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[Request for Relief for Corps of Engineers Disbursing Agent]

Number: B-217114

Date: 1986-09-24

B-217114, SEP 24, 1986, 65 COMP.GEN. 858

DISBURSING OFFICERS - LACK OF DUE CARE, ETC. - ERRONEOUS PAYMENTS - RELIEF DENIED 1. RELIEF FOR ARMY DISBURSING OFFICER UNDER 31 U.S.C. SEC. 3527(C) IS DENIED WHERE THE OFFICER PAID FRAUDULENT TRAVEL VOUCHER AFTER LEARNING THAT ONE OF THE RECIPIENTS OF FRAUDULENT PAYMENTS HAD ADMITTED THE FRAUD AND THE MEANS BY WHICH THE FRAUD WAS ACCOMPLISHED TO A SUBORDINATE OF THE OFFICER. RELIEF GRANTED FOR PAYMENTS BEFORE THIS ADMISSION WHEN INVESTIGATION DID NOT UNCOVER FRAUD. FEDERAL CLAIMS COLLECTION ACT OF 1966 - DEBT COLLECTION - JOINT AND SEVERABLE LIABILITY 2. UNDER THE FEDERAL CLAIMS COLLECTION STANDARDS 4 C.F.R. SEC. 101 ET SEQ., COLLECTIONS RECEIVED FROM A RECIPIENT OF AN IMPROPER PAYMENT WHO IS BOTH INDIVIDUALLY LIABLE FOR SOME IMPROPER PAYMENT AND JOINTLY AND SEVERABLY LIABLE WITH AN ACCOUNTABLE OFFICER FOR OTHER IMPROPER PAYMENTS SHOULD BE CREDITED FIRST TO THE PAYMENTS FOR WHICH THE RECIPIENT IS INDIVIDUALLY LIABLE UNLESS THE RECOVERIES ARE IDENTIFIED AS REPAYMENTS OF THE JOINT INDEBTEDNESS. ACCOUNTABLE OFFICERS - RELIEF - LACK OF DUE CARE, ETC. - RELIEF DENIED 3. AN ACCOUNTABLE OFFICER FACED WITH QUESTIONABLE VOUCHERS, BASED ON THE FACT THAT A CRIMINAL INVESTIGATION INTO FRAUDULENT CLAIMS IS BEING CONDUCTED, DOES NOT EXERCISE REASONABLE CARE BY RELYING ON ADVICE FROM AUTHORITIES WITHIN HIS AGENCY IN LIEU OF SEEKING AN ADVANCE DECISION FROM GAO.

TO MR. CLYDE E. JEFFCOAT, U.S. ARMY FINANCING AND ACCOUNTING CENTER, INDIANAPOLIS, INDIANA, SEPTEMBER 24, 1986:

THIS REPLIES TO YOUR OCTOBER 29, 1985 REQUEST THAT WE GRANT RELIEF UNDER 31 U.S.C. SEC. 3527(C) TO MR. PAUL F. KANE, A FORMER SPECIAL DISBURSING AGENT AT THE BUFFALO, NEW YORK DISTRICT OFFICE OF THE NORTH CENTRAL DIVISION, U.S. ARMY CORPS OF ENGINEERS, FOR SOME $12,615.22 OF FRAUDULENT TRAVEL CLAIMS WHICH WERE PAID OUT OF MR. KANE'S ACCOUNT. /1/ ALTHOUGH WE GRANT RELIEF TO MR. KANE, WE LIMIT THAT RELIEF TO PAYMENTS MADE BEFORE JANUARY 1, 1982.

BACKGROUND

ON JULY 7, 1980, MR. KANE ASSUMED HIS DUTIES AS THE CHIEF OF THE FINANCE AND ACCOUNTING SECTION OF THE U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT OFFICE. IN THAT POSITION MR. KANE WAS RESPONSIBLE FOR ASSURING THAT TEMPORARY DUTY TRAVEL EXPENSE REIMBURSEMENTS PAID TO BUFFALO DISTRICT EMPLOYEES WERE PROPER. A SIGNIFICANT PORTION OF THE BUFFALO DISTRICT'S EMPLOYEES WERE MEMBERS OF SURVEY TEAMS WHOSE JOB DUTIES REQUIRED EXTENSIVE TRAVEL.

SOMETIME IN LATE 1980 OR EARLY 1981, MS. PATRICA SADLER, WHO SERVED UNDER MR. KANE AS A SUPERVISORY VOUCHER EXAMINER, BROUGHT TO MR. KANE'S ATTENTION CERTAIN RECEIPTS SUBMITTED WITH TRAVEL REIMBURSEMENT CLAIMS FOR SURVEY CREW MEMBERS

WHICH SHE VIEWED AS QUESTIONABLE. SPECIFICALLY, THESE WERE RECEIPTS FOR THE USE OF RECREATIONAL VEHICLES AS LODGING WHICH WERE NOT ACCOMPANIED BY RECEIPTS FOR HOOK-UP CHARGES, AND MANY OTHER RECEIPTS FOR LODGING WHICH WERE HANDWRITTEN. MS. SADLER ALSO HAD NOTED UNUSUAL PATTERNS IN TRAVEL REIMBURSEMENT CLAIMS, SUCH AS MEMBERS OF A SURVEY TEAM REQUESTING REIMBURSEMENTS FOR WIDELY VARYING AMOUNTS FOR LODGING WITHIN THE SAME CITY AT THE SAME TIME, AND AMOUNTS ON RECEIPTS FOR LODGING INCREASING WHEN THE GOVERNMENT'S MAXIMUM REIMBURSABLE EXPENSE FOR LODGING INCREASED. /2/ MR. KANE INSTRUCTED MS. SADLER AND THE OTHER VOUCHER EXAMINERS TO CONTINUE WITH THE EXISTING EXPENSE VERIFICATION PROCEDURES, WHICH INCLUDED CONFIRMING THE AMOUNTS OF HANDWRITTEN RECEIPTS BY TELEPHONING THE LODGING PROVIDERS. IN APRIL 1981, MR. CHARLES LAYCOCK, THE DEPUTY DIVISION COUNSEL FOR THE U.S. ARMY CORPS OF ENGINEERS NORTH CENTRAL DIVISION, WHO HAD BEEN INVOLVED IN THE PROSECUTION OF CORPS EMPLOYEES FOR TRAVEL REIMBURSEMENT FRAUD AT THE OTHER DISTRICT OFFICES, SPOKE TO MS. SADLER ABOUT QUESTIONABLE RECEIPTS AT BUFFALO. MR. KANE WAS ADVISED OF THIS CONTACT AND WAS AWARE THAT MR. LAYCOCK WAS GIVEN SAMPLES OF QUESTIONABLE RECEIPTS. MR. LAYCOCK TURNED OVER THE MATERIALS HE HAD COLLECTED TO LIEUTENANT COLONEL LEFEW, THE CHIEF OF LAW ENFORCEMENT AND SECURITY FOR THE NORTH CENTRAL DISTRICT OF THE CORPS. ON MAY 14, 1981, A U.S. ARMY CRIMINAL INVESTIGATION COMMAND (CID) INVESTIGATION INTO TRAVEL CLAIMS AT THE BUFFALO DISTRICT WAS BEGUN AT THE REQUEST OF LIEUTENANT COLONEL LEFEW. ON MAY 18, 1981, MR. KANE BECAME AWARE OF THE CID INVESTIGATION. IN AUGUST 1981, MS. SADLER, AT MR. KANE'S DIRECTION, DISTRIBUTED A NOTICE TO ALL BUFFALO DISTRICT EMPLOYEES. THAT NOTICE EMPHASIZED THE DOCUMENTATION REQUIREMENTS FOR TRAVEL REIMBURSEMENT CLAIMS. DURING THIS TIME, MR. KANE WAS ADVISED BY THE BUFFALO DISTRICT OFFICE OF COUNSEL TO CONTINUE MAKING TRAVEL REIMBURSEMENT PAYMENTS TO EMPLOYEES UNDER INVESTIGATION.

ON SEPTEMBER 11, 1981, THE CID INVESTIGATION INTO THE BUFFALO DISTRICT'S TRAVEL CLAIMS WAS CLOSED BECAUSE NO EVIDENCE OF FRAUD OR LARCENY HAD BEEN DISCOVERED. WHILE THE CID INVESTIGATION WAS IN PROCESS, TWO INFORMAL BUFFALO DISTRICT INVESTIGATIONS WERE CONDUCTED AND ALSO FAILED TO DETECT ANY FRAUD.

THE ESSENTIAL REASON FOR THE FAILURE OF THE CID AND BUFFALO DISTRICT INTERNAL INVESTIGATIONS, AND OF THE VOUCHER VERIFICATION PROCEDURES ENFORCED BY MR. KANE TO DETECT THE FRAUD, WAS IN ASSUMING THAT LODGING PROVIDERS LISTED ON THE QUESTIONABLE RECEIPTS WERE NOT INVOLVED IN THE SUSPECTED FRAUD. IN FACT, LODGING PROVIDERS WERE PART OF A SERIES OF CONSPIRACIES TO DEFRAUD THE GOVERNMENT BY PROVIDING FRAUDULENT RECEIPTS TO BUFFALO DISTRICT EMPLOYEES, MANY OF WHOM WERE THEIR FRIENDS OR RELATIVES. EACH OF THE INVESTIGATIONS, AS WELL AS THE VERIFICATION PROCEDURES, ASSUMED THAT THE SUSPECTED FRAUD TOOK PLACE WHEN EMPLOYEES ALTERED OR MANUFACTURED RECEIPTS, AND THAT CONTACTING THE LODGING PROVIDERS WOULD REVEAL THE TRUE AMOUNTS PAID. WHEN THE LODGING PROVIDERS INCORRECTLY AND FRAUDULENTLY STATED THAT THE AMOUNTS SHOWN ON THE RECEIPTS HAD ACTUALLY BEEN PAID, THE INVESTIGATORS AND VOUCHER EXAMINERS CONCLUDED THAT NO FRAUD HAD OCCURRED. IT WAS NOT UNTIL THE CID INVESTIGATION WAS REOPENED THAT THE POSSIBILITY THAT LODGING PROVIDERS HAD CONSPIRED TO COMMIT THE FRAUD WAS PURSUED. /3/

DURING DECEMBER 1981, THE CID INVESTIGATION WAS REOPENED. ALSO DURING DECEMBER 1981, MS. SADLER RECEIVED A TELEPHONE CALL AT HER HOME FROM A BUFFALO DISTRICT EMPLOYEE. THIS EMPLOYEE TOLD MS. SADLER THAT HE AND OTHER EMPLOYEES WERE SUBMITTING FALSE TRAVEL REIMBURSEMENT CLAIMS AND THAT LODGING PROVIDERS WERE SUPPLYING INFLATED RECEIPTS. MS. SADLER RELAYED THIS INFORMATION IN TURN TO MR. KANE AND THE CID. ON DECEMBER 28 AND 30, 1981, MR. KANE TURNED OVER TO THE CID EVIDENCE DEALING WITH THE SPECIFIC ALLEGATIONS MADE IN THE TELEPHONE CALL TO MS.

SADLER.

ON FEBRUARY 5, 1982, THE FIRST SUPPLEMENT TO THE INITIAL CID REPORT WAS PREPARED BY THE CID. THIS SUPPLEMENT REPORTED CLEAR EVIDENCE OF FRAUD. SECOND AND THIRD SUPPLEMENTS ON APRIL 8 AND MAY 28, 1982, REPORTED FURTHER EVIDENCE OF FRAUD. HOWEVER, MR. KANE CONTINUED TO ALLOW PAYMENTS UNTIL AUGUST 1982 WHEN THE INVESTIGATION WAS FIRST SUBMITTED TO THE U.S. ATTORNEY'S OFFICE FOR PROSECUTION.

A TOTAL OF $169,581.89 IN IMPROPER AND ILLEGAL PAYMENTS WERE MADE FROM 1975 TO 1982. PECUNIARY LIABILITY AGAINST THE ACCOUNTABLE OFFICERS INVOLVED CANNOT BE ASSESSED FOR THE VAST MAJORITY OF THESE PAYMENTS BECAUSE THE ACCOUNTS ARE CONSIDERED CLOSED BY OPERATION OF LAW UPON THE RUNNING OF THE APPLICABLE STATUTE OF LIMITATIONS. 31 U.S.C. SEC. 3526(C) (1982). ON DECEMBER 29, 1984, THE GAO ISSUED A NOTICE OF EXCEPTION WHICH TOLLED THE STATUTE OF LIMITATIONS ON $22,848.46 PAID OUT OF MR. KANE'S ACCOUNT AFTER OCTOBER 9, 1981. YOU HAVE REQUESTED RELIEF FOR MR. KANE FOR THAT PORTION OF THIS AMOUNT THAT REPRESENTS PAYMENTS MADE BEFORE JUNE 1, 1982, TOTALING $12,615.22, BUT HAVE NOT REQUESTED RELIEF FOR THE REMAINING $10,233 IN PAYMENTS MADE BETWEEN JUNE 1 THROUGH AUGUST 1982.

REQUEST FOR RELIEF

A DISBURSING OFFICIAL WHO IS RESPONSIBLE FOR AN ACCOUNT IS LIABLE FOR PAYMENTS ON FRAUDULENT VOUCHERS MADE OUT OF HIS ACCOUNT. SEE, E.G., B-221395, MARCH 26, 1986. UNDER 31 U.S.C. SEC. 3127(C) (1982), THIS OFFICE HAS THE AUTHORITY TO RELIEVE A DISBURSING OFFICIAL FROM LIABILITY FOR AN IMPROPER PAYMENT WHEN THE RECORD SHOWS THAT THE PAYMENT WAS NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE.

IN THIS CASE WE ARE ASKED TO DETERMINE WHEN, DURING THE COURSE OF A SERIES OF FRAUDULENT CLAIMS, DID A DISBURSING OFFICIAL CEASE TO EXERCISE REASONABLE CARE IN PAYING CLAIMS. GENERALLY, WE CONSIDER REASONABLE CARE TO BE WHAT A REASONABLY PRUDENT AND CAREFUL PERSON WOULD HAVE DONE TO TAKE CARE OF HIS OWN FUNDS UNDER LIKE CIRCUMSTANCES. 54 COMP.GEN. 112 (1974). IN CONSIDERING REQUESTS FOR RELIEF OF DISBURSING OFFICERS IN CASES INVOLVING FRAUD, OUR CASES FREQUENTLY EXAMINE THE QUESTION OF WHETHER THE OFFICIAL HAD NOTICE OF THE FRAUD. FOR EXAMPLE, RELIEF FOR A NAVY DISBURSING OFFICER WHO IMPROPERLY PAID LODGING REIMBURSEMENTS BASED ON INFLATED HOTEL RECEIPTS WAS DENIED BECAUSE THE RECORD INDICATED THAT THE OFFICER HAD NOTICE THAT OVERPAYMENTS WERE BEING MADE. B-146729-O.M., MAY 9, 1967. CONVERSELY THE LACK OF NOTICE IS A FACTOR IN DECIDING THAT REASONABLE CARE WAS EXERCISED EVEN THOUGH A CRIMINAL SCHEME WAS SUCCESSFUL IN DEFRAUDING THE GOVERNMENT. E.G., B-221395, SUPRA.

IN YOUR SUBMISSION, YOU ARGUE THAT MR. KANE ACTED WITH REASONABLE CARE IN MAKING PAYMENTS UNTIL JUNE 1, 1982. YOU TAKE THAT DATE TO BE THE POINT AT WHICH MR. KANE HAD EITHER ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE FEBRUARY 5, APRIL 8, AND MAY 28, 1982 SUPPLEMENTS TO THE CID REPORT, EACH OF WHICH CONCLUDED THAT FRAUDULENT TRAVEL CLAIMS HAD BEEN SUBMITTED TO AND PAID BY MR. KANE. PRIOR TO JUNE 1, YOU ARGUE THAT MR. KANE'S ACTIONS IN CONTINUING TO ABIDE BY AND ENFORCE EXISTING PROCEDURES TO VERIFY THE AMOUNTS OF SUSPICIOUS TRAVEL VOUCHERS CONSTITUTE REASONABLE CARE IN PROCESSING TRAVEL CLAIMS.

WE DO NOT AGREE THAT MR. KANE CONTINUED EXERCISING REASONABLE CARE UNTIL JUNE 1, 1982. THIS THEORY OF DETERMINING LIABILITY ASSUMES THAT MR. KANE BECAME NEGLIGENT IN MAKING PAYMENTS ONLY AFTER THE CID INVESTIGATIONS SUBSTANTIATED THE

EXISTENCE OF FRAUD. WE WOULD AGREE IF THIS WERE A CASE WHERE NO PRIOR EVIDENCE OF IMPROPER PAYMENTS EXISTED. IN SUCH A CASE, A CID INVESTIGATION REPORT ESTABLISHING FRAUD MIGHT WELL ESTABLISH WHEN FURTHER PAYMENTS BECAME NEGLIGENT. BUT THE MEASURE OF AN ACCOUNTABLE OFFICER'S NEGLIGENCE IS TAKEN AGAINST THE REASONABLENESS OF HIS CONDUCT UNDER ALL THE CIRCUMSTANCES BEFORE HIM. FURTHER, THE PURPOSE OF ACCOUNTABLE OFFICER LIABILITY IS TO MAKE THE OFFICER AN INSURER OF GOVERNMENT FUNDS. SEE, 54 COMP.GEN. 112, 114 (1974). THAT PURPOSE WOULD BE ILL SERVED IF LIABILITY COULD BE AVOIDED BY MERELY AVOIDING EXPOSURE TO EVIDENCE OF FRAUD. WHEN THERE ARE LONG STANDING QUESTIONS ABOUT PAYMENTS, THE EXERCISE OF REASONABLE CARE MAY REQUIRE ACTION, SUCH AS STRENGTHENING VERIFICATION PROCEDURES (B-212603, ET AL., MARCH 27, 1984, REV'D. B-212603, ET AL., DEC. 12, 1984) OR REQUESTING AN ADVANCE DECISION FROM THIS OFFICE, LONG BEFORE CLEAR EVIDENCE OF ACTUAL FRAUD IS DISCOVERED (49 COMP.GEN. 38 (1969)).

WE CONCLUDE THAT MR. KANE'S CONTINUED PAYMENTS BASED ON THE FRAUDULENT VOUCHERS HAD BECOME NEGLIGENT BY JANUARY 1, 1982. DURING DECEMBER 1981, MR. KANE LEARNED THAT THE CID INVESTIGATION HAD BEEN REOPENED AND THAT MS. SADLER HAD RECEIVED A TELEPHONE CALL EXPOSING THE DEVICE BY WHICH THE FRAUDULENT SCHEMES HAD PREVIOUSLY EVADED DETECTION. AT THAT POINT, MR. KANE WAS ACTUALLY AWARE THAT THE PROCEDURES IN PLACE FOR VERIFYING TRAVEL VOUCHERS WERE NOT ADEQUATE TO ENSURE THAT PAYMENTS WOULD BE PROPER. PERSON EXERCISING REASONABLE CARE IN PROTECTING HIS OWN FUNDS UNDER SIMILAR CIRCUMSTANCES WOULD HAVE, AT A MINIMUM, CEASED RELYING ON A VERIFICATION SYSTEM SHOWN TO BE FAULTY. MR. KANE HOWEVER, CONTINUED TO ACCEPT TELEPHONE VERIFICATION OF HANDWRITTEN LODGING RECEIPTS UNTIL THE TIME THAT THE EVIDENCE OF FRAUD WAS TURNED OVER TO THE U.S. ATTORNEY'S OFFICE.

MR. KANE APPARENTLY DID ASK THE BUFFALO DISTRICT OFFICE OF COUNSEL WHETHER HE SHOULD WITHHOLD TRAVEL REIMBURSEMENTS BETWEEN THE TIME HE LEARNED OF THE FIRST CID INVESTIGATION AND JUNE 1982. THAT OFFICE ADVISED MR. KANE TO CONTINUE MAKING THE PAYMENTS. THIS ADVICE DOES NOT APPEAR TO HAVE BEEN PREDICATED ON THE NEEDS OF FURTHERING THE CID INVESTIGATION. ACCOUNTABLE OFFICER FACED WITH A QUESTIONABLE VOUCHER DOES NOT EXERCISE REASONABLE CARE BY RELYING ON ADVICE FROM OTHERS WITHIN HIS AGENCY IN LIEU OF SEEKING AN ADVANCE DECISION FROM THIS OFFICE. 49 COMP.GEN. 38 (1969).

WE, THEREFORE, RELIEVE MR. KANE ONLY FOR THOSE PAYMENTS WHICH WERE MADE PRIOR TO JANUARY 1, 1982. WE CONCLUDE THAT HE WAS NOT NEGLIGENT AS TO THESE PAYMENTS BECAUSE THEIR SUSPICIOUS NATURE, ALTHOUGH RECOGNIZED, HAD BEEN INVESTIGATED WITHOUT SUCCESS. THESE PAYMENTS TOTAL $7,615.73. MR. KANE REMAINS JOINTLY AND SEVERABLY LIABLE WITH THE RECIPIENTS OF THE IMPROPER DISBURSEMENTS FOR THE BALANCE OF THE IMPROPER PAYMENTS. THESE PAYMENTS TOTAL $15,232.49.

ALLOCATION OF AMOUNTS COLLECTED

AS AN ACCOUNTABLE OFFICER LIABLE FOR A LOSS OF GOVERNMENT FUNDS, MR. KANE IS JOINTLY AND SEVERABLY LIABLE WITH THE RECIPIENTS FOR THE IMPROPER PAYMENTS. HOWEVER, BECAUSE THE RECIPIENTS' LIABILITY FOR THE IMPROPER PAYMENTS THEY RECEIVED IS NOT FORECLOSED BY THE STATUTE OF LIMITATIONS COVERING MR. KANE, THEY REMAIN LIABLE FOR ALL FRAUDULENT PAYMENTS THEY HAVE NOT RETURNED. 31 U.S.C. SEC. 3527(D) (2). ACCORDINGLY, THIS CASE HAS TWO CLASSES OF DEBTS OWED TO THE UNITED STATES-- ONE CLASS CONSISTING OF PAYMENTS MADE BEFORE JANUARY 1, 1982 FOR WHICH ONLY THE RECIPIENTS ARE LIABLE, AND A SECOND CLASS CONSISTING OF PAYMENTS MADE AFTER JANUARY 1, 1982, FOR WHICH MR. KANE AND THE RECIPIENTS ARE JOINTLY AND SEVERABLY LIABLE. YOUR SUBMISSION INDICATES THAT COLLECTIONS MADE FROM THE RECIPIENTS WILL BE CREDITED FIRST TO THE PAYMENTS IN THE SECOND CLASS, THEREBY

REDUCING THE LIABILITY OF BOTH THE RECIPIENT INVOLVED AND MR. KANE. WE DO NOT AGREE THAT THIS IS THE CORRECT ALLOCATION.

AS A BASIS FOR THIS ALLOCATION, YOU RELY ON SEVERAL COMMENTS IN OUR PUBLICATION, PRINCIPLES OF FEDERAL APPROPRIATION LAW. SPECIFICALLY, WE STATED THERE THAT AGENCIES "SHOULD SEEK TO RECOVER FROM THE RECIPIENT IF POSSIBLE" AND THAT "ANY AMOUNTS RECOUPED WILL REDUCE THE ACCOUNTABLE OFFICER'S LIABILITY." YOU HAVE TAKEN THESE STATEMENTS TO MEAN THAT ANY AMOUNTS COLLECTED FROM THE RECIPIENTS IN THIS CASE MUST BE CREDITED TO REDUCE THE DEBT OWED BY MR. KANE. THIS INTERPRETATION TAKES OUR LANGUAGE OUT OF CONTEXT. OUR DISCUSSION WAS MEANT TO BE A GUIDE TO AGENCIES ON HOW TO APPROACH ACCOUNTABLE OFFICER DEBTS IN THE TYPICAL CASE WHERE THE AMOUNT OF RECIPIENT DEBT AND ACCOUNTABLE OFFICER DEBT AROSE FROM ONE TRANSACTION. IN THOSE CASES, COLLECTION FROM THE RECIPIENT WILL, IN FACT, REDUCE THE ACCOUNTABLE OFFICER'S LIABILITY. THIS STATEMENT DOES NOT APPLY TO THE SITUATION WHERE, AS HERE, THE RECIPIENT OF PAYMENTS IS LIABLE FOR DEBTS ARISING FROM SEVERAL TRANSACTIONS AND WHICH TOTAL MORE THAN THE LIABILITY OF THE ACCOUNTABLE OFFICER. THE ALLOCATION OF COLLECTIONS BETWEEN THE TWO CLASSES OF DEBTS IN THIS CASE MUST BE DETERMINED BY REFERENCE TO THE FEDERAL CLAIMS COLLECTION STANDARDS. 4 C.F.R. PART 101 ET SEQ. (1986). SECTION 102.11(B) OF THE STANDARDS SPECIFIES THAT WHEN DEBTORS OWE MORE THAN ONE DEBT TO THE UNITED STATES, AND THEY DO NOT SPECIFY WHICH DEBT A PAYMENT WILL BE CREDITED TOWARD, THE AGENCY INVOLVED SHOULD APPLY PAYMENTS TO LIQUIDATE THE VARIOUS DEBTS IN ACCORDANCE WITH THE BEST INTERESTS OF THE UNITED STATES. IN THIS INSTANCE, THE BEST INTERESTS OF THE UNITED STATES ARE CLEARLY SERVED BY APPLYING PAYMENTS MADE BY THE RECIPIENTS TO THE CLASS OF DEBT FOR WHICH ONLY THE RECIPIENTS ARE LIABLE. THE UNITED STATES HAS, BY VIRTUE OF THE JOINT LIABILITY, GREATER ASSURANCE THAT THE DEBT OWED JOINTLY BY THE RECIPIENT AND MR. KANE WILL BE REPAID. THE INTERESTS OF THE UNITED STATES ARE BEST SERVED BY RETIRING THE LEAST SECURE DEBTS FIRST. IN ADDITION, SEC. 103.6 OF THE STANDARDS SPECIFIES THAT AGENCIES SHOULD NOT ATTEMPT TO ALLOCATE THE BURDEN OF PAYING DEBTS BETWEEN JOINT AND SEVERAL DEBTORS. INSTEAD, AGENCIES ARE INSTRUCTED TO LIQUIDATE THE DEBT AS QUICKLY AS POSSIBLE. ALTHOUGH WE HAVE NOTED THE APPROPRIATENESS OF FIRST SEEKING RECOVERY FROM THE PERPETRATORS OF THE FRAUD, THE ALLOCATION OF REPAYMENTS FIRST TO THE CLASS OF DEBT FOR WHICH MR. KANE AND THE RECIPIENTS ARE JOINTLY LIABLE IS NOT CONSISTENT WITH SEC. 103.6.

CONCLUSION

IN RESPONSE TO YOUR REQUEST, WE GRANT RELIEF FOR PAYMENTS MADE BY MR. KANE BASED ON FRAUDULENT VOUCHERS FROM OCTOBER 19, 1981 TO JANUARY 1, 1982. HOWEVER, WE DENY RELIEF FOR MR. KANE FOR ALL OF THE FRAUDULENT TRAVEL PAYMENTS MADE AFTER JANUARY 1, 1982. IN ADDITION, ANY COLLECTIONS ALREADY RECEIVED FROM THE RECIPIENTS OF THE FRAUDULENT PAYMENTS, WITH WHOM MR. KANE IS JOINTLY AND SEVERABLY LIABLE, SHOULD BE FIRST CREDITED TO THE DEBTS WHICH THESE RECIPIENTS OWE INDIVIDUALLY, RATHER THAN THE DEBTS WHICH THEY OWE JOINTLY AND SEVERABLY WITH MR. KANE.

/1/ THE FRAUDULENT PAYMENTS MADE OUT OF MR. KANE'S ACCOUNT, FOR WHICH HE IS LIABLE, OCCURRED BETWEEN OCTOBER 19, 1981 AND SEPTEMBER 31, 1982. THE TOTAL AMOUNT OF THESE PAYMENTS IS $22,848.22. YOUR SUBMISSION REQUESTS RELIEF ONLY FOR THOSE PAYMENTS MADE BETWEEN OCTOBER 19, 1981 AND JUNE 1, 1982, WHICH TOTAL $12,615.22.

/2/ THESE WERE LONG-STANDING CONCERNS OF MS. SADLER, DATING BACK TO 1974 WHEN SHE WAS FIRST ASSIGNED TO VOUCHER EXAMINING DUTIES IN THE BUFFALO DISTRICT.

THESE CONCERNS HAD ALSO BEEN THE SUBJECT OF AN INSPECTOR GENERAL INVESTIGATION PRIOR TO MR. KANE'S TENURE AS THE CHIEF OF THE FINANCE AND ACCOUNTING SECTION. THAT INVESTIGATION FAILED TO DETECT THE FRAUDULENT NATURE OF THE TRAVEL CLAIMS.

/3/ IN THIS REGARD, WE NOTE THAT MR. CHARLES LAYCOCK WAS INSTRUMENTAL IN ASSURING THAT THE CID INVESTIGATION WAS REOPENED AND THAT THE FULL SCOPE OF THE FRAUD WAS DISCOVERED. HAD MR. LAYCOCK NOT PURSUED THE MATTER OF THE INCOMPLETE INVESTIGATION, THE FRAUDULENT TRAVEL CLAIMS MIGHT STILL BE OCCURRING.