



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

Bullock
525953

B-206860

June 14, 1983

Do not make available to public reading

The Honorable Walter B. Jones
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives

Dear Mr. Chairman:

This responds to your request dated February 2, 1983, for our advice on how the Congress should dispose of claims against the Panama Canal Commission for vessel damage occurring outside the Canal locks that exceed \$120,000. The Commission forwards the claims to the Congress pursuant to section 1415(b) of the Panama Canal Act of 1979 (classified to 22 U.S.C. § 3775(b) (Supp. III 1979)). The Commission has forwarded three claims to the House of Representatives which the Speaker has referred to your Committee. We understand that hearings on these claims were held in February. Generally, the legislation contemplates that Congress will provide for the payment of such claims, to the extent deemed proper, through the appropriations process.

Background

The Panama Canal Act of 1979, Public Law 96-70, 93 Stat. 452 (1979) (Act), implements the Panama Canal Treaty, the Neutrality Treaty and other agreements between the United States and the Republic of Panama signed on September 7, 1977. Under the Panama Canal Treaty, the United States is responsible for operating the Canal until December 31, 1999. The Act establishes the Panama Canal Commission to carry out this responsibility and includes provisions covering the settlement of claims arising out of the operation of the Canal. With respect to the kind of claims now before your Committee, 22 U.S.C. § 3775(b) provides:

"The Commission shall not adjust and pay any claim for damages for injuries arising by reason of the presence of the vessel in the Panama Canal or adjacent waters outside the locks where the amount of the claim exceeds \$120,000 but shall submit the claim to the Congress in a special report containing the material facts and the recommendation of the Commission thereon."

We understand that the Commission has sent reports to the Congress on the claims your Committee is considering. These reports contain factual summaries of the vessel accidents, letters from the claimant's attorneys, descriptions of the vessels' damage, and the Commission's

recommendations on the amounts which should be paid on each claim. Also included were transcripts of hearings which were conducted in Panama a few days after the accidents by the board of Local Inspectors and the opinions of the Board with respect to each claim.

The Act is silent as to what procedures the Congress should follow after receiving the Commission's claims reports. The Act's legislative history provides little guidance on the question. It indicates that the enactment of section 3775(b) returned the law concerning the settlement of outside-the-lock vessel damage claims to approximately what it was during the period from 1940 to 1951, part of the time when the Canal was operated by an "appropriated fund agency". Under the original Panama Canal Act, enacted in 1912, no claims were allowed for damage occurring outside the locks. Congress amended the Act in 1940 to authorize the Panama Canal agency to adjust and pay claims if less than \$60,000. The 1940 amendment further required that claims for more than \$60,000 be submitted to the Congress, by the head of the agency, the Governor of the Panama Canal, by a special report containing the material facts and the Governor's recommendations, similar to the current law. (Act of June 13, 1940, 54 Stat. 387, 388 (1940)). However, Panama Canal records indicate that the Governor did not submit any claims to Congress for the period from 1940 to 1951 apparently because the Canal did not receive any claims for over \$60,000 during that time. The Amending of the Panama Canal Act of 1979 Concerning the Panama Canal Commission's Authority to Adjust and Pay Claims For Vessel Damage. Hearings Before the Subcomm. on Merchant Marine and Fisheries, 97th Cong., 2nd Sess., 17 (1982) (answers of Panama Canal Commission to questions submitted by Chairman Hubbard). Obviously then, examining the period between 1940 and 1951 when the Canal's claim settlement provisions were similar to today's can provide no guidance concerning what action Congress should take upon receiving a vessel damage report under subsection 3775(b).

There are or have been, however, statutory schemes involving the settlement of claims against other agencies which are similar to subsection 3775(b). What has been done under these schemes suggests a procedure which could be followed in disposing of the claims in question here. Since payment of such claims would ultimately require the passage of an appropriation, the appropriations process generally has been followed when Congress has been charged with considering and settling larger agency claims.

Military Claims Act and similar statutes

The Military Claims Act, 10 U.S.C. § 2733, authorizes the settlement of claims for real and personal property damage, death, or personal injury caused by a member or employee of the military departments or the Coast Guard acting within the scope of employment or incident to non-combat activities in situations not cognizable under the Federal Tort Claims Act. Similar authority exists for claims against the military departments arising in foreign countries (10 U.S.C. § 2734) and claims against the National Guard (32 U.S.C. § 715). Until 1978, the Secretary of the department concerned was authorized to settle and pay up to \$25,000 on claims under these statutes. For claims over \$25,000, the

Secretary was authorized to pay the first \$25,000 and then report the excess to the Congress for its consideration, provided he considered the claim to be meritorious and otherwise covered by the particular statute. The language of 10 U.S.C. § 2734 was slightly different, authorizing the Secretary to certify the excess [over \$25,000] to Congress as a legal claim for payment from appropriations made by Congress therefor * * *." 10 U.S.C. § 2734(d).

In 1978, the requirement for Congressional consideration of "excess" claims under these statutes was eliminated when Public Law 95-240 amended 31 U.S.C. § 1304 (then 31 U.S.C. § 724a) by making the permanent indefinite judgment appropriation available to pay the excess. However, the procedure which the military departments and the Congress followed before 1978 in disposing of claims over \$25,000 is instructive. The process began by an authorized official of the military department concerned submitting a letter to the director of the Office of Management and Budget (OMB) indicating that the Department had made the statutorily required determinations concerning a claim and containing the information required under the Act to be submitted to the Congress. For example, in the case of a foreign claim, the department's letter included a brief statement of the claim, the amount claimed, the amount allowed, and the amount paid as required by 22 U.S.C. § 2734(d). The Director of OMB submitted a proposed appropriation request for the amount of the claim still to be paid to the President for his consideration. Typically, the amounts of all claims against the Government requiring congressional action, both under the Military Claims Act and under other similar statutes, were combined into a single appropriation request, prepared twice a year in connection with supplemental appropriations bills. The President would ask the Congress to consider the proposed request by letter to the Speaker of the House of Representatives. The Congress would then consider the President's request through its usual appropriations processes and enact an appropriation.

Generally, all of the Executive Department materials mentioned were included in House and Senate documents. The appropriations were made in lump-sum form and referred specifically to the documents. (See for example, Public Law 94-303, chapt. XIII, 90 Stat. 629.) Once the appropriation was enacted, the Treasury Department issued a check made payable to the claimant in the correct amount using the House and Senate documents as a reference.

The National Aeronautics and Space Administration also has a claims statute, 42 U.S.C. § 2473(c)(13), patterned generally after the Military Claims Act, but to our knowledge it has never been used.

Judgments greater than \$100,000 prior to 1977

Since May 1977 (Pub. L. No. 95-26, 91 Stat. 61, 96), judgments against the United States have been payable, regardless of amount, from the permanent indefinite appropriation established by 31 U.S.C. § 1304

(formerly 31 U.S.C. § 724a). Prior to the enactment of Pub. L. No. 95-26, however, judgments in excess of \$100,000 required specific congressional appropriations for payment. The Government's procedure for paying judgments against the United States of more than \$100,000 prior to 1977 provides another example by way of analogy of a method for disposing of outside-the-locks claims over \$20,000. The procedures were similar in principle to those used to dispose of claims under the Military Claims Act discussed above in that the standard appropriations process was followed. Congress made these appropriations in supplemental appropriations acts. The procedure is described in B-162076, August 7, 1967; we have enclosed a copy for your reference.

Since 22 U.S.C. § 3775(b) requires that Congress make an appropriation if a claim for over \$120,000 for vessel damage occurring outside the locks is to be paid, we suggest that a process similar to the two discussed above be followed. Depending on the degree of oversight your Committee wishes to exercise, you could first investigate individual claims, as you did by conducting hearings in February, and then make a determination of the amount to be paid to a claimant. The result would be similar to an authorization of appropriations, perhaps in the form of a brief report. Using the amount determined, the Commission could then follow the usual appropriations process as was done in disposing of the two kinds of claims discussed above.

We conferred informally with representatives from the Commission and The Office of Management and Budget, and they indicated that these procedures would be in accord with their views as to how these claims should be handled. The amounts to be appropriated could be aggregated and included in regular or supplemental appropriation acts or, if desired, could be handled individually in a manner similar to private relief legislation.

Other statutes

There are several other statutes that require specific appropriations for the payment of certain types of claims, but they do not provide useful analogies to your situation. We mention some of them here to be as responsive as possible to your request.

The military departments have statutory authority to settle admiralty claims. The statutes are 10 U.S.C. § 4802 (Army), 10 U.S.C. § 7622 (Navy), and 10 U.S.C. § 9802 (Air Force). If an award is less than a specified amount (\$1,000,000 for Navy, \$500,000 for the others), the department makes payment out of available appropriations. If the award exceeds the specified amount, the entire award must be reported to the Congress. Here, however, the Congress already has an available mechanism which it could use to handle "excess" awards under these statutes. The annual Defense Department appropriation acts include an

appropriation entitled "Claims, Defense" which covers various other claims in addition to admiralty claims, and "excess awards" could simply be included in this appropriation.

Until recently, the Armed Services Committees seem to have had little or no involvement in the Defense Claims appropriation. The Defense Claims appropriation is included in the Operation and Maintenance category which, until 1980, did not require specific authorization. In that year, the law (10 U.S.C. § 138) was amended to require specific authorization for "O&M" appropriations beginning with fiscal year 1982. Thus, the annual Defense Department authorization acts now include Defense Claims (e.g., the 1983 Defense Department Authorization Act, Pub. L. No. 97-252, 96 Stat. 718, 723), and excess awards under the admiralty statutes would presumably be handled in similar fashion.

The Coast Guard also has an admiralty statute patterned after the Defense statutes, 14 U.S.C. § 646, with awards in excess of \$100,000 to be reported to the Congress. "Excess awards" under this statute have arisen so infrequently that there is no established mechanism for dealing with them. The last one arose in 1979 and was paid under a specific appropriation included in the 1981 continuing resolution (Pub. L. No. 96-536, § 112).

Two statutes—42 U.S.C. §§ 2207 and 2211—provide for reporting to Congress in the case of claims resulting from certain nuclear or other explosive incidents. To our knowledge, these statutes have not been used, at least in recent years.

Under 31 U.S.C. § 3724 (formerly 31 U.S.C. § 224b), the Attorney General is authorized to settle certain claims for personal injury or property damage caused by agents of the Federal Bureau of Investigation not otherwise cognizable under the Federal Tort Claims Act. Awards are to be certified to the Congress for an appropriation. Awards under this statute are small, limited by the statute to \$500 in any one case, and the Senate Appropriations Committee has concurred in a proposal by the FBI to pay them from available operating appropriations.

Other similar statutes are 31 U.S.C. § 3725 (formerly 31 U.S.C. § 224a) and 42 U.S.C. § 223. Both involve claims for small amounts and do not provide useful precedents.

Source of funds

Although Congress could appropriate monies out of the general fund of the Treasury for the payment of the claims in question, the intent of the Panama Canal Act of 1979 is that the Government should satisfy such claims from funds derived from the Panama Canal Commission Fund established by 22 U.S.C. § 3713. As explained below, Congress intended the Fund to be the source of payment of all of the Commission's operating expenses. This would encompass vessel damage claims including those which must be submitted to Congress for its consideration pursuant to 22 U.S.C. § 3775(b).

The Act's legislative history indicates that Congress intended that the Commission conduct its operations over the life of the Panama Canal Treaty of 1977, "without the need for support by the American taxpayer." H.R. Rep. No. 473, 96th Cong., 1st Sess. 59, reprinted in 1979 U.S. Code Cong. & Ad. News 1137, 1141. To achieve this end, Congress provided that the Commission would operate under a financial system whereby the costs of operating the Canal would be completely covered by the tolls collected. Congress provided that the Commission must prescribe tolls at rates calculated to produce revenues to cover, as nearly as practicable all costs of maintaining and operating the Canal. 22 U.S.C. § 3792(b). 22 U.S.C. § 3712(a) establishes the Panama Canal Commission Fund as a separate account in the Treasury and subparagraph (b) provides that all tolls and other receipts of the Commission shall be deposited into the Fund beginning on the effective date of the Act, October 1, 1979. 22 U.S.C. § 3712(c)(2) prohibits appropriations to or for the use of the Commission for any fiscal year from exceeding the amount of revenues deposited into the Fund during that fiscal year (plus unexpended revenues from previous years).

Although the Act does not expressly state that appropriations to or for the Commission's use are to result in a debit to the Fund, or in other words, be derived from the Fund, it is clear that that is what Congress intended. The fact that the Act requires that the unexpended balance of revenues deposited into the Fund be taken into account in determining the amount which may be appropriated to the Commission under 22 U.S.C. § 3712(a)(2) indicates an intent that expenditures, and therefore appropriations, be made from the Fund. In fact, this is what Congress has done in Commission appropriation acts. (See, e.g., Public Law 97-102, 97th Cong. 1st Sess., 95 Stat. 1442, 1456; Public Law 94-400, 96th Cong. 2nd Sess., 94 Stat. 1681, 1683.)

The payment of claims for vessel damage occurring in Canal waters constitutes an operating expense payable out of the Fund. The Fund is the source of payment for outside-the-locks vessel damage claims for less than \$120,000 which the Commission is authorized to settle. In view of Congress' intent that the Commission's operations be self-supporting, the payment source for such claims over \$120,000 should be the same even though congressional consideration is required for their settlement. With this intent in mind, we conclude that Congress included the congressional consideration requirement in the Act not to, in effect, serve as an authorization for appropriations from the general fund of the Treasury, but so that it could directly control and maintain oversight over the Commission's larger claims payments from the Panama Canal Commission Fund.

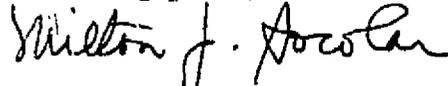
We have conferred informally with the Commission and with OMB and both agree that outside-the-lock vessel damage claims of more than \$120,000 which Congress considers should be satisfied with appropriations from the Panama Canal Commission Fund. As part of its accounting

B-206860

procedures designed to insure that tolls cover operating expenses, the Commission has established a reserve for marine accidents which includes an amount estimated to cover settlement of the claims it must submit to Congress. We note parenthetically that we have previously endorsed this procedure as being entirely consistent with the self-support concept.^{1/}

Accordingly, claims against the Commission for more than \$120,000 for vessel damage occurring outside the locks which must be submitted to Congress for its consideration under 22 U.S.C. § 3775(b) should be disposed of by the enactment of specific appropriations for payment of amounts deemed proper, such payment to be derived from the Panama Canal Commission Fund.

Sincerely yours,



Acting Comptroller General
of the United States

^{1/} The Amending of the Panama Canal Act of 1979 Concerning the Panama Canal Commission's Authority to Adjust and Pay Claims for Vessel Damage; The Commission's Accounting Methods in Setting Aside Toll Revenues to pay Claims; and the Status of Pending Vessel Damage Claims; hearing Before the Subcomm. on Panama Canal/Outer Continental Shelf of the House Comm. on Merchant Marine and Fisheries, 97th Cong., 2nd Sess. 110 (1982) (statement of International Division, U.S. General Accounting Office).