

16039

DECISION



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

[Request For Reconsideration of Decision Concerning Panama Canal Commission]

FILE: B-197052

DATE: February 4, 1981

MATTER OF: Panama Canal Commission Liability and Settlement
Authority on Claims - Reconsideration

DIGEST: Panama Canal Commission, successor agency to Canal Zone Government and Panama Canal Company, may pay claims against the Company arising before October 1, 1979 for damage to vessels and for other tort liability which arises while the vessels are outside the locks but within Canal waterways. Monetary limitations set forth in the Panama Canal Act of 1979, Pub. Law 96-70, 93 Stat. 452, do not apply to such claims because general savings statute, 1 U.S.C. § 109, preserves both liability for and authority to pay such claims which previously existed under the Canal Zone Code. Panama Canal Commission Liability and Settlement Authority on Claims, B-197052, April 22, 1980, modified accordingly.

This is in response to a letter from Fernando Manfredo, Jr., Acting Administrator, Panama Canal Commission (Commission) requesting reconsideration of a portion of our decision, Panama Canal Commission Liability and Settlement Authority on Claims, B-197052, April 22, 1980. Specifically, reconsideration is requested of our holding that the Commission's authority to settle claims against the Panama Canal Company, arising before October 1, 1979, for damage to vessels (and for other torts) occurring while the vessels are outside the locks but within the Panama Canal waterways, but on which no suit was filed before that date, is subject to the monetary limitations set forth in the Panama Canal Act of 1979 (Public Law 96-70, 93 Stat. 452). On review of our decision in light of the points raised by Mr. Manfredo, we are now persuaded that the new monetary limitations are not applicable.

[The Commission agrees with us that it would be fully liable on pre-existing claims against the Panama Canal Company (Company) by virtue of the so-called general saving statute, 1 U.S.C. § 109, which provides that repeal of a statute does not extinguish any liability incurred under the statute (unless expressly so provided) and that the repealed statute shall be treated as remaining in force for the purpose of sustaining an action for enforcement of the liability. The Commission, however, takes issue with our earlier

~~015070~~ / 114255

conclusion that despite 1 U.S.C. § 109, the Commission's legal authority to settle and pay such surviving claims against the Company is limited by the provisions in the 1979 Panama Canal Act which limit its authority to settle and pay the same kinds of claims against itself--that is, for torts involving damage to vessels in the waterways--but which arise on or after October 1, 1979.

Specifically, under the new law, the Commission can settle claims for vessel damage outside the locks only up to \$120,000. Those which exceed \$120,000 are to be referred to the Congress with a recommendation. Other claims, for personal injury, property damage, or death arising from canal operation generally, can be settled by the Commission only if they are for \$50,000 or less. With regard to the latter claims, the claimant would have to sue on claims for more than \$50,000.

While the Commission concedes the lack of express authority in the 1979 Act for it to settle and pay claims against the Company on the same terms on which the Company could have done so, we recognize the force of the Commission's argument that, to give full effect to the general saving statute, not only the Company's liability should be regarded as preserved, but also the authority which the Company had to settle and adjust claims arising from that liability.

In this regard, we note that court action for damages on claims for property damage or loss, or personal injury or death occurring outside the Canal locks is precluded by section 1401 of Public Law 96-70 while the Panama Canal Company was previously subject to suit for such claims under 2C.Z.C. § 65(a)(3). Inasmuch as the general saving statute provides that repealed statutes are to remain in force "for the purpose of sustaining any proper action or prosecution* * *" concerning pre-existing liability, we recognize that a strong argument can be made that the general saving statute should be read as preserving the right of claimants to sue on pre-October 1979 claims. Since the authority of the Commission to defend suits would thus be preserved under this rationale, so too would be its right to pay such claims in full or on a compromise basis in order to avoid suit. See De la Rama S.S. Co. v. United States, 344 U.S. 386 (1953).

Finally, the views of the Commission on its own authority are, of course, entitled to great deference. While it is by no means altogether clear from the statute, we now agree with the Commission that there is sufficient legal basis to hold that it may settle

B-197052

and pay tort claims against the Company arising before October 1, 1979, without regard to the monetary limits on its authority to settle the same type of claims arising thereafter.] Our decision, Panama Canal Commission Liability and Settlement Authority on Claims, B-197052, April 22, 1980, is modified accordingly.

Milton A. Fowler

For the Comptroller General
of the United States



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

IN REPLY
REFER TO: B-197052

FEB 4 1981

The Honorable Charles H. Percy
Chairman, Committee on Foreign
Relations
United States Senate

Dear Mr. Chairman:

Enclosed for your information is a decision of today, B-197052, concerning the Panama Canal Commission's liability on pre-existing claims. At the request of the Commission, we have reconsidered our earlier position and now conclude that claims against the Panama Canal Company arising before the effective date of the Canal Treaty should be handled under the prior law rather than under Public Law No. 96-70, the Treaty-implementing legislation.

Sincerely yours,

MILTON J. SOCOLAR

For the Comptroller General
of the United States

Enclosure

February 4, 1981

DIGEST

Panama Canal Commission, successor agency to Canal Zone Government and Panama Canal Company, may pay claims against the Company arising before October 1, 1979 for damage to vessels and for other tort liability which arises while the vessels are outside the locks but within Canal waterways. Monetary limitations set forth in the Panama Canal Act of 1979, Pub. Law 96-70, 93 Stat. 452, do not apply to such claims because General Savings Statute, 1 U.S.C. § 109, preserves both liability for and authority to pay such claims which previously existed under the Canal Zone Code. Panama Canal Commission Liability and Settlement Authority on Claims, B-197052, April 22, 1980, modified accordingly.