

**Surface Transportation Board Denies "Sea-Land" & "Matson's" Motion to Dismiss Water-Carrier Rate Complaint Filed by "DHX," a Freight Forwarder**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has denied a motion filed by Sea-Land Service, Inc. (SL) and Matson Navigation Company, Inc. (Matson) to dismiss a complaint filed by DHX, Inc. (DHX) concerning the reasonableness of these water carriers' rates and practices in the "Hawaii trade."

DHX is a freight forwarder that operates in the noncontiguous domestic trade (water transportation between states, United States territories, or U.S. possessions that originates or terminates in Alaska, Hawaii, or a U.S. territory or possession). Before 1996, the Board's predecessor agency shared with the Federal Maritime Commission (FMC) regulatory jurisdiction over rates and practices in the noncontiguous domestic trade. In the ICC Termination Act of 1995 (ICCTA), Congress centralized jurisdiction over the noncontiguous domestic trade in a single agency, the Board. Among other things, the ICCTA established a "zone of reasonableness" (ZOR) which provided that annual rate increases of 7.5 percent or less by water carriers could not be found to be unreasonable.

DHX, which, as a freight forwarder, consolidates traffic for shippers and then tenders traffic to "vessel operating common carriers" such as SL and Matson, asked the Board to find that SL and Matson had acted unlawfully by imposing rate increases on certain shipping containers that amounted to more than 7.5 percent per year. SL and Matson moved to dismiss the complaint on the grounds that their rates increases were, in fact, within the ZOR, and that, in any event, DHX's complaint improperly assumed that annual rate increases of more than 7.5 percent are per se unlawful.

The Board found that the motions to dismiss had identified certain shortcomings in how DHX was trying to identify the rates at issue in its complaint. The Board also pointed out that DHX could not succeed in its complaint simply by showing that rate increases may have exceeded the ZOR. But, while noting that

"DHX has framed its case as principally a rate case," the Board concluded that "the gravamen of" the complaint appears to be "that Matson and SL have engaged in unreasonable practices in an effort to put consolidators such as DHX out of business. Although parties may not use the unreasonable practice provisions of the statute to bolster a weak rate case, . . . we cannot at this point say that DHX could not possibly prevail in an unreasonable practice complaint."

Therefore, the Board denied the motions to dismiss.

The Board issued its decision today in the case entitled *DHX, Inc. v. Matson Navigation Company and Sea-Land Service, Inc.*, STB Docket No. WC-105. **A printed copy of the decision is available for a fee by contacting Da-2-Da Legal, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776, or via [http://Da\\_To\\_Da@Hotmail.com](mailto:Da_To_Da@Hotmail.com).** The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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