

U.S. DEPARTMENT OF TRANSPORTATION  
SURFACE TRANSPORTATION BOARD

GOVERNMENT OF THE TERRITORY  
OF GUAM,

Complainant,

vs.

STB Docket WCC-101  
(PHASE II)

AMERICAN PRESIDENT LINES, LTD.,  
MATSON NAVIGATION COMPANY, and  
SL SERVICE, INC. f/k/a SEA-  
LAND SERVICE, INC.,

Defendants.

REPLY COMMENTS OF THE CARIBBEAN SHIPPERS ASSOCIATION, INC.

ENTERED  
Office of the Secretary

JUN 17 2002

Part of  
Public Record

Submitted By:

RICK A. RUDE, Esq.  
Suite 103  
207 Park Avenue  
Falls Church, VA. 22046  
(703) 536-3063 Tele.  
(703) 536-4841 Fax.

Attorney For  
Caribbean Shippers Association, Inc.

Dated: 17 June 2002



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### Introduction

These Reply Comments are being submitted on behalf of the Caribbean Shippers Association, Inc. ("CSA") in response to the Comments submitted by the defendant carriers in the above captioned proceeding.

The initial comments of the CSA pointed out to the Board that this proceeding has essentially been "overtaken by events". Simply, since the date of the filing of the complaint in WCC-101, the circumstances of the Guam trade have changed and evolved to the extent that any final decision in this case will be of little value.

The defendant carriers in the Guam Rate Litigation (which includes FMC Docket No. 89-26 and this docket WCC-101) have either gone out of business, sold out foreign, or changed their business operations such that any final decision in the litigation will be "advisory" in application.

### Reply Facts

The above description of this litigation is not a mistake nor an exaggeration. There are three (3) named defendants-- (1) American President Lines, Ltd., (2) Sea-Land Service, Inc., and (3) Matson Navigation Company. American President Lines and Sea-Land Service have both been "sold out foreign" and no longer serve the Guam trade.<sup>1/</sup> The Comments filed by the Government of Guam noted that Matson Navigation Company, which purchased APL's Guam operations, entered into some type

1/

The APL situation was noted in the Board's November 2001 Order. Sea-Land Service ceased operations in December 1999. CSX Corporation, the parent company of Sea-Land, established a new company, CSX Lines, LLC, which is not a party to this proceeding and therefore any Board "findings" are neither binding nor relevant to CSX Lines.

joint usage vessel arrangement with Neptune Orient Lines AND non-competition agreement. (See V.S. E. Nadel, pages 17-18). The carriers joint presentation included the Verified Statement of Mr. Daniel Downes. Mr. Downes plainly states the fact that he is an employee of "CSX Lines, LLC". Mr. Downes does describe at length a reciprocal service arrangement between CSX Lines, LLC and Matson Navigation Company. Mr. Downes also described an agreement and "chartering relationship with Maersk-Sea-Land" which Mr. Downes then states results in CSX involved only in transportation of cargo to Guam, Saipan, Tinian and Rota. (V.S. Downes at 2-3). Mr. Downes then states that the other cargo loaded on the vessels is "transported by and for the account and expense of Maersk Lines". (V.S. Downes at 3).

The net effect of the above is to place in question just "who" is the water carrier involved in this case.<sup>2/</sup> The issue of reasonable compensation or rates for carrier services has been treated differently as to "past rates" and "future rate prescription". At the time this proceeding was started, the issue was both as to each of the defendants. Now, not only is Sea-Land's defense solely as to "past rates", but Matson's defense involves "future rate prescription". It is submitted that the Board can short cut this proceeding by likewise

bi-furcating the issues. Past rates, which can be determined

2/

The water carrier is the carrier actually operating the vessel. 49 U.S.C. §§13102(19), §§13102(21), §§13102(22), §§13903. Is the carrier NOL/APL instead of Matson Navigation? Is the carrier Maersk-Sea-Land today? These are important facts as they dictate the extent and scope of discovery, whether the Board establishes standards for "past rates" or for "future rate prescription". Does CSX Lines take advantage of Matson's costs to claim similar rates and "res judicata" to such issues in the future? The carriers owed the Board notice that the nature of their operations had fundamentally changed.

with "real" evidence of costs and expenses, need not be tied to "projected" or theoretical future costs and expenses for Matson Navigation Company. This likewise permits the Board to use actual evidence of operations when the carriers did in fact operate as water carriers. It is basic to commerce law that a carrier may NOT use the revenues, costs and expenses (both capital and variable) of another carrier (i.e. Matson) as a basis for determination of the first carrier's profitability.

#### COMMENTS

The above fact statement is necessitated due to the defendants' disclosure of how they have changed their operations. Had Sea-Land Service timely noticed the cessation of service, the scope of this case would have been altered as well as perhaps the "methodologies" proposed in the opening comments. The Board could have requested clarification of and input into methodologies involving "non-operating" carriers versus "operating" carriers. Cf. Ex Parte No. MC-208, Nonoperating Motor Carriers--Collection of Undercharges, 9 I.C.C.2d. 35 (1992), vacated, 9 I.C.C.2d. at 777 (1993). One of the proposals advanced was Stand Alone Costing (SAC). That approach involves establishment of a stand alone competitive carrier (using present costs, projected revenues and the like). It is submitted that when a carrier has ceased operations, use of actual costs, expenses and revenues is more appropriate and substantially more accurate. The Board is attempting to reach a "just and reasonable result". The Board can not do so when a methodology test advocated for one of the

defendants is inappropriate to reach such a result. Compare, defendants' discussion at pages 25-26 of the Opening Comments wherein they 'worry' regarding the "perverse consequences" of "imposing prescriptive relief against one or both carriers". Since Matson Navigation Company is the only defendant that may be subject to such prospective rate setting, it is very difficult to accept the "perverse" consequences contentions.

The domestic offshore trades between the continental United States and Guam/Hawaii, Alaska, and Puerto Rico are the most profitable ocean carrier tradelanes in the world. The Board is entrusted with maintaining a balance between the rates of the carriers, the shipping needs of the public, and fair compensation. Such is not an easy undertaking. However, it is submitted that the Board is more able to meet that challenge when the Board has all of the facts. It is not appropriate to factor into this proceeding any sort of 'advisory' decisions regarding CSX Lines, LLC. The Government of Guam's claims against Sea-Land Service, Inc. are now only as to past service and rates. Since there is little competition, a straight forward cost/revenue analysis is appropriate for the claims against Sea-Land. That analysis can be done on a factually correct basis and need not involve any issue of projected revenues, etc. The G.O. 11 standards were used to reach a specifically identifiable and quantifiable amount in FMC Docket No. 89-26. The CSA would recommend that in so far as Sea-Land Service is concerned, the G.O. 11 standards as amended in September 1995 "work". It is also the belief

5.

of the CSA that those standards may also be a reasonable "fit" for review of Matson Navigation's revenues, expenses and profits as well.

Conclusion

Wherefore, it is hereby respectfully requested that the Board adopt the rate methodology approach as noted in the Opening Comments of the CSA and that the Board enter such other and further order as the Board deems just and appropriate in the circumstances of this proceeding.

Respectfully submitted,



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RICK A. RUDE, Esq.  
Suite 103  
207 Park Avenue  
Falls Church, VA. 22046  
(AC 703) 536-3063 Tele.  
(AC 703) 536-4841 Fax.

Attorney For  
Caribbean Shippers Association, Inc.

Certificate Of Service

I hereby certify that a copy of these Reply Comments have been served by telefax and by first class mail, postage prepaid, upon the following parties of record.

Dated this 17th day of June 2002 at Falls Church, VA.

  
RICK A. RUDE, Esq.

Mr. Rogert A. Berliner  
1225 - 19th Street, N.W.  
Suite 800  
Washington, D.C. 20036

Mr. C. Jonathan Benner  
401 - 9th Street, N.W.  
Suite 1000  
Washington, D.C. 20004

Mr. Richard A. Allen  
888 - 17th Street, N.W.  
Suite 700  
Washington, D.C. 20006