

DATE: March 24, 2000

In Re:

Resource Protection

on behalf of

Wold International, Inc.

Claimant

Claims Case No. 00031420

CLAIMS APPEALS BOARD DECISION

DIGEST

To determine depreciated replacement costs, depreciation is measured from the date of purchase or original possession of the item as a household good (not from the manufacture date) to the date of loss or damage.

DECISION

Resource Protection, on behalf of Wold International, Inc. (Wold) appeals the February 18, 2000, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 99112921, disallowing a refund of \$187 of \$556.75 set off by the Navy to recover for transit loss of three items of household goods shipped by a service member incident to a permanent change of station in 1996.⁽¹⁾

Background

The record indicates that Wold's agent obtained the household goods in Italy on January 29, 1996, and another agent delivered them to the service member in San Diego, California, on April 24, 1996. The Descriptive Inventory indicated that Item 1 was a Sony CF-D765 or CF-D765S portable stereo system with a compact disk player, radio and cassette recorder, with what appears to be a serial number of 19303. On the *List of Property and Claims Analysis Chart*, DD Form 1844, the member stated that he purchased this item in November 1994 for \$399. Item 4 was a Pioneer TX-05 tuner, serial number CL29027625, which the member states in the DD 1844 that he purchased in August 1987 for \$400. Item 5 was a Pioneer CT-05 cassette deck, serial number of CL9302449, which the member states in the DD Form 1844 that he purchased in August 1987 for \$379. These three items, among others, were reported as missing at delivery.

Resource Protection argues that depreciation for purposes of calculating depreciated replacement costs should be measured from the date of manufacture to date of loss rather than date of purchase to date of loss. For example, for Item 1, Resource Protection introduced excerpts from the Orion Blue Book⁽²⁾ that indicate that the portable stereo was manufactured in 1991. Resource Protection does not dispute the year of purchase, and it contends that the Navy has not disputed its information concerning the year of manufacture. But Resource Protection argues that the *Joint Military/Industry Depreciation Guide* (JMIDG) does not make any reference to the date of purchase, and that every reference in the JMIDG is to the "actual age" of the item. Resource Protection adds that it is unlikely that the member purchased the specific model of portable stereo system as a new item in 1994, especially considering the annual improvements in technology. Resource Protection follows the same general analysis with respect to Items 4 and 5.

Discussion

Our research indicates that depreciation is calculated from the time that the property owner acquired the item (e.g., time of original purchase). See Annotation, *Valuation Of Wearing Apparel Or Household Goods Kept By Owner for Personal Use, In Action For Loss or Conversion Of, Or Injury To, Such Property*, 34 A.L.R. 3d 816 ◆ 5 (1970). Compare also *American Van Services, Inc.*, B-270379, May 22, 1996. In *American Van Services*, the carrier claimant questioned a 1992 date of purchase, and argued that the 1987 manufacturing date should apply for depreciation purposes when the repair estimate indicated that the date of manufacture was 1987. The Comptroller General found that the date of purchase, not the date of manufacture, was the relevant date from which to measure depreciation.

Also, for purposes of how the contract with the industry is generally interpreted, it is clear that other services in the Department of Defense also generally measure depreciation from date of purchase, not from the date of manufacture. See the current Department of the Army Pamphlet 27-162, *Claims Procedures*, paragraphs 11-14g and 11-28h (April 1, 1998); and Air Force Instruction 51-502, paragraphs 3-12 and 3-13 (March 1, 1997). Both of these publications refer to the Department of Defense's internal *Allowance List-Depreciation Guide* (ALDG) for the mechanics of calculating the carrier's liability, noting the JMIDG and other specific contractual variations from the way the service determines its liability to the member. The previous versions were similar. See Army Pamphlet 27-162, *Claims*, paragraphs 2-40 and 3-23e (December 15, 1989); and Air Force Instruction 51-502, paragraphs 3-12 and 3-13 (July 25, 1994). Note 6 of the current ALDG, and the introductory paragraphs in the previous version of the ALDG, anticipate a calculation from the date of purchase, not from the date of manufacture.

The wording of the JMIDG does not support Resource Protection's interpretation. Nothing is mentioned about "actual age." The rates shown in the JMIDG are rates of depreciation of specific types of household goods assuming average care and/or usage. An item is not a household good if, for example, it is in wholesale distribution or held by a retailer for sale with thousands of similar items. Some literature offered by members of the industry in other claims indicates that economic and technological factors may be factors in determining the average annual rate of depreciation for a specific type of item, but a rate of depreciation of a household good also assumes that the good is subject to everyday wear as a household good. See generally DOHA Claims Case No. 96081208 (December 20, 1996). An electronic item stored in a warehouse or being shipped as general commodity freight with thousands of similar items for eventual retail sale, is not subject to the wear of everyday use. Resource Protection has not cited any Comptroller General, DOHA, other administrative, or judicial decisions to support its theory, and we are not aware of any. In assessing the amount of damages, the carrier must prove by clear and convincing evidence that the agency acted unreasonably. See DOHA Claims Case No. 96070221 (October 7, 1996); DOHA Claims Case No. 96070206 (September 5, 1996); and *Cartwright International Van Lines*, B-261980, Jan. 26, 1996. The record here is devoid of any indication that the Navy acted unreasonably here.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: William S. Fields

William S. Fields

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 UP-688,629; Navy Claim No. PCA96-1803; and WOLC File No. 96-0002-178.
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