



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Atlas Van Lines--Claim for Reimbursement of Amounts Collected by Setoff for Loss of Household Goods

File: B-261348

Date: February 16, 1996

DIGEST

Although a carrier is generally liable for all damage to property in its control, the carrier will not be held liable if it shows that the damage was caused by an act of God as long as there is no intervening fault on the part of the carrier. When the carrier has adequate notice of severe flooding and fails to move property in its control, that failure constitutes the intervening fault of negligence, and the carrier is liable for the damage which results. The carrier has the burden of proving that it was not negligent.

DECISION

This is in response to an appeal of a Claims Group settlement which denied the claim of Atlas Van Lines for reimbursement of amounts collected by setoff for loss of household goods in storage during the Great Midwest Flood of 1993.¹ We affirm the Claims Group's settlement.

At the time of the Great Midwest Flood of 1993, the household goods of Staff Sergeant Nick Anderson, USAF, were in storage under government bill of lading No. SP-011,693 at ABC Moving and Storage, an agent of Atlas Van Lines, in Chesterfield, Missouri. On July 31, 1993, the Monarch Chesterfield levee on the Missouri River failed. In the flooding that followed, Sergeant Anderson's household goods were destroyed. The Air Force paid Sergeant Anderson \$19,373.95, and then collected \$3,400.00 from Atlas by offset.

The Claims Group denied Atlas's claim for reimbursement of the \$3,400.00, on the grounds that Atlas should have taken steps to protect the household goods in its warehouse and was negligent for not doing so. Atlas argues that its warehouse was

¹Z-219766-39, Mar. 16, 1995.

not in the Chesterfield flood plain and that it had very little notice that the levee which protected the warehouse would fail.

Although a carrier is generally liable for all damage to property in its control, the carrier will not be held liable if it shows that the damage was caused by certain events beyond its control and there is no intervening fault attributable to the carrier. Missouri Pacific R.R. Co. v. Elmore & Stahl, 377 U.S. 134 (1964); Mamiye Bros. v. Barber S.S. Lines, Inc., 241 F. Supp. 99 (1965); Richard R. 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 if it is extraordinary as long as there is no intervening fault attributable to the carrier. 1 Am. Jur. 2d Act of God § 5 (1994).

In the present situation, there is no question that the flooding which occurred in the Midwest in 1993 was extraordinary and was sufficient to constitute an act of God. However, the Air Force determined that Atlas's agent had adequate notice of the approaching flood and should have moved Sergeant Anderson's household goods out of the path of the flood.² Therefore, in the Air Force's view, Atlas was liable because of the intervening fault of negligence. The burden is on Atlas to prove that it was not negligent for its failure to move the household goods. See 377 U.S. at 134.

Because Atlas disputed the Air Force's characterization of its agent's location, we contacted Missouri officials who informed us that its agent is located in zone B on the flood plain map. Zone A is the primary flood plain area, but flooding can occur in zone B under certain circumstances. The area around the warehouse in question was in zone B because it was protected by a levee, but that levee was only expected to prevent flooding completely if the flood were less than a 100-year flood. From the beginning, the 1993 flood was significantly more severe than a 100-year flood and was eventually determined to be a 300-year flood. The climax of the flood for Chesterfield was the structural failure of the Monarch Chesterfield levee. While Atlas is correct that there was little warning that the levee would fail structurally, flood waters had spilled over the levee long before it failed.

The Air Force determined that Atlas was negligent in not moving Sergeant Anderson's household goods out of the path of the flood, and Atlas has not

²Heavy rains began early in 1993 in the northern Midwest. Flood crests were reported along the upper Missouri and Mississippi Rivers in late June. Severe flooding was anticipated as the flood's crest progressed slowly down the rivers as tributaries which were also at record levels flowed into the Missouri and the Mississippi. Chesterfield is located near the Missouri River just west of St. Louis. The Missouri flows into the Mississippi near St. Louis, and the severe flooding in that area occurred in late July.

proved otherwise. Severe flooding began on the upper reaches of the Missouri and Mississippi Rivers in June. As the flood crest gradually moved downstream and as heavy rains continued, it is our view that at some point Atlas should have determined that the danger to the household goods in temporary storage in Chesterfield was serious enough to warrant moving the goods before the flood crest reached Chesterfield in late July. The flooding moved down the rivers at a pace which would have allowed Atlas to move the household goods if it had made that determination in a timely manner, and the predicted severity of the flood should have prompted it to do so. The fact that the structural failure of the Monarch Chesterfield levee was not anticipated does not absolve Atlas of liability, since flood waters had overtopped the levee long before the levee failed. Failure to take action to move the household goods before the flood crest reached Chesterfield constitutes the intervening fault of negligence. See World Products, Inc. v. Central Freight Service, Inc., 222 F. Supp. 849 (D. N.J. 1963).

Since Atlas has not proved that it was not negligent, it is liable for the loss of the household goods up to the limit of its liability, which the Air Force has calculated as \$3,400.00.

Accordingly, we deny Atlas's claim for reimbursement and affirm the Claims Group's settlement.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel