



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20543

Mr. Riedinger

OFFICE OF GENERAL COUNSEL

B-171877.3

June 23, 1981

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The Honorable Thomas S. Martin
Acting Assistant Attorney General
Civil Division
Department of Justice

Attention: David Nerkle, Esq.
Commercial Litigation Branch

Dear Mr. Martin:

Subject: John C. Shull v. United States
Court of Claims No. 307-81C
(Your reference: TSM:DE:ig
154-307-81C)

Reference is made to letter dated June 2, 1981, and statutory call form of the same date requesting a report on a petition filed May 5, 1981, in the above-entitled case wherein plaintiff seeks judgment on matters involving the loss and destruction of his personal property at the time of the evacuation from Vietnam in 1975.

Because of the lack of preciseness of the petition, we are not completely clear as to the nature of his present claim. While plaintiff asserts a personal property loss as a result of that evacuation, the judgment sought is for \$100,000. Since this amount appears to be far in excess of the reasonable value of such goods, it appears that he may be seeking general damages as a result of alleged improper actions in his case, rather than the loss of the goods themselves. If so, it appears that the claim is one sounding in tort, a matter over which the Court of Claims has no jurisdiction. See 28 U.S.C. 1346(b) and 1491 (1976). See also, McCreery v. United States, 161 Ct. Cl. 484 (1963).

In that regard, one aspect of his personal property claim was the subject of Comptroller General's decision B-171877.3, December 15, 1978, copy enclosed, which denied his entitlement to have an excess weight shipment of goods transported from Vietnam at Government expense. The record in the case showed that the plaintiff was relieved from active duty as a captain in the Army on June 26, 1972, and chose to remain in Vietnam as a civilian rather than be returned home for separation

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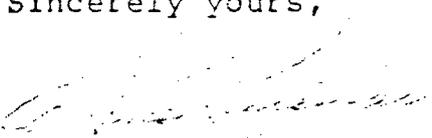
to ship 2,000 pounds of personal effects, plus 600 pounds of unaccompanied baggage at Government expense within 1 year following his overseas separation. Almost 1 year after his separation he attempted to have goods which weighed considerably more than his limit shipped at Government expense, but his request was administratively denied. In April 1975, after a 3-year controversy with the authorities in Vietnam, he arranged for shipment of 4,200 pounds of goods at his own personal expense.

In 1978, plaintiff filed a petition in the Court of Claims (No. 16-78), to recover the costs of that shipment. We understand that the case has not been concluded by the Court. In this regard, see our litigation report to your office (B-171877, February 9, 1978).

No record has been found in this Office of any indebtedness to the United States which would furnish the basis for a cross action against the plaintiff.

Further inquiry regarding this matter may be addressed to the undersigned, telephone 275-5422.

Sincerely yours,



A. James Riedinger
Senior Attorney

Enclosures - 3.