June 19, 1998

DOHA Claims Case No. 98030604

Gulf Forwarding

c/o Bobby L. Cates

Vice President

Fogarty Van Lines

1103 Cumberland Avenue

Tampa, FL 33602-4290

Dear Mr. Cates:

This refers to your April 30, 1998, request that I immediately reconsider the decision of the Claims Appeals Board (Board) in DOHA Claims Case No. 98012618 (February 12, 1998). Your request for reconsideration involves several pieces of correspondence: your March 27, 1998, letter to me and your letters of April 7, 1998, March 6, 1998, and March 3, 1998, to Mr. Michael D. Hipple of this Office. While this approach is somewhat unfocused, I believe that I understand your primary concerns.

Generally, you have asked for clarification of the holding. The Board held that, as a general rule, the service member, or the military service in subrogation, must specify the amount of loss or damage for each item claimed in a shipment of household goods when this information is requested by the carrier as a supporting document. When the service or service member does not do so, and the carrier has timely requested such information during its investigation of the claim, the carrier is not required to pay the claim under 49 C.F.R. §§ 1005.2 - 1005.4 until that information is provided. Therefore, the Board concluded, that setoff against the carrier was improper until that information was provided. The Board found that when the service does not provide this information until sometime after setoff, the service may still have a prima facie case of liability against the carrier, but it is possible that the carrier may have a claim against the government for the improper use of the carrier's receivables between the time the set off was accomplished and the time that the information was provided. The Board distinguished the failure to provide supporting documentation from the failure to present a prima facie case of liability, and the Board affirmed the setoff because the Air Force eventually provided the information requested by the carrier and there was a prima facie case.

The Board's decision did not invite reconsideration by this Office. If, for example, the Air Force may be liable for interest or other damages for improperly withholding Gulf Forwarding/Fogarty's receivables on other moves between the time of the setoff and March 27, 1996, this matter would be decided by the Air Force and Department of Defense finance officials, not by this Office. The Board merely decided that in the circumstances in this claim, setoff was improper until the Air Force had specified the damage for each item.

The gist of your request for reconsideration is that the Board committed error in finding that the Air Force presented a prima facie case of liability even though it did not present specific damage information for each lost/damaged item (only the total damage amount) until after the matter was appealed beyond the Air Force. Stated another way, you believe the Air Force's failure to specify dollar amounts for each lost or damaged item when requested by the carrier, permanently and completely defeats any prima facie case of liability. You cite the decision Salzstein v. Bekins Van Lines, Inc., 993 F. 2d 1187 (5 Cir. 1993), cited by the Board, as a legal authority which is completely dispositive of your position.

As the Board indicated, the Salzstein decision is not directly on point. In Salzstein, the plaintiffs did not claim any amount of damage, either totally or on individual items. In contrast, in this claim, the Air Force claimed an exact total dollar amount of damages ($1,242.39). This addresses one of the Salzstein Court's primary concerns that if damages are sought, it is up to the claimant to say exactly what it seeks. Id at 1190. Moreover, the Salzstein Court concerned itself with the legal requirements for filing a claim under 49 C.F.R. § 1005.2, not with the supporting document requirements

under Item 19(g) of your tariff, which was reflected in 49 C.F.R. § 1005.4(b).[1] To best reconcile the concerns of the Salzstein Court with those of other courts which have tended to emphasize substantial performance in claim filing and the liberal construction of claims,[2] the Board correctly chose to limit Salzstein to the facts of that case and not expand it as you request.

Accordingly, I find that the Board's decision in DOHA Claims Case No. 98012618 was proper, and I sustain the decision. This is the final decision of the Department of Defense on the issue of whether the Air Force had presented a prima facie case of liability. We disallow your claim; however, you are free to explore other possible claims with finance officials.

Sincerely yours,

Signed: Leon J. Schachter

Leon J. Schachter

Director

1. The Board found that Item 19(g) of your tariff, the Professional Movers Commercial Relocation Tariff, STB HGB 400-J, did not directly apply to this shipment for the Department of Defense. The primary sources here for determining the agreement between the DoD and the industry is the Domestic Personal Property Rate Solicitation, the individual rate tenders filed under the Solicitation, and the Tender of Service. Accordingly, the Board relied on the cited provisions from the Code of Federal Regulations on which your tariff provision appears to be based.

2. See Insurance Company of North America v. G.I. Trucking Company, 1 F. 3d 903 (9 Cir. 1993); cert. denied 510 U.S. 1044 (1994).