MRS. MARGUERITE A. BRUMELL

JANUARY 28 (legislative day, JANUARY 10), 1952.—Ordered to be printed

Mr. McCarran, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4645]

The Committee on the Judiciary, to which was referred the bill (H. R. 4645) for the relief of Mrs. Marguerite A. Brumell, having considered the same, reports favorably thereon with amendments, and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On page 1, line 5, strike the figure "\$15,000" and insert in lieu

thereof the figure "\$7,500".

2. On page 1, line 7, following the second comma on that line, strike the words "for personal injuries sustained", and insert in lieu thereof the following: "in full settlement of all claims against the United States for personal injuries, property damage and loss of earnings sustained, and medical and hospital expenses incurred".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of \$7,500 to Mrs. Marguerite A. Brumell, of New York City, N. Y., in full settlement of all claims against the United States for personal injuries, property damage, and loss of earnings sustained, and medical and hospital expenses incurred as a result of an accident involving a United States vehicle on the Army post, Fort Kodiak, Alaska, on March 30, 1944.

STATEMENT

Claimant was employed as a clerk-stenographer with the Army Quartermaster Corps at Fort Greely, Alaska. On the evening of March 29, 1944, Mrs. Brumell attended a dance at the Sergeants' Club. After the dance Sgt. Clifton L. Crawford and two other sergeants from Fort Greely took claimant and a Miss Evelyn Kehoe, a civilian employee at the naval air station at Kodiak, in a \%-ton Army vehicle for the purpose of returning them to their quarters. They first took Miss Kehoe to her quarters at the naval air station, and, because it was snowing heavily, claimant and the three soldiers staved at Miss Kehoe's quarters for about an hour. At about 12:45 a.m. on March 30, 1944, Sergeant Crawford and the other two soldiers started to take claimant to her quarters. Sergeant Crawford was driving, and after leaving the naval air station, he proceeded toward Fort Greely on the road along the side of the airfield. Because it was snowing he was unable to see the road ahead and, missing a turn, drove onto the runway of the airfield. Upon discovering his mistake he turned back to get onto the road, but while he was searching for the road, the vehicle ran off the end of the runway and over an embankment into a small stream. The vehicle turned over on its side and Mrs. Brumell was injured. She was taken to the hospital at the naval air station for emergency treatment, and was later removed to the One Hundred and Eighty-fourth Station Hospital, Fort Greely.

Claimant remained as a patient at the One Hundred and Eighty-fourth Station Hospital at Fort Greely until May 25, 1944. Mrs. Brumell was discharged as a civilian employee of the War Department effective May 15, 1944, on the basis of a recommendation of an officer of the Medical Corps, United States Army, dated March 14, 1944. in which he found that she was not physically fit for service in Alaska. While Mrs. Brumell was at the One Hundred and Eighty-fourth

Station Hospital at Fort Greely the following diagnosis of her condition

1. Fracture, simple, complete, proximal end of left fibula.

2. Wound, contused, moderately severe, left eye, left shoulder right foot, and left knee.

3. Strain, severe, left shoulder.4. Fracture of tooth, L-2.

A further diagnosis of Mrs. Brumell's condition at the One Hundred and Eighty-fourth Station Hospital on or about May 9, 1944, reads as follows:

Arthrodesis, old, left hip, with bony ankylosis; absence of femoral head and neck.
 Sclerosis of sacroiliac joints, moderately severe.
 Nageli's contracted pelvis.
 secondary to accident incurred

at the age of 3 years.

On May 4, 1944, Mrs. Brumell filed a claim with the United States Employees' Compensation Commission for compensation on account of the injuries sustained by her in the accident of March 30, 1944. The claim was denied on June 16, 1944, the reason therefor being stated by the Commission as follows: "This injury is not shown to have occurred while in the performance of duty." Thereafter the claim of Mrs. Brumell was reviewed by the United States Employees' Compensation Commission, which on March 19, 1946, advised the

claimant that "The Commission could find no basis for reversal of

the previous disallowance."

No claim has ever been filed by Mrs. Brumell with the War Department or the Department of the Army for damages on account of the injuries sustained by her in this accident.

Mrs. Brumell was examined at the station hospital, Fort Jay, N. Y., on July 21, 1950, and a report of such examination reads in

pertinent part as follows:

History: Patient was involved in a jeep accident on March 30, 1944. She sustained a multiple contusion to left shoulder, left knee, right foot and a simple fracture of the proximal end of the left fibula. Since then she has been having the following complaints:

1. Intermittent pain in the left shoulder which comes on and subsides without

apparent cause.

2. Cramping in the left calf, more or less constant.

3. Swelling of the left leg from knee to ankle and giving way of the left lower

extremity on walking.

Patient has been walking with a limp favoring the left lower extremity since the age of 3. She was told that she had a "hip condition." At 14 years of age,

the left femoral head was "excised."

Examination: Reveals a 50-year-old nervous white female who walks with an abductor-flexion deformity limp on the left. There is a well-healed scar on lateral aspect of the left hip. The left hip is practically fixed at 135° of flexion, 5° adduction, and ventral rotation. There is 1¾-inch shortening of the left lower extremity. There is marked atrophy of the left thigh. Orthopedic examination is otherwise negative.

X-rays: Revealed marked deformity in the left hip with osteoarthritic changes.

Impression: Osteoarthritic left hip, severe.

Conclusion: The patient has an osteoarthritic, deformed, left hip joint which is secondary to a congenital dislocation and subsequent surgery (history). It is possible that the injury sustained in 1944 may have aggravated the present condition.

With regard to the old injury to Mrs. Brumell's left hip, which appears to have occurred when she was a small child, the clinical record of the claimant at the One Hundred and Eighty-fourth Station Hospital, Fort Greely, contains the following statement:

At the age of 3, Mrs. Brumell states that she fell and injured her left hip. She remembers having recurrent pain and discomfort in the left hip when walking and she developed a limping type of gait. From the age of 3 to 9, she was in a hospital in New York City for this hip condition. In 1912 she was operated on in a New York Orthopedic Hospital by Dr. Hibbs. At that time, she states, the head of the feature was removed and she was beautifulized for about 6 the femur was removed and she was hospitalized for about 6 months. Also an appendectomy was performed on her during that time. In 1916 her leg was stretched under anesthesia, without improvement. She cannot recall any other disease.

At the time of her injury on March 30, 1944, claimant was 45 years of age and her salary as an employee of the War Department was \$2,737 per annum; that following her injury medical treatment and hospitalization were furnished to her by the Army in Alaska without charge except for subsistence; that since her discharge from the One Hundred and Eighty-fourth Station Hospital at Fort Greely, the claimant has incurred private medical expenses in the amount of approximately \$220; and that no one is dependent upon her for support.

As a veteran of the United States Navy, World War I, claimant in January 1, 1949, was granted a total disability non-service-connected

pension of \$60 a month.

The Department of the Army in its report dated July 31, 1951, states:

The Department of the Army is not informed as to whether Mrs. Brumell is now employed or whether she presently has any income other than the \$60 per month pension which she is receiving from the Veterans' Administration.

The evidence in this case fairly establishes that the accident of March 30, 1944, and the resulting injury of Mrs. Brumell were proximately caused by the negligence of the driver of the Army truck in which she was riding as a passenger in failing to exercise proper care in the operation of a motor vehicle while snow was

falling. There was no negligence on the part of Mrs. Brumell.

After a careful consideration of all of the facts and circumstances in this case it is believed that Mrs. Brumell should be compensated in a reasonable amount for the damages sustained by her as a result of this accident. She is now suffering from a serious disability. It appears from the medical evidence in the case that the major cause of her present disability is the deformity of her left hip, which has been present since childhood. This preexisting condition appears to have been aggravated by her injury in the accident of March 30, 1944. Considering the age, occupation, and earnings of the claimant at the time of said accident, the nature of the injuries sustained by her in the accident, the loss of earnings and property damage sustained, the pain and suffering which she has undergone, and the medical expenses incurred, it is the view of the Department of the Army that an award to the claimant in the amount of \$10,000 would constitute a fair and reasonable settlement for all of the damages which she has sustained as the result of this accident. The Department, therefore, would have no objection to the granting of an award to the claimant in that amount.

This claimant has no remedy under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (26 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by the act of April 25, 1949 (63 Stat. 62), for the reason that the accident out of which her claim arises occurred prior to January 1, 1945. There is no other statute available to the Department of the Army under which she may be compensated for the damages sustained by her.

The committee is of the opinion that the claimant should receive compensation in a reasonable amount. The committee in determining what constitutes a reasonable award in this case believes that the sum of \$7,500 would adequately compensate the claimant and therefore

recommends favorable consideration of the bill, as amended.

Attached to this report and made a part thereof is the report of the Department of the Army and evidentiary data submitted by claimant in connection with this bill.

DEPARTMENT OF THE ARMY, Washington, D. C., July 31, 1951.

Hon. EMANUEL CELLER,

Chairman, Committee on the Judiciary, House of Representatives.

Dear Mr. Celler: The Department of the Army would have no objection to the enactment of H. R. 4645, Eighty-second Congress, a bill for the relief of Mrs. Marguerite A. Brumell, if it should be amended as hereinafter recommended.

This bill would authorize and direct the Secretary of the Treasury "to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$50,000 to Mrs. Marguerite Brumell, of 228 East Eighty-first Street, New York, New York, for personal injuries sustained as a result of an accident involving a United States vehicle on the Army post, Fort Greeley [Greely], Kodiak, Alaska, on March 30, 1944."

On November 11, 1943, Mrs. Marguerite A. Brumell, then a resident of New York, N. Y., made an application for employment with the Wr Department (now Department of the Army) for service at Fort Greely, Alaska. She was subsequently employed for service with the Quartermaster Corps at Fort Greely, and on January 31, 1944, she entered into a Contract of Employment for Services in the Alaska Area, which provided that she was employed as a clerk-stenographer, CAF-4, at the basic wage of \$2,250 per annum for a period of 12 months

On the evening of March 29, 1944, Mrs. Brumell attended a dance at the Sergeants' Club at Fort Greely as a guest of the club. At the conclusion of the dance Sgt. Clifton L. Crawford and two other sergeants from Fort Greely took Mrs. Brumell and Miss Evelyn Kehoe, a civilian employee at the naval air station at Kodiak, in a ¼-ton Army truck for the purpose of returning them to their quarters. They first took Miss Kehoe to her quarters at the naval air station, and because it was snowing heavily Mrs. Brumell and the three soldiers stayed at Miss Kehoe's quarters for about an hour. At about 12:45 a.m. on March 30, 1944, Sergeant Crawford and the other two soldiers started to take Mrs. Brumell to her quarters. Sergeant Crawford was driving, and after leaving the naval air station, he proceeded toward Fort Greely on the road along the side of the airfield. Because it was snowing he was unable to see the road ahead and, missing a turn, drove onto the runway of the airfield. Upon discovering his mistake he turned back to get onto the road, but while he was searching for the road, the vehicle ran off the end of the runway and over an embankment into a small stream. The vehicle turned over on its side and Mrs. Brumell was injured. She was taken to the hospital at the naval air station for emergency treatment, and was later removed to the One Hundred and Eighty-fourth Station Hospital, Fort Greely.

In a sworn statement executed on March 31, 1944, Sgt. Clifton L. Crawford

stated: At about 12:45 we departed to take Mrs. Brumell to her quarters The night was stormy and the snow was falling in thick flakes, making it difficult to stay on the roadway. Going along the Airport Road toward Fort Greely, we missed the turn and went straight across the airport for some distance. Sensing that we were off the road, I turned the vehicle around and used the airport runway as a guide. I was then going in the opposite direction to that intended but did not know it. I drove slowly along the runway; and when I came to the end of it, thinking that I was at the opposite end, I made a left-hand turn to get back on the Airport Road. We had driven only a few feet when the front wheels went over the embankment at the mouth of the Buskin River. The vehicle then seemed to turn slowly over on its side.

"We proceeded to get out of the overturned vehicle, all of us succeeding but Mrs. Brumell, whom we lifted out. There was blood on her face, and she complained of the cold so I wrapped her in my parka and wrapped her feet in rags from the car. During this time Mrs. Brumell was standing. Brumell received first aid while awaiting an ambulance from the Navy hospital. Due to the storm, the ambulance driver had difficulty in locating the hangar [where Mrs. Brumel had been taken] and did not arrive until about 2:50 [a. m.,

March 30, 1944].

There was no evidence of any drinking by anyone concerned in the accident between 8 p. m. and the time of its [the accident's] occurrence. While Mrs. Brumell was at the One Hundred and Eighty-fourth Station Hospital at Fort Greely the following diagnosis of her condition was made:

"1. Fracture, simple, complete, proximal end of left fibula, "2. Wound, contused, moderately severe, left eye, left shoulder, right foot and left knee,

"3. Strain, severe, left shoulder,

A further diagnosis of Mrs. Brumell's condition at the One Hundred Eighty-

fourth Station Hospital on or about May 9, 1944, reads as follows:

"1. Arthrodesis, old, left hip, with bony ankylosis; absence of femoral head and neck. 2. Sclerosis of saeroiliae joints, mod. severe. 3. Nageli's con-1-3 secondary to accident incurred at the age of 3 years."

Mrs. Brumell was discharged as a civilian employee of the War Department tracted pelvis. effective May 15, 1944, on the basis of a recommendation of an officer of the Medical Corps, United States Army, dated March 14, 1944, in which he found that she was not physically fit for service in Alaska. However, she remained a patient in the One Hundred Eighty-fourth Station Hospital at Fort Greely until May 25, 1944, after which she returned to her home in New York City.

On May 4, 1944, Mrs. Brumell filed a claim with the United States Employees' Compensation Commission for compensation on account of the injuries sustained by her in the accident of March 30, 1944. The claim was denied on June 16, 1944, the reason therefor being stated by the Commission as follows: "This injury is not shown to have occurred while in the performance of duty." Thereinjury is not shown to have occurred while in the performance of the states after the claim of Mrs. Brumell was reviewed by the United States Employees' Compensation Commission, which on March 19, 1946, advised the claimant that "The Commission could find no basis for reversal of the previous disallowance."

No claim has ever been filed by Mrs. Brumell with the War Department or the Department of the Army for damages on account of the injuries sustained by her in this accident.

Mrs. Brumell was examined at the station hospital, Fort Jay, N. Y., on July 21, 1950, and a report of such examination reads in pertinent parts as follows:

"History: Patient was involved in a jeep accident on March 30, 1944. sustained a multiple contusion to left shoulder, left knee, right foot, and a simple fracture of the proximal end of the left fibula. Since then she has been having the following complaints:

"1. Intermittent pain in the left shoulder which comes on and subsides without

apparent cause.

2. Cramping in the left calf, more or less constant.

"3. Swelling of the left leg from knee to ankle and giving way of the left lower extremity on walking.

"Patient has been walking with a limp favoring the left lower extremity since the age of 3. She was told that she had a 'hip condition.' At 14 years of age, the left femoral head was 'excised.'

"Examination: Reveals a 50-year-old nervous white female who walks with an abductor-flexion deformity limp on the left. There is a well-healed scar on lateral aspect of the left hip. The left hip is practically fixed at 135° of flexion, 5° adduction, and ventral rotation. There is 1%-inch shortening of the left lower extremity. There is marked atrophy of the left thigh. Orthopedic examination is otherwise negative.

"X-rays: Revealed marked deformity in the left hip with osteoarthritic

changes.

"Impression: Osteoarthritic left hip, severe.

"Conclusion: The patient has an osteoarthritic, deformed, left hip joint which is secondary to a congenital dislocation and subsequent surgery (history). It is possible that the injury sustained in 1944 may have aggravated the present condition."

With regard to the old injury to Mrs. Brumell's left hip, which appears to have occurred when she was a small child, the clinical record of the claimant at the One Hundred and Eighty-fourth Station Hospital, Fort Greely, contains the

following statement:

"At the age of 3, Mrs. Brumell states that she fell and injured her left hip. She remembers having recurrent pain and discomfort in the left hip when walking and she developed a limping type of gait. From the age of 3 to 9, she was in a hospital in New York City for this hip condition. In 1912 she was operated on in a New York Orthopedic Hospital by Dr. Hibbs. At that time, she states, the head of the femur was removed and she was hospitalized for about 6 months. Also an appendectomy was performed on her during that time. In 1916 her leg was stretched under anesthesia without improvement. She cannot recall any other

It appears that at the time of her injury on March 30, 1944. Mrs. Brumell was 45 years of age and her salary as an employee of the War Department was \$2,737 per annum; that following her injury medical treatment and hospitalization were furnished to her by the Army in Alaska without charge except for subsistence; that since her discharge from the One Hundred and Eighty-fourth Station Hospital at Fort Greely the claimant has incurred private medical expenses in the amount of approximately \$200; and that no one is dependent upon her for support. In an

affidavit executed on July 20, 1950, Mrs. Brumell stated:

"At the time of the accident my fur coat, costing \$500, the evening dress I wore, which cost me \$75, and the shoes I had on, approximate cost \$10, were all ruined beyond repair. I was wearing an antique jade ring at this time. It was crushed and half the stone was lost at the site of the accident. The ring was given to me as a gift. Its antique value cannot be estimated, but apart from the antique value, I judge the ring to be worth about \$150. Household effects acquired in Alaska had to be disposed of at a loss estimated at \$350 because they could not be returned to the continental United States during wartime period. These effects considered of linens, furniture, china, household utensils.

"As of January 1, 1949, as a veteran of the United States Navy, World War I, after a medical examination, I was granted a total disability non-service-connected pension of \$60 a month."

The Department of the Army is not informed as to whether Mrs. Brumell is now employed or whether she presently has any income other than the \$60 per month pension which she is receiving from the Veterans' Administration.

The evidence in this case fairly establishes that the accident of March 30, 1944. and the resulting injury of Mrs. Brumell were proximately caused by the negligence of the driver of the Army truck in which she was riding as a passenger in failing to exercise proper care in the operation of a motor vehicle while snow was

falling. There was no negligence on the part of Mrs. Brumell.

After a careful consideration of all of the facts and circumstances in this case it is believed that Mrs. Brumell should be compensated in a reasonable amount for the damages sustained by her as a result of this accident. She is now suffering from a serious disability. It appears from the medical evidence in the case that the major cause of her present disability is the deformity of her left hip, which has been present since childhood. This preexisting condition appears to have been aggravated by her injury in the accident of March 30, 1944. Considering the age, occupation and earnings of the claimant at the time of said accident, the nature of the injuries sustained by her in the accident, the loss of earnings and property damage sustained, the pain and suffering which she has undergone, and the medical expenses incurred, it is the view of the Department of the Army that an award to the claimant in the amount of \$10,000 would constitute a fair and reasonable settlement for all of the damages which she has sustained as the result of this accident. The Department, therefore, would have no objection to the granting of an award to the claimant in that amount.

If this bill is favorably considered by the Congress, it is recommended that the

text thereof be amended to read as follows:

"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 Mrs. Marguerite A. Brumell, of 228 East Eighty-first Street, New York, New York, the sum of \$10,000, in full settlement of all claims against the United States for personal injuries, property damage and loss of earnings sustained, and medical and hospital expenses incurred as the result of an accident involving a United States Army vehicle at Fort Greely, Alaska, on March 30, 1944: 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 misdeameanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

This claimant has no remedy under the Federal Tort Claims Act (60 Stat. 843)

28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by the act of April 25, 1949 (63 Stat. 62), for the reason that the accident out of which her claim arises occurred pior to January 1, 1945. There is no other statute available to the Department of the Army under which she may be compensated for the damages sustained by her.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr., Secretary of the Army.

BRUMELL, MARGUERITE, CIVILIAN, QM CIVIL SERVICE

Diagnosis

 Fracture, simple, complete, proximal end of left fibula.
 Wound, contused, moderately severe, left eye, left shoulder, right foot, and left knee.

3. Strain, severe, left shoulder.

4. Fracture of tooth, L-2. 1 to 4, a. i. at approximately 0300, March 30, 1944, while riding as a passenger in a jeep, the driver of the vehicle losing his way during a snowstorm and driving over an embankment near multiple hangar No. 36 of nearby naval operating base.

Operation and treatment

April 4, 1944: Fracture, closed treatment of, with application of plaster of paris long leg cast. No reduction done, no anesthesia necessary. Fragments in excellent apposition.

May 1, 1944: Cast removed. Active exercise and massage daily.

May 8, 1944: Extraction of tooth, L-2, local anesthetic 2 percent procaine HCl, lcc.

May 8, 1944: Improving satisfactorily.

Capt. L. Sluyzinski, MC. Station Hospital 184, APO 937, Seattle, Wash.

May 19, 1944.

Certified to be a true and correct copy of the original hereof.

Lt. M. P. McCaffrey, USAR.

UNITED STATES NAVAL AIR STATION, Kodiak, Alaska, May 5, 1945.

In account with: Marguerite A. Brumell, civil service employee, NOB library. For hospitalization in the station dispensary for non-service-connected disability from May 1, 1945, to May 5, 1945.

4 hospital days at \$5 per day _____ \$20

I certify that the above bill is correct and just; that payment therefore has not been received; that State and local taxes are not included in the amount billed.

T. C. Wall, Lt (jg) (HC), USN, Agent Cashier.

UNITED STATES NAVAL AIR STATION, Kodiak, Alaska, May 5, 1945.

DISPENSARY RECEIPT

Received from Marguerite A. Brumell, civil service employee, Kodiak, the sum of \$20 for hospitalization in the station dispensary from May 1 to May 5, 1945; a period of four hospitalization days.

T. C. Wall, Lt. (jg) (HC), USN Agent Cashier (J. D. Buzzard, By Direction).

United States Naval Air Station, Kodiak, Alaska, May 7, 1945.

In account with: Marguerite A. Brumell, civil service employee NOB library. For hospitalization in the station dispensary for non-service-connected disability from May 5 to 7, 1945.

2 hospital-days at \$5 per day______ \$10

I certify that the above bill is correct and just; that payment therefor has not been received; that State and local taxes are not included in the amount billed.

T. C. WALL, Lt. (jg) HC, USN, Agent Cashier (J. D. Buzzard, By Direction).

UNITED STATES NAVAL AIR STATION, Kodiak, Alaska, May 7, 1945.

DISPENSARY RECEIPT

Received from Marquerite A. Brumell, civil service employee, Kodiak, the sum of \$10 for hospitalization in the station dispensary from May 5 to 7, 1945; a period of 2 days.

T. C. Wall, Lt. (jg) HC, USN, Agent Cashier (J. D. Buzzard, By Direction).

· St. Clare's Hospital, New York 19, N. Y., January 14, 1946.

Dear Mrs. Brumell: I regret the termination of your work in the X-ray department of St. Clare's Hospital. I have appreciated your efforts to function competently and cooperate to the fullest extent, and am sorry that you are not able to handle the volume of work the secretarial position now entails.

I believe you should follow up the treatment initiated in our clinic for your acute anemic condition, and take what other measures you can to possibly correct

the extreme nervousness you suffer from, which I feel would affect your efficiency generally until improved.

I shall not be at St. Clare's Hospital after the 15th of this month, so would suggest you contact me at my home if I can be of any help.

Very truly yours,

H. KINGSLEY BLAKE, Roentgenologist.

Home address: 49 Church Lane, Scarsdale, N. Y. Telephone: Scarsdale 3-356.

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