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DECISION



THE COMPTROLLER
OF THE UNITED STATES
WASHINGTON, D. C. 20548

GENERAL INVESTIGATIVE
DIVISION

FILE: B-190474

DATE: October 23, 1978

MATTER OF: Chandler Trailer Convoy Inc.

DIGEST:

1. Liability of carrier for loss and damage to mobile home commences when shipper relinquishes control and carrier receives custody thereof.
2. Carrier has failed to rebut Government's prima facie case of liability for damage and to meet its burden of proof that sole cause of damage was due to an inherent defect; however, amount of damages is in error and is to be adjusted accordingly.

A report, dated January 31, 1978, from the Department of the Air Force shows that Chandler Trailer Convoy Inc. (Chandler), transported a 65-foot, 1973, mobile home, belonging to an Air Force member, from Andrews Air Force Base, Maryland, to Caswell Air Force Station, Maine. The Government as subrogee collected \$849.73 from the carrier by setoff for damage to the mobile home, having rejected an offer to settle its claim for \$100. By letter of October 12, 1977, Chandler requests review of the denial by the Secretary of the Air Force of its request for refund of the amount deducted.

Chandler received the shipment on Government bill of lading No. K-2735127, February 9, 1976, ". . . in apparent good order and condition (contents and value unknown) . . ." subject to exceptions noted on its Pre-Move Inspection Record. The record noted scratches on the upper-top skin towards the front on the right side, and buckling at the middle-top, left side; loose screws were noted on both sides. At destination, the member reported various items of damage, and submitted a bill from a local repairman detailing the cost of materials to repair each item, and the total cost of labor. Except for the numerical identification, added for convenience in later reference, the bill reads essentially as follows:

(1)	"Right side 2 outside panels	21.00 each	\$42.00
(2)	1 long right top panel	21.00	21.00

(3)	2 left outside middle panels	21.00 each	\$42.00
(4)	Repair front hitch	50.00	50.00
(5)	Metal screws missing around trailer	12.00	12.00
(6)	Insulation missing on sides	40.00	40.00
	Wall pushed in, living room on left side to be replaced		
(7)	3 panels	16.00 each	48.00
(8)	4 - 2x4x8	2.00 each	8.00
(9)	Left rear panel and top trim on outside	21.00 each	42.00
(10)	3 wood panels on right side front in dining room	16.00 each	48.00
	Wall pushed out on right side in middle of trailer		
(11)	4 - 2x4x8		8.00
(12)	Insulation		52.00
(13)	Black sheecs celotex	6.75 per sheet	<u>40.50</u>
			\$453.50
		Labor	396.23"

Chandler's refusal to accept liability for any of the items of damage is based on two theories, one of which (and the first to be stated) has been asserted here before. See 56 Comp. Gen. 357 (1977). This is the inherent vice doctrine, which is a recognized exception to common carrier liability. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964). In this case, Chandler points to "flexing" during movement over the highway as the process that uncovers the inherent weakness of mobile homes. This defect, according to Chandler, accounts for the damages discovered inside the trailer, which would include items 7, 8, 10, and 11 identified above, and apparently the insulation items, numbered 6, 12, and 13.

The other theory of defense is another recognized exception to common carrier liability--the act of the shipper himself. Chandler explains that screws were loose at the time of pickup and implies that the shipper was at fault in preparing the mobile home for shipment. In this connection we note from the record that Chandler was paid \$93.75 for labor in preparing the trailer for shipment and for its extrication from mud at origin; and was paid for labor in the amount of \$25 to reinforce the trailer skin during movement.

We fail to see the relevancy of Chandler's defenses of inherent vice of the mobile home or shipper's fault. The carrier's liability, or absence thereof, on the various items of damage, turn on whether the items were excepted at origin or whether the Government could show good order tender at origin.

A carrier's liability begins at the moment the shipper surrenders control over the goods and the carrier receives custody for the purpose of immediate shipment, with liability commencing regardless of whether or not the goods are immediately put into transportation. See Illinois Central R.R. v. Moore, 228 F.2d 873, 877 (6th Cir. 1956); Mackey v. United States, 197 F.2d 241, 243 (2nd Cir. 1952); see also McAllister Lighterage Line, Inc. v. S/S Steel Age, 306 F.S. 19, 25 (S.D. N.Y. 1968); Adair v. Yazoo & Mississippi Valley R.R., 107 Sou. 371 (Miss. 1926); Delta and Pine Land Co. v. Illinois Central R.R., 95 So.2d 572 (Miss. 1957).

To establish a prima facie case of carrier liability, a shipper must show that the goods were tendered to the carrier at origin in good order and condition, and received from the carrier at destination in a damaged condition. The carrier, to relieve itself of liability, must show both that it was free from negligence and that the damage was due to one of the excepted causes. See 57 Comp. Gen. 170 (1977), and cases cited therein.

Based upon these principles, Chandler's liability, to the extent a prima facie case of liability can be established, commenced at the moment the carrier's agent assumed responsibility for preparation of the mobile home for transportation, even though considerable time may have elapsed until transportation began because utilities and fixtures were secured and the mobile home was extricated from the mud.

Chandler has failed to rebut the Government's prima facie case of liability for damage and to meet its burden of proof that the sole cause of the damage was due to an inherent defect. However, we believe that there is some question as to the amount of damages.

The record contains a copy of an estimate of repair from Hafford's Trailer Service in the amount of \$849.73. The estimate of repair bears the following notation:

"this does not include Broken pipes underneath floor in trailer due to the damage where insulation & black sheets are Missing causing pipes to freeze & break."

The record does not indicate that the Air Force questioned any of the items of damage or whether any consideration was given as to pre-existing or carrier-caused damage.

The record does contain an engineer's report dated March 16, 1977, furnished by the Loring Air Force Base, Maine. The report states in part:

"4. It is possible that some minor damage existed in the mobile home prior to the transport in question. This damage is easily overlooked by occupants until a claim is instigated whereby the entire structure is examined with a 'fine toothed comb'; this is not done intentionally but is human nature. The experienced carrier should also be aware of this and provide a complete inspection of damage existing prior to transport.

"5. If the Pre-Move Inspection Record, which is not in the file, is compared to the estimated damage at destination, the amount of damage incurred to the mobile home during transport can be determined."

Thus only the cost of those repairs which are attributable to the damage may be considered. 22 Am. Jur. 2d Damages Section 148 (1965). Items 1, 3, 5 and 9 apparently are items of repair which are directly related to conditions of damage to the trailer noted on the Pre-Move Inspection Record at origin for which the carrier would not be liable.

We are of the opinion that the three items of missing insulation, items 6, 12, and 13 obviously would not be observable by the carrier upon inspection. The remaining items, 2, 4, 7, 8, 10 and 11 should have been visible at origin, although no exceptions were made; therefore, the Government would have a prima facie case of liability for costs to repair the right top panel (item 2, \$21); hitch (item 4, \$50); living room panels (item 7, \$48); studs (item 8, \$8); dining room panels (item 10, \$48); and dining room studs (item 11, \$8), total, \$183, plus prorated labor costs.

In summary, we believe the following items should be allowed to the carrier:

<u>Item</u>	<u>Parts</u>	<u>Amount</u>
1	Right side 2 outside panels	\$ 42.00
3	Two left outside middle panels	42.00
5	Metal screws	12.00
6	Insulation	40.00
9	Left rear panel and top trim	42.00
12	Insulation	52.00
13	Celotex	40.50
	Total Parts	<u>\$270.50</u>

Repair or replacement costs of the above items, \$270.50, are 59.6 percent of the total bill for parts, \$453.50. Also allowable to the carrier is \$236.15 for labor, which is 59.6 percent of the total bill for labor, \$396.23.

Based on the above, we are instructing our Claims Division to issue a settlement allowing Chandler \$506.65 of its claim for \$849.73, if otherwise correct.

Deputy  Comptroller General
of the United States