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

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B-178061

AUG 1 1973

Phillips-Parr, Inc.
Steamship Agents
1642 International Trade Mart
New Orleans, Louisiana 70130

Attention: Thomas Phillips
Director

Gentlemen:

Subject: MV Naturalist and MV Factor
at New Orleans--June/July 1970

We are considering your letter of May 3, 1973, to our Transportation and Claims Division, as a request for review of that Division's action in sustaining the Military Sealift Command's (MSC) disallowance of your principal's (Harrison Line) claims for unpaid ocean freight charges of $524.07 (MV Naturalist), and for $516.32 (MV Factor).

The claims for $527.04 and for $516.32 arise from five shipments of general cargo which were booked in June 1970 by the Military Sea Transport Service (now MSC) for carriage under Government bills of lading in the MV Factor and the MV Naturalist from New Orleans, Louisiana, to Liverpool, England, and Glasgow, Scotland.

Both vessels sailed from New Orleans but because of a nationwide dock strike in the United Kingdom the Harrison Line, apparently relying on the standard liberties clause of its commercial bill of lading, ordered the MV Factor diverted to Cuxhaven, Germany, and the MV Naturalist diverted to Aarhus, Denmark, for discharge of cargo.

At both ports U.S. Government representatives took custody of the cargo after discharge and arranged for transportation from Cuxhaven and Aarhus to the bill of lading destinations at Government expense.

As agent for Harrison Line you presented to MSC on public voucher forms bills for the ocean freight charges on the five shipments. MSC refused payment: in its opinion, under the Government bill of lading contract as construed in Alcoa Steamship Co. Inc., v. United States, 338 U.S. 421 (1949), freight is not earned unless and until the vessel completes her voyage and delivers the cargo to its destination, a

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requirement that in its view supersedes the inconsistent provisions of the standard liberties clause in Harrison Line's commercial bill of lading.

At your request the claims were sent to our Transportation and Claims Division which, in its letter of April 30, 1973, to you, sustained MSC's refusal to pay the claims. You now request review of that action.

You contend that Harrison Line is entitled to full payment of the claimed ocean freight charges for these reasons:

(1) The inconsistent provision in Alcoa was the commercial bill of lading's "goods or vessel lost or not lost" clause which is not involved here;

(2) Clause 7, the liberties clause of Harrison Line's commercial bill of lading is not inconsistent with the Government bill of lading since the latter bill of lading has no strikes or lockouts provision;

(3) The commercial bill of lading applies by virtue of Condition 2 on the back of the Government bill of lading;

(4) The acceptance of delivery at Cuxhaven and Aarhus by Government officials was clearly in error if they had no authority to accept the cargoes; and

(5) The Harrison Line would be entitled to a lien on the goods for non-payment of ocean freight under the commercial bill of lading because there is no provision to the contrary in the Government bill of lading.

These five shipments were covered by Government bill of lading contracts.

In the often cited Alcoa case the court states at page 429:

> Since it seems to us that the bill of lading's specific conditions for payment can only be satisfied upon delivery of the shipment to destination, we hold the terms of the government bill to be inconsistent with petitioner's "Goods or Vessel lost or not lost" provision.

Clause 7 of the Harrison Line commercial bill of lading reads:

> 7. DISCHARGE PORTS. In case the vessel shall be prevented from reaching her destination, or discharging without any delay, by quarantine, blockade, interdict,

> ice, war, civil or political disturbances, strikes, lockouts, or any cause whatever, or if the Master shall consider it unsafe, without any delay, to proceed to, enter, or discharge at her destination or to remain at any port to complete the discharge of the goods, the Master may immediately discharge the goods into any depot, lazaretto, lighter, or other vessel, or proceed to and land the goods at any available safe port, and such discharge into depot, lazaretto, lighter or vessel, or landing at another port shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be paid by the shipper and/or consignee of the goods, and the carrier shall have a lien on the goods therefor. (Emphasis supplied.)

The fact that the "goods or vessel lost or not lost" clause of Harrison Line's commercial bill of lading is not in issue here is immaterial. It does seem clear, however, that the language in clause 7 of the commercial bill of lading providing that a final delivery under the contract occurs when, among other things, a vessel is prevented by a strike from reaching her bill of lading destination and lands at any available port, is inconsistent with the terms of the Government bill of lading.

In addition to the terms and conditions cited in Alcoa which condition the right to payment of freight or its retention by the carrier upon delivery of the goods to the consignee at its intended destination, the face of the Government bill of lading reads:

> Received by the transportation company named above, subject to the conditions named on the reverse hereof, the property hereinafter described, in apparent good order and condition (contents and value unknown), to be forwarded to destination by the said company and connecting lines, there to be delivered in like good order and condition to said consignee.

Condition 2 on the back of the Government bill of lading, which you argue makes the commercial bill of lading the controlling document, reads:

> Unless otherwise specifically provided or otherwise stated hereon, this bill of lading is subject to the same rules and conditions as govern commercial shipments made on the usual forms provided therefor by the carrier.

But, as indicated above and in Alcoa, specific rules and conditions govern the delivery of and payment for shipments moving under Government bills of lading.

The argument that the acceptance of delivery by Government officials at Cuxhaven and Aarhus was clearly in error also is immaterial; what is material is that Harrison Line failed to deliver the cargoes to the bill of lading destinations and therefore failed to earn the right to claim the freight. Furthermore, there is no indication that the Government officials at Cuxhaven and Aarhus lack authority to receive the cargoes at those ports.

Finally, of course, and aside from the fact that Harrison Line could not assert a valid lien on cargo owned by the United States (Prudential Steamship Corporation v. United States, 220 F. 2d 655 (1955); United States v. American Trading Co. of San Francisco, 138 F. Supp. 535, 540 (1956)), if freight is payable after delivery of the cargo, as was the case here, there is no lien. The Bird of Paradise, 72 U.S. 545 (1866); Portland Flouring Mills Co. v. Portland & Asiatic S.S. Co., 145 F. 687, 695 (1906).

We note, too, that shipowners with freight moneys at risk can insure themselves against loss of those moneys. See Ocean Transportation, McDowell & Gibbs, 1954; Ocean Shipping, Bross, 1956; Inger v. Firemen's Fund Ins. Co., 90 F. 310, 312 (1898); Symmers v. Carroll, 134 N.Y.S. 170 (1912), aff. 101 N.E. 698.

The Transportation and Claims Division's action on your principal's claim is not otherwise known to be in error and, accordingly, is affirmed.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States