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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Panama Canal Commission--Catastrophic Insurance Coverage

File: B-217769

Date: July 6, 1987

DIGEST

Notwithstanding authorization in section 1419 of Panama Canal Act to purchase insurance coverage against catastrophic marine accidents, purchase by Panama Canal Commission of broader "full scope" coverage would not be illegal since government's general policy of self-insurance does not apply to Commission. Commission may therefore purchase insurance based upon an administrative determination of necessity.

DECISION

The Acting Administrator of the Panama Canal Commission (Commission or PCC) requested our decision on the extent of catastrophic insurance coverage the Commission may purchase. A letter subsequently received from the Commission's Office of General Counsel indicates that the Commission has issued a solicitation for brokerage services for the procurement of catastrophic insurance. The solicitation asks offerors to submit two proposals:

> "one that contemplates full scope catastrophic coverage, and another that reflects a limited, conservative interpretation of the Commission's 'marine accident' insurance authorizing legislation."1/

The contract award will be for one proposal or the other. The Commission seeks this opinion for guidance in the selection process.

1/ "Full scope" coverage would include, in addition to marine accidents, such things as industrial accidents, civil or labor disorders, and acts of terrorism.

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As the submission notes, in 1985 the Congress added a new provision to the Panama Canal Act of 1979, section 1419 (codified at 22 U.S.C. § 3779) which reads as follows:

> "The Commission is authorized to purchase insurance to protect the Commission against major and unpredictable revenue losses or expenses arising from catastrophic marine accidents."2/

In ordinary usage, the term "marine" in the present context means "relating or pertaining to the sea." See, e.g., Black's Law Dictionary. The term "marine accidents" is defined neither in the statute nor the legislative history. We must assume therefore that the ordinary meaning was intended. Thus, the issue here is whether section 1419 is the sole source of the Commission's legal authority to purchase insurance, in which event the plain terms of the statute render the full scope proposal impermissible.

There is a long-standing rule that agencies should not use appropriated funds to buy insurance without express statutory authority. E.g., 13 Comp. Gen. Dec. 779 (1907); 19 Comp. Gen. 211 (1939); B-158766, February 3, 1977. The rationale for the rule is that because of the government's vast resources, it is generally more economical for it to be a self-insurer than for it to purchase insurance commercially. However, as the submission notes, we have previously concluded that the self-insurance rationale does not apply to the Commission. This is because the Commission, unlike most agencies, operates on a self-sustaining basis with its operating funds being derived solely from outside revenues. The government's resources are not intended to be available to the Commission. Thus, based on the Commission's funding arrangement, the rule does not apply to it.

The Commission argues that since the self-insurance rule does not apply, "the agency is free to obtain the insurance coverage that it deems necessary and prudent." This is simply an application of the general principle that, unless otherwise prohibited by law, an agency may incur an expense which in its discretion it determines to be reasonably necessary or proper or incident to the accomplishment of its authorized purpose. The Commission is correct -- unless section 1419 was intended to operate as a limitation on the Commission's authority.

2/ Pub. L. No. 99-209, section 6(a), 99 Stat. 1718 (Dec. 23, 1985).

As early as 1982, the Commission was considering the possibility of purchasing commercial insurance, and there was some opinion at that time that statutory authority would be necessary.3/ We have traced the legislative history of section 1419 in detail. While the term "marine accidents" appears consistently, this is entirely logical in that marine accidents constitute the greatest potential for liability based on the Commission's day-to-day operations. Nowhere did we find any mention of the Commission's full scope proposal, nor any other indication that the term "marine accidents" was viewed or intended as a limitation. Rather, it appears that section 1419 was intended to do no more than provide authority which was at that time thought necessary.4/

Accordingly, since the self-insurance rule does not apply to the Commission, and since we have found no indication that section 1419 was intended as a limitation, we conclude that the Commission's funds are legally available to procure the full scope insurance coverage based upon the Commission's administrative determination of necessity.

for Comptroller General
of the United States

3/ E.g., Memorandum of Board Meeting No. 82-2, February 25, 1982, reprinted in Panama Canal Claims: Hearing Before a Subcomm. of the House Comm. on Merchant Marine and Fisheries, 98th Cong., 1st Sess. 316-18 (1984). At that time, we had not yet been asked to consider the question, and had thus not yet had the opportunity to express our view that the Commission was free to purchase insurance without specific statutory authority.

4/ E.g., 131 Cong. Rec. H5980 (daily ed. July 22, 1985) (statement of Rep. Tauzin).