, unless otherwise provided herein, neither CSX Lines nor Carrier will be considered an employee, agent or joint venturer of the other.

#### **SECTION 9. WARRANTY**

Owner, as well as any Delivering Carrier, does not make any warranty or representation, expressed or implied, as to the fitness or condition of the Equipment interchanged, including tires and tubes, and the Carrier acquiring the use thereof does so at its own risk and accepts the Equipment "as is".

#### **SECTION 10. TABLE OF USE CHARGES AND FREE TIME**

Use charges and free time applicable for lease of Equipment between the undersigned parties hereto shall be in accordance with Section 6 and Attachment "A" hereto, which Attachment "A" is made a part of this Agreement.

---

**PART II**  
**OPERATING RULES**

**Section A**

Equipment will be accepted in intermodal interchange service provided that:

1. The name, reporting mark or alpha code and Equipment number of the Owner are clearly indicated thereon. Subscriber placing Equipment in interchange service whose marks do not render it possible to ascertain the Owner for purposes of this Agreement shall cause to be placed upon the Equipment an owner identification and address no less than 2" by 5" in size located as follows:
  - a) trailer/containers - rear left-hand door;
  - b) chassis - left side center beam adjacent to existing markings;
  - c) bogies/flatbeds - left rear.
2. Owners of intermodal Equipment have verified their reporting mark or alpha carrier code with the appropriate liaison organization to avoid the possibility of duplicate markings and to insure uniqueness.

Note: It is strongly recommended that after reporting marks have been verified, Owners list such Equipment in an approved register.
3. Owner and User Responsibilities
  - a) The Owner furnishes valid license plates required in the State of registry.
  - b) The User agrees to indemnify and hold harmless the Owner from and against any and all expenses to Owner for or connecting in any way with fees, fines or tolls, assessed or imposed by governmental authority or other party on Equipment interchanged by Owner to User.
4. Equipment when loaded shall not exceed manufacturer's gross weight limitations which shall be marked on the Unit. User may restrict size and weight of any Equipment to meet clearance and highway requirements for movement over a particular route.
5. Kingpin is free of cracks or other visible flaws and is securely attached to said Equipment.
6. Container Equipment must be secured to chassis or bogie according to safety requirements of Receiving Carrier.
7. Accessories and Special Equipment

7.1 All wheeled Equipment has the following accessories:

- a) The SAE-ATA Recommended (7 Conductor) Electrical Connector Plug.
- b) Flashing turn signals with not less than 12 square inches of lens surface.
- c) Stop lights, tail lights, clearance and marker lights, mud or rain flaps, as required by appropriate governmental agencies.
- d) Tires conforming to requirements of Section B of these Rules.
- e) Landing gears conforming to requirements of Section B of these Rules.

8. An Equipment interchange receipt and safety inspection report form is prepared by Delivering Carrier specifying the description and number of the removable items accompanying Equipment, such as but not limited to:

- a) Chains, binders, cables and straps;
- b) Tarpaulins (except expendable type), including securements;
- c) Tarpaulin bows;
- d) Spreader bars or tie rods;
- e) Bulkheads, bulkhead boards, and load restraining devices;
- f) Sides, gates, sections or end doors;
- g) Mounted spare tire;
- h) Auto transport Equipment such as skids, retainer pins, stands, tie down chains, cables and hooks.

9. When loaded open top Equipment is offered in interchange and is equipped with tarpaulins and bows, the tarpaulins and bows must be in their proper position with tarpaulin spread and secured. In the event tarpaulin and bows are not used, they must be placed in proper storage.

10. When empty open top or platform type Equipment is offered in interchange and is equipped with tarpaulin and bows, side and end gates, etc., the tarpaulin and bows, side and end gate must be in proper place with tarpaulin spread and secured.

Note: It is recommended that tarpaulins used in interchange service carry Owner's identification.

11. Owner reserves the right to require a potential Subscriber to submit to Owner: (a) proof of authority to operate; (b) letters of routing from five (5) regular customers; (c) proof of insurance; and (d) proof of satisfactory credit ratings, as a condition to executing the Agreement.

## Section B

### CONDITIONS GOVERNING COMPONENTS OF EQUIPMENT

#### 1. Tires and Tubes

- 1.1 The Delivering Carrier shall determine that tires and tubes are of proper size at the time of interchange. Thereafter, until Equipment is returned to the Owner, repairs to tires and tubes shall be made by and at the expense of the User at the time of such tire or tube failure. At the time of interchange of Equipment, the tires thereon shall be thoroughly inspected by Receiving Carrier:
  - a) To determine if properly mated.
  - b) To determine major defects, such as:
    - 1) Separation of caps;
    - 2) Visible blisters and sidewall tears;
    - 3) Obvious signs of rim wear;
    - 4) Visible objects protruding from tire, such as nails, bolts, spikes;
  - c) To determine that tires contain a minimum of 4/32" tread depth and are inflated to 85 psi.
- 1.2 Any deficiency noted by inspection shall be corrected by the Owner or by the Delivering Carrier prior to acceptance for interchange use.
- 1.3 At time of inspection there shall be recorded on the Equipment interchange receipt and safety inspection report the tire owner's name and number, if any, or manufacturer's name, and location of tire on the Equipment.
- 1.4 User at his expense, shall provide good maintenance to tires and tubes, including proper inflation, repair of flat tires, pulled valve stems, etc.
- 1.5 In the event of a blowout and/or total failure of tire and/or tube, replaced by other than the Owner, the replacement shall be properly mated and of similar quality and value and report of such replacement must be made to Owner showing size, ply, brand and serial number of tires removed and applied. If tire or tube is ruined as a result of being run flat or otherwise abused, it will be the responsibility of the User to replace or pay for the tire or tube so ruined. Any expense in replacing or repairing a tire exceeding \$125 in cost shall require notification of Owner by User.

- 1.6 When Owner is charged for an unserviceable tire, User shall make reasonable best efforts to hold the tire for thirty (30) days after notification to Owner of such unserviceability. If the Owner requests return of tire, it shall be returned by User to the point and in the manner designated by Owner. If User fails to return tire upon request, Owner reserves the right in its sole discretion to impose a \$200 charge upon User for such failure. User shall pay Owner such \$200 charge.

**2. Landing Gears**

- 2.1 At time of interchange landing gear must be complete as to component parts, properly secured to Equipment and in suitable condition to properly support load.
- 2.2 User in possession of Equipment shall provide required maintenance service to landing gear, including minor repairs and lubrication.

**3. Refrigeration and Heating**

- 3.1 At time of interchange a vehicle equipped with mechanical refrigeration unit shall have marked adjacent to the fuel tank the type of fuel required to drive unit and capacity of fuel tank.
- 3.2 At time of interchange of a loaded vehicle under heat or refrigeration, interior air of vehicle will be at the required temperature. The mechanical unit shall be in satisfactory operating condition and shall have sufficient fuel, or mechanical generator set to make the trip, as measured by the Owner.
- 3.3 Owner shall protect the liquid cooling system of mechanical unit and generator set against freezing damage by application of sufficient permanent antifreeze solution to prevent freezing at temperature not less than minus 20 degrees F. Type of solution and degree of protection afforded shall be shown on tag attached securely to unit.
- 3.4 User shall be responsible for further protecting the mechanical unit and generator set where temperature lower than the above minimum may occur while in its possession. In furnishing this protection the same type and grade of solution shall be added to unit and the information tag shall be corrected to show the new temperature protection.
- 3.5 Fuel used to operate portable unit in either heat or refrigeration service shall comply with all requirements of the carriers and regulatory agencies involved in the movement. Type and location of portable unit shall be designated by Delivering Carrier.
- 3.6 User shall provide proper maintenance to the heating, refrigeration unit, and generator set when vehicle contains commodities requiring temperature control.

- 3.7 Fuel used to operate mechanical refrigeration units and generator sets in either heat or refrigeration service shall comply with all requirements of the Owner and any regulatory agencies involved in the movement.
- 3.8 Notwithstanding any provisions of Section 6, Part I herein, the Owner shall properly clean the Equipment at the User's expense. This includes, but is not limited to, steam cleaning.
- 3.9 Prior to empty refrigerated Equipment being redelivered to the Owner, the User shall properly clean the Equipment at the User's expense. This includes, but is not limited to, steam cleaning. In the event refrigerated Equipment is not properly cleaned prior to return, Owner may refuse to accept its return or invoice User for all cleaning charges.

#### 4. Tanks

- 4.1 The User agrees to return Equipment to Owner in a like condition of that which received. Owner reserves the right to require User to clean interior, dome and discharge area of Equipment, at User's cost, in the event tank Equipment is not clean when returned, and may refuse to accept return.
- 4.2 Tanks shall be returned with all gauges, valves, hatch covers, etc., in good operating condition and there should be no evidence of leakage.

Attachment "A"

- 1) This Attachment A is an attachment to the CSX Lines, LLC Intermodal Interchange Agreement and sets forth the free time and use charges applicable to Equipment interchanged between CSX Lines and Carrier.
- 2) On Intermodal moves, when containers are dropped off at customer's facility or at CSX Lines' inland depot, as directed by CSX Lines, User's free time will be two (2) calendar days commencing with the day of first possession. Use (per diem) charges will be assessed in the same amounts as per paragraph 3 below. Additional free time as well as storage/detention charges for customer's account shall commence for Equipment at customer's premises if any of the following CSX Lines' tariffs (or successor tariffs) apply and so provide:
  - Tariff 301, 314, and 453 – Alaska Trade
  - Tariff 212 – Hawaii Trade
  - Tariff 353 – Guam Trade
  - Tariff 414 and 415 – Puerto Rico Trade
- 3) In accordance with the CSX Lines, LLC's Intermodal Interchange Agreement, the User is billed and shall pay charges for Port-to-Port moves and Intermodal moves, except as specified under 2) above, based upon the following table:

FREE TIME AND CHARGES

| <u>Equipment Type</u>        | <u>Free Time (a)</u> | <u>Charges (b)</u> |
|------------------------------|----------------------|--------------------|
| Dry Containers               | 5 days               | \$11.00 per day    |
| Open Top/Flatbed             | 5 days               | \$15.00 per day    |
| Refrigerated/Tank Containers | 3 days               | \$50.00 per day    |
| Bare Chassis                 | 5 days               | \$ 6.00 per day    |

- (a) Excludes day of initial interchange, holidays and first Saturday and Sunday.  
(b) Charges apply on all days, or fractions thereof, after free time expires.

- 4) User interchanging Equipment with a rail carrier shall not be assessed a use charge if the interchange occurs within the free time permitted by this Agreement and within 2 days thereafter User has provided CSX Lines with the requisite routing information and a copy of CSX Lines' or the railroad's Equipment Interchange Receipt between User and the rail carrier.
- 5) Where repairs of trailers are to be made under the provisions of Section 4 of this Agreement, CSX Lines shall receive use charges as shown in this Attachment A while the Equipment is out of service or, if the Equipment is extensively damaged, use charges will continue until agreement is reached between CSX Lines and the User for the User to pay for the value of the Equipment.
- 6) In the event this Agreement is canceled by CSX Lines for failure of Carrier to maintain required insurance coverage, or to pay valid use charges, or for any other breach of the Agreement, Carrier agrees to pay CSX Lines an administrative fee of \$50.00 if, and at such time as Agreement is reinstated.

END OF AGREEMENT

REBUTTAL VERIFIED STATEMENT OF BRADLEY J. DECHTER  
ATTACHED DOCUMENT NUMBER 3  
HORIZON SERVICES GROUP - WWW.SHIPMYSTUFF.COM



July 15, 2003

Dear Sir or Madam:

Due to the vast volume of LCL / LTL rate requests we receive within our Customer Service group and our Horizon Lines websites, we have created a new website, [www.shipmystuff.com](http://www.shipmystuff.com) to manage this consumer demand. Horizon Lines only handles full container loads, but our goal is to capture the necessary information from these potential customers and forward the lead to a Horizon Lines' partner that has the ability to handle the shipment. A similar program was started several years ago with our sister site, [www.shipmyvehicle.com](http://www.shipmyvehicle.com). ShipMyVehicle is on track to receive over 400,000 visitor sessions and generate more than 70,000 partner leads this year, and we expect similar growth and success from ShipMyStuff.

As a valued Horizon Lines' partner in the Hawaii trade lane, we hope you will join this new program and take advantage of the potential volume of leads, as outlined in the attachment.

Please send an email or contact us by phone if you are interested in joining the program so that we may update our partner files. For more information about the program or to sign-up, please contact Louise Mailloux-McBurnett at 972.813.5990.

Sincerely,

A handwritten signature in black ink, appearing to read "Louise Mailloux-McBurnett".

Louise Mailloux-McBurnett  
ShipMyStuff Product Manager  
Horizon Services Group  
972.813.5990

**shipmystuff.com**  
DID ANYTHING ANYWHERE!

## Partner Program Overview

*"You only pay us when you have been paid for a move."*

### How the Program Works....

Horizon Lines will heavily market the website, essentially providing free marketing dollars to our program participants. We expect to attract a significant number of visitors to our site, many of which will fill out and submit the Quote Request form, generating a lead.

These leads are then distributed evenly among the program participants that sign-up for that market segment. Distribution is typically done via email, however, if appropriate, we can integrate directly into your lead system.

Once the lead is distributed, it is then up to that partner to contact the potential customer, provide a quote, book the shipment, and accept payment.

### The basic process:

- 1) Sign Up and Select Market Segments
- 2) Receive Lead
- 3) Contact Customer
- 4) Quote Lead
- 5) Book Shipment
- 6) Accept Payment
- 7) Move Shipment
- 8) Pay Referral Fee

### What Makes this Program Unique?

There are three major differences between this program and many others that exist:

1. Unlike other sites which send each lead to many companies, our program is set up so that each lead will be **DISTRIBUTED to ONLY ONE PARTNER**. That means less competition and higher closing ratios for you. It also means that we are only successful if you are successful, so it is in our interest to send you the best, most qualified leads possible.

2. You **ONLY PAY** us **IF YOU BOOK and MOVE** the shipment. With most other sites you pay per lead – good or bad, qualified or "just shopping".
3. **QUALITY MARKETING** – We are constantly reviewing our marketing to find new opportunities and to determine which campaigns provide the **HIGHEST QUALITY LEADS** for the thousands of dollars we invest every month. We track revenue per visitor, revenue per lead, and revenue per campaign, so you get a high volume of qualified leads without lifting a finger!

#### Who is Eligible to Participate?

In order to participate, the company must be an existing partner in good standing with Horizon Lines and have the resources and facilities necessary to handle shipments into and out of Hawaii.

#### Cost

There is a small annual fee of \$500 required to cover the cost of maintaining and updating the website. Additionally, if your company **BOOKS and MOVES** a shipment as a result of one of our leads, you pay Horizon Lines an 8% referral fee on the total cost of the shipment (this is lower than the fee for ShipMyVehicle, which has already proven highly profitable both for our domestic and international partners).

For more information about the program or to **SIGN UP**, please contact Louise Mailloux-McBurnett at 972.813.5990.

<sup>1</sup> Shipments booked from ShipMyStuff.com leads that fall within the Horizon Lines trade lanes must be shipped on a Horizon-Lines carrier unless agreed to by Horizon-Lines in advance of the shipment.

<sup>2</sup> In order to ensure good quality service and keep track of fees due, Horizon Lines requires partner to submit a weekly report.

**shipmy**

**stuff.com**

Ship ANY thing ANYWHERE!

[Home](#) | [Service info](#)

[Small Items](#) [HouseHold Goods](#) [Pets](#) [Art and Ant](#)

### *Our Services*

**ShipMyStuff.com provides one-stop shopping for all of the individual consume shipping and moving needs.**

ShipMyStuff transports cargo using a global network of truck lines, rail lines, partnersh and 17 large container vessels in order to service shipments within the US (including Alaska and Hawaii) and internationally, to and from Europe, Asia, Australia, Canada, Guam, the Caribbean, and Puerto Rico.

### **Specialized Transport Services**

- [Small or Individual Item Freight Shipments](#)
- [Household Good Moves](#)
  - Full-Service Moves
  - Self-Service Moves
  - Small Household Moves
- [Household Pet, Livestock and Exotic Animal Transportation](#)
- [Arts and Antiques](#)

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Home | Service info

Ship ANY thing ANYWHERE!

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### **Single Item(s) - LTL / LCL Shipments**

**ShipMyStuff.com can move your "Less than Truckload" shipment of greater than 250 lbs domestically and internationally!**

#### **Less than Truckload (LTL) and Less than Container Load (LCL)**

- Use this option if you have boxes, crates, or skids of product to ship and you know the weight and dimensions.
- Items are shipped by our partnering freight companies and therefore cannot handle unboxed/uncrated items.
- Each item being shipped must be itemized by dimensions and weight (of the box, crate, or skid).
- Quotes cannot be determined solely by weight, so package the items first in order to determine the dimensions before requesting a quote.
- Quotes are provided in 24 - 48 hours.

***If these are PERSONAL EFFECTS or USED HOUSEHOLD GOODS that are not COMPLETELY BOXED or CRATED (e.g., furniture, mattresses, etc) , please see "Household Goods" option. Go to [Household Goods Info](#)***

shipmy

.com

Home | Service info

Ship ANY thing ANYWHERE!

[Small Items](#) [Household Goods](#) [Pets](#) [Art and Ant](#)

## ***Household Goods and Personal Effects Shipments***

**ShipMyStuff only uses high-quality, well-respected companies that are in good standing with the Better Business Bureau and Consumer Affairs department, rather than the dirt-cheap, fly-by-night operations that have recently been featured on 20/20 and other news program. [READ MORE](#)**

ShipMyStuff.com can move your personal goods almost anywhere you need to go, no matter how large or small the shipment. In order to provide you with the best service, partner with companies that specialize in different areas, such as "You Pack and Load" shipments, international shipments, and full-service movers that can professionally wrap and load all your items, including furniture, to ensure that every item gets to its destination in perfect condition.

### **Self-Pack and Load (aka "You Pack and Load")**

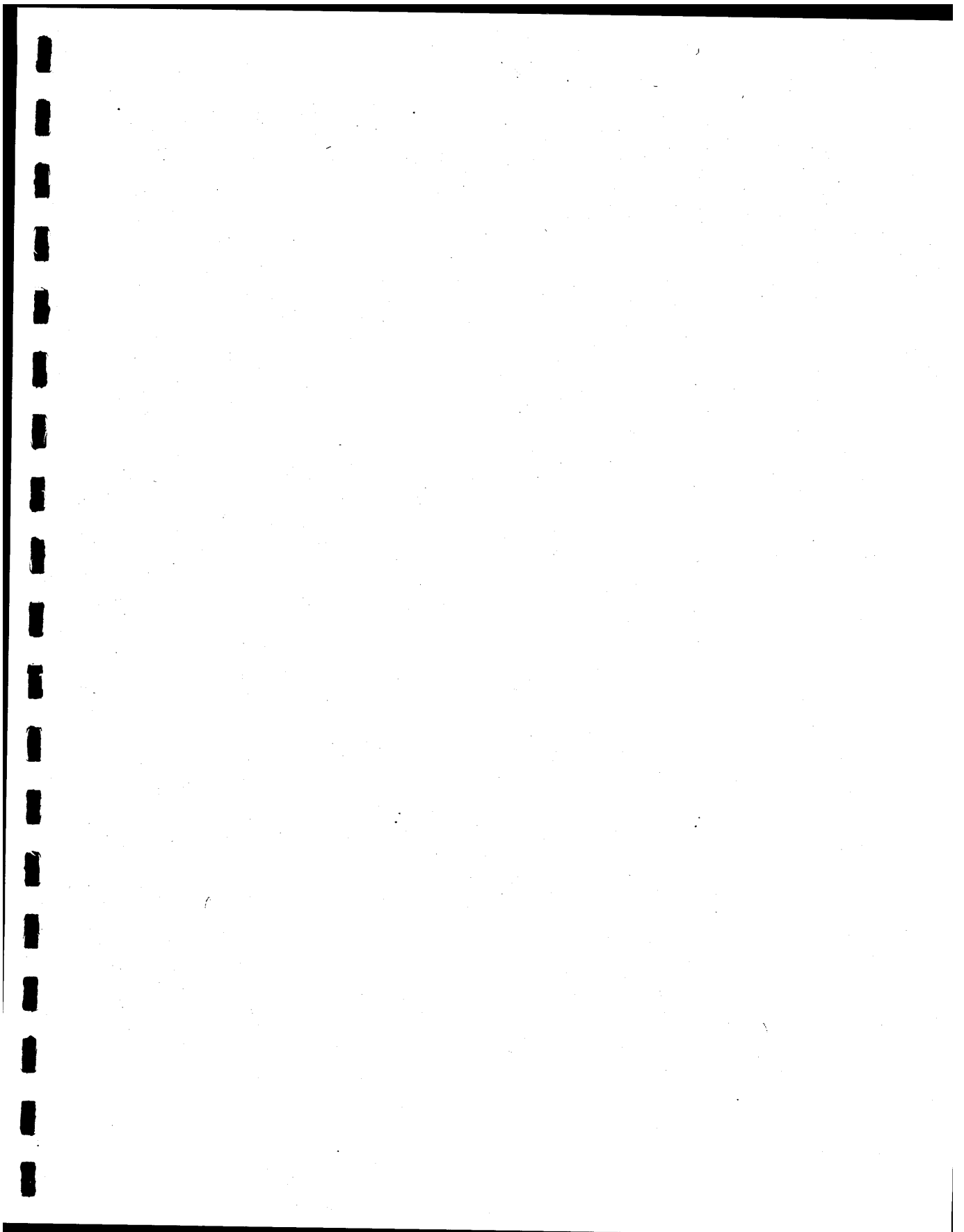
Typically the most inexpensive and often referred to as a "You Pack" type service. You are responsible for packing all of your belongings and loading them into the container that is provided. The container can be delivered directly to your house, or to save delivery fee you may often bring your belongings to the closest freight terminal. The container is then transported, via land or ocean vessel, and then dropped at the final destination by professional drivers. You will be responsible for unloading the container. Note, the insurance on your goods is very limited due to the nature of the service, so it is important to make sure your goods are appropriately packed and, if necessary, seek secondary insurance coverage.

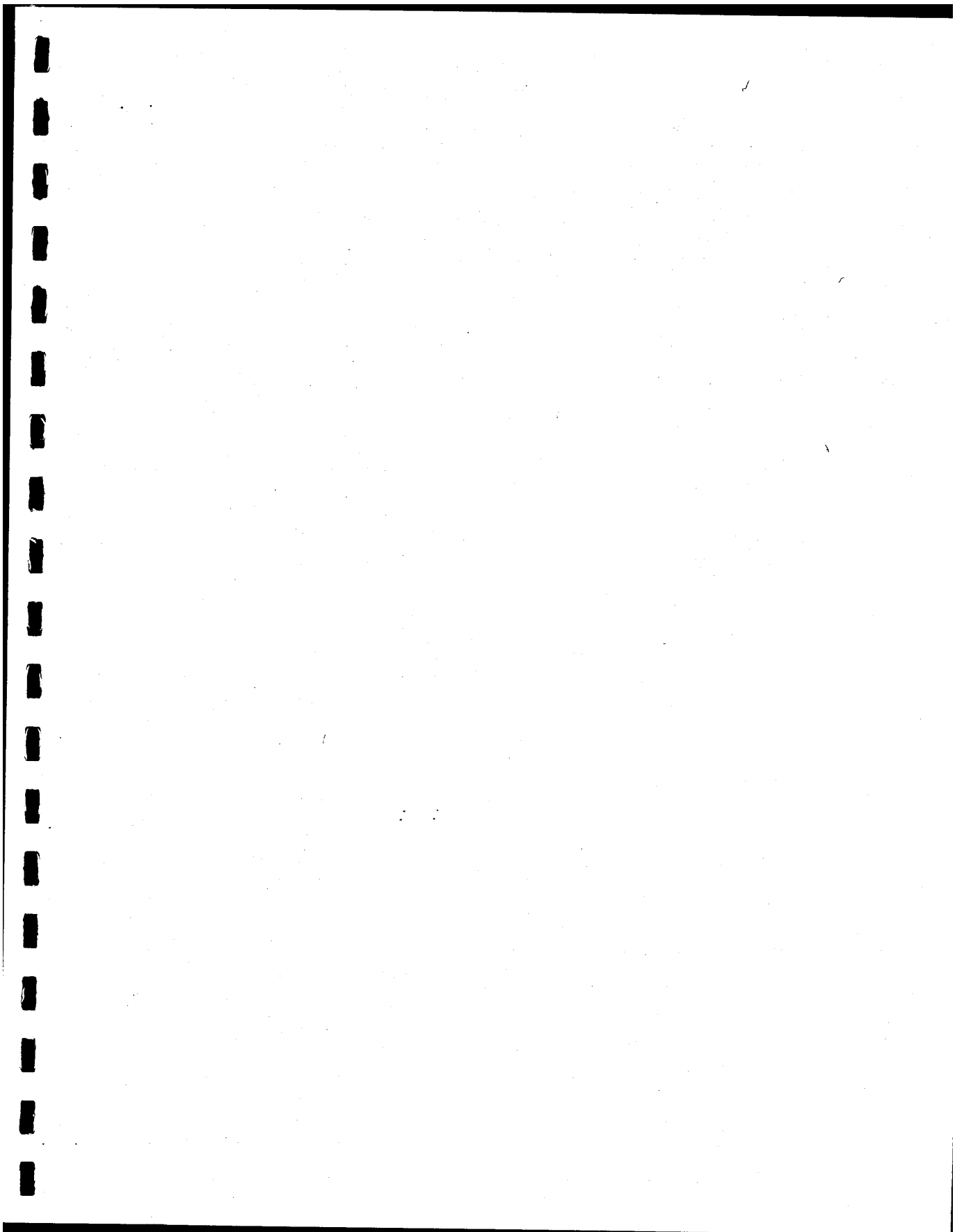
### **Self Pack and 3rd Party Load (aka Professional Load)**

This is the more traditional type of move, where you pack all your household goods and on the agreed upon date, the movers arrive at your house and load all the boxes, furniture, etc into the moving van. The movers will carefully wrap and pad furniture before it is loaded. Your household goods will then be transported to the final destination and unloaded for you. Some international moves may require professional packing services when there is an ocean leg involved, due to the high incidence of breakage for self-packed items.

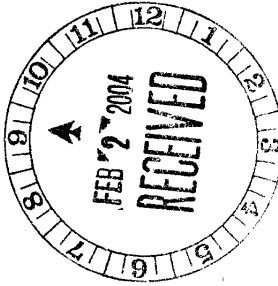
### **3rd Party Pack and Load (aka Professional Pack and Load)**

This is considered a "full-service" move. In addition to the loading services described above, the movers will come and pack your belongings to prepare them for shipping. This is particularly important for large moves, international moves, or moves in which there are many fragile, high-value items. (The last thing we want is for your irreplaceable antique table to be ruined because it wasn't packed properly!) Finally your household goods will be transported to the final destination and unloaded. If you desire, your household goods can also be unpacked for an additional fee.





2/0011



**PUBLIC VERSION**

U.S. DEPARTMENT OF TRANSPORTATION  
SURFACE TRANSPORTATION BOARD

DHX, INC.,

Complainant,

v.

MATSON NAVIGATION COMPANY  
And SL SERVICE, INC., f/k/a SEA-  
LAND SERVICE, INC., CSX LINES,  
LLC, Successor-In-Interest, and now  
Known as HORIZON, LINES, LLC.

Defendants.

STB DOCKET No. WCC-105

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Public Record

VOLUME 3 OF 3

COMPLAINANT'S REBUTTAL STATEMENTS

COMPLAINANT'S ABSTRACT OF UNDISPUTED AND DISPUTED MATERIAL FACTS

Submitted By:

RICK A. RUDE  
Suite 103  
207 Park Avenue  
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Counsel For Complainant  
DHX, INC.

Dated: 3 February 2004

— The Board's Rules of Practice, Rule 49 CFR 1112.6, provides that under the Board's Modified Procedure provisions, material allegations of fact are to be considered as to Have been admitted to the extent such facts are not specifically challenged.

The enclosed Abstract reflects the material facts contained in Complainant's Opening Statements, including the Verified Statements and Sworn Depositions.

The Abstract further identified which material facts are disputed and which facts Are "Uncontested" and therefore admitted under the Board's Rules.

The Table of Contents includes a list of Abbreviations for the use and the Convenience of the Board in review of the record in this proceeding.

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| MOU with , dated 12/13/01                                                        | 101        |
| MOU with , dated 12/20/01                                                        | 101        |
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| SRC # | #  | SOURCE | PAGE  | YEAR | MO. | FACT                                                                                                                                                                                                                                                           | DEFENDANT'S ANSWER |
|-------|----|--------|-------|------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1     | 1  | COS    | Pg 3  | 2003 |     | Defendants are "VOCCs" (vessel operating ocean common carriers) that conduct a transportation service between ports in California, Oregon and Washington, on the one hand and the State of Hawaii on the other, with a beyond movement/transportation to Guam. | Uncontested        |
| 1     | 2  | COS    | Pg 3  | 2003 |     | Defendants are common carriers within the meaning of 49 U.S.C. 13102(22).                                                                                                                                                                                      | Uncontested        |
| 1     | 3  | COS    | Pg 8  |      |     | Matson and SLS/CSX Lines, LLC entered into agreements called "Memorandums of Understanding" with large proprietary shippers. These MOUs provided beneficial terms and conditions, including volume pricing, to the proprietary shippers.                       | Uncontested        |
| 1     | 4  | COS    | Pg 8  | 1995 |     | 49 USC Sections 13702(b)(1) and 13702(b)(2) require the filing of all rates and rules or privileges given.                                                                                                                                                     | Uncontested        |
| 1     | 5  | COS    | Pg 8  | 1995 |     | 49 USC Section 13702(b)(1)(A) requires that carriers filing joint rate tariffs include all carriers that are parties to the tariff.                                                                                                                            | Uncontested        |
| 1     | 6  | COS    | Pg 9  | 1995 |     | SLS/CSX Tariff 468 contains no statement of participating carriers nor routes for the "through" movements. Matson's tariff purports to contain proportional rates but no routings or carriers are identified for the proportional rates.                       | Uncontested        |
| 1     | 7  | COS    | Pg 9  | 1995 |     | The Board's tariff regulations require all service terms to be filed and 'service terms' are defined to mean "all rules and practices that affect the rates or level of service."                                                                              | Uncontested        |
| 1     | 8  | COS    | Pg 9  |      |     | Matson and SLS/CSX misrepresented to DHX that they do not engage in volume pricing.                                                                                                                                                                            | Uncontested        |
| 1     | 9  | COS    | Pg 10 |      |     | Matson and SLS/CSX labeled port to port rates as "proportionals" even though there was no through route nor connecting carrier involved. A true proportional rate is part of a through rate and may only be used as such.                                      | Uncontested        |
| 1     | 10 | COS    | Pg 11 |      |     | According to case law, where there are two conflicting rates, the shipper is entitled to the lower rate.                                                                                                                                                       | Uncontested        |

| SRC # | #  | SOURCE          | PAGE  | YEAR | MO. | FACT                                                                                                                                                                                                                                                        | DEFENDANT'S ANSWER |
|-------|----|-----------------|-------|------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1     | 11 | COS             | Pg 13 |      |     | <b>REDACTED</b>                                                                                                                                                                                                                                             | Uncontested        |
| 1     | 12 | COS             | Pg 13 |      |     |                                                                                                                                                                                                                                                             | Uncontested        |
| 1     | 13 | COS             | Pg 14 | 1992 |     | By 1992, SLS had made enroads into Matson's dominant position in the market. Mr. David Hoppes, the Los Angeles Sales Manager for Matson, approached DHX for help. In response, Dechler taught Hoppes how DHX conducted its business and declared its rates. | Uncontested        |
| 1     | 14 | COS             | Pg 14 | 1995 |     | Hoppes taught other freight forwarders the rate methodology he learned from Dechler. In doing so, he increased business for Matson and in 1994 was promoted to Matson's HQ as General Sales Manager.                                                        | Uncontested        |
| 1     | 15 | COS             | Pg 15 | 1994 |     | In January 1994, DHX established a separate full containerload corporate division.                                                                                                                                                                          | Uncontested        |
| 1     | 16 | COS             | Pg 15 | 1997 | 6   | In the summer of 1997, Matson noticed a shift in revenues from freight forwarder cargoes and noticed that freight forwarders did not appear to be using FAK rates.                                                                                          | Uncontested        |
| 1     | 17 | COS             | Pg 15 | 1997 | 6   |                                                                                                                                                                                                                                                             | Uncontested        |
| 1     | 18 | COS             | Pg 15 | 1997 | 6   | <b>REDACTED</b>                                                                                                                                                                                                                                             | Uncontested        |
| 1     | 19 | COS, MNC Ex. #4 | Pg 15 | 1998 | 6   |                                                                                                                                                                                                                                                             | Uncontested        |

| SRC # | #  | SOURCE          | PAGE  | YEAR | MO. | FACT                                                                                                                                                             | DEFENDANT'S ANSWER |
|-------|----|-----------------|-------|------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1     | 20 | COS             | Pg 16 | 1998 | 6   | REDACTED                                                                                                                                                         | Uncontested        |
| 1     | 21 | COS             | Pg 16 | 1998 | 6   |                                                                                                                                                                  | Uncontested        |
| 1     | 22 | COS             | Pg 16 | 1998 | 7   |                                                                                                                                                                  | Uncontested        |
| 1     | 23 | COS             | Pg 16 | 1998 | 7   | Aggregating all rate increases over the above period, the overall rate increase to the forwarding community was approximately 33.7% for both Matson and SLS/CSX. | Uncontested        |
| 1     | 24 | COS, MNC Ex. #4 | Pg 16 | 1998 | 6   | REDACTED                                                                                                                                                         | Uncontested        |
| 1     | 25 | COS             | Pg 16 | 1998 | 6   |                                                                                                                                                                  | Uncontested        |
| 1     | 26 | COS             | Pg 17 |      |     |                                                                                                                                                                  | Uncontested        |
| 1     | 27 | COS             | Pg 17 |      |     | Contemporaneously with efforts by Matson and SLS to price the forwarders out of the FCL market,                                                                  | Uncontested        |
| 1     | 28 | COS             | Pg 17 |      |     | After denying to DHX that they offered volume pricing,                                                                                                           | Uncontested        |

| SRC # | #  | SOURCE     | PAGE                           | YEAR | MO. | FACT                                                                                                                                                                                                                                | DEFENDANT'S ANSWER |
|-------|----|------------|--------------------------------|------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1     | 29 | COS        | Pg 17                          |      | 1   |                                                                                                                                                                                                                                     | Disputed           |
| 1     | 30 | COS        | Pg 18                          |      |     | In Matson's Tariff 2034-E, Matson published both open and restricted rates. In order for forwarders to use these rates they have to contact Matson first and request permission which is often denied.                              | Uncontested        |
| 1     | 31 | COS        | Pg 18                          |      |     | Both Matson and SLS/CSX have tariffs which contain port rates mis-labeled as proportional rates.                                                                                                                                    | Uncontested        |
| 1     | 32 | COS        | Pg 18                          |      |     | SLS/CSX has a Joint Rate tariff (No. 468) with only (1) participating carrier which was SLS and then CSX Lines.                                                                                                                     | Uncontested        |
| 1     | 33 | COS        | Pg 18                          |      |     | Both Matson and SLS/CSX use cargo ownership requirements, street addresses, zip codes, shipper names and routings as a means to control access to rates and to insure that only specified shippers can access the applicable rates. | Uncontested        |
| 1     | 34 | COS        | Pg 18                          |      |     | Inaccurate tariff filings which use non-transportation factors for anti-competitive purposes are improper.                                                                                                                          | Uncontested        |
| 2     | 1  | VS Dechter | Pg 1/36, Para 1                | 1991 | 1   | Dechter is President of DHX, Inc. and has been since January 3, 1991.                                                                                                                                                               | Uncontested        |
| 2     | 2  | VS Dechter | Pg 1/36, Para 1                | 2003 |     | The business address for DHX is: 19201 S. Susana Rd; Rancho Dominguez, California, 90221.                                                                                                                                           | Uncontested        |
| 2     | 3  | VS Dechter | Pg 1/36, Para 1 & Pg 2, Para 5 | 1982 | 10  | Dechter joined DHX in October 1982 as a consultant. From January 1, 1983 until January 3, 1991, Dechter served as Corporate General Manager and controller of DHX, Inc.                                                             | Uncontested        |
| 2     | 4  | VS Dechter | Pg 1/36, Para 2                | 2003 | 11  | As President, Dechter is authorized to submit a statement on behalf of DHX, Inc.                                                                                                                                                    | Uncontested        |
| 2     | 5  | VS Dechter | Pg 2/36, Para 4                | 1977 | 1   | DHX was founded in 1977 by Ron Massman (currently Chairman of DHX). It was incorporated in 1980.                                                                                                                                    | Uncontested        |

| SRC # | #  | SOURCE     | PAGE             | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                                                                                                                     | DEFENDANT'S ANSWER |
|-------|----|------------|------------------|------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 2     | 6  | VS Dechter | Pg 2/36, Para 4  | 1977 | 2   | In 1977, the freight forwarding industry generally used FAK (freight all kinds) rates and other shippers generally used commodity based rates.                                                                                                                                                                                                                                                           | Uncontested        |
| 2     | 7  | VS Dechter | Pg 2/36, Para 4  | 1977 |     | Commodity based rates are less costly than FAKs                                                                                                                                                                                                                                                                                                                                                          | Uncontested        |
| 2     | 8  | VS Dechter | Pg 2/36, Para 5  | 1984 |     | In 1984 and 1985,                                                                                                                                                                                                                                                                                                                                                                                        | Uncontested        |
| 2     | 9  | VS Dechter | Pg 2/36, Para 5  | 1988 |     | In 1988, Dechter was responsible for Corporate sales and implemented "new hire" tariff training for all sales personnel to allow salespeople to quote rates based on commodity based ocean rating as opposed to FAK based ocean rating.                                                                                                                                                                  | Uncontested        |
| 2     | 10 | VS Dechter | Pg 3/36, Para 6  | 1994 |     | In 1994,                                                                                                                                                                                                                                                                                                                                                                                                 | Uncontested        |
| 2     | 11 | VS Dechter | Pg 3/36, Para 6  | 1998 |     | In 1998, SLS/CSX Lines, LLC used Dechter as an expert witness in its lawsuit against Fleming Foods and Atlantic Pacific International due to his expertise in the freight forwarding industry to provide an expert opinion on the impact, if any, of shipper owned or leased equipment on carrier rates and costing.                                                                                     | Uncontested        |
| 2     | 12 | VS Dechter | Pg 3/36, Para 5  | 1982 |     | In 1982, DHX was the number 3 or 4 forwarder in terms of number of containers shipped. By 1990, DHX was the number 1 forwarder.                                                                                                                                                                                                                                                                          | Uncontested        |
| 2     | 13 | VS Dechter | Pg 5/36, Para 10 | 1960 |     | In the 1960's and 1970's, most freight forwarders used only the FAK tariff item when shipping with Matson.                                                                                                                                                                                                                                                                                               | Uncontested        |
| 2     | 14 | VS Dechter | Pg 5/36, Para 9  | 2003 | 1   | Paul Stevens, Executive VP of Matson, stated in his original affidavit filed with STB that "Over the years...freight forwarders such as DHX have moved beyond their essential functions of LCL consolidators, and have begun to manipulate Matson's tariff provisions, including the overflow rule, to employ those rules in ways that were not originally intended, drawing business away from Matson." | Uncontested        |

| SRC # | #  | SOURCE     | PAGE             | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                          | DEFENDANT'S ANSWER |
|-------|----|------------|------------------|------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 2     | 15 | VS Dechter | Pg 5/36, Para 9  | 2003 | 3   | In other domestic water trade lanes (Alaska and Puerto Rico), freight forwarders provide full containerload service and less-than-containerload service as functions essential to the trade lanes.                                                                                            | Uncontested        |
| 2     | 16 | VS Dechter | Pg 5/36, Para 9  | 2003 |     | DHX uses Matson's tariff provisions as written – they are not manipulated in any way.                                                                                                                                                                                                         | Uncontested        |
| 2     | 17 | VS Dechter | Pg 6/36, Para 11 | 2003 |     | These proceedings have been subject to a highly restrictive protective order. No one from DHX, other than the Attorney representing DHX, has seen all of the materials supplied by the defendants in support or denial of the allegations in the complaint.                                   | Uncontested        |
| 2     | 18 | VS Dechter | Pg 7/36, Para 12 | 1989 |     | In 1989, Glenn Rodgers was VP of Matson Sales, Dechter was DHX General Manager and Ron Massman was DHX President.                                                                                                                                                                             | Uncontested        |
| 2     | 19 | VS Dechter | Pg 7/36, Para 12 | 1989 |     | In 1989, Glenn Rodgers met with Dechter and Ron Massman and requested that DHX stop using tariff item Cargo NOS, Item 5 as a means of taking full containerload business from Matson.                                                                                                         | Uncontested        |
| 2     | 20 | VS Dechter | Pg 7/36, Para 12 | 1989 |     | In 1989, DHX orally agreed not to use tariff item Cargo NOS, Item 5 at the request of Glenn Rodgers because Glenn Rodgers stated that DHX was improperly interpreting the tariff and Matson preferred not to change the tariff to clarify it.                                                 | Uncontested        |
| 2     | 21 | VS Dechter | Pg 7/36, Para 13 | 1992 | 2   | In February 1992, DHX determined that Matson was allowing certain DHX competitors to use the Cargo NOS tariff item in moving full containerload business.                                                                                                                                     | Uncontested        |
| 2     | 22 | VS Dechter | Pg 7/36, Para 13 | 1992 | 2   | In February 1992, DHX informed Matson it intended to start using the tariff item again and again start soliciting full containerload business.                                                                                                                                                | Uncontested        |
| 2     | 23 | VS Dechter | Pg 7/36, Para 13 | 1992 | 7   | As of July 12, 1992, Matson re-wrote the tariff item such that DHX could no longer use it for full containerload business. As re-written, from a less-than-containerload freight standpoint, the tariff item would increase the freight forwarders cost and generate more revenue for Matson. | Uncontested        |

| SRC # | #  | SOURCE     | PAGE              | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                                                                                                                                                      | DEFENDANT'S ANSWER |
|-------|----|------------|-------------------|------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 2     | 24 | VS Dechter | Pg 7/36, Para 14  | 1992 | 6   | On June 18, 1992, Matson filed tariff 2034, effective July 1, 1992.                                                                                                                                                                                                                                                                                                                                                                       | Uncontested        |
| 2     | 25 | VS Dechter | Pg 9/36, Para 15  |      |     | Dechter repeatedly requested volume price incentives from Matson and was told "we don't do volume pricing in this trade - the tariff is your contract."                                                                                                                                                                                                                                                                                   | Uncontested        |
| 2     | 26 | VS Dechter | Pg 9/36, Para 15  |      |     | Through Matson Tariff 2034 and SLS/CSX Lines, LLC Tariff 488, series 0500 and 0600 rate items, Matson and SLS provided discounts to shippers other than DHX.                                                                                                                                                                                                                                                                              | Uncontested        |
| 2     | 27 | VS Dechter | Pg 9/36, Para 16  | 2001 |     | <b>REDACTED</b>                                                                                                                                                                                                                                                                                                                                                                                                                           | Uncontested        |
| 2     | 28 | VS Dechter | Pg 10/36, Para 16 | 2002 | 4   | In April 2002, Dechter was provided with copies of two sworn affidavits (by Peter Wilson of Matson and Daniel Downes of CSX Lines) which had been filed with the Board in a rate case filed on behalf of the Government of Guam. According to these affidavits, Matson and CSX provided volume pricing to proprietary shippers such as Proctor and Gamble while simultaneously denying the existence of such pricing arrangements to DHX. | Uncontested        |
| 2     | 29 | VS Dechter | Pg 10/36, Para 16 |      |     | DHX ships more cargo than some of the shippers who were provided volume shipping discounts according to the Peter Wilson and Daniel Downes affidavits.                                                                                                                                                                                                                                                                                    | Uncontested        |
| 2     | 30 | VS Dechter | Pg 10/36, Para 17 | 1993 | 6   | In mid 1993, Matson hired Dave Hoppes as its sales manager for Southern California.                                                                                                                                                                                                                                                                                                                                                       | Uncontested        |
| 2     | 31 | VS Dechter | Pg 10/36, Para 17 | 1993 | 6   | Hoppes told Dechter that he "knew nothing about the forwarding industry, but he did know that DHX was the largest and that DHX preferred to use SLS." Hoppes expressed an interest in learning about the forwarding business indicating his ultimate goal was for Matson to get the DHX business which was currently being directed to SLS.                                                                                               | Uncontested        |

| SRC # | #  | SOURCE            | PAGE              | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                                                                                                                                                                             | DEFENDANT'S ANSWER |
|-------|----|-------------------|-------------------|------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 2     | 32 | VS Dechter        | Pg 10/36, Para 17 | 1993 | 6   | In mid-1993, SLS' and Matson's tariff had significant rate/pricing differences.                                                                                                                                                                                                                                                                                                                                                                                  | Uncontested        |
| 2     | 33 | VS Dechter        | Pg 11/36, Para 17 | 1991 |     | In 1991, DHX began giving SLS/CSX Lines, LLC more of its business, notwithstanding SLS/CSX Lines, LLC performance problems, since their tariff resulted in lower overall charges to DHX.                                                                                                                                                                                                                                                                         | Uncontested        |
| 2     | 34 | VS Dechter        | Pg 11/36, Para 18 | 1993 | 7   | After meeting with Hoppes in 1993, Dechter spent time teaching Hoppes how DHX worked, why overflows were important to DHX profitability and competitive advantage and why Matson's tariffs were not competitive in many instances.                                                                                                                                                                                                                               | Uncontested        |
| 2     | 35 | VS Dechter        | Pg 11/36, Para 19 | 1993 | 9   | In September 1993, Hoppes gave Dechter a copy of the Matson "Win-Win" proposal which explained (i) why Matson did not want any more freight channeled into the existing overflow system, and (ii) how Matson could get around tariff expansion issues by putting commodity rates in the rules and restricting the freight rates to a limited number of overflows.                                                                                                | Uncontested        |
| 2     | 36 | VS Dechter        | Pg 11/36, Para 19 | 1993 |     | Hoppes explained to Dechter that Matson would put into effect tariff rates that were similar but slightly higher than SLS/CSX Lines, LLC rates in order to get more of DHX's business. Mr Hoppes stated that Matson did not want to affect DHX's ability to go after full containerload business but did not want the general public to be aware of the rates because that would reduce use of the Cargo NOS rates and , as a result, reduce revenues to Matson. | Uncontested        |
| 2     | 37 | VS Dechter, Ex. 3 | Pg 11/36, Para 19 | 1994 |     | In August 1993, Hoppes and Dechter had a conversation discussing forwarder issues and how Matson was going to address the issues.                                                                                                                                                                                                                                                                                                                                | Uncontested        |
| 2     |    | VS Dechter, Ex. 3 | Pg 11/36, Para 19 | 1994 |     | Hoppes provided Dechter with a document identified as a "Win-Win" proposal and explained the impact of the forwarders use of the commodity rates, overflow and note kits gave Matson "heartburn."                                                                                                                                                                                                                                                                | Uncontested        |

| SRC # | #  | SOURCE            | PAGE              | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                                                                                                                               | DEFENDANT'S ANSWER |
|-------|----|-------------------|-------------------|------|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 2     |    | VS Dechter, Ex. 3 | Pg 11/36, Para 19 | 1994 |     | Hoppes provided Dechter with a draft tariff mixed shipment rule that contained proposed rates on commodities that DHX wanted to ship using Matson. Hoppes wanted to put these rates in a tariff rule as Matson believed no one ever read tariff rules and Matson did not want the rates to become common knowledge.                                                                                                | Uncontested        |
| 2     | 38 | VS Dechter        | Pg 12/36 Para 21  | 1994 |     | For all practical purposes, this drafting of Rule 30C4 precluded DHX from using Rule 30C4 for much full containerload overflow freight. DHX could still use unlimited overflow containers under Tariff 14 freight and they still had access to 3 "Rule 30" overflows per week. However, Rule 30 overflows were essentially unavailable from a full containerload sales standpoint.                                 | Uncontested        |
| 2     | 39 | VS Dechter        | Pg 12/36, Para 21 | 1994 |     | In Rule 30C4, Matson restricted the use of containers loaded with Rule 30 freight to "1-1/2 overflows per vessel for each seven calendar day beginning on Sunday and ending on Saturday." Additionally, the term "shipper" was redefined to include a "person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the shipper." | Uncontested        |
| 2     | 40 | VS Dechter        | Pg 13/36 Para 21  | 1994 |     | Much of the Rule 30C4 freight was light density top freight that was needed to completely fill a container.                                                                                                                                                                                                                                                                                                        | Uncontested        |
| 2     | 41 | VS Dechter        | Pg 13/36 Para 22  | 1994 |     | In 1994, DHX was the only forwarder who actively sold containerload business, who treated the containerload as a separate business segment and actually had a separate division to sell and service full containerloads.                                                                                                                                                                                           | Uncontested        |
| 2     | 42 | VS Dechter        | Pg 13/36 Para 22  | 1994 |     | By taking over an account that shipped one container per week and either moving it to the other carrier in the trade lane or using DHX's tariff expertise to reduce the ocean carriers revenue on the container, DHX could save the shipper anywhere from \$75,000 \$200,000 per year on that single account. This money would have otherwise been revenue to the ocean carrier.                                   | Uncontested        |

| SRC # | #  | SOURCE     | PAGE                | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                                                                                                                                                           | DEFENDANT'S ANSWER |
|-------|----|------------|---------------------|------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 2     | 43 | VS Dechter | Pg 14/36<br>Para 23 | 1993 |     | In 1993, DHX had a major account, containers/week consisting of a variety of medical and hospital supplies and drugs and medicines and did not generate a detailed manifest, bill of lading or packing list delineating what goods were in each container. In DHX declarations to ocean carriers, DHX always declared the contents as Many of the containers did not meet the tariff weight requirements and quaimed as overflows.             | Uncontested        |
| 2     | 44 | VS Dechter | Pg 14/36<br>Para 24 | 1992 |     | Prior to becoming a DHX account, 1200 less per container than Matson had charged. When the containers were declared as overflows, DHX made \$800 per container. When they were declared as lead containers, DHX lost \$200 per container so with each lead/overflow container pairing, DHX could make an average of \$300.                                                                                                                     | Uncontested        |
| 2     | 45 | VS Dechter | Pg 14/36<br>Para 24 | 1992 |     | Matson never charged Baxter based on the overflow rule.                                                                                                                                                                                                                                                                                                                                                                                        | Uncontested        |
| 2     | 46 | VS Dechter | Pg 14/36<br>Para 24 | 1992 |     | Baxter was unaware of the overflow rule because it was in the rules and not in the rates.                                                                                                                                                                                                                                                                                                                                                      | Uncontested        |
| 2     | 47 | VS Dechter | Pg 14/36<br>Para 25 | 1993 |     | A DHX competitor approached Matson about the Baxter business. After speaking with Dave Hoppes, the competitor structured a verbal agreement with Matson pursuant to which the competitor was allowed to declare goods in each container based on the weighted average of the goods shipped by Baxter in an average container and the competitor agreed to process all shipments through Matson and not use SLS/CSX Lines, LLC for any of them. | Uncontested        |
| 2     | 48 | VS Dechter | Pg 14/36<br>Para 25 | 1993 |     | Following the conversation with Dave Hoppes, the competitor approached Baxter and offered them a rate of \$100 less per container than that offered by DHX.                                                                                                                                                                                                                                                                                    | Uncontested        |

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| 2     | 49 | VS Dechter | Pg 15/36<br>Para 26 | 1993 |     | During 1993, Hoppes worked with DHX and learned the method DHX used towards the tariffs. During this same period, DHX competitors also serviced by Hoppes became aware of the DHX approach to tariffs and began to use the DHX methodology as well.                                                                          | Uncontested        |
| 2     | 50 | VS Dechter | Pg 15/36<br>Para 27 | 1993 |     | Dave Hoppes was tasked to rebuild market share and recoup business currently being directed to SLS/CSX Lines, LLC.                                                                                                                                                                                                           | Uncontested        |
| 2     | 51 | VS Dechter | Pg 15/36<br>Para 27 | 1993 |     | Matson taught competitor freight forwarders to use the tariff methodology as a means of getting the competitors to use Matson instead of SLS/CSX Lines, LLC.                                                                                                                                                                 | Disputed           |
| 2     | 52 | VS Dechter | Pg 16/36<br>Para 27 | 1993 |     | Rule 30C Tariff 14 included over 20 items which were specifically requested by freight forwarders.                                                                                                                                                                                                                           | Uncontested        |
| 2     | 53 | VS Dechter | Pg 16/36<br>Para 28 | 1993 | 10  | On October 12, 1993, Matson filed Rule 646 of Matson Tariff 2016-D. This Rule 646 was identical to Hoppes Rule 30C Tariff 14 except for the number of commodities included.                                                                                                                                                  | Uncontested        |
| 2     | 54 | VS Dechter | Pg 16/36<br>Para 29 | 1994 |     | In 1994, DHX established its Full Containerload/Intermodal Division and offered Dave Hoppes the position of Vice President in charge of the Full Containerload Division. After a couple months of negotiation, Dave Hoppes rejected the offer and Ross Tester, DHX Corporate Sales Manager, was promoted to the VP position. | Uncontested        |
| 2     | 55 | VS Dechter | Pg 17/36<br>Para 30 | 1995 |     | During 1995 and 1996, SLS/CSX Lines, LLC and Matson increased their use of specialized side tariffs (Tariff 2034 and SLS/CSX Lines, LLC 0500 and 0600 tariff series) which were not available to DHX.                                                                                                                        | Uncontested        |

| SRC # | #  | SOURCE     | PAGE                 | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | DEFENDANT'S ANSWER |
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| 2     | 56 | VS Dechter | Pg 17/36<br>Para 30  | 2001 |     | In 2001, a competitor of DHX whose office is directly across the street from DHX went to a DHX customer and offered them a full containerload rate lower than that being offered by DHX and then went to Matson and asked Matson to lower its rates to make the business profitable. In response to this request, Matson offered a rate that was available only to businesses in a 9 digit zip code qualifier – essentially enabling the competition to use the rate but precluding DHX from using the rate. | Uncontested        |
| 2     | 57 | VS Dechter | Pg 17/36<br>Para 30  |      |     | In some instances, Matson offered rates to smaller shippers who owned the merchandise being shipped that were \$1,000 cheaper than rates available to DHX for moving the same or similar types of cargo.                                                                                                                                                                                                                                                                                                     | Uncontested        |
| 2     | 58 | VS Dechter | Pg 18/36<br>Para 31  | 1995 |     | In late 1995, DHX moved considerable LCL freight back from Matson to SLS/CSX Lines, LLC as a result of the increased cost for LCL shipments through Matson due to the Rule 30 overflow limitations.                                                                                                                                                                                                                                                                                                          | Uncontested        |
| 2     | 59 | VS Dechter | Pg 18/36<br>Para 31  | 1995 |     | In 1995, Matson floated the accounts receivable of a major competitor of DHX for more than 90 days in an aggregate amount of \$3-4,000,000.00.                                                                                                                                                                                                                                                                                                                                                               | Uncontested        |
| 2     | 60 | VS Dechter | Pg 18/36<br>Para 31  | 1996 |     | In 1996, Matson reduced the FAK rate by \$450 in Tariff 2034 and revised Rule 30 in July 1997 to allow 5 overflows per each 7 days.                                                                                                                                                                                                                                                                                                                                                                          | Uncontested        |
| 2     | 61 | VS Dechter | Pg 19/36,<br>Para 32 |      |     | For 2 years DHX requested that Matson impose no Rule 30 limitations on substitute service ("Subservice") containers. After DHX had switched the bulk of its shipments to SLS/CSX Lines, LLC, Matson made the change DHX had requested.                                                                                                                                                                                                                                                                       | Uncontested        |
| 2     | 62 | VS Dechter | Pg 19/36,<br>Para 34 | 1996 |     | After 1996, Dechter stopped personally requesting tariff changes from Matson and from that point forward all such requests were made by Ralph Merolla, the Oakland Terminal Manager.                                                                                                                                                                                                                                                                                                                         | Uncontested        |
| 2     | 63 | VS Dechter | Pg 20/36,<br>Para 35 | 1998 |     | In August 1998, Matson reduced its fleet from 8 vessels to 6 vessels.                                                                                                                                                                                                                                                                                                                                                                                                                                        | Uncontested        |

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|-------|----|------------|-------------------|------|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 2     | 64 | VS Dechter | Pg 20/36, Para 36 | 1996 |     | During each of the following years, Matson's operating profits as a percentage of sales were declining as follows: 1993 - 16.5%; 1994 - 16.1%; 1995 - 14.8%; 1996 - 12.3%.                                                                 | Uncontested        |
| 2     | 65 | VS Dechter | Pg 20/36, Para 36 | 1996 |     | After 1996, virtually every time SLS/CSX Lines, LLC lowered rates, Matson lowered its rates as well.                                                                                                                                       | Uncontested        |
| 2     | 66 | VS Dechter | Pg 20/36, Para 36 |      |     | Matson used Tariff 2034 to lower prices to specific customers without lowering pricing to the general shipping public.                                                                                                                     | Uncontested        |
| 2     | 67 | VS Dechter | Pg 21/36, Para 38 | 1997 |     | In December 1997, Matson and SLS/CSX signed a formal reciprocal agreement allowing each carrier to ship on the other's vessels at unpublished rates.                                                                                       | Uncontested        |
| 2     | 68 | VS Dechter | Pg 21/36, Para 38 | 2001 |     | In 2001, the reciprocal agreement was modified each shipper provided one another better rates than their own customers received.                                                                                                           | Uncontested        |
| 2     | 69 | VS Dechter | Pg 3/36, Para 5   | 1982 |     | In 1982, DHX was the number 3 or 4 forwarder in terms of number of containers shipped. By 1990, DHX was the number 1 forwarder.                                                                                                            | Uncontested        |
| 2     | 70 | VS Dechter | Pg 22/36, Para 39 | 2000 |     | During 2000, DHX requested shipper owned equipment discounts/rates from Tom Good at Matson and the request was denied on the basis that the cost of tracking and being accountable for shipper owned containers was prohibitive to Matson. | Uncontested        |
| 2     | 71 | VS Dechter | Pg 22/36, Para 40 | 1999 |     | Since 1999, Matson has provided SLS/CSX special reduced rates to ship full containerload business on its vessels and has given SLS/CSX a volume incentivized contract.                                                                     | Uncontested        |
| 2     | 72 | VS Dechter | Pg 22/36, Para 40 |      |     | DHX repeatedly requested volume incentivized pricing from Matson and was denied such pricing. The DHX full containerload division is out of business.                                                                                      | Uncontested        |
| 2     | 73 | VS Dechter | Pg 22/36, Para 40 | 1998 | 9   | Between September 1998 and April 2002, per hundred weight rates for commodities based forwarders went up 18.65%.                                                                                                                           | Uncontested        |

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| 2     | 74 | VS Dechter | Pg 22/36, Para 40    | 1998 | 9   | Between September 1998 and April 2002 Matson increased overflow rates by 17.5%, eliminated Note Kits and changed the definition of "shipment" – each of which resulted in increased costs to forwarders.                                                                                                                                             | Uncontested        |
| 2     | 75 | VS Dechter | Pg 22/36, Para 40    |      |     | DHX passed on all rate increases from Matson to its customers. The general rate increases DHX was forced to make as a result of Matson charges totaled 33.7% during the period stated in #74.                                                                                                                                                        | Uncontested        |
| 2     | 76 | VS Dechter | Pg 23/36, Para 41    | 1998 | 9   | Effective September 6, 1998, Matson: (i) increased the minimum overflow rates by 10%; (ii) redefined shipment from a "one week" to a "one vessel" time parameter; and (iii) deleted notes within specific tariff items which allowed the shipment of certain commodities as a percentage of shipment weight or at the rate of a different commodity. | Uncontested        |
| 2     | 77 | VS Dechter | Pg 25/36, Para 43    | 1998 | 9   | Named Shipper rates did not go up 18%.                                                                                                                                                                                                                                                                                                               | Uncontested        |
| 2     | 78 | VS Dechter | Pg 24/36, Para 42-43 | 1998 | 7   | Mr. Dechter provided examples of the impact of Matson's July 1998 tariff changes on DHX's full containerload customers.                                                                                                                                                                                                                              | Uncontested        |
| 2     | 79 | VS Dechter | Pg 24/36, Para 42-43 | 1998 | 7   | The rate increases reflected in the Dechter summary were such that FCL customers immediately began leaving DHX for cheaper shipping alternatives and DHX lost customers, business and profits from this business.                                                                                                                                    | Uncontested        |
| 2     | 80 | VS Dechter | Pg 25/36, Para 44    | 1998 | 11  | On November 18, 1998, Rule 30C4 rates were deleted and Matson's tariff generally conformed to SLS/CSX.                                                                                                                                                                                                                                               | Uncontested        |
| 2     | 81 | VS Dechter | Pg 25/36, Para 45    | 1998 |     | <b>REDACTED</b>                                                                                                                                                                                                                                                                                                                                      | Uncontested        |

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| 2     | 82 | VS Dechter | Pg 26/36, Para 45 | 1998 |     | In 1998, Matson and its subsidiary, Matson Logistics, attempted to partner with                                                                                                                                                                                                                                              | Uncontested        |
| 2     | 83 | VS Dechter | Pg 26/36, Para 45 | 1998 |     | <b>REDACTED</b>                                                                                                                                                                                                                                                                                                              | Uncontested        |
| 2     | 84 | VS Dechter | Pg 26/36, Para 46 | 2001 |     | In 2001, Matson customer, called Dechter at DHX and asked if DHX could handle all its FCL because, even at the same rates, DHX service was better than Matson's. DHX agreed to handle the service.                                                                                                                           | Uncontested        |
| 2     | 85 | VS Dechter | Pg 27/36, Para 46 | 2003 |     | <b>REDACTED</b>                                                                                                                                                                                                                                                                                                              | Uncontested        |
| 2     | 86 | VS Dechter | Pg 27/36, Para 47 | 1999 | 2   | On February 14, 1999, Matson and SLS/CSX implemented a 2.5% general rate increase on all commodity items. It did not apply to overflow minimums and a GRI on all other containerload rates was implemented at 2.5%. At this time, DHX implemented a similar 2.5% increase for a total increase of 17.5% in a 6 month period. | Uncontested        |
| 2     | 87 | VS Dechter | Pg 27/36, Para 48 | 1999 | 10  | On October 17, 1999, Matson again increased the minimum overload provision another 7.5%.                                                                                                                                                                                                                                     | Uncontested        |
| 2     | 88 | VS Dechter | Pg 33/36, Para 60 | 2003 |     | <b>REDACTED</b>                                                                                                                                                                                                                                                                                                              | Disputed           |

| SRC # | #  | SOURCE     | PAGE                 | YEAR | MO. | FACT                | DEFENDANT'S ANSWER |
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| 2     | 89 | VS Dechter | Pg 33/36,<br>Para 61 |      |     | <div>REDACTED</div> | Disputed           |
| 2     | 90 | VS Dechter | Pg 33/36,<br>Para 62 |      |     |                     | Disputed           |
| 2     | 91 | VS Dechter | Pg 33/36,<br>Para 63 |      |     |                     | Disputed           |

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| 2     | 92 | VS Dechter        | Pg 33/36, Para 64 |      |     | ...                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Uncontested        |
| 2     | 93 | VS Dechter        | Pg 33/36, Para 65 |      |     | Matson and SLS/CSX put DHX's full containerload division out of business.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Disputed           |
| 3     | 1  | VS Dechter, Ex. 1 | Pg 1, Para 1      | 1998 | 9   | In September 1998, Matson and SLS removed numerous footnotes from specific tariff items which resulted in an increased cost to move the same items. For instance: (a) prior to the change, any party could pay the Canned Goods rate for up to 15% or non-canned goods merchandise put into a container which held over 36,000 pounds of canned goods. (b) prior to the change, Matson and SLS had a tariff item allowing machinery to be shipped under the paper item and rate so long as certain criteria were met. Them so DHX caused its own customers to have a lower price tolerance. | Uncontested        |
| 3     | 2  | VS Dechter, Ex. 1 | Pg3, Para 2       | 1998 | 9   | In September 1998, Matson and SLS changed the definition of "shipment" such that it was no longer determined on a "per week" basis but rather on a "per voyage" basis.                                                                                                                                                                                                                                                                                                                                                                                                                      | Uncontested        |
| 3     | 3  | VS Dechter, Ex. 1 | Pg3, Para 3       | 1999 | 2   | In February 1999, Matson and SLS implemented a 5% increase on all commodity based container rates (as opposed to containerload rates) but exempted overflow provisions from this increase.                                                                                                                                                                                                                                                                                                                                                                                                  | Uncontested        |
| 3     | 4  | VS Dechter, Ex. 1 | Pg4, Para 4       | 1998 | 9   | There was a 10% increase in minimum overflow rates effective September 6, 1998 and a 7.5% increase in minimum overflow effective October 17, 1999.                                                                                                                                                                                                                                                                                                                                                                                                                                          | Uncontested        |
| 3     | 5  | VS Dechter, Ex. 1 | Pg5, Para 5       | 1999 |     | In 1999, Matson controlled 70% of the ocean freight market to Hawaii. SLS controlled the remaining 30%.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Uncontested        |
| 3     | 6  | VS Dechter, Ex. 1 | Pg5, Para 5       | 1997 |     | Prior to 1998, Matson reduced the FAK containerload rate used by national trucking companies to "level the playing field between forwarders and truckers" according to Tom Goode of Matson.                                                                                                                                                                                                                                                                                                                                                                                                 | Uncontested        |

| SRC # | # | SOURCE            | PAGE         | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | DEFENDANT'S ANSWER |
|-------|---|-------------------|--------------|------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 3     | 7 | VS Dechter, Ex. 1 | Pg 6, Para 5 | 1999 |     | In 1999, DHX repeatedly requested discounted rates from Matson based on DHX's use of shipper-owned containers (as opposed to those provided by Matson). Matson failed to respond to these requests.                                                                                                                                                                                                                                                                                                                                                                                                                               | Uncontested        |
|       |   |                   |              |      |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                    |
| 4     | 1 | VS Dechter, Ex. 2 | Pg 2, Para 1 |      |     | Anti-competitive actions are evidenced in Matson's Tariffs 14 and 2034 and SLS Tariff 468.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Uncontested        |
| 4     | 2 | VS Dechter, Ex. 2 | Pg 2, Para 2 |      |     | Matson's "product" consists of numerous blocks (or containerloads) of finite cubic cargo space.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Uncontested        |
| 4     | 3 | VS Dechter, Ex. 2 | Pg 2, Para 3 | 2003 |     | For 22 years, DHX has made use of Matson and SLS overflow container provisions with full acquiescence of the trade lane carriers.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Uncontested        |
| 4     | 4 | VS Dechter, Ex. 2 | Pg 3, Para 4 |      |     | Overflow containers shipped by DHX are normally full containerload overflow containers. Overflow containers shipped by Matson and SLS are often partially full.                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Uncontested        |
| 4     | 5 | VS Dechter, Ex. 2 | Pg 4, Para 4 | 1999 | 2   | In February 1999, Matson increased subservice usage by (a) putting in a 20' sub-service rate and (b) making sub-service rules available for all containers not just those being loaded at original point of origin.                                                                                                                                                                                                                                                                                                                                                                                                               | Uncontested        |
| 4     | 6 | VS Dechter, Ex. 2 | Pg 5, Para 4 |      |     | In less than 10% of cases, DHX receives full containers of cargo so heavy that 44,000 pounds will only fill one third to one half of the container. IF DHX were to limit the container to that type of cargo, because of legal weight restrictions, the cargo would ship only partially full. Instead, DHX unloads the container and mixes the heavier commodity with lighter commodities to fill cubic space in the container. As a result, rather than sending 6 container loads of heavy and light goods from different shippers, DHX may ship 5 containerloads of the exact same quantities of goods packed more efficiently. | Uncontested        |

| SRC # | #  | SOURCE            | PAGE          | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                                                | DEFENDANT'S ANSWER |
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| 4     | 7  | VS Dechter, Ex. 2 | Pg 7, Para 4  | 1998 | 9   | The September 1998 footnote elimination resulted in many rate increases. For example, the following are pre & post 1998 rates for 4 commodities: Machinery - \$2,440 \$3940; KD Boxes - \$2,688 \$3,525; Garment Hangers \$2261 \$3,353; Hospital Supplies \$2841 \$3,713. In some cases, costs to DHX were increased by over 50%.  | Uncontested        |
| 4     | 8  | VS Dechter, Ex. 2 | Pg 8, Para 4  |      |     | In certain instances, within tariff 2034, Matson has reduced rates to specific shippers and consignees based on their having an ownership interest in the goods being shipped. Thus, identical items being shipped by DHX customers in the same manner are charged higher rates because they fall outside this ownership reduction. | Uncontested        |
| 4     | 9  | VS Dechter, Ex. 2 | Pg 8, Para 5  | 1990 |     | During the 1990's, due to suffering by the Japanese & California economies, the Hawaiian economy began a long recession. In 1998, the Hawaiian economy still had not pulled out of this recession.                                                                                                                                  | Uncontested        |
| 4     | 10 | VS Dechter, Ex. 2 | Pg 9, Para 7  | 1986 |     | Prior to 1987, Matson's had no significant competition. Its only technical competitor at this time was U.S. Lines but due to U.S. Lines poor reputation, Matson commanded a majority of the market share.                                                                                                                           | Uncontested        |
| 4     | 11 | VS Dechter, Ex. 2 | Pg 9, Para 7  | 1987 |     | In 1987, SLS took over U.S. Lines and was headed by Bill Kenwell.                                                                                                                                                                                                                                                                   | Uncontested        |
| 4     | 12 | VS Dechter, Ex. 2 | Pg 9, Para 7  | 1987 |     | For three years, SLS focused on retaining former U.S. Lines customers and did not attempt to increase its customer base by targeting Matson customers.                                                                                                                                                                              | Uncontested        |
| 4     | 13 | VS Dechter, Ex. 2 | Pg 9, Para 8  | 1990 |     | In 1990, Jack Sutherland replaced Bill Kenwell at SLS and began an aggressive pricing strategy - reducing its rates and targeting current Matson customers including DHX.                                                                                                                                                           | Uncontested        |
| 4     | 14 | VS Dechter, Ex. 2 | Pg 9, Para 8  | 1990 |     | In 1990, DHX approached Matson and asked Matson to match SLS' new rates. Matson repeatedly declined to match SLS's rates.                                                                                                                                                                                                           | Uncontested        |
| 4     | 15 | VS Dechter, Ex. 2 | Pg 10, Para 8 | 1990 |     | Between 1990 and 1995, Matson's market share declined from 73% to 67%.                                                                                                                                                                                                                                                              | Uncontested        |

| SRC # | #  | SOURCE            | PAGE           | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                                                 | DEFENDANT'S ANSWER |
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| 4     | 16 | VS Dechter, Ex. 2 | Pg 10, Para 8  | 1995 |     | This decline in market share was partially caused by the fact that more and more commodity based forwarders shifted their business from Matson to SLS.                                                                                                                                                                               | Uncontested        |
| 4     | 17 | VS Dechter, Ex. 2 | Pg 10, Para 9  | 1995 |     | In 1995, Matson began changing its rates and tariffs to match those offered by SLS.                                                                                                                                                                                                                                                  | Uncontested        |
| 4     | 18 | VS Dechter, Ex. 2 | Pg 11, Para 10 | 1996 |     | In order to encourage customers, primarily national truckers, who used FAK rates instead of commodity based rates to continue to use FAK, in 1996 Matson reduced FAK rates in a separate point to point tariff (Tariff 2034) by approximately \$450. This reduction was unavailable to DHX because of the phraseology of the tariff. | Uncontested        |
| 4     | 19 | VS Dechter, Ex. 2 | Pg 11, Para 11 | 1999 | 10  | 57 tariff pricing changes made effective by Matson on October 17, 1999, were thereafter matched by SLS.                                                                                                                                                                                                                              | Uncontested        |
| 4     | 20 | VS Dechter, Ex. 2 | Pg 12, Para 12 | 1999 | 11  | Since these tariff changes became effective, Matson's quarterly profits increased as follows: 1st quarter 1999 - 5.1% increase; 2nd quarter 1999 - 50.8% increase; 3rd quarter 1999 - 35.1% increase.                                                                                                                                | Uncontested        |
| 4     | 21 | VS Dechter, Ex. 2 | Pg 12, Para 13 | 1999 | 11  | In November 1999, DHX paid 17.5% more than what it would have paid in September 1998 to ship the exact same container.                                                                                                                                                                                                               | Uncontested        |
| 5     | 1  | VS Dechter, Ex. 4 | Pg 1 of 5      | 1960 |     | In the 1960's most freight forwarders used FAK as the only tariff item when shipping with Matson.                                                                                                                                                                                                                                    | Uncontested        |
| 5     | 2  | VS Dechter, Ex. 4 | Pg 1 of 5      | 1977 |     | In 1977, DHX began using commodity based rates and rules that were offered to all the shipping public.                                                                                                                                                                                                                               | Uncontested        |
| 5     | 3  | VS Dechter, Ex. 4 | Pg 1 of 5      | 1989 |     | In 1989, Matson asked DHX not to use tariff item 5 (Cargo NOS, item 5) with the overflow provision on FCL business and DHX orally agreed.                                                                                                                                                                                            | Uncontested        |
| 5     | 4  | VS Dechter, Ex. 4 | Pg 1 of 5      | 1992 | 2   | In February 1992, one of DHX's competitors was using tariff item 5 (Cargo NOS, item 5). As a result, in February 1992, DHX began using item 5 again.                                                                                                                                                                                 | Uncontested        |

| SRC # | #  | SOURCE            | PAGE      | YEAR | MO. | FACT                                                                                                                                                                                                                               | DEFENDANT'S ANSWER |
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| 5     | 5  | VS Dechter, Ex. 4 | Pg 1 of 5 | 1992 | 6   | On June 18, 1992, Matson files tariff 2034 effective July 1, 1992 and does not inform DHX of the existence of this tariff.                                                                                                         | Uncontested        |
| 5     | 6  | VS Dechter, Ex. 4 | Pg 1 of 5 | 1992 | 7   | Effective July 12, 1992, Matson rewrites tariff item 5 Cargo NOS.                                                                                                                                                                  | Uncontested        |
| 5     | 7  | VS Dechter, Ex. 4 | Pg 2 of 5 | 1993 |     | In 1993, Matson verbally agrees with a DHX competitor to offer the competitor a price lower than that offered to Matson for shipments by Baxter Healthcare to enable this competitor to underbid against DHX to Baxter Healthcare. | Uncontested        |
| 5     | 8  | VS Dechter, Ex. 4 | Pg 2 of 5 | 1994 |     | In 1994, DHX established the full containerload/intermodal division.                                                                                                                                                               | Uncontested        |
| 5     | 9  | VS Dechter, Ex. 4 | Pg 2 of 5 | 1995 |     | Effective 1/23/95, Matson filed rule 30C4 which allowed for 1-1/2 overflows per vessel for each 7 calendar days.                                                                                                                   | Uncontested        |
| 5     | 10 | VS Dechter, Ex. 4 | Pg 2 of 5 | 1995 |     | In 1995, Matson began matching SLS's rates. Also, in 1995, Matson began using special zip code rates to offer special rates to specific shippers under tariff 2034.                                                                | Uncontested        |
| 5     | 11 | VS Dechter, Ex. 4 | Pg 2 of 5 | 1996 |     | In 1996, Matson offered favorable credit terms to a DHX competitor essentially providing the competitor an interest free loan of approximately \$3-4 million.                                                                      | Uncontested        |
| 5     | 12 | VS Dechter, Ex. 4 | Pg 2 of 5 | 1997 | 2   | In February 1997, Matson and SLS implemented a 3.5% GRI.                                                                                                                                                                           | Uncontested        |
| 5     | 13 | VS Dechter, Ex. 4 | Pg 2 of 5 | 1997 | 7   | Effective 7/10/97, Rule 30C4 was changed to allow 5 overflows in every 7 calendar days.                                                                                                                                            | Uncontested        |
| 5     | 14 | VS Dechter, Ex. 4 | Pg 2 of 5 | 1997 |     | In 1997, Matson and SLS agreed to furnish assistance to each other at a flat rate significantly less than that charged to any other shipper per container to ship on each other's vessels.                                         | Uncontested        |
| 5     | 15 | VS Dechter, Ex. 4 | Pg 3 of 5 | 1998 |     | In 1998, there was no GRI for either Matson or SLS.                                                                                                                                                                                | Uncontested        |

| SRC # | #  | SOURCE            | PAGE      | YEAR | MO. | FACT                                                                                                                                                                                                                     | DEFENDANT'S ANSWER |
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| 5     | 16 | VS Dechter, Ex. 4 | Pg 3 of 5 | 1998 |     | In 1998, Matson began enforcing "shipper" definition precluding DHX from doing Rule 30 business that DHX competitors are allowed to do.                                                                                  | Uncontested        |
| 5     | 17 | VS Dechter, Ex. 4 | Pg 3 of 5 | 1998 |     | In 1998, Matson reduced fleet from 8 to 6 vessels.                                                                                                                                                                       | Uncontested        |
| 5     | 18 | VS Dechter, Ex. 4 | Pg 3 of 5 | 1998 | 9   | Effective September 6, 1998, Matson files a 10% increase in minimum overflow charges and a 5% increase to commodity rated items. Shortly thereafter, this move is followed by SLS/CSX.                                   | Uncontested        |
| 5     | 19 | VS Dechter, Ex. 4 | Pg 3 of 5 | 1998 | 9   | Effective September 6, 1998, Matson redefines the definition of "shipment" and both Matson and SLS remove numerous footnotes from specific tariff items.                                                                 | Uncontested        |
| 5     | 20 | VS Dechter, Ex. 4 | Pg 3 of 5 | 1998 | 11  | Effective November 18, 1998, Matson's Rule 30C4 rate item pages are deleted.                                                                                                                                             | Uncontested        |
| 5     | 21 | VS Dechter, Ex. 4 | Pg 4 of 5 | 1999 | 2   | Effective 2/14/99, Matson and SLS implement a 2.5% GRI but exempt the overflow provision from the increase.                                                                                                              | Uncontested        |
| 5     | 22 | VS Dechter, Ex. 4 | Pg 4 of 5 | 1999 | 2   | In February 1999, Matson increased its sub-service usage substantially by implementing a 20' subservice rate and making subservice rates available for all containers.                                                   | Uncontested        |
| 5     | 23 | VS Dechter, Ex. 4 | Pg 4 of 5 | 1999 | 10  | In October 1999, a 7.5% increase in minimum overflow is implemented along with a 7.5% increase in Cargo NOS.                                                                                                             | Uncontested        |
| 5     | 24 | VS Dechter, Ex. 4 | Pg 4 of 5 | 2000 |     | In 2000, Matson and SLS implemented a 3.9% GRI (overflow was exempted from the increase).                                                                                                                                | Uncontested        |
| 5     | 25 | VS Dechter, Ex. 4 | Pg 4 of 5 | 2001 |     | In 2001, Matson and SLS modify their 1997 Emergency Assistance Agreement and turns it into a "vessel sharing agreement" essentially allowing SLS to act as a freight forwarder on FCL when sharing a vessel with Matson. | Uncontested        |
| 5     | 26 | VS Dechter, Ex. 4 | Pg 5 of 5 | 2002 |     | In 2002, Matson and SLS implement a 2.75% GRI as well as a hazardous materials surcharge.                                                                                                                                | Uncontested        |

| SRC # | #  | SOURCE            | PAGE      | YEAR | MO. | FACT                                                                                                                                                                                                                                | DEFENDANT'S ANSWER |
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| 5     | 27 | VS Dechter, Ex. 4 | Pg 5 of 5 | 2003 |     | In 2003, Matson and SLS implement a terminal handling charge of \$200 per container in January as well as increasing the hazardous materials surcharge and "stop in transit" charges.                                               | Uncontested        |
| 6     | 1  | VS Dechter, Ex. 5 |           |      |     | Dechter provided a detailed explanation of how the damages sought by DHX were formulated and attached the formulation as Exhibit 5.                                                                                                 | Uncontested        |
| 7     | 1  | VS Dechter, Ex. 6 |           |      |     | Dechter provided an explanation of the calculation of lost profits for DHX if the revenue . This calculation is included as Exhibit 6.                                                                                              | Uncontested        |
| 8     | 1  | VS Dechter, Ex. 7 |           |      |     | Dechter provided graphic example of the DHX consolidated annual full containerload cube analysis for the years 1995 to 2002 showing a decrease in the amount of full containerload business. The analysis is attached as Exhibit 7. | Uncontested        |
| 9     | 1  | VS Dechter, Ex. 8 |           |      |     | <b>REDACTED</b>                                                                                                                                                                                                                     | Uncontested        |

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| 10    | 1 | VS Dechter, Ex. 9              | Pg 1 | 2003 | 4   | In April 2003, [REDACTED]                                                                                                                                                                                                                                                                                                                      | Uncontested        |
| 10    | 2 | VS Dechter, Ex. 9              | Pg 1 |      |     | According to [REDACTED] s could and should be booked directly through DHX.                                                                                                                                                                                                                                                                     | Uncontested        |
| 11    | 1 | VS Dechter, Ex. # 11 VS Wilson | Pg 1 | 1990 |     | Peter P. Wilson ("Wilson") has been general manager of pricing of Matson since 1990. Wilson has been employed by Matson since 1969 when he began as a regulatory law attorney in Matson's law department. In 1983, Wilson became Manager Pricing.                                                                                              | Uncontested        |
| 11    | 2 | VS Dechter, Ex. # 11 VS Wilson | Pg 4 |      |     | Matson bases certain of its rates on the volume of cargo to which a customer will commit to ship. Matson has provided volume discounts to: Macy's (department store merchandise), Morrico (vehicles), Bensen-Do-It-Best (building materials), Xerox (duplicating machines), Ross (department store merchandise) and Dewitt (packing material). | Uncontested        |
| 11    | 3 | VS Dechter, Ex. # 11 VS Wilson | Pg 5 | 2003 |     | Freight forwarders can mix and match commodities received from their own competitors to obtain lower rates than the beneficial cargo owner could on his/her own.                                                                                                                                                                               | Uncontested        |

| SRC # | # | SOURCE                       | PAGE | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                                           | DEFENDANT'S ANSWER |
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| 12    | 1 | VS Dechter,<br>Ex. #12 VS DD | Pg 1 | 2003 |     | CSX operates five vessels in its service from the mainland to Guam. They operate on 2 strings.                                                                                                                                                                                                                                 | Uncontested        |
| 12    | 2 | VS Dechter,<br>Ex. #12 VS DD | Pg 1 | 2003 |     | The first vessel string, "TP1", operates on a fixed weekly schedule with direct sailings from Tacoma every Sunday and Oakland every Wednesday and then onto to Honolulu (arriving the following Sunday). Vessels depart Honolulu the following Tuesday and arrive in Guam seven days later.                                    | Uncontested        |
| 12    | 3 | VS Dechter,<br>Ex. #12 VS DD | Pg 1 | 2003 |     | The second vessel string, "CHX", operates on a fixed weekly schedule with sailings from Oakland (every Wednesday) and Long Beach (every Saturday) and then onto Honolulu every Wednesday where cargo destined to Guam is unloaded and relayed to TP1 string vessels from delivery to Guam and Saipan and then back to Oakland. | Uncontested        |
| 12    | 4 | VS Dechter,<br>Ex. #12 VS DD | Pg 1 | 2003 |     | Downes is the Director of Marketing for Horizon Lines, LLC's Hawaii - Guam Service.                                                                                                                                                                                                                                            | Uncontested        |
| 12    | 5 | VS Dechter,<br>Ex. #12 VS DD | Pg 1 | 2003 |     | CSX operates five vessels in its service from the mainland to Guam. They operate on 2 strings.                                                                                                                                                                                                                                 | Uncontested        |
| 12    | 6 | VS Dechter,<br>Ex. #12 VS DD | Pg 1 | 2003 |     | The first vessel string, "TP1", operates on a fixed weekly schedule with direct sailings from Tacoma every Sunday and Oakland every Wednesday and then onto to Honolulu (arriving the following Sunday). Vessels depart Honolulu the following Tuesday and arrive in Guam seven days later.                                    | Uncontested        |
| 12    | 7 | VS Dechter,<br>Ex. #12 VS DD | Pg 1 | 2003 |     | The second vessel string, "CHX", operates on a fixed weekly schedule with sailings from Oakland (every Wednesday) and Long Beach (every Saturday) and then onto Honolulu every Wednesday where cargo destined to Guam is unloaded and relayed to TP1 string vessels from delivery to Guam and Saipan and then back to Oakland. | Uncontested        |
| 12    | 8 | VS Dechter,<br>Ex. #12 VS DD | Pg 2 | 2003 |     | CSX purchases space from Matson for CSX cargo moving from Long Beach to Guam.                                                                                                                                                                                                                                                  | Uncontested        |

| SRC # | #  | SOURCE                    | PAGE  | YEAR      | MO. | FACT                                                                                                                                                                                                             | DEFENDANT'S ANSWER |
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| 12    | 9  | VS Dechter, Ex. #12 VS DD | Pg 17 | 1989      | 2   | Downes began working for Sea-Land in 1989. The international portion of Sea-Land was sold off to Maersk Sea-Land and CSX Lines retained or CSX Corporation retained CSX Lines so he became a CSX Lines employee. | Uncontested        |
| 12    | 10 | VS Dechter, Ex. #12 VS DD | Pg 18 | 1989      |     | CSX Corporation sold the business to a company owned by Carlyle and Downes became a Horizon Lines employee when they retained the company.                                                                       | Uncontested        |
| 12    | 11 | VS Dechter, Ex. #12 VS DD | Pg 18 | 2000      | 12  | The company became CSX Lines.                                                                                                                                                                                    | Uncontested        |
| 12    | 12 | VS Dechter, Ex. #12 VS DD | Pg 18 | 2003      | 2   | The company became Horizon Lines LLC.                                                                                                                                                                            | Uncontested        |
| 12    | 13 | VS Dechter, Ex. #12 VS DD | Pg 20 | 1997-2002 |     | During this time CSX Lines operated out of the west coast ports of: Tacoma, Washington; Oakland, California; and Long Beach, California.                                                                         | Uncontested        |
| 12    | 14 | VS Dechter, Ex. #12 VS DD | Pg 20 |           |     | CSX Lines is a shipping company. They transport containers.                                                                                                                                                      | Uncontested        |
| 12    | 15 | VS Dechter, Ex. #12 VS DD | Pg 20 |           |     | CSX Lines operates vessels.                                                                                                                                                                                      | Uncontested        |
| 13    | 1  | VS Dechter, Appx. A       | Pg 1  | 1980      |     | In the 1980's, HFS (a competitor of DHX) market share was between 70-80%.                                                                                                                                        | Uncontested        |

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| 13    | 2 | VS Dechter, Appx. A | Pg 1 | 1980       |     | In 1980, HFS was a FAK shipper of LCL who worked almost exclusively with Matson.                                                                                                                                            | Uncontested        |
| 13    | 3 | VS Dechter, Appx. A | Pg 1 | 1980       |     | Michael Wausac was President of Matson during most of the 1980's. Prior to this, he was the General Manager of HFS.                                                                                                         | Uncontested        |
| 13    | 4 | VS Dechter, Appx. A | Pg 1 | 1980       |     | During the 1980s and 1990s, HFS relied heavily on FAK rates.                                                                                                                                                                | Uncontested        |
| 13    | 5 | VS Dechter, Appx. A | Pg 1 | 1995       |     | In the mid-1990's, HFS was not able to pay its ocean bills in a timely manner. Both Matson and SLS/CSX allowed HFS to "string out" their payables for an extended period of time.                                           | Uncontested        |
| 13    | 6 | VS Dechter, Appx. A | Pg 1 | Mid 1990's |     | In the mid-1990's an Matson employee anonymously faxed DHX a copy of HFS's aging accounts reports. This report reflected a wide disparity in how DHX accounts were treated as compared with HFS accounts.                   | Uncontested        |
| 13    | 7 | VS Dechter, Appx. A | Pg 1 | Mid 1990's |     | Upon receipt of the HFS aging report, Dechter contact several managers at Matson. All of them denied knowledge of the HFS special treatment except Brad Mulholland, Paul Stevens and Matson's then Chief Financial Officer. | Uncontested        |
| 13    | 8 | VS Dechter, Appx. A | Pg 1 | 1995       |     | Shortly after the HFS aging report became known to DHX in the mid-1990's, SLS/CSX changed its policy with respect to HFS dealing with them only on a cash basis instead of extending credit.                                | Uncontested        |
| 13    | 9 | VS Dechter, Appx. A | Pg 1 | 1995       |     | Following this change, HFS moved all its business to Matson and Matson made arrangements for HFS to pay under a long term payment plan.                                                                                     | Uncontested        |
| 14    | 1 | VS Merolla          | Pg 1 | 1980       |     | Ralph T. Merolla is Executive Vice President of DHX, Inc. and has been an employee of DHX since 1980.                                                                                                                       | Uncontested        |

| SRC # | #  | SOURCE     | PAGE | YEAR | MO. | FACT                                                                                                                                                                                                    | DEFENDANT'S ANSWER |
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| 14    | 2  | VS Merolla | Pg 1 | 2003 |     | Merolla is familiar with the services and operations of both the ocean carriers and the freight forwarder industry.                                                                                     | Uncontested        |
| 14    | 3  | VS Merolla | Pg 2 | 2003 |     | DHX conducts business as a domestic freight forwarder, consolidator, and international Ocean Transportation Intermediary ("OTI").                                                                       | Uncontested        |
| 14    | 4  | VS Merolla | Pg 2 | 2003 |     | DHX, as an OTI is licensed and bonded by the FMC and has an extensive international network of operations and facilities.                                                                               | Uncontested        |
| 14    | 5  | VS Merolla | Pg 2 | 2003 |     | DHX, unlike other forwarders has its own trucks and delivery fleet in Hawaii, Guam and West Coast U.S.                                                                                                  | Uncontested        |
| 14    | 6  | VS Merolla | Pg 2 | 2003 |     | The DHX facilities are modern and state of the art providing various services including storage, consolidation and distribution.                                                                        | Uncontested        |
| 14    | 7  | VS Merolla | Pg 2 | 2003 |     | DHX provides computerized tracking and access as well as offering many 'added value' services not generally available from the average forwarder.                                                       | Uncontested        |
| 14    | 8  | VS Merolla | Pg 2 | 2003 |     | DHX provides a "One Stop Shop" source for all air, ground and ocean transportation service needs.                                                                                                       | Uncontested        |
| 14    | 9  | VS Merolla | Pg 3 | 2003 |     | DHX operates its own trucks and delivery fleet in the continental US, Hawaii and Guam.                                                                                                                  | Uncontested        |
| 14    | 10 | VS Merolla | Pg 3 | 2003 |     | The ocean carriers have undertaken to implement a rate and pricing structure that has had a crippling effect on certain aspects of the forwarders' business.                                            | Uncontested        |
| 14    | 11 | VS Merolla | Pg 3 | 2003 |     | The ocean carriers' rate structure, which was implemented through an unfair manipulation of the market by way of the carrier's tariffs, has damaged the forwarders ability to compete for FCL business. | Uncontested        |
| 14    | 12 | VS Merolla | Pg 3 | 2003 |     | The rate structure results in tiered pricing that provides proprietary shippers with more favorable rates and forwarders are excluded from rates necessary to compete for FCL business.                 | Uncontested        |

| SRC # | #  | SOURCE     | PAGE | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                                                    | DEFENDANT'S ANSWER |
|-------|----|------------|------|------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 14    | 13 | VS Merolla | Pg 3 | 2003 |     | The rate structures to which forwarders have been insulated by the carriers' tariffs is too high in their entirety and thereby exclude forwarders from even making rates quotations on FCL business.                                                                                                                                    | Uncontested        |
| 14    | 14 | VS Merolla | Pg 3 | 2003 |     | DHX acts as the agent, warehouseman and consolidation terminal for several large retail chains with extensive business operations and retail stores in Hawaii and Guam.                                                                                                                                                                 | Uncontested        |
| 14    | 15 | VS Merolla | Pg 3 | 1980 |     | Since 1980, the ocean carriers (Matson and SLS/CSX) have implemented a rate structure with a tiered pricing providing that proprietary shippers obtain more favorable rates and excluding freight forwarders from access to rates that would enable them to compete for full container load cargoes.                                    | Uncontested        |
| 14    | 16 | VS Merolla | Pg 4 | 2003 |     | Matson and SLS/CSX offer rates directly to DHX customers that are lower than the rates Matson and SLS/CSX would offer DHX for shipping the exact same cargo in the same manner.                                                                                                                                                         | Uncontested        |
| 14    | 17 | VS Merolla | Pg 4 | 1987 |     | SLS/CSX entered the Hawaii/Guam trades in 1987 by purchasing the assets of United States Lines, Inc. Since then, SLS/CSX has targeted identifiable customers/shippers and offered them better rates than those generally available in a given market because these customers/shippers dealt in premium cargos with high profit margins. | Uncontested        |
| 14    | 18 | VS Merolla | Pg 4 |      |     | DHX, while an industry leader, is precluded and excluded by the carriers tariff structure from utilizing FCL rates offered to DHX consolidation accounts.                                                                                                                                                                               | Uncontested        |
| 14    | 19 | VS Merolla | Pg 4 |      |     | The ocean carriers established arrangements whereby DHX was specifically excluded from FCL rates.                                                                                                                                                                                                                                       | Uncontested        |
| 14    | 20 | VS Merolla | Pg 4 |      |     | The ocean carriers have a practice of off-tariff contracts and arrangements.                                                                                                                                                                                                                                                            | Uncontested        |
| 14    | 21 | VS Merolla | Pg 4 |      |     | The SLS/CSX engages in a sales method known as "cherry-picking" which means that they go after certain identifiable premium revenue accounts.                                                                                                                                                                                           | Uncontested        |

| SRC # | #  | SOURCE     | PAGE          | YEAR | MO. | FACT                                                                                                                                                                                                                                     | DEFENDANT'S ANSWER |
|-------|----|------------|---------------|------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 14    | 22 | VS Merolla | Pg 5          |      |     | Between 1987 and 1992, DHX was actively developing its FCL business and by 1994 the FCL business had become a significant part of DHX's business and profitability.                                                                      | Uncontested        |
| 14    | 23 | VS Merolla | Pg 6, Para 4  |      |     | Merolla was primarily responsible for negotiating ocean freight rates with the carriers.                                                                                                                                                 | Uncontested        |
| 14    | 24 | VS Merolla | Pg 6, Para 5  | 1992 |     | From 1992-1994, Matson lost business to SLS/CSX including some of its business with DHX.                                                                                                                                                 | Uncontested        |
| 14    | 25 | VS Merolla | Pg 6, Para 6  | 1994 |     | To address this, Matson published a mixed shipment rule.                                                                                                                                                                                 | Uncontested        |
| 14    | 26 | VS Merolla | Pg 6, Para 6  | 1994 |     | The mixed shipment rule was intended to provide freight forwarders with reduced rates on certain commodities without a wholesale rate reduction.                                                                                         | Uncontested        |
| 14    | 27 | VS Merolla | Pg 6, Para 7  | 1994 |     | The carriers published "multiple container" rates but declined to publish volume pricing such as Time Volume Rate Agreements ("TVAs").                                                                                                   | Uncontested        |
| 14    | 28 | VS Merolla | Pg 6, Para 7  |      |     | Matson told DHX that Matson would not engage in volume pricing.                                                                                                                                                                          | Uncontested        |
| 14    | 29 | VS Merolla | Pg 6, Para 8  | 1995 |     | The tariffs of the carriers in the mid-1990's-1998 involved an inter-relationship of tariff items (mixed shipment rule, overflow container rule, definition of shipment rule and various Note Kits) to obtain a multiple container rate. | Uncontested        |
| 14    | 30 | VS Merolla | Pg 6, Para 9  | 1995 |     | The carriers encouraged DHX and other freight forwarders to use these rules rather than the carriers publishing volume rates.                                                                                                            | Uncontested        |
| 14    | 31 | VS Merolla | Pg 6, Para 10 | 1995 |     | The carriers established tariffs specifically intended for proprietary shippers. SLS created these rates with Tariff SEAU 468 and Matson used Tariff 2034.                                                                               | Uncontested        |
| 14    | 32 | VS Merolla | Pg 6, Para 10 | 1995 |     | The rates in Tariff 2034 were attractive and generally lower than port to port rates in Matsons Tariff 14-F.                                                                                                                             | Uncontested        |

| SRC # | #  | SOURCE     | PAGE          | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                        | DEFENDANT'S ANSWER |
|-------|----|------------|---------------|------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 14    | 33 | VS Merolla | Pg 6, Para 11 | 1995 |     | DHX attempted to obtain specific rates made available to other shippers in Tariff 2034.                                                                                                                                                                                                     | Uncontested        |
| 14    | 34 | VS Merolla | Pg 6, Para 12 | 1995 |     | In order to remain competitive, DHX must provide competitive rates to its customers and must be able to quote these rates quickly.                                                                                                                                                          | Uncontested        |
| 14    | 35 | VS Merolla | Pg 7, Para 12 |      |     | Forwarders need to quickly respond to rate quotation requests. If forwarders are foreclosed from a competitive ocean rate by the very delay in providing a response, then the forwarder can lose the transaction as well as customers being less likely to call again for a rate quotation. | Uncontested        |
| 14    | 36 | VS Merolla | Pg 7, Para 13 | 1995 |     | In order for DHX to gain any access to Tariff 2034-E rates, DHX had to submit requests for access or participation lengthening the turn around time for DHX to provide a rate quote to its perspective customer.                                                                            | Uncontested        |
| 14    | 37 | VS Merolla | Pg 8, Para 13 | 1995 |     | The majority of requests made by DHX for access or participation in Tariff 2034-E rates were denied.                                                                                                                                                                                        | Uncontested        |
| 14    | 38 | VS Merolla | Pg 8, Para 13 |      |     | The carrier's ability to foreclose a competitive ocean rate hamstrings forwarders on a competitive basis.                                                                                                                                                                                   | Uncontested        |
| 14    | 39 | VS Merolla | Pg 8, Para 14 |      |     | Dan Downes, in the discussion of volume contracts, explained that SDLS/CSX lines was not interested in such arrangements due to being afraid that the same thing would happen in Hawaii that happened in Puerto Rico.                                                                       | Uncontested        |
| 14    | 40 | VS Merolla | Pg 8, Para 14 | 2003 |     | DHX has repeatedly requested volume pricing from the carriers and has repeatedly been denied.                                                                                                                                                                                               | Uncontested        |
| 14    | 41 | VS Merolla | Pg 8, Para 14 | 2002 | 1   | On January 28, 2002, Merolla and Gary Clemens met with Downes of CSX. Downes stated that large shippers, such as Costco and Wal-Mart, have 2-3 year contracts with CSX exempting them from annual GRIs. Downes also declined DHX's request for volume pricing.                              | Uncontested        |

| SRC # | #  | SOURCE     | PAGE          | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | DEFENDANT'S ANSWER |
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| 14    | 42 | VS Merolla | Pg 9, Para 15 | 1998 | 7   | In July 1998, Matson published changes to its Tariff 14-F and Tariff 2016-D which impacted the rules used by DHX and other forwarders to handle full containerload cargoes. In August 1998, SLS/CSX made similar changes. These changes resulted in an immediate and substantial increase to DHX and other freight forwarders both as to per hundred weight rates and charges (eg, minimum overflow cargo/container charges). In addition, DHX could no longer mix FCLs and the definition of "shipment" was reduced. | Uncontested        |
| 14    | 43 | VS Merolla | Pg 9, Para 17 | 1998 | 9   | From the period September 1998 through October 1999, fundamental ocean transportation costs for forwarders increased significantly. In addition, the carriers have taken GRI's each spring from February 1999-April 2002.                                                                                                                                                                                                                                                                                             | Uncontested        |
| 14    | 44 | VS Merolla | Pg 9, Para 18 |      |     | DHX, as a direct result of the loss of FCL customers had to raise its rates to its LCL customers.                                                                                                                                                                                                                                                                                                                                                                                                                     | Uncontested        |
| 14    | 45 | VS Merolla | Pg 9, Para 18 | 1999 |     | DHX was forced to pass on increased charges to its customers and DHX lost many customers and its FCL business. DHX retained one significant customer -                                                                                                                                                                                                                                                                                                                                                                | Uncontested        |
| 14    | 46 | VS Merolla | Pg 9, Para 18 |      |     | In the time since elected to continue to work with DHX notwithstanding the rate increases, the carriers have adjusted their rules such to use discounted rates offered to other similarly situated shippers and must instead use rates almost equal to FAK rates.                                                                                                                                                                                                                                                     | Uncontested        |
| 15    | 1  | VS Griggs  | Pg 1          | 2003 |     | Elaine P. Griggs is the Ocean Pricing Manager for DHX. Her office is located at 19201 S. Susana Rd; Rancho Dominguez, California, 90221.                                                                                                                                                                                                                                                                                                                                                                              | Uncontested        |
| 15    | 2  | VS Griggs  | Pg 1          | 1982 | 1   | Griggs has been employed by DHX since January of 1982 and has been the Ocean Pricing Manager since 1983.                                                                                                                                                                                                                                                                                                                                                                                                              | Uncontested        |

| SRC # | #  | SOURCE    | PAGE         | YEAR | MO. | FACT                                                                                                                                                                                                                                                  | DEFENDANT'S ANSWER |
|-------|----|-----------|--------------|------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 15    | 3  | VS Griggs | Pg 2, Para 1 | 2003 |     | The steamship lines that provide and control ocean transportation services from the West Coast United States to Hawaii and Guam are Matson and SLS/CSX.                                                                                               | Uncontested        |
| 15    | 4  | VS Griggs | Pg 3, Para 2 | 2003 |     | Matson publishes a tariff known as Tariff 14 which contains predominately per hundred weight rate items. These rates are stated in cents per one hundred pounds ("CWTs") and are the rates used by commodity freight forwarders such as DHX.          | Uncontested        |
| 15    | 5  | VS Griggs | Pg 3, Para 2 | 2003 |     | In addition to Tariff 14, Matson publishes Tariff 2016-D which is a local pickup and delivery tariff which also applies to the Hawaii ocean service.                                                                                                  | Uncontested        |
| 15    | 6  | VS Griggs | Pg 3, Para 2 | 2003 |     | The base rates in Tariff 2016-D are the same as the port rates in Tariff 14. The structure of Tariff 2016-D is that the base rate (Tariff 14 rates) and the local pickup and delivery charge are added together to obtain the 2016-D applicable rate. | Uncontested        |
| 15    | 7  | VS Griggs | Pg 3, Para 2 | 2003 |     | In addition, Matson offers Tariff 2034-E, a point to point intermodal tariff. Tariff 2034-E also contains proportional rates which are actually port to port rates.                                                                                   | Uncontested        |
| 15    | 8  | VS Griggs | Pg 3, Para 3 | 2003 |     | The comparison of Tariff 14 rates with Tariff 2034 reflect that intermodal rates are actually lower than port to port rates.                                                                                                                          | Uncontested        |
| 15    | 9  | VS Griggs | Pg 3, Para 3 | 2003 |     | To ship a full containerload shipment of cargo, it is better and less costly to rate that shipment under Tariff 2034 rates as opposed to Tariff 14 rates.                                                                                             | Uncontested        |
| 15    | 10 | VS Griggs | Pg 3, Para 3 | 2003 |     | Tariff 2034's rate structure includes both open rates and restricted rates. The restricted rates are substantially lower than the open rates.                                                                                                         | Uncontested        |
| 15    | 11 | VS Griggs | Pg 4, Para 4 |      |     | Griggs spends substantial time trying to obtain access to restricted rates in Matson tariff 2034 on behalf of DHX.                                                                                                                                    | Uncontested        |
| 15    | 12 | VS Griggs | Pg 4, Para 4 |      |     | The ability of DHX to effectively compete for FCL cargoes, or to retain FCL cargoes, is dependent upon the level of access to Matson tariff 2034 restricted rates.                                                                                    |                    |
| 15    | 13 | VS Griggs | Pg 4, Para 5 | 2003 |     | SLS/CSX has a similar rate structure and published rates as Matson.                                                                                                                                                                                   | Uncontested        |

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| 15    | 14 | VS Griggs       | Pg 4, Para 6  | 1996 |     | SLS/CSX and Matson were serious competitors until 1986 at which point they began to mirror each others tariff rates, rules and structures.                                                                                                                                                           | Uncontested        |
| 15    | 15 | VS Griggs, Ex.1 | Pg 5, Para 8  | 2002 | 4   | Griggs prepares a summary sheet of CWT rates for each carrier. The April 15, 2002 summary sheet shows that rates for Matson and SLS/CSX for the same commodities were the same.                                                                                                                      | Uncontested        |
| 15    | 16 | VS Griggs       | Pg 5, Para 9  | 2003 |     | Matson and SLS/CSX also maintain the same rates for full containerloads of mixed freight (eg, FAK, retail and general merchandise and consolidated ILL cargoes).                                                                                                                                     | Uncontested        |
| 15    | 17 | VS Griggs       | Pg 5, Para 10 | 1998 | 7   | Prior to July 1998, combining CWT rates and Mixed Shipment rules with Cargo Overflow rules almost always resulted in a lower container shipping cost for ocean transportation than using FAK or R&GM rate items.                                                                                     | Uncontested        |
| 15    | 18 | VS Griggs       | Pg 5, Para 10 |      |     | Since the July 1998 Matson tariff changes, the rate difference between aggregate per hundred weight rates and FAK rates has decreased substantially.                                                                                                                                                 | Uncontested        |
| 15    | 19 | VS Griggs       | Pg 5, Para 10 |      |     | The per hundred weight rates have gone up 18% since July 1998 which percentage does not include the increased costs associated with the rules changes including the increases in the overflow minimums, the deletion of note kits and shipment definition.                                           | Uncontested        |
| 15    | 20 | VS Griggs       | Pg 6, Para 10 |      |     | Matson and SLS/CSX have matching per hundred weight rates as shown on Grigg Ex. 1.                                                                                                                                                                                                                   | Uncontested        |
| 15    | 21 | VS Griggs       | Pg 6, Para 11 |      |     | Matson's mixed shipment rule, Rule 30C4, contained rates for commodities that are considered "top load" freight. This is cargo that is light density and expensive to ship as an FCL shipment. Such cargo is normally placed on top of heavier "base freight" to make a consolidated cargo shipment. | Uncontested        |

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| 15    | 22 | VS Griggs, Ex. 2     | Pg 6, Para 12 | 2003 |     | Rule 30C4 commodities has no true tariff item number. Matson created Rule 30C4 so that forwarders could not include commodities in this rule as overflow cargoes.                                                                                                                                                                     | Uncontested        |
| 15    | 23 | VS Griggs, Ex. 2     | Pg 6, Para 12 |      |     | The commodities listed in Rule 30C4 did not have individual rate items in July 1998 as Matson wanted to limit how these commodities were shipped through the mixed shipment rule.                                                                                                                                                     | Uncontested        |
| 15    | 24 | VS Griggs, Ex. 2     | Pg 6, Para 12 |      |     | On November 18, 1998, Matson's Rule 30C4 rates were eliminated because the July 23, 1998 increases took effect.                                                                                                                                                                                                                       |                    |
| 15    | 25 | VS Griggs, Ex. 4 & 5 | Pg 7, Para 13 | 1998 | 7   | The July 23, 1998 tariff filings changed the definition of "shipment." The August 1998 filing further refined the definition.                                                                                                                                                                                                         | Uncontested        |
| 15    | 26 | VS Griggs, Ex. 4 & 5 | Pg 7, Para 13 |      |     | Griggs Exhibit 4 contains the changes that Matson made in the definition of shipment which were from a period of time (5 days) to a single voyage.                                                                                                                                                                                    | Uncontested        |
| 15    | 27 | VS Griggs, Ex. 4 & 5 | Pg 7, Para 13 |      |     | Griggs Exhibit 5 contained the various changes to Matson Rule 30C4.                                                                                                                                                                                                                                                                   | Uncontested        |
| 15    | 28 | VS Griggs, Ex. 6     | Pg 7, Para 14 |      |     | Griggs Exhibit 6 contains the various changes to the Matson tariff 14, Rule 31 Overflow provisions from October 1995 through April 2002.                                                                                                                                                                                              | Uncontested        |
| 15    | 29 | VS Griggs, Ex. 6     | Pg 7, Para 14 |      |     | Griggs Exhibit 6 reflects that the Matson Rule 3e1 Overflow rates were increased from \$1,891 to \$2,387.<br>This represented an increase of 25.7%.                                                                                                                                                                                   | Uncontested        |
| 15    | 30 | VS Griggs, Ex. 6     | Pg 7, Para 14 | 1998 | 7   | From July 1998 - April 2002, the total increase in charges was \$487 on a forty foot container which represented a 25.7% increase.                                                                                                                                                                                                    | Uncontested        |
| 15    | 31 | VS Griggs, Ex. 7     | Pg 8, Para 15 | 1998 | 7   | On July 23, 1998, Matson removed various "Note Kits" from Tariff 14. For instance, a note in Item 185 was removed and Item 419 was created; a note in Item 270 was changed; a note in Item 310 was removed and Item 266 was created; a note in Item 305 was removed and Item 250 was created; and Item 115 was substantially changed. | Uncontested        |

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| 15    | 32 | VS Griggs, Ex. 7           | Pg 8, Para 15  |      |     | Item 11 of Matson tariff 14 was known as a "mini-FAK" item as it permitted a wide variety of cargoes to be top loaded over canned goods.                                                                | Uncontested        |
| 15    | 33 | VS Griggs, Ex. 8, 12       | Pg 8, Para 16  |      |     | SLS/CSX had its own matching version of Matson Item 115 which was published as item 0200-00-0000.                                                                                                       | Uncontested        |
| 15    | 34 | VS Griggs, Ex. 9, 10, & 11 | Pg 8, Para 17  | 1998 | 8   | On August 19, 1998, SLS/CSX sent a fax to Griggs indicating it had followed the pricing and note changes triggered by Matson in its July 1998 filing almost precisely.                                  | Uncontested        |
| 15    | 35 | VS Griggs, Ex. 10          | Pg 9, Para 18  |      |     | A comparison of the definitions of shipment by Matson and SLS/CSX reflected the definitions matched.                                                                                                    | Uncontested        |
| 15    | 36 | VS Griggs, Ex. 11          | Pg 9, Para 18  |      |     | A comparison of the rates in the overflow rules of Matson and SLS/CSX reflected that the rate levels always matched.                                                                                    | Uncontested        |
| 15    | 37 | VS Griggs                  | Pg 9, Para 18  |      |     | The only difference between the Matson overflow provisions and the SLS/CSX overflow provisions were that Matson limited to the number of overflow containers while SLS/CSX had a "1 for 1" application. | Uncontested        |
| 15    | 38 | VS Griggs                  | Pg 9, Para 18  |      |     | For each SLS/CSX lead container a shipper was permitted one (1) overflow with no limit on the number of lead containers nor overflows.                                                                  | Uncontested        |
| 15    | 39 | VS Griggs                  | Pg 10, Para 20 |      |     | DHX, as a direct result of the changes in the rules and rates, lost customers and business.                                                                                                             | Disputed           |
| 15    | 40 | VS Griggs                  | Pg 10, Para 20 |      |     | Griggs Exhibit 14 contains a <b>REDACTED</b>                                                                                                                                                            | Disputed           |

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| 15    | 41 | VS Griggs, Ex. 14 | Pg 10, Para 20 | 1998 | 8   | As a direct result of the 1998 changes, I to VS Griggs.                                                                                                                                                           | Disputed           |
| 15    | 42 | VS Griggs         | Pg 10, Para 22 |      |     | DHX was harmed by the rates and rules changes and DHX customers were harmed through increases in costs for both LCL and FCL customers.                                                                            | Disputed           |
| 15    | 43 | VS Griggs, Ex. 16 | Pg 10, Para 22 |      |     | Griggs Exhibit 16 contains a review of the effect of the carrier rate and rule changes on various FCL customers of DHX and shows and increase in costs for these FCL between July 1998 and March 1, 2000.         | Uncontested        |
| 15    | 44 | VS Griggs, Ex. 17 | Pg 10, Para 23 |      |     | Griggs duties included negotiations with the carriers to attempt to obtain new rates and to obtain access to existing restricted rates in Matson tariff 2034.                                                     | Uncontested        |
| 15    | 45 | VS Griggs, Ex. 17 | Pg 10, Para 23 | 1998 | 8   | Griggs Exhibit 17 is an example of what is involved in attempting to obtain access to a Matson rate in tariff 2034. The e-mails span weeks of time and DHX was never able to gain access to the sought rate item. | Uncontested        |
| 15    | 46 | VS Griggs, Ex. 17 | Pg 11, Para 23 |      |     | Forwarders without access to a competitive ocean rate, can not even bid or quote a competitive rate to an FCL shipper.                                                                                            | Uncontested        |
| 15    | 47 | VS Griggs, Ex. 17 | Pg 11, Para 23 |      | 8   | Griggs Exhibit 17 is an example of how Matson uses its tariffs to control DHX's ability to compete for business and how Matson impacts controls and competition.                                                  | Uncontested        |
| 16    | 1  | VS Burns          | Pg 1           |      |     | Eric Burns is the Senior Rate Analyst for DHX.                                                                                                                                                                    | Uncontested        |
| 16    | 2  | VS Burns          | Pg 1           |      |     | Burns has been an employee of DHX since May 1999.                                                                                                                                                                 | Uncontested        |

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| 16    | 3  | VS Burns | Pg 1 |      |     | Burns is in frequent contact with DHX sales staff, DHX customers, internal DHX pricing personnel, the pricing personnel of both steamship lines and steamship lines sales personnel.                                                                                                                             | Uncontested        |
| 16    | 4  | VS Burns | Pg 1 |      |     | Duties include setting prices and rate quotations to DHX customers.                                                                                                                                                                                                                                              | Uncontested        |
| 16    | 5  | VS Burns | Pg 2 |      |     | Burns is familiar with the services offered by forwarders, advantages and limitations, and the rates and pricing structures of both the forwarders and the carriers in the Hawaii trade.                                                                                                                         | Uncontested        |
| 16    | 6  | VS Burns | Pg 2 |      |     | One of the goals of Burns' position is to employ his knowledge and expertise of DHX pricing and service to use steamship line pricing and services to build a pricing structure that results in a profitable transaction or transactions for DHX.                                                                | Uncontested        |
| 16    | 7  | VS Burns | Pg 2 |      |     | Burns has been employed in the transportation industry for 10 years.                                                                                                                                                                                                                                             | Uncontested        |
| 16    | 8  | VS Burns | Pg 2 |      |     | As part of his job, Burns is required to be familiar with the rate tariffs of the carriers. In addition, he is familiar with the services offered by FFWDERS such as DHX, their service advantages and limitations and the rate and pricing structures of the FFWDERS and the defendants in the US Hawaii trade. | Uncontested        |
| 16    | 9  | VS Burns | Pg 2 |      |     | Burns is requested to provide rate and service quotations on both LCL and FCL business.                                                                                                                                                                                                                          | Uncontested        |
| 16    | 10 | VS Burns | Pg 3 |      |     | Since 1988, the steamship lines have constructed a tariff structure that is not amendable to use by the domestic FFWDERS for the handling of FCL business.                                                                                                                                                       | Uncontested        |
| 16    | 11 | VS Burns | Pg 3 |      |     | As a result, DHX may only quote rates on LCL cargoes on a competitive open market basis.                                                                                                                                                                                                                         | Uncontested        |
| 16    | 12 | VS Burns | Pg 3 |      |     | On quantities of cargo which can qualify as FCL, DHX must constantly seek to obtain rates from these steamship lines which DHX then has to quote to the shipper.                                                                                                                                                 | Uncontested        |

| SRC # | #  | SOURCE   | PAGE | YEAR | MO. | FACT                                                                                                                                                                                                                                                       | DEFENDANT'S ANSWER |
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| 16    | 13 | VS Burns | Pg 3 |      |     | The tariff structures no longer permit FFWDRS open pricing which would normally be used to provide the basis for a freight quotation by a FFWDR on an FCL load.                                                                                            | Uncontested        |
| 16    | 14 | VS Burns | Pg 3 |      |     | The steamship lines employ a rate or price structure that involves limited the FFWDRS access to open competitive rates and pricing.                                                                                                                        | Uncontested        |
| 16    | 15 | VS Burns | Pg 3 |      |     | The steamship lines also maintain a system of parallel pricing which minimizes rate differences between these carriers and now have established a joint service out of Los Angeles to Hawaii.                                                              | Uncontested        |
| 16    | 16 | VS Burns | Pg 3 |      |     | The carriers are able to control forwarder competition through control of access to the rates that forwarders are able to offer FCL shippers. This is done by manipulation of the carriers' tariff and restriction of access to competitive rates.         | Uncontested        |
| 16    | 17 | VS Burns | Pg 4 | 2001 | 7   | The joint service is identified by the carriers as a slot charter arrangement but upon commencement of the arrangement in July 2001, CSX withdrew vessel capacity from the Hawaii trade by cancelling its mid-week service between Los Angeles and Hawaii. | Uncontested        |
| 16    | 18 | VS Burns | Pg 4 |      |     | The FFWDRS have seen the rates that they generally use be subjected to annual rate increases which have resulted in an average 18% increase in each of the general merchandise rates and the per hundred weight rates used by FFWDRS.                      | Uncontested        |
| 16    | 19 | VS Burns | Pg 4 |      |     | The rate increases have put a cost squeeze on FFWDRS generally and forced the entire FFWDR industry to raise its prices to their LCL customers.                                                                                                            | Uncontested        |
| 16    | 20 | VS Burns | Pg 4 |      |     | The increases have also worked to reduce the FFWDRS ability to engage in the cross-subsidy of cargoes which could be involved in servicing a shipper that tenders both FCL and LCL freight.                                                                | Uncontested        |
| 16    | 21 | VS Burns | Pg 4 |      |     | The dramatic increase in rates used by FFWDRS which combined with a lack of rates or pricing alternatives to handle FCL business has had the effect of squeezing FFWDRS out of the FCL business.                                                           | Uncontested        |

| SRC # | #  | SOURCE   | PAGE | YEAR | MO. | FACT                                                                                                                                                                                                                                                                                                             | DEFENDANT'S ANSWER |
|-------|----|----------|------|------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 16    | 22 | VS Burns | Pg 4 |      |     | The carriers have also established rate and service structures for the FCL market that results in rates that are below the FFWDERS basic ocean transportation costs.                                                                                                                                             | Uncontested        |
| 16    | 23 | VS Burns | Pg 5 |      |     | This situation ensures that no FFWDER will be able to effectively compete for FCL business in the Hawaii trade.                                                                                                                                                                                                  | Disputed           |
| 16    | 24 | VS Burns | Pg 5 |      |     | The distortions of the rate structure include the imposition of accessorial charges on rates which are used by the FFWDERS such as per hundred weight rates, while either absorbing or simply not imposing these charges on shippers using rates from which FFWDERS have been effectively excluded.              | Uncontested        |
| 16    | 25 | VS Burns | Pg 5 |      |     | The steamship lines publish general commodities type rates which go by a variety of generic names (eg, retail merchandise, FAK, Consolidated LTL Cargo).                                                                                                                                                         | Uncontested        |
| 16    | 26 | VS Burns | Pg 5 |      |     | The generic rate items, which are published as being applicable to FFWDERS through street address restrictions, are at rate levels higher than the open competitive rates that the steamship lines quote and publish for FCL cargoes.                                                                            | Uncontested        |
| 16    | 27 | VS Burns | Pg 5 |      |     | FFWDERS are excluded from the use of these lower rates through a series of restrictions including street addresses, customer names, zip codes, commodity combinations and routing limitations.                                                                                                                   | Uncontested        |
| 16    | 28 | VS Burns | Pg 5 |      |     | The result is that FFWDERS presently can only handle FCL on a tariff cost plus basis. DHX can no longer solicit FCL except at "tariff rates."                                                                                                                                                                    | Uncontested        |
| 16    | 29 | VS Burns | Pg 6 |      |     | The steamship lines now maintain a multi-tiered rate structure. There are per hundred weight rates in the tariffs as well as per container rate items that are "open" to all. However, the "open" to all rates are higher than the per container rates the steamship lines offer and provide to direct shippers. | Uncontested        |

| SRC # | #  | SOURCE   | PAGE         | YEAR | MO. | FACT                                                                                                                                                                                                                                                                        | DEFENDANT'S ANSWER |
|-------|----|----------|--------------|------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 16    | 30 | VS Burns | Pg 6         |      |     | FFWDRS are often refused access to tariff rate items that are identified by (1) cargo ownership restrictions, (2) shipper names or (3) origin/destination or routing restrictions.                                                                                          | Uncontested        |
| 16    | 31 | VS Burns | Pg 6         |      |     | Through these price/cost structures, the steamship lines now strictly control pricing for ocean transportation to Hawaii.                                                                                                                                                   | Uncontested        |
| 16    | 32 | VS Burns | Pg 6         |      |     | The net effect is that there is very little rate competition in the Hawaii trade and almost none vis-à-vis the steamship lines and the FFWDR community.                                                                                                                     | Uncontested        |
| 16    | 33 | VS Burns | Pg 6         |      |     | The carriers maintain a higher price and cost structure for forwarders by establishing a procedure whereby forwarder must obtain "permission" for access to competitive rates the result of which is strict control of pricing for ocean transportation services to Hawaii. | Uncontested        |
| 16    | 34 | VS Burns | Pg 6         |      |     | The carrier's procedure for access to rates enables the carriers to indirectly control and manipulate forwarder pricing on FCL cargoes.                                                                                                                                     | Uncontested        |
| 16    | 35 | VS Burns | Pg 7         |      |     | The steamship lines practice parallel pricing and share their vessel service.                                                                                                                                                                                               | Uncontested        |
| 16    | 36 | VS Burns | Pg 7         |      |     | The market for freight transportation services to Hawaii is fairly well defined. There are identifiable large shippers and/or consignees in the trade.                                                                                                                      | Uncontested        |
| 16    | 37 | VS Burns | Pg 7         |      |     | The large shippers are known to have direct service arrangements with the steamship lines but occasionally other business becomes available. Some large shippers have both LCL and FCL business.                                                                            | Uncontested        |
| 16    | 38 | VS Burns | Pg 8, para 1 |      |     | Matson published and maintained 3 rate tariffs that are directly involved in this case.                                                                                                                                                                                     | Uncontested        |
| 16    | 39 | VS Burns | Pg 8, para 1 |      |     | Matson publishes a port to port tariff which is known as Tariff 14 and Tariff 2016-D. The third tariff is known as Tariff 2034.                                                                                                                                             | Uncontested        |

| SRC # | #  | SOURCE   | PAGE         | YEAR      | MO. | FACT                                                                                                                                                                                                                                                                                                                                  | DEFENDANT'S ANSWER |
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| 16    | 40 | VS Burns | Pg 8, para 1 |           |     | The only difference between Tariff 14 and Tariff 2016-D is that 2016-D provides for pickup and delivery service. The base rates in Tariff 2016-D are the port rates in Tariff 14. Tariff 2034 is represented as a "point to point" joint rate intermodal tariff.                                                                      | Uncontested        |
| 16    | 41 | VS Burns | Pg 8, para 2 | 2001      | 6   | CSX Lines, formerly SLS, published a tariff STB CSXL 468. That tariff superseded SLS tariff STB SEAU 468. The CSXL 468 tariff was filed and published in June 2001 and was a republication of the contents of SEAU 468 as it then existed. The tariffs used the same structure, numbering, commodities descriptions and page numbers. | Uncontested        |
| 16    | 42 | VS Burns | Pg 8, para 3 | 1996-2000 |     | CSX Lines tariff CSXL 468 was an "on-line" tariff and could be accessed by a computer terminal while SEAU 468 was a paper tariff from 1996 through at least January 2000.                                                                                                                                                             | Uncontested        |
| 16    | 43 | VS Burns | Pg 9, para 4 |           |     | The carriers engage in parallel pricing. In discussions with either SLS or Matson personnel, they both know the other carrier's rates.                                                                                                                                                                                                | Uncontested        |
| 16    | 44 | VS Burns | Pg 9, para 5 | 1998      | 9   | There are few real differences in these carriers tariffs, especially after September 1998 when Matsn changed the structure of its rules in Tariff 14 as being used by FFWDRS.                                                                                                                                                         | Uncontested        |
| 16    | 45 | VS Burns | Pg 9, para 5 | 1998      | 12  | By the end of 1998, the carriers tariffs were interchangeable as to types of rates, services, rules and the like.                                                                                                                                                                                                                     | Uncontested        |
| 16    | 46 | VS Burns | Pg 9, para 5 |           |     | The only real difference in the carriers' tariffs was that Matson had and used 24 foot containers while SLS did not. Still, SLS published rates applicable on a 24 foot basis.                                                                                                                                                        | Uncontested        |
| 16    | 47 | VS Burns | Pg 9, para 6 |           |     | The carriers held out three types of rates - (1) port to port rates, (2) proportional rates, and (3) store door rates. The door rates, in SEAU 468 or CSXL 468, could also be at inland locations throughout the continental US.                                                                                                      | Uncontested        |
| 16    | 48 | VS Burns | Pg 9, para 7 |           |     | The carriers also held out per hundred weight rates and per container rates.                                                                                                                                                                                                                                                          | Uncontested        |

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| 16    | 49 | VS Burns, Ex. 1 | Pg 10, para 8  | 1999 | 11  | Burns reviewed the CSX and SLS tariffs to identify any participating carriers in the "joint rate" sections of the tariffs. Rule 100 reflects that as of November 3, 1999 and forward, there is no routing guide nor participating carrier guide for SEAU 468.                                                                                                                           | Uncontested        |
| 16    | 50 | VS Burns, Ex. 1 | Pg 10, para 8  |      |     | Burns Exhibit 2 are sample tariff pages for SLS/CSX Rule 340 Zone Arbitraries which have remained substantially the same since February 1996.                                                                                                                                                                                                                                           | Uncontested        |
| 16    | 51 | VS Burns, Ex. 1 | Pg 10, para 8  |      |     | Rule 160 of SEAU 468 and CSXL 468 reflects that the "joint rates" described are really combination rates.                                                                                                                                                                                                                                                                               | Uncontested        |
| 16    | 52 | VS Burns, Ex 3  | Pg 10, para 9  |      |     | Burns reviewed the CSX and SLS tariffs regarding the application of wharfage charges. The tariffs only applied wharfage charges in Rule 998 to rates contained in sections 02 (CWT rates), 03, 05 (proportional rates), and 08. Section 06 (store door rates) are not subject to West Coast wharfages. The rate items in 05 almost always except the items out of the wharfage charges. | Uncontested        |
| 16    | 53 | VS Burns        | Pg 11, para 10 |      |     | The sample tariff pages in Burns Exhibit 4 reflect not only an absorption of wharfage charges but confirm that the carriers have established rate structures that inhibit forwarder competition.                                                                                                                                                                                        | Uncontested        |
| 16    | 54 | VS Burns        | Pg 11, para 10 |      |     | The rates used by FFWDRS are subjected to wharfage charges while the rates for named shippers and the like are not.                                                                                                                                                                                                                                                                     | Uncontested        |
| 16    | 55 | VS Burns        | Pg 11, para 11 |      |     | Item 2200 from Matson 2034 and Item 0598-51-0000 of SLS/CSX SEAU 468 and CSXL 468 as contained in Burns Exhibit 5 were selected based upon the scope of the commodities to which they would apply.                                                                                                                                                                                      | Uncontested        |
| 16    | 56 | VS Burns        | Pg 11, para 11 |      |     | Burns was asked to review sample rate items from the filed tariffs of both carriers and provide them to Chun for his study. Burns reviewed Item 2200 from Matson tariff 2034 and Item 0598-51-0000 from SLS/CSX tariffs SEAU 468 and CSXL 468.                                                                                                                                          | Uncontested        |
| 16    | 57 | VS Burns        | Pg 12, para 11 |      |     | Item 2200 was originally published for Long's Drugs. The SLS item was also published for a named shipper.                                                                                                                                                                                                                                                                               | Uncontested        |

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| 16    | 58 | VS Burns              | Pg 12, para 11 |      |     | The carriers engage in parallel pricing and Burns Exhibit 5-A is a SLS/CSX rate item that is for Long Drug Co. and matches the Matson Item 2200.                                                                                                                                          | Uncontested        |
| 16    | 59 | VS Burns              | Pg 12, para 12 |      |     | The containers shipped under Tariff 2034 are not assessed a separate wharfage charge. The per hundred weight containers shipped by FFWDERS under Tariff 14, on the other hand, are assessed wharfage charges.                                                                             | Uncontested        |
| 16    | 60 | VS Burns              | Pg 12, para 13 |      |     | A review of the proportional rate items in Matson's Tariff 2034 6000 series reflects no publication of a route nor of a participating carrier. Many of them contain cargo ownership restrictions and shipper addresses as limiters on the rates.                                          | Uncontested        |
| 16    | 61 | VS Burns              | Pg 12, para 13 |      |     | The header on these rates notes that they apply on shipments having a prior or subsequent movement by motor carrier and apply on a CY to CY basis.                                                                                                                                        | Uncontested        |
| 16    | 62 | VS Burns, Ex. 8 & 8-A | Pg 13, para 13 |      |     | Burns Exhibit 7 contains sample proportional rate items from Matson tariff 2034.                                                                                                                                                                                                          | Uncontested        |
| 16    | 63 | VS Burns, Ex. 8 & 8-A | Pg 13, para 14 |      |     | The FFWDERS used the per hundred weight rates in Tariff 14. These rates have been increased 5 times since August 1, 1998 for a total increase of 18.65%.                                                                                                                                  | Uncontested        |
| 16    | 64 | VS Burns, Ex. 8       | Pg 13, para 14 |      |     | In comparing the CWT rates with the changes in Matson 2034 Item 2200, the Item 185 commodity was raised 13.65% while the Long Drug Co. rate was raised only 2.7%.                                                                                                                         | Uncontested        |
| 16    | 65 | VS Burns              | Pg 13, para 14 |      |     | This disproportionate increase in the rates serves to make the FFWDERS less competitive with Matson and increases Matson's profits.                                                                                                                                                       | Uncontested        |
| 16    | 66 | VS Burns              | Pg 13, para 15 |      |     | In addition to raising the FFWDERS per hundred weight rates, Matson is also raising the catch all FAK, retail and general merchandise rates - these items were raised at the same rate as the per hundred weight rates.                                                                   | Uncontested        |
| 16    | 67 | VS Burns              | Pg 14, para 15 |      |     | Burns Exhibits 10 and 11 reflect sample tariff pages for the FAK Item Retail & General Merchandise item in Matson's tariffs. The Summary Sheet shows a pattern of increases which support the belief that forwarders are being forced out of CWT rates into these higher rate structures. | Uncontested        |

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| 16    | 68 | VS Burns         | Pg 14, para 15 |      |     | FFWDRS are being forced out of commodity based rates and into the FAK and R&GM rates.                                                                                                                                                                                                                      | Uncontested        |
| 16    | 69 | VS Burns         | Pg 14, para 15 |      |     | The FAK and R&GM rates are so high that no FFWDR could consider attempting to handle any FCL cargoes under such rates.                                                                                                                                                                                     | Uncontested        |
| 16    | 70 | VS Burns         | Pg 14          |      |     | CSX matches rates with Matson.                                                                                                                                                                                                                                                                             | Uncontested        |
| 16    | 71 | VS Burns         | Pg 14, para 17 |      |     | Carriers are not only forcing forwarders to use these catch all rate items, but they are increasing these rate items as well. Carrier rates for specific shippers are not being proportionately increased.                                                                                                 | Uncontested        |
| 16    | 72 | VS Burns         | Pg 14, para 17 |      |     | The rate changes that have been made by the steamship lines are such that both types of rates used by the FFWDRS are being increased disproportionately to the carriers' shipper specific rates.                                                                                                           | Uncontested        |
| 16    | 73 | VS Burns, Ex. 13 | Pg 15, para 17 |      |     | The entire price/rate structure is now skewed against the freight forwarding community as a whole.                                                                                                                                                                                                         | Uncontested        |
| 16    | 74 | VS Burns, Ex. 13 | Pg 15, para 18 |      |     | Burns Exhibit 13 contains copies of the tariff items from Matson 2034 to which DHX is permitted access or which is an "open" item. If the item is "open" it is higher than and uncompetitive with Matson's shipper specific and restricted rates in tariff 2034.                                           | Uncontested        |
| 16    | 75 | VS Burns, Ex. 13 | Pg 15, para 18 |      |     | A comparison of the rates in Burns Exhibit 13 with the sample tariff rate items in Burns Exhibit 4 and 4-A reflects that the rates which Matson "permits" DHX to use are so high that DHX can not obtain FCL business except from a shipper than is unaware of the pricing structures in the Hawaii trade. | Uncontested        |
| 16    | 76 | VS Burns, Ex. 13 | Pg 15, para 18 |      |     | Matson does permit DHX limited participation in the rates in Tariff 2034. DHX is permitted to participate only in open items. The open items rates are high and uncompetitive as compared to Matson's restricted rates.                                                                                    | Uncontested        |
| 16    | 77 | VS Burns, Ex. 13 | Pg 15, para 18 |      |     | The rates Matson permits DHX to use are so high that DHX cannot obtain FCL business.                                                                                                                                                                                                                       | Uncontested        |

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| 16    | 78 | VS Burns | Pg 15 |      |     | Currently, FCL must be quoted by DHX based on the carrier's tariff charges plus a mark-up. The other more attractive rates are only available with permission of the carrier and that permission is very difficult to obtain. | Uncontested        |
| 17    | 1  | VS Chun  | Pg 1  | 2003 |     | Paul B. Chun is the Assistant Controller of DHX, Inc. and his office is located at 19201 S. Susana Road, Rancho Dominguez, California 90221.                                                                                  | Uncontested        |
| 17    | 2  | VS Chun  | Pg 1  | 1999 | 12  | Chun has been employed by DHX since December 1999.                                                                                                                                                                            | Uncontested        |
| 17    | 3  | VS Chun  | Pg 1  |      |     | Chun is a graduate of California State University, Long Beach. He has a B.S. degree in Accounting                                                                                                                             | Uncontested        |
| 17    | 4  | VS Chun  | Pg 2  |      |     | VS Chun includes the following exhibits:<br><br><b>REDACTED</b>                                                                                                                                                               | Uncontested        |
| 17    | 5  | VS Chun  | Pg 2  |      |     | Chun has prepared<br><br><b>REDACTED</b>                                                                                                                                                                                      | Uncontested        |
| 17    | 6  | VS Chun  | Pg 2  |      |     | The reports and schedules contained in Exhibits 1 and 2 are segregated and have been prepared for the following ports: Los Angeles, Oakland, Portland and Seattle.                                                            | Uncontested        |
| 17    | 7  | VS Chun  | Pg 2  | 2003 |     | DHX ships the following size containers: twenty foot ("20FT"); twenty-four foot ("24FT"); twenty-four foot high cube ("24HC"); forty foot ("40FT"); forty foot high cube ("40HC") and forty-five foot ("45FT")                | Uncontested        |
| 17    | 8  | VS Chun  | Pg 3  |      |     | <b>REDACTED</b>                                                                                                                                                                                                               | Uncontested        |

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| 17    | 9  | VS Chun | Pg 3   | 1997 | 10  | From 10/97 to 6/03, both Matson and SLS/CSX offered and published rates that were significantly lower than the base ocean transportation costs offered to DHX by these carriers.                            | Uncontested        |
| 17    | 10 | VS Chun | Pg 3-4 |      |     | The DHX Monthly Average Cost Per Container does not include in its calculation DHX overhead, administrative, labor, trucking or other associated costs.                                                     | Uncontested        |
| 17    | 11 | VS Chun | Pg 5   |      |     | Schedules 1-8 in Exhibit 2 are specific cost comparisons of DHX shipments wherein it is shown that DHX incurred basic ocean transportation costs that were higher than the rate in the sample tariff items. | Uncontested        |
| 17    | 12 | VS Chun | Pg 6   | 1997 | 10  | From 10/97 to 6/03, DHX tendered a<br>its base ocean freight costs higher than the                                                                                                                          | Uncontested        |
| 17    | 13 | VS Chun | Pg 7   |      |     | Exhibit 2 contains a restatement, Schedule by Schedule, of excess sums paid (schedules 9-16) or excess costs incurred (schedules 1-8) by DHX by reason of the carriers rate structures.                     | Uncontested        |
| 17    | 14 | VS Chun | Pg 7   |      |     | Schedules 9-16 in Exhibit 2 contain a listing of all containers tendered by DHX and identifies the amount of the wharfares assessed by the carriers and paid by DHX.                                        | Uncontested        |
| 17    | 15 | VS Chun | Pg 7   | 1997 | 10  | From 10/97 to 6/03, <del>REDACTED</del> excess ocean freight costs on containers tendered to                                                                                                                | Uncontested        |
| 17    | 16 | VS Chun | Pg 7   | 1997 | 10  | From 10/97 to 6/03, DHX incurred excess ocean freight costs on containers tendered to <del>REDACTED</del> if                                                                                                | Uncontested        |
| 17    | 17 | VS Chun | Pg 7   | 1997 | 10  | From 10/97 to 6/03, <del>REDACTED</del> ge.                                                                                                                                                                 | Uncontested        |

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| 17    | 18 | VS Chun         | Pg 8  |      |     | The demonstrated differences in the basic ocean transportation costs incurred by DHX and the rates/costs afforded the sample non-forwarder shippers reflect that DHX would be required to quote and ship FCL containers at price levels substantially below DHX cost in order to handle FCL business. | Uncontested        |
| 17    | 19 | VS Chun         | Pg 8  | 1997 | 10  | From 10/97 to 6/03,<br><b>REDACTED</b>                                                                                                                                                                                                                                                                | Uncontested        |
| 18    | 1  | Dep. Tr. Hoppes | Pg 1  |      |     | Hoppes is the director of Ocean Fit Sales.                                                                                                                                                                                                                                                            | Uncontested        |
| 18    | 2  | Dep. Tr. Hoppes | Pg 6  |      |     | Hoppes is the director of Ocean freight sales. As director of ocean freight sales his responsibilities include the overall management of Matson's mainland sales force, operating responsibility for the freight operations group, and responsibility for the pricing department.                     | Uncontested        |
| 18    | 3  | Dep. Tr. Hoppes | Pg 16 |      |     | Three people reported directly to Hoppes - the General Manager for mainland sales, Ron Barrett, the general manager for the container and freight operations group, Bob Dawdy and the general manager of pricing, Pete Wilson.                                                                        | Uncontested        |
| 18    | 4  | Dep. Tr. Hoppes | Pg 17 |      |     | Matson's pricing department has always been a separate department operated independantly from the sales department.                                                                                                                                                                                   | Uncontested        |
| 18    | 5  | Dep. Tr. Hoppes | Pg 19 | 1993 |     | From 1993 to April 1994, Hoppes was Sales Manager of Southern California.                                                                                                                                                                                                                             | Uncontested        |
| 18    | 6  | Dep. Tr. Hoppes | Pg 19 | 1993 |     | In 1993 or 1994 Hoppes became sales manager of Southern California and held that position until April of 1994.                                                                                                                                                                                        | Uncontested        |
| 18    | 7  | Dep. Tr. Hoppes | Pg 20 |      |     | Hoppes became General Sales manager.                                                                                                                                                                                                                                                                  | Uncontested        |

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| 18    | 8  | Dep. Tr. Hoppes | Pg 20              |           |     | Hoppes's duties as So. Cal. Sales manager included managing sales personnel.                                                                                                            | Uncontested        |
| 18    | 9  | Dep. Tr. Hoppes | Pg 20              | 1994      |     | From April 1994 until March 1998, Hoppes was General Manager of sales at Matson's home office in San Francisco.                                                                         | Uncontested        |
| 18    | 10 | Dep. Tr. Hoppes | Pg 21              | 1993-1994 |     | During 1993 and 1994, Matson's pricing was established in the San Francisco office. At that time, Pete Wilson was responsible for pricing.                                              | Uncontested        |
| 18    | 11 | Dep. Tr. Hoppes | Pg 27              | 1993-1994 |     | In establishing pricing, Pete Wilson used a variety of approaches. One approach was to analyze SLS' tariffs.                                                                            | Uncontested        |
| 18    | 12 | Dep. Tr. Hoppes | Pg 29              |           |     | At Matson, if a customer shipped large volumes of cargo each week, Matson factored this in to their prices.                                                                             | Uncontested        |
| 18    | 13 | Dep. Tr. Hoppes | Pg 29              | 1993-1994 |     | In calculating its prices, Matson factored in the strategic value of particular customers. The strategic value was based on the customers' history and volume of shipments with Matson. | Uncontested        |
| 18    | 14 | Dep. Tr. Hoppes | Pg 41              | 1997      |     | Deborah Kirker, an Matson employee who was supervised by Hoppes, was the author                                                                                                         | Uncontested        |
| 18    | 15 | Dep. Tr. Hoppes | Pg 41              | 1997      |     | Deborah Kirker worked in the ocean freight services group under the general manager of mainland sales, Ron Barrett.                                                                     | Uncontested        |
| 18    | 16 | Dep. Tr. Hoppes | Pg 42              | 1997      |     | At the time the immediate supervisor. Hoppes was her                                                                                                                                    | Uncontested        |
| 18    | 17 | Dep. Tr. Hoppes | Pg 43              | 1997      |     | Hoppes claims he cannot recall whose idea the 1997 FFWD Study was or when exactly in 1997 it took place.                                                                                | Uncontested        |
| 18    | 18 | Dep. Tr. Hoppes | Pg 44, lines 21-23 |           |     |                                                                                                                                                                                         | Uncontested        |

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| 18    | 19 | Dep. Tr. Hoppes | Pg 45, lines 1-4   |      |     | REDACTED | Uncontested        |
| 18    | 20 | Dep. Tr. Hoppes | Pg 45, lines 16-18 |      |     |          | Uncontested        |
| 18    | 21 | Dep. Tr. Hoppes | Pg 45, lines 20-21 |      |     |          | Uncontested        |
| 18    | 22 | Dep. Tr. Hoppes | Pg 46, lines 3-6   |      |     |          | Uncontested        |
| 18    | 23 | Dep. Tr. Hoppes | Pg 44              | 1997 |     |          | Uncontested        |
| 18    | 24 | Dep. Tr. Hoppes | Pg 44              | 1997 |     |          | Uncontested        |
| 18    | 25 | Dep. Tr. Hoppes | Pg 45              | 1997 |     |          | Uncontested        |
| 18    | 26 | Dep. Tr. Hoppes | Pg 45              | 1997 |     |          | Uncontested        |
| 18    | 27 | Dep. Tr. Hoppes | Pg 46              |      |     |          | Uncontested        |

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| 18    | 28 | Dep. Tr. Hoppes | Pg 46 | 1997 |     | <b>REDACTED</b> | Uncontested        |
| 18    | 29 | Dep. Tr. Hoppes | Pg 49 | 1997 |     |                 | Uncontested        |
| 18    | 30 | Dep. Tr. Hoppes | Pg 49 | 1997 |     |                 | Uncontested        |
| 18    | 31 | Dep. Tr. Hoppes | Pg 50 | 1997 |     |                 | Uncontested        |
| 18    | 32 | Dep. Tr. Hoppes | Pg 51 | 1997 |     | <b>REDACTED</b> | Uncontested        |
| 18    | 33 | Dep. Tr. Hoppes | Pg 52 | 1997 |     |                 | Uncontested        |
| 18    | 34 | Dep. Tr. Hoppes | Pg 52 | 1997 |     |                 | Uncontested        |
| 18    | 35 | Dep. Tr. Hoppes | Pg 54 | 1997 |     |                 | Uncontested        |
| 18    | 36 | Dep. Tr. Hoppes | Pg 58 | 1997 |     | <b>REDACTED</b> | Uncontested        |
| 18    | 37 | Dep. Tr. Hoppes | Pg 59 | 1997 |     |                 | Uncontested        |
| 18    | 38 | Dep. Tr. Hoppes | Pg 60 |      |     |                 | Uncontested        |

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| 18    | 39 | Dep. Tr. Hoppes | Pg 60 | 1997 |     | <b>REDACTED</b>                                                                                                                       | Uncontested        |
| 18    | 40 | Dep. Tr. Hoppes | Pg 61 | 1997 |     |                                                                                                                                       | Uncontested        |
| 18    | 41 | Dep. Tr. Hoppes | Pg 62 | 1997 |     |                                                                                                                                       | Uncontested        |
| 18    | 42 | Dep. Tr. Hoppes | Pg 63 |      |     |                                                                                                                                       | Uncontested        |
| 18    | 43 | Dep. Tr. Hoppes | Pg 63 | 1997 |     |                                                                                                                                       | Uncontested        |
| 18    | 44 | Dep. Tr. Hoppes | Pg 64 |      |     |                                                                                                                                       | Uncontested        |
| 18    | 45 | Dep. Tr. Hoppes | Pg 64 | 1997 |     |                                                                                                                                       | Uncontested        |
| 18    | 46 | Dep. Tr. Hoppes | Pg 64 | 1997 |     |                                                                                                                                       | Uncontested        |
| 18    | 47 | Dep. Tr. Hoppes | Pg 65 |      |     | Hoppes does not recall giving Dechter the "WIN-WIN."                                                                                  | Uncontested        |
| 18    | 48 | Dep. Tr. Hoppes | Pg 65 | 1994 |     | In his testimony Hoppes initially claims he cannot recall giving Brad Dechter a draft tariff page labeled as Exhibit MNC-# 7 in 1994. | Uncontested        |
| 18    | 49 | Dep. Tr. Hoppes | Pg 66 |      |     |                                                                                                                                       | Uncontested        |

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| 18    | 50 | Dep. Tr. Hoppes | Pg 66 | 1994 |     | REDACTED                                                                                                                                                                                                        | Uncontested        |
| 18    | 51 | Dep. Tr. Hoppes | Pg 66 | 1994 |     |                                                                                                                                                                                                                 | Uncontested        |
| 18    | 52 | Dep. Tr. Hoppes | Pg 68 | 1993 | 9   |                                                                                                                                                                                                                 | Uncontested        |
| 18    | 53 | Dep. Tr. Hoppes | Pg 69 |      |     | Rule 30C and Rule 646 came from the draft and was Matson's solution or alternative to matching or publishing a large series of per hundred weight rates.                                                        | Uncontested        |
| 18    | 54 | Dep. Tr. Hoppes | Pg 69 | 1993 |     | The mixed shipment rule that resulted from the draft faxed by Wilson to Hoppes in September 1993, was Matson's solution as an alternative to matching or publishing a large series of per-hundred-weight rates. | Uncontested        |
| 18    | 55 | Dep. Tr. Hoppes | Pg 76 |      |     |                                                                                                                                                                                                                 | Uncontested        |
| 18    | 56 | Dep. Tr. Hoppes | Pg 77 |      |     | Hoppes told Dechter on more than one occasion that the full-container-load business belongs to Matson.                                                                                                          | Uncontested        |
| 18    | 57 | Dep. Tr. Hoppes | Pg 81 | 1997 |     | REDACTED                                                                                                                                                                                                        | Uncontested        |
| 18    | 58 | Dep. Tr. Hoppes | Pg 81 | 1997 |     |                                                                                                                                                                                                                 | Uncontested        |

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| 18    | 59 | Dep. Tr. Hoppes | Pg 82              |      |     | REDACTED          | Uncontested        |
| 18    | 60 | Dep. Tr. Hoppes | Pg 82              |      |     |                   | Uncontested        |
| 18    | 61 | Dep. Tr. Hoppes | Pg 82              |      |     |                   | Uncontested        |
| 18    | 62 | Dep. Tr. Hoppes | Pg 82              |      |     | REDACTED          | Uncontested        |
| 18    | 63 | Dep. Tr. Hoppes | Pg 82              |      |     |                   | Uncontested        |
| 18    | 64 | Dep. Tr. Hoppes | Pg 94, Lines 16-17 |      |     | REDACTED          | Uncontested        |
| 18    | 65 | Dep. Tr. Hoppes | Pg 94              |      |     | REDACTED REDACTED | Uncontested        |
| 18    | 66 | Dep. Tr. Hoppes | Pg 95 Lines 2-8    |      |     |                   | Uncontested        |

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| 18    | 67 | Dep. Tr.<br>Hoppes | Pg 96  |      |     | s,                                                                                                                                                                                                                  | Uncontested           |
| 18    | 68 | Dep. Tr.<br>Hoppes | Pg 96  | 1998 | 6   | By June of 1998, Hoppes went to work for Matson Logistics.                                                                                                                                                          | Uncontested           |
| 18    | 69 | Dep. Tr.<br>Hoppes | Pg 97  | 1998 | 2   | From February 1998 to 2002, Hoppes worked with Matson Logistics.                                                                                                                                                    | Uncontested           |
| 18    | 70 | Dep. Tr.<br>Hoppes | Pg 97  |      |     | Hoppes did not recall how often Deborah Kirker approached him for guidance during her preparation of the                                                                                                            | Uncontested           |
| 18    | 71 | Dep. Tr.<br>Hoppes | Pg 98  |      |     | REDACTED                                                                                                                                                                                                            | Uncontested           |
| 18    | 72 | Dep. Tr.<br>Hoppes | Pg 98  |      |     | REDACTED                                                                                                                                                                                                            | Uncontested           |
| 18    | 73 | Dep. Tr.<br>Hoppes | Pg 98  |      |     | REDACTED                                                                                                                                                                                                            | Uncontested           |
| 18    | 74 | Dep. Tr.<br>Hoppes | Pg 99  | 1997 |     | At the time of the 1997 FFWD Study, when Hoppes was guiding Deborah Kirker, he was generally aware of how Matson's services were pricing to FFWDs based on his familiarity with the FFWDs operations.               | Uncontested           |
| 18    | 75 | Dep. Tr.<br>Hoppes | Pg 99  |      |     | Hoppes based his beliefs on how the FFWDs worked on what he learned, mostly from Dechter, in his role as Southern California sales manager and then general sales manager.                                          | Uncontested           |
| 18    | 76 | Dep. Tr.<br>Hoppes | Pg 100 | 1997 |     | In general, it is part of a salesperson's job to know what is going on in their customer's business, and Matson salespeople generally have some knowledge of the mechanism their customers use to ship their cargo. | Uncontested           |
| 18    | 77 | Dep. Tr.<br>Hoppes | Pg 100 | 1997 |     | Customers would have to know where to look for rates and that information would come from the Matson salespeople.                                                                                                   | Uncontested           |

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| 18    | 78 | Dep. Tr. Hoppes | Pg 101 | 1997 |     |                                                                                                                                                                              | Uncontested        |
| 18    | 79 | Dep. Tr. Hoppes | Pg 102 |      |     | Exhibit MNC-#8 contained representative sample tariff pages from Matson tariff 2034-E which were acknowledged as such.                                                       | Uncontested        |
| 18    | 80 | Dep. Tr. Hoppes | Pg 102 |      |     | Exhibit MNC-#9 contained representative sample tariff pages from Matson tariff 14-F which were acknowledged as such.                                                         | Uncontested        |
| 18    | 81 | Dep. Tr. Hoppes | Pg 105 | 1998 |     | Hoppes claimed to have no knowledge regarding pricing activities or practices b/w March 1998 and March 2002.                                                                 | Uncontested        |
| 18    | 82 | Dep. Tr. Hoppes | Pg 105 | 1998 | 3   | After March of 1998, Hoppes was not involved in pricing and sales for Matson on the ocean vessel side until March of 2002.                                                   | Uncontested        |
| 18    | 83 | Dep. Tr. Hoppes | Pg 105 | 1998 |     | During the period 1998-2002, Hoppes claims to have no personal knowledge of pricing activities and practices.                                                                | Uncontested        |
| 18    | 84 | Dep. Tr. Hoppes | Pg 120 | 1990 |     | Under the 1990 version of the definition of "shipment" allowed you to load containers onto more than one vessel in a time period not to exceed five successive working days. | Uncontested        |
| 18    | 85 | Dep. Tr. Hoppes | Pg 120 | 1998 |     | Under the 1998 version of the definition of "shipment," all goods had to be tendered on the same vessel at the same time.                                                    | Uncontested        |
| 18    | 86 | Dep. Tr. Hoppes | Pg 123 | 1998 | 7   | Matson Exhibit 6 includes the rate filing for 798 CWT items.                                                                                                                 | Uncontested        |
| 18    | 87 | Dep. Tr. Hoppes | Pg 126 | 1998 |     | On July 23, Matson issued a tariff page which increased minimum overflow charges.                                                                                            | Uncontested        |
| 18    | 88 | Dep. Tr. Hoppes | Pg 130 |      |     | <b>REDACTED</b>                                                                                                                                                              | Uncontested        |

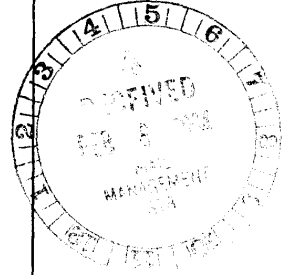
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| 18    | 89 | Dep. Tr. Hoppes | Pg 132 | 1994 | 4   | In April 1994, Hoppes moved to San Francisco.                                                                                                                                                                       | Uncontested        |
| 18    | 90 | Dep. Tr. Hoppes | Pg 133 |      |     |                                                                                                                                                                                                                     | Uncontested        |
| 18    | 91 | Dep. Tr. Hoppes | Pg 134 |      |     |                                                                                                                                                                                                                     | Uncontested        |
| 18    | 92 | Dep. Tr. Hoppes | Pg 136 |      |     |                                                                                                                                                                                                                     | Uncontested        |
| 18    | 93 | Dep. Tr. Hoppes |        |      |     |                                                                                                                                                                                                                     | Uncontested        |
|       |    |                 |        |      |     | <b>REDACTED</b>                                                                                                                                                                                                     |                    |
| 19    | 1  | Dep. Tr. Wilson | Pg 7   | 2003 |     | Wilson is the general manager for pricing at Matson.                                                                                                                                                                | Uncontested        |
| 19    | 2  | Dep. Tr. Wilson | Pg 11  | 2003 |     | Deborah Kirker is in the sales department located at 333 Market Street.                                                                                                                                             | Uncontested        |
| 19    | 3  | Dep. Tr. Wilson | Pg 8   |      |     | Matson is a vessel operating common carrier providing primarily transportation b/w the Pacific Coast of the United States and Hawaii, Guam and other islands. They are a domestic offshore transportation provider. | Uncontested        |
| 19    | 4  | Dep. Tr. Wilson | Pg 9   | 2003 |     | As general manager, Wilson's primary duties and responsibilities are: to review and enhance the company's overall revenues; to negotiate freight rates and to ensure regulatory compliance.                         | Uncontested        |

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| 19    | 5  | Dep. Tr. Wilson, Ex. MNC-#4 | Pg 11 | 2003   |     | Deborah Kirker is a sales support person who makes reports of activities and gives those reports to the personnel within the company.             | Uncontested        |
| 19    | 6  | Dep. Tr. Wilson, Ex. MNC-#4 | Pg 14 | 1998   | 6   | In June 1998, Wilson prepared a memo to Paul Stevens regarding the 1997 FFWDR Study.                                                              | Uncontested        |
| 19    | 7  | Dep. Tr. Wilson, Ex. MNC-#3 | Pg 14 | 1998   | 6   | Paul Stevens gave a presentation to Matson's board of directors or Paul Steven's management (the president of Matson).                            | Uncontested        |
| 19    | 8  | Dep. Tr. Wilson, Ex. MNC-#4 | Pg 17 | 1997   |     | The 1997 FFWDR Study was a compilation of data.                                                                                                   | Uncontested        |
| 19    | 9  | Dep. Tr. Wilson, Ex. MNC-#4 | Pg 17 | 1998   | 6   | The June 16 memo contained recommendations to management concerning what actions Matson might take based on the findings in the 1997 FFWDR Study. | Uncontested        |
| 19    | 10 | Dep. Tr. Wilson             | Pg 18 | 1990's |     | <div style="text-align: center;"> <div>REDACTED</div> <div>REDACTED</div> </div>                                                                  | Uncontested        |
| 19    | 11 | Dep. Tr. Wilson             | Pg 19 |        |     |                                                                                                                                                   | Uncontested        |
| 19    | 12 | Dep. Tr. Wilson             | Pg 22 | 1997   | 6   |                                                                                                                                                   | Uncontested        |
| 19    | 13 | Dep. Tr. Wilson             | Pg 25 | 1997   | 6   |                                                                                                                                                   | Uncontested        |

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| 19    | 14 | Dep. Tr. Wilson | Pg 28 |      |     | The term "straight load business" is also referred to as "beneficial cargo interest." Also, the terms "proprietary shipper," "beneficial cargo owner," and "ownership of cargo" all refer to cargo owned by the shipper.                                                                                                            | Uncontested        |
| 19    | 15 | Dep. Tr. Wilson | Pg 27 | 1997 |     | <b>REDACTED</b>                                                                                                                                                                                                                                                                                                                     | Uncontested        |
| 19    | 16 | Dep. Tr. Wilson | Pg 28 |      |     | Matson referred to the use of "note kits" in their tariffs as manipulation of the tariffs although such use was legal under the tariffs as written at that time.                                                                                                                                                                    | Uncontested        |
| 19    | 17 | Dep. Tr. Wilson | Pg 29 |      |     | Due to the use of note kits, cargos were shipped at significantly lower revenues than Matson intended to offer.                                                                                                                                                                                                                     | Uncontested        |
| 19    | 18 | Dep. Tr. Wilson | Pg 29 |      |     | Wilson used the term "anomaly" to mean the legal use of "note kits" and the use of Matson's then current definition of shipment.                                                                                                                                                                                                    | Uncontested        |
| 19    | 19 | Dep. Tr. Wilson | Pg 29 |      |     | By the mid 1990's, the FFWDs were using the overflow provisions in the tariff such that they were discount containers for the FFWDs.                                                                                                                                                                                                | Uncontested        |
| 19    | 20 | Dep. Tr. Wilson | Pg 32 |      |     | The overflow rates in Tariff 2016-D were identical to those in Tariff 14-F.                                                                                                                                                                                                                                                         | Uncontested        |
| 19    | 21 | Dep. Tr. Wilson | Pg 32 |      |     | Tariff 14 sets forth container yard to container yard rates. Tariff 2016 publishes store door to seaside rates. The rates and charges are identical in almost all instances - the only difference would be that cargo moving under 2016 includes drayage within the metropolitan area or Seattle, Portland, Oakland or Los Angeles. | Uncontested        |
| 19    | 22 | Dep. Tr. Wilson | Pg 39 |      |     | When Matson did general rate increases they did not apply to every number in the tariffs. For instance, wharfage charges and trucker charges would not be included in rate increases.                                                                                                                                               | Uncontested        |

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| 19    | 23 | Dep. Tr. Wilson | Pg 45 |      |     | In Matson's tariff 2034-E, retail and general merchandising pages, on the third line down Matson lists proportional rates. These proportional rates are container yard to container yard rates because they intentionally do not contain any route information as these proportional rates do not involve any motor carrier." | Uncontested        |
| 19    | 24 | Dep. Tr. Wilson | Pg 48 |      |     | Wharfage charges that are separately stated in Tariff 14 but are included in the freight rate for Tariff 2034 cargos are wharfage charges imposed by the port authorities.                                                                                                                                                    | Uncontested        |
| 19    | 25 | Dep. Tr. Wilson | Pg 48 |      |     | Wharfage is a charge for use of the facilities.                                                                                                                                                                                                                                                                               | Uncontested        |
| 19    | 26 | Dep. Tr. Wilson | Pg 49 |      |     | Wharfage is a charge imposed by the entity which owns or controls the port and traditionally has been a charge for the use of the port facilities.                                                                                                                                                                            | Uncontested        |
| 19    | 27 | Dep. Tr. Wilson | Pg 52 |      |     | Matson is and holds itself out to the public as a common carrier.                                                                                                                                                                                                                                                             | Uncontested        |
| 19    | 28 | Dep. Tr. Wilson | Pg 52 |      |     | The notes/rates in item 7000 are origin restrictions and were published at and for the benefit of various freight forwarders using Matson's service and the street addresses of the requesting forwarders and those items are restricted to those customers.                                                                  | Uncontested        |
| 19    | 29 | Dep. Tr. Wilson | Pg 53 |      |     | Matson regularly restricts rates to particular street addresses and particular shippers in order to reflect the arrangement they have with particular customers.                                                                                                                                                              | Uncontested        |
| 19    | 30 | Dep. Tr. Wilson | Pg 53 |      |     | Publishing specific shipper rates was a means for Matson to publish a more favorable rate for a particular shipper or group of shippers as compared to the open tariff rate.                                                                                                                                                  | Uncontested        |
| 19    | 31 | Dep. Tr. Wilson | Pg 56 |      |     | <b>REDACTED</b>                                                                                                                                                                                                                                                                                                               | Uncontested        |

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| 19    | 32 | Dep. Tr. Wilson | Pg 57              | 1998 | 6   | <b>REDACTED</b>                                                                                                                                                                                                                                                                                                               | Uncontested        |
| 19    | 33 | Dep. Tr. Wilson | Pg 57              |      |     |                                                                                                                                                                                                                                                                                                                               | Uncontested        |
| 19    | 34 | Dep. Tr. Wilson | Pg 58              | 1998 | 7   |                                                                                                                                                                                                                                                                                                                               | Uncontested        |
| 19    | 35 | Dep. Tr. Wilson | Pg 58              | 1998 | 7   | Around the same time Matson put its tariff changes into place, SLS posted comparable amendments.                                                                                                                                                                                                                              | Uncontested        |
| 19    | 36 | Dep. Tr. Wilson | Pg 62              |      |     | <b>REDACTED</b>                                                                                                                                                                                                                                                                                                               | Uncontested        |
| 19    | 37 | Dep. Tr. Wilson | Pg 63              | 1997 | 3   |                                                                                                                                                                                                                                                                                                                               | Uncontested        |
| 19    | 38 | Dep. Tr. Wilson | Pg 63              |      |     | Matsons goal was to remove the mechanisms which they had created in the tariffs to restore the historical position where Matson was competitive with freight forwarders for full-load business.                                                                                                                               | Uncontested        |
| 19    | 39 | Dep. Tr. Wilson | Pg 63, lines 16-20 |      |     | Wilson, in response to the Study Goal "to recapture control of the business" explained that "What our goal was is to remove the mechanism - the mechanisms which we had created in the tariff so that we would restore the historical position where we would be competitive with freight forwarders for full-load business." | Uncontested        |



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| 19    | 40 | Dep. Tr. Wilson | Pg 64, lines 7-14  |      |     | Wilson, in response to being asked to further explain what he meant stated that Matson was 'attempting to strike a balance here between ... really recapturing control of our own business, but, you know, we want the freight forwarders to remain in business. They perform a very viable and important role in this trade. We, neither Matson, nor its competitor, Horizon Lines, consolidate LCL cargo, so we were attempting to strike a balance here.' | Uncontested        |
| 19    | 41 | Dep. Tr. Wilson | Pg 64, lines 16-25 |      |     | Wilson then confirmed what he was really stating was that Matson was really trying to do was "regain control over your own pricing."                                                                                                                                                                                                                                                                                                                         | Uncontested        |
| 19    | 42 | Dep. Tr. Wilson | Pg 65, lines 2-5   |      |     | Wilson further stated that Matson had lost full containerload business to forwarders because the forwarders were shipping FCL cargoes with Matson "at significantly less than the cost that we published for the same items."                                                                                                                                                                                                                                | Uncontested        |
| 19    | 43 | Dep. Tr. Wilson | Pg 64              | 1997 |     | In making the 1997/1998 changes, Matson was trying to recapture the pricing control of its own business. Neither Matson nor Horizon Lines consolidates LCL cargo so they were trying to strike a balance by restricting the FFWDs to this part of the business.                                                                                                                                                                                              | Uncontested        |
| 19    | 44 | Dep. Tr. Wilson | Pg 65              | 1997 |     | Over time, Matson realized that they lost full load business to freight forwarders because the FFWDs were shipping cargoes with Matson at significantly less than the cost that we published for those same items.                                                                                                                                                                                                                                           | Uncontested        |
| 19    | 45 | Dep. Tr. Wilson | Pg 65              |      |     | Matson defined "contraband cargo" as cargo not specifically listed in the commodity description which may be included in shipments moving under a published item number.                                                                                                                                                                                                                                                                                     | Uncontested        |
| 19    | 46 | Dep. Tr. Wilson | Pg 68              |      |     | Wilson's pricing department prepared all draft tariff pages.                                                                                                                                                                                                                                                                                                                                                                                                 | Uncontested        |
| 19    | 47 | Dep. Tr. Wilson | Pg 71              |      |     | <b>REDACTED</b>                                                                                                                                                                                                                                                                                                                                                                                                                                              | Uncontested        |

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| 19    | 48 | Dep. Tr. Wilson | Pg 72    |      |     |                                                                                                                                                                                                                                                  | Uncontested        |
| 19    | 49 | Dep. Tr. Wilson | Pg 73    |      |     | REDACTED                                                                                                                                                                                                                                         | Uncontested        |
| 19    | 50 | Dep. Tr. Wilson | Pg 74    | 1887 |     |                                                                                                                                                                                                                                                  | Uncontested        |
| 19    | 51 | Dep. Tr. Wilson | Pg 80    | 1999 | 2   |                                                                                                                                                                                                                                                  | Uncontested        |
| 19    | 52 | Dep. Tr. Wilson | Pg 81    | 1999 | 10  | REDACTED                                                                                                                                                                                                                                         | Uncontested        |
| 19    | 53 | Dep. Tr. Wilson | Pg 85    |      |     |                                                                                                                                                                                                                                                  | Uncontested        |
| 19    | 54 | Dep. Tr. Wilson | Pg 86    |      |     | REDACTED                                                                                                                                                                                                                                         | Uncontested        |
| 19    | 55 | Dep. Tr. Wilson | Pg 86    |      |     |                                                                                                                                                                                                                                                  | Uncontested        |
| 19    | 56 | Dep. Tr. Wilson | Pg 86-87 |      |     | Shippers contacted Matson and proposed that the shippers would provide more cargoes if Matson would lower its rates.                                                                                                                             | Uncontested        |
| 19    | 57 | Dep. Tr. Wilson | Pg 87    |      |     | Large customers use volume to negotiate lower rates with Matson. They do so by offering to move volume from a competitor to Matson in exchange for a reduced rate.                                                                               | Uncontested        |
| 19    | 58 | Dep. Tr. Wilson | Pg 88    |      |     | Large shippers sent Matson "requests for proposals" which ask the carriers to offer rates for a certain period of time. This is called Bid Cargo - customers tell the carrier "we will increase your carriage in return for lower freight rate." | Uncontested        |

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| 19    | 59 | Dep. Tr. Wilson          | Pg 88 |      |     | When Matson receives a request for proposal, they refer to this cargo as "bid cargo"                                                                   | Uncontested        |
| 19    | 60 | Dep. Tr. Wilson          | Pg 88 |      |     | When carriers respond to requests for proposals with pricing concessions, they will often include a reciprocal commitment such as a volume commitment. | Uncontested        |
| 19    | 61 | Dep. Tr. Wilson          | Pg 89 |      |     |                                                                                                                                                        | Uncontested        |
| 19    | 62 | Dep. Tr. Wilson          | Pg 90 |      |     |                                                                                                                                                        | Uncontested        |
| 19    | 63 | Dep. Tr. Wilson          | Pg 90 |      |     | REDACTED                                                                                                                                               | Uncontested        |
| 19    | 64 | Dep. Tr. Wilson          | Pg 91 |      |     |                                                                                                                                                        | Uncontested        |
| 19    | 65 | Dep. Tr. Wilson          | Pg 91 |      |     |                                                                                                                                                        | Uncontested        |
| 19    | 66 | Dep. Tr. Wilson, MNC-#16 | Pg 91 |      |     | REDACTED                                                                                                                                               | Uncontested        |
| 19    | 67 | Dep. Tr. Wilson, MNC-#16 | Pg 91 |      |     |                                                                                                                                                        | Uncontested        |
| 19    | 68 | Dep. Tr. Wilson, MNC-#16 | Pg 92 |      |     |                                                                                                                                                        | Uncontested        |
| 19    | 69 | Dep. Tr. Wilson, MNC-#16 | Pg 92 |      |     |                                                                                                                                                        | Uncontested        |

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| 19    | 70 | Dep. Tr. Wilson, MNC-#16 | Pg 93    |      |     | <b>REDACTED</b> | Uncontested        |
| 19    | 71 | Dep. Tr. Wilson          | Pg 93    |      |     |                 | Uncontested        |
| 19    | 72 | Dep. Tr. Wilson          | Pg 93    |      |     |                 | Uncontested        |
| 19    | 73 | Dep. Tr. Wilson, MNC-#16 | Pg 93    |      |     |                 | Uncontested        |
| 19    | 74 | Dep. Tr. Wilson, MNC-#16 | Pg 94    |      |     |                 | Uncontested        |
| 19    | 75 | Dep. Tr. Wilson, MNC-#16 | Pg 94    |      |     |                 | Uncontested        |
| 19    | 76 | Dep. Tr. Wilson, MNC-#16 | Pg 94-96 |      |     |                 | Uncontested        |
| 19    | 77 | Dep. Tr. Wilson, MNC-#16 | Pg 96    |      |     |                 | Uncontested        |
| 19    | 78 | Dep. Tr. Wilson, MNC-#16 | Pg 96    |      |     |                 | Uncontested        |

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| 19    | 79 | Dep. Tr. Wilson, MNC-#16 | Pg 97  |      |     | <b>REDACTED</b> | Uncontested        |
| 19    | 80 | Dep. Tr. Wilson, MNC-#16 | Pg 97  | 2001 | 12  |                 | Uncontested        |
| 19    | 81 | Dep. Tr. Wilson, MNC-#16 | Pg 97  | 2001 | 12  |                 | Uncontested        |
| 19    | 82 | Dep. Tr. Wilson, MNC-#16 | Pg 97  |      |     |                 | Uncontested        |
| 19    | 83 | Dep. Tr. Wilson, MNC-#16 | Pg 98  |      |     |                 | Uncontested        |
| 19    | 84 | Dep. Tr. Wilson, MNC-#16 | Pg 98  |      |     |                 | Uncontested        |
| 19    | 85 | Dep. Tr. Wilson          | Pg 100 |      |     |                 | Uncontested        |
| 19    | 86 | Dep. Tr. Wilson          | Pg 101 |      |     |                 | Uncontested        |
| 19    | 87 | Dep. Tr. Wilson          | Pg 102 |      |     | <b>REDACTED</b> | Uncontested        |

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| 19    | 88 | Dep. Tr. Wilson | Pg 109              |      |     | When Matson publishes a rate using a shipper name (eg, Fleming Foods), the rate item would consist of "articles that would appear in a grocery store where Flemming was the shipper and consignee." | Uncontested        |
| 19    | 89 | Dep. Tr. Wilson | Pg 110              |      |     | REDACTED                                                                                                                                                                                            | Uncontested        |
| 19    | 90 | Dep. Tr. Wilson | Pg 110              |      |     |                                                                                                                                                                                                     | Uncontested        |
| 19    | 91 | Dep. Tr. Wilson | Pg 111              |      |     |                                                                                                                                                                                                     | Uncontested        |
| 19    | 92 | Dep. Tr. Wilson | Pg 111-112          |      |     |                                                                                                                                                                                                     | Uncontested        |
| 19    | 93 | Dep. Tr. Wilson | Pg 115              |      |     | The motor rates in the 2000 or 3000 series in Tariff 2034 included drayage factors.                                                                                                                 | Uncontested        |
| 19    | 94 | Dep. Tr. Wilson | Pg 117              |      |     | REDACTED                                                                                                                                                                                            | Uncontested        |
| 19    | 95 | Dep. Tr. Wilson | Pg 118, lines 10-18 |      |     |                                                                                                                                                                                                     | Uncontested        |
| 19    | 96 | Dep. Tr. Wilson | Pg 118              |      |     |                                                                                                                                                                                                     | Uncontested        |
| 19    | 97 | Dep. Tr. Wilson | Pg 121              |      |     | REDACTED                                                                                                                                                                                            | Uncontested        |
|       |    |                 |                     |      |     |                                                                                                                                                                                                     |                    |

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| 19    | 98  | Dep. Tr. Wilson  | Pg 121             |      |     | <b>REDACTED</b>                                                                                                                                                                                                                  | Uncontested        |
| 19    | 99  | Dep. Tr. Wilson  | Pg 121, lines 7-23 |      |     |                                                                                                                                                                                                                                  | Uncontested        |
| 19    | 100 | Dep. Tr. Wilson  | Pg 122             |      |     | <b>REDACTED</b>                                                                                                                                                                                                                  | Uncontested        |
| 19    | 101 | Dep. Tr. Wilson  | Pg 123             |      |     | The effect of Matsons restrictive rates is that anyone who is not at either the street address or is not the particular shipper is precluded from using the freight item.                                                        | Uncontested        |
| 20    | 1   | Dep. Tr. Stevens | Pg 9               |      |     | Matson is an ocean transportation company primarily involved in the trade between the west coast of the United States and Hawaii.                                                                                                | Uncontested        |
| 20    | 2   | Dep. Tr. Stevens | Pg 10              |      |     | Paul Stevens was executive vice president and responsible for ocean services division including sales, pricing, and marketing fleet schedules.                                                                                   | Uncontested        |
| 20    | 3   | Dep. Tr. Stevens | Pg 10              |      |     | As executive Vice President, Stevens is primarily responsible for the ocean services division - the Matson intermodal division including sales, pricing, marketing, public relations, container operations and fleet scheduling. | Uncontested        |
| 20    | 4   | Dep. Tr. Stevens | Pg 21              |      |     | Pricing means looking at the customer, looking at the commodity, looking at the service requirements and then pricing the business.                                                                                              | Uncontested        |
| 20    | 5   | Dep. Tr. Stevens | Pg 22              |      |     | Matson pricing function included consideration of SLS' prices.                                                                                                                                                                   | Uncontested        |
| 20    | 6   | Dep. Tr. Stevens | Pg 22              | 1990 |     | In 1990, SLS was Matson's predominant competitor in the US-Hawaii trade.                                                                                                                                                         | Uncontested        |

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| 20    | 7  | Dep. Tr. Stevens               | Pg 22              |           |     | In pricing, Stevens would take into consideration SLS' prices. They were a dominant consideration in setting a price. | Uncontested        |
| 20    | 8  | Dep. Tr. Stevens, MNC-Ex. #2   | Pg 24              |           |     | REDACTED                                                                                                              | Uncontested        |
| 20    | 9  | Dep. Tr. Stevens, MNC-Ex. #3   | Pg 25              |           |     |                                                                                                                       | Uncontested        |
| 20    | 10 | Dep. Tr. Stevens, MNC-Ex. #3&4 | Pg 25              | 1997      |     |                                                                                                                       | Uncontested        |
| 20    | 11 | Dep. Tr. Stevens, MNC-Ex. #3&4 | Pg 25              | 1997      |     | REDACTED                                                                                                              | Uncontested        |
| 20    | 12 | Dep. Tr. Stevens               | Pg 26              |           |     |                                                                                                                       | Uncontested        |
| 20    | 13 | Dep. Tr. Stevens               | Pg 26              | 1995-1997 |     |                                                                                                                       | Uncontested        |
| 20    | 14 | Dep. Tr. Stevens               | Pg 27, lines 18-24 |           |     | REDACTED                                                                                                              | Uncontested        |
| 20    | 15 | Dep. Tr. Stevens               | Pg 27              | 1997      |     |                                                                                                                       | Uncontested        |

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| 20    | 16 | Dep. Tr. Stevens | Pg 27                   |      |     | <b>REDACTED</b> | Uncontested        |
| 20    | 17 | Dep. Tr. Stevens | Pg 27-28, lines 25, 1-2 |      |     |                 | Uncontested        |
| 20    | 18 | Dep. Tr. Stevens | Pg 27-28                |      |     |                 | Uncontested        |
| 20    | 19 | Dep. Tr. Stevens | Pg 28, lines 11-12      |      |     |                 | Uncontested        |
| 20    | 20 | Dep. Tr. Stevens | Pg 28                   |      |     |                 | Uncontested        |
| 20    | 21 | Dep. Tr. Stevens | Pg 28, lines 20-24      |      |     |                 | Uncontested        |
| 20    | 22 | Dep. Tr. Stevens | Pg 28-29, lines 25, 1-2 |      |     |                 | Uncontested        |
| 20    | 23 | Dep. Tr. Stevens | Pg 29, lines 6-12       |      |     |                 | Uncontested        |
| 20    | 24 | Dep. Tr. Stevens | Pg 28-29                |      |     |                 | Uncontested        |
| 20    | 25 | Dep. Tr. Stevens | Pg 29                   |      |     |                 | Uncontested        |

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| 20    | 26 | Dep. Tr. Stevens | Pg 30 |      |     | Matson sales personnel complained about FFWD rates.                                                                           | Uncontested        |
| 20    | 27 | Dep. Tr. Stevens | Pg 30 |      |     | Stevens learned from the general sales manager and other managers that sales personnel at Matson complained about FFWD rates. | Uncontested        |
| 20    | 28 | Dep. Tr. Stevens | Pg 32 |      |     | <b>REDACTED</b>                                                                                                               | Uncontested        |
| 20    | 29 | Dep. Tr. Stevens | Pg 33 |      |     |                                                                                                                               | Uncontested        |
| 20    | 30 | Dep. Tr. Stevens | Pg 35 |      |     |                                                                                                                               | Uncontested        |
| 20    | 31 | Dep. Tr. Stevens | Pg 36 |      |     |                                                                                                                               | Uncontested        |
| 20    | 32 | Dep. Tr. Stevens | Pg 39 |      |     | <b>REDACTED</b>                                                                                                               | Uncontested        |
| 20    | 33 | Dep. Tr. Stevens | Pg 43 |      |     |                                                                                                                               | Uncontested        |
| 20    | 34 | Dep. Tr. Stevens | Pg 43 |      |     |                                                                                                                               | Uncontested        |
| 20    | 35 | Dep. Tr. Stevens | Pg 43 |      |     |                                                                                                                               | Uncontested        |
| 20    | 36 | Dep. Tr. Stevens | Pg 46 |      |     | <b>REDACTED</b>                                                                                                               | Uncontested        |
|       |    |                  |       |      |     |                                                                                                                               | Uncontested        |

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| 20    | 37 | Dep. Tr. Stevens | Pg 46 |      |     | <p style="text-align: center;"><b>REDACTED</b></p> | Uncontested        |
| 20    | 38 | Dep. Tr. Stevens | Pg 47 |      |     |                                                    | Uncontested        |
| 20    | 39 | Dep. Tr. Stevens | Pg 49 |      |     |                                                    | Uncontested        |
| 20    | 40 | Dep. Tr. Stevens | Pg 49 |      |     |                                                    | Uncontested        |
| 20    | 41 | Dep. Tr. Stevens | Pg 49 |      |     |                                                    | Uncontested        |
| 20    | 42 | Dep. Tr. Stevens | Pg 50 |      |     |                                                    | Uncontested        |
| 20    | 43 | Dep. Tr. Stevens | Pg 50 |      |     |                                                    | Uncontested        |
| 20    | 44 | Dep. Tr. Stevens | Pg 50 |      |     |                                                    | Uncontested        |

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| 20    | 45 | Dep. Tr. Stevens | Pg 51             |      |     | <b>REDACTED</b>                                                                                                                                                                                                                                                                                                                                                                                              | Uncontested        |
| 20    | 46 | Dep. Tr. Stevens | Pg 51             |      |     |                                                                                                                                                                                                                                                                                                                                                                                                              | Uncontested        |
| 20    | 47 | Dep. Tr. Stevens | Pg 52             |      |     |                                                                                                                                                                                                                                                                                                                                                                                                              | Uncontested        |
| 20    | 48 | Dep. Tr. Stevens | Pg 52             |      |     |                                                                                                                                                                                                                                                                                                                                                                                                              | Uncontested        |
| 20    | 49 | Dep. Tr. Stevens | Pg 53             |      |     | The involved tariff rules had not been set up for use by FFWDers.                                                                                                                                                                                                                                                                                                                                            | Uncontested        |
| 20    | 50 | Dep. Tr. Stevens | Pg 62             |      |     | Matson engaged in tariff watching of SLS and SLS watches Matson tariffs.                                                                                                                                                                                                                                                                                                                                     | Uncontested        |
| 20    | 51 | Dep. Tr. Stevens | Pg 62             |      |     | SLS/CSX became aware of Matson's rates through it's tariff filings.                                                                                                                                                                                                                                                                                                                                          | Uncontested        |
| 20    | 52 | Dep. Tr. Stevens | Pg 66             |      |     | FFWDers are not limited to LCL business.                                                                                                                                                                                                                                                                                                                                                                     | Uncontested        |
| 20    | 53 | Dep. Tr. Stevens | Pg 66             |      |     | Stevens considered the FFWDers function in the Hawaii trade to be providing transportation services to shippers, LTL and FCL, receipt delivery, pickup and storage.                                                                                                                                                                                                                                          | Uncontested        |
| 20    | 54 | Dep. Tr. Stevens | Pg 67, lines 6-11 |      |     | Stevens stated his expectations of the results of Matson's implementation of the strategy from Scenario 1 of the June 16, 1998 Memorandum as follows: My expectation, other than, you know, that - the average unit price from the forwarders would increase, was that Matson Navigation Company sales reps would be in a better position to compete when customers gave up the freight for transportation." | Uncontested        |

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| 20    | 55 | Dep. Tr. Stevens | Pg 67, lines 12-15      |      |     | Stevens further acknowledged that a corollary to his expectations of greater revenue was that the ability of the forwarders to go after full containerload business would be decreased.                         | Uncontested        |
| 20    | 56 | Dep. Tr. Stevens | Pg 67-68, lines 25, 1-2 |      |     | Stevens also acknowledged that Matson's ability to capture cargo would also be enhanced.                                                                                                                        | Uncontested        |
| 20    | 57 | Dep. Tr. Stevens | Pg 67                   |      |     | Stevens expected that the average unit price from the FFWDs would increase and that Matson would be in a better position to compete when customers gave up their freight for transportation.                    | Uncontested        |
| 20    | 58 | Dep. Tr. Stevens | Pg 69                   |      |     | Matson publishes rates with shipper names to capture the business.                                                                                                                                              | Uncontested        |
| 20    | 59 | Dep. Tr. Stevens | Pg 70                   |      |     | "The practice of Matson is to restrict access to the rate to that specific customer because we only want that customer to have that rate."                                                                      | Uncontested        |
| 20    | 60 | Dep. Tr. Stevens | Pg 70                   |      |     | Anyone shipping a commodity that could be construed as Campbell's foodstuffs could not use the Campbell's rate item.                                                                                            | Uncontested        |
| 20    | 61 | Dep. Tr. Stevens | Pg 70                   |      |     | The Campbell's rate item was published for Campbell's at a certain facility. Matson moves Campbell's soup through a Safeway facility and they have a Safeway rate because that satisfies a particular customer. | Uncontested        |
| 20    | 62 | Dep. Tr. Stevens | Pg 70                   |      |     | When Matson publishes such an item it's for a specific customer.                                                                                                                                                | Uncontested        |
| 20    | 63 | Dep. Tr. Stevens | Pg 71, lines 1-6        |      |     | <b>REDACTED</b>                                                                                                                                                                                                 | Uncontested        |
| 20    | 64 | Dep. Tr. Stevens | Pg 71                   |      |     |                                                                                                                                                                                                                 | Uncontested        |

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| 20    | 65 | Dep. Tr. Stevens | Pg 71, lines 13-21 |      |     | REDACTED                                                                                                                                                         | Uncontested        |
| 20    | 66 | Dep. Tr. Stevens | Pg 72              |      |     |                                                                                                                                                                  | Uncontested        |
| 20    | 67 | Dep. Tr. Stevens | Pg 73              |      |     |                                                                                                                                                                  | Uncontested        |
| 20    | 68 | Dep. Tr. Stevens | Pg 76              |      |     | Matson' employs the Carriage of Goods by Sea Act for cargo liability. They provide \$1,000 per package. The limit for liability under CGSA is \$500 per package. | Uncontested        |
| 20    | 69 | Dep. Tr. Stevens | Pg 77              |      |     | The Matson (overflow) rules being used by FFWDs were established for single commodity shippers.                                                                  | Uncontested        |
| 20    | 70 | Dep. Tr. Stevens | Pg 78              |      |     | The Note Kits were not restricted so they were being used by FFWDs even though they were not intended for use by the FFWDs.                                      | Uncontested        |
| 20    | 71 | Dep. Tr. Stevens | Pg 79              |      |     | Stevens was presented Matson Ex. #2.                                                                                                                             | Uncontested        |
| 20    | 72 | Dep. Tr. Stevens | Pg 80              |      |     |                                                                                                                                                                  | Uncontested        |
| 20    | 73 | Dep. Tr. Stevens | Pg 80              |      |     | REDACTED                                                                                                                                                         | Uncontested        |
| 20    | 74 | Dep. Tr. Stevens | Pg 81              |      |     |                                                                                                                                                                  | Uncontested        |

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| 20    | 75 | Dep. Tr. Stevens | Pg 84                            |      |     | A shipper's agreement to tender a certain amount/volume of cargo over a fixed period of time would result in Matson affording that shipper a more favorable rate than what might ordinarily be available from Matson's tariff. | Uncontested        |
| 20    | 76 | Dep. Tr. Stevens | Pg 86                            |      |     | REDACTED                                                                                                                                                                                                                       | Uncontested        |
| 20    | 77 | Dep. Tr. Stevens | Pg 84-85, lines 21-25, lines 1-2 |      |     |                                                                                                                                                                                                                                | Uncontested        |
| 20    | 78 | Dep. Tr. Stevens | Pg 89                            |      |     |                                                                                                                                                                                                                                | Uncontested        |
| 20    | 79 | Dep. Tr. Stevens | Pg 91                            |      |     | REDACTED                                                                                                                                                                                                                       | Uncontested        |
| 20    | 80 | Dep. Tr. Stevens | Pg 91                            | 1997 |     |                                                                                                                                                                                                                                | Uncontested        |
| 20    | 81 | Dep. Tr. Stevens | Pg 92                            | 1997 | 12  |                                                                                                                                                                                                                                | Uncontested        |
| 20    | 82 | Dep. Tr. Stevens | Pg 92                            |      |     | REDACTED                                                                                                                                                                                                                       | Uncontested        |
| 20    | 83 | Dep. Tr. Stevens | Pg 92                            |      |     |                                                                                                                                                                                                                                | Uncontested        |
| 20    | 84 | Dep. Tr. Stevens | Pg 93                            |      |     |                                                                                                                                                                                                                                | Uncontested        |
| 20    | 85 | Dep. Tr. Stevens | Pg 93                            |      |     |                                                                                                                                                                                                                                | Uncontested        |

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| 20    | 86 | Dep. Tr. Stevens | Pg 93               |      |     | REDACTED | Uncontested        |
| 20    | 87 | Dep. Tr. Stevens | Pg 94               |      |     |          | Uncontested        |
| 20    | 88 | Dep. Tr. Stevens | Pg 94               |      |     |          | Uncontested        |
| 20    | 89 | Dep. Tr. Stevens | Pg 95               |      |     |          | Uncontested        |
| 20    | 90 | Dep. Tr. Stevens | Pg 96               |      |     |          | Uncontested        |
| 20    | 91 | Dep. Tr. Stevens | Pg 103              | 2001 | 7   |          | Uncontested        |
| 20    | 92 | Dep. Tr. Stevens | Pg 103              | 2001 |     |          | Uncontested        |
| 20    | 93 | Dep. Tr. Stevens | Pg 110              |      |     | REDACTED | Uncontested        |
| 20    | 94 | Dep. Tr. Stevens | Pg 126              |      |     |          | Uncontested        |
| 20    | 95 | Dep. Tr. Stevens | Pg 126 & 127        |      |     | REDACTED | Uncontested        |
| 20    | 96 | Dep. Tr. Stevens | Pg 137              |      |     |          | Uncontested        |
| 20    | 97 | Dep. Tr. Stevens | Pg 137, lines 11-16 |      |     |          | Uncontested        |
| 20    | 98 | Dep. Tr. Stevens | Pg 137              |      |     |          | Uncontested        |

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| 20    | 99  | Dep. Tr. Stevens | Pg 137 |           |     | REDACTED                                                                            | Uncontested        |
| 20    | 100 | Dep. Tr. Stevens | Pg 138 |           |     |                                                                                     | Uncontested        |
| 21    |     | Dep. Tr. Downes  |        |           |     |                                                                                     |                    |
| 21    | 1   | Dep. Tr. Downes  | Pg 1   | 2003      |     | Downes is the Director of Marketing for Horizon Lines, LLC's Hawaii - Guam Service. | Uncontested        |
| 21    | 2   | Dep. Tr. Downes  | Pg 21  | 1999-2002 |     |                                                                                     | Uncontested        |
| 21    | 3   | Dep. Tr. Downes  | Pg 21  | 1999      | 12  |                                                                                     | Uncontested        |
| 21    | 4   | Dep. Tr. Downes  | Pg 21  | 2003      |     |                                                                                     | Uncontested        |
| 21    | 5   | Dep. Tr. Downes  | Pg 22  | 2003      |     |                                                                                     | Uncontested        |
| 21    | 6   | Dep. Tr. Downes  | Pg 23  |           |     |                                                                                     | Uncontested        |
| 21    | 7   | Dep. Tr. Downes  | Pg 23  |           |     |                                                                                     | Uncontested        |
| 21    | 8   | Dep. Tr. Downes  | Pg 26  | 2003      | 5   |                                                                                     | Uncontested        |
| 21    | 9   | Dep. Tr. Downes  | Pg 39  |           |     |                                                                                     | Uncontested        |

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