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DECISION

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

FILE: B-214326 **DATE:** October 19, 1984

MATTER OF: Applicability of the Government Losses in Shipment Act to shipment of U.S. securities by commercial armored car carriers.

DIGEST:

The revolving fund established by section 2 of the Government Losses in Shipment Act (GLISA), 40 U.S.C. § 722 (1982) is not available to provide replacement funds for losses of securities transported by commercial carriers from registered mail facilities to Federal Reserve Banks, up to the amount of the carriers' liability/insurance coverage; the fund would be available to replace losses exceeding that amount. GLISA provides that fund shall not be available with respect to any loss of valuables "of which shipment shall have been made at the risk of persons other than the United States * * *." 40 U.S.C. § 723. Under the standard shipping agreement, the private commercial carriers have assumed the risk of loss but only up to the amount of their stated maximum liability.

This responds to the request by the Deputy Fiscal Assistant Secretary, Department of the Treasury, for our opinion on whether the Government Losses in Shipment Act, (GLISA) 40 U.S.C. §§ 721-729 (1982) affords coverage for losses of Treasury securities transported by commercial carriers when the amount lost exceeds the carriers' insurance coverage. For the reasons given below, we hold that the fund established by the Act is available in these cases.

Background

The Bureau of the Public Debt regularly ships unissued marketable Treasury bonds and notes from Washington, D.C., to the Federal Reserve Banks and Branches. The bonds and notes generally travel part of the way by registered mail and part by private commercial carrier.

The receiving banks take custody of the securities when they arrive at their destination postal facilities. In the past, the banks transported the securities from the postal facilities to their buildings in their own armored cars. However, in recent years some of the banks have switched to using commercial armored car carriers because it is more economical

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that way. The banks also use commercial armored car service to deliver securities to financial institutions which purchase them after issuance. The entire delivery of the securities from Washington, D.C., to the receiving financial institutions is at the Treasury's risk and expense.

The carriers generally include insurance coverage against losses of the shipped securities in their base service charge. The coverage ranges from $5 million to $50 million. The Bureau currently limits the value of securities which a bank may have transported in any one shipment to the carrier's insurance coverage amount.1/ However, the Bureau often makes security shipments to the Federal Reserve Banks which exceed the coverage amounts. When this occurs a consignee bank, in order to comply with the limitation of PD Bulletin 163, contracts with a commercial carrier for more than one shipment from the registered mail facility to its building.

The Assistant Secretary notes that the multiple shipments add to the Bureau's expenses and increase the Government's exposure to security losses. To save expenses and to reduce the risk of loss the Bureau would like to begin allowing the consignee banks to have the armored car portion of their securities shipments made in a single trip regardless of whether a shipment's value exceeds the carrier's insurance coverage. The Assistant Secretary raises the question of whether the fund established by the GLISA would be available to replace a loss which occurred during a shipment if the amount lost exceeded the carrier's insurance coverage. Administratively it appears reasonable for the Bureau to transport securities in single rather than multiple shipments. Further, as explained below, the operation of the GLISA would not be an impediment to the Bureau's using single shipments.

<u>Government Losses in Shipment Act</u>

The GLISA, 40 U.S.C. §§ 721-729, was enacted for the purpose of saving the Government money by creating a scheme in which the Government, rather than purchasing private insurance, in effect, insures itself against the loss of valuables it ships. S. Rep. No. 738, 75th Cong., 1st Sess. 5-6 (1937). In furtherance of this purpose, section 4 of the Act prohibits (with exceptions not relevant here) any executive department, independent establishment, agency, wholly-owned corporation, officer, or employee from purchasing insurance against loss, destruction or damage in the shipment of valuables.

1/ PD Bulletin No. 163, revised December 1, 1977.

40 U.S.C. § 726. Section 2 establishes a revolving fund for replacing valuables which have been lost, destroyed, or damaged in the course of shipment. 40 U.S.C. § 722. The Treasury Department which administers the Act has issued implementing regulations at 31 C.F.R. Parts 261 and 262. Consistent with 40 U.S.C. § 721, the regulations require that shipments of valuables must be made so as to provide the greatest possible protection against risk of loss, destruction, and damage. 31 C.F.R. § 261.3 (1983).

If a loss occurs while the valuables are in transit, a claim may be filed with the Secretary of the Treasury. 40 U.S.C. § 723. The Secretary may authorize replacement of the lost valuables to be made out of the revolving fund if he is satisfied that the responsible agency shipped the valuables substantially in accordance with the applicable regulations.

The Issue

The Assistant Secretary raises the question of whether the Act would allow replacement from the fund if a loss occurred during a shipment and the amount lost exceeded the carrier's insurance coverage.[2] The third proviso of section 3 of the GLISA (40 U.S.C. § 723) stipulates that the revolving fund which section 2 establishes "shall not be available with respect to any loss, destruction, or damage affecting valuables of which shipment shall have been made at the risk of persons other than the United States, its executive departments, independent establishments, agencies, wholly-owned corporations, officers and employees." The Assistant Secretary asks whether the fact that the private armored car services carry insurance means that the carriers have assumed the risk of shipments so as to preclude replacement from the fund in the event of a loss. If we conclude

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2/ As discussed above, GLISA generally prohibits insurance coverage of Government valuables in transit. However, shipments in which valuables are covered by insurance such as those at issue here occur when the carrier's transportation charges upon a shipment are regularly fixed at a rate which covers his indemnity insurance cost and he will not accept the shipment at a rate excluding such cost. We have held for some time that the total sum paid to the carrier for the shipment may be considered as transportation costs in such cases and we will not object to an agency's paying such rates. See 34 Comp. Gen. 175 (1954), 17 Comp. Gen. 139 (1937).

that the carriers have assumed the risk, have they done so for the full shipment value or only for the coverage amount?

We hold that the private carriers assume the risk of loss up to their limit of liability/insurance coverage amounts and that any losses exceeding these amounts are covered by the GLISA.

Discussion

There is little in the GLISA's legislative history concerning the third proviso of section 3. However, it suggests that when the Congress included the proviso it was primarily contemplating situations in which the party receiving the valuables would assume the risk of loss, such as when bonds are sent for exchange at the risk of the sendee. No mention is made of the private carriage of Government valuables--this was not a common practice at the time. S. Rep. No. 738, 75th Cong., 1st Sess. 9 (1937).

In general, the extent to which a carrier assumes the risk of loss depends upon his agreement with the party who hires him. We received from the Department of the Treasury a copy of pertinent portions of the standard General Services Administration contract for the shipment of coins, securities and food stamps. We assume that the Bureau will be shipping its securities under this contract or under one containing like provisions pertaining to allocation of risk of loss. Under the GSA contract the carrier assumes the risk of loss up to the amount of his insurance coverage. It states as follows:

> "Unless otherwise specifically provided, the Contractor assumes full liability for the monetary value of the property shipped * * *. In the event of loss of or damage to any shipment or part thereof, the Contractor shall be liable for the monetary value of any and all property lost or damaged.
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> * * * * *
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> "The Contractor, at his own expense, agrees to provide and maintain * * * sufficient cargo insurance to cover the total value of the property in a shipment."

The sample contract also contains the following:

> "The carrier certifies that insurance coverage is equal to or exceeds the value of the commodity to be shipped per vehicle/per shipment. * * * The maximum acceptable liability per vehicle is $50,000,000.00, per shipment is $50,000,000.00." (Emphasis added.)

Thus, under these provisions, read together, the carrier accepts liability for losses up to $50,000,000 and agrees to obtain insurance sufficient to cover the amount of his liability. If the Bureau were to make its shipments to Federal Reserve Banks using the GSA contract (or a contract containing similar risk of loss provisions) the carriers, the private armored car services, would be considered to have assumed the risk of loss in shipment up to the amount of their insurance coverage by virtue of the provisions quoted above. Since the carrier would have assumed the risk of losses up to the amount of his insurance coverage under his contract with the Bureau, the GLISA fund would not be available to cover any losses up to that amount due to the prohibition of 40 U.S.C. § 723, discussed above, against the use of the fund with respect to any loss "of which shipment shall have been made at the risk of persons other than the United States."

On the other hand, under such contracts, the carriers would not have assumed liability for losses in excess of their insurance coverage. Thus, the prohibition against the use of the revolving fund for the replacement of lost valuables not at Government risk would not apply to excess amounts which might be lost in shipment and the fund would be available to make such replacements.

The fund's availablity for the replacement of excess losses is entirely consistent with the GLISA's self-insurance rationale and with our previous decisions interpreting the Act. This rationale is based on the theory that the Government's vast resources make it far more economical for it to assume its own risks of loss than to pay for insurance coverage from private sources at rates sufficient to cover all losses, to pay the insurer's operating expenses (including agency or broker commissions) and to leave the insurers a profit. S. Rep. No. 738, 75th Cong., 1st Sess. 6 (1937); 58 Comp. Gen. 14, 16 (1978).

Conclusion

Accordingly, we conclude that under the GLISA, the Bureau of the Public Debt may sanction single shipments of securities by private armored car carriers when the value of shipment exceeds the amount of the carriers' liability/insurance coverage. In the event a loss occurs during such a shipment, the private carrier shall be deemed to have assumed the risk of loss within the meaning of the third proviso of section 3 up to the amount of its contractual liability. However, the carrier does not assume the risk of loss beyond the maximum liability provided for in the shipping contract. Therefore, the revolving fund is available to replace the excess loss.

Milton J. Socolar

Acting Comptroller General
of the United States