

March 11, 2004

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In Re:

American Van Services, Inc.

Claimant

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Claims Case No. 04020502

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A sofa with soil and stains prior to shipment was found at delivery to have a black streak on the seat cushions. The carrier did not inspect or otherwise investigate the damage. To avoid liability, the carrier must prove that the black streak was pre-existing damage (PED). The fact that the pre-existing soil and stains may have been removed in the course of cleaning to remove the black streak is incidental as long as no additional costs were incurred. The carrier has not provided evidence that the black streak was PED or that extra cleaning costs were incurred.

### DECISION

American Van Lines, Inc. (American), appeals the January 8, 2004, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03111711, which disallowed American's claim for a refund of \$239.96 for damage to four inventory items in a shipment of household goods (HHG). In its appeal, American only addresses the \$140.00 offset for damage to a sofa (inventory item 105). That is the only item which will be addressed in this appeal. [\(1\)](#)

### Background

The record indicates that the member's HHG were picked up in Pensacola, Florida, on May 26, 2000, and delivered to Miramar, California, on July 3, 2000. In the HHG inventory prepared before shipment, the sofa was described as soiled, rubbed, and stained. On the DD Form 1840 completed by the member and American's agent at delivery, the couch was noted to have a black streak on the seat cushions. The record indicates that the shipper's damage claim was processed in

a timely manner. There is no indication that American availed itself of its right to inspect the sofa. The shipper submitted an estimate of \$140 for cleaning the sofa, and that amount was collected from American by offset. American now asserts that it did not have to inspect the shipper's HHG. It contends that the Navy should not have accepted the cleaning estimate because it was not sufficiently detailed. It argues that the black streak on the sofa was not move-related, *i.e.*, that it was pre-existing damage (PED).

### Discussion

Generally, when a claim is made for damage to HHG, the shipper must show tender to the carrier, delivery in a more damaged condition, and the amount of damages. Thereafter, the burden shifts to the carrier to prove that it was free from negligence and that the loss was due to an excepted cause. *See Missouri Pacific Railroad Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964).

American questions whether the second portion of the above test (delivery in a more damaged condition) has been met in this case. The inventory stated that, prior to shipment, the sofa was soiled, rubbed, and stained. Upon delivery, American's agent and the shipper noted on the DD Form 1840 the presence of a black streak on the seat cushions. The words on the 1840 would appear to indicate new damage. American correctly states that it was not required to perform an inspection to view the damage. However, since it did not inspect or otherwise pursue information about the damage to the sofa, it can provide no evidence to prove that the black streak was part of the PED noted on the inventory. A mere statement to that effect is not evidence. A *prima facie* case has been established, and American has presented no evidence to reduce its liability. *See* DOHA Claims Case No. 98021009 (March 5, 1998); B-252972.2, July 14, 1995; and B-256229, Sept. 8, 1994.

American argues that the Navy should not have accepted the estimate obtained by the shipper for the cleaning of the sofa because the estimate was not sufficiently detailed. Repair estimates for many items do need to be detailed, and the exact nature and extent of the proposed repair is often a major issue in the settlement of the shipper's claim. However, the estimate at issue here is for upholstery cleaning, and a flat rate based on the size of the piece of furniture is not unusual. The fact that some PED is repaired along with transit damage does not reduce a carrier's liability if the repair of PED does not result in extra cost to the carrier. *See* B-256229, *supra*. In this case, cleaning was required to remove the black streak. The fact that pre-existing soil and stains may have been cleaned is incidental, and American has not demonstrated that removal of the soil and stains resulted in extra cost to American.

We have reviewed the decisions cited by American in its appeal. We view the decisions cited above as more relevant to the facts in this case. American is reminded that General Accounting Office settlements beginning with the letter Z cannot be cited as precedent for any other case.

### Conclusion

We affirm the Settlement Certificate.

/s/

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Michael D. Hipple  
Chairman, Claims Appeals Board

/s/

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William S. Fields  
Member, Claims Appeals Board

/s/

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Jean E. Smallin  
Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading AP-514,936; Navy Claim No. 0311334; and Carrier Claim No. Unknown.