



Office of the General Counsel

B-256294

May 13, 1994

Mae W. Vlasak
Director, Transportation Payments
Defense Finance and Accounting Service
Indianapolis Center
Indianapolis, IN 46249-0621

Dear Ms. Vlasak:

We acknowledge receipt of your letter dated January 20, 1994, regarding the action against Clearwater Trucking, Inc., for recovery of lost/damaged Department of Defense (DOD) freight. You state that you have reached an impasse with the carrier in interpreting the governing released valuation provision and seek our advice in resolving any ambiguity.

Clearwater participated in a Guaranteed Traffic program governed by Military Traffic Management Command (MTMC)/ Defense Logistics Agency (DLA) Freight Traffic Rules Publication 600,000 (Enhanced DLA Distribution System). Under the program, carriers like Clearwater offered to receive DOD general commodity freight from various sources in a particular region of the United States, consolidate the freight going to particular destination(s), issue a Government Bill of Lading (GBL), and then transport it. Clearwater was awarded a contract for such services in the southwestern United States under its negotiated Tender 600,040.

Supplement No. 9 to Tender 600,040 substituted a new Item 23 (Liability of the Carrier, Government) for the one in Rules Publication 600,000. The substitute provision stated, among other things:

"b. Shipments subject to this rule have a released valuation of \$10 per pound based on the weight in each/any vehicle, or \$50,000 per incident, or \$3,500 per box whichever is the lesser. As an example, if the total weight in the vehicle moving from the carrier operated Consolidation and Distribution Center [CDC] is 1,500 pounds, the carrier's maximum liability is \$15,000. However, if only one box is lost or

damaged the carrier's maximum liability is \$3,500."

"f. Liability on any freight damaged while in the Consolidation and Distribution Center [CDC] will be limited to actual value, \$10 per pound, \$50,000 per incident, or \$3,500 per box whichever is less."

You state that you have over 200 claims against the firm for in-transit loss/damage, totaling approximately \$140,000. In calculating this debt you interpret the \$10 per pound limitation in Item 23b as requiring the multiplication of \$10 by the weight of the shipment noted on the GBL, for comparison to \$50,000 per incident and \$3,500 per box.

Clearwater, however, argues that it is not right to include in the calculation and comparison all of the weight noted on the GBL. The basis for that argument is not entirely clear, but appears to be that the shipment's weight on a vehicle has no relationship to the loss or damage, and the calculation thus leads to an artificially high number for comparison purposes. Clearwater therefore would determine liability for transit damage under Item 23b the same way it is determined for CDC damage under Item 23f. Under Item 23f, the \$10 per pound limitation is multiplied by the weight of the lost/damaged item of freight, not the weight of the shipment in a vehicle. This calculation would substantially reduce Clearwater's liability for transit damage because it often yields a liability amount less than one or both of the other two figures.

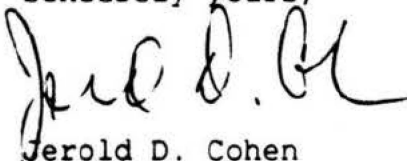
We generally agree with your interpretation of the contract. Item 23 specifically provides for two different types of released value with regard to the \$10 limitation, one for loss or damage to an article that is part of a shipment in transit, and the other for loss or damage of freight in the CDC. Differences in released valuation depending on whether an article is in transit or in a warehouse, are typical in military transportation practices.¹ Clearwater has acknowledged that the \$10 per pound limit in 23b is based on the weight in the vehicle.

¹For example, a carrier's liability for loss or damage to an article in a DOD domestic household good shipment is generally \$1.25 per pound times the net weight of the shipment, while liability for loss or damage to the same article during non-temporary storage generally is limited to \$50 per article or package. Compare Item 17 of the Domestic Personal Property Rate Solicitation D-2, and Appendix H, para. H-7 of DOD Personal Property Traffic Management Regulation, DOD Reg. 4500.34-R (October 1991).

We point out that in applying the standard in Item 23b, the calculation should not include any weight associated with other shipments that may be on that vehicle. Our view in this regard is based on, among other things, the analogous situation in Item 21 of the Rules Publication involving rates and charges: if more than one vehicle is needed to transport a shipment, any unfilled vehicle would be rated at the weight attributable to the portion of the shipment that is placed on it. Weight attributable from unrelated shipments is not to be considered. Also, as a general matter, in determining the rights and obligations of government shippers it would be unusual and impractical to consider unrelated non-DOD shipments that coincidentally occupy the same vehicle.²

In sum, your basic approach is correct. Please note, however, that the weight on the GBL you should consider is the weight attributable to the shipment that is placed on the vehicle; this weight may be less than the total weight of the shipment. If we can provide further assistance, our point of contact is _____, who can be reached at _____.

Sincerely yours,



Jerold D. Cohen
Acting Associate General Counsel

²Unless exclusive use is involved, a carrier generally may fill the remainder of his vehicle with a non-DOD shipment to most efficiently utilize it.

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DIGEST

There is nothing inherently wrong in the fact that a released valuation provision in a government/carrier negotiated rate tender based carrier liability for (1) transit loss and damage on the lower of \$10/pound times the weight in the vehicle, actual value, \$50,000 per incident, or \$3,500 per box, and (2) damage in the carrier-operated Consolidation and Distribution Center on the lower of \$10/pound times the lost or damaged item's weight, and the other three amounts. The separate provisions are clear as written, and differences in released valuation depending on whether an article is in transit or in a warehouse are common. For transit damage, however, the weight should include only that attributable to the shipment (not the weight of other shipments that may happen to move on the vehicle), and only to the weight on that particular vehicle (which may be less than the full shipment weight).