

January 28, 2000

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In Re:

Resource Protection.

on behalf of

Blue Sky Van Lines

Claimant

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Claims Case No. 99111907

## CLAIMS APPEALS BOARD DECISION

### DIGEST

Generally a carrier may receive a credit of 25 percent for the depreciated replacement value of the salvage of items on which the carrier pays depreciated replacement value where a service member disposes of salvage to which a carrier is entitled prior to the expiration of time in which the carrier had to exercise its rights under the *Military/Industry Memorandum of Understanding*.

### DECISION

Resource Protection, on behalf of Blue Sky Van Lines (BSVA), disputes \$533.92 of the Navy's setoff of \$2,213.50 arising from transit loss or damage to the household goods of a service member.<sup>(1)</sup> Due to administrative necessity, the Claims Appeal Board directly settles this matter.

### Background

The record shows that BSVA picked up the service member's household goods as a Code 1 shipment in Atlantic Beach, Florida, on May 21, 1996, and delivered them to the service member in Port Hueneme, California, on November 7, 1996. The member and BSVA's agent reported loss and damage noted at the time of delivery on a *Joint Statement of Loss or Damage at Delivery* (DD Form 1840), and the member dispatched a *Notice of Loss and Damage* (DD Form 1840-R) advising the carrier of additional loss and damage on January 13, 1997. In January 1997, the member's spouse filed her claim against the Navy, but due generally to the lack of information, the claim was not adjudicated until June 1997. On February 18, 1998, the Naval Legal Service Office Southwest asserted a subrogated claim against BSVA in the amount of \$4,168.41. BSVA received the claim on February 23, 1998. The record indicates that on March 2, 1998, and again on March 12, 1998, BVSA sent the member a letter advising him that it was exercising its salvage rights and intended to obtain possession of any item deemed to be damaged beyond repair. On March 23, 1998, the member's spouse, and attorney-in-fact for the member, advised BVSA that she had submitted her claim and was paid for damages about a year prior to that date, and that her "paperwork" stated that she only needed to keep the damaged furniture for six months. She advised BVSA that the damaged items had been "dumped." On March 26, 1998, BVSA forwarded the spouse's letter to the Navy and asked for salvage credit. While the "paperwork" allegedly authorizing the disposal of the salvage after six months was not identified, the administrative report does not dispute this assertion of fact. In the administrative report, the Navy denied BSVA credit for salvage on the basis that in its letters of March 2, 1998, and

March 12, 1998, the carrier failed to specifically identify the items on which it was claiming salvage.

Resource Protection seeks to recover \$135 because the Navy improperly setoff for transit damage to a television with internal damage. Additionally, Resource Protection claims \$258.19 on Descriptive Inventory Item 56 (a living room sectional) and \$42.73 on Item 9 (a bed) as credits for the salvage value for each item. Resource Protection believes that BSVA was improperly denied its salvage rights on these two items because the member improperly disposed of the salvage prior to the time allowed in the *Military/Industry Memorandum of Understanding* (MOU). Finally, Resource Protection seeks \$78 because required cleaning of clothing after transit is not appropriate.

### Discussion

The Navy agrees with Resource Protection concerning the television, but contends that \$119.70 is the appropriate amount of refund, not \$135. The Navy's accounting appears to be correct. While the *List of Property and Claims Analysis Chart*, DD Form 1844, indicates that BSVA's liability was \$135, the Navy's final demand letter of February 10, 1999, to BSVA's agent indicates that the claim against the carrier on the television was only \$119.70. The Navy used the \$119.70 amount, not the \$135 amount, as one of the numbers it added to reach the total amount that it setoff in July 1999, \$2,213.50.

The military services and the industry agreed by contract to procedures for claiming salvage and crediting a carrier with salvage value. This agreement is contained in the MOU which became effective on April 1, 1989. In relevant part the agreement states where the carrier has paid, or agrees to pay, a claim for the total depreciated replacement value of an item, the carrier that chooses to exercise salvage rights will take possession of salvage items not later than 30 days after receipt of the government's claim. The 30-day pick up period can be extended by mutual agreement. Where a service member refuses to cooperate with a carrier that is exercising its salvage rights, this problem should be referred to the claims office for prompt resolution. The carrier will not exercise a right to salvage when any single item is less than \$50, or when the item is hazardous or dangerous to the health or safety of the member's family unless it is an antique, figurine or crystal. For an individual item which has a depreciated replacement value of less than \$50, the carrier will receive no credit for salvage. *See generally* DOHA Claims Case No. 98022313 (March 5, 1998).

An argument may be made that BSVA could have acted more promptly in contacting Navy claims officials to enforce its salvage rights once it received the Navy's demand. However, the cause of the loss of the salvage in this claim was not BSVA's failure to pursue its salvage rights; it was the member's improper disposal of the salvage prior to the expiration of the time in which BSVA had to exercise these rights. The Navy stated that BSVA failed to identify which items it wished to salvage. Such an identification may be important in prompt enforcement of salvage rights when the salvage is preserved. *See* DOHA Claims Case No. 98022313, *supra*. But, it would be causally irrelevant when, admittedly, none of the salvageable items were preserved for the carrier. Since setoff is now complete, and BSVA has paid damages calculated in accordance with the depreciated replacement costs, credit for salvage is payable if otherwise proper.

On item 56, the Navy contends that to the extent that credit for salvage value is payable, the amount owed would be \$278.19, rather than \$258.19 as claimed by Resource Protection. BSVA should be paid the \$258.19 it claimed, but Resource Protection may amend the claim to \$278.19 which would be payable if otherwise proper. The Navy and BSVA appear to agree to the \$42.73 as credit for salvage value on account of Descriptive Inventory Item 9.

We agree with the Navy that there is no basis for a refund of \$78 on account of damage to Descriptive Inventory Items 35, 36 and 44. While Resource Protection is concerned about the propriety of paying damages to repair (i.e., pressing) clothing that was wrinkled in transit, the claim indicates that each of the items was also soiled in transit. The standard Descriptive Inventory specifically allows the carrier to note a soiled condition on any clothing or other fabric that may be pre-existing to transit, and the cleaning of unsoiled materials tendered for transit that are soiled in transit is not an unusual damage. We need not decide whether some wrinkling normally results from transit; soiling should not occur. The carrier has no basis for requesting a refund for pressing clothing also soiled in transit when laundering or dry cleaning is required to repair transit soiling, and pressing is incidental. *Compare* DOHA Claims Case 97090818 (October 28, 1997) and decisions cited therein.

### **Conclusion**

Aside from the television, we allow the carrier \$300.92 as credit for salvage value on Items 9 and 56, plus an additional \$20 on account of salvage value for Item 56 if Resource Protection timely amends BSVA's claim.

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-367,876; Navy Claim No. PCA 97-0752; and BSVA Claim No. 98-0012.