

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

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FILE: B-193432**DATE:** December 3, 1984**MATTER OF:** Chandler Trailer Convoy, Inc.--
Reconsideration**DIGEST:**

Damage in transit to a mobile home caused by the combination of a rust-weakened frame and flexing of the frame over the axle, aggravated by an unbalanced load in the mobile home, resulted from a combination of defects which are exceptions to common carrier liability for the damage.

Chandler Trailer Convoy, Inc. (Chandler), requests reconsideration of our decision in Chandler Trailer Convoy, Inc.--Reconsideration, B-193432, B-211194, Aug. 16, 1984, 84-2 C.P.D. ¶ 185, disallowing the claim of Chandler for refund of \$8,685 recovered by the United States Marine Corps (USMC) for the destruction in transit of a mobile home transported from Jacksonville, North Carolina, to Pittston, Pennsylvania, under government bill of lading (GBL) No. K-0,997,949.

We reverse the decision.

In our prior decision, we denied Chandler's claim because, under the Interstate Commerce Act, 49 U.S.C. § 11707 (1982), commonly referred to as the Carmack Amendment, a prima facie case of carrier liability for the damage in transit was established by a showing that the mobile home was in better condition when received by Chandler at origin than when delivered by Chandler at destination and Chandler failed to establish that the damage resulted solely from an exception to carrier liability.

On pickup of the mobile home at Jacksonville, North Carolina, the only defects noted by Chandler were a small buckle and small dent on the right side, small dents in front, shower door broken inside and the A-frame behind the hitch was bent and rusty. However, near Harrisburg, Pennsylvania, the main framework under the trailer was buckling over the axle, and the owner of the mobile home authorized the installation of a third axle and reinforcement of the framework by Penn Welding and Automotive Service (Penn

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Welding) at a cost of \$2,814. The transportation resumed, but was terminated at Pittston, Pennsylvania, after traveling about 105 miles, because the walls appeared to be collapsing. The USMC then issued a corrected GBL terminating the shipment at Pittston because of "trailer disintegrating."

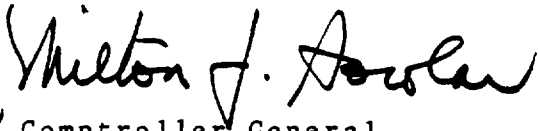
On request for reconsideration, Chandler contends that we erred in holding that Chandler had "not shown the damages in transit to have resulted solely from premove latent defects in the mobile home" and that Chandler had not shown, therefore, "that the damage resulted solely from an excepted cause," alleged by Chandler to be shipper fault, under the decision in Missouri Pacific Railroad Company v. Elmore & Stahl, 377 U.S. 134 (1964). That is, that the shipper had tendered for shipment a commodity, the mobile home, in a condition in which it could not be safely transported and that the defects in the condition of the mobile home were not apparent to Chandler on ordinary observation. Chandler alleges that the

". . . evidence of record clearly and positively shows that the damages were caused by broken springs, fracture in the hitch, main framework bending and buckling over the axle necessitating welding and reinforcement of the main beams with channels and new cross beams and the installation of a third axle."

Although no new evidence of the cause of the structural failure has been presented by Chandler, the USMC, in response to our request for comments on the request for reconsideration, specifically our request for information on the salvage value of the trailer, for the first time advised our Office that the private insurance carrier of the owner of the mobile home had denied liability under the insurance contract because the damage was caused by a defective frame. The inspector for the insurance carrier stated that, in his opinion, the damage was caused by the severe rusting of the undercarriage which broke up in flexing over the axle and that the rust-weakened condition of the undercarriage would not have been apparent on ordinary observation. Penn Welding confirmed the opinion of the insurance carrier and added that the flexing of the mobile home in transit was aggravated by an unbalanced overload of books in one end of the mobile home. There is no evidence in the record that Chandler knew or should have known either of the rust-weakened condition of the undercarriage or the unbalanced load in the mobile home.

The record contains an affidavit by Michael L. Chandler attesting that a review and examination of the documents, papers, records and files kept in the normal course of business in connection with this transportation disclose no record or evidence of collision, accident, traffic violations, or any acts of omission or commission that would indicate or constitute negligence of Chandler.

The record now establishes that the transportation was performed by Chandler without negligence and that the damage in transit resulted solely from acts of the shipper, the tender of the mobile home with an unbalanced load and rust-weakened undercarriage. Consequently, Chandler is not liable for the damage in transit, and the claim for refund of the amount recovered by setoff for the damage is allowed.

for 
Comptroller General
of the United States