



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

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March 9, 1993

John W. Toothman, Esq.
Shulman, Rogers, Gandal, Pordy, & Ecker, PA
11921 Rockville Pike, Suite 300
Rockville, MD 20852-2743

re: Ulmet v. United States, Z-2886509

Dear Mr. Toothman:

The purpose of this letter is to explain, in response to your letter of June 11, 1992, our determination not to certify the payment of interest on the captioned matter. As you know, interest may not be assessed against the United States except where the government's sovereign immunity has been expressly waived by statute or contract. E.g., Library of Congress v. Shaw, 478 U.S. 310, 314 (1986). You have argued that immunity has been waived in this case by virtue of 28 U.S.C. § 1961(c)(2). Section 1961(c)(2) is not applicable here. Interest may be paid under section 1961(c)(2) only in the event of an unsuccessful appeal by the United States to the Supreme Court of a judgment of the Court of Appeals for the Federal Circuit. This has not occurred in your case.

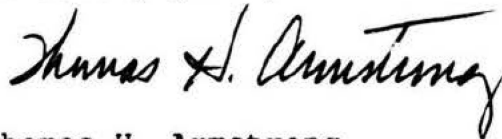
The waiver of sovereign immunity for interest in section 1961(c)(2) is expressly conditioned upon satisfaction of the provisions of 28 U.S.C. § 1961(b). Section 1961(b) incorporates, by reference, the provisions of 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b). Section 1304(b) is critical to your demand for interest. It provides, in pertinent part, that interest may be paid from the Judgment Fund "on a judgment of the Court of Appeals for the Federal Circuit . . . only from the date of filing of the transcript of the judgment with the Comptroller General through the date, before the date of the mandate of affirmance." 31 U.S.C. § 1304(b)(1)(B), as amended by Pub. L. No. 102-572, § 902, 106 Stat. 4506, 4516 (1992). In other words, section 1961(c)(2) authorizes payment of interest from the Judgment Fund only in the event of an unsuccessful appeal by the government to the Supreme Court. See generally, Ulmet v. United States, 19 Cl. Ct. 527, 536-38 (1990): Although section 1961(c)(2) was not at issue, the court, citing that statute's legislative history, observed that

"the intent of Congress in promulgating [28 U.S.C. § 1961(c)(2)] was to permit the payment of interest only in those cases in which an adverse judgment is rendered against the government by the United States Court of Appeals for the Federal Circuit and appealed to the Supreme Court, unless otherwise provided for by an express waiver of sovereign immunity in a separate statute."

Id. at 538. The court noted, also, that "as the plaintiff well knows no such 'other provision of law' exists to cover [the payment of interest in this case]." 19 Cl. Ct. at 536-37.

I hope that the foregoing discussion is of help to you. Should any further questions arise, please feel free to contact Mr. Neill Martin-Rolsky of my staff at

Sincerely yours,

A handwritten signature in cursive script, reading "Thomas H. Armstrong". The signature is written in dark ink and is positioned above the typed name.

Thomas H. Armstrong
Assistant General Counsel

cc: Mr. David M. Cohen, U.S. Department of Justice