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94-17 AVIATION WAR RISK INSURANCE PROGRAM

GOVERNMENT
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DOCUMENTS (94-17)

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THE KANSAS STATE UNIVERSITY



HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON

PUBLIC WORKS AND TRANSPORTATION

USE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 8564

TO AMEND THE FEDERAL AVIATION ACT OF 1958 RELATING
TO WAR RISK INSURANCE

JULY 16, 1975

Printed for the use of the
Committee on Public Works and Transportation



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94TH CONGRESS
1ST SESSION

H. R. 8564

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 1975

Mr. ANDERSON of California (for himself and Mr. SNYDER) introduced the following bill; which was referred to the Committee on Public Works and Transportation

A BILL

To amend the Federal Aviation Act of 1958 relating to war risk insurance.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 1306 of the Federal Aviation Act of 1958
4 (49 U.S.C. 1536) is amended by adding at the end thereof
5 the following new subsection:
6 "INVESTMENT OF REVOLVING FUND
7 "(f) Upon the request of the Secretary, the Secretary
8 of the Treasury may invest all or any part of the revolving
9 fund in interest-bearing securities of the United States. The
10 interest on, and the proceeds from the sale or redemption of,

1 any securities held in the revolving fund shall be credited to
2 and form a part of the revolving fund.”.

3 (b) That portion of the table of contents contained in
4 the first section of such Act which appears under—

5 (1) the center heading

“TITLE XIII—WAR RISK INSURANCE”

6 is amended by striking out

“Sec. 1306. Collection and disbursement of funds.”

7 and by inserting in lieu thereof

“Sec. 1306. Collection, disbursement, and investment of funds.”;

8 and

9 (2) the side heading

“Sec. 1306. Collection, disbursement, and investment of funds.”

10 is amended by adding at the end thereof the following:

“(f) Investment of revolving fund.”.

11 SEC. 2. Section 1312 of the Federal Aviation Act of
12 1958 (49 U.S.C. 1542) is amended by striking out “Sep-
13 tember 7, 1975”, and inserting in lieu thereof “September
14 30, 1980”.

AVIATION WAR RISK INSURANCE PROGRAM

WEDNESDAY, JULY 16, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION,
OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 1:10 p.m., in room 2253, Rayburn House Office Building, Hon. Glenn M. Anderson (chairman of the subcommittee) presiding.

Mr. ANDERSON. The meeting of the Aviation Subcommittee will please come to order.

Today the Aviation Subcommittee begins hearings on the aviation war risk insurance program. Since the present program expires September 7, these hearings are necessary to determine the need for continuation of the program. We shall also inquire as to whether the program should be revised from its present format.

We find ourselves once again in a situation of waiting for a legislative proposal long promised by the administration. No draft bill has been forthcoming despite several assurances that one was on the way.

In anticipation of the administration's failure to have a bill of this subcommittee to look at, Mr. Snyder and I have introduced H.R. 8564. The bill would accomplish two purposes: it would extend the present program through September 30, 1980; and it would authorize funds in the revolving fund to be invested in interest bearing securities of the United States.

The aviation war risk insurance program has been extended on five occasions since the program was established by the 82d Congress in 1951. The reasons for these past extensions seem equally compelling today, particularly in view of the very high cost of aircraft in the fleet.

The second part of the draft bill would authorize the Secretary of the Treasury, at the request of the Secretary of Transportation, to invest portions of the Aviation War Risk Revolving Fund in Securities of the United States and to credit the interest and proceeds to the revolving fund account.

Premiums received in consideration of policies issued under the program are deposited in a revolving fund in the Treasury, but there is no express authority to invest the premiums for the benefit of the fund. The investment of Treasury revolving funds is a common practice, but express statutory authority is a prerequisite to such investment.

Sums necessary to carry out the provisions of the aviation war risk insurance program are authorized to be appropriated under 49 U.S.C. section 1536(b). To date the Congress has not been called upon to

appropriate money because the program has been self-sustaining. Recognizing the increased values of today's aircraft it is important that the revolving fund continue to grow in order to obviate the need for a congressional appropriation to cover a major claim. The draft bill would provide a means for expanding the fund without appropriating money from the U.S. Treasury, and thus assure the program's continued self-sustaining nature.

Today we are pleased to have representatives from the Federal Aviation Administration, the Air Transport Association of America and Pan American World Airways, and others.

Our first witness today will be Mr. Charles O. Cary, Assistant Administrator, Office of International Aviation affairs, Federal Aviation Administration.

Perhaps I should ask my colleagues if they have any comments before we proceed.

Mr. SNYDER. No, Mr. Chairman.

Mr. ANDERSON. Mr. Cary, proceed.

TESTIMONY OF CHARLES O. CARY, ASSISTANT ADMINISTRATOR, OFFICE OF INTERNATIONAL AVIATION AFFAIRS, FEDERAL AVIATION ADMINISTRATION; ACCOMPANIED BY JAMES D. CAMERON, CHIEF, AVIATION INSURANCE STAFF; NEIL EISNER, ESQ., OFFICE OF CHIEF COUNSEL, AND OSCAR SHIENBROOD, OFFICE OF CHIEF COUNSEL

Mr. CARY. Thank you, Mr. Chairman.

I appreciate the opportunity to appear before you to discuss the proposed legislation amending title XIII of the Federal Aviation Act of 1958, pertaining to the aviation war risk insurance program.

My office is responsible for the administration of this program. Appearing with me today are James D. Cameron, Chief of the Aviation Insurance Staff, Oscar Shienbrood and Neil R. Eisner of the Office of the Chief Counsel.

The proposed legislation would amend title XIII in two respects. First, it would extend the war risk insurance program for an additional 5 years from its present expiration date of September 7, 1975 to September, 1980.

Second, it would amend section 1306 to provide authority for investing the war risk insurance fund held in the Treasury and depositing earnings of such investments to the credit of the fund.

Mr. SNYDER. When you say proposed legislation, you are saying the bill Mr. Anderson and I put in, or something you are proposing?

Mr. CARY. The Secretary today has signed a letter transmitting the Department of Transportation and administration's bill.

Mr. SNYDER. I want to understand because I want to know what you are referring to, the Secretary's bill or Mr. Anderson's bill.

Mr. CARY. I was referring to the legislation which the Secretary has proposed, which is substantially the same, or with just very minor differences.

Mr. SNYDER. Do we have a copy of that?

Mr. CARY. It was signed a short time before we left, and I do not have the transmittal.

Mr. SNYDER. I think it would be helpful, Mr. Chairman, if we had a copy of what he is talking about.

Mr. ANDERSON. Can you get us copies of the proposal that is going to be introduced?

Mr. SHIENBROOD. I am not sure it has reached the Speaker yet.

We will get you copies as soon as we possibly can, and have them up to you.

Mr. SNYDER. Why not send down and get us copies of the bill we are going to be talking about while we go and answer this roll call?

Mr. Chairman, may I suggest that?

Mr. ANDERSON. We have to go vote any way, and we would like to see the bill, and it is difficult to talk about your bill if we do not know what it is we are talking about, and I hope your bill and our bill is the same.

Mr. CARY. Very good. We will see if we cannot get it for you.

Mr. ANDERSON. We will recess for about 10 minutes.

[Short recess.]

Mr. ANDERSON. The subcommittee will come to order.

Thank you for providing the bill for us so when you talk about the legislation you are talking about this one right here, and it will be introduced forthcoming.

Mr. CARY. Yes, Mr. Chairman.

Mr. ANDERSON. Do you know who is going to introduce it?

Mr. CARY. I do not.

If I may, Mr. Chairman, I will continue with my prepared statement.

Title XIII of the Federal Aviation Act authorizes the Secretary of Transportation, with the approval of the President, to provide premium and nonpremium war risk insurance for the protection of aircraft and of persons and property transported by them when commercial insurance cannot be obtained on reasonable terms and conditions from commercial insurers.

In addition, protection is authorized against other liabilities of a kind that insurance would customarily cover.

Nonpremium insurance is presently provided to air carriers having contracts with the Department of Defense and the Department of State. This insurance may be procured by departments or agencies of the United States which enter into agreements with the Secretary of Transportation to indemnify him against all losses covered by the insurance provided by the act.

An example of this type of arrangement is that which this Department has with the Department of Defense. During periods when a national emergency is not in effect, air carriers which are members of the Civil Reserve Air Fleet (CRAF) make their equipment available to the Department of Defense through contractual arrangements. Under these arrangements, carriers may be required to enter areas where hostilities exist in order to provide airlift for military or non-military operations.

The Department of Transportation provides war risk insurance to these CRAF air carriers without premiums with the understanding that it will be reimbursed by the Department of Defense for any losses incurred. Presently, approximately 400 aircraft are covered under the nonpremium aspect of the program.

The other war risk insurance authorized in title XIII is of the premium type. Under the ordinary aviation insurance policy certain named "war risks" are excepted from coverage. A fairly typical commercial policy usually includes a clause or clauses excluding from coverage any claim for loss or damage "directly or indirectly occasioned by, happening through, or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, or insurrection."

Since an air carrier normally wishes to be covered against such excluded risks, it purchases special war risk insurance. This coverage is at present provided only through the London market. While this coverage has generally been obtainable by U.S. air carriers operating internationally, its continued availability, on any terms, let alone on reasonable terms, cannot be assured or assumed due to the unsettled character of the world in which U.S. airlines must offer service.

The scale of the aviation war risk insurance market is sufficiently limited so that a single incident of loss can quickly lead to the cancellation of existing war risk policies or a marked escalation of premiums.

The premium war risk insurance program is intended to bridge this actual or potential gap in coverage and, by doing so, enable air carriers to continue operations into areas where they would otherwise be reluctant to go.

By providing coverage for the excluded perils, we can in effect assure keeping various international routes operational which might otherwise be discontinued because of the uninsured risks involved. Therefore, it is important that the war risk insurance program continue so that it will be immediately available if needed.

For instance, those air carriers recently involved in the "rice lift" into Phnom Penh, Cambodia, and the evacuation of personnel from Saigon under Military Airlift Command contracts required the war risk insurance coverage provided by the nonpremium programs. Three claims estimated at less than \$250,000 were reported as a result of losses during these operations.

In addition, the premium program was activate to assure continuation of scheduled operations into Saigon as long as such operations were in the national interest. No claims were reported under this program.

To continue this necessary insurance program without interruption, we request that section 1312 of the Federal Aviation Act (49 U.S.C. 1542) be amended to extend the expiration date for another 5 years.

Turning now to the proposed investment authority, we refer to section 1306(a) of the act which provides that all receipts in connection with title XIII shall be deposited in a revolving fund in the Treasury of the United States.

We are requesting that the authority under section 1306 be extended to allow the Secretary of the Treasury, at the request of the Secretary of Transportation, to make investments from this fund in public debt obligations of the United States and credit to the fund the earnings from such investments. There is clear precedent for such authority which is now granted to the Maritime War Risk Fund, the National Credit Union Share Insurance Fund, and the National Insurance De-

velopment Fund of the Department of Housing and Urban Development, among others.

Presently, the war risk insurance revolving fund has a balance of approximately \$13.7 million which, if invested at 5 percent, could produce additional annual income of \$685,000.

For some years after the aviation war risk insurance provisions were enacted, there were no earned premiums in the fund. Thus, there was little incentive to seek investment authority. With the growth of the fund, however, and the desire to keep the program on a self-sustaining basis, we believe it is important and appropriate that authorization be enacted to invest the receipts held in the war risk insurance fund and credit the proceeds to the fund. This parallels the action taken with respect to the maritime war risk insurance fund, on which the aviation fund is patterned, for which investment authority was enacted in 1962.

The aviation war risk insurance program has been extended by the Congress on four previous occasions. We believe the program has served a vital role in the past, and that general world conditions warrant an additional 5 year extension. We urge, therefore, that the Congress act to allow this program to continue on an uninterrupted basis, with the additional authority to accomplish the investment of the funds involved.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions you may have.

Mr. ANDERSON. Thank you, Mr. Cary.

I have been checking the two bills that we have, our bill and the one you are going to produce, and I notice they are very similar. Ours extends it to September 30, 1980, and yours extends it to September 7, 1980.

Our bill says the Secretary of Treasury may invest all or any part of the revolving fund in interest bearing securities of the United States.

You have public debt obligations of the United States and credit the fund with the earnings from such investments.

I assume we are talking about the same thing. That is basically the same, is it not?

Is there any difference in the interest bearing securities of the United States and in a fund in public debt obligations of the United States?

Mr. CARY. Mr. Chairman, I am not an expert on fiscal matters, but I suspect there may be a difference, because the Treasury Department recommended the change in the language which is in our proposed legislation.

I suspect Treasury had a reason for doing that, but I do not know what significant difference it may make.

Mr. ANDERSON. Could you furnish the reasons why they preferred that language rather than ours?

Mr. CARY. Yes.

[The following was received for the record:]

We have reviewed this question with the staff of the Fiscal Service of the Treasury Department. As a result of this review, we understand that, for statutory language authorizing the investment of public enterprise revolving funds such as the aviation war risk insurance fund, the Treasury Department currently recommends using the term "Treasury securities" rather than "public debt

obligations of the United States" or "securities of the United States." We would, therefore, favor a corresponding change in the bill transmitted to the Speaker, i.e., substitute the words "Treasury securities" for the words "public debt obligations of the United States." With reference to H.R. 8564, we would similarly suggest substituting the words "Treasury securities" for the words "interest-bearing securities of the United States."

With reference to the differences in the terminology, the following descriptions are generally applicable insofar as investment of funds are concerned:

(1) "Public debt obligations of the United States" include (a) the marketable obligations issued by the United States Treasury Department, i.e., Treasury bills, notes and bonds; (b) the nonmarketable special obligations of the Treasury such as those issued to the various trust funds or other government accounts; and (c) securities issued by the new Federal Financing Bank.

(2) The term "treasury securities" encompasses the marketable obligations of the Treasury and the nonmarketable special obligations of the Treasury identified in (1) (a) and (b) above.

(3) The term "securities of the United States" generally refers to the direct obligations of the Treasury of the kinds identified in (1) (a) and (b) above. But the term sometimes has been understood to include securities issued by Federal agencies other than the Treasury Department, including securities guaranteed by the United States.

The Fiscal Service has advised us that it considers the term "Treasury securities" to be more precise in referring *only* to obligations issued directly by the Treasury Department.

Mr. ANDERSON. I am going to read now a series of questions that I have here that I would like to have you answer for the record.

If there are any of them that you want to answer right now you can, and I am going to yield after that for questions by the other members so we can get around to them, and I will ask some other questions of you later.

These are questions that tell a little bit more about the whole operation, and I think it is something we want to know about.

The first series of questions are background questions.

No. 1, tell us how the present program is administered within the Department of Transportation.

What size staff is used to run the program?

What is the program's annual budget?

What is the chain of command up from FAA to DOT?

What role does the President play in the program?

What attempt is made to keep up with the latest developments in the insurance and industry relative to the war risk situation?

Who makes the decision that a given area is a war risk area necessitating coverage?

Second, describe the nonpremium insurance program that you have with the Departments of Defense and State.

How active is this program?

How many aircraft are covered?

Third, describe what is covered by the term "war risk."

Can "war risk" be said to encompass risks other than those covered in so-called all-risk clauses?

How are premiums set?

Who sets the premiums?

Fourth, describe the premium insurance program.

Under what circumstances would an air carrier come to FAA for war risk insurance under this program?

Is this program currently active?

Fifth, describe how the claims procedure works.

How many claims are presently outstanding and approximately how many do they represent?

How many claims have been settled in the past and in what dollar amount?

Sixth, concerning the revolving fund, what moneys go into the fund? What expenditures come out of the fund?

How much money is presently in the fund?

Is this money drawing interest?

What is your position on legislation to authorize investment of the fund?

How much in additional fund revenue would you anticipate could be added by investment?

How would you anticipate the investment provision would work?

Seventh, regarding extension of the program, does the administration feel the program should be extended? Why?

What would you anticipate could be the result if the present program were to expire September 7?

Eighth, regarding the Pan Am-ATA proposal, what is your reaction?

What problem areas do you foresee in the proposal?

Could you write policies and assess premiums based upon the language in the proposal?

What affect might inclusion of such language in the law have on the availability of commercial insurance under so-called all-risk clauses?

Those are eight basic questions we would like you to provide answers for the record, and any of those that you want to volunteer and answer at this time you can. If not, I will yield to Mr. Snyder who may have a question.

Mr. CARY. Mr. Chairman, we will supply the answers for the record.
[Replies to the foregoing questions follow:]

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Washington, D.C., July 21, 1975.

HON. GLENN M. ANDERSON,
Chairman, Subcommittee on Aviation, Committee on Public Works and Transportation, House of Representatives, Washington, D.C.

DEAR MR. ANDERSON: Enclosed are the answers for the record to the written questions presented to me during my testimony before the Subcommittee on Aviation on the War Risk Insurance Program by you on behalf of the Subcommittee. If additional information or explanation on these responses is desired by the Subcommittee, I will be pleased to provide it.

Sincerely,

CHARLES O. CARY,
*Assistant Administrator for
International Aviation Affairs.*

Enclosure.

Question 1. Tell us how the present program is administered within the Department of Transportation.

a. What size staff is used to run the program?

Answer. The day to day administration of the aviation war risk insurance program is conducted by the Chief, Aviation Insurance Staff, Office of International Aviation Affairs, Federal Aviation Administration, and an administrative Assistant. In addition, legal assistance is provided by the Office of the Chief Counsel, Federal Aviation Administration, on an as-needed basis.

Question b. What is the program's annual budget?

Answer. The budget for fiscal 1976 is \$58,000. This is representative of past recent budgets. If the scope of the program were significantly expanded, a larger budget for additional staff might be needed. The funds for this budget are taken from current year fee receipts of this program, when available.

Question c. What is the chain of command up from FAA to DOT?

Answer. The Chief, Aviation Insurance Staff is directly responsible to the Assistant Administrator for International Aviation Affairs who in turn reports directly to the FAA Administrator. The Administrator is responsible to the Secretary of Transportation.

Question d. What role does the President play in the program?

Answer. When the DOT/FAA is requested to supply Title XII war risk coverage under the Premium program a determination must be made by the Secretary of Transportation that such coverage, adequate for the needs of the air commerce of the United States, cannot be obtained from commercial insurance companies on reasonable terms and at reasonable rates. When such a determination has been made by the Secretary he then submits his finding to the President, indicating his intention to exercise his authority under Title XIII and requests the President's approval.

Question e. What attempt is made to keep up with the latest developments in the insurance industry relative to the war risk situation?

Answer. The incumbent Chief, Aviation Insurance Staff has through his past insurance experience developed numerous contacts within the aviation insurance industry and in the course of regular conversations with underwriters, brokers and airline insurance managers he is able to stay abreast of current trends in the aviation insurance industry. Changes in the war risk situation which might necessitate activation of the program would usually be indicated to the Department of Transportation/FAA promptly by the affected air carriers.

Question f. Who makes the decision that a given area is a war risk area necessitating coverage?

Answer. The decision for the issuance of Title XIII coverage does not require that a given area of the world be determined to be a war risk area but merely that commercial war risk insurance is not available. The commercial war risk underwriters can and do cancel or restrict their coverage based on changing world conditions, often on a geographical basis, and it is these cancellations or restrictions that cause the United States air carriers to turn to the Department of Transportation for assistance.

Question 2. Describe the non-premium insurance program that you have with the Departments of Defense and State.

Answer. In accordance with the authority as stated in Section 1304 of Title XIII, the Secretary of Transportation has entered into agreements with the Secretary of Defense and the Secretary of State to make war risk insurance available to air carriers who are performing missions under contract to the Department of Defense or the Department of State. The programs are characterized as "non-premium" since the Department of Transportation does not levy a premium on aircrafts while participating in these Department of Defense or Department of State programs. In accordance with the above-mentioned agreements the Secretary of Defense and the Secretary of State, respectively, agree to reimburse the Department of Transportation for the amount of any claims paid to the participating air carriers under the terms of their Title XIII policies.

Question a. How active is this program? How many aircraft are covered?

Answer. The Department of Defense program has been a relatively active one involving 18 airlines and some 400 aircraft at present. The Department of State program is on a smaller scale under which we have approximately 85 aircraft presently insured. Of course, the potential activity of these programs will depend on future events.

Question 3. Describe what is covered by the term "war risk."

Answer. "War Risk" coverage is defined, to the extent determined by the Secretary of Transportation, as those risks described in "free of capture and seizure" clauses, or analogous clauses.

A free of capture and seizure clause is an exclusion clause which begins with the words "Capture, seizure, . . ." A typical free of capture clause is:

Capture, seizure, arrest, restraint, detainment, confiscation, nationalization, requisition, willful damage or destruction, or any attempt at any of the foregoing, by any independent unit or individual engaged in activities in

furtherance of a program of irregular warfare or by any government, or by any public or local authority.
 Another example of a war risk exclusion clause is:

War; invasion; acts of any independent unit or individual engaged in activities in furtherance of a program of irregular warfare; acts of belligerents or foreign enemies (whether accorded diplomatic recognition or not); civil war, revolution, rebellion or insurrection, or any attempt thereat; war-like operations or hostilities; martial law, exercise of military or usurped power, or any attempt at usurpation of power (any of the foregoing applying whether war be declared or not).

Question a. Can "war risk" be said to encompass risks other than those covered in so-called "All Risk" clauses.

Answer. The current commercial insurance "all risk" contracts for international aviation are written in such a fashion that the "war risks" described above are excluded and made the subject of a separate insurance contract with a so-called "war risks insurer". Since 1970, other perils which do not fall within the above-quoted clauses have been excluded by the commercial insurers from the "all risk" policies.

Question b. How are premiums set?

Answer. Rates charged for the Premium program have been geared to the most recent charges for similar coverage when purchased from the commercial war risk insurers plus a judgment increase to reflect the additional hazard which caused the retrenchment of the commercial insurer. There is no good actuarial base to use in promulgating war risk insurance rates because of the nature of these perils. Recognizing the purpose of Title XIII, an effort is made to arrive at a rate which is fair, reasonable and non-discriminatory. The amount of the premium would ordinarily include a factor for claims adjustment expenses. In addition, the level of the rate is set at a level high enough so as to not discourage commercial insurance companies to re-enter the market after a crisis has passed. It is not our intent to offer "bargain" insurance to the air carriers, but insurance at a reasonable level.

Question c. Who sets the premiums?

Answer. The premiums are set by the Department of Transportation.

Question 4. Describe the premium insurance program.

Answer. The premium insurance program under Title XIII is intended to provide war risk insurance for the commercial operations of U.S. air carriers when such insurance is not available on reasonable terms and conditions from commercial insurers and when it is deemed by the Secretary of Transportation, as approved by the President, to be necessary to meet the needs of air commerce of the United States. We also have a "binder" program which will provide war risk insurance in the event that a war occurs between the "great powers", and commercial insurance is unavailable.

Question a. Under what circumstances would an air carrier come to the FAA for war risk insurance under this program?

Answer. The U.S. airlines may find that conditions have prompted the war risk insurance underwriters to either unreasonably restrict or even cancel coverage or to ask for a unreasonable increase in rates. When this situation arises the carrier applies for Title XIII coverage under the premium program. It is normal in indenture or mortgage agreements that the air carriers have with their creditors to require comprehensive insurance coverage.

Question b. Is this program currently active?

Answer. This program is not active at the present time.

Question 5. Describe how the claims procedure works.

Answer. The insured is required by the terms of the policy to give notice of any loss, damage or injury including all particulars, which may result in a claim being filed under the Title XIII programs. In the case of an aircraft hull proof of loss shall be filed within 60 days. If a liability claim is involved the insured forwards a copy of each demand notice, summons or other process received. Claims are handled by the Litigation Division of the Office of the Chief Counsel of the FAA.

Question a. How many claims are presently outstanding and approximately how many do they represent?

Answer. At this time three claims which arose out of our nonpremium Department of Defense program are outstanding. These claims, which resulted from the

"rice-lift" into Phnom Penh, Cambodia could result in a maximum liability of approximately \$250,000.00.

Question b. How many claims have been settled in the past and in what dollar amount?

Answer. Three claims have been submitted, one resulting in payment and two were denied.

The approved claim was for \$625.00 and arose under the Department of Defense non-premium program.

The two claims that were denied were taken to litigation by the claimants and the Federal Aviation Administration determination that the losses incurred were not covered by the respective Title XIII war risk insurance policies was upheld by the court of first instance and at the appellate level. One of the claims, for \$150,000.00, arose out of the Department of Defense non-premium program. The other claim for \$9.7 million arose out of the premium program; the latter claim arose out of the hijacking of the Pan Am aircraft in 1970 and its subsequent destruction. Both denied claims were paid in full by the "all risk" insurer.

Question 6. Concerning the Revolving Fund, what monies go into the Fund? What expenditures come out of the fund?

Answer. The revolving fund is an accumulation of binder fees and earned premiums in excess of operating expenses. The fund may be used for loss settlements, payment of judgments and other liabilities incurred under Title XIII.

Question a. How much money is presently in the fund?

Answer. The fund is presently in excess of \$13.7 million.

Question b. Is this money drawing interest?

Answer. This money is not drawing interest.

Question c. What is your position on legislation to authorize investment of the Fund?

Answer. We indicated in the prepared statement at the hearing our strong support for the addition of investment authority to help keep the program on a self-sustaining basis. It should be noted that the fund is not yet at a level at which it could cover one jumbo jet total loss.

Question d. How much in additional Fund revenue would you anticipate could be added by investment?

Answer. We have no way of answering this question precisely at this time. The answer is dependent upon the balance in the fund available for investment, which can fluctuate; the specific investments to be made, which are to be determined by the Secretary of the Treasury; and the prevailing interest rates. The reference during the hearings to investment of the existing balance of \$13.7 million at 5%, yielding \$685,000.00 annually was not intended to reflect any conclusion that the 5% rate would be applicable.

Question e. How would you anticipate the investment provision would work?

Answer. We would anticipate that the Secretary of Transportation would request the Secretary of the Treasury to initiate an investment program which would produce maximum return to the fund consistent with the provisions of Title XIII. When the premium program is activated to assure continued commercial operations for U.S. air carriers it is essentially a business type enterprise and as a matter of sound business practice a reasonable reserve should be retained to meet program needs as to losses and expenses.

Question 7. Regarding extension of the program, does the Administration feel the program should be extended? Why?

Answer. As evidenced by the letter dated July 16, 1975, transmitting the proposed Administration bill to the Speaker of the House of Representatives, the Administration does support the extension of Title XIII. Although the premium program was called into use only twice since the inception of the program each time it was a matter of urgency and was deemed to be in the national interest to meet the needs of air commerce. Additionally, the coverage provided air carriers during the Berlin air lift, the Phnom Penh "rice lift" and in Vietnam, gives evidence of the requirements for availability of these programs. Both the premium and non-premium programs have been used to meet emergency situations in the national interest.

Question a. What would you anticipate could be the result if the present program were to expire September 7?

Answer. If an unforeseen war or other dangerous situation occurs it is likely the commercial war risk underwriters will invoke their seven day notice of

cancellation, at least in respect to the particular geographic area involved. If this legislation is allowed to expire the U.S. Government operating through the Department of Transportation would no longer have a program in place which produces the necessary policies and forms, promulgates a fair and reasonable rate, receives and processes these applications and finally issues the requested policies. Emergency legislation would be needed from the Congress. It was pointed out that 7 days notice was considered an extremely short period of time even under present circumstances. If we were required to begin the whole process, even to drafting and enacting new legislation, within a 7 day time limit it would be most impractical.

In addition, as of September 7, 1975, if the program lapsed we would be unable to provide the coverage we are currently maintaining for the Department of Defense and Department of State in support of their programs. Our function would have to be replaced if these programs were to be maintained under their present terms and conditions.

Question 8. Regarding the Pan Am/ATA proposal, what is your reaction?

Answer. At this time our reaction to the Pan American draft text is that this proposal highlights a problem which deserves the careful consideration of several agencies of the government. In an effort to better understand the intended scope of the Pan Am proposal and explore the possibility of reaching a prompt agreement on an exact text, representatives of the FAA met on Wednesday night, July 16, with Pan Am and the Air Transport Association immediately after the conclusion of the hearing. As a result of that meeting and the hearing testimony, while no agreement was reached, Pan Am decided to modify the proposal they had earlier presented to us. As we indicated at the hearing, the FAA has been in contact with various interested agencies; it was deemed desirable to meet together to consider the situation. This meeting was held on Friday, July 18, attended by representatives of the Department of State, Department of Defense, Office of Management and Budget and the Department of Transportation/Federal Aviation Administration. At that meeting the Pan Am proposal, as modified by them, was presented and discussed. It was decided unanimously that because of the scope of the proposed changes in coverage no decision of either support or disapproval, or agreement as to an alternative text, could be taken then. Recognizing the valid objectives that the Pan Am proposal was attempting to reach it was felt that further consultations would be appropriate after review within the respective agencies.

The Department of Transportation/Federal Aviation Administration would endorse the proposal made by the Subcommittee Chairman, Mr. Anderson that the Pan Am proposal be the subject of another hearing which could be held in September so as to assure that language in the legislation would be in the public interest while responsive to the airline needs. At that time, the Administration would be better able to present specific views to the Subcommittee or an alternative text. However, it was the unanimous view of the representatives at the Friday meeting that the war risk program should not be allowed to lapse, even for a short period of time, while the policy review is being undertaken and the Pan Am proposal considered. The Administration continues to strongly endorse the extension of the war risk program and the addition of investment authority.

Question a. What problem areas do you foresee in the proposal?

Answer. We cannot indicate definitively the problem areas in the Pan Am proposal since that is one objective of our interagency policy review. The ramifications of the major increase in the scope of the Secretary of Transportation's discretion will be carefully reviewed.

Question b. Could you write policies and assess premiums based upon the language in the proposal?

Answer. The Pan Am proposal does not require any specific terms or conditions be written by the Secretary of Transportation into our policies. The proposal, as does Section 1301(b) as presently written, sets forth broad parameters of coverage which could be provided. If the Pan Am proposal is enacted, and coverage under Title XIII extended, then our present policies could be rewritten to accomplish this. As we understand the Pan Am proposal, however, we could expect that all of the perils now exclude from the Pan Am "all risk" policy might have to be covered by the Secretary. We would expect the basis for premium calculations for the expanded coverage would be similar to our present calculation system. Of course, the rates may be much higher, and the perils to be covered are more extensive and thus even less subject to exact actuarial analysis.

Question c. What effect might inclusion of such language in the law have on the availability of commercial insurance under so-called "all risk" clauses?

Answer. This question is still under review by the Administration as well as the effect of the Pan Am proposal on the "war risk insurers." It is possible that adoption of the Pan Am language might lead the "all risk" insurers to exclude more high-risk perils from their current policies. Since the "all risk" clauses do not cover the perils to which the Pan Am proposal is aimed, the Pan Am proposal, on the other hand, might have no effect on the availability of commercial "all risk" insurance. Certainly, the impact of the Pan Am proposal on the commercial insurance market, both "all risk" and "war risk", needs to be carefully assessed.

Question d. Comment on the proposed extension of the aviation war risk insurance program through September 30, 1980 instead of September 7, 1980.

Answer. The proposed bill transmitted to the Speaker of the House of Representatives by the Secretary of Transportation provides for a straight five-year extension of the war risk insurance program through September 7, 1980. There would be no objection, however, to rounding off the extension date through September 30, 1980.

Mr. ANDERSON. Mr. Snyder, any questions?

Mr. SNYDER. Yes, thank you, Mr. Chairman.

Mr. CARY, do you have a copy of Mr. Anderson's bill?

Mr. CARY. Yes, we do.

Mr. SNYDER. I understand legislative counsel drew up that bill and, of course, you are going to tell us what difference there is, if any, in the language of "public debt obligation or interest" bearing securities of the United States."

In addition, legislative counsel made some changes that I believe to be technical changes on page 2, and I wish that you would have your lawyers take a look at those and see if they would concur in those technical changes, and if not, why not?

Then I think Mr. Anderson pretty well covered everything in the list of questions he read to you, but I am particularly interested in his question No. 8.

We have been told there are some perils which are being excluded from commercial coverage, and which are not covered in the war risk, and there is an area in which there is no insurance. If you are prepared to give us some idea of what those risks are, and what the attitude of FAA is at this time, I think it would be helpful as we are going to hear some of these other witnesses in a few minutes.

Mr. CARY. Thank you.

If I might, first commenting on all of the questions as a whole, I think that although we can answer some of them more or less off the cuff immediately, it might perhaps be more comprehensive if we did them all in order and provided, as I said we would, the answers for the record.

Mr. ANDERSON. We are going to be making amendments on that, too, and we are going to give you a 1 week's time limit. We are going to try to mark up the legislation this month, and must have the answers back in time, and we will need them within 1 week.

Mr. SNYDER. What are the problems at this time in the areas where there is no insurance available, either from the private market or the war risk policy? Apparently there are some.

Mr. CARY. I am not completely prepared to answer that, Mr. Chairman, and Mr. Snyder.

I am familiar with the Pan Am proposal which we have received, and have discussed it with the Pan American people.

We are in the process now of discussing it with the Department of State and the Department of Defense, both of whom have an interest in this program.

The Department of Defense has indicated that they have some amendments that they would like to have included as well that affect the bill.

Before preparing comments on the Pan Am proposal, we had wanted to combine the Defense recommendations with that, and we do have a meeting scheduled with Defense, and also with the State Department.

Mr. SNYDER. Let us take it piecemeal, and see how far you will go.

Is there any area where insurance is not available through private carriers, and not covered by war risk insurance, any peril?

Mr. CARY. If I might, I will ask Mr. Eisner to respond.

Mr. EISNER. Mr. Snyder, we had a meeting with Pan Am the other day, and it was my impression, but I may be wrong, but at the present time there is no area that is not covered, but there is an anticipation that in the near future there is a possibility that certain phrases or certain types of risks would be excluded from the all risk policy, and would not be picked up by the commercial war risk insurers.

There is a feeling this type of risk should be covered, if possible, by the FAA under title XIII.

Mr. SNYDER. If an airplane is hijacked from Washington, D.C., and arrives in Cuba, is it covered all the way?

Mr. EISNER. It depends. Some hijackings would be covered.

Mr. SNYDER. Some kook that wanted to hijack an airplane, but belongs to no military group, and leaves the United States and goes to Cuba, is he covered?

Mr. EISNER. The decision that arose out of the hijacking of the Pan Am aircraft to Cairo in 1970, are you referring to that?

Mr. SNYDER. The PLF hijacked the aircraft.

Mr. EISNER. This was described as an Arab guerrilla organization.

The District Court and the Second Circuit Court of Appeals decided this was covered by the all-risk policy.

A number of changes have been made as a result of this decision, and whether it would now be definitely excluded, I do not know.

The language will vary from policy to policy, but there have been changes made in the policy. Hijacking at the present time could be covered by the all-risk insurance.

Mr. GOLDWATER. Was that airplane covered if the lower court of appeal said the war-risk insurance would cover the loss?

Mr. SNYDER. But it is your understanding that they are currently rewriting policies to exclude that kind of thing?

Mr. EISNER. I know from my involvement in the litigation, that before the decision was even reached, changes were being made in the clauses.

Mr. SNYDER. So you anticipate that any new policies issued probably would not cover it?

Mr. EISNER. I do not know that it would necessarily not cover it.

They may tighten up their policy language to limit the type of hijackings they will cover. They still may be willing to cover the example you gave where a kook might hijack the aircraft, but not where the PLF would hijack an aircraft to Cairo, as they did in this instance.

I do not know whether the war-risk insurance market would be willing to pick up in their policy any new exclusions from the all-risk policy.

Mr. SNYDER. Assuming they would be willing would it require a change in the basic law to do that?

Mr. EISNER. Perhaps there was a misunderstanding. When I say the war-risk insurance, I am talking about the commercial war-risk insurers.

There are some insurance markets in the world that will insure against war-risks. The concern of Pan Am is that neither the war-risk insurers on the commercial market or the all-risk insurers will pick up some of the risks, and they would like us to pick up their risks.

Some of the risks they would like us to pick up may require a change in the current legislation. Some of them may be insurable under our current authority.

Mr. SNYDER. Are you going to be able to look at that more closely in the next week as the chairman mentioned?

Mr. EISNER. Yes. We have already made plans to get together with some of the other interested departments and agencies to discuss the matter with them.

Mr. SNYDER. Is it possible you may be sending us a new draft bill?

Mr. EISNER. I believe it is the position of the administration that we would like to get this bill passed to extend the authority under title XIII; but that it might take time to work out appropriate language if we are to expand the authority as Pan Am proposes.

Mr. SNYDER. You want to do it in two pieces?

Mr. CARY. We would prefer, of course, if it could be done, to do it in one piece, if time permits.

The problem is one really that is beyond the FAA's control, in that there are other agencies and departments involved that we have to coordinate with.

If we can do it within the next few days, obviously we would prefer that, because the process takes time to get a bill amended, and we would prefer to get it done at one crack.

Mr. ANDERSON. What other agencies should we be discussing this with?

Mr. CARY. State, Defense, the Office of Secretary of Transportation, and OMB.

Mr. ANDERSON. Those are the four then?

Mr. CARY. Yes.

Mr. SNYDER. Thank you.

Mr. ANDERSON. Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Cary, would you, or your advisory expert here, please define and explain the legal phrase "free of capture and seizure," particularly as it may pertain to this act?

Mr. EISNER. Free from capture and seizure language, to my understanding, refers to what was, throughout the past years a war risk exclusion clause.

It started off with the phrase "This policy is warranted free from capture, seizure," and other phrases like arrest, detention. Those were the words used in the clause, or to describe a clause, that was excluded from the all risk policy.

Mr. MILFORD. How would the Department of Transportation interpret this insofar as coverage under this bill that we are trying to extend?

Mr. EISNER. How would we interpret the phrases in that clause?

Mr. MILFORD. Yes. Would you consider it as being inclusive, exclusive?

Mr. EISNER. If I understand your question, the statute gave us authority to issue war risk insurance as that term war risk was defined in the typical capture and seizure clauses.

The clauses did vary somewhat, and the authority is somewhat broad, but when we get into an area where we are not exactly sure whether our authority permits us to write a particular type of coverage it would be our tendency oftentimes not to cover it.

If our authority is questionable, we would fear we would be going against congressional intent, and not be in accordance with the act.

Mr. MILFORD. Well, has the Department of Transportation taken the position that it cannot, under title XIII, insure a risk that does not have a clear war or a warlike character and hence, cannot insure riots, civil commotions, and mere intentional and malicious acts?

Mr. EISNER. We have reviewed the legislative history, and the act, and have informally advised particular carriers that certain phraseology, such as what you quoted was not within our statutory authority.

Mr. MILFORD. Well, would those things be covered under the war risk commercial insurance that one could obtain?

Mr. EISNER. I believe that some carriers could obtain it.

There may be those who tell us they could not obtain it.

I believe, to the best of my knowledge, that we have never written it, and we have never had an instance presented to us in the end that I know of where a carrier could not obtain it.

We have been told the riots, civil commotion type coverage was unavailable in one instance, and when we said we did not have statutory authority to provide it, I believe the carrier was able to obtain it on the commercial market.

Mr. MILFORD. If this act was amended, and you may answer within the 1-week time limit, if you prefer, but if this act was amended by the following amendment:

The term war risk includes to such extent as the Secretary may determine:

(1) All or any part of those risks which are described in free of capture and seizure or analogous clauses;

(2) All or any part of any risk of loss or damage from;

(a) detonation of an explosion,

(b) any weapon of war,

(c) any exercise of military power and,

(3) All or any part of any risk or loss of damage from any intentional or unlawful human action, including riots, civil commotion, hijacking, and any other act intending to cause loss or damage however described.

I would appreciate your comments and criticisms for the record on that within the next week.

Mr. CARY. All right, sir.

[The information received is the reply to question 8, page 11.]

Mr. MILFORD. Let me ask you this. Where would a carrier get this war risk insurance?

Mr. CAMERON. Mr. Milford, the market for the war risk insurance is mainly in Lloyds of London, and in foreign companies.

Mr. MILFORD. How many insurance companies offer such coverage?

Mr. CAMERON. Well, that is difficult to say. I cannot pin it down to the number.

There are a number of Lloyds of London underwriters who participate in it.

Mr. MILFORD. Do you mean then if Pan Am wanted to buy war risk coverage they would have several companies they could go to and obtain the coverage?

Mr. CAMERON. No. It would be very doubtful that they would have a wide choice of markets.

It is very doubtful that one single underwriter would be able, or would care to take their whole risk, and therefore, it would be spread among those underwriters who were interested in writing, or who were writing war risk coverage.

Mr. MILFORD. And are you familiar with cancellation time of "war risk" insurance? How much notice, for example, would the insurer have to give Pan Am, or TWA, in order to cancel their coverage?

Mr. CAMERON. I believe they have 7-day notice on their policy.

Mr. MILFORD. Do you agree that is kind of a short term for an air carrier to make the kind of decisions they would have to make to stay in business?

Mr. CAMERON. Yes, probably so.

There is a lot of scurrying around, of course, when these cancellation notices go out.

I would have to say yes, it probably is.

Mr. MILFORD. Let us assume TWA, Pan Am, or Braniff was given a 7-day notice of cancellation.

Is the market such that they can go over to some other company and get them to pick up the coverage?

Mr. CAMERON. No, sir, they have been coming to us at that stage.

Mr. MILFORD. So there is no place literally they can go.

Mr. CAMERON. No, sir.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Goldwater?

Mr. GOLDWATER. Thank you, Mr. Chairman.

Mr. Cary, you mentioned that the balance in the revolving fund was \$13.7 million.

Where did the \$13.7 million come from in the first place?

Mr. CARY. The \$13.7 million came from premiums which were paid by the air carriers over the years for the premium insurance.

Mr. GOLDWATER. For the premium insurance?

Mr. CARY. Right. There are two types of insurance. There is the nonpremium insurance, which we provide for the Department of Defense and the Department of State, for which they agree to reimburse the FAA for any losses sustained under the program.

Under the premium program the carriers pay the Department of Transportation a premium, just as they would pay to Lloyds, or any of the insurance underwriters, and it is that accumulation that represents the \$13.7 million which unfortunately, is not enough to sustain the loss of one 747.

Mr. HAMMERSCHMIDT. Would the gentleman yield?

Mr. GOLDWATER. Yes.

Mr. HAMMERSCHMIDT. Would you mind repeating about the premiums, because I was going to ask that question?

Mr. CARY. Surely.

We have two types of policy—the nonpremium policy covers situations in which the Department of State or the Department of Defense asks the air carriers to perform certain services in areas where they may be hostilities going on or a military action.

We provide the coverage, and the Defense and State Departments agree to reimburse us in the event there is a loss sustained by the carriers in that particular operation.

The second type of policy is the premium policy which is provided by the Department of Transportation to cover an airline's commercial operations. When Lloyds cancelled out the war risk, Pan Am in this case came to the Department of Transportation which provided the war-risk insurance under a premium policy. That premium war-risk insurance is available to them when the insurance coverage is not available commercially.

Mr. HAMMERSCHMIDT. So you become the underwriters at that point.

Mr. CARY. Yes, we do.

Mr. GOLDWATER. If there is a loss, where does the money come from to pay that loss, out of the general Treasury?

Mr. CARY. It comes first out of the accumulated premiums that have been built up in the revolving fund.

If that is not adequate, we have to come back to the Congress for an appropriation in accordance with the terms of the bill as presently written.

Mr. GOLDWATER. How much have you paid out over the past couple of years?

Mr. CARY. We have \$250,000 in outstanding claims under our non-premium program at the moment, which just arose as a result of the action in Cambodia and Laos.

We have paid nothing under the premium policy to date to any carrier.

Mr. GOLDWATER. So you really have not paid out very much.

Mr. CARY. No, sir.

Mr. GOLDWATER. Exactly. If we sustain one major loss we would have a deficit instead of the \$13.7 million.

One of the reasons, of course, for asking for authority to invest the fund is to help build it up so that in the future we will have some backlog to cover any losses.

Mr. GOLDWATER. Did you pay for the 747 that was lost?

Mr. CARY. No, Mr. Eisner was indicating the courts decided that it was not a war-risk loss. It was an all-risk coverage, which meant the commercial underwriters paid.

Mr. GOLDWATER. I see.

Just as a point of information, I recall you mentioned something about the Saigon airlift, or operations around Saigon.

Mr. CARY. Yes, sir.

Mr. GOLDWATER. As I understand it, World Airways was very actively involved in that situation.

Were they covered by this program?

Mr. CAMERON. Mr. Goldwater, the activity in Saigon by World Airways was not conducted under a Military Airlift Command con-

tract, and in that activity they did not have the nonpremium coverage, if that is what you are referring to, specifically.

As to their involvement in the rice lift into Phnom Penh, Cambodia, that was done under a Military Airlift Command contract, and under that situation they did have coverage.

Mr. GOLDWATER. So this coverage is just provided on a project-by-project basis, and there is no overriding coverage than an air fleet would have regardless of the situation.

Mr. CAMERON. Of course, the act provides that premium insurance is available, or I should say is made available only when it cannot be obtained in the commercial marketplace and, of course, at most times it is available from the commercial insurance underwriters.

Now, as to those airlines which are hauling under a Military Airlift Command contract, as long as they are hauling under one of those contracts they do have coverage under the nonpremium program.

Mr. GOLDWATER. Well now, for instance, in the World Airways' case, would they have been covered by commercial means for their activities in and around Saigon?

Mr. CAMERON. I am sorry, I do not know.

I would have no knowledge as to whether or not they had continuing commercial war-risk insurance.

Mr. Goldwater, I would seriously doubt it.

Mr. GOLDWATER. Is there someone here in the room from World Airways?

[No response.]

Mr. CARY. It may help, Mr. Goldwater, to point out the decision as to whether the carrier covered by war-risk insurance is one made by the ownership and management of the airline, unless they have financial commitments through loan agreements with various financial institutions that require that they have insurance coverage at all times.

Now, in the case of World Airways, it is possible they did not have such a requirement. We know they did not have war-risk insurance from the Government, and it is possible they did not obtain it in the commercial market either.

Mr. GOLDWATER. So as I understand it, the only way you are covered under this program is if you are under contract with the U.S. Government to perform some kind of function, or if you cannot get coverage in the commercial field.

Mr. CARY. Yes; and the latter would be in the case of a commercial operation as contrasted to a Military Airlift Command, or a CRAF plan operation.

Mr. GOLDWATER. So under circumstances in which World Airways found themselves, where they were neither under contract, nor on a commercial venture, I would assume under the circumstances they found that their commercial coverage probably did not apply to those activities in and around Saigon, and under this program they would be excluded, so why would they not then be able to qualify for this program?

Mr. CARY. I can understand your question.

The reason I suspect they did not apply is unlike, for instance, the Pan American operation into Saigon, which was a scheduled air transportation operation in accordance with a certificate issued by the

CAB, the World Airways operation was not in response to any public convenience and necessity requirement, and consequently, it would not have been eligible for insurance under this act.

Mr. GOLDWATER. As determined by who?

Mr. CARY. The Secretary of Transportation, or by his agent.

Mr. GOLDWATER. One other point I would like to explore with you is this concept of investing these funds into public obligations of the United States.

You talk about an earning of 5 percent that could produce \$675,000 a year.

Are you convinced, or do you actually expect to get 5 percent back?

Is that an accurate return on most Government obligations?

Mr. CARY. I do not know the correct answer to that question.

That is one of the things we are going to look into at the Chairman's request.

The Treasury Department did require we put in the public obligation language.

I suspect that limits us to certain types of securities which the Secretary of Treasury would purchase for the account of the fund.

What the interest rate for those securities may be is one I would imagine varies from time to time, as most Government security rates do, but I do not know what the current rate would be for that category of security.

Mr. GOLDWATER. This obviously is a devious device used by the executive branch to finance Government activities to create these investment pools of money.

It was pointed out in testimony on another committee that I happen to serve on last year that the rate of return was, I think, less than 3 percent, that the Treasury tends to use these pools of money to buy up some of their crummy obligations that nobody else in the street would buy.

I would suggest, Mr. Chairman, that we look into this and find out if we are going to provide these moneys into this pool, this revolving fund, that some sort of language be incorporated to assure that we maximize the yield on whatever obligations are purchased by this fund.

I think if we do not insert some sort of reference to it, then the Treasury Department will have a free hand to buy up some of these Government obligations which nobody else wants, and which wind up long term, low yield, and consequently, not maximizing the potential of this kind of fund.

Mr. SNYDER. Would the gentleman yield?

Mr. GOLDWATER. Yes.

Mr. SNYDER. Mr. Cary, would you have any objection along Mr. Goldwater's line, in your bill, where it says in public debt obligations of the United States, add the words "yielding not less than 5 percent?"

Mr. GOLDWATER. I do not know what kind of language would be included, but it is something that should be examined.

Mr. SNYDER. Yielding not less than 5 percent per annum.

Mr. CARY. I would have to go back and check that with the Treasury, Mr. Snyder.

The FAA are not expert in fiscal matters.

Mr. SNYDER. You are not testifying for the Treasury. You are testifying for the FAA.

Mr. CARY. I think that one problem that I might have with it is that economic conditions change, and if there are no obligations that are paying 5 percent or better we would have none.

Mr. GOLDWATER. Then you would come back, and we would allow you to go out in the open market and buy some CD's that are paying 13 percent?

I have no further questions, but I think that is a point that is many times overlooked.

Mr. ANDERSON. We have asked Mr. Cary to get a statement from Treasury of why they prefer the language of public debt obligation to our language of interest bearing securities.

I would not be opposed to going one step further in putting a minimum there, but Mr. Cary will answer that for us.

Mr. Mineta?

Mr. MINETA. Thank you, Mr. Chairman.

I really have not gotten a good grasp of the subject yet, but I just have a sense that we are missing something, that there is something falling between the cracks in the sense there have been times when the carrier really needs the coverage, the prices are out of whack in terms of getting it, or it is just really not available in terms of when they really need it the most.

I am not getting the feeling that the coverage is available, is what I am saying. It seems to me that just giving a cursory look at what was intended in 1951, that there be coverage, and that this would be the place of last resort, and yet now I just do not get the feeling that at the place of last resort the carriers really have an available place to get the coverage when they need it.

Mr. CARY. If I might comment on that, I think first up to the present date the Government has been able to provide the coverage which the carriers required in one way or another.

Mr. MINETA. But excuse me, Mr. Cary, that is only because "there is a national emergency."

Mr. CARY. Yes.

Mr. MINETA. And what was the other condition, national emergency?

Mr. CARY. It covers the activation of the Civil Reserve Air Fleet plan by the Department of Defense, a national emergency, or a finding by the Secretary. I do not have exact language.

For instance, the continuation of the scheduled operation of Pan Am out of Saigon in the recent problem there. The commercial war risk insurers did give them very short cancellation notice. I believe it was 7 days, but I am not sure. A very short period of time, for them to arrange necessary war risk insurance coverage to allow the continuation of scheduled operations.

There has been no problem with the nonpremium insurance with Defense and State. That has been provided since the act was first in effect.

Mr. MINETA. That coverage is available to them without premium as a result of operations for the Department of State?

Mr. CARY. Any time they are operating for the Department of State.

Mr. MINETA. Any time they are operating in war risk exclusions?

Mr. CARY. The problem has arisen in the case of the scheduled operations, and the operation into Saigon was an unusual one, in that there was a requirement by the State Department to continue that operation for a fairly protracted period of time.

The commercial underwriters decided to terminate that insurance, and so notified the carrier, who, in turn, approached us for coverage.

We provided coverage. There was some gap, and I think this is what has perhaps motivated some of the questions.

The gaps came about because of the change in coverage excluded under "all risk" policies since the date when the act was first written. At that time the "free of capture and seizure clauses" were quite clearly delineated in maritime practice, and we followed that in setting up the act.

However, since then the commercial underwriters have tended to change the language in their insurance policies, so that all of the things that were at one time covered are no longer covered.

Mr. MINETA. War related exclusions really. They are not just standard war exclusions, but war related, the kind of things that Mr. Milford had started to enumerate.

Mr. CARY. This is what prompted the questions of the gaps he was attempting to identify.

Mr. MINETA. Where does that gray area get covered?

Mr. CARY. In that particular instance, it was covered by the Department of Defense, which under the War Powers Act, agreed to indemnify the carrier, and there was a great deal of scurrying around to get that at the time.

I do not think that situation is likely to arise again.

But I think if it does arise that coverage could be provided in the same manner, and having once done it, it could be done again.

On the other hand, I certainly feel that we need to look into the amendment of the act to see if it can be amended so that like situations can be handled in a much more expeditious manner.

Mr. MINETA. Is that a specific coverage of title XIII, or is it because the Secretary of Defense says go ahead and cover it and we will reimburse you, FAA, or whatever it is?

Mr. CARY. The indemnification was by the Secretary of Defense under the War Powers Act.

Certain portions of the war risk were covered by the Secretary of Transportation under this act.

Mr. MINETA. Suppose that the Secretary of Defense does not give that magic wand, then what happens? The carrier is without coverage, and has no place to turn.

Mr. CARY. For the scheduled operations. I would say this.

From the standpoint of the FAA, we would probably be concerned with the safety of the operation and the continuance therefore of the particular flight if Lloyds or some of the commercial war risk insurers felt that the situation was so hazardous that they canceled the insurance.

This would clearly be a red flag to us, and one we would have to look at.

The question would then be: Could alternatives be provided under an airlift charter, or in some other manner?

Notwithstanding that, we certainly agree we should look at the act and the possibility of amending it to cover situations of that nature, where it is in the national interest.

Mr. MINETA. That is what I am driving at.

What kind of amendments do you think are needed in order to make sure those gray areas are covered under title XIII?

I feel that the intent was there in 1951. In looking at the Senate report and the House report under aviation war risk insurance, at least for the time it seems to me that it was clear that the intent was that those gray areas be covered.

Mr. ANDERSON. Norman, please excuse the interruption; but there is a vote in the House at this time and we will recess at this time.

[Short recess.]

[The subcommittee reconvened at 2:45 following a recess.]

Mr. ANDERSON. The meeting will come to order.

Mr. Cary, I have one question I will ask you and then we'll come back to Mr. Mineta.

Mr. Cary, my question is: If the President feels it is in the national interest for an air carrier to fly a scheduled route into a particular location, does he have authority under this or any other act to make sure that that carrier has 100-percent insurance coverage at reasonable terms and conditions?

If he hasn't then how can we change the law? Can you answer that, for the record?

Mr. CARY. May I ask Mr. Eisner, from our chief counsel's office to address that question?

Mr. EISNER. Mr. Chairman, you used the words "full 100-percent insurance coverage," and the answer to that is clearly no. We only have authority to provide war risk insurance.

Mr. ANDERSON. What percentage of the coverage would that be, then?

Mr. EISNER. Let me put it this way, for clarification on the record, so there will be no confusion.

A typical all-risk policy—and if you take a look at your automobile insurance, you will probably see the same clause in there—covers all risks except those which are specifically excluded. The specific exclusions, among them, include what is commonly referred to as a "capture and seizure clause," or, in other terms, the war risk exclusion clause.

It is this which we have the authority to then cover under title XIII if it can not be obtained on the commercial war risk insurance market.

We only can cover war risks, and there is some question—some doubt—as to exactly how far war risks go. As Mr. Cary has pointed out, the language changes. The statute gives us a lot of discretion; the legislative history has created in our minds some doubt with respect to some of the language which certain people have suggested does come within our authority—the language, for example, like "riots, civil commotion . . ."—language like this.

This language is referred to in a footnote, in the legislative history, in initial reports on the Act; when they refer to a "free from capture and seizure" clause they used a footnote and they cite the entire clause, which does include what we consider the questionable language.

We consider it questionable because later on in the report, in the text, when referring, on a section by section analysis, again to the

clause, they do not quote what we consider to be the language that we do not have authority to cover—the riots and civil commotions, and that type of thing.

If I may give an example, too, in general—very general terms, what a person might consider a war risk would not, I think, by any stretch of the imagination, cover some of the language that is questionable.

For example, “intentional damage” could include someone throwing a rock at a plane, to cite a simple example. That would be an intentional act, to throw a rock at a plane. If it was just a kid walking down the street, I don’t think anyone would consider that to be a war risk.

It is for this reason that in analyzing our authority, we have determined that we do not have authority to cover this area; we have authority to cover what we consider are the traditional war risks as are defined in the statute and case law, things like that.

Mr. ANDERSON. Mr. Mineta?

Mr. MINETA. Mr. Chairman, could I just carry this one point further?

The problem is, let’s just use an example, the problem being—the plane being in Manila and a rock being thrown at it, but because the chances are higher that if a grenade is thrown, then—you know, it is not the rock that we are worried about, it is the grenade.

It just seems to me that we have a war risk exclusion that leaves out gray areas, and we have a title 13 that is not broad enough to include it, and so the crack is there, and there is no coverage.

Mr. MILFORD. Would the gentleman yield on that point? I think I can plug something in.

You are right on the very thing that I am concerned about.

Mr. MINETA. I would sure like to have a little plug somewhere.

Mr. MILFORD. Maybe we could all understand it better with what you attorneys call a hypothet. Let’s take one.

Let’s take the country of Lower Slobbovia (a nonexistent country) which has certain rebel factions operating in the country, to an extent where it would force Lloyd’s of London to cancel their war risk insurance. And that one of our carriers applied for coverage under this act.

And let us say also that Lower Slobbovia has a drought, among other things, in progress.

And that this carrier makes a mercy flight into that country for the purposes of delivering food and medicine and medical help.

But while sitting on the ground, after landing, the civil populace, eager to get out of the country, storms the airplane, and destroys the aircraft. Now, this has nothing to do with the rebel forces that were acting, and yet that carrier has lost an airplane.

Now, would it be covered, as this law is now structured?

Mr. EISNER. Mr. Milford, you preface your question by talking about lawyers, and I am sure you know no lawyer likes to answer hypothetical questions.

But in the situation, as in all situations where a claim has been submitted to FAA, we have to look at specific facts; we have to determine whether they fit within any of the terms of the coverage.

When they talk about rebel groups, we would perhaps want to have more information as to what kind of a rebel group.

Mr. MILFORD. Well, is it proof that it forced the commercial carrier to cancel his war risk?

Mr. EISNER. In the Pam Am case, for example—when I talk about Pan Am, the 747 hijacking—the parties went beyond looking just at a particular group and went on to look at certain things like whether they were in uniform, whether they had any kind of a governing body, this kind of thing.

Mr. MILFORD. You are getting out of the area that I posed to you.

Mr. EISNER. What I am getting at, though, is that whether or not it is a war risk is going to depend on the particular facts of the situation.

Now, we have two types of insurance. We have all-risk and war risk. You said that the war risk is canceled; it is possible that the all-risk would cover this type of thing, this type of risk. We only have authority to issue war-risk insurance.

It is not so much that there is a gap; it is a question of whether we can go beyond the war-risk into the all-risk area, if that, too, is cancelled.

The question is: do the risks that are being talked about today, the riots, civil commotion—

Mr. MILFORD. Clearly, the exclusion is in his commercial policy. Incidentally, in case you're not aware of it, they have all been changed or will be changed at the annual policy dates. Any damages caused by riot is now excluded, so that he is not covered under a standard policy. My point is that the carrier has got to fly into the area, and he is going to have to have insurance. Otherwise he is going to keep his airplane on the ground.

Mr. EISNER. Mr. Milford, the point I am trying to make is the fact that the commercial all-risk policy excludes the cause—or the risk, does not mean that it is a war-risk under title XIII, so the simple exclusion from the all-risk policy does not in itself, at least in our interpretation, give us authority to cover the risk.

If the situation deteriorated to such an extent that they did not want to issue any insurance—the all-risk people—not just excluding riots or civil commotions, would not want to issue any insurance—the carrier would not be covered for any risk and clearly all risks would not be within the war-risk area.

It could go beyond riots and civil commotions, and I am saying that simply excluding riots and civil commotion does not make them a war-risk under Federal—under title XIII.

What you may be talking about is going beyond war-risk insurance and getting into the area of issuing insurance against all risks.

Mr. MILFORD. As I understand, that would be a shooting-type thing, and is covered under the Defense Department. We are talking about the ability of a carrier to purchase coverage in areas that are not available to him on the commercial market, and this seems to be the best vehicle we can apply. Furthermore, if the wording of the law is such that it doesn't cover it, then what wording will we need to make it cover it?

Mr. EISNER. Well, again, the statute, section 1302, provides only authority to issue war-risk insurance when it is not available on the commercial market.

What you are talking about is perhaps going beyond that, in terms of issuing insurance for all risks, or at least some risks beyond war risks.

Mr. MILFORD. I thank the gentleman for yielding, and I didn't mean to take all his time.

Mr. MINETA. I have no further questions at this point, Mr. Chairman, other than that it seems to me that the intent of Congress was, under title 13, to provide the coverage.

Thank you, Mr. Chairman.

Mr. ANDERSON. Is this insurance which may be provided by the private sector for hijackings or bombings—not actual war—is that available at reasonable terms and conditions?

Mr. CAMERON. It has been, up to the present time, Mr. Chairman, to the best of my knowledge.

I would assume it is because I have not heard to the contrary.

Mr. ANDERSON. Is the objective of a war-risk insurance coverage to provide coverage—to provide coverage to our carriers in the event the President determines it to be in the national interest for our airlines to serve certain international points.

Would not that objective be further served if the President were authorized to provide insurance coverage in instances other than those “directly or indirectly occasioned by the war, invasion, acts of foreign enemies, hostilities, civil war, revolution, rebellion, or insurrection” in which he felt the national interest would be involved, and rates on the private market were prohibitive, such as perhaps the Vietnam situation, involving Pan-Am?

Mr. CARY. Mr. Chairman, I think that that does get into the question that you raise, and the points you made earlier—I think it was point 8 in the Pan-American-proposed language.

I think there is at issue two things: one, can we clarify the legislation so that we are able to provide coverage for scheduled air-carriers operating under circumstances of a war-risk operation, and include those points in the most recent experience that were picked up by the Department of Defense through the War Powers Act, and put them all in one place.

Or are we talking about actually broadening the scope of legislation beyond war risk?

If we start picking up the all-risk insurers' program covering the types of things which they were covering, we are no longer addressing a war-risk situation; we are looking at a different type of insurance, and the question then, I think, becomes a fairly basic one: do the Congress and the people want to have the executive branch providing a broad type of insurance which goes beyond a war-risk situation?

Mr. ANDERSON. I have one more question.

Mr. Cary, the rice lift and the Vietnam evacuation happened a few months ago. The FAA was aware of some problems with the coverage at that time.

The FAA has also been aware that the program expired on September 7. You testified that you would meet next week with other interested agencies.

What has taken you so long to get moving on this important problem?

Mr. CAMERON. At the time that the application was made to cover the activities in both Cambodia and Vietnam—the nonpremium program, with the indemnity clause that the military air contract has, gave full coverage to those airlines that were flying under the military airlift contracts.

At that time there was a question as to the providing of total coverage under the premium program. We did provide, through our premium program the “war, capture, and seizure clause” coverage.

The other portion of that coverage, I believe, was purchased on the commercial market or provided for by an indemnity agreement. While we did understand that there was some difficulty in obtaining that, the coverage was provided to the carrier involved, and we at that time did begin discussions within our own organization as to whether or not we could extend the program to provide the coverages beyond the normal war, and capture, and seizure clause coverages.

Mr. ANDERSON. It seems to me that you could have been moving a bit faster on this. We are happy that you were able to get a bill in here today; there has been some suspicion on the part of some of us that had we not scheduled a hearing here today, the bill might not have been rushed over here.

There are 14 more days of this month, and then we have the August recess, and 7 days later the present law expires. So we have 21 days, including weekends here, to get through this committee, have you report back on these questions that bother us, perhaps work on some amendments, get it to the full committee, past the House and then to the Senate.

That is not very much time. It seems to me you are a little late. That is my observation.

Mr. SNYDER. Mr. Chairman, that’s like the question my constituents ask me:

“You’ve been in Congress 11 years; why haven’t you solved our problems?”

What happens if it expires?

Mr. CARY. If we don’t have another emergency, why, we are all right.

But if it expires, and there is an emergency, then we would no longer have the authority to provide the war-risk coverage under the nonpremium or the premium programs.

Mr. ANDERSON. How long do the policies go, for the people that you are insuring at the present time? Do they extend down to September 7, or beyond September 7?

Mr. CAMERON. Yes. They are indefinite until canceled. They run until canceled.

Mr. SNYDER. But would expiration of the law automatically cancel those policies?

Mr. CAMERON. Sir?

Mr. SNYDER. Expiration of the law would automatically cancel the policy, wouldn’t it?

Mr. CAMERON. Yes, they would. We have no authority.

Mr. ANDERSON. That is what I am talking about.

In other words, if we don’t renew this legislation by September 7, those policies you have would automatically expire?

Mr. CAMERON. We would have to advise the carriers that we no longer have authority to provide that coverage, and they would have to seek it elsewhere.

Mr. EISNER. Mr. Chairman, I believe the insurance policies themselves reference our authority under title XIII, implying that that is where our authority comes from and in the absence of title XIII the policy would not be in effect.

Mr. ANDERSON. If we do not pass extending legislation, those insurance policies expire on September 7?

Mr. CARY. Yes, sir.

Mr. ANDERSON. All right, I think that is all, unless any other member has another question.

Thank you very much, gentlemen.

It is my understanding that the next two witnesses, Mr. Gabriel Phillips, vice president, International Affairs for Air Transport Association of America, and Mr. Stuart G. Tipton, senior vice president, Federal affairs, for Pan American World Airways, are going to present their testimony together. Is that right?

Mr. TIPTON. Yes, Mr. Chairman.

Mr. ANDERSON. All right. Who goes on first?

Mr. PHILLIPS. Mr. Chairman, if I may, perhaps I can—since both statements are very brief, I can read mine and Mr. Tipton can follow, and you may question us in that order after we both testify, however you choose.

Mr. ANDERSON. Proceed, Mr. Phillips.

TESTIMONY OF GABRIEL PHILLIPS, VICE PRESIDENT, INTERNATIONAL AFFAIRS, AIR TRANSPORT ASSOCIATION OF AMERICA; AND STUART TIPTON, SENIOR VICE PRESIDENT, FEDERAL AFFAIRS, PAN AMERICAN WORLD AIRWAYS, INC.; ACCOMPANIED BY JAMES C. BLAIR, ATTORNEY, FIRM OF CLEARY, GOTTLEIB, STEEN AND HAMILTON, AND JAMES G. GOULARD, SENIOR VICE PRESIDENT, FRANK B. HALL & CO. INSURANCE AGENCY

Mr. PHILLIPS. My name is Gabriel Phillips, vice president, International Services, Air Transport Association of America.

I am here with Mr. Stuart Tipton, senior vice president, Pan American World Airways, Inc., who will provide separate testimony. Also Mr. James C. Blair, attorney with firm of Cleary, Gottlieb, Steen and Hamilton; Mr. James G. Goulard, sr. vice president, Frank B. Hall & Co., insurance agency.

The Air Transport Association is the trade and service organization of virtually all U.S. scheduled airlines, 19 of which have international operations.

I am appearing before this committee on behalf of our members to lend their endorsement and strong support to the extension of Public Law 85-726. We also propose for adoption certain amendments to title 13 of that law.

The law should be extended because it is needed to cover airline operational risk situations arising from international problems, for

which normal commercial insurance is not available, or is available only at prohibitive rates.

We feel very strongly that, in addition to extending the law, Congress should broaden its applicability in a reasonable and realistic way to provide for a clarification of the definition of "War Risk" under title 13. The inadequacy of the present definition, as interpreted by the Federal Aviation Administration, results in a situation where the purposes of the act cannot be carried out.

In the last 5 years, the commercial war risk insurance situation has been in a constant state of flux. For over 2 years after the events in Jordan in September, 1970, the commercial market refused to write any war-risk insurance except at prohibitive rates. Further, the commercial all-risk market has expanded the scope of its "war-risk" exclusion.

As a result of the court decision last year, in the suit by Pan American involving destruction of a 747 by the PFLP, the all-risk insurers increasingly tend to refuse to separate such risks as riot, civil commotion, intentional damage, and the like from classic war risks. This was made clear in their recent position regarding flights in Southeast Asia, where they refused to cover as general "all-risk" any of the intentional-damage-type risks.

As of this moment, commercial insurance is fully available. However, this availability can dry up instantly, as it has in the past. The rapid and unpredictable changes which occur in international relations affect insurance availability.

In such an atmosphere, it is desirable that the Federal Government be in a position, when the occasion arises, to make a decision quickly as to whether, in the national interest, American international air flights should have the insurance necessary to permit them to be continued.

The American international airlines simply cannot fly without full insurance coverage. The proposed amendment will assure the availability of insurance for operations required in the national interest when private coverage becomes unavailable because of extreme risk. It is hoped that such risks will not arise, but we know from experience that they do and then it is too late to deal adequately and promptly with the situation unless broader statutory authority is available. We think it urgent that the plan be broadened to permit coverage of these warlike and other extreme measures where normal commercial insurance is not available at reasonable rates.

Mr. Tipton, whose carrier has had the unfortunate experience of discovering the limitations of the present "war-risk" coverage, will elaborate in more detail on this very important insurance coverage problem.

I offer, for the record, the proposed amendment.

PROPOSED AMENDMENT TO SECTION 1301 OF TITLE XIII OF PUBLIC LAW 85-726

Amend Subsection (b) by changing period presently at the end thereof to a comma and by adding after that comma the following:

"and also includes, to such extent as the Secretary may determine, all or any part of any other risk of loss and damage;

(i) from detonation of an explosive, any weapon of war, or any exercise of military power, and;

(ii) from any intentional or unlawful human action, including riots, civil commotion, hijacking, and any other act intended to cause loss or damage, however described.

Mr. ANDERSON. I now turn to Mr. Tipton.

Mr. TIPTON. My name is Stuart G. Tipton, Senior Vice President, Federal Affairs, Pan American World Airways.

I appreciate the opportunity to come before the committee, and I will speak very briefly.

Mr. Phillips has identified my role very clearly, in that we are the ones who have had the experience, and a very recent experience, with the statute, which indicates that in its present terms it is inadequate to do what it is supposed to do.

The original law was designed to permit carriers to conduct services deemed by our Government to be in the national interest at a time when commercial insurance is not available at reasonable cost. This inadequacy is made clear by Pan American's experience in seeking to meet the Government's requirements in connection with the evacuation of Vietnam.

On or about April 5, the chairman of our company, Mr. Seawell, was called by the Department of State and asked to provide expanded service to Saigon. At that point we were serving Saigon on two scheduled trips per week, plus charters.

Almost in fact simultaneously, our insurers informed us that effective April 11, 1975, our war-risk liability coverage for that area would be withdrawn and that our war-risk hull insurance premium would be raised to impossible levels.

These two events caused Mr. Seawell to write a letter to the President of the United States, as follows, and I will read the letter in full, because it states the situation as briefly and as clearly as I could state it:

Mister President:

We are, of course, anxious to cooperate in the movement of refugees, orphans and American personnel from Vietnam under a program which we understand is being developed by the U.S. Government, and to endeavor to continue our scheduled and charter services to Vietnam. However, there are problems which we have not been able to solve through our own efforts.

We have been advised by our insurance underwriters that they are terminating, effective 12:01 EST AM on April 11, 1975, our third-party liability War Risk coverage with respect to operations from, to and over Vietnam, Cambodia, and Laos.

We are seeking to reinstate this coverage, but have not been successful to date. Under the terms of our existing indenture and mortgage with our creditors, we can not operate any aircraft into any recognized area of hostilities unless fully covered by war-risk insurance or a United States Government contractual indemnity.

Further, the premiums on our aircraft covered under our War Risk hull insurance have been quoted as 25 cents per \$100 of aircraft insured value per trip on any additional flights into Vietnam and this coverage is subject to revised rating—or cancellation at any time.

This amounts to a premium of approximately \$12,500 for a 707 aircraft, and \$62,500 for a 747 aircraft, per trip.

We have sought coverage under Title 13 of the Federal Aviation Act, but have found, however, that such coverage is restricted, and does not cover all the risks which are insured by our commercial insurance program, such as:

(a) Riots and civil commotion.

(b) Sabotage and malicious acts or other acts intended to cause loss or damage.

(c) Hijacking, any unlawful seizure, diversion or exercise of control of the aircraft.

(d) The detonation of an explosive.

(e) The exercise of military power by a foreign government.

Therefore, due to lack of insurance coverage and prohibitive costs, if Pan Am is to participate in such a program, we must secure compensation for additional costs for insurance over the costs in effect prior to March 31, 1975, or a fully enforceable and hold-harmless agreement by the U.S. Government applicable to all aircraft hulls, third-party and crew liability involved in such operations.

Such indemnity and hold-harmless provisions are described in our wire dated April 4, 1975 to the Military Airlift Command, a copy of which is enclosed herewith.

If such coverage can not be obtained by 12:01 A.M. EST on April 11, 1975, the time of termination of our war-risk liability insurance, as referred to above, we will not only be denied the opportunity to expand our operations to and from Vietnam, but will be forced to suspend all scheduled and charter service to Vietnam.

We would appreciate your good offices in developing such United States Government indemnification program.

This letter, followed by intensive discussions with the affected agencies of the Government, caused the matter to be considered by the National Security Council. It was agreed that every effort should be made to provide for the indemnity requested. The execution of this policy was turned over to the Department of Defense and it was decided that action could be taken by the Secretary of the Air Force under the War Powers Act to provide the indemnity.

The situation was greatly complicated by the fact that our Government wanted the expanded operation to be conducted as a scheduled airline service, and not as a military contract operation, and thus it was difficult to bring the operation under the War Powers Act. Nevertheless, the Secretary of the Air Force signed the necessary order, and we were able to continue our operations to Saigon and were prepared at all times to expand these services to a daily service.

Thus, while it was possible for us to meet our problem, on this particular occasion it took 5 days and a great deal of time on the part of Pan American and various Government agencies to get the job done. If the war-risk insurance statute had covered the risks that we were obviously going to encounter in Saigon, we could have complied with our Government's request in 24 hours.

On this occasion it turned out that we were able to meet the requirements as they developed. But we must anticipate that occasions will arise when we must act as rapidly as operational and safety measures permit, or when the situation is not one of a national defense emergency, but is still in the national interest that flights by American international carriers continue. These are the purposes of the war-risk insurance statute, and it should be amended to accomplish these purposes.

Incidentally, it should be noted that had the war-risk insurance statute adequately covered the risk involved in the Vietnam situation, we would have paid a substantial premium to the Government for providing the insurance. Since the statute was not adequate, it was necessary for the Government to provide us with the indemnity free.

That concludes my statement, but let me add some comments arising out of the discussion we have already had.

I have a feeling, in listening to the testimony, that the problem here is not really nearly as complicated as the Government testimony would indicate.

Our situation is just this: We have a statute that is supposed to meet the type of problem that we encountered. It is the classic type of problem—that was supposed to be encountered, but the statute has been construed to eliminate coverage of a whole list—which I read—of risks which are exactly the risks which you are likely to encounter in a tense but nonwar situation.

The things I listed were exactly the things that might well have happened to us in Saigon. It would apparently be a reasonably simple policy, in view of the basic purpose of this statute, to amend it to cover those risks in order that it could really fulfill its purpose.

I don't really think this is a policy issue that the executive branch of the Government should have great difficulty with. I think one of the difficulties they are encountering—that is, that in order to state these risks, you have to state them in fairly broad terms. Otherwise, you run a risk in one of these endless varieties of situations that you might meet all over the world, of leaving out something that would cause us the problem next time.

Consequently, in preparing the amendment that we have submitted to the committee, we have stated it in broad terms. But it is already very carefully restricted.

First the Secretary of Transportation has to make a determination that he will insure the risk under the statute. He has broad discretion in making that determination.

Second, the President of the United States has to approve the action he takes under it.

Third, the U.S. Government has to also want us to conduct this operation, or it would not be endorsed in those terms by the Government.

So I don't really believe that we are running any risk of turning this so-called war-risk insurance statute into a general, broad, Government insurance program. We would not like to have it a broad Government program.

Our preference is to deal with our commercial insurer. We go to the Government only when we are hard up against it. And consequently, I would think that this question of policy could be dealt with on that basis, in view of the administrative restrictions already imposed.

The idea, was expressed to a degree, that this would not happen again. It is my notion, in view of the state of the world, that this is most very likely to happen again, that we have not seen our last Saigon, and therefore, it is just exactly the type of situation which the current state of the world requires to be covered, if we are to do our work.

Now, that concludes my statement, and I will of course be glad to answer questions, but I would also like to have the gentleman on my left, Mr. James Blair, of Cleary, Gottlieb, Steen and Hamilton, in New York, our counsel in this type of matter make any supplement that he would like to make of this.

He personally handled the litigation that is being referred to here, in which our 747 was hijacked in Cairo, and which created such a controversy as to who was to pay the indemnity.

Do you have any additional comments you would like to make, sir?

MR. BLAIR. Well, I think perhaps it would be helpful to bring out two facts.

While we have been talking about the possibility of a war-risk insurer canceling for this area or that, the premium program that they

earn their \$15 million premiums on arose primarily in September 1970, after the hijackings in Jordan, and the destructions, when there ceased to be any war-risk market anywhere in the world for aircraft—international aircraft, for 2½ years, and the title 13 was the only market.

At that time, the all-risk were still willing to pick up some of these other gray-area risks. The all-risk—as a result of the decision in the *Pan American* case, their position has—I don't know that you would say hardened, it has changed so that they are much less interested in, and in some cases flatly will now decline, to pick up some of these risks.

Now as far as whether they are called war-risk or all-risk, it gets a little semantic. Historically they have been in free-of-capture-seizure clauses; historically they are risks that war-risk insurers have regularly insured.

In all-risk exclusions, historically they have come under what is called war and related risks.

So I think it just is semantics in any discussion about whether this is extending the act to cover all-risk as distinguished from war-risk.

They are the classic war type; they are intentional human violence, as distinguished from operational risks.

Mr. ANDERSON. Now, Mr. Tipton, a moment ago you said that you do not want broad Government programs.

Do you not agree that your proposal, the amendment proposed, represents a rather broad expansion of the President's program beyond the term war-risk?

Mr. TIPTON. No, I think not. As Mr. Blair has just been pointing out, the type of risk we are talking about here, and have been included in war-risk policies in the past, and have been referred to there. I don't think that we are carrying them beyond the general slope.

Mr. ANDERSON. Let me ask you a couple of questions, then, a couple of for instances.

Would your proposed language encompass losses occasioned by labor disputes, such as might happen when striking workers cause damage to an aircraft?

I am told by counsel the answer would be "Yes."

Mr. TIPTON. I think it would be if the policy were written that way. Ultimately this has to be—the process here—and let's assume these risks can be covered under the statute—the Secretary and his staff have their discretion as to what they propose to cover.

They will have their exclusions, too, and they can go as far as the necessities of the case require, and stop there. And they would be under some—they would be under some compulsion to be strict, to restrict, rather than expand, because they don't want to take any more risks than the situation requires.

I think the type of situation we are facing here is that the Government agencies, when they are brought face to face with this, are going to have a situation before them just as they had a situation before them in Vietnam, and in the surrounding territory in Southeast Asia.

They will be—we have to start with the assumption that they want the carrier to fly there. Consequently, they will provide him with the coverage necessary to fly there, and no more.

On the other hand, if we try to restrict this thing in some fashion, we would very likely leave out something which, when they are faced

with this situation, that will be what is missing, just like all these things were missing when we were trying to get geared up for an additional scheduled service into Saigon.

So that I believe you have a case here where it would be good to leave some breadth in the statute and rely upon the administration of the statute to address itself to the specific situation and put in restrictions that are necessary.

Mr. ANDERSON. My next question—

Mr. MILFORD. Mr. Chairman, would you yield just briefly before you make that point?

Mr. ANDERSON. I was just going to broaden it a little bit and make sure they understand that with this—would the same be true if the strikers were Pan American—the first of which are strikers anyway, anywhere, and the next is Pan American employees, and I am also told the answer would be “Yes.”

Now, you are suggesting—

Mr. BLAIR. It could be.

Mr. TIPTON. I would think yes.

Mr. ANDERSON. So you are suggesting we made this so broad. How then can we be assured that the Secretary will make sure that the policies are limited enough to cover?

Mr. BLAIR. Pan American employees in Lebanon, who are Palestinians, mechanics who get out and sabotage an airplane. Where do you draw these lines, where—yes, you have an employee, but he is actually acting for a political purpose against the American Government and the American Government policies?

Mr. ANDERSON. We are not arguing your problem; we are trying to point out that you are broadening this definition quite a ways, and we want to know what we are broadening when we put this into the legislation.

Mr. Milford?

Mr. MILFORD. I think the answer is to read in the amendment the very first words, the key phrase:

“* * * includes, to such extent as the Secretary may determine * * *”

Everything underneath is subjected to that modification. All of the coverage being suggested here still must be interpreted as to the extent the Secretary might determine.

Mr. ANDERSON. You see, we would probably like to know what he would include in that. We are the ones that are going to have to be accountable for what we put into the definition.

All right, the fourth question.

Since the program only covers losses outside the United States, would you agree that the language you propose could result in a situation where the U.S. Government's liability might depend solely on where the loss occurred?

Mr. TIPTON. Actually, it does now, because the statute only applies outside the United States.

Mr. BLAIR. I am only—I am not satisfied that the statute applies to international flights, I am not clear that that is written, that the statute would exclude a loss in the United States on an international flight.

Mr. ANDERSON. My fifth one is: I can see that it is in the national interest to provide war-risk coverage, as is done in the present program. However, I am having difficulty in translating your proposed

language into something identifiable with the national interest, particularly where you would cover strike-related losses, or losses occasioned by any intentional or unlawful human action.

Can you relate this broad coverage to the national interest for us?

Mr. TIPTON. I would relate it to the national interest in this way, that the Secretary of Transportation must approve it and the area covered has to be up to him.

Second, the President of the United States has to approve the program also.

So that I think that we could conclude from that that if those two high officers of the Government determine that this insurance must be issued, that the operations to which they relate are required in the national interest.

Mr. ANDERSON. You are suggesting then that we depend almost solely upon the Secretary's determination?

Mr. TIPTON. In drafting this language, we were encountering the problem so often encountered when you are dealing with situations of endless variety involving an endless variety of circumstances which you really cannot fully anticipate, and we thought, in order to provide the coverage and at the same time put the restrictions on it so it couldn't get too broad, that you would need an administrative check, and that, it would seem to us, was the best way to go at it in trying to draft this language, in this case.

Mr. BLAIR. Let me say, the source of the words is not us. These are the verbatim words in our coverage—our commercial all-risk or war-risk inclusions, with the exception that we omitted strikes.

Mr. ANDERSON. Let me, so we will get a full scope here—Mr. Tipton, under the suggested amendment, can you name any "human action" which could not be insured?

Would it include graffiti on the wall, bubble gum on the floor? Would it include actions by labor groups, such as a walkout which resulted in damaged cargoes, such as spoilage?

Would it include all of these?

Here it is: "From any intentional . . ."—

Mr. TIPTON: "From any intentional or unlawful action."

No. I think that the act must be, as is said, intentional and intended to cause loss or damage, and if—I can't remember the listing of things, but if they fall within that, then it could conceivably be covered.

If the Secretary of Transportation could be persuaded to cover them, and I would be greatly surprised if he could.

There is also, as I have been continuing to fail to mention, a central restriction, and that is that we have to demonstrate that the commercial market will not cover them at reasonable prices.

Now, many of those acts the commercial market will cover, at reasonable prices. The situation has to be a tough situation to begin with, or the commercial insurers cover it, and they would be anxious to cover it.

Mr. ANDERSON. I have one last question I think maybe we can get in before we break.

Regarding the Vietnam situation which you described, if the administration had not provided coverage, would Pan Am have paid the premiums and made the flight?

If the answer is "No," and what you will be saying—and I would not blame you—is that Pan Am would not have flown into Vietnam

even though the President felt it was in our national interests for you to do so.

Mr. TIPTON. We could not have flown into Saigon. We might have been prepared—this would be a far stretch, too—we might have been prepared to risk the destruction of an airplane, but the liability would have been fantastic.

It would have been out of all possibility, so we would have had to say, as Mr. Seawell said in his letter:

"If we can't get this done, we are going to have to quit," and we did not want to quit right at that critical stage of the game.

Mr. ANDERSON. I think we had maybe better break here and go to a vote, and be back in 15 minutes and pick up right there.

Thank you very much.

[Whereupon the committee was recessed at 3:29 p.m.]

[The subcommittee was reconvened at 3:45 p.m.]

Mr. ANDERSON. The session will come to order.

I have one other question before I turn it over to Mr. Snyder.

The reason Pan Am is here, as I understand it, is that they disagree with the Secretary's narrow interpretation of present law, but their primary argument this afternoon seems to be to give the Secretary more discretionary authority.

Now, could you comment on that a little bit?

Mr. TIPTON. I don't think—I don't believe that states our situation quite rightly, Mr. Chairman.

We don't disagree with the DOT's original interpretation—

Mr. ANDERSON. But you do disagree with the interpretation as it is developed now over the period of time, when you said it was "narrow, narrow, narrow" so you said you disagreed with the interpretation.

But now you say you want to give him more discretionary authority in this new amendment.

Mr. TIPTON. I don't believe it can be said that we disagree at this point with his interpretation of existing law. It is debatable.

I think we would have to agree that the breadth of the statute is debatable. We sought to convince him that the statute is broader than he thought it was; we did not do so.

We dropped that argument and went off to get our insurance, our indemnity in other ways.

What we are suggesting here is that, having arrived at what is an inadequacy in the statute, by reason of that interpretation—debatable as it is—we ought to cure it.

Mr. ANDERSON. In other words, in a sense, what you are suggesting is that we broaden out so that if he does interpret it, narrow it back down to where you think it should be today by present law?

Mr. TIPTON. Well, that might be a way of stating it.

What we want to cover is what experience has shown us to have been inadequately covered by the statute, an area that the commercial insurers are likely to walk out of and, as in this case, just at the time when we were called upon to meet this problem, where they might walk out of it, and the Government, desiring the service, would be prepared to step in.

Mr. ANDERSON. Mr. Snyder?

Mr. SNYDER. Thank you, Mr. Chairman.

Mr. Phillips, you represent ATA?

Mr. PHILLIPS. Yes, sir.

Mr. SNYDER. With 19 members, I believe, according to your statement—19 international carriers?

Mr. PHILLIPS. Nineteen who have international operations; yes, sir.

Mr. SNYDER. The only rumblings we have heard about these amendments from the carriers as such have been Pan Am.

Have you any affirmative response or activity from your 18 other international carriers to indicate that they are having serious problems obtaining coverage now that they need?

Mr. PHILLIPS. The purpose of my testimony is to lend the industry support to the extension and expansion of the act.

The reason that Pan Am is in the forefront of this is because they had the problem; they had to have the administrative determination made. They were discoverers of the limitations of the present law, and it is the others who only lately came to know about this.

Mr. SNYDER. When you say they had their problem, you are talking about this long letter to the President he read into the record?

Mr. PHILLIPS. That is correct.

Mr. SNYDER. And the facts surrounding that. All right.

Mr. Tipton, in response to a question by the chairman, just before we left, for the last vote, he asked you, in essence, that if this matter had not been worked out with the administration, and you had not gotten some coverage, it might be sort of questionable under the law, but would you have flown?

I believe you said: most likely not.

Mr. TIPTON. Well, I can't remember my exact formal words, but we would not have flown. We will be awfully clear on that; we just could not have done it.

Mr. SNYDER. Just to set some rumors at ease, I take it then that it would be an accurate statement that Pan Am, at that time, did not fly for 5 days without coverage, in violation of their indenture agreements?

Mr. TIPTON. No, we didn't. The problem was solved just about that time—

Mr. SNYDER. You made no flights—

Mr. TIPTON. We made no flights without insurance.

It was a near thing. I might say. It took 5 days to get it untangled.

Mr. SNYDER. Reference has been made in your testimony, Mr. Tipton, about obtaining this coverage at reasonable rates, and I wonder if you would give us some idea of what a reasonable rate is?

Mr. TIPTON. I am not familiar with rates. Can you answer that, Mr. Goulard?

Mr. GOULARD. That is a very difficult question to answer.

Mr. SNYDER. You are going to ask the Secretary to make a determination of what a reasonable rate is.

Mr. GOULARD. I think using 1970 examples of the things that can happen in the insurance marketplace might be of interest.

Our rates—war-risk rates at that time, prior to the Jordan situation, were around 10 cents; I forget exactly, but it was insignificant—10 cents per \$100 of value per year.

Right after that, the war-risk rates in the commercial market exceeded \$1.75-\$1.72, in that range; that became the rate, basically prohibitive.

Mr. SNYDER. You are still talking about an annual premium? Actual premiums, rather?

Mr. GOULARD. Yes, per \$100 of value per flight.

So the war-risk peril itself—at that point pure war-risk, not related risks—because of the changing attitudes, again, of the market, it exceeded the operational rates. The war-risk market premium was higher than the operational premium.

That 25 cents per \$100 that you were quoted for going into Vietnam, which came to \$12,500 on a 707, and \$62,500 for 747 was a—

Mr. GOULARD. Per flight, round-trip, and by the end of the evacuation, that was up to 50 cents. That was the final rate we received.

Mr. SNYDER. At what point in your rate increase charges did you shift from private coverage to Government coverage a couple of years ago when you had that trouble?

Mr. GOULARD. I don't recall. Do you recall, Jim?

Mr. BLAIR. You mean on the money? The rate you quoted?

They shifted September 21, 1970.

Mr. TIPTON. I think Mr. Snyder was referring to our experience in 1970, was he not?

Mr. SNYDER. When either—I believe one of you testified that at that time insurance on the private market was virtually nonexistent?

Mr. GOULARD. That was—that is correct. It was also questionable at that time whether we could—well, before that we still could not buy insurance to full value, and we did have some—we did have title 13 insurance as well.

For instance, in our plane at Cairo, that was destroyed at Cairo, the first 60 percent in value of that aircraft was covered by commercial war-risk market—only the first 60 percent.

Excess coverage was placed—the other 40 percent was placed under title 13.

So there wasn't even the capacity in the marketplace at that stage of the game to insure the full value of the aircraft.

Today there is, but at that time there wasn't.

Mr. SNYDER. What is the title 13 rate?

Mr. GOULARD. I think—I don't recall what it was for the excess, but when we went pure title 13, it was a swing-rate, on loss experience, and it went from 20 cents to 80 cents. It was variable, depending on losses.

Mr. SNYDER. Is that determined by actuarial experience or by negotiation?

Mr. GOULARD. I think it was applied uniformly to all—all over, wasn't it?

Mr. SNYDER. I didn't ask you whether it was uniform or not. I asked you how it was determined.

Mr. GOULARD. You would have to ask Mr. Cameron that question.

Mr. SNYDER. Under the proposed amendment, are you asking the U.S. Government to insure against bad security provisions of other governments?

Mr. TIPTON. Yes; if they lead to this kind of damage. To that extent that is exactly what is happening, because of riots and that sort of thing, and I suppose if we have them it indicates that there are bad security provisions in the governments concerned.

In that, we have two alternatives: either don't go there, or get this insurance, and if the Government wants us to go there, then if it is of sufficient importance, the insurance has to be provided.

Mr. SNYDER. You indicated that a determination had to be made by the Secretary and by the President?

Mr. TIPTON. Yes.

Mr. SNYDER. I assume that you are not suggesting to us that there would be any lack of agreement between the Secretary and his boss—the President—

Mr. TIPTON. What the statute says is:

"The Secretary, with the approval of the President, shall go forward with this program," and I would assume that they would reach an agreement on the subject.

Mr. SNYDER. Is there anything that would not be covered on an international flight under the provisions of your amendment, provided of course that it is intentional and unlawful?

Mr. TIPTON. No, I think that at least we wrote the amendment in an effort to provide complete coverage under the circumstances mentioned, where there is no available commercial insurance at a reasonable price. That was our intention.

I emphasize that—

Mr. SNYDER. Who will make the determination of whether it is a reasonable price?

Mr. TIPTON. That the Secretary of Transportation makes—yes, that is made by the Secretary of Transportation.

Mr. SNYDER. You outlined *a*, *b*, *c*, *d* and *e* as items you have sought coverage under existing law for, and have been refused.

Mr. TIPTON. That is right. Our amendment seeks to provide coverage of those under the circumstances stated.

Mr. SNYDER. What were the circumstances under which you were refused coverage under existing law for Item *e*?

Mr. TIPTON. That I can't answer. Can you answer that? The exercise of military power by a foreign government?

Mr. BLAIR. These were the clauses—*c*, *d*, *f* and *g*.

Mr. GOULARD. Those are specific insurance perils in the commercial war-risk placement that Pan American has today.

"*e*"—and this gives you an idea of the flexibility, and I guess the desires, of the commercial insurance market—"e" arose out of the specific loss situation in the Middle East, and I believe it was a Jordanian aircraft which got over another Mideastern country's territory and was forced down.

It was a Libyan aircraft and was forced down, and here is an aircraft that has strayed over someone else's territory and was damaged. As a matter of fact, I think it might have been shot down. I forget the exact circumstances.

But that specific insuring peril, insuring agreement, was introduced because of that specific activity. The marketplace is a very fluid one, and it obviously changes.

Mr. SNYDER. But you say you were denied coverage under title 13? You requested coverage to protect against the exercise of military power by a foreign government; is that what your statement says?

Mr. TIPTON. Yes, that is what it says.

Mr. SNYDER. And your testimony is that circumstances arose that brought that about which were that when the plane strayed over some foreign territory and was shot down, so in this case, being more specific, you are asking us to insure against pilot error.

Mr. TIPTON. No, I think—

Mr. SNYDER. Well, the plane does not stray unless someone is flying it, does it?

Mr. TIPTON. I think that you are not having merely a problem of possible straying; you have the problem of such a vigorous reaction on the part of a foreign government that they shot it down, or damaged it. It is not merely a case of pilot error.

Mr. SNYDER. If a foreign government shoots a plane down it is not covered under title 13? Is that what you are telling me?

Mr. TIPTON. It may not be.

Now, actually, we were told that in effect, that it would not be covered, and we had the situation.

This list of things, as I said a moment ago, are just exactly the things that were providing us with risks—riot, sabotage, hijacking—all in that tense atmosphere. Those things—if anything was going to happen, those would be the things that would happen, and we were told by DOT that this would not be covered.

Mr. SNYDER. I guess your lawyer ought to answer this question.

We were handed earlier today an item "Pan American World Airways, Inc.—Section I—Loss of or Damage to Aircraft." I will request that this item appear in the record at this point.

Mr. ANDERSON. Without objection, so ordered.

[Item referred to follows:]

PAN AMERICAN WORLD AIRWAYS, INC.

SECTION I—LOSS OF OR DAMAGE TO AIRCRAFT

Subject to the Terms, Exclusions, Conditions and Limits hereon Underwriters will:

1. Pay for loss of or damage to each aircraft described and valued in Section VI (hereinafter called the aircraft) caused by:

A. War; invasion, acts of any independent unit or individual engaged in activities in furtherance of a program of irregular warfare; acts of belligerents or foreign enemies (whether accorded diplomatic recognition or not); civil war, revolution, rebellion or insurrection, or any attempt thereat; war-like operations or hostilities; martial law, exercise of military or usurped power, or any attempt at usurpation of power (any of the foregoing applying whether war be declared or not).

B. Capture, seizure, arrest, restraint, detainment, confiscation, nationalisation, requisition, willful damage or destruction, or any attempt at any of the foregoing, by any independent unit or individual engaged in activities in furtherance of a program of irregular warfare or by any government, or by any public or local authority.

C. Strikes, lockouts, labour disturbances, riots, civil commotion.

D. Vandalism, sabotage, malicious act or other act intended to cause loss or damage.

E. Hijacking, any unlawful seizure, diversion, or exercise of control of the aircraft, or attempt thereat, by force or threat thereof or by any form of intimidation, by any person or persons whether on board the aircraft or otherwise.

F. The detonation of an explosive.

G. Any weapon of war.

H. The exercise of military power by a foreign government or authority in defense of such government's territorial sovereignty.

Mr. GOULARD. Yes; that's the war-risk coverage.

Mr. SNYDER. Now, I understand that the A and B items are covered by title XIII insurance.

Mr. TIPTON. That is correct.

Mr. SNYDER. Then what is the difference between A—some portions of it, and E?

Mr. GOULARD. That is a good point.

Mr. TIPTON. I am afraid I spent several years litigating some of these clauses. If I had a loss, I assure you that I would argue with vehemence that this was——

Mr. BLAIR. I believe you have active government—governmental authority, up there in A, don't you?

Mr. SNYDER. Yes, sir.

War; invasion; acts of any independent unit or individual engaged in activities in furtherance of a program of irregular warfare; acts of belligerents or foreign enemies (whether accorded diplomatic recognition or not) * * *.

Mr. BLAIR. Somewhere the insurance industry, when the Libyan aircraft was shot down by Israel—somebody in that industry got concerned, so that they added to the war-risk coverage clause specifically, and it is in all-risk, called exclusion clause, this other particular item.

Now, from our standpoint, as it is shown, yes, we could argue a lot of things, but one of the things you often want from insurance is that you want to be sure you collect and collect quickly, and you don't—when they start making distinctions, you hope you'll win, but you haven't got what you need, and you need insurance to know where you stand, as well as to get things covered.

I will agree with you it has always looked to me like that; it ought to have been in there under A and B, anyhow.

But the insurance people in this market felt that there was some distinction, and they brought it in this way. Isn't it in there as H?

Mr. GOULARD. Yes, I think it's H.

Mr. SNYDER. Yes, sir.

Mr. BLAIR. So they put it in a separate item as well, and we have that usual presumption against surplusage—I hope it is surplusage, if it ever comes up.

Mr. SNYDER. Am I correct—I am not sure I am—that what you can buy under title XIII currently is what is in A and B?

Mr. BLAIR. In A and B.

Mr. SNYDER. What you cannot get under title XIII is C through H.

Mr. SNYDER. I still have difficulty in understanding why you needed—why they turned down the title XIII insurance for E when in fact what you can buy under A sounds to me like the same thing. I am not going to belabor the point.

Mr. MILFORD. If the gentleman would yield——

Mr. SNYDER. Certainly.

Mr. MILFORD. I read a brief on this and perhaps can supply the answer to it.

In the case of the Libyan affair, the aircraft had inadvertently strayed across the boundary; it was not an act of war, because the Libyans have a perfect right to shoot an airplane down that comes in unannounced over their territory, so it is not an enemies situation, but nonetheless, it was a loss of an airplane.

It was technical.

Mr. ANDERSON. That would be pilot error, as he pointed out.

Mr. MILFORD. Well, no; he could be going around weather. The technical point being it was not an "act of war." The airplane was not going in there for warlike purposes. Libya was simply defending her borders.

Mr. SNYDER. When you defend your borders in that way, Mr. Milford, that is not war?

Mr. MILFORD. Not necessarily.

Mr. ANDERSON. Mr. Milford, it's your turn.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Tipton, I am concerned about the ratesetting procedures; that is, the ratesetting procedures established by DOT.

Are you familiar with how those rates are set? What criteria they use?

Mr. TIPTON. I am not, and I will ask my associates here if they are familiar with them.

Are you familiar with them? You're familiar with the rates you ultimately have to agree with, but you are not familiar with how they got there.

Mr. BLAIR. I think the only place that we had very detailed knowledge of the rates was during the very early period when, due to inadequate capacity in the war-risk market, commercial covered the top 60 percent and the title XIII covered the last 40 percent on the 747, and while it was still a war-risk market, it was only good for 60 percent.

I am familiar with it because they had to produce all those documents in our lawsuit, and all the internal memorandums.

Their premium was based on the commercial premium of—for 60 percent, plus a substantial addition designed to encourage the carriers to keep pressure on the commercial market to write the other 40 percent, and get out away from the Government.

Mr. MILFORD. Mr. Chairman, I notice Mr. Cary is still present in the hearing room. I wonder if we could ask Mr. Cary if he could supply for the record an explanation of how these premiums are established, and particularly whether or not there is consultation with American insurance underwriters, and whether or not steps are taken to prevent the Federal Government from pre-empting a commercial insurance fee.

Would you be able to do that, Mr. Cary?

Mr. ANDERSON. Without objection, so ordered. The record will so reflect.

Mr. CARY. Yes, sir, I will.

[The following was received for the record:]

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Washington, D.C., July 23, 1975.

Hon. GLENN M. ANDERSON,
Chairman, Subcommittee on Aviation, Committee on Public Works and Transportation, House of Representatives, Washington, D.C.

DEAR MR. ANDERSON: Enclosed is a schedule showing a progression of commercial war risk insurance rates over a two year period.

The first column reflects the rates just prior to the hijackings in Europe in September, 1970, and the second column the rates immediately after the hijackings.

As the rates reached the levels indicated for September, 1972, the carriers again purchased their war risks coverage from the commercial insurers and the Title XIII premium program was discontinued in early spring of 1973.

We hope this information will be useful.

Sincerely,

CHARLES O. CARY,
Assistant Administrator for
International Aviation Affairs.

Enclosure.

	September 1970	October 1970	September 1971	September 1972
Airline:				
A-----	0.04	1.50	0.125	0.125
B-----	0.52	1.70	.437	.265
C-----	.052	1.50	.63	.285
D-----	.052	1.50	.52	.295
E-----	.125	1.50	.56	.26

Note: (1) Above rated do not cover hijacking; (2) the coverage may vary slightly from policy to policy.

RE: Title XIII.

S. G. TIPTON,

Pan American World Airways.

In the recent House aviation subcommittee hearing, the subject of rating was addressed by several of the Congressmen present. For this reason we have prepared a "History of Pan Am's War Risk Rating" for the years 1968 to Present (see attached).

From the exhibit the following is apparent:

1. Pan Am's rate prior to the introduction of the 747 was under \$.10/100 of value annually with special surcharges made for the MAC operations into South Vietnam.

2. From January 1, 1970 to early 1973, insufficient capacity existed in the Commercial Market to place the necessary coverage on 747 aircraft.

3. Immediately after the Dawson Field and Cairo incidents, Pan Am was quoted a rate \$1.50/100 of value with the provision that 33 1/3% remain self-insured (see copy of cable attached) clearly an unreasonable risk assumption on behalf of your management.

4. As security measures improved throughout the world, rate indications became lower returning to a reasonable level, by early 1973, although capacity at that time was still insufficient to handle the full 747 value.

5. Rates at this point have "settled" into a totally reasonable area but still far exceed those prior to the September 1970 incidents.

During the period May 12, 1972 to May 12, 1973 when the Commercial "War Risk" Market capacity was insufficient to insure the full 747 value, the "All Risk" Market absorbed the C, D, & E perils excess of \$16,600,000 per aircraft at a rate of \$.05/\$100 annually. These perils are now fully insured with the \$.0176/\$100 rate charged by the Commercial "War Risk" Market.

HISTORY OF PAN AM HULL WAR RISK RATING, 1968 TO PRESENT

Date	Underwriter	Maximum value per aircraft	Rates(s) \$100 of fleet value	Commercial rates ¹
1968-----	Lloyds & Co.	100 percent-----	\$0.05 plus 222,000 A/P ² -----	Same.
1969-----	do.	do.	\$0.05 plus 150,000 A/P ² -----	Do.
Jan. 1, 1970-Sept. 21, 1970.	do.	The 1st \$14,226,290 per 747 plus 100 percent all others.	\$0.145 (747 aircraft); \$.0075 (all other air- craft plus 155,000 A/P ²)	Do.
Sept. 21, 1970- May 12, 1972.	DOT ³	100 percent-----	Minimum \$0.20; Maxi- mum \$0.80.	Sept. 16, 1970=\$1.50; Dec. 18, 1970=\$0.475; June 8, 1971=\$0.4375 (747); \$0.35 (all other); Aug. 27, 1971=\$0.35.
May 12, 1972-May 12, 1973.	Lloyds & Co.	The 1st \$16,600,000 per 747 plus 100 percent all others.	\$0.265-----	Same.
May 12, 1973-Jan. 1, 1974.	do.	100 percent-----	\$0.22-----	Do.
Jan. 1, 1974 to present.	do.	do.	\$0.176 ⁴ -----	Do.

¹ All commercial rate indications received were subject to placement in the market. As sufficient capacity did not exist to handle the 747 aircraft until May of 1973 the DOT provided excess coverage on these aircraft for A and B perils and the commercial "all risk" market the excess for C, D, and E.

² Surcharge applied for South Vietnam operations.

³ Covered basically the A and B perils now available under title XIII C, D, and E perils insured with commercial "all risk" markets.

⁴ Surcharges were developed for Saigon operations during April 1975 as previously discussed.

Mr. MILFORD. Mr. Tipton, we continue to hear you and other witnesses continually referring to all-risk insurance. What is all-risk insurance?

Mr. TIPTON. I will ask some of our insurance experts to explain that. That is over my depth.

Would you like to explain that, Mr. Goulard?

Mr. GOULARD. There are two forms of insurance, basically—main peril, where you specifically state the peril that is being insured, and all-risk, which insures everything subject to those perils which are specifically excluded.

The burden of proof resting on the all-risk insured is that he has to prove that the loss was caused by an excluded peril, whereas in main peril insurance, you, as the insured, must prove that the loss was caused by a peril which you insured.

Mr. MILFORD. Would it be a fair summation to say that the all-risk insurance is your normal operating insurance policy that you carry?

Mr. GOULARD. For an airline, yes, sir, very definitely. All-risk aircraft hull insurance.

Mr. MILFORD. Now, in the past, under all-risk insurance coverage, has your company normally been able to obtain coverage on such things as on-board explosions, such as the type that might have been detonated, say, by a demented passenger?

Mr. GOULARD. Yes; I would say that that is true.

Mr. MILFORD. Is that now covered for international flights?

Mr. GOULARD. Provided it was not a "war-risk."

Mr. BLAIR. What he asked is: is it now covered?

Mr. GOULARD. Is it now covered? No.

Mr. MILFORD. In the past, under all-risk, did your commercial underwriter normally cover such things as riots?

Mr. GOULARD. Yes.

Mr. MILFORD. Is it now covered?

Mr. GOULARD. No.

Mr. MILFORD. I believe that is all I have, Mr. Chairman.

Mr. ANDERSON. Mr. Mineta?

Mr. MINETA. Thank you.

What we are really concerned with here, it seems to me, is the problem of carriers being faced in crisis situation with less than adequate insurance coverage.

It seems to me that what we have—these are situations in which the airlines themselves have not created the situation, and yet because of national interest, we expect them to respond. This seems to me a growing or potential problem in the 1970's, and it is a "now" problem, with what, I guess, happened here in April, being a situation that is real.

Because here we have a specific carrier—Pam Am—with inadequate coverage. I would like to have you go back, during the month of April, and describe what your actual insurance situation was relative to your commercial flights in the vicinity of Vietnam.

Mr. TIPTON. I think you can do that better than I can, Mr. Goulard.

Mr. MINETA. Can we have liability and hull?

Mr. TIPTON. Liability and hull, both.

Mr. GOULARD. All right, because they are different, and that is important.

The liability also has a 7-day cancellation provision, and was canceled outright on 12:01 a.m., April 11, so notice was given 7 days before that.

Mr. MINETA. When were you asked by the State Department to escalate your service to Vietnam—

Mr. TIPTON. Approximately the fifth of April.

Mr. MINETA. So before you had been called by the State Department, you had already received notice that on the 12th or 11th of April that your cancellation would be in effect?

Mr. GOULARD. Almost the same time—maybe 24 hours difference.

Mr. MINETA. That both your liability and hull?

Mr. GOULARD. Just liability alone.

Mr. MINETA. Just liability?

Mr. GOULARD. Yes. The Hull underwriter, while not giving us a 7-day cancellation notice, said he wanted a lot more money for flying into that area, and the rate started at 25 cents per \$100 per flight, and gradually built up to 50 cents.

Now, I don't remember the exact days involved, but the—in the beginning he gave us quotes for, like 72 hours, that we could fly any flight in within the next 72 hours for 25 cents per \$100.

Then it got down to 48; the quota lasted for 48 hours, and it was 50 cents.

Mr. MINETA. So as the action escalated, your rates also?

Mr. GOULARD. Either rates increased and he became more and more conservative in terms of time allowance for that quote, and I don't recall off the top of my head the exact dates.

Mr. MINETA. In that time period, did you have flights continuing?

Mr. GOULARD. Our scheduled services continued to operate.

Mr. MINETA. And during the time, as I understand it in response to Mr. Snyder's question, you were never at a point without coverage?

Mr. TIPTON. That's right.

Mr. GOULARD. Right.

Mr. MINETA. So as these physical damage insurance rates for your hull coverage kept going up, you kept eating those costs?

Mr. GOULARD. Not on scheduled flights, because that was our normal operations. He did not impose the increase in rates on our two flights a week for scheduled flights.

Mr. MINETA. Other than those scheduled two flights a week, did you have other flights going in?

Mr. GOULARD. All charter flights. We ran a few orphan flights.

Mr. MINETA. And on those charter flights, you were paying the increased damage rates—hull damage rates.

Did you have any of those additional flights after the 11th of April, at 12:01 a.m.?

Mr. GOULARD. No; because we didn't have any liability insurance.

Mr. MINETA. All right.

You have said that on the 5th of April, you had been asked by the State Department to expand service to Saigon, and that you in fact had also received notice that on 12:01 of the 11th of April that you would be without coverage.

What should have been done at that point to provide you with the necessary coverage?

Mr. TIPTON. At that point we should have been able—we think we should have been able at that point to turn to the Department of Transportation and have gotten that coverage for the uncovered risks with which we were faced.

As I said, if it had not been for the inadequacy of the statute that we sought to describe, the operation could have gone forward very quickly.

I said 24 hours; it might have been less, but if it had been ready to move forward on that, we could have. All during this period, I am reasonably sure, we were seeking additional coverage for anything we could get.

As a matter of fact, we had to seek additional coverage at one stage because we were operating our normal around-the-world operations well south of Vietnam and Cambodia and Laos, and we felt the necessity for covering a possible veering into that area, so we had to go and buy that on the commercial market, and did so, and that was not a case where we intended to fly to Saigon; it was just a case where, by reason of weather conditions or otherwise, we might get into the airspace over those areas, at which point we would have been uninsured.

Mr. HAMMERSCHMIDT. Will the gentleman yield?

Mr. MINETA. I will yield.

Mr. HAMMERSCHMIDT. I have been in and out of the meeting, and I don't want to be redundant; if this has been covered, please tell me.

But while you are on that subject is why I am asking you to yield.

You asked the Secretary for some indemnifying authority, and he gave it to you. If that had gone to court, isn't it highly questionable about whether he had the real authority to indemnify that situation?

Would you care to go on record on that point?

Mr. MINETA. I was going to get to that point.

Mr. TIPTON. Mr. Blair suggests that I say that we are very glad that it did not get to court.

Mr. HAMMERSCHMIDT. Thank you, sir.

Mr. MINETA. It seems to me that, going back to Mr. Cary's statement earlier, where we have a period—or where we can have air carriers who are members of the CRAF, or let's say even in the instance of Military Airlift Command, could have called the planes and pilots into service as members of CRAF—wouldn't that provided the contract indemnity coverage?

Mr. TIPTON. It would have.

Mr. MINETA. All right, now; why wasn't that action taken?

Mr. TIPTON. The situation here was one in which we were asked to continue a scheduled service, and not do it on the basis of either a MAC charter or as part of a CRAF callup, and that was the request made to us, I think.

Mr. MINETA. You were asked to escalate your service, but to make sure that it was not under the CRAF situation?

Mr. TIPTON. That is right. They wanted it as scheduled service, because they did not want to create—I am—this was never explained to me, and consequently I am guessing.

But I think the situation was that the Government did not want to create a situation in which it looked like a great panic and things were all changing, and they wanted the scheduled service, and this was the only way we could get it.

A MAC charter, we wouldn't have had any problem; we would have just cranked up and gone, because that was fully indemnified.

Mr. MINETA. But you said that most of this was really a matter that was considered by the National Security Council.

Mr. TIPTON. It is my understanding it was.

Mr. MINETA. Well, let me ask: what was the form of the indemnity that you had?

It says here:

The letter, followed by intensive discussion with the affected agencies of the Government, caused the matter to be considered by the National Security Council, and it was agreed that every effort should be made to provide the indemnity requested.

And yet it is not under what is already there as available authority?

Mr. TIPTON. That was the problem, and yet—

Mr. MINETA. What was the nature of that indemnity?

Mr. TIPTON. The nature of that indemnity was an order entered by the Secretary of the Air Force, under the War Powers Act.

Mr. BLAIR. "as if..."

Mr. TIPTON. "As if..." which would have provided the indemnity "as if" we were operating under a CRAF contract.

Mr. MINETA. What kind of insurance is that "as if..."? Suppose your plane had been shot down?

Mr. TIPTON. We get back again to the answer—

Mr. SNYDER. We would have had an appropriations bill.

Mr. MINETA. Here you were at a situation where you had uncontrolled mob action. Someone says:

"Well, fly those things in and out of there as if you were really covered; don't worry about it."

Mr. TIPTON. Well, it is—as if the indemnity was written down on a piece of paper signed by the Secretary of the Air Force.

Mr. MINETA. Well, why couldn't he exercise his other power, just going ahead and utilizing CRAF.

Mr. TIPTON. He didn't want to—well, I don't know what he wanted, but the remainder of the Government did not want an activation of CRAF, or utilization of MAC charters.

Now, it was never fully explained to me, and I will just have to fail on this one. It was never fully explained to me exactly why the operation was to be conducted that way.

Mr. MINETA. Well, you do have a letter from the Secretary of the Air Force with these assurances?

Mr. TIPTON. It is an order. It is a very formal piece of paper.

Mr. MINETA. I am wondering if we could ask Mr. Tipton to supply that as part of the record?

Mr. TIPTON. It is classified.

Mr. SNYDER. It isn't much classified after today's testimony.

Mr. MINETA. It was?

Mr. TIPTON. The terms of—the existence of the order is well known, but the order itself is classified.

Mr. MINETA. How can you be given private or contracted indemnity while flying as a private aircraft?

Mr. TIPTON. I don't understand your question.

Mr. MINETA. How can there be indemnity given while really flying as a Pan Am—as a private aircraft—you know, Pan Am as CRAF would be covered; I can understand that.

But you are flying under an "as if" assurance from the Secretary of the Air Force, and I don't understand how you could be given that kind of contract indemnity.

Mr. TIPTON. The type of doubts that you are expressing are the—are one of the reasons that we are here today.

We do not want to get into this situation again; we would like to be able to do it, if a scheduled service is desired, and you can well imagine that it might be under some circumstances, rather than some military presence. If that is the kind of operation the Government feels it needs, then we should not have to spend 5 days and go to the National Security Council, and walk off into these kinds of uncharted seas.

The statute should button it down, and that is what we recommended. It is all these questions that you are posing, Mr. Mineta—and very good questions—that cause us to be here.

Mr. MINETA. Were you given any reasons for being in that kind of a difficulty?

Mr. TIPTON. I cannot recall an explanation; no, I cannot.

Mr. MINETA. You were asked to respond because of national interest?

Mr. TIPTON. Yes.

Mr. MINETA. Was anything being done to minimize the risks to you or to your company, to undertake this kind of—

Mr. TIPTON. Yes. Many things in Saigon were being done to make sure that not only our operations but everybody else's operations and existence, as a matter of fact, were carried on without incident.

Mr. MINETA. What kind of load factors did you have?

Mr. TIPTON. On our regularly scheduled service, which went twice a week, we were operating in the neighborhood of 100 to 135 people on a 747.

Mr. MINETA. Which has a capacity of what?

Mr. TIPTON. 363. Our load factors were low.

Mr. MINETA. Why were they so underfilled, if they were putting you in a difficult situation, trying to maximize loads and at the same time minimize your risks?

What was that all about?

Mr. TIPTON. I am not very thoroughly familiar with what was going on. I think your questions possibly are being addressed to the wrong person.

Mr. ANDERSON. Will the gentleman yield?

Mr. MINETA. Surely.

Mr. ANDERSON. Was that 135 going both ways?

Mr. TIPTON. Outbound.

Mr. ANDERSON. Just outbound you were talking about?

Mr. TIPTON. Very light inbound.

Mr. ANDERSON. I thought maybe that was why you had the low coverage.

Mr. TIPTON. To speak generally, this Saigon operation is not one of a type on which Pan American Airways is ever going to get rich.

Mr. MINETA. I am trying to superimpose, I guess a number of things, and get them into proper perspective.

Given the situation at the time, trying to get people out, having half-loaded planes going out, tremendous liability and risks, as well

as the hull risks that you had, and it just does not make any sense at all to have private carriers in that position.

It just seems to me that, again going back, that we have got this gray area that has got to be covered. What we need to do is not just renew and extend the present coverage, but fill this crack that I see, in terms of the present legislation. I hope when we come to the specific legislation, or markup, that we will correct the situation, and not just go around an extension of the act as it is now.

It seems to me we are not covering this base.

Mr. TIPTON. I think as far as the gray area which—in which we were moving, our amendment would provide—would turn that gray area into a clear area. We would then know how we were moving, and we would know what we were doing.

It is that—as I say, that is the reason we are here.

Mr. MINETA. Mr. Tipton, you were asked, according to your own testimony, on the fifth of April, to provide expanded service to Saigon, and yet you indicate 100 and some passengers on a large 747.

That is really not expanded service, nor is it very efficient.

Mr. TIPTON. Well, we never did expand the service.

We solved the liability problem and were prepared to expand the service. We had a 707 with flight crew sitting on Guam; at any time after we got our insurance that we were requested to, we could have established a daily service within, let us make it 5 hours.

The airplane remained on Guam for a period of about 10 days, and we were never specifically requested to lay on the daily service for which we had made these preparations.

Mr. MINETA. April 7 you get a request from State Department; you already have a notice that on April 11th, that your insurance is cancelled. As I recall, April 10th was the President's State of the World message to us in the joint session of Congress, asking for \$722 million in increased aid, and then also clarification of pulling the Vietnamese, or at least American citizens and certain Vietnamese who might be threatened, and it just seems to me that what was going on at this time just put you in a very difficult position.

Mr. TIPTON. I think the rather extraordinary characteristics of the evacuation part of this are one problem; the liability problem—the insurance problem is another problem.

I think that we do need to knead that one.

Mr. MINETA. So even though you were called in to do this, you never really got to the stepped-up service?

Mr. TIPTON. No.

Mr. MINETA. Thank you, Mr. Tipton.

Mr. ANDERSON. Mr. Tipton, would it be reasonable to say, after listening to your discussion here, that what you really want is all-risk insurance?

Mr. TIPTON. No. No; I don't think that what we are saying here is all-risk insurance, because what we are adding are these extraordinary—hopefully extraordinary—in addition to the normal—well, they aren't really normally part of war-risk.

The perils that have been referred to involved in all-risk insurance are a vast number of matters which we of course will have to insure and expect to insure.

No, we are not asking for any kind of an all-risk arrangement, because these are—even though these are stated broadly, you take them in the full scope of perils to which we are all subject, and they are quite a restricted area.

Mr. ANDERSON. Mr. Hammerschmidt?

Mr. HAMMERSCHMIDT. I want to go back briefly to the Saigon discussion.

You say if that had been more clearly defined, you would have been operating with a contract with the Government, you would have clearly been covered by war-risk insurance?

Mr. TIPTON. Yes.

Mr. HAMMERSCHMIDT. But they were asking you to operate as a scheduled carrier?

Mr. TIPTON. Scheduled carrier.

Mr. HAMMERSCHMIDT. And you would have paid premiums for that?

Mr. TIPTON. Yes.

Mr. HAMMERSCHMIDT. How are those premiums established?

Mr. TIPTON. The question was put, and Mr. Cary has said that he will furnish a statement for the committee defining the method of setting the premium.

Mr. HAMMERSCHMIDT. I will see that I assume it will be related to some actuarial basis in the private sector. You couldn't comment on that?

Mr. TIPTON. Well, we really don't know.

Maybe you could add something there?

Mr. GOULARD. Let me add one thing, there.

In aviation insurance as a whole, actuarial studies are difficult. Obviously things happen in a big way when they happen, but particularly in the war-risk or the war-related potential damage area, it is a political volatility that is basically unpredictable, and Mr. Yeargin will be on later, and maybe can answer something along those lines later.

But from an actuarial base, I don't believe that can actually exist in the war-risk insurance field.

Mr. HAMMERSCHMIDT. Has Mr. Milford gone into that line of questioning yet?

Mr. MILFORD. Yes.

Mr. HAMMERSCHMIDT. I expect he has covered matters that we had informally discussed.

Mr. MILFORD. It is a matter of record.

Mr. HAMMERSCHMIDT. I won't further take the committee's or the witnesses' time. That is all I have, Mr. Chairman.

Mr. ANDERSON. Mr. Snyder?

Mr. SNYDER. Just as a matter of practicality, with the time schedule that has been outlined by the chairman, we only have 2 weeks to get a bill through the House and the Senate. Don't you really think that if we could con the chairman into giving us a September date on going into this a little further, and go ahead and extend the bill now, and give us a little more into September to extend hearings, to see if we can resolve the language with the administration and FAA, and so forth, that that would be the best practical procedure?

Mr. TIPTON. I think we expect to meet with the representatives of the Government tonight, for discussion of this. I think these matters can be cleared up and reported back to the committee very promptly.

Mr. SNYDER. You think you can do that within the rest of the week, then?

Mr. TIPTON. Oh, yes.

Mr. SNYDER. Mr. Cary, do you agree with that?

Mr. CARY. I think we might have some trouble, for the reason that we mentioned earlier, that it is not the—not just the FAA; we do have to talk with other parts of the Government—Defense, State and OMB, and to come back with a firm position, having obtained the necessary clearances and conducted the discussions, I think we can do this with Pan American, certainly, between now and then, but to come back with an executive branch clearance would be very difficult.

Mr. SNYDER. Is everybody pretty well agreed that it would be a mistake to let this bill expire for any period of time?

Mr. MILFORD. Will the gentleman yield?

Mr. SNYDER. Well, let them answer.

Mr. TIPTON. My reaction to that is, I think—well, rather than have the committee take two bites at this apple, the committee has an endless job of aviation problems anyway—rather than taking two bites at this, I think we would say: let the statute expire for a little and clean up all these problems, and then go forward.

Mr. SNYDER. Do you agree with that, Mr. Phillips?

Mr. PHILLIPS. Yes, sir.

Mr. MINETA. What would you do inbetween? There is no coverage at all—liability or hull.

Mr. GOULARD. We have full coverage right now. The whole industry has full coverage right now; the only time we would not have coverage is if craft were activated.

Mr. BLAIR. And then there is full Government indemnity.

Mr. GOULARD. Yes, full Government indemnity, and we are required to buy the title XIII, but if title XIII didn't exist, I assume there would be a full Government indemnity.

Mr. HAMMERSCHMIDT. Will the gentlemen yield?

Mr. ANDERSON. Mr. Hammerschmidt?

Mr. HAMMERSCHMIDT. To pick out a single instant—let's say that bazooka incident over there at Orly involved a Pan American aircraft, and they had hit it with a bazooka shell.

Are you covered by your regular insurance for that sort of thing?

Mr. GOULARD. Under our war-risk insurance we are covered for that.

Mr. TIPTON. Commercial.

Mr. GOULARD. Commercial war-risk insurance.

Mr. SNYDER. They want to buy this, but they can't get it commercially. They are getting in tight situations.

Mr. ANDERSON. It has been suggested here that possibly what we should do is take our simple bill that we have—one of the two here—and pass that now, like next week, and then come back right after the recess, some time in September and take this extension of the programs and then come up with what was presented here today at that time.

What are your thoughts on that?

Mr. MILFORD. Will the chairman yield?

Mr. ANDERSON. Certainly.

Mr. MILFORD. My thoughts are this: I think it has been pretty well established at this hearing that there is a gap in the coverage.

Assuming that commercial war-risk becomes unavailable tomorrow, and we have to go back to the Department of Transportation to gain war-risk coverage, there is still a gap. By extending the law, as it is now constituted, it does not fill that gap.

And in any case, the insurance is going to be worthless. They are still going to have to shut their airplanes down, because of the gap that is now in existence. It is a gap that has been recently created, as established by the witnesses before this committee, and therefore we have got to correct it and then extend the law. Otherwise, we haven't accomplished anything.

Mr. SNYDER. If you'll yield, I don't have any trouble with the premise that you have stated, insofar—I don't think you shut the airplanes down unless you have a crisis in some particular area that you need the coverage for and can't get what you need.

Mr. MILFORD. That is my point.

Mr. SNYDER. I am having some problems with this language, and I am not sure at this point that we want to insure against the strike of Pan Am's employees in Paris or somewhere, and damage that they do to the plane over there, because there is a labor dispute going on with Pan Am.

Mr. MILFORD. I can tell you that this not covered, and——

Mr. SNYDER. I think it does.

Mr. MILFORD. The wording of the amendment very clearly says that whatever is covered is going to be to such extent as the Secretary may determine.

That means there is going to be a regulation written here specifying exactly what is going to be covered, what is not going to be covered, and under what circumstances.

Mr. SNYDER. Well, the chairman posed that question, and I believe the record will show that their counsel agreed that if the Secretary wanted to give that kind of coverage, he could.

He could; I don't think he ought to do it, off-hand.

Mr. TIPTON. If there is no commercial coverage for that kind of risk. You have to get over that hump.

Mr. SNYDER. That is right; that's right. We are assuming now that you have labor problems at Orly, as he mentioned, or somewhere, and so your commercial carrier says:

Look, you're having this big labor dispute up there; we are going to up your rates unreasonably. We are not going to cover you.

And quite frankly, I think that this may be the kind of coverage we don't want to get into.

Mr. MILFORD. Since this coverage is provided only when the U.S. Government says to this carrier: "We need you to fly," I don't think the U.S. Government is going to go to the carrier that's in the middle of a labor dispute and say: "We want you to fly."

Mr. SNYDER. You might be surprised, Mr. Milford. They flew to Saigon because Ambassador Martin says: "It is necessary to have the image over here that we are still running the scheduled airlines."

I happen to disagree with Ambassador Martin's determination in that instance. I don't think it would have been any disaster if they had gone over there under a military contract proposition where they would have been fully indemnified.

But on the other hand, that was State Department's determination as a result of Ambassador Martin's request. I think that is roughly right; he is nodding in the affirmative.

Mr. TIPTON. Yes. And I think the Secretary of Labor may say, for the benefit of ILO or something, that we want to go on over there and not let that strike disrupt us.

And I don't think it is something we ought to be doing. I think it is something we ought to get into further anyway.

Mr. MILFORD. I am not so sure that I like every word of this amendment myself, but we will check it before we markup.

Nonetheless, I would rather see an amendment of some type go in here, and then 3 months later we need to go back and amend the amendment, fine. But rather than see the law expire and leave a gap in coverage—

Mr. ANDERSON. We weren't suggesting expiration of the law. We are planning on passing one of these two bills, which would extend the law for 5 years, but then hold hearings right after we come back from recess on your proposed amendment, so we could do that.

Mr. MILFORD. My point is, what good is extending the law if it doesn't cover the airplane?

Mr. SNYDER. My only answer to your question is that I would hope that an amendment could be drafted in agreement with the carriers and FAA, and Defense and State, and everybody else that I can support.

Mr. MILFORD. I would hope so, too.

Mr. ANDERSON. Thank you gentlemen. Our next witness is Mr. Richard Yeargin, President of the Associated Aviation Underwriters.

Mr. Yeargin, you do not have a prepared statement; for the record, do you have a statement?

Mr. YEARGIN. No, Mr. Chairman; I apologize for that.

TESTIMONY OF RICHARD YEARGIN, PRESIDENT, ASSOCIATED AVIATION UNDERWRITERS

Mr. YEARGIN. My company is the all-risk company that you heard about.

We are one of the insurers of Pan American, among others.

Our policies for international airlines contain exclusions which roughly parallel this amendment here, which is the subject of this discussion, and under the circumstances in the foreseeable future, I cannot see that our underwriting practices would change to permit the inclusion of coverage of those exclusions.

Mr. ANDERSON. My understanding is that right now, practically everything dovetails, but that at the moment, from now on there is a danger there will be this gap.

Can you go into that? Why do you think it would not continue to dovetail for, say the next few months?

Mr. YEARGIN. Well, at the moment our coverage, or our exclusions mirror the commercial war-risk coverage. As long as the commercial war-risk coverage stays in effect, our exclusions mirror that, and there is no Government coverage.

Mr. ANDERSON. What do you exclude under your war-risk policies?

Mr. YEARGIN. The list which Mr. Snyder put in the record a while

ago of A and B is—as a matter of fact, we exclude the war-risk coverage.

Mr. ANDERSON. In other words, that item that we put in the record—A to H—those are the items that you exclude?

Mr. YEARGIN. In that letter.

Mr. ANDERSON. Mr. Snyder?

Mr. SNYDER. Mr. Yeargin, tell me again the name of your association?

Mr. YEARGIN. Associated Aviation Underwriters.

Mr. SNYDER. That is an association of several companies?

Mr. YEARGIN. Yes, sir.

Mr. SNYDER. Give me a for instance.

Mr. YEARGIN. Well, there is a pool of some 31 companies, and we function as the aviation department of those companies.

Mr. SNYDER. And where are you located?

Mr. YEARGIN. In New York.

Mr. SNYDER. And if a carrier wants to get some insurance through your association, they get that in New York?

Mr. YEARGIN. Yes. The broker comes to us.

Mr. SNYDER. There has been testimony here—and I suppose you have heard all of it—that they have to go to London to get most of this coverage. Do you find yourself disagreeing with that?

Mr. YEARGIN. Yes, sir. They go to London for the war-risk insurance.

Mr. SNYDER. You are all-risk?

Mr. YEARGIN. We are all-risk.

Mr. SNYDER. Your all-risk excludes the list that I put in the record, A through H?

Mr. YEARGIN. Yes, sir.

Mr. SNYDER. A and B of that is obtainable under war-risk and obtainable under title XIII if they can not get that on the private market?

Mr. YEARGIN. I don't recall the exact—I have only seen one title 13 policy, and I don't recall the exact wording of it, but it was like that; yes.

Mr. SNYDER. And then give me some examples of what you do insure.

Mr. YEARGIN. Operational accidents.

Mr. SNYDER. Beg pardon?

Mr. YEARGIN. All operational accidents.

Mr. SNYDER. Operational accidents?

Mr. YEARGIN. Yes, sir.

Mr. SNYDER. Anything else?

Mr. YEARGIN. Yes; pretty much all-risks.

Mr. ANDERSON. Would that go into such things as pilot, weather, acts of God, these types of things?

Mr. YEARGIN. Yes, sir.

On the ground, anything except those items that are specifically excluded.

Mr. SNYDER. Are most domestic carriers insured through your organization—your association?

Mr. YEARGIN. Well, let me say that we provide a part of the coverage for domestic carriers. No one market could provide the entire coverage, because of the limits involved.

Mr. SNYDER. So what you are saying is that for instance, on the strike issue that we have been batting around here, they can not buy insurance on it?

Mr. YEARGIN. Internationally?

Mr. SNYDER. Yes, sir.

Mr. YEARGIN. No, sir.

Mr. SNYDER. They can domestically?

Mr. YEARGIN. Yes.

Mr. SNYDER. Do you sell that?

Mr. YEARGIN. Yes.

Mr. SNYDER. I guess it would be a policy decision in your companies as to why its available domestically and not internationally?

Mr. YEARGIN. Well, the policy decision, Mr. Synder, comes from the case that everybody has been talking about, this *Cairo* case.

Prior to that time, we did—we were providing what we thought—or, our intent was the war-risk area. It became quite clear, from the decision that was handed down, that our intent was unimportant, that we should have been very specific as to what was excluded, had we desired not to cover that particular incident.

So at that time, our exclusions were considerably changed, to the form that you see now. We were told by the court in that case that we could have used more specific wording, had we wished to exclude this sort of thing under the—as war-risk, and we should have used that, which we now do.

Mr. SNYDER. You have now elected to do that?

Mr. YEARGIN. We do.

Mr. ANDERSON. Is your association the sole source of this insurance?

Mr. YEARGIN. No, sir. There is one other market that is roughly the same size as we are, and there are several smaller markets that can provide a portion of it.

Mr. ANDERSON. Where are they located?

Mr. YEARGIN. The other market is the United States? Aviation Underwriters in New York, and the smaller markets are——

Mr. ANDERSON. That is, they are aviation underwriters, and——

Mr. YEARGIN. They are the United States Aviation Insurance Group. We are the Associated Aviation Underwriters. Two entirely separate, competing organizations.

Mr. ANDERSON. What do you feel the Government should insure in addition to the exclusions that you enumerate?

Mr. YEARGIN. That is not an area that I really think I should get into, as to what the Government should insure, and I can only state as to what we can not and will not insure.

Mr. ANDERSON. I assume you are supporting, then, the proposal—the Pan Am amendment? Is this the one that you favor?

Mr. YEARGIN. No, sir, I am not supporting or opposing it, as such, because it really is not—it doesn't get into my particular business.

Mr. ANDERSON. Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Yeargin, earlier you supplied me with a copy of a document entitled: "Loss or Damage not covered."

I believe this is a list of the exclusions that your companies have from your all-risk coverage; is that correct?

Mr. YEARGIN. Yes, sir.

Mr. MILFORD. Would you have any objections to allowing us to insert this document in the record at this point?

Mr. YEARGIN. This is the exclusions that are on the Pan American policy, and Mr. Tipton and Mr. Blair—if they have no objection, I have none.

Mr. SNYDER. Would you yield?

Mr. MILFORD. Of course.

Mr. SNYDER. Is that identical to the letter that I presented a while ago?

Mr. GOULARD. This is only hull. Right?

Mr. MILFORD. This contains the exact wording of the exclusions.

Let me ask you if other underwriters have similar types of exclusions in their policies?

Mr. YEARGIN. Yes, sir, they do.

Mr. MILFORD. So that this will be an accurate reflection of the industry as a whole, so far as their exclusions?

Mr. YEARGIN. Yes, sir, on this particular item.

Mr. MILFORD. Mr. Chairman, I ask unanimous consent to introduce this into the record at this point.

Mr. ANDERSON. No objections? So ordered.

[The text of the document referred to follows:]

32. LOSS OR DAMAGE NOT COVERED

A. This policy does not cover loss or damage which is due and confined to (1) loss of use; (2) depreciation; (3) wear and tear; (4) mechanical or electrical breakdowns.

B. This policy does not cover with respect to all loss or damage caused by:

1. (a) War; invasion; acts of any independent unit or individual engaged in activities in furtherance of a program of irregular warfare; acts of belligerents or foreign enemies (whether accorded diplomatic recognition or not); civil war, revolution, rebellion or insurrection, or any attempt thereat; warlike operations or hostilities; martial law, exercise of military or usurped power, or any attempt at usurpation of power (any of the foregoing applying whether war be declared or not).

(b) Capture, seizure, arrest, restraint, detainment, confiscation, nationalization, requisition, willful damage or destruction, or any attempt at any of the foregoing, by any independent unit or individual engaged in activities in furtherance of a program of irregular warfare or by any government, or by any public or local authority.

(c) Strikes, lockouts, labor disturbances, riots, civil commotion.

(d) Vandalism, sabotage, malicious act or other act intended to cause loss or damage.

(e) Hi-jacking, any unlawful seizure, diversion, or exercise of control of the aircraft, or attempt thereat, by force or threat thereof or by any form of intimidation, by any person or persons whether on board the aircraft or otherwise.

(f) The detonation of an explosive.

(g) Any weapon of war.

(h) The exercise of military power by a foreign government or authority in defense of such government's territorial sovereignty.

(i) Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

2. A peril other than enumerated in Paragraph 32.B. (1.) above, occurring while the aircraft is outside the control of the Insured by reason of any of the perils enumerated in Paragraph 32.B. (1.), above. The aircraft shall be deemed to have been restored to the control of the Insured on the safe return of the aircraft to the actual possession and full control of the Insured and in an operable condition with available fuel for a safe flight to a reasonable destination entirely suitable for the operation of the aircraft. Such safe return shall require that the aircraft be parked with engines shut down and under no duress.

Mr. MILFORD. Mr. Yeargin, are you familiar with the procedures that the Department of Transportation uses on schedules of premiums for their all-risk coverage—or rather, their war-risk coverage?

Mr. YEARGIN. No, sir.

Mr. MILFORD. Let me ask you this: Would the Department of Transportation, in supplying a war-risk insurance, be in any way preempting commercial—or competing with the commercial market?

Mr. YEARGIN. No, sir.

Mr. MILFORD. Would adopting the extensions of the war-risk coverage, that I proposed in the amendment when Mr. Cary was at the witness table, in any way be invading the realm of the commercial insurance market?

Mr. YEARGIN. No, sir.

Mr. MILFORD. Now, in the past, did you and your company normally include, under the all-risk policies, such things as on-board explosions, riots and other things that you now exclude?

Mr. YEARGIN. Yes, sir, some of the things.

Mr. MILFORD. Does this then leave a gap of noncoverage between what used to be covered by commercial companies and now is not covered by the DOT's all-risk insurance?

Mr. YEARGIN. Well, once again, from what I have seen, of the policy issued by the DOT—and I have only seen one, which was the Cairo thing there, the Pan Am thing—yes, it would leave a gap.

Mr. MILFORD. So that if it becomes necessary because of the non-availability of commercial war-risk insurance for Pan Am to continue to fly, then they would have an area of noncoverage?

Mr. YEARGIN. Yes, sir.

Mr. MILFORD. I believe that is all the questions I have.

Mr. ANDERSON. Mr. Hammerschmidt?

Mr. HAMMERSCHMIDT. Thank you, Mr. Chairman.

To pursue that line of questioning with our witness further. I take it from your responses to Mr. Snyder, and subsequently to Mr. Milford, that at some point in time you came in with these restrictions in your policies.

Do you know about when that was?

Mr. YEARGIN. It was after September of 1970, when the loss in question—the Pan Am Cairo loss, occurred, and the court held that our exclusions which we had assumed covered this type of operation, or this type of loss—our exclusions excluded this type of loss, and this had been our assumption, and the court held it did not, and we were held liable for that 747.

So at that time we determined that it was necessary that we clarify our language to be certain that we did not get caught in this kind of trap again.

Unfortunately, you cannot put every word into a policy, so we had to take the broad exclusion rather than a more narrow one.

Mr. HAMMERSCHMIDT. Your response may somewhat anticipate my next question, which is, after that action was taken, did you have a change in premium rates?

Did it reflect itself in the premiums?

Mr. YEARGIN. It was taken into consideration; yes, sir.

Mr. HAMMERSCHMIDT. Did they lower?

Mr. YEARGIN. No, because the losses continued—all of these factors are taken into consideration in rating.

Mr. HAMMERSCHMIDT. As a matter of fact, even though you had less liability even after these restrictions were put in your policies, your premiums were not lowered?

Mr. YEARGIN. Yes. There was a definite premium reduction for this included in our calculations; yes, sir.

Mr. SNYDER. If you'll yield, sir?

I don't understand that, because you had so assumed, before the lawsuit, that it wasn't covered anyway.

Mr. YEARGIN. Well, we went even further than we had assumed before.

Mr. SNYDER. I see.

Mr. HAMMERSCHMIDT. I believe that is all, Mr. Chairman.

Mr. ANDERSON. Is all-risk airline insurance profitable?

Mr. YEARGIN. Not in the last 2 years; no, sir.

Mr. ANDERSON. Who makes the determination to add new inclusions and on what basis?

Mr. YEARGIN. We—whoever is writing the insurance.

Mr. ANDERSON. But you all write it as a pool, don't you?

Mr. YEARGIN. Yes; but the brokers come to one organization, as a lead, or a leading underwriter on that particular account, and he makes the determination.

Mr. HAMMERSCHMIDT. Would the chairman yield?

I don't want to interrupt your line of questioning, but I am going to have to leave. Would it be appropriate if I ask unanimous consent if the witness can furnish us a premium schedule that would show the difference in the rates before the restrictions and after the restrictions.

Mr. YEARGIN. There is no rate schedule.

Mr. HAMMERSCHMIDT. Could we ask Pan American or one of the people who advise this product—

Mr. ANDERSON. Don't you charge all of them the same rate on the same basis?

Mr. YEARGIN. No, sir.

Mr. ANDERSON. Is each one figured differently?

Mr. YEARGIN. Yes, sir.

Let me make one thing plain, Mr. Anderson. There are many different types of insurance plans for airlines, as there are airlines, and there are no two alike.

Mr. ANDERSON. There should be in payments, though, shouldn't there?

Mr. YEARGIN. No. We start from a basic factor, and work out, but this is all judgment underwriting.

Mr. HAMMERSCHMIDT. Do you negotiate this airline by airline, route by route, plane by plane?

Mr. YEARGIN. No; airline by airline.

Mr. SNYDER. Your exclusions are uniform, are they, sir?

Mr. YEARGIN. Yes, sir.

Mr. HAMMERSCHMIDT. I could understand, of course, why you might have different rates for different airlines, but would it be out of order for us to ask you for an example or two, on different airlines, and on the way you figure them?

Mr. YEARGIN. As to how the airlines are rated?

Yes; I can do that. On some, we will insure the airline on what is called a guaranteed cost rate; this is a rate that is a flat determination, based on the airline itself, on the values, and on the revenue-passenger-miles flown.

Now, there is another form where we will write on a minimum rate, subject to a maximum rate based on loss. This will be a spread or a range of rates of premium.

That is two examples.

Mr. HAMMERSCHMIDT. Is there any common ownership between airlines and insurance companies?

Mr. YEARGIN. No, sir; not to my knowledge; not that I have ever heard.

I am certain that—

Mr. ANDERSON. We would like to have you give us, for the record, some of these things so we can get some idea how you would determine these rates, in the full operation.

And my last question to you; who made the determination to add no exclusions—now, instead of adding no exclusions, would it be possible to raise the rates?

Mr. YEARGIN. It would; yes.

Mr. ANDERSON. But you don't do this?

Mr. YEARGIN. Sometimes it is a combination of both. It depends on experience.

Mr. ANDERSON. Well, did you offer an alternative, instead of giving these exclusions on this list?

Mr. YEARGIN. We don't write war-risk insurance. No U.S. company does, and the reason for this is that there is not sufficient spread of that type of insurance available in the United States.

We don't write foreign airlines, so we are not a war-risk market.

Mr. ANDERSON. Is there any competition between insurance companies in offering all-risk rates to airlines?

Mr. YEARGIN. Yes, sir; there is.

Mr. ANDERSON. Are you under any government regulatory agency in your insurance?

Mr. YEARGIN. In certain portions of our insurance, yes.

Mr. ANDERSON. What agency?

Mr. YEARGIN. Under the various insurance departments. In certain areas of our business we have to file with the various insurance State agencies.

Mr. ANDERSON. State? What about Federal?

Mr. YEARGIN. No, sir.

Mr. ANDERSON. You are under no Federal regulation?

Now, a moment ago, Mr. Hammerschmidt asked a question similar to what I have here. My question would be; are the all-risk rates reduced when the new exclusions were added?

Now, you said yes. Can you give us, for the record, some evidence of this, where you have reduced the all-risk rates when the new exclusions were added?

Mr. YEARGIN. It is possible I could find some in my notes on past quotations.

Mr. ANDERSON. There must be some record to the companies, notifying them that their rates are reduced when you do this. Something must go to the banks, the creditors?

I mean, on property things I have, whenever there is a change of insurance company, the banks, insurance companies, they are all right there. I am sure the banks are at these peoples' doorsteps when they change their insurance policies.

Mr. YEARGIN. Well, the quotations for insurance are provided to the broker for the insured. We don't make these changes except at the anniversary of the policy, and at that time, then we provide a quotation for the coming year, as do other markets as they go to the competitive markets.

Mr. ANDERSON. But you said when the exclusions were added, you did not reduce the rates. There must be some showing at the year's end that you did reduce the rates on a certain policy for a given company?

Mr. YEARGIN. I said they would have been reduced—we would have reduced the rate for that, or it would have been a consideration in our rating, a reduction; yes, sir.

Mr. ANDERSON. I have heard a reference to a gap. Can you tell us what is not covered today? Can you give us a few examples?

Mr. YEARGIN. Well, today, with our policy and the commercial war-risk policy, there is no gap.

Mr. ANDERSON. There is no gap anywhere today?

Mr. YEARGIN. What we—not that we know of.

Mr. ANDERSON. What we are talking about today is a gap in the future.

Mr. YEARGIN. Yes.

Mr. MILFORD. Mr. Chairman, will you yield?

Just to follow that one point there; what we are talking about is, if the commercial war-risk companies should cease to write this insurance, then we would have to fall back on this bill.

That is when the gap would appear.

Mr. ANDERSON. There is no gap as of now.

Mr. MILFORD. There is no gap now. They are covered by commercial, but should commercial companies fail to offer that insurance, then the gap would exist.

By the same token, this bill wouldn't take effect until that time. It would not be used until that time. The point I am trying to make is that it doesn't really do any good to renew the bill. It would still be useless.

Mr. ANDERSON. Anything else?

Mr. MILFORD. I have one or two more.

There seem to be some misunderstandings on the way this underwriting is done.

I tend to think of an insurance policy like the one on my automobile, like the type I buy from State Farm. I pay the same premiums as the next guy, with variations between models.

Does this fit the pattern of aviation underwriting?

Mr. YEARGIN. No, sir.

Mr. MILFORD. In the case of aviation underwriting, isn't it a fact that you simply draw up an insurance contract with the carrier, tailored to his particular needs, and that the contract is different from every other air carrier that you write insurance for?

Mr. YEARGIN. No, the contract is not necessarily so.

Mr. MILFORD. When I say "contract," I am talking about coverage.

Mr. YEARGIN. No. The coverage is pretty well uniform. There are

some that will have some special features that they lack, which we will provide.

Mr. MILFORD. The only thing that would be uniform would be the exclusions?

Mr. YEARGIN. I would say—well, no, not necessarily. There could be—for the most part the coverage is uniform, yes. But there are some particular—the provisions that are necessary for a particular airline, and their own operation, which come within the scope of things that we can do.

These exclusions that you have here apply to international airlines. The exclusions for purely domestic airlines are different.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Snyder?

Mr. SNYDER. You are saying, Mr. Yeargin, that if Pan Am and TWA each fly two flights a day from LaGuardia to Orly, they won't necessarily pay the same rate, both flying the same 707's? They don't necessarily pay the same rate for that coverage?

Mr. YEARGIN. Yes, I am saying that.

Mr. ANDERSON. What States' insurance would you be under regulation for that kind of a—?

Mr. YEARGIN. Well, we write many forms of insurance other than airline insurance. We write insurance on general aviation, we write general liability insurance, which is one of the forms that we are under State regulation for.

We write workmen's compensation insurance, which is under State regulation.

Mr. ANDERSON. Who would regulate for example, the Pan Am incident? Who would be the oversight body, what regulatory institution?

Mr. YEARGIN. We are not regulated there.

Mr. ANDERSON. Oh, you are not regulated there? Your only regulation is on this interstate or intrastate?

Mr. YEARGIN. Well, only on some of that. We are not regulated on anything pertaining to—except self-regulation, of course, on aircraft hull and aircraft liability.

Mr. MILFORD. I didn't know there was any business in existence that wasn't regulated some way or another.

Mr. ANDERSON. Thank you, Mr. Yeargin.

Mr. ANDERSON. Would you identify yourself, sir?

Mr. CAMERON. Mr. Cameron, chief of the aviation staff for FAA.

I wanted to be sure that it was clearly understood in connection with the testimony, that there would be no objection to allowing title XIII to expire on September 7; that is, that the expiration, if it is allowed to expire, that all existing Military Airlift Command contracts would be invalid or probably would be invalidated, because there is a requirement within each contract that war-risk insurance be purchased from title XIII and not from the commercial carrier.

Mr. ANDERSON. So what you are telling us is that we have to extend the date beyond September 7?

Mr. CAMERON. I would hope you would, sir. And that affects the craft program, too.

Mr. ANDERSON. Thank you Mr. Cameron. Before adjourning this hearing I will insert into the record a statement received from Edward

J. Driscoll, president of National Air Carrier Association; and a letter received from Richard S. Tribbe, vice president, Trans World Airlines, Inc.

[Statement and letter referred to follow:]

STATEMENT OF EDWARD J. DRISCOLL, PRESIDENT, NATIONAL AIR CARRIER ASSOCIATION

Mr. Chairman, members of the committee, I am pleased to have the opportunity to present the views of the National Air Carrier Association concerning HR-8564. The Association, which represents the major supplemental air carriers of the United States, supports HR-8564, a bill to amend Title XIII of the Federal Aviation Act of 1958, relating to war risk insurance. We not only support the extension of this Title but we support the amendments involving the investment of the revolving fund.

Air Carriers, who are members of this Association, have participated in support of military operations in war areas where war risk insurance has been required, and without such war risk insurance, authorized under Title XIII, no insurance would have been available.

As the Committee knows, such insurance is a fundamental requirement to protect our carriers and their stockholders from total loss of investment and is one of the fundamental enabling acts which permits commercial corporations to place their assets at the disposal of the military.

Additionally, the unstable conditions which prevail in the world today also place commercial air carriers in jeopardy because we must operate into areas where risks are ever present and riot, rebelling and even war can erupt with little or no warning.

We would suggest that there be no termination date and that Title XIII be made a permanent part of the Federal Aviation Act. It is our belief that if at any time such protection were not required, Congress could terminate Title XIII by Joint Resolution. As we view it, Title XIII is no less important than any other provision of the Federal Aviation Act, and, as the Committee knows, the Act does not have a termination date. We respectfully request that Section 1312 of the Federal Aviation Act of 1958 be amended as follows:

Section 1312 of the Federal Aviation Act of 1958 is amended by striking out, "expire at the termination of September 7, 1975," and inserting in lieu thereof "remain in effect unless and until terminated by a Joint Resolution of the Congress."

Thank you for your consideration of our views.

TRANS WORLD AIRLINES, INC.,
Washington, D.C., June 17, 1975.

Hon. GLENN ANDERSON,

Chairman, Subcommittee on Aviation, Committee on Public Works and Transportation, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Extension of the War Risk Insurance statute is now pending. Mr. John Zorack, Federal Affairs Counsel for Pan American World Airways, has called to my attention a proposed amendment to Section 1301 of Title 13 of P.L. 85-726. As a matter of record I would like to state that TWA solidly supports this proposal and we consider it to be in the national interest. I will not take your time in spelling out the reasons for our support in view of the memorandum from Pan Am which adequately does so.

Cordially,

RICHARD S. TRIBBE,
Vice President.

Mr. ANDERSON. Thank you very much. The meeting is adjourned.
[Whereupon, at 5:11 p.m., the hearing was adjourned.]

of the National Air Carrier Association; and a letter from Richard B. Tabor, Vice President, Trans World Air Lines.

Statement and Information as follows:

On January 1, 1938, the National Air Carrier Association, Inc., was organized as a corporation under the laws of the State of New York. The purpose of the corporation is to represent the interests of the airlines in the United States and to act in concert with the Federal Government in the regulation of the airline industry. The corporation is a non-profit organization and its assets are held in trust for the benefit of the airlines.

The corporation is organized under the laws of the State of New York and is a corporation of the State of New York. The corporation is organized under the laws of the State of New York and is a corporation of the State of New York.

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Trans World Air Lines, Inc.
New York, N. Y.

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