DOCUMENT RESUME

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[Claim for Payment for Transportation Charges]. B-173168. October 6, 1977. 4 pp.

Decision re: Pan American Van Lines, Inc.; Dean Van Lines, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation (300).
Contact: Office of the General Counsel: Special Studies and Analysis.
Budget Function: National Defense: Department of Defense - Military (except procurement & contracts) (051).
Organization Concerned: Department of the Army.
Authority: Cromwell v. County of Sac, 94 U.S. 351, 2. Commissioner v. Sunnen, 333 U.S. 591, 597 (1948). Sea-Land Services, Inc. v. Gaudet, 414 U.S. 573, 578-9. Great Northern Ry. Co. v. United States, 312 F.2d 906 (Ct. Cl. 1963). Global Van Lines, Inc. v. United States, 456 F.2d 717 (Ct. Cl. 1972).

The claimant requested reconsideration of the decision not to pay claims for transportation charges on 12 Government Bills of Lading (GBLs) covering shipments of household goods. Shipment under a GBL is a single cause of action, and when a court judgment pertains to a particular GBL, GAO is precluded from considering a subsequent claim on the same GBL. (Author/SC)

03799

DECISION

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

FILE: B-173168 DATE: October 6, 1977

MATTER OF: Pan American Van Lines, Inc.

DIGEST: 1. Shipment under a Government Bill of Lading (GBL) is a single cause of action, and when a court judgment pertains to a particular GBL, the General Accounting Office (GAO) is precluded from considering a subsequent claim on the same GBL under the doctrine of res judicata.

2. When GAO makes no representations that it will consider a claim simultaneously submitted to it and a court of competent jurisdiction after the court has adjudicated the claim, GAO is not estopped from applying the doctrine of res judicata to the claim.

By letter of September 16, 1970, Dean Van Lines, Inc., the former name of claimant Pan American Van Lines, Inc., claimed payment from the Finance Center, Transportation Division, U.S. Army, for transportation charges on 12 Government Bills of Lading (GBLs) covering shipments of household goods. That claim was referred to the General Accounting Office for direct settlement. By letter of October 14, 1971, our Office informed Dean that since all the GBLs had been included in suits filed in the Court of Claims, we would take no further action regarding the claim but leave any amounts due Dean to be finally determined by the Court.

Judgment was rendered by the Court of Claims in the suits that contained the GBLs upon which Dean claimed. By letter of December 31, 1975, Pan American again submitted to our Office the original claim but added another GBL that was included in one of the suits covering the original 12 GBLs. We declined to pay the claim on the basis of the doctrine of res judicata by letter of July 6, 1976. On April 28, 1977, claimant requests reconsideration, stating that the doctrine of res judicata was inapplicable to this situation.

The doctrine of res judicata

" * * * provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their

> privies are thereafter bound '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.' Cromwell v. County of Sac, 94 U. S. 351, 352. The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. See Von Moschzisker, 'Res Judicata', 38 Yale L.J. 299; Restatement of the Law of Judgments, sections 47, 48. Commissioner v. Sunnen, 333 U.S. 591, 597 (1948)." Sea-Land Services, Inc. v. Gaudet, 414 U.S. 573. 578-579 (1974).

Parties are bound by a previous judgment on matters that may have been offered to sustain or defeat the cause of action involved in the judgment only if the claim presently being asserted is based on the same cause of action involved in the previous judgment. If the causes of action involved in the previous judgment and present claim are different, res judicata only applies to those issues actually adjudicated in the previous litigation. Pan American argues that the cause of action involved in the original claim and reasserted now is different from the cause of action involved in the Court of Claims' judgments even though the same GBL shipments are involved in both the claim and Court of Claims' judgments. Pan American argues further that the specific issue involved in its claim never was actually adjudicated in the previous litigation.

Container Transport International, Inc. v. United States, 468 F. 2d 926 (Ct. Cl., 1972), shows that the Court of Claims now regards a shipment under a GBL as a single cause of action, regardless of how many different kinds of transportation charges may be involved in the shipment. Therefore, since the GBLs (causes of action) are the same in the prior suits and current claim, Pan American's claim should be denied on the basis of res judicata if it is appropriate to apply Container Transport.

Before Container Transport was decided, the Court of Claims believed that a shipment under a GBL could contain more than one cause of action. See Great Northern Ry. Co. v. United States, 312 F. 2d 906 (Ct. Cl. 1963). But Container Transport held that the rule in Great Northern would not be applied to any case filed after November 10, 1972.

Although the suits in the Court of Claims containing the GBL shipments that are the subject of Pan American's claim were filed before November 10, 1972, we do not believe that that fact precludes either the Court of Claims or this Office from applying the "single cause of action" rule announced in Container Transport.

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 is crucial to note that these damage proceedings were undertaken well after the Container Transport decision with the object of resolving all the transportation issues involved. Therefore, we do not believe that the rule in Great Northern has any application to this case where Pan American is unable to say that it relied on being able to litigate separately different aspects of the transportation charges due under a GBL shipment. It is appropriate to apply here the "single cause of action" rule announced in Container Transport.

Even though Pan American agrees in its request for reconsideration that the cause of action in the GBLs in the suits in the Court of Claims

was "the total amount payable on each bill of lading", it tries to avoid the "single cause of action" rule and resulting application of res judicata by characterizing its claim, involving the same GBLs, as "the erroneous payment of the original amount due" or "wrongful payment" or "improper payment" or "wrongful paymants made by a government disbursing office". Pan American confuses a defense or counterclaim belonging to the Government with its underlying cause of action - "the total amount payable on each bill of lading". It does not change Pan American's cause of action even if at some point the Government raises the defense or counterclaim that someone else already has been properly paid for the service for which Pan American is claiming payment. The "single cause of action" rule announced in Container Transport is applicable, and Pan American's claim is barred from our consideration by the doctrine of res judicata.

Pan American also asserts that our Office is estopped from applying res judicata because we made representations to it in the letter of October 14, 1971, which it construed to mean that our Office would consider the claim once the suits in the Court of Claims were concluded. This assertion is wholly without merit. There is nothing in the letter of October 14 that could be construed to mean that our Office would consider the claim after the Court of Claims had adjudicated it. We quote the last paragraph of the October 14 letter in full:

> "Since these claims are now within the jurisdiction of the United States Court of Claims for adjudication in the cited cases, no further action will be taken regarding them here, consistent with our policy in such cases. Any amounts due Dean Van Lines will be finally determined by the court."

Deputy Comptroller General
of the United States