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

B-173168

FEB 13 1978

The Honorable Alan Cranston
United States Senate

Dear Senator Cranston:

This is the report you requested in your letter of November 8, 1977, concerning the non-payment to Dean Van Lines (now Pan American Van Lines, Inc.) for 12 Government bills of lading that were included in Dean Van Lines, Inc. v. United States, Court of Claims Nos. 506-71 and 507-71.

There is no disagreement about what happened. In 1970 Dean Van Lines, Inc. (Dean), filed a claim for payment on 12 Government bills of lading (GBLs) with the Finance Center, Transportation Division, U.S. Army. The claim was referred to this Office. In June 1971 Dean (Pan American) filed two suits in the Court of Claims (Nos. 506-71 and 507-71) which included these 12 GBLs. In October of 1971 our Office declined further action on the claim since it was the subject of legal proceedings. In 1975 the Court of Claims rendered judgment in the suits containing the 12 GBLs, awarding Dean $20 for each GBL, and soon thereafter Pan American renewed Dean's original claim and added another GBL that was also included in one of the suits filed in the Court of Claims. Our Office declined Pan American's claim on the basis of the doctrine of res judicata.

It appears that Pan American's sense of unfair treatment derives from its misinformation or lack of information about the legal effect of taking Dean's original claim out of the administrative settlement process with the Finance Center and our Office and committing it to the judicial system for settlement. We realize of course that Pan American believes that there were two independent claims associated with the same GBLs--one claim involving non-payment of the GBLs, which was being pursued with our Office, and another claim involving altogether different "selected disallowed charges", which was being pursued simultaneously through the Court of Claims. However, our Office's letter of October 1971, partially quoted in our decision upon reconsideration, October 6, 1977, clearly states that the claim for non-payment of the GBLs which was referred to our Office for settlement was in the jurisdiction of the Court of Claims after suit had been filed on those GBLs and that any amounts due Dean would be finally determined by the court. Thus, Dean was on notice that the two claims associated with the same GBLs were within the jurisdiction of the court for disposition.

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We agree with Pan American when it states in its letter of October 21, 1977, to you that "* * * the Court of Claims actions were not brought to determine whether our invoices had been paid, properly or not, or whether we were entitled to such payment but only to resolve the propriety of those specified charges included in those invoices brought before the Court." However, during the conduct of those actions--specifically during the damage proceedings in which the parties to the actions (Dean included) agreed and stipulated to a formula approved by the Court--the "specified charges" and all other issues, including payment, were addressed and settled.

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We believe that this paragraph from our decision of October 6, 1977, B-173168, makes clear that during the damage proceedings Dean (through its attorney) did in fact stipulate to a formula that settled all Dean's claims on each bill of lading, including payment, even though the Court of Claims actions did not initially specifically state a payment claim:

> "The two judgments in the suits in the Court of Claims containing the GBL shipments that are the subject of Pan American's claim were consent judgments which never directly involved the court in adjudicating any issues. These two consent judgments, similar to hundreds of others, were based on a liability finding in two related test suits, Global Van Lines, Inc., v. United States, 456 F. 2d 717 (Ct. Cl. 1972) and Trans Ocean Van Service v. United States, 426 F. 2d 329 (Ct. Cl. 1970), 470 F. 2d 604 (Ct. Cl. 1973). However, further damage proceedings involving a detailed review of thousands of representative GBL shipments from hundreds of similar suits in the Court of Claims involving household goods had to occur before the consent judgments could be rendered. These further damage proceedings began in 1974 and culminated in the fall of 1975 with the parties to the hundreds of suits stipulating to a formula approved by the court that assigned a standard monetary value to all GBLs that were involved in each suit. It simply was not possible to address each GBL for each of the hundreds of household goods suits that were filed (frequently, there were over 10,000 GBLs involved). Consequently, the representative sampling technique, which specifically determined all the money due for each

> representative GBL regardless of how many different kinds of transportation charges or related issues were involved, was intended by the parties and the court to settle all the issues that were involved in all the GBLs in all the household goods suits on the basis of the projection made from the representative GBLs. Pan American was awarded $20 per bill of lading in the consent judgments for each bill of lading which it now claims under. To allow Pan American now to reopen the $20 amount would reimburse Pan American twice for the same claims and negate the process by which thousands of representative GBLs were meticulously audited (some of which did involve the situation where a carrier received no payment for services rendered) and used as the basis to determine the amount due for all GBLs in suit."

It appears to us that Pan American never understood that this was involved in the settlement process because Pan American states in its letter of October 21, 1977:

> "The GAO explanation infers that the Court's decision reduced payment of our 12 outstanding invoices totaling almost $14,000 to $240. Obviously the Court knew nothing about unpaid or erroneously paid invoices nor was it concerned therewith in the cases before it."

The paragraph quoted from our decision of October 6, 1977, explains why the court was not specifically concerned with Dean's 12 GBLs, but with a liability formula that covered all the GBLs in all the suits. Although that formula produced only $240 for the 12 GBLs Pan American is specifically complaining about, it produced $19,740 for the 987 other GBLs in the two suits containing the 12, and it produced an additional $780,605 in the other 22 suits filed by Dean.

There is one final point made in the letter of October 21 that we believe should be cleared up. Pan American quotes Cromwell v. County of Sac, 94 U.S. 351 (1876) to support the principle that the doctrine of res judicata applies only to the question actually litigated and determined in the original action, not what might have been litigated and determined. Pan American neglected to point out that Cromwell holds that this principle only applies when the claims or causes of action in the original and subsequent suit are different. When the claim or cause of action is the same in both suits, Cromwell states at page 352:

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> "* * * the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

We see no need to repeat the reasons given in our decision upon reconsideration supporting the proposition that Pan American's claim or cause of action for non-payment of 12 GBLs is the same claim or cause of action that was dealt with by the Court of Claims in the two suits containing the 12 GBLs.

We do not believe that Pan American has any judicial recourse to collect more than the $240 already collected. If Pan American were to resort to the courts, it would be faced with the same res judicata argument we have raised. And even if Pan American were correct that its claim for non-payment of 12 GBLs is a different cause of action than that adjudicated in the two Court of Claims' decisions, any suit still would be subject to the defense of the statute of limitations. We do not know when the shipments under the 12 GBLs were delivered, but the deliveries would have had to have been before June 1971 when the suits were filed in the Court of Claims. The date of delivery is when Pan American's cause of action accrued on each GBL, and since Pan American has not filed suit within the 6-year statutory period specified in 28 U.S.C. 2401 (1970), Pan American's claim is barred. See Baggett Transportation Company v. United States, 319 F.2d 864 (Ct. Cl. 1963).

Pan American could attempt to get private relief legislation granting it payment. We would not be in favor of such legislation because, as we stated before, payment would reimburse Pan American twice for the same claims and negate the process by which the suits containing the 12 GBLs were settled.

We regret that we cannot be more helpful to Pan American; it is unfortunate that Pan American apparently was not apprised of the settlement conditions of the two Court of Claims suits which it had filed containing the 12 GBLs in question.

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The enclosures to your letter of November 8, 1977, are returned.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

Enclosures

cc: Washington, D.C., Office