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In Re:

Resource Protection

on behalf of

Carlyle Brothers Van Lines, Inc.

Claimant

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DATE: December 3, 1998

Claims Case No. 98112017

## CLAIMS APPEALS BOARD DECISION

### DIGESTS

1. A carrier fails to overcome an otherwise *prima facie* case of liability against it for transit damage to the baffle system in a waveless waterbed mattress merely by arguing that the shipper failed to tender the mattress in an accordion-type format and that gripping the mattress into such a shape was the only proper way to drain a waterbed mattress with baffles. The carrier did not offer evidence that the service member failed to drain the mattress in accordance with the manufacturer's instructions for the specific model of waterbed mattress involved; did not offer probative evidence that gripping the mattress into an accordion shape was the only proper way to drain the mattress; and failed to distinguish between draining the mattress and folding, rolling or gripping it. Moreover, the carrier's position on the proper method of draining and folding or rolling a baffled waterbed mattress is impeached by publicly available information from the industry suggesting that some types of waterbed mattresses with baffles may be folded for storage and transportation, while others cannot be folded and generally must be rolled.

2. Similarly, a carrier cannot overcome an otherwise *prima facie* case of liability for the mattress by arguing without empirical evidence that damage to the baffle system is an internal damage which is not observable at pick-up because a carrier cannot determine whether a mattress is waveless (with baffles) or non-waveless. This argument likewise is impeached by publicly available information that the baffle system may be observable.

### DECISION

Resource Protection, on behalf of Carlyle Brothers Van Lines, Inc. (Carlyle), appeals the October 20, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98100202. Among other things, the Settlement Certificate disallowed Carlyle's claim of \$682 which Resource Protection contends was the amount improperly offset against Carlyle for a recovery of transit damage to a water bed and for a missing rocking chair belonging to the service member. [\(1\)](#)

### Background

The record indicates that Carlyle picked up the service member's household goods in Colorado Springs, Colorado on July 17, 1996, and delivered them to the member in Chester, Virginia, on August 22, 1996. There are two items involved in this appeal: Descriptive Inventory Item Number 206 a waveless waterbed mattress with no pre-existing damage (PED) noted at pickup but delivered with destroyed baffles (\$450); and Item Number 100/102, a missing oak and canvas folding rocking chair in a 4.5 cubic foot carton marked as "garage" (\$170). The Notice of Loss or Damage (DD Form 1840R) dispatched on October 8, 1996, indicated that the shipper had advised Carlyle to fold the mattress properly, but that Carlyle had merely shoved it into a box. The member also stated in a separate statement that the rocking chair was in its original box in the garage when Carlyle received it.

Resource Protection contends that if the member had properly drained the water from the mattress involved, as he was required to do, no baffle damage would have resulted. Resource Protection alleges that the mattress should have been "gripped" into the shape of an accordion to properly drain it and suggests that it necessarily had to be in that shape when tendered to the carrier. Resource Protection alleges that a carrier cannot determine whether a waterbed mattress is waveless or non-waveless when the mattress is lying flat or folded on the floor, and that the member did not advise Carlyle that a waveless mattress was involved. A waterbed mattress is composed of heavy dark vinyl, and Resource Protection contends that it is impossible to observe the baffles in such circumstances. Concerning the rocking chair, Resource Protection contends that there is no evidence of tender because Carlyle's agents would have identified it as a rocking chair on the inventory because the outside of the box would have indicated that it was a rocking chair.

Carlyle's supporting evidence on the waterbed mattress consists of a partially redacted June 16, 1989, statement in another claim purportedly made by an individual at Tradewinds Waterbeds in Santa Clara, California, describing the possibility that the interior portions of a waterbed mattress would become entangled if the mattress is not properly gripped during drainage. There is no indication that Resource Protection had inspected the damage noticed in the DD Form 1840R involved in this claim, and Resource Protection did not address its arguments with respect to the specific model of the waterbed mattress involved here.

### Discussion

To establish a *prima facie* case of liability for transit loss or damage, the service member, or the military service that succeeded to the member's claim through subrogation, must establish that he delivered the item to the carrier in good condition, that it was not delivered or it was delivered in a damaged condition, and the amount of damages. *See Missouri Pacific Railroad Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964).

Resource Protection essentially argues that the mattress was tendered to it in apparent good order and that its agent would not have had notice of any internal defect to the baffles to which it could take exception on the Descriptive Inventory at origin. Resource Protection also argues that if a waterbed mattress has baffles (waveless), then there is affirmative evidence that the service member damaged it because there was no indication of tender in an accordion-type format. These factual assertions and suggestions are questionable. Publicly available information indicates that some types of waterbed mattresses with baffles may be folded for storage and transportation, while others cannot be folded and generally must be rolled. The important point is that the shipper must follow the manufacturer's instructions for the specific mattress.<sup>(2)</sup> Notwithstanding other problems with the Tradewinds' statement, the authority in Footnote 2, at a minimum, raises an issue concerning the relevancy of the Tradewinds statement to a mattress purchased in June 1994.<sup>(3)</sup> The authority in Footnote 2 also suggests that drainage is a separate process from folding or rolling for storage or transportation. In summary, we find nothing to support Resource Protection's position that all baffled waterbed mattresses must result in an accordion format after proper drainage. Resource Protection did not refer to the manufacturer's instructions on proper drainage in presenting its defense.

Resource Protection's argument that damage to the baffles would have been unobservable, is also questionable. The authority cited in Footnote 2 specifically notes that square or circular baffles may be visible after draining. This directly contradicts Resource Protection's argument that the baffles are never visible. Whether or not the baffles were visually observable, the same authority also indicates that the process of folding or rolling involves touching the mattress and feeling the baffles. The member's DD Form 1840R statement here indicates that he had advised Carlyle's agent to fold the mattress properly; therefore, the agent had the opportunity to observe the condition of the baffles in this manner.<sup>(4)</sup> It is just as likely that baffle damage resulted from improper folding by Carlyle's agent after proper drainage.

There is sufficient basis for a *prima facie* case of carrier liability on the folding rocking chair. Carlyle chose to describe this carrier packed item simply as "garage." This type of generalized description invited a more particular description from the shipper, and the shipper provided such an explanation in a December 1996 written statement which recounted what he shipped and the circumstances which placed it in the garage on moving day. Resource Protection assumes, without evidentiary support, that if the carton involved contained a rocking chair, the carrier's agent would have marked it as such. However, there is no showing that the contents of the box would have been described on the outside, and even if they were, there is no basis for the assumption that Carlyle's agent would have marked it as a rocking chair when

it appears that Carlyle generally marked anything found in the garage simply as "garage."

### **Conclusion**

We affirm the Settlement.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. This matter refers to Personal Property Government Bill of Lading YP-234, 738; Army Claim No. 97-311-0222; and carrier's file 97-0017.

2. *See, for example, The Atlas How to Move Your Waterbed Page* presented by Atlas Van Lines on the Worldwide Web at [www.atlasvanlines.com/waterbed.html](http://www.atlasvanlines.com/waterbed.html). While we do not offer this authority as substantive proof of the type of care required for the mattress involved in this claim, we believe that it impeaches Resource Protection's general arguments to such a degree that Carlyle cannot meet its burden of proof on the claim.

3. The Tradewinds' statement lacks probative value for other reasons, including the lack of authentication, its age, questions surrounding the redactions, and its failure to identify the type of waterbed mattress involved and how that compares with this mattress.

4. The Army's administrative report cited three Comptroller General decisions which held the carrier liable for baffle damage to waterbed mattresses. *See Resource Protection*, B-270319, May 21, 1996; and *Andrews Van Lines*, B-258966, Feb. 15, 1995, *aff'd on reconsideration*,

B-258966.2, Dec. 5, 1995. We do not find these decisions helpful in deciding the instant claim because the decisions appear to involve allegations that the baffles were damaged by the shipper's failure to drain all of the water from the mattresses. Resource Protection's arguments here are somewhat different.