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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fogarty Van Lines

File: B-235558.6

Date: July 5, 1991

DECISION

Fogarty Van Lines asks that we review our Claims Group's disallowance of reimbursement of $1,420.37 set off by the Army from revenues otherwise due to the firm to recover for the loss of and damage to a member's household goods incident to transit under Government Bill of Lading (GBL) QP-204,539. Fogarty admits both its liability and the amount of damages, but contends that the set-off is improper because the member's insurance company, and not the government, is the real beneficiary of such action.

We affirm the Claims Group's decision.

The insurance company, United Services Automobile Association (USAA), reimbursed the member for part of the total loss/damage pursuant to the insurance contract between the two parties, with the government compensating the member for the remainder under the Military Personnel and Civilian Employees Claims Act of 1964, as amended, 31 U.S.C. § 3721.1/ The Army then set off Fogarty's liability pursuant to the contract for the transportation with the carrier, and prorated the set-off amount between USAA and the government based on what each paid the member. Our Claims Group endorsed the set-off and prorating.

In supporting its action, the Army directs our attention to a Stipulation and Order entered between USAA and the military services in USAA v. Secretary of the Air Force, Civil Action No. 80-2458 (D.D.C. 1981). In this Stipulation and Order, the services agreed to demand from a carrier payment of the full contractual liability owed for loss/damage, and to prorate

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1/ The member claimed either loss or damage on 12 items at $3,189.98. USAA insured three of these items (two reimbursed at amounts above the government's adjudication), paying $1,808.58.

the amount collected between the government and the insurer with respect to items for which both had made payment.2/

Fogarty argues that a member must seek redress for loss damage from his insurance company; only afterwards, according to Fogarty, can the government set off funds from the carrier, and then only in amounts not covered by insurance. Fogarty contends that the Stipulation and Order is merely an out-of-court agreement between the parties, and does not have the effect of a court order. Fogarty maintains that for USAA to recover any amount it paid to the member, the insurance company must take direct legal action against the carrier.

We find no merit in Fogarty's argument. The government's right to recover from a carrier arises from the contract between those two parties. See Fogarty Van Lines, B-235558.5, Apr. 29, 1991; American Ensign Van Lines, Inc., B-224827.4, Nov. 21, 1990. Fogarty does not suggest that there is any provision in that contract that diminishes the carrier's liability for loss or damage based either on the owner of the goods securing insurance for them, or on the government's disposition of any payment collected from the carrier.

Further, notwithstanding Fogarty's point about the 1981 Stipulation and Order, our Office specifically has recognized and encouraged the same procedure in our decision in B-187502 Mar. 25, 1977. There, the carrier voluntarily paid its liability for the loss. We said that the insurer is entitled to a pro rata share of the recovery from the carrier under the GBL contract. The insurer's right to share in recoveries is recognized in paragraph 11-30b of Army Regulation 27-20, Feb. 28, 1990.

In sum, the set-off against Fogarty was proper, as was reimbursement to the insurance company to the extent of the company's payment to the member compared to the government's. The Claims Group's decision is affirmed.

James F. Hinchman
General Counsel

2/ For example, if USAA and the Army each paid the member $1,000 for an item, and the limit of the carrier's liability was $600, USAA and the Army each would get $300 of any set-off.