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

FILE: B-214473 **DATE:** July 10, 1984

MATTER OF: Continental Van Lines, Inc.

DIGEST:

1. Damage in transit to goods passing through the hands of successive custodians is not presumed to occur in the custody of the last custodian where that custodian notes that preexisting damage exists on receipt of the goods.

2. In order to hold a common carrier liable for damage in transit, the shipper bears the initial burden of establishing a prima facie case of liability by showing that the goods transported were in better condition when received by the carrier at origin than when delivered by the carrier at destination.

3. Where the record shows the existence of preexisting damage and lacks evidence of greater or different damage, the common carrier has not been shown to be liable for damage in transit.

4. In the absence of a special contract or statute, a common carrier is not liable for preexisting damage to goods occurring in the custody of a prior custodian of the goods.

Continental Van Lines, Inc. (Continental), requests review of the disallowance by our Claims Group, General Government Division, of its claim for refund of $35 recovered by the Department of the Navy (Navy) for damage in transit to the dining room table of Captain William E. Dennison, USN, while being transported from nontemporary storage in Tacoma, Washington, to Lemoore, California, under government bill of lading No. AP-539,745.

We allow the claim.

Continental picked up the shipment from nontemporary storage at Metropolitan Movers in Tacoma, Washington. On

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pickup, Continental prepared a manifest on which was noted that the top of the dining room table was scratched and marred. On delivery at destination, the owner, Captain Dennison, noted damage to the table consisting of the top of the table "chipped." The Navy Schedule of Property describes the damage at destination as "Top Scraped." The Navy Inspection Report, DD 1841, described the damage as "Top Gouged." The Navy also reported that the repairman indicated that the damage involved removal of a bit of wood, but was not deep enough to repair as a gouge and was recent damage.

For this damage, the Navy claimed from Continental the repair costs of $35 and, on denial by Continental, that amount was recovered by setoff. Continental claimed refund of the amount set off on the grounds that the damage was noted on pickup of the shipment as preexisting damage. Our Claims Group denied the claim on the grounds that the preexisting damage was a scratch while the damage noted at destination consisted of a scrape, citing the decision in Julius Klugman's Sons, Inc. v. Oceanic Steam Nav. Co., et al., 42 F.2d. 461 (1930), which held that damage to goods which pass through the hands of several custodians is presumed at common law to occur in the custody of the last custodian.

In the decision cited by the Claims Group, the court held, among other things, that where goods pass through the hands of successive custodians, in apparent good order, any loss is presumed to have occurred while they were under the control of the last custodian. This record shows, however, that the dining room table did not pass into the custody of Continental in apparent good order. On receipt by Continental, Continental noted a scratch and a mar on the top of the table. The cited decision is not applicable.

In order to hold a common carrier liable for damage in transit, the shipper bears the initial burden of establishing a prima facie case of liability by showing that the goods transported were in better condition when received by the carrier at origin than when delivered by the carrier at destination. Missouri Pacific R. Co. v. Elmore & Stahl, 377 U.S. 134 (1964).

The evidence in this record shows that the dining room table bore damage, when received by Continental, consisting

of a scratched and marred top and, on delivery at destination, bore damage variously described as "chipped," "scraped," and "gouged on top." None of the terms are defined, except to the extent that the Navy stated that "according to Webster, a 'rub,' 'scratch,' and 'scrape' are technically the same." On this record, the evidence does not establish that additional damage occurred to the table while in the custody of Continental. A common carrier is not liable for preexisting damage, in the absence of a special contract or statute. 14 Am. Jur. 2d., Carriers § 684; 13 C.J.S., Carriers § 424b(1), and there is no evidence of special contract or applicable statutory provision.

The claim is allowed.

for Milton J. Socolar
Comptroller General
of the United States