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In Re:

American International Moving Corporation

Claimant

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DATE: July 15, 1997

Claims Case No. 97062427

## CLAIMS APPEALS BOARD DECISION

### DIGEST

Generally, when settling a claim for loss or damage, a common carrier by motor vehicle of household goods shall use the replacement costs of the lost or damaged item as a base to apply a depreciation factor to arrive at the current actual value of the lost or damaged item; however, the government limits its recovery in subrogation of a service member's claim to costs of repair when those costs are less than depreciated replacement costs and when repair will restore the property owner to the condition he was in with respect to the property prior to shipment. When the government limits its recovery from the carrier to repair costs, the repair costs generally involve the full costs of repair, not a depreciation of them.

### DECISION

American International Moving Corporation (American) appeals the May 9, 1997, Settlement of the Defense Office of Hearings and Appeals (DOHA), under DOHA Claim No. 97022019, which disallowed American's claim for \$69.01, part of the amount offset by the Air Force to recover for damage in transit to the household goods of a service member.<sup>(1)</sup>

### Background

The record shows that the shipment was picked up at Shalimar, Florida, on August 16, 1995, and it was delivered at Suisun City, California, on September 25, 1995. The shipper reported the remote control missing from Descriptive Inventory 27, a 27-inch Hitachi television. The shipper submitted an estimate from a television repairer which listed a remote for a 27-inch television (27AX2B) and an amount of \$72.92. Another television, Hitachi Model CT1965, also appears on the estimate. The shipper also reported that the right rear turn signal mount and the left front turn signal mounts of his 1983 Honda CB 1100F motorcycle, Descriptive Inventory 99, were broken. The Air Force offset \$40.90, the replacement cost for these parts ("winkers").

On appeal American contends that the \$72.92 noted on the shipper's estimate referred to a "cracked PCB board" for repair, and therefore this amount was not the depreciated replacement cost of the remote. American's position on the "winkers" is that they should have been depreciated by 75 percent, and as a result, American claims a refund of \$30.67.

### Discussion

The issue regarding the remote control involves the interpretation of the repair estimate. The top of the estimate refers to a Hitachi Model CT1965, but one of the lines which followed this data contained the handwritten words "remote," "27AX2B," "Hitachi" and "72.92" crossed out. The line below this contained the following preprinted note: "TECHNICAL SERVICE PERFORMED AT ABOVE SHOP IF OTHER THAN ABOVE , GIVE ADDRESS" followed by an arrow and a blank space. After the blank space, the preprinted words "TOTAL PARTS" appear and are followed by a handwritten "72.92." The next line contained the handwritten words "cracked PCB board," followed by the preprinted "TAX" and a handwritten "5.29." The next line contained the handwritten "& broken connectors" followed by the preprinted "TECHNICAL CHARGE" and the handwritten "120.00."

We agree that the estimate was poorly drafted, but its intent was very clear when read together with the other documents in the claim, particularly the Schedule of Property and Claim Analysis Chart, DD Form 1844, and the Notice of Loss or Damage, DD Form 1840R. The estimate covered the loss of the remote as well as damage to the unrelated CT1965 television, Descriptive Item 83. On the DD Form 1844, the service member claimed damage to Descriptive Item 83, a 19" Hitachi Model CT1965, and the loss of the remote control to the 27" Hitachi television, Model 27AX2B, under Descriptive Item 27. On the DD Form 1844, the replacement cost of the remote was \$72.92, for which the Air Force offset \$58.34. The damage to the 19" television was assessed at \$120. Although the estimator poorly placed this information on the estimate, all of the information is present. The Notice of Loss or Damage also indicated that the remote for Item 27 was lost, and Item 83, a 19" Hitachi, was inoperative. If there was any question regarding the estimate, American could have clarified it when it completed its investigation of the claim pursuant to 49 C.F.R. 1005.5.

American cites us to no authority which holds that a carrier is liable only for the depreciated repair costs of the "winkers." The award of depreciated repair costs to this shipper clearly would not have placed him in the same condition that he was in with respect to this property prior to the shipment. Generally, when settling a claim for loss or damage, a common carrier by motor vehicle of household goods shall use the replacement costs of the lost or damaged item as a base to apply a depreciation factor to arrive at the current actual value of the lost or damaged item. See 49 C.F.R. 1005.5(b). The Air Force's policy thereafter is to recover from the carrier the least of depreciated replacement cost, repair cost or the carrier's contractual liability. See para. 3.12 of Air Force Instruction 51-502, Personnel and Government Recovery Claims, 25 July 1994. Under paragraph 2.71.3 of the Instruction, there is an exception for depreciation of parts that claimants would separately purchase or replace during the useful life of the item, but American did not demonstrate that these "winkers" were such parts. American's contractual liability is in accord with the general policy. See B-271364, July 1, 1996 and Fogarty Van Lines, B-248982, Aug. 16, 1993. Thus, the contractual liability and policy is carrier liability for depreciated replacement cost or repair cost.

### **Conclusion**

Accordingly, we affirm the Settlement.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Joyce N. Maguire

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Joyce N. Maguire

Member, Claims Appeals Board

Signed: Christine M. Kopocis

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Christine M. Kopocis

Member, Claims Appeals Board

1. The property was transported under Personal Property Government Bill of Lading

SP-267,066. It involves Air Force Claim No. Travis AFB 96-73 and carrier reference 89084.