

WINIFRED C. LYDICK

---

MARCH 19, 1958.—Committed to the Committee of the Whole House and ordered to be printed

---

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

REPORT

[To accompany S. 1562]

The Committee on the Judiciary, to whom was referred the bill (S. 1562), for the relief of Winifred C. Lydick, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to authorize the payment of \$2,500 to Winifred C. Lydick, of Oklahoma City, Okla., in full satisfaction of her claim against the United States for compensation for permanent personal injuries, pain, and suffering sustained by her as the result of an accident which occurred on April 14, 1955, on the island of Okinawa, when a United States Army vehicle struck the automobile in which Mrs. Lydic was a passenger.

STATEMENT

On April 14, 1955, a United States Army vehicle, driven by a soldier acting within the scope of his employment, collided with a car owned by Col. John M. Lydick, and in which Mrs. Lydick, his wife, was riding. As a result of the accident Mrs. Lydick sustained lacerations of her forehead and left forearm, swelling of the right knee and lateral aspect of her right ankle, and some soreness on the right side of her neck. The lacerations have resulted in a moderate cosmetic defect of the face and forearm which cannot be concealed by makeup, and the condition is described as permanent.

Colonel Lydick's automobile was damaged in the same collision and a claim in the amount of \$2,400 for this damage was adjudged meritorious by the Department of the Army. The entire amount was

submitted to the House of Representatives in a supplemental appropriation measure. The explanation submitted with the request for supplemental appropriation contained an admission that the accident and resultant damage was proximately caused by the negligence of the Army driver who, failing to obey a stop sign at an intersection, crossed three lanes of roadway, and struck the claimant's vehicle which was properly proceeding in the fourth lane.

On February 3, 1956, Mrs. Lydick submitted a claim to the Department of the Army in the amount of \$4,900 for pain and suffering, permanent disfigurement, and disruption of her life. She was advised by the Department of the Army that the only statute available to the Department for the consideration of claims such as hers, limited compensation for personal injuries to reasonable hospital, medical, and burial expenses actually incurred. This law has since been amended, but that amendment has no bearing on this case which arose prior to adoption of the amendment. Mrs. Lydick has no remedy under the Federal Tort Claims Act (60 Stat. 843), as revised, codified, and amended (28 U. S. C. 1346 (b)), since that act does not apply to claims arising in foreign countries. Consequently, Mrs. Lydick has no remedy at law by which she may receive compensation for her pain and suffering and permanent disfigurement.

The Department of the Army in its report to the Senate committee on this legislation states that it has no objection to the enactment of the bill if the amount of the award is reduced to a sum not exceeding \$2,500. The report cites a series of cases, most of them arising in State courts, demonstrating that \$2,500 is a fair and reasonable settlement for the type of injury sustained by this claimant as a result of the accident.

The committee believes that this legislation should be approved. The negligence of the driver of the Government vehicle was admitted and the claimant is barred from recovery only because the accident occurred outside the United States. The amount suggested by the Department of the Army would appear to be a proper award in view of the several cases cited by the Department involving similar injuries. The committee therefore recommends that the legislation, as amended, be favorably considered.

The report of the Department of the Army to the Senate Committee on the Judiciary on the bill is as follows:

DEPARTMENT OF THE ARMY,  
*Washington, D. C., August 13, 1957.*

HON. JAMES O. EASTLAND,

*Chairman, Committee on the Judiciary,  
United States Senate.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to S. 1562, 85th Congress, a bill for the relief of Winifred C. Lydick.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Winifred C. Lydick, of Oklahoma City, Oklahoma, the sum of \$9,500. Such sum shall be in full satisfaction of the claim of the said Winifred C. Lydick against the United States for compensation for permanent personal injuries and pain and suffering sustained by her as

the result of an accident, occurring on April 14, 1955, on the island of Okinawa, in which a United States Army vehicle struck the automobile in which the said Winifred C. Lydick was a passenger."

The Department of the Army has no objection to the enactment of this bill provided it is amended as hereinafter recommended.

Records of the Department of the Army reveal that Mrs. Winifred C. Lydick, the wife of Col. John M. Lydick, United States Army, retired, was injured at Sukiran, Okinawa, on April 14, 1955, when a United States Army truck collided with her husband's automobile in which she was riding.

Colonel Lydick submitted a claim in the amount of \$2,400 to the United States Army for damage to his private automobile resulting from this collision. The claim was adjudged meritorious in the entire amount and submitted to the House of Representatives by supplemental appropriation message from the President pursuant to the provisions of the act of July 3, 1943 (57 Stat. 372), now codified (10 U. S. C. 2733). The detailed explanation contained in this message stated as follows regarding Colonel Lydick's claim:

"Claim of Col. John M. Lydick, 2033 Chateau Street, Sherwood Forest Addition, Anaheim, Calif., and United Services Automobile Association, 1400 East Grayson Street, San Antonio, Tex. The automobile owned by Colonel Lydick and insured by the United Services Automobile Association, a 1953 Lincoln, was extensively damaged on April 14, 1955, at Sukiran, Okinawa, when it was involved in a collision with a United States Army vehicle driven by a soldier acting within the scope of his employment. The accident and resultant damage was proximately caused by the negligence of the Army driver who, failing to obey a stop sign at an intersection, crossed three lanes of roadway, and struck claimant's vehicle which was properly proceeding in the fourth lane. The amount of \$2,400 which claimants have agreed to accept represents the difference in value of the vehicle immediately before and immediately following the incident" (H. Doc. 156, 85th Cong., 1st sess., p. 11 (1957)).

On February 3, 1956, Mrs. Winifred C. Lydick submitted a claim to the Department of the Army in the amount of \$4,900 for pain and suffering, permanent disfigurement, and disruption of her life. She has stated that most of the major medical expenses incidental to this accident were taken care of by virtue of the fact that she was rendered care by United States Army medical personnel at the Ryukyus Army Hospital. By letter dated May 25, 1956, Mrs. Lydick was advised by the Department of the Army that the act of July 3, 1943, *supra*, the only statute available to the Department for the consideration of such claims, limited compensation for personal injuries to reasonable medical, hospital, and burial expenses actually incurred. The act of March 29, 1956 (Public Law 446, 84th Cong.), removed this limitation as to claims accruing after the date of its enactment, but has no effect upon Mrs. Lydick's case. The Federal Tort Claims Act (60 Stat. 843), as revised, codified and amended (28 U. S. C. 1346 (b)), does not apply to claims arising in foreign countries. Mrs. Lydick thus has no method at law except private relief legislation whereby she may receive compensation for her pain and suffering, permanent disfigurement, and disruption of her life. The Department has no objection to the enactment of legislation for the relief of Mrs. Lydick, provided the grant of compensation is in a reasonable amount.

At the time of the submission of her original claim, Mrs. Lydick listed as basis for compensation the scars upon her face and forearms; a hard lumpy condition on the left side of her face which forced the left side of her mouth downward and partially closed her eye for many months, but apparently has cleared up; bruises on her legs, knees, and right ankle, with her knees and ankle still causing periodic distress; overall effects on her body and nervous system which, in her opinion, are considerable; pain and suffering after the accident, for although she was discharged from the hospital on April 18, 1955, she stated it was impossible for her to leave her bed or chair for more than very short periods for the next 6 or 7 weeks; and the complete reorganization of her household and life resulting from the accident.

Records of the United States Army Hospital, Ryukyus, reveal that on April 14, 1955, Mrs. Lydick was admitted to that facility following an automobile accident and found to be suffering from lacerations of her forehead and left forearm, which were sutured after irrigation, and presented no artery or nerve involvement; some soreness of the right side of her neck; and some swelling of the right knee and lateral aspect of her right ankle. A statement by the Chief, Dermatology Section, United States Army Hospital, Ryukyus, prepared on February 3, 1956, and submitted by Mrs. Lydick in substantiation of her claim, stated pertinently as follows:

"Examination at the present time reveals a well-healed linear scar on the right side of the forehead, with the upper portion roughly horizontal and 2.5 centimeters long, and the main portion extending downward from the medial end of this and turning somewhat to the right for a distance of 4.5 centimeters, ending at the root of the nose, from which a 2-centimeter linear scar extends to the right in the upper eyelid, being hidden in the folds of the eyelid when the eye is open. There is decreased sensation to touch on the right side of the main portion of the scar. There is mild chronic swelling on the left cheek. On the dorsum of the left forearm is a right-angled scar, extending 3 centimeters in each direction and being about 3 millimeters in width. There is increased brownish pigmentation of the skin along the borders of this scar.

"As a result of the above-described scars there is a moderate cosmetic defect of the face and forearm which cannot be concealed by makeup. This condition as described at the present time is expected to be permanent."

It has been stated that "There is no absolute standard by which we can measure the amount of damages in personal injury cases" (*Cleven v. Griffin*, 298 N. W. 483 (Sup. Ct. Mich. 1941)). The difficulty of assigning a pecuniary valuation for the injuries and attendant suffering incurred by Mrs. Lydick is vividly illustrated by the fact that her original claim submitted to the Department of the Army was in the amount of \$4,900, while subject bill would award her \$9,500. Pertinent to this problem, the Supreme Court of Arkansas has declared:

"Recognizing, as we do, that any appreciable scar on a lady's face may cause embarrassment, and that the blemish, if traceable to another's negligence, calls for appropriate compensation, the fact remains that personal pride and the appearance of an attractive woman can never be fully atoned for or the effects removed by a monetary payment. But in the absence of aggravative circumstances predicated upon malice or willfulness, the limit of recovery must be



in some proportion to the injury sustained" (*Holmes v. Lee*, 184 S. W. 2d 957 (1945)).

It is the opinion of the Department of the Army that both the amount of Mrs. Lydick's original claim and the award provided in subject bill are excessive and that an award in an amount not exceeding the sum of \$2,500 would constitute fair and reasonable settlement for all damages sustained by her as a result of this accident. This settlement would appear consonant with the awards rendered in the following cases involving similar injuries to women:

Remittance of \$1,200 of \$3,000 verdict ordered as being grossly excessive where plaintiff received a Y-shaped scar one-half inch long over eyebrow, heavy bruises on face, forehead and shoulders, scratches, and abrasions on legs and knees, and cut and swollen ankles (*Fann v. Farmer*, 289 S. W. 2d 144 (Ct. App. Mo. 1956)); award of \$2,500 held not excessive where plaintiff received a 4-inch scar on bridge of nose, other permanent facial scars, lacerations on right forearm, injury to her back, and suffered from headaches and nervousness (*Bailey v. DeBoyd*, 65 S. E. 2d 82 (Sup. Ct. W. Va. 1951)); award of \$2,500 held not excessive where plaintiff suffered a severely cut upper lip requiring 7 stitches, cuts on her knees, bruises on her chest, face, legs, and arms, and could not perform ordinary household duties for 6 weeks (*Butcher v. Stull*, 82 S. E. 2d 278 (Sup. Ct. W. Va. 1954)); award of \$1,280 held neither excessive nor inadequate for woman suffering "minor scar formations" on face, a sore back and contusions (*Malone v. Hughes*, 65 So. 2d 665 (Cir. Ct. La. 1953)); award of \$1,500 held neither so excessive or inadequate as to require reversal where plaintiff suffered a mild concussion, a 4-inch scar over the left eyebrow and permanent numbness in the left side of her face resulting from the severance of a nerve (*Bonner v. Ouachita Baking Co.*, 37 So. 2d 543 (Ct. App. La., 1948)); award of \$2,000 held not excessive where plaintiff, a 47-year-old woman, received a 2-inch scar on the side of her face (*Joly v. Jones*, 55 A. 2d 181 (Sup. Ct. Vt. 1947)); award of \$2,500 affirmed where plaintiff, a 22-year-old girl, spent 8 days in the hospital, was incapacitated at home for 2 months, suffered 3 broken ribs, a concussion, and 3 permanent scars across her face (*Geoghegan v. Daugherty*, 217 S. W. 2d 953 (Ct. App. Ky. 1949)); award of \$2,000 to a 21-year-old girl affirmed in case where she suffered a slight concussion, a jagged cut over 1 eye resulting in a permanent scar, a cut nose, cuts and bruises on her lower limbs, and an injured hand with ulnar nerve involvement (*Cleven v. Griffin*, 298 N. W. 483 (Sup. Ct. Mich. 1941)); award of \$1,844 was affirmed where a married woman suffered a 2½-inch scar on her forehead, a permanent fibrous growth on her knee and headaches and backaches for 1 month (*Day v. Newton*, 142 F. 2d 582 (10th Cir. 1944)); award of \$2,500 reduced to \$1,500 where a plaintiff suffered slight disfigurement from small scars on her forehead and a somewhat misshapen nose; and her leg was broken below the knee necessitating a 1-week stay in the hospital (*Candage v. Belanger*, 57 A. 2d 145 (Sup. Ct. Me. 1948)).

Accordingly, the Department of the Army would have no objection to the enactment of this bill if it should be amended to provide an award in an amount not exceeding \$2,500.

The cost of this bill, if enacted in its present form, would be \$9,500, or, if amended as herein recommended, would not exceed \$2,500.

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

Sincerely yours,

WILBER M. BRUCKER,  
Secretary of the Army.

○