



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

13408 GEM
Mr. Saldin



IN REPLY
REFER TO: B-196022

OFFICE OF GENERAL COUNSEL

April 7, 1980

[Automobile Damage Claim]

Ms. Carol A. Latterman
Assistant Regional Counsel
General Services Administration
26 Federal Plaza
New York, N.Y. 10007

AGC00017

DLG 04/3/80

Dear Ms. Latterman:

This concerns your request for review of our denial of a claim (B-196022, October 15, 1979) by State-Wide Insurance Company, as subrogee of MacKay Publishing Corporation, under the Federal Tort Claims Act. The claim was for damage to one of MacKay's vehicles resulting from an automobile accident on April 30, 1979, in Hartsdale, New York, involving a GSA motor pool vehicle driven by a GAO employee. The Government's car was also damaged in the accident. Counsel for State-Wide has proposed a settlement under which State-Wide would pay 50% of the damages to the Government's car if the Government paid 50% of State-Wide's claim.

In our denial of the claim, we concluded that the "cause of the accident was the failure of Mrs. Kristt [the driver of the MacKay vehicle] to observe the stop sign before entering the intersection." That conclusion was based on the factual statement of Mr. Norman Krieger, the GAO employee-driver. However, you state that you were informed by State-Wide that Mrs. Kristt claimed her vehicle was stopped at the stop sign when it was struck by the GSA vehicle. In light of the new allegations described in your letter, we discussed the matter again with Mr. Krieger who reiterated that Mrs. Kristt went through a stop sign and struck the driver's side of his vehicle as he was making a left-hand turn. Mr. Krieger also stated that Mrs. Kristt admitted fault after the accident occurred.

There were no independent witnesses or police reports to support either version of the accident. If this were just a matter of going into court with contradictory statements leading to opposite conclusions, we would probably agree with your recommendation that accepting a 50% settlement would be less costly than risking an adverse judgment following litigation. However, the Government's case is stronger than the mere unsupported statement of its employee. The record shows that the GSA vehicle sustained \$200 worth of damages on the driver's side of the car, from the front door to the rear

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door. The policyholder's vehicle sustained damages to the front bumper and left front headlight area. It is difficult to conceive how the type of damage sustained by the GSA vehicle could have occurred if, in fact, the policyholder's car had been standing still.

We think that the Government has an excellent case on the record and therefore feel that we should reject the settlement offer.

Sincerely yours,

Harry R. Van Cleave

for

Milton J. Socolar
General Counsel