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AIRLINE LIABILITY: LOST, DAMAGED OR DELAYED BAGS

PART II: INTERNATIONAL

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The loss, damage or delay of baggage by airlines is felt most acutely by travelers on international trips, since strange surroundings and an unfamiliar language can create added difficulties in making emergency arrangements. The traveler will rightly want full recompense for these occurrences but will find that airline liability on foreign flights is limited by an international treaty—the Warsaw Convention.

The Convention applies only to foreign flights (although the domestic leg of a foreign flight is included). Liability for lost, damaged and delayed luggage in domestic air travel is covered by a different but parallel set of rules.

LIABILITY UNDER THE WARSAW CONVENTION

Article 18 of the Convention holds an air carrier "liable for damage sustained in the event of the destruction or loss of, or of damage to, any checked baggage or any goods, if the occurrence which caused the damage so sustained took place during the transportation by air."

In addition, an air carrier is liable under Article 19 "for damage occasioned by delay in the transportation by air of passengers, baggage or goods."

The imposition of liability is subject to exclusions and limitations. Thus, under Article 20, if an airline demonstrates that it took "all necessary measures" to avoid the loss, damage or delay of the luggage, or that the damage is a result of an "error in piloting," in "handling" the aircraft, or "in navigation," the carrier is not liable. If the damage was "caused by or contributed to by the negligence of the injured person," Article 21 permits a court to exonerate the carrier, "wholly or partly."

Finally, and most significantly, Article 22 of the Warsaw Convention sets a maximum limit of \$9.07 per pound for damage liability for checked luggage and 5,000 French francs for carry-on baggage.

WHEN LIABILITY LIMITATIONS ARE INAPPLICABLE

If certain requirements in the Warsaw Convention are not met by the airline in a

particular situation, courts will find the limitations and exclusions of the Convention null and void.

The first requirement, found in Article 3, is that the airline must deliver to the passenger a ticket containing (1) the place and date of issue, (2) the place of departure and destination, (3) the agreed stopping place subject to necessary alteration, (4) the name and address of the carrier(s) and (5) notice of the liability rules of the Warsaw Convention.

The second requirement, found in Article 4 and most important for baggage claims, is that the airline must deliver a baggage check containing (1) the same information required to be in the passenger ticket, (2) the passenger ticket number, (3) a statement that the baggage will be delivered to the check bearer, (4) the number and weight of packages and (5) the amount of declared value.

The baggage check is not the identification stub given upon check-in. Typically, it is combined with the ticket. If the airline fails to complete all the information required to be in the baggage check or passenger ticket, however, it cannot avail itself of the liability limitations or exclusions of the Warsaw Convention.

These limitations and exclusions are also void if the damages resulting from lost, damaged or delayed luggage are caused by the airline's willful misconduct or gross negligence. However, proving

willful misconduct, which means that an airline intentionally committed an act injuring a passenger, is unlikely in international baggage cases.

FILING CLAIMS

It is essential that a timely complaint regarding lost, damaged or delayed luggage be made *in writing*: if luggage is lost or stolen, immediately after learning of the loss; if damaged, within three days after receiving luggage and seven days after receiving goods; and in the case of delay, within 14 days after return of the luggage.

As can be seen, the small print on airline tickets only hints at a host of complex issues. If a major loss is suffered because of lost, stolen or delayed luggage, one should seek advice to determine whether or not the liability limitations and exclusions of the Warsaw Convention apply under the circumstances.

Of course, prevention is the best medicine. It makes good common sense to avoid putting highly valued items such as expensive jewelry in checked luggage or to take out extra insurance to cover these valuables. ■

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