DECISION

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

FILE: B-203624 DATE: July 7, 1982

MATTER OF: Oberfinanzdirektion Stuttgart

DIGEST: Claims for reimbursement of costs to Federal Republic of Germany of compulsory insurance premiums for 1967-1971, received by GAO in 1979, is not barred by the 6-year statute of limitations since the claim did not accrue until the conclusion of negotiations to fix the obligation, as required under the agreements between the parties. This occurred in 1977 well within the 6-year statutory period for submission of claims.

The Department of the Air Force has requested that we reconsider the denial by our claims group of the German Government claim for payment of compulsory insurance premiums. (Claim No. Z-2810133). This claim is based on the same series of international agreements between the United States and the Federal Republic of Germany (the FRG) that formed the basis for the claim we considered and allowed in B-196982, September 4, 1980. As with this 1980 case, the issue presented by the Air Force is whether this claim is barred by the statute of limitations, 31 U.S.C. § 71(a)(1976). For the reasons expressed below, we hold that the claim is not barred and may be paid by the Air Force if otherwise correct.

In August 1953, the Status of Forces Agreement (SOFA), a treaty signed by the United States and the other members of the North Atlantic Treaty Organization (NATO), went into effect. The treaty was designed to establish the rights and obligations of military forces of NATO nations (and their civilian components) which were, or which might in the future be, stationed in the territory of other member nations. The Agreement, at Article IX (9) paragraph 3, states that, "In the absence of a specific contract to the contrary, the laws of the receiving State shall determine the rights and obligations arising out of the occupation or use of the buildings, grounds, facilities or services." This paragraph also provides that any such "contracts" between NATO nations regarding the stationing of military forces and civilian components shall "as far as possible" conform with laws of the member nation in which the forces are stationed (the receiving State).

Subsequently, the Supplementary Agreement to the NATO SOFA (the Supplemental Agreement) was signed by the United States, the Federal Republic of Germany, and the other NATO nations in August 1959 and entered into force on July 1, 1963. Article 63 (sections 4(a) and (b)) of the Supplementary Agreement provides that U.S. Forces are entitled to use, free of charge, real property legally owned by the FRG, or procured or constructed with U.S. funds or reconstructed with funds of the U.S. Forces. However, Article 63, section 4(d) provides:

> "(d) Exemption from payment for the use of property as set forth in sub-paragraphs (a) to (c) of this paragraph shall not, however, extend to
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> "(ii) current public charges on property to the extent that the Federation is obligated under German law to pay or reimburse such charges;"
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The Protocol of Signature to the Supplementary Agreement, Part II, Re Article 63 section 8(a), states:

> "8. Other operating costs within the meaning of sub-paragraph (d) of paragraph 4 of Article 63 also include the following:
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> "(a) the cost of
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> "(v) compulsory insurance against fire and other damage to property; insofar as there is obligation under German law to meet such costs:* * *"

It was anticipated in the Protocol of Signature, Part II, Re Article 63, section 1, that additional agreements concerning the financial matters raised in Article 63 might be needed in the process of implementing the NATO SOFA.

Such an agreement was entered into between the United States and the FRG. The Agreement for Implementation of Article 63 of the Supplementary Agreement, NATO Status of Forces Agreement, (the Implementation Agreement) was signed on March 26, 1971. Section II, paragraph 5 of the Implementation Agreement establishes the procedures by which the costs of insurance premiums for the U.S. Forces in Germany will be determined. It provides in part:

> "5. Listings of US occupied buildings which are currently covered by insurance will be prepared by the Oberfinanzdirektion (OFD) and submitted in two copies to the appropriate US Forces agency for review. Information will include for each property the assessed insurance value, the applicable insurance index and the annual premium payable. The US Forces, if satisfied with the data and amounts furnished, will return one copy of the listing of assessments to the OFD together with a statement acknowledging the acceptablity of the assessments. Should the US Forces take exeception to the above-mentioned information in any individual cases, the OFD will be informed of the reasons for US disagreement; the OFD will then inform the appropriate insurance agency accordingly and request a revaluation. In accordance with the pertinent provisions of the building insurance agencies, the costs of a revaluation of buildings will only be borne by the property owner if such review had been requested by him and was not decided in his favor. If the Federation under legal provisions governing insurance is required to bear the costs of the revaluation, the US Forces will reimburse such costs according to paragraph 11. If, after revaluation, the competent US Forces agency, the OFD, and the insurance agency should still be in disagreement as to the assessed value, the applicable insurance index, or annual premium payable, the matter will be taken up for negotiation between the German Federal Ministry of Finance and Headquarters, USAREUR, or Headquarters, USAFE, as appropriate. Objections of the US Forces which cannot be set aside by mutual negotiations will be resolved by court action. Concerning the procedure and reimbursement of cost of litigation, Article 44, Sections 1 to 5, of the Supplementary Agreement and the Administrative Agreement concluded between the Federal Ministry of Finance and the American Embassy by an exchange of letters of January 30/April 17, 1967 shall be applied mutatis mutandis."

Upon completion of this process of negotiation, or, where necessary, the court action, the FRG will submit the invoice for the costs of insurance premiums to the U.S. Forces for reimbursement. Section III paragraph II provides in part:

> "11. Upon submission of invoices (Annex B), the US Forces will reimburse to the Federal Republic the amounts of insurance premiums and other costs, in particular the costs of evaluation paid by the Federation in accordance with Section II. Reimbursement by the US Forces will be made annually for the period of the current year on May 1 of each year. The first reimbursement payment upon entry into force of this agreement will be made within three months upon receipt of the invoices (Annex B) by the US Forces and will cover, except for payments for buildings which were constructed from Occupation Cost/Mandatory Expenditure funds and Defense Support Cost funds, the reimbursement period from July 1, 1963 to December 31, 1969. The first reimbursement payment for buildings which were constructed from Occupation Cost Mandatory Expenditure funds and Defense Support Cost funds will cover only the the period from January 1, 1967 to December 31, 1969.***"

Determining the amount and value of United States Government holdings which were subject to payment of the compulsory fire insurance premiums was a lengthy process. Because of this delay, final invoices were submitted in many cases more than 6 years after the year for which the insurance coverage was provided. The Department of the Air Force believes that these claims are valid but submitted to us the issue of whether they are now barred by the statute of limitations if the coverage year is more than 6 years ago.

Application of the Statute of Limitations

The statute of limitations for submission of claims against the United States to the General Accounting Office (GAO) provides in part:

> "(1) Every claim or demand (except a claim or demand by any State, Territory, possession or the District of Columbia) against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within 6 years after the date such claim first accrued.***" 31 U.S.C. § 71(a) (1976).

As we noted in our prior decision, B-196982, September 4, 1980, the crucial issue with respect to the claims of the FRG is when the claims first accrued. The general rule is that, for the purposes of

a statute of limitations, a claim first accrues on the date when all events have occurred which fix the liability, if any, of the United States and entitles the claimant to sue or to file a claim. Empire Institute of Tailoring Inc. v. United States, 161 F. Supp. 409 (Ct. Cl. 1958). See also, 42 Comp. Gen. 377 (1963) and 42 Id. 622 (1963). Where a claim is based on a contractual obligation of the Government to pay money, the claim first accrues on the date when the payment becomes due and is wrongfully withheld in breach of the contract. Cannon v. United States, 146 F. Supp. 827 (Ct. Cl. 1956); 44 Comp. Gen. 1 (1964).

In rejecting the FRG claim, our Claims Division assumed that the claims for insurance premiums must have accrued in the years of their coverage. This assumption is not correct.

It has long been recognized that the running of a statute of limitations is delayed where a right, to be either actionable or ripe for a claim, is dependent on the occurrence of an event or contingency, and that the right does not accrue until the event or contingency occurs. 20 Comp. Gen. 734 (1941). This has been applied for example, to circumstances where a claim based upon a statutory right is not cognizable until a determination is made by a designated Government agency. In such situations we have held that the claim does not accrue until the determination has been made. 34 Comp. Gen. 605 (1955); 50 Id. 607 (1971).

Similar reasoning was applied in 44 Comp. Gen. 1 (1964), in which a claim, arising under a contract containing a mandatory disputes clause, had been submitted for an administrative determination of the dispute as required under the contract. The issue confronting us was whether the claim had accrued at the time when the contractor's claim first arose, or when a final administrative determination on the claim had been reached. Our decision, while observing that there was a division of authority on the issue, adopted the position of a Court of Claims case that a "***contractor's claim does not accrue while the parties to the contract are following a disputes procedure because that procedure essentially fixes the rights and liabilities of the parties.***" 44 Comp. Gen at 9.

The Court of Claims subsequently reexamined and reaffirmed its position in Nager Electric Co. v. United States, 368 F.2d 847, 177 Ct. Cl. 234 (1966). The court stated that "there is no inexorable principle of limitations for contract litigation but that the individual terms, conditions and practices must always be studied." 177 Ct. Cl. 421.

The court went on to state,

> "***The Disputes clause mechanism is not an attempted administrative waiver of a claim which has already accrued; it is, rather, a condition precedent to liability, an essential step (where required) on the way toward qualification of the cause of action for judicial consideration***". 177 Ct. Cl. at 250.

Subsequently the United States Supreme Court in Crown Coat Front Co. v. United States, 386 U.S. 503 (1967), largely adopted the analysis of the Court of Claims in Nager.

Compulsory Insurance Costs

Applying this analysis to the facts of this claim and of the earlier claim we considered in B-196982, September 4, 1980, it is apparent that the parties to the SOFA recognized that the obligations of the U.S. Forces to the FRG, while genuine, had to await precise definition and the development of procedures before they were ever intended to be payable. To this end the Supplemental Agreement served to define precisely what costs under the laws of the receiving state, here the FRG, the U.S. Forces were obligated to pay. Among the costs defined under the Supplemental Agreement was the cost of compulsory fire and damage insurance to the degree it was obligated under the laws of the FRG.

The final development of the procedures for determining what the actual insurance costs were for each facility of the U.S. Forces stationed in the FRG awaited the Implementation Agreement. This agreement established both the dispute procedures, in the event of a disagreement between the U.S. Forces and the FRG over issues involved in assigning insurance costs, and the procedures for submission of final invoices for reimbursement of the FRG for insurance costs. These agreements, in our view, conclusively demonstrate that it was never the intention of the parties that the cost of premiums for compulsory insurance policies, incurred by the U.S. Forces, be payable in the year of their coverage. Indeed, prior to the Supplemental Agreement and the Implementation Agreement there was no means of determining what costs the U.S. Forces would be responsible for, or how (and in what sequence) payments should be made. Therefore, the debt for compulsory insurance cost could not have accrued prior to the completion of these agreements.

Further, it is plain that both parties to the Implementation Agreement recognized that the determination of which buildings were being occupied by U.S. Forces, the value of those buildings, and the insurance rates

that would be charged—essential information for the calculation of the debt--had all been left to be worked out by the disputes mechanism in Section II paragraph 5. Thus even at this stage there was no actionable debt until this negotiation process between the parties had been completed. Indeed, Article 16 of the NATO SOFA makes it mandatory for parties to submit any disputes arising under this agreement to negotiations:

> "All differences between the Contracting Parties relating to the interpretation or application of this Agreement shall be settled by negotiation between them without recourse to any outside jurisdiction.* * *"

Thus, under both the SOFA and the Implementation Agreement both the U.S. Forces and the FRG were required to complete the full cycle of procedures and negotiations described in these agreements before the FRG's claim could mature. Until that time when FRG's liability for these costs was fixed in accordance with German law, it could not assert a claim against the United States for reimbursement of those costs. The statute of limitations begins to run only at the point when FRG's claim was determined.

With respect to the instant case, the claim of the FRG was first received in our office on February 14, 1979. Negotiations between the FRG and U.S. Forces, as required under the Implementation Agreement, to determine the insurance costs the U.S. Forces were obligated to pay were completed on October 19, 1977. Thus, since this claim of the FRG first accrued at the conclusion of these negotiations under the Implementation Agreement, the claim falls within the 6-year period of our statute of limitations and is not barred from consideration. Therefore, the claim may be paid by the Air Force if otherwise correct.

Milton J. Socolar

Acting Comptroller General
of the United States