

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 2054858851  
97125  
JUN 30 1975

FILE: B-183208

DATE:

MATTER OF: Submission of claims of employees of Government contractor  
to Congress pursuant to Meritorious Claims Act of 1928DIGEST: Claims of employees of Government contractors living on  
remote island whose personal belongings were destroyed  
in fire in Government-owned housing do have such elements  
of legal liability or equity of unusual nature which  
would justify report to Congress under Meritorious Claims  
Act of 1928.

We have been requested by the Department of the Air Force to report to the Congress pursuant to the Meritorious Claims Act of 1928, 45 Stat. 413, 31 U.S.C. § 236 (1970) the claims of Messrs. Robert G. Gibbs, Henry Kusmierski, Kenneth E. Marshall and Frank L. Wiles, who were employees of a Government contractor working on Canton Island, a United States possession in the Pacific.

The claims are for reimbursement of personal property damage and losses incurred incident to a fire in their Government-owned quarters on Canton Island on August 22, 1974. The record before us indicates that the fire completely gutted the quarters occupied by the claimants. The Department of the Air Force's Investigating Officer was unable to determine the cause of the fire although he speculated that combustible material (such as clothing) may have come into accidental contact with the heating unit in the bedroom closet of one of their fellow employees.

Mr. Gibbs submitted a claim to the Air Force under the Foreign Claims Act. This Act was considered inapplicable by the Air Force and its Office of the Judge Advocate General considered the claim under the Federal Tort Claims Act. On December 31, 1974, that office denied the claim based on the lack of evidence establishing that the loss was proximately caused by the negligence of the Air Force or other governmental personnel. It was also determined by that office that the loss was not the fault of Mr. Gibbs and the office requested that we give consideration to his claim on its equitable merits under the provisions of the Meritorious Claims Act. In a subsequent letter the Air Force advised fellow employees were similarly situated and it recommends favorable consideration under the Meritorious Claims Act of their claims for damages and losses from the same fire.

According to the Air Force, had the claimants been members of the Air Force or civilian officers or employees of that Department, their claims could have been considered under 31 U.S.C. §§ 240-243 and, if allowed, paid by the Secretary of the Air Force in an amount not to exceed \$10,000. In other words, while members of the uniformed services and civilian employees of the Government who occupy Government assigned housing and who suffer losses from fire may be compensated for their losses under 31 U.S.C. § 240 without being required to demonstrate negligence on the part of the Government, the Government would be legally liable to employees of a Government contractor only if negligence is attributable to it.

While the housing involved is Government owned, it was set aside for Global Associates' use and that company assigned each of the four company employees to his particular quarters. Under the terms of its contract with the Government, Global Associates was responsible for operating and maintaining billeting and messing facilities for the total population at the Canton operating location, including, of course, the building in question. As far as pertinent here, under the contract the contractor was not liable to the Government for any loss of, or damage to, Government property or for expenses incidental to such loss or damage. Further, it appears from the record that if Global Associates had made any payments to its employees for losses incurred as a result of the August 22, 1974, fire, such payments would not be considered as allowable costs under its contract with the Government based on Appeal of Gannett, Eastman and Fleming, Inc., WDBCA 671, 22 CCF 1082 (1944). It further appears from the record that property insurance was not offered these employees by the contractor prior to the fire.

The Meritorious Claims Act provides that when a claim against the United States is filed in this Office that may not be lawfully adjusted by use of an appropriation theretofore made, but which claim in our judgment contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, it shall be submitted to the Congress with our recommendations. The remedy is an extraordinary one and its use is limited to extraordinary circumstances.

The claimants are employees of a Government contractor and, as such, the Government is not legally responsible for the losses of their personal property, absent negligence attributable to the Government. Other employees of Government contractors may suffer losses as a result of their employment and we would see no basis on which to distinguish these four claimants from the others who might

be similarly situated. Hence, while we can appreciate the circumstances of the claimants in the instant case, we do not consider their claims to contain such elements of legal liability or equity as would warrant reporting them to the Congress under the Meritorious Claims Act of 1928. Accordingly no action will be taken by our Office to report the claims to the Congress for such consideration.

R.F. KELLER

Secretary

Comptroller General  
of the United States