

STAR INSURANCE CO.

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AN ESTIMATE OF APPROPRIATION SUBMITTED BY THE TREASURY DEPARTMENT TO PROVIDE FOR THE PAYMENT TO THE STAR INSURANCE CO. IN THE SUM OF \$70.25, WITH INTEREST, PURSUANT TO AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

APRIL 28, 1926.—Referred to the Committee on Appropriations and ordered to be printed

THE WHITE HOUSE,
Washington, April 28, 1926.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: I have the honor to transmit herewith for the consideration of Congress an estimate of appropriation submitted by the Treasury Department to provide for payment to the Star Insurance Co. in the sum of \$70.25, with interest, pursuant to an order of the United States District Court for the Northern District of New York.

The necessity for the appropriation asked is set forth in the letter of the Director of the Bureau of the Budget and accompanying papers, transmitted herewith, in whose recommendations thereon I concur.

Respectfully,

CALVIN COOLIDGE.

BUREAU OF THE BUDGET,
Washington, April 27, 1926.

SIR: I have the honor to submit herewith for your consideration, and upon your approval for transmission to Congress, an estimate of appropriation submitted by the Treasury Department to provide for payment to the Star Insurance Co. the sum of \$70.25, together with any interest which may be payable thereon, pursuant to an

order of the United States District Court for the Northern District of New York December 4, 1923, under section 26 of the national prohibition act, directing such payment, the proceeds of the sale having been deposited in the Treasury prior to the issuance of said order.

The appropriation asked for is required to meet an obligation of the Government arising under the provisions of the above named act, and its approval is recommended.

In further explanation of this estimate there are transmitted herewith the petition and order of court, with accompanying correspondence.

Very respectfully,

H. M. LORD,

Director of the Bureau of the Budget.

The PRESIDENT.

United States District Court, Northern District of New York. In the matter of the petition of Star Insurance Co.

To the honorable judges of the District Court of the United States for the Northern District of New York:

The petition of Star Insurance Co. respectfully shows:

First. That your petitioner is a domestic corporation duly organized and existing under the laws of the State of New York, and having its principal office at No. 80 William Street, in the Borough of Manhattan, city, county, and State of New York.

Second. That on or about the 8th day of May, 1921, your petitioner issued its policy of insurance No. 227183, wherein and whereby it insured one Eugene J. Sinnott for one year from the 8th day of May, 1921, against loss by theft in respect to one 1917 Mercer automobile with touring body painted maroon bearing manufacturer's No. 3520 and transmission bearing No. 1586 in the sum of not exceeding \$1,500.

Third. That, as your petitioner is informed and believes, said Sinnott purchased said automobile on or about the 4th day of May, 1920, as appears by a bill of sale from John Anderson to said Sinnott of which a true copy is annexed hereto and marked "Exhibit A"; that on or about the 15th day of November, 1921, said Mercer automobile was stolen from the private garage of said Sinnott and that said Sinnott made claim upon your petitioner under said policy for \$1,500, as appears by a proof of loss filed by said Sinnott with your petitioner on or about the 23d day of January, 1922, a true copy of which is annexed hereto and marked "Exhibit B"; that on or about the 8th day of February, 1922, your petitioner paid said Sinnott the sum of \$1,500, pursuant to the terms of its said policy for the loss of said automobile; as appears by the auto loss draft for \$1,500 issued by your petitioner, a true copy of which is annexed hereto and marked "Exhibit C"; that pursuant to the provisions of said policy your petitioner became and was subrogated to all rights of said Sinnott in respect to said automobile, and that in aid thereof said Sinnott transferred, assigned, and set over to your petitioner all his right, title, and interest in and to said automobile, as appears by a subrogation receipt dated the 20th day of February, 1922, a

true copy of which is annexed hereto and marked "Exhibit D"; and that your petitioner thereupon became and was the owner of said automobile.

Fifth. That, as your petitioner is informed and believes, said automobile was on or about the 14th day of December, 1921, seized by officers of the United States Treasury Department at Albany, N. Y., while it was being used for the transportation of intoxicating liquor in violation of the laws of the United States; that the occupants, Floyd Anderson and Samuel Richardson, of said car at said time, were arrested and subsequently convicted on or about the 6th day of April 1922; and that thereupon said automobile was sold by the United States marshal for the northern district of New York at public auction at Troy, N. Y., on or about the 26th day of April, 1922, for the sum of \$425 or thereabouts.

Sixth. That on or about the 15th day of February, 1922, one Charles Lowell, of Malone, N. Y., claiming to have a lien on said automobile, applied to this court for the payment thereof out of the proceeds of sale; that an order was made by this court directing such payment, and that said marshal paid said Lowell \$300 out of said proceeds pursuant to said order; that your petitioner believes that the lien asserted by said Lowell was invalid and reserves the right to take any proceedings that may be proper in respect thereto.

Seventh. That, as your petitioner is informed and believes, said marshal, after paying certain expenses, delivered the sum of \$70.25, the balance of said proceeds of sale, to the clerk of this court on or about the 13th day of May, 1922, and that said clerk on the same day deposited said sum to credit of the Treasurer of the United States, as appears by the certificate of said clerk annexed hereto and marked "Exhibit E."

Wherefore your petitioner prays that an order be made directing the payment to your petitioner of the sum of \$70.25 and for such further and other relief as may be proper.

STAR INSURANCE Co., *Petitioner.*

By F. I. CRISFIELD, *Adjuster.*

CARDOZO & NATHAN,

Attorneys for Petitioner.

STATE OF NEW YORK,
County of New York, ss:

F. I. Crisfield, being duly sworn, says that he is the adjuster of the Star Insurance Co., the petitioner above named; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

F. I. CRISFIELD.

Sworn to before me this 14th day of August, 1923.

[NOTARIAL SEAL.]

COLIN J. CAMPBELL,

Notary Public, Queens County, No. 196. Certificate filed in New York County, Clerk's No. 411, Register's No. 5353.

Commission expires March 30, 1925.

At a stated term of the District Court of the United States for the Northern District of New York, held in the city of Utica on the 4th day of December, 1923. Present: Hon. Frank Cooper, judge. In the matter of the petition of Star Insurance Co.

Upon reading and filing the annexed petition of the Star Insurance Co., and it appearing that said Star Insurance Co. was the owner of one 1917 Mercer automobile bearing manufacturer's No. 3520, and that said automobile was seized by officers of the United States while being used in the transportation of intoxicating liquor in violation of the laws of the United States, and that said automobile was sold by the United States marshal for the northern district of New York for the sum of \$425, and that the sum of \$70.25 thereof has been deposited to the credit of the Treasurer of the United States, and that said Star Insurance Co. is justly entitled thereto, and due notice having been given to the United States attorney for the northern district of New York, now on motion of Cardozo & Nathan, attorneys for said Star Insurance Co., it is

Ordered, That the Treasurer of the United States pay to said Star Insurance Co. the sum of \$70.25 and any interest which may be payable thereon, out of any funds in his custody applicable thereto.

Enter.

FRANK COOPER,
United States District Judge.

TREASURY DEPARTMENT,
January 2, 1926.

The ATTORNEY GENERAL.

SIR: There are transmitted herewith for your consideration photostat copies of a communication from Cardozo & Nathan, New York, dated September 30, 1925, and of an order dated December 4, 1923, of Hon. Frank Cooper, United States district judge for the northern district of New York, directing the Treasurer of the United States to pay to the Star Insurance Co. \$70.25, together with any interest which may be payable thereon. It is stated that this sum represents the proceeds of the sale of an automobile belonging to the Star Insurance Co. which was seized by officers of the United States while it was being used in the transportation of intoxicating liquors in violation of the laws of the United States, which sum was deposited in the Treasury of the United States by the clerk of the court.

It is shown by the records of this department that the amount referred to, \$70.25, was deposited by C. W. Higgison, clerk United States district court, on May 13, 1922, and covered into the Treasury of the United States to the credit of "Miscellaneous receipts—fines, penalties, and forfeitures (judicial)," by miscellaneous receipt covering warrant No. 116, fourth quarter, 1922 (list 95250).

Inasmuch as the funds have been deposited in the Treasury of the United States and as there is no existing appropriation or provision of law under which a refundment covering the proceeds of a sale of this character may be effected, it would appear that no relief can be afforded at this time in this case under the order of the court by this department or any of the other executive departments of the Government.

The matter, however, is brought to your attention for any suggestion or recommendation that your department may deem it desirable to submit in connection with the question as to whether or not this order of the court may be treated as a regular judgment of the United States district court and the amount thereof be certified to Congress for the necessary appropriation to meet the payment thereof pursuant to the provisions contained in the deficiency act of April 27, 1904 (33 Stat. 422), in case such action is approved by your department, and no appeal is to be taken in the case.

By direction of the Secretary.

Respectfully,

GARRARD B. WINSTON,
Undersecretary of the Treasury.

DEPARTMENT OF JUSTICE,
Washington, D. C., February 8, 1926.

The SECRETARY OF THE TREASURY,
Washington, D. C.

SIR: Reference is made to your letter of January 2, 1926, wherein you transmitted for consideration photostat copies of a communication from Cardozo & Nathan and an order of court of the northern judicial district of New York, directing the Treasurer of the United States to pay to the Star Insurance Co. the sum of \$70.25, and interest, which sum was deposited in the Treasury of the United States following a sale of an automobile belonging to the Star Insurance Co., which was seized by officers of the United States while it was being used in the transportation of intoxicating liquor in violation of the laws of the United States, and requested a suggestion as to whether the amount named in the order should be certified to Congress for the necessary appropriation to meet the payment thereof.

This matter was referred by this department to the United States attorney for the northern district of New York, Syracuse, N. Y., and a copy of his letter is inclosed herewith for your information and consideration.

In reply to the inquiry contained in your letter, you are advised that this department feels that the facts mentioned in the letter of the United States attorney warrant the certification to Congress of the amount of the claim, with interest, filed by the Star Insurance Co., for the necessary appropriation.

Respectfully,

MABEL WALKER WILLEBRANDT,
Assistant Attorney General
(For the Attorney General).

SYRACUSE, N. Y., January 28, 1926.

The ATTORNEY GENERAL,

Washington, D. C.

(Attention of Hon. Mabel Walker Willebrandt, Assistant Attorney General).

DEAR MADAM: Receipt is acknowledged of your letter of January 15, with inclosures, which inclosures are herewith returned.

Mercer automobile, manufacturer's No. 2520: Our records show this car was seized from Floyd Anderson and Sam Richardson on December 14, 1921, at the corner of Clinton and North Pearl Streets, Albany, N. Y., while transporting intoxicating liquor. The arrest was made by Prohibition Agents Becker, Fulton, Voss, and Gleason. Both defendants plead guilty to transportation and possession and were fined \$600 each at the February term in 1922.

March 16, 1922, an order was entered directing the sale of the car by the marshal, pursuant to provisions of section 26 of the national prohibition act. April 26, 1922, the car was sold by the marshal for \$425; his expenses were \$54.75, and he paid a lien of Charles Lowell, of \$300; and the balance \$70.25 net proceeds were paid to the United States district clerk of the northern district of New York, which your letter states was received by him May 13, 1922.

We find the criminal records in the file, but are unable to locate the proceedings in regard to the sale of the car, and the above statement is taken from our docket. No reference in the docket is found to the order which you inclosed.

Section 26 of the national prohibition act provides, among other things, that—

The court, upon conviction of the person so arrested, shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, the law orders sale by public auction of the property seized, and the officer making the sale, after deducting the expenses for keeping the property, the fee for the seizure, and cost of the same, shall pay all liens according to the priorities which are established by intervention or otherwise at said hearing, or any other proceedings brought for said purpose, as being bona fide, and as having been created without the lienor having any notice that the carrying vehicle was being used, or was to be used, for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States, as miscellaneous receipts. All liens against the property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property.

As these liens can be established in any proceedings it is the custom in this district for the lienor to present his oral or documentary proof to the court, and the same is transcribed by the stenographer and presented to the judge, who reviews it and makes a finding as to whether the lien is allowed or disallowed, and I assume the same was done in this case in respect to the lien claimed by Lowell, which was paid, and also in respect to the claim of the Star Insurance Co., but as the decision in reference to the Star Insurance Co. was not made until after the sale and payment of the net proceeds to the clerk, the order directed the payment of this balance to the lienor.

This seems to be warranted by the provisions of the law above quoted, providing that the lien shall be transferred from the property to the proceeds of the sale, and there seems to be no specific limitation as to when such lien can be established, and in this case, of course, the ordinary six-year rule would not apply, as the seizure was in 1921, and the order granted December, 1923.

While the order inclosed is not found in our docket, there is no reason to doubt the certified copy of the clerk, and such order might have been drawn with more detail, but in our opinion it amounts to an allowance of the lien of the Star Insurance Co. to the extent, at least, of \$70.25.

It seems to us that the Government took these proceeds, charged with this lien now allowed by the court as provided by law, and I do not see why the court order is not sufficient to certify the same, as a judgment to Congress for appropriation and payment, if there is no other provision of law which would warrant its payment by the Secretary of the Treasury.

It May be possible that you will have other cases with the same situation but ordinarily the lien is established before we procure an order directing the sale of the car, and payment of expenses and liens.

Respectfully yours,

B. F. TOMPKINS,
Assistant United States Attorney.

Estimates of appropriations required for the service of the fiscal year ending June 30, 1926, by the Treasury Department

Payment to the Star Insurance Co.: For payment to the Star Insurance Co. of the net proceeds of the sale of an automobile, pursuant to an order of the United States District Court for the Northern District of New York, December 4, 1923, under sec. 26 of the national prohibition act, directing such payment with any interest which may be payable thereon, the proceeds of such sale having been deposited in the Treasury prior to the issuance of said order (submitted)----- \$70. 25

