

F.D. 30400, et al. Pages 7181 thru 7216

1 A Oh, yes, okay.

2 Q And in addition, you would need employees to
3 handle MLB trains, would you not?

4 A That's correct.

5 Q And those employees work every day, whether or
6 not the train is full, half full, or totally empty, do
7 they not?

8 A Yes.

9 Q And in your opinion, isn't the maximization of
10 the utilization of that rail equipment just as important
11 a goal to the railroad carriers as it would be to the
12 water carrier for its portion of the movement?

13 A I don't know. I would rather not answer. I
14 don't think I'm qualified to answer. This certainly is
15 not an analogy with the water carrier. You don't send a
16 locomotive out on a trip without pulling any cars, but a
17 ship on a schedule has to go. The locomotive does not
18 have to go.

19 I wouldn't say that it's the same, if that's
20 what you're driving at. I want to be responsive, but I
21 just don't see -- if you're trying to make an analogy
22 between the two, I don't believe there is one.

23 Q I'm asking you a much simpler question than
24 that. You were the president of a transportation
25 company at some point in your career. Put yourself in

1 the shoes of the president of the Santa Fe. And if
2 you're the president of that company, you want to
3 maximize the utilization of all of the assets that you
4 have purchased every day that your company is in
5 operation, don't you?

6 A Yes, I would assume that, yes.

7 Q And wouldn't any action on your part that
8 resulted in the diversion of traffic and the less than
9 complete utilization of those assets be something that
10 would be contrary to your goals as the chief executive?

11 A Not necessarily. I might decide I want to
12 move half as much freight and make a lot more profit.
13 That happens every day. It's not a question of how much
14 volume you handle that determines how much profit you
15 make.

16 You can run the trains back and forth and be
17 in bankruptcy. So I wouldn't say that follows.

18 Q Turn to Exhibit 1, please. In Exhibit 1 you
19 show the impact of cargo balance on the costs of a
20 hypothetical container ship operator; is that correct?

21 A Yes.

22 Q And this is done from the perspective of a
23 trans-Pacific MLB operator in this exhibit, is that
24 right?

25 A Yes.

1 Q And are the higher costs per slot in column B
2 the result of a lower capacity utilization factor that
3 you plug in? Am I correct in reading the table that
4 way?

5 A That's correct.

6 Q And that is what solely --

7 A Solely drives the --

8 Q -- drives the change in the two columns, is
9 that right?

10 A Yes.

11 Q So the point you are trying to make with
12 Exhibit 1 is that any diversion of a container from an
13 MLB movement to an all-water movement will drive up the
14 cost of the MLB operator, is that right?

15 A That's correct, yes.

16 Q By the same token, won't the diversion of that
17 cargo from an MLB operator to a water, an all-water
18 service, improve the utilization of the carrier
19 providing the all-water service?

20 A If there is a carrier supplying the all-water
21 service, which in some of these cases, particularly the
22 case going to the Gulf, there is not. I don't consider
23 Yang Ming as being a direct container service.

24 Q Well, whether it is the Far East or Europe,
25 every day when an MLB operator diverts cargo from an

1 all-water carrier that improves the MLB operator's
2 position and, by the same token, harms an all-water
3 carrier, doesn't it, in terms of utilization?

4 A They are generally the same carrier. Carriers
5 that use MLB also use all-water. They make the
6 distinction based on their own economics whether they
7 will run MLB or all water. That is a consideration and
8 that's really what drives them to do MLB. They consider
9 it both ways, believe me.

10 I mean, I think that goes without saying.
11 They analyze the pros and cons and where it is to their
12 bottom line benefit to go MLB. One of the
13 considerations obviously is utilization. It helps if
14 it's going to a common point, and the lower total cost.
15 So if that's what you're asking me, that's true.

16 Q And you're saying in some instances that
17 they're just diverting the cargoes from themselves?

18 A In some instances. Well, I don't say -- yes,
19 there would be some instances of that. The MLB service
20 has become attractive enough that some all-water
21 carriers -- U.S. Lines would be a case in point -- are
22 now being pressured to unload and ship cargo MLB that
23 they would prefer from an economic standpoint to run all
24 the way through themselves by another alternate route.

25 Q Turn to page 16 of your testimony, please.

1 I'd like to direct your attention to the paragraph at
2 the bottom of the page, and specifically I'd like to
3 direct your attention to the sentence that begins on the
4 third line, that states:

5 "Separating MLB cargoes from the major
6 deployments and ports and relegating them to a direct
7 service, as suggested by Mr. O'Connell, runs contrary to
8 an operator's major goals."

9 When you say "an operator," I take it that
10 that is an MLB operator?

11 A Ocean carrier, yes, okay.

12 Q It would not be contrary to the goals of the
13 carrier that was providing all-water service?

14 A No. At least he wouldn't perceive it to be
15 against his goals.

16 Q And I'd like to direct your attention to the
17 next sentence. That says: "Ocean carriers would have
18 every incentive to resist that change, even to the point
19 of paying substantially increased rail rates if
20 necessary."

21 Again, by "ocean carrier" you're talking about
22 an MLB ocean carrier, right?

23 A Correct.

24 Q If this statement is correct in your
25 testimony, then it must also be correct, is it not, that

1 MLB cargoes would make a contribution to the cost of
2 these MLP carriers even if the rates were substantially
3 increased?

4 A Yes, they would make a contribution to the
5 chart we just discussed, utilization factor. They make
6 a utilization contribution to the ship. That is not to
7 say they would make a contribution at any price. I just
8 want to qualify that. They would make a contribution to
9 the extent that we just discussed in the previous
10 exhibit. They do increase his utilization to a common
11 point, common facilities, that is correct.

12 Q It's your testimony that at substantially
13 increased rail rates -- and here we get to the
14 difficulty of what is "substantial" --

15 A Well, in this particular case --

16 Q I didn't finish my question.

17 Let's take a five percent rate increase. That
18 is what we discussed as substantial earlier, am I
19 correct? When I asked about substantial, I believe you
20 said five percent.

21 A No, I said anything more than five percent,
22 not covered by increases in basic market conditions
23 within the corridor.

24 Q Okay. Let's take a ten percent rate increase,
25 ten percent increase in the rail division of an MIB

1 movement, all right? Is it your testimony that if a ten
2 percent increase were imposed, that that MLB cargo
3 moving, let's say, from the Far East to the West Coast,
4 would not make any contribution to the voyage costs of
5 that particular voyage by filling the slot?

6 A No, I didn't say that.

7 Q I thought earlier you said a substantial rate
8 increase would leave a contribution only in the area of
9 cargo balance.

10 A It would lessen the contribution of that load
11 coming from the Far East to Los Angeles. To what degree
12 would depend on what the rate level of traffic is. And
13 there are all kinds of freights and all kinds of
14 tariffs, and it would depend on the high rated cargoes.
15 It's definitely going to come out of the carrier's
16 pockets, so it would lessen his profitability.

17 But if you're asking me, would it make it
18 unprofitable, there is no way I could say. I don't know
19 at what point. It would depend on the product.

20 Q But you agree with me, sir, that even positing
21 a substantial increase in the railroad's portion of the
22 MLB tariff, that these MLB cargoes will continue to make
23 a contribution to the MLB operator's costs?

24 A That's a difficult question to answer. There
25 are 26 carriers. Now, I'm not ducking the question.

1 What I'm trying to say to you is, of those 26 carriers,
2 several of those carriers are, knowing the condition of
3 the trade, in a losing position today.

4 I wouldn't want to go out and say some of them
5 are losing position because they don't cost
6 appropriately, so I can't make it categorical, the
7 answer to that question, you know, an unqualified
8 answer. It certainly would eat into profits, which are
9 very, very small, five percent roughly pre-tax profit
10 for the most successful lines in the trade.

11 There's not an awful lot of money there. So
12 it would depend on the particular load and the
13 particular rate, and I think it would cause them a great
14 deal of concern. It would take a very detailed study of
15 which loads they could afford to handle and which loads
16 they couldn't.

17 Q And from your perspective as an executive of
18 an ocean carrier, the perspective you take in your
19 testimony, that is the problem that you see arising from
20 the proposed merger?

21 A Yes, I see that as a very big problem.

22 Q Turn to page 19, please. In the first full
23 paragraph you state that: "For 1983, revenue per load
24 was approximately \$2300." This was for the three
25 carriers listed on the bottom of page 18: Sea-Land,

1 APL, and U.S. Lines, correct?

2 A Correct.

3 Q Is that a weighted average for the three?

4 A Yes, that is a weighted average, yes. I did
5 it for all three. I did 1982 and 1983 for all three,
6 and I'd be glad to give you those numbers if you would
7 like.

8 Q Yes.

9 A Pre-tax profit from transportation or
10 percentage of revenue in 1982 for American President
11 Line was 7.9 percent; for U.S. Lines was 8.9 percent;
12 and for Sea-Land Service was 9.9 percent. The same
13 figures for 1983: APL was 4.2 percent; U.S. Lines, 3.4
14 percent; and Sea-Land Service 4.7 percent.

15 And so in that particular case where I said
16 five percent, obviously in '83 they didn't even make the
17 five percent, and that illustrates the point I'm trying
18 to make, that any substantive increase is going to cause
19 these carriers considerable problems, particularly in
20 this corridor.

21 Q Now, in that sentence you say that revenue per
22 load was \$2300, and elsewhere in the sentence you
23 reference profit on the basis of per FEU. Can I equate
24 the two and say that when you say per-load you meant
25 FEU?

1 A We did a formula which might be worth
2 stating. We used a formula to change a TEU to a load.
3 The formula roughly is .55. In other words -- and I
4 will give you the formula detail if you want, but in
5 transferring TEU's, one of the confusions here is people
6 use short tons, long tons, people use TEU's and FEU's.

7 But in order to come out with the right
8 numbers, you have to come up with loads. So we
9 transferred things to loads. So it's not -- when you
10 say FEU, it is not -- we used the conversion of .55.

11 Q Where did you acquire the revenues per load
12 for each of the three carriers in order to derive the
13 weighted average?

14 A The revenue per load?

15 Q The revenue per load for APL, how did you find
16 out what the revenue per load for APL was for 1983?

17 A In these numbers I quoted to you before, they
18 are public. All three are now public companies, and we
19 took out numbers from public statements. We have even
20 more information on them, but we took it all from public
21 statements made by APL to the analysts, Sea-Land and
22 U.S. Lines, three public companies.

23 Q Were those statements to the analysts provided
24 in your work papers?

25 A I'd have to check.

1 Q I don't believe that I saw them in reviewing
2 them.

3 MR. HYNES: Could I ask counsel to check on
4 that and provide them to us if they are not in fact in
5 the work papers today?

6 MR. BAKER: Certainly, if there's something in
7 writing that we have, certainly.

8 MR. HYNES: Any statement from a financial
9 analyst which was used as the basis.

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1 BY MR. HYNES: (Resuming)

2 Q Turn to page 21, please.

3 I would like to direct your attention to the
4 second paragraph. You indicate in that paragraph that
5 both the Europe-West Coast trade and Far East-Gulf
6 trades are served by 18 ocean carriers. Elsewhere in
7 your testimony you make reference to 26 carriers in the
8 Europe trade.

9 I wonder if you could tell me which of those
10 two numbers is accurate.

11 A Let me refer you to Exhibit 5 and 12 in this
12 document. Exhibit 5 here is intended to show the
13 principal container operators serving Louisiana-Texas
14 Gulf from Japan and Korea. Now, let me just check, but
15 I think 12, if I am not mistaken, was the same thing for
16 the other. No, that is California to Europe. I take it
17 back.

18 Q There seem to be 26 on Exhibit 5. So can I
19 take it, then, that your reference on page 21 should
20 have stated 26 in the Far East trade and 18 in the
21 Europe trade?

22 A You had better let me look at it again.

23 The 26 I referred to was 26 carriers offering
24 service from the Far East to the Gulf, okay. 24 of which
25 were minilndbridge. I am saying here, Europe-West

1 Coast, and I have something in here which says
2 Europe-West Coast, and I am assuming there are 18 Europe-
3 West Coast carriers.

4 Q It says "and Far East-Gulf Coast markets."

5 A Europe-West Coast and Far East-Gulf Coast.

6 Q The Far East-Gulf Coast would be the 26
7 carriers on Exhibit 5, wouldn't it? They all serve that
8 market.

9 A Yes. I would have to do some more checking.
10 It is 18 from Europe and I think 26 for the other, but
11 it would be 26 in Europe. It is published.

12 MR. HYNES: Could I ask Counsel to check that
13 one as well?k

14 MR. DREILING: Your Honor, if I might, I have
15 the explanation. In developing the errata, a secretary
16 inadvertently struck out too many words. It reads -- it
17 had read "more than 20," and the change was from 20 to
18 18. The words "more than" were inadvertently --

19 MR. HYNES: So it should be "more than 18."

20 Of course, that is not accurate based on --

21 MR. DREILING: Eighteen or more.

22 MR. HYNES: Because Exhibit 12 says 18.

23 MR. DREILING: You can ask the witness.

24 BY MR. HYNES: (Resuming)

25 Q The point I was getting to with all of the

1 questions about the numbers, if you look at your Exhibit
2 5 and Exhibit 12, these carriers offer a variety of
3 services over a variety of ports with a variety of
4 transit times, don't they?

5 A That is correct.

6 Q And you have testified that the market is
7 intensely competitive, is that correct as well?

8 A Yes, it is.

9 Q And these carriers are all able to compete
10 despite the fact that they are to one degree or another,
11 they are able to compete despite the fact that their
12 transit times aren't perfectly matched and they call at
13 separate ports and so forth?

14 A I am not being facetious. Able to compete,
15 several of these carriers -- I think all of you people
16 are aware there is a tremendous amount of bankruptcy.
17 These carriers are failing at an accelerated rate. So I
18 would question. I don't think it properly is phrased to
19 say that they are all able to compete. The failures in
20 the maritime business, many of these carriers cannot
21 compete, and unfortunately, the best example here is in
22 the United States. Every single day we are shrinking
23 down. We had 40 carriers ten years ago. We are down to
24 eight, and very likely going to be down to five or less
25 in a couple of years. So it is very difficult based on

1 those numbers to compete.

2 So I want to qualify that answer. They are
3 competing, but they are not competing well.

4 Q At the same time, the carriers shown on your
5 exhibits here are adding capacity at a rapid rate, are
6 they not?

7 A Oh, yes. There is no question that the name
8 of the game is economy of scale, and that is being
9 driven by the announcement U.S. Lines and Evergreen
10 causing companies like Sea-Land to respond, and the
11 companies that are able to respond, that have the
12 capital, such as those, will survive. The smaller
13 companies, just to illustrate my point, aren't going to
14 survive, many of them.

15 JUDGE HOPKINS: Off the record a minute.

16 (Discussion off the record.)

17 BY MR. HYNES: (Resuming)

18 Q Let me direct your attention to page 26. You
19 indicate in the second paragraph on that page that
20 "According to data published by the U.S. Department of
21 Transportation, fully 27 percent of the nation's
22 waterborne containerized traffic moves in trades other
23 than U.S.-Western Europe and U.S.-Far East."

24 Specifically, what statistics by USDOT are you
25 referring to?

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0001 0256

1 A We are talking about containerized cargo
2 statistics, calendar year 1982, MarAd, Department of
3 Transportation, and I will quote, "The line of trades
4 with industrialized companies are predominantly
5 containerized services, and other trades are moving in
6 this direction. In 1982, liner cargo carried in
7 containers grew to 86 percent for both the U.S.-Far East
8 trades and the U.S.-Western Europe trades. Together,
9 these services comprised 73 percent of the U.S.
10 containerized trade."

11 O Okay, so it is 73 percent in those two trades,
12 and the 27 percent becomes important because there are
13 31,044 loads which we show in our Exhibit 7 based upon
14 this percent. That is on Exhibit 7, line 6, in what you
15 referred to as other container trade totals.

16 Q And you say the 27 percent was based on 1982
17 data?

18 A Yes. MarAd DOT data.

19 Q Why don't you turn to Exhibit 7 of your
20 testimony. I would like to direct your attention to the
21 second and third entries in the first column, the
22 between column. I notice you have included in your
23 testimony movements both in the Asian and Europe trade
24 over South Atlantic ports, is that correct?

25 A That is correct.

1 Q Returning to the assumption which we talked
2 about which is set forth on page 4 of your testimony,
3 does your assumption concerning the circuit and cost of
4 alternate routings via the central corridor also apply
5 to movements destined to South Atlantic ports?

6 A Our costs, we did not cost the movement over
7 South Atlantic ports as we had in our costing. As you
8 know, we did Houston, New Orleans, Louisiana ports. We
9 did not know, we did not cost the --

10 Q So your analysis does not apply to these two
11 particular movements?

12 A No.

13 Q Do you know how many containers moved between
14 the Far East and South Atlantic ports in 1982 via
15 routings other than the primary Applicants' rail
16 routings, and I am speaking about the land leg now.

17 A I know what you are referring to.

18 No, I don't.

19 Q On page 27 of your testimony, you indicated
20 that you had used the Journal of Commerce Piers data to
21 determine the MIB exports that are shown in Exhibit 7,
22 is that correct?

23 A That is correct.

24 Q Am I also correct that this data shows the
25 location of importers and exporters based on the address

1 shown on the bill of lading?

2 A That is correct.

3 Q Is this address or location necessarily the
4 origin or destination point of the cargo?

5 A No, it is not.

6 Q In fact, it is quite possible that in certain
7 instances it can be the headquarters office if their
8 transportation logistics are managed out of that?

9 A Yes. I think we testified to that. That's
10 correct. You are right. It has an error factor.

11 Q I believe you testified that your numbers are
12 conservative because there are possibly movements which
13 actually move from the Gulf but the bills of lading for
14 them would show Delaware, for example. I think you used
15 DuPont.

16 A I think we used DuPont.

17 Q Isn't it equally possible that for a company
18 like Exxon, which is based in Houston, a cargo could
19 have come out of Bayonne, New Jersey or some other
20 location and shown a bill of lading Houston?

21 A It's possible, yes.

22 Q So in terms of the problem that we discussed
23 with respect to the data, your study is really neither
24 conservative nor liberal in that sense.

25 A Well, the -- we went to six different sources

1 to build our statistics, and we spent a great deal of
2 time here talking about the U.S. imports via minibridge
3 1981 to '83, for minilandbridge cargo, that was
4 correct. We think it is the best source, and it is an
5 accurate source for minibridge cargo. We do accept the
6 fact that there is an error factor for Piers data.
7 However, I will call to your attention that Piers data
8 has been accepted in testimony, and I have in here -- I
9 can cite the cases -- by the Federal Maritime Commission
10 and Maritime Administration, in many cases presented by
11 Temple, Barker & Slcane, presented by SIMAT, presented
12 by others, and it is the recognized source for this
13 particular data.

14 But keep in mind something else. We didn't
15 just accept this data. We went and made other
16 adjustments to allow for where we may have failed. For
17 instance, to give you a case in point, we went and found
18 the Arizona and Mexico loads were taken from the UP-MP,
19 Exhibit C-52 entitled Southern Pacific Six Month '82
20 COFC traffic lane totals.

21 Now, that tonnage was annualized at 18 short
22 tons per unit. Now, there again, it was a conservative
23 figure, but we sought out every figure we could find.
24 But I don't deny that our figures are conservative.

25 Q You mentioned UP data.

1 Where did you acquire that from?

2 A It apparently was published information. I
3 think we got it in Washington, but it was public
4 information. I had two people working with me who work
5 on my staff, and I am sure that Bill Kelly got that
6 information here in Washington. It is public data which
7 was available to TBS the same as us. It is a public
8 document.

9 Q There is a public document somewhere here in
10 Washington that tells us how many containers UP handled
11 in any given year?

12 A It is six months 1982 container-on-flat-car
13 traffic lane totals.

14 MR. BAKER: It is an exhibit in this case.

15 MR. HYNES: What exhibit?

16 MR. BAKER: It is a UP-MP-C number, counsel's
17 exhibit.

18 THE WITNESS: It is C-52.

19 BY MR. HYNES: (Resuming)

20 Q I'm sorry, you were mentioning a C --

21 A I probably should have mentioned that.

22 Q I'm sorry, I didn't get the significance of
23 the C number that you were referencing.

24 A I didn't make it clear.

25 Q Returning to the Hiers data, did you conduct

1 any spot check of the data to find out whether in fact
2 any other cargoes that you had included as Houston or
3 L.A. cargoes were in fact cargoes generated by --

4 A We did checking with the lines when in doubt.

5 Q If I could finish the question.

6 My question was whether or not you did any
7 checking to make sure that your data did not include, or
8 to see if your data included any cargoes which were
9 shown on the bill of lading as Los Angeles or Houston,
10 for example, but which in fact actually moved from
11 another point and were simply noted as bill of lading
12 because the corporate headquarters was located at
13 Houston or Los Angeles?

14 A Yes, we did do a check, and we think we are
15 fairly accurate in the way we presented the numbers. We
16 don't think we had a big problem. The DuPont issue I
17 recognized.

18 Q What check did you do?

19 A When in doubt, we contacted Sea-Land and AFL,
20 primarily, and I didn't do it, but the fellow who was
21 doing our marketing, Bill Kelly, contacted them. We
22 talked to a lot of people. We talked to Mattson. We
23 talked to many people.

24 Q Are there notes of these interviews or
25 contacts in the work papers?

1 A We mentioned them here as PFR inquiries to
2 shipping executives.

3 Q I was going to get to that. That is my next
4 question.

5 In the sources I cited you list PFRA increase
6 to shipping executives. At various places in your work
7 papers we were able to find references to contacts
8 between your firm and Sea-Land and APL.

9 Were there contacts with any other ocean
10 carriers?

11 A Mattson Navigation.

12 Q And were there any notes taken by Mr. Kelly or
13 other persons on your staff documenting the --

14 A I think in our work papers, if I am not
15 mistaken, there is an innocuous slip, if you will, of
16 the information taken by phone from David Tolan, who is
17 the Vice President of Americas Division at Sea-Land in
18 which he gave us the information on Caribbean cargoes
19 moving via the Gulf. I think that work paper is
20 000532. The same information was true, we got that for
21 the Far East, Caribbean and also in the same work paper
22 we got the California, Puerto Rico and Virgin Islands
23 tonnage. The Hawaii-U.S. Gulf we received from Walter
24 Brewer of Mattson Navigation. He is the Director of
25 Freight Services.

1 Q Could I direct your attention, please, to page
2 36 of your verified statement?

3 A I have it.

4 Q I would like to direct your attention to Table
5 5.

6 Am I correct that Table 5 is also based on the
7 Piers data?

8 A Yes, that's correct. The FEUs in this table
9 were calculated from the tonnage taken from imports,
10 Exhibit No. 8, which is revised here, Piers data, and
11 exports, Exhibit 10, revised Piers data. To this
12 tonnage was applied the load factors of 18.9 short tons
13 per each import load and 21.9 for each export load, and
14 these load factors are found in my work papers, 000010,
15 and are based on the containerized cargo statistics of
16 1982 published by MarAd.

17 Q You stated that the figures in Table 5 are
18 based on 1982.

19 A Correct.

20 Q Did you analyze the 1981 Piers data and
21 convert it also to FEUs to determine if the FEUs in '81
22 were higher or lower than the ones you showed for 1982
23 in Table 5?

24 A No.

25 Q Do you know if the comparable FEUs for 1982

1 were higher or lower?

2 JUDGE HOPKINS: Do you mean '81?

3 BY MR. HYNES: (Resuming)

4 Q '81, excuse me, than for '82.

5 A Let me say this. Looking at how dynamic the
6 growth is, and we have charts predicting this growth in
7 minilandbridge, I would very definitely be of the
8 opinion it would be lower, as I would also be that '83
9 and '84 will be higher.

10 Q But that is your opinion and not based on a
11 look at '81?

12 A We have charts in here showing the increase
13 of minilandbridge cargo -- I don't know what exhibit it
14 is. We have charts that are showing a steady increase.
15 I think we went back to '75 and charted it through. I
16 don't want to take the time of the Court, but it is in
17 here. It is in my testimony.

18 So we did look at the pattern evolving over
19 the years, all the way back to '75, actually.

20 MR. DREILING: It looks like Exhibit 14.

21 THE WITNESS: Thank you.

22 Exhibit 14 is an exhibit that shows the steady
23 decline in the U.S. Gulf percentage of the U.S.-Asia
24 trade, that is, water percentage, and I think that gets
25 at the heart of what you are asking. This decline is

1 evidence of the dramatic shift away from all-water to
2 minilandbridge, and I said '75. We went back to '72.
3 The steady Pacific Coast gains during the ten year
4 period reflect the importance of the Pacific trades and
5 the growth in intermodal traffic for the West Coast, for
6 the Gulf and the Midwest.

7 I think we are all aware that the Far East has
8 been growing, the fastest growing market out of the
9 United States, something like 34 percent just last
10 year. It was amazing. So that trend will continue all
11 the way through if we extended it.

12 Q I would like to ask you at this point some
13 questions about the cost analysis which you performed,
14 which begins on page 38.

15 A Am I correct, sir, that in performing the cost
16 analysis, that you adopted a container size mix of 80
17 percent 40-foot containers and 20 percent 20-foot
18 containers?

19 A Yes, that's correct. What did you say, 38?
20 Yes, that's correct.

21 Q Thirty-eight is where --

22 A Okay.

23 Q -- the discussion of your cost analysis
24 begins.

25 A Okay. The answer to that question is yes.

1 Q And you applied this 80-20 ratio for both the
2 Far East trade and the Europe trade?

3 A Yes.

4 Q Would you look at the package of work papers
5 which I have provided as SFSP-C-89?

6 A Yes.

7 Q I would like to direct your attention to page
8 20 of 21.

9 A That's right, I see it.

10 Q Is this the work paper which sets forth the
11 information upon which you derived the 80-20 mix?

12 A This is the source.

13 Q The source of your data? →

14 A Information as to the mix in the trade.

15 Q Okay. And this work paper indicates, does it
16 not, that you contacted two carriers, Sea-Land through a
17 Mr. Ron Gottshal?

18 A Two major carriers, yes.

19 Q And you contacted APL through Mr. George
20 Jones?

21 A Yes, correct.

22 Q Are these the only water carriers that you
23 contacted to --

24 A We didn't --

25 Q Excuse me. Let me finish the question.

1 A I'm sorry.

2 Q Are these the only two water carriers that you
3 contacted in order to obtain information to allow you to
4 derive the 80-20 mix?

5 A Yes. We did not ask the carrier what his mix
6 was. We asked the carrier what the mix on the route
7 was, and being that they are in the conference, asking
8 any one of these carriers who was familiar with the
9 conference statistics would have had the same
10 information. So Ron Gottshal's reply to us and George
11 Jones' reply to us was not what APL and Sea-Land was
12 handling on the trade but what was moving in the
13 corridor, what the balance was.

14 Q Isn't it a fact, sir, that APL doesn't offer
15 any service in the Europe-California trade?

16 A That's right.

17 Q Arek they a member of any European
18 conference?

19 A No.

20 Q Isn't it also true that Sea-Land utilizes 35
21 foot containers rather than 40s or 20s?

22 A Not in this corridor.

23 Q This corridor means --

24 A Not in the corridor in question, from the Gulf
25 to the West Coast. Sea-Land advises me that they do not

1 use 35 footers in that corridor. Sea-Land is in the
2 process of phasing out the 35-foot equipment and does
3 not use it on this particular trade, does not use it in
4 the Far East trade or the Gulf trade, nor do they use 20
5 footers either.

6 So that is why I qualify it. They are talking
7 about what the conference is. They don't have 20
8 footers.

9 Q Would you turn to page 45, please?
10 Specifically, I would like to direct your attention to
11 the sentence that begins three lines up from the bottom
12 of the page, which states that "In my opinion, it would
13 not be practical or cost efficient to handle this
14 traffic via feeder vessel between, say, Los Angeles and
15 Panama or Savannah."

16 My question is did you conduct any cost
17 analysis of feeder service to the Gulf from a point such
18 as Panama?

19 A Yes, we did. We did it, and one of our cost
20 things is just such a feeder concept which we did over
21 Panama, that's correct. We did not do it over
22 Savannah. It is in our testimony.

23 Q Can you point it out to me, please?

24 A Let me just check in Exhibit -- I am having a
25 little trouble finding it. If you would give me some

1 time to find it, unless you want me to come back to it.

2 MR. HYNES: Perhaps Counsel could provide us a
3 reference to the page or exhibit number later.

4 MR. BAKER: Yes, we will.

5 MR. HYNES: This is for the Panama feeder.

6 BY MR. HYNES: (Resuming)

7 Q You have testified you did not conduct a cost
8 study for the Savannah feeder.

9 A We definitely didn't do a Savannah. I am of
10 the opinion that we did Panama, but I will check.

11 Q I missed that if it was in the testimony.

12 A If we didn't, then I will so report that.

13 Q I would like to direct your attention to page
14 47, please. On this page you make reference to the new
15 double-stack container cars that have been introduced in
16 the trade.

17 Which ocean carriers now utilize these
18 double-stack cars?

19 A APL utilizes them on the Long
20 Beach-Chicago-New York. Sea-Land has just made an
21 announcement which I will find here. I had it here
22 somewhere. Sea-Land has been using them, as you
23 undoubtedly know, on this particular corridor. Sea-Land
24 has announced a new program where they are going to
25 accelerate the use of the articulated double-stack cars

1 in the future.

2 In addition, the Port of Seattle has also
3 announced that they also are going to purchase
4 articulated rail cars for themselves and run those
5 actually in competition with APL.

6 Port of New York, in addition, is also doing
7 studies contemplating the possibilities of these cars,
8 but Sea-Land has definitely made an announcement. I
9 will give you the article when I get it, with a
10 reference to it. This was in the Journal of Commerce
11 this past week.

12 Q With respect to Sea-Land, you stated that they
13 are using them in the L.A.-Houston corridor.

14 A No, I said they were using them.

15 Q Were using them.

16 A I don't think they are currently using them in
17 that corridor. When I get this article, it deals with
18 the -- I will make that available.

19 Q So they are not now using them in the
20 Houston-L.A. corridor?

21 A They are not now using them in the Houston
22 corridor, but they intend to use them in that corridor.

23 Q Do you know of any plans by any other water
24 carrier to use them in the Houston-L.A. corridor?

25 A Just APL and Sea-Land.

1 Q And how long approximately have APL and
2 Sea-Land been using these, let's say, in the trade to
3 New York, transcontinental movements?

4 A Oh, it is very recent.

5 Q And when they put these cars into service, did
6 the carriers make any adjustment in their MIB rates to
7 pass along to shippers the benefit of cost savings made
8 possible by the use of these cars?

9 A They haven't as yet.

10 Q Do you know if anybody has announced a plan to
11 do that, if any of the ocean carriers have announced a
12 plan to do so?

13 A I know it is a bone of contention. A meeting
14 was just called in Tokyo amongst the carriers for that
15 purpose this week, this past week, but I am not privy
16 to -- I don't think they decided anything. It is a big
17 issue right now.

18 Q And am I correct that in performing your cost
19 analysis, you assumed a 25 percent cost saving on the
20 rail leg of the movement on the basis of this
21 double-stack equipment?

22 A Right.

23 Q Can I direct your attention to page 49,
24 please.

25 In the second full paragraph I would like to

1 direct your attention to the first sentence which
2 states, "Without question, excess capacity exists in the
3 major container trades, so I have taken into account the
4 existence of a 10 percent overcapacity factor in the
5 Atlantic and 12 percent in the Pacific."

6 How did you arrive at this, at these 10 and 12
7 percent figures for overcapacity?

8 A In Mr. O'Connell's verified statement, page 8,
9 line 4, he states "Because of the depressed state of the
10 international shipping market, significant overcapacity
11 currently exists in virtually all U.S.-foreign trades."
12 We also referred to an article by Mr. John Ricklefs of
13 FBC Engineering who said in his article, "Pacific
14 utilization was 81 percent." We used 82.1. We had done
15 the 82.1. It was our estimate. His article in the
16 Atlantic was 75 percent, and we had used 74.7. So this
17 article I am referring to by John Ricklefs was October
18 29, 1984. And at least it indicates that our estimate
19 and his are very close. And I also point out that Mr.
20 O'Connell also believes there is an overcapacity
21 factor.

22 Q Mr. O'Connell's testimony didn't provide any
23 specific measure of what he thought overcapacity was,
24 did he?

25 A No.

1 Q He just agreed with the statement I think
2 anybody would agree with in the industry, that there is
3 overcapacity.

4 A I believe so.

5 Q Let me direct your attention to page 50,
6 please.

7 Specifically, in the first full paragraph, you
8 state that in performing your cost calculations, you
9 assume that in the Far East trade 65 percent of the MLP
10 traffic would shift to all-water.

11 Did you conduct a formal traffic study to
12 arrive at that figure?

13 A No, but as you can appreciate, we are very
14 familiar with the sentiments. We worked with -- I
15 worked with virtually all of the American lines. In my
16 testimony I tried to make the point quite clear, I don't
17 really believe -- I don't believe this hypothetical
18 thing would work.

19 Number two, I don't believe 65 percent would
20 switch because you have to realize for these people to
21 switch there are national interests, tyhere is
22 utilization factors, and if you see the problem these
23 carriers have, these 26 carriers, if you will, in
24 conference meetings, the possibility of their coming
25 together in a group that could control 65 percent of

1 that business is highly unlikely.

2 Nonetheless, we did it, but I don't believe it
3 would be 65 percent. I don't believe it is possible.

4 Q So in your opinion, the cost calculation of an
5 all-water service based on the 65 percent diversion is
6 really hypothetical?

7 A Purely hypothetical, and I don't think it is
8 realistic.

9 Q And in your opinion, in the real world, what
10 would happen if the merged system attempted to demand a
11 larger division of the MLB rates would be that the
12 ocean carriers would pay it and service would continue
13 along the routes as it does today?

14 A No, I don't think that would be true. I think
15 if there was a substantial increase in the corridor, I
16 think that many of these low-rated, high-value products
17 which is peculiar to the Gulf -- they have the highest
18 load factor in the United States -- would be priced out
19 of business. I refer specifically to chemicals,
20 resins. From my own experience in dealing with DuPont,
21 they are constantly -- they have a policy, they don't
22 expect you to put in a rate that is noncompensatory, yet
23 they caution the carrier, please, you had better be sure
24 it is noncompensatory, because if not, we are losing it
25 to Germany.

1 So what I really think would happen, as the
2 sophisticated carriers -- and the sophisticated
3 carriers, that's all there will be is sophisticated
4 carriers left -- I think what they will have to do is
5 take, is price themselves, put an exorbitant price on
6 that low-rated cargo and probably still compete and keep
7 it low on the high-rated. That's what I suspect, purely
8 an opinion.

9 Q You haven't conducted any
10 commodity-by-commodity analysis to determine at one
11 point any particular commodity might stop moving?

12 A Oh, God, no. That would be a heck of a
13 study.

14 Q When you discuss in all-water service
15 handling, 65 percent of the MLP cargo, is that all-water
16 service you are referring to the hypothetical
17 consortium?

18 A It would have to be, yes.

19 Q By the way, I notice at the bottom of that
20 paragraph the number 34 percent had been changed in the
21 errata to 39.

22 Should the number 65 be changed to 61 so that
23 those things add up to 100 percent?

24 A No. The 65 percent refers to the amount of
25 cargo, whatever the amount of cargo in MLP, the 65

1 percent refers to the division of that cargo. The 61
2 percent you referred to would be an amalgamation of
3 cargo currently moving by water and which we say is 4
4 percent, the Yang Ming, if you will, 29 loads by lykes.

5 Q On page 50 I would like to direct your
6 attention to the last paragraph which states that "In
7 the case of the European trade, a consortium already
8 exists. It has, in my opinion, captured substantially
9 all of the traffic which would move in all-water
10 service."

11 What consortium are you referring to there?

12 A Johnson Scan Star, CCM, and ICT, and Harag
13 Lloyd, excuse me.

14 JUDGE HOPKINS: Off the record.

15 (Discussion off the record.)

16 JUDGE HOPKINS: We will be in recess until
17 9:00 o'clock tomorrow morning.

18 (Whereupon, at 5:00 o'clock p.m., the hearing
19 in the above-entitled matter recessed, to reconvene at
20 9:00 o'clock a.m., Tuesday, January 15, 1980.)