Robert Heitzman
Transp.

DECISION

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

FILE: B-185064 DATE: February 10, 1977

MATTER OF: Chandler Trailer Convoy, Inc.

DIGEST: 1. The law places burden on carrier to establish not only the general tendency of a mobile home to be damaged in transit, but that damage was due solely to that tendency. Whitehall Packing Co., Inc. v. Safeway, 228 N.W. 2d 365 (Wisc. 1975).

2. Definition of inherent vice indicates that loss is caused in commodity witnout outside influence, and courts have so held. See cases cited.

3. If carrier knows or should have known that goods delivered to it for transportation are in danger of loss or damage, law requires carrier to use ordinary care, skill and foresight to avoid consequences. Little Rock Packing Co. v. Chicago, B & O R.R., 116 F. Supp. 213 (W.D. Mo. 1953).

4. Carrier has failed to rebut its 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.

Chandler Trailer Convoy, Inc. (Chandler), has requested review of a settlement issued by our Claims Division on February 9, 1976, (Claim No. Z-2608885(3)). In the settlement the Claims Division disallowed Chandler's claim for a refund of $2,299, which the Government as a subrogee collected by setoff for damage to a mobile home owned by a member of the military and transported by Chandler under Government bill of lading No. F-6530696.

The mobile home was picked up by Chandler on February 6, 1974, at Nolanville, Texas, and delivered in a damaged condition to its owner at Gray, Kentucky, on February 12, 1974. While

Chandler admits that the mobile home was damaged at destination, it contends that the damages were caused by inherent defects in the mobile home. An inherent defect is one of the exceptions to a carrier's common law liability for damage to property. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964).

Chandler contends that statements of a Mr. Aldridge, who on March 30, 1974, prepared an estimate of damages (later revised), is proof of the fact that the damages to the mobile home were caused by an inherent defect. Mr. Aldridge stated that the mobile home "had the appearance of over the road damage due to long hours and miles of continued road shock which so often happens on long hauls with mobile homes of this size." Chandler further states that the Aldridge March 30th estimate contains additional repairs and parts which would strengthen the frame beyond its factory specifications, and that such evidence supports Chandler's contention that the damages were due to structural failure.

Chandler alleges that Mr. Aldridge's statement supports its argument that the mobile home was the sole cause of its own damage. However, the statement is only an opinion about the propensity of mobile homes to sustain damage when transported a great distance. The law places a burden on Chandler to establish not only the general tendency of a mobile home to be damaged in transit, but that the damage was due solely to that tendency. See Whitehall Packing Co., Inc. v. Safeway, 228 N.W. 2d 365 (Wisc. 1975). Further, Mr. Aldridge was interviewed by a representative of the Army Claims Service and stated that the additional work, which would strengthen the frame beyond the factory specifications, was necessary in the event of another move. Thus, the suggested additional work is not proof of an inherent defect in the mobile home. The additional work was eliminated in a later estimate. We note also that the pre-move inspection report prepared by Chandler's agent indicates that the frame was not in a damaged condition at origin.

In Missouri Pacific R.R. v. Elmore & Stahl, supra, the court states that inherent vice means any existing defects, diseases, decay or the inherent nature of the commodity which will cause it to deteriorate with a lapse of time. This

definition indicates that an inherent vice in a commodity will result in the loss of the commodity without any outside influence. See Schnell v. The Vallescura, 293 U.S. 296, 305-306 (1934). In fact, in the closely related insurance field the courts have held that the term inherent vice as a cause of loss not covered by the insurance policy does not relate to an extraneous cause but to a loss entirely from internal decomposition or some quality in the property which brings about its own injury or destruction. Employers Casualty Company v. Holm, 393 S.W. 2d 353 (Ct. Civ. App. Texas 1965); Mayeri v. Glens Falls Ins. Co., 85 N.Y.S. 2d 370 (Sup. Ct. N.Y. 1948). The mobile home was picked up by Chandler and transported from Texas to Kentucky, and it arrived in a damaged condition. It follows that an extraneous cause, the elements of the transportation movement, caused its damage. The mobile home would not have sustained damage had it remained at its origin and not been moved. Thus, it cannot be said that an inherent defect was the sole cause of the damage.

When a carrier knows or should have known that goods delivered to it for transportation are in peril or danger of loss or damage, the law requires a carrier to use ordinary care, skill and foresight to avoid the consequences. Little Rock Packing Co. v. Chicago, B & Q R.R., 116 F. Supp 213 (W.D. Mo. 1953). Thus, if Chandler was of the opinion that the mobile home could not be transported without damage, it could have refused to do so. And if it was known that the mobile home was susceptible to damage, Chandler should have taken the necessary foresight to avoid the consequences.

Chandler has failed to rebut its 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 the amount of the damages is in error.

The record contains an estimate of repair that is substantially lower ($1,500 to $2,000) than the actual amount of the claim of $2,299, and some additional items on the Aldridge March 30th estimate appear to be either the result of pre-existing damage or normal maintenance of a mobile home. And only the cost of those repairs which are

attributable to the damage may be considered. 22 Am. Jur. 2d Damages § 148 (1965). Accordingly, we believe that only these items taken from the Aldridge estimate should be charged to Chandler:

Parts Necessary & Estimate of Labor Required	Parts	Labor
Frame & Chassis:		
Remove, replace body from frame in order to rebuild body under side and straighten repair frame		$192
Straighten right master frame rail		175
Straighten left master frame rail		150
Body and Interior:		
Repair and reinforce lower wood side sill plates	$10	$48
Replace lower starter aluminum panels where needed and straighten all other lower starter panels	15	24
Living Room:		
Repairs to wall moulding paneling and ceiling	$18	$84
Estimate:		$56
Wrecker Service:		$227
Total:	$43	$956
Grand Total:		$999

We today are instructing our Claims Division to reopen the settlement and to allow Chandler $1,300 of its claim for $2,299 ($2,299 less $999), if otherwise correct.

Deputy Comptroller General
of the United States