



**UNITED STATES TRANSPORTATION COMMAND  
508 SCOTT DR  
SCOTT AIR FORCE BASE IL 62225-5357**

18 December 2008

MEMORANDUM FOR MAERSK LINE LIMITED  
2 GIRALDA FARMS  
PO BOX 880  
GIRALDA FARMS, NJ 07940-0880  
ATTN: WILLIAM BENDER

FROM: USTRANSCOM/TCAQ-I  
508 SCOTT DRIVE  
BLDG. 1600  
SCOTT AFB, IL 62225-5357

SUBJECT: Transportation Discrepancy Report WAMD20-0018M Contracting Officer's Final Decision

1. On 4 July 2007, the Surface Deployment Distribution Command (SDDC) Operations Center submitted a Transportation Discrepancy Report (TDR) on Contract W81GYE-06-D-0016 (USC-05), detailing damage to cargo. Container MAEU3321275 arrived on truck number LSB-3806 with a broken truck windshield, a broken mirror bracket, and two missing horns. The windshield had been replaced with a type of flexible plastic. The TDR is based on photos and movement documents associated with said shipment, totaling \$1,016.60 in damages. This TDR was disputed by Maersk Line on 31 July 2008 as Maersk "received this cargo on a 'Shipper's Load and Count' basis (CY/CY)." Liability was denied despite a Demand for Payment letter and supporting documentation submitted to Maersk on 13 May 2008. The Contracting Officer has reviewed the documentation provided by SDDC and the Contractor in relation to this claim, as well as documentation in the contract file.

2. In the 4 July 2007 TDR, SDDC outlined its claim against the Contractor. The factual background for this claim is as follows:

(a) The effective date of award for Contract W81GYE-06-D-0016 (USC-05) was 01 March 2006. The "3PL Container management - Pakistan SDDC / RAITH / TAREEN" document titled "Container's Check List" is dated 27 May 2007. The document is signed by the "Carrier's Representative" and by a representative from "SDDC/RAITH/TAREEN." The document notes that the shipment contains a truck and the "OK" box is checked next to "Condition of Truck." This evidences that the container was turned over to the Contractor on 27 May 2007 and that the cargo was in good condition. The cargo was not remitted back to Government possession until 4 July 2007. On this date, Capt. M Bohard witnessed the container being opened and documented the loss described in the TDR. The value of this loss is calculated through the use of a repair quotation from Automotive Energy Services Asia Afghanistan.

(b) Specifically, with regard to liability Contractor asserts that it has "no alternative but to deny liability in this matter" because it found "no evidence of carrier mishandling." No documentation was presented to substantiate this finding.

3. The pertinent contract terms establishing liability on this matter are as follows:

(a) The Performance Work Statement (PWS), section E.1 at page 54 of 71, states that "The United States Carriage of Goods by Sea Act (COGSA) 46 U.S.C. 1300 et seq. is incorporated into this solicitation and shall apply to the ocean transportation of all goods (including goods in containers stowed on deck, which shall be considered as goods stowed under deck) under any Shipping Order with the same force and effect as if the Act applied to such carriage by express provision therein.... nothing in this solicitation is intended to relieve the Contractor or the vessel from liability for loss or damage to or in connection with the goods arising from negligence, fault or failure in the duties and obligations provided by the Act or to lessen such liability otherwise than as provided therein. The Contractor shall be liable as a common Carrier by land for any loss of or damage to cargo while being transported under this solicitation between any inland origin and the vessel's side and between the vessel's side and any inland destination."

4. Statement of factual areas of agreement and disagreement: Contractor and the Government are in general agreement that this Contract was executed for intermodal sealift and ancillary services. The Contract was effective on 01 March 2006 and Contractor has been providing listed services under the Contract since that time. However, the parties are in disagreement over the liability for damages to the truck shipped in Container MAEU3321275. The areas of dispute are as follows:

- a. Has the Government shouldered its prima facie burden of proof?
- b. Has Maersk overcome the presumption of liability in this case?

5. Statement of the Contracting Officer's decisions with supporting rationale:

(a) The Government must shoulder the burden of proving that it made "delivery in good condition, [that cargo] arriv[ed] in damaged condition, and the amount of damages." Air Land Forwarders v. United States, 38 Fed. Cl. 547, 556 (Fed. Cl. 1997). This language is clear and while it allows the Government to recover from a carrier for damaged property, this prima facie case must be made. The Government has made its prima facie case. The "Container's Check List" dated 27 May 2007 proves that the cargo was delivered to the carrier in good condition. The evidence presented in "Damage/ Shortage Inspection Report" dated 4 July 2007 and the "Truck Note" dated 4 July 2007 shows that the cargo was returned to the Government in damaged condition. In addition, the quantum identified in the repair quote has presented adequate financial proof to substantiate the demand for \$1016.60.

(b) The burden now "shifts to the carrier to show that it was not negligent and that the damage to the cargo was due" to an excusable cause. Id. at 557. The carrier has not presented evidence that it was not negligent and has not argued that damage occurred as a result of an "act of God, the public enemy, public authority, the shipper, or the inherent vice or nature of the goods." Id. at 556. The carrier bears "the loss which it cannot explain." Id. at 557, see also Schnell v. The Vallescura, 293 U.S. 296, 304 (U.S. 1934) ("the law casts upon him the burden of the loss which he cannot explain or, explaining, bring within the exceptional case in which he is relieved from liability"), Missouri P. R. Co. v. Elmore & Stahl, 377 U.S. 134, 143-144 (U.S. 1964) ("it cannot be doubted that while the carrier has possession, it is the only one in a position to acquire the knowledge of what actually damaged a shipment entrusted to its care"). Therefore, this claim for relief is granted in the amount of \$1016.60.

6. As per FAR 32.610, the Contracting Officer is the responsible official designated for determining the amount of the debt and for its collection. The Contracting Officer has computed the amount due and

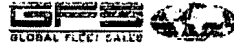
owing as \$1016.60. The Government demands that this amount be paid within thirty (30) days from the date of this letter. Any amounts not paid within thirty (30) days from the date of this demand will bear interest from the date of this demand. The interest rate shall be the rate established by the Secretary of the Treasury, for the period affected, under Public Law 92-41. Within the next thirty (30) days, the Contractor may submit a proposal for deferment of collection if immediate payment is not practicable or if the amount is disputed. If the full amount is not paid, or a proposal for deferment is not received, within the next thirty (30) days, FAR 32.612 will be utilized to withhold principal and interest from payments otherwise due to the Contractor.

7. This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals [Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, VA 22041-3208] and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's small claim procedure for claims of \$50,000 or less or its accelerated procedure for claims of \$100,000 or less. Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. § 603, regarding Maritime Contracts) within 12 months of the date you receive this decision.

  
MICHAEL SCHREIBER  
Contracting Officer

Attachments:

1. Repair Quotation from Automotive Energy Services Asia Afghanistan
2. Maersk Line "Truck Note" dated 4 July 2007 showing damage to vehicle
3. Container's Checklist dated 27 May 2007
4. Damage/ Shortage Inspection Report dated 4 July 2007



REPAIR QUOTATION							
Customer : US ARMY				Vehicle Model : INTL TRUCK			
Customer ref: DRS7				VIN : 7J553883			
Quotation No. - 0295-07				I - 1011			
				18-Aug-07			
Item No	PART NO	Description	UNIT	QTY	UNIT PRICE	TOTAL	REMARKS
1	3558488C91	HORN LOW NOTE	PC	1	\$79.20	\$79.20	
2	3553179C91	HORN LOW NOTE	PC	1	\$79.20	\$79.20	
3	2505274C3	EXT MIRROR BRKT RH	PC	1	\$124.20	\$124.20	
4	3554252C3	WINDSHIELD	PC	1	\$511.00	\$511.00	
5	3556773R1	SEALANT	PC	3	\$25.00	\$75.00	

PARTS \$888.60  
LABOR \$148.00  
TOTAL \$1,036.60

We are confident that you will find our prices competitive, but should you have any questions, please do not hesitate to contact us.

Sincerely,

  
Ashley Cordova  
After sales Manager  
Mobile: 0758245845  
E-mail: [service.manager@mmssle-ca.net](mailto:service.manager@mmssle-ca.net)  
[ashley.cordova@globalfleetisales.net](mailto:ashley.cordova@globalfleetisales.net)



MAERSK LINE

4-1011

DA57J553983

WAMD00-00187

TRUCK NOTE

Vessel	MAERSK VIRGINIA
Voyage	91W/0707
BI no.	US9000343
Seal No.	
Container No.	MAEU3321275 ✓

Destination	KABUL	AFGHANISTAN
Truck No.	LSB 3806	

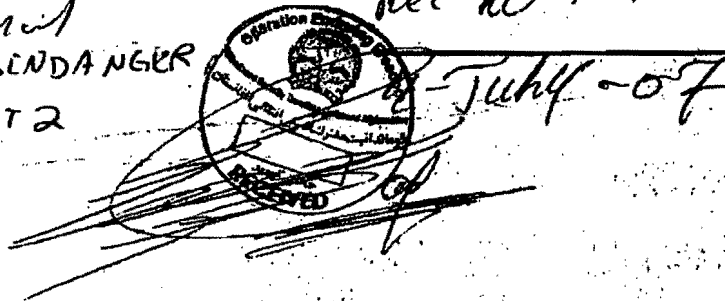
	Time	Date
Container Arrived at Destination		
Container Off-Load From Truck		
Received In Good order		
Remarks		

Truck arrived Depot 2  
on 4 July 2007 with  
broken windshield

Received By  
Name & Signature

Rec at Depot 2

Summit  
DCC WIESENDANGER  
OIC DEPOT 2



3PL CONTAINER MANAGEMENT - PAKISTAN SDDC / RAITH / TAREEN		DUPLICATE SR. NO. 024166
<b>CONTAINER S CHECK LIST</b>		
TRUCK No.: <u>TUB 362</u>		DATE: <u>7/15/07</u>
DRIVER'S NAME: <u>SAIF KHAN</u>		DRIVER'S LICENCE No.: <u>2039/03</u>
CONTAINER No. (1): <u>UAAU 3311195</u>		CONTAINER No. (2): <u>UAAU 3311195</u>
RFID TAG No. (1): <u>N/A</u>		RFID TAG No. (2): <u>N/A</u>
RFID BATTERY <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		RFID BATTERY <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
H. S. SEAL No. <u>N/A</u>		H. S. SEAL No. <u>N/A</u>
BOLT SEAL No. <u>030075 + 030072 + 030078</u>		BOLT SEAL No. <u>N/A</u>
TCN No. <u>UAAU 3311195</u>		TCN No. <u>N/A</u>
CONDITION OF TRUCK. <input checked="" type="checkbox"/> OK <input type="checkbox"/> BAD		DESTINATION: <u>HBL</u>
<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">           Back Front              CONTAINER No. 1         </div> <div style="text-align: center;">           Back Front              CONTAINER No. 2         </div> </div>		
<b>REMARKS:</b>		
1) FRONT DOOR / LOCKS <u>OK</u>		1) FRONT DOOR / LOCKS <u>OK</u>
2) LEFT SIDE <u>OK</u>		2) LEFT SIDE <u>OK</u>
3) RIGHT SIDE <u>OK</u>		3) RIGHT SIDE <u>OK</u>
4) BACK SIDE <u>OK</u>		4) BACK SIDE <u>OK</u>
RFID TAGS RECEIVED BY CARRIER'S REPRESENTATIVE:		SDDC / RAITH / TAREEN
(NAME & SIGNATURE) <u>[Signature]</u>		(NAME & SIGNATURE) <u>[Signature]</u>
N. I. C. No. <u>15289-141431</u>		

## Damage/Shortage Inspection Report

Shipping Company Maersk Line  
Container No. MAEU 3321275  
Truck No. LSR-3806  
TCN No. BB2B 7562759001 DEX

### Material Received

Name International Cargo Truck 21011  
Model No. 2400 SFA 6X6  
Serial No. 1HTWJA DR 57J 553983  
Arrived Date 04 July 07  
Received Date 04 July 07  
Driver Name \_\_\_\_\_  
Driver Sign. \_\_\_\_\_  
Receiving Depot ANA DEPOT 2  
Received by DCC WIESENDANGER  
Received by Sign. [Signature]  
Shipping Rep Name Zamorin  
Shipping Rep Sign. [Signature]  
Discrepancy Windshield was broken  
and had been replaced with plastic  
Missing 2 horns, Mirror bracket  
broken