

APPENDIX A

Procedural History of This Proceeding

Both parties engaged in extensive discovery. Shortly after the Commission instituted this investigation, Sea-Land filed its Interrogatories and Requests for Production of Documents, served May 16, 1998. BOE furnished answers there to on July 22, 1998, together with all production required of BOE. BOE likewise initiated discovery procedures through the filing of Interrogatories and Requests for Production directed to respondent, served May 22, 1998.¹

On September 8, 1999, Sea-Land filed a Motion for Issuance of a Protective Order, seeking to prevent any public use or disclosure of certain discovery documents relating to prior investigations of the equipment substitution practices of Sea-Land undertaken by the "neutral body" enforcement authority contracted by the carrier members of the Trans-Pacific Policing Agreement. By responsive filing served September 14, 1999, BOE opposed respondent's claims of confidentiality and requested that the Motion be denied in its entirety. The Administrative Law Judge twice deferred ruling upon Sea-Land's Motion pending a prehearing conference held September 21, and subsequently to permit Sea-Land counsel to clarify its authority in relation to settlement.²

Sea-Land subsequently withdrew its Motion for Protective Order by praecipe dated December 6, 1999. On that same date, Sea-Land filed "Second Set" Interrogatories and Requests for Production directed to BOE, and a Notice of Deposition Duces Tecum with respect to the

¹Over a lengthy span extending through August 4, 1999, Sea-Land produced documents which amounted to less than two Xerox boxes worth of records in the aggregate. See BOE Response to Sea-Land Request for Discovery, filed May 10, 2000, at 2 fn.1 and Attachment A. BOE ultimately advised Sea-Land that BOE would forego further production in order to proceed to hearing in this matter, rather than continue with respondent's procedure extending indefinitely the discovery process. See BOE's letter to Mr. Zuckerman dated September 2, 1999.

²See Order served September 15, 1999, Motion of Sea-Land Service, Inc. for Issuance of a Protective Order Deferred; and Status Report, served November 1, 1999.

Commission's Area Representative, Oliver Clark.³ By order of December 9, the Administrative Law Judge suspended the filing of responsive pleadings by BOE pending the consummation of Maersk's purchase of the ocean common carrier operations of Sea-Land Service, Inc. and determination of further procedures with respect to Sea-Land's filings. The presiding officer accordingly directed counsel to file status reports in this matter no later than February 1, 2000.⁴

An informal prehearing conference and discussion with the parties was conducted by telephone on February 1, 2000, and it was decided that since Sea-Land's praecipe had the effect of withdrawing Sea-Land's earlier Motion for Protective Order, BOE had no ongoing obligation to maintain confidential treatment of Sea-Land discovery documents. The Administrative Law Judge then determined that BOE's case should be "put to the test," and that submission of verified statements of BOE's witnesses provided the best means to do so in an expeditious manner.⁵ BOE was directed to prepare direct written testimony for submission in accordance with Commission Rule 157, 46 C.F.R. § 502.157.

On March 3, the presiding officer adopted a Procedural Schedule to govern the remaining phases of the proceeding.⁶ In accordance with that schedule, BOE submitted its direct case in the form of verified statements, exhibits and attached documents by filing timely completed on April 10,

³While not included within the official docket file, Sea-Land separately filed requests for issuance of subpoenas for non-party witnesses. The Administrative Law Judge made explicit reference to such subpoenas in his Further Status Report, served December 9.

⁴The presiding officer also anticipated settlement discussions between BOE and counsel for the new Maersk Sea-Land operation. No contact ensued from Sea-Land counsel, however, until January 27, 2000, at which time Sea-Land's counsel advised that Sea-Land had "no new information to offer" with regard to renewing settlement discussions. BOE so informed the Administrative Law Judge by letter dated January 28, 2000.

⁵The Administrative Law Judge determined that Sea-Land's requests for further discovery would continue to be held in abeyance pending further proceedings subsequent to Sea-Land's receipt of BOE's direct case.

⁶Procedural Schedule Adopted, served March 3, 2000.

2000.⁷ The presiding officer granted BOE's Motion to Admit Its Direct Case, and received into evidence the written statements and documents comprising BOE's direct case.⁸

On May 1, 2000, Sea-Land renewed its discovery efforts through the filing of a Request for Discovery, seeking the Administrative Law Judge's approval for extensive new interrogatories and requests for production directed to BOE; to conduct 16 depositions of BOE witnesses and non-parties; and to require production of specific and extensive documents by 13 persons employed by identified NVOs and forwarders and from three individual employees of the Commission. On May 10, 2000, BOE filed its Response to Sea-Land's Request for Discovery, opposing such discovery as untimely.⁹ The Administrative Law Judge denied Sea-Land's request to resume discovery, finding that respondent had failed to establish good cause to depose witnesses at that time and that respondent would have "adequate opportunity" to cross-examine such witnesses at the hearing. See Order served May 12, 2000, Respondent's Request for Discovery Denied.¹⁰

On June 5, 2000, BOE submitted a Motion for Summary Judgment,¹¹ limited to addressing two of the issues addressed in the Commission's Order of Investigation: whether Sea-Land had

⁷BOE also furnished to Sea-Land's counsel five boxes of documents comprising all the records in the possession of BOE which relate to those shipments cited in the direct testimony of Mr. Gravitt and Mr. Clark. See BOE's letter of April 18, 2000 to Joseph Nah, Esq.

⁸See Order served May 3, 2000, Motion of the Bureau of Enforcement to Admit Direct Case Into the Record Granted.

⁹In order to meet the original deadlines established in the March 3 procedural schedule, BOE was compelled nonetheless to respond to Sea-Land Interrogatories and Requests for Production by May 10, 2000. BOE filed timely responses to Sea-Land's discovery on that date.

¹⁰The Administrative Law Judge also declined Sea-Land counsel's subsequent request to reconsider his May 12 ruling. See Respondent's Motion Denied for Partial Reconsideration of Order Denying Request for Discovery Denied, served May 26, 2000, at 3.

¹¹The procedural schedule of March 3 made explicitly [explicit] provision whereby either party could seek summary judgment prior to oral hearing upon BOE's direct case.

violated section 10(b)(1) of the 1984 Act with respect to the rates and charges collected, and whether Sea-Land violated section 19(d) of the 1984 Act with respect to its payments of compensation to certain ocean freight forwarders. BOE asserted that, if BOE's motion were granted in whole or in part, the issues for hearing would be narrowed to focus upon the extent to which Sea-Land engaged in activities which "knowingly and willfully" violated the shipping Act of 1984, and the amount by which its penalty should be increased due to the gravity of its offenses and its degree of culpability. Sea-Land responded in opposition to the motion on June 19. Thereafter, the Administrative Law Judge denied BOE's Motion, asserting, *inter alia*, that partial summary judgment should not be granted where neither party had yet proffered its witnesses to testify.¹²

Oral hearing with respect to BOE's case in chief convened in Washington, D.C. on August 22. Hearings with respect to BOE's witnesses Oliver Clark, James Carey and Thomas Gravitt took place over six days, August 22-29, 2000.¹³ Hearings as to NVO and other forwarder witnesses presented by BOE were conducted thereafter in Long Beach, CA. Examination of these 11 witnesses occurred between September 7-14, 2000.¹⁴

In accordance with procedures previously famed by the presiding officer, Sea-Land did not have to file any part of Sea-Land's case in chief until after BOE filed its direct case and oral hearing was completed thereon. Pursuant to a Revised Procedural Order served October 3, 2000, Sea-Land filed on October 17 Sea-Land's Motion to Admit Direct Case into the Record, including therewith three attachments said to comprise Sea-Land's direct case. BOE filed a reply to Sea-Land's Motion

¹²Order served July 17, 2000, Bureau of Enforcement's Motion for Partial Summary Judgment Denied.

¹³BOE's three employee witnesses were examined by Sea-Land counsel over a period of six day, encompassing over 1150 pages of transcript.

¹⁴Testimony of BOE's 11 NVO and ocean forwarder witnesses encompassed over 975 additional pages of transcript.

noting that, with the exception of those attachments to the Verified Statement of Donna Smith, BOE had no objection to the admission of Sea-Land's three exhibits. The presiding officer granted, in part, Sea-Land's Motion to admit Direct Case by Order served December 18, 2000.¹⁵

Sea-Land followed its October 17 submission by filing on that same date a motion denominated as its "Motion for Change of Venue of Possible Cross Examination," requesting that the Administrative Law Judge modify the Procedural Schedule to permit a "potential witness," Mr. Glenn Spargo, to submit testimony herein. In support thereof, respondent noted that Mr. Spargo "declined to provide a verified written statement as long as the hearing and his potential cross-examination, is scheduled for Washington D.C.

The following day Sea-Land filed a supplemental motion entitled "Respondent's Motion to Admit Verified Statement into the Record." This latter filing consisted of a motion with an attached unsigned and undated document entitled "Verified Statement of Scott Hagan." BOE replied to both motions on October 30, requesting that both be denied as untimely and improper as failing to demonstrate why Sea-Land should be allowed to submit part of its direct case after its due date of October 17, and that respondent's motion with respect to Mr. Hagan would admit into evidence a statement which was unsigned and undated by the purported witness.¹⁶ On November 6, Sea-Land

¹⁵Following the appearance of Donna Smith at [the] hearing [on] March 26, 2001, the presiding officer determined to receive into evidence that portion of Donna Smith's Attachments to which BOE had previously raised objection. See Order served April 5, 2001, Receipt into Evidence of Remaining Portions of Attachments A and B to Verified Statement of Donna Smith.

¹⁶Sea-Land sought to supplement its initial filing with respect to Mr. Hagan by submitting on October 23 a fax version purporting to reflect the signature of Mr. Hagan; not until October 22 did Sea-Land submit for the record the signed statement of Scott Hagan.

filed replies to BOE's reply documents.¹⁷ By separate Orders served November 16, the Administrative Law Judge granted Sea-Land's Motion for Change in Venue¹⁸ and its Motion to Admit the Hagan Statement. The presiding officer set hearings to commence in Long Beach as to Mr. Spargo.

A praecipe was filed with the Commission itself on September 22, wherein counsel filed notice of Sea-Land's change of its corporate name to SL Service Inc. BOE responded to the praecipe on September 26, questioning what relief was sought and whether the name change presaged an alteration in the legal liabilities of Sea-Land as the respondent and predecessor to those common carrier operations purchased and subsequently operated as Maersk Sea-Land. On November 5, the Commission remanded the praecipe for determination by the Administrative Law Judge.¹⁹ On November 22, the Administrative Law Judge issued an Order on Remand.

BOE immediately filed a Request for Limited Discovery²⁰ to determine the extent to which Sea-Land Service and its corporate parent CSX transferred to Maersk the assets and liabilities of the former Sea-Land operation, and to determine the extent to which any non-compete agreement with Maersk would regulate Sea-Land's right of re-entry into common carrier services. The presiding

¹⁷Sea-Land denominated its submissions as "Reply to Bureau of Enforcement's Opposition to Respondent's Motion for Change of Venue" and as its "Reply to Bureau of Enforcement's Opposition to Respondent's Motion to admit Verified Statement." The presiding officer nonetheless declined to reject the November 6 filings as a "reply to a reply" barred under Rule 74.

¹⁸Having granted Sea-Land the relief demanded by its witness, Mr. Spargo's signed statement was made available November 28.

¹⁹By correspondence from Sea-Land counsel dated November 20, respondent clarified that its praecipe was not intended to change the styling of the instant docket.

²⁰On November 28, 2000, BOE submitted its request to take discovery, together with the proposed Requests for Production which BOE sought from Sea-Land. BOE also filed a Motion to Reduce Time for Reply to Objections to ten (10) days after service, as permitted under Rule 103.

officer initially ordered that the motions be held in abeyance pending hearings scheduled to commence in Long Beach. See Order served December 5, 2000, Motions to be Held in Abeyance.

On December 12, 2000, Sea-Land witness Glenn Spargo was presented to testify in Long Beach, CA. Immediately following his testimony, BOE proffered former Sea-Land sales representative Rich Favor to testify as an impeachment witness with respect to Mr. Spargo and other prior testimony introduced by Sea-Land.²¹ Following initial objections from Sea-Land's counsel, Mr. Favor was then cross-examined extensively by Sea-Land over a two-day period. By prior permission of the presiding officer, Sea-Land counsel also called Sea-Land's witness, Mr. Spargo, back to the stand for additional testimony.²²

By Procedural Order issued subsequent to the December 12-13 hearings in Long Beach, the administrative Law Judge lifted his prior order as to BOE's motion to initiate limited discovery.²³ Sea-Land then filed its Reply in Opposition on January 2, 2001. On January 25, the presiding officer determined that BOE's discovery would again be held in abeyance. He directed that the proceeding be bifurcated into two procedural phases: first to determine Sea-Land's liability, and thereafter to determine the assessment of penalties.²⁴

²¹Mr. Favor appeared pursuant to a subpoena issued November 30, 2000. Return of service of the subpoena was filed with the Commission's Secretary on December 4, in accordance with Rule 134, 46 C.F.R. § 502.134.

²²Sea-Land subsequently filed a Motion to Strike oral testimony given by Mr. Favor at the Long Beach hearing, including all such testimony as was elicited by Sea-Land counsel during cross-examination. BOE replied to the motion to strike on January 24, 2001. Sea-Land's Motion was denied the following day, and the proceeding assigned for further hearings.

²³See Procedural Order, served December 18, 2000. The presiding officer also dismissed as moot BOE's Motion to Reduce Time.

²⁴See Order served January 25, BOE's Request for Limited Discovery Held in Abeyance; Proceeding Bifurcated.

After a prehearing conference on February 6, the presiding officer adopted a further procedural schedule to permit a final opportunity to submit rebuttal evidence to the testimony of Mr. Favor or other witnesses. On February 26, Sea-Land counsel furnished its Submission of Rebuttal Evidence and Motion to Admit Rebuttal Evidence into the Record, together with the written statements of Sea-Land witnesses Scott Hagan and Donna Smith. In addition to recalling witness Rich Favor,²⁵ Sea-Land also sought opportunity to introduce oral testimony of Glenn Spargo and David Wing, witnesses who had refused to furnish written statement. BOE, in turn, served notice that it would seek the appearance of Mr. John Ohle, a former manager within Sea-Land's Operations Department identified in the previously-confidential documents produced by Sea-Land as to Neutral Body investigations conducted in 1997 and 1998.

Oral hearings resumed in Long Beach as to witnesses Messrs. Favor, Wing and Ohle on March 20-23, 2001.²⁶ Hearings with respect to Sea-Land witnesses Donna Smith and Scott Hagan then convened in Washington, D.C. on March 26-27, 2001,²⁷ and the evidentiary record thereafter was closed by Order of the presiding officer served April 5, 2001.²⁸

In accordance with the procedural schedule served February 26, the parties were directed to file simultaneous opening briefs 30 days following receipt of completed transcripts of all hearings.

²⁵By letter of February 20, Sea-Land made an application for a subpoena directing the appearance of Mr. Favor. Following a telephone conference, the presiding officer quashed that portion of the Favor subpoena demanding production of documents. See Order served March 6, 2001, Partial Modification of February 21, 2001 Subpoena Issued to Mr. Richard Favor.

²⁶Hearings were scheduled in Long Beach primarily to accommodate the appearance of Sea-Land witness Glenn Spargo. Mr. Spargo was not called for further questioning.

²⁷Testimony as to witnesses appearing in Long Beach amounted to 405 pages of transcript. Sea-Land's witnesses appearing in Washington hearings accounted for 269 pages of additional transcript.

²⁸See Receipt into Evidence of Remaining Portions of Attachments A and B to Verified Statement of Donna Smith, served April 5, 2001.

By letter dated May 22, the parties advised the presiding officer that such event occurred on May 21. The due date for briefs thus became June 21, 2001. At the request of BOE and over the objections of Sea-Land, the page limitation for opening briefs was lifted and the parties were allowed to file 100-page opening briefs. Reply briefs were thereafter filed by the parties.

APPENDIX B

Official notice is taken of the text of the TWRA equipment substitution rule, tariff rule 265, in effect during the period at issue, accompanied by an explanatory letter of counsel. The rule and explanatory letter are attached hereto.



APPENDIX B (Cont.)

**FEDERAL MARITIME COMMISSION
BUREAU OF ENFORCEMENT**

800 North Capitol Street NW
Washington, D.C. 20573-0001

April 2, 2001

Hon. Frederick M. Dolan Jr.
Administrative Law Judge
Federal Maritime Commission
800 North Capitol St NW
Washington, D.C. 20573

Re: Docket No. 98-06
Sea-Land Service Inc.

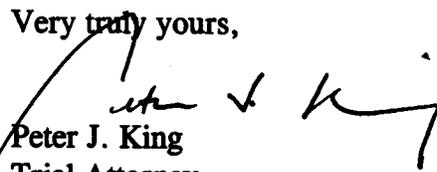
Dear Judge Dolan:

During hearings in Long Beach and Washington D.C. this month, you indicated that you would take official notice of the text of the TWRA equipment substitution rule, tariff Rule 2G5. In connection with that issue, counsel agreed to confer and furnish you with a printed copy (or copies) of the tariff rule reflecting the governing text of the rule during the period 1996 -1998.

Attached please find the text of the equipment substitution rule as effective on December 6, 1996 (Bates stamp 0001-0004), which text remained substantially unchanged throughout the affected time period. TWRA also published other amendments to rule 2G5 for the benefit of individual carrier members of TWRA, *inter alia*, to establish a higher "maximum allowable" for equipment substitution affecting certain specified commodities. The latter changes are not at issue in the shipments specified in BOE's Direct Case.

At hearing, testimony also was heard concerning changes in equipment substitution requirements applicable to "FAK" cargoes. Since such modifications applied only to FAK cargoes, those latter changes were published by TWRA as amendments within the tariff "Notes" to the FAK rate items. See e.g., counsel's Exhibit 29 ("Notes" to FAK rates under commodity 0000-00-7000).

Very truly yours,


Peter J. King
Trial Attorney

cc : David Smith, Esq.
Sher & Blackwell

T.W.R.A.
TWRA RULES TARIFF

Tariff Code
TWRA-017

Rule Report
2 G5

DXI Tariff Report

Page 1

Access date: 06Dec1996 Print date: 16Jul1998

Except as otherwise provided, rates apply per 1 KT or 1,000 CBM, whichever produces the greater revenue.

RULE: 2 G5 Effective: 06Dec1996 Thru: 02Jan1997 (R)

EQUIPMENT SUBSTITUTION

A. The following applies to DRY, Closed containers only.

Carrier may, at its option, substitute a type of equipment other than that which was booked or ordered by the shipper or his agent, subject to the following conditions:

1. A 40' container may be substituted for a 20' container, subject to maximums of 25 CBM and 18 KT, at the rate and charges applicable to a 20' container.

In the case of the following items, the maximum allowable is:

ITEM No.	DESCRIPTION	MAXIMUM ALLOWABLE	CARRIERS
17-0000-2000	Lactose(12)	20 KT	HLCU, SEAU
22-0000-0500	Beer(6)	20 KT	MOLU
23-0000-0460	Animal Feed (13)	21 KT	KKLU
26-0000-3620	Molybdenum-Concentrate Ore (3)	20 KT	HLCU
28-0000-1480	Hydrazine Hydrate (5)	21 KT	KKLU
29-0000-0850	Caprolactum Flake(10)	22 KT	SEAU
29-0000-1435	Dithiocyanates(5)	21 KT	KKLU

When cargo is loaded in excess of the above quantities, the applicable revenue ton rate or per container rate and charges for a 40' container will apply.

- (3) From Langeloth, PA only.
- (5) To Singapore only.
- (6) From Seattle and Tacoma, WA to Hong Kong only.
- (10) From Augusta, GA via Ag to Taiwan only.
- (12) From WC and Hilmar, CA to Japan, Taiwan, Hong Kong.

allowable is (continued):

ITEM No.	DESCRIPTION	MAXIMUM ALLOWABLE	CARRIERS
72-0000-4010	Tinplate(1)	20 KT	APLS
84-0000-1670	Compressors	21 KT	KKLU, OOLU
99-0000-0906	HM Products(4).	27 CBM	KKLU
99-0000-2345	Chemicals(2)	20 KT/ 28 CBM	APLS
99-0000-2345	Chemicals(2)	20 KT	SEAU

When cargo is loaded in excess of the above quantities, the applicable revenue ton rate or per container rate and charges for a 40' container will apply.

- (1) Except to Korea.
- (2) From Houston, TX and New Orleans, LA only.
- (3) From Langeloth, PA only.
- (4) From Chicago to Hong Kong only.

A. The following applies to DRY, Closed containers only.

Carrier may, at its option, substitute a type of equipment other than that which was booked or ordered by the shipper or his agent, subject to the following conditions (continued):

2. A 45' container may be substituted for a 40' container, subject to a maximum of 65 CBM and 21 KT, at the rate and charges applicable to a 40' container.

In the case of the following items, the maximum allowable:

ITEM No.	DESCRIPTION	MAXIMUM ALLOWABLE	CARRIERS
39-0000-3111	Plastic viz Tape Reels(11)	77 CBM	SEAU
68-0000-2100	Ceiling Tile(9)	77 CBM	KKLU, MAEU, NOSU, SEAU, NYKS

APPENDIX B (Cont.)

000002

(13) From Omaha, NE to Hong Kong only.

A. The following applies to DRY, Closed Containers only.

Carrier may, at its option, substitute a type of equipment other than that which was booked or ordered by the shipper or his agent, subject to the following conditions:

1. A 40' container may be substituted for a 20' container, subject to maximums of 25 CBM and 18 KT. at the rate and charges applicable to a 20' container.

In the case of the following items, the maximum

99-0000-0311	Accoustical Tile(9)	77 CBM	MAEU, APLS, SEAU, KKLU, OOLU, NYKS
99-0000-0330	Sanitaryware	75 CBM/ 21 KT	MAEU, APLS, SEAU, KKLU, OOLU, NYKS
99-0000-1050	Household Appliances(7)	21 KT/ 71 CBM	MAEU, NYKS
99-0000-1050	Household Appliances(8)	21 KT/ 71 CBM	APLS, MAEU

When cargo is loaded in excess of the above quantities, the applicable revenue ton or per container rate for a 45' container will apply.

T.W.R.A.
TWAR RULES TARIFF

Tariff Code
TWAR-017

Rule Report
2 G5

DXI Tariff Report

Page 2

Access date: 06Dec1996

Print date: 16Jul1998

Except as otherwise provided, rates apply per 1 KT or 1.000 CBM, whichever produces the greater revenue.

RULE: 2 G5 EQUIPMENT SUBSTITUTION
(Continued...)

- (7) From New York, Norfolk and Savannah to Taiwan only.
- (8) West Coast Ports to Taiwan only.
- (9) Does not apply to Japan.
- (11) From Minneapolis/St. Paul to Singapore only.

A. The following applies to DRY, closed Containers only.

Carrier may, at its option, substitute a type of equipment other than that which was booked or ordered by the shipper or his agent, subject to the following conditions (continued):

- 3. A 45' container may be substituted for a 20' container for the following commodities only subject to the maximum noted below at the rate and charges applicable to a 20' container:
 - *ONE (Via NYKS only)
 - For Item No. 74-0000-0900 (Copper Cathodes), from WC Ports to Thailand only, the maximum allowable is 20.5 KT.

*Expires December 31, 1996.

When cargo is loaded in excess of the above quantities, the applicable revenue ton or per container rate for a 45' container will apply.

B. For KLIU, 00LU and **NYKS:

The following applies to Refrigerated Containers only.

Carrier may, at its option, substitute a type of equipment other than that which was booked or ordered by the shipper or his agent, subject to the following conditions:

- 1. A 40' container may be substituted for a 20' container, subject to a maximum loading of 16 KT. If 16 KT is exceeded, the minimum (weight, count, etc.) applicable to a 40' container in the rate (Tli) will apply. This substitution does not apply to the following item numbers:

02-0000-5050	02-0000-5270	02-0000-6300
02-0000-5200	02-0000-5300	02-0000-6350
02-0000-5250	02-0000-5350	02-0000-6600

**Thru January 2, 1997.

C. Where equipment is substituted under the provisions of this rule, Bills of Lading must be claused, *Equipment Substitution per Rule 2-G5.

End of Rule Text

APPENDIX C

Attached is a list of the names of the witnesses who testified in this proceeding (Column 1), the names of their identification in this ruling (Column 2), the transcript page (including volume numbers of Mr. Spargo and Mr. Favor) where their testimony appears (Column 3), and the date of their appearance. This list may be of help in quickly locating the volume of the transcript where particular testimony may be found.

These witnesses appeared during one or more of the various sessions of the hearings conducted in Washington, D.C. on April 22-29, 2000, Long Beach, CA on September 7-14, 2000, December 12-13, 2000 and March 20-23, 2001, and in Washington, D.C. on March 26-27, 2001.

APPENDIX C (Cont.)

<u>List of Witnesses</u>		<u>TR Pages</u>	<u>Date of appearance</u>
Oliver E. Clark	Clark Tr.	pp 1 - 446	(8/22 - 8/23/00)
James F. Carey	Carey Tr.	pp 447 - 782	(8/24 - 8/25/00)
Thomas Gravitt	Gravitt Tr.	pp 783 - 1160	(8/28 - 8/29/00)
Chao Lee	C_Lee Tr.	pp 4 - 103	(9/07/00)
Nathan Wei	Wei Tr.	pp 104 - 156	(9/07/00)
Harry Oh	Oh Tr.	pp 4 - 94	(9/08/00)
David Lee	D_Lee Tr.	pp 95 - 181	(9/08/00)
Raymond Tse	Tse Tr.	pp 4 - 127	(9/11/00)
Dean Chang	Chang Tr.	pp 4 - 65	(9/12/00)
Cooper Chao	Chao Tr.	pp 66 - 120	(9/12/00)
Ram Sehvani	Sehvani Tr.	pp 4 - 94	(9/13/00)
Simon Wu	Wu Tr.	pp 95 - 174	(9/13/00)
Danny Tam	Tam Tr.	pp 4 - 134	(9/14/00)
Tony Tiao	Tiao Tr.	pp 135 - 226	(9/14/00)
Glenn Spargo	Spargo I Tr.	pp 4 - 190	(12/12/00)
Rich Favor	Favor I Tr.	pp 191 - 307	(12/12/00)
Rich Favor	Favor II Tr.	pp 4 - 223	(12/13/00)
Glenn Spargo	Spargo II Tr.	pp 224 - 278	(12/13/00)
Rich Favor	Favor III Tr.	pp 5 - 145	(3/20/01)
David Wing	Wing Tr.	pp 150 - 343	(3/21/01)
John Ohle	Ohle Tr.	pp 348 - 404	(3/23/01)
Donna Smith	Smith Tr.	pp 1 - 132	(3/26/01)
Scott Hagan	Hagan Tr.	pp 1 - 137	(3/27/01)

APPENDIX D

Summary of Data as to the 149 Issue Shipments, Based on Gravitt Attachment A

Column 1 - Sea-Land bill of lading number ("BL N^o")

Column 2 - Name of shipper-NVOCC

Column 3 - Cubic measurement of the shipment on Sea-Land bill ("CM Declared")

Column 4 - Actual cubic measurement of the shipment ("CM Actual")

Column 5 - Ocean freight charged by Sea-Land ("O/F Sea-Land")

Column 6 - Tariff line item number from the tariff or service contract ("TLI/SC")

Column 7 - Applicable rates under the TWRA tariff, essential terms, publication and rules ("O/F ReRated")

Table of Shipments

B/L №	Shipper	CM Declared	CM Actual	O/F Sea-Land	TL/SC	O/F ReRelated
1	Brennan	24.81	28.54	\$1,770.50	0000-00-7000-0656	\$2,335.50
2	Brennan	24.778	32.71	1,809.70	0000-00-7000-0656	2,335.50
3	Brennan	24.466	39.76	1,748.70	0000-00-7000-0656	2,343.50
4	Global Links	19.22	43.94	1,706.95	0000-00-7000-0601	3,560.25
5	Global Links	24.69	57.2	1,320.00	0000-00-7000-0601	3,560.25
6	Global Links	23.78	48.91	1,320.00	0000-00-7000-0601	3,560.25
7	Global Links	20.22	55.01	1,706.95	0000-00-7000-0601	3,560.25
8	Global Links	18.22	66.0	671.00	0000-00-7000-0601	3,560.25
9	Global Links	21.87	57.49	1,227.37	0000-00-7000-0656	2,321.15
10	Global Links	21.55	36.17	1,226.85	0000-00-7000-0656	2,318.71
11	Global Links	24.77	64.42	1,318.10	0000-00-7000-0656	2,363.50
12	Global Links	21.22	50.41	815.00	0000-00-7000-0657	2,325.00
13	Global Links	23.22	48.73	1,187.00	0000-00-7000-0657	2,325.00
14	Global Links	22.22	43.6	1,282.90	0000-00-7000-0656	2,363.50
15	Global Links	21.22	58.0	815.00	0000-00-7000-0657	2,325.00
16	Global Links	50.085 ¹	72.36	1,150.00	0000-00-7000-0810	2,660.00
17	Global Links	24.22	51.86	1,871.00	0000-00-7000-0657	2,325.00
18	Global Links	23.56	64.04	671.00	0000-00-7000-0601	3,656.95
19	Global Links	22.55	38.08	671.00	0000-00-7000-0601	3,656.95
20	Global Links	Undeclared	59.96	1,390.00	0000-00-7000-0657	2,365.00
21	Global Links	21.78	63.13	1,389.59	8400-00-1855-0288	2,575.53
22	Global Links	23.55	73.69	1,755.00	0000-00-7000-0810	2,700.00
23	Global Links	24.22	50.0	814.80	8400-00-1855-0288	2,534.75
24	Global Links	22.0	50.0	1,357.80	8400-00-1855-0288	2,535.07
25	Global Links	40.0 ²	125.39	2,780.00	8400-00-1855-0288	5,150.00
26	Global Links	24.77	61.13	1,358.00	8400-00-1855-0288	2,535.00
27	Global Links	17.1	48.88	1,358.00	9500-00-1800-0177	2,600.00
28	Global Links	22.22	49.26	1,357.59	0000-00-7000-0657	2,325.75
29	Global Links	23.22	37.91	2,325.00	0000-00-7000-0657	2,325.00
30	Global Links	21.22	46.34	815.00	0000-00-7000-0657	2,325.00
31	Global Links					

¹1,768.74 Cft.

²Two containers

32	796293667	Global Links	19.33	32.41	815.00	0000-00-7000-0657	2,325.00
33	767994015	Global Links	22.77	57.72	1,821.00	0000-00-7000-0657	2,365.00
34	767890548	Global Links	20.54	37.54	1,796.00	0000-00-7000-0657	2,333.00
35	796375156	Global Links	23.22	58.04	811.00	0000-00-7000-0601	3,560.25
36	767982931	Global Links	23.69	68.65	1,406.56	0000-00-7000-0601	3,628.60
37	796065555	Global Links	24.22	62.17	1,417.72	0000-00-7000-0601	3,656.95
38	796051954	Global Links	24.54	70.37	1,406.56	0000-00-7000-0601	3,628.60
39	796353414	Global Links	21.96	71.03	811.00	0000-00-7000-0601	3,560.25
40	796082733	Supetrans	49.43 ³	101.71	3,529.34	0000-00-7000-0656	4,757.98
41	796097231	Supetrans	23.042	61.042	2,057.70	0000-00-7000-0656	2,363.50
42	767993666	Supetrans	23.881	61.961	1,751.13	0000-00-7000-0656	2,345.15
43	796052598	Supetrans	23.84	61.13	1,751.13	0000-00-7000-0656	2,345.15
44	796070695	Supetrans	23.97	52.97	1,764.70	0000-00-7000-0656	2,363.50
45	767985928	Supetrans	60.88	77.14	2,345.15	0000-00-7000-0809	2,617.65
46	767881046	Supetrans	24.56	34.74	1,803.45	0000-00-7000-0656	2,410.55
47	767920528	Supetrans	24.11	75.33	2,345.15	0000-00-7000-0809	2,617.65
48	767930435	Supetrans	23.98	60.98	1,751.13	0000-00-7000-0656	2,345.15
49	767931991	Supetrans	24.968	61.968	1,751.13	0000-00-7000-0656	2,345.15
50	767942211	Supetrans	22.984	72.49	1,751.13	0000-00-7000-0656	2,345.15
51	767881050	Morrison	24.24	64.24	1,803.45	0000-00-7000-0656	2,345.15
52	767754619	Morrison	24.27	69.27	1,719.54	0000-00-7000-0656	2,320.64
53	767719924	Morrison	24.36	60.36	1,748.70	0000-00-7000-0656	2,343.50
54	767733342	Morrison	24.18	61.18	1,748.70	0000-00-7000-0656	2,343.50
55	767983059	Morrison	24.34	69.34	1,751.13	0000-00-7000-0656	2,345.15
56	796023251	Morrison	22.61	42.61	1,764.70	0000-00-7000-0656	2,363.50
57	796424642	Pan Pacific	21.53	42.25	1,284.00	0000-00-7000-0601	3,537.18
58	796450985	Pan Pacific	22.99	55.429	1,769.05	0000-00-7000-0601	3,537.18
59	796349847	Pan Pacific	20.951	64.044	1,769.05	0000-00-7000-0601	3,537.18
60	796330611	Pan Pacific	21.65	48.987	2,111.25	0000-00-7000-0601	3,537.18
61	796376458	Pan Pacific	17.908	50.791	1,769.05	0000-00-7000-0601	3,537.18
62	796468540	Pan Pacific	22.828	52.653	1,769.05	0000-00-7000-0601	3,523.68
63	796261784	Pan Pacific	23.96	52.796	1,911.25	0000-00-7000-0601	3,544.17
64	796310125	Global Links	24.22	50.0	815.00	8400-00-1750-0097	1,825.38

³Two containers

65	796482150	Global Links	54.13	67.13	2,325.00	0000-00-7000-0810	2,659.83
66	796488296	Global Links	64.4	74.42	2,345.00	0000-00-7000-0810	2,679.83
67	796230158	Global Links	23.22	31.28	1,358.00	0000-00-7000-0657	2,324.74
68	796095232	Global Links	21.78	37.63	1,390.00	0000-00-7000-0657	2,365.52
69	796363569	Pan Pacific	18.005	44.753	1,284.00	0000-00-7000-0657	2,325.38
70	796075428	Global Links	19.22	47.89	1,417.72	0000-00-7000-0601	3,649.94
71	796250876	Global Links	21.45	62.07	671.00	0000-00-7000-0601	3,544.17
72	796238792	Global Links	21.78	54.23	671.00	0000-00-7000-0601	3,544.17
73	796219614	Global Links	18.88	41.44	671.00	0000-00-7000-0601	3,547.75
74	767842984	Global Links	21.45	61.04	1,374.56	0000-00-7000-0601	3,537.18
75	796126902	Global Links	24.56	49.78	671.00	0000-00-7000-0601	3,644.45
76	796158948	Global Links	24.78	68.96	671.00	0000-00-7000-0601	3,644.45
77	796008198	Pan Pacific	13.39	62.684	1,316.00	0000-00-7000-0657	2,365.52
78	796294285	Pan Pacific	21.99	56.046	1,284.00	0000-00-7000-0657	2,324.74
79	796311880	Pan Pacific	22.501	43.775	1,535.00	0000-00-7000-0657	2,325.38
80	796023309	Pan Pacific	21.56	31.115	1,316.00	0000-00-7000-0657	2,365.06
81	796144312	Pan Pacific	15.396	50.364	1,316.00	0000-00-7000-0657	2,365.06
82	796238897	World Pacific	39.72 ⁴	101.148	2,013.00	9900-00-1300-0492	13,099.26
83	796321117	World Pacific	14.056	Unknown ⁵	791.52	8500-00-1500-1974	1,071.93
84	796505918	World Pacific	13.897	62.0	1,634.35	9900-00-1050-1767	1,788.33
85	796230377	Global Links	23.99	49.7	1,789.00	0000-00-7000-0657	2,325.00
86	796253192	Global Links	18.54	43.94	1,789.00	0000-00-7000-0657	2,325.00
87	796496562	World Pacific	14.483	48.79	1,542.86	4900-00-0950-0195	2,938.93

⁴Three containers

⁵47,320 lbs. (21.46 KT) - Overweight

88	796341393	World Pacific	14.199	45.06	1,368.18	0000-00-7000-0656	2,313.56
89	796408062	World Pacific	14.05	32.34	2,228.36	3900-00-3095-0530	2,810.40
90	796278209	World Pacific	39.18 ⁶	126.00	4,035.00	3900-00-3095-0006	9,718.26
91	796341511	Global Links	23.07	33.07	1,290.59	0000-00-7000-0656	2,321.15
92	796353764	Global Links	21.78	39.872	1,290.59	0000-00-7000-0656	2,321.15
93	796363567	Global Links	23.59	71.65	1,290.59	0000-00-7000-0656	2,321.15
94	767936257	Global Links	21.0	52.14	1,406.56	0000-00-7000-0601	3,621.59
95	767960601	Global Links	24.89	60.45	1,406.56	0000-00-7000-0601	3,621.59
96	796455353	Global Links	21.22	50.03	1,642.00	0000-00-7000-0656	2,321.15
97	796393428	Global Links	24.22	35.28	1,818.15	0000-00-7000-0656	2,321.15
98	796375149	Global Links	22.55	54.03	1,290.59	0000-00-7000-0656	2,321.15
99	796330079	Global Links	24.22	34.23	1,290.59	0000-00-7000-0656	2,313.56
100	767971692	Global Links	55.00	69.03	1,755.03	0000-00-7000-0810	2,700.52
101	796272575	Global Links	23.22	45.61	1,412.00	0000-00-7000-0657	2,324.74
102	796361743	Global Links	18.22	26.19	1,290.59	0000-00-7000-0656	2,313.56
103	796354468	General Ocean	46.0 ⁷	90.0	1,629.60	8500-00-0580-0550	17,460.00
104	796265062	World Pacific	13.836	42.333	2,168.40	3900-00-3095-0006	3,055.50
105	796326137	World Pacific	28.0 ⁸	Unknown ⁹	1,583.04	2500-00-2680-0008	6,809.86
106	796087162	Asian Plaza ^{9A}	25.0	60.0	937.59	8500-00-0580-0550	11,760.00
107	796186099	Global Links	24.25	55.0	2,513.00	8400-00-7840-0090	3,165.00
108	796333376	General Ocean	22.0	45.0	814.59	8500-00-0580-0550	8,730.00

⁶Three containers

⁷Two containers

⁸Two containers

⁹42.86 KT - Overweight

^{9A} Gravitt's attachment identifies Asian Plaza since that is literally the name which appeared as shipper on Sea-Land's bill of lading No. 796087162. The corresponding house (NVOCC) bill of lading for this shipment is a General Ocean Freight Container Line bill of lading, No. 9707801LAHK, issued by General Ocean in Los Angeles. Copies of the above Sea-Land master bill, and the corresponding General Ocean house bill were submitted for record directly as part of Mr. Gravitt's testimony at the time (April 1999). Asian Plaza does not appear as the nominal shipper on any of the other S-L shipments in the record here. On the above Sea-Land bill of lading, Asian Plaza (solely a Hong Kong-based company) appears not only as the shipper of record, but also as the consignee and notify party. Likewise, Asian Plaza is identified as the consignee/notify party on all other shipments originated by General Ocean. (See, e.g., on page 4 [this page], corresponding documents for Sea-Land bill No. 796354468 and No. 796333376, both identifying Asian Plaza.) The shipment in issue also appears as part of the documentation cited by the Neutral Body, included as Clark Attachment L (wherein the Neutral Body Exhibit E refers to BL 796087162, and also including the SED prepared by General Ocean). This shipment was originated by General Ocean and is included in the 149 shipments for which BOE claims violation here.

109	796058337	Brennan	64.847	70.42	3,015.03	SC 96-55	3,330.03
110	796166418	Global Links	21.56	39.25	1,318.10	0000-00-7000-0656	2,364.71
111	796404187	Global Links	23.22	50.0	814.59	8400-00-1750-0097	1,825.38
112	767935472	Global Links	46.0	76.31	1,755.00	0000-00-7000-0810	2,700.52
113	796051993	Global Links	21.45	62.55	1,308.59	0000-00-7000-0656	2,360.63
114	796192932	Global Links	24.78	54.11	671.00	0000-00-7000-0601	3,644.45
115	796014958	Global Links	19.22	45.64	671.00	0000-00-7000-0601	3,644.45
116	796137569	Global Links	24.56	33.24	671.00	0000-00-7000-0601	3,644.45
117	796015119	Global Links	24.0	30.32	671.00	0000-00-7000-0601	2,415.00
118	796214196	Global Links	24.78	60.36	671.00	0000-00-7000-0601	3,547.75
119	796036570	Global Links	24.33	61.07	671.00	0000-00-7000-0601	3,544.17
120	796230451	Global Links	21.88	60.05	671.00	0000-00-7000-0601	3,544.17
121	796238811	Global Links	18.22	65.58	671.00	0000-00-7000-0601	3,544.17
122	796310065	World Pacific	13.895	Unknown ¹⁰	671.00	8500-00-1500-1974	1,071.93
123	796035427	Global Links	23.52	65.2	1,789.00	0000-00-7000-0657	2,325.00
124	796458558	Pan Pacific	23.62	55.724	1,769.05	0000-00-7000-0601	3,537.18
125	796270374	Pan Pacific	21.991	63.794	1,535.00	0000-00-7000-0657	2,324.74
126	796544493	World Pacific	14.38	61.5	1,446.02	8500-00-1500-1272	1,893.56
127	796532351	World Pacific	14.852	62.0	1,630.02	9900-00-1050-1767	1,818.56
128	796561335	World Pacific	30.0	30.0	937.59	9900-00-1050-4259	1,249.75
129	796474933	World Pacific	14.285	14.284 ¹¹	783.33	8500-00-1500-1974	1,058.44
130	796488268	World Pacific	14.368	Unknown ¹²	783.33	8500-00-1500-1974	1,058.44

¹⁰ 42,470 lbs. (19.26 KT) - Overweight

¹¹ 19.55 KT - Overweight

¹² 19.04 KT - Overweight

131	796502796	World Pacific	14.485	39.84	2,288.08	3900-00-3095-0374	2,885.10
132	796329996	World Pacific	14.060	53.38 ¹³	1,578.15	4900-00-0950-0191	2,255.00
133	796463789	World Pacific	28.45 ¹⁴	Unknown ¹⁵	1,573.29	8500-00-1500-1974	2,143.86
134	796456941	World Pacific	14.25	Unknown ¹⁶	786.64	8500-00-1500-1974	1,071.93
135	796264901	World Pacific	13.598	Unknown ¹⁷	1,973.00	3900-00-3087-0019	3,225.57
136	796274226	World Pacific	27.18 ¹⁸	Unknown ¹⁹	1,342.00	2500-00-2680-0008	6,856.00
137	767973333	Global Links	24.57	48.27	1,406.56	0000-00-7000-0601	3,621.59
138	767924775	Global Links	23.78	57.92	1,406.56	0000-00-7000-0601	3,621.59
139	767920881	Global Links	21.78	60.17	1,406.56	0000-00-7000-0601	3,621.59
140	796276672	World Pacific	13.9	52.0	671.00	9900-00-0300-0033	4,008.75
141	796310074	World Pacific	26.1 ²⁰	Unknown ²¹	1,342.00	2500-00-2680-0008	6,809.86
142	796292029	World Pacific	27.8 ²²	Unknown ²³	1,342.00	2500-00-2680-0008	6,823.84
143	796273888	World Pacific	13.48	44.401	2,441.00	9900-00-0906-0667	3,130.00

¹³ 1,885 cft.

¹⁴ Two containers

¹⁵ 41.29 KT - Overweight

¹⁶ 22.13 KT - Overweight

¹⁷ 18.83 KT - Overweight

¹⁸ Two containers

¹⁹ 42.98 KT - Overweight

²⁰ Two containers

²¹ 43.45 KT - Overweight

²² Two containers

²³ 42.86 KT - Overweight

144	796310073	World Pacific	13.945	Unknown ²⁴	671.00	2500-00-2680-0008	3,404.93
145	796310066	World Pacific	28.04 ²⁵	Unknown ²⁵	671.00	2500-00-2680-0008	6,809.86
146	796274277	World Pacific	13.72	25.796	671.00	8500-00-1500-1974	1,078.92
147	796257631	World Pacific	27.16 ²⁷	Unknown ²⁸	3,946.00	3900-00-3087-0019	6,643.80
148	796410091	World Pacific	13.98	54.566	815.00	0000-00-7000-0657	2,325.38
149	796263696	World Pacific	24.838 ²⁹	84.271	1,342.00	9900-00-1300-0492	9,100.68

²⁴ 21.91 KT - Overweight

²⁵ Two containers

²⁶ 42.86 KT - Overweight

²⁷ Two containers

²⁸ 38.79 KT - Overweight

²⁹ Two containers