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DECISION



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

FILE: B-215685

DATE: January 14, 1985

MATTER OF: Air Land Forwarders Suddath,
Inc.

DIGEST:

A common carrier is not liable for flood damage to goods stored while in transit, where the flood constituted an act of God and there is no intervening fault attributable to the carrier.

Air Land Forwarders Suddath, Inc. (Suddath), has appealed our Claims Group's denial of its claim for a refund of \$342 which the Department of the Navy (Navy) collected by offset to compensate for water damage incurred, during transport by Suddath, to household goods owned by a Navy Chief Petty Officer. We find that Suddath is entitled to a refund.

The facts are undisputed. Suddath packed the goods in Mayport, Florida, and delivered them to Eastern Moving and Storage of Warwick, Rhode Island (an agent of Suddath), for storage-in-transit. Flooding occurred in the Warwick area while the goods were in storage, and water levels in the warehouse as high as 4 feet caused extensive damage to several items. The Navy determined that Suddath was liable for \$342 of damage because it had failed to comply with a provision of the Tender of Service Agreement (Tender) requiring that all storage-in-transit property be stored at least 2 inches above the floor (on pallets or other platforms). Suddath denied liability, however, asserting that since the damage from a 4-foot flood would not have been averted even had the items been 2 inches above the floor, the damage was attributable to an act of God. The Navy ultimately collected the \$342 by administrative offset against other amounts due Suddath.

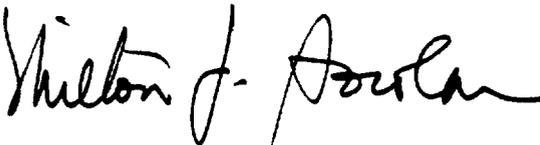
Although a carrier generally is liable for all damage to property it transports, a carrier will not be held liable if it shows that the damage was caused by certain events beyond its control, including an act of God, see Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964), and there is no intervening fault attributable to the carrier. See Sigmon, Miller's Law of Freight Loss and Damage Claims, 83 (4th ed. 1974). A flood can constitute an act of God sufficient to relieve a carrier of liability if it is extraordinary. 1 Am. Jur. 2d Act of God § 5.

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Suddath obviously considers the flood here extraordinary and, since the Navy has presented no evidence or argument that Suddath reasonably should have anticipated major flooding, we agree that the 4-foot flood did constitute an act of God. The remaining question is whether, notwithstanding an act of God, the damage was attributable to any intervening fault of Suddath.

It seems to be the Navy's position that Suddath's failure to store the goods 2 inches above the floor as required under its Tender constituted sufficient intervening fault to render Suddath liable notwithstanding the act of God. We disagree. While not all the circumstances of the flood are clear from the record, we think it is fairly clear that damage resulting from 4 feet of water could not have been averted by storing the goods 2 inches off the floor. We therefore conclude that Suddath's contractual failure was too remote a cause to make Suddath liable in this instance. See Railroad Company v. Reeves, 77 U.S. (10 Wall.) 176 (1869).

Since the damage to the goods was caused by an act of God and intervening fault has not been demonstrated, Suddath is entitled to a refund of the \$342 offset by the Navy.

for 
 Comptroller General
 of the United States