Claims Report

United States Army Claims Service

Personnel Claims Note

Effective Date of New Regulation

The effective date of the new claims regulation[1] and new claims pamphlet[2] is 1 April 1998. Any new rules contained in the regulation and pamphlet apply only to claims filed on or after this date.[3] Claims filed prior to 1 April 1998 are still covered by the previous claims regulation[4] and pamphlet.[5]

There is one important exception to this rule: the new vehicle theft and vandalism provisions apply only to *incidents* occurring on or after 1 April 1998.[6] The new vehicle rules provide expanded authority to pay for certain types of vehicle theft and vandalism occurring anywhere on post and, in limited circumstances, theft and vandalism off post.[7] To determine whether these new rules apply, claims personnel must look to the date on which the incident occurred rather than the date the claim was filed.

For example, if a claimant's vehicle is vandalized in the post exchange parking lot on 30 March 1998, his claim would not be payable, regardless of when it was filed. The previous version of the claims regulation would apply, and it generally only permits payment for vehicle vandalism which occurs at quarters.[8] If the vandalism occurred on 1 April 1998, the new regulation would apply and would permit payment for vandalism occurring anywhere on post under these circumstances.[9] Therefore, the claim would be payable, as long as the claimant could produce clear and convincing evidence that the vandalism occurred on post. Lieutenant Colonel Masterton.

Carrier Liability Rates

Recent changes to non-temporary storage and direct procurement method maximum liability rates seem to have caused some confusion that has extended to all categories of carrier liability. This note reviews shipment categories and liability rates to assist practitioners in applying these rates properly.

Most personal property shipments are transported using a "through government bill of lading" (TGBL), under which a single carrier or freight forwarder is responsible for all phases of the transportation (including packing, moving, temporary storage, and delivery). The TGBL carrier or forwarder may perform these functions with its own personnel or contract with other companies for all or part of the transportation. If the TGBL carrier or forwarder contracts with other companies, however, those companies become agents of the carrier or forwarder, and the carrier or forwarder is liable for all loss and damage.

Shipments that use a TGBL may be within the United States or between the United States and some point overseas.[10] The procurement or contracting with these carriers and forwarders is centralized at the Military Traffic Management Command Headquarters. There are various codes to describe these shipments.

Shipping Codes and Carrier Liability Rates

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1. U.S. Dep't of Army, Reg. 27-20, Legal Services, Claims (31 Dec. 1997) [hereinafter AR 27-20].

2. U.S. Dep't of Army Pam. 27-162, Legal Services, Claims Procedures (1 Apr. 1998) [hereinafter DA Pam 27-162].

3. *See* AR 27-20, *supra* note 1, para. 1-22 (stating that "[a]ny instructions in this regulation that both differ from the previous version and affect the adjudication of a claim apply only to claims filed on or after the effective date of this regulation").

4. U.S. Dep't of Army, Reg. 27-20, Legal Services, Claims (1 Aug. 1995) [hereinafter Previous AR 27-20].

5. U.S. Dep't of Army, Pam. 27-162, Legal Services, Claims (15 Dec. 1989).

6. AR 27-20, *supra* note 1, para 11-5h(6) (providing that "[t]o the extent the provisions of this paragraph [on vehicle theft and vandalism claims] make vehicle loss claims payable, when they would not be payable under previous policy, such claims will be considered for payment only if the loss occurred after the effective date of this regulation").

7. *See* AR 27-20, *supra* note 1, para. 11-5h. *See also* Lieutenant Colonel Masterton, *Policy Changes to be Published in New Regulation*, Army Law., Feb. 1998, at 54.

8. *See* Previous AR 27-20, *supra* note 4, para. 11-5e.

9. *See* AR 27-20, *supra* note 1, para. 11-5h.

10. When the shipment is between the United States and some point overseas, the bill of lading is an "international through government bill of lading" or ITGBL.

Shipping codes 1 and 2 are used for household goods shipments within the continental United States (CONUS) that are fully paid for by the government. Since 1 May 1987, the maximum rate of the carrier's liability for these categories of shipments has been $1.25 multiplied by the net weight of the shipment.

Shipping codes 3, 4, and 6 are used for household goods shipped between CONUS and overseas areas (including Hawaii). Prior to 1 October 1993, the carrier's liability was sixty cents multiplied by the weight of the article. From 1 October 1993 through 30 September 1995, the rate was $1.80 multiplied by the weight of the article. Effective 1 October 1995, the liability rate was changed to $1.25 multiplied by the net weight of the shipment.

Household goods that are placed in containers by a civilian carrier and are transported to a military ocean terminal use shipping code 5. The Military Sealift Command transports the items to the designated delivery port, where a civilian carrier receives the articles and transports them to their final destination. The rate of carrier liability has been, and remains, the same as the rates for codes 3, 4, and 6.

When household goods are placed in containers by a civilian carrier and transported to a Military Airlift Command (MAC) terminal, shipping code T is used. The MAC transports the articles to the designated delivery terminal, where a civilian carrier receives the articles and transports them to their final destination. The carrier liability rates are the same as for codes 3, 4, 5, and 6.

Code 5 and code T shipments are similar in that the government and a civilian carrier share the shipping functions. In both of these situations, any initial demand against a civilian carrier will only be for fifty percent of the overall recovery amount. If the carrier refuses to pay or does not reply in a timely manner, the charge will be increased to 100%.

Shipping codes 7, 8, and J are used for worldwide shipment of unaccompanied hold baggage. The rates are the same as for codes 3, 4, 5, 6, and T.

Direct Procurement Method Shipments

The transportation officer may arrange to ship personal property by contracting with separate companies for each phase of the shipment. These shipments are known as direct procurement method shipments (DPM), because the transportation officer procures the necessary services directly through local or regional contracts. A government bill of lading may be used for each or any one of the segments of a DPM shipment.

There are several types of DPM shipments. One of the most common is a local move. The transportation office may arrange with a single DPM contractor for a local, intra-city, or intra-regional shipment that involves all phases of the shipment—packing, pickup, transportation, delivery, and unpacking. These are known as Schedule III shipments, and the liability is the same as for TGBL shipments: $1.25 multiplied by the net weight of the shipment.

A second type of DPM shipment involves more than one contractor. Sometimes the transportation office will arrange for one DPM contractor who will pack the goods, place them in large shipping boxes or containers, load them on a truck, and take them to a freight terminal near the residence where the goods were packed. This company is referred to as a packing and containerization contractor, the outbound contractor, or the Schedule I contractor. When the first contractor is finished, a second contractor, usually a motor freight company rather than a household goods carrier, will move the containers as a freight shipment under a government bill of lading to a terminal near the destination address. The transportation office will then contract with the DPM packing and containerization carrier for the area of the destination address (also known as the inbound or Schedule II contractor) to transport the property from the inbound terminal to the destination address and to unpack and to place the property in the home. In these cases, the maximum liability for each contractor may be different.

The maximum liability for the freight carrier will be listed on the government bill of lading. The liability for the outbound (Schedule I) and Inbound (Schedule II) carrier is $.60 per pound per item, unless there is evidence of actual negligence by the carrier. If there is evidence of negligence, the carrier is liable for the full value of the loss or damage. Full value in this context means the actual repair or depreciated replacement cost.

Normally, the claim for loss or damage noted on delivery will be sent to the inbound contractor, and maximum liability will be $.60 per pound per item. If the contractor noted damages on a joint inspection with the terminal operator or freight carrier, the liability for those damages shifts back to the terminal or freight carrier. If the inbound carrier has evidence (for example, photos, statements, or government inspection reports) that the damage is the result of poor packing by the outbound carrier, liability for the loss can be shifted to the outbound carrier. Because there is likely to be evidence of negligence in such situations, the outbound carrier is liable for the full value of the loss.

For overseas DPM shipments, the local packing and containerization contractor will pack, pickup, and transport the shipment to a terminal at an air or sea port. The goods will be transported by an air or ocean carrier to a terminal in the destination country. The inbound DPM contractor will pick up the shipment from the inbound terminal. This contractor may either carry the shipment to another terminal for onward transportation by a freight carrier; take it to a terminal where it will be picked up by a delivery contractor; or, more often, deliver it directly to the owner. The liability of the outbound packing and containerization contractor and the inbound delivering carrier is the same as discussed above. In overseas DPM shipments, however, the air or ocean leg of the movement may be through the Defense Transportation System (DTS) on Department of Defense (DOD) vessels or aircraft. In those cases, a transportation control number will be entered in block 15 of the government bill of lading. If joint inspection at the inbound terminal reveals that damage or loss occurred while the goods were in the DTS, the Army will not recover for that loss or damage, because the Army does not assert claims against other DOD or government agencies.

Non-temporary Storage

Household goods are sometimes placed in a warehouse for long term storage (not storage in transit). For all storage shipments booked prior to 1 January 1997, the liability of the warehouse is $50 per line item. For shipments booked on or after 1 January 1997, the liability is the same as for TGBL shipments: $1.25 multiplied by the net weight of the shipment.

Conclusion

The following chart indicates carrier liability rates and was developed as a guide to answer most questions in this area. The chart should be used in conjunction with the information contained in *Department of the Army Pamphlet 27-162*,[11] paragraphs 3-8 through 3-15. Mr. Goetzke and Mr. Lickliter.

Code 1 & 2	**CODES 3, 4, 5, 6, 7, 8, T, & J:** [a]	**DPM**	**Nontemporary Storage**
Since 1 May 1987: $1.25 X net weight of the shipment.	Prior to 1 October 1993: $.60 X weight of the article. 1 October 1993 through 30 September 1995: $1.80 X weight of the article. 1 October 1995 to present: $1.25 X weight [b] of the shipment.	Schedule I & II contractors: $.60 X weight of the article (if no evidence of carrier negligence). If there is evidence of negligence: full value of the loss. [c] If sufficient evidence exists to shift liability from the delivery carrier to the origin (packing) outbound carrier, there is probably sufficient evidence to hold the outbound carrier liable for the entire amount of loss, in which case the liability is the repair or depreciated replacement cost. Schedule III contractors (intra-city/intra-region moves): $1.25 X weight of the shipment. Line haul contractors (usually a freight carrier): maximum liability is stated on the government bill of lading.	Booked prior to 1 January 1997: $50 per line item. Booked on or after 1 January 1997: $1.25 X weight of the shipment.

a. When Code 5 or Code T is involved, the initial demand on the carrier should be for only 50% of the recovery amount. If the carrier refuses to settle or does not make a timely response, the charge will be increased to 100%.

b. Liability is based on gross weight for codes 7, 8, and J. Net weight is used to determine liability for codes 3, 4, 5, 6, and T.

c. Full value in this context means the repair or depreciated replacement cost.

11. DA PAM 27-162, *supra* note 2.