



United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-229329

January 30, 1989

J. Christopher Kohn, Director  
Commercial Litigation Branch  
Civil Division  
Department of Justice  
550 11th Street, NW  
Washington, DC 20044

Dear Mr. Kohn:

We recommend that you favorably consider a debtor's offer to compromise a claim of the United States. Since the amount of the claim is \$63,749.83, the matter is being referred to the Department of Justice under the provisions of 31 U.S.C. § 3711 (1982) and 4 C.F.R. § 103.1 (1988). The matter was referred to this Office by the Department of the Air Force.

The claim arose out of a contract of carriage which is evidenced by a Government Bill of Lading (Attachment 1) that the Air Force issued on August 24, 1983, to Ryder/PIE Nationwide, Inc. (now PIE Nationwide, Inc.). The record indicates that Dover Air Force Base, Delaware, tendered a shipment to PIE, consisting of one piece, an atomic clock, weighing 94 pounds, for delivery to Newark Air Force Station, Ohio. Newark AFS contends that PIE did not deliver the article. PIE agrees that it cannot prove delivery. (Attachment 2) The Air Force determined that the article's value was \$63,749.83 (Attachment 3); the agency claimed that amount and when PIE failed to pay the claim the Air Force collected the full amount by deduction from other bills. (Attachment 4)

Although the government recovered the amount claimed, it is our view that unilateral deduction does not constitute payment; therefore, a claim of the United States remains. See 46 Comp. Gen. 801 (1967); United States v. Isthmian S.S. Co., 359 U.S. 314 (1959) and Grace Lines v. United States, 255 F.2d 810 (2nd Cir. 1958).

Letters from PIE suggest that the carrier had considered settling the claim for \$4,700 (Attachment 5) and possibly for the higher amount of \$15,040. (Attachment 6) We

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believe that in view of the litigative probabilities the latter amount deserves consideration as a basis for settlement. See 4 C.F.R. § 103.3. We refer to the legal and factual issues involved, including evidentiary difficulties to support the government's claim and "related pragmatic considerations."

The major issues raised by PIE include a factual question of whether the government delivered the atomic clock to the carrier at origin; whether the government had a duty to inform PIE of the clock's high value, which would determine whether PIE is relieved of all liability; and the amount of damages, among other issues that PIE argues. (Attachment 7) Attachment 8 contains the Air Force's position.

The issue of delivery to PIE appears particularly troublesome. It is undisputed that the GBL contained a notation indicating "shipper's load and count." (Attachment 1) The general rule is that a bill of lading notation, such as "SL&C", places the burden on the shipper to prove that the property was loaded on the carrier's equipment; in other words, a signature on the bill of lading by the carrier's agent, indicating receipt, does not prove delivery by the shipper. See Dublin Co. v. Ryder Truck Lines, Inc., 417 F.2d 777 (5th Cir. 1969); cf. Florencio Roman, Inc. v. CTMT, Inc., 614 F.2d 9 (1st Cir. 1980). The issue here is whether testimony by a warehouse foreman at Dover AFB, if available as a witness, would prove delivery. As contended by PIE there is a question whether the foreman's statement (Attachment 9) would establish that fact. Further complicating the issue is the fact that the article was en route from the United Kingdom. (Attachment 10)

The question of whether the government had a duty to disclose the article's value is also troublesome. The carrier's statutory liability for loss is based on 49 U.S.C. § 11707 (1982). If the article is determined to be of extraordinary value and the shipper fails to disclose that fact, however, there is some authority to relieve the carrier from liability. See, for example, Mass v. Braswell Motor Freight Lines, Inc., 577 F.2d 665 (9th Cir. 1978).

Whether the Air Force could muster witnesses to prove the claimed damages is also questionable in view of the fact that there is no market value for atomic clocks and this clock needed unspecified repairs. (Attachment 11)

The practical considerations supporting acceptance of a reasonable compromise are substantial. The government's claim is over 5 years old, suggesting potential difficulties in establishing material facts. Of greater significance are

a few salient facts which support on equitable grounds the carrier's position that it would have protected itself from liability if the government had informed its agent of the article's value. The article weighed 94 pounds and the carrier received freight charges of only \$34.03 to assume the risk of transporting an article valued at \$678.18 per pound, assuming a total value, as the Air Force claims, of \$63,749.83.

Uncertainty also remains as to whether or not the Air Force actually received the article. The agency may not be able to identify the article from its records even if the carrier did deliver it. (Attachments 11-16)

These circumstances explain our view that \$15,040 would be an acceptable basis for compromise of the claim. While not entirely clear, the carrier's letter to the Air Force of October 24, 1985 (Attachment 6) suggests that PIE would settle the claim based on a value of \$160 per pound, which is the basis for the \$15,040 figure.

If you need further information from this Office, the attorney assigned to the case in our Office of General Counsel is Daniel Billard, who can be reached on 275-5422.

Sincerely yours,



James F. Hinchman  
General Counsel

Enclosures

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