



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

OFFICE OF GENERAL COUNSEL

B-223507

July 16, 1986

The Honorable Richard K. Willard
Assistant Attorney General
Civil Division
Department of Justice

Attention: Denise Butler Harty, Attorney
Commercial Litigation Branch

Dear Mr. Willard:

Subject: Pacific States Transport, Inc. v. United States
Cl. Ct. No. 370-86C
(Your reference: RKW:DMC:DBHarty:flw
154-370-86)

In the complaint attached to your request for a report, dated June 24, 1986, the plaintiff, a motor carrier that transported nine shipments of steel from a government contractor's plant to various government installations, seeks judgment for allegedly unpaid freight charges of \$14,351.70, and other relief.

Our records contain no information concerning the claims involved in this action and we have no records or information which would form a basis for a counterclaim or setoff against the petitioner; however, we do have a general comment concerning the possible defense of estoppel.

The fact that copies of the commercial bills of lading attached as exhibits of the complaint clearly shows that freight charges were to be "prepaid," suggests that the contract between the government and the bankrupt contractor, Roberts Steel and Aluminum Company, made Roberts primarily liable for the charges. Although the carrier would not be bound by the contract between Roberts and the government, and the government would be secondarily liable for the freight charges upon acceptance of the goods, there is some authority recognizing a defense of estoppel under specified circumstances.

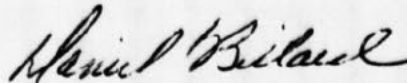
For example, in United States v. Mason & Dixon Lines, 222 F.2d 646 (1955), the United States Court of Appeals for the Sixth Circuit allowed the defense of estoppel where goods were

procured under a contract providing for delivery f.o.b. destination, they were transported under a prepaid bill of lading, and the carrier failed to notify the United States of the nonpayment by the party primarily liable (the government contractor) until after the government had paid the contractor all amounts due under the contract and the contractor became insolvent.

Of course, in the present case we do not have access to the relevant facts of reliance, dates of payment and insolvency. Pertinent to the defense would be resolution of the complaint's factual allegation in paragraph 15. Although the plaintiff alleges that "the bills of lading for each shipment state that the consignee is liable for the payment of freight charges, in the event that the consignee defaults," no such notice is shown on the copies of bills we received. However, even if the bills did contain such notice, there might still be a substantial legal question of whether estoppel applied where the carrier failed to timely bill the contractor and provide the government with notice of the contractor's insolvency.

Although the file is very old, we can also refer you to the case of Navajo Freight Lines, Inc. v. U.S.A., U.S.D.C. D.N.M., Civil No. 5799, your reference JWD:KK:mjm, 78-32-33, and the court's order in that case of July 15, 1966, copy enclosed.

Sincerely yours,



Daniel F. Billard
Senior Attorney

Enclosure