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April 19, 2001

Hon. John M. Nannes
Acting Assistant Attorney General
Antitrust Division
United States Department of Justice
Tenth Street and Constitution Avenue, N.W.
Washington, D.C. 20530

Re: Request for Business Review Letter -- Foss Maritime Company et al

Dear Mr. Nannes:

Pursuant to the Antitrust Division's business review procedures as set out in 28 CFR 50.6, we are requesting a business review on behalf of our client, Foss Maritime Company ("Foss") and on behalf of Crescent Towing Company, Inc., ("Crescent") Crowley Marine Services ("Crowley"), Hawaiian Tug and Barge ("HTB"); Intercoastal Towing Corp. ("Intercoastal") Maritrans Operating Partners LP ("Maritrans"), McAllister Towing & Transportation ("McAllister"), Moran Towing Corporation ("Moran"), Penn Maritime ("Penn"), and Sause Bros. Ocean Towing ("Sause"). These companies all provide tug and barge services in the United States and are referred to herein collectively as the "Companies."

The Companies propose to submit certain historical cost information to an independent third party which will compile the data and distribute statistical analyses of the data to the Companies (the "Survey"). The Companies intend to design and implement the Survey in accordance with the principles set forth in Statement 6 of the Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care, "Antitrust Safety Zone: Exchanges of Price and Cost Information Among Providers That Will Not Be Challenged, Absent Extraordinary Circumstances, By The Agencies."

In general, each of the Companies provides tug and barge services. These services include the following:

- "**Harbor Services**," which generally includes use of a tug to assist in the docking or undocking of an ocean-going vessel and other tug and towing services performed within a harbor, including towing a fuel barge to the vessel to re-fuel the vessel;

- "**Towing**" which generally includes work performed by the Companies for third party customers outside of harbors, including escorting petroleum tankers to and from port and towing barges owned by third parties; and
- "**Transportation**" which includes towing barges outside of a harbor, where the barge is owned by the respective Companies but the cargoes are owned by third parties (as distinguished from "towing," where the barge is also owned by a third party).

Although the Companies provide many of the same services, they do not all operate in the same geographic areas.

- Crescent operates in the Gulf of Mexico and on the East Coast
- Crowley operates in the Gulf of Mexico and on the East and West Coasts
- Foss operates in the Gulf of Mexico and on the West Coast
- HTB (which is a sister corporation to Foss) operates in Hawaii
- Intercoastal operates in Houston, Texas
- Maritrans operates in the Gulf of Mexico
- McAllister operates on the East Coast
- Moran operates in the Gulf of Mexico and on the East Coast
- Penn operates primarily in the Northeast
- Sause operates on the West Coast

No price information would be exchanged or included in the Survey. The purpose of the Survey would be to establish benchmarks and best practices so that each Company will be better able to identify those areas in which it has the greatest potential to reduce costs, improve efficiency, and improve the quality and value of the service it offers to customers. See generally letter dated March 3, 2000 from Joseph H. Langjahr to Edmond J. Moran, Jr. (Enclosure (1)).

Each Company will submit to an independent third party the specific data that is summarized in the January 21, 2000 letter from Edmond J. Moran, Jr. to Joseph H. Langjahr (Enclosure (2)) and that is described in more detail in "U.S. Jones Act – Tug Services Benchmarking Guide" (Enclosure (3)). Although that third party has not yet been specifically identified, the Companies anticipate that it will be one of the national accounting firms, most likely PricewaterhouseCoopers. No data of any kind will be exchanged directly between the Companies, although the Companies may find it necessary or desirable to communicate directly with one another concerning the precise definitions of the data to be submitted for the Survey.

The data to be surveyed generally falls into seven categories:

1. **Utilization**. The Survey will calculate the quantity of time that a tug or barge is "working" as opposed to the time it is idle or under repair.

2. **Repairs**. The Survey will compare each Company's cost of repairs to its total gross revenue and will also calculate repair costs per tug.

3. **Claims and Insurance**. This category includes both damages claims (such as damage caused when a tug collides with another vessel) and the cost of insurance. The Survey will compare these costs to each Company's total gross revenue and will also count the total number of events that resulted in damages.

4. **Revenue**. This is not the price charged to customers, but rather the income recognized by each Company. The Survey will compare revenue to the number of "engine hours," which is a unit used to measure operating activity. The Survey will also calculate the revenue earned per sea-going employee.

5. **Sea-going Labor**. This category includes the wages, taxes and benefits of the employees who work on the vessels. The Survey will compare sea-going labor cost to total gross revenue and will calculate sea-going labor cost per tug and per engine hour.

6. **Overhead**. The Survey will compare overhead expenses to revenue and will calculate overhead per employee.

7. **Supplies**. Supplies include tow line, paint, engine room consumables, etc. that are used in the Companies' operations. The Survey will compare the cost of supplies to revenue, and will also calculate the supply cost per tug, and the supply cost per engine hour.

The Companies have not yet determined whether they will permit other firms to participate in the Survey. It is their present intention to permit other firms to participate, if the other firm's operations are comparable in size and scope to the Companies, but the Companies are not at this time prepared to assure the Antitrust Division that they would do so.

As noted above, the Companies intend to structure the Survey in accordance with Statement 6 of the Health Care Guidelines. Accordingly:

- The Survey will be managed by PricewaterhouseCoopers or by another national accounting firm.
- All data submitted by the Companies to the Survey manager will be more than three months old at the time the results of the Survey are disseminated.
- The Survey manager will be instructed not to disseminate data on any particular statistical point unless (a) at least five Companies submit data on that point and (b) no individual Company's data represents 25 percent or more, on a weighted basis, of that

statistical point. For example, data will not be segregated into East Coast or West Coast geographic areas because fewer than five Companies operate in those areas.[1]

- The Survey manager will be instructed not to disseminate data on any particular statistical point unless the data is sufficiently aggregated that recipients would not be able to identify the data supplied by any individual Company.

The Companies believe that the Survey will permit them to better identify areas of potential cost savings and efficiency, thereby allowing them to offer customers better value. We emphasize that pricing information will not be part of the Survey, nor will information about plans for new equipment, future deployment of existing equipment, marketing plans, or other information that a Company deems confidential, proprietary or competitively sensitive.

If you or the staff have any questions or would like any additional information, please contact the undersigned.

Very truly yours,

GARVEY, SCHUBERT & BARER

By
Alan P. Sherbrooke

Enclosures
cc: A. Moss (Crowley)
Langjahr (Foss)
G. Hong (HTB)
E. Moran (Moran)
D. Sause (Sause)
B. McAllister (McAllister)
J. Burns (Maritrans)
R. Murray (Crescent)
W. Waterman (Penn)
L. Doyle (Intercoastal)

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[1] If, however, additional firms joined the Survey such that it would be possible to report certain data by geographic area without violating the five company/25 percent principle, then the Companies might elect to report that data by geographic area.