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**Matter of:** Art International Forwarding, Inc.

**File:** B-255004

**Date:** March 4, 1994

**DIGEST**

Where the carrier's share of liability for damage to a Code 5 shipment of household goods is, pursuant to a Military-Industry agreement directing a 50/50 split of liability, less than $25, the government should not pursue the claim, since another Military-Industry agreement states that neither party will pursue claims that are under $25.

**DECISION**

Art International Forwarding, Inc., requests a refund of the $45 offset by the Air Force for damage to a Code 5 shipment of the household goods of Sgt. Carl R. Mata under Government Bill of Lading No. TP-236,730. We believe the amount should be refunded to the carrier.

A Code 5 shipment is an international shipment packed by the carrier overseas and delivered to a government port. The government is responsible for placing the containers on pallets; providing ocean transportation from the overseas port to the stateside port; and providing terminal service. The carrier then resumes responsibility for the final transport and delivery.

In shipments where the carrier handles all transportation, the general rule is that the carrier is presumed liable for loss and damage unless the firm proves otherwise. For Code 5 shipments, however, under the terms of a 1975 Military-Industry agreement the carrier and the government will each assume claims liability of 50 percent of any loss or damage when liability cannot be determined to be solely the responsibility of the carrier or the government.[1]

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[1]The agreement provides, in part:

> "In situations in which an accurate determination cannot readily be made whether loss or damage to a Code 5 . . . shipment occurred while in the custody and control of the carrier, the Government will offer to

(continued...)

Here, following adjudication of the claim, the Air Force sent a demand for $45 to the carrier, which was the amount of the liability before the 50/50 split. While the record shows that the Air Force expected the carrier to pay only $22.50, the demand did not make this clear. The carrier denied any payment, however, on the basis of a provision in a 1987 Joint Military-Industry agreement that a military service will not pursue a loss/damage claim against a carrier for $25 or less, and in return a carrier will not request reimbursement of $25 or less. When Art International did not remit the $22.50, the Air Force offset the entire $45. It is this offset that the carrier wants refunded.

The Air Force contends that Art International's use of two unrelated Military-Industry agreements to escape payment is improper. The Air Force argues that because its claim was asserted for $45, the $25-threshold agreement does not apply. We disagree.

The purpose of the Code 5 compromise agreement is to facilitate settlement of claims regarding shipments for which both the government and the carrier had transportation responsibility and it is difficult to determine where the loss or damage occurred. See Jet Forwarding, Inc., B-213835, May 10, 1984; cf. American VanPac Carriers, Inc., B-239199, May 3, 1991, 91 CPD ¶ 431 (involving similar dual-responsibility shipments and the 50/50 compromise). The stated purpose of the $25 agreement is to reduce administrative costs to both the industry and the government in settling low-dollar disputes. Both agreements apply to loss and damage situations, and we see no reason why they should not be read together in the adjudication of a loss and damage claim.

We recognize that the Air Force in fact asserted its claim in an amount exceeding $25. This is consistent with Air Force Regulation 112-1, para. 6-62, which requires that the claim be asserted in the full amount, but directs the agency to accept half unless the carrier does not pay that amount within 120 days or attempts to compromise individual claims.[2] (The 1975 agreement requires "prompt acceptance

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[1](...continued)
accept a compromise of 50% of the amount the Government determines to be due. . . The offer of compromise is predicated upon prompt acceptance and payment of the Government offer."

[2]According to the regulation, the Air Force also is to make that point clear when it bills the carrier. See Figure 6-17.

and payment" by the carrier.) Nevertheless, it is evident from the record that this was a situation in which the agency could not clearly assess liability for loss and damage, and the Air Force therefore expected Art International to pay only $22.50. Thus, the Air Force's assertion of the carrier's liability in the full amount was, in effect, artificial - the agency expected and intended the carrier to pay only half that amount.

As indicated above, the 1975 and the 1987 Military-Industry agreements are aimed at expediting settlements and reducing costs on both sides. We do not think the fact that the Air Force asserted a liability amount of $45, half of which the government in fact was going to assume, should in itself mandate that the administrative costs to be avoided (on both sides) by the $25 rule must be incurred nonetheless.

In sum, if a Code 5 shipment has sustained damage that falls under the Code 5 compromise, and following computation of the 50/50 split the amount of the carrier's share falls below $25, the claim should not be pursued, under the $25 agreement. Accordingly, the offset of $45 should be returned to Art International.

Robert P. Murphy
Acting General Counsel