

SIMON A. BRIEGER, LEGAL REPRESENTATIVE OF THE
ESTATE OF THOMAS GERALD BRIEGER, A DECEASED
MINOR

JUNE 12 (legislative day, MAY 28), 1940.—Ordered to be printed

Mr. SCHWARTZ, from the Committee on Claims, submitted the
following

REPORT

[To accompany H. R. 7914]

The Committee on Claims, to whom was referred the bill (H. R. 7914) for the relief of Simon A. Brieger as legal representative of the estate of Thomas Gerald Brieger, a deceased minor, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 2245, Seventy-sixth Congress, third session, which is appended hereto and made a part of this report.

[H. Rept. No. 2245, 76th Cong., 3d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 7914) for the relief of Simon A. Brieger, as legal representative of the estate of Thomas Gerald Brieger, a deceased minor, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to pay the sum of \$2,500 to Simon A. Brieger, father of Thomas Gerald Brieger, a deceased minor, as legal representative of the said Thomas Gerald Brieger, in full settlement of all claims against the United States on account of the death of the said Thomas Gerald Brieger, who was fatally injured on March 14, 1939, in Lauderdale County, Miss., by a truck operated by the Works Progress Administration.

A similar bill, H. R. 5923, was passed by the House during the first session of the Seventy-sixth Congress, but this particular bill was vetoed by the President because he was of the opinion that the amount allowed (\$5,000) was excessive. Otherwise, the President has no objection to the bill.

All the facts in the case are fully set forth in House Report No. 1138, Seventy-third Congress, first session, which is made a part of this report.

Your committee is still of the opinion that this bill is most meritorious, but is willing to recommend payment in the amount of \$2,500, in order that the claimants in this case may receive some measure of compensation for their great loss.

Appended hereto is a copy of the House report above referred to, and also a copy of the memorandum of disapproval of the President on the previous bill passed by the House.

[H. Rept. No. 1138, 76th Cong., 1st sess.]

STATEMENT OF FACTS

On March 14, 1939, at about 2 p. m., four trucks operated by employees of the Works Progress Administration were hauling gravel to a project near Collinsville, Miss. It seems that the first truck passed the home of Simon A. Brieger and raised a considerable cloud of dust. The second truck was traveling close behind the first truck, not heeding the danger which the cloud of dust caused. Thomas Gerald Brieger, who was at the time 4 years of age, had waited for the first truck to pass and then attempted to cross the road directly in front of his home. The second truck, however, was traveling at such a rate of speed and in such a cloud of dust that the driver was unable to observe the child and he struck and injured him to such an extent that he died at 1:10 a. m. the following morning. It is alleged that the truck must have been proceeding at a speed of approximately 30 miles per hour and admittedly in a negligent manner.

The child's injuries consisted of a compound fracture to his right leg above the knee, and the kneecap of his right leg was knocked up several inches above the knee. His bowels and chest were crushed. His head and face were greatly bruised and lacerated and there were several other injuries, including a snag or hole in his neck about the size of a half dollar.

There has been no excuse whatsoever offered for the negligent operation of the vehicle which killed this child, and the Works Progress Administration recommends the enactment of proper legislation.

Your committee are of the opinion, therefore, that this proposed legislation is deserving in every respect and recommend passage of the bill as amended.

Appended hereto is the report of the Works Progress Administration, together with other pertinent evidence.

WORKS PROGRESS ADMINISTRATION,
Washington, D. C., May 8, 1939.

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

MY DEAR CONGRESSMAN KENNEDY: Your records will disclose your communication of May 2, 1939, and my reply of May 5, 1939, relative to H. R. 5923, a bill for the relief of Simon A. Brieger. The Administration's report is as follows:

The bill proposes to appropriate to Simon A. Brieger, Collinsville, Miss., the sum of \$10,000 "on account of the death of Thomas Gerald Brieger, a minor, who was fatally injured on March 14, 1939, in Collinsville, Miss., by a truck operated by the Works Progress Administration."

It appears that on March 14, 1939, at about 2 o'clock p. m., four trucks operated by employees of the Works Progress Administration were hauling gravel to a project near Collinsville, Miss. The first truck passed the home of Simon A. Brieger and raised a considerable cloud of dust. The second truck, which was traveling approximately 65 feet behind the first truck, at a point directly in front of the Brieger home, struck Thomas Gerald Brieger, a child of 4 years of age, who had attempted to cross the road.

The child suffered internal injuries to the chest and abdomen, from which he died on the following day.

In view of the foregoing, which indicates that the employee of the Works Progress Administration operating the truck that struck the child negligently followed the truck preceding his too closely, so that his vision was impaired by the cloud of dust, this Administration recommends enactment of the proposed legislation in such amount as the Congress may deem appropriate.

Photostatic copies of pertinent papers in the files of this Administration are enclosed.

Sincerely yours,

CORRINGTON GILL,
Assistant Administrator.

To Whom It May Concern:

I, Mrs. Ettoyle Brieger, after having been duly sworn, under oath state that: I am the mother of Thomas Gerald Brieger, now deceased; that he was born on the 5th day of March 1935, and was struck, injured, and killed by an automobile truck used in connection with Works Progress Administration activities, operated by a Works Progress Administration employee by name of Aubrey Skelton at Schamberville near Collinsville, in Lauderdale County, Miss., March 14, 1939,

at a time when said child was 4 years of age. This fatal injury occurred in public highway in front of my residence.

The Works Progress Administration trucks were hauling dirt at the time and a Works Progress Administration truck had just passed at the time my child was on the opposite side of the road from my residence. My child was returning to the residence from the farm situated just across the road on the south side of the road to the residence on the north side of the highway from a visit to his father on the farm situated to the south. When he reached the south side of the highway three trucks were being operated on said highway under such circumstances that there was a tremendous dust cloud caused by the operation of those trucks. All three trucks were being operated by Works Progress Administration employees in the hauling of dirt in connection with a Works Progress Administration project.

About the time my child reached the highway immediately on the south side of same a truck passed him traveling south or southeast operated by Mr. Earl Powell, a Works Progress Administration employee, at a speed of about 30 or 35 miles an hour, leaving a tremendous cloud of dust immediately behind his truck, and about the same time a truck passed him traveling north or northwest loaded with dirt and operated by a Works Progress Administration employee, by name of Quinn Pool. He was operating said truck at a speed of about 20 or 25 miles an hour and his truck also contributed to the dense cloud of dust. I saw both of these trucks in operation and saw the dust cloud. Immediately after the passage of these two trucks my boy started to cross the highway from the south to the north side of same en route to the residence, passing through this dust cloud, whereupon a truck operated by a Works Progress Administration worker by name of Aubrey Skelton, approached this place in the highway coming from the northwest traveling south or southeast on said highway at a rate of speed of at least 35 miles per hour, in my judgment, and probably at a greater rate of speed, traveling at that rate of speed in that dust cloud. As this last-mentioned truck approached the place where it struck my child in the highway, it was going so fast that I saw the body of the truck waving from one side to the other with that unsteady motion characteristic of trucks operated at a dangerously high rate of speed and it frightened me to the extent that I left my residence from the back way without taking time to go through the residence.

I went around the residence running toward the highway because I knew my son was crossing the highway and was afraid he would be hit by this passing truck operated by Mr. Skelton, but before I got to the front of the house—the house facing south which was to the left of the truck driver at the time he struck my child—he traveling southeast at the time—the truck had already struck my child, but not knowing that the truck struck him and I therefore continued toward the highway and met Mr. Skelton, the operator of the truck, between the front of my residence and the highway, bringing the child to me. He struck the child on his left hand or wrong side of the highway—on Mr. Skelton's, the truck driver's wrong side of the highway. Mr. Skelton said to me that the child had reached the center of the highway or a little past the center of the highway coming toward his home when the truck struck him.

At this time this truck driver and this child were the only two persons on the highway at that place and the truck driver could have by keeping to his right or proper side of the highway passed the child without interference and without injury but the truck driver told me that he made a mistake of judgment and turned the truck to his left in an effort to head off the child, thinking that by so doing he would avoid striking him.

The truck driver, Mr. Skelton, told me in the presence of my husband, Mr. Simon A. Brieger, at our residence about a week after the death of my child that due to the dust cloud he did not see my child in the roadway of the highway until he was within about 12 feet of him. He told us that he then applied his brakes. There were signs on the highway showing that his left wheel of the truck skid at an angle from where the child was struck, angling toward the left side of the highway, traveling in the direction in which the truck was traveling until it reached the drain or ditch on the left side of said highway.

The truck driver also told me and my husband, at our residence on this occasion, that he was at the time of striking my child traveling at a rate of speed of about 30 miles an hour but as above stated I feel sure that he was traveling at a rate of speed of not less than 35 miles an hour if not more than that immediately before he struck my child. At the time I became excited and ran from the back of my residence toward the front of it because of the anxiety about my child immediately before he was struck.

The child sustained a compound fracture to his right leg above the knee and the kneecap of his right leg was knocked up several inches above the knee. His

bowels and chest were crushed. His face and head were greatly bruised and lacerated. There was a laceration or gash on the left side of his neck, immediately below his left ear and his jawbone. It was a snag or hole in his neck about the size of a half dollar. He got hurt about 2:30 p. m. and lived until 1:10 a. m. the next morning. He lived about 10 hours. He was in Rushes Infirmary at the time of his death. During this 10 hours he was able to talk and expressed a desire to go home from the hospital. He suffered most intensely—consciously suffering. He knew everything and talked with intelligence.

I know that the truck driver did not blow a horn or give any warning signal of his approach and that if he had been operating his truck at a reasonable rate of speed he could have stopped and avoided striking my child or he could have turned reasonably to the right and avoided striking my child. He could have turned entirely off of the highway to the right and avoided striking the child as easily as he could have turned to the left. The drain ditch was about the same on both sides of the highway. I also feel that he was negligent in operating or causing the truck to have been operated in that dust cloud at any rate of speed that prevented him from stopping the truck within a seeing distance. That in fact he should have stopped the truck and not operated it at all in that dust cloud unless he could see through the dust, objects, and avoided striking my child. It was a straight stretch of highway and but for the dust my child could have been seen for a long distance in either direction; there was no obstructions in the highway to obstruct the vision except the dust, and I feel that if a truck should not operate in the dead of night without any light so that they could see at least 200 feet ahead that they should not be permitted to operate in the daytime in a dust cloud unless they could see clearly ahead of them for at least 200 feet and had their truck in good mechanical condition, equipped with good and sufficient brakes to enable them to stop within a few feet and thereby prevent injury to my child, or anyone else in the highway.

When this truck driver, Mr. Skelton, was talking to me and my husband at our residence on the above-mentioned occasion I told him that he and the other drivers had been operating at such high rate of speed for several days that it was surprising to me that somebody had not already been hurt and he then and there requested me not to say anything about the rate of speed at which he had been operating because that would cause him to lose his job.

My child was in good health up to the time that he was struck and we considered him an extraordinary intelligent boy, very industrious. He carried water to the field to his father and tried to be of assistance to me and his father in every way, and tried to help in everything that we undertook to do wherein he could be of assistance; he not being of school age had not started to school.

When this truck driver, Mr. Skelton, handed to me my injured child I suggested that they get a doctor, and on that suggestion, Dr. Wilson was sent for but no offer was made to carry my child to the hospital or to render any assistance in connection with his injury. We did not have a conveyance and my husband went to a neighbor and got a car to take the child to the hospital. No offer has been made to pay funeral expenses, doctor bills, hospital bills, or any other bills, or to defray any other expenses in connection therewith of any character. The Works Progress Administration officials have not even been to see us or to ask us how it occurred or to express any sympathy, with the exception of the fact that a Mr. Hainey, said to have been from Hattiesburg, Miss., expressed to my husband regret that the boy had been injured and killed and gave expression to some words of sympathy, but my husband did not know at the time that he was a Works Progress Administration employee or official. He did not ask anything about how the injury occurred. The only thing he made inquiry about was the age of myself and my husband and children, so if this be material, I wish to state that I am of the age of 40 years, and my husband is of the age 45 years, and my oldest daughter, Mrs. Doris Ethridge, is of the age of 19 years, and my oldest son, Edwin Brieger, is of the age of 22 years, my daughter Lucille is of the age of 14 years, and my son James is of the age of 9 years, and my baby Simon is 3 months old. We are all in good health with the exception of my husband who has a physical disability at one time rated by the Veterans' Bureau at 50 percent but according to my recollection the rating is now 30 percent.

Dr. Rush, of Rushes Infirmary, having been a special friend of ours, only charged \$9.50, the actual cost of the medicines used in the treatment of our child. The cost of transportation in going to and from the hospital and making trips incident to the injury, etc., have not been paid and we do not know the amount of it. The costs incident to the funeral and burial was \$150.96.

My married daughter, Mrs. Doris Ethridge, was at my residence at the time my child was struck by the truck and fatally injured, as above stated, but she was

inside of the residence and her attention was not called to the tragedy until the time when Mr. Skelton handed the injured child to me. She saw the physical conditions in the roadway and knows that the child was injured in the manner in which I have outlined in this statement.

[SEAL]

Mrs. ETOYLE BRIEGER, *Affiant*.

Sworn to and subscribed before me, a notary public in and for Lauderdale County, Miss., this the 15th day of April A. D. 1939.

MARY BUXTON, *Notary Public*.

I, Mrs. Doris Ethridge, the sister of Thomas Gerald Brieger, deceased, after having been duly sworn under oath state that I was at the home of my parents when my little brother was fatally injured by being struck on the public highway in front of the residence by a Works Progress Administration truck operated by Mr. Aubrey Skelton, a Works Progress Administration employee, and the foregoing statement and affidavit made by my mother, Mrs. Etoyle Brieger, as touching the character and extent of the injuries to my brother, the fact that the injuries caused his death in approximately 10 hours after his injury, the fact that he suffered conscious and most severe pain and talked with intelligence during those 10 hours, and as touching the expenses incident thereto, and the condition and health and ages of the members of the family, were all true and correct as stated by my mother.

I, being in the inside of the building, knew that the child was coming from the field to the residence but did not know that he was in danger or had been struck until I saw Mr. Skelton, the driver of the truck, bringing the child toward the house and hand him to my mother. I had observed the Works Progress Administration trucks in operation on the highway before that time and had, therefore, noticed that they had been operated generally at high rates of speed and that there was continuously a heavy, dense dust cloud during the times that they were in operation on that highway. I went to the scene of the tragedy almost immediately and I, therefore, saw the skid marks on the highway made by the truck, saw where the truck hit my little brother, and I know that he was struck on the left side of the highway, that is, the side next to the residence, and that the truck did not begin to skid until after it reached the place where it struck him, and the skid marks show that the truck was traveling at an angle from the right to the left side of the highway and that it continued to travel at an angle until it reached the north side of the highway and went toward the ditch or drain on that side of the highway. The highway at that place was wide—wide enough for at least three trucks to go abreast and there was therefore ample room in the highway to have passed my little brother without striking him. I know that the highway was straight for a long distance and at that place there was nothing to prevent the driver from seeing the child for several hundred yards before he struck the child if it had not been for the dust cloud because of the operation of the Works Progress Administration trucks on that highway.

I know that there was not any horn blown or any other warning signal given

My post-office address is Collinsville, Miss., route 2.

Executed in triplicate, this the 15th day of April A. D. 1939.

Mrs. DORIS ETHRIDGE, *Affiant*.

Sworn to and subscribed before me, a notary public, in and for Lauderdale County, Miss., this the 15th day of April A. D. 1939.

MARY BUXTON, *Notary Public*.

I, S. A. Brieger, after having been first duly sworn, under oath state that I am the father of Thomas Gerald Brieger, deceased, and although I knew nothing of the fatal injury to him until about 15 minutes after it occurred I know that his physical injuries, the time that he lived and died after his injuries, and the expenses, etc., in connection therewith, his conscious suffering and all other facts having to do with the extent of his injuries and what was done in connection therewith, and what was said in connection therewith has been correctly stated in detail by the foregoing statement and affidavit made by my wife, including the statements made by Mr. Skelton, the operator of the truck that injured and killed my child.

I also know that the Works Progress Administration trucks had for several days been operating in front of my house at high, negligent, and excessive rate of speed and Mr. Skelton stated to me that the dust cloud was so thick that he could not see ahead of him and, therefore, did not see the child until he was within 10

or 12 feet of him. The dust was created through the operation of Works Progress Administration trucks at a high rate of speed.

S. A. BRIEGER, *Affiant*.

Sworn to and subscribed before me, a notary public in and for Lauderdale County and State of Mississippi, this, the 15th day of April, A. D. 1939.

[SEAL]

MARY BUXTON, *Notary Public*.

I, M. I. Beeman, whose post-office address is Collinsville, Miss., route 1, after having been first duly sworn under oath state that I was one of the occupants of an automobile truck that was first to arrive at the place where Thomas Gerald Brieger was fatally injured about 2:30 p. m., on March 14, 1939. The truck that struck the child, operated by Mr. Aubrey Skelton, passed me on the highway about 250 or 300 yards northwest of the place of the injury and at the time he passed me Mr. Skelton was driving his truck at a rate of speed that I judged to be from 30 to 35 miles per hour and possibly faster. It was traveling at least 30 or 35 miles per hour when it passed me. I did not see it when it struck the child. When I got to the place where the injury occurred the truck operated by Mr. Skelton was on its left or north side of the highway, it having been headed in a southerly or southeasterly direction on the highway. The marks on the highway made by the wheels of the truck showed clearly that the truck was being operated about the center of the highway until about the time it struck the child when it turned to its left and went at an angle to the left into its left ditch or drainway. There was one place about where the truck evidently struck the child that the right wheels of the truck did not show any sign on the highway and although I could not be positive that that was due to the fact that the wheels ran over the child I presumed that was the reason; the gravel and dirt signs were on the right side of the face but the hole and bruises on his head and neck were on the left side.

At the time Mr. Skelton's truck hit the child he was traveling down grade and his truck was empty. He told me either that day or soon thereafter that he was traveling about 30 miles an hour, he thought, when he struck the child. He afterwards told me that he thought he was going about 20 miles an hour. This last statement was made to me after a Works Progress Administration official had insisted that they reduce the speed to not more than 20 miles an hour and this instruction by the Works Progress Administration official was given, as I understand it, after the fatal injury to the child. He told me that he was within 10 or 15 feet of the child before he saw the child but I know that the highway there is straight for a long distance and there was no obstruction to prevent him from seeing the child for at least 300 yards before he struck the child unless the dust cloud was so thick as to obstruct the vision of the driver, and the Works Progress Administration trucks were the ones that were creating the dust clouds.

Witness my signature, this the 15th day of April 1939.

M. I. BEEMAN, *Affiant*.

Sworn to and subscribed before me, a notary public in and for Lauderdale County, Miss., this the 15th day of April A. D. 1939.

MARY BUXTON.

MERIDIAN, MISS., March 15, 1939.

Williams Funeral Benefit Association:

(Funeral expenses for Thomas G. Brieger, policy No. F1335)

IN ACCOUNT WITH WILLIAMS FUNERAL HOME, INC.

Mar. 15, 1939:

Casket.....	\$75. 00
Embalming.....	35. 00
Funeral car.....	25. 00
Clothing.....	3. 00
Professional services.....	10. 00
Total.....	148. 00
Sales tax, 2 percent.....	2. 96
Total.....	150. 96
Paid.....	150. 96

RUSH'S INFIRMARY,
Meridian, Miss.

Mr. S. A. Brieger, Collinsville, Miss.

Master Thos. Gerald Brieger

Mar. 14, 1939, H, admission to hospital E-1, intravenous-----	\$2. 00
Mar. 15, 1939, room-----	4. 50
Total-----	6. 50

RUSH BROS. CLINIC,
Meridian, Miss.

Mr. S. A. Brieger, Collinsville, Miss.

Master Thos. Gerald Brieger

Mar. 15, 1939, H, professional service of Dr. Rush-----	\$3
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COLLINSVILLE, MISS., May 22, 1939.

To Whom It May Concern:

This is to certify that my services for two trips to hospital for Mr. Simon A. Brieger when his son Jerry was run over by Works Progress Administration truck was \$5 per trip.

M. E. CLARK.

MAY 23, 1939.

Hon. ROSS A. COLLINS, M. C.,
Washington, D. C.

DEAR MR. COLLINS: I have your letter of May 20 with the enclosure, a letter of May 18 addressed to you and signed by Hon. Ambrose J. Kennedy, chairman of Claims Committee wherein he advised you that his committee was in receipt of a favorable report from the Works Progress Administration on the bill that you introduced in my behalf in connection with the death of my child.

In his letter he refers to affidavits in the hands of the committee in support of the claim. I presume they are the affidavits that I mailed to you for that purpose but that he wanted some bills or statements to substantiate the amount called for and I presume that he meant by that doctor's bill, hospital bill, transportation bill, and funeral bill. Of course, that is not a drop in the bucket to our loss and we feel that the \$10,000 referred to in the bill that you introduced would certainly not be an overpayment for our loss but I know of no way to furnish a bill for that.

I am, therefore, enclosing a statement from M. E. Clark, dated May 22, 1939, for services for two trips to hospital at \$5 per trip, making a total of \$10. A statement from Rush Brothers Clinic for professional services \$3 and from Rush's Infirmary, hospital bill \$6.50, and from Williams Funeral Home, Inc., funeral and burial expenses, \$150.96. If any further information on the subject is needed, please let me know what is needed. I think this information complies with request made upon you in that letter of May 18, which you enclosed with your letter to me of May 20.

Again assuring you of my deep appreciation for your cooperation in this matter, and trusting that our great Government will through its Congress do justice in this case by passing this bill that you have introduced, I remain,

Your friend,

SIMON A. BRIEGER,
Collinsville, Miss.

MEMORANDUM OF DISAPPROVAL

I have withheld my approval from H. R. 5923, a bill "For the relief of Simon A. Brieger as legal representative of the estate of Thomas Gerald Brieger, a deceased minor."

The bill provides for the payment of \$5,000 in full settlement of a claim against the United States on account of the death of a 4-year-old child. While I do not think that the record in the case establishes any high degree of negligence on the part of the employee who was driving the truck, my main objection to the bill is what I consider the excessive amount of the proposed settlement.

I have before me H. R. 5259, "For the relief of Mrs. Laver Taylor" in settlement of her claim against the United States for the death of an 18-year-old son. The amount involved in that claim is \$1,360. The Congress estimated the probable loss of income for a period of 3 years, and made an allowance for medical and funeral expenses and for mental suffering and loss of companionship. It seems to me that the Congress adjudicated this claim on an equitable basis.

In another bill now before me, H. R. 5698, "For the relief of H. H. Rhyne, Junior" the sum of \$3,000 is provided in settlement for the death of his 9-year-old daughter.

In these circumstances, I consider the proposed settlement of \$5,000 for the death of the 4-year-old son of Mr. Brieger, as excessive, and, therefore, feel constrained to withhold approval of this bill.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, August 7, 1939.

