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UNITED STATES GENERAL ACCOUNTING OFFICE

Washington, D.C.

FOR RELEASE

Thursday, November 3, 1983

STATEMENT FOR THE RECORD

BY THE

OFFICE OF THE GENERAL COUNSEL

U.S. GENERAL ACCOUNTING OFFICE

SUBMITTED TO THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES

UNITED STATES HOUSE OF REPRESENTATIVES



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Mr. Chairman and Members of the Committee:

We are pleased to present our views on H.R. 3953, a bill to amend the Panama Canal Act of 1979 in order that outside-the-locks claims for vessels damaged may be resolved in the same manner as those damaged inside-the-locks, and for other purposes. We believe the bill to be legally and administratively sound, and, therefore, recommend its passage.

There are three provisions of the bill in particular which we would like to comment upon today. These are sections 2(b) and 4 which would change the way in which the United States settles vessel damage claims for injuries occurring outside-the-locks of the Panama Canal; section 5, in which the United States would consent to suits against the Panama Canal Commission in the United States District Court for the Eastern District of Louisiana by

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claimants who suffer damages outside-the-locks; and section 6(a) which would authorize the Commission to obtain insurance to cover excessive amounts that it may have to pay as a result of catastrophic marine accidents.

SETTLEMENT OF OUTSIDE-THE-LOCKS VESSEL DAMAGE CLAIMS EXCEEDING \$120,000

As mentioned, sections 2(b) and 4, if enacted, would amend the Panama Canal Act so that outside-the-lock vessel damage claims exceeding \$120,000 would be resolved in the same manner as outside-the-locks claims for less than \$120,000 and all "inside-the-locks" claims. Currently, the Panama Canal Commission adjusts and pays the latter two types of claims with funds appropriated to the Commission from the Panama Canal Commission Fund, derived from toll revenues. 22 U.S.C. §§ 3771, 3772. However, the Act now requires that the Congress, not the Commission, resolve outside-the-locks claims which exceed \$120,000. Congressionally resolved claims also are to be paid with funds appropriated from the Panama Canal Commission Fund. See B-206860, June 14, 1983. The Commission currently maintains a reserve for payment of claims it resolves as well as those to be resolved by the Congress, based on its estimates of amounts likely to be needed each year. H.R. 3593 would not change the source of funds for paying the claims.

The relevant provision of the present Act, section 1415(b) (22 U.S.C. § 3775(b)) provides:

"The Commission shall not adjust and pay any claims 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."

This provision would be struck from the Act if H.R. 3953 is passed and the Commission would be charged with resolving the larger outside-the-locks claims.

The Congress would lose a degree of the control it now has over the resolution and payment of outside-the-locks claims exceeding \$120,000 if it passes this bill. Under subsection 1415(b), as currently worded, when a claimant files a claim with the Commission for outside-the-locks vessel damage exceeding \$120,000, the Commission conducts an investigation and then submits a report to the Congress on the matter, along with its recommendation as to how the claim should be resolved. The Act does not specify what the Congress is to do after it receives the Commission's report and recommendation. We assume that what is intended is that the Congress consider a claim submitted and then, if it determines that the claim has merit, appropriate funds from amounts reserved in the Panama Canal Commission Fund for paying the amount of damages it believes the claimant has suffered.

Passage of H.R. 3953 would result in the Commission, not the Congress, settling outside-the-locks damage claims exceeding \$120,000. However, this should not affect the amounts paid on such claims. How much a vessel is damaged and the extent to which the Commission is responsible for that damage are questions of fact. Although individual judgments as to the amount of damages payable could differ in particular cases, we see no reason why the Commission would settle claims for greater or lesser sums than the Congress would. Thus, substituting the Commission for the Congress as the body which settles outside-the-locks vessel damage claims should not affect the amount paid on these claims. While the Congress, under the present law, could choose not to pay a claim which has merit (i.e., where payment would raise tolls to a level deemed undesirable and the damaged vessel which is the subject of the claim is fully insured), to our knowledge it has not done this in the past. The amendment, on the other hand, would require the Commission to pay all meritorious claims.

Assuming that the Congress does not wish to retain the option of rejecting otherwise meritorious claims, then we view the primary effect of section 4 as procedural. The Congress must balance the degree of oversight it deems prudent to exercise over the larger outside-the-locks claims against the time and effort it devotes to its consideration of them, before determining whether to enact this provision.

We note that the Congress has amended other legislation so as to remove from itself the job of settling claims in analogous situations. For example, in 1978, the Congress amended the Military Claims Act, 10 U.S.C. § 2733 which authorizes the settlement of certain claims not cognizable under the Federal Tort Claims Act. Prior to amendment, the Secretary of the Department concerned was authorized under the Act to settle and pay claims only up to \$25,000. 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 statute. The requirement for Congressional consideration of "excess" claims under the statute was eliminated when Public Law 95-240 amended 31 U.S.C. § 1403 (then 31 U.S.C. § 724a) by making the permanent indefinite judgment appropriation (the so-called "judgment fund") available to pay the excess.

Public Law 95-26 (91 Stat. 61, 96) provides another example of Congress' relinquishing oversight responsibilities with respect to claims. Prior to that law's passage, judgments against the United States of less than \$100,000 were paid automatically from the judgment fund upon certification of the Comptroller General. Judgments in excess of \$100,000 required specific Congressional appropriations for payment. In 1977, Public Law 95-26 amended 31 U.S.C. § 1304 (then 31 U.S.C. § 724a) which establishes the judgment fund so that since that time, judgments against the United States in excess of \$100,000 have also been payable from the fund in appropriate circumstances.

We note further that other governmental instrumentalities which, like the Commission, are supported to some degree (if not wholly) by revenues generated by their activities, have the authority to settle claims on their own, without monetary limit. For example, the United States Postal Service has such authority under the Postal Reorganization Act, 39 U.S.C. § 2008(c); B-179464, March 27, 1974. Also, wholly owned Government corporations which conduct their activities under the Government Corporation Control Act, generally have the authority to administratively settle claims on their own without limit, under their power to "sue and be sued." See B-190806, April 13, 1978.

SUITS ON CLAIMS

Section 5 of the bill would give a claimant who suffers damages outside-the-locks the right to bring an action on his claim in the United States District Court for the Eastern District of Louisiana. The claimant could exercise his right to bring suit if he considered himself aggrieved by the Commission's actions in reference to his claim. If enacted, the provision would put "outside-the-locks" claimants in the same position as persons claiming damages inside-the-locks. They currently have the right to bring a court action on their claims under the Act. 22 U.S.C. § 3776. The amendment would also return the law concerning the right to bring suit on outside-the-locks claims essentially to what it was prior to the passage of the Panama Canal Act. From 1951 until September 30, 1979, the day before the effective date of the Act, the Panama Canal Company, a wholly owned Government corporation, operated the Canal. As is generally the case

with respect to such corporations, the Company was subject to suit on all claims including vessel claims for accidents outside-the-locks. As discussed below, court awards on disputed claims will be paid from Commission funds, not from the Treasury.

SOURCE OF PAYMENT OF OUTSIDE-THE-LOCKS VESSEL DAMAGE CLAIMS

Costs of judgments in cases brought against the Commission for outside-the-locks vessel damages would also be paid with funds appropriated or allotted from toll revenues for the Canal's maintenance and operation if Congress makes the Commission subject to such suits by enacting section 5 of H.R. 3953. Neither the judgment fund nor the general fund of the Treasury would be available to pay vessel damage judgments without further legislation. Currently, under the Act, inside-the-locks vessel damage claims are paid from Commission operation and maintenance funds, derived from toll revenues, and not from the judgment fund nor from the general fund of the Treasury.

Section 1416 of the Act (22 U.S.C. § 3776) governs court actions on vessel damage claims. If amended as proposed, it would provide in relevant part:

"A claimant for damages pursuant to section * * * 1412 of this Act who considers himself aggrieved by the finding, determination, or award of the Commission in reference to his claim may bring an action on the claim against the Commission in the United States District Court for the Eastern District of Louisiana. * * * Any judgment obtained against the Commission in an action under this subchapter shall be

paid out of any moneys appropriated or allotted for the maintenance and operation of the Panama Canal."

(Emphasis added.)

Section 1412, if amended, would authorize the Commission to resolve all outside-the-locks claims administratively. Thus, the Act would specifically provide that Commission funds would be the payment source of outside-the-locks claims judgments. This would be entirely consistent with the overall intent of the Act that the Commission's operation of the Canal be self-supporting.

Since the Congress would have made a specific provision for the payment of outside-the-locks vessel damage judgments by enacting H.R. 3953 as proposed, the judgment fund would not be available to pay them. 31 U.S.C. § 1304 governs the availability of the judgment fund. Subparagraph (a)(1) of 31 U.S.C. § 1304 provides, in effect, that the judgment fund is not available to pay a judgment if payment is otherwise provided for. In other words, if the Congress has provided funds to pay a particular type of judgment through authorizing and/or appropriation legislation, then the judgment fund cannot, by law, be used to pay that kind of judgment. Accordingly, since by enacting the amendment the Congress would be providing that Commission operation and maintenance funds should be used to pay outside-the-locks vessel damage judgments, the judgment fund would not be available to pay them.

Also, if the Commission did not have sufficient funds to satisfy a judgment rendered under section 1416, the general fund of the Treasury

could not be used to pay the judgments nor could a court effectively order the general fund to be so used without Congressional action. Article I, section 9, clause 7 of the Constitution provides in part, "No money shall be drawn from the Treasury, but in consequence of appropriations made by law * * *." Under this clause, the general fund of the Treasury could not be used to pay section 1416 judgments unless the Congress makes an appropriation from the fund for that purpose. Nowhere in the Act or elsewhere in the bill is there any appropriation for the use of the general fund for the payment of vessel damage judgments. Therefore, the general fund cannot be used for the payment of claims judgments and nothing in H.R. 3953 changes this conclusion. The Congress would have to enact a specific appropriation measure providing for payment from the general fund of the Treasury to authorize this source of payment.

INSURANCE

Section 6 of the bill would add a new section to the Act, section 1419, which would authorize the Commission to purchase insurance to cover excessive amounts that it might be liable to pay on claims arising from catastrophic marine accidents. This Office has long held as a matter of policy that agencies should not use their appropriated funds to buy insurance without express statutory authority. (13 Comp. Dec. 779 (1907); 19 Comp. Gen. 211 (1939); B-158766, February 3, 1977.) The rationale for the rule is that because of the Government's vast resources, it is generally more economical for it to be a self-insurer than for it to purchase insurance commercially.

However, the self-insurance rationale is not applicable to the Commission because the Government's resources are not intended to be available to pay vessel damage claims resulting from such accidents. The Commission's operation of the Canal is intended to be self-supporting. H.R. Rep. No. 473, 96th Cong., 1st Sess. 59, reprinted in 1979 U.S. Code Cong. & Ad. News 1137, 1141. In furtherance of this self-support concept, Congress set up the Commission so that its operating expenses are completely covered by its own revenues generated by its operation of the Canal and other activities. (See B-206860, June 14, 1983 for a discussion of the Commission's financial system.) Moreover, also consistent with the notion that the Commission be self-supporting, as discussed earlier, the Act now provides, and if amended would continue to provide, that payments in satisfaction of vessel damage claims (generally considered an operating expense) is to be made from Commission operating expense funds.

It would therefore be inconsistent with the intent of the Panama Canal Act to apply the self-insurance policy to the Commission's purchase of catastrophic insurance.