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November 15, 2005

Mark G. Oesterle  
Division Administrator  
Motor Carrier Division Office  
U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
Midwestern Service Center  
19900 Governors Drive, Suite 210  
Olympia Fields, IL 60461-1021

**VIA FACSIMILE (708-283-3565)  
and First Class Mail**

Chief Safety Officer  
Assistant Administrator  
U.S. Department of Transportation  
Attn: Dockets  
400 7<sup>th</sup> Street, S.W., Room PL-401  
Washington, D.C. 20590

**VIA First Class Mail**

RE: Marten Transport, Ltd.  
Case No.: WI-2005-0197-US0563

Dear Mr. Oesterle and Chief Safety Officer:

Our law firm represents Marten Transport, Ltd. Mr. Oesterle's letter of October 26, 2005 has been forwarded to our attention regarding the above-referenced case.

This letter constitutes Marten Transport's Reply to the October 26<sup>th</sup> Notice of Claim for alleged violations of 49 CFR § 382.211. The Notice of Claim sets forth an assessed Civil Penalty of \$17,160. This Reply is presented pursuant to 49 CFR § 386.14(b), and addresses the four requirements in order:

1. *An admission or denial of each allegation of the claim or notice and a concise statement of facts constituting each defense.*

**Marten Transport's Response:** Marten Transport denies and contests the Notice of Claim in regard to the amount of the civil penalty being set at \$17,160. This defense is based upon the following statement of facts:

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On November 12, 2004, Marten Transport's Safety Department instructed its driver, (b)(3); (b)(7)(D), report for a random drug test. Marten Transport's Safety Department coordinates all drug and alcohol tests for the Company. All applicable Department of Transportation regulations and Marten Transport employment procedures were adhered to in regard to this random drug test of (b)(3); (b)(7)(D). At the time of Marten Transport's instruction to him to report for a random drug test, (b)(3); (b)(7)(D) was in dispute with the Company regarding certain payroll issues. After receiving the random drug test instruction on (b)(3); (b)(7)(D) resigned his employment. He never reported for his random drug test.

In mid-November 2004, Marten Transport's Operations Department worked with Mr. (b)(3); (b)(7)(D) in resolving his payroll issues and concerns, and returned him to work. However, because of (b)(3); (b)(7)(D) resignation, Marten Transport's Safety Department had never informed its Operations Department of (b)(3); (b)(7)(D) refusal to report for a random drug test. As a result, the Operations Department was not aware of (b)(3); (b)(7)(D) refusal to report for the random drug test. The Safety Department was not informed until May 2005 that (b)(3); (b)(7)(D) had returned to work in mid-November 2004.

As such, the mistake that occurred regarding (b)(3); (b)(7)(D) was simply a communication breakdown between two Marten Transport departments. The Company did not intentionally permit (b)(3); (b)(7)(D) to continue operating a commercial motor vehicle after he had refused to report for a random drug test. Indeed, if the Operations Department had been aware of (b)(3); (b)(7)(D) it would not have allowed (b)(3); (b)(7)(D) to resume driving a truck for the Company until he had complied with 49 CFR § 40.285(a). Likewise, if the Safety Department was aware that the Operations Department had rehired (b)(3); (b)(7)(D) it would have immediately informed the Operations Department that he could not continue driving for the Company until he had met with a Substance Abuse Professional ("SAP"), pursuant to 49 CFR § 40.285(a) for evaluation, referral, and education/treatment. In fact, in approximately May of 2005, when the Safety Department first became aware that the Operations Department had rehired (b)(3); (b)(7)(D), it specifically required him to make an appointment with an SAP. The Company provided (b)(3); (b)(7)(D) with approximately a 30-day period to set up such an appointment with an SAP and report the results by June 20, 2005. Marten Transport informed (b)(3); (b)(7)(D) that if he did not, he would be terminated.

In a typical situation involving a refusal to report for a drug or alcohol test, Marten Transport terminates the employee. Marten Transport would allow the driver to return to operating a commercial motor vehicle only if the driver met the requirements of 49 CFR § 40.285(a). (b)(3); (b)(7)(D) situation was a bit unusual in that he resigned and then was rehired. There was also a factual dispute raised by (b)(3); (b)(7)(D) as to whether his

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November 12, 2004 resignation occurred prior to Marten Transport informing him that he needed to report for a random drug test. Furthermore, as noted above, Marten Transport's Safety Department was not aware of (b)(3); (b)(7)(D) return to work until mid-May 2005. As soon as it learned of this, the Safety Department informed (b)(3); (b)(7)(D) that he needed to meet with an SAP by June 20, 2005. It was due to this very unusual fact scenario that (b)(3); (b)(7)(D) "fell through the cracks," and was allowed to continue to drive subject to his satisfying 49 CFR § 40.285(a) within 30 days.

Significantly, in the approximately 15 years that Marten Transport has conducted drug testing, this is the first incident of its kind. The only reason this alleged violation occurred was due to a communication breakdown as the Safety Department maintained (b)(3); (b)(7)(D) resting information on a confidential basis following his resignation in November 2004. The Operations Department simply rehired a driver who they had no information had refused to report for a drug test.

In order to avoid this communications mistake in the future, Marten Transport has implemented a new procedure which effectively abates the cited violation. When there is a positive test result or refused drug/alcohol test, the Safety Department immediately notifies the Human Resources Department, which enters the driver as terminated in Marten Transport's personnel system. This process prevents any department, including Operations, from using a driver without first communicating with Human Resources. Of course, if Operations now contacts Human Resources regarding a driver who had been terminated, it would learn that the termination was due to either a positive drug test or a refusal to report for a drug/alcohol test for a driver. By implementing this procedure, Marten Transport is confident that this type of violation will never happen again at the Company.

The Company has no history of prior offenses, and as set forth above, there was no intentional violation by Marten Transport. Based upon this statement of facts which sets forth the nature, circumstances and extent of the violation, Marten Transport respectfully requests the Department of Transportation to reconsider the amount of the civil penalty.

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- If the respondent contests the claim or notice, a request for an oral hearing or notice of intent to submit evidence without an oral hearing must be contained in the reply. A request for a hearing must list all material facts believed to be in dispute. Failure to request a hearing within 15 days after the Claim Letter is served, or 30 days in the case of a Notice of Investigation, shall constitute a waiver of any right to a hearing.*

**Marten Transport's Response:** Marten Transport hereby contests the amount of the civil penalty as set forth in the Notice of Claim and respectfully requests an oral hearing through the Federal Motor Carrier Safety Administration's binding arbitration program. Marten Transport has set forth above a statement of facts, but is not aware whether any of them are in dispute by the Department.

- A statement of whether the respondent wishes to negotiate the terms of payment or settlement of the amount claimed, or the terms and conditions of the order.*

**Marten Transport's Response:** Marten Transport would be interested and willing to negotiate the terms of payment, the settlement of the amount claimed, and/or the terms and conditions of the Order. Marten Transport respectfully requests such negotiations take place as soon as possible.

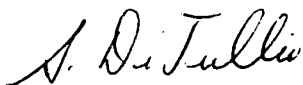
- Certification that the reply has been served in accordance with §386.31.*

**Marten Transport's Response:** Attached to this letter is a Certificate of Mailing attesting that this Reply has been served as required by 49 CFR § 386.31. Marten Transport states that there was not a Service List attached to the Notice of Claim, so this Reply has only been mailed to the two recipients set forth above.

Please contact me with any questions regarding this Reply and in regard to the negotiations of this Notice of Claim as set forth in Marten Transport's Reply to requirement three. Your attention to this letter is most appreciated.

Very truly yours,

DEWITT ROSS & STEVENS s.c.



Stephen A. DiTullio

SAD:bmf

cc: Ms. Susan Deetz

CERTIFICATE OF MAILING

STATE OF WISCONSIN )
) ss.
COUNTY OF DANE )

I hereby certify that I am an employee of DeWitt Ross & Stevens S.C., attorneys for Marten Transport, Ltd. in connection with the Notice of Claim served on it by the United States Department of Transportation, Federal Motor Carrier Safety Administration, Case No. WI-2005-0197-US0563, and that on the 15th day of November 2005, I caused a copy of the Reply of Marten Transport, Ltd. to the October 26th Notice of Claim to be mailed, properly addressed and postage pre-paid, to:

Mark G. Oesterle
Division Administrator
Motor Carrier Division Office
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
Midwestern Service Center
19900 Governors Drive, Suite 210
Olympia Fields, IL 60461-1021

Chief Safety Officer
Assistant Administrator
U.S. Department of Transportation
Attn: Dockets
400 7th Street, S.W., Room PL-401
Washington, D.C. 20590

Dated: November 15, 2005

Brenda Ferris
Brenda M. Ferris

Subscribed and sworn to before me this 15th day of November, 2005.

Notary Public, State of Wisconsin. My commission expires: 01/26/08