MAYFLOWER
TRANSIT

260206

October 23, 2003

Hon. Annette M. Sandberg
Administrator
Federal Motor Carrier Safety
Administration
U.S. Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

Re: Transportation of Household Goods;
Consumer Protection Regulations,
Interim Final Rule Docket No. FMCSA 97-2979 -76

Dear Ms. Sandberg:

This is written on behalf of Mayflower Transit, LLC (Mayflower) in response to comments submitted in this proceeding by an attorney, Ms. Angie Chen, on August 25, 2003.

On July 28, 2003, you extended the date to file for reconsideration of the Interim Final Rule (IFR) to August 25, 2003. Attorney Chen's submission of August 25, 2003, is not a Petition for Reconsideration; and, therefore, should not be considered in this matter. Attorney Chen made filings subsequent to the comment period and she has previously fully availed herself of the opportunity to comment in this proceeding.

My name is L. Joseph Garr, III, and I am employed by UniGroup, Inc. as Senior Staff Attorney. UniGroup, Inc. is the parent holding company of Mayflower, a licensed motor carrier of household goods. Mayflower is a member of the American Moving and Storage Association (AMSA), which, on October 15, 2003, submitted a reply to Ms. Chen's comments. AMSA and Mayflower, individually, have submitted Petitions for Reconsideration of the IFR adopted on June 11, 2003. I am familiar with Ms. Chen's ongoing 4-year old lawsuit against Mayflower and am a counsel of record representing Mayflower in that matter.[1]

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[1] Case No. 99 C 6261, *Angie Chen v. Mayflower Transit, Inc.*, N.D. Ill., Eastern Division.

We are uncertain as to the purpose of Ms. Chen's recent filing. As noted, it is not a Petition for Reconsideration and Ms. Chen has twice previously submitted comments (see Document Nos. 58 and 60 dated February 12 and July 5, 2001) in this Docket. It appears that she is taking yet another opportunity to berate Mayflower specifically and the moving industry generally perhaps in an effort to advance her court case against Mayflower.

Inasmuch as her claim is presently pending in court, it is obviously inappropriate for Mayflower to offer a point-by-point rebuttal to Ms. Chen's contentions or otherwise attempt to conduct a parallel proceeding before the FMCSA relative to her pending court action. We are confident that you will likewise view Ms. Chen's latest comments for what they are and accord them no weight in your consideration of the pending Petitions. Mayflower is vigorously defending the lawsuit and specifically challenging Ms. Chen's factual allegations in the District Court case. This limited response is offered so that the record reflects that her allegations are very much in dispute.

If Ms. Chen's lawsuit has any relevance at all in this proceeding, it serves to vividly illustrate the concerns of the moving industry described in the AMSA Comments and the Petitions for Reconsideration with respect to the collection of lawful charges at delivery relating to situations not disclosed (which could be through an oversight or not known) at the time a shipment estimate is presented.

As indicated in the District Court's July 19, 2002, opinion,[2] the entire dispute with Ms. Chen stemmed from her inability to pay her estimated charges at destination in an acceptable form. In and of itself that circumstance was certainly unforeseen by Mayflower since a carrier may reasonably assume that a customer will pay its transportation bill. Compounding this turn of events were the unanticipated delivery services necessary to fulfill Mayflower's obligations under the contract of carriage.

When the driver arrived at Ms. Chen's destination residence, it was determined that a long carry shuttle service would be required to unload the van because it could not be parked on Ms. Chen's one-way residential street without completely blocking traffic. In situations such as this where even a smaller vehicle would block traffic, the van is parked as close to the residence as safely and legally possible and the articles are then walked from that location to the residence. The need for those extra services, which produced extra charges, was not disclosed by Ms. Chen at the time of her estimate. Waiting time charges were also incurred as Ms. Chen unsuccessfully attempted to secure funds to pay her charges. Subsequently, storage and related handling charges began to accrue when the shipment was placed in storage. There is no question that

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[2] Reported at 2002 U.S. Dist. Lexis 13309.

these additional charges were prescribed by Mayflower's tariff and that its actions were permissible under the law.

Notwithstanding the legitimacy of Mayflower's actions, it has been engaged in litigation with Ms. Chen for four (4) years and the end is not in sight. What commenced as a breach of contract action has been elevated by Ms. Chen to a RICO claim. The irony of all of this is that Ms. Chen's actions precluded Mayflower from collecting even the original estimated charges at delivery.

Movers and their customers routinely encounter circumstances at destination that were not revealed or anticipated at the time the estimate was prepared. In short, the terms and conditions of the original estimate have changed. The inability of carriers to collect their lawful charges at destination for services required and performed as contemplated in the Interim Final Rule puts them on the horns of a dilemma. If they refuse to perform the service, they face a breach of contract action for failure to deliver or holding freight hostage. If they perform the service and bill the shipper later, they can only hope to collect those charges and perhaps then only after years of protracted litigation. Ms. Chen's lawsuit demonstrates that it is not realistic to expect that a carrier can simply bill for additional services in 30 days and receive prompt payment.

The IFR strips from carriers their most effective collection tool, i.e., a possessory lien. The fact that movers are dealing with consumers does not justify such an inequitable result. Indeed, consumers deal directly with a variety of service providers who may exercise such liens. For example, automobile mechanics are often required to perform additional work on a car not anticipated when the customer brought the vehicle in for repair. Yet, the mechanic is entitled to full payment for his services before releasing the vehicle. There is no valid justification for eliminating the same right which movers have held for many years to recover lawful charges for unanticipated services necessary to complete the transportation undertaken by the carrier.

A mover should surely be permitted to collect at delivery under either estimate formats (binding or non-binding – 110%) for additional services requested by the shipper. The moving process must be looked at from a practical standpoint. During various stages of a move, a shipper often realizes that he or she needs additional services not included in the original estimate. For instance, during the course of loading, a shipper may request that a particular piece of furniture be delivered on route to a friend or relative. This is commonly called a "stop off". It requires an alteration in how the goods are packed at origin, a detour on the route of delivery and an additional stop to unload the item. Certainly a mover should be able to collect at final destination for such additional shipper requested service. The same can be said of many other situations when the shipper asks for additional services not included in the original estimate (e.g.

the shipper wants the carrier to unpack his or her shipment at destination when originally the shipper was going to perform the unpacking or wants an attic full of old items delivered when originally the shipper had intended to sell them before the move, etc.).

Further, a mover should be able to collect at delivery for additional services that become necessary and for which the shipper was informed in accordance with the Interim Final Rule. When a shipper has failed to inform a mover of particular problems at destination (which could be through oversight or lack of knowledge) the mover could not include them in the original estimate. Attorney Chen's allegations provide an example. Mayflower was not informed that the van could not remain parked on the street at destination; it would block an entire lane of a residential street and the driver had to arrange for delivery of multiple portions of the load from a nearby location.

If movers cannot collect at delivery for requested or needed additional services, it would be to the shipper's advantage, when an estimate is being presented, not to request a service, but request it later or not inform a mover of possible problems that could arise. This is not a situation that FMCSA should encourage since it will surely foster disputes between shippers and movers.

Simply put, the important issue of the collection of requested and necessary charges at destination should not be blurred by the attempts of Attorney Chen to use the rulemaking process of the FMCSA to gain leverage in her lawsuit, which is nothing more than a dispute between private parties. It also serves to demonstrate how a relatively simply issue can be inflated into complex, expensive and protracted litigation and the problems a mover can encounter attempting to collect its lawful charges. Even if Mayflower ultimately prevails on the merits, it cannot recoup the expense of litigation or the loss of use of revenues over this period of time. The inflexible, bright line requirement envisioned by the IFR will undoubtedly foster this type of litigation as consumers and their lawyers learn how to "game" the system.

Sincerely,

L. Joseph Garr, III
Senior Staff Attorney

cc: Angie Chen, Esq.

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