



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

Trans

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on B-156887
6/23/65*

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FEB 24 1966

C. A. Sporl & Co., Inc.
c/o Milton C. Grace, Attorney at Law
1815 H Street, N. W.
Washington, D. C. 20006

Gentlemen:

Reference is made to the request of your attorney, Milton C. Grace, for further consideration of your claim (2-1883940) in the amount of \$233.13 for general average contributions on Government cargo on board the SS. Del Santos, the disallowance of which was sustained by our decision of June 22, 1965, B-156887.

Our prior decision was made on the basis of the record then before us which included your "Statement of General Average and Particular Average on S. S. 'Del Santos'" as the result of striking a submerged object on January 16, 1961. Page 3 of such statement entitled "Narrative" states the bill of lading contains a clause to the effect that General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1950 excepting rule XXII at such port or place in the United States as may be selected by the carrier and as to matters not provided for by such rules according to the laws and usages at the port of New York. The bill of lading was not furnished in support of your claim nor was it of record here. Since Mr. Grace's brief in support of the allowance of your claim, however, indicated that the bill of lading included the amended Jason clause--not cited in the narrative of the general average statement nor previously mentioned or referred to in support of your claim--we obtained from him a copy of the bill of lading on which the Government-owned property moved. We find that it included the following provision:

"In the event of accident, danger, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which the Carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and

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special charges incurred in respect of the goods.
If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully and in the same manner as if salving ship or ships belonged to strangers."

Section 5 of the Carriage of Goods by Sea Act, incorporated by reference in the bill of lading, 46 U.S.C. 1305, provides "Nothing in this Act shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average." The quoted clause (so-called amended Jason clause) appears to be such a clause in common usage and the striking of a submerged object appears to have resulted from a mistake in the navigation or management of the ship for which the carrier or ship is not responsible under section 4(2)a of the Carriage of Goods by Sea Act, 46 U.S.C. 1304(2)a

Accordingly, on the basis of the expanded record, and there being nothing here to indicate the ship was unseaworthy when the Government cargo was loaded at Houston, Texas, on January 11, 1961, prior to the vessel striking a submerged object five days later at Mobile, Alabama, we conclude that your claim for contribution in general average is proper for allowance and we have today instructed our Claims Division to certify such claim for payment, if otherwise proper. You will receive a notice of settlement making an appropriate allowance in due course.

Very truly yours,

FRANK H. WEITZEL

Acting Comptroller General
of the United States

EVIDENCE CONCERNING SEAWORTHINESS OF VESSEL
GENERAL AVERAGE

GOVERNMENT LIABILITY
GENERAL AVERAGE