74TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2726

NINTH OMNIBUS CLAIMS BILL

MAY 20, 1936.—Committed to the Committee of the Whole House and ordered to be printed

Mr. KENNEDY of Maryland, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 12788]

The Committee on Claims, to whom was referred certain bills for the relief of sundry claimants, and for other purposes, having considered the same, report thereon with the recommendation that they do pass with the following amendments:

No. 1: Page 1, line 5, strike out the word "is" and insert "be, and he is hereby,".

No. 2: Page 1, line 7, strike out the words "Eugene McGirr and".

No. 3: Page 1, line 8, strike out the figures "$11,618.50" and insert "$2,500".

No. 4: Page 2, line 2, strike out the words "Eugene McGirr and" and the words "his wife,".

No. 5: Page 2, line 3, strike out the word "latter" and insert "she".

No. 6: Amend the title of title I to read "A bill for the relief of Rose McGirr.".

No. 7: Page 2, line 23, strike out the figures and words "$10,000 as remuneration" and insert "$5,000 in full settlement of all claims against the United States".

No. 8: Page 3, lines 23 and 24, strike out the figures and words "$145,612.17 to reimburse said corporation" and insert in lieu thereof "$68,073.47, in full settlement of all claims against the United States".

No. 9: Page 5, line 3, after the figures "$3,500" insert the clause "in full settlement of all claims against the United States,".

No. 10: Page 6, line 6, strike out the figures "$10,000" and insert "$2,500".

No. 11: Page 6, lines 9 and 10, strike out the words "in the year 1930, which has resulted in permanent injury" and insert "on June 1, 1930".

No. 12: Page 7, line 2, strike out the figures "$4,000" and insert "$2,500".

No. 13: Page 7, lines 4, 5, and 6, strike out the words "loaded with oyster shells, when it ran into a submerged pile while approaching a dock in Alexandria, Virginia, June 17, 1933, and sank" and insert in lieu thereof the following:

which was negligently beached in August, 1933, so as to render it unfit for further use, and the possession of which was refused said Asa C. Ketcham prior to such beaching, by employees of the Corps of Engineers, War Department: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

No. 14: Page 7, line 23, strike out the figures "$5,000" and insert "$2,500".

No. 15: Page 8, line 22, strike out the figures "$5,000" and insert "$2,500".

No. 16: Page 8, line 24, strike out the word "tragic".

No. 17: Page 9, line 23, after the figures "$1,453.33", insert the words "in full settlement of its claim against the United States for the".

No. 18: Page 10, line 1, strike out the words "orders S. 290 and S. 1193" and insert "order numbered M–1, dated July 2, 1928, by the Post Office Department".

No. 19: Page 10, line 21, strike out the word "being" and insert "in full settlement of all claims against the United States for".

No. 20: Page 11, line 6, after the word "session" insert the following:

: *Provided*, That no part of the amount appropriated in this Act in excess of 20 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this Act in excess of 20 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

No 21: Strike out all the whereas clauses on pages 15, 16, and 17, and on page 17, line 11, insert the following:

That the Clerk of the United States District Court for the Eastern District of Virginia at Norfolk is hereby authorized and directed to satisfy, of record, the judgment obtained by the United States on November 30, 1934, against Joseph M. Cacace, Charles M. Cacace, and Mary E. Clibourne, who are hereby relieved of all liability to the United States for payment of said judgment, which was entered against them as sureties on the criminal bail bond executed in behalf of John T. Cacace, the latter having failed to appear after he had willfully departed from the jurisdiction without the knowledge, consent, or connivance of said sureties. Said John T. Cacace subsequently voluntarily appeared on December 6, 1934, without cost to the Government and was sentenced to imprisonment for conspiracy to violate the National Motor Vehicle Theft Act in accordance with his previous conviction on November 24, 1934.

No. 22: Page 18, line 17, after the name "DeKnight", insert the following:

for services rendered before the committees of Congress and executive officers of the Government during the period of twenty years prior to and including the date of approval of said Act, in connection with securing authority for payment of the findings of the Court of Claims therein enumerated: *Provided*, That such

payment of 10 per centum shall be participated in by such other attorney or attorneys, if any, who, in addition to having appeared in the Court of Claims, shall have rendered services as above described during said period, such participation to be in proportion to the value and extent of services so rendered as determined by the Comptroller General of the United States, to whom all claims for participation in said 10 per centum shall be presented within thirty days from the date of approval of this Act.

No. 23: Page 2, line 5, after the figures "1929"; page 3, line 4, after the word "Service"; page 5, line 10, after the word "proceedings"; page 6, line 10, after the figures "1930"; page 8, line 4, after the name "California"; and page 9, line 5, after the word "Service"; insert the following:

: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this Act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

TITLE

This bill may be cited as the ninth omnibus claims bill.

EXPLANATION

This measure contains 14 bills and 1 joint resolution, objected to, reconsidered, and again reported to the House under the present procedure in considering the Private Calendar (House Rules, clause 6, rule XXIV). Twelve of them involve a total appropriation of $294,841.53; one provides for the cancelation of a $10,000 judgment obtained by the United States against the claimants; another provides for amendment of a private act and clarification of the Comptroller General's duties in connection therewith; and the last confers jurisdiction on the Court of Claims to hear and determine the claim.

During the reconsideration of these bills each Member who objected to any of them on their first calendar call was asked to appear before the committee in order that the basis for objection might be heard. Your committee is glad to report that those Members who are vested with the duty of considering these bills on behalf of the House, and objecting to them if they deem it necessary, are cooperating with the committee, and their services have been most helpful in arriving at a better understanding of the several claims. It should be observed that all bills objected to and reconsidered have not, in consequence of said objection and reconsideration, been included in an omnibus bill.

The proceedings had on the reconsideration of all bills in this omnibus measure, as well as the others which have heretofore been submitted to the House, have been recorded, and while it is believed that an unnecessary expenditure would be entailed in printing them, they are filed with the committee and may be inspected by the Members at any time.

After careful consideration, it is recommended that the claims included here be approved. The facts in each individual case are fully set out in the previous committee reports accompanying them, and they appear hereafter in the order of their arrangement in the bill.

ROSE McGIRR

[H. Rept. No. 2083, 74th Cong., 2d sess., to accompany H. R. 857]

The proposed legislation is for the purpose of paying to Rose McGirr the sum of $2,500 because of injuries and damages sustained when she was struck by a motor vehicle of the Prohibition Bureau of the Treasury Department in New York City on May 16, 1929.

The claimant, Rose McGirr, contends that on May 16, 1929, she was attempting to cross Lexington Avenue, at Twenty-eighth Street, New York City, proceeding from the southwest to the southeast corner. She states that before starting across the street she looked to her left and right to make certain that nothing was coming and at that time the traffic light was red for the north-and-south traffic. Claimant further contends that when she was almost across the street, she was hit by an automobile which was traveling at a high rate of speed, and was thrown in the air for several feet, striking the pavement heavily and receiving serious injuries. As a result of her injuries, she was confined to the hospital until June 19, a period of a month and 3 days. After that time, it seems that it was necessary for her to maintain a nurse for a period of 6 months. Her injuries consisted mainly of a fractured hip, which necessitated the use of crutches when she was discharged from the hospital.

The description of the accident as above described is contradicted by the Treasury Department in its report, and they recommend adversely, contending that whatever injuries Mrs. McGirr received as a result of the accident were attributable to her fault. However, there are statements of disinterested parties to bear out the claimant's contention.

Furthermore, the committee wishes to call attention to the fact that the agents in the Government car contend that they saw claimant running toward the path of the car and came to a stop, and that claimant ran into the car after it had been brought to a standstill. It seems very unreasonable and unlikely that anyone could have been injured to the extent that Mrs. McGirr was merely by running into the side of a still car. It further seems to your committee that the very fact that Mrs. McGirr was attempting to cross the street at an intersection, where she had a perfect right to be, entitled her to protection and that the driver of the Government vehicle should have seen her in time to avoid coming in contact with her.

It will be noted that the bill was originally for $11,618.50; $1,618.50 being claimed for actual expenses. However, it is believed that some of the items constituting this amount are not altogether reasonable and necessary, and said amount has therefore been reduced to $650 for expenses; and the $10,000 grant has been reduced to $3,500, which your committee feels is an equitable settlement under the circumstances.

The report of the Treasury Department, together with other pertinent papers, is appended hereto.

THE SECRETARY OF THE TREASURY,
Washington, August 27, 1935.

Hon. AMBROSE J. KENNEDY,
Chairman, Committee on Claims, House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to Department letter of August 2, 1935, relative to bill H. R. 757, Seventy-fourth Congress, first session. The bill proposes to pay to Eugene McGirr and Rose McGirr the sum of $11,618.50 in full settlement of all claims against the United States on account of damages alleged to have been sustained "by the said Eugene McGirr and Rose McGirr, his wife, when the latter was struck and seriously injured by a motor vehicle of the Prohibition Bureau of the Treasury Department in New York City on May 16, 1929."

Enclosed is a copy of report dated May 17, 1929, submitted by Prohibition Agents Peter Reager, George F. Gallagher, J. P. Coleman, and Joseph R. Irwin,

also copies of separate reports dated July 8, 1929, submitted by Agents Reager and Gallagher. These reports set forth in detail the facts relating to the accident which resulted in personal injuries to Mrs. McGirr.

A summary of said reports shows the following material facts:

On May 16, 1929, about 12:15 p. m., Prohibition Agents Reager, Gallagher, Coleman, and Irwin, in a Government-owned automobile, were driving north on the east side of Lexington Avenue. As they approached the intersection of Twenty-eighth Street, at a speed approximating 15 miles an hour, they saw four women on the west curb at the corner of Twenty-eighth Street and Lexington Avenue. The women were going in an easterly direction toward the center of Lexington Avenue. When these women reached the center of Lexington Avenue they stopped with the exception of Mrs. McGirr. She continued to cross toward the easterly corner, notwithstanding northbound vehicles at the time had the right-of-way. Agent Reager sounded his horn and slowed down. His car came to a stop, the front pointing easterly at about the intersection of Twenty-eighth Street and Lexington Avenue. Mrs. McGirr had started to run diagonally toward the northeast corner of Lexington Avenue and Twenty-eighth Street. Although Agent Reager stopped the car to avoid Mrs. McGirr, she kept running, looking north, and ran into the left front fender of the car. The contact threw her down. Agent Reager states that "at the moment that she ran into the car it was standing still." The accident occurred at a distance of about 11½ feet from the curb of the southeast corner.

Agents Gallagher and Coleman took Mrs. McGirr in a taxicab to Bellevue Hospital. She was conscious all the time. Apparently no serious injury was inflicted beyond shock of the contact. Agent Reager's report, made at the time of the accident, states that Mrs. McGirr seemed more disturbed about her glasses than about her injuries. The glasses were recovered by the agents, repaired at their expense, and returned to Mrs. McGirr in proper order.

The driver of a taxicab, who, at the time of the accident was waiting at the northwest corner for the traffic lights to change, informed the agents that he saw Mrs. McGirr run to the center of the street and into the agents' car as it was standing still, and that the accident was due to her own fault. Mrs. McGirr, after reaching the hospital, stated in the presence of Agent Coleman and Police Officer Mulcahy, that she did not see the agents' car, as she was "looking north."

The facts, as reported, indicate that whatever injuries Mrs. McGirr received as a result of this accident were attributable to her fault, and that the agents were not to blame.

It is recommended that the bill be not passed.

Very truly yours,

T. J. COOLIDGE,
Acting Secretary of the Treasury.

MAY 17, 1929.

From: Peter Reager, Head, Special Squad.
To: Wm. D. Moss, Assistant Administrator.
Re: Accident of Mrs. Rose C. McGirr, 915 West End Avenue, New York City.

SIR: In reference to the above-mentioned accident I wish to report as follows: On May 16, 1929, at about 12:15 p. m., I, Agent Peter Reager, accompanied by Agents George Gallagher, Joseph Coleman, and Joseph Irwin, were riding in a Government car, Buick coupe, license no. 2–C–2517 N. Y., identification no. 1654 on Lexington Avenue, going north about 10 feet from the curb at the rate of about 15 miles per hour. As we were approaching Twenty-eighth Street and Lexington Avenue, we noticed four women starting to cross Lexington Avenue going from west to east against traffic lights. I immediately sounded my horn four or five times and slowed down the speed of the car, whereupon three of the women stopped at the center of Lexington Avenue between the car tracks; the fourth woman, Mrs. Rose C. McGirr, stopped and hesitated a second, then rushed diagonally toward the northeast corner of Lexington Avenue. I immediately slowed down the speed of the car and swerved eastward toward Twenty-eighth Street and stopped to avoid the fourth woman; she kept running looking north and ran into the left front fender of our car which threw her down. At the moment that she ran into the car it was standing still. Agents Gallagher and Coleman put the woman in a taxicab and rushed her to Bellevue Hospital; she was conscious all the time and was more worried about where her glasses were than about her injuries. I, Agent Reager, in Government Buick coupe, followed them to Bellevue Hospital.

In the presence of Police Officer Mulcahy, shield no. 3105, and Agents Gallagher, Coleman, and Reager, the woman admitted that she did not see the car approaching as she was looking north.

The accident occurred at a distance of about 11½ feet from the curb of the southeast corner of Twenty-eighth Street and Lexington Avenue.

The taxi driver, Charles Maider, of 1721 Bathgate Avenue, New York City, who drove Mrs. McGirr to the hospital, was witness to the accident and stated to Agent Reager in the presence of Agents Coleman and Gallagher that he saw the woman running into our car and claimed it was her own fault.

Respectfully submitted.

(Signed) P. REAGER,
GEO. F. GALLAGHER,
J. P. COLEMAN,
JOSEPH R. IRWIN.

JULY 8, 1929.

From: Peter Reager, Head, Special Squad.
To: Mr. Wm. D. Moss, Assistant Administrator.
Re: Accident of Mrs. Rose C. McGirr, 915 West End Avenue, New York City.

In reference to the above-mentioned accident, I wish to report as follows:

On May 16, 1929, about 12:15 p. m., I, accompanied by Agents George F. Gallagher, Joseph Coleman, and Joseph R. Irwin, was riding in a Government car, Buick coupe, license 2C2517, identification number 1654 going north on Lexington Avenue to report at the office, 1 Park Avenue, New York City. Agents Gallagher and Coleman were sitting in the front seat with me, and Agent Irwin was sitting in the rear seat. We were going about 15 miles per hour, and about 10 feet away from the east curb.

There was an American Express wagon standing at the curb about 25 feet from the near corner of Twenty-eighth Street. We were about 175 feet from the near corner of Twenty-eighth Street and Lexington Avenue when I noticed four women starting to cross Lexington Avenue, coming from the west to the east on the downtown side of Twenty-eighth Street against traffic lights. I immediately sounded my horn four or five times.

The four women, about this time, had reached the center of Lexington Avenue between the car tracks. Three of the women stopped, and the fourth woman, Mrs. McGirr, hesitated a second and started to run diagonally toward the northeast corner of Lexington Avenue and Twenty-eighth Street. At this time we were about 25 feet away from them, I immediately slowed down the speed of the car and swerved eastward toward Twenty-eighth Street, and stopped the car to avoid Mrs. McGirr. She kept running, looking north, and ran into the left front fender of our car, which threw her down. The moment she ran into the car it was standing still. The accident occurred at a distance of about 11½ feet from the curb of the southeast corner of Twenty-eighth Street and Lexington Avenue.

Agents Gallagher and Coleman put her in a taxicab and took her to Bellevue Hospital. She was worried more about her glasses than her injuries, and was conscious all of the time. I followed them to the hospital in the Government car. While Mrs. McGirr was in the emergency room, I asked her in the presence of Agents Gallagher and Coleman, and Police Officer Charles Mulcahy, shield no. 3105, if she saw the car, to which she answered, "I did not, as I was looking north."

The taxi driver, Charlie Maider, residing at 1721 Bathgate Avenue, who drove Mrs. McGirr to the hospital, told me in the presence of Agent Gallagher, that it was Mrs. McGirr's own fault, and he saw her run into our car while it was standing still. I asked the driver, C. Maider, for a written statement, but he would not give it to me, saying, however, that he would be my witness any time I needed him.

On May 17, 1929, Agent Gallagher and myself visited Mrs. McGirr at the hospital and asked her how she was feeling. She said "All right", that she did not believe any bones were broken, but that she was at a loss without her glasses. We informed her that her glasses were found, with the bridge broken. She seemed very much pleased about the return of her glasses. We could not get any information at the hospital as to her condition. Agent Gallagher took her glasses to an optician on Second Avenue and Twenty-sixth Street and had them repaired for a charge of $3, which amount of money was given by Agent Reager to Gallagher.

On May 26, 1929, Mr. McGirr, the husband of Mrs. McGirr, visited me at the prohibition office and asked to see my superior. I then introduced him to Mr. Hanford, legal adviser, Enforcement.

On July 5, 1929, about 10 p. m., accompanied by Agent Gallagher, we visited the chauffeur who drove Mrs. McGirr to the hospital, at 1721 Bathgate Avenue. I asked him if he remembered the accident of May 16, 1929, to which he answered that he did. I then asked him if he would give me a written statement, and he answered that he would not give any written or signed statement as he had given a statement to a railroad company on an accident at one time, and had never heard anything from it. He did state to us that he had seen the accident; that his taxicab had been standing off the northwest corner of Twenty-eighth Street and Lexington Avenue on Twenty-eighth Street, facing east, waiting for the traffic lights to change so he could go ahead. He had seen this woman run into our car, while it was standing still. He also stated that it was the woman's fault. He said he would testify for us, and would be available at all times, but expected to be paid for any time he lost, as he was the father of a family and could not afford to lose time and not be paid for it.

On July 7, 1929, about 3:30 p. m., I interviewed at the Bellevue Hospital, Police Office C. Mulcahy, shield number 3105, who was on duty, in reference to the statement of Mrs. McGirr at the hospital, to the effect that she had not seen the car, as she had been looking north. Police Officer Mulcahy was present at that time, but would not give me a written statement to that effect. He replied that he had heard Mrs. McGirr say she did not see the car as she was looking north, but could not give me a written statement, as it was against department regulations to give any signed statement, but that he was willing to testify any time he was needed.

Respectfully submitted.

PETER REAGER, *Head, Special Squad.*

JULY 8, 1929.

From: George F. Gallagher, Prohibition Agent.
To: Mr. Wm. D. Moss, Assistant Administrator.
Re: Accident on May 16, 1929 at 12:15 p. m.; Mrs. Rose C. McGirr, 915 West End Avenue, New York City.

In reference to the above, I wish to report as follows:

While riding in Buick coupe Government-owned auto, license 28–25–17 N. Y., identification number 1654, and Agent Reager at the wheel driving, I was seated on his right side and Agent Coleman on my right, and the auto was proceeding north on Lexington Avenue, New York City, at about 15 or 18 miles an hour with traffic, as lights were showing green when auto was about 175 feet from the near corner of Twenty-eighth Street. We were moving along about 10 feet from the east curb because of an American Express wagon standing at the curb on Lexington Avenue 25 feet from the near corner of Twenty-eighth Street.

I saw four women coming from the west curb of Lexington Avenue at the south crosswalk of Twenty-eighth Street. Agent Reager was blowing the horn as these women were moving against traffic lights. They continued on to the center rails of the uptown and downtown trolley tracks, and three of the women stopped. One, whom I later learned to be Mrs. Rose C. McGirr, hesitated for a moment and then started to run. She was looking north and running diagonally northeast to the curb. The auto was then about 25 feet from her, and the horn was sounded at this moment. Agent Reager put on the brakes and pulled to the right to avoid an accident. Mrs. McGirr was still running and looking north, and collided with the front left fender of the auto as same stopped about 11½ feet from the southeast corner of Twenty-eight Street and Lexington Avenue. She fell to the left of the auto. Agent Coleman and I immediately jumped out of the auto and picked Mrs. McGirr up from the street and placed her in a taxicab and took her to Bellevue Hospital. The first thing Mrs. McGirr asked for when we were placing her in the taxicab was her glasses, and on the way to the hospital she said she did not see the car, and repeatedly asked if we wouldn't get her glasses for her as they were new. We promised that we would make every effort to have her glasses returned to her, and she apparently was pleased. She was more worried about her glasses than her injuries. In the emergency room of the hospital, Mrs. McGirr stated in the presence of Agents Reager and Coleman, and Police Officer Mulcahy, that she did not see the car as she was looking north.

In the corridor of the hospital, the chauffeur of the taxicab, Charles Maider, 1721 Bathgate Avenue, New York City, told Agent Reager in my presence that

he was waiting on Twenty-eighth Street facing east, waiting for the traffic lights to change, and saw the woman run into the car while it was standing still, and that she was at fault. We returned to the scene of this accident and started a hunt for the glasses, when a man came over and asked what we were looking for. Upon telling him, he produced the glasses, the bridge of same having been broken, but said he did not see the accident.

The next day, May 17, 1929, Agent Reager and I visited Mrs. McGirr at the hospital and asked her how she was feeling. She said "allrght" as she didn't believe any bones were broken, but that she was at a loss without her glasses. We informed her that her glasses were found, with the bridge broken. She seemed pleased about the return of her glasses. We could not get any information at the hospital as to her condition. I then took her glasses to an optician, had them repaired for $3 which was paid by Agent Reager, and I returned the glasses to her. She said she did not know how she could show her appreciation for our kindness in having her glasses fixed.

I called a few days later at the Bellevue Hospital, and was informed there that Mrs. McGirr was transferred to the Roosevelt Hospital. I immediately went there and visited Mrs. McGirr in a private ward. She told me that she was feeling better than she had been on my previous call, and that she was transferred because she requested privacy. I inquired at the Roosevelt Hospital as to her condition and was informed they could give me no information.

On July 5, 1929, accompanied by Agent Reager, we went to the home of the taxi driver (who drove Mrs. McGirr to the hospital) and witness, Chas. Maider, 1721 Bathgate Avenue, who said he would not give us a written or signed statement, as he had given a statement to a railroad company on an accident one time and nothing was ever heard from it. He did state in our presence that he saw the accident; that his taxicab was standing at the northwest corner of Twenty-eighth Street and Lexington Avenue facing east, waiting for traffic lights to change, and that he was at the wheel and saw the woman run from the center of the street into our car as it was standing still, and that it was her own fault. He also said that he would testify for us and was available at all times, but expected to be paid for any time he lost, as he was the father of a family and could not afford to lose time and not be paid for same.

On July 7, 1929, about 3:30 p. m., Agent Reager interviewed Police Officer Mulcahy, no. 3105, in my presence at the Bellevue Hospital, in reference to the statement Mrs. McGirr made on May 16, 1929, at this hospital. When I asked her did she see the car, she replied, "I did not see the car as I was looking north." Police Officer Mulcahy was present when that statement was made. I asked him if he would give me a written statement to that effect, and he replied that he heard Mrs. McGirr say she did not see the car as she was looking north, but could not give me a written statement as it was against the police department regulations to give any signed statement, but he was willing to testify any time that he was needed.

Respectfully submitted.

(Signed) GEO. F. GALLAGHER,
Prohibition Agent.

AFFIDAVIT OF MRS. ROSE M'GIRR

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

Mrs. Rose McGirr, being duly sworn, deposes and says: I reside at 915 West End Avenue, New York City. I am 52 years of age, and prior to May 16, 1929, I was in good health, sound in body, with no impairment to my hearing or vision, other than the use of glasses. I am a housewife and keep house for my husband at the above address.

Deponent was crossing Lexington Avenue at Twenty-eighth Street from the southwest to the southeast corner on May 16, 1929, at about 12:15 p. m. Before I crossed the street I made sure the traffic light was red. I looked both to the left and to the right and saw nothing coming and thought it safe to cross. When I was almost across the street I was hit by an automobile owned by the United States Treasury Department. The said automobile was traveling at a high rate of speed. I was thrown in the air for several feet and fell, striking the pavement heavily, receiving the injuries hereinafter described but still retaining consciousness. I was then put in a taxicab by the men in the car that hit me and taken to Bellevue Hospital where I remained under the care of Dr. Kline until the following

Sunday (May 19, 1929). I was then taken to Roosevelt Hospital where I am still confined under the treatment of Dr. James I. Russell.

Deponent further states: I have intense pain in the left hip and am suffering from what is technically known as a fracture of the acetabalum. My right leg is still black and blue and is causing great pain. The doctor advises me that I will not be able to put one foot on the ground until 6 weeks from the time I was injured. My spine has troubled me and is still troubling me, and I am also suffering internally. Prior to the accident my nerves were in a very good condition, but the slightest noise now greatly upsets me. I am completely broken in health and despair of ever completely regaining.

Both my husband and I have been put to great expense for hospital care, nurses, etc.

Mrs. ROSE MCGIRR.

Sworn and subscribed to before me this 18th day of June 1929.

[SEAL] CLINTON W. BEEBE,
Notary Public, New York County, New York County Clerk's No. 105; New York County Register's No. 1–B–625.

Commission expires March 30, 1931.

ROSE MCGIRR, AND EUGENE MCGIRR, CLAIMANTS, *v.* UNITED STATES OF AMERICA, DEFENDANT

Complainants above named, by their attorney, Hebert J. Noonan, for their complaint, respectfully show as follows:

AS AND FOR A FIRST CLAIM

First. That the complainant, Rose McGirr, is the wife of Eugene F. McGirr, a resident of the city and State of New York.

Second. That on or about the 16th day of May 1929 claimant, Rose McGirr, while in the act of walking across Lexington Avenue from the west to the east side thereof, near the intersection of Lexington Avenue and Twenty-eighth Street, in the Borough of Manhattan, city of New York, at or about noon of said day, was struck and run over by the motor vehicle bearing New York State registration No. 2C–2517–1929, of the Prohibition Bureau, United States Treasury, through the negligence and carelessness in the management, operation, and control thereof.

Third. That said defendant and its servants, agents, and/or employees were so negligent and careless in the management and operation of the said motor vehicle and control thereof that in consequence thereof and without fault on the part of the claimant, Rose McGirr, she was knocked violently to the ground by the said car.

Fourth. That the management and operation of said car were negligent in that it was being operated at a high and improper rate of speed and without the giving of any warning of its approach; that the laws and ordinances of the city and State of New York were violated by the defendant; and that the defendant, its agents, servants, and/or employees, were otherwise negligent in the operation and control of said car.

Fifth. That by reason of the defendant's negligence as aforesaid, the claimant, Rose McGirr, suffered great bodily injury with accompanying pain, that she became and still continues to be sick, sore, lame, and disabled; and that as claimant is informed and verily believes, the said injuries as aforesaid will be permanent, and the claimant, Rose McGirr, will be permanently disabled and caused to suffer continuous pain and inconvenience, all to the claimant, Rose McGirr's, damage in the sum of $10,000.

AS AND FOR A SECOND CLAIM

Claimant Eugene F. McGirr, by his attorney, Herbert J. Noonan, for his claim, respectfully shows as follows:

Sixth. Repeats, reiterates, and realleges each and every allegation contained in paragraphs marked "First" and "Second" of claimant, Rose McGirr's claim herein.

Seventh. Upon information and belief, said claimant repeats, reiterates, and realleges each and every allegation contained in paragraphs marked "Third", "Fourth", and "Fifth" of the complainant's complaint herein.

Eighth. That prior to and at the times hereinafter mentioned Rose McGirr was and still continues to be claimant's wife and as such wife then and ever since has lived with the claimant, her husband, in the city and State of New York.

Ninth. That claimant then was and ever since has been a householder in said city, and was and ever since has been fully supporting and providing for his wife.

Tenth. That in consequence of defendant's said negligence, plaintiff's said wife was severely and permanently injured and was confined to her bed and to claimant's house for many months, and claimant was obligated to and did necessarily pay and became liable for nursing and medicines and hospital treatment and other incidental expenses in the total amount of $1,618.50.

Wherefore, claimant makes claim against the defendants in the sum of $10,000 on the first claim; and in the sum of $1,618.50 on the second claim, making a total of $11,618.50.

HERBERT J. NOONAN,
Attorney for Claimants.

JULY, AUGUST, SEPTEMBER 1929.

Mrs. ROSE C. MCGIRR, to Mrs. Martha Lewis, Dr., Kew Kensington Apartments, Kew Gardens, Long Island. Rent for Lewis cottage, Fire Island, during July, August, and September 1929, $400.

SCULLY-WALTON,
New York, May 19, 1929.

Mrs. ROSE C. MCGIRR,
New York City:

Patient McGirr, from Bellevue Hospital to Roosevelt Hospital; time set 2 p. m., $15. No. 62071. Paid May 19, 1929, W. G. G.

SCHOENIG & CO., INC.,
New York, June 27, 1929.

Mrs. R. C. MCGIRR,
915 W. E. A.:

Gold filled shell eyeglass and untex lenses, $18.50. Received payment June 27, 1929; Schoenig & Co., Inc., per S. E. Sellers.

JANUARY 18, 1932.

Mrs. Rose C. McGirr, 915 West End Avenue, New York City, N. Y., to Anne McGirr, dr., 915 West End Avenue, New York City, N. Y., nursing services, June 1929 to December 1929; 6 months, at $100 per month, $600.

NEW YORK, *July 2, 1929.*

Mrs. Rose McGirr, to the Roosevelt Hospital, dr.:

For board of self from May 19 to June 19, 32 days, at $6 per day	$192
Routine laboratory work	5
X-ray, $40; crutches, $1; Eau de Cologne, $1	42
Services Dr. J. I. Russell	75
Total	314
Credit	409
Received payment June 24—refund	95
	75
Balance refund	20

HERBERT J. NOONAN,
New York City.

Re: Rose McGirr and Eugene McGirr *v.* United States of America.
To professional services rendered, $250.

STATEMENT

Copies of bills attached to original papers:

Rent for Lewis convalescent cottage		$400.00
Scully-Walton, private ambulance service, removing patient Rose McGirr from Bellevue Hospital to Roosevelt Hospital, New York City, N. Y., May 19, 1929		15.00
To Schoenig & Co., Inc., Dr., gold-filled eyeglass shell and ultra lenses		18.50
Nursing services June 1929 to December 1929, 6 months at $100 per month		600.00
To Roosevelt Hospital, Dr., from May 19 to June 19, 1929:		
32 days, at $6 a day	$192.00	
Routine laboratory	5.00	
X-ray	40.00	
Crutches	1.00	
E. D. C	1.00	
Total	239.00	
Services Dr. J. F. Russell	75.00	
		314.00
Lawyer's fee, Herbert J. Noonan, 551 5th Ave., New York City		250.00
		1,618.50

STATE OF NEW YORK,
City of New York, county of New York, ss.

Rose McGirr, being duly sworn, deposes and says: That she is claimant in the within claim; that she has read the foregoing claim and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters she believes it to be true.

ROSE MCGIRR.

Sworn to before me this 8th day of June 1932.

PEARL R. SOLOMON,
Notary Public, New York County clerk's no. 959, registration no. 3–S–1409.

Commission expires March 30, 1933.

STATE OF NEW YORK,
City of New York, county of New York, ss:

Eugene F. McGirr, being duly sworn, deposes and says: That he is claimant in the within claim; that he has read the foregoing claim and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

EUGENE F. MCGIRR.

Sworn to before me this 8th day of June 1932.

PEARL R. SOLOMON,
Notary Public, New York County clerk's no. 959, registration no. 3–S–1409.

Commission expires March 30, 1933.

THE ROOSEVELT HOSPITAL,
New York, June 24, 1929.

This is to certify that the records of this hospital show that Mrs. Rose McGirr, 52 years of age, and said to be living at the time of her application here at 915 West End Avenue, New York City, was received in the private patients' pavilion department of this institution on May 19, 1929, suffering from fracture of left acetabulum, palliative treatment was rendered and patient was discharged from the hospital on June 19, 1929, condition improved.

GEO. W. M. STOCK, *Superintendent.*

Discharge note.—This patient was admitted to the private pavilion after having been in Bellevue Hospital for a day or two. She was found to be suffering from a small fracture of the left acetabulum with no displacement. She was kept

quietly in bed for a period of 17 days and then allowed up with the aid of crutches. She was discharged after 30 days and is to continue to use crutches for another week or two.

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

Benjamin Ebert, being duly sworn deposes and says: I was at my place of business, a cigar and candy store at 119 Lexington Avenue on May 16, 1929; outside of my store. About noon time I heard the noise of automobile brakes and the crash of collision, while a woman screamed. I turned around and saw a woman in front of the automobile, lying on the roadway. She was promptly taken away in a taxicab. I later learned that the woman herein described to be Mrs. Rose McGirr. The traffic lights at the time of the collision on Lexington Avenue were red.

BENJ. EBERT.

Sworn to before me this 22d day of June.

[SEAL] CLINTON W. BEEBE,
Notary Public, New York County, New York County Clerk No. 105, New York County Register No. 1–B–625.

Commission expires March 30, 1931.

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

Michael Davis, being duly sworn, deposes and says: I am over the age of 21 and am employed as a waiter at 116 Lexington Avenue. On May 16, 1929, about noon, I was standing on the southwest corner of Lexington Avenue and Twenty-eighth Street. I saw a woman, whom I later learned to be Mrs. Rose McGirr, hit by an automobile which was going up Lexington Avenue. The accident took place on the southeast corner of Lexington Avenue and Twenty-eighth Street. The traffic lights at the time of the accident were with the pedestrians. I then saw the woman placed in a cab and driven away.

Sworn to before me this — day of June 1929.

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

Patrick Sexton, being duly sworn, deposes and says: I live at 134 East Twenty-eighth Street. I was standing at the northeast corner of Twenty-seventh Street and Lexington Avenue. I heard a great noise and walked up to Twenty-eighth Street, where an automobile owned by the Treasury Department of the United States had hit Mrs. Rose McGirr. I noticed that, after the said automobile had gone, it left tire tracks, showing clearly that it had turned quickly in toward the curb on the southeast corner of Lexington Avenue and Twenty-eighth Street. The traffic lights appeared to be red on Lexington Avenue. The above accident happened about noon on May 16, 1929.

PATRICK SEXTON.

Sworn to before me this 22d day of June.

[SEAL] CLINTON W. BEEBE,
Notary Public, New York County, New York County Clerk's No. 105, New York County Register's No. 1–B–625.

Commission expires March 30, 1931.

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

Clinton W. Beebe, being duly sworn, deposes and says: I am over the age of 21 and am employed in the law office of Lafayette B. Gleason and Alexander Otis (274 Madison Ave., city of New York) attorneys for Mrs. Rose McGirr.

On June 22 and 24, 1929, I interviewed Michael Davis, a waiter in a restaurant at 116 Lexington Avenue. The said Michael Davis told deponent that on May 16, 1929, at about noon, he was standing on the southwest corner of Lexington Avenue and Twenty-eighth Street, and saw a woman crossing the street, hit

by an automobile; that the accident took place at the southeast corner of Lexington Avenue and Twenty-eighth Street. The aforesaid Michael Davis informed the deponent that the traffic lights at the time of the accident were with the pedestrian.

The aforesaid Michael Davis refused to sign any statement or affidavit pertaining to the accident, even with the advice of his counsel, who was present, although he would be willing to appear in court if subpenaed.

CLINTON W. BEEBE.

Sworn to before me this 24th day of June 1929.

ALLEN CEDAR,

Notary Public, Bronx County, Bronx County Clerk no. 162, Register no. 30815; New York County Clerk no. 866, Register no. 0–378; Kings County Clerk's no. 203, Register no. 499; Westchester County Clerk and Register

Commission expires March 30, 1936.

ELLEN KLINE

[H. Rept. No. 2301, 74th Cong., 2d sess., to accompany H. R. 1361]

The claimant's husband, Lewis R. Kline, together with his wife and son, was engaged in business, known as the El Paso Headlight Co., in El Paso, Tex. The United States Reclamation Service was a patron of this company and used acetylene gas manufactured by said company. It was the custom that when certain containers belonging to the Reclamation Service had been used or emptied they were placed in a certain part of their place of business, and Mr. Kline and his son would collect the said used containers or drums from the usual place, haul them to their place of business, and recharge same.

On July 1, 1918, Mr. Kline and his son called at the usual place of the Reclamation Service and collected several of the supposedly used containers, and in accordance with the usual custom, carried same to their place of business for recharging. At approximately 6:30 p. m. on the same date, Mr. Kline, still in accordance with his usual custom, was, with a gage made for the purpose, measuring the amount of gas left in the containers for the reason that said containers were never entirely emptied, although the pressure in them had been greatly reduced. The gas was sold by actual measurement and it was, therefore, necessary to measure the amount of gas still remaining in the containers after being used. Mrs. Kline, the claimant, was within 10 or 12 feet from her husband at the time he was measuring the containers, and she states that he had measured the amount of gas remaining in all of the containers collected by her husband and son on that date except one. She contends that her husband put the gage on this container and that on account of the enormous pressure, the measuring device was smashed. At that time her husband remarked, "This tank is hot", whereupon the tank or container exploded, killing the said Mr. Kline.

There seems to be no contradiction of the fact that the container which caused the explosion was either by mistake or negligence on the part of the employees of the Reclamation Service placed, without being emptied or used, where it was the usual custom to place the empty containers. It has been brought out that the empty containers were kept in a part of the building of the Reclamation Service that was exposed to the hot rays of the sun, and that acetylene gas in a filled tank must never be exposed to heat in that way because it generates enormous pressure and is calculated to explode, and the explosion was no doubt caused by an unused or unemptied container being exposed to such heat.

The Department of the Interior reports adversely on the bill for the reason that a Mr. N. E. Fordham, master mechanic at the Reclamation Service, stated that, "On the day this accident happened Mr. Kline called at the warehouse, 318 South Leon Street, to collect the empty containers. The warehouseman was busy and the writer helped Mr. Kline load two of the containers in his truck. However, before they were put into the truck the writer borrowed a wrench from Mr. Kline and opened the valves on both containers as Mr. Kline wanted to be sure that they were empty. When the valves were opened some gas escaped and from the sound it made Mr. Kline and the writer concluded that there was not over 50 pounds in either tank. Mr. Kline asked me to close the valves as the acetone would be lost if not. The valves were closed and containers loaded in Mr. Kline's truck and he left with them." It was concluded, in view of Mr. Fordham's statements, that had it not been for Mr. Kline's request the gases would have been released from the tanks; and further that Mr. Kline's request manifestly was prompted by the desire to save the gas in the tanks and thus reduce the cost of refilling them.

In this connection, hereafter made a part of this report, is a letter from the deceased's son, addressed to former Congressman Hudspeth, wherein he states, "We never tested tanks nor were we equipped to test the contents of the tanks while out on delivery. The tanks were carefully weighed and tested at our factory before being delivered, but were never tested by us at anytime until they were back at our plant supposedly empty. Had the tank in question been tested

at the reclamation shop, as Mr. Fordham states, the explosion would have occurred there. I am sure that the Bureau of Explosives will bear me out in that statement. A pressure of 50 pounds will not cause any tank of that type to explode. No doubt, the fuel tank was placed accidentally in with the group of empty tanks by some employee of the Reclamation Service."

Your committee has carefully considered all the facts as presented and feels that it has been clearly brought out that it was not possible to properly gage the tanks at the time of calling for them, and that due care was not taken by the employees of the Reclamation Service in allowing the either unused or slightly used tank to be among the empty ones in the usual place where the empty ones were always placed.

The explosion not only instantly killed Mr. Kline but caused the loss of the business to Mrs. Kline and her son.

Your committee, in view of all the foregoing, recommends passage of the bill in its amended form, namely for $5,000.

Appended hereto is the report of the Department of the Interior, together with other pertinent papers.

DEPARTMENT OF THE INTERIOR,
Washington, March 21, 1934.

Hon. LORING M. BLACK,
Chairman, Committee on Claims, House of Representatives.

MY DEAR MR. BLACK: I have received with request for report a copy of H. R. 2754 "for the relief of Ellen Kline."

The bill authorizes and directs the Secretary of the Treasury to pay out of any money in the Treasury not otherwise appropriated, the sum of $10,000 to Ellen Kline, widow of Lewis R. Kline, as remuneration for the death of said Lewis R. Kline, which it is claimed was occasioned by the negligence of the Reclamation Service.

It will be noted that this bill is identical with H. R. 7407, introduced in the Seventieth Congress on December 14, 1927, with the exception that the amount mentioned in said bill was the sum of $5,000. Copies of all papers on file in this Department relating to this claim were forwarded to the committee on January 16, 1928, together with the report, and are undoubtedly in the files of the committee. However, for the sake of convenience, I enclose additional copies of these papers.

An examination of the record shows that Mr. Kline was not in the employ of the United States but was doing business under the firm name and style of El Paso Headlight Co., that Mr. Kline called at the warehouse of the Reclamation Service, as he had done on previous occasions, for the purpose of collecting empty acetylene containers, refilling and returning the same to the Reclamation Service.

Particular attention is invited to the report of Master Mechanic N. E. Fordham, from which, for convenience and emphasis, the following is quoted:

"On the day this accident happened Mr. Kline called at the warehouse, 318 South Leon Street, to collect the empty containers. The warehouseman was busy and the writer helped Mr. Kline load two of the containers in his truck. However, before they were put into the truck the writer borrowed a wrench from Mr. Kline and opened the valves on both containers as Mr. Kline wanted to be sure that they were empty. When the valves were opened some gas escaped and from the sound it made Mr. Kline and the writer concluded that there was not over 50 pounds in either tank. Mr. Kline asked me to close the valves as the acetone would be lost, if not. The valves were closed and containers loaded in Mr. Kline's truck and he left with them."

The facts available do not appear to support the allegation of the bill to the effect that the death of Mr. Kline was occasioned by the negligence of the Reclamation Service (Bureau of Reclamation).

It appears that but for the request of Mr. Kline all gases would have been released from the tanks. Mr. Kline's request manifestly was prompted by the desire to save the gas in the tanks and thus reduce the cost of refilling them.

For the reasons hereinbefore indicated, I am unable to recommend favorable consideration of the bill.

Sincerely yours,

HAROLD L. ICKES,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
November 21, 1927.

From: District counsel.
To: The Commissioner, Washington, D. C.
Subject: Claim of Mrs. Ellen Kline and Willard L. Kline relating to death of Lewis R. Kline—Rio Grande project.

1. Reference is made to affidavits of Ellen and Willard L. Kline, dated October 27, 1927, and your letter of November 2, 1927, to Hon. C. B. Hudspeth, with copies to this office requesting comments.

2. From the letter dated November 17, 1927, from the acting superintendent, Rio Grande project to the chief engineer, it appears that there are no available records whatsoever which would throw any light on the correctness of the statements set forth in the affidavit. The files in my office likewise contain nothing concerning the accident which leads me to believe that up until this apparent afterthought and making of affidavits in October of this year all parties concerned had treated it simply as a very unfortunate accident with which employees of the Bureau of Reclamation were in no way connected.

3. It is assumed that as no authority exists to compromise claims for personal injury or death that the affiants and Mr. Hudspeth had in mind submitting the matter to Congress for inclusion in a relief act.

4. Assuming the facts as stated in the affidavit to be correct it would seem that the deceased did not, considering the probable hazards of the pursuit in which he was engaged, use the degree of care that an ordinary prudent person would use under like circumstances and the accident was proximately caused by such omission. However, I take it that you are primarily interested in comments as to the facts and further report accordingly must await such further information as may be found from the sources mentioned in the acting superintendent's letter.

(Signed) H. J. S. DEVRIES.

DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Denver, Colo., November 22, 1927.

From: Master mechanic.
To: Chief engineer.
Subject: Claim of Mrs. Ellen Kline and Willard L. Kline, relating to death of Lewis R. Kline—Rio Grande project, Texas-New Mexico.

1. Reference is made to paragraph 2 of letter dated November 17, from acting superintendent of Rio Grande project, to chief engineer on the above subject. This is to advise that the then project manager, Mr. L. M. Lawson, requested the writer to furnish a report, as complete as possible, of matters connected with the handling and care of both empty and full acetylene gas containers. This report was furnished, and I am quite sure that there is a copy of it stored with my furniture in Pendleton, Oreg.

2. The writer happened to be in the El Paso shop on the date Mr. Kline called for the empty containers. These containers were the property of the United States, having been purchased from the Searchlight Co. at Minneapolis, Minn., early in 1917. They were 100-cubic-foot capacity and had the stamp of the I. C. C. on them. All the employees that had anything to do with the use or handling of acetylene gas, oxygen, or other explosive material were instructed as to how to care for it. When the welder used an acetylene container the contents were completely exhausted and tank marked "empty" with chalk before it was returned to warehouse. On the day this accident happened Mr. Kline called at the warehouse, 318 South Leon Street, to collect the empty containers. The warehouseman was busy and the writer helped Mr. Kline load two of the containers in his truck. However, before they were put in the truck the writer borrowed a wrench from Mr. Kline and opened the valves on both containers as Mr. Kline wanted to be sure that they were empty; when valves were opened some gas escaped and from the sound it made Mr. Kline and the writer concluded that there was not over 50 pounds in either tank. Mr. Kline asked me to close the valves as the acetone would be lost if not. The valves were closed and containers loaded in Mr. Kline's truck and he left with them.

3. When the acetylene gas was received or stored in the warehouse or shop during hot weather it was kept cool with wet burlap covers, and it was treated the same way when shipped by Government truck to the field. This statement can

be substantiated by Mr. N. B. Phillips, now employed by the water users at Las Cruces, N. Mex., and a Mexican laborer by the name of Pete, who is now, or was a short time ago, employed by the Service in the Ysleta storehouse.

(Signed) N. E. FORDHAM.

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington, December 1, 1927.

Hon. C. B. HUDSPETH,
House of Representatives.

MY DEAR MR. HUDSPETH: Further reference is made to your letter of November 1 with which you transmitted affidavit by Mrs. Ellen Kline and Willard L. Kline in regard to the death of Lewis R. Kline, which occurred on or about July 1, 1918, in El Paso under conditions outlined in the affidavit.

It is stated in the affidavit that a report was made by the Rio Grande project office soon after the death of Mr. Kline. An exhaustive search has been made of the files in the El Paso office and in the office of the chief engineer at Denver, but no record of any written report has been found.

A report has now been received from Master Mechanic N. E. Fordham, who was formerly an employee of the Rio Grande project. From Mr. Fordham's report the following is quoted:

"The writer happened to be in the El Paso shop on the date Mr. Kline called for the empty containers. These containers were the property of the United States, having been purchased from the Searchlight Co. at Minneapolis, Minn., early in 1917. They were 100 cubic feet capacity and had the stamp of the I. C. C. on them. All the employees who had anything to do with the use of handling of acetylene gas, oxygen, or other explosive material were instructed as to how to care for it. When the welder used an acetylene container the contents were completely exhausted and the tank marked 'empty' with chalk before it was returned to the warehouse. On the day this accident happened Mr. Kline called at the warehouse, 318 South Leon Street, to collect the empty containers. The warehouseman was busy and the writer helped Mr. Kline load two of the containers in his truck. However, before they were put into the truck the writer borrowed a wrench from Mr. Kline and opened the valves on both containers as Mr. Kline wanted to be sure that they were empty. When the valves were opened some gas escaped and from the sound it made Mr. Kline and the writer concluded that there was not over 50 pounds in either tank. Mr. Kline asked me to close the valves as the acetone would be lost if not. The valves were closed and containers loaded in Mr. Kline's truck and he left with them.

"When acetylene gas was received, or stored in the warehouse or shop, during hot weather, it was kept cool with wet burlap covers, and it was treated the same way when shipped by Government truck to the field. This statement can be substantiated by Mr. N. B. Phillips, now employed by the water users at Las Cruces, N. Mex., and a Mexican laborer by the name of Pete, who is now, or was a short time ago, employed by the service in the Ysleta storehouse."

The above report embodies all the essential information it has been possible to secure, for the reason that most of the employees who were on the project at the date of the accident are no longer employed by the Bureau of Reclamation.

There is no general principle of law under which the United States could be held legally responsible for the death of Mr. Kline, even though it should be shown that his death occurred as a result of negligence on the part of Government employees. As you know, the sovereign cannot be held responsible for the negligence or laches of its employees.

For some years there has been incorporated in the various appropriation acts a provision which permits "payment of damages caused to the owners of lands or private property of any kind by reason of the operations of the United States, its officers, or employees, in the survey, construction, operation, or maintenance of irrigation works, and which may be compromised by agreement between the claimant and the Secretary of the Interior, or such officers as he may designate."

You will note that the above special provision relates only to payment of damages to property and does not cover the matter of personal injury.

It is necessary to report, therefore, that no legal liability rests upon the United States to make compensation, and there are no funds available for making payment in such cases.

Very truly yours,

(Signed) ELWOOD MEAD, *Commissioner.*

The STATE OF TEXAS,
County of El Paso, ss:

To whom it may concern:

Ellen Kline and Willard L. Kline being duly sworn on oath, depose and say that they are mother and son and that Lewis R. Kline was the husband of Ellen Kline and the father of Willard L. Kline. That Willard L. Kline is 23 years of age and was 14 years of age at the time of his father's death on July 1, 1918, and that the said mother and son live together at 801 North San Marcial Street in the city of El Paso, Tex., and that the said Ellen Kline has not remarried since her said husband's death. That for a period of about 3 years prior to July 1, 1918, the said Lewis R. Kline, deceased, together with affiants, ran the business known as the El Paso Headlight Co., at 1319 East Missouri Street. That at said time, said Lewis R. Kline was 50 years of age and his wife, Ellen Kline, was 41 years of age and that said Lewis R. Kline, out of said business had a yearly income of approximately $6,000. That on said date mentioned and prior thereto, the United States Reclamation Service was a patron of said El Paso Headlight Co. and used acetylene gas manufactured by said Headlight Co. and had containers or drums of 100 cubic feet content. That it was the custom of the said Lewis R. Kline to deliver said gas containers to the said Reclamation Service after having charged same. That when said containers had been used or emptied by the said Reclamation Service, they were placed by the said Reclamation Service in a certain part of their place of business and the deceased, Lewis R. Kline, together with his son, one of the affiants herein, would collect said used containers and haul them to the Headlight Co. and recharge same.

On July 1, 1918, said Willard L. Kline and his father collected several of the supposedly used containers or drums from the usual place of the Reclamation Service near Leon and Chihuahua Streets. That they carried said supposedly used drums to their place of business. That at approximately 6:30 p. m. on said date the deceased, as was his custom, had been, with a gage made for that purpose, measuring the amount of gas left in said drum or containers for the reason that said drums were never entirely emptied although the pressure in said drums had been greatly reduced and said gas was sold by actual measurement and it became necessary to measure the amount of gas still remaining in said drums after being used. That on said date at the time of explosion hereinafter explained, Ellen Kline was 10 or 12 feet from her husband at the time said drum exploded. That her said husband had measured the amount of gas remaining in all of said drums collected by her husband and son on this date except this particular drum which was the last one to be measured. That her said husband put his said gage or measuring device on said drum and that on account of the enormous pressure, said measuring device was smashed and at said time the last remark made by her said husband was, "This tank is hot", whereupon the said tank or drum exploded, killing the said Lewis R. Kline.

The only explanation of said occurrence is that the agents and servants of the United States Reclamation Service had, through mistake or negligence, placed the said drum or tank, without emptying or using it, with the empty or used drums and Willard L. Kline and his father had collected said drums, believing them all to have been empties in the sense hereinbefore explained. That said empties were placed in a part of the building of the said Reclamation Service that was exposed to the hot rays of the July sun and that acetylene gas in a filled tank must never be exposed to heat in that way because it generates enormous pressure and is calculated to explode. That there is a peculiar chemical action or reaction of said gas when exposed to heat of which all of the users of said gas are familiar with. That at the time of said explosion in which the said Lewis Kline met his death, none of the tanks so received from said Reclamation Service had been or were being charged; and as before said, the said Lewis R. Kline was measuring the extent of the emptiness of each tank. That affiants believe, and so believing state the fact to be, that had said tank been used or emptied by said Reclamation Service, then, in that event, said explosion would not have occurred and said Lewis R. Kline would not have met his death and that through some mistake or negligence the agents or servants of the United States Reclamation Service had placed said unused tank with the empties, exposed to the hot rays of the sun, which was the cause of the death of said Lewis R. Kline. That, as hereinbefore stated, the said business of the deceased netted approximately $6,000 a year. That it had been the intention of the deceased and his wife to give their said son a college education. That, on account of the death of the said husband and father, affiants were compelled to dispose of said business and that the widow

was never financially able to send her son to college and had to be contented with his finishing high school. That unfortunately the said Lewis R. Kline, although in good health, did not believe in or have life insurance. He had been a resident of El Paso 20 years at the time of his death and had acquired some property which was encumbered.

Affiants have never made any claim heretofore for the death of the said husband and father and were told that it was useless to present a claim as the Government could not be sued. That, after said explosion, there was an investigation made by the Reclamation Service and that, although affiant, Ellen Kline, requested a copy of its findings, she was refused a copy thereof. That newspaper clippings at said time reported the death of said Lewis R. Kline and the cause thereof in substantially the manner hereinabove set forth.

Affiants pray that the things hereinabove set forth be verified and that such relief be granted them as may be considered just and equitable.

ELLEN KLINE.
WILLARD L. KLINE.

Subscribed and sworn to before the undersigned authority, a notary public in and for El Paso County, Tex., this 27th day of October, A. D. 1927.

C. M. WILCHAR,
Notary Public in and for El Paso County, Tex.

The STATE OF TEXAS,
County of El Paso, ss:

To whom it may concern:

Ellen Kline and Willard L. Kline being duly sworn, on oath depose and say that they are mother and son and that Lewis R. Kline was the husband of Ellen Kline and the father of Willard L. Kline. That Willard L. Kline is 23 years of age and was 14 years of age at the time of his father's death on July 1, 1918, and that the said mother and son live together at 801 North San Marcial Street in the city of El Paso, Tex., and that the said Ellen Kline has not remarried since her said husband's death. That for a period of about 3 years prior to July 1, 1918, the said Lewis R. Kline, deceased, together with affiants, ran the business known as the El Paso Headlight Co. at 1319 East Missouri Street. That at said time said Lewis R. Kline was 50 years of age and his wife, Ellen Kline, was 41 years of age, and that said Lewis R. Kline, out of said business, had a yearly income of approximately $6,000. That on said date mentioned and prior thereto, the United States Reclamation Service was a patron of said El Paso Headlight Co. and used acetylene gas manufactured by said Headlight Co. and had containers or drums of 100 cubic feet content.

It was the custom of the said Lewis R. Kline to deliver said gas containers to the said Reclamation Service after having charged same. That when said containers had been used or emptied by the said Reclamation Service, they were placed by the said Reclamation Service in a certain part of their place of business and the deceased Lewis R. Kline, together with his son, one of the affiants herein, would collect said used containers and haul them to the Headlight Co. and recharge same. That on July 1, 1918, said Willard L. Kline and his father collected several of the supposedly used containers or drums from the usual place of the Reclamation Service near Leon and Chihuahua Streets. That they carried said supposedly used drums to their place of business. That at approximately 6:30 p. m. on said date the deceased, as was his custom, had been, with a gage made for that purpose, measuring the amount of gas left in said drums or containers for the reason that said drums were never entirely emptied although the pressure in said drums had been greatly reduced and said gas was sold by actual measurement and it became necessary to measure the amount of gas still remaining in said drums after being used. That on said date at the time of explosion hereinafter explained, Ellen Kline was 10 or 12 feet from her husband at the time said drum exploded. That her said husband had measured the amount of gas remaining in all of said drums collected by her husband and son on this date except this particular drum, which was the last one to be measured. That her said husband put his said gage, or measuring device, on said drum and that on account of the enormous pressure, said measuring device was smashed and at said time the last remark made by her said husband was, "This tank is hot", whereupon the said tank or drum exploded, killing the said Lewis R. Kline.

The only explanation of said occurrence is that the agents and servants of the United States Reclamation Service had, through mistake or negligence, placed the said drum or tank, without emptying or using it, with the empty or used drums and Willard L. Kline and his father had collected said drums, believing them all to have been empties in the sense hereinbefore explained. That said empties were placed in a part of the building of the said Reclamation Service, that was exposed to the hot rays of the July sun and that acetylene gas in a filled tank must never be exposed to heat in that way because it generates enormous pressure and is calculated to explode. That there is a peculiar chemical action or reaction of said gas when exposed to heat of which all of the users of said gas are familiar with. That at the time of said explosion in which the said Lewis Kline met his death, none of the tanks so received from said Reclamation Service had been or were being charged and as before said, the said Lewis R. Kline was measuring the extent of the emptiness of each tank. That affiants believe and so believing, state the fact to be that, had said tank been used or emptied by said Reclamation Service, then in that event, said explosion would not have occurred and said Lewis R. Kline would not have met his death and that through some mistake or negligence, the agents or servants of the United States Reclamation Service had placed said unused tank with the empties exposed to the hot rays of the sun which was the cause of the death of said Lewis R. Kline.

As hereinbefore stated, the said business of the deceased netted approximately $6,000 a year. That it had been the intention of the deceased and his wife to give their said son a college education. That on account of the death of the said husband and father, affiants were compelled to dispose of said business and that the widow was never financially able to send her son to college and had to be contented with his finishing high school. That, unfortunately, the said Lewis R. Kline, although in good health did not believe in or have life insurance. He had been a resident of El Paso 20 years at the time of his death and had acquired some property which was encumbered. That affiants have never made any claim heretofore for the death of the said husband and father and were told that it was useless to present a claim as the Government could not be sued. That after said explosion, there was an investigation made by the Reclamation Service and that although affiant, Ellen Kline, requested a copy of its findings, she was refused a copy thereof. That newspaper clippings at said time reported the death of said Lewis R. Kline and the cause thereof in substantially the manner hereinabove set forth.

Affiants pray that the things hereinabove set forth be verified and that such relief be granted them as may be considered just and equitable.

ELLEN KLEIN.
WILLARD L. KLEIN.

Subscribed and sworn to before the undersigned authority, a notary public in and for El Paso County, Tex., this 27th day of October A. D. 1927.

[SEAL] C. M. WILCHAR,
Notary Public in and for El Paso County, Tex.

THE OLD TOWN PUMP,
El Paso, Tex., February 2, 1934.

The Honorable R. E. THOMASON,
Member of Congress, Washington, D. C.

MY DEAR MR. THOMASON: I am taking the liberty of writing you in behalf of my mother, Mrs. Ellen Kline, for whom you introduced bill H. R. 13277 in the House of Representatives, asking for the sum of $10,000 as remuneration for the death of my father, Lewis R. Kline, who was killed in an accident occasioned by the negligence of the Reclamation Service.

I believe Mr. Fordham made a statement saying that he and my father had opened all of the valves to be sure that all drums were empty, before they were loaded up and taken away. As an eyewitness, and before the God above us, that statement is not true. I cannot blame Mr. Fordham for trying to shift the burden of the blame, yet the truth must not be denied.

On the day of the accident, at about 4 p. m. or slightly later, my father and I went to the reclamation shop to pick up all empty drums as was our custom. The empties were always to be found in the north end of the shop, just inside of a large driveway door, which opened and faced the west. I would estimate the door to be about 10 or 12 feet wide. We found the drum in question in a group of other drums, all of which were standing directly in the hot July sun.

I helped load all of the drums that were in the group, and then drove the truck back to the factory and helped unload them.

In the process of manufacture of acetylene gas it is necessary to allow remaining gas in empty drums to escape completely before putting in a liquid known as acetone, which later becomes a property of the acetylene gas.

After unloading all of the drums, they were taken into the building which housed the factory, and my father began opening all drums to allow the remaining gas to escape. During this process, he came to the one that was to explode a few seconds later. On opening the valve, he found a terrific outflow of gas, so he closed the valve immediately, which was only a natural course for anyone to follow when finding a full drum. In closing the valve, the terrific flow of gas was stemmed. Now, according to a verbal statement given my mother by a representative of the Bureau of Standards, who made a special trip to El Paso to investigate the accident, the explosion took place in the following manner:

The fully charged drum had been exposed to the hot July sun probably all day, and the gas had expanded to some enormous pressure. When my father opened the valve on this drum, he started the outward flow of gas, but finding the drum apparently full, he closed the valve hurriedly. However, the outward flow of gas was so terrific that the closing of the valve caused internal heat to generate, and in a matter of split seconds, the gas pressure built itself to a point where the steel drum could no longer hold the pressure, and the drum exploded. Allow me to create a mental picture for you of the violence of the explosion. The drum and force of the explosion carried my father to the rafters of the roof, killing him instantly. The drum traveling upward struck two 2- by 12-inch rafters that were set edgewise, and passed through them as though they were mere match sticks. It continued upward through the roof and soared to a height of approximately 100 feet, finally falling in a vacant lot about three-quarters of a block away.

My mother asked the investigators for written copies of the results of their findings, but none were ever sent to her, and to this day she has not received a word from anyone.

The death of my father left my mother in debt to the extent of approximately $12,000, no part of which was covered by insurance. She has fought a mighty brave battle with the odds against her most of the time. Her property has been mortgaged and remortgaged, until the ordinary human would have given up. She had me to raise and educate. I was to have had a Boston Tech education, but that was out, but that does not matter. I ask for nothing for myself. She made many and many personal sacrifices to give me my high-school education, and I am indeed very grateful for that much.

If the Committee on Claims understood this case in every detail, I feel sure that there would be no hesitancy on their part to allow this claim. I regret to say that I have been of very little help to my mother so far as helping financially on community obligations is concerned. Even at the present time, she is working in a basement of one of our local stores in order that she may pay her own way as she goes along. She is not in very good health, and her doctor has advised that she give up her position, but she is proud and accepts no charity, and refuses to do so.

Perhaps you may feel that I am inclined to overstress the picture, but Mr. Thomason, this is an appeal of a son for his mother, an appeal such as your own son would make, if Bill were in the same position. I have tried to tell you the truth in every little detail, so that you may have an accurate picture of the justness of this claim.

It must be remembered that I was an eyewitness to everything that happened, except the actual explosion. I left the factory, and 10 minutes later received a telephone call to come home at once. I defy Mr. Fordham to make a sworn statement that the drums were opened at the reclamation shop to see if they were all empty.

If there ever was a just cause for a claim, this certainly is one. My father came to his death through the absolute negligence of some employee of the Reclamation Service.

In closing, allow me to take this opportunity to thank you for the interest that you have already shown in behalf of my mother, and for the many things that you are constantly doing for the good of our community. We are all very grateful.

All I would plead is that this claim be considered and acted upon favorably by the Committee of Claims, as it would permit my mother, who is nearly upon

her sixtieth year, to spend the rest of her years in modest comfort, to which she is certainly entitled, and which she would have had if my father had not been taken from her.

Again thanking you, I remain,

Respectfully yours,

W. L. KLINE.

EL PASO, TEX., *December 9, 1927.*

Hon. C. B. HUDSPETH,
House of Representatives.

OUR DEAR MR. HUDSPETH: Your letter of December 2 to hand, also enclosed copy of Dr. Mead's letter which we read carefully.

With reference to the written report made by Mr. N. C. Fordham regarding the gas containers that exploded, the writer was present at the time the gas tanks were placed in the truck for delivery back to the plant. We never tested tanks, nor were we equipped to test the contents of the tanks while out on delivery. The tanks were carefully weighed and tested at our factory before being delivered, but were never tested by us at any time until they were back at our plant, supposedly empty.

Had the tank in question been tested at the reclamation shop, as Mr. Fordham states, the explosion would have occurred there. I am sure that the Bureau of Explosives will bear me out in that statement. A pressure of 50 pounds will not cause any tank of that type to explode. No doubt, the fuel tank was placed accidentally in with the group of empty tanks by some employee of the Reclamation Service.

Mr. Hudspeth, we wish to take this opportunity to thank you for all that you have done for our cause, and we sincerely hope that you will be successful in putting our claim through, as it is both honest and just.

Thanking you again for your interest, we remain,

Respectfully,

WILLARD L. KLINE.
ELLEN KLINE.

SACHS MERCANTILE CO., INC.

[H. Rept. No. 1298, 74th Cong., 1st sess., to accompany H. R. 4655]

Under the terms of the bill, as amended, the Secretary of the Treasury is directed to pay the Sachs Mercantile Co., Inc., the sum of $68,073.47 for losses incurred by it by reason of the purchase from the Navy Department, at a sale by auction at the Navy supply depot at Brooklyn, N. Y., on October 15, 1924, of 360,494 pairs of white navy trousers, as set forth in the special findings of fact, conclusion of law, and opinion of the Court of Claims of February 5, 1934.

The corporation, on the stated date, became the highest bidder at an auction sale held at the Navy supply depot in New York by the Navy Department for 363,494 pairs of white navy trousers at 83 cents per pair. The bid was accepted by the Department, and in due course the trousers were paid for in accordance with the terms of the sale.

After sale and shipment of the goods, the company discovered that many cases of the trousers were torn, damaged, and in a deteriorated condition, to such an extent that they were absolutely worthless, and immediately upon discovering this it protested to the Department against the character of the goods delivered, alleging that they were not of the character represented by the catalog, which had been submitted prior to the sale, and by representatives of the Navy.

The catalog was received by the company on October 1, 1924, through the mail from the Department. It advertised the sale of the property in question and specifically stated that all of the property would be offered for sale by auction "as is and if is without recourse. The description is based on the best available information, but no warranty is given by the Navy as to the exact quantity, quality, condition, weight, size, or description, or that same is in condition to be used for the purpose for which it was originally intended, or may be intended or desired to be used by the purchaser. No claim for allowance upon any of the grounds aforesaid will be considered after the property is knocked down to a bidder by the auctioneer. In every case where samples of the lots are shown, these samples to the best of the Navy's belief are true and fair, but bidders are cautioned that they must make examination of lots before the sale and no allowance will be made on account of any difference between the sample and lot."

Paragraph 16 in said catalog reads as follows:

"No representative of the Navy is authorized to make any statement or representation as to quality, character, condition, size, weight, or kind of any material offered at this sale, and any representation of statement made by any representative of the Navy concerning any such material will not be binding on the Navy nor considered as grounds for any claim for adjustment or rescission of any sale. This is not a sale by sample."

Two officers of the company visited the Naval Supply Depot at Brooklyn, N. Y., after receiving the catalog for the purpose of inspecting the goods. It appears that the trousers were packed in cases, 400 pairs to the case. Some of these cases were located on different floors of the building, and a few were open for inspection. There were several men engaged in the work of opening and sorting the trousers. The catalog had also stated that some of the trousers were located at four other navy yards, namely, Philadelphia, Hampton Roads, Va., Boston, and Mare Island, Calif. Neither these men, nor any representative of the claimant company, inspected the trousers located at the last-named places.

It also appears that at least 2 out of every 50 pairs were stained from the paper covering the bales in which they were packed. In the room where the sale was held several hundred pairs of the trousers were open for inspection, some of which were stained. On the day of the sale these same officers of claimant company visited the depot, prepared to bid on all of the surplus trousers offered for sale. When a certain lot was reached for sale, the Navy officer in charge announced that 100,000 pairs, more or less, had been withdrawn from the sale and that the trousers on display were a fair representation of the entire quantity offered. He also stated that the Navy had been quite successful in removing stains from trousers.

Apparently, notwithstanding the statements contained in the catalog, as previously set out by the Navy, the record shows that the claimant, through its officers, relied on these representations made by the Navy officer in charge. It also appears that it would have been impossible for the claimant to inspect all of the trousers, and that the greater portion inspected was found not to be seriously damaged or unsalable or unmarketable trousers.

After delivery of the trousers, the claimant found that the cases were not all of uniform size; that there were cases where the original stenciled covers were turned inward and stained some of the trousers with ink; that there were cases where nails were permitted to protrude inward which tore trousers in the moving and handling of the cases; and that there were other cases so large that 400 pairs of trousers contained therein were damaged by shunting around on the handling and moving thereof. Other trousers were badly stained from oil and other causes.

On January 28, 1929, by Senate Resolution 315, a bill (S. 1689) proposing an appropriation of $196,154.21 for the relief of the claimant in this matter was referred to the Court of Claims under the provisions of the Judicial Code. Thereupon on July 29, 1929, the claimant filed its original petition in the Court of Claims, amended petition September 3, 1929, and second amended petition January 29, 1931, praying for judgment against the United States in the sum stated with interest from June 16, 1925.

Before the court the claimant's damage was alleged to be as follows, itemized under three distinct heads:

1. Direct loss on sale of the trousers—that is, the difference between the purchase price and the amount received by the company upon the sale and disposition of the trousers—$68,073.47.

2. Overhead or operating expenses of the company in conducting its business attributable to the transactions involved, $77,538.70.

3. The loss of anticipated profit, $50,542.04.

As to items nos. 2 and 3, your committee does not believe them to be properly allowable, and finds that it has not been the policy of Congress to pay such claims. They have accordingly been eliminated from the bill.

As to item no. 1, upon which this report is based, and which your committee recommends payment of, the Court of Claims had the following to say: "The plaintiff's direct loss growing out of the sale of the trousers is established beyond any question." The total amount as found by unimpeachable evidence is given as $68,073.47. The court, however, denied the right of the company to recover the amount as shown in either items nos. 1 to 2, and rested their position upon the notice, heretofore stated, as was found in the catalog submitted by the Navy Department for the sale of the trousers in question. The court said that the plaintiff could not say that it was misled as to the character and quality of the trousers purchased because of misleading statements of the defendant's agents and officers in face of the fact that its bid was submitted on the understanding and upon the express condition that "no representative of the Navy is authorized to make any statement or representation" as to the quality or character of the goods offered for sale and that "any representation or statement made by any representative of the Navy * * * will not be binding on the Navy." Accordingly, the court found that the Sachs Co. had no legal claim against the Government, and your committee agrees with that conclusion.

But the court also said: "The plaintiff sustained a loss, and a grievous one, growing out of the transaction, as clearly disclosed by the findings, and whether or not the company should be reimbursed in whole or in part is a matter which rests with Congress and not within the powers of the court."

Your committee is of the opinion that the Government, through its agent, notwithstanding a notice to the contrary, misrepresented the goods purchased by the Sachs Mercantile Co. upon which representation it bought and received damaged and deteriorated trousers, sustaining a direct loss. Our conclusion with respect to the $68,073.47 damage sustained by the claimant is, therefore, that it is entitled to recover that amount from the Government on the basis that it was misled by the representations of a Government agent, notwithstanding the notice given in the catalog.

There is appended hereto the report of the Navy Department, together with a memorandum submitted by attorneys for the claimant, both to be made a part of this report.

NAVY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, June 14, 1934.

The CHAIRMAN, COMMITTEE ON CLAIMS,
House of Representatives.

MY DEAR MR. CHAIRMAN: Replying further to the committee's letter of May 17, 1934, transmitting a copy of the bill (H. R. 9294) for the relief of the Sachs Mercantile Co., Inc., and requesting an opinion of the Navy Department as to its merits, I have the honor to advise the committee as follows:

The purpose of the proposed legislation is to pay to the Sachs Mercantile Co., Inc., the sum of $145,612.17 to reimburse said corporation for losses incurred by it by reason of the purchase from the Navy Department, at a sale by auction at the Navy Supply Depot at Brooklyn, N. Y., on October 15, 1924, of 360,494 pairs of white navy trousers, as set forth in the special findings of fact, conclusions of law, and opinion of the Court of Claims of February 5, 1934.

The terms and conditions under which the aforesaid sale was conducted were set forth in detail in catalog no. 565–A, from which the following excerpts are quoted:

"All material listed in this catalog will be offered for sale by auction 'as is and if is' without recourse. The description is based on the best available information, but no warranty or guaranty is given by the Navy as to the exact quantity, quality, condition, weight, size, or description, or that same is in condition to be used for the purpose for which it was originally intended, or may be intended or desired to be used by the purchaser. No claim for allowance upon any of the grounds aforesaid will be considered after the property is knocked down to a bidder by the auctioneer. In every case where samples of the lots are shown, these samples to the best of the Navy's relief are true and fair, but bidders are cautioned that they must make examination of lots before the sale and no allowance will be made on account of any difference between the sample and lot.

"Full opportunity for actual physical inspection of the material listed is offered to prospective bidders for 1 week prior to date of sale (Sunday excepted). Failure on the part of any purchaser to inspect the material will not constitute grounds for any claim for adjustment or rescission of contract.

"No representative of the Navy is authorized to make any statement or representation as to quality, character, condition, size, weight, or kind of any material offered at this sale, and any representation or statement made by any representative of the Navy concerning any such material will not be binding on the Navy nor considered as grounds for any claim for adjustment or rescission of any sale. This is not a sale by sample."

At the sale the Sachs Mercantile Co., Inc., the claimant named in the bill, was the highest bidder and purchased 360,494 pairs of trousers and subsequently on March 27, 1925, purchased 2,800 additional pairs, making a total purchase of 363,294 pairs of trousers. After the sale the claimant protested against the character of the goods delivered, alleging that they were not of the quality or condition represented by the catalog and by representatives of the Navy.

The Navy Department advised the claimant that said protest was without legal basis in view of the express provisions of the catalog as above quoted. Subsequently a bill (S. 3980) was introduced in the Sixty-ninth Congress providing for payment to the claimant of $159,008.67 and a bill (S. 1689) was introduced in the Seventieth Congress providing for payment of $196,154.21. This latter bill was, on January 28, 1929, referred by Senate Resolution 315 to the Court of Claims.

In its findings pursuant to said resolution, the court found the direct loss to the Sachs Mercantile Co., Inc., on the sale of trousers, was $68,073.47, and that—

"The overhead expenses of plaintiff during the period that applied to the transactions on white trousers purchased from the Navy, including all charges, salaries, commissions, traveling expenses, advertising, freight, shipping, storage, alterations, insurance, rent, light and electricity, printing, telephone and telegraph, general expenses, legal accounting, interest, and bad debts, were $77,538.70."

Apparently the total of these items represents the amount contemplated by the bill.

In its opinion the Court of Claims held—

"The plaintiff cannot be heard to say that it was misled as to the character and quality of the trousers purchased because of misleading statements of the

defendant's agents and officers in face of the fact that its bid was submitted on the understanding and upon the express condition that 'no representative of the Navy is authorized to make any statement or representation' as to the quality or character of the goods offered for sale and that 'any representation or statement made by any representative of the Navy * * * will not be binding on the Navy.' If the plaintiff, despite this unmistakable and positive provision in the terms and conditions of the sale, saw fit to submit a bid for the entire lot of trousers offered for sale, without having examined and inspected the whole of them, relying upon the unauthorized statements of agents of the defendant engaged in sorting and packing the trousers as to the quality of portions of the lot not inspected, it did so at its own risk. If it elected to rely on the unauthorized statements of persons conducting the auction that samples on display at the place of sale were fairly representative of the lot of trousers advertised and offered for sale it also did that at its own risk. It was expressly visited with notice that 'this is not a sale by sample.' "

* * * * * * *

"It is not claimed that there was a shortage in delivery of the number of pairs of trousers purchased by the plaintiff. The trousers were all delivered from the specific lot no. 5 advertised and offered for sale in defendant's catalog no. 565–A. They were offered for sale 'as is and if is' without recourse, without warranty or guaranty on the part of the Navy Department as to the exact quantity, quality, condition, weight, size, or description, or that they were in condition to be used for the purpose for which they were originally intended or might be intended or desired to be used by the purchaser. The plaintiff's bid was made and accepted on these terms and conditions. The Government in no way breached the terms and conditions of the sale as set forth in its catalog. The plaintiff under these facts and circumstances has no legal claim against the Government for any loss it may have sustained by reason of the purchase and sale of the trousers."

There is enclosed for the information of the committee a copy of the report dated September 8, 1925, by the officer in charge of the Navy Supply Depot, Brooklyn, N. Y., which covers fully all details in connection with the sale on which the claim is based.

The cost of the proposed legislation is $145,612.17.

The Navy Department is of the opinion that the enactment into law of H. R 9294 would be prejudicial to the public interests in that it would create a dangerous precedent that would be cited by persons and corporations seeking congressional relief to cover losses sustained in transactions with the Government when such losses were due to their own poor judgment, negligence, or ordinary business hazards, and therefore recommends against the enactment of the bill H. R. 9294.

Sincerely yours,

CLAUDE A. SWANSON.

MEMORANDUM IN RE H. R. 4655 (74TH CONG.) FOR THE RELIEF OF THE SACHS MERCANTILE CO., INC.

FEBRUARY 20, 1935.

COMMITTEE ON CLAIMS,
House of Representatives, Washington, D. C.

This bill provides for the payment to the Sachs Mercantile Co., Inc., a New York corporation, of the sum of $145,612.17, to cover losses incurred by it growing out of the purchase of white Navy trousers from the Navy Department at a sale at public auction held at the Navy Supply Depot, at Brooklyn, N. Y., on October 15, 1924.

As a result of its bid it received 360,494 pairs of trousers at a price of 83⅓ cents per pair. Subsequently, it purchased from the Navy 2,800 additional pairs at 93 cents per pair, making its total purchases 363,294 pairs, for which it paid the Navy Department $301,814.02.

In the catalog covering the sale at auction these trousers were described as "white trousers", "surplus material." Some thousands of pairs, on display before the sale, were inspected by the plaintiffs, but not all the trousers were available for inspection at any time prior to the sale. Most of the trousers were packed in wooden cases, containing 400 pairs per case, but there were also 898 bales, each containing 50 pairs of trousers. Representatives of the Sachs Mercantile Co. asked to have additional cases opened for inspection but were informed that was impossible, but were assured that those they had inspected were representative of the entire lot to be placed on sale.

In their inspection some of the trousers were found to be slightly bale-stained, but among the entire lot made available for inspection there were no seriously damaged or unsalable or unmarketable trousers.

During and after delivery of the trousers the claimant, however, found that the great bulk of the trousers purchased were not only seriously damaged and unfit for sale as surplus goods, as advertised in the Government catalog, but that many thousands of pairs could not be disposed of at any price. This condition was due to the fact, as shown by testimony of Government witnesses, that these trousers in large part had been previously allotted to Navy use and had been subsequently collected from navy yards and stations all over the United States and from American battleships throughout the world.

The claimant, therefore, made complaint as to the actual condition of the goods, not only to the officer in charge of the Navy Supply Depot at Brooklyn, where the sale was made, but to the Secretary of the Navy in Washington. To the Secretary of the Navy they submitted samples of some of the trousers received by them, with the request that the damaged trousers be replaced by other surplus material then available for public sale by the Navy, but the Department even refused to examine the samples of damaged and unsalable trousers submitted, claiming they had no legal authority to make any settlement or adjustment.

Claimant's continued efforts to secure relief proved unavailing and Senator Copeland, of New York, after a thorough personal investigation of the entire matter, introduced a bill for its relief in the Sixty-ninth Congress. Hearings on this bill were held by a subcommittee on Naval Affairs of the Senate in February 1927, at which hearings Senator Copeland made the following opening statement:

"This matter was brought to my attention about a year ago by Mr. Sachs, who came to my office in New York and complained about the alleged bad treatment he had received at the hands of the Navy Department.

"It seems that he had bought certain surplus material, and felt that the goods he received were not such goods as has been represented to him. Mr. Sachs urged me to go down to the loft building, on the lower West Side, to see for myself what the situation was as regards these goods. I went down to this place and found, in a warehouse, on two floors of the warehouse, great packing cases containing these white trousers. In order that I might be satisfied that I was not being imposed upon, I selected at random cases which I asked to be opened so that I might see for myself exactly the condition these goods were in, and to test for myself whether or not I thought the representations made by Mr. Sachs were true.

"Many of these cases were made out of very light veneer; not made of heavy strong timber, but temporary stuff, such as you would pack phonographs in. They were large cases, nearly as far across as this table and as high.

"These trousers had been put in the boxes, done up in packages, I suppose, of a dozen each. No paper had been put around them. These loose packages were put in; many of the boards were rough on the inside, and many of them had been stenciled so that they were covered with black ink. These trousers had rubbed up and down in the boxes; the corners had been worn off, meaning that the seats and knees of the trousers had been mutiliated. The goods were soiled with the black ink. Broken boxes had permitted the weather to come in, so that many of the garments were stained; and what was even worse than this, as I view it, many of these trousers had been made of two qualities of cotton. They had bleached unequally, so that one leg was white and the other yellow, like Mardi Gras pants. That condition seemed to me to be an evidence that the Navy itself had been imposed upon in the purchases of these goods, but it is very apparent to me, Mr. Chairman, that this firm was grossly imposed upon by the United States Government, and there should be some sort of an adjustment, as I see it.

"I made every effort, through the Secretary of the Navy, by representing the conditions as I had seen them and by presenting to him this evidence which you will see directly; but the Navy felt that they had ample defense and were under no legal obligation to make it right. I have no question myself that there is a great moral obligation upon this Government. If any private individual had treated another private individual as this firm was treated by the Government, there is no question at all that there would be a recovery in court, and I feel that this firm has been outrageously treated, and it is only right that Congress should know the facts.

"In order that the matter may be placed before the Naval Affairs Committee first, and then Congress, I presented this bill. I have made a statement to attempt to bring home to the committee the situation as it presents itself to me.

"This firm is here represented by Mr. Reynolds, and I will ask him to present the matter to the committee."

No final action was taken on this bill by the committee, but the measure was reintroduced in the Seventieth Congress and was referred by Senate resolution for the consideration of the Court of Claims.

Extended hearings for the court were held before commissioner John A. Elmore. Numerous witnesses appeared for the claimant, among them Senator Copeland, who reiterated his testimony before the Senate Subcommittee on Naval Affairs. The attorney for the Government relied entirely upon a statement in the catalog that the trousers were sold "as is" without warranty and that regardless of any description or representations made by officers of the Navy before and at the time of sale there was no legal liability in the matter on the part of the Government.

Commissioner Elmore resigned his post after the hearings were concluded and the findings of facts were prepared by another Commissioner, who had no opportunity to hear the testimony or to observe the demeanor of any of the witnesses on the stand. In this report, however, the Commissioner found:

"During and after the delivery to the warehouse of the trousers purchased, officers of plaintiff found that the cases were not all of uniform size; that there were cases where the original stenciled covers were turned inward and stained some of the trousers with ink; that there were cases where nails were permitted to protrude inward which tore trousers in the handling and moving of cases; and that there were other cases so large that 400 pairs of trousers contained therein were damaged by shunting around on the handling and moving thereof. Some of the trousers delivered to plaintiff were composed of white and yellow materials as a result of having been made of both bleached and unbleached material. These trousers were referred to by some witnesses as Mardi Gras trousers. Other trousers were badly stained from oil and other causes. The trousers inspected by officers of plaintiff at the times of their visits to the Navy Supply Depot, Brooklyn, before the auction sale, and the trousers that were on display for inspection on the day of the auction sale were not damaged except by stains due to baling.

"During the delivery of the trousers to the plaintiff, officers of plaintiff made complaint to the officer in charge at the Navy Supply Depot, Brooklyn, as to the condition of the cases and trousers. Soon thereafter, they made complaint to the Secretary of the Navy and asked for an adjustment either by return of part of the purchase money paid by plaintiff for said trousers or for delivery to plaintiff of undamaged goods to take the place of the goods damaged. They were advised that the Navy Department had no legal authority to make any settlement or adjustment.

"As to the number of cases that were poorly constructed, the number of trousers that were stained by ink, the number of trousers that were torn, the number of trousers damaged by shunting around in oversized cases, the number of Mardi Gras trousers, and the number of trousers that were stained from oil and other causes, the proof is unsatisfactory."

The Commissioner also found (p. 21, par. 11) that the claimants suffered as a result of the transaction a direct loss of $68,073.47 and an overhead loss of $77,538.70, making a total loss of $145,612.17, as claimed in the pending bill.

While in its finding the court held that there was no legal liability to pay this claim on the part of the Government, the court further stated:

"That the plaintiff sustained a loss, and a grievous one, growing out of the transaction is clearly disclosed by the findings. Whether, under the facts and circumstances shown, a moral obligation rests on the United States to reimburse the plaintiff, in whole or in part, for its loss is a matter that lies wholly within the jurisdiction of Congress and is one upon which the court is not called upon to express an opinion."

Claimant submits that there is a strong moral obligation on the part of the Government, in view of all the facts as disclosed by the testimony, to grant the relief prayed for and respectfully requests that a favorable report be made on the bill by your honorable Committee on Claims.

Respectfully submitted.

SACHS MERCANTILE CO., INC.,
By MCCUMBER, REYNOLDS, BRAND & REDMOND,
Its Counsel.

GUIDEO BISCARO ET AL.

[H. Rept. No. 2162, 74th Cong., 2d sess., to accompany H. R. 4915]

The proposed legislation is for the purpose of appropriating the sum of $3,500 to be distributed between Guideo Biscaro, Giovanni Polin, Spironello Antonio, Arturo Bettio, Carlo Biscaro, and Antonio Vannin, being the amount of bond deposited with the United States Immigration Service guaranteeing the presence in court of Virginia Nasato, Melchiore Miotto, Silvio Polin, Augustino Del Bianco, Daniel Biscaro, Augustin Taveron, and Emilio Miotto, and later forfeited because of failure of the bondsmen to produce the aliens in court for deportation proceedings.

On August 25, 1925, the Department of Labor issued a warrant for the arrest of each of the above-named aliens for deportation on the charge that he was in the United States in violation of the immigration laws. In accordance with the provisions of the Immigration Act, authority was granted in each warrant for the release of the alien under bond in the sum of $500 pending deportation. The claimants named in the bill were each owners of certain United States Liberty bonds. It seems that they employed to act as their attorney one Frank A. Corti, of Batavia, N. Y., each one submitting to him certain Liberty bonds, totaling $3,500, to be used in furnishing the $500 bond in the case of each of the seven aliens. On August 28, 1925, Mr. Corti executed as surety the required $500 bond in each case. On the following day, August 29, 1925, Mr. Corti deposited with each immigration bond the Liberty bonds above referred to as security for the faithful performance of the conditions and stipulations of each immigration bond. The matter was left entirely in the hands of Mr. Corti, as attorney, the claimants being ignorant of the procedure necessary. Never were the names of the claimants used in connection with the transaction, the matter being conducted entirely by Mr. Corti and the receipts for the bonds described being given to Mr. Corti in his name.

It seems that the aliens in question entered the United States at Niagara Falls, N. Y., on various dates in the year 1924, without being examined and inspected by an immigration officer, or being charged to the quota of their native country, or paying the head tax required by the immigration laws. In view of these facts, the Department issued warrants for the deportation of the aliens to Italy, their native country. The immigration officer in charge at Buffalo, N. Y., addressed a letter to Mr. Corti at the address he gave when he executed the immigration bonds, calling upon him to deliver up the aliens to the immigration authorities at the Grand Trunk Station, Black Rock, Buffalo, N. Y., on November 1, 1925, for deportation. However, Mr. Corti failed to respond in any manner to the letter, and subsequently the collateral security pledged with each bond, and furnished by the claimants, was forwarded to the Department and deposited in the Treasury of the United States. This was done without any knowledge whatsoever on the part of the claimants, who, apparently, had assumed that the matter was in good hands and that their interest was being looked after by Mr. Corti.

Subsequently the aliens were apprehended by the immigration authorities of the Buffalo, N. Y., district and were deported from the port of New York on January 5, 1926.

Affidavits are on file which indicate that the aliens in question were at work on the day they were supposed to appear in court, having received no notification whatsoever that they were to appear in court. This, of course, is because of the fact that Mr. Corti failed to notify either the bondsmen or the aliens. Doubtlessly the claimants would have been in a position to, and would have been ready and willing to see that the aliens appeared on the required date had they received notice to this effect.

It has been ascertained by your committee that the attorney, Mr. Corti, has consistently refused to cooperate in any manner in submitting any reason for his negligent attitude to the matter, and in this particular case it would appear that it is unfortunate that the amount of $3,500 should be lost by the claimants, and as a

matter of equity recommends the passage of the bill, inasmuch as the aliens were deported, and without any expense to the Government. As the matter now stands, the Treasury has profited by the wrongful and negligent attitude of Mr. Corti, who was employed in good faith by the claimants to handle for them a matter which they were not familiar enough with to handle alone. This legislation would not cost the Government anything, and after due consideration your committee feels that the money should be refunded to the previous owners of the Liberty bonds.

There are six beneficiaries in the bill, one having furished bonds amounting to $1,000, and the other five, $500 each. Hereafter made part of this report are photostatic copies of the receipts issued to the attorney, Mr. Corti for the various bonds, and attached to each one is a notation by Mr. Corti to show that the money was actually posted by the claimants.

Attached hereto is the report of the Department of Labor, together with other pertinent papers.

DEPARTMENT OF LABOR,
OFFICE OF THE SOLICITOR,
Washington, April 17, 1935.

Hon. AMBROSE J. KENNEDY,
Chairman, House Committee on Claims,
Washington, D. C.

MY DEAR CONGRESSMAN KENNEDY: I have the honor to refer to your letter of February 12, 1935, requesting the opinion of this Department on the merits of bill H. R. 4915, entitled "For the relief of Guideo Biscaro, Giovanni Polin, Spironello Antonio, Arturo Bettio, Carlo Biscaro, and Antonio Vannin." The bill provides for the payment to those persons of the total sum of $3,500, which sum is stated therein to be the amount of the bond deposited with the United States Immigration Service for the purpose of guaranteeing the presence in court of certain aliens, namely, Virginia Nasato, Melchiore Miotto, Silvio Polin, Augustino Del Bianco, Daniel Biscaro, Augustin Taveron, and Emilio Miotto, and later forfeited because of the failure of the bondsmen to produce the aliens in court for deportation proceedings.

In accordance with the practice long followed in cases of this character, the Department, instead of transmitting to your committee its files containing all the papers pertaining to the cases of the above-named aliens, is submitting a complete statement of the facts as disclosed by its records. Such records show that on August 25, 1935, the Department issued a warrant for the arrest of each of the above-named aliens for deportation on the charge that he was in the United States in violation of the immigration laws. In accordance with the provisions of section 20 of the Immigration Act of 1917 (39 Stat. 890; U. S. C., title 8, sec. 156), authority was granted in each warrant for the release of the alien under bond in the sum of $500, pending deportation. On August 28, 1925, Frank A. Corti, whose address was 14 Jackson Street, Batavia, N. Y., executed as surety the required $500 bond in each case. On the following day, August 29, 1925, Mr. Corti deposited with each immigration bond certain United States Liberty bonds of the face value of $500 as security for the faithful performance of the conditions and stipulations of each immigration bond. On the same date, he executed a power of attorney constituting and appointing the Secretary of Labor as his attorney, for him and in his name to collect the said Liberty bonds or any part thereof or to sell, assign, and transfer them in the event any default occurred in performing the conditions of each immigration bond. Those conditions imposed upon Mr. Corti the obligation of delivering up each alien for a hearing or hearings under the warrant of arrest and for deportation, if found to be in the United States unlawfully, upon request therefor being made by an immigration official representing the United States.

The evidence adduced at the hearings given the aliens under the warrants of arrest disclosed that they had entered the United States at Niagara Falls, N. Y., on various dates in the year 1924, without being examined and inspected by an immigration officer, or being charged to the quota of their native country, or paying the head tax required by the immigration laws. In view of these facts, the Department issued warrants for the deportation of the aliens to Italy, their native country. The warrant for the deportation of Virginia Nasato was issued on October 7, 1925; Melchiore Miotto, October 8, 1925; Silvio Polin, October 13, 1925; Augustino Del Bianco, October 7, 1925; Daniel Biscaro, October 8, 1925;

Augustin Taveron, October 15, 1925, and Emilio Miotto, October 9, 1925. With a view to enforcing such warrants, the immigration officer in charge at Buffalo, N. Y., addressed a letter to Mr. Corti at the address he gave when he executed the immigration bonds, calling upon him to deliver up the aliens to the immigration authorities at the Grand Trunk Station, Black Rock, Buffalo, N. Y., on November 1, 1925, for deportation. Mr. Corti was reminded in that letter of the obligation he had assumed under the condition of each of the immigration bonds of performing the duty he was then being called upon to fulfill, and was admonished that if he failed to comply with the demand made upon him such failure would probably result in the forfeiture of the bonds and of the collateral security he had deposited therewith. Upon receipt of a report from the immigration officer in charge at Buffalo that none of the aliens had been surrendered for deportation, the Department entered orders on November 10, 13, 16, and 17, 1925, declaring the condition of each immigration bond broken and the penalty thereof forfeited, and directed that steps be taken to collect the penalty of each bond. Pursuant to such orders and in accordance with the terms and provisions of the power of attorney which Mr. Corti had executed in favor of the Secretary of Labor, the collateral security pledged with each bond was forwarded to the Department and deposited in the Treasury of the United States to the credit of "Miscellaneous receipts."

Subsequently, the aliens were apprehended by the immigration authorities of the Buffalo, N. Y., district and were deported from the port of New York on January 5, 1926. There is nothing in the records of the Department indicating that Mr. Corti, or any person in his behalf, rendered any assistance in the apprehension of the aliens or furnished any information that lead to their apprehension. The obligation assumed by Mr. Corti clearly imposed upon him the duty of surrendering the aliens for deportation when he was called upon to do so, and when he defaulted in performing that duty, the Department was clearly within its rights in forfeiting the bonds. Mr. Corti, according to the records, was an attorney at law at the time he executed the immigration bonds. In view of his knowledge of the law, the assumption is warranted that he was fully aware of the seriousness of the undertaking he entered into and, also, of the consequences that would follow any default in performing the obligation he voluntarily assumed. Mr. Corti never made any explanation to excuse or to justify his default, nor did he ask for any additional time to enable him to produce the aliens for deportation, or offer to cooperate with the immigration authorities in doing so. No claim was set up that any mistake of fact or law was made in the forfeiture of the bonds.

In view of the foregoing facts, the Department is of the opinion that bill H. R. 4915 is not based on any meritorious claim and respectfully recommends that it be not passed.

There is nothing in the Department's records showing that any of the beneficiaries named in the bill had any connection whatever with the execution of the immigration bonds or with the deposit of the collateral security pledged therewith. It may be that they were the actual owners of the Liberty bonds that were deposited by Mr. Corti, but even if they were they have not presented any facts which, in the opinion of this Department, would warrant the Government in reimbursing them for the loss they sustained through Mr. Corti.

Respectfully,

For the Secretary of Labor.

CHARLES E. WYZANSKI, Jr.,
Solicitor of Labor.

RECEIPT OF IMMIGRATION OFFICER FOR UNITED STATES BONDS ACCEPTED AS SECURITY

(This receipt is to be given to the owner of the bonds when he deposits with the immigration officer either the bonds or an executed form 553A–2, showing that they have been properly deposited in an approved depository to the order of the Secretary of Labor)

BUFFALO, N. Y., *August 29, 1925.*

The undersigned hereby acknowledges receipt from Frank A. Corti of the United States bonds hereinafter described, deposited as security on bail bond dated August 28, 1925, filed with the undersigned to be transmitted to the Secretary of Labor through the Bureau of Immigration, United States Depart-

ment of Labor, for the delivery of the alien Melchiore Miotto as stipulated in said bail bond.

Title of bonds	Coupon or registered	Total face amount	Denomination	Serial number	Interest dates
			Percent		
Third Liberty Loan	Coupon	$500	4¼	90546	March and September.

This receipt is executed in duplicate, and the original must be surrendered by the obligor before the bonds deposited are returned to him. This receipt is not assignable.

S. D. SMITH, *District Director.*

This is to certify that Giovanni Polin put up the bonds set forth herein for the alien described herein.

FRANK A. CORTI.

RECEIPT OF IMMIGRATION OFFICER FOR UNITED STATES BONDS ACCEPTED AS SECURITY

(This receipt is to be given to the owner of the bonds when he deposits with the immigration officer either the bonds or an executed form 553A–2, showing that they have been properly deposited in an approved depository to the order of the Secretary of Labor)

BUFFALO, N. Y., *August 29, 1925.*

The undersigned hereby acknowledges receipt from Frank A. Corti of the United States bonds hereinafter described, deposited as security on bail bond dated August 28, 1925, filed with the undersigned to be transmitted to the Secretary of Labor through the Bureau of Immigration, United States Department of Labor, for the delivery of the alien Augustino Tiveron as stipulated in said bail bond.

Title of bonds	Coupon or registered	Total face amount	Denomination	Serial number	Interest dates
			Percent		
Third Liberty Loan	Coupon	$100	4¼	3004312	March and September.
Do	do	100	4¼	3685383	Do.
Do	do	100	4¼	3685382	Do.
Do	do	100	4¼	1145284	Do.
Do	do	100	4¼	1145285	Do.

This receipt is executed in duplicate, and the original must be surrendered by the obligor before the bonds deposited are returned to him. This receipt is not assignable.

S. D. SMITH, *District Director.*

This is to certify that Antonio Vannin, of Akron, N. Y., is the person who gave me the Liberty bonds for the purpose of furnishing the bail bond of the alien, who was arrested, by the name of Augustin Tiveron.

FRANK A. CORTI.

RECEIPT OF IMMIGRATION OFFICER FOR UNITED STATES BONDS ACCEPTED AS SECURITY

(This receipt is to be given to the owner of the bonds when he deposits with the immigration officer either the bonds or an executed from 553A–2, showing that they have been properly deposited in an approved depository to the order of the Secretary of Labor)

BUFFALO, N. Y., *August 29, 1925.*

The undersigned hereby acknowledges receipt from Frank A. Corti of the United States bonds hereinafter described, deposited as security on bail bond dated August 28, 1925, filed with the undersigned to be transmitted to the Secre-

tary of Labor through the Bureau of Immigration, United States Department of Labor, for the delivery of the alien Silvio Polin as stipulated in said bail bond.

Title of bonds	Coupon or registered	Total face amount	Denomination	Serial number	Interest dates
			Percent		
Second Liberty Loan	Coupon	$100	4¼	E02530385	May and November.
Do	do	100	4¼	A01587646	Do.
Do	do	50	4¼	C03284393	Do.
Do	do	50	4¼	B00714907	Do.
Do	do	50	4¼	A00714906	Do.
Do	do	50	4¼	C02020418	Do.
Do	do	50	4¼	E03129670	Do.
Do	do	50	4¼	E03461475	Do.

This receipt is executed in duplicate, and the original must be surrendered by the obligor before the bonds deposited are returned to him. This receipt is not assignable.

S. D. SMITH, *District Director.*

This is to certify that Spironello Antonio is the person who put up the bonds herein set forth for the alien Silvio Polin.

FRANK A. CORTI.

RECEIPT OF IMMIGRATION OFFICER FOR UNITED STATES BONDS ACCEPTED AS SECURITY

(This receipt is to be given to the owner of the bonds when he deposits with the immigration officer either the bonds or an executed form 553A–2, showing that they have been properly deposited in an approved depository to the order of the Secretary of Labor)

BUFFALO, N. Y., *August 29, 1925.*

The undersigned hereby acknowledges receipt from Frank A. Corti of the United States bonds hereinafter described, deposited as security on bail bond dated August 28, 1925, filed with the undersigned to be transmitted to the Secretary of Labor through the Bureau of Immigration, United States Department of Labor, for the delivery of the alien Emilio Miotto as stipulated in said bail bond.

Title of bonds	Coupon or registered	Total face amount	Denomination	Serial number	Interest dates
			Percent		
Third Liberty Loan	Coupon	$100	4¼	3600827	March and September.
Do	do	100	4¼	2998315	Do.
Do	do	100	4¼	485629	Do.
Do	do	100	4¼	485630	Do.
Do	do	100	4¼	485628	Do.

This receipt is executed in duplicate, and the original must be surrendered by the obligor before the bonds deposited are returned to him. This receipt is not assignable.

S. D. SMITH, *District Director.*

This is to certify that Giovanni Polin put up the bonds set forth herein for the alien herein set forth.

FRANK A. CORTI.

RECEIPT OF IMMIGRATION OFFICER FOR UNITED STATES BONDS ACCEPTED AS SECURITY

(This receipt is to be given to the owner of the bonds when he deposits with the immigration officer either the bonds or an executed form 553A–2, showing that they have been properly deposited in an approved depository to the order of the Secretary of Labor)

BUFFALO, N. Y., *August 29, 1925.*

The undersigned hereby acknowledges receipt from Frank A. Corti of the United States bonds hereinafter described, deposited as security on bail bond

dated August 28, 1925, filed with the undersigned to be transmitted to the Secretary of Labor through the Bureau of Immigration, United States Department of Labor, for the delivery of the alien Daniele Biscaro, as stipulated in said bail bond.

Title of bonds	Coupon or registered	Total face amount	Denomination	Serial number	Interest dates
			Percent		
Third Liberty Loan	Coupon	$100	4¼	2998497	March and September.
Do	do	100	4¼	4238940	Do.
Do	do	100	4¼	3401188	Do.
Do	do	100	4¼	3122952	Do.
Do	do	100	4¼	1119352	Do.

This receipt is executed in duplicate, and the original must be surrendered by the obligor before the bonds deposited are returned to him. This receipt is not assignable.

S. D. SMITH, *District Director.*

This is to certify that Carlo Biscaro put up the bonds herein set forth as bail for the alien Daniele Biscaro.

FRANK A. CORTI.

RECEIPT OF IMMIGRATION OFFICER FOR UNITED STATES BONDS ACCEPTED AS SECURITY

(This receipt is to be given to the owner of the bonds when he deposits with the immigration officer either the bonds or an executed form 553A–2, showing that they have been properly deposited in an approved depository to the order of the Secretary of Labor)

BUFFALO, N. Y., *August 29, 1925.*

The undersigned hereby acknowledges receipt from Frank A. Corti of the United States bonds hereinafter described, deposited as secuirty on bail bond dated August 28, 1925, filed with the undersigned, to be transmitted to the Secretary of Labor through the Bureau of Immigration, United States Department of Labor, for the delivery of the alien Virginio Nasato as stipulated in said bail bond.

Title of bonds	Coupon or registered	Total face amount	Denomination	Serial number	Interest dates
			Percent		
Third Liberty Loan	Coupon	$100	4¼	1201288	March and September.
Do	do	100	4¼	2690672	Do.
Do	do	100	4¼	1193421	Do.
Do	do	100	4¼	1193422	Do.
Do	do	100	4¼	1193420	Do.

This receipt is executed in duplicate, and the original must be surrendered by the obligor before the bonds deposited are returned to him. This receipt is not assignable.

S. D. SMITH, *District Director.*

This is to certify that Guido Biscaro has put up the bonds set forth herein as bail bond for the alien herein.

FRANK A. CORTI.

RECEIPT OF IMMIGRATION OFFICER FOR UNITED STATES BONDS ACCEPTED AS SECURITY

(This receipt is to be given to the owner of the bonds when he deposits with the immigration officer either the bonds or an executed form 553A–2, showing that they have been properly deposited in an approved depository to the order of the Secretary of Labor)

BUFFALO, N. Y., *August 29, 1925.*

The undersigned hereby acknowledges receipt from Frank A. Corti of the United States bonds hereinafter described, deposited as security on bail bond dated August 28, 1925, filed with the undersigned to be transmitted to the Secretary of Labor through the Bureau of Immigration, United States Department of Labor, for the delivery of the alien Augustino Del Bianco as stipulated in said bail bond.

Title of bonds	Coupon or registered	Total face amount	Denomination	Serial number	Interest dates
Third Liberty Loan	Coupon	$500	*Percent* 4¼	145267	March and September.

This receipt is executed in duplicate, and the original must be surrendered by the obligor before the bonds deposited are returned to him. This receipt is not assignable.

S. D. SMITH, *District Director.*

This is to certify that Bettio Arturo put up the within bonds as bail for the alien herein set forth.

FRANK A. CORTI.

To whom it may concern:

I was chief clerk at the Beaver Products Co. (later taken over by the Certain-teed Products Co.) in 1925 when on December 10, the Bureau of Immigration agents seized aliens in default of bond. When these men were sought they were at work in the mine.

DELOS WILKINSON.

Sworn to before me this 29th day of June 1935.

ROBERT J. RICHARDS,
Notary Public.

CERTAIN-TEED PRODUCTS CORPORATION,
Akron, N. Y., June 27, 1935.

To whom it may concern:

This is to certify that our records indicate the following employment of the men as shown below:

Daniel Biscare entered our employ during the week ending September 6, 1925, and left our employ during the week ending December 12, 1925.

Augustino Travori entered our employ during the week ending November 8, 1925, and left our employ during the week ending December 12, 1925.

Virginio Nasanti entered our employ during the week ending September 6, 1925, and left our employ during the week ending December 12, 1925.

CERTAIN-TEED PRODUCTS CORPORATION
(Successors to Beaver Products Corporation),
By C. C. HALL, *Chief Clerk.*

UNIVERSAL GYPSUM & LIME CO.,
Akron, N. Y., June 29, 1935.

To whom it may concern:

This is to advise that the following-named men: Emilio Miotto, Melchoire Miotto, Augustino del Bianco, Guiseppe Polin, were in the employ of our predecessor, the American Gypsum Co., from December 1924 until December 1925.

During the term of their employment at this mine these men were sober and industries and were well thought of by their fellow employees. They worked on December 10, 1925, and were at work when the Government officers came to the mine to apprehend them.

Very truly yours,

DOUGLAS C. JEFFREY,
General Superintendent.
A. F. GILLIE,
Office Manager.

AKRON, N. Y., *June 27, 1935.*

To whom it may concern:

I was mine foreman at the Beaver Products Corporation mine at Akron, N. Y., when on December 10, 1925, aliens were seized by immigration agents for default of bond.

It is also to my knowledge that these men were called from their working places in the mine, so that the immigration agents could take them.

To my knowledge these men were sincere in their intentions of putting in an appearance at the appointed time. I understand they were not notified.

I am still employed by this mine concern in the capacity of mine superintendent; although it has since been taken over by Certain-teed Products Corporation.

WM. LOTZ,
Mine Superintendent.

Subscribed and sworn to before me this 29th day of June 1935.

V. E. DAWSON,
Notary Public.

HENRIETTA JACOBS

[H. Rept. No. 1948, 74th Cong., 2d Sess., to accompany H. R. 6213]

The purpose of the proposed legislation, as amended, is to pay to Henrietta Jacobs, the sum of $2,500 on account of an injury sustained while visiting the United States Naval Air Station at Lakehurst, N. J., on June 1, 1930.

The German airship, *Graf Zeppelin*, was moored in a hangar at Lakehurst at the time this accident occurred. It was, of course, the object of many visitors, including the claimant herein. Visitors' lines had been erected along the deck of the hangar, and guards were stationed at various points to safeguard the ship and control the crowds.

These lines were supported by posts, which were in turn made fast by lines to eyebolts sunken in the hangar's deck. The eyebolts were in holes along the deck about 8 inches in length, 4 in width, and 4 in depth. Under ordinary circumstances, when the eyebolts were not in use, the holes were filled by wooden blocks. Some of these blocks had been removed from the holes so that the bracer lines could be attached to the bolts, as before described.

The Navy Department states that the surging of the crowds caused the lines to give, pulling the post, and uncovering partly the hole in question. It states that the posts had served to cover the holes when originally rigged. The claimant caught her foot in one of these holes which caused her to fall, sustaining a fractured knee. The Department disclaims any responsibility for the accident on the grounds that it had taken all care necessary to protect the claimant, as well as other visitors to the hangar.

We come now to the question of the liability of the Government, as we see it. No issue is made of the fact that the airship was an attraction; that its inspection was open to the public; that all persons who visited the air station on that day for the purpose of viewing the craft were not trespassers, but were licensees; and that, as such, it was the duty of the Government to take reasonable care in protecting them.

Undoubtedly, the officials at the air station took some steps in that direction, as stated in our previous comment. But it appears to your committee that such officials should have contemplated the danger that could arise, and did arise, as a result of the uncovering of this eyebolt hole. If the surging of the crowd was sufficient to loosen the post protecting the hole in question, there is a strong likelihood that similar holes were thereby left unguarded. We do not contend that they should have undertaken to have each visitor personally warned, but they at least could have detailed a few men to avoid the possibility of these small pits becoming unguarded by regularly checking them. In view of the large crowds that were on hand to see the zeppelin, it is fortunate that others were not similarly injured.

The claimant was incapacitated for about 4 months as a result of her injury. She has undergone an operation therefor, and at present has a permanent limitation in the knee joint. It is alleged that her actual damage, including loss of salary, has been approximately $3,300. However, as there is no conclusive evidence supporting the allegation of damage, your committee recommends settlment of the claim in the sum of $2,500.

There is appended hereto the report of the Navy Department, and other relevant papers.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, May 8, 1933.

The CHAIRMAN, COMMITTEE ON CLAIMS,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Replying further to the committee's letter of April 21, 1933, transmitting a bill (H. R. 4247) "For the relief of Henrietta Jacobs", and requesting the opinion of the Navy Department as to its merits, I have the honor to inform you as follows:

The purpose of the proposed legislation is to pay $10,000 "to Henrietta Jacobs on account of an injury sustained while visiting the United States Naval Air Station at Lakehurst, N. J., in the year 1930, which has resulted in permanent injury."

It appears from the records of the Navy Department that on June 1, 1930, the date on which the accident to the claimant occurred, the German rigid airship *Graf Zeppelin* was moored in a hangar at the Naval Air Station, Lakehurst, N. J. The presence of this airship was the attraction for a great number of people.

Visitors' lines were rigged inside the hangar to permit visitors to have as good a view of the airship as possible, consistent with the necessary safety precautions. Guards were stationed at various stations in the hangar to properly sageguard the airship and equipment and control crowds.

Miss Jacobs while in the hangar at about 7 p. m. on the date in question accidently stepped into one of the deck eyebolt holes near the visitors' lines. It is probable that Miss Jacobs' primary interest at the time was in viewing the *Graf Zeppelin* and that little or no attention was being paid to where she was going other than to follow the people in the hangar.

There are a number of holes in the deck of the hangar similar to the one into which Miss Jacobs stepped. They are about 8 inches long, 4 inches wide, and about 4 inches deep and have eyebolts sunk in them. When the eyebolts are not in use, the holes are filled with wooden blocks. The wooden block was out of the hole in which Miss Jacobs stepped, as a line had been secured to the eyebolt therein to brace a post supporting lines surrounding the Zeppelin to permit the nearer approach of visitors. As originally rigged the post itself prevented visitors from stepping into the hole, but due to the surging of the crowds against the lines, the post had been moved to one side leaving the hole partially uncovered.

The claimant was carried to the station hospital and afterward transported to Bellevue Hospital, New York City, in the station ambulance attended by one of the physicians attached to the air station.

The district medical officer, third naval district, was instructed by the commandant of such district to keep in touch with the hospital to ascertain the condition of Miss Jacobs, and he reported July 22, 1930, to the commandant as follows:

"Frequent inquiry has been made at Bellevue Hospital regarding the condition of Miss Jacobs and the following reports have been received:

"June 1, 1930: Admitted Bellevue Hospital, New York, N. Y.

"June 2, 1930: Under care of Dr. John Hunter. Diagnosis: Fracture, knee. Condition: Not serious.

"June 3, 1930: No change.

"June 5, 1930: Condition remains the same.

"June 13, 1930: Resting; not serious.

"June 16, 1930: Resting; not serious.

"June 24, 1930: Getting along all right.

"July 1, 1930: Getting along all right.

"July 9, 1930: Fairly good; not serious.

"July 16, 1930: Not serious.

"July 22, 1930: Went home on Saturday (July 19, 1930)."

No further information is available in the Navy Department as to the subsequent physical condition of the claimant. The above reports from the hospital, however, do not indicate that the injury was of a permanent nature.

The commanding officer of the naval air station at Lakehurst is of the belief that "every reasonable precaution was taken not only for the safeguarding of rigid airships but for safeguarding visitors on the station at that time."

From the information above set forth it would appear that the naval representatives took all precautions reasonably incumbent on them under the circumstances to protect visitors, and that the recess or hole was exposed by the crowding of the people pushing on the line and moving the post that was flared over the recess.

Miss Jacobs was present on the station of her own volition out of curiosity to view the *Graf Zeppelin*. She was not on the premises for business reasons nor was she present at the station at the request of anyone connected therewith.

The cost of the proposed legislation is $10,000.

In view of the foregoing and as all reasonable precautions appear to have been taken by the Government representatives and therefore no negligence can be imputed to them, the Navy Department feels that claimant's equities are not

sufficient to justify any reimbursement by the Government, and therefore recommends against the enactment of the bill H. R. 4247.

In compliance with the committee's request there are enclosed copies of the following papers bearing on the subject matter of the bill, viz:

(*a*) Copy of statement of Lt. (Jr. Gr.) F. C. McCord, United States Navy, executive officer, naval air station.

(*b*) Copy of statement of Lt. (Jr. Gr.) C. F. Miller, United States Navy.

(*c*) Copy of statement of Lt. (Jr. Gr.) H. H. Pickens, United States Navy.

(*d*) Copy of statement of Pvt. Leroy C. Gosnell, United States Marine Corps.

(*e*) Copy of statement of Richard Lloyd, corporal, United States Marine Corps.

(*f*) Copy of statement of Lt. Comdr. L. E. Mueller (Medical Corps), United States Navy.

(*g*) Copy of statement of Lt. (Jr. Gr.) B. E. Bradley (Medical Corps), United States Navy.

Sincerely yours,

CLAUDE A. SWANSON,
Secretary of the Navy.

UNITED STATES NAVAL AIR STATION,
Lakehurst, N. J., June 2, 1930.

From: Lt. (Jr. Gr.) B. E. Bradley (Medical Corps), United States Navy.
To: Commanding Officer.
Subject: Miss Henrietta Jacobs, injury of.

1. Miss Henrietta Jacobs, of 44 West Seventy-fifth Street, New York, N. Y., was first seen by me at 7:25 p. m. on June 1, 1930, as requested by station duty officer. She stated that she had injured her right knee about 7:15 p. m. on June 1, 1930, when she stepped into a hole while inside the hangar at this station.

2. A diagnosis of transverse fracture of the right patella was made from an examination of this patient. The diagnosis was confirmed by Lt. Comdr. L. E. Mueller (Medical Corps), United States Navy. Miss Jacobs was given a hypodermic, the right knee joint was immobilized and she was transferred, about 1 hour later, by the station ambulance to Bellevue Hospital, New York, N. Y., for further treatment.

B. E. BRADLEY.

BELLEVUE HOSPITAL,
New York City, May 12, 1933.

Hon. LORING M. BLACK,
Chairman, House of Representatives Committee on Claims,
Washington, D. C.
(This is a privileged and confidential communication.)

DEAR SIR: Replying to your inquiry regarding Henrietta Jacobs, age 38, of 44 West Seventy-fifth Street, I wish to say that she was admitted to this hospital on June 2, 1930. She was operated on June 10, 1930, an open reduction for fracture of the patella being done.

She was discharged on July 19, 1930, condition improved.

Diagnosis: Fracture of the patella.

Very truly yours,

E. GIDDINGS, M. D.,
Assistant General Medical Superintendent.

BELLEVUE HOSPITAL,
New York City, February 13, 1934.

Mr. JAMES J. MACKIN,
Clerk, House of Representatives,
Committee on Claims, Washington, D. C.
(Confidential communication.)

DEAR SIR: In response to your inquiry, I wish to say that one Henrietta Jacobs, age 38, of 44 West Seventy-fifth Street, was admitted to this hospital on June 2, 1930, and was discharged on July 19, 1930.

Diagnosis: Fracture of the patella.

Very truly yours,

E. GIDDINGS, M. D.,
Assistant General Medical Superintendent.

ASA C. KETCHAM

[H. Rept. No. 2310, 74th Cong., 2d sess., to accompany H. R. 6522]

As amended, the proposed legislation provides for payment to Asa C. Ketcham, of Fairmont, Md., of the sum of $2,500 in full satisfaction for his claim against the United States Government for loss of his vessel *J. J. Underhill*, which was negligently beached in August 1933 so as to render it unfit for further use, and the possession of which was refused said Asa C. Ketcham prior to such beaching, by employees of the Corps of Engineers, War Department.

The vessel in question, loaded with oyster shells, ran into a sumerged pile while approaching a dock in Alexandria, Va., June 17, 1933, and sank. The owner and pilot, claimant herein, Asa C. Ketcham, had not before visited the dock and lost the regular channel, steering his boat into the remains of an old wharf. With the aid of a tug and fireboat belonging to the District of Columbia, the vessel was towed into Washington Channel toward a marine railway for repairs. However, it commenced to leak as it entered the channel and sunk off Hains Point.

Claimant then visited the War Department seeking assistance. The district engineer for the Washington district was authorized by claimant to remove the vessel under the provisions of the River and Harbor Act of 1899, which allows the Government to take possession of sunken vessels constituting a serious interference to navigation for removal. Claimant advised the engineer that he was without funds to salvage the vessel at the time, and he alleges and it appears that an agreement was then reached that the War Department would assist in raising the vessel and patching the holes in it, when it would be turned over to claimant. Mr. Ketcham also agreed to reimburse the Government, as he was able to, for the expense incurred by it in raising the vessel and making it seaworthy. Claimant states also that the district engineer agreed to raise the boat if claimant would get a diver to patch the holes up, from the Navy yard.

It appears that the day after these agreements the work of raising the boat was done. Claimant furnished the diver as promised, but the commander of the Government derrick told him that he had brought a diver with him, and refused the services of claimant's diver. Statements are also on file that Mr. Ketcham had his crew on hand and the necessary fuel to get his vessel under way at the time, in anticipation that the agreement of the previous day, whereby he was to get possession of the boat, would be carried out.

The commander of the Government derrick who was in charge of the operations refused claimant possession of the boat, however, and after it had been floated, it was towed by said derrick to Gravelly Point where it was beached. The statements on file show that the vessel was beached on what seems to have been a narrow channel, in deep water, but with the bow resting on hard bottom at one side of the channel, and stern resting on hard bottom at the other side. It appears that claimant was also present and ready and willing to take charge of his boat at this time, but was refused the right so to do by the Government officer in charge, who stated that he could not "touch her for 30 days."

This was about August 10, 1933. The War Department then advertised the boat for sale, and claimant's son made a bid of $20, which was accepted, but subsequently rejected. The bid was unaccompanied by a $200 bond required by the Department, but the real reason for canceling same appears to have been the discovery that the vessel was in such a damaged condition that the expense of raising it and getting it afloat was more than the vessel was worth.

The Department indicates that the damage to the *J. J. Underhill*, outside of its condition when originally beached, was caused by storms, but the preponderance of the evidence seems to show that the damage resulted from the condition in which the vessel was left. The hull is at the present time at Gravelly Point, lying across the channel where it was placed.

Under all of the circumstances, while we admit that the Government had the right to take possession of the vessel for removal as an interference to navigation, it hardly seems that any law could give it the right under the facts in this case to refuse claimant possession thereof when he was ready, willing, and able to take it. Furthermore, we cannot conclude that he should not have relied on the agreement between the district engineer and himself; but, be this as it may, certainly no authority existed for negligently beaching the vessel as indicated, thereby causing it to become a total loss to anyone.

Claimant is a man of meager means, and this vessel was his only means of making a livelihood. It appears that the sum of $2,500 is reasonable compensation for its loss, and we recommend payment in that amount. Attached are all material papers

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WAR DEPARTMENT,
Washington, June 19, 1935.

Hon. AMBROSE J. KENNEDY,
Chairman, Committee on Claims,
House of Representatives, Washington, D. C.

DEAR MR. KENNEDY: The Department has received your form letter dated May 29, 1935, enclosing a copy of H. R. 6522, a bill for the relief of A. C. Ketcham, and requesting for the use of the committee, all papers or copies of same, on file in this Department relating to the claim together with an opinion as to its merits.

It is proposed by this bill to pay the sum of $4,000 to Mr. Ketcham in full satisfaction of his claim against the United States Government for the loss of his vessel *J. J. Underhill* loaded with oyster shells when it ran into a submerged pile while approaching a dock in Alexandria, Va., June 17, 1933.

The vessel *J. J. Underhill*, loaded with oyster shells, ran into a submerged pile while approaching a dock in Alexandria, Va., June 17, 1933, and sank. It was ascertained that Mr. Ketcham had never previously visited the dock. Instead of using the regular channel leading thereto he steered his boat into an area in which there were numerous piles, the remains of an old wharf. Mr. Ketcham subsequently requested aid from the Commissioners of the District of Columbia, who furnished a tug and a fireboat. The *J. J. Underhill* was pumped out and it was towed toward a marine railway in Washington Channel. As it entered the channel, the vessel commenced to leak and sank in about 20 feet of water. In its sunken position it constituted a serious interference to navigation as would warrant its immediate removal by the Department.

Section 20 of the River and Harbor Act of March 3, 1899, provides in effect that whenever, in the opinion of the Secretary of War or any agent of the United States to whom proper authority has been delegated, a sunken vessel seriously interferes with or especially endangers navigation, immediate possession of the vessel may be taken and its removal effected. The law further provides that the expense of removing the obstruction shall be a charge against such craft, and if the owner fails to reimburse the United States the craft may be sold and the proceeds of the sale covered into the Treasury.

The United States district engineer, Washington, D. C., who has immediate supervision over such matters in this vicinity, was advised by Mr. Ketcham that he was without funds to salvage the vessel and requested that the salvage operations be conducted in such a way as to damage the vessel as little as possible. Thereupon the district engineer was authorized to remove the vessel under the provisions of the aforementioned statute. The vessel was raised and towed to the mud flats near Gravelly Point and there beached. It was subsequently advertised for sale with a requirement that the successful bidder furnish bond to protect the United States against the possibility that it would sink before reaching a marine railway for repairs.

Mr. Ketcham was the only bidder, but being unable to furnish the necessary bond, his proposal was rejected. A few days later the storm of August 22, 1933, caused such an opening of the seams of the hull that its removal was impracticable.

Under these circumstances the Department does not consider that Mr. Ketcham has a valid claim against the United States on account of the loss of said vessel, and it is accordingly recommended that the proposed legislation be not enacted into law.

Sincerely yours,

GEO. H. DERN, *Secretary of War.*

JULY 14, 1933.

Mr. ASA C. KETCHAM,
Fairmount, Md.

DEAR SIR: Under the provisions of section 20 of the River and Harbor Act of March 3, 1899, you, as original owner, have the privilege of securing the schooner *J. J. Underhill* by reimbursing the United States for the expense of removal, which was $455.15.

You are advised that if the amount stated is not paid within 30 days, or by August 15, 1933, the United States will proceed to dispose of the schooner, either by sale or by destroying it, as is most advantageous to the United States. If you do not intend to exercise the above privilege, this office should be notified so that sale of the schooner can be advertised at once, before further deterioration occurs.

Very truly yours,

J. D. ARTHUR, Jr.,
Major, Corps of Engineers, District Engineer.

FAIRMOUNT, *July 16, 1933.*

UNITED STATES ENGINEERS OFFICE.

GENTS: Your letter received and in reply will say that I would not give $455.15 for the *J. J. Underhill* in the condition that she is in. When I went to Major Arthur to get this boat he told me that he would have her taken up if the navy-yard boat would patch the holes. They agreed to do it, and I had no idea that you were going to take the boat and charge me for taking her up. You will have to put her up at auction. There is someone responsible for this boat, and the boat can be gotten up cheaper than blowing her up.

Respectfully,

A. KETCHAM.

AUGUST 14, 1933.

Mr. JOHN R. KETCHAM,
Washington, D. C.

DEAR SIR: You are hereby notified that your bid of $20 for the bugeye, *J. J. Underhill* is accepted and its removal should be started at once.

In order to give you what assistance possible this office will pump the vessel out and get it afloat after you remove the shells which are in the hold. The removal of these shells is necessary to float and trim the vessel so that it can be made seaworthy. Under no circumstances will the vessel be allowed to depart with any load.

Please keep this office informed of the progress of the work so that preparations can be made to raise it when preliminary work is completed.

For and in the absence of the district engineer,

Very truly yours,

L. H. HEWITT,
Captain, Corps of Engineers.

SEPTEMBER 22, 1935.

Mr. JOHN R. KETCHAM,
Washington, D. C.

DEAR SIR: Referring to your bid for the bugeye *J. J. Underhill*, you are advised that the storm of August 23 apparently racked the vessel to such an extent that the seams are open and to raise it would require considerable equipment. It is believed that the expense would be more than the vessel is worth, and further efforts toward raising it will not be made.

In view of the above and as your bid was not accompanied by the bond for $200 as required, the bid is rejected and the money deposited with the bid, $20, will be returned to you at this office upon application.

Very truly yours,

J. D. ARTHUR, Jr.,
Major, Corps of Engineers, District Engineer.

September 26, 1933, received $20 in cash.

J. R. KETCHAM.

FEBRUARY 20, 1936.

Hon. T. ALAN GOLDSBOROUGH,
House of Representatives.

MY DEAR MR. GOLDSBOROUGH: I submit to you this sworn statement covering certain details of the loss of my boat, the *J. J. Underhill*, in the Potomac River waters adjacent to Washington, D. C., in August 1933.

My boat was lying off Hains Point, D. C., where she sank while being towed to a wharf in Washington Channel. Major Arthur, the district engineer of the War Department for the Washington district, told me himself that he would raise the vessel if I would have the holes in the hull patched so that she would float when raised, and that he would then turn her over to me.

Accordingly, on _____, 1933, divers went below for me and patched the two holes which they could reach as my vessel lay on the bottom. They planned to patch the final hole after the boat was gotten up off the bottom by the engineers' derrick.

The next day the engineers' derrick was put in position to raise my boat. The divers were there when the derrick arrived and were prepared to go overboard to patch the final hole as my boat hung in the derrick sling.

But the commander of the derrick refused to allow my divers to do further work, saying he had his own diver. Consequently he sent his diver below and that diver patched the hole. Pumps from the derrick cleared the hold of my boat and she was not leaking further when the derrick towed her, in a slacked sling to Gravelly Point where she was to be beached. In beaching my boat damage was done to her which ruined her for further use. Instead of placing her on a level bottom where she would be awash she was dropped into deep water across a channel so that her bow rested on hard bottom at one side of the channel and her stern rested on hard bottom at the opposite side. In this position the boat formed a regular bridge and with her load of oyster shells she sagged amidships and broke. The following morning early I went aboard the boat and found her decks and rails under water 4 feet at low tide. All her gear, except her sails, had been stripped during the night. I took the sails off myself, at the request of one of the engineer officers named Merrick, and put them aboard a scow belonging to the engineers, which took them to the navy yard.

At this time I was prepared and ready to take charge of the boat but the officer, Merrick, told me I could not touch her for 30 days. So I undertook to do nothing further at that time.

My son, John R. Ketcham, was told by the engineers that he would have to buy my boat at public auction and the engineers agreed to raise her and float her if my son did purchase the vessel. In accordance with these instructions my son did bid $20 on the boat and was declared purchaser. In conformity with their agreement to float the vessel, the engineers undertook to raise her by building up her hatches clear of the water level. A 4-inch syphon was run into the hold and after much pumping was found to be inadequate to take out the water. Because the hull was broken where she sagged between the banks of the channel, the water rushed in as fast as the syphon could take it out.

Failing completely to raise my boat, the War Department engineers returned my son's $20 and called off the deal.

With me, both at Hains Point and at Gravelly Point, to assist me in taking possession of the boat each time the district engineers worked on her were my crew, Charles Ketcham, who is my son, and George Walters, colored man, and the son who bid on the boat, John R. Ketcham, and Ira C. Harper. All of the persons will substantiate this statement of facts.

ASA C. KETCHAM.

Sworn to and subscribed before me this 24th day of February 1936.

[SEAL] ROBERT E. P. KREITER,
Notary Public, D. C.

IN ANSWER TO THE WAR DEPARTMENT'S LETTER OF FEBRUARY 19, 1934

FEBRUARY 24, 1936.

Their statement refers to Major Arthur's reason for not giving me my boat. They do not say anything about his promise to take this boat up and give her to me. This is what caused all of the trouble. He sent his derrick to my boat and

the work was started as promised. I stopped by his office on my way down to see if the derrick was working and a man by the name of Schmitt said "yes it was at work, but that I would have to pay for taking my boat up." I asked how much it would cost and he said somewhere around $100. I told him that I could not pay him all of it now but I would pay what I could and later pay the balance. I told him to go ahead and take her up and let me have her. Then I went on down to the derrick and boarded it with my crew and found them at work getting slings on her. I and my crew went to work helping any way we could to get her up. After we had lifted her to the top of the water and had her half pumped out I was informed by Engineer Merrick that I was not going to get the boat. His orders had been to carry her to Gravelly Point and there let her sink again and after 30 days I could reclaim her. I and my crew stayed aboard until she was left at Gravelly Point.

I believe Major Arthur was perfectly honest and meant to do what he said, but while the derrick was working on my boat, he found some river laws which made him afraid to give her to me. Major Arthur's mistake caused the boat to be lost and I think the Government should be responsible for his error. My boat was the only means of making a living, and I haven't been able to make a living since. I have spent on this boat in the last 2 years over $3,000. If Major Arthur had not promised to get this boat up I could and would have gotten a private derrick at Alexandria, Va., to raise it for $100. You have no contradiction from the War Department that Major Arthur did not make this promise to me.

Gentlemen, this is a true and accurate account of the case and I hope you will give it your kindest consideration.

ASA C. KETCHAM.

Personally appeared before me Mr. Asa C. Ketcham this 26th day of February 1936, and makes oath in due form of law that the above statement is true.

[SEAL] EDWARD A. GLADDING, *Notary Public.*

My commission expires May 3, 1937.

As witness for Asa C. Ketcham, captain of the *J. J. Underhill*, whose boat was sunk and raised at Hains Point by the Government, this is to verify the bill, H. R. 6522, which has asked for proof that Captain Ketcham was there and ready to take charge of the vessel when she was raised in accordance with the promise of Major Arthur.

I, John R. Ketcham, was with Captain Ketcham and his crew ready to take charge of the vessel when she was raised.

As to why he did not take her when she was beached, she never was beached but was sunk across a channel at Gravelly Point with 4 feet of water over her deck on low tide. Furthermore, the engineer of the derrick said that Captain Ketcham could not have her or even touch a piece of rope on her because she belonged to the Government.

I made the only bid of $20 for the boat *J. J. Underhill*, which was to have been accompanied by a $200 bond. I was not able at the time to raise this amount of money so was advised by Major Arthur that if my father, Asa C. Ketcham, and his crew could be present at the raising of the said boat, that the $200 bond would be defaulted. My father, his crew, and I were ready and waiting to take charge of the boat when it should be raised, but owing to the position the boat was left in at Gravelly Point it was impossible for the engineers to raise it.

JOHN R. KETCHAM.

Sworn to and subscribed before me this 24th day of February 1936.

[SEAL] ROBERT E. P. KREITER,
Notary Public, District of Columbia.

As witness for Asa C. Ketcham, captain of the *J. J. Underhill*, whose boat was sunk and raised at Haines Point by the Government, this is to verify the bill (H. R. 6522) which has asked for proof that Captain Ketcham was there and ready to take charge of the vessel when she was raised in accordance with the promise of Major Arthur.

I, Ira C. Harper, was with Captain Ketcham and his crew ready to take charge of the vessel when she was raised.

As to why he did not take her when she was beached, she never was beached but was sunk across a channel at Gravelly Point with 4 feet of water over her deck at low tide. Furthermore, the engineer of the derrick said that Captain Ketcham could not have her or even touch a piece of rope on her because she belonged to the Government.

IRA C. HARPER.

Sworn to and subscribed before me this 24th day of February 1936.

[SEAL] ROBERT E. P. KREITER,
Notary Public, District of Columbia.

DISTRICT OF COLUMBIA, *ss:*

This is to certify that I, Clifton M. Evans, of Crisfield, Md., on or about August 10, 1933, took Mr. Asa C. Ketcham and his crew of two, together with two barrels of gasoline from Mr. Ketcham's boat, to Crisfield, Md., from Washington, after Mr. Ketcham's boat was beached at Gravelly Point.

CLIFTON M. EVANS.

On the 18th day of February 1936, appeared before me Mr. Clifton M. Evans, of Crisfield, Md., who subscribes to the above as true and correct.

Signed and sealed before me, A. M. Huguenin, a notary public in and for the District of Columbia, this 18th day of February 1936.

[SEAL] A. M. HUGUENIN, *Notary Public.*

My commission expires April 1, 1940.

MARTIN J. BLAZEVICH

[H. Rept. No. 2311, 74th Cong., 2d sess., to accompany H. R. 6611]

The purpose of the bill, as amended, is to pay to Martin J. Blazevich the sum of $2,500 in settlement of his claims against the United States for injuries sustained by him while a prisoner at the United States disciplinary barracks, Alcatraz, Calif.

While a soldier in the Philippine Islands, the claimant contends that he defended himself against a fellow soldier who attacked him with an iron poker, by taking the poker away from his assailant and striking him over the head with it. He was sentenced therefor to be dishonorably discharged the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor for 1 year. The sentence was approved and the Pacific branch, United States disciplinary barracks, Alcatraz, Calif., was designated as the place of confinement.

While at Alcatraz, the authorities in charge assigned him to work in the carpenter shop, where he was engaged on November 2, 1916. While so engaged, he was sawing lumber with the aid of a power-driven circular saw to which there was no safeguard or safety device of any kind attached, and while sawing the lumber, his left hand came in contact with the unguarded circular saw, and as a result, he lost the first, second, and third fingers of his left hand.

The Government furnished all necessary medical and surgical treatment and hospitalization, but there was no authority by which any additional compensation could be granted him.

Your committee wishes to call attention to the fact that it is a custom of the committee not to favorably consider claims of this nature unless it can be clearly established that negligence was existent on the part of the institution. In this instance, it is felt that not to have a circular saw properly guarded is gross negligence as there is considerable danger involved in the operation of a circular saw. The claimant was performing work assigned to him. Your committee considers the loss of three fingers a serious handicap, and accordingly recommends passage of the bill, H. R. 6611, in its amended form.

Appended hereto is the report of the War Department, together with other pertinent papers.

WAR DEPARTMENT,
Washington, May 22, 1933.

Hon. LORING M. BLACK,
Chairman, Committee on Claims, House of Representatives.

DEAR MR. BLACK: Careful consideration has been given to the bill H. R. 3990, Seventy-third Congress, first session, for the relief of Martin J. Blazich, formerly a member of Company A, Thirteenth Infantry, which bill you transmitted to the War Department on May 11, 1933, with a request for information relative thereto and my opinion as to its merits.

The pending bill proposes to pay to this former soldier the sum of $5,000 in full satisfaction of all claims against the Government arising out of injuries sustained by him while a prisoner at the United States disciplinary barracks, Alcatraz, Calif.

By reference to the enclosed report of the Acting The Adjutant General of the Army it will be seen that the status of this man on November 2, 1916, when he sustained the injuries referred to was that of a civilian who had been dishonorably discharged from the military service March 19, 1916, and was held in confinement as a general prisoner pursuant to the sentence of a general court martial.

Doubtless the records would disclose that there are many other individuals who, after their dishonorable discharge from the military service, died or incurred disabilities while in confinement under a court-martial sentence. The War Department is constrained to take the view that all persons of a similar status should receive similar treatment under general laws, and that if legislation in the premises is enacted, the same should be on broad and general lines that would afford

equal relief to all who are in equal measure entitled to it, none being singled out for preferential treatment by special legislation. The Department is not aware of any special or peculiar merit in the case of Mr. Blazich that should single him out for relief that is not extended to all in the same category. The Department is of the opinion that legislation for the relief of only individual or single cases would work a discrimination in the law, and be a just ground for complaint from others not so favored. For these reasons, favorable consideration of the pending bill is not recommended.

Sincerely yours,

GEO. H. DERN, *Secretary of War.*

CASE OF MARTIN BLAZICH, PRIVATE, COMPANY A, THIRTEENTH INFANTRY

WAR DEPARTMENT,
THE ADJUTANT GENERAL'S OFFICE,
July 29, 1932.

The honorable the SECRETARY OF WAR.

It is shown by the records of this office that Martin Blazich (name not borne as Martin J. Blazevich) enlisted March 16, 1915, at Fort McDowell, Calif., and was forwarded to Manila, Philippine Islands, May 5, 1915, where he was received June 5, 1915, and assigned to duty as a private, Company A, Thirteenth Infantry, Fort Mills, Corregidor Island, Philippine Islands.

The records also show that Private Blazich was dishonorably discharged the service March 19, 1916, pursuant to the sentence of a general court martial, the charge, specification, pleas, findings, and sentence of the court being promulgated in General Court-Martial Orders No. 133, Headquarters, Philippine Department, Manila, Philippine Islands, dated March 17, 1916, a copy of which orders is hereto attached. He was released from confinement January 16, 1917.

The medical records show that, while a general prisoner at Alcatraz, Calif., this soldier was under treatment in hospital from April 3 to 12, 1916, for gonorrheal urethritis, chronic, old; and from November 2, 1916, to December 13, 1916, for lacerated wounds, severe, all fingers of left hand, index and middle fingers entirely severed, all just below base of second phalanx, ring and little fingers almost severed, accidentally incurred by getting hand caught in a circular saw at Alcatraz, Calif., November 2, 1916; operation November 2, 1916: (1) Disarticulation of second finger, metacarpo-phalangeal joint, left; (2) amputation of third and fourth fingers at proximal middle phalanges, left.

Respectfully submitted.

C. H. BRIDGES,
Major General, The Adjutant General.

WAR DEPARTMENT,
THE ADJUTANT GENERAL'S OFFICE,
May 22, 1933.

To the Honorable the SECRETARY OF WAR.

The records of this office show that Martin Blazich enlisted in the United States Army at Fort McDowell, Calif., on March 16, 1915, and that he was forwarded to Fort Mills, Philippine Islands, where he arrived on June 5, 1915, and where he was assigned to Company A, Thirteenth Infantry. While serving with that organization, he was tried by general court martial and found guilty of assault and battery, to the prejudice of good order and military discipline, in that he did on February 15, 1916, assault a fellow soldier by striking him on the head with a poker, with intent to do bodily harm. He was sentenced to be dishonorably discharged the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor for 1 year. The sentence was approved and the Pacific branch, United States disciplinary barracks, Alcatraz, Calif., was designated as the place of confinement. The charge, specification, pleas, findings, sentence, and action of the reviewing authority in this case were published in General Court Martial Order No. 133, dated Headquarters, Philippine Department, March 17, 1916, a copy of which is enclosed. Pursuant to the sentence of the general court martial, Private Blazich was dishonorably discharged on March 19, 1916, and was forwarded to United States disciplinary barracks, Alcatraz, Calif., where he was in confinement until released on January 16, 1917.

The records further show that this former soldier was treated in hospital from April 3 to 12, 1916, for gonorrheal urethritis, chronic, and from November 2 to December 13, 1916, for lacerated wounds, severe, all fingers left hand, index and middle fingers, entirely severed, all just below base of second phalanx, ring and little fingers almost severed. Accidentally incurred by getting hand caught in circular saw Alcatraz, Calif., November 2, 1916. November 2, 1916, operation: (1) Disarticulation second finger, metacarpo-phalangeal joint, left; (2) amputation third and fourth fingers at proximal middle phalanges, left.

Respectfully submitted.

JAMES F. MCKINLEY,
Brigadier General,
Acting The Adjutant General.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Martin J. Blazevich, being first duly sworn, deposes and says:

I am a citizen of the United States, of the age of 36 years. I am a widower and the father of two children. I reside with my two children at No. 245 Athens Street, San Francisco, Calif.

On or about March 16, 1915, at the age of 19 years, I enlisted in the Regular Army at Fort McDowell, Calif. I enlisted under the name of Martin Blazich; my true and correct name is Martin J. Blazevich; when I enlisted in the Army I omitted the middle syllable of my name for convenience and to make my surname easier to pronounce; I am the same person named as Martin Blazich in the enlistment aforesaid.

While a soldier in the Philippine Islands, I defended myself against a fellow soldier who attacked me with an iron poker, by taking the poker away from my assailant and striking him over the head with it. For this offense I was court-martialed, convicted, and sentenced to the United States disciplinary barracks, Alcatraz, Calif.

While at Alcatraz, the authorities in charge assigned me to work in the carpenter shop where I was engaged on November 2, 1916, and while so engaged, I was sawing lumber with the aid of a power-driven circular saw to which there was no safeguard or safety device of any kind attached, and while so sawing lumber, my left hand came in contact with the unguarded circular saw and as a result thereof, I lost the first, second, and third fingers of my left hand, and was left crippled as is shown clearly on the attached photograph which is hereby referred to and made a part of this affidavit, and marked "Exhibit A."

The Government furnished all necessary medical and surgical treatment and hospitalization, but no compensation of any kind was given or paid to me in consideration of the damages I sustained by reason of the injury aforesaid.

That affiant is informed, verily believes, and avers, that he is entitled to the sum of $5,000 from the Government of the United States of America by reason of the unguarded circular saw aforesaid, the unsafe place in which affiant was placed to work as aforesaid, and the personal injuries sustained by affiant as aforesaid.

Wherefore, affiant prays that by legislation or otherwise, the Government of the United States of America pay to affiant the sum of $5,000 as compensation for personal injuries sustained as hereinbefore set forth.

MARTIN J. BLAZEVICH.

Subscribed and sworn to before me this 8th day of March 1932.

[SEAL] WINIFRED BELLAM, *Notary Public.*

My commission expires December 31, 1934.

ANNA MUETZEL

[H. Rept. No. 2180, 74th Cong., 2d sess., to accompany H. R. 9023]

Under the terms of the bill, as amended, the Secretary of the Treasury is authorized and directed to pay to Anna Muetzel, of Chicago, Ill., the sum of $2,500, in full settlement of all claims against the United States on account of the death of her daughter, Irene Muetzel, who was killed on June 8, 1935, when struck by an automobile driven by George Graziano, a United States post-office employee, assigned to the Chicago, Ill., post office, who, at the time, was on duty and engaged in his regular duties as special-delivery messenger, United States Postal Service.

An investigation of this case by the Post Office Department inspector at Chicago contains a complete statement of the facts as they appear to your committee, and the same is agreed to, except for the inspector's conclusion as to liability for the accident. To avoid repetition of the facts, said report is inserted at this point.

POST OFFICE DEPARTMENT,
OFFICE OF THE INSPECTOR,
Chicago, Ill., December 5, 1935.

Subject: Chicago, Ill., accident on June 8, 1935, involving automobile operated by George Graziano, a special-delivery messenger, and an automobile owned by Berger Manufacturing Co., 4239 West Harrison Street, resulting in fatal injuries to Miss Irene Muetzel, 117 South Central Avenue.

INSPECTOR IN CHARGE,
Chicago, Ill.:

1. Personal investigation of this case was made at Chicago, Ill., June 10, 1935, the local office having brought it to my attention on that date, also on various subsequent dates.

2. The case relates to an accident which occurred in the street in front of a building situated at 4249 West Harrison Street, Chicago, Ill., at approximately 12:05 p. m., June 8, 1935. It involved an automobile owned and operated by Special Delivery Messenger George Graziano in the performance of his official duties, and a pedestrian, one Irene Muetzel, who died from the injuries she sustained. After striking Miss Muetzel, the messenger's car ran into and damaged an automobile which was parked. The weather was clear and the pavement in good condition and also dry. Traffic, unregulated in the vicinity, was reported being medium. A report of this accident was made by the city police and a copy thereof is enclosed to which attention is invited.

3. Messenger Graziano, who is assigned to the Garfield Park station of the Chicago post office, bears a good reputation as to truth and veracity. His affidavit relative to this accident is herewith and it reads as follows:

"I am 22 years of age and have been employed as a special-delivery messenger at Chicago, Ill., since June 1931. During that time I have been involved in three automobile accidents. The last one occurred about 12:05 p. m., June 8, 1935. On that date I left the Garfield Park branch of the Chicago post office about 10 a. m. to deliver a number of pieces of special-delivery mail. I used my personal automobile to effect delivery and completed delivery about 11:50 a. m. On my way back to the branch I was driving east in Harrison Street. At Cicero Avenue I observed a friend walking, and I stopped and offered him a ride. He got into the car and I drove further east in Harrison Street. I was driving at a speed of between 25 and 30 miles per hour and astride the outer rail of the eastbound streetcar tracks. As I approached Kildare Avenue, I observed a westbound streetcar stopped at the east side of the street. Behind or to the rear of the streetcar were one or two automobiles and then a truck. The lane of traffic in which I was traveling was clear in front of me, and I therefore continued on. When my auto was near to the rear of the truck, a young woman walked from behind the truck and directly into the path of my car. She was walking toward

the south side of the street. I believe that she saw my car approaching for she appeared to become bewildered and instead of continuing toward the south curb she stopped and stood still. I immediately applied my brakes and swerved sharply to the left behind the truck, attempting to avoid the girl; however, the right front fender of my car struck her, knocking her to the pavement. My car came to a stop against another automobile which had been parked at the north curb. I thought it best to turn toward the left for the reason that there was more room to turn in that direction; automobiles parked at the south curb prevented turning toward the right to any great extent. I immediately went to where the girl was lying in the street, picked her up and placed her in an automobile which was going west, instructing the driver to take us to the Francis Willard Hospital. The girl was still alive after we arrived at the hospital but died about 10 minutes later in the emergency room.

"I have expressed my willingness to the owner of the private car, which was damaged at the time of the accident, to reimburse him for the damages, but to date he has not had the repairs made.

"I was suspended for 5 days for the reason that I violated the regulations when I transported my friend while engaged in the delivery of mail matter."

4. The messenger submitted the names of Dominic Gorgano, 3847 West Lexington Street; Moses McBride, 5315 Crystal Street; Mrs. Margaret O'Neil, 4326 West Congress Street; and Esther Muller, 4251 West Harrison Street, all of Chicago, Ill., as being witnesses to the accident. However, with the exception of Dominic Gorgano, the persons named did not actually witness the accident but were in the vicinity when it occurred. Statements of the witnesses are included in the files.

5. Mr. Gorgano states that he was riding in the front seat of the messenger's automobile; that they were driving east, astride the north rail of the east-bound streetcar tracks, in Harrison Street at a speed of about 25 miles per hour; that on approaching the intersection of Kildare Avenue, the messenger sounded his horn and continued eastward; that he observed a west-bound streetcar, behind which were several motor vehicles, the last one being a truck; that cars were parked at both north and south curbs of the street; that Miss Muetzel ran from behind the truck into the path of the messenger's car when it was only a few feet from the rear of the truck; that the messenger immediately applied his brakes and swerved his car sharply toward the left in an attempt to avoid striking the pedestrian, but that the car struck Miss Muetzel, knocking her to the pavement; that the messenger's car came to a stop against an automobile parked at the north curb of the street, and that he was thrown from the messenger's car to the street due to the sudden swerving of the automobile.

6. Moses McBride states that he heard the screech made by the sudden application of the brakes on the messenger's car, and upon looking toward the direction from which the sound came, he saw the pedestrian fall over on the street, and the auto turn and crash into a parked automobile at the north curb; that the messenger immediately alighted from his automobile ,went to where Miss Muetzel was lying in the street, picked her up and placed her in an automobile which was west-bound.

7. Mrs. Margaret O'Neil states that her attention was attracted by the squeaking of the brakes on the messenger's auto; that she saw the car run into another automobile, which had been parked at the north curb, and Gorgano roll from the messenger's auto; that the messenger jumped from his car, picked the girl up, and placed her in a standing automobile which drove off toward a nearby hospital.

8. Esther Muller states that she was playing ball with a small boy and observed the messenger's car traveling east in Harrison Street; that the messenger applied his brakes and swerved his car around toward the left to avoid striking Miss Muetzel; that she believes the front bumper of the car struck the pedestrian; that as soon as his car stopped the messenger ran to where Miss Muetzel was lying in the street and took her to a hospital. Other than Mr. Gorgano, Miss Muller is the only witness able to furnish any information concerning the rate of speed at which the messenger's automobile was being operated. She states that it appeared to her that it was traveling at a rate of about 20 miles per hour.

9. A coroner's inquest was held on June 10, 1935, and continued from that date to June 21, 1935, in accordance with a request made by the United States attorney. The files now include a copy of the transcript of the testimony taken during the inquest, to which attention is invited. It will be noted that the testimony of the witnesses agrees substantially with their previous statements. Also, that opinion was divided as to which direction Miss Muetzel was crossing the street. In this connection attention is invited to the testimony of Gene Guardian, who

conducts a grocery store at 4256 West Harrison Street. He testified that immediately prior to the time of the accident Miss Muetzel had purchased a single egg from him at his store. The Guardian store is located on the north side of Harrison Street and Miss Muetzel was employed in a cleaning establishment located on the south side of the street. Thus, to return to her place of employment, Miss Muetzel would cross from the north to the south side of the street, which is the direction stated by the messenger. A direct line between the grocery store and the cleaning establishment would cross the street at a point where this accident occurred. Attention is also invited to the testimony of the police officers who tested the brakes on the messenger's automobile. It will be noted that they determined the brakes to be better than required by law.

10. The verdict of the coroner's jury, a copy of which is herewith, reads as follows:

"An inquisition was taken for the people of the State of Illinois at 5130 West Twenty-fifth Street, town of Cicero, Fillmore Police Station, city of Chicago in said county of Cook, on the 10th to the 21st day of June, A. D. 1935, before me, Frank J. Walsh, coroner, in and for said county, upon view of the body of Irene Muetzel, then and there lying dead upon the oaths of six good and lawful men of the said county, who, being duly sworn to inquire on the part of the people of the State of Illinois into all circumstance attending the death of said dead body and how and in what manner, and by whom or what, and when and where the said dead body came to its death, do say, upon their oaths, as aforesaid, that the said dead body now or then lying dead at 5130 West Twenty-fifth Street, town of Cicero, county of Cook, State of Illinois, came to its death on the 8th day of June, A. D. 1935 in the Frances Willard Hospital from depressed skull fracture due to external violence, caused by being struck and knocked down by a Ford sedan, automobile license no. [redacted] Illinois, 1935, owned and being driven east-bound in Harrison Street by one George Graziano, not licensed, at a point known as 4249 Harrison Street, when the decedent was in the act of crossing Harrison Street from north to south at the above-mentioned location on June 8, A. D. 1935, at about 12:05 p. m. From the testimony presented we, the jury, believe said occurrence was an accident."

11. Article IV, section 15, paragraph 3, Uniform Traffic Code for the city of Chicago, which appears to apply in this case, reads as follows:

"Any pedestrian crossing a roadway at a point other than within a cross walk shall yield the right-of-way to vehicles upon the roadway."

12. The vicinity where this accident occurred is a closely built up business and residential district. Section 22, Illinois Motor Vehicle Law states in part that—

"If the rate of speed of any motor vehicle operated upon any public highway in this State where the same passes through the closely built up business portion of any incorporated city, town, or village exceeds 15 miles an hour, such rate of speed shall be prima-facie evidence that the person operating such motor vehicle is running at a rate of speed greater than is reasonable and proper having regard to the traffic and use of the way or so as to endanger the life or limb or injure the property of any person."

13. Recent legislation has increased the permissible rate of speed in the closely built up sections of a community to 20 miles per hour, and the Chicago police permit vehicles to be operated at a speed 10 miles per hour in excess of that limit before making arrests.

14. The private automobile, against which the messenger's car came to a stop, is owned by the Berger Manufacturing Co., 4239 West Harrison Street. It is a 1926 model Buick sedan. The damage to it was examined on June 10, 1935, by a mechanic attached to the local motor-vehicle service and a copy of his report is enclosed to which attention is invited. It indicates that the left front fender and left running board of the private car were damaged, and also that the front system is probably out of alinement.

15. Shortly after the accident occurred the messenger visited the offices of the Berger Manufacturing Co. and expressed his willingness to reimburse them for the damage to their automobile. The postmaster's files relative to this case include an agreement signed by the messenger and Mr. H. Berger, in which the Berger Manufacturing Co. agrees to have the necessary repairs made and pay for same, and in which the messenger agrees to pay the company $1 semimonthly until the debt is liquidated. A copy of this agreement is herewith. Recent inquiry determined that the Berger automobile has not been repaired and Mr. Berger stated that in view of its dilapidated condition he had not decided whether

or not he would have the repairs made. The damage to the Berger car did not affect the operation of it and it is being driven daily.

16. It is my opinion that the facts in this case clearly indicate that this accident did not result from any fault or negligence on the part of the special-delivery messenger. The facts determined indicate that Miss Muetzel was crossing from the north to the south side of Harrison Street at a point other than a cross walk; that she did not exercise due care and walked directly into the path of the messenger's automobile from behind a west-bound truck which prevented her from observing the approach of east-bound vehicles. The messenger acknowledges that he was operating his car at a speed in excess of that permitted by the Illinois motor-vehicle law, in force on the date of the accident, and therefore he might be termed at least guilty of contributory negligence. However, it is my opinion this accident would have occurred and the result been the same even though the messenger had been complying fully with the rate of speed set forth by the statutes. No claim of which I am aware, has been filed in this case and under the circumstances it is returned for such further action or disposition as may be deemed advisable.

H. H. KIMBALL,
Post Office Inspector.

Considerable time has been given to the examination of all papers filed in this case, including the hearing before the coroner's jury. It is not denied that the deceased was guilty of some negligence in crossing the street between intersections, but regardless of this, we believe it to be an accepted fact that pedestrians are entitled to safely cross the street at any point, and that simply because they only have the right-of-way at an intersection does not permit drivers of automobiles to escape the consequences of their negligence should it result in injury to a pedestrian between intersections.

Now this Government driver was admittedly proceeding at an excessive rate of speed along the center of Harrison Street, straddling the north rail of the car tracks, being that nearest to the deceased as she crossed said street. The evidence shows that a street car, two autos, and a truck were stopped, facing the direction opposite from that in which the Government driver was traveling, and that the deceased walked from behind the truck. It seems to us that every driver must anticipate the possibility that a pedestrian will walk out from between vehicles so stopped, and whether right or wrong on the pedestrian's part, such a convoy of traffic should be some notice to a driver that the speed of his car should be diminished.

This driver did not, we think, and there being some distance between the street car and the point of collision, the accident may easily have been avoided by the proper reduction of speed. There appears to us no merit in the inspector's conclusion that, if the driver had not been speeding, it was his opinion the accident would still have occurred. And for that reason the Post Office Department opposes the enactment of the bill.

It should be observed that the vehicle's speed, nearly twice that lawfully permitted at the time of the accident, caused an impact sufficient to result in the death of Irene Muetzel very shortly after she was struck. Had the vehicle been traveling at a lawful or reasonable rate, there is the additional prospect, and not an idle one, that Miss Muetzel would sustain a much less severe injury, and would be alive today.

It is our conclusion, therefore, that the Government should stand some responsibility for this occurrence. However, as we have noted, the deceased was guilty of some negligence in failing to cross the street at a proper place, and it is recommended accordingly that $2,500, and not the usual sum awarded in death cases, be paid claimant, mother of the deceased.

There is appended hereto letter from the Post Office Department, and certain other papers.

POST OFFICE DEPARTMENT,
Washington, D. C., December 27, 1935.

Hon. AMBROSE J. KENNEDY,
Chairman, Committee on Claims, House of Representatives.

MY DEAR MR. KENNEDY: Further reference is made to the request of your committee for a report on H. R. 9023 (74th Cong.), for the relief of Anna Muetzel in the sum of $5,000 on account of the death of her daughter Irene in an accident which occurred at Chicago on June 8, 1935, involving a vehicle operated by a special-delivery messenger.

All papers disclosed in the investigation of this case are herewith transmitted in compliance with the request of your committee.

It will be noted that the special-delivery messenger was east-bound and had just passed several west-bound vehicles at a point near the middle of the block when the deceased, a young lady 23 years of age, walked out from behind a west-bound truck directly into the path of the messenger's car. It appears that when she saw the automobile bearing down on her she became terror stricken and stood motionless until the vehicle collided with her. The messenger swerved sharply to the left and ran into a car parked on the north side of the street in his last-moment endeavors to avoid the accident.

Concerning the negligence of the pedestrian there can be no question. She was crossing the street at an improper place and without regard for approaching traffic. On the other hand, it must be conceded that the messenger was exceeding the speed limit, which at the time of the accident was 15 miles an hour. That speed limit has since been changed to 20 miles an hour. It seems doubtful whether the speed of the messenger's car had any direct bearing on the proximate cause of the accident which happened so suddenly that it would probably have been unavoidable in any event. An inquest was conducted in this case which failed to disclose adequate grounds for holding the messenger and he was discharged from custody.

In the circumstances it is believed that favorable consideration should not be accorded the pending bill.

Very truly yours,

W. W. HOWES,
Acting Postmaster General.

FRANK J. WALSH, CORONER OF COOK COUNTY

DOCTOR'S STATEMENT BLANK

At an inquest upon the body of Irene Muetzel, held June 8, 1935, at 5130 West Twenty-fifth Street, Cicero, county of Cook, State of Illinois, personally appeared----------who, being sworn according to law, deposes and says:

My name is Herman A. Jacobson. I reside at Chicago, Ill., and am by occupation a coroner's physician of Cook County, and that I have today (June 8, 1935) performed a post-mortem examination on the dead body of Irene Muetzel, identified to me by Mr. Edward O. Hrejsa, undertaker. External examination revealed a well-developed white female, 5 feet 4 inches tall, weighing about 110 pounds, with brown hair and blue-gray eyes, the pupils being equally dilated. There were extensive lacerations of the skin of the scalp, and the right fronto-parietal area of the head. There was pitting swelling of the scalp, and there was a small amount of hemorrhage in the subcutaneous tissues of the scalp. There was an extensive, depressed, comminuted fracture of the right frontal bone and of the right temporal bone of the head. This fracture extended into the supra-orbital plate of the right side and into the greater wing of the sphenoid bone of the right side. There was a slight amount of blood in the subdural space and there was bloody fluid in the lateral ventricles of the brain. There were numerous small pin-point to pin-head size petichial hemorrhages in the cortical and subcortical areas of the brain. There was a purple-red abrasion of the skin of the anterior aspect of the right shoulder and there were a few small abrasions of the skin of the extremities. The other organs of the body were pale and purple-gray in color, soft and flabby.

In my opinion, the death of Irene Muetzel was the result of a depressed skull fracture.

HERMAN A. JACOBSON, M. D.,
2635 Carmen Avenue (22 years),
Long Beach 5120 (5 years).

N. Ford Sedan, 307–356 Ill., 35.

JANUARY 8, 1936.

This is to certify that the above is an exact verbatim copy of the original filed in the office of Frank J. Walsh, coroner of Cook County.

[SEAL] GEORGE BROWN, *Notary Public.*

My commission expires January 9, 1937.

JANUARY 10, 1935.

Hon. THOMAS J. O'BRIEN,
United States Congressman, Sixth District, Illinois,
United States Congress, Washington, D. C.

or

To whom it may concern:

This is to certify that I, Mrs. Anna Muetzel, am the mother of the late Miss Irene Muetzel, who met with tragic death on the 8th day of June 1935 as the result of being struck by a United States post-office special-delivery automobile, driven by George Graziano.

Further, that at the time of the death of Miss Irene Muetzel and for some years prior to that date she was my sole support.

Respectfully submitted by,

Mrs. ANNA MUETZEL,
Mother of the Late Irene Muetzel.

Subscribed and sworn to before me this 14th day of January 1936.

[SEAL] SELMER G. LARSON, *Notary Public.*

JANUARY 6, 1936.

Hon. THOMAS J. O'BRIEN,
United States Congressman, Sixth District, Illinois,
United States Congress, Washington, D. C.

or

To whom it may concern:

This is to certify that I, Anne Lindstrom, am the chief bookkeeper for Graham & Daniel Co., dry cleaners, 4245 West Harrison Street, Chicago, Ill. That I was personally acquainted with the late Miss Irene Muetzel, who was employed at this establishment for a period beginning January 29, 1934, and continuing to June 8, 1935, at which date she met with tragic death by being struck by a car driven by George Graziano, post-office special-delivery employee.

At the time of and prior to her death she was employed here as a telephone operator and desk clerk and received a regular salary of $15 per week. She was a very alert, conscientious, thoroughly honest, and satisfactory worker.

She had many occasions to cross the street while employed at this establishment, and she always used great precaution and care in crossing the street. On this particular instance when she met with tragic death she had gone across the street to purchase a few things for a midday lunch and was on her way back to our establishment when the United States post-office special-delivery car struck her and instantly killed her.

At the time of her death and during the entire time that she worked at this establishment I have personal knowledge of the fact that she was the sole support of her mother, Mrs. Anna Muetzel. I am personally of the opinion that Miss Irene Muetzel used due precaution in crossing the street on this particular incident as well as she did at other times, and I cannot help but feel that the driver of the car which so tragically killed her was careless in his driving and, therefore, responsible for the tragedy.

I feel that Mrs. Anna Muetzel, mother of the late Irene Muetzel, who was entirely dependent upon said daughter for her sole support, should be granted a pension by the Government in view of the fact that the driver of the car was a United States Government post-office special-delivery employee.

Respectfully submitted.

Miss ANNA M. LINDSTROM,
Chief Bookkeeper, Graham & Daniel, Dry Cleaners,
4245 West Harrison Street, Chicago, Ill.

Subscribed and sworn to before me this 18th day of January 1936.

[SEAL] GEORGE BROWN, *Notary Public.*

My commission expires January 9, 1937.

JANUARY 6, 1936.

Hon. THOMAS J. O'BRIEN,
United States Congressman, Sixth District, Illinois,
United States Congress, Washington, D. C.

or

To whom it may concern:

This is to certify that I, Joseph Borch, am employed as a floorman at Graham & Daniel Co., dry cleaners, 4245 West Harrison Street, Chicago, Ill. I was personally acquainted with the late Irene Muetzel during the time she was employed at this establishment.

On June 8, 1935, she left the establishment and crossed the street to purchase a few things for midday lunch. Upon crossing the street while returning to the establishment she was struck by a United States Government post-office special-delivery car driven by George Graziano. The injuries she received at that time were so severe that she died almost instantly.

Miss Irene Muetzel was very well liked by everyone employed here as well as by the customers whom she met in person or by telephone conversation. She was a very conscientious and satisfactory worker. She was very alert and dependable at all times.

From my personal contact with her I know that she always used great precaution in crossing the street. It is my opinion that at this time when she met her tragic death she used similar precaution and that the driver, George Graziano, failed to use due precaution and should, therefore, be held responsible for the accident which resulted in her tragic death.

I have also personal knowledge of the fact that at the time of her death Miss Irene Muetzel was the sole support of her mother and had been her sole support for a considerable period of time.

I also feel that the United States Government should provide a pension for the mother, Mrs. Anna Muetzel, who through this tragic accident was deprived of her sole support.

Respectfully submitted.

JOSEPH BORCH,
Graham & Daniel Co., Chicago, Ill.

Subscribed and sworn to before me this 13th day of January 1936.

[SEAL] ANNA M. LINDSTROM, *Notary Public.*

JANUARY 6, 1936.

Hon. THOMAS J. O'BRIEN,
United States Congressman, Sixth District, Illinois,
United States Congress, Washington, D. C.,

or

To whom it may concern:

This is to certify that I, Otto Chvoy, am the general manager of Graham & Daniel Co., dry cleaners, 4245 West Harrison Street, Chicago, Ill. That I was personally acquainted with the late Miss Irene Muetzel, who was employed at this establishment from January 29, 1934, to June 8, 1935, at which date she met with tragic death by being struck by a car driven by George Graziano, a United States post-office special-delivery employee.

Miss Irene Muetzel was employed here as a telephone operator and desk clerk and at all times worked under my general supervision. She was very well liked by all of the employees and her work was always very highly satisfactory. She was a very conscientious worker and always very alert. She could always be trusted and was always dependable.

On the forenoon of the day when she met with tragic death she had been engaged in her regular routine work as telephone operator and desk clerk. She seemed very happy and in good spirits, and during the midday lunch hour she left the office for a few minutes to purchase a few things for midday lunch. On her return to the office she was struck by a United States post-office special-delivery car and instantly killed.

Miss Muetzel had many occasions to cross the street while employed here, and she was always very careful in crossing the street, and I feel that on this particular instance as well as all other times she used due precaution in crossing the street

but was nevertheless struck by the United States post-office special-delivery car and which resulted in her tragic death.

I feel that in view of the fact that her death was caused by severe injuries received when struck by the United States Government post-office special-delivery car, and in view of the fact that at the time of her death she was the sole support of her mother, Mrs. Anna Muetzel, that the United States Government should grant Mrs. Anna Muetzel, mother of the late Irene Muetzel, a pension in lieu of the support which was provided the mother by the daughter.

Respectfully submitted by,

OTTO CHVOY,
General Manager, Graham & Daniel Co., Dry Cleaners,
4245 West Harrison Street, Chicago, Ill.

Subscribed and sworn to before me this 13th day of January 1936.

[SEAL] ANNA M. LINDSTROM, *Notary Public.*

PERKINS-CAMPBELL CO.

[H. Rept. No. 2097, 74th Cong., 2d sess., to accompany S. 277]

This claim is for 1,000 satchels furnished to the Post Office Department for mailmen to use in carrying mail. On November 24, 1928, the purchasing agent, on the basis of the Bureau of Standards report, rejected the 1,000 satchels on the ground that there was too much sulphuric acid contained to meet the requirements of the Bureau of Standards. However, later they accepted the satchels because, as the purchasing agent now says, they were so badly in need of the satchels that they had to make use of these despite the defect. They deducted one-third of the amount. The Perkins-Campbell Co. claims it was because of an agreement that if the satchels held up and were satisfactory for a period of a year, the Government would pay that additional amount, that it was simply a hold-back of the amount pending the determination of the question as to whether or not the satchels were satisfactory. A very definite affidavit as to that effect is made by the representative of Perkins-Campbell Co. On the other hand all the Post Office Department can submit is a letter from the present purchasing agent which is based upon the files and records of the Department as of 1928. The file discloses that persistently since 1928 the Perkins-Campbell Co. has been asserting this claim. The Post Office Department does not contend that the satchels were not used or that they did not render satisfactory service. In view of the discrepancy in the testimony, the claimant positively setting forth its claim by means of an affidavit and the rather unsatisfactory nature of the Post Office Department's evidence, and, further, in view of the fact that the Post Office Department did make use of the satchels and did deduct one-third of the price, it seems to your committee only fair that the Department should pay the contract price at which the satchels were delivered. It is accordingly recommended that the bill do pass, as amended.

The facts are fully set forth in the following communications, which are appended hereto and made a part of this report.

POST OFFICE DEPARTMENT,
Washington, D. C., February 5, 1935.

Hon. JOSIAH W. BAILEY,
Chairman, Committee on Claims, United States Senate.

MY DEAR SENATOR BAILEY: Referring to your letter of the 17th instant requesting a report on S. 277, being a bill for the relief of the Perkins-Campbell Co. of Cincinnati, Ohio, I invite your attention to the enclosed copy of a communication dated June 29, 1934, addressed to the Solicitor by the purchasing agent of this Department.

In view of the records of the Department on the subject, it is not believed that favorable consideration should be given to the claim of the Perkins-Campbell Co.

Very truly yours,

JAMES A. FARLEY,
Postmaster General.

POST OFFICE DEPARTMENT,
OFFICE OF THE PURCHASING AGENT,
Washington, June 29, 1934.

SOLICITOR:

Reference is made to your memorandum of the 12th instant and previous correspondence, relating to the claim of the Perkins-Campbell Co., which has been taken up with the Department by Senator Bulkley. In the absence of definite information, this office assumed that the Perkins-Campbell Co.'s claim was based on the delivery of city letter-carrier satchels on orders nos. S–290 and

S–1193, which were drawn in the fiscal year 1928. Now that the company has furnished some definite information, it is apparent from our records that the Perkins-Campbell Co. is referring to order no. M–1, dated July 2, 1928, covering 2,000 special-delivery satchels.

Our records indicate that 1,000 of these satchels were delivered in September 1928, and that they were rejected on account of failure to meet the specifications. On November 24, 1928, the purchasing agent wrote to the Perkins-Campbell Co. stating that the board of inspection had recommended the acceptance of 1,000 satchels that had previously been rejected, at a deduction of 33⅓ percent, in order to meet the then present needs of the Service. In the same letter it was stated that this decision was reached after a conference with Mr. M. D. Campbell of the Perkins-Campbell Co. the chairman of the board of inspection, the Superintendent of the Division of Equipment and Supplies, and Mr. Bowker of the Bureau of Standards. The deduction of 33⅓ percent amounted to $1,453.33. That amount, together with the amount of the cash discount, $58.13, makes a total of $1,511.46 which the Perkins-Campbell Co. claims is now due them.

There is nothing in our records to indicate that the Department ever promised the Perkins-Campbell Co. or any representative of that company that it would subsequently pay the balance of $1,511.46 if the satchels delivered proved to give as good service as would the specification satchel. As a matter of fact, as stated above, the delivery of 1,000 satchels was originally rejected and that number of satchels was apparently accepted later only because the Department needed them badly. It could not, of course, pay full price for material which did not meet the specifications.

The correspondence accompanying your letter is returned herewith.

HARRISON PARKMAN,
Purchasing Agent.

THE PERKINS-CAMPBELL CO.,
Cincinnati, Ohio, June 12, 1935.

To the Senate of the United States:

I, Carl S. Schneider, employed by the Perkins-Campbell Co. for the past 12 years as auditor, make the following affidavit regarding the purchase of mail bags under Post Office order M–1, dated July 2, 1928.

That said shipment was made on August 31, 1928, covering 1,000 of these bags, for the amount of $4,360; that payment was partially received on such shipment January 23, 1929, for $2,848.54. The balance of the shipment of 1,000 bags on this order was paid in July, but the balance of $1,511.46, which remained due on the shipment of August 31, has never been received by the Perkins-Campbell Co., and that notation on our books shows that Mr. Milton D. Campbell went to Washington in the month of January 1929, with reference to payment, and the partial payment was the result of said visit, and our notation further shows that the balance was promised within 1 year from date of shipment.

I further state that on order S–290 of the Post Office Department that full payment was made on all bags supplied to the Post Office Department on invoices to them, and that on order S–1193 of the Post Office Department the same condition exists, and that in accordance with the books of the Perkins-Campbell Co. there is due them no other moneys than those described above.

C. SCHNEIDER, *Auditor.*

STATE OF OHIO,
Hamilton County, ss:

Personally appeared before me, a notary public, this 13th day of June 1935, Carl S. Schneider, who swears that the above statements are true and correct to the best of his knowledge and belief.

[SEAL] A. M. CAMPBELL, *Notary Public.*

My commission expires January 24, 1936.

THE PERKINS-CAMPBELL CO.,
Cincinnati, Ohio, June 12, 1935.

To the Senate of the United States:

The following sworn statements are made by Milton D. Campbell, vice president and secretary of the Perkins-Campbell Co., a corporation under the laws of the State of Ohio, who on June 26, 1928, entered into a contract with the Post

Office Department, office of the purchasing agent, of the United States Government, for the supplying of 2,000 special-delivery satchels, in accordance with Government specifications, and under order M–1 dated July 2, 1928, and signed by T. L. Degnan, purchasing agent of the United States Post Office Department.

On August 31, 1928, the Perkins-Campbell Co. delivered to the Post Office Department 1,000 special-delivery satchels, billing the same to the Post Office Department at $4,360, which was in accordance with the contract. On January 24, 1929, they delivered 100 bags, charging them to $436, which was in accordance with the contract. On February 28, 1929, they delivered 500 bags, charging the same at $2,180. On March 6 they delivered on the same contract bags to the amount of $1,722.20, and on March 14, bags to the amount of $17.44. The above charges were paid for by the Post Office Department in the amounts as follows: On the charge of August 31, 1928, the Post Office Department made a partial payment of $2,848.54 on January 23, 1929. On March 1 they made a payment of the January 24 shipment in full, at $436. On March 14 this company issued a credit of $17.44, covering the charge of March 14, amounting to $17.44. On March 18 the Post Office Department made a partial payment amounting to $2,123.58, covering a partial payment on the charge of February 28, 1929, which was for $2,180, and on April 1, 1929, the Post Office Department paid the balance of this charge, which amounted to $56.42. On March 21, 1929, the Post Office Department made a partial payment on the charge of March 6, which partial payment was $1,691.68, and on March 22 this company credited the Post Office Department with $30.52, which completed the payment on the invoice of March 6. This leaves due to the Perkins-Campbell Co. on the shipment of August 31, 1928, $1,511.46, inasmuch as the Department only paid $2,848.54 on a charge of $4,360.

In taking this matter up with the United States Government through Senator Bulkley, of Ohio, the Senator addressed the Post Office Department asking them to give detailed statement regarding this matter, and on March 17, 1934, a letter was addressed to Senator Bulkley and signed by Karl A. Crowley, Solicitor of the Post Office Department, in which they referred in detail to order S–290 and order S–1193, and in that letter the Solicitor claimed payment and entire amount due to the Perkins-Campbell Co., which was correct inasmuch as he referred only to orders S–290 and order S–1193, and did not at any place refer to order.

In January of 1929, the writer of this letter, Milton D. Campbell, vice president of the Perkins-Campbell Co., was called to Washington with reference to the bags delivered on August 31, 1928, and this call was sent by Mr. T. L. Degnan, the purchasing agent of the Post Office Department. On arriving in Washington, it was found that a Mr. L. J. Briggs, of the Bureau of Standards, had made a chemical analysis of the leather used in these bags, and had found that the percentage of acid in the leather was 1.04 whereas under the new specifications only 0.75 was permitted, and made the claim that the leather would not give satisfactory service, because of that additional amount of acid in the leather. The writer had made a statement, and still makes the statement, that this company did not add or use any sulphuric acid in the tannage of, or bleaching of our leather, but it was found that by the use of sulphonated cod-liver oil in the waterproofing of the leather that a certain amount of sulphuric acid had been released by this cod-liver oil, bringing the acid content above that as prescribed by the Bureau of Standards; and the writer accompanied by Mr. Degnan of the Post Office Department, and by Mr. Briggs of the Bureau of Standards visited the Industrial or Storage Division of the Post Office Department in the building which is immediately next to the Union Station in Washington, and held a conference in the office of the assistant postmaster in charge of that building, and it was agreed that the Post Office Department would pay a portion of this bill, the balance to be held open for 1 year to prove that these cases would give satisfactory service, and it was at that time that a check was issued to the Perkins-Campbell Co. for $2,848.54, which check was received by the Perkins-Campbell Co., on January 23, 1929. During that year the Post Office Department did not make any complaint regarding the service as given by these bags, and on contact with the post office in Cincinnati, Ohio, we found that some of the bags that we had furnished had been sent to Cincinnati, and were in constant use for a number of years after they had been furnished to the Post Office Department by this company.

In 1931 the writer took this matter up with Senator Simeon D. Fess and Congressman Nicholas Longworth of the First District of Ohio to see if this company could not get relief on the balance of the money due to them. But the writer was not able to get either Senator Fess or Congressman Longworth interested

in the case. Later, believing that it would be necessary to have legal advice on this matter, the file was turned over to Joe Heintzman, who was a partner of Congressman William Hess of the Second District of Ohio. Very inadvertently this gentleman died very suddenly, and it was therefore necessary to take the matter up with someone else. The matter was then turned over to Mr. Frank J. Merrick, of Cleveland, Ohio, who kept the file for quite a long while, was then made safety director of the city of Cleveland, Ohio, and later elected to a judgeship, and because of his official connection returned the files to Cincinnati. It was then that the matter was presented to Senator Robert Bulkley, of Ohio, and as we understand it, it was only after Senator Bulkley had received same that any claim was made in Washington.

The attention of the committee is called to the fact that when Senator Bulkley took this matter up with the Post Office Department, that the Post Office Department made no mention whatsoever of order M–1, dated July 2, 1928, and on which order shipment of August 31, 1928, was made. They refer only to two other orders on which this company had furnished bags, and in which claim they speak of the fact that a number of bags have been rejected, but which bags were later replaced and paid for by the Post Office Department. There is no controversy regarding the two previous orders.

The entire transaction regarding order M–1, on which the shipment of August 31 was made, was of one between the representative of the Post Office Department, the representative of the Bureau of Standards, and the writer, who was representing the Perkins-Campbell Co., and in all of the writer's experience with Government contracts, both from a standpoint of a supplier, who had supplied large amounts of Government material to the War Department through the depot quartermaster at Jeffersonville, Ind., and the Rock Island Arsenal at Rock Island, Ill., as well as millions of dollars of harness supplied to the War Department during the war; and from the standpoint of a Government agent when I was in charge of the leather-goods production at Rock Island Arsenal during the war, was the fact that the United States Government did not at any time accept goods on a partial payment, as the goods were either right or wrong, and if they were right they were accepted, and if they were wrong they were rejected, and for that reason felt that any oral agreement with the representatives of the United States Government would be considered as an acceptance of the bags, and that they would be paid for accordingly. It was just a matter of putting too much trust in the representatives of the United States Government.

The contact with the Bureau of Standards representative was the first contact that the writer or this company had ever had with a Bureau of Standards representative in dealing with the United States Government, and there was quite a clash between the mind of the writer and the representative of the Bureau of Standards, as to the wearability of leather which contained 1.04 percent sulphuric acid, and the writer would respectfully call the attention of the committee to the fact that the United States War Department has been carrying on tests regarding sulphuric content for the past 20 years, both in Panama and the Philippine Islands, and even with a greater percentage of sulphuric acid than 1.04, leather has given excellent service. However, we would also respectfully call the attention of the committee to the fact that this company did not use, nor did not add any sulphuric acid to the leather in the tannage of same, but that the sulphuric acid was released by the sulphonated cod oil, which is considered by all tanners as being the very finest of "stuffing" material that is used in leather.

It is felt by this company that the United States Post Office Department did receive on order M–1, and on the shipment of August 31, 1928, the very best of materials, which did give good service to the United States Government. It is also felt that had there been anything particularly wrong with the cases as furnished on that order that similar rejections should have been made on the shipments of January 24, 1929, February 28, 1929, and March 6, 1929, all of which was made from exactly the same tannage of leather, and the bags were paid for as described in the opening paragraphs of this statement.

This company, therefore, makes a special plea to the committee of the United States Senate for the recommendation of passage of the bill giving relief to the Perkins-Campbell Co., to the amount of $1,511.46, which bill was placed before the Senate of the United States by Senator Robert Bulkley of the State of Ohio.

Respectfully submitted.

MILTON D. CAMPBELL,
Vice President.

STATE OF OHIO,
Hamilton County, ss:

Personally appeared before me, a notary public, this 13th day of June 1935, Milton D. Campbell, who swears that the above statements are true and correct to the best of his knowledge and belief.

[SEAL] A. M. CAMPBELL, *Notary Public.*

My commission expires January 24, 1936.

THE PERKINS-CAMPBELL CO.,
Cincinnati, Ohio, May 16, 1934.

Hon. ROBERT J. BULKLEY,
United States Senate, Washington, D. C.

MY DEAR SENATOR BULKLEY: Your letter of May 14 received, and wish to state that we still believe that we have reason for holding the Government liable on the carrier satchels, because in their correspondence to you they have overlooked the main facts. Now, the sheet that you sent to us, which we are returning to you, which shows the number of cases that they returned to us because of certain defects, is correct, but there was a shipment made to them on August 31, 1928, regarding which they say absolutely nothing, and the enclosed sheet will show the charges as made to the Government on this contract, and the payments made on same, as well as the amounts that were returned and credited to them in accordance with the returns, which returns check up exactly with the sheet that you sent to us, but you will find as stated above that we made a shipment on our invoice no. 6668 on August 31, 1928, and this amounts to $4,360. There was an argument over the leather containing an excess of acid, and on January 23, 1929, they paid us on that invoice $2,848.54 with the statement that they were going to see if this material gave service and if it did give service they would pay the balance. While it is impossible for us to get affidavits from the Post Office Department here in Cincinnati, we can say that many of the cases delivered to them on invoice no. 6668 came in to Cincinnati, and they are still in use, whereas certain cases that they have had since that time from other manufacturers have long since worn out.

We can hardly understand why the Post Office Department keeps insisting that this matter is closed up by the rejected number, for there is no argument whatsoever on these, for on each and every instance where these cases have been returned a new case has been furnished in its place, and a new invoice sent out to them, but this still leaves $1,511.46 due to this company, and so far they have not said one word regarding this.

We hesitate to bother you with these things, but feel that that is the only way we can get relief on same.

Yours very truly,

MILT D. CAMPBELL, *Vice President.*

UNION IRON WORKS

[H. Rept. No. 2098, 74th Cong., 2d sess., to accompany S. 918]

This bill provides that the Secretary of the Treasury be authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $165,284.53 to the Union Iron Works, being the difference between the actual cost of the construction of three torpedo-boat destroyers and the amount paid under the contract entered into for the building of said boats, as found by the Court of Claims and reported in Senate Document No. 78, Seventy-third Congress, first session.

On July 13, 1898, the Secretary of the Navy advertised for bids for the construction of certain torpedo boats and torpedo-boat destroyers. The Navy Department fixed the maximum price at which bids would be considered after it had estimated the costs and the price was intended to allow a fair return to the contractor for his work. On August 23, 1898, a bid for the construction of three torpedo-boat destroyers at a price per vessel of $285,000 was submitted to the Navy Department by the Union Iron Works and the bid was accepted and the contracts awarded.

After execution of the above-mentioned contracts the Union Iron Works immediately placed its orders for the necessary material for the three torpedo-boat destroyers. But two plants in the United States were in position to furnish nickel steel for forgings which the specifications called for. Deliveries were greatly delayed by reason of this fact. On March 20, 1900, the Secretary of the Navy advised this company and other contractors that they would be granted an additional period of 12 months on account of difficulty in obtaining steel products. This advanced the date for completion of the three vessels upon which the company was working to April 5, 1901. On that date, April 5, 1901, the company wrote the Navy Department requesting that the Navy Department so extend the time of construction as to enable the contractor with due diligence to carry out whatever decision might be reached as to modification of the hulls and so to conform to the provisions of the contract. On April 20, 1901, the Navy Department advised the Union Iron Works that final action on its request would be postponed until the trials of the *Perry* (one of the torpedo-boat destroyers covered by the company's contracts) had been completed. May 20, 1901, a general strike occurred in the plant of the Union Iron Works. January 28, 1902, the company notified the Navy Department that the strike had ended, following which the Navy Department on March 13, 1902, at the company's request, granted, on account of the strike, an additional period of 8 months and 8 days in which to complete the vessels, thus specifically extending the time to December 13, 1901.

The Navy Department, after numerous trials of the *Perry* and tank tests made with models at Washington, granted extensions on account of delays caused by changes in the sterns of the vessels from December 13, 1901, to their several dates of delivery, which were, as to the *Perry*, May 31, 1902; as to the *Preble*, June 21, 1902; and as to the *Paul Jones*, July 19, 1902. During this delay the prices of labor and materials advanced greatly, which had not been anticipated when the contracts were made.

Changes in the plans and specifications were made by the Navy Department from time to time as the work progressed. Most of the changes were not and could not be foreseen, but were found necessary as the work developed. During the course of construction it became apparent that the displacement originally agreed to had been greatly underestimated. With a given horsepower, the increase in displacement materially retarded the speed of the vessels, and it was necessary to compensate for the increased displacement by attention to the efficiency of the machinery, the form of the stern, and the design of the propellers. This added to the cost of construction.

Including the dock trials, 14 trial runs were made with the *Perry*, 4 with the *Preble*, and 3 with the *Paul Jones*. These runs determined the form of stern and the type of propellers to be used. Nine of the runs with the *Perry* were made before change of stern. The form of the stern was changed as a result of the trial

runs with the *Perry*. All other runs on the three vessels were made with the new stern. The trial runs on the *Perry* preceded those on the other two vessels and the experience gained on the *Perry* was applied to the other two vessels. The *Paul Jones*, *Perry*, and *Preble* were, on September 2, July 9, and July 18, 1902, respectively, preliminarily accepted by the Secretary of the Navy, acceptance to date from the day of delivery.

The cost of the construction of these three vessels was in excess of that which was anticipated by either of the contracting parties. The evidence indicates that the cost was more than it would have been had either or both parties had prior experience in building torpedo-boat destroyers; but the excess on that account is not proved and it is probably incapable of proof. There is no evidence that the Union Iron Works unnecessarily increased the cost to any extent.

The aggregate cost to the Union Iron Works of constructing the *Paul Jones*, *Perry*, and *Preble*, exclusive of any item of profit, was $1,043,939.22. The company has been paid by the Government, for such construction, a total of $878,-654.69. Their loss was, therefore, $165,284.53, which sum the Union Iron Works is seeking to obtain.

This amount has been found by the Court of Claims.

This claim seems to be a just one, and your committee recommends that the bill do pass. A similar claim for the loss incurred in the construction of two torpedo-boat destroyers has previously been found by the Court of Claims; and Congress has enacted a law for the relief of that contractor, the Fore River Ship & Engine Building Co., act of June 17, 1926 (44 Stat. L., pt. 3, p. 1606).

The facts are fully set forth in Senate Document No. 78, Seventy-third Congress, first session, which is appended hereto and made a part of this report.

[S. Doc. No. 78, 73d Cong., 1st sess.]

COURT OF CLAIMS OF THE UNITED STATES,
OFFICE OF THE CLERK,
Washington, D. C., June 14, 1933.

Hon. JOHN N. GARNER,
President of the United States Senate,
Washington, D. C.

SIR: Pursuant to the order of the court, I transmit herewith certified copy of the special findings of fact, conclusion of law and opinion of the court by Whaley, J., entered April 10, 1933, in the case of *Union Iron Works* v. *The United States*, No. 15014 Congressional.

Said case was referred to this court on June 21, 1910, by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act. I am,

Yours very respectfully,

F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claims.

Court of Claims of the United States, No. 15014 Cong. (Decided April 10, 1933.)
Union Iron Works v. *The United States*

Messrs. Frank F. Nesbit and Clarence W. DeKnight for the plaintiff.

Mr. Arthur Cobb, with whom was Mr. Assistant Attorney General Charles B. Rugg, for the defendant.

This case having been heard by the Court of Claims, the court, upon the evidence adduced, makes the following

SPECIAL FINDINGS OF FACT

I. This is a claim for reimbursement of loss suffered in the construction under the act of May 4, 1898, 30 Stat. 369, 389, of three torpedo-boat destroyers, known as the *Paul Jones*, the *Perry*, and the *Preble*.

There was introduced in the United States Senate June 6, 1910, Sixty-first Congress, second session, a bill known as S. 8533, for the relief of certain Government contractors, builders of torpedo boats and torpedo-boat destroyers, authorized by the aforesaid act of May 4, 1898. Included among the contractors named therein was the Union Iron Works, plaintiff in this case, for which the bill proposed to appropriate $171,519.21, as the difference between actual cost of

construction and the amount paid under plaintiff's contract. Omitting the names of contractors other than plaintiff herein, bill S. 8533 is as follows:

A BILL For the relief of certain Government contractors

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the hereinafter-named builders of the twelve torpedo and sixteen torpedo-boat destroyers authorized by the act of Congress making appropriations for the naval service approved May fourth, eighteen hundred and ninety-eight, the following sums, namely, * * * the Union Iron Works, of San Francisco, California, one hundred and seventy-one thousand five hundred and nineteen dollars and twenty-one cents; being the difference between the actual cost of said boats to their respective builders and the amount paid them under their contracts.

Senate resolution of June 12, 1910, referred plaintiff's claim, among numerous others, to this court, as follows (omitting the names of other claimants):

Resolved, That the claims of * * * certain Government contractors (S. 8533) * * * now pending in the Senate, together with all accompanying papers, be, and in the same are hereby, referred to the Court of Claims, in pursuance of the provisions of an act entitled "An act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887, and commonly known as the "Tucker Act." And the said court shall proceed with the same in accordance with the provisions of such act and report to the Senate in accordance therewith.

On December 13, 1910, the Union Iron Works filed in this court its petition, praying the court to hear and determine the facts and make report thereof to the Senate.

Plaintiff, Union Iron Works, was incorporated in 1882 and is now, and has been since said date, a corporation duly created, organized, and existing under and by virtue of the laws of California.

II. In August 1902 plaintiff transferred all its property, except contracts with the Government and the claim in suit, to the United States Shipbuilding Corporation, a New Jersey corporation. In 1905 all the property of the United States Shipbuilding Co. was, pursuant to receivership proceedings, purchased by the Union Iron Works Co., likewise a New Jersey corporation. In November of 1917 the property of the Union Iron Works Co. was leased or purchased by the Bethlehem Shipbuilding Corporation, Ltd., a corporation of the State of Delaware. The Union Iron Works Co. controls the plaintiff company, and said Bethlehem Shipbuilding Corporation, Ltd., controls the Union Iron Works Co.

Plaintiff's corporated status is maintained for the purpose of prosecuting this claim.

III. The Naval Appropriation Act of May 4, 1898 (30 Stat. 369, 389), provided for and authorized certain increases in the Naval Establishment, among which was the construction of "sixteen torpedo-boat destroyers of about four hundred tons displacement, and twelve torpedo boats of about one hundred and fifty tons displacement, to have the highest practicable speed, and to cost in all, exclusive of armament, not exceeding six million nine hundred thousand dollars"; it was by the act further provided that not more than 5 of the destroyers and not more than 4 of the torpedo boats should be built in one yard or by one contracting party; that the contracts for destroyers and torpedo boats might be let after 3 weeks' advertisement, and that in all their parts, including steel, the vessels should be of domestic manufacture.

On May 16, 1898, the Navy Department issued its circular defining the chief characteristics of the torpedo boats and torpedo-boat destroyers authorized by said act of May 4, 1898, and under date of May 4, 1898, issued a circular defining the characteristics of machinery for the vessels. In the circular of May 16, 1898, it was stated that an advertisement would be published later, calling for the construction of the vessels in accordance with plans and specifications (class 1) provided by the Navy Department and (class 2) submitted by the bidder, and, further, that a bidder on his own design could adopt and incorporate therein any part of the Navy Department's plans; it was further provided that the maximum prices allowable would be for the torpedo boats $170,000 and for the torpedo-boat destroyers $295,000, and that there would be reserved on each boat $5,000 to

cover expenses chargeable to the appropriation but not included in the contract prices. The aggregate of the maximum prices fixed by the circular and the reservations equals the limit of $6,900,000 provided by the act.

On or about May 25, 1898, a copy of the above-mentioned circulars, together with an accompanying letter stating that the Navy Department's hull plans and specifications would be ready the following July, was received by the plaintiff.

On July 13, 1898, the Secretary of the Navy advertised for bids for the construction of the vessels. In the advertisement it was provided that no bids in excess of the prices mentioned would be entertained for the construction of the vessels; that the torpedo-boat destroyers should have a displacement of approximately 400 to 435 tons and a speed of not less than 28 knots; that construction should be completed within 18 months; that copies of the formal proposal and contract and the Navy Department's plans and specifications would be available after July 18, 1898; and that proposals would be entertained for the construction of vessels upon either the builder's plans and specifications (class 2) or the plans and specifications of the Navy Department (class 1).

IV. During the times herein involved the Navy Department fixed the maximum or upset price at which bids would be considered after it had estimated the costs and such price was intended to provide and usually allowed a fair return to the contractor for his work. Previous to submitting its proposal, hereinafter mentioned, plaintiff had realized a material profit on the construction of naval vessels in the prices set by the Navy Department.

Officers of the Navy Department believed that the prices fixed in the advertisement for the torpedo boats and torpedo-boat destroyers were fair and reasonable and that a profit would accrue to the builders.

The president of the plaintiff company before submitting the proposal for the construction of these vessels made inquiries at the Navy Department and was there informed that the upset price of $295,000 fixed for each boat would cover the cost and there should be also a profit.

V. Following the advertisement the plaintiff applied for and received the Navy Department's plans and specifications for the torpedo-boat destroyers. These plans were in accord with the standard Navy practice, with which plaintiff was familiar, and termed "General Arrangement Plans", leaving the preparation of detailed working plans to the contractor.

On August 23, 1898, plaintiff filed with the Navy Department its proposal for the construction (class 1), in accordance with the Navy Department's plans and specifications, of three torpedo-boat destroyers, each to be of about 400 tons displacement, with speed of 29 knots, and at a price per vessel of $285,000. This proposal was accepted by the Navy Department September 23, 1898, and a contract awarded plaintiff for the construction of torpedo-boat destroyers nos. 10, 11, and 12, to be known, respectively, as *Paul Jones*, *Perry*, and *Preble*.

VI. Contracts for the construction of the three vessels were dated October 5, 1898, and entered into between plaintiff, represented by its president, and the United States, represented by the Secretary of the Navy. The contracts provided, among other things, that construction was to be in accordance with certain drawings, plans, and specifications, which the United States might change from time to time, the change to be authorized in writing by the Secretary or Acting Secretary of the Navy where the cost thereof would exceed $500, the actual cost of changes and the damage, if any, caused thereby to be ascertained, estimated, and determined by a board of naval officers appointed by the Secretary of the Navy, their determination in the matter to be binding upon the contractor. The contracts required the contractor to submit necessary plans and drawings to the Navy Department for approval before material was ordered or work commenced. Workmanship and materials were at all times to be subject to inspection by the Secretary of the Navy or by those whom he might appoint. The vessels were to be of about 400 tons displacement (the specifications said about 420 tons), were to be ready for delivery on or before 18 months from October 5, 1898, and were to have a minimum speed of 29 nautical knots an hour under specified conditions. The United States expressly disclaimed responsibility with reference to production of speed and stated that it would consider any changes suggested by the contractor as to hull or machinery. Provision was made for deductions from the contract price in case of delay upon the part of the contractor, delays from specified causes, such as those beyond the control of the contractor, being excepted. The consideration named was $285,000.

Thereafter, on March 26, 1902, the required minimum speed was by agreement reduced to 28 knots.

VII. Prior to the transfer of its property to the United States Shipbuilding Corporation in August of 1902 plaintiff had been engaged in the construction of commercial and Government vessels at its shipyard near San Francisco, Calif. At the time plaintiff entered into the contracts for the construction of the *Paul Jones*, *Perry*, and *Preble* it was an experienced shipbuilder, and had built for and delivered to the United States Government battleships, cruisers, gunboats, and monitors, had under construction two submarines, and had practically completed a torpedo boat. It has never built a torpedo-boat destroyer.

The Government had never before had built for it a torpedo-boat destroyer and those authorized by the act of May 4, 1898, were the first torpedo-boat destroyers within the experience of the Navy officers. Prior to contracting for the construction of the torpedo-boat destroyers the Government had had built a number of torpedo boats, and plaintiff was building one for the Government at the time it entered into the contracts for the *Paul Jones*, *Perry*, and *Preble*, being about 97 percent completed. Torpedo boats were of the same general type as torpedo-boat destroyers, but slightly smaller in size. The cost of building them was not by itself a criterion of the cost of building the torpedo-boat destroyers authorized by the act of May 4, 1898, but was of some help in calculating the probable cost.

The Navy officers and plaintiff had more or less benefit from the experience of England in building torpedo-boat destroyers for her navy beginning in 1892, but the information gained therefrom was in no great detail. It was insufficient to determine an estimate as to the cost of torpedo-boat destroyers of the specifications here required, built of domestic material and in American shipyards.

VIII. Upon execution of the foregoing contracts plaintiff placed its orders for the necessary material with due promptness. The specifications for the forgings entered into the construction of the three vessels required the use of nickel steel instead of carbon steel which had been previously used, and but two plants in the United States, the Midvale Steel Co. and the Bethlehem Steel Co., had the facilities to turn out such material as was required for the machined forgings. Under the terms of the contract plaintiff was limited to the American market. Plaintiff exercised due diligence in efforts to expedite deliveries of all structural material. Deliveries thereof were greatly delayed and this materially delayed completion of the vessels. All of the contractors for torpedo boats and torpedo-boat destroyers suffered similar delays. In all, plaintiff was delayed some 18 months by reason of inability of the steel mills to supply the necessary structural members and plates for the hull in time.

On March 20, 1900, the Secretary of the Navy advised plaintiff that due to the difficulty in obtaining timely deliveries of steel products, which he considered beyond the control of the shipbuilders, all of the contractors for torpedo boats and torpedo-boat destroyers would be granted an additional period of 12 months for completion. This advanced the date for completion of the three vessels upon which plaintiff was working to April 5, 1901.

On that date, April 5, 1901, plaintiff wrote the Navy Department stating that it was found that the resistance due to the peculiar form of the after body of the vessels was much greater than had been anticipated and that the trials run by the *Perry* had demonstrated the impossibility of obtaining a speed of 29 knots unless the after section of the hull were changed; suggesting that the lines of the stern of that vessel and of the *Paul Jones* and *Preble*, which were then practically ready for trial, be modified; and requesting that the Navy Department so extend the time of construction as to enable the contractor with due diligence to carry out whatever decision might be reached as to modification of the hulls and so to conform to the provisions of the contract.

On April 20, 1901, the Navy Department advised the plaintiff that final action on its request would be postponed until the trials of the *Perry* had been completed.

A general strike occurred in plaintiff's plant on May 20, 1901. On January 28, 1902, plaintiff advised that the strike had ended, following which the Navy Department on March 13, 1902, at plaintiff's request, granted, on account of the strike, an additional period of 8 months and 8 days in which to complete the vessels, thus specifically extending the time to December 13, 1901.

The Navy Department, after numerous trials of the *Perry* and tank tests made with models at Washington, ordered that the sterns of the vessels be modified, and granted extensions on account of delays caused by such changes on the three vessels from December 13, 1901, to their several dates of delivery, which were, as to the *Perry*, May 31, 1902; as to the *Preble*, June 21, 1902; and as to the *Paul Jones*, July 19, 1902. The several extensions on each vessel were as follows:

	Paul Jones			Perry			Preble		
	Years	*Months*	*Days*	*Years*	*Months*	*Days*	*Years*	*Months*	*Days*
Materials	1			1			1		
Strike		8	8		8	8		8	8
Sterns		7	6		5	18		6	8
Total	2	3	14	2	1	26	2	2	16

XIX. Changes in the plans and specifications were made by the Navy Department from time to time as the work progressed, and the details were under the direction of the Navy officers. All detail and working plans were submitted to and approved by the Navy Department before being put into effect and in many instances they were changed by the Navy Department before approval. The materials and work entering into the construction of the vessels and all assembly and structural work were currently inspected and approved by representatives of the Navy Department, and the completed vessels were approved before their acceptance.

Most of the changes were not and could not be foreseen, but were found necessary as the work developed. All of them were paid for in accordance with the method provided for in the contracts. In many instances these changes affected not only the particular part changed, but required rearrangements of other parts, increasing the cost of the work, the time involved, and the displacement.

During the course of construction it became apparent that the displacement originally agreed to had been greatly underestimated, that, in fact, it was impractical for the plaintiff, if the vessels were constructed according to the details required by the Navy Department, to keep within the original displacement. With a given horsepower, the increase in displacement materially retarded the speed of the vessels, and it was necessary to compensate for the increased displacement by attention to the efficiency of the machinery, the form of the stern, and the design of the propellers. This added to the cost of construction.

XX. As completed, the *Paul Jones* had a displacement of 474.5 tons, the *Perry* 475.6 tons, and the *Preble* 474.7 tons, which were, respectively, 54.5 tons, 55.6 tons, and 54.7 tons above the displacement of 420 tons each. This excess in displacement was due, as aforesaid, to an underestimate in the original contract and specifications.

After the preliminary trials of the *Paul Jones*, *Perry*, and *Preble*, they were, on September 2, 1902, July 9, 1902, and July 18, 1902, respectively, preliminarily accepted by the Secretary of the Navy, acceptance to date from the day of delivery, and the Secretary thereupon granted extensions of time for completion to the several dates of delivery, as set forth in finding XVIII, supra.

XXI. Including the dock trials, 14 trial runs were made with the *Perry*, 4 with the *Preble*, and 3 with the *Paul Jones*. These runs determined the form of stern and the type of propellers to be used. Nine of the runs with the *Perry* were made before change of stern. The form of the stern was changed as a result of the trial runs with the *Perry*. All other runs on the three vessels were made with the new stern. The trial runs on the *Perry* preceded those on the other two vessels and the experience gained on the *Perry* was applied to the other two vessels.

XXII. Plaintiff kept for the different jobs going through its plant original books of entry termed "Prime cost books", and entered therein each day charges for labor and material. Included in the charges for labor was an overhead burden on direct labor and charges on an hourly basis for the use of machines. The charges for material represented the actual invoice cost, plus carriage, of all materials ordered especially for the job, and for material carried in stock at the plant, such cost plus a percentage representing the cost of handling in stores, except as to bronze and brass castings manufactured in plaintiff's plant, which were charged out to the job at fixed prices.

A part of the overhead or indirect expenses of plaintiff's plant was liquidated through the several departments of the plant by the charge of certain fixed percentages on direct labor, the percentage rates varying in the different departments. The same percentages and distribution had been in use for many years and worked satisfactorily. The remainder of plaintiff's overhead charges was liquidated as hourly charges for use of machine units.

The total of the overhead, thus arrived at, was included as a part of the labor cost charged to the jobs, and is not in excess of that property allocable to the three vessels, the *Paul Jones*, *Perry*, and *Preble*.

After the close of each day's work the labor-time, machine-time, and materials-issued reports, together with the job numbers to which allocable, were turned over to computers and cost accountants, who entered the results of their computation in the prime cost books. The labor wage plus the aforesaid overhead was entered as cost of labor, and the charges for materials issued to the job were entered as materials cost. Except as to a profit of $1,210.17 on drydock charges, and $10,199.83 on prices of bronze and brass castings, the charges on the prime cost books reflect the cost to the plaintiff.

The actual cost to the plaintiff of the *Paul Jones*, *Perry*, and *Preble*, thus reflected, exclusive of profit, is as follows:

	Paul Jones	Perry	Preble
HULL			
Labor	$80, 287. 53	$73, 940. 88	$75, 786. 35
Material	62, 888. 59	61, 865. 95	61, 239. 25
Total	143, 176. 12	135, 806. 83	137, 025. 60
MACHINERY			
Labor	88, 840. 83	101, 207. 06	95, 200. 41
Material	117, 886. 10	119, 627. 27	116, 579. 00
	206, 726. 93	220, 834. 33	211, 779. 41
Total	349, 903. 05	356, 641. 16	348, 805. 01
Less profit on brass and bronze castings	3, 323. 95	3, 475. 95	3, 399. 93
Net	346, 579. 10	353, 165. 21	345, 405. 08

SUMMARY

Paul Jones	$346, 579. 10
Perry	353, 165. 21
Preble	345, 405. 08
	1, 045, 149. 39
Less profit on drydocking (unapportioned to the 3 vessels)	1, 210. 17
Total cost	1, 043, 939. 22

XXIII. The cost of construction of the three vessels was in excess of that which was anticipated by either of the contracting parties.

Due to the fact that the construction of torpedo-boat destroyers was not within the experience of either party, they did not in fact know their probable cost. The evidence indicates that the cost was more than it would have been had either or both parties had prior experience in building torpedo-boat destroyers; but the excess on that account is not proved and it is probably incapable of proof. The *Perry* was used more or less as an experimental boat, the result of the tests thereon being later applied to the *Paul Jones* and *Preble*. The cost of the *Perry* exceeded that of the other two by some $7,000.

There is no evidence that plaintiff unnecessarily increased the cost to any extent. The boats, when completed, departed widely from the original calculations and designs of the Navy Department, but were completed in accordance with all changes therefrom required by defendant's officers under the contract.

XXIV. Plaintiff has been paid by the defendant on the three vessels, as follows:

	Paul Jones	Perry	Preble
Original contract price	$285, 000. 00	$285, 000. 00	$285, 000. 00
Addition thereto due to changes	6, 216. 54	8, 857. 91	8, 580. 24
Total	291, 216. 54	293, 857. 91	293, 580. 24

SUMMARY

Paul Jones	$291, 216. 54
Perry	293, 857. 91
Preble	293, 580. 24
Total	878, 654. 69

The contracts provided that plaintiff should receive its last payment "on the execution of a final release to the party of the second part (the United States), in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under or by virtue of this contract."

Pursuant to this clause of the contracts, plaintiff, on January 19, 1903, acknowledged receipt of the balance due on the contract for the *Perry*, and executed a release as follows:

"* * * the Union Iron Works * * * does hereby, for itself and its successors and assigns and its legal representatives, remise, release, and forever discharge the United States of and from all and all manner of debts, dues, sum and sums of money, accounts, reckonings, claims, and demands whatsoever in law and in equity, for or by reason of, or on account of, the construction of said vessel under the contract aforesaid."

On May 20, 1903, a like release was executed by plaintiff as to the *Paul Jones*, and on June 4, 1903, as to the *Preble*, in each case acknowledging receipt of balances due on the contract appertaining thereto.

XXV. The aggregate cost to plaintiff of constructing the *Paul Jones*, *Perry*, and *Preble*, exclusive of any item of profit, was $1,043,939.22 (finding XXII, supra). Plaintiff has been paid by the defendant for such construction a total of $878,654.69 (finding XXIV), which is $165,284.53 less than said cost.

XXVI. The Navy Department February 26, 1902, appointed a board to examine the claims of the several contractors building torpedo boats and torpedo-boat destroyers as to excessive cost of construction, the president of which was Rear Admiral F. M. Ramsay. This board, known as the "Ramsay Board", made its report to the Secretary of the Navy April 9, 1902, and it appears at length in Senate Document No. 112, Fifty-eighth Congress, second session, Relief of Bath Iron Works and Others.

Therein the probable cost of plaintiff's torpedo-boat destroyers, as reported by plaintiff, is shown, page 9, as follows, with the respective degrees of completion on April 1, 1902:

Vessel	Percentage of completion	Cost
Paul Jones	87	$355,950.65
Perry	93	355,930.28
Preble	90	354,720.06
		1,066,600.99

These items of cost were reported by plaintiff in three communications to the Ramsay Board dated March 10, 1902, as the estimated cost to complete the vessels ready for delivery to the Government. Plaintiff's report of its estimates is to be found at pages 65–70 of said Senate Document No. 112.

CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made part of the judgment herein, the court decides, as a conclusion of law, that plaintiff is not entitled to recover, and its petition is dismissed.

Judgment is rendered against the plaintiff for the cost of printing the record herein, the amount thereof to be ascertained by the clerk and collected by him according to law, which amount is found to be $2,159.82.

OPINION

Whaley, Judge, delivered the opinion of the court:

By Senate resolution of June 21, 1910, there was referred to this court for action in accordance with the Tucker Act, act of March 3, 1887, 24 Statutes, 505, the claim of "certain Government contractors", Senate bill 8533, Sixty-first Congress, second session. Senate bill 8533 proposed the relief of these contractors, builders of torpedo boats and torpedo-boat destroyers authorized by the act of Congress approved May 4, 1898, in certain amounts, included in whom was the plaintiff herein, in the amount of $171,519.21, "being the difference between the actual cost of said boats to their respective builders and the amount paid them under their contracts."

Plaintiff's case was docketed by the court under no. 15014. Considerable testimony was taken and documentary evidence filed, and on the proof thus adduced the court has made the foregoing special findings of fact.

This case, among others, had been heard and passed upon by the Ramsay Board, who reported thereon to the Secretary of the Navy April 9, 1902. Therein, as appears by Senate Document No. 112, Fifty-eighth Congress, second session, the Board showed the actual costs as reported by the plaintiff to be:

Paul Jones	$355, 950. 65
Perry	355, 930. 28
Preble	354, 720. 06
Total	1, 066, 600. 99

It will be noted that the Ramsay Board reported before these three vessels were completed, delivered, and accepted. Hence, the cost of $1,066,600.99 is an estimate.

The report of the Ramsay Board, and the recommendation of the Navy Department thereon, are contained in Senate Document No. 112, above referred to.

At the time of reference to this court, June 21, 1910, and when petition was filed herein, December 13, 1910, the act of March 3, 1887 (24 Stat. 505), under which the claim was referred, was in force, and section 14 thereof, id. 507, in connection with section 1 of the act of March 3, 1883 (22 Stat. 485), provided that:

"When the facts shall have been found, the court shall not enter judgment thereon, but shall report the same to the committee or to the House by which the case was transmitted for its consideration."

On March 3, 1911 (36 Stat. 1087), was enacted the Judicial Code, section 151 whereof, id. 1138, provided that where the court had jurisdiction to enter judgment it should proceed to do so, reporting its proceedings to the House that had referred the case.

The claim is one founded upon a contract with the Government of the United States (sec. 145, Judicial Code), and within the general jurisdiction of this court. The cause or causes of action accrued more than 6 years before either the claim was transmitted to the court by the Senate or petition was filed in court, and the claim is therefore barred by section 156 of the Judicial Code. Were the court to base its judgment on the merits, the petition would still have to be dismissed, since the facts show no breach of contract, and none is alleged. The plaintiff is not entitled to either legal or equitable relief. The claim is one for a gratuity.

Whether plaintiff is to have relief from its loss, and the amount of relief, if any, is therefore solely within the wisdom and sound discretion of the Congress.

It is ordered that the special findings of fact and conclusion of law, and the foregoing opinion of the court, be transmitted to the Senate, in accordance with the act of March 3, 1911 (36 Stat. 1087, 1138 (sec. 151 of the Judicial Code, sec. 257, title 28 of the United States Code)), amending the act of March 3, 1887 (24 Stat. 505, 507).

Williams, Judge; Littleton, Judge; Green, Judge; and Booth, Chief Justice, concur.

Filed April 10, 1933.

A true copy.

Test:

F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claims of the United States.

COHEN, GOLDMAN & CO., INC.

[H. Rept. No. 2333, 74th Cong., 2d sess., to accompany S. 1041]

Under the terms of the bill the Secretary of the Treasury is authorized and directed to pay to Cohen, Goldman & Co., Inc., the sum of $19,030.20, in full settlement of all claims against the Government growing out of contracts nos. 1325, 1625, 2299, 3220, and 4519–N, and contracts supplementary thereto, for the manufacture during 1917 and 1918 of overcoats and uniforms for the United States Army.

In the years 1917 and 1918 the claimant, Cohen, Goldman & Co., Inc., entered into five original and two supplemental contracts for the manufacture and delivery during 1917 and 1918 of overcoats and uniforms for the United States Army at a fixed price for each article. Under these contracts the materials for the manufacture of the articles were to be furnished by the Government.

The claims growing out of these contracts were of two kinds. The first type of claim was for an agreed bonus for saving of material to the Government as a result of special methods of manufacture adopted by Cohen, Goldman & Co. for that specific purpose at great expense to itself and at the Government's special request and urgence. The Government agreed in writing to pay the bonuses, in provision contained in various of the contracts. The second type of claim, arising under contract 4519–N, was for the extra expenses to which Cohen, Goldman & Co. was put by changes in specifications by the Government after execution of the contract. This contract expressly provided that the contractor was to have the right to reimbursement for such additional expense.

From the end of the year 1918, when claims under these contracts were first made by Cohen, Goldman & Co., until January of 1928, claimant went from one Government Department to another and from one Government board to another in an effort to obtain a settlement, but without success. In June 1930 suit was brought in the Court of Claims for bonuses and extra expenses earned and incurred under the various contracts and supplements. The Government, after service of the complaint upon it, demurred to the claims on the ground that they were barred by the statute of limitations. This demurrer was overruled by the Court of Claims, with leave to the Government to plead the statute of limitations in its answer. After the joinder of issue, the case was duly referred to a commissioner of the court for the taking of testimony and for a report on the facts.

At that point the Government contested the claims on two grounds. First, that on the merits they were not entitled to a recovery, and second, that a recovery was barred by the statute of limitations. The commissioner in his report found in favor of the claimant on the merits of all of its claims for bonuses, making certain adjustments in the amounts. On its claim for additional expense incurred under contract 4519–N, the commissioner found that the additional expense was incurred, but held that the Government was entitled to a counterclaim in excess of the amount allowed for additional expense, although that counterclaim had never been pleaded by the Government. (This counterclaim was subsequently dismissed by the Court of Claims.) On the record as it now stands, the claim for additional expense has been found warranted and no counterclaim exists against it.

While the Government originally resisted the claims upon their merits, as well as upon the plea of the statute of limitations, when the matter was argued before the Court of Claims, the Government, with certain minor exceptions, accepted the report of the commissioner upon the facts as correct. The Court of Claims accepted the report of the commissioner upon the facts in full. The claimant was, however, denied relief on its concededly and judicially declared meritorious claims simply and solely by reason of the court's holding that they were barred by the statute of limitations.

The facts before your committee show that from the time the claims first arose almost 15 years ago, claimant diligently and continuously urged its claims and promptly complied with every request of the Government to adduce proofs in support of them. It followed the claims as they were shifted from department

to department, and responded to the call of each new tribunal to which it was referred by the Government. Apparently its one fault was that it followed the suggestions and requests of the various governmental officials instead of entering suit.

The Court of Claims in its opinion held that the bonuses earned by Cohen, Goldman & Co. totaled $17,958.40, and that the extra expense incurred totaled $1,071.80, amounting in all to $19,030.20.

Judge Littleton delivered the opinion of the court, a part of which is as follows:

"In this case plaintiff seeks to recover under the first four contracts mentioned in the findings and the two supplements thereto amounts computed upon the basis of 20 percent of the net cost to the Government of the amount of material and trimmings saved by plaintiff in the manufacture of the articles of clothing called for from September 1, 1917, to completion of these contracts. The facts established that the Quartermaster General authorized this additional allowance to the plaintiff, from September 1, 1917, and that the total additional allowance, to which it became entitled under the contracts for the saving in material effected, was $17,958.40.

"Plaintiff also seeks to recover $1,071.80 for extra cost incurred under written changes made in contract 4519–M, and this amount is established by the facts. * * *."

Under all the circumstances your committee is of the opinion that the claim is a meritorious one, and it is recommended that the bill do pass.

The decision of the Court of Claims, decided May 29, 1933, is appended hereto and made a part of this report.

[Court of Claims of the United States. No. L–244 (decided May 29, 1933), *Cohen, Goldman Co., Inc.*, v. *The United States*]

Mr. H. H. Nordlinger for the plaintiff.

Mr. Dean Hill Stanley, Mr. Harold Riegelman, and Mr. David B. Lefkowitz were on the brief.

Mr. R. R. Farr, with whom was Mr. Assistant Attorney General Charles B. Rugg, for the defendant.

Plaintiff sues to recover a total of $19,030.20 under five original and two supplemental contracts for the manufacture during 1917 and 1918 of overcoats and uniforms for the United States Army. The amount claimed under the first four contracts and the two supplements is for a bonus alleged to have been agreed upon by the parties from the date of the original contracts of September 1, 1917, and, in any event, not later than October 10, 1917, for savings in material furnished by the Government effected by plaintiff in the performance of these contracts.

The amount claimed under the last contract is for additional expense incurred by plaintiff as a result of an enlargement by the defendant of its requirements under the contract ordered after the execution thereof. The right to the extra expense was reserved to plaintiff by the terms of the contract.

The defendant contends that under one of the contracts the plaintiff was overpaid, and that there is due the defendant $2,538.60, or, in the alternative, $1,208.35, and that the other claims of plaintiff under all of the contracts and supplements are barred by the statute of limitation inasmuch as this suit was not instituted within 6 years after the cause of action accrued.

SPECIAL FINDINGS OF FACT

1. April 12, 1917, the plaintiff, a New York corporation, entered into a concontract, no. 1645, with the United States represented by Colonel J. M. Carson of the Quartermaster Corps, U. S. Army, for the manufacture and delivery by plaintiff of a certain number of Army overcoats and uniforms at a fixed price for each article. Under this and all other contracts hereinafter mentioned, the materials for the manufacture of the articles were to be furnished by the Government. Deliveries under this contract were to be made commencing thirty days after receipt of the materials at the rate of approximately one fifth of the garments contracted for a month so as to complete delivery in five months. This contract and all other original contracts, hereinafter mentioned, had attached to them schedules showing the specifications and allowances of clothing material that would be made by the defendant for the various sizes of garments to be manufactured.

June 12, 1917, plaintiff entered into another contract, no. 1325, with defendant represented by Colonel M. Gray Zalinsky, Quartermaster Corps of the Army, calling for a certain number of overcoats, and mounted and foot breeches at a fixed price for each article. Deliveries under this contract were to be made commencing thirty days after receipt of materials by plaintiff and in equal monthly deliveries to be completed by December 31, 1917.

2. Early in 1917 the president of the plaintiff company was appointed a member of a committee of the National Association of Clothiers to act in an advisory capacity to the Government with reference to the requirements of the clothing industry. This committee was informed by a representative of the Government that the latter was anxious to conserve material and the committee recommended to him a method by which articles of clothing could be cut from less cloth than was then being used and allowed by the Government, provided the manufacturer was compensated for the extra expense the new method would involve.

The cloth furnished by the Government came in varying widths and when being cut in thickness of a number of layers, according to the standard custom, the manufacturers had to use the narrowest piece as the top layer for a marker, and consequently all the extra widths of those pieces that were wider went into rags and clippings. The committee suggested that the manufacturer be adequately compensated to pay him to divide the cuttings into groups so that they could be cut according to the uniform widths which would result in a material saving. This method, as pointed out by the committee, would involve considerable additional expense to the manufacturer, as it would require more cuttings in that it would be necessary to make such cuttings of thinner layers of cloth because the manufacturer would not have sufficient material on hand at all times to cut them in the thickness formerly made and it would also be necessary to assort the pieces making it necessary to have more cutters and more room to handle the material.

The committee proposed that in order to obtain the assistance and cooperation of the manufacturers in effecting this saving to the Government, the Government should offer 50 percent of the saving made beyond the existing Government allowances for cloth for each garment under the contract.

The Government looked with favor upon the proposal of the National Association of Clothiers and later the committee received a notice from the Government that its recommendations had been approved, but that the bonus would be 20 percent of the cost to the Government of the goods saved instead of 50 percent.

In August 1917, plaintiff received a letter from the Quartermaster General of the Army referring to the desire of the Government committee on supplies to conserve cloth used on Government contracts and, also, to the two contracts hereinafter mentioned between the plaintiff and the Government. In this letter the Quartermaster General guaranteed to the plaintiff a bonus of 20 percent of the cost of the cloth to the Government for cloth saved on all garments thereafter to be manufactured. The Quartermaster General also advised plaintiff that supplemental contracts would be made. The effective date of the bonus was September 1, 1917.

3. Prior to September 1, 1917, plaintiff followed the general method then employed in the clothing industry for the cutting of garments. The material making up the shipments of cloth furnished by the Government varied substantially as to width. In cutting this material under the standard method in use prior to September 1, 1917, the narrowest piece was placed on top of the pile of pieces to be cut at each particular cutting, and, because of the variation in width of the pieces lying under the top, the benefit of the full width of each piece could not be obtained in the cutting.

On and after September 1 plaintiff used its best efforts to avoid all possible waste of material and adopted a new method of cutting under which plaintiff sorted the pieces of material contained in each shipment according to the widths so that each pile of pieces of material cut contained pieces of approximately the same width. This sorting involved additional labor, both by reason of the necessity of sorting according to width and also by reason of the fact that the piles of material cut at each cutting had to be smaller than the piles under the old system. In order to operate its plant under the new system it was necessary for plaintiff to provide additional space for workrooms and for this purpose the plaintiff, on September 1, 1917, leased the fifth floor of the building in which its plant was located at an annual rental of $9,000. Plaintiff was also required to purchase additional equipment. The total additional expenditures made by plaintiff for the additional equipment necessary, in order to cut the cloth under the new system, was $11,736.40 for 18 additional cutting machines, 3 band saws,

3 ticket-sewing machines, 3 motors, electrical work, 840 feet of additional cutting tables and linoleum therefor, 180 feet of trimming tables and linoleum therefor, and certain miscellaneous equipment.

It was also necessary for plaintiff to employ 6 additional cutters and 6 additional helpers at $45 and $30 a week, respectively. In addition it was necessary to employ about three extra people for opening the cloth, measuring the widths, rerolling it, and stacking it in proper places.

4. October 10, 1917, plaintiff and the Government entered into two supplemental contracts, the first being 2716, supplementary to original 1325 and the second being 1645, supplementary to the original 1645. These supplemental contracts were as follows:

"And whereas it is believed that a considerable yardage in cloths, etc., furnished contractors for the manufacture of coats, breeches, and other articles cut from patterns, has been lost to the Government, through careless and inefficient cutting, whereby the saving in uncut cloth returned to the Government is materially reduced; and in order to encourage skillful and painstaking cutting from the patterns furnished the contractors, it is to the interest of the United States that said contract be modified in the following particulars:

"Now, therefore, it is hereby agreed between the parties hereto that the abovenamed contract is hereby amended so as to embody the following proviso, viz:

" 'That in cutting textile materials furnished by the United States for use in the manufacture of garments, etc., under said contract, the contractor shall use best efforts to avoid all possible waste. For the additional work and special care so involved, the contractor shall be paid as separate compensation and premium an amount equal to twenty percent of the net cost price of such Government-owned materials, to the extent of the saving in uncut yardage on comparing the quantities actually used in the cutting with the allowances for the purpose listed in the accompanying schedules—the material of the yardage so saved to remain the property of the United States. There shall not, however, be any skimping whatever, in the cutting for the garments, etc., and in event of the violation of this condition, no compensation shall be made for the saving in yardage resulting from the lays of such skimped cuttings, and the Government shall also have the election of annulling the contract for such cause.'

"In all other respects the stipulations of said original contract shall remain in full force and effect."

The plaintiff put into effect the new method of cutting the garments in order to effect the saving of cloth, as aforesaid, on September 1, 1917, and between that date and the completion of the two original contracts, 1645 and 1325, it saved 6,442.25 yards of cloth for the breeches, coats, and overcoats upon which the additional allowance of 20 percent of the net cost price to the Government of material saved was $8,736.34.

The bonus of 20 percent computed from October 10, 1917, to the date of completion on the remaining articles manufactured under these contracts amounted to $8,373.26.

5. The method of cutting followed by plaintiff from September 1, 1917, also resulted in substantial savings of trimming materials to the defendant under the contracts, and the additional allowance of 20 percent of the net cost price to the Government of trimming materials saved from September 1, 1917, to the date of completion of the two contracts mentioned amounted to $3,108.91.

The 20 percent allowance on the net savings of the trimming materials computed from October 10, 1917 to the date of completion of the contracts amounted to $1,104.97.

6. October 29, 1927, plaintiff and the Government, represented by Colonel J. M. Carson of the Quartermaster Corps, entered into another contract, 2299, calling for the manufacture of 25,000 service coats at $1.649 each, delivery to be made after receipt of materials and the contract to be completed by December 31, 1917. It had annexed a schedule showing the allowances of materials for the cutting of articles of particular sizes of the garments called for. It also contained a provision the same as in the supplemental contracts, hereinbefore mentioned, calling for the use by plaintiff of its best efforts and extra care in cutting materials and for a bonus, or additional allowance, to plaintiff of 20 percent of the net cost price to the Government of the materials saved.

In the performance of this contract plaintiff used special care and its best efforts to avoid all possible waste from the date of execution of the contract to its completion, and it employed the methods and incurred the additional necessary expense in operating its plant under the system adopted September 1, 1917,

hereinbefore described. The bonus to which plaintiff became entitled, because of the saving in cloth and trimmings by the methods used, was $291.38.

7. December 31, 1917, plaintiff and the Government, represented by Colonel Thomas H. Slavens, Quartermaster Corps of the Army, entered into another contract, 3220, calling for the manufacture of 200,000 wool coats from material to be furnished by the Government. Deliveries were to be made commencing three weeks after receipt of the cloth at the rate of approximately 50,000 coats a month. This contract contained a provision allowing plaintiff a bonus or additional allowance in excess of the fixed price of 20 percent of the net cost price to the Government of material saved in the manufacture of these coats. Plaintiff pursued the method adopted prior to September 1, 1917, for saving cloth and trimming materials as a result of which it became entitled under this contract to a bonus of $5,821.77.

8. The extra care and additional expense referred to in findings 3 and 4, used and incurred by plaintiff, continued from September 1, 1917, until completion of the performance by it of contracts 1645 and 1325, as supplemented, and from the beginning until completion of contracts 2299 and 3220.

9. July 15, 1918, plaintiff and the Government, represented by Captain John R. Holt, Quartermaster Corps of the Army, entered into a contract, 4519–N, calling for the manufacture by plaintiff of 48,000 pairs of wool trousers at 65 cents each; deliveries to be completed September 14, 1918. Art. 15 of this contract provided that "the contracting officer may, by written notice, make reasonable alterations, omissions, additions, or substitutions not materially affecting the general design and substance of the articles, and in such case the contractor shall be governed thereby as if same were originally provided for in this contract. If by reason therefore the cost of performance to the contractor shall be increased or decreased, then the contract price shall be increased or decreased accordingly to a sum which shall be agreed upon, or if the parties shall be unable to agree, then to a sum fixed by the War Department Board of Appraisers." The contract also provided that every decision or determination made under it by the Secretary of War or the Quartermaster General, exclusive of decisions or determinations by the contracting officer, should be final and binding upon the parties unless otherwise stated therein. The contract contained schedules showing the allowance of materials for the cutting of trousers of the particular sizes called for.

10. August 29, 1918, the Quartermaster General requested that "on all long wool trousers you overcast the bottoms of seam to prevent raveling. It will be a little additional expense but since the final price on these trousers is not yet settled, such extra cost will be included in final settlement of price."

August 30, 1918, plaintiff was directed in writing that "on all long trousers cut from serge material the inseams, side seams, and edges of flys be serged to prevent raveling. A record should be kept of all garments treated in this manner in order that same be taken into consideration in setting price for the manufacture. This refers to garments cut prior to the time order was issued to cut no more serge material for long trousers. Hereafter long trousers will be made from Melton only."

Pursuant to these instructions plaintiff serged the bottoms of 37,450 pairs of trousers and the bottoms, inseams, outside seams, and seat seams of 750 pairs. These requirements were in addition to those specified in the original contract. The extra cost to plaintiff by reason of these alterations and additions made to the original contract by the defendant was $1,330.25. This extra expense has not been paid to plaintiff.

Plaintiff duly performed all the terms and conditions of this contract, 4519–N, and the defendant received and accepted the total number of trousers called for therein in full compliance with the terms and conditions thereof. The defendant received and accepted a net total shipment of 48,149 pairs of trousers, the contract price of which, at 65 cents each, was $31,296.85. The total of the payments to plaintiff by the defendant under this contract was $31,555.30, or $258.45 in excess of the contract price of 65 cents a garment. Deduction of this last-mentioned amount from the additional expense of $1,330.25, to which plaintiff was entitled because of changes in the contract price, leaves $1,071.80 due by reason of the changes ordered in writing.

11. Prior to December 1918, plaintiff filed with the zone finance officer of the War Department, New York, a claim for extra compensation because of additional expense incurred as a result of changes and alterations in contract 4519–N. August 14, 1919, the New York Zone Board of Contract Review, acting under the authority of the act of March 2, 1919, known as the Dent Act, made an award to plaintiff of $4,241.70 on account of additional expense incurred under this

contract, which amount was subsequently paid to plaintiff but was subsequently deducted from an amount due plaintiff for overpayment of taxes stated in finding 18.

12. In December 1918, plaintiff filed with the zone finance officer claims for the bonus of 20 percent on account of cloth saved under contracts 1645, 1325, 2299, and 3220. April 25, 1919, plaintiff presented the claims to the director of purchase and storage of the War Department in Washington and, also, on May 9, 1919, it presented these claims to the zone supply officer of the War Department at New York. June 3, 1919, the zone finance officer at New York sent plaintiff certain forms for presenting its claims and the forms were filled out and returned. On June 6 plaintiff filed these claims with the claims board, office of director of purchase, War Department, Washington.

13. March 16, 1920, the War Department disallowed plaintiff's claim for bonus based on materials saved under contract 1325 on the ground that the supplemental contract was without consideration and not binding on the United States and notified the plaintiff of such action by letter on that date.

14. March 8, 1920, the War Department, through the claims board, office of director of purchase, disallowed plaintiff's claim for bonus based on materials saved under contract 1645 for the same reason and notified the plaintiff of such action by letter of that date.

15. July 13, 1920, the War Department, through the purchase section, War Department Claims Board, disallowed plaintiff's claim for bonus based on materials saved under contract 2299 on the ground that plaintiff effected no savings, but used 1,373⅞ yards of cloth in excess of the allowance under the contract.

16. On the same date July 13, 1920, the War Department, through the same claims board, disallowed plaintiff's claim for bonus based on materials saved under contract 3220 on the ground that it had used 9,302 yards of cloth in excess of the allowance provided in this contract.

Thereafter plaintiff petitioned the War Department to grant it a rehearing on account of its claims for bonus under contracts 2299 and 3220 and, on December 20, 1921, The Assistant Secretary of War advised plaintiff by letter that inasmuch as it had not promptly appealed from the decisions of the claims board disallowing its claim "it is my opinion that the decision of the purchase section should stand, unless reversed by the courts."

May 3, 1922, plaintiff again requested a rehearing by the War Department Claims Board of its claims for bonuses under these two contracts, and on May 9, 1922, The Assistant Secretary of War advised plaintiff that its application for a rehearing was denied.

May 23, 1922, plaintiff again requested a rehearing of its claims for bonuses under these two contracts, and The Assistant Secretary of War, on May 31, 1922, notified the plaintiff of the refusal of the Department to reopen and rehear the matter.

17. January 31, 1921, the finance department of the War Department notified plaintiff by letter that an audit of its contracts made by the Department revealed that plaintiff was indebted to the United States in the amount of $525,694.11 for excess use of materials under contracts 1645, 1325, 3220, and 2299, and other contracts not involved in this suit. Subsequently at plaintiff's request an aduit and survey were made by the War Department of plaintiff's books and records with reference to these contracts.

September 25, 1923, plaintiff filed with the finance department of the War Department a claim in the amount of $32,226.59 for bonuses on account of material saved under the four contracts above mentioned. September 26, 1923, it filed the same claim with the Comptroller General.

18. During 1920 plaintiff filed a claim for refund of income taxes paid for the fiscal year ended November 30, 1919. Thereafter, on November 8, 1923, the claim for refund was allowed by the commissioner in the amount of $10,080.41 and the disbursing clerk of the Treasury Department was authorized to issue a refund check therefor. Settlement of this matter was made by the Comptroller General by certificate of January 29, 1924, which was mailed to the plaintiff. In such settlement the Comptroller General deducted $2,194.97 from the amount authorized by the commissioner to be refunded, being the amount held by him to be due the United States from plaintiff on account of an adjustment for freight under a separate contract between the plaintiff and the Government, which adjustment is conceded by plaintiff and is not in issue in this suit. The Comptroller General also deducted from said tax overpayment the further sum of $4,241.70 paid to plaintiff under the award of the New York Zone Board of Contract Review,

hereinbefore mentioned in finding 11, on the ground that the payment made to plaintiff on account of the award was erroneous. After making the deductions the Comptroller General paid plaintiff the balance of the tax overpayment of $3,643.74. The settlement certificate mailed to the plaintiff by the Comptroller General contained a statement that "if a claimant desires a review of this settlement, or any item thereof, he should not accept payment of the amount allowed as to such item." In accordance with the notice plaintiff returned the check for $3,643.74 to the Comptroller General. Plaintiff requested a review of this settlement, protesting against the deduction made of the award of $4,241.70 by the New York Zone Board of Contract Review and, on August 13, 1924, after a review of the settlement, the Comptroller General rendered a decision sustaining the deduction, which decision was furnished plaintiff. On December 15, 1924, plaintiff requested a reconsideration and on March 23, 1925, the Comptroller General reaffirmed his decision disallowing the award and notified the plaintiff thereof. This decision also covered other matters relating to the claims arising out of plaintiff's contracts with the defendant. So far as is material to this proceeding, it held that plaintiff was indebted to the Government in the amount of $157,990.54 on account of plaintiff's failure to account for all the property delivered to it by the United States for the purpose of manufacturing clothing under contracts 1645 and 1325, and three other contracts not involved in this proceeding. The amounts which the Comptroller General held to be due the Government by plaintiff under contracts 1645 and 1325 were $61,733.24 for clippings not returned to the defendant under contract 1645 and supplements thereto and $96,165.76 for material used under contract 1325 and supplement, in excess of the material allowed by this contract for which the plaintiff failed to account to the Government.

In this decision the Comptroller General also denied plaintiff's claims for the 20 percent bonus for savings effected under contracts 1645 and 1325 in the amount of $13,862.67. Plaintiff's claims for the 20-percent bonus for savings effected under contracts 2299 and 3220 were allowed in the amount of $17,820.35 in the decision on the basis of a reaudit made by the War Department.

The Comptroller General also advised plaintiff in this decision that check issued by the Treasury Department in the amount of $3,643.74, in payment of the net balance for overpayment of tax allowed by settlement certificate of January 29, 1924, hereinbefore referred to, and returned by plaintiff to the Comptroller General, would be returned to the Secretary of the Treasury for cancelation and the proceeds thereof credited to the plaintiff's account. This decision of the Comptroller General showed a net balance due the Government by the plaintiff of $136,526.45, as follows:

Due Government for property not accounted for		$157,990.54
Bonus of 20 percent due plaintiff for savings on cloth	$17,820.35	
Proceeds of tax-refund check	3,643.74	
		21,464.09
Balance due the United States		136,526.45

Demand was made on plaintiff for payment of the above-mentioned balance.

19. July 26, 1924, the finance department of the War Department notified plaintiff by letter that as a result of the revised audit made by the contract audit section of all contracts between the plaintiff and the Government for the manufacture of supplies for the War Department, the plaintiff was indebted to the United States in the amount of $158,096.48 for cloth furnished by the Government and used by the plaintiff in excess of the allowances authorized by contracts 1645, 1325, 1645, and two other contracts not involved in this suit. This notice requested the plaintiff, if the figures shown were in accord with its records, to forward a check for $158,096.48. Plaintiff at all times denied that it was indebted to the Government for any portion of the balances claimed by the Comptroller General and the Finance Department and has at no time paid any portion thereof.

20. July 18, 1925, the Comptroller General again made demand upon plaintiff for the balance determined by him to be due the United States and advised it that unless payment was made before July 28, 1925, suit would be instituted to recover.

January 26, 1928, the defendant brought suit in the United States District Court for the Southern District of New York on the account rendered by the Comptroller General asking judgment against plaintiff for $136,467.11, the net balance claimed by the Comptroller General after the allowance of the additional credit of $59.34, representing a refund of tax due plaintiff for the fiscal year 1924.

Plaintiff answered this suit denying any indebtedness to the United States and asserting a counterclaim against the Government for $40,112.03, $32,226.59 of which was based upon plaintiff's claim for the 20-percent bonus for savings of material made in connection with the contracts involved in this suit. The case came on for trial October 25, 1929, but before the trial the United States moved the court to dismiss the case on the ground that the Government, after a very thorough investigation of the case, was not able to prove the same. Thereupon it was agreed between counsel for the parties that the case be dismissed and that the counterclaim filed by the plaintiff herein be withdrawn without prejudice to its right to assert or prosecute the claims in another proceeding. October 28, 1929, the district court entered its decision in which it was "ordered and adjudged that the Government's complaint and alleged cause of action herein be dismissed on the merits, and the defendant's counterclaims be withdrawn, without prejudice to the assertion or prosecution by the defendant in one or more other actions, claims, or proceedings, either in this or in any other form or elsewhere, of the claim set forth in the counterclaims in the amended answer herein and/or of any claims by the defendant against the plaintiff involved in the mutual accounts between the parties referred to in the complaint."

21. February 7, 1930, the Comptroller General of the United States issued a certificate accompanied by a Treasurer's check in the amount of $3,703.08 made up of overpayments of tax of $3,643.74 for 1919 and $59.34 for 1924.

22. On November 4, 1929, and thereafter, plaintiff requested the Comptroller General to reconsider its claims under the contracts involved in this suit. March 11, 1930, the Comptroller General by letter to plaintiff affirmed his previous disallowance of the claims and revoked the allowance theretofore made of $17,820.35 for bonus alleged to have been earned by plaintiff under contracts 2299 and 3220. April 4, 1930, plaintiff protested against the revocation of the amount of $17,820.35 previously allowed by the Comptroller General and on May 13, 1930, the Comptroller General affirmed his disallowance and advised the plaintiff of his reasons therefor as follows:

"There was received your letter of April 4, 1930, relative to an alleged balance claimed to be due you as a bonus for savings on cloth under contracts no. 2299 of October 29, 1917, and no. 3220 of December 31, 1917, as found by an audit made by the Chief of Finance, War Department, the amount of which was applied by this office in partial liquidation of the amount found in the same audit to be due the United States on account of your failure to return clippings, etc., resulting from the manufacture of clothing from materials furnished by the United States for use in manufacturing the different articles called for by other contracts.

"The amount due the United States, as determined in the audit made by the Chief of Finance, aggregated the sum of $157,990.54 and the total credit to you, as found in said audit, was the sum of $17,820.55, the audit reports covering both debits and credits being transmitted to this office by the Chief of Finance for the stating of a settlement under the provisions of section 236, Revised Statutes, as amended by the act of June 10, 1921, 42 Stat. 24.

"The basis for the disallowance in decision of March 11, 1930, A–3236, of the item for which claim is now asserted, was that the allowance of claims against the Government must be based on records showing definite and specific facts and that if the War Department audit report is insufficient to support the charge against you it is likewise insufficient to support an allowance for savings, and that the evidence submitted by you in the form of reports of certified public accountants is not sufficient to overcome the deficiency.

"The Chief of Finance has refused to admit that the official evidence on which the audit report was based was not sufficient to support the items charged to you, or to concede that the audit made from the official evidence was erroneous, and, in view of that fact, the position of this office in regard to the matter, as above indicated, is that the audit report as submitted by the Chief of Finance, insofar as its being regarded as evidence is concerned, must be accepted in its entirety or not at all; that is, if the audit report is not sufficient to support the charge then it is not sufficient to support the claim against the Government. In other words, the debits and credits set up in the audit report must stand or fall together. Therefore, you are advised that, in view of the fact that the amount of the debits set up in the same audit is largely in excess of the amount of the credits, the claim will not be further considered by this office."

23. The Comptroller General, acting for the United States in his decisions with reference to the contracts involved in this suit, and in his correspondence with plaintiff and the United States district attorney for the southern district of New York, in the suit instituted against plaintiff on the account between the

parties as settled by the Comptroller General, treated the claims made by plaintiff in this action and the alleged indebtedness of the plaintiff to the Government under the contracts as an open, running, mutual account between the plaintiff and the United States.

24. The first four contracts and the two supplements under which plaintiff makes claim in this suit were completely performed in May 1918. All items due plaintiff by the Government, or the Government by the plaintiff, under these contracts accrued upon completion of these contracts in May 1918.

25. Contract 4519–N was completely performed by plaintiff on or before September 14, 1918, and all items due plaintiff or defendant under this contract accrued at that time.

26. There was no open, running, mutual account between plaintiff and the defendant under any of the contracts involved in this suit.

This suit was instituted June 17, 1930.

CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is not entitled to recover and its petition is therefore dismissed.

Judgment is rendered against plaintiff for the cost of printing the record herein, the amount thereof to be entered by the clerk and collected by him according to law.

OPINION

LITTLETON, *Judge*, delivered the opinion of the court:

In this case plaintiff seeks to recover under the first four contracts mentioned in the findings and the two supplements thereto amounts computed upon the basis of 20 percent of the net cost to the Government of the amount of material and trimmings saved by plaintiff in the manufacture of the articles of clothing called for from September 1, 1917, to completion of these contracts. The facts establish that the Quartermaster General authorized this additional allowance to the plaintiff from September 1, 1917, and that the total additional allowance, to which it became entitled under the contracts for the saving in material effected, was $17,958.40.

Plaintiff also seeks to recover $1,071.80 for extra cost incurred under written changes made in contract 4519–N, and this amount is established by the facts. The defendant filed a counterclaim for $2,538.60, an alleged overpayment by the Government for the garments called for by contract 4519–N, but the counterclaim is not supported by the evidence and it is denied.

The defendant contends that plaintiff is not entitled to recover under any of the contracts for the reason that the claims made were barred by the statute of limitation of six years at the time the suit was instituted on June 17, 1930. Plaintiff denies this and contends that "the statute of limitations is inapplicable because the conduct of the Government itself has rendered the account between the Government and the plaintiff a mutual, open, running account, the last item of which is within the statutory period before the commencement of the present action." We are of opinion that the contracts and the facts establish that there was not such a mutual, open, and current account between the parties as would bring this suit within the statute of limitation, and we have so found. The amounts to which plaintiff became entitled under the first four contracts and supplements for additional compensation for savings made in materials furnished by the Government clearly accrued not later than the date of completion of these contracts in May 1918, and the claim of plaintiff for additional compensation under the fifth contract, 4519–N, for changes ordered in writing accrued not later than the date of completion of this contract in September 1918. The contracts fixed the time when the payments to which plaintiff was entitled should become due and the fact that they were not paid by the defendant on or before the date on which the contracts were completed and the fact that the Government contended that the plaintiff had been overpaid did not, we think, create a mutual, open, and current account by the parties. The contracts in this case called for the manufacture by plaintiff of certain articles and payment therefor by the defendant of a fixed price at stated times. There were no reciprocal demands, such as are necessary to give rise to a mutual, open, current account, and the general rule that the cause of action to recover the balance due in the case of such current account at the date of the last item accrued is not applicable here.

The statute gave plaintiff six years within which to obtain a settlement of its claims in the departments but made it necessary that, if such settlement should not be effected within that time, suit be instituted within the six-year period. This the plaintiff failed to do and the fact that the matter was under consideration by the War Department and the General Accounting Office for a considerable time, during which the Government made certain audits and determinations disallowing plaintiff's claims and the plaintiff made various applications for reopening and reconsideration, did not extend the six-year period within which the plaintiff was required to institute suit. In one of the audits the General Accounting Office, on January 29, 1924, within six years after the completion of the contracts, issued a certificate of settlement showing $136,526.45 due the Government after allowing plaintiff a 20-percent bonus of $17,820.35, but this settlement was not accepted by the plaintiff and the Comptroller General subsequently revoked the same.

The petition must be dismissed. It is so ordered.

WHALEY, *Judge*; WILLIAMS, *Judge*; and GREEN, *Judge*, concur.

BOOTH, *Chief Justice*, did not hear this case on account of illness and took no part in its decision.

A true copy.

Test:

_____ _____,
Chief Clerk, Court of Claims of the United States.

WAR DEPARTMENT,
Washington, March 25, 1936.

Hon. AMBROSE J. KENNEDY,
Chairman, Committee on Claims,
House of Representatives.

DEAR MR. KENNEDY: Careful consideration has been given to the bill (S. 1041, 74th Cong., 1st sess.) for the relief of Cohen, Goldman & Co., Inc., which you transmitted to the War Department under date of February 13, 1936, with a request for information and the views of the Department relative thereto.

The bill provides for the appropriation of $19,030.20, in full settlement of all claims of Cohen, Goldman & Co., Inc., against the United States growing out of contracts nos. 1325, 1625, 2299, 3220, and 4519N.

The views of the War Department as to claims of this concern are set forth at considerable length in the enclosed first endorsement from the Quartermaster General to the Judge Advocate General, dated March 19, 1936 (QM 158 S–CC, Cohen, Goldman & Co., Inc.), from which it appears that instead of the United States being obligated to the claimant in the sum of $19,030.20, the claimant is obligated to the United States in the sum of $157,913.60, on account of shortage of Government material furnished the claimant in the execution of the contracts mentioned in the bill, S. 1041.

In view of the foregoing, it is the opinion of the War Department that the interests of the United States require an unqualified disapproval of the legislation proposed in the bill which you have submitted.

The War Department records in this case are exceedingly voluminous and in view of the detailed report of the Quartermaster General, they are not furnished at this time but will be transmitted if desired.

Sincerely yours,

GEO. H. DERN, *Secretary of War.*

[First endorsement]

WAR DEPARTMENT,
OFFICE OF QUARTERMASTER GENERAL,
Washington, March 19, 1936.

QM 158 S–CC (Cohen, Goldman & Co., Inc.).

To: The Judge Advocate General, Washington, D. C.:

1. In compliance with the request contained in the foregoing communication, the following is submitted in connection with the claim of Cohen, Goldman & Co., Inc., for the relief of which company S. 1041, for payment to the said firm in the sum of $19,030.20, has been referred to the War Department for report and records in the case.

2. With the exception of the contracts listed, the records of this office afford no information aside from that contained in the files of the War Department Claims Board, and copies of audit sheets herewith.

3. The following brief history of the contracts involved in the several claims filed, and action taken by the claims board in each instance is submitted for your information and convenience in the consideration of the matter.

4. Contract no. 1325 was entered into between the United States and Cohen, Goldman & Co., Inc., under date of June 12, 1917, for the manufacture of 100,000 overcoats at $1.947 each; 150,000 pairs of breeches, mounted, at $0.924 per pair; 50,000 pairs of breeches, foot, at $0.737 per pair; material for the manufacture of which was to be furnished by the United States.

5. A supplemental agreement was entered into under date of October 10, 1917, in accordance with the provisions of which the contractor was to receive as separate compensation and premium an amount equal to 20 percent of the net cost price of the Government-owned materials to the extent of the saving in amount of uncut yardage on comparing the quantities actually used in the cutting with the allowance for the purpose listed in the schedules accompanying the agreement, the material of the yardage so saved to remain the property of the United States.

6. On November 5, 1917, supplemental contract no. 2–2716 (P1225), was entered into with Cohen, Goldman & Co., Inc., under the provisions of which the balance of approximately 75,690 overcoats remaining due on contract no. 1325 were to be manufactured "short length" in accordance with OQMG Specifications No. 1267, adopted August 27, 1917. No change in the contract price was provided for, nor was it stipulated that the contractor was to share in any savings affected by the change in length of the overcoats involved.

7. Under date of June 3, 1919, contractor filed claim in the amount of $16,302.27, to cover savings alleged to have been affected by extra care in cutting the garments called for in said contract. This claim was investigated by the Claims Board, office of the Director of Purchase, and same was disallowed for the reason that the Secretary of War, in connection with a previous claim, decided that the bonus-for-saving clause appearing in a supplemental contract was without consideration and not binding on the United States.

8. An index sheet attached to the copy of the audit report on this contract, indicates that the contractor filed claim in the amount of $3,940.94 for saving 7,345.73 yards of 16-ounce Melton at $0.53 per yard, and $9,921.75 for saving 14,175.90 yards of 30-ounce Melton at $0.70 per yard. A counter-claim by the Government states that the contractor is owing $39,659.81 for 1,133⅓ yards of 30-ounce Melton at $3.50 per yard used in excess of allowance, and $56,505.95 for 21,323 yards of 16-ounce Melton at $2.65 per yard used in excess of allowance, which contractor failed to account for. (See exhibit A attached.)

9. No record has been found of a claim having been filed by Cohen, Goldman & Co., Inc., on a contract no. 1625. There is, however, a record of a claim involving contract no. 1645, which contract was entered into between the United States and Cohen, Goldman & Co., Inc., under date of April 12, 1917, for the manufacture of the following articles of clothing: 100,000 overcoats, at $1.947 each; 100,000 coats, at $1.749 each; 100,000 pairs of breeches (foot), at $0.0737 per pair; 300,000 pairs of breeches (mounted), at $0.0924 per pair. Material for the manufacture of the garments was to be furnished by the Government and contractor was to be held responsible for any loss or damage to any of the material while in his possession.

10. A supplemental agreement was entered into on October 10, 1917, under the provisions of which the contractor was to be paid as separate compensation a sum equal to 20 percent of the net cost price of the Government-owned material to the extent of the saving in the amount of yardage when comparing the quantities actually used in the cutting with the allowance for the purpose listed in the schedules accompanying the agreement, the material of the uncut yardage so saved to remain the property of the United States.

11. Under date of November 17, 1917, a second supplemental agreement was entered into with the said company under the terms of which the contractor was to perform services on the half holiday, Saturday, November 17, and the holiday, Sunday, November 18, 1917, necessary for the manufacture and delivery under the original contract of 1,540 olive-drab woolen coats, in consideration of which it was to be allowed a bonus of 50 cents for each coat accepted by the United States, the manufacture and delivery of which was completed on one of the days mentioned.

12. Under date of June 3, 1919, the contractor filed claim against the United States for the sum of $14,129.66 to cover the percentage allowed for saving in

cutting on the materials furnished. By letter dated March 8, 1920, the Claims Board, office of the Director of Purchase, notified the contractor that its claim was disapproved in view of the Secretary of War's decision that the bonus for saving clause appearing in a supplemental contract was without consideration and not binding on the United States.

13. Contract no. 2299 was entered into between the United States and Cohen, Goldman & Co., Inc., under date of October 29, 1917, for the manufacture of approximately 25,000 coats, service, wool, at $1.649 each. This contract contained the usual clause requring the contractor to avoid all possible waste and also contained the provision for separate compensation and premium on savings in uncut yardage of any of the material furnished by the Government.

14. The contract also provided that "the contractor will enter into collective bargaining arrangement with its employees." Also cancelation at the option of the Government in the event the contractor refused to afford the representative or representatives of the employees an opportunity of conferring with him. The agreement further provided for a minimum wage scale as follows:

"In the performance of this agreement all work done by garment workers, operatives, or laborers, shall be paid for by the contractor at rates not less than those prescribed by the Board of Control for Labor Standards in Army Clothing of the War Department, appointed by the Secretary of War on the 24th day of August 1917; provided that if such rates shall be changed by said Board during the performance of this agreement, compensatory adjustments shall be made for the benefit of the contractor in the event such rates are increased; compensatory adjustments shall reciprocally be made for the benefit of the Government in the event such rates are reduced."

15. Under date of June 3, 1919, contractor filed claim for relief under the act of Congress approved March 16, 1919, entitled "An act to provide relief in cases of contracts connected with the prosecution of war and for other purposes", requesting payment in the sum of $232.78 to cover savings of that amount alleged to have been made in cutting the garments to be furnished as required by the terms of said agreement. No increase in wages was involved in this claim.

16. On a hearing had by an advisory board appointed by the chairman of the Claims Board, office of the Director of Purchase, for the purpose of negotiating settlement of contractor's claims, it was found that the claimant overused 1,373⅞ yards of 16-ounce olive drab Melton, and made a saving of 565⅝ yards of luster wool serge and 143 yards of duck. The values per yard for the alleged saving made by claimant is indicated as:

	Per yard
16-ounce Melton	$2. 65
Luster wool serge	. 85
Duck	. 27

It was recommended, that inasmuch as claimant had not made any saving on the article of greatest value, that the claim be entirely disapproved.

17. Contract no. 3220 between the Government and Cohen, Goldman & Co., Inc., was entered into December 31, 1917, for the manufacture of approximately 200,000 coats, service, wool, according to Specifications No. 1268, at $1.649 each. Deliveries were to be made at the rate of $50,000 per month. All rags or clippings were to remain the property of the United States. This contract contained the usual stipulation that the contractor would be paid separate compensation and premium for any saving in cutting the garments. (Contract appears to have been completed.)

18. Under date of June 3, 1919, the contractor filed claim in the amount of $5,948.72, under the act entitled "An act to provide relief in cases of contracts connected with the prosecution of war and for other purposes."

19. This claim was disapproved by the Claims Board for the reason that on a hearing had by an advisory board appointed by the chairman of the Claims Board, office of the Director of Purchase, for the purpose of negotiating settlement of contractor's claim, it was found that the contractor had overused 9,302 yards of 16-ounce olive-drab Melton at a value of $2.65 per yard, and had saved 6,415⅝ yards of luster wool serge, and 1,060⅛ yards of duck, at $0.85 per yard and $0.27 per yard, respectively; that in view of the fact that no saving was made on the article of greatest value it was recommended that the claim be entirely disapproved.

20. An index sheet in connection with the audit of this contract shows a claim of $18,363.92 for saving 34,648.91 yards of 16-ounce Melton, at $0.63 per yard, as per bonus clause in contracts nos. 2299 and 3220—no charges were made by

the Government for shortage. However, a memorandum dated February 1, 1921, office of the zone finance officer, requesting a stop order against Cohen, Goldman & Co., Inc., for material used in excess of allowances, includes contract no. 3220.

21. The records of this office show that contract no. 4519–N was entered into between the United States and Cohen, Goldman & Co., Inc., on July 15, 1918, for the making of approximately 48,000 wool trousers, new model, as per specification requirements.

22. After the contractor had completed part of the contract it was found essential to have the end seams, side seams, and edges of flies serged to prevent raveling. It appears that 42,417 pairs of the trousers were required to be so serged. Claim was filed by the contractor for an additional amount to cover the expense of serging, and in the settlement thereof, the sum of $4,241.70, representing 10 cents per garment, was allowed by the Claims Board, Office of the Director of Purchase, under PC–1176 on July 23, 1919.

23. It appears that claim was filed by the contractor for payment of an additional amount of $28,169.30, representing increased cost of labor in connection with its operations under contract no. 4519–N and other contracts not involved in the attached bill. The claim was disallowed by the Claims Board and an appeal was taken by the contractor. The Board of Contract Adjustment found, under date of February 16, 1920, that no amount was due the claimant for the reason that the wages paid its employees were shown to have been below the standard rates prevailing in the New York district for similar work to the extent of the increase recommended by Dr. Stone, Chief of the Cost Studies Section, Clothing and Equipage Division, Office of the Quartermaster General.

24. On reconsideration, the Board of Contract Adjustment, under date of June 3, 1920, reversed its decision of February 16, 1920, and expressed the opinion that the claimant was fairly and equitably entitled to a proportionate increase in the unit price under the provisions of paragraph XI of the contract by virtue of claimant having complied with the award made thereunder. The claim was then referred to the Claims Board, office of the Director of Purchase, to "ascertain and fix the amount of additional compensation to which claimant is entitled, pursuant to the above decision, and for further proceedings in accordance therewith."

25. The records show that an amount of $20,000 was found to be due the claimant in settlement of contract made on or about October 19, 1918, on account of an increase in wages of the five contracts dated July 3, 15, 19, 29, and August 17, 1918, involved in PC 2307 and 4149. The findings of fact dated June 3, 1920, show that the following are the contracts involved: 4271 N, 4519 N, 4616 N, 4899 N, 5552 N.

On April 27, 1921, allotment no. QM PJ 19858, PM 885, was issued to the Finance Officer, United States Army, Brooklyn, N. Y., to cover payment of the above stated amount. (See exhibit B.)

It will be noted that whereas in original claim filed by the contractor in connection with the contracts involved the amount claimed due was stated as $28,169.30. However, in answer to a request made by the Purchase Section, War Department, Claims Board, in letter of February 12, 1921, the contractor, in his reply dated February 14, 1921, claimed an amount due under the said contracts of $34,091.59.

27. The records show that the War Department, in cooperation with the Labor Department and representatives from certain manufacturers of civilian clothing, prepared a wage scale showing the labor cost of each garment manufactured and the rate for each operation. There was also prepared a piece-work price list and table showing cost of production of Army wool trousers during the test period.

28. Records show that Cohen, Goldman & Co., Inc., did not pay their operators on a piece-work basis, but paid for all work on a weekly basis and that said company could not furnish the cost on a piece-work basis. In this connection it may be pointed out that there were workers in the plant of this firm who were employed entirely on making civilian clothing that had no connection whatever with the contracts for Army clothing.

29. Records herewith indicate that there was a strike at the plant of Cohen, Goldman & Co., Inc., in August 1918, and that both this firm and the workers agreed to an investigation by Dr. Stone into wages, different rates for same work, etc. In the investigation it was found that the firm had a bonus rate under which workers paid at a weekly rate could obtain more pay by turning out a certain amount of work each week. Workers objected strenuously to this bonus system, claiming it was impossible to turn out the quantity of work required in order to

obtain the bonus. It was also contended that the effort to get out the extra quantity of work required caused a waste of material and was also the cause of poor workmanship due to the haste necessary to perform enough work to entitle the operator to the extra pay. (See exhibit C.)

30. Records show that under date of February 1, 1921, a stop order in the amount of $525,694.11 was issued against Cohen, Goldman & Co., Inc., by the Zone Finance Officer, for material used in excess of the allowance for the manufacture of clothing under the following contracts (see exhibit D); 1325, 1645, 2299, 3220, 3358, 1174 N, 1179 N, 2100 N, 3850, 4168 N, 4271 N, 4519 N, 4616 N, 4881 N, 4899 N, 5551 N, 5552 N, 5826 N.

31. On an audit being made of the following contracts between the United States and Cohen, Goldman & Co., Inc., it was found that there was due the United States the sum of $157,913.60, on account of shortage of material: 3358, 1174 N, 1179 N, 2100 N, 3850 N, 4168 N, 4271 N, 4519 N, 4616 N, 4831 N, 4899 N, 5551 N, 5552 N, 5826 N, 1645–1–2–3–4, 1325–1–2–3.

Records in connection with the audit referred to were forwarded to the General Accounting Office under date of November 21, 1924, with the recommendation that an account be stated and that necessary steps be taken to collect the amount due the United States. (See exhibit E.)

32. All available records pertinent to the matter are transmitted herewith for use in the examination of the case. After these records have served their purpose, it is requested that same be returned to this office.

For the Quartermaster General:

J. VAN NESS INGRAM,
Captain, Quartermaster Corps,
Assistant.

CAPT. GUY L. HARTMAN

[H. Rept. No. 2050, 74th Cong., 2d sess., to accompany S. 2719]

The purpose of the proposed legislation is to authorize payment of the sum of $20,000 to Capt. Guy L. Hartman, as reimbursement for loss suffered upon forfeiture of appearance bonds by United States commissioner in Kansas City, Mo., May 22, 1915, in connection with prosecution of cases wherein complete recovery was had by the Government.

Before going into the facts of this case, which are rather lengthy, it is proper to observe that, while the claim is a bit aged, it appears that claimant has made almost constant efforts to obtain a disposition thereof since it first accrued. It should also be noted that he has been absent from the United States a good deal during the intervening years, which has made it impossible for him to put forth much personal effort. The case can best be explained by inserting relevant evidence at the proper points and commenting thereon.

Capt. Guy L. Hartman, holder of the Distinguished Service Cross and Croix de Guerre, and recommended for the Congressional Medal of Honor, was compelled to forfeit $20,000 in bail bonds on May 22, 1915, because, too sick to travel, he failed to appear on that date before the United States commissioner at Kansas City, Mo., to be given a preliminary hearing upon indictment for illicit distilling, bribery, and conspiracy to defraud. Captain Hartman was apparently a country bred, unsophisticated young man imposed upon and made a tool by older men, some of them Government officials conspiring to defraud the Government of whisky excise taxes. An affidavit to that effect by I. J. Ringolsky, dated April 28, 1927, is attached hereto.

STATE OF MISSOURI,
County of Jackson, ss:

J. Ringolsky, of lawful age, having first been duly sworn, upon his oath states that he resides in Kansas City, Mo., and has been a resident of said city for more than 40 years; that he was born in the city of Leavenworth, State of Kansas, and came to Kansas City to engage in the practice of law in August 1886, and has been at all times since said date engaged actively in the practice of his profession; that he is now the senior member of the firm of Ringolsky, Friedman & Boatright; that he is personally acquainted with Capt. Guy L. Hartman and represented him and acted for him as his attorney in Kansas City, Mo., in May 1915, at which time said Hartman was charged by the Government with violation of law; that bail bonds were given in the sums, respectively, of $5,000 and $15,000, and that I obtained for Mr. Hartman sureties to sign said bonds. These bonds were both approved by the United States commissioner, Harry L. Arnold; that by the terms of each one of the bonds, Guy L. Hartman was required to appear in Kansas City, Mo., before said commissioner, on May 21, 1915, in order to avoid a forfeiture of the bonds given.

Prior to the date fixed for the appearance of Mr. Hartman, I received from him a certificate made by a physician to the effect that said Hartman was sick—the nature of the sickness I am unable to recall—and that it was impossible for him to appear in Kansas City, Mo., on May 21, 1915, as required by the terms of the bonds. I received the certificate, as I recall, from some point in Mexico. I presented this certificate to the commissioner and asked for the postponement of the date of the preliminary hearing of Mr. Hartman before him and for an extension of time for the appearance of Mr. Hartman, but my application was denied by the United States commissioner, and an order was then and there made by him, on the 21st day of May 1915, to the effect that the bonds were declared forfeited. I have searched our records and files and, although I found the Hartman files, the doctor's certificate was not among the papers.

I know that I received such a certificate and that it, in effect, stated that Mr. Hartman was too ill to appear in court at Kansas City, Mo., on May 21, 1915. I know I presented this certificate to the United States Commissioner with a

request that the hearing be postponed. My best recollection is that the doctor's certificate mentioned was left by me with the United States Commissioner or with the Government's attorney appearing at the hearing on May 21, 1915. At least I have been unable to find or to locate it, and I have made diligent search for the same.

I. J. RINGOLSKY.

Subscribed and sworn to before me this 28th day of April 1927.

[SEAL] WM. G. BOATRIGHT, *Notary Public.*

My commission expires April 7, 1928.

About 12 days before he was scheduled to be present before the United States Commissioner he went to Juarez, Mexico, in order to arrange to dispose of his interest in a ranch at that place. He lodged with Mr. J. H. Pigg, and suffered a severe attack of lumbago. Mr. Pigg makes affidavit that a Dr. Mayfield treated him and furnished an affidavit of his sickness to be presented to the United States Commissioner at Kansas City.

STATE OF CALIFORNIA,
County of Los Angeles, to wit:

Personally appeared J. H. Pigg, who, after being sworn, deposes and says:

That on or about May 10, 1915, Guy L. Hartman visited me at my home in Juarez, Mexico, to consult with me concerning some trouble that he was in with the United States Government; while there he suffered a severe attack of lumbago and was treated by Dr. Mayfield, who gave a certificate that said Hartman was unable to return to the United States at that time.

Later Mr. Hartman recovered to such an extent that he was able to travel. He told me that his bond had been forfeited, that he was penniless, and rather than face trial in a feeble condition and without money he decided to disappear in Mexico.

Given under my hand and seal this July 25, 1921.

[SEAL] J. H. PIGG.

Subscribed and sworn to before me this 25th day of July 1921.

——— ———, *Notary Public.*

In a memorandum of the Department of Justice dated February 26, 1927 (176022), it is stated that a number of others were involved in a conspiracy to defraud the Government out of taxes on approximately 400,000 gallons of distilled spirits upon which no tax was paid.

Criminal prosecutions were instituted, with the result that many persons were involved and tried, including a revenue agent, in the western district of Arkansas, with the following results:

"Prosecutions against Hartman were nol-prossed after his $20,000 was forfeited and the help given by him to the Government had resulted in the recovery of more than $100,000.

"Of the many indicted, at least four were convicted and served terms in a penitentiary.

"One settled liability by payment of $100,000, and case nol-prossed.

"Two were acquitted.

"Government confiscated a distillery and stock, claiming delinquent taxes, and, according to Hartman in his testimony before the committee, it had cost $35,000 to erect the distillery, and the value of the stock must have amounted to $150,000 or $200,000."

Since his bond was forfeited while he was sick in Juarez, Mexico, where he had gone to arrange for disposal of real property before he was due to appear in Kansas City, he elected to remain after he had recovered from his illness.

When well he joined the American punitive forces in Mexico as a scout under Col. Joseph B. Irwin, Seventh Cavalry. He served with distinction until July 20, 1916, when, with the permission and upon the advice of his commanding officer, he returned to Columbus, N. Mex., for the purpose of surrendering to Government authorities.

Attention is called to an extract from a letter written by Mr. David A. Gates on October 10, 1921, to Mr. Vincent M. Miles, of Fort Smith, Ark. Gates was deputy commissioner of internal revenue and in charge of the investigation of these alleged violations on the part of distillers:

"* * * While at Fort Smith, in jail, he got in communication with the Department and made disclosures to the Bureau which were of substantial assist-

ance in developing cases against Smithdeal and a former revenue agent, J. H. Surber. Smithdeal, as I now recall it, paid $150,000 in compromise of his civil liability. Surber was tried and should have been convicted and would have been but for the manner in which the jury was manipulated.

"Much of the assistance rendered the Government by Hartman after he returned to this country was most substantial and was used as a basis upon which the prosecutions were thereafter conducted.

"Personally, I do not know Hartman. I do know a great deal about him, however, and I have always felt that he was anything but a bad man and that he got into the conspiracy originally more because of environment than because of inherent viciousness. He was certainly square and manly in his dealing with the Government after he returned to this country.

"It was on the strength of his services in the prosecution of this case and his splendid services in the Army afterward that I recommended in 1919 to the Department of Justice that the case against him pending in Fort Smith be dismissed.

"I felt that Hartman had made full reparation for everything he had done and that so far as he was concerned the Government could afford to be most liberal with him."

A letter from Mr. I. J. Ringolsky, dated May 14, 1930, reiterating his contention that a physician's affidavit was furnished to show Hartman's sickness when the bond was forfeited, is as follows:

KANSAS CITY, MO., *May 14, 1930.*

Hon. S. RUTHERFORD, M. C.,
Washington, D. C.

MY DEAR SIR: I came in today from Amarillo, Tex., on account of receiving word of the death of my sister, and am to return to Amarillo tomorrow night. I am engaged there in the trial of a case in the Federal court.

I will not have time to look after the matters mentioned in your letter in connection with the claim of Guy L. Hartman. Mr. Hartman's father does not live here in Kansas City, so I will be unable to get any information from him. You can ascertain from Mr. Hartman the address of his father. I personally have no doubt but that I showed the certificate of the doctor, as to the condition of the health of Mr. Hartman, at the time his case was reached for trial. I do not recall the name of the doctor, and I would have to go through my files and find all the correspondence and papers connected with the Hartman matter before I could make an affidavit and, furthermore, would have to see all correspondence that passed between us and some other representative of Mr. Hartman during the years that have passed since his troubles.

I will try to give you all the information you desire next week, whenI return from Texas.

Yours very truly,

I. J. RINGOLSKY.

Hon. Henry L. Arnold, judge of the Kansas City court of appeals, then commissioner, who ordered the forfeiture, writes under date of May 10, 1930, that Mr. Ringolsky may be correct in maintaining that a physician's affidavit was furnished at the time. His letter follows:

KANSAS CITY, MO., *May 10, 1930.*

Re bill for relief of Guy L. Hartman.

Hon. S. RUTHERFORD, M. C.,
Washington, D. C.

MY DEAR MR. RUTHERFORD: I have your letter of the 8th instant relative to the above matter, and replying beg to say that it has been so long since the occurrence referred to that my memory may not be very clear about it.

Mr. Ringolsky may be correct in saying in his affidavit that at the time Hartman's bonds were forfeited he presented before me, as commissioner, a physician's affidavit to the effect that Hartman was physically unable to be present at the preliminary hearing.

It is my recollection that Mr. Ringolsky, at the time I called the case, presented instead of a physician's affidavit, a telegram from Hartman himself, sent from El Paso, Tex., stating he was ill and unable to appear; that Mr. Ringolsky stated if the case were continued he would secure a physician's affidavit and submit it. But this was never done. I am fairly clear as to this. I recall that, at the time, I ruled there was no sufficient showing that Hartman was ill and unable to appear.

The circumstances were such that I concluded Hartman had decided to abscond

and become a fugitive. He apparently left Kansas City right on the eve of his preliminary hearing. I therefore forfeited his bond.

If this statement will aid you in your endeavor in Hartman's behalf, I shall be very glad to have you use it before the committee.

Yours very truly,

HENRY L. ARNOLD.

In the memorandum of February 26, 1927, furnished the committee by the Attorney General, referred to above, the statement, "There is no question about Captain Hartman having been engaged in the gigantic, illicit whisky enterprise. His going to Mexico was not only to avoid what to him seemed his certain conviction, but was to make himself unavailable as a material witness as to other defendants. Therefore, his claim seems to be without merit", in the judgment of the committee is not borne out by the record and all the statements which it has examined and studied.

Hartman was prosecuted on the theory that he was one of the joint owners of the distilleries. (Memorandum, supra.) He told the committee that he had a one-fourth interest in the stock of the Arkansas distillery, for a few months only, and that it was sold to him on credit at the insistence of the parties selling it.

Nowhere does the record show or indicate any criminal intent on the part of Hartman to defraud the Government.

Captain Hartman's father raised $12,000 toward the amount of the bond. As a result his estate was practically bankrupt. The $8,000 furnished by this soldier exhausted his own funds. His father explains the circumstances in detail in the following affidavit:

HARTMAN STOCK FARMS,
Farmington, N. C., May 28, 1930.

Hon. EDWIN M. IRWIN,
Chairman of the Committee on Claims, Washington, D. C.

DEAR MR. CHAIRMAN: In the month of May 1915, my son, Guy L. Hartman, was arrested in Kansas City, Mo., by the United States marshal, under and by virtue of a warrant issued by Mr. Harry L. Arnold, United States Commissioner, and one bond was fixed at $5,000 and the other at $15,000. These bonds obligated my son, Guy L. Hartman, to appear before the Commissioner on May 21, 1915.

My recollection is that one of the bonds was signed by Guy L. Hartman, Harry L. Jacobs, James H. White, and Sallie Hartman, and the other bond for $15,000 was signed by Guy L. Hartman, James H. White, and Sallie Hartman. As my son was able to deposit securities and cash of $8,000 with James H. White, who signed as surety, I turned over to my son, Guy L. Hartman, securities to the amount of $12,000 to be deposited with Mr. James H. White to induce him to sign the bond as surety.

As my son was sick at the time set for his appearance on May 21, 1915, both of the bonds were forfeited and judgment was had, and since that time the Government has collected the full amount of $20,000, the amount named in the two bonds. In order to raise $8,000 of the above amount, it exhausted the funds of my son, Guy L. Hartman, and practically bankrupted my estate to raise the $12,000 additional.

I wish to urge that the bill authorizing the Government to refund the amount of $20,000 be favorably reported to the House. I do know that my son, Guy L. Hartman, had only a nominal working interest in the business of Casper et al., and on account of his age and lack of experience he was only a tool in the hands of the more experienced men.

When my son returned to the States from Mexico he frankly told the Government authorities the entire truth of the situation, and largely as a result of the information given the Government recovered something like $100,000, and without the evidence that he gave it is very probable that the Government would have never been able to have collected this amount.

I hereby endorse a bill giving full relief to Guy L. Hartman for the entire amount of $20,000 for our joint use, and when the amount is refunded to Guy L. Hartman I hereby give my full release to the Government in the amount of $12,000 that was furnished by me.

Yours very truly,

C. A. HARTMAN.

This signature subscribed and sworn to before me this 29th day of May 1930.

[SEAL] L. J. HORNE, *Notary Public.*

My commission expires January 30, 1932.

Hartman is a distinguished veteran. There were exhibited to the subcommittee the original certificates awarding him the Distinguished Service Cross, the French Croix de Guerre, and the Victory Medal with bars, all awarded him for acts of gallantry and courage upon the field of battle.

Despite the difficulties in which Hartman found himself, his loyalty to his country never wavered. The committee has concluded that the evidence warrants the belief that Captain Hartman did not leave Missouri to avoid an appearance, as was contended, and further that because of the aid he rendered the Government, he is deserving, and restitution ought to have been made of the amount of the bonds, especially in view of the sickness that prevented his appearance in Kansas City on May 22, 1915, and his subsequent material service to the Government, and heroic actions on the battlefield in France.

There follows the report of the Department of Justice, with memorandum referred to, and other relevant statements.

DEPARTMENT OF JUSTICE,
Washington, D. C., February 28, 1927.

Hon. CHARLES L. UNDERHILL,
Chairman, Committee on Claims, House of Representatives,
Washington, D. C.

MY DEAR MR. CHAIRMAN: Replying further to your letter of the 19th instant, with which you transmitted for report H. R. 16940, a bill for the relief of Guy L. Hartman, I have the honor herewith to enclose a copy of an office memorandum by Assistant Attorney General Willebrandt setting forth the circumstances out of which Hartman's claim arises and to say that in view of the facts as therein set forth I do not feel that I can recommend the enactment of the proposed relief measure.

Respectfully,

JNO. G. SARGENT, *Attorney General.*

MEMORANDUM FOR ASSISTANT ATTORNEY GENERAL MARSHALL

DEPARTMENT OF JUSTICE,
Washington, D. C., February 26, 1927.

Reference is made to the request of Representative Charles L. Underhill, Chairman, Claims Committee, House of Representatives, for information relative to the merits of the claim of Capt. Guy L. Hartman, H. R. 16940, for repayment of $20,000 forfeited by Captain Hartman in criminal proceedings instituted against him.

Upon inspection of the Department file (176022), containing data on the prosecutions against Captain Hartman, I find that an investigation was instituted in February 1917, of the activities of certain distilleries in the States of Arkansas, Florida, and Virginia. One of the objects of the investigation was the Brock distillery at Fort Smith, Ark. The special assistant to the Attorney General in charge of the investigations and prosecutions to follow reported to the Attorney General, December 31, 1917:

"My investigations disclose that this distillery during 1912–13–14 and 1915 distilled and marketed approximately 400,000 gallons of distilled spirits upon which no tax was paid.

"While the distillery was registered in the names of M. B. Brock and J. C. Brewbaker, the following persons were interested therein, to wit: Guy L. Hartman, John L. Casper, Thomas C. McCoy, and John F. Smithdale."

Criminal prosecutions were instituted. John L. Casper was convicted and served 14 months in the penitenitary and was pardoned. Thomas C. McCoy was convicted in Florida and served a penitentiary sentence. Finally John F. Smithdale settled his liability to the Government by the payment of $100,000 and the case as to him was nolle prossed.

So far as the Department records reveal, Captain Hartman made no settlement of his civil liabilities in the premises. It appears that he was defendant in the following cases in the western district of Arkansas for conspiracy to defraud the Government out of taxes on the distilled spirits, and incidental offenses, namely: No. 1314, *United States* v. *Guy L. Hartman et al.*, illicit distilling; no. 1318, *United States* v. *Guy L. Hartman*, bribery, United States revenue officer; no. 1319, *United States* v. *Guy L. Hartman et al.*, conspiracy to defraud. The prosecutions were developed on the theory that Guy L. Hartman was one of the joint owners of the distilleries.

A report of the special assistant to the Attorney General in charge of the cases, January 17, 1918, states:

"This defendant (Guy L. Hartman) has never been tried. Soon after his indictment he fled and forfeited a $20,000 bond which was collected by the Government. He went to Mexico where he joined the Pershing expedition and performed services, which, I am informed, were highly valuable to the Government as a scout. He finally returned, was arrested, and gave a new bond in the sum of $5,000, since which time he has been at liberty. Upon being rearrested he made a full statement to the Government officers as to his participation in the fraudulent operations of said distillery and I am convinced that from having applied every conceivable test to his statements that he told the truth in every respect, fully, completely, and without evasion or mental reservation. He has been used as a witness by the Government in other cases and the services which he has rendered to the Government in its several investigations have been cheerfully rendered and have proved extremely helpful."

The report further makes complimentary remarks as to his military bearing and superior manhood and mentions that he had been commissioned as second lieutenant in the Army, and suggests that the prosecutions against him should be abandoned in order that he might go to France where he would be able to perform valuable services in the military.

The prosecutions against Captain Hartman were nolle prossed and it seems that the extent of his punishment was the $20,000 bond forfeiture. Undoubtedly the dismissal of the criminal charges was in consideration of his valiant military record and also his valuable services to the Government in furnishing information relative to the distillery operations resulting in the collection of over $100,000 in taxes and the conviction of most of the defendants. It does not appear that any effort was made to have the default on the fine set aside pursuant to statutory method provided when circumstances justify it. On the other hand, indications are that when the criminal prosecutions were disposed of the fact that the defendant Hartman had suffered a $20,000 forfeiture was taken into consideration. One of his codefendants who also avoided a penitentiary sentence made a $100,000 settlement on tax liability.

There is no question about Captain Hartman having been engaged in the gigantic, illicit whisky enterprise. His going to Mexico was not only to avoid what to him seemed his certain conviction, but was to make himself unavailable as a material witness as to other defendants. Therefore, his claim seems to be without merit.

Respectfully,

MABEL WALKER WILLEBRANDT,
Assistant Attorney General.

FARMINGTON, N. C., *June 15, 1935.*

CHAIRMAN OF THE SENATE COMMITTEE ON CLAIMS,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: In compliance with the wishes of Mr. C. A. Hartman (deceased), as expressed in his letter dated May 28, 1930, to Hon. Edwin M. Irwin, chairman of the Committee on Claims, we, his sole heirs (except Guy L. Hartman), do hereby endorse a bill giving full relief to Guy L. Hartman for the entire amount of $20,000, and when the amount is refunded to Guy L. Hartman we hereby give our full release to the Government in the amount of $12,000 that was furnished by C. A. Hartman (deceased).

MAGGIE M. HARTMAN, *Widow.*
MARGIE SCHOLTES, *Daughter.*
MARY NELL LASHLEY, *Daughter.*
GEORGE A. HARTMAN, *Son.*

Subscribed and sworn to before me this 19th day of June 1935.

[SEAL] L. J. HORNE, *Notary Public.*

My commission expires February 10, 1936.

WAR DEPARTMENT,
THE ADJUTANT GENERAL'S OFFICE,
Washington, June 10, 1935.

STATEMENT OF THE MILITARY SERVICE OF GUY LAFAYETTE HARTMAN

The records of this office show that Guy Lafayette Hartman was born June 25, 1883, at Farmington, N. C. He accepted appointment November 27, 1917, as first lieutenant, Infantry section, Officers' Reserve Corps; date of rank and assignment to active duty same; accepted as captain of Infantry, United States Army, November 11, 1918, to rank from November 6, 1918; vacated September 16, 1920, to accept appointment on that date as captain of Infantry, Regular Army to rank from July 1, 1920; discharged as captain and appointed first lieutenant (acts June 30 and Sept. 14, 1922) November 18, 1922; promoted to captain March 25, 1924; and was retired on account of disability in line of duty November 30, 1934.

Captain Hartman is a graduate of Infantry School company officers course, 1923; and advanced course, 1932.

He served at Chickamauga Park, Ga., from December 15, 1917, to April 5, 1918; en route to and in France with Sixth Infantry; participated in St. Mihiel and Meuse-Argonne offensive operations; also, St. Die and Villers en Haye Defensive Sectors, 1918; was wounded in action August 17, 1918; returned to the United States July 23, 1919; with Sixth Infantry at Camp Gordon, Ga., to September 1, 1920; assistant recruiting officer, Savannah recruiting district, to December 16, 1920; on leave to January 16, 1921; duty with regiment at Camp Jackson, S. C., to August 11, 1921; at Fort McPherson, Ga., to September 1, 1922; student, Infantry School, Fort Benning, Ga., to June 30, 1923; assistant instructor and company duty at summer training camp, Camp Custer, Mich., to August 22, 1923; duty at Camp Perry, Ohio, to September 30, 1923; with regiment at Jefferson Barracks, Mo., and at Camp Custer, Mich., to September 9, 1924; at Jefferson Barracks, Mo., to June 30, 1925; at Camp Custer and Jefferson Barracks to October 31, 1925; at Jefferson Barracks, Mo., to August 14, 1927; en route to Philippine Islands to September 13, 1927; commanding company, Fifty-seventh Infantry (Philippine Scouts) at Fort William McKinley, P. I., to August 16, 1930; on leave and en route to United States via China, to November 3, 1930; en route San Francisco to New York on *Cambrai* to November 25, 1930; on leave to January 11, 1931; duty with Twenty-fourth Infantry, Fort Benning, Ga., to September 19, 1931; student, Infantry School advanced course, to June 30, 1932; with Twenty-fourth Infantry to June 30, 1933; on leave to August 23, 1933; en route to Hawaii and mess officer, on United States Army Transport *Republic* to September 26, 1934; duty with Twenty-first Infantry, Schofield Barracks, Territory of Hawaii, to August 28, 1934; sick in quarters en route to United States and on leave to November 30, 1934; date of retirement.

He was awarded the Distinguished Service Cross, for act near Frapelle, France, while serving as first lieutenant, Sixth Infantry, Fifth Division.

Citation follows: "After having been painfully wounded, Lieutenant Hartman refused to go to the rear for treatment. He made his way through a heavy barrage and brought up a platoon that was stopped by a heavy fire. Some time later, after having his wound dressed, he conducted his brigade commander through a heavily gassed area, after which he remained constantly on duty until relieved."

Awarded the Silver Star. Cited in General Order No. 50, headquarters, Fifth Division, September 7, 1918, act, no place or date given.

Awarded a Purple Heart, on account of wound received in action August 17, 1918, while serving as first lieutenant, Sixth Infantry.

Awarded French Croix de Guerre, with gilt star, under Order No. 17, 196 D, dated May 8, 1919, General Headquarters French Armies of the East.

Citation: "An officer of admirable courage. Suffering severely from a wound he refused to go to the rear but instead crossed through a violent barrage and led a platoon that an intense fire was holding back. Then, after having been bandaged, he conducted his brigade commander across a zone covered with gas and remained at his post until he was relieved."

By authority of the Secretary of War:

E. T. CONLEY,
Brigadier General,
Acting The Adjutant General.

CANAL DREDGING CO.

[H. Rept. No. 2336, 74th Cong., 2d sess., to accompany S. 2747]

The purpose of the bill is to confer jurisdiction upon the United States Court of Claims to hear the claim of the Canal Dredging Co., a corporation under the laws of Illinois, with its principal office in the city of Memphis, Tenn., and to determine, and report to Congress the amount of additional compensation, if any, that said Canal Dredging Co. may be justly entitled to for the excavation of rock exceeding the percentage represented in and by the specifications, profiles, and other data relating to the work, and for loss on account of its preparation for doing work along the south shore of Lake Okeechobee in the area known locally as South Bay between the Miami Canal and Bacom Point, State of Florida, under the contract entered into August 5, 1932, between the United States and itself designated as "contract W 436–eng–3071", and supplemental agreement modifying the same between the parties on July 13, 1933, terminated by supplemental agreement entered into between the parties on June 14, 1934, as for the best interests of the Government, because of the discovery of rock to be excavated in excess of that represented and contemplated, as aforesaid, entitling said Canal Dredging Co. to a material increase in the contract price, in order that the Government might construct said work by Government plant and hired labor, of a materially different design as more efficient for the purpose intended and at a less cost to the Government, to which said Canal Dredging Co. consented.

This is a rather involved claim, and it appears that the matter can hardly be straightened out by Congress, and that it is properly one for a judicial finding. It should be observed that the bill merely confers jurisdiction on the Court of Claims to the extent of hearing the claim and reporting its findings to the Congress. There is no provision for the award of a judgment, and the Congress will therefore have the final say, as a matter of legislation, if it is determined by the Court of Claims that the Canal Dredging Co. has suffered the loss which it alleges. The reason or necessity for conferring jurisdiction on the court is said to be because the supplemental agreement which canceled the contract contained a release of the United States from other claims. The dredging company did not enter into this agreement, it states, voluntarily and freely, but under compulsion in order to pay its debts and save itself from bankruptcy. We feel that they are entitled to their day in court.

The claim is fully set out in the report of the Senate Committee on Claims, with all material exhibits, which is therefor appended hereto and made a part of this report.

[S. Rept. No. 1562, 74th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (S. 2747) to authorize Canal Dredging Co. to bring suit in the Court of Claims against the United States for additional compensation under contract terminated as for the Government's best interests, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendments:

Strike out all after the enacting clause and insert in lieu thereof the following:

"That jurisdiction is hereby conferred upon the United States Court of Claims to hear the claim of the Canal Dredging Company, a corporation under the laws of Illinois, with its principal office in the city of Memphis, Tennessee, and to determine, and report to Congress, the amount of additional compensation, if any, that said Canal Dredging Company may be justly entitled to for the excavation of rock exceeding the percentage represented in and by the specifications, profiles, and other data relating to the work and for its loss on account of its preparation for doing the work which it was to do in the State of Florida along the south shore of Lake Okeechobee in the area known locally as "South Bay" between the Miami Canal and Bacom Point, under the contract entered into on the 5th day of August 1932 between the United States and itself designated as

"Contract W 436–eng–3071", and supplemental agreement modifying the same between said parties, approved by the Chief of Engineers, United States Army, on the 13th day of July 1933, terminated by supplemental agreement entered into between said parties on the 14th day of June 1934, as for the best interests of the Government, because of the discovery of rock to be excavated in excess of that represented and contemplated as aforesaid, entitling said Canal Dredging Company to a material increase in the contract price, in order that the Government might construct said work by Government plant and hired labor, of a materially different design as more efficient for the purpose intended and at a less cost to the Government, to which said Canal Dredging Company consented.

"SEC. 2. Such claim may be instituted at any time within one year after the passage of this Act, notwithstanding the lapse of time or any statute of limitations."

Amend the title of the bill so as to read:

"Conferring jurisdiction upon the United States Court of Claims to hear the claim of the Canal Dredging Co."

The purpose of the bill, as amended, is to confer jurisdiction upon the United States Court of Claims to hear the claim of the Canal Dredging Co., a corporation under the laws of Illinois, with its principal office in the city of Memphis, Tenn., and to determine, and report to Congress, the amount of additional compensation, if any, that said Canal Dredging Co. may be justly entitled to for the excavation of rock exceeding the percentage represented in and by the specifications, profiles, and other data relating to the work, and for loss on account of its preparation for doing work along the south shore of Lake Okeechobee, under a contract entered into between said company and the War Department dated August 5, 19 2.

The contract provided for the excavation of a navigation channel and the placing in the levee embankment and berm of 4,860,000 cubic yards of material at a total cost of $564,732, and for the placing of 55,000 cubic yards riprap along said channel amounting to $84,700, or a total of $649,432. The date set for commencement of the work was December 5, 1932, and for completion, April 16, 1934. An average rate of not less than 300,000 cubic yards of material per month was required under the contract. The contractor began work on August 15, 1932, and the rate of progress was such that up until April 4, 1934, only 2,486,950 cubic yards of material had been placed in the levee. Owing to the delay or lack of progress on the work, and after it was determined that the work would not be completed within the contract time, a supplemental agreement, dated June 14, 1934, was entered into providing for the termination of the contract and the payment to the contractor of the sum of $80,230.46 in full settlement under the contract.

The contention of the contractor is that the alleged lack of performance on the contract was due to failure on the part of the district engineer to recognize the amount of time required to revamp its plant to meet the changed conditions brought about by the modified contract; lack of progress on the part of the United States in stripping muck, as provided by the contract; and because of conditions materially different from those shown by the drawings and specifications.

The Canal Dredging Co. now seeks authority from Congress to bring suit in the Court of Claims for additional compensation under its contract. The bill as originally drawn conferred jurisdiction upon the Court of Claims to determine the amount of additional compensation, granted authority to render judgment, and waived any defense the Government may have as to the settlement agreement.

After considering all the facts your committee feels that it would only be justified in recommending the passage of a bill conferring upon the Court of Claims the right to hear said claim and to determine, and report to Congress, the amount of additional compensation, if any, that the said Canal Dredging Co. may be justly entitled to. It is accordingly recommended that the bill, as amended, do pass.

The facts are fully set forth in the following communications, which are appended hereto and made a part of this report.

WAR DEPARTMENT,
Washington, May 27, 1935.

Hon. JOSIAH W. BAILEY,
Chairman, Committee on Claims,
United States Senate, Washington, D. C.

DEAR SENATOR BAILEY: The Department has received your form letter dated May 6, 1935, enclosing a copy of S. 2747, a bill for the relief of the Canal Dredging Co., and requesting for the use of the committee all papers, or copies of same, in

the files of the Department relating to the matter, together with an opinion as to its merits.

The proposed legislation is to authorize the Canal Dredging Co. to bring suit in the Court of Claims against the United States, for additional compensation for the excavation of rock exceeding the percentage represented in and by the specifications, profiles, and other data relating to the work, and for loss on account of its preparation for doing work along the south shore of Lake Okeechobee, under contract 436–eng–3071, dated August 5, 1932.

The contract involved provided for the excavation of a navigation channel and the placing in the levee embankment and berm of 4,860,000 cubic yards of material at a total cost of $564,732, and for the placing of 55,000 cubic yards riprap along said channel amounting to $84,700, or a total of $649,432. The date set for commencement of the work was December 5, 1932, and for completion, April 16, 1934. An average rate of not less than 300,000 cubic yards of material per month was required under the contract. The contractor began work on August 15, 1932, and the rate of progress was such that up until April 4, 1934, only 2,486,950 cubic yards of material had been placed in the levee. On numerous occasions, the matter of delay or lack of progress on the work was brought to the attention of the contractor, but without material results. The delay was due entirely to the lack of adequate and suitable plant for hydraulic work, proper superintendence, and financial responsibility.

After it was determined that the work would not be completed within the contract time, the supplemental agreement of June 14, 1934, was entered into providing for the termination of the contract and the payment to the contractor of the sum of $80,230.46 in full settlement under the contract. The contractor voluntarily agreed without any coercion by the Department to a settlement on this basis and to release the Government from any and all claims under the contract and supplemental agreements thereto. The contractor was released from the performance of any further work under the contract.

The Department feels that the Canal Dredging Co. has been adequately compensated for the work performed under the contract in question and therefore recommends that the proposed legislation be not enacted into law.

A file of correspondence giving the detailed facts and circumstances with respect to this matter, together with a copy of the supplemental agreement entered into by the contractor and his surety in complete settlement thereof, are forwarded herewith for the use of the committee in its consideration of the case.

Sincerely yours,

HARRY H. WOODRING,
Acting Secretary of War.

CANAL DREDGING CO.,
Memphis, Tenn., March 9, 1934.

Re W–436–eng.–3071. Job no. 1521.

To the Chief of Engineers, United States Army (through the district engineer, Jacksonville, Fla.).

DEAR SIR: We are in receipt of a letter dated February 21, 1934, from Maj. B. C. Dunn, district engineer, and copy of same is hereto attached.

You will note that we are directed to cease all operations under our contract for a certain portion of the work. The authority for such action is apparently article 9 of our contract.

Pursuant to the above-styled contract we are seeking a review of the action of the district engineer, and hereinafter set forth our reason for same.

The above-styled contract was entered into between the Canal Dredging Co. and the United States on the 5th day of August, A. D. 1932, for certain construction, which contract was subsequently amended on July 8, 1933, after vigorous protest on our part that the shrinkage of the muck core was far greater than indicated on the plans. Progress being somewhat ahead of schedule up to the time of our protest.

Alleged lack of performance on the above-styled project is due to the following causes:

A. Failure on the part of the district engineer to recognize the amount of time required to revamp our plant to meet the changed conditions brought about by the modified contract, and the time necessary to assemble and install additional equipment. This was fully explained to the district engineer by our letter of October 28, 1933, which was in response to his letter of October 14, 1933, in which the district engineer threatened action under article 9 of the contract.

Copy of our letter of October 28, 1933, is hereto attached. The district engineer has never questioned the correctness of the position taken by us in our letter of October 28, 1933.

B. Lack of progress on the part of the United States in stripping muck, as provided by the contract. This lack of progess was called to the attention of the district engineer, December 1, 1933, and again on December 19, 1933, in each instance by letter, copies of same are hereto attached. This lack of progress on the part of the United States, as set forth in the letters above mentioned, has occasioned much of the alleged delay. Particular attention is called to the fact that the plant of the United States to perform the muck stripping operations as per supplemental contract, did not arrive on the project until September 18, 1933, and in the meantime the contractor had two machines shut down on account of the failure of the United States to begin the muck-stripping operation and another machine working on material which the contractor had stripped at its own expense. And this lack of performance on the part of the United States continues up to the present time.

C. Conditions are materially different from those shown by the drawings and specifications. That the conditions are materially different from those shown by the drawings and specifications was called to the attention of the district engineer on December 18, 1933, and again on December 19, 1933, in each instance by letter. Copies of the letters are hereto attached. Subsequent investigation by the district engineer by core borings has substantiated this fact. The contractor has in its possession a log of said core borings as made by the district engineer, which will fully verify this statement.

In view of the foregoing, the contractor was more than surprised to receive the letter of February 21, 1934, terminating a portion of its contract in the unwarranted and arbitrary manner indicated; particularly since said letter of February 21, 1934, does not make any findings of fact as contemplated by the contract as to the reasons advanced for the alleged delay as above set forth (A, B, C).

However, if the letter of February 21, 1934, is to be construed as findings of fact on the reasons advanced for the alleged delay, and our protest on the classification, then this is an appeal therefrom and an immediate hearing is respectfully requested to the end that the letter of the district engineer be rescinded and relief granted as contemplated by article 4 of the contract.

Yours very truly,

CANAL DREDGING CO.,
By A. J. SHEA, *President.*

[First endorsement]

OFFICE DISTRICT ENGINEER,
Jacksonville, Fla., March 17, 1934.

Subject: Contract no. W 436–eng–3071, Canal Dredging Co.

To the Chief of Engineers, United States Army, Washington, D. C. (through the division engineer, Gulf of Mexico division, New Orleans, La.).

1. In connection with the basic communication, the following report and recommendation are submitted with reference to the claims and statements of the contractor.

2. The contract in question was awarded in response to circular proposal no. 32–567, opened in this office on July 19, 1932. In order that all the facts in the case may be readily understood, the following brief outline and record of the contract from the beginning to the present are submitted:

a. Job no. 1521:

(1) Contract number: W 436–eng–3071.
(2) Date of contract: August 5, 1932.
(3) Name of contractor: Canal Dredging Co. of Memphis, Tenn.
(4) Date set for beginning contract: December 5, 1932.
(5) Date set for completion of contract: April 16, 1934.
(6) Location of work and nature of materials: The work is located along the south shore of Lake Okeechobee in the area known locally as South Bay, between the Miami Canal and Bacom Point. (See white print copy of map attached hereto; area marked in black, yellow, and red.) The area over which the work is located consists of muck overburden varying in depth of from 8 to 12 feet,

overlying a formation composed of marl, sand, and shell, with variable limestone rock strata throughout.

(7) Nature of contract:

(*a*) Contract provided for the excavation of a navigation channel and the placing in levee embankment and berm of 4,860,000 cubic yards of muck, marl, sand, shell, and rock, at a unit cost of 11.62 cents per cubic yard in place, amounting to $564,732, and the placing of 55,000 cubic yards of riprap along the navigation channel slope, at $1.54 per cubic yard in place, amounting to $84,700; or a total contract cost of $649,432.

(*b*) The contract called for the excavation of a navigation channel having a bottom width of 80 feet, and the construction of a levee adjacent thereto. A berm 30 feet wide was to be built up to elevation of +20 with rock, marl, sand, and shell. The levee was to be constructed with a muck core to be covered with 6 feet of marl and rock. Lakeside slope 1 to 3 and landslide slope 1 to 2. A toe ditch was to be excavated at the lakeside and landside toes of levee slope 12 feet wide through the muck to underlying hard material, and these ditches were to be filled with marl. The navigation-channel slope adjacent to berm across the open waters of Pelican Bay was to be riprapped.

(8) The contractor began work on August 15, 1932, with one short boom (100-foot) dragline machine, which began excavating the muck overburden, working from the berm and taking the near material and placing in levee core. By January 1933 the contractor had increased his plant to four dragline and two dipper dredges. Only one dragline machine, however, had a boom length of 135 feet, the balance of the equipment averaging from 75 to 100 feet. Owing to the depth of muck, in order to obtain sufficient suitable rock and marl cover for the muck core, the excavation of a channel 220 feet in width was required. The machines having inadequate reach for this width of channel required the rehandling of material several times over before it could be placed into the levee. This operation proved to be very unsatisfactory, as the nature of the material was such that when rehandled through the water the marl content was washed out, resulting in an unsatisfactory material for cover. (See letter of June 3, 1933, exhibit A.) The contractor claimed the shrinkage and compression in the muck material were so great, which he estimated to run as high as 75 percent, as to result in a considerable loss of material. (See contractor's letter dated Apr. 7, 1933, exhibit B.) This office replied to his letter under date of April 15, 1933 (see exhibit C), advising him that the conditions complained of would be investigated and he would be informed of the result of such investigation. In this connection, the local representative of this office at Clewiston was instructed to make a thorough investigation of the conditions complained of by the contractor and to submit a report to this office promptly upon the completion of such investigation. The investigation made of these conditions is covered in first endorsement dated May 27, 1933, on letter from this office dated April 17, 1933. (See exhibit D.) The contractor was advised verbally of the results of the investigation and was informed by letter dated June 1, 1933 (see exhibit E), that it was the ruling of this office that the contractor assumed the loss of all material above the natural ground surface occasioned by shrinkage and compression during construction and until the levee was finally completed to gross grade and slope. The contractor protested the ruling of the contracting officer in letter dated June 7, 1933 (see exhibit F), and requested a conference with the division engineer with a view of adjusting the differences. Several meetings were held with the contractor and the division engineer, and an effort was made to arrive at a just and reasonable settlement of the difficulties. After further investigation it was decided that the rehandling of material through water made it unsatisfactory as a cover layer for the levee, and that a new levee section should be designed to obviate barging in cover material at 23.24 cents per yard. This decision required the following adjustment:

b. Supplemental agreement:

(1) Supplemental agreement dated July 15, 1933.

(2) Provisions of supplemental agreement were as follows:

(*a*) Under the terms of the supplemental agreement all muck was to be excluded from the levee section. The lakeside slope was changed from 1 to 3 to 1 to 5, and the landside slope from a 1 to 2 slope to a 1 to 3 slope. Any material except muck was permitted within the levee section. The riprapping was increased to include the entire channel slope from station 1220+00 to station 564+00. The United States agreed to remove all muck overburden, relieving the contractor of this feature of the work, and in order to compensate the contractor for the rehandle of the material necessary to construct the levee, the unit

contract price was increased from 11.62 cents per cubic yard to 15 cents per cubic yard. The supplemental agreement became effective July 8, 1933, and provided that all work prior to that date, which amounted to 1,511,896 cubic yards in place in the levee embankment, would be paid for at the original contract price of 11.62 cents per cubic yard; that all work subsequent to that date, estimated to amount to 4,900,000 cubic yards to be placed in the levee embankment, would be paid for at a unit cost of 15 cents per cubic yard.

(*b*) The contractor agreed verbally to revamp his machinery and to place sufficient additional plant and equipment on the job to bring his progress up to the prescribed rate called for by the specifications within 90 days from the date of the supplemental agreement. On October 14, 1933, approximately 3 months after the date of supplemental agreement, the rate of progress was deficient by an amount of approximately 956,000 cubic yards, or 33 percent behind schedule. The contractor's attention was called to this deficiency in letter dated October 14, 1933 (see exhibit G), directing that he place additional plant on the job to bring his schedule up to the rate required by the specifications by November 1, 1933. The contractor replied by letter dated October 28, 1933 (see exhibit H), giving a list of the additional plant which he proposed to place on the job, which he stated had a rated capacity of 8,000 cubic yards per day, and further stating that these dredges, in addition to the plant on the job which had a capacity of 8,000 cubic yards per day, would give him a total of 18,000 cubic yards per day, or 450,000 cubic yards per month. The contractor further stated that he expected to have all his plant working by November 20, 1933. He met these conditions partially by the addition of several small suction dredges, with a view of constructing the levees by pumping in material between small retaining dikes, the fill to be subsequently graded and shaped up with dragline machines. The suction dredges placed on the job consisted of the 15-inch dredge *Culebra*, the 10-inch dredge *Oriente*, the 10-inch dredge *Reliable*, the 12-inch dredge *Alice*, and the 16-inch dredge *Dania*. Owing to the lack of sufficient power, all of the above dredges, with the exception of the *Dania*, proved to be inadequate, and, notwithstanding the addition of this extra equipment, the contractor's average rate of progress since the supplemental agreement went into effect has been only 136,700 cubic yards per month instead of the required progress of 340,000 cubic yards per month. The contractor's attention, both verbally and by letter of December 19, 1933 (see exhibit I), has been repeatedly called to his deficiency in his contract and he has been instructed to make the necessary arrangements for bringing his rate of progress up to the prescribed schedule, in order that the work may be completed within the specified time limit. The addition of the above-mentioned plant, with the possible exception of the dredge *Dania*, has in nowise bettered the conditions, but, to the contrary, the deficiency is increasing at a rapid rate from month to month. On December 18, 1933, the contractor submitted a letter (see exhibit J) to this office claiming changed conditions from those shown on the plans and specifications, and stating that considerably more rock was being encountered in the excavation than was shown on the original profile, and requested that that portion of his contract upon which no work had been done be redrilled at his expense and that a reclassification of materials be made on that portion of the work where no excavation had been performed. On December 19, 1933 (see exhibit J), the contractor replied to letter from this office to him under date of December 19, 1933 (exhibit I), calling his attention to the unsatisfactory progress of his work, in which he based his claim for unsatisfactory progress as follows:

"In our opinion this is due to two causes: Firstly, the lack of progress by the United States in stripping muck as provided by the supplemental agreement, which lack of progress on the part of the United States has caused to date a shutdown of three of our plants at various times; secondly, the amount of rock that we have encountered on the project that is not indicated on the profile has materially slowed down our operations."

The contractor's contention that delay was caused by failure of the United States to strip muck is neither true nor legal grounds for claim. During the conference on the supplemental agreement the contractor stated he had sufficient stripped area to provide operation for his plant for a period of from 60 to 90 days, and further that he would make no claims due to delays incident to advertising for a dredge to remove muck. All bids for this work were rejected, due to high prices, but a 10-inch leased dredge, the *Reliable*, and the U. S. dredge *Congaree* were placed on the work on August 28 and September 17, 1933, approximately 50 and 69 days, respectively, after the supplemental agreement went into

effect. There has been at all times during the entire period since the date of the supplemental agreement sufficient area where muck had been removed, for the contractor to operate. It is true that the contractor did, on his own initiative, place units of his plant in areas where no muck had been removed, but such moves and disposition of his plant were entirely unwarranted by the requirements of the progress of his work. It would appear, when all facts in the case are understood, that such moves and disposition of his plant were deliberately planned for the purpose of acquiring a basis for claims. Therefore, in view of the above, the contractor's claim for delays due to the nonremoval of muck by the United States is absurd and without merit. As far as the legality of the claim is concerned, there was included in the supplemental agreement a clause in which the contractor agreed to make no claims for delays on account of muck removal.

In compliance with request of the contractor for the reboring of the area over which no work had been done, a drill rig and crew were placed on the job to do the drilling, with the understanding that such drilling was to be done at the expense of the contractor and the cost was to be deducted from any moneys due him on his estimates for work performed. Under this arrangement an area of approximately 1,500 feet was drilled at 200-foot intervals along the line of the navigation channel where no excavating had been done. The area drilled was along the line of the navigation channel which had been shifted subsequently to the original precontract survey borings at about an average distance of 500 feet therefrom. The results of these drillings indicated that within the short area drilled the amount of material to be removed consisted of about 40-percent rock, whereas the original profiles, approximately 500 feet away, gave only approximately 10 percent of rock. The drill rig was then moved to a location near the line of original borings, and six holes were drilled in this locality which checked very closely the original profiles. The contractor had several representatives present on the drill rig during the entire time of the drilling operations. He was furnished a log of each hole drilled each day of operation. In the meantime, due to the unsatisfactory progress of the work being performed by the contractor, which indicated that no effort was being made to overcome the deficiency, but instead deficiency was increasing at a rapid rate, the contractor was informed by letter dated February 21, 1934 (see exhibit L), to cease all operations between stations 875+00 and 564+00, over that portion of his contract where only a small amount of work has been done. A letter was prepared to the Chief of Engineers, through the division engineer, recommending the termination of his contract on that portion of the work and that the work in that portion be undertaken by Government plant and hired labor. At the direction of the division engineer, however, this letter was held in abeyance pending a conference with Mr. Shea, which he had requested on March 6, 1934. As a result of this conference, the contractor made claims for additional compensation due to the excessive amount of rock which he claimed he was encountering in the contract, and which he claimed was substantiated by the small amount of boring that had been done at his request. The contractor was instructed to place his claim in writing and submit it to the contracting officer for his action. In compliance therewith, the contractor submitted to March 9, 1934 (see exhibit M), a letter to the district engineer claiming that as a result of additional borings made he was entitled to a reclassification and an increase of 12 cents per cubic yard in his contract price. A copy of his letter dated March 9, 1934 (exhibit M), and a copy of reply from this office dated March 16, 1934 (exhibit N), are enclosed herewith. On the same date, March 9, 1934, the contractor submitted a letter to the Chief of Engineers, through the district engineer, which forms the basic communication of this report. It is believed the above history of the contract answers all claims made by the contractor in the basic letter.

(3) The present status of the contract is as follows:

(*a*) The records of this office show that on February 1, 1934, the contractor had placed 2,397,470 cubic yards of material in the levee embankment, berm, and toe ditches. In accordance with progress prescribed in paragraph 3 of the specifications, the contractor was required to place approximately 4,111,540 cubic yards of material, which gives a deficiency of approximately 1,714,070 cubic yards as of February 1, 1934, or a percentage of 41.7 behind the required schedule. The total amount remaining to complete the contract is approximately 4,014,000 cubic yards. In order to complete the work within the time set by the specifications, it will require 510,000 cubic yards to be placed each month.

(*b*) Since July 8, 1933, the effective date of the supplemental agreement, the contractor has placed an average of 136,700 cubic yards per month instead of the required 340,000. The extent of the contractor's operations to date is from

station 1220+00 to station 777+00, or a distance of 44,300 feet, and, with the exception of about 3,000 feet, no completed section of levee has been accomplished. The contractor is either financially unable or has no intention of placing adequate and suitable equipment on the job to complete it within the time limit set by the specifications. Under date of December 18, 1933, the contractor requested a reclassification of materials, claiming that he was excavating considerably more rock than was shown on the profile or drawings accompanying the specifications. This matter has been investigated by additional borings, as discussed above.

3. *Conclusions.*—It is the opinion of this office that the difficulty being experienced by the contractor on this work and his lack of progress are entirely due to inadequate plant, improper supervision, and lack of experience in hydraulic work. The contractor should have been in a favorable position to estimate correctly the difficulties attending the execution of his contract in view of the fact that all the experimental work done by this office was done with a machine leased from the contractor, and his superintendent, Mr. Martin, was in charge of the equipment and was thoroughly familiar with all the different classes of material and the difficulty in excavating such material. Experimental sections were constructed in areas where only sand, shell, and marl predominated and in other areas where sand, shell, and hard marl predominated, and still in other sections where heavy rock excavation was required. Mr. Martin, the superintendent for the Canal Dredging Co., was in charge of this machine during the entire period it was under lease to this office doing the experimental work. All this work was done prior to the advertising of the section now under contract to the Canal Dredging Co. Mr. Martin also made extensive borings over the entire area now under contract and stated on several occasions, before competent witnesses, that he checked the Government profile practically 100 percent. The contractor had access to and was shown all of the cores of rock, hard marl, loose marl, sand, shell, and muck. It is further the opinion of this office that the work can be performed at the present contract unit price with a profit, providing the proper type of machinery is used in the execution of the work. The contract has now been in force for a period of 1¾ years, and out of a total of 655 stations the contractor has actually completed less than 35 stations. His lack of proper supervision, inferior equipment, and unorthodox methods have clearly shown that he is not able to complete the job within the time limit, but, on the other hand, if permitted to continue, it will require for the completion a period of time extending from 12 to 18 months beyond the actual time set for completion. With reference to the contractor's claim of a difference in materials, it is the opinion of this office that the materials encountered are not materially different from those shown by the drawings and specifications over that portion of the levee over which the contractor has worked north of Tory Island Road. The contractor and his superintendents, Mr. Martin and Mr. Buchanan, have stated on several occasions prior to the submission of the contractor's letter of December 18, 1933, that the actual conditions were very close to the Government profile. Experience in this locality has shown that a rigid classification from core borings is not only difficult to define but almost impossible to apply in practice. It is almost impossible to make a boring that secures full recovery. It is equally as difficult to determine accurately the limits or extent of each layer of material, even if the material is in a uniform layer or stratum. In this connection it will be noted that the H. C. Nutting Co., who performed all the core boring work upon which the plans and specifications were based for this contract, guaranteed their classification insofar as it was possible to guarantee it, and received pay in accordance with the class of material encountered. The contract price for drilling rock was $2.25 per foot as compared with $1.25 per foot for overburden, and certainly it would have been to this contractor's advantage to have shown as much rock as possible. In this locality holes bored 5 feet apart show different characteristics. The theory that there is at least 50 percent of rock as claimed by the contractor, based on the recent small area bored, is not necessarily representative of the area involved, and should not be considered as the basis for a claim over the entire contract.

4. *Recommendations.*—In view of the above, it is recommended that, first, the contractor's right to proceed be terminated for his entire contract, as provided for in article 9 of the contract, and that prior to deciding upon the method best suited for completion of the contract the U. S. dredge *Gulfport* be placed on the work for a period of approximately 2 months to demonstrate the feasibility of completing the contract with hydraulic equipment and to ascertain and check cost figures; second, if the termination of the Canal Dredging Co.'s contract is

not approved in its entirety it is recommended that his right to proceed on that portion between stations 875+00 and 564+00 be terminated, and that the same demonstration test with the dredge *Gulfport* outlined above be authorized.

B. C. DUNN,
Major, Corps of Engineers,
District Engineer.

[Second endorsement]

Subject: Protest, Canal Dredging Co., Contract No. W436–eng–3071.

OFFICE, DIVISION ENGINEER,
GULF OF MEXICO DIVISION,
New Orleans, La., April 14, 1934.

To the CHIEF OF ENGINEERS:

1. Contending that rock exists in materially larger quantities than shown by the specifications and drawings, the contractor desires reclassification of the material with a view to adjustment in the unit contract price, asking an increase therein from 15 to 27 cents per cubic yard.

2. The date of the contract is August 5, 1932; date of beginning, December 5, 1932. Supplemental agreement was executed to be effective July 8, 1933. Between these dates there was no protest submitted by the contractor as to the classification of the material. Nor since that date has any written protest been submitted until that of December 18, 1933. The work under the contract was contemplated to be done by the dragline method, and the plant offered for the work was of this character. When the supplemental agreement was executed there was no indication that the contractor intended to employ other than dragline equipment. About November 1933 the contractor placed hydraulic pipeline dredges on the job to excavate and pump material into the levee. No written application for performance of the work by this method was received, nor was any written authority granted therefor by the contracting officer. Under date of December 18 the contractor protested the classification of the material, claiming that rock existed in much greater quantities than shown on the specifications and drawings, and requested that at his expense borings be made on a portion of the work where little or no work had been done in order to determine this matter.

3. The specifications relating to classification of materials are those numbered paragraphs 11, 12, 13, in the specifications attached to the contract. The following extracts are taken therefrom:

"Scattered rock not disclosed by the core borings may be found in some localities.

"Sample cores of the rock and dry samples of the other material have been taken and preserved, and these samples may be seen at the United States engineer suboffice at Clewiston, Fla. Prospective bidders are advised to examine these samples and make their own estimate as to the difficulties attending the excavation of the various materials encountered, as the cost of excavation and placing in levee embankment shall include the cost of removal of all materials encountered. A log of each hole drilled may also be seen and examined. Samples of rock previously excavated may also be seen along the borrow pit.

"13. *Character of materials.*—The material to be excavated is believed to be muck, sand, marl, shell; sand, marl and shell mixed; and rock. The rock which will be encountered is of a limestone formation in layers varying in thickness from a few inches to a couple of feet, in most cases overlying a marl formation. The texture of the rock varies from a rather porous and friable character to a denser and fairly tough character. It breaks up into fragments ranging from pebble size to one-man and two-man stone sizes. Some blasting will be necessary, but it is believed the greater portion of the rock encountered is susceptible of being excavated * * *."

4. The borings requested, as stated above, were made, and the district engineer reports at bottom of page 7, first endorsement: "The results of these drillings indicated that within the short area drilled the amount of material to be removed consisted of about 40 percent rock, whereas the original profiles approximately 500 feet away gave only approximately 10 percent of rock." It should be noted, however, that in the reclassification the rock was determined from dry borings rather than from wet borings, as normally taken. Furthermore, it may be doubted whether the classification of rock was strictly in accordance with that originally made. Thus, material which was classified as marl or hard marl may have been reclassified as soft rock.

5. The date of completion of the contract, as modified by the supplemental agreement, which increased the quantity of material in the levee, is estimated to be September 26, 1934. As of April 4, 1934, the amount of yardage placed in the levee was 2,486,950. The total amount remaining to be placed under the contract is 4,075,054. Thus about 38 percent of the work has been accomplished in 73 percent of the contract period. The yardage remaining to be placed outside of that portion between stations 875+0 and 564+0, on which the contracting officer has directed the contractor to cease operations, involves the placement of 972,000 cubic yards. The rate of progress required under the contract is 300,000 cubic yards per month. At this rate, in the 5 remaining months of the contract period 1,500,000 cubic yards should be placed in the levee, as compared with the above amounts remaining to be placed. At no time since the execution of the supplemental agreement has this monthly rate of progress been obtained.

6. The division engineer concludes:

(*a*) That classification of material as "rock," is difficult and controversial.

(*b*) That there probably exists over an appreciable portion of the uncompleted work, "rock" in excess of that shown by the drawings and specifications.

(*c*) That it will be extremely difficult accurately to determine by borings or otherwise the proportion of rock to other material.

(*d*) That rock in any reclassification should be classified in accordance with the original samples that were made available for inspection by bidders. Thus, material that might be classified as soft rock, if it be found the same as original samples marked "marl" or "hard marl", should not be reclassified as rock.

(*e*) That if rock, reclassified as above, is found in work done since December 10, 1933, materially to exceed quantities shown by the drawings and specifications, the contractor is entitled to adjustment in the unit price under paragraph 13 of the specifications and article 4 of the contract.

(*f*) That the increase in unit price to be allowed should be proportionate to the relative percentages of rock in the original classification and the reclassification, and determined by allowing 35 cents per cubic yard for rock. The average price being paid for rock excavation under three existing National Industrial Recovery Act contracts in the same locality, which provide for classified unit prices, is 40 cents. Therefore, 35 cents is considered a fair unit price for work being done not under National Industrial Recovery Act provisions.

(*g*) That due to the fact that ample space was available to work on partially completed work elsewhere, the district engineer was justified in directing the contract to cease operations between stations 875+0 and 564+0.

(*h*) That due to the great deficiency in the progress required, the contracting officer would be justified in eliminating from the contract all or a large portion of the work between stations 875+0 and 564+0, under article 9 of the contract.

(*i*) That if all or a portion of the work should be eliminated from the contract, it would be preferable, if practicable, to terminate it by supplemental agreement, thus relieving the surety, in order that the section of levee may be changed to another smaller approved section, thus reducing materially the quantities and permitting the accomplishment of the work for less than the contract price if done by Government plant.

7. There appears to be open for consideration the following lines of action:

(*a*) Terminate the entire contract under article 9 of the contract.

(*b*) Enter into supplemental agreement providing for one of the following proposals.

(1) Continue contract as is at increased unit contract price, such increase to be proportionate to the relative increase in amount of rock as determined by borings along the line of the navigation channel, the price of rock being taken at 35 cents per cubic yard in both the unclassified present and future contract unit price. The proportionate increase in amount of rock to be determined by contracting officer after consideration of all pertinent data, including comparison of cores from new borings with those of original borings as to classification. In order not to delay execution of supplemental agreement it may be advisable to provide a classified unit price of 35 cents for rock and a unit price for other material corresponding to the existing unclassified contract price of 15 cents. Under such provision the amount of rock could be determined as the work progresses.

(2) Continue contract as is at existing contract unit price (15 cents), with modification providing that the United States shall place, by Government pipeline dredge or otherwise, suitable and sufficient material on the line of the levee between earth dikes prepared and maintained by the contractor, a deduction of 8.5 cents per cubic yard for each cubic yard so placed to be made from any amounts due or to become due the contractor. Also an additional allowance to

be made to the contractor as an adjustment on work done since protest as to classification was made, in accordance with paragraph 13 of the specifications and determination of increased unit price as outlined in paragraph (1) above.

(3) Continue contract at increased unit contract price determined as outlined in (1) above, eliminating from the contract the uncompleted work south of Torry Island Road (station 875+00 to station 564+00). Make additional allowance at new unit contract price for work done since protest as to classification as outlined in (1) above, the United States to assume all cost of boring for reclassification of material.

(4) Eliminate from the contract the uncompleted work south of the Torry Island Road (station 875+00 to station 564+00); and continue contract on remaining work at existing contract price (15 cents), with provisions that the United States place with Government pipe-line dredge or otherwise material to complete levee as outlined in (2) above. Make adjustment at increased unit price for work done since protest as to classification as outlined in (1) above, the United States to assume all costs of boring for reclassification of materials.

(5) Terminate the whole contract and pay for all work done to date, in accordance with specifications, and make adjustment at increased unit price for work done since protest as to classification as outlined in (2) above, the United States to assume all costs of borings for reclassification of materials.

8. The district engineer recommends, firstly, that contractor's right to proceed be terminated for the entire contract, as provided for in article 9 of the contract; or secondly that the contractor's right to proceed on that portion between stations 875+0 and 564+0 be terminated. The contractor has indicated verbally to the division engineer that he prefers the line of action indicated in paragraph 6 hereof by (*b*) (1); or if this be not followed, then the line of action indicated in (*b*) (4). The division engineer recommends that so much of the uncompleted work between stations 875+0 and 564+0 be eliminated from the contract and performed by Government plant and hired labor as will leave to the contractor an amount of work to be done totaling approximately 1,500,000 cubic yards, which is the amount that he could do in the remaining portion of the contract period if the prescribed monthly rate of progress were attained; and that the contractor be permitted to continue the contract on the remaining work at an increased price if it be found that "rock" exceeds that shown in the drawings. Borings should be made along the line of the borrow pit to determine the percentage of rock as reclassified, and the price should be increased in proportion to the excess of "rock" found over that shown by the drawings and specifications for that locality. The new unit price should preferably be classified into prices for rock at 35 cents per yard and other material at a price corresponding to the unclassified price of 15 cents per yard.

WARREN T. HANNUM,
Colonel, Corps of Engineers,
Division Engineer.

[Third endorsement]

OFFICE, CORPS OF ENGINEERS,
May 1, 1934.

To the DIVISION ENGINEER,
Gulf of Mexico Division, New Orleans, La.

1. Careful consideration has been given to all the facts involved as presented in the foregoing letter and endorsements, as well as to those adduced at a series of conferences held in this office with the contractor and his representatives. The district engineer is hereby authorized to terminate this contract by mutual agreement.

2. In view of the fact that it is desired to construct a levee of radically different design than that prescribed in the contract, and one which will be more efficient for the purpose intended at probably a less cost, it is to the interest of the United States to terminate the existing contract. The contract should be terminated on the basis of payment to the contractor at contract price for all work which he had done for which payment is permissible under the terms of the contract. No payment may be included for mobilization or demobilization.

3. Supplemental agreement should include a paragraph releasing the United States from any and all claims under the contract.

4. Release of retained percentages should be provided for in the supplemental agreement.

5. Supplemental agreement should be executed by the district engineer, the contractor, and his sureties, and submitted to this office for final approval.

By order of the Chief of Engineers:

J. S. BRAGDON,
Major, Corps of Engineers,
Chief, Finance Division.

OCTOBER 28, 1933.

Re: Contract 436–eng–3071, your file ODA–18.3

Maj. B. C. DUNN,
United States District Engineer, Jacksonville, Fla.

DEAR SIR: Responding to your letter of October 14, we have to say that while we do not agree that the present situation of our work would warrant procedure under article 9 of the contract, we have been working diligently both before and since the receipt of your letter to provide additional plant and equipment on our work, and we have now arranged for the following additional plant:

1. The 12-inch Diesel dredge *Alice*, with the capacity of 4,000 cubic yards per day, or 100,000 cubic yards per month, now at Miami, Fla., which can move on to the work within 4 or 5 days after notice.

2. The 16-inch steam dredge *Culebra*, which is to be provided with a new cutter giving it a capacity of 4,000 cubic yards per day, or 100,000 cubic yards per month, now on Lake Okeechobee and can move at once. The new cutter can be provided in 1 week.

3. The 10-inch Diesel dredge *Venitia*, with a capacity of 2,000 cubic yards per day, or 50,000 cubic yards per month, now at Miami, Fla. This machine can also be placed on work on short notice.

The capacity of our machine of 8,000 cubic yards per day, or 200,000 cubic yards per month, supplemented by the capacity of the three above-mentioned dredges, will give our operation a capacity of 18,000 cubic yards per day, or 450,000 cubic yards per month.

We expect to have above-mentioned additional equipment on the job and working by November 20.

We beg further to inform you that we have had negotiations for another large dredge, which have not been successful to date, but which we expect to continue and which we hope will ultimately succeed in getting this dredge on our work.

We are having it understood with each of the owners that these dredges, and each of them, are to do the work or be promptly eliminated and replaced with other equipment.

You will bear in mind that we were doing the required average monthly yardage, and more, up to the time we reached the adjustment of our differences under the original contract and made the amended contract with you. You will recall that you conceded in your letter of April 7 that our average was 332,000 cubic yards per month. You will also recall that when the modified contract was agreed upon, it was understood that our large dredge would have to be revamped and that would require probably 90 days. You know from your own experience that it takes time to get started upon a new set-up. We refer to the fact that you did not succeed in getting your dredge upon the work to strip the muck under the new agreement until September 19. You did make a provisional arrangement for muck stripping during the interval with Ireland's *Reliable*, but in doing that you deprived us of the means of testing hydraulics on the job and thus postponed our ultimate decision and arrangement. We brought the *Reliable* on to the work for the purpose of testing the suitability of hydraulics, and if you had not made the above-mentioned provisional arrangement with Ireland to use his dredge for muck stripping, we would have been further along with out arrangements for providing supplemental plant than we are now.

During the time we were revamping our large dredge we used our other machine and did all we could possibly do, thus showing that we were not wasting any time on advancing this work. We mention these things as indicating that we were not only exercising diligence but that we have not had a fair chance under the circumstances under the modified contract to bring our production up to the contract requirements. The specifications in paragraph 3 recognized the fact that probably 120 days was necessary to fairly enable the contractor to get his production up to requirements. The new contract amounted practically to beginning anew.

We have no doubt that our production can be brought to the required average in a comparatively short time with the proposed additional equipment and that we can finish within contract time. The contract time is determined by dividing

the total yardage by the monthly average of 300,000. (See par. 3 of specifications and par. 15 of the amended contract.)

We are advised that the peculiar terms of the original and amended contracts and circumstances of the present situation would not permit or justify action under article 9 at this time.

We assure you that we shall push to the limit all units employed and get others in their places if they do not perform as promised and contemplated and will carry out our contract if not interfered with and if permitted to do so.

Yours truly,

CANAL DREDGING CO.,
By ——— ———, *President.*

PAHOKEE, FLA., *December 1, 1933.*

UNITED STATES ENGINEER OFFICE,
Clewiston, Fla.
(Attention Lt. N. L. Hemenway)

DEAR SIR: As you know, our machine 900, was shut down at 7 a. m., November 27, on account of muck overburden in the navigation channel, at station 1218 more or less. This machine is still down, waiting on instructions.

On the night of November 29, our dredge *Broward* building small levee for the dregde *Alice* to pump behind, arrived at station 846 more or less. This is where the dredge *Congaree* quit stripping muck some few weeks ago. The *Broward* has been moved about 400 feet from the face of the muck stripping and is storing more marl on the berm. This will keep the dredge busy until Saturday night, then she will be shut down waiting on muck removal.

Dredge *Alice* arrived on the work last night and will start operation at station 868 working south. This is about 2,200 feet north of the south face of muck removal. It will not be very long until she will be at the south face of muck removal.

Yours truly,

CANAL DREDGING CO.,
By W. H. MARTIN, *Superintendent.*

DECEMBER 19, 1933.

Re W 436–eng–3071. Job no. 1521.

DISTRICT ENGINEER,
Jacksonville, Fla.

DEAR SIR: Your attention is invited to the lack of progress on the above-styled project.

In our opinion this is due to two causes: Firstly, the lack of progress by the United States in stripping muck as provided by the supplement agreement, which lack of progress on the part of the United States has caused to date a shutdown, of three of our plants at various times; secondly, the amount of rock that we have encountered on the project that is not indicated on the profile has materially slowed down our operations.

For the purpose of record, and for that purpose alone, we are inviting your attention to the above-set-forth matters.

Yours very truly,

CANAL DREDGING CO.,
By ——— ———, *President.*

DECEMBER 18, 1933.

Re W 436–eng.–3071. Job no. 1521.

DISTRICT ENGINEER,
Jacksonville, Fla.

DEAR SIR: We invite your attention to the fact that the drawings and specifications on the above-styled project contemplate the removal under the original contract and supplement thereto approximately 296,000 yards of rock material. We wish to advise you that although we have completed less than 5 percent of the above-styled project we have excavated to date approximately 550,000 yards of rock material.

Inasmuch, therefore, as the conditions are materially different from those shown by the drawings and specifications we therefore, under article 4 of the above contract, respectfully call this to your attention and respectfully suggest that the contract be adjusted to meet the changed conditions.

We suggest that a reclassification of the unexcavated portion of the above project be made and at the same time be determined at our expense.

We would respectfully suggest that the reclassification be made over the unexcavated portion by core borings, to be made at intervals 250 feet, and that the borings be made under the direction and supervision of your representatives agreeable to us, but that we have a representative on the borings at all times, and that in case of disputes that the same be settled by the district engineer, subject to the usual privilege of appeal.

Yours very truly,

CANAL DREDGING CO.,
By ——— ———, *President.*

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* * * * * * *

We, therefore, assume that of the approximately 5,000,000 cubic yards to be moved on this project, approximately 2,225,000 cubic yards are rock and the balance marl-sand shell and other common excavation.

In view of the foregoing, a readjustment of price is herewith claimed under article 4 of the contract, said readjustment of price to amount to and be an increase in price of 12 cents per cubic yard and the same to be retroactive to the date of the supplement to the original contract.

We also call your attention to the fact that the method outlined in the specifications for measuring subsidence is not satisfactory. The borrow pit in all cases far exceeds the amount in the levee, although payment is being made for gross fill of a material that is being handled wet and as a consequence will have no appreciable shrinkage.

We request that a satisfactory method be adopted for measuring subsidence or an arbitrary percentage be set up and agreed upon.

An immediate reply is respectfully requested.

Yours very truly,

CANAL DREDGING CO.,
By ——— ———, *President.*

CANAL CONSTRUCTION CO.,
CANAL DREDGING CO.,
Memphis, Tenn., March 27, 1934.

In re W 436–eng.–3071, job no. 1521.

CHIEF OF ENGINEERS
(Through District Engineer),
Jacksonville, Fla.

DEAR SIR: Appeal is taken herewith from the decision of the district engineer in his letter of March 16, 1934, in answer to ours of March 9, 1934, requesting an adjustment of our contract due to material change in character of material encountered (copies of both letters attached).

The following reasons are assigned as to the basis of this appeal:

First: The conclusions reached by the district engineer are not consistent with the fact as developed by his investigation, inasmuch as a material change is admitted by his letter. "* * * The results of this drilling indicated that in the area drilled there was 40 percent of rock, whereas the original profiles showed only about 10 percent of rock * * *."

Second. The district engineer now states that the boring taken between station 854+78 and station 785+00 diverged an average of 500 feet from the precontract borings. This is the first official knowledge we have had that the borings are off the line of the borrow pit. Paragraph 12 of the specifications states: "* * * Core borings: Core borings have been made at 500-foot intervals along the entire length of the proposed work, supplemented by probings on sections 100 feet apart; these borings and probings are shown on profiles 13, 14, and 15 referred to in paragraph 6."

How the district engineer arrived at the conclusion that because the line of boring diverged 500 feet from the precontract borings we could expect an increase of 300 percent in the rock quantity is something that we frankly cannot follow.

His conclusion that the second set of borings which were taken between stations 715 and 725 (approximately) and not between stations 730 and 695, as the district engineer states, checked with "reasonable accuracy" with the precontract borings is also beyond our power to comprehend, as the copy of the log of the borings as furnished us by the district engineer shows this area to contain approximately 50 percent rock, as against the 20 percent approximately as shown on the profiles. "Reasonable accuracy" according to any engineering standard we have ever worked by would not permit any such variation as is indicated.

The hole bored at station 695 was the start of a new series of holes, and if it is to be considered at all it must be considered as indicative of the rock in the balance of the project. This hole shows approximately 52.6 percent of rock, as against 27.7 percent on the original profile. This series of holes was not compiled, due to orders of the district engineer.

Our assumption that the entire project contained 50 percent rock, with the exception of that portion on Bacom Point, is the only hypothesis we could set up, inasmuch as the district engineer stopped the investigation before it had been completed and proceeded to cancel a portion of the contract before making a finding of fact, as requested in our various letters. We insist, however, that our assumption is more correct than his profile, and we believe this contention will be proven if an investigation is made.

We respectfully submit that the findings of the district engineer warrant a revision of the contract as provided in article 4 thereof and paragraph 13 of the specifications, regardless of the conclusions reached in his letter.

In view of the foregoing, an immediate hearing in this cause is respectfully requested.

Yours very truly,

CANAL DREDGING CO.,
By A. J. SHEA, *President.*

CANAL DREDGING CO.,
Memphis, Tenn., March 9, 1934.

Re W 436–eng–3071. Job no. 1521.

DISTRICT ENGINEER,
Jacksonville, Fla.

DEAR SIR: We advised you on December 18, 1933, inviting your attention to the fact that the conditions on the above-styled project are materially different from those shown by the drawings and specifications, and although you ordered an investigation, we have not been advised of the result of your findings, despite the fact that you have ordered the investigation stopped and addressed us under date of February 21, 1934, terminating that portion of the contract in which the investigation has been conducted.

You have furnished us with a copy of the log of your borings and we find that the investigation as far as conducted has disclosed that the conditions are materially different from those shown by the drawings and specifications.

The log of your borings shows that the percentage of rock is far in excess of that indicated on the drawings and specifications.

The log of the borings on this investigation compiled by our representatives, shows some difference from yours. This is due to your calling one band of material "hard marl" and "marl with lumps", whereas we classify it as rock. This classification of ours is upheld by such eminent authorities as Dr. Chas. P. Berkey, of Columbia University, and Dr. Stewart J. Lloyd, of the University of Alabama.

Under this classification the respective log of our findings shows that the area bored by you contains approximately 50 percent rock.

Our observation of our machines working on the other portions of the project indicates that the same condition is true, with the exception, however, of a small portion of the project lying on the sand ridge known as Bacom Point.

We, therefore, assume that of the approximately 5,000,000 cubic yards to be moved on this project, approximately 2,225,000 cubic yards are rock and the balance marl sand shell and other common excavation.

In view of the foregoing, a readjustment of price is herewith claimed under article 4 of the contract, said readjustment of price to amount to and be an increase in price of 12 cents per cubic yard and the same to be retroactive to the date of the supplement to the original contract.

We also call your attention to the fact that the method outlined in the specifications for measuring subsidence is not satisfactory. The borrow pit in all cases

far exceeds the amount in the levee, although payment is being made for gross fill of a material that is being handled wet and as a consequence will have no appreciable shrinkage.

We request that a satisfactory method be adopted for measuring subsidence or an arbitrary percentage be set up and agreed upon.

An immediate reply is respectfully requested.

Yours very truly,

CANAL DREDGING CO.,
By ——— ———, *President.*

MARCH 16, 1934.

CANAL DREDGING CO.,
Memphis, Tenn.

DEAR SIRS: Having reference to your letter dated March 9, 1934, relative to your contract no. W 436–eng–3071, you are informed as follows:

With reference to paragraph 1 of your letter of March 9, 1934, this office replied to your letter of December 18, 1933, under date of December 20, 1933, and informed you therein that this office did not agree with your claim regarding the increase in the amount of rock over the amount shown on original profiles accompanying the plans and specifications. It was agreed, however, in compliance with your request in paragraphs 3 and 4 of your letter of December 18, that additional drilling would be done at your expense over that portion of your contract where no work had been performed. In compliance with your request, the United States drill rig no. 3 was placed on the job south of the Tory Island Road, and the area between stations 854+ and 78 and 785+00 was drilled at 250-foot intervals, and the machine was then moved to a point between stations 730+00 and 695+00, and six holes were drilled in this area. During the entire period of this drilling your representatives were present and were furnished a log of each and every hole drilled. The results of this drilling indicated that in the area drilled there was approximately 40 percent of rock, whereas the original profiles showed only about 10 percent of rock. However, in view of the fact that the first section drilled, just south of the Tory Island Road, between stations 854+78 and 785+00, diverged on an average of 500 feet from the original precontract borings, the difference in the result of the investigation is about the difference that could be expected in such country where subsurface conditions change frequently. The second set of borings consisted of four holes between stations 730+00 and 695+00. These latter borings were taken close to the site of the precontract drilling and checked the previous findings with reasonable accuracy. The result of these investigations applies to two particular sections covered by drilling operations and cannot be used as any basis for the determination of subsurface materials in other sections included within your contract.

In view of the fact that your letter dated December 18, 1933, was the first formal indication in writing that you were encountering more rock than was shown on the profiles accompanying the specifications, and, further, in view of the fact that the drilling was done in an area where no work had been performed, this office sees no justification for an increase in your unit cost or that it be made retroactive for that portion of your work, north of Tory Island Road, where work has actually been performed. From observations made during the progress of your work from station 1221+00 to the Tory Island Road, this office is still of the opinion that the profiles, specifications, and samples of materials upon which your bid price was based are a true and fair representation of the materials as they actually existed in nature over that area.

In view of my letter of February 21, 1934, directing you to cease operations between station 875+00 and station 564+00, consideration may be given to the omission of the drilling charges.

Referring to paragraphs 9 and 10 of your letter dated March 9, 1934, relative to the method of measuring subsidence, paragraph 14 (*b*) of supplemental agreement dated July 15, 1933, provides that subsidence shall be measured by subsidence plates. This office sees no reason or justification for changing this method.

Very truly yours,

B. C. DUNN,
Major, Corps of Engineers,
District Engineer.

[First endorsement]

Subject: Protest, Canal Dredging Co., Contract No. W 436-eng.-3071.

OFFICE DISTRICT ENGINEER,
Jacksonville, Fla., April 9, 1934.

To the Chief of Engineers, United States Army (through the division engineer, Gulf of Mexico Division, New Orleans, La.), Washington, D. C.

1. The following answers to the contractor's protest are given briefly, in view of the fact that the subject is answered in detail by first endorsement dated March 17, 1934, on a letter from the contractor to the Chief of Engineers dated March 9, 1934:

"First. The conclusions reached by the district engineer are not consistent with the fact as developed by his investigation, inasmuch as a material change is admitted by his letter. '* * * the results of this drilling indicated that in the area drilled there was 40 percent of rock, whereas the original profiles showed only about 10 percent of rock * * *.' "

Answer.—The district engineer's ruling was that in a locality where substrata conditions change as rapidly as they do in the Okeechobee area, the results obtained in one small particular area (7,000 linear feet) should not be used as a basis for determination of the amount of rock in the total area (65,000 linear feet) under contract. In this locality subsurface conditions vary to a great degree. One test hole may show as much as 2 feet of rock; and another hole, 5 feet away, may reveal no rock.

"Second. The district engineer now states that the boring taken between station 854+78 and station 785+00 diverged an average of 500 feet from the precontract borings. This is the first official knowledge we have had that the borings are off the line of the borrow pit. Paragraph 12 of the specifications states '* * * Core borings: Core borings have been made at 500-foot intervals along the entire length of the proposed work, supplemented by probings on sections 100 feet apart; these borings and probings are shown on profiles 13, 14, and 15 referred to in paragraph 6.' "

"How the district engineer arrived at the conclusion that because the line of boring diverged 500 feet from the precontract borings we could expect an increase of 300 percent in the rock quantity is something that we frankly cannot follow."

Answer.—Before bids were canvassed, the contractor was furnished a set of maps which accompanied the specifications, file no. 159-9236, in 24 sheets. Sheets 2 to 12, inclusive, gave the location of each core boring made. Sheet no. 5 indicates clearly the divergence referred to. This divergence was also verbally called to the attention of each prosqective bidder prior to the opening of bids. Since awarding of the contract, the contractor has been furnished several sets of these maps. It is reasonable to expect, and the records of this district show from the vast amount of drilling done, that a variation of from 20 to 30 percent between two holes as near together as 5 feet is not unusual.

"His conclusion that the second set of borings, which were taken between stations 715 and 725 (approximately) and not between stations 730 and 695, as the district engineer states, checked with 'reasonable accuracy' with the precontract borings is also beyond our power to comprehend, as the copy of the log of the borings as furnished us by the district engineer shows this area to contain approximately 50 percent rock as against the 20 percent approximately, as shown on the profiles. 'Reasonable accuracy' according to any engineering standard we have ever worked by would not permit any such variation as is indicated.

"The hole bored at station 695 was the start of a new series of holes, and if it is to be considered at all, it must be considered as indicative of the rock in the balance of the project. This hole shows approximately 52.6 percent of rock as against 27.7 percent on the original profile. This series of holes was not compiled due to orders of the district engineer.

"Our assumption that the entire project contained 50 percent rock, with the exception of that portion on Bacom Point, is the only hypothesis we could set up, inasmuch as the district engineer stopped the investigation before it had been completed and proceeded to cancel a portion of the contract before making a finding of fact, as requested in our various letters. We insist, however, that our assumption is more correct than his profile and we believe this contention will be proven if an investigation is made."

Answer.—The borings referred to above were taken between stations 730 and 695 and also between stations 715+00 and 724+60. The statement "reasonable

accuracy" made by the district engineer was based on records obtained from drilling in the entire Okeechobee area over a period for the past 3 years, which records plainly indicate that a variation of from 20 to 30 percent may be expected. In view of the fact that the reborings checked with the precontract borings within 20 percent, the results were considered to be reasonably accurate. The assumption by the contractor that the entire contract contains 50 percent of rock is evidently based on the small amount of reboring made between stations 854+78 and 785+00 and between stations 715+00 and 724+60, in an area where the contractor had performed no work and where the greatest percentage of rock is known to exist, as can readily be determined by reference to sheets nos. 13, 14, and 15 of the contract maps. It is felt that an adjustment of the contract on such a basis would be unfair and contrary to the best interest of the United States.

2. It is believed that the above statements answer all claims brought up by the contractor in the basic letter.

B. C. DUNN,
Major, Corps of Engineers,
District Engineer.

SUPPLEMENTAL AGREEMENT

This supplemental agreement, entered into this 14th day of June 1934, by and between the United States of America, hereinafter called the Government, represented by the contracting officer executing this agreement, of the first part, and the Canal Dredging Co., a corporation organized and existing under the laws of the State of Illinois, of the city of Memphis, State of Tennessee, hereinafter called the contractor, of the second part, witnesseth that:

Whereas on the 5th day of August 1932, a contract numbered W 436–eng–3071 was entered into by and between the above-named parties for the following work along the south shore of Lake Okeechobee in the area known locally as South Bay, between the Miami Canal and Bacom Point: (*a*) Excavating a navigation channel and placing in levee embankment 4,880,000 cubic yards of material at 11.62 cents per cubic yard between stations 564+89.64 and 1221+07.74 of division 2, section 1; (*b*) furnishing and hand placing 55,000 cubic yards of riprap along the channel slopes at $1.54 per cubic yard between stations 1023+00 and 1173+00; and

Whereas said contract was modified on the 13th day of July 1933 by supplemental agreement entered into by and between the above-named parties so as to provide for the placement of a certain additional quantity of material in the levee and an extension of time for the completion of the work; and

Whereas conditions were such that as of April 4, 1934, the contractor had placed in the levee only 2,633,145 cubic yards of material; and

Whereas it has been determined to be in the best interests of the Government to forthwith discontinue the construction of the levee in the manner provided for in the contract aforesaid as modified by said supplemental agreement and to construct the levee by Government plant and hired labor of materially different design which will be more efficient for the purpose intended and at a less cost to the Government; and

Whereas it has been found to be advantageous and in the best interests of both of the said parties hereto to terminate the contract aforesaid as modified by said supplemental agreement on the basis hereinafter stated:

Now, therefore, it is hereby mutually agreed by the parties hereto that the contract aforesaid as modified by said supplemental agreement is hereby terminated.

The Government agrees to pay the contractor the sum of $80,230.46 in full settlement for all retained percentages and yardage placed by him in accordance with the terms of the contract.

The contractor agrees to accept settlement on the above basis and hereby releases the Government from any and all claims under the contract and supplemental agreement aforesaid.

The Government hereby further agrees to release the contractor from the performance of any more or additional work under the contract and supplemental agreement aforesaid, and to release to the contractor all retained percentages upon the execution of this supplemental agreement.

This supplemental agreement shall be subject to the approval of the Chief of Engineers, United States Army.

In witness whereof the parties aforesaid have hereunto placed their signatures at the time of execution of this agreement.

Witnesses:

PHILIP BURTON as to

B. C. DUNN,
Major, Corps of Engineers.

C. M. DEVELBISS as to

CANAL DREDGING CO.,
By A. J. SHEA, *President.*

[Executed in triplicate]

Approved June 15, 1934.

E. M. MARKHAM,
Major General,
Chief of Engineers.

CONSENT OF SURETY

We, United States Fidelity & Guaranty Co., bondsmen for the due performance of a contract dated August 5, 1932, between the United States, represented by B. C. Dunn, major, Corps of Engineers, United States Army, and the Canal Dredging Co., of the city of Memphis, State of Tennessee, for levee and riprap work along the south shore of Lake Okeechobee, Fla., hereby give our full consent to the attached supplementary articles of agreement, dated June 14, 1934, providing for termination of said contract.

In presence of—

——— ——— as to ——— ——— [SEAL].
——— ——— as to ——— ——— [SEAL].

UNITED STATES FIDELITY & GUARANTY CO.,
By J. L. BRIDWELL, *Attorney in Fact.*

Attest:

HERBERT H. RICE.

There is also attached memorandum submitted by claimant company.

In re Senate bill 2747.

Hon. CHARLES L. SOUTH,
Subcommittee, House Committee on Claims,
Washington, D. C.

DEAR SIR: Statement on behalf of claimant:

Purpose of bill: The purpose of this bill is to confer jurisdiction upon the United States Court of Claims to hear the claim of the Canal Dredging Co., a corporation under the laws of Illinois, with its principal office in the city of Memphis, Tenn., and to determine and report to Congress the additional compensation, if any, that said Canal Dredging Co. may be justly entitled to for the excavation of rock exceeding the percentage represented in and by the specifications, profiles, and other data relating to the work, and for loss on account of its preparation for doing work along the south shore of Lake Okeechobee under a contract entered into between said company and the War Department, dated August 5, 1932.

Necessity for bill: The reason or necessity for giving the Court of Claims jurisdiction of the claim is that the supplemental agreement, which canceled the contract, contained a release of the United States from other claims. But for this release the dredging company would have the right to sue in the Court of Claims, without any action on the part of Congress.

Dredging company's action under compulsion: The dredging company did not enter into the supplemental agreement voluntarily and freely, but under compulsion, as will appear from the statement of the facts about the contract and the action thereunder, hereinafter briefly set forth.

How supplemental agreement came about: The supplement agreement, which canceled the contract and gives rise to the claim of the dredging company, came about in this way: The dredging company discovered during the progress of the work that there was more rock to be excavated than was represented in the instructions to bidders, the specifications, and profiles. Of the total material to be excavated under the contract, 4,860,000 cubic yards, only 198,600 cubic yards was rock. (See par. 11 of specifications.) Thus it is seen that the rock represented

a very small percentage of the material to be excavated. The dredging company thereupon claimed an adjustment of its price under article 4 of the contract because of this condition. (See its letter of Dec. 18, 1933, p. 14 of the Senate Claims Committee's report). Pursuant thereto the district engineer made additional borings to determine the extent of the rock. The dredging company employed two of the most eminent authorities in this country to pass judgment upon these borings, namely, Dr. Charles P. Berkey of Columbia University, and Dr. Stewart J. Lloyd of the University of Alabama.

These authorities were of the opinion that about 50 percent of the material was rock. (See dredging company's letter to the district engineer, dated Mar. 9, 1934, p. 15 of the Senate Claims Committee's report.) The district engineer himself admitted that there was 40 percent of the material that was rock. (See his letter to the dredging company of Mar. 16, 1934, p. 16 of the Senate Claims Committee's report.) Thus the Government's contracting officer admitted that there was at least eight times more rock than represented in the specifications. Strange to say, the Government discontinued its borings before the whole site was covered. From that it is inferable that the contracting officer realized what they were up against.

The Government, instead of adjusting the price under article 4 because of this development, decided upon a different method of construction, and to that end decided to cancel the contract as for the best interests of the Government. It will be noted that there was no claim on the part of the Government that the dredging company should have investigated the conditions for itself before making its bid. The specifications, constituting the instructions to bidders (par. 13), contained the usual provision that "bidders are expected to examine the work and decide for themselves as to its character, and to make their bids accordingly." But it was evidently recognized that this provision was without effect in such case, because there were only 3 weeks' time between the advertisment for bids and the letting, which, in the nature of things, would not have been enough time for contractors to have made the borings necessary to determine the subsurface conditions, if that was otherwise practicable. It was not practicable because the site of the work was the open water of Pelican Bay, and it was not physically possible for the bidder to have made the necessary explorations, and also the expense of the necessary explorations would have been too much to have expected of any bidder.

It was also doubtless recognized that the Supreme Court of the United States had held that the bidder had the right to rely upon the representations of the Government in such circumstances in the case of *United States* v. *Atlantic Dredging Co.* (253 U. S. 1). It is inferable that the Government's engineers were doubtful about the correctness of their representations in this respect, as we find in paragraph 13 of the specifications a provision for an increase of the contract price in event of such development during the progress of the work.

The Government's cancelation of the contract in such circumstances entitled he contractor to be paid a reasonable value for the work it had done up to that time, and to the reasonable costs of necessary preparation for the work, as its outlay for that purpose would go for naught in such case. The contractor, under this well-recognized measure of damages, made claim for the reasonable value of the work done and the costs of preparation. The Government's representatives authorized the contracting officer to pay only for the work done at the contract price. (See letter from Maj. J. S. Bragdon, Corps of Engineers, Chief, Finance Division, dated May 1, 1934, to the division engineer, appearing on p. 11 of the Senate Claims Committee's report.)

The dredging company, under this ruling, found itself in this sort of dilemma: If it did not acquiesce in the cancelation and accept the proposed settlement, the engineers had the right to take the work out of its hands, under article 9 of the contract, because of their failure to proceed, and proceed to complete the work. The contractor and its surety, upon the completion of the work, would be confronted with a suit for a large amount and the necessity for an expensive defense which, under the circumstances, it was not in position to make. The district engineer had laid the predicate for this action by giving notice, under date of February 21, 1934, of his purpose to take the work out of the hands of the dredging company under the provisions of article 9. A copy of that communication is hereto attached.

The dredging company had invested practically all of its resources in its preparation for this work and, without a fair adjustment of its price, was not in position to borrow money to carry on. With the price adjusted to meet the conditions, it would have been in position to have gotten finances to go on with its work,

and the contract in such case would have been profitable enough, as it had been prior to this development. Its creditors, who were subcontractors, and others in Florida who had done work and furnished labor and material in the prosecution of the work, were clamoring for their settlement. The dredging company, therefore, was compelled to acquiesce in the cancelation and accept settlement on the proposed basis, in order to pay its debts and save itself from bankruptcy. Accordingly, the supplemental agreement in question was entered into. (See supplemental agreement, p. 18 of Senate Claims Committee's report.) We respectfully submit that this amount to coercion, coercion of the dredging company to enter into the contract.

The sum of $80,230.46 paid under the supplemental agreement was based upon the amount of work at the contract price that had not been paid up to that time. No allowance was made for the fact that the material excavated was of a different character than that represented to the dredging company when it made its bid, and for which it was to be compensated at 11.62 cents per cubic yard. The dredging company's claim therefore, will be the difference in price on the material moved and the reasonable cost of its necessary preparation.

History of contract and performance: The original contract which was entered into August 5, 1932, contemplated the excavation of 4,860,000 cubic yards of material. This material was to be taken from a prescribed area across the south end of Lake Okeechobee, and the excavated material was to be placed along the bank in the form of a levee to protect the lowland from storm-driven waters. The contractor set to work in due time, and was proceeding satisfactorily and profitably when the Government decided upon some changes in the plan, and a supplemental contract was entered into under date of July 13, 1933, wherein the quantity of material to be excavated was increased and the price was advanced from 11.62 cents per cubic yard to 15 cents per cubic yard. The district engineer, prior to the change of contract, had claimed that the contractor was not putting up the requisite 300,000 cubic yards per month; but, upon the contractor's challenging the correctness of this claim, he checked up and conceded in a letter to the contractor dated April 7, 1933, that he was mistaken, and that the contractor's average was 332,000 cubic yards per month. That letter has been mislaid, and cannot for the moment be produced, but the engineer's copy can be secured if verification is required.

From this it is seen that the letter of the Acting Secretary of War, dated May 27, 1935, to Hon. Josiah W. Bailey, chairman of the Senate Claims Committee, appearing on page 3 of the report, was not correct in its statement of facts. In this connection, it might be noted that it would appear from that letter that the contract was canceled because the contractor's progress was such that the work could not be completed as soon as desired, and that the cancelation was really for the benefit of the contractor. The correctness of that is, of course, negative, by the fact that the contract was canceled for the benefit of the Government, as shown by Major Bragdon's letter hereinbefore referred to, and the recital of the supplemental contract itself, and that it came about under the circumstances indicated.

The change in contract required the revamping of the dredging company's largest machine. This took time and was recognized by the fact that the original contract contemplated 60 days in which to prepare for that work. The dredging company, in order not to delay the work while it was revamping its larger machine, got in another dredge, but this the Government's engineer commandeered to remove the muck from the material to be excavated, and thus really prevented the dredging company from making progress. The dredging company, under the original contract, was to remove the muck, but under the supplemental contract the Government itself undertook to remove the muck. The contracting officer's criticism of the dredging company's lack of progress after the supplemental contract was entered into was unfair, and the suggestion in the letter of the Acting Secretary of War to the same effect was not fair to the contractor in the circumstances.

The contractor, as shown by the correspondence, got its dredge in shape for the work, got in additional dredges to supplement its force as rapidly as possible, and diligently proceeded with the work, and was going forward when it developed that the formation there was rock rather than the friable marl in the proportions stated.

Another circumstance not hereinbefore mentioned, which it is well enough to mention in this connection, is that the borings upon which representations were made to the bidders were not taken upon the site of the proposed work but, as

the writer understands it, from 500 feet to half a mile of the line upon which the excavation was made, and the borings were made, as a result of which the contract was canceled.

Conclusion: The dredging company is only asking its day in court on the merits of its claim. If the Court of Claims finds it was entitled to more money upon the grounds stated then it was unjustly deprived of a part of what was due it under the law, and should have its day in court; if the Court of Claims finds that it was not entitled to more money, the claimant has had its day in court and at its own expense. We submit, therefore, that the dredging company is only asking what is fair in the circumstances.

WM. M. HALL, *Attorney for Claimant.*

[Copy]

UNITED STATES ENGINEER OFFICE,
Jacksonville, Fla., February 21, 1934.

CANAL DREDGING CO.,
Memphis, Tenn.

DEAR SIRS: Having reference to an oral discussion in this office this morning with your Mr. A. J. Shea, relative to the progress being made on your contract dated August 5, 1932, no. W-436-eng-3071, for the excavating of navigation channel and construction of levee along the south shore of Lake Okeechobee, Fla., you are informed as follows:

Owing to the unsatisfactory progress which is being made on this contract, which has resulted in your being deficient by approximately 1,714,070 cubic yards on February 1, 1934, or a percentage of 41.7 behind schedule, and which fact clearly indicates the contract will not be completed within the specified time, you are directed to cease all operations, effective this date, on your contract between stations 875+00 and 564+00. In this connection, this office is recommending to the Chief of Engineers that the portion of your contract between the points named above be taken over by the United States and prosecuted as provided for in article 9 of your contract.

Very truly yours,

B. C. DUNN,
Major, Corps of Engineers,
District Engineer.

JOSEPH M. CACACE ET AL.

[H. Rept. No. 2103, 74th Cong., 2d sess., to accompany S. 3090]

As amended, the bill will release Joseph M. Cacace, Charles M. Cacace, and Mary E. Clibourne from liability on the judgment obtained by the United States against them in the United States District Court for the Eastern District of Virginia, said judgment having been entered against them as sureties on the criminal bail bond executed in behalf of John T. Cacace, their brother, who failed to appear after he had willfully departed from the jurisdiction without the knowledge, consent, or connivance of said sureties. The bond was in the sum of $10,000, and John T. Cacace subsequently voluntarily appeared without cost to the Government and was sentenced to imprisonment for conspiracy to violate the National Motor Vehicle Theft Act in accordance with his conviction prior thereto on November 24, 1934.

The bill has passed the Senate, and the Department of Justice has no objection to its enactment. The relevant facts appear in the report of the Senate Committee on Claims, hereto appended, and made a part of this report.

[S. Rept. No. 1483, 74th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (S. 3090) for the relief of Joseph M. Cacace, Charles M. Cacace, and Mary E. Clibourne, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The sole purpose of the bill is to relieve Joseph M. Cacace, Charles M. Cacace, and Mary E. Clibourne, from liability on a judgment entered against them in favor of the United States on November 30, 1934, in the United States District Court for the Eastern District of Virginia for the sum of $10,000, on a forfeited bail bond on which they were sureties.

The records of the Attorney General show that the bail bond had been given by them to secure the appearance of their brother, John R. Cacace, who had been convicted on November 24, 1934, of conspiracy to violate the National Motor Vehicle Theft Act, and was released during the pendency of a motion for a new trial. After his release on bail, the defendant attempted to perpetrate a hoax by disappearing from a boat on which he had booked passage and leaving a number of suicide notes. He failed to appear on the date set for hearing. The bond was immediately declared forfeited and judgment on the forfeiture entered.

The defendant was subsequently arrested in New Orleans on a minor charge and, through the medium of fingerprints transmitted to the Federal Bureau of Investigation, his true identity was established. Subsequently he surrendered and on January 15, 1935, was sentenced to imprisonment for a term of 5 years in Atlanta Penitentiary.

The Attorney General states that—

"In view of these circumstances and since the Government has not incurred any expense or been otherwise prejudiced by the default, I have no objection to the enactment of the bill."

Your committee concur in the recommendation of the Attorney General and accordingly recommend the passage of the bill.

The letter of the Attorney General is appended hereto and made a part of this report.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., July 5, 1935.

Hon. JOSIAH W. BAILEY,
Chairman, Committee on Claims, United States Senate.

MY DEAR SENATOR: I have your letter of June 20, requesting my views concerning the bill (S. 3090) to relieve Joseph M. Cacace, Charles M. Cacace, and Mary E. Clibourne, from liability on a judgment entered against them and in

favor of the United States on November 30, 1934, in the United States District Court for the Eastern District of Virginia for the sum of $10,000, on a forfeited bail bond on which they were sureties.

The bail bond had been given by them to secure the appearance of their brother, John T. Cacace, who had been convicted on November 24, 1934 in the above-mentioned court, of a conspiracy to violate the National Motor Vehicle Theft Act, and was released during the pendency of a motion for a new trial. After his release on bail, the defendant attempted to perpetrate a hoax by disappearing from a boat on which he had booked passage and leaving a number of suicide notes. He failed to appear on the date set for the hearing. The bond was immediately declared forfeited and judgment on the forfeiture entered.

The defendant was subsequently arrested in New Orleans on a minor charge and, through the medium of fingerprints transmitted to the Federal Bureau of Investigation, his true identity was established. Subsequently he surrendered and on January 15, 1935, was sentenced to imprisonment for a term of 5 years in a penitentiary. He is now serving his sentence at the Atlanta Penitentiary.

In view of these circumstances and since the Government has not incurred any expense or been otherwise prejudiced by the default, I have no objection to the enactment of the bill.

Sincerely yours,

HOMER CUMMINGS, *Attorney General.*

CORRECT ERRORS IN ENROLLMENT OF PRIVATE ACT NO. 349, SEVENTY-FOURTH CONGRESS, AND CLARIFY THE DUTIES OF COMPTROLLER GENERAL IN CONNECTION THEREWITH

[H. Rept. No. 2496, 74th Cong., 2d sess., to accompany S. J. Res. 196]

Your committee feels that the pending joint resolution, which is (1) to correct errors in the enrollment of said Private Act 349, and (2) to provide a clarification of said act, constitutes emergency legislation.

STATEMENT OF FACTS

Said private act, approved August 29, 1935, is entitled "An act for the allowance of certain claims for extra labor above the legal day of 8 hours at the several navy yards and shore stations certified by the Court of Claims."

The claims authorized by said act to be paid are contained in findings of the Court of Claims rendered more than 20 years ago, and are embraced in 82 Senate documents enumerated in said act. Said documents contain the names of the 1,349 claimants who, more than 53 years ago, performed labor at the several navy yards and shore stations in excess of the legal day of 8 hours, and who had been underpaid the amounts found, as set forth in said findings; the average underpayment being $250 per claimant.

The act provides that the Comptroller General, in making settlement with the claimants, shall first deduct a sum equal to a certain percent and pay one-half of the same to the attorney or attorneys who appeared for the claimant in the Court of Claims, as found by said court, and as set forth in the Senate documents enumerated in said act, and pay the other one-half of the same to the attorney or attorneys who performed services toward securing provision for the payment in said act of the amounts so found.

The act, as passed by both Houses, provided for 20 percent to be divided equally between the two classes of attorneys' services. This 20 percent was erroneously enrolled at 10 percent.

Section 1 of the pending joint resolution corrects said errors in enrollment by restoring said 20 percent.

The Comptroller General points out that the attorneys who are to be paid for services rendered in the Court of Claims are ascertainable by a reference to the Senate documents or the court records.

However, the Comptroller General has suggested that a direct reference be made by name or names to the person or persons who were contemplated by the following phrase in section 3 of said act:

"the attorney or attorneys who performed services toward securing provision for the payment herein of the amounts so found."

This suggestion was complied with in section 2 of the pending joint resolution as it passed the Senate, by the naming of the only attorney who, in addition to having appeared in the Court of Claims, was known to have followed the claims to Congress, and during the past 20 years to have rendered services before the committees of Congress in connection with securing legislative authority for payment of the findings of the Court of Claims.

While your committee is satisfied that the attorney named in the pending joint resolution is the only attorney who rendered services as described in the preceding paragraph hereof, your committee has added an amendment to said joint resolution as it passed the Senate, which will enable any other attorney coming within the category above-mentioned to present a claim to the Comptroller General for participation in the 10 percent to be paid for such services, if presented within 30 days from the date of enactment of the pending joint resolution.

○