Rogers GGM 14823

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

[Request by German Government for Reimbursement of Fire Insurance Premiums]

FILE: B-196982 DATE: September 4, 1980

MATTER OF: German Government's Claim for Reimbursement of Fire Insurance Premiums

DIGEST: 1. Claim for reimbursement of cost to German Government of insurance premiums for the years 1963-1972, received by GAO in 1978, is not barred by the six year statute of limitations since the claim did not accrue until payment became due in 1974.

2. The Government's usual policy of self-insurance does not prohibit payment of cost of fire insurance which German law requires the German Government to procure on buildings which it owns and lets the United States use in return for reimbursement of costs.

The Department of the Air Force has asked that we reconsider our denial of the German Government's claim for reimbursement of fire insurance premium payments (Claim No. Z-2802630). The basis for denial was that the claim was barred by the six year statute of limitations applicable to claims against the United States which are cognizable by the General Accounting Office under 31 U.S.C. §§ 71a and 236. For the reasons that follow, we conclude that the claim should be paid because it constitutes a valid obligation of the United States which is not barred by the statute of limitations.

The claim arises out of the Supplementary Agreement to the NATO Status of Forces Agreement which was signed by the United States and the Federal Republic of Germany on August 3, 1959 and which 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 Federal Republic of Germany, or procured or constructed with funds of the Occupation Cost and Mandatory Expenditures or Support Cost budgets, or reconstructed with funds of the U.S. Forces. Article 63, section 4(d)(iii) of the Supplementary Agreement and section 8(a)(v) of the Protocol of Signature to the Supplementary Agreement provide that the U.S. Forces are not exempt from costs of compulsory insurance against fire and other damages insofar as the Federal Republic is obligated under German law to pay for such insurance.

~~011935~~ 113226

The details concerning payment by the United States of this compulsory insurance were worked out in an Implementing Agreement signed by the U.S. Forces and the German Government on March 26, 1971. This Agreement covered such matters as developing a list of U.S.-occupied buildings, determining what buildings had already been assessed for insurance, and ascertaining the insurance value of the non-assessed buildings. The Agreement contained the following provision concerning the reimbursement of insurance premiums.

> "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 period from January 1, 1967 to December 31, 1969."

> "12. In case new buildings, for which this agreement is applicable, will be provided to the US Forces, the first payment will include the period from the initial provision of the building up to the end of the current calendar year."

Pursuant to this Agreement, the German Government submitted to the Air Force invoices for fire insurance premiums for the Rhein-Main Air Base and Langen Terrace Family Housing Area for the years 1963 to 1975. The Air Force paid only the bill for the period from April 1, 1972 to December 31, 1975, because it believed that payment for the earlier period might be barred by the six year statute of limitations for filing claims against the United States. The Air Force submitted the remainder of the claim to us for settlement, and we received it on June 6, 1978. (The claim is for the amount

of insurance premiums paid by the German Government, presumably with itself as beneficiary of the policies. This is therefore not a situation in which the United States' policy of self-insurance is relevant but rather a case of a landlord passing on one of his costs to a tenant.)

The applicable statute of limitations reads, in part, as follows:

> "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. § 71a (1976).

In denying the claim initially, our Claims Division acted on the assumption that a claim for reimbursement of the insurance premiums attributable to a particular year must have accrued in that year. In fact, the claim accrues when payment becomes due. B-147497, August 31, 1964.

Even if, arguably, the German Government's claim arose originally under the 1959 Supplementary Agreement, providing that the United States would not be exempt from payment for operating costs, the 1971 Implementing Agreement operated to revive any claims which might otherwise have been time-barred in the interim by expressly assuming liability for payments attributable to the period 1963-71. A new promise to pay a debt or an unqualified acknowledgment of a debt arising out of a contract for payment of money will take a case out of the statute of limitations and fix a new date from which the statute runs. Shepherd v. Thompson, 122 U.S. 231 (1887).

The 1971 Implementing Agreement provided that payment would be made after invoices had been submitted. As a general rule, where a condition precedent exists, such as making a demand, the cause of action accrues and the statute of limitations begins to run when the condition is performed. E.g., Ginn v. State Farm Mutual Auto Insurance Co., 417 F.2d 119 (5th Cir. 1969). Here, the condition precedent was submission of invoices.

The Agreement did not specify a time for the submission of invoices, and because of the complexity of determining which buildings were covered by the Agreement, invoices for 1963-1973

were not completed until December 12, 1974--three years after the Agreement had been signed. Since the claim did not accrue until the invoices were submitted, and our Claims Division received the claim less than four years later, the claim is not barred by the six year statute of limitations.

We conclude that this claim is a valid obligation of the United States. An appropriate settlement will be issued by this Office in due course.

Harry R. Van Cleve

For the Comptroller General
of the United States