

Smullins

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Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Andrews Van Lines, Inc.—Claim for Reimbursement of Amounts  
Collected by Setoff for Lost Household Goods

**File:** B-257399

**Date:** December 8, 1994

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### DIGEST

When a prima facie case of carrier liability has been established, the carrier's assertion that the cartons in which the missing items were packed were delivered in a sealed condition and unpacked by the carrier does not overcome the carrier's liability.

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### DECISION

This is in response to an appeal of a Claims Group settlement which denied the claim of Andrews Van Lines, Inc., for refund of amounts collected by setoff for loss of household goods. We affirm the Claims Group's settlement.

By government bill of lading SP-308-506, Andrews contracted with the Army to ship the household goods of Private Luis A. Burgos from Los Osos, California, to El Paso, Texas. The goods were picked up on March 10, 1983, and delivered 8 days later. After delivery the member reported items missing from 4 boxes—3 pictures from a mirror carton labeled "pictures," 10 bath towels and a set of 3 towels from a box marked "towels," bathroom accessories from a box marked "bath items," and a bottle of perfume from a box labeled "hat, camera." The member made a claim for the items in a timely manner.

The Army billed Andrews \$390 for the missing items plus an additional \$146 for damage to other items not under consideration here. The total was collected from Andrews by setoff. Andrews claims reimbursement and denies liability for loss of the above items, arguing that they were never tendered. The Claims Group denied the claim, stating that Andrews was liable for all items except the perfume, for which it was not entitled to reimbursement because a joint military-industry agreement prohibits refunds of less than \$25.

Although the record does not so indicate, Andrews maintains that the member initialed each inventory item as received and indicated by his signature that the

carrier unpacked the household goods. Andrews argues that if the pictures, towels, and bath items had been missing at delivery the cartons would have been almost empty.

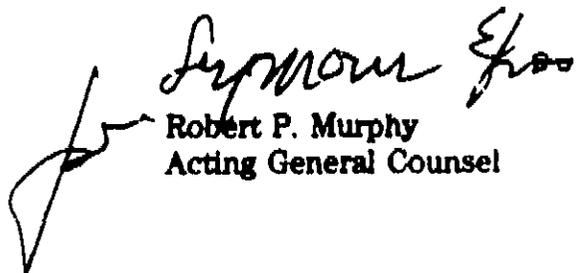
A prima facie case of carrier liability is established by a showing that the shipper tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and that a timely claim was filed. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1964). The burden of proof then shifts to the carrier to rebut the prima facie liability.

When a prima facie case of carrier liability has been established, the carrier's assertion that it delivered the sealed carton in which a missing item had been packed by the carrier does not rebut the prima facie liability. See Paul Arpin Van Lines, Inc., B-213784, May 22, 1984.

The pictures, towels, and bath items under consideration here were missing from boxes listed on the inventory as containing similar items. The carrier was promptly notified of the loss of the items and their value. A prima facie case of liability has been established, and Andrews' assertions as to delivery do not overcome it. See B-213784, supra.

In the present situation the fact that the member may have initialed the inventory for delivery of the cartons and signed for the unpacking of the household goods provides no evidence that the missing goods were delivered since the goods were carried into the house and unpacked by the carrier. Even if the cartons were nearly empty as Andrews maintains the member would not receive notice that items were missing. Moreover, the member's prompt reporting of the missing items overcame the presumption of correctness of the delivery receipt. See National Forwarding Company, Inc., B-238982, June 22, 1990.

Accordingly, the Claim Group's denial of Andrews' claim is affirmed.



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