Calendar No. 984

91st Congress, 2d Session | SENATE | Report No. 91–980

ARTHUR JEROME OLINGER, A MINOR

June 26, 1970.—Ordered to be printed

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

REPORT

[To accompany S. 703]

The Committee on the Judiciary, to which was referred the bill (S. 703) for the relief of Arthur Jerome Olinger, a minor, by his next friend, his father, George Henry Olinger, and George Henry Olinger, individually, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 1, strike the word "three" and insert in lieu thereof the word "four".

PURPOSE OF AMENDMENT

The purpose of the amendment is to reflect the correct age of the minor claimant.

PURPOSE

The purpose of the bill, as amended, is that, notwithstanding any statute of limitations, bars of laches, or lapse of time, or that the claims herein arose in a foreign country, jurisdiction is hereby conferred upon the U.S. District Court for the District of Hawaii to hear, determine, and render judgment upon the claims of Arthur Jerome Olinger and his father, George Henry Olinger, for compensation for a fractured skull and other injuries sustained by the said Arthur Jerome Olinger at the age of four, such injuries having occurred as a result of a fall from the third floor of Government quarters, owned

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and controlled by the United States, known as Feevren Strass II, Warner Barracks, Bamberg, Germany, on September 29, 1962.

STATEMENT

This bill (S. 703) in the 91st Congress is similar to S. 1803 in the 89th Congress and S. 155 in the 90th Congress. Both previous bills were passed by the Senate but no action was taken by the House of Representatives.

The facts of the case as found in the Army report of January 11, 1966, and quoted in the reports of this committee on the two previous bills, are as follows:

> On September 29, 1962, at approximately 11:15 a.m., Army Sergeant George Olinger's 4-year-old son, Arthur, fell from his third floor bedroom window in Government quarters at Bamberg, Germany. Mrs. Olinger informed an investigator that she had left her son in his bedroom to pick up some paper. She was in the living room combing her hair when she heard a scream. She ran into the bedroom and saw that the window was open and the screen had fallen out. When asked how her son was able to get up to the window, she answered that she had a coffee table setting by the window and her son must have climbed upon the table and opened the window. Mrs. Olinger explained why the post engineer had not installed bars over the bedroom window as follows:
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> "About 3 months ago I called the engineers and made a request for them to do it because the screen had fallen out on other occasions. They told me that they couldn't do anything unless I came down and signed some papers for the work order. My husband is always in the field and has very little time to go down and with four children it is hard for me to go down to their office."
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> As a result of the fall Arthur Olinger suffered a skull fracture. After being taken to the 188th General Dispensary in Bamberg, Germany, he was evacuated by air, first to the 10th Field Hospital, Wurtzburg, Germany, then to the Landstuhl Medical Center. The child was treated at the Landstuhl Medical Center from September 29, 1962, to October 6, 1962. The clinical record of Arthur Olinger shows his medical treatment as follows:
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> "The patient was admitted September 29, 1962, at 1630 hours. Shortly thereafter the patient was taken to the operating room where debridement of the skin, right frontal, with removal of loose depressed bone fragment and repair of tear in the wall of sagittal sinus was done. Approximately 30 cc's of brain was debrided. Postoperatively the patient did well and by October 5, 1962, was awake, and alert and eating well. He was up and about the ward and the wound looked good. On October 6, 1962, the sutures were removed and the wound found to be well healed."
>
> Congress has provided for an orderly system to compensate individuals for personal injuries caused by one of the Armed

Forces. Persons injured in the United States or its territories may file suit under the Federal Tort Claims Act (28 U.S.C. 1346, 2671–2680 (1964)) or seek administrative redress through the appropriate military department under the Federal Tort Claims Act, the Military Claims Act, infra, and other laws. Claimants injured in a foreign country by one of the Armed Forces have no judicial remedy in U.S. courts but may seek administrative relief under the Military Claims Act (10 U.S.C. 2733 (1964)) or under other laws not pertinent to the present case. The Olingers had 2 years from the date the claim accrued to file a claim against the United States cognizable under the Military Claims Act, supra. Such claims may be administratively settled for an amount not to exceed $5,000 and any amount in excess of $5,000 deemed meritorious is reported to Congress for its consideration. The Olingers have not presented a claim to the Army under this statute and are now barred from doing so by the statute of limitations. The purpose of the bill is to waive any statute of limitations and to permit a cause of action in a U.S. district court for a tort claim expressly barred from judicial consideration under the provisions of the Federal Tort Claims Act as it arose in a foreign country (28 U.S.C. 2680(k) (1964)). Enactment of the proposed legislation would therefore interfere with the systematic procedures provided by Congress for administrative and judicial consideration of such claims against the United States. It could result in the introduction of numerous similar bills. Even if the Olingers were allowed to institute suit in a district court by enactment of the bill, recovery would be improbable as the Government is in no way responsible for the injuries suffered by Arthur Olinger. At the time of his injuries window guards were installed on the windows of children's bedrooms in Government housing at the Bamberg post only upon written request by either sponsors or dependent wives. Although the post engineers informed Mrs. Olinger 3 months before the incident that window guards could not be installed without a written request, a search of the records at the Bamberg Subdistrict Engineer Office disclosed that the Olingers failed to submit a written request for the installation of window guards.

It is the opinion of the committee that the rights of a minor child should not be extinguished because of a mere inadvertence of the mother. In disagreement with the Army on this point, the committee adheres to its position and recommends favorable enactment of S. 703, as amended.

Attached hereto and made a part hereof is the report of the Department of the Army dated January 11, 1966.

DEPARTMENT OF THE ARMY,
Washington, D.C., January 11, 1966.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army on S. 1803, 89th Congress, a bill for the relief of Arthur Jerome Olinger, a minor, by his next friend, his father, George Henry Olinger, and George Henry Olinger, individually.

The bill provides:

"That, notwithstanding any statute of limitations, bars of laches, or lapse of time, or that the claims herein arose in a foreign country, jurisdiction is hereby conferred upon the U.S. District Court for the District of Hawaii to hear, determine, and render judgment upon the claims of Arthur Jerome Olinger and has father, George Henry Olinger, for compensation for a fractured skull and other injuries sustained by the said Arthur Jerome Olinger at the age of 3, such injuries having occurred as a result of a fall from the third floor of Government quarters, owned and controlled by the United States, known as Feebren Strasse II, Warner Barracks, in Bamberg, Germany, on September 29, 1962.

"SEC. 2. Suit upon any such claims may be instituted at any time within 1 year after the date of the enactment of this act. Proceedings for the determination of such claims and review thereof, and payment of any judgment thereon, shall be in accordance with the provisions of law applicable to cases over which the court has jurisdiction under section 1346(b) of title 28 of the United States Code. The application of section 2680(k) of title 28 of the United States Code to the claims herein is waived. Nothing in this act shall be construed as an inference of liability on the part of the United States."

The Department of the Army opposes the bill.

On September 29, 1962, at approximately 11:15 a.m., Army Sgt. George Olinger's 4-year-old son, Arthur, fell from his third floor bedroom window in Government quarters at Bamberg, Germany. Mrs. Olinger informed an investigater that she had left her son in his bedroom to pick up some paper. She was in the living room combing her hair when she heard a scream. She ran into the bedroom and saw that the window was open and that the screen had fallen out. When asked how her son was able to get up to the window, she answered that she had a coffee table setting by the window and her son must have climbed upon the table and opened the window. Mrs. Olinger explained why the post engineer had not installed bars over the bedroom window as follows:

"About 3 months ago I called the engineers and made a request for them to do it because the screen had fallen out on other occasions. They told me that they couldn't do anything unless I came down and signed some papers for the work order. My husband is always in the field and has very little time to go down and with four children it is hard for me to go down to their office."

As a result of the fall Arthur Olinger suffered a skull fracture. After being taken to the 188th General Dispensary in Bamberg, Germany,

he was evacuated by air, first to the 10th Field Hospital, Wurzburg, Germany, then to the Landstuhl Medical Center. The child was treated at the Landstuhl Medical Center from September 29, 1962, to October 6, 1962. The clinical record of Arthur Olinger shows his medical treatment as follows:

"The patient was admitted September 29, 1962, at 1630 hours. Shortly thereafter the patient was taken to the operating room where debridement of the skin, right frontal, with removal of loose depressed bone fragment and repair of tear in the wall of sagittal sinus was done. Approximately 30 cc's of brain was debrided. Postoperatively the patient did well and by October 5, 1962, was awake, and alert and eating well. He was up and about the ward and the wound looked good. On October 6, 1962, the sutures were removed and the wound found to be well healed."

Congress has provided for an orderly system to compensate individuals for personal injuries caused by one of the Armed Forces. Persons injured in the United States or its territories may file suit under the Federal Tort Claims Act (28 U.S.C. 1346, 2671–2680 (1964)) or seek administrative redress through the appropriate military department under the Federal Tort Claims Act, the Military Claims Act, infra, and other laws. Claimants injured in a foreign country by one of the Armed Forces have no judicial remedy in U.S. courts but may seek administrative relief under the Military Claims Act (10 U.S.C. 2733 (1964)) or under other laws not pertinent to the present case. The Olingers had 2 years from the date the claim accrued to file a claim against the United States cognizable under the Military Claims Act, supra. Such claims may be administratively settled for an amount not to exceed $5,000 and any amount in excess of $5,000 deemed meritorious is reported to Congress for its consideration. The Olingers have not presented a claim to the Army under this statute and are now barred from doing so by the statute of limitations. The purpose of the bill is to waive any statute of limitations and to permit a cause of action in a U.S. district court for a tort claim expressly barred from judicial consideration under the provisions of the Federal Tort Claims Act as it arose in a foreign country (28 U.S.C. 2680(k) (1964)). Enactment of the proposed legislation would therefore interfere with the systematic procedures provided by Congress for administrative and judicial consideration of such claims against the United States. It could result in the introduction of numerous similar bills. Even if the Olingers were allowed to institute suit in a district court by enactment of the bill, recovery would be improbable as the Government is in no way responsible for the injuries suffered by Arthur Olinger. At the time of his injuries window guards were installed on the windows of children's bedroom in Government housing at the Bamberg Post only upon written request by either sponsors or dependent wives. Although the post engineers informed Mrs. Olinger 3 months before the incident that window guards could not be installed without a written request, a search of the records at the Bamberg Subdistrict Engineer Office disclosed that the Olingers failed to submit a written request for the installation of window guards.

For these reasons the Department of the Army opposes the bill.

The cost of this bill, if enacted, cannot be determined at this time.

The Bureau of the Budget advises that from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

STANLEY R. RESOR,
Secretary of the Army.

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