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Before the
SURFACE TRANSPORTATION BOARD



_____)
DHX, Inc.)
)
Plaintiff,)
)
v.)
)
MATSON NAVIGATION COMPANY and)
SEA-LAND SERVICE, INC.,)
)
Defendants.)
_____)

Docket No. WCC-105

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Public Record

REPLY STATEMENT OF
HORIZON LINES, LLC.

VOLUME I
NARRATIVE STATEMENT

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January 9, 2004

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I. INTRODUCTION

This Reply Statement is filed by Horizon Lines, LLC. (formerly known as CSX Lines, and successor in interest to SL Service, and Sea-Land Service and referred to throughout as “Horizon” or “Horizon Lines”).

The ocean trade between the West Coast of the United States and Hawaii is a highly competitive commercial arena populated by two major water carriers, defendants Matson Navigation Company (“Matson”) and Horizon Lines, LLC (“Horizon”), as well as several large forwarders who are simultaneously the valued customers of the water carriers and, in certain circumstances, their competitors. Complainant DHX, Inc. (“DHX”) is a major forwarder in this trade and, as such, is a valued customer and significant competitor of the two defendant water carriers. DHX has developed very particular (and, in Horizon’s view, very peculiar) ideas of how the defendant carriers should conduct themselves vis-à-vis DHX. Although DHX’s patronage is sought after and contended for by defendant carriers, each has been, in DHX’s view, inexcusably slow to apprehend the commercial wisdom of acceding to DHX’s insistent demands for rate concessions that would enable DHX to secure for its own account full containerload (“FCL”) cargo currently being carried by the ocean carriers and competing freight forwarders. DHX has brought this formal adversarial action to enlist the Board’s aid in forcing the carriers to conform to DHX’s views. DHX also asks that the Board order defendants to pay substantial sums of money to DHX for economic injuries allegedly incurred as a result of Matson’s and Horizon’s unreasonable and unlawful practices.

The disagreements between the parties, and now placed between the Board, define a clash of pre-ICCTA and post-ICCTA commercial and regulatory worldviews.¹ DHX's complaints, although stated so variously in so many portions of its materials as to defy ready categorization, appear to boil down to a two primary theories:

- that defendants have unlawfully interfered with DHX's ability to expand its FCL business by allegedly adjusting tariff structures to diminish DHX's returns on FCL cargo;
- that other forwarders and shippers have succeeded in obtaining tariff rates or service concessions (some through agreements with the carriers) that are more favorable than those enjoyed by DHX.

Of course, there is much more to DHX's submissions to the Board than these two items and it is not Horizon's purpose to ignore or minimize the fact that DHX has set forth many perceived grievances and is seeking to extract millions of dollars from defendants at the conclusion of this proceeding. However, the two points isolated above are repeated themes in the cacophony of charges and imprecations contained in the DHX filings.

Horizon defends by stating that all of its actions in relation to DHX (and, for that matter, other shippers and forwarders in the trade) have been based on Horizon's best commercial judgment of how to sustain quality common carrier, vessel operating transportation between the mainland United States and Hawaii in a manner that is fair and reasonable to all the participants in this trade. Further, Horizon argues that the existing regulatory regime expressly grants water carriers substantial discretion to tailor rate and service offerings to disparate customer needs and requirements, to act aggressively to protect and gain market share, and, to be quite direct about it, to say "No" to customers when they seek concessions that do not appear to be in the best

¹ In this document, the ICC Termination Act of 1995 (Pub. L. 104-88, 109 Stat. 803 (1995)) is referred to as "ICCTA."

interests of the carrier or the trade. For example, Horizon is confident that the applicable regulatory regime permits rejection of DHX demands that Horizon permit it access to rates that would enable it to secure FCL cargo currently carried by Horizon and then tender the same cargo to Horizon (or, worse yet, to Matson) at lower revenues than Horizon could have achieved had the cargo moved directly with the water carriers. Horizon regards the post-ICCTA regulatory regime as permitting confidential agreements with shippers (49 U.S.C. § 14101(b)) and rates that “vary with the volume of cargo offered over a specified period of time.” 49 U.S.C. § 13702(b)(4).

In this response to DHX’s initial submissions, Horizon will contend that all of its actions in the U.S. West Coast /Hawaii trade adverted to by DHX are well within the freedoms permitted water carriers under ICCTA, and that all of its actions were based on sound commercial judgments that do not trespass on any statutory or regulatory proscriptions. Horizon will show that DHX has not backed its claims with either evidence supporting its factual contentions or cogent statements of legal principles that provide clear guidance for regulated carriers. Horizon will also show that the evidence that is available in this record undermines or flatly contradicts DHX’s factual contentions and that the Board can only conclude that the trade is much the same today as it was at the beginning of the limitations period for this suit.² DHX continues to be a substantial and prosperous forwarder in the trade, competitive conditions are vibrant and demanding, the two defendant water carriers are engage in daily competition not only with each other, but with forwarders seeking to make inroads into the FCL market, and forwarders continue

² The initial DHX complaint was filed in October, 1999. Pursuant to an Order of the Board (an Order which described elements of the original complaint as “fundamentally flawed,”) an amended (and substantially expanded) complaint was filed on 29 April 2002. To the extent DHX seeks findings of violations and/or damages for matters traceable to the amended complaint, the two-year limitations period of 49 U.S.C. § 14705(c) confines the period in review in this proceeding to that period following 29 April 2000.

to compete with one another for both LCL and FCL business. There is no contemporaneous evidence in this record that conclusively establishes the “loss” of a DHX FCL customer or links that alleged loss to a particular rate action or practice of either carrier. In fact, there is direct evidence that many of the FCL accounts alleged by DHX to have been casualties of its feuds with the ocean carriers remain active accounts with DHX. DHX has not accounted for internal competition within the forwarding sector (*i.e.*, the competitive impacts of account migration from forwarder to forwarder) and it has not quantified the general impact of external economic forces on overall trade volumes.

Given that this case is a relatively early proceeding under the Board’s regulation of water carriers serving the offshore common carrier trades of the United States, Horizon trusts that DHX’s approach will not be disposed of in a manner that will encourage emulation by others. This proceeding has been hugely expensive to litigate, an expense derived in substantial measure by the wide range and inchoate nature of DHX complaints and charges. To prevent future debacles of this nature, it is essential that the disposition of this matter either confirm the degree to which the ICCTA permits the flexibility of commercial action that the water carriers have exercised in their approaches to the Hawaii trade or that future plaintiffs discern the extent to which the processes of the Board are accessible to use as a sounding board for nostalgic notions of mechanical equality of treatment in a competitive market.

II. PROCEDURAL HISTORY OF THIS PROCEEDING

A. THE ORIGINAL COMPLAINT

On October 13, 1999, DHX filed its original Complaint against Matson and Horizon. The original Complaint was modest and primarily directed at certain carrier rates, the so-called

“overflow rates” charged by Matson and Horizon. The Board, in its December 21, 2001 Order (discussed *infra* in Section B) described the tariff situation at issue succinctly:

Defendants maintain certain tariffs for the ocean transportation of weight-rated, dry commodities shipped in containers. When a single (“stand-alone”) container is shipped under these tariffs, charges are assessed on the basis of the per-100-pound rate for the commodity, subject to a minimum weight requirement that varies depending on the size of the container. The effect of the minimum weight provision, standing alone, is that shippers whose freight does not meet the minimum weight specified in the tariff would, in effect, pay a rate that is higher than the per-100-pound rate established in the tariff for their commodity.

These tariffs, however, also contain special rules for so-called “overflow” containers. A partially filled container is deemed an overflow container if it is shipped by the same shipper, on the same vessel/voyage, as a full container (now called a “lead” container). The charge for the overflow container is likewise determined by applying the per-100-pound rate listed in the tariff to the actual weight of the commodity, but the overflow container is subject to a flat (not weight-related) minimum charge that varies depending on the size of the container. Thus, shippers who tender a volume of freight in excess of the capacity of a lead container would pay the per-100-pound rate for the lead container and could still end up paying a higher rate per-100-pounds for the overflow container. However, because the flat minimum charge for the overflow container is generally less than the weight-based minimum charge for a stand-alone container, shippers can pay a lesser charge than would be applicable if there were no overflow provision.

DHX Inc. v. Matson Navigation Co. et al. Decision No. WCC-105, Slip op. at 2, (STB served December 21, 2001)(“December 21, Order”)

DHX, along with every other freight forwarder in the trade, utilized the Overflow Rule whenever possible. The Overflow Rule allowed forwarders to ship goods in their possession as soon as possible, even if the container was not fully loaded, without fear that it would pay dead freight charges based upon the stand alone minimum weight per container requirement. Because the minimum revenue requirement for the overflow container was significantly lower than the minimum rate requirement of the stand-alone container, forwarders were able (and are still able)

to ship goods to Hawaii without waiting for more cargo (and possibly a delayed sailing) to fill out the second container. [REDACTED]

On September 6, 1998, Horizon increased the minimum revenue requirement contained in its Overflow Rule by 10%. Complaint, ¶ 6. Thirteen months later, on October 17, 1999, the minimum revenue requirement for overflow containers was raised 7.5%. Complaint, ¶ 8. DHX asserted that these two increases jointly constituted an unreasonable, unfair and destructive practice. Complaint, ¶ 12. Further, DHX asserted that the increase in the minimum revenue requirements were *per se* unreasonable on the grounds that the cumulative increase exceed the Board's "zone of reasonableness" ("ZOR") under 49 U.S.C. § 13701(d). Complaint, ¶¶ 10 – 11.

Although not referred to in its original Complaint, DHX has complained, through the Affidavit of DHX's President annexed to the original Complaint, that certain other rate actions of DHX were unfair and unreasonable. Complaint, ¶ 12. Specifically, DHX complained about the elimination of certain tariff footnotes. *See*, Affidavit of Bradley Dechter (attached to the original Complaint as Exhibit C). Those footnotes ("Note Items") allowed shippers with more than one commodity in a container to ship higher rated-items, such as machinery or electronics, at much lower rates if certain conditions were met.

For example, all items in Horizon's port-to-port commodity tariffs are rated on a hundred-weight ("CWT") basis. Heavier, denser items traditionally carry relatively low CWT rates while lighter, bulkier items were subject to higher CWT rates.³ Horizon had a Note Item in

³ Heavier items, such as canned goods, take lower rates because they do not take up much room in a container. In terms of weight, shippers can load more canned goods in a container than a less dense product. Because all items are rated on a weight rather than a measurement basis, higher CWT rates for less dense items are greater because a full containerload of feathers will weigh less. The fact that the rate for lighter commodities is higher than the rate for denser

its tariff for canned goods. This Note Item “allowed any party to pay the [lower] Canned Goods rate for up to 15% of non-canned goods merchandise which held 36,000 pounds of canned goods.” Dechter Aff., P.1. Forwarders, such as DHX could utilize this note to ship large quantities of high-rate items under the low canned goods rate. A similar Note Item, for example, existed under which high-rated machinery could be combined with copy paper (a dense, low-rated item) and shipped at the lower copy paper rate. DHX complained that the elimination of these note items, which meant that machinery would thenceforth be shipped and rated at the established machinery rate, harmed its profit margins.

In fact, only some Note Items were eliminated. Some others were modified. A substantial number of Note Items remained unchanged and remain in Horizon’s tariff today. These allegations were apparently advanced by DHX as background information in the original Complaint but were not alleged to have constituted unfair or unreasonable practices that violated statutes administered by this Board.

B. THE MOTION TO DISMISS THE ORIGINAL COMPLAINT

Matson filed a Motion to Dismiss the original Complaint on November 16, 1999. Horizon followed with a similar motion on November 29, 1999. In pertinent part the defendant carriers argued that DHX’s allegation that the rate increases were *per se* unreasonable was unsustainable as a matter of law. The Carriers also argued that the rates applicable to overflow containers were only a component of the rate applicable to an entire shipment. A proper analysis of the impact on the increases to the overflow revenue requirement could only be made by looking at the cumulative impact on an entire shipment, *i.e.* a lead container matched with an overflow container. The carriers further argued that the essence of DHX’s complaint was one

commodities does not necessarily indicate that the revenue generated will be greater than that generated for a high density commodity.

that sounded in discrimination and noted that discrimination was not unlawful under the ICCTA. Further, the rate reasonableness provisions were enacted to protect shippers against unreasonably excessive rates and not to protect sellers of transportation services (such as DHX) from competition from other sellers of such services.

On December 21, 2001, the Board issued its Order on the Carriers' Motions to Dismiss. The Board noted that it agreed with the Carriers' arguments "that the complaint is fundamentally flawed in its attempt to focus on the rates for overflow containers separate from the rates for the lead containers on which they are dependent." December 21 Order, Slip. op. at 5.

Although the Board denied the Carriers' Motions to Dismiss, it attempted to focus continuation of the proceeding by observing:

Finally, although DHX has framed its case as principally a rate case, it appears to us that the gravamen of its complaint is 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, *cf. Union Pacific R.R. v. ICC*, 867 F.2d 646 649 (D.C.Cir. 1989) we cannot at this point say that DHX could not possibly prevail in an unreasonable practice complaint.

December 21 Order, slip op. at 6.

On March 28, 2002 the Board issued a procedural and scheduling order in this proceeding. *DHX, Inc. v. Matson Navigation Co. and Sea-Land Service Inc.*, Docket NO. WCC-105, (STB served March 28, 2002) ("March 28 Order). The Board instructed DHX to file an amended complaint. In so doing, the Board noted that:

In the December 21 decision, Slip op. at 6, the Board stated that although DHX has framed its case as principally a rate case, it appears to us that the gravamen of the complaint is that defendants have engaged in unreasonable practices in an effort to put consolidators such as DHX out of business. The arguments contained in DHX's motion for a procedural schedule and accompanying correspondence support that determination. Under the circumstances, it is reasonable that DHX be required to submit an amended

or supplemental complaint that properly identifies the grounds for action and the relief sought.

March 28 Order, Slip op. at 3.

The Board also noted that “It is also unclear whether DHX plans to pursue the rate reasonableness challenge contained in the original complaint. If it does, as directed in the *December 21 decision*, slip op. at 5, DHX must specify which particular multi-container rates it is challenging and state why those rates are unreasonable.” March 28 Order, Slip op at 3, n.5.

C. THE AMENDED COMPLAINT

On April 29, 2002, DHX filed a 48-page, 266 paragraph Amended Complaint. The Amended Complaint incorporated the original Complaint by reference. Although plaintiff has not pursued any of the claims arising out of its original Complaint (*i.e.* it has not sought or introduced evidence relating to the reasonableness of rates generated by the shipment of lead and overflow containers) it appears that the allegations may still be extant.

The Amended Complaint contained nine counts against Matson individually, six counts against Horizon individually, and a single count alleged against the two carriers jointly. DHX’s evidentiary submission, despite its bulk, does not even make an effort to connect any statement, allegation, or exhibit to support a specific count against either Matson or Horizon. DHX has thrown thousands of pages of random thoughts at the Board and has asked the Board to connect the dots by itself.

Count No. 1 against Horizon alleged that Rule 882 (the “Overflow Rule”) of Horizon’s Tariff 468 subjects overflow containers to a minimum revenue requirement. These overflow containers (and the lead containers they are matched) are rated, pursuant to Horizon’s Mixed Containerload rule (Rule 645), on a per hundred-weight basis. DHX further alleged that subjecting items rated on a CWT basis to a minimum revenue requirement was an unlawful form

of rate-making and that publication of a minimum revenue requirement in a tariff rule constituted something called a “misplacement.” Last, DHX alleged that commodities shipped pursuant to the Mixed Containerload Rule should not be subject to any minimum revenue requirements. Amended Complaint, ¶¶ 192-205.

Count No. 2 alleged that the provisions of Horizon’s tariff relating to mixed containerload shipments were unreasonable because they conflicted with rates and terms contained in a National Motor Freight Classification tariff that was allegedly applicable to the mixed containerload rate. Amended Complaint, ¶¶ 206-212.

Count No. 3 alleged that Horizon published rate items that are restricted by the use of factors such as the identity of the shipper for whom the rate has been published or by limiting access to the rate by reference to the point of origin of the cargo. DHX alleged that the use of these factors in the filing of Horizon’s tariff rates is unlawful because it discriminates against DHX. Amended Complaint, ¶¶ 212-220.

Count No. 4 alleged that Horizon’s Tariff 468 contains port-to-port, proportional, motor-water, and store-door rates. DHX alleged that these rates overlap even though similar services are provided as those listed in the port-to-port section of Horizon’s tariff. Consequently, DHX asserted that it is entitled to the lowest rate available in Horizon’s tariffs. Amended Complaint, ¶¶ 221-228.

Count No. 5 alleged that Horizon offers “Joint Rates” but that Horizon’s tariff does not contain a list of participating motor carriers and that those motor carriers have not concurred in Horizon’s tariff. Amended Complaint, ¶¶ 229-236.

Count No. 6 alleged that Horizon’s tariff contained shipper specific rates that were based on the volume of cargo offered to Horizon. DHX further alleged that Horizon advised DHX that

Hawaii is a tariff trade and that it does not engage in volume pricing arrangements, including service contracts. DHX asserted that the statements made by Horizon to DHX constitute misrepresentation and that this misrepresentation caused DHX to lose its FCL business. Amended Complaint, ¶¶ 237-249.

The joint claim against Matson and Horizon alleged that the carriers collectively acted to maintain rate and price structures that deprived DHX of a competitive market and that compelled DHX “to pay unjust, **discriminatory**, and unreasonable rates.” Amended Complaint, ¶¶ 250-266 (emphasis added).

D. MOTION TO DISMISS THE AMENDED COMPLAINT

On May 23, 2002, Horizon filed a Motion to Dismiss two counts of the Amended Complaint. Specifically, Horizon sought an Order from the Board dismissing Count No. 2 of the Amended Complaint against Horizon and the sole Joint Claim against Horizon and Matson.

On May 14, 2003, the Board issued an order granting Horizon’s Motion to Dismiss. *DHX, Inc. v. Matson Navigation Co. and Sea-Land Service Inc.*, Docket NO. WCC-105, (STB served May 14, 2003) (“May 14 Order”) In so holding, the Board stated:

Here, DHX wants to compare rates that one shipper pays to a carrier with those paid by another shipper to the same to the same carrier. Thus, even if *Georgia Pacific* were applicable in the noncontiguous domestic trade, DHX’s approach appears to be no more than a broad-ranging allegation that all of defendants’ rates are discriminatory. But the discrimination remedy was repealed as to this trade in ICCTA. Thus, DHX cannot possibly prevail in its argument that the assailed rates are unreasonable even if it did show that different shippers pay different rates for arguably similar services. See *Government of the Territory of Guam v. Sea-land Service, Inc., American President Lines, Ltd., and Matson Navigation Company, Inc.* STB Docket No. WCC-101, Slip op. at 5 (STB Served Nov. 15, 2001).

May 14, 2003 Order, Slip. op. at 8.

The dismissal of the Joint Count is important because it eliminated the ability of DHX to attribute the acts or actions of Matson to Horizon or vice versa. This is particularly important because, in its evidentiary submission, DHX has completely failed to distinguish between the acts of Matson or Horizon.

For example, DHX has alleged that it lost a number of FCL customers as a result of Matson and Horizon's actions. There is no evidentiary substance to this allegation. DHX has failed to identify which FCL customers were allegedly lost to Matson and which to Horizon. This is not an unimportant point because, in the absence of a count seeking joint and several liability, the fact that Matson may have acquired some of this business has no bearing at all on Horizon and vice versa.

With regard to DHX's lost profit calculations, DHX has simply asserted that it lost profits and that those lost profits are jointly and severally attributable to the acts of Matson and Horizon. Yet, DHX's submission concerning lost profits never distinguishes between the two carriers. DHX has submitted a lost profit calculation that does not identify or even attempt to identify the quantum of alleged lost profits attributable to Matson and that are attributable to Horizon. DHX's lost profit calculations are premised on a finding of joint and several liability, a finding that has been foreclosed since the Board issued its Order dismissing the Joint Count.

On August 28, 2002, subsequent to the Board's Order dismissing two counts of the Amended Complaint, DHX filed and served a civil action against Horizon in the United States District Court for the Central District of California. *DHX, Inc. v. CSX Lines, LLC*, Case No. CV-02-6740. The Complaint repeated the allegations in the Amended Complaint before the Board and sought compensatory damages for "common law price discrimination," Complaint, ¶¶ 5-8, 18-36, and punitive damages for charging DHX rates higher than those charged to other shippers,

Complaint ¶¶ 40-45. DHX’s prayer for relief sought a total of Thirty-Two Million Dollars in damages. After a hearing before United States District Judge Kelleher, the court summarily granted CSX’s Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 12(b)(1), 12(b)(6).

III. STATEMENT OF FACTS

The arguments advanced in this submission are supported by a detailed verified statement of Mr. Daniel Downes. That document is appended to this proceeding and is referred to as the “Downes Statement.” While we commend to the Board’s attention the statement in its entirety, the essential features necessary to provide context for this submission are summarized below.

A. OVERVIEW OF THE TRADE

1) WATER CARRIERS

There are two Water Carriers, as that term is defined by statutes administered by the Board, serving the Hawaii Trade, Horizon and Matson. Horizon Lines owns and/or charters a fleet of containerships documented under the laws of the United States and eligible under U.S. coastwise laws to operate in the domestic trades between the mainland United States and Puerto Rico, Alaska, Hawaii, and Guam. In addition to owning or chartering a large fleet of U.S.-Flag vessels, Horizon owns or leases thousands of ocean going containers and thousands of chassis for use in its transportation operations.

Horizon maintains a regular schedule of U.S.-Flag vessel sailings between the U.S. West Coast to Hawaii. Horizon’s Hawaii trade operations consist of two distinct routes, known in the trade as vessel strings, which, in the aggregate, are served by seven vessels. Downes Statement, ¶¶ 6-9. In addition to these two Horizon-operated vessel strings, Horizon offers an additional sailing from Los Angeles on a service designated the Midweek Express (“MWX”) service.

Vessels under the MWX service depart every Wednesday from Los Angeles at 0400 hours and arrives Honolulu on the following Sunday at 1800 hours. Horizon does not own or operate the vessels on the MWX service. Rather, Horizon has obtained space from Matson pursuant to a transportation service agreement between Matson and Horizon in order to provide additional service to Horizon's customers, particularly those who miss the Saturday cut-off for cargo designated for its CHX service.⁴ Downes Statement, ¶¶ 7-9.

Horizon operates a full containerload ("FCL") service and does not directly accept or consolidate LCL cargo at its terminals.⁵ Simply put, Horizon only accepts bookings for FCL cargo whether in consolidated or straight loads. LCL cargo is secured by freight forwarders who consolidate LCL offerings and tender them as FCL shipments. Mr. Downes estimates that Matson moves about 65% of the cargo in the trade and Horizon the remaining 35% of the cargo. Downes Statement, ¶ 11.

2) FREIGHT FORWARDERS

Freight forwarders maintain the dual status of carrier (vis-à-vis its shippers) and shipper (vis-à-vis the underlying carriers they use). *See Exemption of Freight Forwarders from Tariff Filing Requirements*, 2 S.T.B. 48, 50 (1997). A freight forwarder, as used in the non-contiguous domestic trade, refers "to an entity that, acting as a carrier, consolidates shipments for further

⁴ DHX has asserted that this agreement is a vessel-sharing agreement ("VSA"). VSAs are common to the international shipping industry and are considered by the FMC to enhance competition and efficiency in the industry by offering shippers more choices in carrier, even if the cargo is moved on the same vessel. Whatever the arrangement is called, the MWX service does not utilize a Horizon vessel, but rather is maintained through securing space on a Matson vessel.

⁵ Horizon does transport a number of motor vehicles a year that are delivered directly to its terminal. Horizon also occasionally accepts large, outsize pieces of cargo as part of large project shipments.

movement, and that then uses an underlying carrier for line-haul transportation. . . . A (freight forwarder) as that term is used here, is equivalent to an NVOCC under FMC regulations.” *Id.*

Mr. Downes acknowledges that freight forwarders are a major portion of Horizon Lines’ business. In the Hawaii trade, freight forwarders traditionally directed their efforts toward assembling and consolidating LCL cargo from several shippers and presenting water carriers, such as Horizon, with FCL shipments. The forwarder offers LCL rates directly to smaller shippers. The sum of a forwarder’s rates to its underlying shippers for a full container of consolidated cargo is higher than what it obtains from the water carrier.

Forwarders mix and match cargo in a manner designed to qualify for the most favorable rates available to the forwarder from the underlying water carrier. Additionally, most major forwarders in the Hawaii trade own or lease trucks capable of picking up and delivering local loads to the cross-dock facility and capable of delivery loaded containers to Matson or Horizon.

The forwarding industry in the Hawaii trade is divided into two major segments. The first is a group that includes DHX and about nineteen other major forwarders. Because of the forwarder’s ability to mix-and-match cargo to achieve the maximum blend of cargo in containers, they typically rely on two rates in Horizon’s tariff. The first is the mixed containerload rate in conjunction with the Overflow Rule. This rate enables the forwarder to load a lead container with sufficient cargo to meet the minimum weight requirement applicable under the mixed containerload rate. A forwarder can also match “lead” containers with overflow containers that have less weight, but have sufficient cargo to meet or exceed the lower-cost minimum revenue requirement set out for the designated overflow container. Downes Statement, ¶ 15.

Freight forwarders also utilize a Horizon Lines tariff item designated as a Freight All Kinds (“FAK”) rate. The FAK rate applies to mixed commodities on a per container basis and typically produces a higher revenue for the water carrier than most single commodity rates. However, the FAK rate enables forwarders to gain unlimited use of an equipment substitution provision that allows forwarders to utilize, for example, a forty foot container, while paying a rate for a twenty-foot container as long as the cargo volume does not exceed the capacity of a twenty foot container. This enables forwarders to move cargo off their cross-dock facilities and on to Hawaii without waiting for additional cargo and without paying a penalty for using the larger container. Downes Statement, ¶ 16.

A second group of entities offering consolidated LCL cargoes to water carriers consists of long haul or long distance truckers (such as Roadway and Yellow Freight) that offer ocean service to Hawaii as part of their long-haul domestic motor carrier services. Typically, long distance truckers do not have cross-dock facilities and cannot configure multiple-shipper containers as efficiently as the first segment. Consequently, long-haul truckers typically use the FAK rate and do not often load containers that qualify for designation as an overflow under the mixed containerload rate.

Mr. Downes states that these long haul truckers are additional elements of the competitive mix and that they, like forwarders, occupy his attention in reaching decisions on rate and service items. Downes Statement, ¶ 17.

In recent years forwarders including DHX, have moved beyond their initial role of entities that assist LCL shippers to entities directly competing with traditional steamship operators (like Matson and Horizon) for FCL cargoes.

3) SHIPPERS

Shippers who are not forwarders are the beneficial owners of the cargo being shipped. Because the Hawaii trade is a mature, not rapidly growing market, the universe of shippers regularly moving cargo to Hawaii does not change dramatically from year to year. The vast majority of shippers and their cargo originate on the West Coast.⁶ Downes Statement ¶18. *See*, Verified Statement of Sean Burns (“Burns Statement”), p. 7. All types of cargo are shipped to Hawaii. Hawaii is an island destination that does not have a large industrial economic base, that is not self-sufficient agriculturally (with the exception of coffee, fresh fruit and some cattle production) and that is heavily dependent upon tourism. Consequently, Hawaii receives large volumes of foodstuffs (dry and refrigerated) to support its indigenous and tourist populations, building and construction materials, machinery, and supplies.

Mr. Downes states that the Hawaiian market is a mature market that has not experienced a great deal of growth in recent years. Downes Statement, ¶ 19. *See*, [REDACTED] [REDACTED] Because the Hawaiian economy is dependent upon tourism both from the mainland and from Asia, cargo volumes tend to fluctuate with changing worldwide economic and political developments. The recession in Asia, the terrorist attacks on September 11, 2001, general domestic economic conditions, and the recent SARS outbreak all have had a negative impact of the total volume of cargo shipped from the mainland to Hawaii.

4) COMPETITION IN THE TRADE

Matson and Horizon compete with each other for FCL cargo in the Hawaii trade. Matson was the largest water carrier when Horizon first entered the trade in 1987. Since that time

⁶ Cargo to Hawaii originates from shippers all over the continental United States. However, historically the preponderance of cargo itself originates on the West Coast.

Horizon has increased its market share substantially. Nevertheless, it remains the number two water carrier in the trade with a market share of approximately [REDACTED].

Freight forwarders also compete with each other and with Matson and Horizon for FCL cargo. DHX has acknowledged that, “freight forwarders represent the only real and true competition for either Matson or Sea-Land in the U.S./Hawaii trade.” Complainant’s Reply to Defendants’ Motion for Procedural Schedule and to Require Amended Complaint, ¶ 9 (March 7, 2002).⁷ Typically, freight forwarder margins on FCL business are smaller than their margins on LCL business. It is axiomatic that the greater competition for FCL cargo explains why margins on this segment of the trade are more compressed compared to LCL operations. Horizon seeks cargo from both shippers and forwarders and takes all prudent steps to procure that cargo within principles of sound economics. Horizon actively and aggressively solicits FCL cargo from its shippers. Horizon actively and aggressively solicits both LCL-consolidated containers and FCL from freight forwarders. In fact, freight forwarder-routed cargo, whether consolidated or straight FCL loads, constitutes a critical portion of Horizon’s total cargo movement. Freight forwarders, including DHX, are valued customers. Support from the forwarder community has always been an essential component of Horizon’s business plans and business planning.

B. HORIZON’S DEALINGS WITH SHIPPERS AND FORWARDERS

There are two key areas that drive Horizon’s relationships with its shipper and forwarder accounts: service and price. The term service encompasses a broad, sometimes subjective range of individual components but, generally speaking, shippers and forwarders expect the following from Horizon: that Horizon will load and deliver cargo on time and on schedule; that it will be

⁷ Horizon rejects the inference in this statement that it does not compete with Matson for FCL business. Nevertheless it does acknowledge DHX’s admission that forwarders provide significant competition to both Matson and Horizon for FCL cargoes in a stagnant market.

responsive to shipper/forwarder inquiries; that Horizon will process and issue shipping documentation in a timely manner; and that Horizon will process and honor cargo claims in a timely manner. [Downes Statement]

Mr. Downes explains that the forwarder segment of the market requires specific service adjustments by vessel operators. Loading and delivery are particularly acute in the forwarder industry. A consolidated LCL container can contain cargo delivered to a freight forwarder from multiple shippers. That cargo is often delivered to the forwarder's facility at or near the time of a vessel's departure. If a container misses a vessel or is not loaded ("shut out") on a vessel, the forwarder will no doubt complain to Horizon and will also have to field multiple complaints about the late delivery of cargo. More importantly, if a forwarder cuts off deliveries from its own shipper customers in order to make sure a container is timely delivered to the terminal behind, it is likely to have negative impacts on the forwarder's bottom line. First, the container will not be loaded as efficiently as it might otherwise have been. This wastes container space and results in a direct and immediate revenue loss to the forwarder. Second, shippers of cargo left behind waiting additional cargo to be delivered will be annoyed at the delayed sailing.

The Overflow Rule was designed by Horizon for shippers and forwarders who had more cargo than could be loaded into a single container and it was designed to lower the costs of lighter containers that are not stuffed as fully as containers loaded earlier in the shipping cycle. In other words, by setting a minimum revenue charge that was significantly lower than the rate charged for more fully loaded containers, forwarders or shippers could deliver the overflow container to the earlier ship and not leave a partially loaded or light container behind until more cargo arrived for the next sailing. Mr. Downes testifies that this remains the purpose of the

and Horizon. If the shipper/forwarder is a current customer of Horizon, Horizon will examine its past relationship with the shipper/forwarder. If the customer is a new or unknown to Horizon or is or a party with whom Horizon has only done minimal business, Horizon will try to determine how that shipper's cargo has moved previously in the marketplace and at what rate levels.

Horizon also examines the commodity to determine whether Horizon is currently shipping that product to Hawaii and, if so, the current volumes of that commodity. If Horizon is currently moving significant volumes of that commodity, it must consider the impact of a rate concession on the requesting shipper, but also upon other shippers of the same commodity. Horizon is reluctant to reduce rates for a shipper or forwarder on a commodity that is already moving with Horizon from other shippers or forwarders at the existing tariff rate. Downes Statement, ¶¶ 29-31.

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.

If Horizon determines that this new business is desirable it will seek ways to file modify existing rates for the specific shipper or forwarder without reducing the entire market rate for that commodity. Frequently, Horizon will file the new rate in the proportional rate portion of its tariff. Typically, a proportional commodity rate is structured in such a way as to be applicable only to cargo that originates within a narrow geographic range and reflects, among other things, unique circumstances related to a particular shipper's carriage needs. A proportional rate is

similar to a port-to-port rate in that the rates quoted for FCL loads in proportional rate section typically only cover the waterborne portions of the cargo movement. However, the ocean rate is predicated upon the inland movement of the shipment from a designated inland point outside Horizon's terminal facility.

Proportional rates benefit both Horizon Lines and its shipper and forwarder customers. First, they enable Horizon Lines to take action on an active commodity being shipped (or promised) in volume without undermining the entire rate structure for that commodity. A proportional rate (or a through rate for that matter) benefits the shipper or forwarder because it reflects the specific transportation and economic circumstances of its operations.

Horizon routinely offers and files rates for freight forwarders in the Hawaii trade. Horizon routinely files proportional rates, through rates, joint rates and store door rates for both shippers and for freight forwarders. Horizon routinely responds favorably to requests for proportional and other FCL rates from DHX, just as it does for other shippers and forwarders in the Hawaii trade. Downes Statement, ¶ 35.

Mr. Downes notes that Horizon approaches rate requests from beneficial shippers with slightly different background assumptions than those that apply to forwarders. When a beneficial shipper seeks a rate, Horizon can readily determine whether that shipper has moved that cargo in the past and expects to continue moving that cargo. In some instances, a forwarder will identify a potential customer who utilizes the services of another forwarder. In order to secure that business, the forwarder will not only have to compete with the forwarder on basic forwarding services, but also on the underlying freight rate running between the forwarder and his shipper. If the forwarder can obtain a reduced rate from Horizon in advance, it can "shop" that lower rate lure business away from competing forwarders. Downes Statement, ¶ 38.

Similarly, because the identity of the prospective customer is not known to Horizon, Horizon does not necessarily know whether it is already moving the specific cargo being offered through a different freight forwarder.

As a result, Horizon needs to maintain strong commercial relationships with all the forwarders with which it does business in order to continue operating profitably in the Hawaii trade. Horizon cannot be perceived as favoring one forwarder over another. Downes Statement, ¶ 39.

These are all factors that Horizon must weigh before taking rate action on requests for reduced or joint through rates. Nevertheless, Horizon does respond favorably to some of these requests, be they from shippers or forwarders, whenever the characteristics and volume of cargo warrant such consideration.⁸

C. DHX AND OTHER FORWARDERS' USE OF THE OVERFLOW RULE AND NOTE ITEMS

The link between the original and Amended Complaint are allegations concerning the elimination or modification by Horizon of some of the "Note Items" contained in its Hawaii tariff and two increases to the discounted minimum revenue requirement for overflow containers. As noted above, the Overflow Rule benefits freight forwarders by enabling them to ship light or partially filled containers at a discounted rate below that applicable to stand-alone containers. The Overflow Rule facilitated the more rapid delivery of cargo for the forwarder's shippers because forwarders did not have to pay a dead freight penalty for shipping partially loaded containers.

⁸ It should be pointed out that Horizon views competition between and among freight forwarders (as well as competition between forwarders and carriers) as a sign of a healthy, competitive marketplace.

At the same time, forwarders and shippers made ample use of Note Items contained in Horizon's tariff. These Note Items were designed to provide another benefit to both LCL and FCL shippers and forwarders. As noted above, Horizon's primary tariff section consists of a series of commodity rates based on a hundred-weight basis. Rates are typically shown as a rate in dollars for very one hundred pounds of cargo. Lower rates are typically set for heavier, denser cargo while higher rates are established for bulkier cargo because it takes up more space in the container and does not weigh as much.

Mr. Downes explains the reasons for Horizon's Overflow Rule and Note Items and the operational experience under those rules at paragraphs 42 through 50 of his Verified Statement. These tariff provisions were intended to assist forwarders with their consolidation of LCL cargo. However, as Mr. Downes explains at paragraph 49, Horizon realized that DHX and other forwarders had gone beyond the original design of that provision and were capturing FCL cargo from Horizon. For reasons explained in detail by Mr. Downes, (Downes Statement at ¶¶ 50-53), Horizon found it necessary to react to the erosion of its FCL market.

The end result was that Horizon balanced its own internal concerns over revenue loss against the knowledge that the Overflow Rule continued to play an important role in the business plans of the freight forwarding community for both consolidated and straight loads. Downes Statement, ¶¶ 50-51. The result was that Horizon found a compromise solution, it raised the discounted minimum revenue requirement for the overflow container and eliminating or modifying some but not all of the Note Items in its tariff. Downes Statement, ¶¶ 51-53.

Mr. Downes testifies that DHX and other forwarders still use, and in fact still do use, the Overflow Rule to move LCL or FCL cargo, but that cargo is subject to a higher discounted minimum revenue requirement. Downes Statement, ¶ 54. The current minimum revenue

requirement of the Overflow Rule could still represent a significant continued discount from the revenue generated by the minimum weight requirement for lead containers. See [REDACTED] *Deposition*, 104:2-4.⁹ However, by increasing the minimum revenue requirement for overflow containers Horizon ensured that FCL cargo routed via freight forwarders would move at rates that were competitive with the rates that Horizon was prepared to offer for stand-alone FCL shipments.¹⁰

In sum, forwarders can and still do compete for FCL loads with Horizon. Forwarders, including DHX, can and do still utilize Horizon's tariff to compete on price for FCL loads. Those overflow containers that are subject to minimum revenue charges continue to generate less revenue for Horizon than lead containers.

D. COMPETITION BETWEEN FREIGHT FORWARDERS

Because Horizon is aware of competitive pressures between its forwarder customers, it strives for actual and perceived neutrality in its dealings with its customers. Downes Statement, ¶¶ 55-58. Horizon must not only pay attention to the absolute levels of FAX and Mixed Containerload rates, but also competitive sensitivities about the relationships between those rates and the shippers and forwarders who use them. Downes Statement, ¶ 58.

E. HORIZON'S DEALINGS WITH DHX

At paragraphs 59 through 74 of his Verified Statement, Mr. Downes recounts a long and consistent history of Horizon's efforts to support DHX in the market. DHX is a knowledgeable and demanding customer who, by virtue of its expertise and skill has been able to secure numerous concessions from Horizon with respect to rates and service. Downes Statement, ¶¶

⁹ [REDACTED]

¹⁰ The increases in the minimum revenue requirements for overflow containers are most accurately understood as decreases in previously granted discounts.

60-64. However, Mr. Downes also explains circumstances where Horizon has considered it commercially imprudent to accede to DHX's desires. These circumstances include DHX efforts to secure FCL cargo already moving pursuant to direct relationships between Horizon and a beneficial shipper (Downes Statement, ¶ 67) or situations in which Horizon is already moving significant quantities of a given commodity (Downes Statement, ¶ 68).

Horizon has accommodated DHX's rate requests whenever it is commercially practicable to do so. In fact, despite DHX's allegations that it has been denied access to proportional rates, Horizon has filed a large number of proportional rates for DHX. A copy of a selection of those rates is annexed as Exhibit 2 to the Downes Statement.

Although Horizon competes with DHX for FCL business, Horizon has not interfered with DHX's ability to solicit and procure FCL business. In fact, on more than one occasion, where DHX has attempted to solicit FCL business from shipper with whom Horizon did not have a previous commercial relationship, Horizon worked cooperatively with DHX in those efforts. Downes Statement, ¶ 64.

IV. ARGUMENT

A. OVERVIEW OF DHX'S DIRECT CASE SUBMISSION

The record in this case is filled with substantial information about two types of cargo: "bottom freight" and "top freight." Bottom freight is dense and takes up little space in a container. Lead is an example of bottom freight. Top freight is light and takes up a lot of space without adding significant weight to the container. Feathers are an example of top freight. DHX testified during this proceeding that a good container for them is one which they fill with bottom freight to add weight to the container along with sufficient top freight to fill out the unused space in the container. ██████ *Deposition* 16: 9-19.

DHX's evidentiary submission, like a poorly stuffed container, is volume without weight. DHX has filled the Board's docket room with thousands of pages of deposition transcripts and thousands of pages of so-called damage estimates generated specifically for this litigation which do little but show that different shippers pay different rates to move their cargoes to Hawaii. DHX argues, without evidentiary support, that rate actions by Horizon Lines in September of 1998 and October of 1999 were intended to drive DHX out of the FCL market. DHX's own records establish the contrary. DHX's FCL revenue in the Hawaii trade [REDACTED] between 1997, when Matson and Horizon first allegedly set their sights on DHX's FCL business, and 2001. [REDACTED]

[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

DHX argues, without evidentiary support, that, as a direct consequence of Horizon and Matson's rate actions, it can no longer compete with Matson or Horizon for FCL cargo. DHX's own records establish the contrary. In 1997, [REDACTED] of DHX's ocean revenues to Hawaii were generated by FCL business [REDACTED] while in 2002, fully [REDACTED] of DHX's Hawaii business was FCL business [REDACTED]. Further, DHX admits that it landed its single largest FCL account, [REDACTED] *Deposition 115: 4-10*, an account that ships over [REDACTED] FCL containers a year at the same time Horizon and Matson were allegedly taking steps to keep DHX out of the FCL market [REDACTED] *Deposition 115: 16-23*. DHX's own success in the FCL market flies in the face of its allegations.

DHX claims that it lost FCL business and the loss of that business is attributable solely to unfair acts of Horizon and Matson. Yet, the only evidence in the record identifying with specificity why DHX lost certain FCL accounts indicates that the business was lost as a result of

competition with other freight forwarders and not with Horizon. Further, the record is clear that during the time period in question DHX lost both Less-Than-Containerload (“LCL”) accounts and FCL accounts while at the same time gaining new LCL and FCL business. Simply put, this is what happens in a competitive marketplace.

DHX submits lists created for this litigation purporting to identify FCL customers lost as a result of Horizon and Matson’s rate actions. Yet, DHX’s own records, those kept in the usual course of their business and produced to Horizon, support the inference that most of those “lost” customers still actively ship cargo with DHX. DHX’s exhibits in this regard are inaccurate and misleading and will be shown to be so by this submission.

DHX has not submitted one piece of evidence linking the loss of any customer, let alone a substantial portion of its FCL customer base, to the actions of either Horizon or Matson. There is not a single document among the reams of paper laid on the Board by DHX that reveals a causal link between the rate actions of Horizon or Matson and the underlying relationship between DHX and any of its shipper customers. These charges rest on nothing more than the unsupported allegations of DHX’s employees. The sworn statements of DHX’s witness are replete with covering phrases such as “I think,” “I believe,” or “I have no proof, but . . .” before claiming that Horizon and/or Matson is to blame for DHX’s alleged lost FCL customers. What DHX has not produced is a shred of admissible, legitimate evidence. DHX has produced no contemporaneous evidence of lost business, merely post-discovery, purpose-built lists generated for submission in this phase of the litigation.

[REDACTED]

¹¹ [REDACTED]

[REDACTED]

Lastly, DHX asserts that the rate actions taken by Horizon and/or Matson have caused its profit margins to compress so that it cannot compete effectively with Matson and Horizon for FCL business. This is balderdash. A review of the monthly handwritten ledgers maintained meticulously by [REDACTED] for 30 years reveals that in 1997, DHX's gross operating profit (or margin) on its Hawaii Trade ocean cargo services was [REDACTED] per cent. In 2002, that margin had [REDACTED] in its shipping services profit margin.

DHX submits two types of documents to support its claim for damages. The first type consists of DHX-generated lists comparing the rates DHX paid the carriers to move for thousands of containers to the rates paid by other shippers under different tariff items. In addition, DHX submits documents purporting to establish that DHX is entitled to a refund of charges paid to Horizon for wharfage charges where wharfage charges appear as a separate line item on a freight bill of lading. In either instance DHX, has not identified its shipments with any specificity, has not identified the contents, weight or volume of the cargo DHX tendered to

12 [REDACTED]

Horizon, and has not identified with specificity any reasons establishing why it is entitled to a rate used by another shipper pursuant to a different tariff item in Horizon's tariff.

As to wharfage charges, DHX has done nothing to disprove the uncontradicted testimony of both Horizon and Matson witnesses that some tariff rates (specifically port-to-port rates) typically maintain wharfage rates as a separate line item in its tariff while some tariff rates (specifically door-to-door full containerload rates) typically incorporate the carrier's wharfage charges into the door-to-door rate established for the shipper or forwarder (including DHX). There is nothing notable or objectionable about this practice. DHX's tactic is to spin the straw of alleged deficiencies in the carriers' tariff structure into a windfall of gold. DHX's scattershot claims and abstract theories support but one conclusion: DHX is litigating a discrimination case wrapped in a mantle of unreasonable practice allegations. Any case in which the damages claimed by a plaintiff are based upon the difference between the rates it paid and the rates paid by another shipper sound solely in discrimination and as such fall outside the jurisdiction of the STB. *Government of the Territory of Guam v. Sea-Land Service, Inc., et al.*, Docket No. WCC-101 Slip op. at 5 (STB served November 15, 2001)("GovGuam November 15 Order").

DHX's [REDACTED], has submitted affidavit testimony and exhibits purporting to show lost DHX profits caused by defendants. These exhibits consist of two parts. In the first, [REDACTED] attempts to quantify damages by projecting continuing growth in both market share and profit between 1997 and 2002 and the [REDACTED] DHX actually made in that period. In doing so, DHX assumes continued growth and profitability in a market that DHX and the carriers have repeatedly described as stagnant. DHX asserts, without supporting evidence, that any shortfall in its projected revenue and profitability below levels previously attained were caused solely by the actions of Matson and Horizon. The only reliable evidence in the record

establishes that DHX competes not only with Horizon and Matson for FCL business but also with at least twenty other freight forwarders in the Hawaii trade. [REDACTED] *Deposition*, 10:12-15.¹³ The record establishes that DHX lost business to its freight forwarder competitors, but DHX refuses to acknowledge that competition from other freight forwarders¹⁴ or market conditions in an island economy heavily reliant upon tourism and readily affected by external circumstances (*e.g.* the impact of SARS, the recession in Asia, post-9/11 declines in tourism), have had significant impacts on DHX's FCL bottom line.

DHX's own internal memoranda direct that when competing for FCL business against Matson and Horizon, DHX should [REDACTED] per container but when [REDACTED]. Any compression in DHX's FCL margins (if such compression has occurred) is as readily attributable to competition from other freight forwarders as it is from Matson or Horizon.¹⁵ To the extent that DHX's damage calculations do not account for competition amongst freight forwarders, its lost profit calculations are meaningless.

In the second part of his submission, [REDACTED] creates a graph that purports to show a decline in DHX's FCL volume. That graph analyses FCL volume on a cubic foot basis and

¹³ [REDACTED]

¹⁴ DHX does acknowledge the existence of freight forwarder competition for FCL business but asserts it lost FCL business because the water carriers conspired with other freight forwarders to take that business from DHX and place it in the hands of other forwarders. No evidence of such collusion accompanies this charge. This claim also contrasts sharply with Mr. Downes testimony that Horizon, for self-serving commercial reasons, must be punctilious in preserving neutrality in its dealings with forwarders.

¹⁵ This statement also rebuts the assertion that DHX cannot compete with CSX for FCL business on price.

shows a dramatic decline during the period in question. DHX's own witnesses all testified that they cannot accurately gauge the cubic footage of cargo in any FCL container they ship because they do not load or measure the cargo. [REDACTED] *Deposition*, 37:13-15.¹⁶ In other words, DHX attempts to delineate a decline in FCL cargo volume using a measure its witnesses admit they cannot establish with any degree of accuracy. DHX also intentionally omits from this graph the cargo volumes and revenues produced by their single biggest FCL customer, [REDACTED]. Yet, DHX refers to this major account as an anomaly, and claims that because [REDACTED] it should not be factored into DHX's calculations of FCL volumes. Anticipating the obvious, DHX proffers excuses explaining the omission of its single biggest FCL account from its "lost volume" calculations. DHX claims it was able to secure [REDACTED] because it could add value-added services not made available by Matson or Horizon and [REDACTED] on either carrier's vessel. DHX does not explain why these powerful competitive tools do not assist them in competing for other FCL cargo.

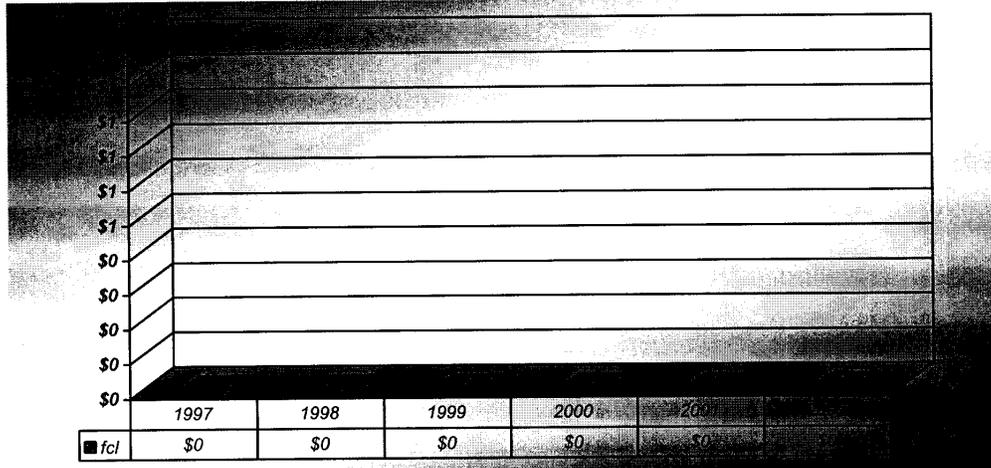
In short, the Board has a plaintiff before it that will say anything to prove a case that cannot be proven from contemporaneous records maintained by DHX in the normal course of business. The ability of DHX [REDACTED], DHX's biggest customer, proves the fact that DHX can and does compete successfully for FCL business with Matson and Horizon.

DHX's FCL revenues [REDACTED] between 1999 and 2000. DHX's historic growth in FCL revenue between 1997 and 2002 provides convincing evidence that DHX is an enormously

¹⁶ Q. Why not for the FCL? A. Because we really don't know the cube in those containers, a lot of times.

successful company that has done well in a competitive market during a time of stagnant cargo volumes.

DHX [REDACTED] 1997-2002¹⁷



DHX also [REDACTED] on both its LCL and FCL business and its [REDACTED] between 1997 and 2002 subject to the usual fluctuations in a market depressed by the SARS epidemic, 9/11, and recessions in Asia.

B. DHX CAN AND DOES COMPETE SUCCESSFULLY WITH HORIZON FOR FCL CARGO

DHX has alleged that it can no longer compete successfully with Horizon or Matson for FCL. The [REDACTED] set out in the next section rebuts this otherwise unsupportable allegation. DHX's FCL revenue figures compiled during the normal course of DHX's business stand in sharp contrast to their created-for-litigation testimony. Further support for the proposition that DHX can and does compete successfully for FCL business is found in another business record of DHX, [REDACTED]

¹⁷ [REDACTED]") annexed as Exhibit 3.

[REDACTED], created nine months after the second increase taken on the minimum revenue requirement for containers moving under the Overflow Rule. The [REDACTED] set out the [REDACTED]. The Memorandum sets up three [REDACTED] and reads, in full, as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In 1997, before any of the alleged acts by Matson or Horizon took place, DHX was the [REDACTED] in the Hawaii trade and [REDACTED] for both its LCL and FCL business. Between 1998 and 2002 DHX [REDACTED]. Its [REDACTED] for both its [REDACTED] during that period. Furthermore, [REDACTED]. During years in which DHX claimed Matson and Horizon were trying to drive DHX out of the FCL business [REDACTED].

1) DHX'S OWN RECORDS SUPPORT THE ASSERTION THAT IT WAS
[REDACTED]

Horizon relies on two sets of documents provided by DHX during this litigation to support its assertion that DHX was and remains exceedingly profitable. The first set consists of DHX Inc.'s Financial Statements for the years 1997 through 2002. These records were maintained in the normal course of DHX's business and were prepared by DHX's outside auditors in consultation with [REDACTED]. These Financial Statements are admissible as evidence in this proceeding on two grounds. First, they are business records that: were prepared in the normal course of DHX's business; were made at or near the time of the events it records; and were based on the personal knowledge of the entrant, specifically the outside accountants and DHX's Chief Financial Officer. *See Datamatic Services, Inc. v. United States*, 909 F.2d 1029, 1032 (7th Cir. 1990). Second, because these Financial Statements rebut the proposition that DHX's financial position has been in any way diminished in the period between 1997 and 2002 the records are admissible as admissions against interest. Copies of the Financial Statements are attached as Exhibit 2 to Horizon's Reply Statement.

The second set of documents consists of [REDACTED]
[REDACTED] has maintained these [REDACTED] in the normal course of his company's business for 30 years and updates them monthly. [REDACTED]
Deposition 64:10-19. These hand-written ledger notes are broken down into 13 four-week periods each year and are meticulously maintained by [REDACTED]. The [REDACTED] contain the following line items pertinent to this proceeding for each four week period during the calendar year: [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

For any given four-week period [REDACTED] contemporaneous records reveal DHX's [REDACTED]

[REDACTED], in the normal course of DHX's business for over thirty (30) years are also admissible. *See Saks International, Inc. v. M/V Export Champion*, 817 F.2d 1011, 1013 (2nd Cir. 1987). Because these documents flatly contradict the assertions made that DHX's FCL business to Hawaii has been harmed in any way by the actions of either Horizon or Matson, they are similarly admissible as admissions against interest. A copy of the [REDACTED] 3 hereto.

¹⁸ e.g. DHX's margin for the first four week period of 1997 may be derived by taking the revenue, \$546,965 and subtracting 79.7% for a total gross margin of \$111,033.90.

Horizon's review of DHX's financial statements and [REDACTED] reveal a company that was and remains [REDACTED] and that [REDACTED] with signal generosity. [REDACTED] and DHX's financial statements are glaringly irreconcilable with the claims of economic harm caused by defendants.

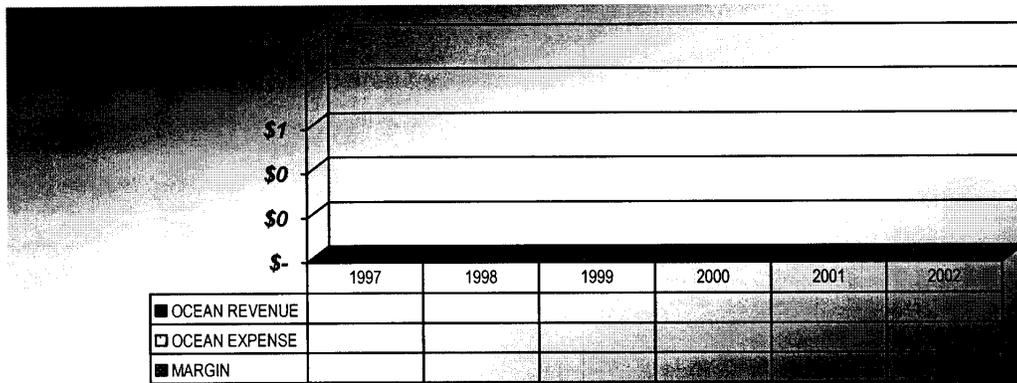
DHX'S FINANCIAL STATEMENT EVIDENCES

[REDACTED]

A chart presenting [REDACTED] between 1997 and 2002 is set out below:²⁰

¹⁹ [REDACTED]

²⁰ [REDACTED]



In [REDACTED] in revenues and earnings, the Financial Statements provide a compelling [REDACTED]. As sworn to by DHX's Chief Financial Officer, [REDACTED], at his deposition, the line item designated [REDACTED] *Deposition 29:1-6.* [REDACTED]

[REDACTED] further testified that because [REDACTED]

In 1997 [REDACTED] [REDACTED] [REDACTED] [REDACTED] for the period.

The [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

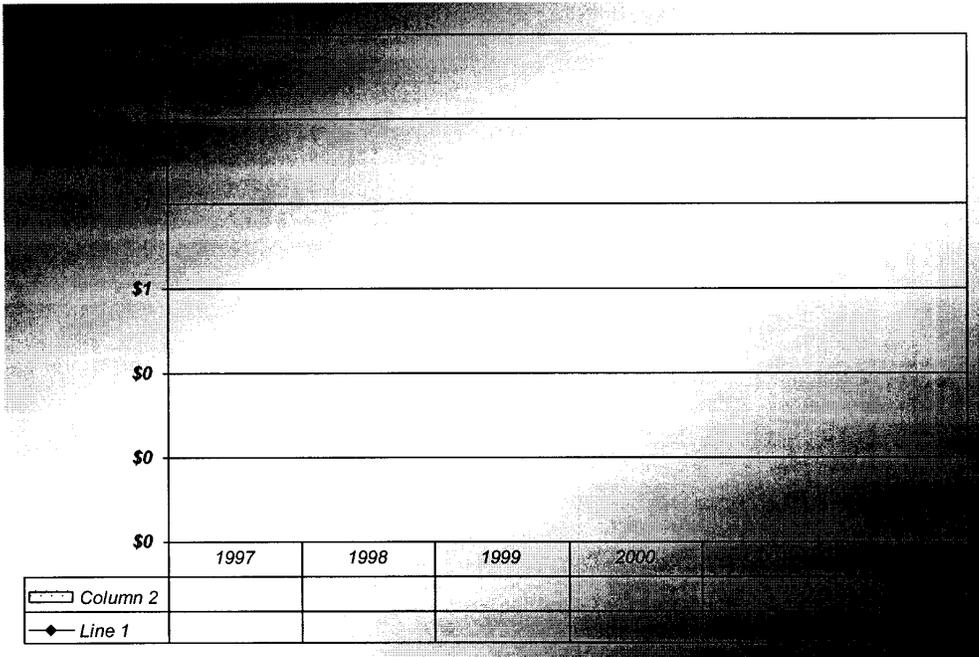
[REDACTED] *Deposition 92:15-24.*

A graph [REDACTED]

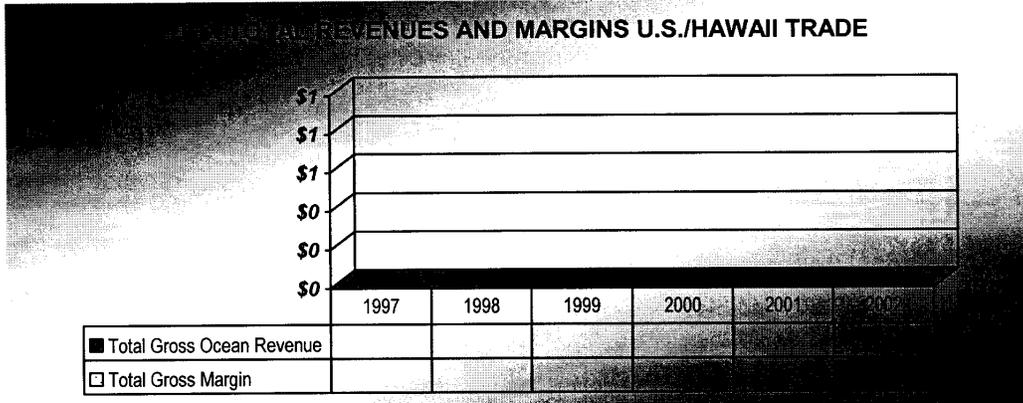
[REDACTED] are

set out below.

[REDACTED] ²¹



²¹ Graph derived from DHX Annual Statements 1997 through 2002, inclusive.



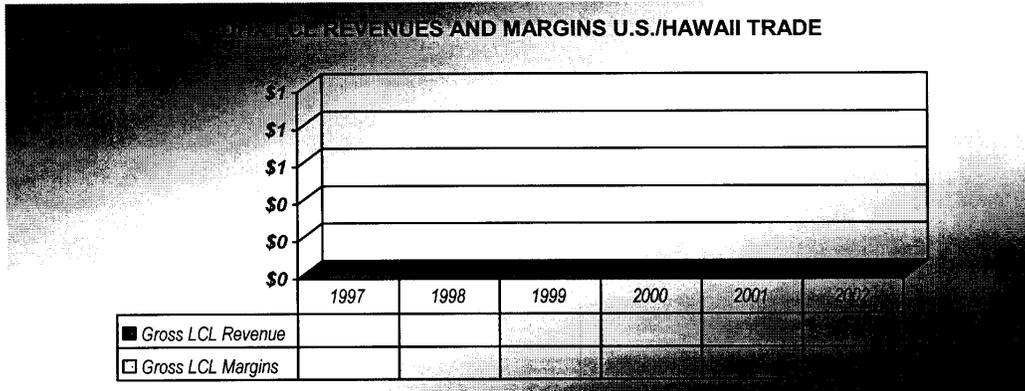
DHX's [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].



²³ Derived by [REDACTED]

[REDACTED]

D. DHX CANNOT UTILIZE THE NATIONAL TRANSPORTATION POLICY TO RESUSCITATE A DISCRIMINATION COMPLAINT

Every count in DHX’s complaint against Horizon alleges that Horizon’s rate and tariff actions constitute unreasonable practices. DHX further contends that these alleged unreasonable practices have caused DHX economic harm. The single thread that connects each of the remaining five (5) counts against Horizon is the fact that DHX asserts that each alleged unreasonable practice is unreasonable solely by virtue of the fact that the actions discriminate against DHX. DHX argues, or appears to argue, in its submission that this alleged discrimination is contrary to the guidance set out in the National Transportation Policy (“NTP”) and as such constitutes a *per se* unreasonable practice. Specifically, DHX argues that Horizon’s practices are unreasonable because they supposedly do not comport with the policy guidelines set out in section 13101(a)(1)(D) of the NTP.

DHX asserts that that “NTP is the compelling “source” of the Board’s power and obligation to carry out ICCTA. *Complainants Opening Statement of Facts and Laws*, p. 4. DHX goes on to note that it is NTP policy “to encourage the establishment and maintenance of

reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices.” *Id.* DHX fails to point out the fact that this Board has already held that “the policy guidelines contained in the NTP do not constitute a separate right of action under the ICC Termination Act of 1995, Pub. L. No. 14088, 109 Stat. 803. *Trailer Bridge v. Sea-Star Lines*, WCC-104, Slip op. at 3, December 7, 1999. The Board, in so holding, dismissed one count in the complaint brought by Trailer Bridge on this basis. The Board allowed one count in the complaint, one that alleged unreasonable practices and which was not wrapped in the mantle of the NTP. *Id.* at 4.

It is axiomatic, as the Board noted, that the “policies embodied in the NTP, however, serve as guidance to the Board in every action that it takes.” *Id.* However, to the extent that DHX relies solely upon the NTP’s stricture against unreasonable discrimination to establish an unreasonable practices claim, that effort must fail. DHX willfully seeks to avoid the implications of the fact that Congress expressly eliminated a cause of action for discrimination through the enactment of ICCTA. As the Board has pointed out in this proceeding and in another Water Carrier proceeding (*See* GovGuam November 15 Order, Slip op. at 5), alleged discrimination standing alone does not and cannot rise to the level of an unreasonable practice.

The NTP is an historic document that has not necessarily shed its vestigial historic tone and content over the last hundred years. In fact, more than one hundred years ago the Supreme Court set out the policy objectives of the original Interstate Commerce Act in a manner starkly similar to that enunciated in the current NTP:

The principal objects of the Interstate Commerce Act were to secure just and reasonable charges for transportation; to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions, to prevent undue or unreasonable preferences to persons, corporation or localities; to inhibit great compensation for a shorter than for a longer

distance over the same line; and to abolish combinations for the pooling of freights. I was not designed, however, to prevent competition.

Interstate Commerce Commission v. Baltimore & Ohio Railroad Co., 145 U.S. 263, 276, 12 S. Ct. 844, 848, 36 L.Ed. 699 (1892).

Similarly, the pre-ICCTA iteration of the NTP contained the identical passage to that found in the current version. Specifically, the NTP put in place before ICCTA reads as follows: “It is the policy of the United States government to provide for the impartial regulation of the modes of transportation subject to this subtitle, and - - - to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices.” 49 U.S.C. § 10101(a)(1)(D) (A copy of the previous version of the NTP is annexed as Exhibit 4 to Horizon’s Reply Statement).

The current, post-ICCTA, version is virtually identical and reads: “it is the policy of the United States Government to oversee the modes of transportation and - - - to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices.” 49 U.S.C. § 13101(a)(1)(D).

The fact that the statute retains this vestigial statement of policy is not particularly surprising considering the fact that this section of the NTP pertains to all modes of transport, not specifically Water Carriers, each of which is governed by a distinct set of rules and competitive operating principles. Although the Board rightfully seeks general guidance from the NTP, it cannot construe Congress’ failure to eliminate the reference to discrimination in that portion of the NTP applicable to all modes of transportation as reviving a cause of action against water carriers that was expressly eliminated by Congress. If the Board seeks guidance from elements of the NTP, it must also seek guidance from the only section applicable directly to water carriers. That section provides that it is the policy “in overseeing transportation by water carrier, to

encourage and promote service and price competition in the noncontiguous domestic trade.” 49 U.S.C. § 13101(a)(4). Absent from this section is reference to discrimination. Simply put, DHX’s reliance upon section 13101(a)(1)(D) even if only for guidance, standing alone without reference to either section 13101(a)(4) or the express provision of ICCTA must fail.

DHX’s assertion that Horizon has engaged in “destructive competitive practices” is totally unsupported in fact and at law. Horizon has treated DHX as fairly and fully as possible as a shipper and valuable customer while at the same time competing fully and fairly with DHX and other forwarders for FCL cargo. In its barest and most straightforward form, what DHX seeks by this proceeding is an order from the Board holding that any competition between a water carrier and a forwarder is *per se* unreasonable that does not result in the forwarder being given a competitive advantage by the carriers.

DHX seems to be of the opinion that any competition it faces from Matson or Horizon is by definition “destructive” simply because in 2002 DHX [REDACTED] on its LCL business [REDACTED] on its FCL business. DHX’s own profit margins establish the fact that Horizon’s competition with DHX and other freight forwarders does nothing more than to “encourage and promote service and price competition in the noncontiguous domestic trade” as desired by that portion of the NTP devoted to water carriers. 49 U.S.C. § 13011(a)(4).

Horizon has done nothing but compete fairly with DHX and with other large freight forwarders for FCL business. The [REDACTED] of DHX supports this assertion. Also supporting this assertion is the fact that Horizon has actively supported DHX’s efforts to obtain FCL cargo that has traditionally moved exclusively with its water carrier competitor, Matson. As is set out above, Horizon actively supported DHX’s bid [REDACTED]. This was cargo [REDACTED] with Matson. Horizon supported

DHX's attempt to grow its FCL business [REDACTED]

[REDACTED]

[REDACTED] Horizon provided a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] to procure or retain

that business.

Horizon has not, however, provided similar assistance to DHX or any other freight forwarder in their efforts to obtain FCL cargo that is already moving with Horizon. Similarly, Horizon has not lowered commodity rates for DHX for commodities that it is already moving in similar or larger volumes with Horizon. To do so would be irrational from both a commercial and economic point of view.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. For reasons well stated by Mr. Downes,

Horizon is not willing to undercut its own rates for cargo it is already moving for a shipper with whom it already enjoys a commercial relationship to enable DHX to quote a rate to that shipper

that is lower than its existing rate. Horizon's position is not a destructive competitive practice.

This is sound, practical competition in a mature, competitive marketplace.

DHX's claims of destructive competition are commercial ploys intended to get the Board to compel a commercial result that the market has not supported. When Horizon assists DHX in securing FCL cargoes, or when Horizon files a proportional tariff rate for the benefit of DHX, DHX does not complain. In effect, DHX's complaint of unreasonable practices is grounded on the premise that it is unreasonable for Horizon not to engage in discriminatory treatment in favor of DHX to the detriment of every other forwarder with whom Horizon does business.

E. EACH COUNT SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED AND FOR A FUNDAMENTAL FAILURE OF PROOF

1) DHX HAS SUBMITTED NO EVIDENCE RELATING TO THE ALLEGATIONS OF THE ORIGINAL COMPLAINT AND THE ORIGINAL COMPLAINT SHOULD BE DISMISSED

DHX's original Complaint alleged, in pertinent part, that Horizon's September 6, 1998 and October 17, 1999 increases to the minimum revenue requirement contained in its Overflow Rule were unreasonable. Complaint at ¶¶8-11. Complainant DHX, through the Affidavit of Brad Dechter, asserted that the elimination of certain Note Items caused it economic harm but did not otherwise allege that the elimination of these special footnotes constituted, in and of itself, an unreasonable practice. Complaint at ¶12 and annexed Affidavit of Bradley Dechter.

The Board, while denying Horizon and Matson's Motion to Dismiss, advised all parties that "we agree with the carriers that, for purposes of a rate reasonableness assessment, overflow rates are not separate rates but are components of the rates applicable to multi-container shipments." The Board went on to advise DHX that "to support a rate reasonableness complaint, indicate which particular multi-container rates it is challenging and why those rates, if outside of

the ZOR, are unreasonable.” December 21 decision, Slip op. at 5. DHX’S Amended Complaint states that “[t]he original complaint in this proceeding was filed on October 1, 1999, and is, to the extent not inconsistent herewith, incorporated herein.” Amended Complaint at 1.

In order for DHX to advance the argument, therefore, that the increases taken on the overflow component of multi-container shipments were unreasonable, it must establish that the total increase on the multi-container shipment exceeded the statutory ZOR or were otherwise excessive. In other words, DHX was obligated to submit evidence that the increased revenue derived by the increase to the overflow container exceeded the ZOR in terms of the total freight generated by the multi-container shipment. As noted by the Board the 1998 ZOR, when adjusted for the decrease in the PPI, was 6.5%. For 1999, the ZOR was increased to 10.3%. December 21 decision, Slip Op at n.11. In fact, the 7.5% increase in 1999, even if treated as a stand alone increase is presumptively reasonable pursuant to the 1999 ZOR.

DHX has not submitted evidence to the Board in its submission that would enable the Board to make an assessment as to the statutory reasonableness of any specific multi-container rates. DHX has not submitted any evidence that the net increase of the minimum revenue component on overflow containers when combined with the rate for the lead container (which rate was not increased), exceeded the ZOR on any given multi-container shipment. Similarly, DHX has introduced no evidence at all suggesting that the elimination of the Note Item discounts was unreasonable. As set out above, the elimination of the Note Items did not even constitute a rate increase. The only impact of the elimination of the note items was to ensure that single commodities moved at the existing tariff rates for these commodities whether or not the cargo was mixed with other items.

The total failure of proof with regard to the increase in the minimum revenue requirement for overflow containers and the elimination of Note Items has a direct and immediate impact on the new counts contained in DHX's Amended Complaint. The gravamen of DHX's amended Complaint involves the allegation that the elimination of note items and the increase in the minimum revenue requirement drove DHX out of the FCL marketplace. The record establishes that DHX was not driven out of the FCL marketplace. DHX is left with imaginative damage calculations. Although those calculations are flawed and have little probative value they assert: 1) that other shippers paid more than DHX by virtue of using different tariff items; and 2) that DHX's profit margins on its FCL business were reduced as a result of Horizon's rate actions.

In either case, to the extent that these damage claims and allegations of unreasonable practices are predicated upon presumptively reasonable rates DHX's, claims must fail. Support for this assertion may be found in rate reasonableness determinations made by the Federal Maritime Commission and its predecessor agencies.²⁵

In an action alleging that rates for the ocean transportation of Water Carrier rates between New York and Puerto Rico were unlawful, complainants asserted that they suffered competitive harm arising out of its freight rates. The Commission held that "reasonableness of rates, of course, is not to be gauged by the ability or inability of shippers to market their products with profit." *Atlas Waste Manufacturing Co. v. New York & Porto Rico Steamship Co. and Bull Insular Line, Inc.* 1 U.S.S.B. 195, 196 (U.S. Shipping Board 1931).

In 1936, the FMC held that "the Commission has no authority to reduce a rate primarily to protect an industry from domestic or foreign competition." *See Eastbound Intercoastal*

²⁵ Given the Board's relatively short period of time handling Water Carrier cases and the FMC's extensive experience in handling these issues in the non-contiguous domestic trade prior to ICCTA, Horizon has relied heavily on FMC opinions on matters relevant to the issues presented here.

Lumber, 1 U.S.M.C. 608, 620 (U.S. Maritime Commission 1936). *See also Interstate Commerce Commission v. Duffenbaugh*, 222 U.S. 42, 46 (“The law does not attempt to equalize fortune, opportunities or abilities” of competitors). The Commission, in 1940, then expanded on this point:

That a shipper does not realize as large a net profit as formerly may be a factor in determining reasonableness but it is not conclusive. Our only duty with respect to rates alleged to be unlawful is to inquire whether they are in accordance with the provisions of the various shipping acts. We cannot require carriers to establish rates which assure to a shipper the profitable conduct of his business. A carrier may not impose an unreasonable transportation charge merely because the business of the shipper is so profitable that he can pay it nor conversely can the shipper demand that an unreasonably low rate be accorded him simply because the profits of his business shrink to a point where they are no longer sufficient.

Intercoastal Cancellations and Restrictions, 2 U.S.M.C. 397, 400 (USMC 1940); *see also Increased Rates – Alaska Steamship Co.*, 3 F.M.B. 632, 638 (FMB 1951).

Diminished (albeit still healthy) profits are not predominant or significant factors in a determination of rate reasonableness. Similarly, Horizon should not be required to establish or maintain rates or practices that assure to DHX the profitable conduct of its business. The core thrust behind DHX’s Amended Complaint is that Horizon’s rates are too high for DHX to maintain its historic profit margins and that this fact, standing alone, constitutes an unlawful practice.

2) MINIMUM REVENUE REQUIREMENTS ARE AN ESSENTIAL ELEMENT OF ANY FCL SERVICE, PUBLICATION OF MINIMUM REVENUE REQUIREMENTS IN TARIFF RULES IS NOT A MISPLACEMENT OR UNREASONABLE PRACTICE AND COUNT 1 OF THE AMENDED COMPLAINT SHOULD BE DISMISSED

Count 1 is a hodgepodge of allegations that are inexplicable and incapable of being easily understood. DHX appears to argue that setting out a minimum revenue requirement for overflow

containers in the Rules sections of Horizon's tariff constitutes a "misplacement" with the intent to mislead the shipper."²⁶ Amended Complaint at ¶ 202. Absent from DHX's evidentiary submission is any indication that DHX itself was misled by the terms of the Overflow Rule.

In fact, DHX's pleadings and testimony are ripe with testimony extolling their expert tariff knowledge. DHX's ██████████ that it was DHX's ability to understand and manipulate Horizon (and Matson's) tariffs that provided it with a competitive edge in procuring both LCL and FCL business. ██████████ *Deposition* 101:18-25. ██████████ and whose primary responsibility was to read and interpret the water carrier's tariffs, has worked with Matson and Horizon's tariffs for over 15 years. ██████████ deposition she was able to quote rates, to recite tariff item numbers, and to compare FAX and mixed containerload items from memory without recourse to the tariffs themselves. ██████████ has such expert knowledge of the tariff that DHX's operations personnel use her "cheat sheets" designed to facilitate the loading of cargo to gain the maximum utilization of the container whilst paying the lowest applicable freight rates.²⁷ ██████████ *Deposition* 14:18-15:12. ██████████ also testified that given her vast experience in the area, she believed she had a greater knowledge of Horizon's tariffs than Horizon's own tariff employees. ██████████ *Deposition* 42:10-13.

Further, the allegation that the minimum revenue requirement applicable to overflow containers was placed in the Overflow Rule with the intent to mislead is specious. As noted by

²⁶ DHX does not define the term 'misplacement' nor anywhere indicate why a 'misplacement' constitutes a statutory violation.

²⁷ ██████████ extraordinarily proficient ██████████ job and Horizon in no way believes that there is anything wrong with utilizing tariff knowledge to obtain the most favorable rates possible for one's shippers.

DHX, the Overflow Rule is not a rate. Rather, it is a rule applicable to shipments of multiple CWT-rated commodities that qualify for treatment, by being matched with a lead container, as an overflow container. DHX's demand that the minimum revenue requirement be published in the rate section of Horizon's tariff would require Horizon to add a footnote to every single item in its commodity tariff. Any shipper or freight forwarder with knowledge of the rule (and the rule is well-known to every freight forwarder and consolidator) can read the rule and derive all the information it needs on one page.

Lastly on this point, DHX's assertion that the rule was structured with the intent to mislead is not only baseless and legally irrelevant, but also unavailing absent any evidence or testimony that DHX was, in fact, misled by the rule. DHX has repeatedly advised the trade in its promotional material (and the Board in its pleadings and testimony) that DHX possesses extensive knowledge of every nook and cranny in the water carriers' tariffs. Absent from their submission is any assertion that DHX was misled at all by the Overflow Rule. Rather, DHX personnel confirmed in deposition testimony and in direct case submissions that DHX has prospered because of their knowledge of that rule.

Last, DHX makes the astonishing assertion that cargo loaded into an overflow container should not be subject to any minimum revenue charge but, rather, DHX should have been charged for the actual amount of the cargo contained in the overflow shipment. Amended Complaint ¶ 205. What DHX actually seeks by this demand is an Order from the Board asserting that even if DHX only loaded one ton of cargo into a 40-foot container it should not be required to pay Horizon any specified minimum revenue for the use of a 40-foot container but, rather, the going CWT rate for one ton of cargo.

Astonishing in this regard is the total absence of proof that any DHX overflow container has been subject to the minimum revenue requirement of the Overflow Rule. In fact, DHX's own witnesses, including [REDACTED], all stated that they load each container with as much cargo as possible. They take careful steps to ensure that DHX loads cargo that exceeds the minimum weight requirement applicable to the lead container and that exceeds the minimum revenue requirement for the overflow container. Each witness stated that it is not DHX's policy to "pay for air." [REDACTED] *Deposition* 147:19-25; 148:1-5; [REDACTED] *Deposition* 74:21-25; 75:1; [REDACTED] *Deposition* 82:17-25; 83:1-20. Further, [REDACTED] that in those instances where a container, say a 40-foot container, was particularly light, she would declare it [REDACTED] [REDACTED] *Deposition* 54:3-18. As [REDACTED] noted, the FAK rate applicable to those shipments, particularly those using the equipment substitution provision, [REDACTED] requirement utilizing the overflow rule. [REDACTED] *Deposition* 60:2-12.

DHX testified that as a matter of corporate policy, they do not ship overflow containers that are likely to be subject to the minimum revenue requirement. Even if the Board were to find that Horizon's publication of a minimum revenue requirement in a rule constituted an unlawful practice, DHX has provided no evidence from which the Board could calculate the financial implications for DHX as the result of that practice. DHX has not identified any shipments which took the minimum revenue (and, based upon DHX's own testimony, there may not be any) and has not submitted any documents evidencing the difference between the rate they paid Horizon and the rate they claimed they should have paid if the cargo had been "rated on a CWT basis for the actual amount of the cargo contained in the Overflow Shipment."

DHX has profoundly failed to provide support for its legal theory and has compounded that omission by failing to provide factual support for the claims that any financial harm was incurred as a result of the alleged violations of law. There is no evidence in this record of a single DHX shipment subject to the minimum revenue requirement of the Overflow Rule. Horizon therefore requests that the Board dismiss Count 1 of the Amended Complaint on the grounds that DHX has not met its burden of proof with regard to Count 1 and has furthermore failed to meet its burden of proof with regard to identifying those shipments that it claims were subject to the minimum revenue requirement.

3) HORIZON'S TARIFF RATE ITEMS LIMITED BY REFERENCE TO THE ORIGIN OF THE CARGO ARE NOT UNREASONABLE, DO NOT DISCRIMINATE AGAINST DHX AND COUNT 3 OF THE AMENDED COMPLAINT SHOULD BE DISMISSED

DHX alleges in Count 3 that Horizon's publication of rates limited in their applicability to named shippers or for cargo originating at designated addresses or zip code constitutes an unreasonable practice. Amended Complaint ¶¶ 215-216. The sole reason given by DHX to explain why such limitation are unreasonable is because DHX does not have access to some of those rates and that has resulted in "discrimination against Complainant." Amended Complaint ¶ 219.

There is nothing expressly or inherently unreasonable about this practice but for the fact that DHX does not have full an unfettered access to rates set up for the benefit of other shippers. DHX enjoys the benefit of access to many proportional and store-door rates in Horizon's tariff and does not allege that the fact that its forwarder competitors might not have access to those rates is unreasonable or constitutes a destructive competitive practice.

4) HORIZON'S MAINTENANCE OF DIFFERENT SECTIONS OF ITS TARIFFS FOR PORT-TO-PORT, PROPORTIONAL, MOTOR-WATER AND STORE DOOR RATES ARE REASONABLE IN ALL RESPECTS AND COUNT 4 OF THE AMENDED COMPLAINT SHOULD BE DISMISSED

Count 4 essentially restates the allegations of Count 3 and alleges that Horizon's rate structure is unreasonable because it discriminates against DHX. DHX alleges that Horizon's tariff structure discriminates against DHX because DHX does not have access to every rate in Horizon's tariff. DHX can point to no statute, regulation or case law, either at the Board or at the Federal Maritime Commission ("FMC") that prohibits a carrier from maintaining separate sections in its tariff for port-to-port, proportional, motor-water rates. The only standard that governs the publication and maintenance of Horizon's tariffs in this regard is the direction that tariffs be clear and unambiguous. In fact, the underlying purpose behind the division of Horizon's tariff into readily identifiable and understandable sections based upon the modality of the shipment is to render it more easily understood than a one-section tariff consisting of a hodgepodge of different type moves on each page for each specific commodity. Horizon's tariffs are consistent with water carrier practice and are clear, unambiguous, and easily understood. They are well understood by DHX who has testified about its in-depth expertise and knowledge of both Horizon and Matson's tariffs and tariff structure.

As set out above, DHX has had rates filed on its behalf by Horizon in every section of its tariff. Those rates are found in the proportional, motor-water, and store-door sections of Horizon's tariff. DHX has not complained about those rates because they redound to its benefit. DHX now complains about similar rates offered to different forwarders or shippers only because they benefit a party other than DHX.

Horizon understands that the freight forwarding community moves a significant amount of LCL and FCL cargo. It appreciates and seeks that cargo out. At the same time, Horizon is aware that, given the intense competition between freight forwarders, any particular advantage given to one freight forwarder by Horizon will encourage other forwarders to seek a similar advantage. If they do not obtain that similar advantage, Horizon is likely to lose shipments from the other forwarder. Horizon cannot actively take steps to provide rate advantages to one forwarder unless it is prepared to provide similar advantages to all the freight forwarders with which Horizon conducts business.

Consequently, Horizon has taken steps in all its tariff filings, particularly in its proportional and motor-water rate filings to ensure that special rates filed for DHX or other freight forwarders do not adversely impact Horizon's ongoing relationships with those parties. This is a difficult but necessary task. It sometimes requires Horizon to say no to certain requests from DHX and other forwarders. When this count is broken down to its essence, the gist of DHX's complaint is not that Horizon maintains separate tariff sections but that those tariff sections and the rates contained therein do not universally advantage DHX's commercial goals.

**5) ALL PARTICIPATING MOTOR CARRIERS, INCLUDING DHX,
THAT PARTICIPATE IN HORIZON'S TARIFF HAVE FILED
CONCURRENCES WITH HORIZON AND COUNT 5 SHOULD BE
DISMISSED**

It is a bit hard to understand the allegations in Count 5 of the Amended Complaint. Count 5 alleges that Horizon's tariff has three sections. Section 200 contains all water rates. Section 500 contains proportional rates, and Section 600 contains Horizon's store door joint motor-water rates. Amended Complaint ¶ 223 (found in Count 4). DHX goes on to allege that the Section 500 and Section 600 rates are mislabeled because the rates contained in those

sections do not list participating motor carriers nor do the rate items list through routings.

Amended Complaint ¶ 233.

DHX then alleges that “Sea-Land/Horizon is in violation of sections 1312.14(a) and 1312.14(b) as well as section 13702(b)(1), 13701(b)(1)(A), 13701(b)(1)(D) and 13701(b)(1)(E), 49 U.S.C.” Amended Complaint ¶ 234. We assume in this defense that DHX’s reference to “sections 1312.14(a) and 1312.14(b) refer to 49 C.F.R. § 1312.14. Horizon cannot ascertain DHX’s reference to 49 U.S.C. §§ 13701(b)(1)(A), 13701(b)(1)(D) and 13701(b)(1)(E) as those sections do not exist. Horizon believes that DHX might be referring to 49 U.S.C. § 13702(b), which sets out tariff requirements for the noncontiguous domestic trade.

49 C.F.R. §1312.14 states as follows:

(a) *Authorization.* Rates and services of a carrier must be filed in a tariff issued in that carrier’s name unless they are filed:

- (1) In an agent’s tariff when the carrier has executed a power of attorney authorizing that individual or entity to service as its tariff agent; or
- (2) In a tariff of another carrier through issuance of a concurrence to the latter carrier authorizing the first carrier’s participation in joint rates and through routes.

(b) *Disclosure of authorization.* If two or more carriers execute powers of attorney to the same agent, it is not necessary for those carriers to exchange concurrences to participate in joint rates in that agent’s tariffs. Powers of attorney and concurrences are not to be filed with the Board, but shall be provided to any person on request.

49 C.F.R. § 1312.14

Horizon is hard-pressed to determine exactly what DHX is alleging. Section 13702 contains the tariff filing requirements for water carriers in the noncontiguous domestic trades, Section 13702(a) requires water carriers to maintain a tariff. There is no allegation in Count 5 asserting that Horizon is operating or has operated without an effective tariff during any period in question set out in this litigation. 49 U.S.C. § 13702(a). Rather, the record shows that Horizon

has been diligent in maintaining complex tariffs in a business environment that requires frequent changes to accommodate the needs of shippers.

Section 13702(b) requires that those tariffs be published and filed with the Board in a manner prescribed by the Board. 49 U.S.C. §13702(b)(1). Section 13702(b)(2) sets out minimum contents that must be included in a tariff. Critically, for purposes of responding to the allegations contained in Count 5, the Board has provided that as to inland divisions of through rates “[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. 49 U.S.C. § 13702(b). As best as we can determine, DHX alleges that Horizon’s tariffs do not list the motor carriers that undertake the provision of inland transportation services used in the performance of joint or through rates. Further, DHX has apparently asserted, by reference to 49 C.F.R. § 1312.14, that Horizon either does not have, nor has it filed with the Board, any of the concurrences from participating motor carriers required by 49 C.F.R. § 1312.14. Horizon does not, in fact, list the participating carriers it utilizes to undertake the mainland inland portions of its joint and store door shipments. Horizon does not list those participating carriers because there is no requirement to do so set out at 49 U.S.C. § 13702. Similarly, there is no requirement in the Board’s regulations for the publication of posting and filing of tariffs that Horizon must list its participating motor carriers. *See* 49 C.F.R. pt. 1312. Horizon does, in fact, have concurrences in its files with every carrier that performs inland moves for Horizon. Horizon has not filed those concurrences with the Board because it is not required by the Board’s tariff rules to do so.²⁸

²⁸ Horizon maintains a DHX concurrence in its files. See Exhibit 5 to Horizon’s Reply Statement. During depositions of the parties taken in Long Beach, California in August 2003, Counsel for Horizon advised counsel for DHX that it had just received a box filled with

In the face of ICCTA's express provision that exempts Water Carriers from stating separately or otherwise revealing in their tariff filing their inland divisions on a through route, DHX has not demonstrated that Horizon has actually violated any provision of 49 U.S.C. § 13702. This is particularly true given that fact that DHX has received and maintains concurrences from every motor carrier for which it does business in the Hawaii trade. DHX does not dispute that Horizon has maintained and made available these concurrences.

Even if it can be shown that the failure of Horizon to list its participating motor carriers rose to a level of a regulatory violation, DHX has introduced no evidence providing any causal link between that alleged violation and harm suffered by DHX. DHX has, repeatedly held itself as having expert knowledge of the Water Carriers' tariffs. Its personnel have asserted that their knowledge of Horizon's tariffs is so detailed that they are able to find beneficial rates in that tariff that smaller FCL shippers cannot obtain. DHX has boasted of its expertise in obtaining favorable inland rates for its shippers. DHX purports to have relationships with long distance truckers and railroads that provides it with knowledge and access to competitive inland rates for the shipments of its cargo. DHX maintains its own trucking service that can offer pick up services for FCL cargo throughout the West Coast. Given DHX's own self-proclaimed knowledge of the carriers' port-to-port rates and its self-proclaimed knowledge of inland rates and routes, the record remains void of any indication that DHX incurred economic harm because of Horizon's actions. DHX has not provided nor identified any specific shipments that it has moved with Horizon on a through route with Horizon. Further, Horizon has not provided any evidence indicating that the rates it paid for its store-door or multimodal shipments with Horizon

thousands of concurrences from Horizon's operational offices in Dallas, Texas. Counsel for Horizon advised that those concurrences were available for review, inspection, and copying. Counsel for DHX declined the opportunity to view or make copies of the concurrences..

were unlawful by reason of Horizon's practice of maintaining concurrences in a central file. DHX, a self-proclaimed expert at reading and understanding Horizon's tariffs merely asserts, without more, that the failure to list participating carriers or publish its concurrences has caused DHX harm and asks the Board to dispense Horizon's monies to DHX.

6) HORIZON'S DECISION NOT TO ENTER INTO CONFIDENTIAL TRANSPORTATION CONTRACTS WITH DHX IS NOT UNREASONABLE OR UNLAWFUL AND COUNT 6 OF THE AMENDED COMPLAINT SHOULD BE DISMISSED

Horizon has not entered into confidential transportation service contracts with DHX in the Hawaii trade. Horizon has not entered into confidential transportation service contracts with any other freight forwarder in the Hawaii trade. Horizon has not entered into confidential transportation service contracts with any beneficial shipper in the trade. In fact, and as set forth in the Verified Statement of Daniel Downes ("Downes Statement"). Horizon has filed rates in its tariff subsequent to the agreement of the parties with a few shippers but the rates applicable to those shipments are duly filed in Horizon's tariff in the manner prescribed by the Board.

The attached statement of Dan Downes clearly states Horizon's reasons for not entering into confidential transportation service contracts. Horizon is the number two Water-Carrier in a two-Water-Carrier trade. Its market share has improved dramatically since its entrance into the Hawaii trade but its current market share still does not exceed 35%. See also, *Deposition of Charles Brown* ("Brown Deposition") 83:5 – 83:10. It is Horizon's ongoing goal and obligation to increase that market share. Horizon also has no doubt that Matson's ongoing goal and obligation is to retain and possibly increase its own market share.

If Horizon were to enter into one confidential transportation service contract with any one shipper or freight forwarder it would no doubt feel compelled to enter into similar agreements with all other similarly situated. Such an outcome might serve to lock-in or otherwise commit a

certain portion of its current market share by force of these service contracts. However, Horizon has no doubt that if Horizon were to begin offering service contracts to its shippers and/or forwarders, Matson would feel compelled to take similar steps. As so eloquently put by Horizon's General Manager for the Western region at his deposition, such an occurrence would serve to freeze the market and would serve to limit significantly Horizon's ability to grow its market share in the Hawaii trade:

16 Q. Well, let me ask you this. And I may not be
17 making myself clear, and Mr. Benner might make it a
18 little more clear for us. Why -- if you know, why
19 doesn't Horizon or Sea-Land engage in volume pricing
20 contracts through written agreements in the Hawaii
21 trade?

22 A. In my understanding in terms of --

23 Q. Yes.

24 A. And I can only go by my understanding. The
25 reason is that we've looked -- we looked at it, we did
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1 entertain it, we looked at it, but it wouldn't be in our
2 best interest to do it, given the factors that we've
3 experienced in the past in other trades, in terms of
4 what happens as soon as you entertain a volume contract.

5 In addition, we -- if you look at sort of our
6 history in the Hawaii trade, we are the Number 2 carrier
7 within the Hawaii trade, and it's to our advantage not
8 to have the market locked up as the Number 2 carrier,
9 because we're trying to grow. And if we have our
10 competitor, who is about at 65 percent of the market,
11 lock up everything in the contract, that leaves us no
12 room to grow in the marketplace.

13 Q. So, in other words, if you were to do written
14 contracts, Matson would do the same thing?

15 A. Oh, absolutely, absolutely.

Brown Deposition 82:16 – 83:18.

Horizon's Director of Marketing and Pricing for the Hawaii Trade confirmed Mr.

Brown's testimony:

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17 A. Well, at this point, our participation in the
18 Hawaii trade is somewhere in the ballpark a half of the
19 amount of freight number of containers that Matson
20 carries. And it's our intention to continue to grow our
21 market share over time, and at this stage we don't feel
22 it's in our best interest to move down the path of
23 contracts or some sort of time volume agreement, because
24 we feel it will impede our ability to continue to grow
25 our market share.

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1 Q. And how will it impede your ability to grow
2 market share by making your rates more widely available?

3 A. Well, if the 100-container-a-week shippers or
4 large shippers of that magnitude are locked into what
5 you call time volume agreements or contracts or
6 something of that nature, then the freight is not, in
7 our opinion, more readily accessible for us to go out
8 and attract.

9 Q. So, in other words, this would be a situation
10 where, if this shipper had a time volume agreement with
11 Matson, his rate -- his commodities wouldn't be
12 available to you, correct?

13 A. Yes.

14 Q. What has that got to do with your use or
15 publication of time volume rates?

16 A. Well, the logic is that since Matson has
17 approximately two containers to every one that we have
18 in terms of regular lift to Hawaii, if they -- if Matson
19 locked up those customers in time volume agreements
20 because they felt compelled to do that because we
21 started doing that, then we'd be quickly in a situation
22 where we would have more of a ceiling, if you will, on
23 our ability to grow.

24 Q. So if I'm understanding your explanation
25 correctly here, your concern is that if you publish time
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1 volume rates, Matson would also do so?

2 A. Correct.

3 Q. And then secondly, because they're a much
4 larger operation, they would in effect tie up a larger
5 percentage of the market?

6 A. In the Hawaii trade, they're a much larger
7 operation, if you will, and the concern is that we would
8 like to have the upside of being able to grow our
9 participation and add sailings, add to our service

10 office, and continue to grow our presence in the trade.

Deposition of Daniel Downes (“Downes Deposition”) 167:17-169:10.

Horizon’s consistent decision not to enter into confidential transportation service contracts or to file/time volume rates for either shippers or forwarders is an inherently rational action on the part of the number two carrier in the trade concerned with continuing growth of its market share. DHX has not presented any evidence or testimony that contradicts the factual testimony of Messrs. Downes or Brown or that undermines the marketing and economic rationale behind Horizon’s decision to not offer service contracts in the trade. In fact, the uncontradicted testimony of Messrs. Brown and Downes that Horizon does not offer these agreements to either shippers or forwarders contradicts any assertion that Horizon’s treatment of DHX in this regard is any different from its treatment of either beneficial shippers or other freight forwarders. Even were Horizon to be commercially misguided in these decisions, federal law does not prohibit CSX from making sub-optimal, commercial judgments.

Horizon has filed a number of tariff rates for large, beneficial, shippers subsequent to an exchange of correspondence and negotiations with those large shippers. Typically, these large shippers all have their own logistics departments that manage the transportation of their company’s shipments. These companies all prefer to select Water Carriers (and VOCCs in the foreign trades) through a competitive bid process. In the Hawaii trade, these shippers will advise Horizon, and presumably Matson, how much and what type of cargo they expect to ship to Hawaii during their next business cycle, typically a calendar year.²⁹

²⁹ Some products and shippers operate on different cycles but, generally speaking, large shippers typically operate on an annual logistics cycle.

Horizon responds to these bids by submitting to the shipper a recapitulation of the bid and Horizon's rate proposal in response to the bid. The shipper is then free to accept Horizon's bid, reject Horizon's bid, or submit a counter-proposal. Once an agreement is reached, Horizon notifies the shipper, again in the form of a recapitulation of the agreed upon rates, and then files the applicable rates in its tariffs.

Mr. Downes' statement recounts that Horizon takes a number of factors into account when responding to a bid with proposed rates. It looks at the current rate level for the commodity, it determines whether the shipper is currently moving this cargo with Horizon or Matson, it examines its commercial relationship with the shipper (e.g., have they consistently shipped the volumes set out in previous bids and have they stayed current with their accounts payable); it looks at the expected volumes of cargo to be shipped during the bid cycle; and determines whether the proposed rate would have a negative impact in terms of the rate levels for other shipments moving on Horizon. The volume of containers set out in the bid is certainly an inherently important transportation factor that Horizon weighs when evaluating the appropriate rate proposal. However, Horizon's bid proposals do not contain minimum volume commitments and they do not contain any liquidated damage provisions in the event that the volume actually shipped falls below the expected amount. Once the shipping cycle is complete the shipper will generally approach Horizon (and no doubt Matson) and ask Horizon to propose new rates for the next cycle. Horizon's response will be predicated, in part, upon the previous year's experience. The fact that a shipper has not generated the expected volume of cargo will not necessarily induce Horizon to decline or cancel the rate prior to the end of the bid cycle. There may be many explanations, including lagging sales or a sluggish economy that might account from a shortfall under the estimated volumes during the previous cycle.

All these factors, both subjective factors relating to the shipper's commercial and economic dealings with Horizon in the past and objective factors such as the volume and value of the cargo being offered to Horizon, are legitimate transportation factors. These types of arrangements are, however, quite different from the more formal contract that DHX is demanding.

Horizon has thus far thought it prudent not to enter into such an arrangement with DHX or other forwarders and its judgments in this regard are not subject to governmental reversal at the behest of DHX or any other shipper or forwarder.

Horizon does not generally engage in a similar bid process with freight forwarders. In the first instance, freight forwarders do not typically put out their cargo for a bid. There are many reasons for this. Beneficial shippers have a generally good idea as to the present market for their goods in Hawaii. They own the merchandise and control the routing of their cargo. More importantly, shippers, particularly large-volume shippers with logistics departments that control the flow of cargo, are more likely to commit their shipments to a single water-carrier than a freight forwarder. In other words, when a beneficial shipper promises Horizon a specific volume or percentage of its cargo, that shipper is in a position to ensure that cargo is delivered and loaded accordingly. Beneficial shippers control the routings and time the delivery of their own shipments. Freight forwarders do not enjoy the same level of control for practical commercial reasons. Consequently, Horizon's participation in responding to bids from shippers with the filing of tariff rather than contract rates does not freeze Horizon's market share and, in fact, assists Horizon in obtaining its goal of increasing its market share in the Hawaii trade.

Freight forwarder shipments, particularly consolidated loads that might have cargo in it from thirty different shippers destined for thirty different consignees in Hawaii, are often more

time-sensitive than single-shipper loads. Cargo is received and loaded by forwarders every day of the week and the market demands that forwarders move their cargo on the next available ship, whether that ship is a Matson or Horizon sailing. If a freight forwarder delayed loading of a container for one week in order to load that container on the next available Horizon vessel, it would have thirty shippers complaining about late delivery. Further, the ability of freight forwarders to juggle loads between Matson and Horizon helps ensure that each carrier tends to the forwarder's service and price needs in an attempt to maintain its market share of freight forwarder routed shipments and, hopefully, to see an incremental increase in any given freight forwarder's weekly business with Horizon. Simply put, the ability to shift cargo between Matson and Horizon is a powerful tool that freight forwarders use to secure many value added services from Horizon.

Freight forwarder cargo offerings are as diverse and as subject to change as the forwarder's shipper base. Freight forwarders seek and obtain every type of cargo that is available. One week their product mix might consist of low-value, low rated cargo and the next week it might consist of higher-value, higher rated cargo. Whereas a shipper's cargo offerings are far more predictable and quantifiable. Predictability of the type and nature of the cargo being offered to it is an essential component of practical rate-making. Horizon can make professional judgments about cargo offered to [REDACTED], for example, because it knows the general value and characteristics of the cargo shipped [REDACTED]. Horizon cannot make any objective judgments about the type and nature of freight forwarder cargo offerings because those cargo offerings change every week.³⁰ It is Horizon's carefully thought out commercial view that

³⁰ There are many instances where a forwarder controls regular merchandise for a large shipper known to Horizon. [REDACTED] Because that cargo moves in predictable volumes and cargo mixes Horizon can and does provide

entering into a bid process with forwarders that do not necessarily control the ultimate routing of that cargo would do nothing to enhance its market share because a non-binding volume commitment would not necessarily alter the forwarder's commercial obligation to move its cargo to Hawaii on the next available vessel. This commercial judgment may be correct or incorrect, but it is a judgment that Horizon is entitled to make.

F. DHX'S DAMAGE CALCULATIONS ARE FLAWED AND NOT SUPPORTED BY THE EVIDENCE

It is axiomatic that the Board need not reach the issue of damages unless it finds that Horizon or Matson has engaged in unlawful conduct. Horizon is confident that there has been no such unlawful conduct. Nevertheless, Horizon is obligated to respond to DHX's assertions that it is entitled to damages and its attempt to quantify those damages. DHX's damage submission, to the extent Horizon is capable of understanding it, has three components. First, DHX claims it lost FCL customers as a result of Horizon's rate actions. Unfortunately, DHX has not quantified the volume of FCL business generated by these allegedly lost FCL customers. In other words, DHX has not provided any evidence indicating how many containers for these shippers DHX moved with Horizon or Matson or how many containers these shippers currently move. Further, DHX has not proffered evidence that these customers were actually lost or that actions of Matson or Horizon were the proximate cause of the alleged loss of business. In fact, the only evidence in the record establishes that DHX lost FCL customers to competition from other freight forwarders and not from Matson or Horizon.

Second, DHX has submitted documents that purport to quantify the difference between the rate DHX paid for its shipments with Horizon and Matson and the rates other shippers paid for what DHX claims to be similar commodities. The flaws in this approach are manifest. As a

rates similar to those set out in response to shipper bids.

primary matter, a claim of differential pricing for similar commodities appears to be nothing more than a rate discrimination claim. The Board has already rejected this approach twice in this proceeding. Further, there is no indication in the record that the shipments cited by DHX are either LCL or FCL shipments. Neither defendants nor the Board can sort out whether DHX is intentionally claiming damages for LCL shipments and, if so, on what theory it is proceeding. Each count of the Amended Complaint alleges that the harm caused by Horizon and Matson's rate actions caused it to lose FCL business and profits, yet DHX submits lists of numerous LCL shipments in support of its damage claims.

Third, DHX has submitted what it claims to be evidence of lost profits for its FCL business. What DHX has failed to provide is any causal link between its alleged lost profits and any particular action of Matson or Horizon. [REDACTED]

[REDACTED]. What DHX has failed to provide is any evidence linking the relatively small compression of its FCL margins to any particular act of the carriers. As the record shows, the only evidence in the record establishes that DHX faced significant competition from other freight forwarders for FCL business. The record further shows that DHX regularly lost and gained FCL accounts to and from other freight forwarders. Critically, for purposes of its lost profits analysis, [REDACTED]

[REDACTED] This glaring omission renders its lost profits analysis devoid of any probative or evidentiary value. Last, but certainly not least, DHX admits [REDACTED]

[REDACTED]
[REDACTED] containers per year with the Complainant.

**1) DOCUMENTS PREPARED AND SUBMITTED FOR LITIGATION
HAVE LITTLE PROBATIVE VALUE WHEN COMPARED TO
RECORDS MAINTAINED IN USUAL COURSE OF BUSINESS**

Common to all its damage claims is the failure of DHX to provide any documentary evidence that was not prepared specifically for this litigation. DHX's lost customer sheets, lost profit analysis, and its confusing list alleging discrimination damages were all created specifically for this litigation. DHX has not submitted any records kept in the normal course of its business that support the proposition that any act of Matson or Horizon was the proximate cause of any harm alleged by DHX. DHX has not submitted any records in which the loss of any single customer was attributed by that customer to any act of either Matson or Horizon. DHX has not submitted any records kept in the normal course of business that would establish or tend to indicate that the rate actions of Horizon and/or Matson were the sole and proximate reason that DHX's FCL profit margins, or spread, in 2002 were not quite as large as it was in 1997.

Typically, business records are admissible evidence only if it can be shown that: 1) the document was prepared in the normal course of business; 2) it was made at or near the time of the events it records; and 3) it is based on the personal knowledge of the entrant. *See Datamatic Services, Inc. v. United States*, 909 F.2d 1029, 1032 (7th Cir. 1990).

Documents prepared specifically for litigation are typically not admissible under the Federal Rules of Evidence. The reasons for this construction are readily ascertained:

Litigation is not a "regularly conducted business activity," and this for the practical reason that documents prepared specifically for use in litigation are (in Judge Jerome Frank's immortal words) "dripping with motivations to misrepresent. They are therefore inadmissible and inadmissible documents are not made admissible by being summarized.

Ampat/Midwest, Inc. v. Illinois Tool Works, Inc., 896 F.2d 1035, 1044-1045 (7th Cir. 1990) (Citing *Hoffman v. Palmer*, 129 F.2d 976, 991 (2d Cir. 1942), *aff'd*, 318 U.S. 109, 63 S.Ct. 447, 87 L.Ed. 645 (1943) (“Data prepared or compiled for use in litigation are not admissible as business records.”)).

The primary purpose of this evidentiary standard is “to provide a check on trustworthiness” of the evidence submitted by a party to litigation. Therefore, such records may only be admitted if three conditions are met: “(1) the records must be kept pursuant to some routing procedure designed to assure their accuracy, (2) they must be created for motives that would tend to assure accuracy (preparation for litigation, for example, is not such a motive), and (3) they must not themselves be mere accumulations of hearsay of uninformed opinion.” *United States v. Miller*, 500 F.2d 751, 754 (5th Cir. 1974). This standard is premised in part on the long-held notion that “the party proffering evidence has the burden of showing that the prerequisites for its admissibility are met. *Potamkin Cadillac Corp. v. B.R.I. Coverage Corp.*, 38 F.3d 627, 632 (2d Cir. 1994). In fact, “the principal precondition to admission of documents as business records pursuant to Fed. R. Evid. 803(6) is that the records have sufficient indicia of trustworthiness to be considered reliable.” *Saks International, Inc. v. M/V Export Champion*, 817 F.2d 1011, 1013 (2d Cir. 1987)

As the Board reviews DHX’s evidentiary submission it should keep in mind that every single record submitted by DHX in its Opening Statement was produced specifically for use in this litigation. These records are glaringly difficult to reconcile with the records DHX maintains in the usual course of its business.

**2) DHX’S CLAIMS CONCERNING ITS LOST SHIPPERS ARE
INCONSISTENT, MISLEADING, AND CONTRADICTED BY DHX’S
OWN RECORDS**

DHX argues that it has lost FCL customers as a result of Matson and/or Horizon's rate actions. Testimony concerning these alleged lost customers was introduced by DHX through the [REDACTED]. The Griggs Statement contains 17 exhibits. Two of those exhibits, Exhibit 14 and Exhibit 16 purport to provide this Board with evidence that DHX lost full containerload customers and that these customers left DHX because of actions taken by Matson and/or Horizon.

At the outset, the exhibits are fundamentally flawed because they do not quantify the volume of FCL business generated by these customers. They do not assert how many containers per year these shippers moved with DHX, nor do they indicate whether these were long-term, short-term, or an episodic customers of DHX. DHX does not provide any evidence at all which would indicate that even if DHX lost these accounts (and it is not clear that they actually did lose them) that the loss of that business was attributable in whole or in part to Horizon or Matson. Further, DHX does not claim, or try to establish, that these shippers are still moving cargo to Hawaii, and if so, whether they are routing that cargo direct with Matson or Horizon or via a freight forwarder competitor of DHX. This omission is glaring because the record, set out below, establishes that DHX regularly lost FCL business to other freight forwarders. Despite that fact, DHX asks this Board to presume that all lost business may be solely attributable to acts of Matson or Horizon.

As is patently clear, these exhibits were prepared by DHX specifically for this litigation. They have little probative value but, more importantly, they are incorrect and misleading. Further, the witness used to sponsor these exhibits, [REDACTED], is not competent to testify about the relationship between DHX and its shipper clients.

At [REDACTED] testified under oath that [REDACTED] job responsibilities as [REDACTED] [REDACTED] involve a relationship that is limited almost exclusively to Matson and Horizon. [REDACTED] to the Carriers and ensures that the Carriers rate DHX's shipments properly. [REDACTED] *Deposition 7:10-21.*³¹ [REDACTED] had direct and immediate knowledge of rate and billing activities between Horizon and the Carriers, [REDACTED] not get involved in any issue relating to the billing of DHX's clients. [REDACTED] *Deposition 9:23-10:10.*³² In other words, [REDACTED] any first-hand knowledge of the relationship, rate-setting or otherwise, between DHX and its shipper customers.

DHX nonetheless seeks [REDACTED] as a vehicle through which it introduces self-serving litigation created Exhibits purporting to establish that DHX lost FCL customers and that these customers took their business away from DHX solely because of rate actions taken by Horizon and Matson. As is set out below, there is absolutely no evidence in the record that

³¹ [REDACTED]

³² [REDACTED]

supports this hodgepodge of inferences. In fact, the record will establish that DHX did not lose the FCL business it claims to have lost in these exhibits.

Horizon responds to these litigation-prepared exhibits by referencing documents and records maintained on a daily or regular basis by DHX in their normal course of business. Specifically, Horizon refers the Board to the Special Billing Instructions (SBI) maintained by DHX in the usual course of its business.

As the Board knows, freight forwarders are exempt from the tariff-filing requirements of the Act in the non-contiguous domestic trade between the U.S. mainland and Hawaii, Guam, Alaska, and Puerto Rico. *See Exemption of Freight Forwarders in the Noncontiguous Domestic Trade From Rate Reasonableness and Tariff Filing Requirements*, STB Ex Parte No. 598 (February 21, 1997). Nevertheless, DHX maintains a tariff, designated DHXI-300. [REDACTED]

Deposition 19:15-25. [REDACTED]

[REDACTED] *Deposition* 15:10-16:8. DHX maintains a set [REDACTED]

[REDACTED] *Deposition* 19:15-25.

A DHX [REDACTED]

Deposition 117:1-7. Additionally, when [REDACTED]

[REDACTED] For example if a change to a rate for a DHX client was made on 12/23/02 [REDACTED]. [REDACTED] *Deposition*

117:22-118:11.³³ In other words, if a shipper is moving either LCL or FCL cargo with DHX

³³ [REDACTED]

DHX also asserted that although the [REDACTED]

[REDACTED]

[REDACTED]

*Deposition 65:1-18.*³⁶ If one were to accept this proposition at face value, a critical examination of the Exhibit reveals that DHX [REDACTED] in 1997 yet only three (3) of them were identifiable as FCL accounts. However, a comparison of the “prepared for litigation” Lost Customer list to DHX’s regularly maintained records and [REDACTED]’s own testimony belies the accuracy of the exhibit. First, immediately after asserting that the customers contained on the Exhibit were lost forever, the witness backtracked and acknowledged that this might not be the case. [REDACTED] *Deposition 65:15-23.*³⁷ Secondly, a review of DHX [REDACTED] provides ample evidence that many of the FCL customers listed on the exhibit remain active customers of DHX.

36

[REDACTED]

37

[REDACTED]

The names of the lost FCL shippers contained in Exhibit 14 to [REDACTED] as are follows:

[REDACTED]

A review of [REDACTED] by DHX provides compelling evidence that most of the allegedly lost customers were never actually lost, except in the fevered imaginations of those who created these exhibits for use in this litigation.

[REDACTED]:

[REDACTED] is an FCL shipper allegedly lost to DHX in 1998. However, DHX's [REDACTED] for this shipper evidences an FCL rate for [REDACTED] updated as recently as April 14, 2002. DHX also updated its LCL rate for [REDACTED] on April 14, 2002.

[REDACTED]

According to the DHX SBI, [REDACTED] had FCL activity with DHX as recently as April 14, 2002, long after the time in which DHX claims this business to have been lost in 1997.

[REDACTED]

DHX asserts that [REDACTED] was an FCL account and that this account was lost by DHX sometime in 1999. Nevertheless, [REDACTED]

[REDACTED]

[REDACTED] These rates were updated on April 14, 2002. DHX's

³⁸ DHX has not been able to explain why some shippers, designated with a "*", appear on this list in multiple years.

assertion that it lost this FCL account to Horizon or Matson loses all probative value and credibility in the face of ongoing FCL business [REDACTED].

[REDACTED]

As is patently clear from the testimony of both the [REDACTED] deposition, the [REDACTED]. FCL business was lost to another freight forwarder competitor of DHX and not to Matson or Horizon. The fact that DHX [REDACTED] as a client lost solely as a result of the acts alleged to have been made by Horizon and Matson reveals a repeating pattern of misrepresentation on the part of the plaintiff.

[REDACTED]

The DHX [REDACTED] evidences FCL rates updated as recently as April 14, 2002.

[REDACTED]

The DHX [REDACTED] contains numerous FCL rates, including FCL rates from [REDACTED]. These rates were all updated on April 14, 2002, yet Exhibit 16 claims that DHX lost this account

[REDACTED]

The DHX [REDACTED] of credit, but does not set out any specific FCL rates. However, in the sworn testimony of [REDACTED] [REDACTED] admits that DHX [REDACTED] sometime in 1993, a full six years before the actions of Horizon and Matson that DHX attacks. [REDACTED] *Statement* ¶¶ 23-24. More importantly, DHX admits that it lost [REDACTED] to another freight forwarder [REDACTED] *Statement* ¶ 25. (“The competitor [REDACTED] and dropped [REDACTED] a container to obtain the business.”). In other words, DHX may or may not have lost the [REDACTED]

FCL shipments, but its own records indicate that it lost the business six years before this case started and lost the business to another forwarder, not to Matson or Horizon.³⁹

██████████ testimony with regard to ██████████ does shed some interesting light on competitive conditions in the trade. Competition is fierce in this mature market both for LCL and for FCL cargo. DHX may have first ██████████ in 1993 but clearly it fought for and obtained some of that business back. That is the nature of the business. Competitors fight for business and fight for market share. Further, ██████████ admission constitutes yet more evidence that FCL business in this trade lane is lost not just to Matson and to Horizon but to all segments, including and especially freight forwarders.

██████████

The ██████████ contains a full range of FCL rates for ██████████. One notation under the heading Ocean Rates directs the billing person to ██████████ : 4/29/99. There are also numerous door-to-door and door-to-port FCL rates, all of which were updated as recently as December 23, 2002. Once again, DHX cannot claim with a straight face that it has actually lost this business.

██████████

The DHX SBI for ██████████ maintains door-to-port FCL rates for ██████████ updated as recently as April 14, 2002.

██████████

DHX claims, apparently, that it lost the ██████████ account in 1997. However, DHX's ██████████ credit was increased to \$██████████ on March 26, 2002.

³⁹ ██████████ makes an unsubstantiated suggestion that Matson conspired with another forwarder to wrest this business away from DHX, but as with virtually all of its testimony, DHX does not support this allegation with any fact on record but, rather, admits that it is merely an unfounded opinion. ██████████ *Statement* ¶ 25 (“In retrospect, it is my opinion”).

Further, the [REDACTED] FCL rates to [REDACTED]. These FCL rates were entered into DHX's [REDACTED] on or about June 21, 2001 and were all updated on December 23, 2002. Clearly, this account was not lost by DHX.

The pertinent [REDACTED] plaintiff's post-litigation claims of lost shippers contained in Exhibit 14 are annexed as Exhibit 6 to Horizon's Reply Statement.

**b) GRIGGS EXHIBIT 16 IS INACCURATE, MISLEADING
AND IS CONTRADICTED BY DHX'S [REDACTED]
[REDACTED] RECORDS MAINTAINED IN THE
USUAL COURSE OF DHX'S BUSINESS**

Exhibit 16 is referenced in paragraph 22 of the [REDACTED]'s Statement purports to contain a list of FCL customers lost to DHX as a result of Horizon and/or Matson's tariff changes. Exhibit 16 lists the following as "Customers Lost":

[REDACTED]

Again, stark by its omission from these exhibits or from any other testimony of DHX is any reference to the volume of containers moved by those shippers with DHX. The only information provided by DHX with regard to the volumes shipped by these allegedly lost FCL customers is the admission against interest of [REDACTED] that the bulk of DHX's FCL business consisted primarily of "medium size companies who shipped a container or two a week at most."

[REDACTED] (hereinafter "[REDACTED]'s Statement"), ¶ 63.

More importantly, a review of [REDACTED] reveals the following:

[REDACTED]

[REDACTED] remains an active shipper of DHX. [REDACTED] refers to ten (10) separate FCL rates for [REDACTED]. The FCL rates were established on or about June 21, 2001 and were all updated on December 23, 2002.

[REDACTED]

Again, DHX does not attempt to provide the Board with some indication of the volume of FCL volume it allegedly lost [REDACTED] as a result of the rate actions taken by Horizon. Further, [REDACTED] indicates FCL activity [REDACTED] on November 30, 2001 with a notation that the FCL rate would remain in place through May 31, 2002.

[REDACTED]

Once again, the [REDACTED] record maintained in its usual course of business, evidences FCL activity for DHX as late as April 14, 2002, long after the time in which DHX claims this business to have been lost.

[REDACTED]

THE SBI for [REDACTED] establishes that DHX has three (3) FCL rates in place for [REDACTED]
[REDACTED]
[REDACTED]. These rates were all updated on April 14, 2002. DHX's records show that they continued to move FCL freight for shippers whose FCL business they claim to have lost.

[REDACTED]

The DHX [REDACTED] does not contain any FCL rates. It should be noted, again, that DHX has never submitted any documents into the record indicating the volume of FCL revenue supposedly lost [REDACTED] nor have they provided any evidence that [REDACTED] FCL cargo is not moving via another freight forwarder competitor of DHX's. More

importantly, however, [REDACTED] bears the following notation dated August 16, 2001: [REDACTED]

[REDACTED]

[REDACTED]

The only evidence on record, therefore, that might establish why DHX lost an account (whether LCL or FCL) is not related to the rates or practices of Horizon or Matson, but to the admission by DHX that its customer [REDACTED]

[REDACTED]

The [REDACTED]. The first bears a one line entry that states: [REDACTED] There are no LCL rates or FCL rates listed for this shipper. Again, it is just as likely that if DHX lost this account, they lost it because [REDACTED] that the commercial relationship was not particularly robust in any event. The second SBI shows “[REDACTED] [REDACTED] does not show a line item for FCL freight but it does note “[REDACTED] [REDACTED].” Again, if in fact, DHX lost this freight, the only evidence in the record supports the inference that the freight was lost because of [REDACTED].

Lastly, it must be pointed out that DHX [REDACTED] LCL customer in Exhibit 14 and yet lists it as an FCL account in Exhibit 16.

[REDACTED]

[REDACTED] refers to another shipper, [REDACTED], for FCL shipments. The [REDACTED] contains three (3) FCL rates [REDACTED]

in place and updated as of April 12, 2002, a date considerably later than that in which DHX claims to have lost this FCL business.

[REDACTED]

The [REDACTED] was updated⁴⁰ on January 24, 2002 (change to credit line) and again on April 14, 2002 (change to LCL rate). [REDACTED] indicates that a rate is in place for forty (40) foot high cube containers to Hawaii.

[REDACTED]

The [REDACTED] contains FCL rates to [REDACTED] locations in the United States. Those rates were updated on April 14, 2002 and again on December 23, 2002.

In essence, Exhibit 16, one created specifically for this litigation, is contradicted on a shipper by shipper basis by the very records DHX maintains in the normal course of its business.

The regularly maintained records show activity beyond the dates of the alleged cargo losses. A copy of [REDACTED] to in this section and not provided in Exhibit 6 are annexed as Exhibit 7 to Horizon's Reply Statement.

If this action were being heard by a federal district court, Horizon would ask the court to strike DHX Exhibits 14 and 16 as inadmissible. Horizon is aware that evidentiary standards at the STB are somewhat more flexible than that of a federal district court. Nevertheless, Horizon requests that the Board recall the Court of Appeals for the Second Circuit's holding that self-serving documents prepared for litigation, such as Exhibits 14 and 16 are often "dripping with motivations to misrepresent." *Hoffman v. Palmer*, 129 F.2d 976, 991 (2d Cir. 1942), *aff'd*, 318 U.S. 109, 63 S.Ct. 447, 87 L.Ed. 645 (1943). The exhibits in question cannot withstand scrutiny

⁴⁰ [REDACTED] updated during the discovery phase of this proceeding. The version produced to us appears to contain notations through 2002. DHX [REDACTED] referred to in this section are included as Exhibit ___ to this submission.

and are flat out contradicted by the evidence contained in DHX's own Special Billing Instructions, documents maintained in the usual course of DHX's business.

3) DHX'S DAMAGE CLAIMS SOUNDING IN DISCRIMINATION REVEAL THE UNDERLYING THRUST OF THE SUBSTANCE OF THE COMPLAINT AND SHOULD BE DISMISSED

If the Board has any doubts as to whether DHX was cloaking a discrimination complaint in the guise of unreasonable practice allegations those doubts should be removed after examination of DHX's damage claims. Those claims are introduced through the Verified Statement [REDACTED] and the Verified Statement of [REDACTED] [REDACTED], two DHX employees. The Statements contain more than a few inaccuracies. More importantly, the actual damage calculations is nothing more than a list comparing thousands of DHX shipments with thousands of shipments for other shipper. [REDACTED] Statement, Exhibit 1, Schedules 1-7.

The most glaring inaccuracy in the statements involve their allegations that carrier rates have had a negative impact on DHX's LCL margins. The statements further allege that compressed margins in the LCL trades prevents DHX from discounting its LCL rates to its shippers in order to attract the shipper's FCL business. For example, The [REDACTED] Statement alleges:

[REDACTED]

[REDACTED] Statement, p. 4

Similarly, [REDACTED] claims that:

[REDACTED]

[REDACTED]

[REDACTED] Statement at ¶ 37.

These statements represent the otherwise inchoate articulation of the notion that DHX is unable to compress their LCL margins in an attempt to FCL business from shippers that move both FCL and LCL cargo. Many large shippers move both LCL and FCL cargo and DHX could, if it chooses, opt to offer reduced LCL rates in order to secure FCL cargo, something Horizon cannot do because it does not offer LCL service.

The records set out below clearly supports the inference that DHX's margins are [REDACTED], seek to increase its FCL market share in this manner. This argument is supported by DHX's [REDACTED]

[REDACTED]

[REDACTED] Although [REDACTED] they are not, apparently, privy to the records maintained by DHX and provided to Horizon in this proceeding that establish exactly the opposite.

As noted [REDACTED] [REDACTED] Statement ¶ 19. Additionally, the company's [REDACTED] [REDACTED] [REDACTED]

[REDACTED] *Deposition* 62:14-17. [REDACTED] in the normal course [REDACTED] business for 30 years. [REDACTED] them monthly. [REDACTED] *Deposition* 64:10-19.

A review [REDACTED] [REDACTED]. In fact, as is

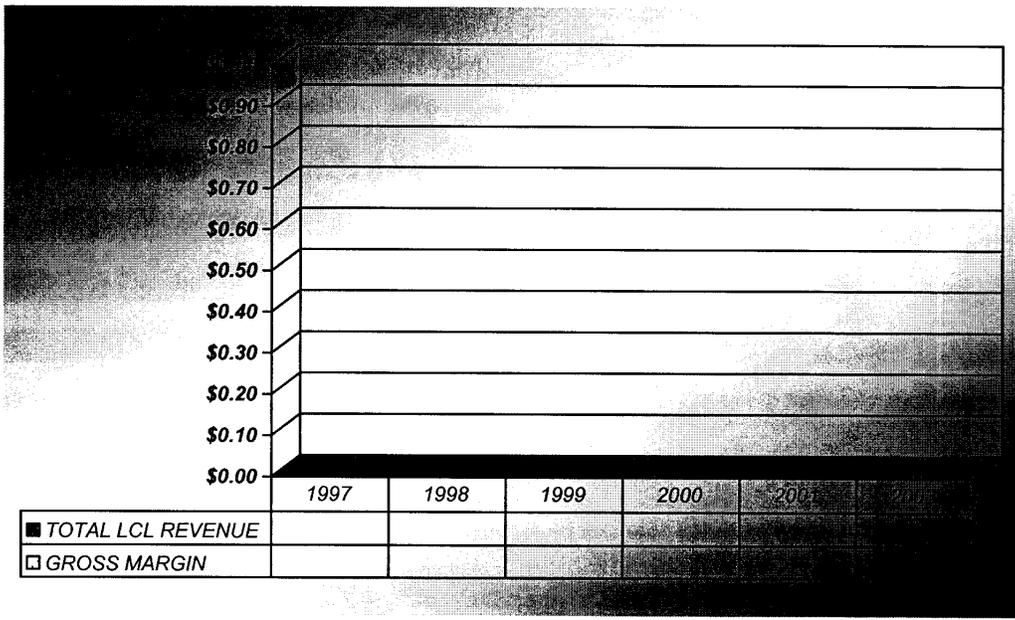
evidenced below, DHX's gross margins on LCL [REDACTED]

[REDACTED]

[REDACTED] This information is derived directly [REDACTED]

[REDACTED] The [REDACTED]:

[REDACTED]⁴¹



The assertions contained in the [REDACTED] Statement and in the [REDACTED] Statement that [REDACTED] LCL margins prevent them from using LCL margins for the "cross-subsidy" of FCL cargo are just wrong and are directly contradicted by the records maintained in DHX's usual course of course. The Statements lack any probative value and should be stricken from the record.

The damage print-outs also lack probative value. They fail to identify the cargo with any specificity, and fail to describe the mix of cargo loaded in those containers. They then simply

⁴¹ Information derived [REDACTED].

allege that other shippers may have paid less for their shipments. Even if DHX had a viable discrimination count, its supporting exhibits are so lacking in clarity and information as to be indecipherable.

In short, the very mechanism through which DHX chooses to advance its fanciful damage calculations does nothing but support the assertion that what DHX has filed here is a discrimination complaint. That complaint would have failed pre-ICCTA because the allegations are simply not true. The complaint certainly cannot survive now.

4) DHX'S CLAIMS FOR LOST PROFITS ARE INACCURATE, MISLEADING, SPECIOUS, AND FAIL TO PROVIDE ANY PROBATIVE EVIDENCE LINKING THE ACTIONS OF HORIZON TO DHX'S PROFIT MARGINS ON ITS FCL BUSINESS

DHX's claims for lost profits relating to its FCL business are so flawed that they should be stricken from the record. It is almost impossible to set out the numerous ways in which the self-serving calculations of lost profits have no probative value and do not even begin to take into account the minimum evidentiary requirements necessary to establish a claim for lost profits.

To put it bluntly, DHX's claim for lost profits fails:

- to take into account FCL business it lost to freight forwarder competitors;
- to take into account the admission that they quoted lower rates for FCL business when it knew it was competing against freight forwarders as well as water carriers;
- to take into account FCL business it declined to seek out because it could only obtain profits of [REDACTED] rather than [REDACTED] per container;
- to take into account FCL business it intentionally split into multiple containers and treated as LCL business;

- to quantify the actual number of FCL containers it actually shipped during the period in question instead of estimating the cubic volume of FCL shipments even though they admit they cannot quantify cargo volumes in containers they do not load; and
- to take into consideration their single largest customer, [REDACTED] [REDACTED] containers per year to DHX.

All these failures bespeak a plaintiff that is willing to misrepresent its own records in order to puff up its claims against Horizon. DHX's lost profit claims are specious and not worthy of consideration.

The law concerning the evidence required to support a claim for lost profits is clear in federal courts, the Federal Maritime Commission, and this Board.

Federal courts are clear that in order to obtain an award for lost profits, "first, it must be demonstrated with reasonable certainty that such damages have been caused by the breach, and second, the alleged loss must be capable of proof with reasonable certainty." *Pax Computer Associates, Inc. v. Bendata, Inc.*, 178 F.R.D. 27, 28-29 (N.D.N.Y. 1998). It is clear that federal courts "will not allow lost profit recovery as a matter of law, where such damages are based on speculation." *National Controls Corp. v. National Semiconductor Corp.*, 833 F.2d 491, 495-496 (3d Cir. 1987). Lost damages sought by a plaintiff "must be a proximate consequence of the breach, not merely remote or possible." *Advent Systems, Ltd.*, 925 F.2d 670, 681 (3d Cir. 1987); *see also DSC Communications Corp. v. Next Level Communications*, 107 F.2d 322, 329 (5th Cir. 1997). A federal court's assessment of claims for lost profit are generally based on applicable state common law. Federal common law, however, applies the standard. "Although cases addressing the standard of proof for lost profits as a matter of federal law are sparse, the court holds that federal law requires that lost profits be proved to a reasonable certainty. *See Swain*,

Inc. v. Maxey, 1997 U.S. Dist. LEXIS 16562 , *10-*11 (N.D. Tex. 1997). *See, e.g. Delta Steamship lines, Inc. v. Avondale Shipyards, Inc.*, 747 F.2d 995, 1000 (5th Cir. 1984) (holding that lost profits must be proved to a reasonable certainty in admiralty cases); *Harrison Higgins, Inc. v. AT&T Communications, Inc.*, 697 F. Supp. 220, 224 (E.D. Va. 1988) (holding that lost profits must be proved to a reasonable certainty where they formed a component of damages for an alleged violation of the Federal Communications Act).

DHX has not met, or even attempted to meet the requirement of federal law. DHX has not established that its alleged lost profits were proximately caused by the acts of either Matson or Horizon. First, as noted earlier, the joint count against Matson and Horizon was dismissed by the Board. Subsequent to that dismissal DHX could not attribute the acts of one carrier to the other. For DHX to prevail on its lost profit claims, it would have to break down and attribute lost profit by the specific acts of the individual carrier. DHX has not done this.

Second, in view of the evidence indicating that DHX's FCL profits were compressed as much, and in fact more, as a result of competition from other freight forwarders the failure of DHX to take this competitive factor into account destroys any sole causative link between any act of Horizon and DHX's profit margins.

Third, DHX's failure to account for both those FCL loads it split into multiple shipments in order to derive the greater margins available to LCL cargo further serves to destroy any probative value of DHX's lost profit calculations.

Decisions concerning the evidentiary burdens faced by plaintiffs seeking lost profits before the FMC set an equally high standard.⁴² In fact, these cases stand universally for the

⁴² Horizon believes it pertinent to refer to the FMC's long history of jurisprudence concerning enforcement of the statutes and regulations governing the activities of water carriers and freight forwarders both before and subsequent to the transfer of jurisdiction over the noncontiguous

proposition that a complainant is obligated to show a firm causal connection between a violation of a statute and the alleged injury claimed by the complainant.

A Complainant in a proceeding before the FMC has the burden of proof with respect to each element of its case. *See Boston Shipping Association v. Federal Maritime Commission*, 706 F.2d 1231, 1239 (1st Cir. 1983); *see also* 46 C.F.R. § 502.155 (2003). Moreover, an essential element in a complainant's case for reparation is both the demonstration of injury and the statutory violation as a proximate cause of that injury. *See, e.g. Prudential Lines, Inc. v. Farrell Lines, Inc.*, 22 S.R.R. 1054, 1058, 1984 WL 136266*4 (Docket 83-9 and 83-12 FMC 1984); *West Indies Fruit Co. v. Flota Mercante Grancolombiana*, 7 F.M.C. 66, 70 (1962); *Balmill Lumber & Sales Corp. v. The Port of New York Authority*, 11 F.M.C. 494, 510-511 (1968). The FMC has long held the view that "(a) damages must be the proximate result of violations of the statute in question; (b) there is no presumption of damage; and (c) the violation in and of itself without proof of pecuniary loss resulting from the unlawful act does not afford a basis of reparation." *Waterman v. Stockholm Rederiaktiebolag Svea*, 3 F.M.C. 248, 249 (1950).

The *Prudential Lines* decision is instructive because the FMC held that there is no necessary causal relationship between a failure to have a lawful tariff on file and a failure of a competitor to carry that cargo. In the instance case we have a situation where DHX alleges that but for the actions of Horizon it would have continued to maintain a margin of approximately 19% on its FCL cargo rather than its subsequent margin of 15%. However, DHX's own records indicate that it knowingly and intentionally quoted lower rates (and consequently expected lower margins) on FCL in order to meet freight forwarder competition. This undercuts DHX's attempt

domestic trade pursuant to the ICCTA

to attribute the actions of Horizon as the single causative factor in its profit margins. In fact, it tends to establish the contrary proposition.

The FMC's decision in *California Shipping Line, Inc. v. Yangming Marine Transport Corp.*, 1990 WL 427466 (FMC 1990), is also instructive because it involves the probative value of lost profit calculations prepared by the Complainant for purposes of the litigation. *Id.* at *22. The FMC reversed the finding of the ALJ in its Initial Decision that such summaries met the plaintiff's burden of proof and in so holding noted that:

Applying the above principles to the instant case we find that CSL [plaintiff] has not established its actual injury with a reasonable degree of certainty. Its proof is so speculative and conjectural that it lacks the requisite degree of certainty. The crux of CSL's proof is Exhibit FFF, Volume I. As indicated earlier, this damage summary was entirely the work of CSL's president and was based on his estimates of the amounts and types of cargoes he could have generated if given access to the three [service] contracts. This summary also contains Mr. Walker's estimates of profit margins and payments to foreign agents. Although some of these estimates are supported by additional evidence in an attempt to establish their reasonableness, we find the basic damage summary to be an unconvincing basis upon which to award damages.

Id. at *24.

The lost profit testimony of [REDACTED] is as speculative and conjectural as that found lacking by the FMC in the testimony of CSL's president. It is based on an estimate of volume (cubic feet) that it cannot calculate with reasonable certainty. It is based upon a calculation that omits the revenue and profits obtained from DHX's largest FCL account simply because the inclusion of that account would belie the claim that it actually lost profits. It is based on a calculation that does not take into account FCL competition from other freight forwarders and does not distinguish between profits lost due to the action of Matson and profits allegedly lost to the actions of Horizon.

Critically, for the issues before the Board in this proceeding, is the FMC's holding that a complainant seeking reparations for lost profits must provide evidence of the economic impact of trade wide competition in the market to buttress its lost profits case:

Furthermore, we agree that Rose [plaintiff] failed to properly consider competition and other market factors in its analysis of lost profits. The Commission considers competition as a factor that must be addressed in determining whether a party would be entitled to lost profits. *Prudential Lines v. Farrell Lines, Inc.* 22 S.R.R. 1054, 1058 (1984) (finding that whether or not complainant would have carried the cargo carried by respondent but for respondent's illegal act "depended upon what other carriers operation competitive services, what the frequency of those services was, and what [complainant's] rates were on the particular cargo involved.") Rose assumes that Graebel, Movers International, Morgan Manhattan and American International [former clients of Rose] would have shipped with Rose in 1995 and 1996 but for the actions of Respondents. However, there is no proof in the record that Rose would have carried this cargo [in the future] . . . Rose, however, fails to review the market during the period of Respondents' infractions and thus never directly considers the potential impact of such competition on lost profits. . . . Rose presents no testimony or affidavits from its former customers to support that claim. It appears that Rose's claim for lost profits also fails to consider competition and other market factors. Thus Ross cannot prove its damage calculations with reasonable certainty.

Rose International, Inc. v. Overseas Moving Network International Ltd., 22 S.R.R. 119, 188-189, 2001 WL 865708*78 (FMC 2001).

The Commission recently reaffirmed the lost profits methodology contained in *Rose* and went on to adopt a holding that added that the Commission disfavored "statistical studies that fail to correct for salient factors, not attributable to defendant's misconduct, that may have caused the harm of which the plaintiff is complainant do not provide a rational basis for a judgment."

James J. Flanagan Shipping Corp. v. Lake Charles Harbor & Terminal District et al., 2003 WL 22067203*10 (FMC 2003) (Citing *Blue Cross & Blue Shield United of Wisconsin v. Marshfield Clinic*, 152 F.3d 588, 593 (7th Cir. 1998).

The record is clear. DHX's lost profit calculations fail to take salient factors, such as forwarder-to-forwarder competition, not attributable to Horizon's actions, into account and its failure to do so do not provide DHX with a rational basis for judgment on its lost profit claims.

This Board, like the FMC, possess the authority to award damages for lost profits. *Louisiana Railcar, Inc. v. Missouri Pacific Railroad Co.*, 5b I.C.C.2d 542, 545 (1989). Also like the FMC, the Board maintains a strict evidentiary standard and requires that claims for lost profits not be speculative or remote. *See GS Roofing Products Co., Inc. et al. v. Arkansas Midland Railroad Co. et al*, Docket NOR 41230 (May 3, 2000) (Shippers plainly have not carried their burden of proof concerning the amount of lost profits because the documentation for their lost profit claim is too speculative and remote to be persuasive).⁴³ *See e.g., Webb Coal v. New York Central R. Co.*, 278 I.C.C. 5, 15 (1950) ; *Crosby v. St. L. F. Ry. Co.*, 112 I.C.C. 239, 243 (1926).

Simply put, DHX's fanciful lost profit calculations are too biased, subjective, and speculative to meet the standards enunciated by federal courts, the Federal Maritime Commission, the Interstate Commerce Commission or its successor-in-interest, the Surface Transportation Board.

Solely looking at a company's revenue figures does not provide a complete picture of how the company is performing in a given market relative to its competitors because changes in revenue may reflect changes in market size or changes in economic conditions. A more accurate measure of a company's performance relative to its competitors is its market share (calculated by

⁴³ The decision of the Board in this matter was partially reversed by *GS Roofing Products v. Surface Transportation Board*, 262 F.3d. 767 (8th Cir. 2001). The Eighth Circuit did not did not reverse the Board's evidentiary standards but, rather, held that one of the two lost profit claims at issue had met this strict evidentiary standard.

dividing the company's sales or cargo volume by total market figures).⁴⁴ A company can grow by increasing its market share, as studies have shown that profitability rises when a company increases its market shares relative to its competitors.⁴⁵ It should be noted, however, that an increase in market share does not necessarily equal higher profits as the costs of buying higher market share exceed returns.⁴⁶

In a mature or stagnant market, overall market sales within a given industry generally do not grow; however, a firm can increase its sales by taking market share from its competitors.⁴⁷ There is generally intense rivalry for market share within a mature market, as efforts are generally focused towards attracting new customers.⁴⁸ In the maturity stage, at best, sales growth slows down and profits peak, while at worst, market share stabilizes and profits severely decline.⁴⁹ Companies typically battle to retain or increase their market share by, among other things, granting price concessions and entering price wars against weaker members of the industry.⁵⁰ Thus, a market share maximizer will price to undercut the competition.

⁴⁴ SUBHASH C. JAIN, *MARKETING & PLANNING STRATEGY 305* (South-Western College Publishing, 6th ed. 2000); Internet Center for Management and Business Administration, Inc., *Market Share*, at <http://www.quickmba.com/marketing/market-share/>. (last visited December 8, 2003).

⁴⁵ PHILIP KOTLER & GARY ARMSTRONG, *PRINCIPLES OF MARKETING 608-609* (Prentice Hall, Inc. 7th ed. 1996). (citing David M. Szymanski, Sundar G. Bharadwaj & P. Rajan Varadarajan, *An Analysis of the Market Share-Profitability Relationship*, *JOURNAL OF MARKETING*, July 1993, at 1-18).

⁴⁶ Kotler at 609-10.

⁴⁷ Internet Center for Management and Business Administration, Inc., *Market Share*, at <http://www.quickmba.com/marketing/market-share/>

⁴⁸ Jain at 242.

⁴⁹ Jain at 242; MICHAEL R. CZINKOTA ET AL., *MARKETING BEST PRACTICES 397* (The Dryden Press 2000).

⁵⁰ Jain at 242.

Most economists and business scholars recognize that no market is tougher than a mature market full of competitors.⁵¹ Static or declining markets do not provide much scope for gaining profits as firms are competing for a share of a finite or diminishing total of sales revenue in the market.⁵² In competitive markets, many firms seek to price their products or services competitively to attain higher profits or a larger market share than their competitors.⁵³ Therefore, given the finite amount of revenues to be earned, as one company's profits or market share increases, others' profits will decline.

V. CONCLUSION

The DHX complaint and the associated arguments and allegation submitted to support it reveal a well-cultivated sense of entitlement and grievance running from DHX to the defendant water carriers. There is however, no basis in this record to find violations of law on compensable harm that has resulted from actions of the carriers. Horizon therefore asks that the Board dismiss in its entirety with prejudice the DHX Complaint and direct in its order that plaintiff take nothing in this cause.

⁵¹ See, e.g., Jaclyn Fierman, *How to Make Money in Mature Markets*, FORTUNE, Nov. 25, 1985, at 46.

⁵² Elizabeth Bourdon, *Pricing Strategies on Highly Competitive Markets*, MANAGEMENT DECISION, Vol. 30 No. 4, 1992, at 57.

⁵³ David E. Griffith & Roland T. Rust, *The Price of Competitiveness in Competitive Pricing*, JOURNAL OF THE ACADEMY OF MARKETING SCIENCE, Vol. 25, No. 2, 1997, at 109.

Respectfully submitted,




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Dated: December 23, 2003

Filed: January 9, 2004

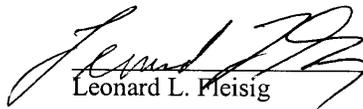
CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2004 a copy of the foregoing Defendant Horizon Lines, L.L.C.'s Reply Statement was served by overnight delivery upon:

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Leonard L. Meisig

PUBLIC VERSION

**Before the
SURFACE TRANSPORTATION BOARD**



_____)
DHX, Inc.)
)
Plaintiff,)
)
v.)
)
MATSON NAVIGATION COMPANY and)
SEA-LAND SERVICE, INC.,)
)
Defendants.)
_____)

Docket No. WCC-105

UNITED STATES
Office of Proceedings
JAN 12 2004
Dept of Justice

**REPLY STATEMENT OF
HORIZON LINES, LLC.**

VOLUME II

VERIFIED STATEMENT OF DANIEL DOWNES

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Dated: December 23, 2003
Filed: January 9, 2004

PUBLIC VERSION

VERIFIED STATEMENT OF DANIEL DOWNES

BACKGROUND RESPONSIBILITIES AND QUALIFICATIONS

1. My name is Daniel R. Downes. I am employed as the Director of Marketing and Pricing for Horizon Lines, LLC (formerly known as CSX Lines, and successor in interest to SL Service, and Sea-Land Service and referred to throughout my statement as Horizon Lines) Hawaii-Guam Service.
2. I have been employed by Horizon Lines since 1989. In my capacity as Director of Marketing and Pricing I am involved on a managerial level with all aspects of Horizon Lines' marketing and sales efforts as well as its pricing practices and tariff filings.
3. My marketing responsibilities include, but are not limited to, establishing a budget and revenue plan that is rolled out to Horizon Lines' sales force. I assist in implementing a marketing plan that Horizon Lines develops and maintains to communicate with Horizon Lines' customers on operational, marketing, and pricing issues. I regularly make sales calls on shippers and freight forwarders in conjunction with our sales force and regularly communicate with shippers and forwarders on a broad range of service and pricing issues.
4. Before assuming my duties as Director of Marketing and Pricing I maintained positions that provided me with a diverse range of experience concerning Horizon Lines' operations. This included a management training program, administrative duties, and at least one year in operations. I am fully conversant and competent to testify on all aspects of Horizon Lines' operations, particularly as they bear on cargo moving between the mainland United States and Hawaii.
5. Prior to beginning my career with Horizon Lines I received an undergraduate degree in Business Administration from California State University, Chico, and a postgraduate degree in international management from the American Graduate School of International Management.

INDUSTRY OVERVIEW

6. Horizon Lines owns and/or charters a fleet of containerships that operate in the noncontiguous domestic trades between the mainland United States and Puerto Rico, Alaska, Hawaii, and Guam. In addition to owning or chartering a large fleet of U.S.-Flag vessels, Horizon owns or leases thousands of ocean going containers and thousands of chassis for use in its transportation operations.
7. Horizon maintains a regular schedule of vessel sailings between the U.S. West Coast to Hawaii. Horizon's Hawaii trade operations consist of two distinct routes, known in the trade as "vessel strings". The first string, designated by Horizon as the Transpacific Express ("TP1") Service string, provides a weekly service from Tacoma, Washington and Oakland, California to Honolulu and Guam. Horizon currently operates five vessels on its TP1 service:

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the *M/V Horizon Spirit*; the *M/V Horizon Pacific*; the *M/V Horizon Enterprise*; the *M/V Horizon Reliance*; and the *M/V Horizon Trader*. Vessels depart from Tacoma every Sunday morning at 0800 hours. They sail to Oakland and depart Oakland on Wednesday at 1800 hours. The vessels then sail for Honolulu and arrive four days later, on Sunday evening at 2400 hours. The vessels then proceed to Guam and beyond before returning to Tacoma for another voyage.

8. The second vessel string, designated by Horizon as the California-Hawaii Express ("CHX") Service string, provides a weekly service from Oakland and Los Angeles to Honolulu. Horizon currently operates two vessels on its CHX string: the *MV Horizon Consumer*; and the *M/V Horizon Navigator*. Vessels depart from Oakland every Wednesday morning at 0800 hours. They then sail to Los Angeles and depart every Saturday at 0300 hours. The vessels then sail for Honolulu and arrive the following Thursday at 1700 hours.

9. In addition to these two Horizon-operated vessel strings, Horizon offers an additional sailing from Los Angeles on a service designated the Midweek Express ("MWX") service. Vessels under the MWX service depart every Wednesday from Los Angeles at 0400 hours and arrive in Honolulu on the following Sunday at 1800 hours. Horizon does not own or operate the vessels on the MWX service. Rather, Horizon secures space from Matson Navigation Co. ("Matson") pursuant to a transportation service contract between Matson and Horizon in order to provide additional service to Horizon's customers, particularly those who miss the Saturday cut-off for cargo designated for its CHX service. A copy of Horizon Lines' current sailing schedules is annexed as Exhibit 1 to this Statement.

10. Horizon Lines leases terminal facilities on the West Coast and maintains similar facilities in Hawaii. These facilities supervise the loading and unloading of containers from Horizon's vessels. In addition to its terminal facilities Horizon maintains offices in Hawaii, on the West Coast and throughout the mainland to support its Water Carrier operations.

11. Matson is the largest water carrier in the Hawaii trade. One of Horizon's ongoing goals is to compete with Matson for cargo and to increase our market share. Currently, we estimate that Matson moves about [REDACTED] of the cargo in the trade and Horizon about [REDACTED] of the cargo.

12. With the exception of a limited number of personal vehicles and some large oversized project cargo, Horizon operates a full containerload ("FCL") service and does not directly accept or consolidate less than containerload ("LCL") cargo at its terminals. Simply put, Horizon only accepts bookings for FCL cargo, whether in consolidated or straight loads.

13. A major portion of Horizon Lines' business originates with freight forwarders. Historically, freight forwarders have focused their efforts on assembling and consolidating LCL cargo from several shippers and presenting water carriers, such as Matson and Horizon, with FCL shipments. The forwarder, or consolidator, thus obtains the benefit of utilizing a variety of rates in the water carriers' tariffs. The forwarder offers LCL rates to its customers that are lower than those available (or not available at all in the absence of any water carrier LCL service) directly to smaller shippers. At the same time, the forwarder's aggregate revenue for a full container of consolidated cargo is higher than the rate it pays the underlying water carrier.

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Forwarders profit on the difference between the rates they obtain from Water Carriers (their “buy rate”) and the aggregate of rates they sell to their LCL shippers (their “sell rate”) by combining these LCL shipments into full containers. This difference is often referred to as the forwarder’s spread or the forwarder’s margin.

14. Typically, major forwarders to Hawaii maintain warehouse and storage facilities near West Coast ports such as Oakland, Long Beach, and Seattle. These facilities, often referred to as cross-dock facilities, are the locations where LCL cargo is delivered to the forwarder. The cargo is then mixed and matched at the cross-dock facilities in a manner designed to load containers with a blend of cargo designed to take best advantage of Horizon’s tariff in order to obtain the lowest possible buy rates. Most forwarders in the Hawaii trade own or lease trucks capable of picking up and delivering local loads to the cross-dock facility and capable of delivery loaded containers to Horizon.

15. The forwarding industry in the Hawaii trade is divided into two major segments. The first is a group that includes complainant DHX and about twenty other major forwarders. Because of the forwarders’ ability at their cross-dock facilities to mix-and-match cargo to achieve the maximum blend of cargo in containers, forwarders typically rely on two rules in Horizon’s tariff. The first is the mixed containerload rate in conjunction with the “Overflow Rule”. This rate enables a forwarder to load a lead container with sufficient cargo to meet the minimum weight requirement applicable under the mixed containerload rate. It also enables a forwarder to match those lead containers with overflow containers that have less weight, but have sufficient cargo to meet or exceed the lower-cost minimum revenue requirement set out for the designated overflow container. By utilizing the Overflow Rule the overflow container is not subject to the minimum weight requirement applied to the lead container but is, rather, subject to a discounted minimum revenue requirement.

16. Freight forwarders are also able to take advantage of a Horizon Lines tariff item designated as a Freight All Kinds (“FAK”). The FAK rate is applicable to mixed commodity shipments and generally results in higher revenues for the water carrier than rates for a full container of a single item. However, the FAK rate provides forwarders the ability to use of an equipment substitution provision that allows forwarders to utilize, for example, a forty-foot container, while paying a rate for a 20- foot container if the cargo volume does not exceed the capacity of a twenty foot container. This enables forwarders to move cargo off their cross-dock facilities and on to Hawaii without waiting for additional cargo and without paying a penalty for using a large container. The equipment substitution provisions enable the forwarder to obtain the full utilization of a twenty-foot container in a larger container.

17. The second group of forwarders consists of long haul or long distance truckers (such as [REDACTED] and [REDACTED]) who offer ocean service to Hawaii as part of their long-haul domestic motor carrier services. Typically, long distance truckers do not have cross-dock facilities and do not have the ability to stuff (*i.e.*, consolidate) containers as efficiently as the first group. The facilities they do have tend to be designed to handle overland domestic shipments rather than shipments to Hawaii. As a result, long distances truckers are generally not capable of loading containers in a manner that would entitle them to use the mixed container load rate in conjunction with the Overflow Rule. Consequently, long haul truckers typically use a Horizon’s

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FAK rate rather than the mixed containerload rate. However, the long distance truckers generally offer better long-haul inland rates (for cargo originating in Chicago for example) than the forwarders. The usual circumstance is that long distance truckers have trouble competing on price with other freight forwarders on the West Coast that have cross-dock facilities.

18. Over the last fifteen years freight forwarders have evolved beyond their traditional role of simply providing consolidation and transportation services for LCL shippers. Both in the non-contiguous domestic trades and in international trades, many large, sophisticated forwarders have successfully managed to capture a significant portion of the FCL business. In essence, these forwarders have gone beyond their initial role of entities who assist LCL shippers to entities directly competing with traditional steamship operators (like Matson and Horizon) for FCL. This change in the profile of large forwarders may be attributed to any number of reasons. Many LCL shippers also move FCL cargo and feel comfortable relying on one provider to make all their shipping arrangements. Many forwarders are capable of utilizing their knowledge of Matson's and Horizon's tariffs to offer better rates to shippers of FCL cargo than might otherwise be obtained by direct reference to the Water Carrier's commodity tariffs. Most importantly, forwarders market their FCL services by packaging them as a one-stop basket of their other services, including trucking at pick up and destination, warehousing, and logistics. DHX has successfully entered the FCL market in the Hawaii trade. As DHX and other forwarders have expanded their FCL business, they more directly compete with domestic water carriers and ocean common carriers in the international trades.

19. All types of cargo are shipped to Hawaii. However, Hawaii is an island destination that does not have a large industrial economic base, that is not self-sufficient agriculturally (with the exception of coffee, certain fruits and some cattle production) and that is heavily dependent upon tourism. Consequently, Hawaii receives large volumes of foodstuffs (dry and refrigerated) to support indigenous and tourist populations, building and construction materials, machinery, and supplies. Because the Hawaii trade is a mature, sometimes stagnant market, the universe of shippers regularly moving cargo to Hawaii does not change dramatically from year to year. Similarly, in recent years, cargo volumes have been either stagnant or declined. The majority of shippers and their cargo originate on the U.S. West Coast.

20. Competition for cargo is particularly intense in a stagnant or slowly growing market. Matson and Horizon compete with each other for FCL cargo in the Hawaii trade. As I stated previously, Matson is and has been the largest water carrier since Horizon first entered the Hawaii trade. Since that time Horizon has grown its market share substantially. Nevertheless it remains the number two water carrier in the trade with a market share of approximately [REDACTED]

21. There are approximately twenty major freight forwarders in the Hawaii trade. They compete with each other for both LCL and FCL customers and cargo. Freight forwarders also compete with Matson and Horizon for FCL cargo. Horizon seeks cargo from both shippers and forwarders and takes all prudent steps to procure that cargo within the principles of sound economics. Horizon actively and aggressively solicits FCL cargo from its shippers. Horizon actively and aggressively solicits both LCL-consolidated containers and FCL from freight forwarders. In fact, freight forwarder-routed cargo, whether consolidated or straight FCL loads, constitutes a critical portion of Horizon's total cargo movement. Stated in blunt commercial

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terms, freight forwarders, including DHX, are valued customers. Support from the forwarder community has always been an essential component of Horizon's business plans and business planning. Without the patronage of these major forwarders, it would be extremely difficult for Horizon to sustain its Hawaii service.

22. In order to achieve its goals of obtaining cargo from shippers and forwarders, Horizon maintains a marketing and sales staff. Horizon sales and marketing staffs are assigned geographic regions and maintain regular relationships with Horizon existing and potential customers. Horizon sales and marketing staff make regular calls on shippers and forwarders in their assigned regions.

23. There are two considerations that drive Horizon's relationships with its shipper and forwarder accounts: service and price. The term "service" encompasses a broad, sometimes subjective range of individual components but, generally speaking, shippers and forwarders expect that Horizon will load and deliver cargo on time and on schedule; will be responsive to shipper/forwarder inquiries by telephone and telefax concerning every aspect of a pending or past shipment; will process and issue shipping documentation in a timely manner; and will process and honor cargo claims in a fair and timely manner.

24. Service issues, particularly timely loading and delivery, are particularly acute in the forwarder industry. A consolidated LCL container is likely to contain cargo delivered to a freight forwarder from upwards of thirty shippers. That cargo is often delivered to the forwarder's facility at or near the time of a vessel's departure. If a container misses a vessel or is not loaded on a vessel ("shut out") the forwarder will no doubt complain to Horizon, but the forwarder will also have to field complaints from up to thirty shippers and/or consignees about the late delivery of their cargoes. More importantly, if a forwarder cuts off deliveries from its own shipper customers in order to make sure a container is delivered to the terminal it is likely to have a negative impact on the forwarder's bottom line. First, the container will not be loaded as fully as it might otherwise have been. This is an inefficient use of available container space and results in a direct immediate revenue loss to the forwarder. Second, shippers of cargo left behind for additional cargo from other shippers would be upset at the delayed sailing. If a freight forwarder's shippers are annoyed at their freight forwarder, that freight forwarder is likely to be annoyed at the water carrier.

25. Horizon Lines has used tariff entries to address specific concerns of valued customers, including forwarders. The Overflow Rule was designed to lower the costs of lighter containers that are not stuffed as fully as containers loaded earlier in the shipping cycle. In other words, by setting a minimum revenue charge that was significantly lower than the rate charged for more fully loaded containers, forwarders could deliver the overflow container to the earlier ship and not leave a partially loaded container behind until more cargo arrived for the next sailing. That is still the purpose of the Overflow Rule and it is still used in that fashion by forwarders, including DHX.

26. Similarly, forwarders demand immediate unloading and delivery of containers in Hawaii so they can de-consolidate the container and deliver up to thirty different smaller parcels to consignees that anxiously await delivery. Given these pressing service concerns of the

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forwarder industry, Horizon has implemented a "late gate" and "hot hatch" program for its forwarder customers. A late gate enables forwarders an extra few hours to deliver cargo to Horizon's terminal after the published latest delivery time for each vessel sailing. A hot hatch container is one of the first containers taken off the ship on arrival in Hawaii. The late gate and hot hatch programs accomplish two goals. First, they give forwarders additional time to stuff as much cargo as they can into a container at a load port, even cargo delivered late on the date of sailing, and enable them to move all the cargo in its premises out of its facility and on to Hawaii without missing a sailing. Second, because these containers are the last loaded on board the departing vessel, they are the first containers unloaded. This enables the forwarders' agents at destination to de-consolidate the container as soon as possible and deliver the smaller lots immediately to their multiple consignees.

27. Price, in the form of freight rates, is the other essential component of the Horizon-shipper/forwarder relationship. All shippers/forwarders demand that their cargo move at reasonable, market-driven rates. At the same time, Horizon must only offer rates that produce sufficient revenue to enable it to operate reasonably profitably. None of Horizon Lines' service inducements to forwarders and other customers will be of any value if Horizon is imprudent in its pricing policy and fails to earn sufficient revenue to sustain service.

28. Horizon's pricing philosophy is relatively simple. All applicable rates governing shipments to Hawaii are contained in Horizon's published tariff. When a shipper or forwarder requests a port-to-port rate from Horizon, Horizon begins by looking at, or quoting from, its applicable tariff rate for the commodity being shipped. Quite often, the shipper or forwarder will accept the rate and book cargo with Horizon. Alternatively, the shipper or forwarder may ask for a new or reduced rate.

29. Horizon weighs a number of factors when responding to requests for a new or reduced rate. Horizon examines the relationship between the shipper/forwarder and Horizon. If the shipper/forwarder is a current customer of Horizon, Horizon will examine its past relationship with the shipper/forwarder, the customer's credit history, historic shipment volumes, and the general course of conduct between Horizon and the customer. If the shipper is a new or unknown to Horizon or is a party that has only done minimal business with us, we will try to determine how that shipper's cargo has moved previously in the marketplace and at what rate levels.

30. Horizon also examines the commodity to determine whether Horizon is currently shipping that product to Hawaii and, if so, the volume of that commodity it is currently shipping. If Horizon is currently moving significant volumes of that commodity, it will take a hard look at the volume of cargo at issue before making a determination as to how to respond to the rate request. Obviously, Horizon is reluctant to reduce rates for a shipper or forwarder with a commodity that is already moving with Horizon from other shippers or forwarders at the existing tariff rate since Horizon's tariff rates are available to all shippers of that commodity.

31. If the cargo being offered by a shipper or forwarder is currently moving with Matson, Horizon will look very hard at creating ways in which it can accommodate the rate request in order to obtain cargo previously going to Matson. Alternatively, Horizon will look to

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determine whether the volume of cargo promised by the shipper or forwarder is sufficient to warrant a reduction from the current tariff rate.

32. If Horizon determines that this new business is desirable it will seek ways to file a new rate for the specific shipper or forwarder without impacting the entire market rate for that commodity. To that end, Horizon will consider creating a store-door or multi-modal rate that it can insert in a section of its tariff other than its port-to-port commodity rate section. Horizon may also file the rate in the proportional rate portion of its tariff. A proportional rate is similar to a port-to-port rate in that the rates quoted for FCL loads in its proportional rate section typically only cover the waterborne portions of the cargo movement. However, the ocean rate is predicated upon the inland movement of the shipment from a designated inland point outside Horizon's terminal facility. By publication of this rate by Horizon, and its utilization by a shipper or forwarder, the shipper undertakes to be responsible for the inland transportation of the cargo to pier-side.

33. Typically, a proportional commodity rate is applicable only to cargo that originates at a specific inland location. The specific inland location is typically identified either by a street address or a zip code. This specifically reflects, among other things, unique circumstances related to a particular shipper's carriage needs.

34. Proportional rates benefit both Horizon Lines and its shipper and forwarder customers. First, they enable Horizon Lines to take action on an active commodity being shipped (or promised) in volume without creating downward pressure on the entire rate structure for that commodity. A proportional rate (or a through rate for that matter) benefits the shipper or forwarder because it helps ensure that any given rate concession by Horizon reflects the business and transportation circumstances of the particular shipper or forwarder while permitting rate flexibility by the carrier.

35. Horizon routinely files proportional rates, through rates, joint rates and store door rates for both shippers and for freight forwarders. Horizon routinely has and does respond favorably to requests for proportional and other FCL rates from DHX.

36. Horizon does not and cannot accede to every request for a reduced rate or for a request for the filing of a proportional or other joint rate. Horizon sometimes declines rate reduction requests both from shippers and from forwarders. Each decision is based on factors I have previously mentioned and is always tested against our best judgment of what is in the best interests of the company. It simply cannot accede to every request for a reduced rate but, rather, makes a case-by-case determination of each request.

37. Horizon regards rate requests from forwarders as deserving close attention. It has been Horizon's experience that when an owner/shipper has a rate, it is not difficult to determine if that shipper has moved that cargo in the past and expects to continue moving that cargo. This is generally true of freight forwarders, particularly when it comes to consolidated loads and FCL business from the forwarder's regular FCL accounts. However, forwarders often make rate requests, or requests for reduced rates on speculation. Specifically, and as noted previously, there is intense competition among freight forwarders for both LCL and FCL business. Just as

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Horizon and Matson vie to take business from the other's customers, forwarders actively vie to take business from each other.

38. In some instances, a forwarder will identify a potential customer who utilizes the services of another forwarder. In order to secure that business, the forwarder will not only have to compete with the forwarder on basic forwarding services, but also on the underlying freight rate running between the forwarder and his shipper. If the forwarder can obtain a reduced rate from Horizon in advance, it can utilize that lower rate to help take that business away from the other forwarder before any freight has been moved with Horizon. Similarly, because the identity of the prospective shipper is unknown to Horizon (forwarders understandably, generally do not disclose their underlying shippers directly to Matson or Horizon for fear that the carrier might market their shippers directly) Horizon does not necessarily know whether it is already moving the specific cargo being offered through a different freight forwarder.

39. In other words, Horizon tries to minimize the possibility of reducing a rate for cargo it is already moving at regular tariff-rate levels with another forwarder. It also has to be particularly careful not to be seen to aid and assist one freight forwarder in wresting business away from another forwarder. Both forwarders are probably valued customers of Horizon Lines. If Horizon Lines takes precipitous rate action that results in one forwarder being deprived of a client, the forwarder that loses the business is likely to respond by taking some or all of its Horizon cargo and booking it with Matson as a result. This is not a desirable commercial result.

40. I believe DHX is currently the [REDACTED] in the Hawaii trade, but the difference in market share among the top five or six forwarders is not significant. As a result, Horizon needs to maintain strong commercial relationships with all the forwarders with which it does business in order to continue operating profitably in the Hawaii trade. In order to do that Horizon cannot be perceived as favoring one forwarder over another.

41. These are all factors that Horizon must weigh before taking rate action on requests for reduced or joint through rates. Nevertheless, Horizon does respond favorably to some of these requests, be they from shippers or forwarders, whenever the characteristics and volume of cargo warrant such consideration.

42. It is my understanding that this litigation involves the increases taken by both Matson and Horizon Lines on the minimum revenue requirement in the Overflow Rule in 1998 and 1999. I also understand that this litigation involves the elimination from our tariff of certain "Note Items" by Horizon in 1998.

43. As noted above, the Overflow Rule benefits freight forwarders by enabling them to ship light or partially filled containers at a discounted rate below that applicable to stand alone containers. At the same time it facilitates the more rapid delivery of cargo for the forwarder's shippers because forwarders do not have to pay a dead freight penalty for shipping partially loaded containers.

44. At the same time, forwarders and shippers made use of Note Items contained in Horizon's tariff. These Note Items were designed to provide another benefit to both LCL and

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FCL shippers and forwarders. As noted above, Horizon's primary tariff section consists of a series of commodity rates based on a hundred-weight basis. Rates are typically shown as a rate in dollars for very one hundred pounds of cargo. Lower rates are typically set for heavier, denser cargo while higher rates are established for less dense cargo, because it takes up more space in the container and does not weigh as much.

45. It has been Horizon's experience that many shippers and forwarders that moved heavy freight, such as canned goods for supermarkets, also sent other lighter goods along in the container. For example, Horizon determined that canned good shippers typically sent along a supply of light but bulky paper bags that the receiving grocery store would use in the packaging or further shipment of the canned goods. Because the canned goods were so heavy, a shipper or forwarder could load the minimum weight requirement set out in the carrier's tariff (which consequently met the minimum revenue desired for the container of that product) with significant empty space left over. The Note Item provision enabled those shippers and forwarders to move the bulkier lighter items at the less expensive canned goods rate so as not to generate excessive shipper costs for the container. A shipper or forwarder transporting the paper bags alone without canned goods boxes alone paid the applicable tariff rate for paper bags.

46. The Overflow Rule and the Note Items benefited Horizon as well as freight forwarders and shippers when Horizon entered the Hawaii trade. Horizon used the Overflow Rule and Note Items as a marketing tool to establish market share in both the shipper and forwarder communities. At some point in time, however, it became apparent to Horizon that both the Overflow Rule and the Note Items were being utilized by shippers and forwarders (primarily forwarders in this instance) in a manner not intended by Horizon.

47. Freight forwarders, including DHX, determined that they could utilize the Overflow Rule, in conjunction with the Note Items, to put together straight FCL loads at rates that were well below the straight commodity rates in effect in Horizon's tariff. The Mixed Containerload rate only requires that there be more than one commodity in the shipment. It does not require that there be more than one commodity in each container. A freight forwarder could use the Mixed Containerload rate to load the lead container with one, heavy item, such as canned goods. The weight of the canned goods in the lead container would meet easily the minimum weight requirements set out in Horizon's tariffs. The forwarders would then utilize the second (overflow) container to load a full containerload of a single, light, but high-hundred weight rate item, covered by the Note Item.

48. Because the second container, say paper bags, was able to take the benefit of the Note Item, it would qualify for the very low canned good rate. Because the cargo was generally light it might not meet the minimum revenue requirements of the Overflow Rule. In effect, forwarders were obtaining a very low lump sum rate for any number of commodities moving under the applicable note items. This lump sum rate derived from the low minimum revenue requirement in the Overflow Rule, because it was intended to be a discount from Horizon's normal revenue or weight requirements so as not to penalize forwarders, and was significantly lower than Horizon's rates for stand-alone shipments of specific commodities. Forwarders utilizing the Overflow Rule and note items in this way were able to undercut Horizon's published tariff rate by hundreds of dollars while retaining a very large profit on each shipment.

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49. DHX and other forwarders were very aggressive in utilizing this rule and a combination of other tariff rules to their advantage. They were also effective in soliciting new FCL business by utilizing these provisions. It became apparent to us that Horizon was moving the same cargoes it had already been moving for direct shippers but at rates that were hundreds of dollars per container less than the existing tariff rate levels for those commodities.

50. We were concerned that this erosion in our average revenue per container was causing us economic harm. At the same time, we were also concerned that the discounted rate offered by the Overflow Rule in conjunction with some of these Note Items resulted in Horizon moving FCL shipments of single commodities at lower rates than the average revenue per container that Horizon tries to obtain for its other stand alone FCL shipments.

51. We were also concerned about the loss of direct commercial relationships with shippers who took advantage of the "new" rates offered by forwarders. Horizon could have alleviated its concern simply by eliminating the Overflow Rule. However, Horizon balanced that concern with the knowledge that the Overflow Rule continued to play an important role in the business plans of the freight forwarding community for both consolidated and straight loads. Horizon also understood that the Overflow Rule was a critical component in attracting and maintaining a profitable share of the freight forwarder market.

52. Horizon also recognized the continuing need of its forwarder customers to move cargo to Hawaii as quickly and as efficiently as possible. Therefore, when contemplating how best to respond to its shifting market share and declining average revenue levels in the FCL market, Horizon determined that one way to stem the erosion in its average revenues per container would be to raise the discounted minimum revenue requirement for the overflow container and to eliminate or modify some of the Note Items in our tariff.

53. Horizon eliminated a small number of Note Items in its tariff. It modified some other Note Items. It retained a substantial number of Note Items and those Note Items are still in place today. The elimination or modification of those few Note Items simply meant, for example, that all shippers of copy paper would have the existing copy paper rate applied to that shipment without regard to whether the copy paper was accompanied by canned goods or any covered Note Item. Forwarders could still use, and in fact still do use, the Overflow Rule to move LCL or FCL cargo, but that cargo is subject to a higher discounted minimum revenue requirement. The current minimum revenue requirement of the Overflow Rule could still represent a significant continued discount from the revenue generated by the minimum weight requirement for lead containers. However, by increasing the minimum revenue requirement for overflow containers (actually we decreased the discount available to forwarders that utilize overflow containers), Horizon could ensure that FCL cargo routed via freight forwarders would move at rates that were commensurate and competitive with the rates that Horizon was prepared to offer for stand-alone FCL shipments.

54. Forwarders can and still do compete for FCL loads with Horizon. Forwarders, including DHX, can and do utilize Horizon's tariff to compete on price for FCL loads. Those

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overflow containers that are subject to minimum revenue charges still generate less revenue for Horizon than lead containers.

55. Horizon is aware that freight forwarders compete with each other for both LCL and FCL cargo. Horizon is also aware that its own commercial success is in good part dependent upon maintaining strong commercial relationships with the entire forwarder community. For that reason, Horizon cannot be perceived in the trade as favoring one forwarder over another nor can it be perceived as favoring one segment of the forwarding community over the other. This is particularly true when it comes to balancing the competitive relationship between the traditional forwarding and long distance trucking components of the forwarding market. As a result, Horizon prefers to treat all forwarders pursuant to its published tariff.

56. As discussed above, West Coast based forwarders such as DHX have extensive, well-run cross-dock facilities at or near Horizon's terminals that enable them to mix and match cargo in a manner designed to take fullest advantage of Horizon's tariff structure. Consequently, these forwarders can load containers that enable them to utilize Horizon's Mixed Containerload rate in conjunction with the Overflow Rule or Horizon's FAK rate. Long distance truckers, however, do not have the same facilities to mix and match cargo and typically bring in less-efficiently loaded cargoes from a wide-range of inland locations. These truckers typically utilize Horizon's FAK rate. This rate is often higher than rates utilizing the Mixed Shipment/Overflow rate.

57. This rate differential provides cross-dock forwarders with a price advantage over long distance truckers for the ocean segment of the transportation. However, long distance truckers maintain a price advantage on the inland portion of the move. West Coast forwarders therefore typically have an overall price advantage when it comes to West Coast based shipments but long distance truckers tend to compete better for cargo originating at inland destinations.

58. Horizon therefore views rate levels for its Mixed Containerload and FAK rates as very sensitive. Again, Horizon does not want to be perceived as favoring one segment of the forwarder population against the other because it does not wish to jeopardize its commercial relationship with any one segment. They are all Horizon's current or potential shippers. At the same time, these forwarders are also competitors of Horizon for FCL cargo and we are equally concerned that we do not to concede our own market share or minimum revenue levels to our competitors by use of tariff rules in a manner not intended for that purpose when they were created.

59. DHX was and remains a valuable customer of Horizon. Horizon has, since it entered the Hawaii trade, provided top notch service to DHX, one of its largest customers. Horizon sales and marketing employees pay regular calls on DHX both in Oakland and Long Beach. Horizon pricing employees remain in almost daily contact with DHX responding to rate enquiries. Horizon operational employees in Oakland, Long Beach and Hawaii maintain almost daily contact with DHX operational employees to ensure the smooth loading and unloading of DHX's cargo. Horizon has, in fact, bent over backwards to provide top quality service to DHX in all respects as befits any large shipper or forwarder customer of Horizon.

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60. These services include the provision of as many late gates and hot hatches per sailing as possible and being responsive to DHX's regular requests for new, different, or reduced rates.

61. Horizon cannot grant every rate request made by DHX or any other forwarder. Horizon must balance its desire to solicit additional cargo from DHX with its own revenue requirements. It must also balance rate requests with current market rates and the potential impact of the proposed rates on every segment of the industry, including its impacts on other shipper and forwarder rates, its effect on Matson's rates, and the implications of any rate action on the for the fiscal health of Horizon.

62. Horizon has accommodated DHX's rate requests whenever it is commercially practical to do so. In fact, despite the fact that DHX alleges that they have been denied access to proportional rates, Horizon has filed a large number of proportional rates for DHX. A copy of a selection of those rates is annexed as Exhibit 2 to this Statement.

63. Horizon does compete with DHX for FCL business but Horizon has not interfered with DHX's ability to solicit and procure FCL business. In fact, on more than one occasion, where DHX has attempted to solicit FCL business from shipper with whom Horizon did not have a previous commercial relationship, Horizon has actively assisted DHX in those efforts. Horizon's work with DHX's attempt to [REDACTED] FCL business is a case in point.

64. Horizon supported DHX's attempt to grow its FCL business with [REDACTED] because it understood and hoped that if DHX won that bid, DHX would route some or all of that FCL cargo with Horizon, cargo that was currently moving with Matson. Horizon provided a range of FCL rates that DHX could quote to [REDACTED]. In other words, Horizon cooperated with DHX in this bid because it would be able to obtain FCL loads from DHX that it could not obtain directly from the shipper. If DHX had been successful, Horizon would have increased its market share vis-à-vis Matson.

65. Horizon will not accede to rate requests from forwarders that will cause Horizon to lose an existing account, and Horizon will not accede to rate requests for a small volume of a particular commodity if that proposed rate will compel Horizon to reduce its rates on shipments of commodities that are already moving with Horizon in greater volume at current tariff levels. This is neither an unreasonable nor an unfair practice. It is simply prudent management.

66. Horizon has done nothing but compete fairly with DHX and with other large freight forwarders for FCL business. The fact that Horizon has actively assisted DHX's efforts to obtain FCL cargo that has traditionally moved exclusively with its water carrier competitor, Matson, supports that assertion.

67. Horizon has not, however, provided similar assistance to DHX or any other freight forwarder in their efforts to obtain FCL cargo that is already moving with Horizon. Similarly, Horizon has not lowered commodity rates for DHX for commodities that it is already moving in similar volumes. To do so would be irrational from both a commercial and economic point of view. Horizon is not willing to undercut its own rates for cargo it is already moving for

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a shipper with whom it enjoys a commercial relationship just to enable DHX to ship the same FCL loads at lower returns to Horizon.

68. Similarly, Horizon will not reduce an existing rate either for a forwarder or for a shipper for a commodity that is already being shipped with Horizon at similar or greater volumes. For example, Horizon regularly moves significant FCL volumes of electronic products to Hawaii. Horizon's current rate for electronics is set at a level that enables it to continue to maintain that business. Horizon is often asked to quote reduced rates by forwarders and direct shippers with a small or medium volume of electronics. Horizon will generally not reduce the rate for such shipments. To do so would put significant pressure on Horizon to reduce its existing rates on those containers that are already moving at higher rate levels. This is not a destructive competitive practice. It is a sound, practical competitive practice to refrain from undercutting existing rates for thousands of containers in order to attract a small incremental volume of the same commodity. Horizon's decisions in this regard do not differ between requests from freight forwarders and from direct shippers.

69. If Horizon determines that providing a new rate for cargo that it is already shipping can be done without damaging the financial or competitive position of the company, it will file rates for shippers and forwarders that request them. Horizon has done this numerous times for DHX.

70. Horizon understands that the freight forwarding community moves a significant amount of LCL and FCL cargo via Horizon. It appreciates and seeks that cargo out. At the same time, Horizon is aware that, given the intense competition between freight forwarders, any particular advantage given to one freight forwarder by Horizon will either cause the other forwarders to seek a similar advantage or to shift its business to Matson. .

71. Consequently, Horizon has taken steps in all its tariff actions, particularly in its proportional and motor-water rate filings to ensure that special rates for DHX or other freight forwarders do not adversely impact Horizon's ongoing relationships with that forwarder's competitors. This is a difficult but necessary task. It sometimes requires Horizon to say no to certain requests from DHX and other forwarders.

72. Horizon has not entered into any confidential transportation service contracts with DHX in the Hawaii trade. Horizon also has not entered into confidential transportation service contracts with any other freight forwarder in the Hawaii trade.

73. Horizon's reasons for not entering into confidential transportation service contracts are clear, simple, and economically rational. Horizon is the number two Water-Carrier in a two-Water-Carrier trade. Its market share has improved dramatically since its entrance into the Hawaii trade, but its current market share still does not [REDACTED] Horizon's goal is to increase that market share. Horizon also has no doubt that Matson's ongoing goal and obligation is to retain and to increase its own market share.

74. If Horizon were to enter into one confidential transportation service contract with any one shipper or freight forwarder, it would no doubt feel compelled to enter into service

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contracts with all others similarly situated. Such an outcome might serve to lock-in or otherwise commit a certain portion of its current market share by force of these service contracts.

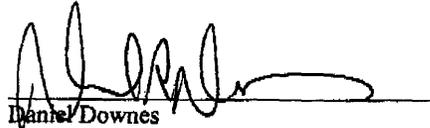
However, Horizon has no doubt that if Horizon were to begin offering service contracts to its shippers and/or forwarders, Matson would feel compelled to take similar steps. This would or could result in Horizon's market share being frozen at ■ since Matson would certainly seek to secure its current market share by use of those same service contracts and this would reduce competition in the trade.

75. Freight forwarders do not typically put out their cargo for a bid. Freight forwarders cannot predict with any degree of certainty the numbers of containers being shipped, the blend of cargo delivered to it, on the type of equipment they need for that cargo on a week to week basis. A forwarder typically cannot predict the amount and type of cargo it will receive in any given week and as a result cannot predict with a great degree of accuracy its specific needs both with regard to the number and size of equipment. Those shippers that Horizon will enter into bids with can predict their anticipated needs, both as to the number and type of containers they require in any given week, with a high degree of accuracy and have a generally good idea as to the present market for their goods in Hawaii. They own the merchandise and control the routing of their cargo. More importantly, shippers, particularly large-volume shippers with logistics departments that control the flow of cargo, are more likely to commit their shipments to a single water carrier than a freight forwarder. Shippers control the routings and time the delivery of their own shipments. Freight forwarders do not enjoy the same level of control for practical and commercial reasons.

76. Freight forwarder shipments, particularly consolidated loads that might contain cargo from thirty different shippers destined for thirty different consignees in Hawaii, can often be more time sensitive than single-shipper loads. Cargo is received and loaded by forwarders every day of the week and the market often demands that forwarders move their cargo on the next available ship, whether that ship is a Matson or Horizon sailing. Further, the ability of freight forwarders to juggle loads between Matson and Horizon helps ensure that each carrier tends to the forwarder's service and price needs in an attempt to maintain its market share of freight forwarder-routed shipments and, hopefully, to see an incremental increase in any given freight forwarder's weekly business with Horizon. Simply put, the ability to shift cargo between Matson and Horizon is a powerful tool that freight forwarders use to secure many value added services from Horizon.

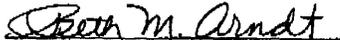
77. Horizon maintains a number of different sections in its tariff including a: port-to-port section; proportional rate section; and sections applying various joint through rates. The rates found in Horizon's port-to-port section are generally thought of as the commodity section in which rates are quoted on a commodity-by-commodity basis by application of various rates per hundred pounds of cargo. Typically each commodity rate in the port-to-port sections lists a set of applicable minimum weight requirements depending upon the size of the container used for the shipment. The freight charges assessed for any commodity shipped in a container under this section are generated by multiplying the weight by the rate, subject to the minimum weight requirement for that commodity. Minimum weight requirements are necessary to ensure that a shipper does not load 2,000 lbs into a 40-foot container and expect to pay \$120 to ship its container to Hawaii.

78. There are many reasons why Horizon treats wharfage as a separate line item on port-to-port shipments rather than factoring its wharfage costs into line item commodity rates. The through rates contained in the other sections of Horizon's tariff are almost universally quoted on a lump sum per container basis. Because Horizon quotes and assesses these rates on a lump sum basis, it has been Horizon's policy to factor the wharfage component of the rate into the rate itself. Horizon certainly takes its wharfage charges into account when constructing a tariff rate for its multi-modal tariff sections, just as it takes its wharfage charges into account when establishing its separate line item wharfage rate in the port-to-port section of its tariff.


 Daniel Downes

Subscribed and sworn to before me

this 22nd day of December, 2003.


 Notary Public

My Commission expires on March 29, 2004

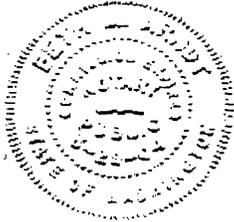


EXHIBIT 1

Hawaii/Guam Sailing Schedule

Beginning the week of December 15, 2003



DEPARTS		TP1	MWXX	CHX	TP1	MWXX	CHX	TP1	MWXX	CHX	TP1	MWXX	CHX	TP1	MWXX	CHX
TACOMA	TAC	11-30		12-4	12-7		12-11	12-14	12-17		12-21	12-23	12-25	12-28		1-1
OAKLAND	OKK	12-3		12-6	12-10		12-13	12-16	12-19		12-23	12-26	12-29	1-1		1-3
LOS ANGELES*	LAC	12-1		12-6	12-8		12-10	12-13	12-16		12-17	12-20	12-22	12-24		1-3
ARRIVES		TP1	MWXX	CHX	TP1	MWXX	CHX	TP1	MWXX	CHX	TP1	MWXX	CHX	TP1	MWXX	CHX
HONOLULU	HON	12-7	12-7	12-10	12-14	12-14	12-17	12-21	12-23	12-24	12-28	12-31	1-4	1-4	1-7	1-9
KAHULUI	KUH	12-9	12-9	12-12	12-16	12-16	12-19	12-23	12-26	12-26	12-30	1-2	1-6	1-6	1-9	1-9
NAWILIWILI	NAW	12-9	12-9	12-12	12-16	12-16	12-19	12-23	12-26	12-26	12-30	1-2	1-6	1-6	1-9	1-9
KAWAIIHAE	KWH	12-9	12-9	12-13	12-16	12-16	12-19	12-23	12-27	12-27	1-3	1-3	1-6	1-6	1-10	1-10
HILO	HIO	12-10	12-10	12-16	12-17	12-17	12-23	12-24	12-30	12-30	1-3	1-6	1-7	1-7	1-13	1-13
GUAM**	GUM	12-16	12-16	12-23	12-23	12-23	12-30	12-30	1-1	1-6	1-6	1-13	1-13	1-13	1-13	1-20
SAIPAN**	SNX	12-18	12-18	12-25	12-25	12-25	1-1	1-1	1-8	1-8	1-8	1-15	1-15	1-15	1-22	1-22

DEPARTS		HIO <th>HON <th>KUH <th>KKA <th>KWH <th>LNH <th>NAW <th>TAC <th>OKK <th>LAC </th></th></th></th></th></th></th></th></th>	HON <th>KUH <th>KKA <th>KWH <th>LNH <th>NAW <th>TAC <th>OKK <th>LAC </th></th></th></th></th></th></th></th>	KUH <th>KKA <th>KWH <th>LNH <th>NAW <th>TAC <th>OKK <th>LAC </th></th></th></th></th></th></th>	KKA <th>KWH <th>LNH <th>NAW <th>TAC <th>OKK <th>LAC </th></th></th></th></th></th>	KWH <th>LNH <th>NAW <th>TAC <th>OKK <th>LAC </th></th></th></th></th>	LNH <th>NAW <th>TAC <th>OKK <th>LAC </th></th></th></th>	NAW <th>TAC <th>OKK <th>LAC </th></th></th>	TAC <th>OKK <th>LAC </th></th>	OKK <th>LAC </th>	LAC					
HAWAII TO MAINLAND		Kauai KU577N	RJ Pfeiffer RJ256N	Maui MU633N	Horizon Consumer CS134N	Kauai KU578N	Lihue LU001N	Maui MU634N	Horizon Consumer CS135N	Kauai KU579N	Lihue LU002N	Maui MU635N	Horizon Consumer CS136N	Kauai KU580N	Lihue LU003N	Maui MU636N
HIO	NWX	12-9	12-16	12-16	12-23	12-23	12-30	12-30	1-6	1-6	1-13	1-13	1-20	1-20	1-27	1-27
HON	CHX	12-15	12-19	12-22	12-26	12-29	1-2	1-5	1-9	1-12	1-16	1-19	1-23	1-26	1-30	2-2
KUH	NWX	12-9	12-16	12-16	12-23	12-23	12-30	12-30	1-6	1-6	1-13	1-13	1-20	1-20	1-27	1-27
KKA	CHX	12-9	12-16	12-16	12-23	12-23	12-30	12-30	1-6	1-6	1-13	1-13	1-20	1-20	1-27	1-27
KWH	NWX	12-9	12-16	12-16	12-23	12-23	12-30	12-30	1-6	1-6	1-13	1-13	1-20	1-20	1-27	1-27
LNH	CHX	12-4	12-11	12-11	12-18	12-18	12-25	12-25	1-1	1-1	1-8	1-8	1-15	1-15	1-22	1-22
NAW	NWX	12-9	12-16	12-16	12-23	12-23	12-30	12-30	1-6	1-6	1-13	1-13	1-20	1-20	1-27	1-27
TAC	CHX	12-19	12-23	12-26	1-1	1-2	1-6	1-9	1-13	1-16	1-20	1-23	1-27	1-30	2-3	2-6
OKK	NWX	12-23	12-25	1-1	1-1	1-8	1-8	1-15	1-15	1-16	1-22	1-29	1-29	1-30	2-3	2-6
LAC	CHX	12-25	1-1	1-1	1-8	1-8	1-15	1-15	1-15	1-16	1-22	1-29	1-29	1-30	2-3	2-6

++-Cargo to Guam/Spain on the CHX/MWXX Service refers to TP1 Service over Hawaii.
 Service available to Tiran and Rota.
 For Intermodal information please call Horizon Lines Customer Service at: 1-877-678-SHIP (7447).
 Schedules subject to change without notice.
 Over-the-road service provided from LAC to OKK for the TP1 Service.
 Page 1 of 3 - Updated on 12/21/2003



Hawaii/Guam Sailing Schedule

Beginning the week of December 15, 2003

DEPARTS		TP1	MWX	CHX	TP1	MWX	CHX	TP1	MWX	CHX	TP1	MWX	CHX
MAINLAND TO HAWAII & GUAM													
HORIZON ENTERPRISE EN179W		1-4			1-8			1-11			1-14		
MANUKAI M3008S		1-7			1-10			1-14			1-17		
LIHUE LU002S		1-5			1-12			1-16			1-20		
HORIZON RELIANCE RG143W													
PRESIDENT GRANT GU060W													
EWA EU205S													
HORIZON CONSUMER CS136S													
HORIZON TRADER TO207W													
MANUKAI M3009S													
LIHUE LU003S													
HORIZON SPIRIT JB046W													
EWA EU206S													
HORIZON CONSUMER CS137S													
HORIZON PACIFIC PS180W													
MANUKAI M3010S													
HORIZON NAVIGATOR NV208S													
ARRIVES													
TACOMA	TPC												
OAKLAND	OAK												
LOS ANGELES	LAC												
ARRIVES													
TACOMA	TPC												
OAKLAND	OAK												
LOS ANGELES	LAC												

* Guam- and Saipan-destined cargo for LU002S must be booked to GU060W

DEPARTS		CHX	NWX	CHX	NWX	CHX	NWX	CHX	NWX	CHX	NWX	CHX	NWX
HAWAII TO MAINLAND													
HILLO		2-3	2-3	2-10	2-10	2-17	2-17	2-24	2-24	3-2	3-2	3-9	3-9
HONOLULU		2-6	2-9	2-13	2-16	2-20	2-20	2-27	3-1	3-5	3-8	3-12	3-15
KAHULUI		2-3	2-3	2-10	2-10	2-17	2-17	2-24	2-24	3-2	3-2	3-9	3-9
KAUNAKAKAI		2-3	2-3	2-10	2-10	2-17	2-17	2-24	2-24	3-2	3-2	3-9	3-9
KAWAIIHAE		2-3	2-3	2-10	2-10	2-17	2-17	2-24	2-24	3-2	3-2	3-9	3-9
LANAI		1-29	1-29	2-5	2-5	2-12	2-12	2-19	2-19	3-4	3-4	3-4	3-4
NAWILIWILI		2-3	2-3	2-10	2-10	2-17	2-17	2-24	2-24	3-2	3-2	3-9	3-9
ARRIVES													
TACOMA	TPC		2-13		2-20		2-27		3-1		3-8		3-15
OAKLAND	OAK		2-17		2-16		2-24		2-24		3-2		3-12
LOS ANGELES	LAC		2-19		2-12		2-17		2-24		3-18		3-25
ARRIVES													
TACOMA	TPC		2-13		2-20		2-27		3-1		3-8		3-15
OAKLAND	OAK		2-17		2-16		2-24		2-24		3-2		3-12
LOS ANGELES	LAC		2-19		2-12		2-17		2-24		3-18		3-25
ARRIVES													
TACOMA	TPC		2-13		2-20		2-27		3-1		3-8		3-15
OAKLAND	OAK		2-17		2-16		2-24		2-24		3-2		3-12
LOS ANGELES	LAC		2-19		2-12		2-17		2-24		3-18		3-25

Hawaii/Guam Sailing Schedule

Beginning the week of December 15, 2003

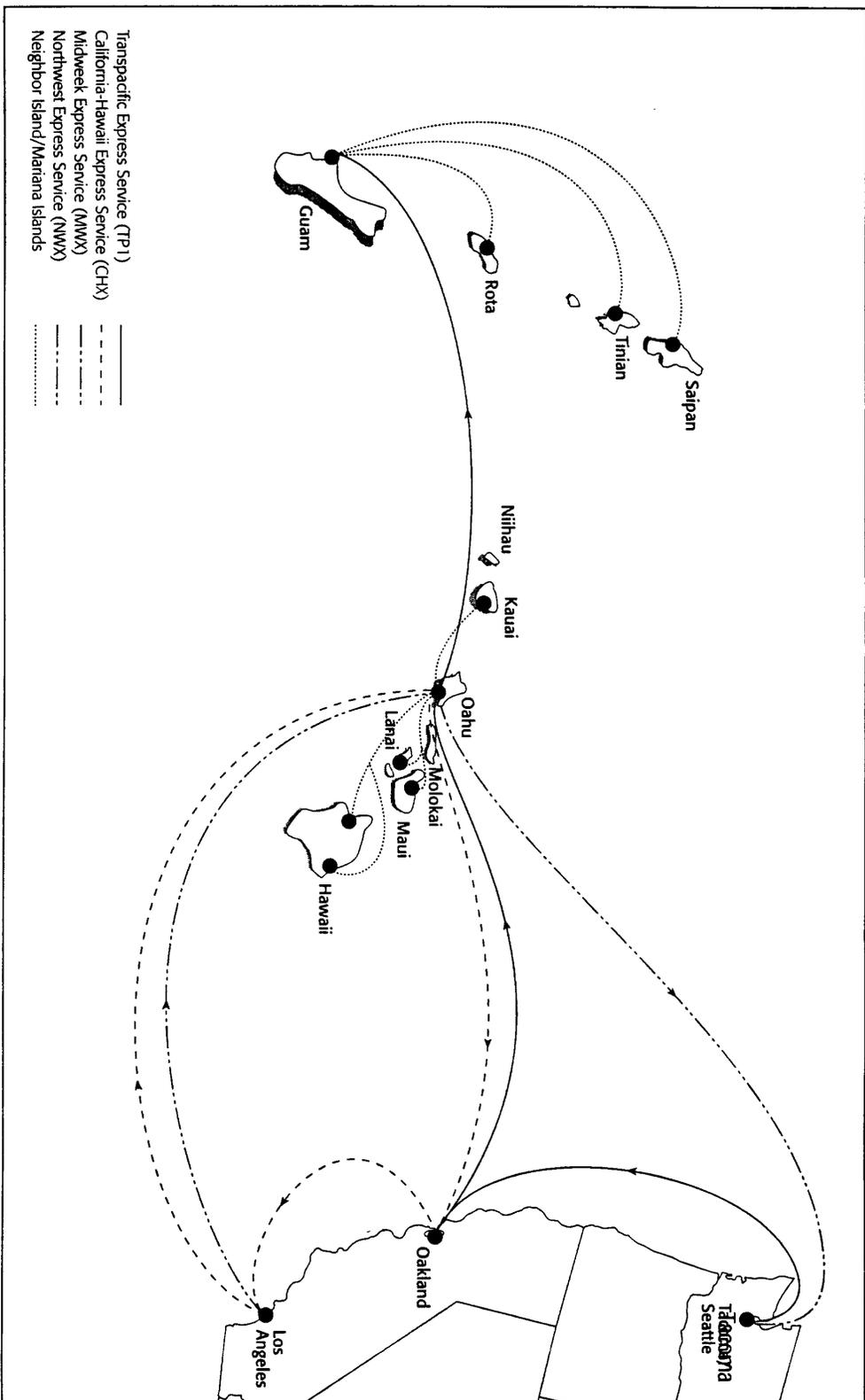


DEPARTS		TP1	MWX	CHX	TP1	MWX	CHX	TP1	MWX	CHX	TP1	MWX	CHX
TACOMA	TAC	2-8			2-15			2-22			2-29		
OAKLAND	OKK	2-11		2-12	2-18		2-19	2-25		2-26	3-3		3-11
LOS ANGELES*	LAC	2-9	2-11	2-14	2-16	2-18	2-21	2-23	2-25	2-28	3-1	3-3	3-10
ARRIVES		TP1	MWX	CHX	TP1	MWX	CHX	TP1	MWX	CHX	TP1	MWX	CHX
HONOLULU	HON	2-15	2-15	2-18	2-22	2-22	2-25	2-29	2-29	3-3	3-7	3-10	3-14
KAHULUI	KUH	2-17		2-20	2-24	2-24	2-27	3-2	3-2	3-5	3-9	3-12	3-16
NAWILIWILI	NAW	2-17		2-20	2-24	2-24	2-27	3-2	3-2	3-5	3-9	3-12	3-16
KAWAIIAE	KWH	2-17		2-21	2-24	2-24	2-28	3-2	3-2	3-6	3-9	3-13	3-16
HILO	HLO	2-18		2-24	2-25	2-25	3-2	3-3	3-3	3-9	3-10	3-16	3-17
GUAM **	GUM	2-24		3-2	3-2	3-2	3-9	3-9	3-16	3-16	3-23	3-23	3-30
SAIPAN **	SNX	2-26		3-4	3-4	3-4	3-11	3-11		3-18	3-18	3-25	4-1

DEPARTS		CHX	NWX	CHX	NWX	CHX	NWX	CHX	NWX	CHX	NWX	CHX	NWX	CHX		
HILO	HLO	3-23	3-30	3-30	4-6	4-6	4-13	4-13	4-20	4-20	4-27	4-27	5-4	5-11		
HONOLULU	HON	3-29	4-2	4-5	4-9	4-12	4-16	4-19	4-23	4-26	4-30	4-30	5-7	5-14		
KAHULUI	KUH	3-23	3-30	3-30	4-6	4-6	4-13	4-13	4-20	4-20	4-27	4-27	5-4	5-11		
KAUNAKAKAI	KKA	3-23	3-30	3-30	4-6	4-6	4-13	4-13	4-20	4-20	4-27	4-27	5-4	5-11		
KAWAIIAE	KWH	3-23	3-30	3-30	4-6	4-6	4-13	4-13	4-20	4-20	4-27	4-27	5-4	5-11		
LANAI	LNI	3-18	3-25	3-25	4-1	4-1	4-8	4-8	4-15	4-15	4-22	4-22	5-6	5-11		
NAWILIWILI	NAW	3-23	3-30	3-30	4-6	4-6	4-13	4-13	4-20	4-20	4-27	4-27	5-4	5-11		
ARRIVES		CHX	NWX	CHX	NWX	CHX	NWX	CHX	NWX	CHX	NWX	CHX	NWX	CHX		
TACOMA	TAC		4-9		4-16		4-23		4-30		5-7		5-14			
OAKLAND	OKK		4-6		4-13		4-20		4-27		5-4		5-11			
LOS ANGELES	LAC		4-8		4-15		4-22		4-29		5-6		5-13			
DEPARTS		CHX	NWX	CHX	NWX	CHX	NWX	CHX	NWX	CHX	NWX	CHX	NWX	CHX		
HAWAII TO MAINLAND		Horizon Consumer CS141N	Kauai KU585N	Horizon Navigator NV212N	Maui MU641N	Horizon Consumer CS142N	Kauai KU586N	Horizon Navigator NV213N	Maui MU642N	Horizon Consumer CS143N	Kauai KU587N	Horizon Navigator NV214N	Maui MU643N	Horizon Consumer CS144N	Kauai KU588N	Horizon Navigator NV215N

Hawaii/Guam Service Overview

Hawaii/Guam



- Transpacific Express Service (TP1) ————
- California-Hawaii Express Service (CHX) - - - - -
- Midweek Express Service (MWX) - . - . - .
- Northwest Express Service (NWX)
- Neighbor Island/Mariana Islands

WESTERN HORIZON
L I N E S SM

Hawaii/Guam Service Overview

TP1 Arrivals/Departures			
MAINLAND TO HAWAII			
<i>Port</i>	<i>Arrives</i>	<i>Departs</i>	
Tacoma	Fri 1800	Sun 0800	
Oakland	Tue 0800	Wed 1800	
Honolulu	Sun 2400	Tue 0300	
Guam	Tue 1600		
CHX Arrivals/Departures			
MAINLAND TO HAWAII			
<i>Port</i>	<i>Arrives</i>	<i>Departs</i>	
Oakland		Wed 0800	
Los Angeles	Thu 0800	Sat 0300	
Honolulu	Wed 1700		
HAWAII TO MAINLAND			
<i>Port</i>	<i>Arrives</i>	<i>Departs</i>	
Honolulu		Thu 2400	
Oakland	Tue 0800	Wed 0800	
Los Angeles	Thu 0800		
MWX Arrivals/Departures			
MAINLAND TO HAWAII			
<i>Port</i>	<i>Arrives</i>	<i>Departs</i>	
Los Angeles		Wed 0400	
Honolulu	Sun 1800		
NWX Arrivals/Departures			
MAINLAND TO HAWAII			
<i>Port</i>	<i>Arrives</i>	<i>Departs</i>	
Honolulu		Mon 0500	
SEA/TAC	Fri 2100		

TP1 Transit Times (Days)		
MAINLAND TO HAWAII		
<i>To: ▼</i>	<i>From: ▼</i>	
<i>Destination*</i>	Tacoma	Oakland
Honolulu	7	4
Guam	16	13
CHX Transit Times (Days)		
MAINLAND TO HAWAII		
<i>To: ▼</i>	<i>From: ▼</i>	
<i>Destination</i>	Oakland	Los Angeles
Honolulu	7	4
HAWAII TO MAINLAND		
<i>To: ▼</i>	<i>From: ▼</i>	
<i>Destination</i>	Honolulu	
Oakland	5	
Los Angeles	6	
MWX Transit Times (Days)		
MAINLAND TO HAWAII		
<i>To: ▼</i>	<i>From: ▼</i>	
<i>Destination*</i>	Los Angeles	
Honolulu	4	
HAWAII TO MAINLAND		
<i>To: ▼</i>	<i>From: ▼</i>	
<i>Destination*</i>	Honolulu	
Tacoma	4	



California-Hawaii Express Service (CHX)

Hawaii/Guam



Arrivals/Departures

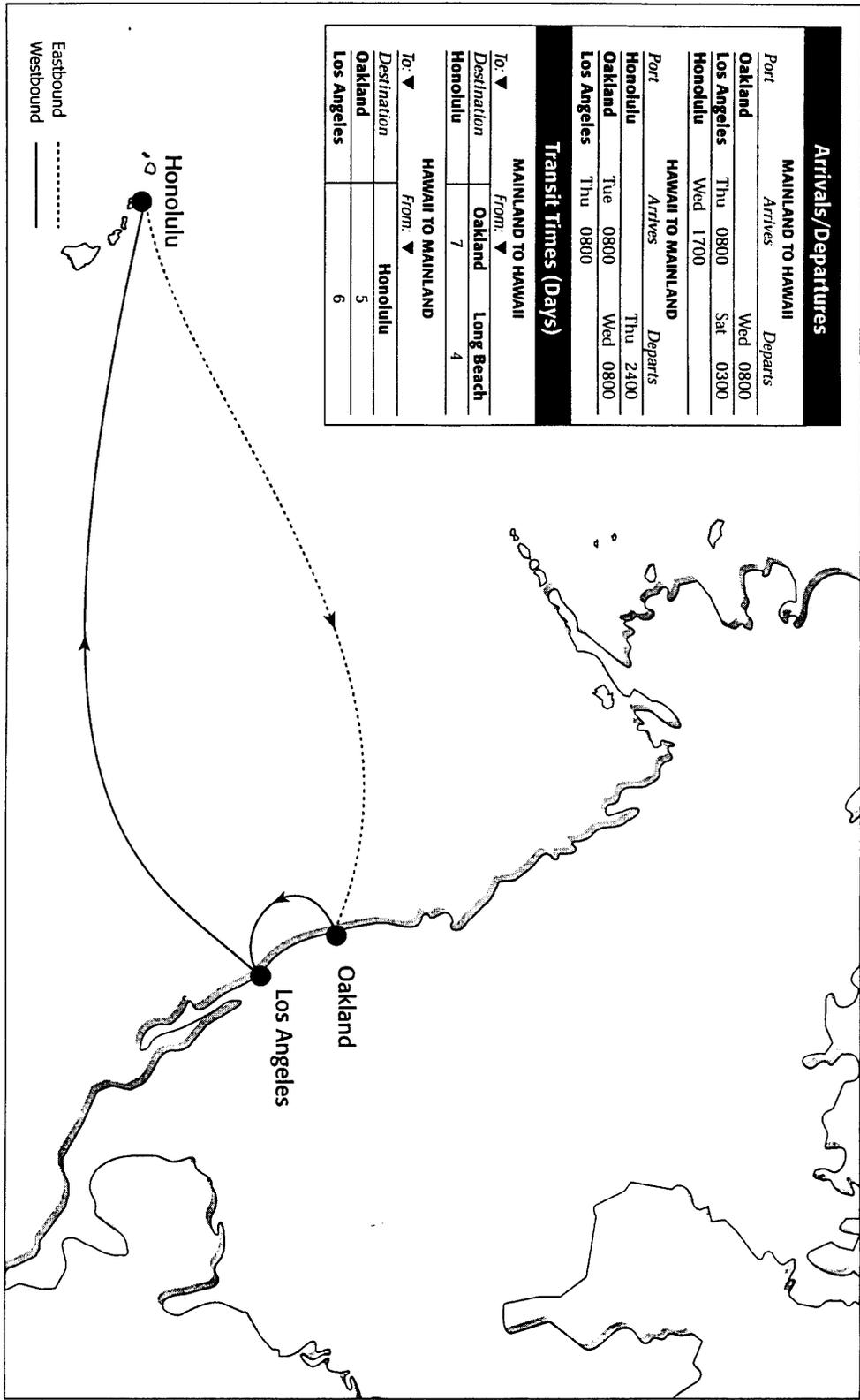
MAINLAND TO HAWAII		Departs	
Port	Arrives	Port	Departs
Oakland	Thu 0800	Wed	0800
Los Angeles	Thu 0800	Sat	0300
Honolulu	Wed 1700		

HAWAII TO MAINLAND		Arrives	
Port	Arrives	Port	Departs
Honolulu	Thu 2400	Thu	2400
Oakland	Tue 0800	Wed	0800
Los Angeles	Thu 0800		

Transit Times (Days)

MAINLAND TO HAWAII		From: ▼	
To: ▼	Destination	To: ▼	From: ▼
Honolulu	Oakland	Honolulu	Long Beach
	7		4

HAWAII TO MAINLAND		From: ▼	
To: ▼	Destination	To: ▼	From: ▼
Oakland	Honolulu	Oakland	Honolulu
	5		6
Los Angeles			



HORIZON
W L I N E S SM

H/C-CHX-03/2003

CALIFORNIA-HAWAII EXPRESS SERVICE (CHX)

Cutoffs and Transits

California Service to Honolulu

Oakland Cutoff Times	
HORIZON LINES 1425 Maritime Street Oakland, CA 94607 510-271-1000	
<i>Cargo</i>	<i>Cutoff</i>
Flats	Mon 1500
General	Tue 1700
FAK & Reefer	Tue 2100
HORIZON LINES 2277 - 7th Street Oakland, CA 94607 510-271-1000	
<i>Cargo</i>	<i>Cutoff</i>
POVs	Mon 1500

Los Angeles Cutoff Times	
HORIZON LINES Pier 400 - APM Terminals - Los Angeles 2500 Navy Way Terminal Island, CA 90731-7554 1-877-678-7447	
<i>Cargo</i>	<i>Cutoff</i>
Flats	Wed 1600
General	Fri 1700
FAK 20-foot	Fri 2100
FAK & Reefer	Fri 2400
HORIZON LINES 669 Harbor Plaza Long Beach, CA 90802 562-590-2131	
<i>Cargo</i>	<i>Cutoff</i>
POVs	Thu 1200

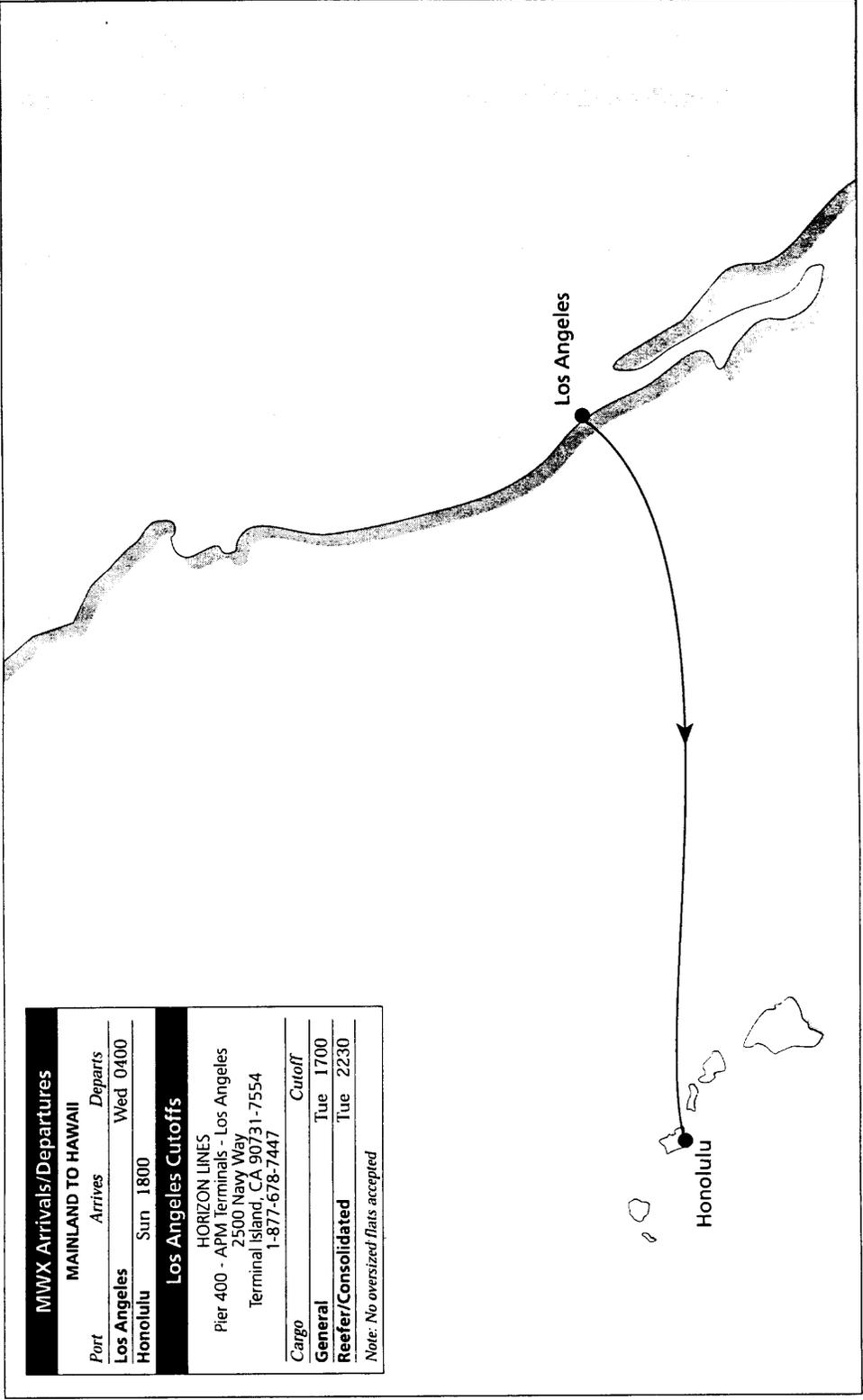
Honolulu Service to Oakland & Los Angeles

Honolulu Cutoff Times	
HORIZON LINES Pier 51A, Sand Island Honolulu, HI 98619 808-842-1515	
<i>Cargo</i>	<i>Cutoff</i>
POVs & Flats	Tue 1600
General	Thu 1200
FAK & Reefer	Thu 1600



Hawaii/Guam

Midweek Express Service (MWX)



MWX Arrivals/Departures	
MAINLAND TO HAWAII	
<i>Port</i>	<i>Arrives</i>
Los Angeles	Wed 0400
Honolulu	Sun 1800
Los Angeles Cutoffs	
HORIZON LINES	
Pier 400 - APM Terminals - Los Angeles	
2500 Navy Way	
Terminal Island, CA 90731-7554	
1-877-678-7447	
<i>Cargo</i>	<i>Cutoff</i>
General	Tue 1700
Reefer/Consolidated	Tue 2230
<i>Note: No oversized flats accepted</i>	



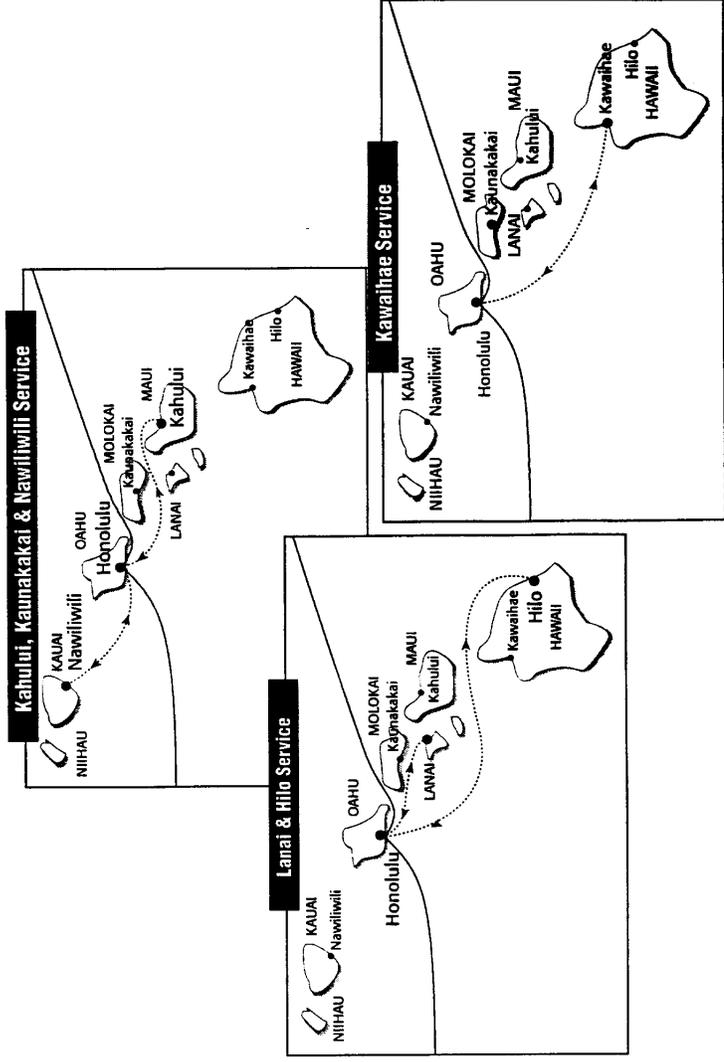


Hawaii/Guam

Hawaii Neighbor Island Service

Hawaii to Neighbor Islands				
TPI Service Arrives Honolulu Sun 2400				
Port	Departs Honolulu	Arrives	TAC Transit	OAK Transit
Kahului	Mon PM	Tue AM	9	6
Kaunakakai	Wed PM	Thu AM	10	7
Nawiliwili	Mon PM	Tue AM	8	5
Lanai	Wed PM	Thu AM	10	7
Hilo	Mon PM	Wed AM	11	8
Kawaihae	Mon PM	Tue AM	8	5

CHX Service Arrives Honolulu Wed 1700				
Port	Departs Honolulu	Arrives	LAC Transit	Transit
Kahului	Thu PM	Fri AM		6
Kaunakakai	Sun PM	Mon AM		9
Nawiliwili	Thu PM	Fri AM		6
Lanai	Wed PM	Thu AM		12
Hilo	Sun PM	Tue AM		10
Kawaihae	Thu AM	Fri AM		6



..... Barge Service
 _____ Linehaul Service



Northwest Express Service (NWX)

Hawaii/Guam



NWX Arrivals/Departures

Port	Arrives	Departs
Honolulu		Mon 0500
Seattle/Tacoma	Fri 2100	

Honolulu Cutoffs

HORIZON LINES
 Pier 51A, Sand Island
 Honolulu, HI 96819
 808-842-1515

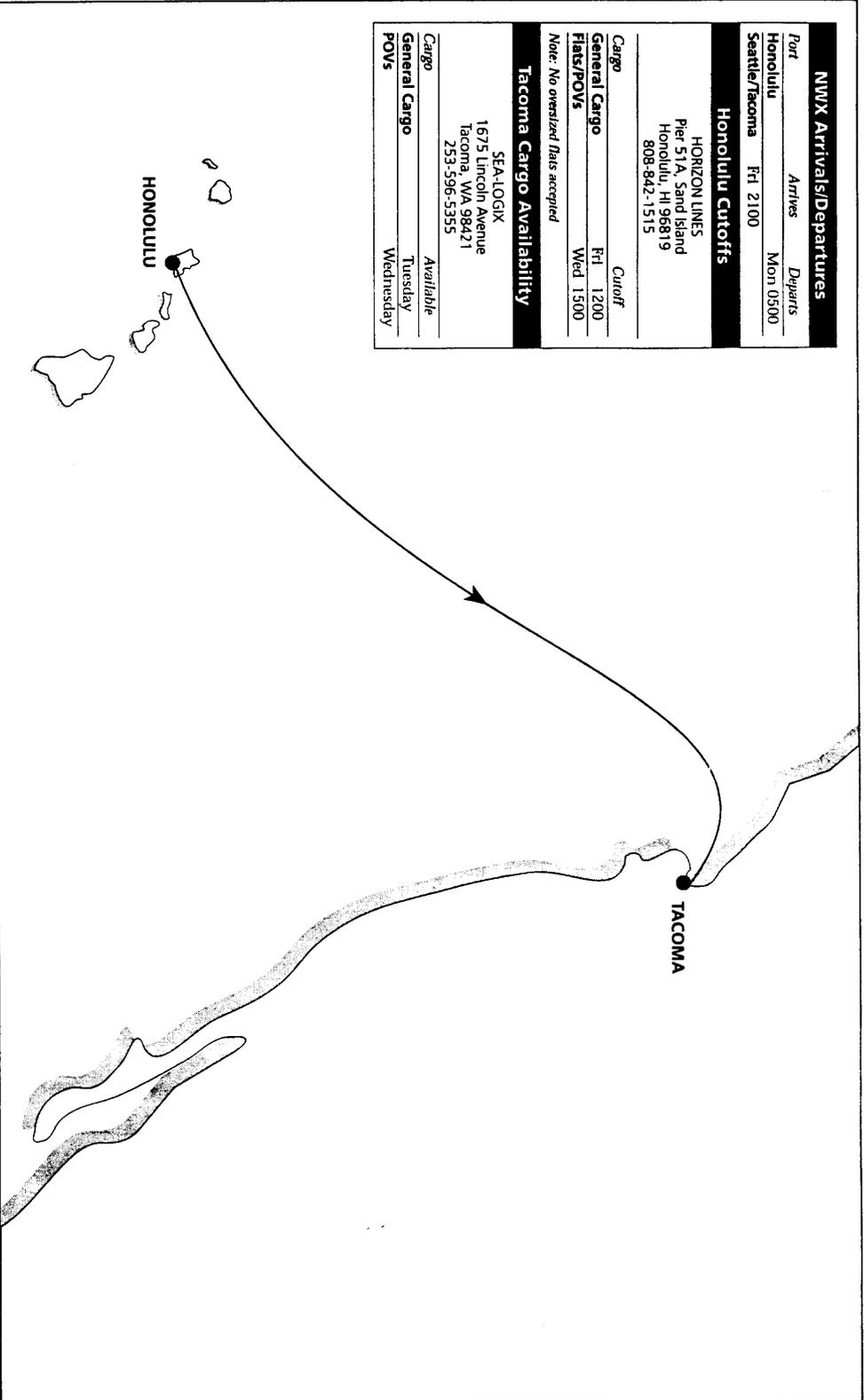
Cargo	Cutoff
General Cargo	Fri 1200
Flats/POVs	Wed 1500

Note: No oversized flats accepted

Tacoma Cargo Availability

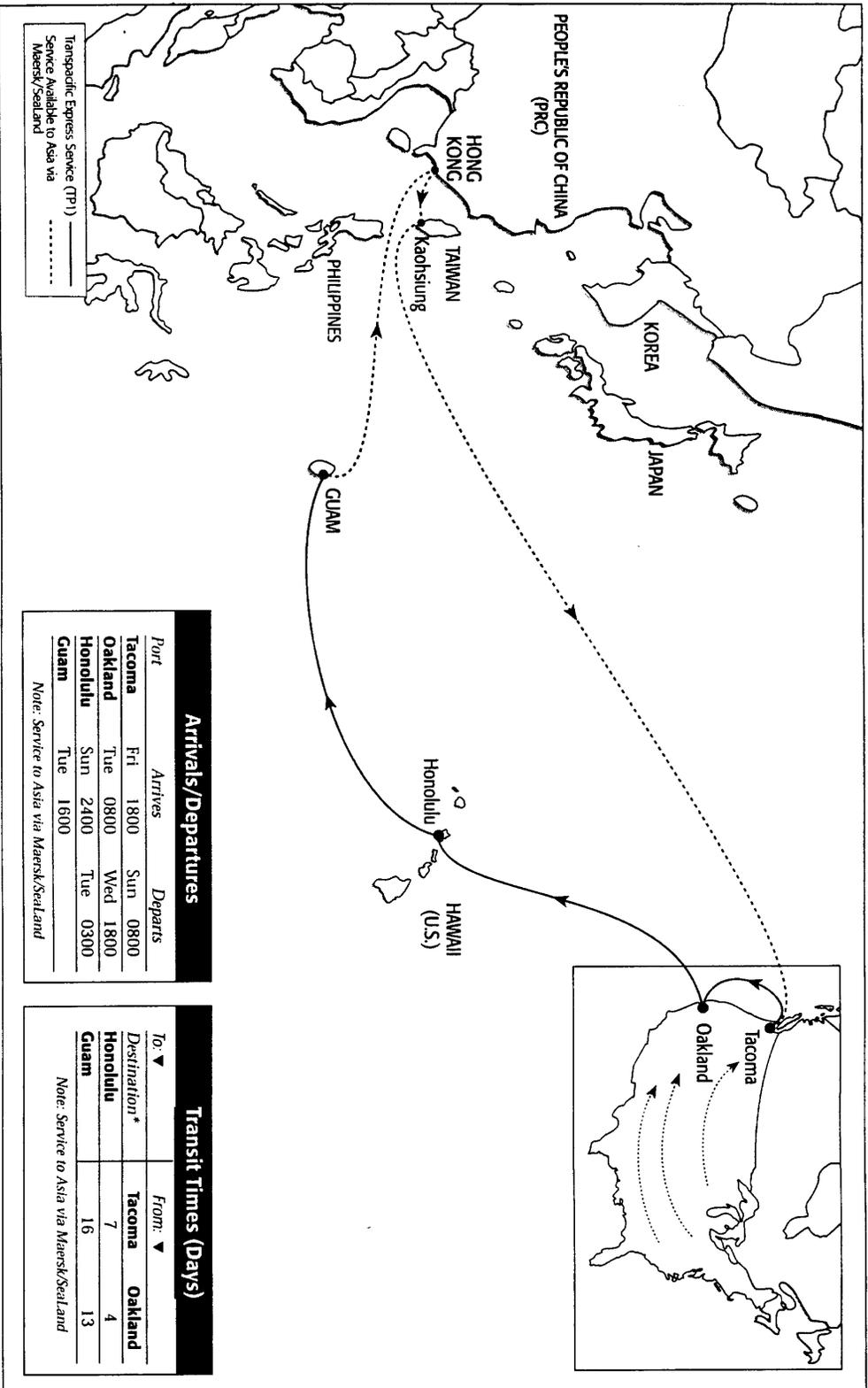
SEA-LOGIX
 1675 Lincoln Avenue
 Tacoma, WA 98421
 253-596-5355

Cargo	Available
General Cargo	Tuesday
POVs	Wednesday



Transpacific Express Service (TP1)

Hawaii/Guam



Transpacific Express Service (TP1) —————
 Service Available to Asia via
 Maersk/Sealand

Arrivals/Departures			
Port	Arrives	Departs	
Tacoma	Fri 1800	Sun	0800
Oakland	Tue 0800	Wed	1800
Honolulu	Sun 2400	Tue	0300
Guam	Tue 1600		

Note: Service to Asia via Maersk/Sealand

Transit Times (Days)			
To: ▼	From: ▼		
Destination*	Tacoma	Oakland	
Honolulu	7	4	
Guam	16	13	

Note: Service to Asia via Maersk/Sealand



TRANSPACIFIC EXPRESS SERVICE (TP1)

Cutoffs and Transits

Transpacific Northwest Service To Hawaii & Guam

Tacoma Cutoff Times		
SEA-LOGIX 1675 Lincoln Avenue Tacoma, WA 98421 253-593-1420		
<i>Cargo</i>		<i>Cutoff</i>
General	Fri	2200
Reefer & FAK	Sat	1130
POVs	Thu	1200
Flats	Fri	1700

Seattle Cutoff Times		
PRTI (Pacific Rim Transport) 10231 East Marginal Way South Seattle, WA 98168 206-763-6860		
<i>Cargo</i>		<i>Cutoff</i>
General	Fri	1700
Reefer	Fri	1700

Portland Cutoff Times		
WESTERN CONTAINER FREIGHT 3860 North Shuttle Road Portland, OR 97217 503-283-1726		
<i>Cargo</i>		<i>Cutoff</i>
General, Reefer, FAK & OTR	Fri	1200

Honolulu Service To Oakland & Long Beach

Oakland Cutoff Times		
HORIZON LINES 1425 Maritime Street Oakland, CA 94607 510-271-1000		
<i>Cargo</i>		<i>Cutoff</i>
Flats	Tue	1500
General	Wed	1100
FAK & Reefer	Wed	1200
HORIZON LINES 2277 - 7th Street Oakland, CA 94607 510-271-1000		
<i>Cargo</i>		<i>Cutoff</i>
POVs	Tue	1630

Los Angeles Cutoff Times		
HORIZON LINES Pier 400 - APM Terminals - Los Angeles 2500 Navy Way Terminal Island, CA 90731-7554 1-877-678-7447		
<i>Cargo</i>		<i>Cutoff</i>
General - OTR	Tue	1600
FAK & Reefer - OTR	Tue	1800



EXHIBIT 2

TARIFF TLI LISTING

Tariff: HRZD 468

Commodity: 050400 0000 FOODSTUFFS, REFRIGERATED, VIZ:

COMMODITY TEXT:

Foodstuffs, Refrigerated, VIZ:

Bakery Goods;
Bread, Frozen;
Butter or Butter Substitutes;
Cheese;
Eggs, Frozen;
Eggs, Liquid;
Fish, Frozen or Not Frozen;
Fruits or Vegetables, Frozen;
Juice, Frozen;
Margarine;
Meat, including Poultry, Frozen or Not Frozen;
Pasta;
Pickles;
Prepared Food, Frozen, in packages;
Pudding;
Salad Dressing;
Seafood;
Tortillas;
Yogurt

COMMODITY VIZ LIST (Index Entries):

Foodstuffs, Refrigerated, VIZ:

Bakery Goods;
Bread, Frozen;
Butter or Butter Substitutes;
Cheese;
Eggs, Frozen;
Eggs, Liquid;
Fish, Frozen or Not Frozen;
Fruits or Vegetables, Frozen;
Juice, Frozen;
Margarine;
Meat, including Poultry, Frozen or Not Frozen;
Pasta;
Pickles;
Prepared Food, Frozen, in packages;
Pudding;
Salad Dressing;
Seafood;
Tortillas;
Yogurt

COMMODITY NOTES:

1. Non-Food items may be included in containers under this Item.
2. Rates include the return of empty pallets and cardboard separators from Hawaii CY to Pacific Coast CY, which moved loaded to Hawaii under rates in this Item. Shipper must certify that the pallets and separators so returned comply with the provisions of this Note.
3. Rates include West Coast Wfg.

SPECIAL CHARGES:

Special Charge ID# Description Apply(Y/N) Cycle #
 No Records Found

 Origin: LOS ANGELES, CALIFORNIA Dest: DHI - (DEST. HAWAII TERMINALS)

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0002	PC	RE	40		TT		3,624.00	17MAR2003		

TLI Notes:

- Rate applies only on cargo originating at:
 - 1400 Date St., Montebello, CA 90640
 -or-
 - 6290 Caballero Blvd., Buena Park, CA 96020
 -or-
 - 19201 Susanna Rd., Rancho Dominguez, CA 90221
 -or-
 - 4339 Fruitland Ave., Vernon, CA 90058
 -or-
 - 430 S. Anderson St., Los Angeles, CA 90033
 -or-
 - 2442 E. Carson St., Carson, CA 90810
 -or-
 - 1981 E. 213th St., Carson, CA 90749
 -or-
 - 11222 La Cienega Boulevard, Suite 205, Inglewood, CA 90304
 -or-
 - 2964 Alvarado St., San Leandro, CA 94577

Rule Overrides:

Rule	Apply
RESERVED FOR FUTURE USE	N
WHARFAGE - LOS ANGELES, CA	N
RESERVED FOR FUTURE USE	N
WHARFAGE - OAKLAND, CA	N
RESERVED FOR FUTURE USE	N
WHARFAGE - SEATTLE/TACOMA/PORTLAND	N

 Origin: OAKLAND, CA 94601 (P) Dest: DHI - (DEST. HAWAII TERMINALS)

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0001	PC	RE	40		TT		3,665.00	17MAR2003		

TLI Notes:

- Rate applies only on cargo originating at:
 - 1700 Ferro St., Oakland, CA 94607
 -or-
 - 7200 Edgewater Drive, Oakland, CA 94621
 -or-
 - 3623 Munster Ave., Hayward, CA 94545
 -or-
 - 23787 Eichles Ave., Hayward, CA 94545
 -or-

- 2964 Alvarado St., Unit K, San Leandro, CA 94577
- or-
- 2996 Alvarado St., Unit F, San Leandro, CA 94577
- or-
- 2920 Regatta Blvd., Richmond, CA. 94806

Rule Overrides:	Apply
RESERVED FOR FUTURE USE	N
WHARFAGE - LOS ANGELES, CA	N
RESERVED FOR FUTURE USE	N
WHARFAGE - OAKLAND, CA	N
RESERVED FOR FUTURE USE	N
WHARFAGE - SEATTLE/TACOMA/PORTLAND	N

 Origin: TACOMA, WA 98401 (P) Dest: DHI - (DEST. HAWAII TERMINALS)

Rate	Container	Serv	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0003	PC RE 40	TT		3,660.00	21JUL2003		

TLI Notes:
 Rate applies only on cargo originating at:
 - 2326 Airport Way, S., Seattle, WA 98134
 - 1400 4th Street, Anacortes, WA 98221
 - 2825 Roeder Ave., Bellingham, WA 98227

Rule Overrides:	Apply
RESERVED FOR FUTURE USE	N
WHARFAGE - LOS ANGELES, CA	N
RESERVED FOR FUTURE USE	N
WHARFAGE - OAKLAND, CA	N
RESERVED FOR FUTURE USE	N
WHARFAGE - SEATTLE/TACOMA/PORTLAND	N

***** End of Report *****

TARIFF TLI LISTING

Tariff: HRZD 468

Commodity: 050770 1000 EXHIBITION, DISPLAY OR CONVENTION MATERIALS, NOT TO INCLUDE

COMMODITY TEXT:
Exhibition, Display or Convention Materials, not to include
Merchandise.

COMMODITY VIQ LIST (Index Entries):
Exhibition, Display or Convention Materials, not to include

COMMODITY NOTES:
Rates include Orig. wfg. charges.

SPECIAL CHARGES:
Special Charge ID# Description Apply(Y/N) Cycle #
No Records Found

Origin: LOS ANGELES, CALIFORNIA Dest: DHI - (DEST. HAWAII TERMINALS)

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0007	PC	PC	20		TT		2,280.00	17MAR2003		

TLI Notes:
Rate applies on cargo having originated at:
-13861 Rosecrans Ave., Santa Fe Springs, CA 90670
-or-
-2747 South Vail Ave., Commerce, CA 90040
-or-
-19201 Susana Rd., Rancho Dominguez, CA 90221
-or-
-13900 South Broadway, Los Angeles, CA 90061
-or-
-7300 Chapman Ave., Garden Grove, CA 92841

Rule Overrides: Apply
RESERVED FOR FUTURE USE N
WHARFAGE - LOS ANGELES, CA N
RESERVED FOR FUTURE USE N
WHARFAGE - OAKLAND, CA N

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0001	PC	PC	40		TT		3,804.00	17MAR2003		

TLI Notes:
Rate applies on cargo having originated at:
-13861 Rosecrans Ave., Santa Fe Springs, CA 90670
-or-
-2747 South Vail Ave., Commerce, CA 90040
-or-
-19201 Susana Rd., Rancho Dominguez, CA 90221
-or-
-13900 South Broadway, Los Angeles, CA 90061

-or-
 -7300 Chapman Ave., Garden Grove, CA 92841
 Rule Overrides:
 RESERVED FOR FUTURE USE
 WHARFAGE - LOS ANGELES, CA
 RESERVED FOR FUTURE USE
 WHARFAGE - OAKLAND, CA

Apply
 N
 N
 N
 N

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0002	PC	PC	40B		TT		4,110.00	17MAR2003		

TLI Notes:
 Rate applies on cargo having originated at:
 -13861 Rosecrans Ave., Santa Fe Springs, CA 90670
 -or-
 -2747 South Vail Ave., Commerce, CA 90040
 -or-
 -19201 Susana Rd., Rancho Dominguez, CA 90221
 -or-
 -13900 South Broadway, Los Angeles, CA 90061
 -or-
 -7300 Chapman Ave., Garden Grove, CA 92841

Rule Overrides:
 RESERVED FOR FUTURE USE
 WHARFAGE - LOS ANGELES, CA
 RESERVED FOR FUTURE USE
 WHARFAGE - OAKLAND, CA

Apply
 N
 N
 N
 N

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0003	PC	PC	45B		TT		4,838.00	17MAR2003		

TLI Notes:
 Rate applies on cargo having originated at:
 -13861 Rosecrans Ave., Santa Fe Springs, CA 90670
 -or-
 -2747 South Vail Ave., Commerce, CA 90040
 -or-
 -19201 Susana Rd., Rancho Dominguez, CA 90221
 -or-
 -13900 South Broadway, Los Angeles, CA 90061
 -or-
 -7300 Chapman Ave., Garden Grove, CA 92841

Rule Overrides:
 RESERVED FOR FUTURE USE
 WHARFAGE - LOS ANGELES, CA
 RESERVED FOR FUTURE USE
 WHARFAGE - OAKLAND, CA

Apply
 N
 N
 N
 N

 Origin: OAKLAND, CA 94601 (P) Dest: DHI - (DEST. HAWAII TERMINALS)

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0004	PC	PC	40		TT		3,692.00	17MAR2003		

TLI Notes:

Rate applies on cargo having originated at:
 -3623 Munster Blvd., Hayward, CA 94545.
 -or-
 -7200-B Edgewater Dr., Oakland, CA 94621

Rule Overrides:

RESERVED FOR FUTURE USE
 WHARFAGE - LOS ANGELES, CA
 RESERVED FOR FUTURE USE
 WHARFAGE - OAKLAND, CA

Apply
 N
 N
 N
 N

TLI#	Rate	Container	Serv	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0005	PC	PC 40B	TT		3,999.00	17MAR2003		

TLI Notes:

Rate applies on cargo having originated at:
 -3623 Munster Blvd., Hayward, CA 94545.
 -or-
 -7200-B Edgewater Dr., Oakland, CA 94621

Rule Overrides:

RESERVED FOR FUTURE USE
 WHARFAGE - LOS ANGELES, CA
 RESERVED FOR FUTURE USE
 WHARFAGE - OAKLAND, CA

Apply
 N
 N
 N
 N

TLI#	Rate	Container	Serv	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0006	PC	PC 45B	TT		4,656.00	17MAR2003		

TLI Notes:

Rate applies on cargo having originated at:
 -3623 Munster Blvd., Hayward, CA 94545.
 -or-
 -7200-B Edgewater Dr., Oakland, CA 94621

Rule Overrides:

RESERVED FOR FUTURE USE
 WHARFAGE - LOS ANGELES, CA
 RESERVED FOR FUTURE USE
 WHARFAGE - OAKLAND, CA

Apply
 N
 N
 N
 N

***** End of Report *****

TARIFF TLI LISTING

Tariff: HRZD 468

Commodity: 051509 0000 SHORTENING AND OIL

COMMODITY TEXT:
SHORTENING AND OIL

COMMODITY VIZ LIST (Index Entries):
SHORTENING AND OIL

COMMODITY NOTES:
1. Rates in this Item are proportional and apply only on cargo having originated at:
- Rancho Dominguez, CA.
2. Rate includes WC Wfg.

SPECIAL CHARGES:
Special Charge ID# Description Apply(Y/N) Cycle#
No Records Found

Origin: LOS ANGELES, CALIFORNIA Dest: DHI - (DEST. HAWAII TERMINALS)

Rate	Container	Serv	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0001	PC	PC 40	TT	2,470.00	09OCT2003		N/A

Rule Overrides: WHARFAGE - LOS ANGELES, CA Apply N

Rate	Container	Serv	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0002	PC	PC 40B	TT	2,470.00	09OCT2003		N/A

Rule Overrides: WHARFAGE - LOS ANGELES, CA Apply N

***** End of Report *****

TARIFF TLI LISTING

Tariff: HR2D 468

Commodity: 052002 0011 FOODSTUFFS ALL KINDS, REFRIGERATED, FOR OVERFLOW SHIPMENTS

COMMODITY TEXT:

Foodstuffs All Kinds, Refrigerated, for Overflow Shipments

COMMODITY VIZ LIST (Index Entries):

Foodstuffs All Kinds, Refrigerated, for Overflow Shipments

COMMODITY NOTES:

Note 1 - For each vessel/voyage a shipper tendering cargo under items 0504-00-0000, 0520-01-0000 may include one overflow container for chilled cargo and one overflow container for frozen cargo. For purposes of this note, the term "chilled" shall mean a shipment for which the thermostat setting is 29 or more degrees Fahrenheit and the term "frozen" shall mean a shipment for which the thermostat setting is less than 29 degrees Fahrenheit.

Note 2 - Shipper must specify on bill of lading which container is to be considered the lead container and which container is to be considered the overflow.

Note 3 - Rates include Hawaii Wharfage.

Note 4 - For containers moving under this item to Hilo, Nawiliwili, Kahului and Kawaihae, a wharfage differential of \$52.40 applies.

SPECIAL CHARGES:

Special Charge ID#	Description	Apply(Y/N)	Cycle #
No Records Found			

Origin: LOS ANGELES, CALIFORNIA Dest: DHI - (DEST. HAWAII TERMINALS)

TLI#	Basis	Container Type	Size	Serv Temp Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0001	W	RE	40	TT		12.45	17MAR2003		

TLI Notes:

- Subject to minimum of \$2,447 per container.
- Rate is proportional and applies only on cargo originating at:
 - 2442 E Carson St, Carson Ca 90810
 - 1031 E Watson Center Road, Carson, Ca 90745
 - 1981 E 213th St, Carson, Ca 90749

TLI#	Basis	Container Type	Size	Serv Temp Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0005	W	RE	40	TT		12.72	17MAR2003		

TLI Notes:

- Subject to minimum of \$2,483 per container.

2. Rate is proportional and only applies on cargo
 originating at:
 - 14952 Valley View Ave, La Mirado, CA 90638

TLI#	Rate	Container	Size	Temp	Serv	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0007	W	RE	40		TT			12.71	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,483 per container.

2. Rate is proportional and applies only on cargo
 originating at:
 - 4215 Exchange Ave, Los Angeles, Ca 90058
 - 430 S Anderson, Los Angeles, Ca. 90033
 - 5403 Santa Fe Ave, Los Angeles, Ca. 90058
 - 517 Clarence St, Los Angeles, Ca 90033
 - 19201 Susana Rd., Rancho Dominguez, CA 90221
 - 19840 Rancho Way, Rancho Dominguez, CA 90221

TLI#	Rate	Container	Size	Temp	Serv	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0009	W	RE	40		TT			12.65	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,472 per container.

2. Rate is proportional and applies only on cargo
 originating at:
 - 1400 Date Street, Montebello, Ca 90640

TLI#	Rate	Container	Size	Temp	Serv	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0021	W	RE	40		TT			12.80	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,519 per container.

2. Rate is proportional and applies only on cargo
 originating at:
 - 4339 Fruitland Ave, Vernon, Ca. 90058
 - 3261 E. 44th St., Vernon, Ca. 90058

TLI#	Rate	Container	Size	Temp	Serv	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0023	W	RE	40		TT			12.74	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,492 per container.

2. Rate is proportional and applies only on cargo
 originating at:
 - 6950 Artesia Blvd, Buena Park, Ca. 90620-1061
 - 6290 Caballero Blvd, Buena Park, Ca 96020

TLI#	Rate	Container	Size	Temp	Serv	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0002	W	RE	40B		TT			12.45	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,447 per container.
2. Rate is proportional and applies only on cargo originating at:
 - 2442 E Carson St, Carson Ca 90810
 - 1031 E Watson Center Road, Carson, Ca 90745
 - 1981 E 213th St, Carson, Ca 90749

Rate	Container	Serv	Effect	Expire	Haz					
TLI#	Basis	Type	Size	Temp	Code	Minimum Qty	Base Rate	Date	Date	Cde
0006	W	RE	40B		TT		12.72	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,483 per container.
2. Rate is proportional and applies only on cargo originating at:
 - 14952 Valley View Ave., La Mirado, CA 90638

Rate	Container	Serv	Effect	Expire	Haz					
TLI#	Basis	Type	Size	Temp	Code	Minimum Qty	Base Rate	Date	Date	Cde
0008	W	RE	40B		TT		12.71	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,483 per container.
2. Rate is proportional and applies only on cargo originating at:
 - 4215 Exchange Ave, Los Angeles, Ca 90058
 - 430 S Anderson, Los Angeles, Ca. 90033
 - 5403 Santa Fe Ave, Los Angeles, Ca. 90058
 - 517 Clarence St, Los Angeles, Ca 90033
 - 19201 Susana Rd., Rancho Dominguez, CA 90221
 - 19840 Rancho Way, Rancho Dominguez, CA 90221

Rate	Container	Serv	Effect	Expire	Haz					
TLI#	Basis	Type	Size	Temp	Code	Minimum Qty	Base Rate	Date	Date	Cde
0010	W	RE	40B		TT		12.65	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,472 per container.
2. Rate is proportional and applies only on cargo originating at:
 - 1400 Date Street, Montebello, Ca 90640

Rate	Container	Serv	Effect	Expire	Haz					
TLI#	Basis	Type	Size	Temp	Code	Minimum Qty	Base Rate	Date	Date	Cde
0022	W	RE	40B		TT		12.80	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,519 per container.
2. Rate is proportional and applies only on cargo originating at:
 - 4339 Fruitland Ave, Vernon, Ca. 90058
 - 3261 E. 44th St., Vernon, Ca. 90058

Rate	Container	Serv	Effect	Expire	Haz					
TLI#	Basis	Type	Size	Temp	Code	Minimum Qty	Base Rate	Date	Date	Cde

0024 W RE 40B TT 12.74 17MAR2003

TLI Notes:

1. Subject to minimum of \$2,492 per container.
2. Rate is proportional and applies only on cargo originating at:
 - 6950 Artesia Blvd, Buena Park, Ca. 90620-1061
 - 6290 Caballero Blvd, Buena Park, Ca 96020

 Origin: OAKLAND, CA 94601 (P) Dest: DHI - (DEST. HAWAII TERMINALS)

Rate	Container	Serv	Effect	Expire	Haz					
TLI#	Basis	Type	Size	Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0003 W	RE	40			TT		12.65	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,474 per container.
2. Rate is proportional and applies only on cargo originating at:
 - 3623 Munstes Ave, Hayward Ca 94545
 - 28787 Eichler, Hayward Ca 94545
 - 30611 San Antonio, Hayward, Ca 94544

Rate	Container	Serv	Effect	Expire	Haz					
TLI#	Basis	Type	Size	Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0011 W	RE	40			TT		12.32	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,410 per container.
2. Rate is proportional and applies only on cargo originating at:
 - 1700 Ferro St., Oakland, Ca. 94607
 - 860 92nd Ave Oakland, Ca. 94603
 - 1301 26th St., Oakland, Ca. 94607
 - 7200 Edgewater Drive, Oakland, CA. 94621

Rate	Container	Serv	Effect	Expire	Haz					
TLI#	Basis	Type	Size	Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0015 W	RE	40			TT		12.53	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,450 per container.
2. Rate is proportional and applies only on cargo originating at:
 - 420 17th st., San Francisco, Ca 94107

Rate	Container	Serv	Effect	Expire	Haz					
TLI#	Basis	Type	Size	Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0017 W	RE	40			TT		12.58	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,457 per container.
2. Rate is proportional and only applies on cargo originating at:

- 2964 Alvarado St., Unit K, San Leandro, CA. 94577
- 100 Halcyon Drive, San Leandro, Ca. 94577
- 111 San Leandro, Blvd, San Leandro, CA. 94577

Rate	Container	Serv	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0004 W	RE 40B	TT		12.65	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,174 per container.
2. Rate is proportional and applies only on cargo originating at:
 - 3623 Munstes Ave, Hayward Ca 94545
 - 28787 Eichler, Hayward Ca 94545
 - 30611 San Antonio, Hayward, Ca 94544

Rate	Container	Serv	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0012 W	RE 40B	TT		12.32	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,410 per container.
2. Rate is proportional and applies only on cargo originating at:
 - 1700 Ferro St., Oakland, Ca. 94607
 - 860 92nd Ave Oakland, Ca. 94603
 - 1301 26th St., Oakland, Ca. 94607
 - 7200 Edgewater Drive, Oakland, CA. 94621

Rate	Container	Serv	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0016 W	RE 40B	TT		12.53	17MAR2003		

TLI Notes:

Subject to minimum of \$2,450 per container.

Rate applies from:

420 17th st., San Francisco, Ca 94107

Rate	Container	Serv	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0018 W	RE 40B	TT		12.58	17MAR2003		

TLI Notes:

1. Subject to minimum of \$2,457 per container.
2. Rate is proportional and only applies on cargo originating at:
 - 2964 Alvarado St., Unit K, San Leandro, CA.
 - 9457 100 Halcyon Drive, San Leandro, Ca. 94577
 - 111 San Leandro, Blvd, San Leandro, CA. 94577

Origin: TACOMA, WA 98401 (P) Dest: DHI - (DEST. HAWAII TERMINALS)

Rate	Container	Serv	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
TLI#	Basis Type Size Temp Code						

0019 W RE 40 TT 12.49 17MAR2003

TLI Notes:

- 1. Subject to minimum of \$2,441 per container.
- 2. Rate is proportional and applies only on cargo originating at:
 - 1762 6th Ave So., Seattle, Wa 98134
 - 2326 Airport Way, Seattle, Wa. 98134
 - 547 Occidental Ave So. Seattle, Wa. 98104
 - 6050 E Marginal Way S, Seattle, Wa. 98108
 - 303 South Rives St., Seattle, Wa. 98108

Rate	Container	Serv	Effect	Expire	Haz					
TLI#	Basis	Type	Size	Temp	Code	Minimum Qty	Base Rate	Date	Date	Cde
0020	W	RE	40B		TT		12.49	17MAR2003		

TLI Notes:

- 1. Subject to minimum of \$2,441 per container.
- 2. Rate is proportional and applies only on cargo originating at:
 - 1762 6th Ave So., Seattle, Wa 98134
 - 2326 Airport Way, Seattle, Wa. 98134
 - 547 Occidental Ave So. Seattle, Wa. 98104
 - 6050 E Marginal Way S, Seattle, Wa. 98108
 - 303 South Rives St., Seattle, Wa. 98108

***** End of Report *****

TARIFF TLI LISTING

Tariff: HRZD 468

Commodity: 052080 1001 FOODSTUFFS, VIZ: SOUP INGREDIENTS, NOODLES, PASTA OR RICE,

COMMODITY TEXT:

Foodstuffs, VIZ: Soup Ingredients, including:
 Noodles;
 Pasta or Rice;
 Dry, in serving cups or microwaveable cooking/serving trays
 or dishes, With or Without Vegetables, Cheese, Meat,
 Seasonings or Other Ingredients, shipped in boxes.

COMMODITY VIZ LIST (Index Entries):

Foodstuffs, VIZ: Soup Ingredients, including:
 Noodles;
 Pasta or Rice;
 Dry, in serving cups or microwaveable cooking/serving trays
 or dishes, With or Without Vegetables, Cheese, Meat,
 Seasonings or Other Ingredients, shipped in boxes.

COMMODITY NOTES:

1. Rate applies only on cargo originating at:
 - Rancho Dominguez, CA. 90221.
2. Rate includes Orig/Dest Wfg.

SPECIAL CHARGES:

Special Charge ID#	Description	Apply(Y/N)	Cycle #
No Records Found			

Origin: LOS ANGELES, CALIFORNIA Dest: DHI - (DEST. HAWAII TERMINALS)

Rate	Container	Serv	Minimum Qty	Base Rate	Effect	Expire	Haz
TLI#	Basis	Type	Size	Temp	Date	Date	Cde
0001	PC	PC	40	TT	3,239.00	17MAR2003	

Rule Overrides:	Apply
RESERVED FOR FUTURE USE	N
WHARFAGE - LOS ANGELES, CA	N
WHARFAGE - HAWAIIAN PORTS	N

Rate	Container	Serv	Minimum Qty	Base Rate	Effect	Expire	Haz
TLI#	Basis	Type	Size	Temp	Date	Date	Cde
0002	PC	PC	45B	TT	3,321.00	17MAR2003	

Rule Overrides:	Apply
RESERVED FOR FUTURE USE	N
WHARFAGE - LOS ANGELES, CA	N
WHARFAGE - HAWAIIAN PORTS	N

***** End of Report *****

TARIFF TLI LISTING

Tariff: HR7D 468

Commodity: 053208 2000 PAINT, NOS

COMMODITY TEXT:
PAINT, NOS

COMMODITY VIZ LIST (Index Entries):
PAINT, NOS

COMMODITY NOTES:
No Records Found

SPECIAL CHARGES:
Special Charge ID# Description Apply(Y/N) Cycle #
No Records Found

Origin: LOS ANGELES, CALIFORNIA Dest: DHI - (DEST. HAWAII TERMINALS)

TLI#	Rate Basis	Container Type	Size	Serv Temp Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0001	PC	PC	40	TT		2,099.00	17MAR2003		N/A

TLI Notes:
1. RATE IS PROPORTIONAL AND APPLIES ONLY ON CARGO ORIGINATINGAT:
- 19201 SUSANA ROAD, RANCHO DOMINGUEZ, CA 90221

2. RATE INCLUDES WC WFG.

Rule Overrides:	Apply
RESERVED FOR FUTURE USE	N
WHARFAGE - LOS ANGELES, CA	N
RESERVED FOR FUTURE USE	N
WHARFAGE - OAKLAND, CA	N
RESERVED FOR FUTURE USE	N
WHARFAGE - SEATTLE/TACOMA/PORTLAND	N

TLI#	Rate Basis	Container Type	Size	Serv Temp Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0002	PC	PC	40B	TT		2,099.00	17MAR2003		N/A

TLI Notes:
1. RATE IS PROPORTIONAL AND APPLIES ONLY ON CARGO ORIGINATINGAT:
- 19201 SUSANA ROAD, RANCHO DOMINGUEZ, CA 90221

2. RATE INCLUDES WC WFG.

Rule Overrides:	Apply
RESERVED FOR FUTURE USE	N
WHARFAGE - LOS ANGELES, CA	N
RESERVED FOR FUTURE USE	N

WHARFAGE - OAKLAND, CA
RESERVED FOR FUTURE USE
WHARFAGE - SEATTLE/TACOMA/PORTLAND
***** End of Report *****

N
N
N

TARIFF TLI LISTING

Tariff: HRZD 468

Commodity: 054012 0000 TIRES OR TUBES, PNEUMATIC

COMMODITY TEXT:
Tires or Tubes, Pneumatic

COMMODITY VIZ LIST (Index Entries):
Tires or Tubes, Pneumatic

COMMODITY NOTES:
1. Rates in this Item are proportional and apply only on cargo originating at:
- Rancho Dominguez, CA 90221
- La Mirada, CA 90638
2. Rates include Orig. Wfg.

SPECIAL CHARGES:
Special Charge ID# Description Apply(Y/N) Cycle #
No Records Found

Origin: LOS ANGELES, CALIFORNIA Dest: DHI - (DEST. HAWAII TERMINALS)

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0001	PC	PC	20		TT		1,900.00	17MAR2003		

Rule Overrides: Apply
RESERVED FOR FUTURE USE N
WHARFAGE - LOS ANGELES, CA N

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0002	PC	PC	40		TT		3,674.00	17MAR2003		

Rule Overrides: Apply
RESERVED FOR FUTURE USE N
WHARFAGE - LOS ANGELES, CA N

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0003	PC	PC	40B		TT		3,674.00	17MAR2003		

Rule Overrides: Apply
RESERVED FOR FUTURE USE N
WHARFAGE - LOS ANGELES, CA N

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0004	PC	PC	45B		TT		3,954.00	17MAR2003		

Rule Overrides:

RESERVED FOR FUTURE USE

WHARFAGE - LOS ANGELES, CA

Apply

N

N

***** End of Report *****

TARIFF TLI LISTING

Tariff: HRZD 468

Commodity: 059950 0000 MIXED SHIPMENTS, VIZ: WINE, LIQUOR, NON-ALCOHOLIC BEVERAGE

COMMODITY TEXT:

Beverages, in mixed containerloads, Viz:

- Wine;
- Liquor;
- Cocktail Mix;
- Bottled Juice;
- Water;
- Beer;
- Wine Coolers;
- Champagne;
- Vermouth;
- Malt Coolers;
- Non-Alcoholic Beverages.

COMMODITY VIZ LIST (Index Entries):

Beverages, in mixed containerloads, Viz:

- Wine;
- Liquor;
- Cocktail Mix;
- Bottled Juice;
- Water;
- Beer;
- Wine Coolers;
- Champagne;
- Vermouth;
- Malt Coolers;
- Non-Alcoholic Beverages.

COMMODITY NOTES:

1. Rates apply only on cargo originating at:
 - Sante Fe Springs, CA 90670
 - 19201 Susana Rd, Rancho Dominguez, CA 90221
 - Buena Park, CA 90620
 - La Mirada, CA 90638
2. Rates not subject to West Coast Wharfage.

SPECIAL CHARGES:

Special Charge ID#	Description	Apply(Y/N)	Cycle #
No Records Found			

Origin: OUST (ORIGIN US TERMINALS) Dest: DHI - (DEST. HAWAII TERMINALS)

Rate	Container	Serv	Effect	Expire	Haz							
TLI#	Basis	Type	Size	Temp	Code	Minimum	Qty	Base	Rate	Date	Date	Cde
0001	PC	PC	20		TT			2,322.00		17MAR2003		

Rule Overrides:

RESERVED FOR FUTURE USE	Apply
WHARFAGE - LOS ANGELES, CA	N
	N

RESERVED FOR FUTURE USE N
 WHARFAGE - OAKLAND, CA N
 RESERVED FOR FUTURE USE N
 WHARFAGE - SEATTLE/TACOMA/PORTLAND N

Rate	Container	...	Serv			Effect	...	Expire	...	Haz	
TLI#	Basis	Type	Size	Temp	Code	Minimum	Qty	Base Rate	Date	Date	Cde
0002	PC	PC	40		TT			2,633.00	17MAR2003		

Rule Overrides: Apply
 RESERVED FOR FUTURE USE N
 WHARFAGE - LOS ANGELES, CA N
 RESERVED FOR FUTURE USE N
 WHARFAGE - OAKLAND, CA N
 RESERVED FOR FUTURE USE N
 WHARFAGE - SEATTLE/TACOMA/PORTLAND N

Rate	Container	...	Serv			Effect	...	Expire	...	Haz	
TLI#	Basis	Type	Size	Temp	Code	Minimum	Qty	Base Rate	Date	Date	Cde
0003	PC	PC	40B		TT			2,633.00	17MAR2003		

Rule Overrides: Apply
 RESERVED FOR FUTURE USE N
 WHARFAGE - LOS ANGELES, CA N
 RESERVED FOR FUTURE USE N
 WHARFAGE - OAKLAND, CA N
 RESERVED FOR FUTURE USE N
 WHARFAGE - SEATTLE/TACOMA/PORTLAND N

***** End of Report *****

TARIFF TLI LISTING

Tariff: HR2D 468

Commodity: 054815 0012 BOXES, KDF

COMMODITY TEXT:
Boxes, KDF

COMMODITY VIZ LIST (Index Entries):
Boxes, KDF

COMMODITY NOTES:
1. Rates include WC Wfg.
2. EXCEPTION to Rule 505 - Containers utilizing the provisions of this Item shall be given 15 days free time at Honolulu.
3. Rates are proportional and apply only on cargo originating at (except as noted in specific TLI's):
- 19201 Susana Road, Rancho Dominguez, CA 90221
-or-
- 14952 Valley View Road, La Mirada, CA 90638

SPECIAL CHARGES:
Special Charge ID# Description Apply(Y/N) Cycle #
No Records Found

Origin: LOS ANGELES, CALIFORNIA Dest: DHI - (DEST. HAWAII TERMINALS)

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0001	PC	PC	20		TT		1,929.00	17MAR2003		

Rule Overrides: Apply
RESERVED FOR FUTURE USE N
WHARFAGE - LOS ANGELES, CA N
RESERVED FOR FUTURE USE N
WHARFAGE - OAKLAND, CA N
RESERVED FOR FUTURE USE N
WHARFAGE - SEATTLE/TACOMA/PORTLAND N

Rule Overrides: Apply
RESERVED FOR FUTURE USE N
WHARFAGE - LOS ANGELES, CA N

TLI#	Rate Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0002	PC	PC	40		TT		2,469.00	17MAR2003		

Rule Overrides: Apply
RESERVED FOR FUTURE USE N
WHARFAGE - LOS ANGELES, CA N
RESERVED FOR FUTURE USE N
WHARFAGE - OAKLAND, CA N
RESERVED FOR FUTURE USE N

WHARFAGE - SEATTLE/TACOMA/PORTLAND

N

Rule Overrides:

RESERVED FOR FUTURE USE
WHARFAGE - LOS ANGELES, CA

Apply
N
N

TLI#	Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0004	PC	PC	40		TT		2,483.00	17MAR2003		

TLI Notes:

Rate applies only on cargo originating in Zip 90221.

Rule Overrides:

RESERVED FOR FUTURE USE
WHARFAGE - LOS ANGELES, CA
RESERVED FOR FUTURE USE
WHARFAGE - OAKLAND, CA
RESERVED FOR FUTURE USE
WHARFAGE - SEATTLE/TACOMA/PORTLAND

Apply
N
N
N
N
N
N

TLI#	Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0003	PC	PC	40B		TT		2,469.00	17MAR2003		

Rule Overrides:

RESERVED FOR FUTURE USE
WHARFAGE - LOS ANGELES, CA
RESERVED FOR FUTURE USE
WHARFAGE - OAKLAND, CA
RESERVED FOR FUTURE USE
WHARFAGE - SEATTLE/TACOMA/PORTLAND

Apply
N
N
N
N
N
N

Rule Overrides:

RESERVED FOR FUTURE USE
WHARFAGE - LOS ANGELES, CA
RESERVED FOR FUTURE USE
WHARFAGE - OAKLAND, CA
RESERVED FOR FUTURE USE
WHARFAGE - SEATTLE/TACOMA/PORTLAND

Apply
N
N
N
N
N
N

TLI#	Basis	Container Type	Size	Serv Temp	Code	Minimum Qty	Base Rate	Effect Date	Expire Date	Haz Cde
0005	PC	PC	40B		TT		2,483.00	17MAR2003		

TLI Notes:

Rate applies only on cargo originating in Zip 90221.

Rule Overrides:

RESERVED FOR FUTURE USE
WHARFAGE - LOS ANGELES, CA
RESERVED FOR FUTURE USE
WHARFAGE - OAKLAND, CA
RESERVED FOR FUTURE USE
WHARFAGE - SEATTLE/TACOMA/PORTLAND

Apply
N
N
N
N
N
N

***** End of Report *****