

October 28, 1999

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In Re:

National Claims Service

on behalf of

Aalmode Transportation Corp.

Claimant

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Claims Case No. 99092921

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A carrier's liability for transit damage is the lesser of the cost of repair or replacement cost (less depreciation and salvage). The adjudicating Naval Legal Service Office should credit a carrier for salvage when, under a proper comparison of depreciated replacement cost and repair costs, the carrier is liable for a lesser amount of damages under the depreciated replacement cost measure of damages. If the adjudicator uses the repair measure of damages, but reduces the member's recovery for repairs to reflect pre-existing damage (PED) to the property, he should also consider PED in any competing calculation of the carrier's damages under the depreciated replacement cost method of measuring damages.

### DECISION

The Naval Legal Service Office Southwest (NLSOSW) appeals the September 8, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98062220 which partially allowed (\$43.75) the National Claims Service's request for a refund of \$342.04 of the amount set off by the Navy for transit loss or damage to the shipment of a service member's household goods by Aalmode Transportation Corporation (Aalmode).<sup>(1)</sup> In deciding the narrow issue involved, we relied on the basic legal authorities; therefore, we do not consider this decision as legal precedent.

### Background

A solid mahogany dresser purchased in April 1960 for \$400 was reported to have sustained severe mildew damage when it was moved between Florida and California by Aalmode in April 1994. When the NLSOSW adjudicated the member's claim against the Navy, it found that the repair cost was \$350 and the replacement cost was \$699.99. The NLSOSW also found that there was substantial pre-existing damage (PED) which warranted a further reduction in the member's recovery from the Navy. The member chose to retain the damaged furniture and not turn it over to the carrier for salvage. The NLSOSW awarded repair costs, but reduced the recovery by 50 percent to reflect PED. Thus, the net award to the member was \$175.

In requesting DOHA's review, the National Claims Service stated its liability is \$175, minus a 25 percent depreciation credit, or \$131.25. Thus, it asked for a \$43.75 refund on this item for its client. In the Settlement Certificate, DOHA found that "because of the age of the dresser, it appears it should have been depreciated 75%, so the repair cost did exceed the value of the dresser." DOHA requested the Navy to refund the \$43.75 salvage credit.

In this appeal, the NLSOSW argues that DOHA committed error in finding a 75 percent rate of depreciation. The NLSOSW contends that the proper rate of depreciation was 64 percent, or two percent per year over 32 years.<sup>(2)</sup> Thus, the depreciated replacement value was \$252, or 64 percent of \$699.99. And because it applied repair costs, rather than depreciated replacement value, NLSOSW contends that Aalmode was not entitled to any credit for salvage.

### **Discussion**

The *Joint Military/Industry Depreciation Guide* (JMIDG) has recognized an upward or downward reduction to the rates of depreciation set forth in the JMIDG to reflect a departure from average care and/or usage of a piece of property. Substantial PED may indicate a deterioration from the average care/usage. In this case, the Navy found that the PED was so substantial that it warranted a 50 percent reduction in the recovery of repair costs, but for reasons that are unexplained, NLSOSW failed to also apply such a reduction when it calculated the dresser's depreciated replacement value. While DOHA's Settlement Certificate could have been more specific, it appears that DOHA's adjudicators also considered the Navy's finding that the member's recovery should be reduced to reflect substantial PED. DOHA's adjudicators reasonably concluded that the maximum depreciation applied to the dresser. The depreciated replacement value, therefore, was \$175 (\$699.99 x 25 percent residual value). The carrier timely requested the salvage, but the member chose to retain it. Thus, the *Joint Military-Industry Memorandum of Understanding on Salvage*, effective April 1, 1989, required a credit to the carrier of 25 percent of the item's depreciated replacement value. Under paragraph 2b of Item 5 of *Domestic Personal Property Rate Solicitation D-3* (effective November 1, 1993) the carrier was liable for the lesser of its limitation on liability or the cost of repair, replacement, or actual cash value of the item (less depreciation or salvage) at the time and place of the loss/damage. Applying a salvage credit to depreciated replacement costs results in the lowest carrier liability applicable to this transit damage.

### **Conclusion**

We affirm the Settlement Certificate.

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 SP-625,078; Navy Claim No. 94-1404; and National Claims Service's Claim No. X-2742B.

2. DOHA found that the dresser should have been depreciated over 34 years at 2 percent per year, or a total of 68 percent, prior to any additional depreciation for PED.