

(i) *The carrier contends that liability should have been predicated on the agreed weight of a sofa and not a hide-a-bed.* This argument only applies when carrier liability is based on weight. At the time the inventory is prepared, the carrier's driver must establish whether a sofa is merely a sofa, or one that converts into a bed. Failure to properly identify the item on the inventory does not relieve the carrier of liability for the greater weight of a sofa bed.

(j) *The carrier argues that it is not responsible for warpage, rust, etc., due to climatic changes.* This argument does not relieve a carrier of liability unless the carrier offers substantial evidence to show that the damages resulted solely from unusual circumstances beyond its control, as with an "act of God," or that it occurred while the property was in the hands of another contractor, as reflected upon a valid NTS exception sheet. The burden of proof is on the carrier to establish that the damage was not due to its negligence and that circumstances beyond its control were the sole cause of the loss. Because the carrier can rarely establish this, denial due to "climatic changes" is rarely acceptable.

§ 751.32 Forwarding claims files for offset action.

(a) *General.* Claim files are forwarded with a recommendation for offset action when 120 days have passed since a demand and a response has not been received from the carrier or contractor. Files are also forwarded for offset action when an impasse is reached. An impasse occurs when legitimate efforts to collect the fully justified amount demanded have reached a standstill and the carrier has no valid basis for denial. Prior to forwarding files for offset action, claims personnel must ensure that timely notice has been given, that all necessary documents are included, and that the demand and any correspondence were mailed to the proper carrier or contractor at its correct address. When applicable, claims personnel must also ensure that an unearned freight packet is included.

(b) *Claim files forward to local contracting offices.* Claims forwarded to local contracting offices for offset action include claims involving local moves and

DPM shipments in which the origin and/or destination contractor is determined to be liable. When the contractor fails to reply to a demand within 120 days or fails to make an acceptable offer, the file should be forwarded to the local contracting office with a request for offset action.

(c) *Unjustified denials and inadequate settlement offers by carrier or contractor—*

(1) *GBL carriers.* If a GBL carrier or insurer has refused to acknowledge or respond to a demand within a reasonable time (usually 30 days), if the claims investigating officer considers a valid claim to have been denied or not adequate settlement offered, or if settlement has been delayed beyond 120 days (see § 751.32(a)), the claim shall be forwarded to the NLSC activity serving the geographical location recommending that set-off action be taken against the carrier or contractor. The 120-day period begins to run on the date initial demand is made on the carrier. The NLSC activity shall review the file and if the carrier liability is correctly computed, forward a copy of the GBL, copies of the DD Forms 1843 and 1844, SCAC code, and final demand on carrier to the Commanding Officer, Naval Material Transportation Office, Code 023, Bldg. Z-133-5, Naval Station, Norfolk, VA 23511 directing set-off action against the carrier or contractor.

(2) *Nontemporary warehousemen.* If a warehouseman or insurer has refused to acknowledge or respond to a claim within a reasonable time, if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if settlement has been delayed beyond 120 days, the claim shall be referred to the NLSC activity serving the geographic location recommending set-off action be taken against the contractor. The 120-day time period begins to run on the date the initial demand was made. The NLSC activity shall review the file and if the warehouseman's liability is correctly computed, forward the file to the appropriate MTMC Regional Storage Management Office for set-off.

§ 751.33 Unearned freight packet.

(a) *Preparation.* An unearned freight packet should be prepared when the

loss or destruction of an item in shipment is attributable to a GBL carrier. Unearned freight packets should be addressed to the carrier, and not to the agents of GBL carriers, NTS contractors, or other contract movers. An unearned freight packet is required when a mobile home is lost or completely destroyed. An unearned freight packet includes:

- (1) A Request For Deduction of Unearned Freight Charges;
- (2) A copy of DD Form 1843;
- (3) A copy of DD Form 1844; and
- (4) A copy of the GBL.

(b) *Dispatch*. The unearned freight packet is not dispatched to the NAVMTO, Norfolk until the carrier has paid its agreed liability or when offset has been accomplished.

§ 751.34 GAO appeals.

(a) *General*. Sections 1 through 12 and 52 through 65 of Title 4, GAO Manual, Policy and Procedures Manual for Guidance of Federal Agencies, and 4 CFR parts 30–32 set forth procedures for carriers to appeal setoff action. Before a carrier can appeal a setoff action to GAO, the command requesting setoff action must make an administrative report to GAO.

(b) *Procedures for appeals*. (1) The carrier must request appeal from the command requesting setoff action and request a GAO review.

(2) The command requesting setoff action will review the appeal and if it is determined the setoff action was appropriate, will do an administrative report and notify the carrier when this has been accomplished.

(3) The administrative report and complete claims file will be forwarded to the NLSC activity serving the geographic location for review prior to forwarding to GAO.

(4) The complete claims package, including all correspondence with the carrier, will then be forwarded to GAO.

(c) The administrative report and enclosures must support the setoff action.

(d) *GAO Manual*. All NLSC activities have been provided a copy of a manual published by the Claims Group General Government Division, U.S. General Accounting Office entitled Procedures of the U.S. General Accounting Office for

Household Goods Loss and Damage Claims. Other commands dealing with carrier recoveries should get a copy of the manual from the NLSC activity servicing the local area.

§ 751.35 Forms and instructions.

Copies of all of the forms and instructions discussed in this part may be obtained if needed, from the Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

PART 752—ADMIRALTY CLAIMS

Sec.

752.1 Scope.

752.2 Organization.

752.3 Claims against the Navy.

752.4 Affirmative claims.

752.5 Salvage.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5013, 5148, and 7621–7623; 32 CFR 700.206 and 700–1202.

§ 752.1 Scope.

This part applies to admiralty-tort claims. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and affirmative claims by the United States for damage caused by a vessel or floating object to Navy property.

[39 FR 9962, Mar. 15, 1974]

§ 752.2 Organization.

(a) *Administrative authority of the Secretary of the Navy*. The Secretary of the Navy has administrative authority for settlement and direct payment where the amount paid does not exceed \$1,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels (10 U.S.C. 7622 (1982)). The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to property under the jurisdiction of the Navy (10 U.S.C. 7623 (1982)).