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B-255226

March 24, 1994

Claims Adjuster
American Van Services, Inc.
P.O. Box 2317
Fort Walton Beach, Florida 32549

Dear Mr. :

This responds to your April 9, 1993, letter requesting a review of our Claims Group's April 5 Settlement Certificate Z-2862118-17 concerning transit damage to the household goods shipment of , under Personal Property Government Bill of Lading TP-011,269. Your request involves three items: water damage to a picture lithograph (item 89); scratches, dents and chips to a bed foot board (item 160); and a chipped glass kettle cover for a deep fryer (item 30). We affirm the Claims Group's settlement.

In a previous decision, we rejected the general concerns you express here with respect to the effect of the government's inspection of transit loss/damage in personal property shipments, and we also discussed the purpose of item 5i of the Domestic Rate Solicitation D-2 (and its predecessors) with regard to the burden of proof. See American Van Services, Inc. - Reconsideration, B-249834.2, Sept. 3, 1993. Since our positions on these two issues is clear, no additional discussion is necessary.

The record includes enough evidence to hold your company liable for the picture lithograph. The determination that your company was liable for water damage to it ($9.60) was supported by the agency's finding and the member's statement that your agent exposed it to the rain.

The finding that your company was liable for repair of additional scratches, dents and chips ($50) to the foot board was supported by the service member's statement that he observed the movers letting the item fall, causing additional damage. Even though the pre-existing damage (PED) to the foot board was similar to the damage caused to it when it fell, we have held that a shipper can establish a prima facie case of carrier liability when the shipper shows that the condition of an item deteriorated between tender and delivery. See Starck Van Lines of Columbus, Inc.,

B-213837, Mar. 20, 1984. The member's statement is evidence of additional damage, and a carrier is liable for such damage even though some incidental PED is repaired in the process. See Interstate Van Lines, Inc., B-197911.2, Sept. 9, 1988.

You suggest that the DD Form 1840 was fraudulently altered to show damage at delivery, and you challenge the credibility of the service member. The burden of establishing fraud rests on the party alleging it. See B-251159, Mar. 16, 1993. We have no reason to believe that the member, in completing the Form 1840 (at delivery, or as you seem to suggest, as part of a later notice) intended anything other than to provide timely notice of loss or damage. Although both the Air Force and the Claims Group refer to the driver's signature on the form as supporting the driver's concurrence in the member's description of events, the member does not make that connection in his statement. As noted above, that statement of the member's observations at delivery is in itself adequate for purposes of a prima facie case.

Finally, you note that the age of the kettle cover is not specified on the AF Form 180, and you maintain that the government therefore cannot meet its burden of proof on the amount of damages. However, the AF Form 180 applied a 20 percent depreciation factor in determining carrier liability, and in doing so specifically referred to Rule 53 It therefore is reasonable to conclude that the fryer was 2 years old, since Rule 53 of Air Force Regulation 112-1, Table 6-1, involves crockery ware, and the Depreciation Guide suggests depreciation of 10 percent per year for such items. Moreover, we find no error of law or fact in our Claims Group's rejection of your argument that damages ought to be reduced because there is no proof that this item was truly destroyed.

Sincerely yours,

Robert P. Murphy
Acting General Counsel