

DATE: May 25, 2000

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In Re:

Carlyle Van Lines, Inc.

on behalf of

Resource Protection

Claimant

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Claims Case No. 00050803

## CLAIMS APPEALS BOARD DECISION

### DIGEST

In adjudicating the amount of setoff from a household carrier to recover for damage to a dining chair, the military service decides whether the chair is depreciated as "Solid Wood (Expensive)" or "Ordinary Wood" under the *Joint Military/Industry Depreciation Guide*. The presence of cane or wicker as a component of the back part of a relatively expensive dining chair with a wood frame, does not, by itself, necessarily require the service to categorize the dining chair as "Ordinary Wood."

### DECISION

Resource Protection, on behalf of Carlyle Van Lines, Inc. (Carlyle), appeals the April 19, 2000, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in which this DOHA disallowed Carlyle's claim for a refund of \$127.50 of \$190 offset by the Air Force for damage to the household goods of a service member. [\(1\)](#)

### Background

The record indicates that on October 23, 1996, Carlyle obtained the members property in Colorado Springs, Colorado, and on November 7, 1996, delivered it to the member in Beaverton, Oregon. The Descriptive Inventory included Item 259, a dining chair with pre-existing scratches, rubs and dents on the left, front leg and scratched and rubbed wicker. On the *Joint Statement of Loss or damage at Delivery* (DD Form 1840), the member and Carlyle's agent reported that the top of the chair was broken. The member obtained a repair estimate that quoted a price of \$125 to repair the top of the frame and \$75 to re-cane. *The List of Property and Claim Analysis Chart* (DD Form 1844) further described the dining chair as an Ethan Allen *Georgian Court, Queen Anne* side chair with a broken cane back and top. The member listed the May 1984 purchase price as \$250, and the Air Force applied a 24-percent depreciation rate (12 years multiplied by two

percent per year) to the purchase price to estimate depreciated replacement cost in 1996.<sup>(2)</sup> The member provided the Air Force photographs of the damaged chair showing damage to the wood frame and the surrounding portion of wicker at the top of the chair.

The issue here is the correct rate of depreciation. The Air Force contends that a rate of two percent per year applied because the *Joint Military/Industry Depreciation Guide* (JMIDG) listed a two percent rate, assuming average care/usage, for "Solid Wood (Expensive)" furniture. Resource Protection contends that the chair is made in part of cane or wicker; therefore, on that basis alone it is not solid wood furniture. Thus, a seven percent annual rate of depreciation, assuming average care/usage, is appropriate.<sup>(3)</sup> Applying the seven percent per year rate to the purchase price, Resource Protection argues that Carlyle's liability is no more than the purchase price depreciated to salvage value (25 percent of that value), or \$62.50.

### Discussion

In adjudicating this claim, the Air Force had to decide whether the chair met the description of "Ordinary Wood," with a seven percent annual rate of depreciation, or whether it met the description "Solid Wood (Expensive)," with a two percent annual rate of depreciation. This decision involved a factual determination. DOHA does not question an agency's calculation of damages unless the carrier presents clear and convincing evidence that the agency acted unreasonably. *See generally* DOHA Claims Case No. 96081202 (April 28, 1997). Additionally, on disputed questions of fact between a claimant and an administrative officer of the government, we accept the statement of fact furnished by the administrative officer in the absence of clear and convincing contrary evidence. *See* DOHA Claims Case No. 96081209 (January 31, 1997).

In DOHA Claims Case No. 99080601 (September 9, 1999) we found that the Army had a reasonable basis for concluding that the two percent rate of depreciation for "Solid Wood (Expensive)" furniture applied to a damaged German Schrank. The Schrank (a wall unit) appeared to have been constructed of a solid wood core, but it had a wood veneer finish. We rejected the carrier's argument that the presence of a wood veneer finish necessarily precluded application of the two percent depreciation rate because such a piece of furniture would not meet the literal definition of "solid wood." In that claim the Schrank was a relatively expensive piece of fine furniture made with a solid wood core; in the present claim, the chair is also a relatively expensive piece of fine furniture with a wood frame. There is no indication that the presence of cane or wicker<sup>(4)</sup> in the back of the chair depreciated the value of the chair compared to essentially the same model of chair with a back composed of one or more larger pieces of thicker wood. Thus, the Air Force had some reasonable basis for finding that the chair fit within the category "Solid Wood (Expensive)," rather than as "Ordinary Wood."

### Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: William S. Fields

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William S. Fields

Member, Claims Appeals Board

Signed: Michael H. Leonard

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Michael H. Leonard

Member, Claims Appeals Board

1. This matter involves to Personal Property Government Bill of Lading (PPGBL) YP-685,336; Air Force Claim McChord AFB 98-471; and Carlyle Claim No. 98-0140.

2. Unless there was a good reason for not doing so, the Air Force should have used the replacement cost at the time and place of delivery in 1996 (rather than purchase price in 1984) as the basis on which to apply the depreciation. However, the indications are that the replacement cost would have exceeded \$250. Using the purchase price as the replacement cost, and depreciating that amount by 24 percent, the Air Force calculated depreciated replacement cost at \$190, or \$10 less than repair costs.

3. In the appeal, Resource Protection argues that the seat, as well as the back, were made of wicker or cane. However, the photographs reveal that the seat was covered with fabric or upholstery. While Resource Protection complains that it was not provided copies of the photographs, Carlyle's representative observed the damaged chair at delivery.

4. In its appeal, Resource Protection contends that cane or wicker is not "wood." While we assume here for purposes of discussion that it is not wood, a contrary argument can be made.