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APPROVED
OCT 17 1976

8/10/17/1976

THE WHITE HOUSE
WASHINGTON
October 14, 1976

ACTION

Last Day: October 18

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON *JAC*
SUBJECT: H.R. 13964 - Relief of Jeanette Green and Mary Jane Baker Nolan

Attached for your consideration is H.R. 13964, sponsored by Representative Dickinson.

The enrolled bill would waive the two-year statute of limitations contained in the Suits of Admiralty Act, as well as any other statute of limitations which would act to bar the beneficiaries from bringing suits against the United States. Jurisdiction to hear the cases would be vested in the U.S. District Court for the Middle District of Georgia. The enrolled bill would also declare that its enactment shall not be construed as an inference of liability on the part of the U.S.

The two beneficiaries were victims of a boating accident in Georgia in June of 1972. Both of their husbands drowned and Mary Jane Baker Nolan was injured. The two couples were boating near the George Andrews Dam when the Army Corps of Engineers lock operator raised a gate to let floating debris pass down the river. The resulting turbulence capsized their boat.

Both widows filed administrative claims against the U.S. within the two years of the deaths under the Federal Tort Claims Act. However, more than two years after the cause of action occurred, the Army advised the claimants' attorneys that the claims should be prosecuted under the Suits in Admiralty Act. That Act preempts the Federal Tort Claims Act and the Act's two year statute of limitations is not tolled by filing an administrative claim under the Federal Tort Claims Act.

A motion by Justice to dismiss the actions brought by the claimants and a request for a stay by the claimants are both pending before the U.S. District Court for the Middle District of Georgia. The Court has not yet ruled on either request pending the final disposition of this private relief legislation.



A more detailed discussion of the enrolled bill and complete agency comments are provided in OMB's enrolled bill report at Tab A.

Agency Recommendations

The Department of the Army recommends disapproval.

The Department of Justice states they would normally oppose such relief legislation, however, because of the peculiar facts involved in this matter, they have no objection to approval.

OMB recommends approval of the enrolled bill.

Staff Recommendations

NSC, Max Friedersdorf, Counsel's Office (Kilberg) and I recommend approval of the enrolled bill. Max indicates that Representative Dickinson strongly supports this bill.

Recommendation

That you sign H.R. 13964 at Tab B.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 9 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 13964 - Relief of Jeanette Green
and Mary Jane Baker Nolan
Sponsor - Rep. Dickinson (R) Alabama

Last Day for Action

October 18, 1976 - Monday

Purpose

To waive the statute of limitations to permit litigation against the United States by two widows.

Agency Recommendations

Office of Management and Budget

Approval

Department of Justice

No objection

Department of Defense

Disapproval (Memorandum
of disapproval attached)

Discussion

H.R. 13964 would waive the two-year statute of limitations contained in the Suits of Admiralty Act, as well as any other statute of limitations which would act to bar the beneficiaries from bringing suits against the United States. Jurisdiction to hear the cases would be vested in the U.S. District Court for the Middle District of Georgia. The enrolled bill would also declare that its enactment shall not be construed as an inference of liability on the part of the United States.

On June 24, 1972, Mary Jane Baker Nolan and her husband were boating with the husband and son of Jeanette Green on the Chattahoochee River in Georgia near the George Andrews Dam.

At about 9:30 P.M. the Army Corps of Engineers lock operator at the dam raised a gate to let floating debris pass on down the river. The resulting turbulence capsized their small boat, drowning the males; Mary Jane Baker Nolan was injured, but survived.

Both widows filed administrative claims against the United States within two years of the deaths and both their attorneys and the Army attorneys treated the matter as falling within the ambit of the Federal Tort Claims Act. However, more than two years after the cause of action occurred, the claimants' attorneys were advised by the Army that the claims should be prosecuted under the Suits in Admiralty Act. That Act preempts the Federal Tort Claims Act, and the Admiralty Act's two-year statute of limitation is not tolled by filing an administrative claim under the Federal Tort Claims Act.

A motion by Justice to dismiss the actions brought by the claimants and a request for a stay by the claimants are both pending before the U.S. District Court for the Middle District of Georgia. The court has not yet ruled on either request pending the final disposition of this private relief legislation.

Agency Views

The Department of the Army recommends that you withhold your approval of this measure because "Approval of the act would have the effect of recreating a right to sue by means of a private relief bill once the applicable statute of limitation has run. Such relief dissipates the judicial necessity for finality of causes of actions and would result in unfair treatment of those litigants similarly situated whom [sic] would not be afforded private relief. Moreover, the jurisdictional issue which the act addresses is presently under consideration by the court."

In its attached views letter, the Department of Justice states it "would normally oppose such relief legislation on the grounds that statutes of limitations would soon become meaningless if allowed to be routinely so circumvented, and because the result is un-uniform and unequal treatment of the citizenry as a whole with respect to suits brought against the Government. However, under the peculiar facts involved in this matter ..., the Department of Justice has no objection to Executive approval of the bill."

Recommendation

The report of the Senate Judiciary Committee notes that:

-- The Army claims service "concedes that it is often difficult to determine whether a claim falls under the Federal Tort Claims Act or the Suits in Admiralty Act".

-- In cases of doubt, the claims service is required to "advise a claimant... that he should file both an administrative claim with the Army and a protective complaint in an appropriate federal district court within two years of the date the course of action accrued"; but that was not done in this case.

The committee report concludes:

"... that facts of this case are such that it would be inequitable to bar claimants from proceeding with their claim due to the erroneous advice given by the Army Claims Service to claimants' attorneys... Therefore, the Committee believes that such a bar should be waived..."

We concur and recommend approval.

James M. Frey
Assistant Director
for Legislative Reference

Enclosures

Department of Justice
Washington, D.C. 20530

October 6, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill H. R. 13964, "For the relief of Jeanette Green, as mother of the minor child, Ricky Baker, deceased, and as widow and administratrix of the estate of Enoch Odell Baker, deceased; and for the relief of Mary Jane Baker Nolan, individually, and as widow and administratrix, of the estate of John William Baker, deceased."

The act waives the bar of the two-year statute of limitations contained in the Suits in Admiralty Act, 46 U.S.C. 745, and vests jurisdiction in the United States District Court for the Middle District of Georgia to determine the merits of the claim of Jeanette Green, on her own behalf as widow of Enoch Baker, and as the mother of his minor child. The act grants similar rights to Mary Jane Baker Nolan, as widow and administratrix of the estate of John William Baker, who died in the same boating accident in which Enoch Baker died.

An administrative claim was filed on behalf of Mrs. Green and Mrs. Nolan within two years of their husbands' deaths, and both their attorney and Army attorneys treated the matter as one falling within the ambit of the Federal Tort Claims Act. It was not until after two years from the date of the deaths that the Army, for the first time, advised claimants' attorney that the claims were in fact cognizable only under the Suits in Admiralty Act.

The Department of Justice would normally oppose enactment of such a private relief bill on the grounds that statutes of limitations would soon become meaningless if

allowed to be routinely so circumvented, and because the result is un-uniform and unequal treatment of the citizenry as a whole with respect to suits brought against the Government. However, under the peculiar facts involved in this matter, as detailed in House Report No. 94-1509 (94th Cong., 2d Sess.), the Department of Justice has no objection to Executive approval of this bill.

Sincerely,

A handwritten signature in cursive script, reading "Michael M. Uhlmann". The signature is written in dark ink and is positioned above the typed name.

MICHAEL M. UHLMANN
Assistant Attorney General

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 11

Time: 740pm

18

FOR ACTION: Dick Parsons *sign*
 Max Friedersdorf *sign* cc (for information):
 Bobbie Kilberg *sign* *Comments* Jack Marsh
 NSC/S *sign* EdmSchmults

FROM THE STAFF SECRETARY

DUE: Date: October 12

Time: 530pm

SUBJECT:

H.R.13964-Relief of Jeanette Green and Mary Jane Baker Nolan

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President



DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

Honorable James T. Lynn

Director, Office of Management and Budget

Dear Mr. Lynn:

The Department of Defense recommends that the President withhold his approval from enrolled enactment H. R. 13964, 94th Congress, "For the relief of Jeanette Green, as mother of the minor child, Ricky Baker, deceased, and as widow and administratrix of the estate of Enoch Odell Baker, deceased; and for the relief of Mary Jane Baker Nolan, individually, and as widow and administratrix of the estate of John William Baker, deceased."

The reasons for this recommendation are in the draft of a Memorandum of Disapproval inclosed for the signature of the President, should he approve the proposed action.

If approved, the act would cause no apparent increase in the budgetary requirements of the Department of Defense.

The inclosed Memorandum of Disapproval has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

Sincerely,

A handwritten signature in black ink, appearing to read "W. H. Hall".

Incl

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20310
ATTENTION: ASST. SEC. FOR POL. AFFS.



TO THE HOUSE OF REPRESENTATIVES:

I have withheld my approval of H. R. 13964, "For the relief of Jeanette Green, as mother of the minor child, Ricky Baker, deceased, and as widow and administratrix of the estate of Enoch Odell Baker, deceased; and for the relief of Mary Jane Baker Nolan, individually, and as widow and administratrix of the estate of John William Baker, deceased."

The purpose of the act is to authorize Jeanette Green as mother of the minor child, Ricky Baker, deceased, and as widow and administratrix of the estate of Enoch Odell Baker, deceased, to bring an action against the United States for the deaths of Ricky Baker and Enoch Baker arising from a boating accident that occurred on June 24, 1972 near the George Andrews Dam under the jurisdiction of the Secretary of the Army, on the Chattahoochee River, near Columbia, Alabama. The act would also authorize Mary Jane Baker, individually, and as administratrix of the estate of John William Baker to bring an action against the United States for injuries to herself and for the death of John Baker arising out of the same accident.

The act would authorize such actions to be filed within one year of the effective date of the bill in the United States District Court for the Middle District of Georgia notwithstanding the statute of limitations of the Suits in Admiralty Act (46 U.S.C. 741, 745) or any other statute of limitations. The act further provides that nothing in its provisions shall be construed as inference of liability on the part of the United States.

Four actions by Mary Baker Nolan and Jeanette Green concerning the aforementioned boating accident are currently pending against the United States in the United States District Court for the Middle District of Georgia. The actions were initiated pursuant to the Federal Torts Claims Act (28 U.S.C. 2671-2680). A motion to dismiss these consolidated writs based on the court's lack of subject matter jurisdiction is pending before the court.

Approval of the act would have the effect of recreating a right to sue by means of a private relief bill once the applicable statute of limitation has run. Such relief dissipates the judicial necessity for finality of causes of actions and would result in unfair treatment of those litigants similarly situated whom would not be afforded private relief. Moreover, the jurisdictional issue which the act addresses is presently under consideration by the court.

There are no circumstances present in this case which would warrant singling it out for preferential treatment to the discrimination of similar cases.

THE WHITE HOUSE

Date: October 11

Time: 740pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
NSC/Scc (for information): Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 12

Time: 530pm

SUBJECT:

H.R.13964-Relief of Jeanette Green and Mary Jane Baker Nolan

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

Approve. RR

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

Date: October 11

Time: 740pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg ✓
NSC/Scc (for information): Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 12

Time: 530pm

SUBJECT:

H.R.13964-Relief of Jeanette Green and Mary Jane Baker Nolan

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

approved
Kelley 10/12/56

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

Date: October 11

Time: 740pm

FOR ACTION: Dick Parsons
Max Friedersdorf ✓
Bobbie Kilberg
NSC/S

cc (for information):

Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 12

Time: 530pm

SUBJECT:

H.R.13964-Relief of Jeanette Green and Mary Jane Baker Nolan

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*Recommend Approval. Rep
Rep. Dickinson (R. Ala.)
Strongly supports.*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

MEMORANDUM

NATIONAL SECURITY COUNCIL

5681

October 12, 1976

MEMORANDUM FOR: JAMES M. CANNON
FROM: Jeanne W. Dav 
SUBJECT: H. R. 13964

The NSC Staff concurs with the proposed enrolled bill H. R. 13964-
Relief of Jeanette Green and Mary Jane Baker Nolan.

JEANETTE GREEN, AS MOTHER OF THE MINOR CHILD, RICKY BAKER, DECEASED, AND AS WIDOW AND ADMINISTRATRIX OF THE ESTATE OF ENOCH ODELL BAKER, DECEASED; AND FOR THE RELIEF OF MARY JANE BAKER NOLAN, INDIVIDUALLY, AND AS WIDOW AND ADMINISTRATRIX OF THE ESTATE OF JOHN WILLIAM BAKER, DECEASED

SEPTEMBER 13, 1976.—Committed to the Committee of the Whole House and ordered to be printed

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

REPORT

[To accompany H.R. 13964]

The Committee on the Judiciary, to whom was referred the bill (H.R. 13964) for the relief of Jeanette Green, as mother of the minor child, Ricky Baker, deceased, and as widow and administratrix of the estate of Enoch Odell Baker, deceased; and for the relief of Mary Jane Baker Nolan, individually, and as widow and administratrix of the estate of John William Baker, deceased, 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 waive the limitations of section 745 of title 46 of the United States Code, or any other statute of limitations for suits filed within one year of the effective date of this Act in the United States District Court for the Middle District of Georgia by Jeanette Green as mother of the minor child, Ricky Baker, deceased, and as widow and administratrix of the estate of Enoch Odell Baker, deceased, for the deaths of Ricky Baker, a minor, and Enoch Odell Baker, and by Mary Jane Baker Nolan, individually, and as administratrix of the estate of John William Baker for the death of John William Baker and for injuries to Mary Jane Baker Nolan, arising from a boating accident that occurred on or about June 24, 1972, near the George Andrews Dam on the Chattahoochee River, near Columbia, Alabama. The bill further provides that suits will then be considered as timely suits and will be subject to the otherwise applicable provisions of sections 741 through 752 of title 46 of the United States Code. The bill specifies that jurisdiction would be con-

ferred upon the United States District Court for the Middle District of Georgia to receive, hear, and render judgment upon any suits filed with that court under the Act. Nothing in the Act is to be construed as inference of liability on the part of the United States.

STATEMENT

This bill was the subject of a subcommittee hearings on August 6, 1976. At that hearing, the witnesses appearing in support of the bill outlined the facts which resulted in a situation in which the parties are barred from asserting their claims based upon the deaths and injuries referred to in the bill. At that hearing the facts presented were that on July 24, 1972, a small fishing boat on the Chattahoochee River, below the George Andrews Dam, was occupied by Enoch Odell Baker, his sons, Rickey Baker, a minor, and John William Baker, and John William Baker's wife, Mary Jean Baker Nolen. The Army Corps of Engineers who were in charge of the lock and dam at that time, opened one of the gates to allow some trash and debris through the dam. When the gate was opened, a chain of events took place which caused the boat which these persons were occupying to be swamped, resulting in the death of Enoch Odell Baker and his sons, Rickey Baker and John William Baker. Mary Jane Baker Nolen survived the incident, but did receive some personal injury.

Within two years from the date of the accident, administrative claims were filed for these deaths and personal injury, in accordance with the provisions of the Federal Tort Claims Act. [The Federal Tort Claims Act bars the filing of a lawsuit against the Government until after the administrative claims have been filed and denied (28 U.S.C. § 2675)]. The filing of an administrative claim suspends the running of the statute of limitations under the Federal Tort Claims Act. If these claims had come within the provisions of the Federal Tort Claims Act, the claims would have been properly prepared and filed with the prescribed period of time.

After the filing of the claims, it was stated that all persons involved in the matter felt that the claims were properly filed and that the claims fell within the provisions of the Federal Tort Claims Act. The claimant's attorneys asserted that these assumptions were held by not only the attorneys representing the claimants, but the attorneys for the Department of the Army as well, and referred to letters written by Judge Advocate Attorney James D. Wilson dated July 17, 1974, and Army memorandum dated November 8, 1974 furnished to the committee in behalf of the claimants and which are appended to this report.

It was stated at the hearing that after several months of handling the claims under the Federal Tort Claims Act, the Government attorneys from the Maritime Division of the Judge Advocate General's Office reviewed the file and for the first time, stated on opinion that the claims fell not under the Federal Tort Claims Act, but under the Suits in Admiralty Statute. This opinion was based upon the Maritime Division's opinion that a 1960 Amendment to the Suits in Admiralty Statute exempted these particular claims from the Federal Tort Claims Act and placed them within the provisions of the Suits in Ad-

miralty Statute. It appears that the 1960 Amendment to the Suits in Admiralty Statute did in effect broaden that act to include the type of claims presented in this matter, thereby taking them out from under the application of the Federal Tort Claims Act.

The committee has been advised that the Suits in Admiralty Statute requires that lawsuits, not administrative claims, be filed within the period of two years from the date of the accident. The facts of this case emphasized the fact that the filing of an administrative claim under the Federal Tort Claims Act does not stop the running of the Statute of Limitations under the Suits in Admiralty Statute.

Although administrative claims were properly prepared and filed within the two years of the date of the incident, and although initially both sides of the matter may have felt that the claims were properly under the Federal Tort Claims Act, the Statute of Limitations was not suspended by the filing of the claims and the Statute of Limitations ran against these claimants under the Suits in Admiralty Statute.

The relief provided in this bill for the Administratrixes of the Estates of these deceased persons, as well as for the individual personal injury received by Mary Jane Baker Nolen, would only be that the Government waive the Statute of Limitations for the bringing of these claims under the Suits in Admiralty Statute. It further provides that the U.S. District Court which would hear the Federal Tort Claims Act suit would have jurisdiction to hear these claims under the Suits in Admiralty Statute as well. The bill specifically states that nothing in the Act should be construed as an inference of liability on the part of the United States and makes no gift of any money. Thus its sole purpose is to give these persons an opportunity for fair trial on the merits of their claims arising out of the boating accident.

In support of the general confusion on the appropriate remedy in this case, the claimants pointed out that after claims were filed, the Government attorneys wrote a letter to the claimants' counsel in which the Government attorney states as follows:

Therefore, it appears from a statute of limitations standpoint, the claims have been appropriately filed and this office is satisfied in that regard.

At the hearing, the witness appearing in behalf of the claimants called attention to the memorandum prepared by the Government attorneys which discusses both the facts and the uncertainties in the law in regard to this application to this fact situation. That memorandum contains the following quotation:

It must be conceded that it is often difficult to determine whether a claim falls under the Federal Tort Claims Act or the Suits in Admiralty Act. In case of doubt, this service is required to advise a claimant or potential claimant that he should file both an administrative claim with the Army and a protective complaint in an appropriate Federal District Court within two years of the date the cause of action occurred.

The committee feels that in this matter the Government received notice before the two years ran that the claims were going to be filed

and the manner in which they would be filed. Thus the government would not actually be prejudiced by the delay. The committee feels that as a matter of equity this relief is appropriate. The bill would not indicate any approval of the claims, rather it would merely permit their consideration under appropriate law and in the appropriate forum. It is recommended that the bill be considered favorably.

DEPARTMENT OF THE ARMY,
U.S. ARMY CLAIMS SERVICE,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Fort Meade, Md., July 17, 1974.

MR. DONALD D. LUSK,
McDaniel, Hall, Parsons and Conerly,
Birmingham, Ala.

DEAR MR. LUSK: I refer to the claims of Jeanette Green on behalf of the estates of Ricky Baker and Enoch Odell Baker, and to the claims of Mary Jane Baker Nolan on behalf of herself and the estate of John William Baker. All of these claims have been filed against the United States under the provisions of the Federal Tort Claims Act as the result of a boating accident on the Chattahoochee River near George Andrews Dam on 24 June 1972.

As stated in your letter of 1 July 1974, I have ascertained that on 21 June 1974, copies of each claim were received by the U.S. Army Corps of Engineers, District Engineer's Office, Mobile, Alabama. I have been advised by Mr. Alfred Holmes, Jr., the District Counsel, that the claims have been recorded as received by his office on that date. Therefore, it appears that from a statute of limitations standpoint, the claims have been appropriately filed and this office is satisfied in that regard.

In the event you have not handled a Federal Tort Claims matter before, I shall briefly explain the procedures to you. The U.S. Army Claims Service has sole responsibility for settlement and/or disposition of claims in an amount less than \$25,000. Though we handle claims in excess of that amount, any settlement in excess of \$25,000 must be submitted to the Department of Justice for the approval. In most instances, it approves such settlements.

Once a claim is received by an appropriate administrative agency, that agency has six months in which to make a determination on the claim. If a determination has not been made at the end of the six month period, suit may be filed in the appropriate United States District Court. However, there is no requirement that you file after the six month period, and one usually continues to negotiate with this Service until the claim has been settled, assuming, of course, that there is liability on the part of the United States. If a claim has been administratively denied, the claimant must file suit in an appropriate United States District Court within six months from the date of denial or his remedy is forever barred. Furthermore, if the claim is not settled administratively and suit is filed, there is no jury trial under the Federal Tort Claims Act and trial is by judge alone. The authority for these procedures and information is in Chapter 4 of Army Regulation 27-20 and the Federal Tort Claims Act (60 Stat. 842, 28 U.S.C. 2671-2680, as amended by The Act of 18 July 1966).

H.R. 1509

As you are aware after our conversation of 1 July, the Federal Tort Claims Act specifically makes the law of the place where the act or omission occurred the controlling law of each case [28 U.S.C. 1346(b)]. Therefore, the law of Georgia would apply since it appears, both from my discussion with you and with Mr. Holmes, that the entire bed of the Chattahoochee River is a part of the State of Georgia. Accordingly, the Georgia wrongful death act will be controlling (Title 105 of Georgia Code Annotated, §§ 105-1301, et seq.). You may note that with regard to the Nolan and Green claims, § 105-1302 provides that where the husband has died, a widow, or if no widow, a child or children, minor or sui juris, may recover. Also, with regard to the Green claims, § 105-1307 provides that a mother, or if no mother, a father may recover for the homicide of a child, minor or sui juris, unless said child shall leave a wife, husband or child. Since Mrs. Green and Mrs. Nolan now bear names different from those of the deceased, I will have to assume that they have remarried and were, in fact, the wives and mothers of the deceased at the time of the incident, and thus are the proper party claimants here. However, I wish that you would clarify their relationships before we next speak. Furthermore, I would also appreciate a copy of Mr. Enoch Odell Baker's death certificate, since one was not attached to the claim when I received it.

Finally, any application of the Georgia wrongful death statute will necessarily involve the application of *Hartz v. United States*, 415 F.2d 259 (1969). There, the U.S. Court of Appeals for the Fifth Circuit interpreted that statute to be punitive in nature insofar as it permits recovery of more than the loss to the survivor. The court pointedly allowed the reduction of the full value of the decedent's life by necessary or other personnel expenses and by income taxes. In essence, the court was confining the effect of the statute, as applied in Federal Tort Claims actions, to the financial loss of the survivor. Beyond that, damages would be punitive in nature, which is prohibited by the Act itself (28 U.S.C. § 2674). I strongly recommend your reading of this case since any approach to the damages question, assuming government liability, will be controlled by it.

I am hopeful of receiving a preliminary report from the District Engineer's Office within the next few weeks. After I do, I shall be in touch with you regarding the future disposition of this matter. I look forward to working with you, also, and I appreciate your intent to make your clients available for an interview.

Sincerely yours,

JAMES D. WILSON,
Captain, JAGC, Claims Judge Advocate,
General Claims Division.

HQDA (DAEN-GCK),
Washington, D.C., November 8, 1975.

CLAIMS OF JEANETT GREEN AND MARY JANE BAKER NOLAN

1. The problem is to determine appropriate action on subject claims which are, in our opinion, barred by the statute of limitations. It appears that all persons who initially handled the claims believed that they fell under the Federal Tort Claims Act (28 U.S.C. 2671-

H.R. 1509

2680) instead of the Suits in Admiralty Act (46 U.S.C. 741-752). As you know, the latter act, when applicable, preempts the former and the two year time limitations provisions of the latter are not tolled by the filing of an administrative claim or any negotiations thereon. The cause of action accrued on 24 June 1972, the claims were hand-carried to the office of the District Engineer on 21 June 1974, were mailed to this Service and date stamped showing receipt on 25 June 1974 at which time the claims were barred by limitations.

2. The facts are set forth in section 9, DA Form 1208 and may be very briefly summarized as follows: At about 2130 hours on 24 June 1972, the U.S. Army Corps of Engineers lock operator at the George W. Andrews Lock and Dam on the Chattahoochee River in Early County, Georgia, raised a gate to let a dead cow and some other objects pass on down the river. The resulting turbulence capsized a small boat, drowned claimants' decedents and dumped claimant Mary Jane Baker Nolan into the river.

3. It is asserted that the dead and injured persons were contributively negligent in failing to heed warning signs and the like. The question of liability on the merits is fraught with considerable doubt. For the purposes of this letter, however, a discussion of the merits of these claims may be deferred until the statute of limitations problem is resolved. Our opinion that claims, such as these, generated by operation of a lock and dam on navigable waters of the United States, involving injury to or death of persons in a boat on such waters, are cognizable in Admiralty is supported by case law arising after the 1960 amendment to the Suits in Admiralty Act (See *Beeler v. United States*, 224 F. Supp. 973 (W.D. Pa. 1964); *Hess v. United States*, 259 F.2d 285 (9th Cir. 1958); *Rebel Towing Co. v. United States*, Admiralty No. 64-H-67 (S.D. Tex. 1965) reported in 1968 A.M.C. 2526). In considering the Hess case, one must be mindful of the fact that subsequent to Hess the Supreme Court announced that a wrongful death action will lie under general maritime law for a death upon navigable waters of the United States (*Moragne v. States Marine*, 398 U.S. 375 (1970)).

We are mindful of the problems generated by the maritime nexus test of jurisdiction announced by the Supreme Court in *Executive Jet Aviation v. City of Cleveland* (409 U.S. 249 (1972) (see also *Richards v. Blake Builders Supply* and *Blake*, Civil No. 1616-A (E.D. N.C. 1974)), however, it is our opinion that these claims have the required maritime nexus.

4. A letter from claimants' attorney, copy inclosed, alleges that prior to the filing of the administrative claims, he consulted with U.S. Corps of Engineers personnel who advised him that he should not file a complaint within the two year period from the date of the incident as the government had six months from the date of the filing of the claim within which to consider and attempt to administratively handle the claims. If our opinion that the claims are cognizable only in Admiralty is correct, the advice not to sue was incorrect and resulted in barring claimants' cause of action.

5. It must be conceded that it is often difficult to determine whether a claim falls under the Federal Tort Claims Act or the Suits in Admiralty Act. In case of doubt, this Service is required to advise a claimant or potential claimant that he should file both an administrative

claim with the Army and a protective complaint in an appropriate federal district court within two years of the date the cause of action accrued (within 18 months, if the claims are for injury or damage done and consummated on land) (see paragraphs 2-11b(5) and 8-8, AR 27-20; pp. 19, 20, DA Pam 27-50-17, The Army Lawyer, copy inclosed). We request your assistance in advising division and district counsel and claims officers promptly to notify the Maritime Claims Branch of this Service of claims or potential claims which might be cognizable under the Suits in Admiralty Act supra, or the so-called Extension of Admiralty Act (46 U.S.C. 740), so that we can render appropriate advice concerning any statute of limitations problem.

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Calendar No. 1064

94TH CONGRESS }
2d Session }

SENATE

{ REPORT
No. 94-1129

FOR THE RELIEF OF JEANETTE GREEN, AS MOTHER OF THE MINOR CHILD, RICKY BAKER, DECEASED, AND AS WIDOW AND ADMINISTRATRIX OF THE ESTATE OF ENOCH ODELL BAKER, DECEASED; AND FOR THE RELIEF OF MARY JANE BAKER NOLAN, INDIVIDUALLY, AND AS WIDOW AND ADMINISTRATRIX OF THE ESTATE OF JOHN WILLIAM BAKER, DECEASED

AUGUST 6, 1976.—Ordered to be printed

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

REPORT

[To accompany S. 3477]

The Committee on the Judiciary, to which was referred the bill, (S. 3477), for the relief of Jeanette Green, as mother of the minor child, Ricky Baker, deceased, and as widow and administratrix of the estate of Enoch Odell Baker, deceased; and for the relief of Mary Jane Baker Nolan, individually, and as widow and administratrix of the estate of John William Baker, deceased, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this legislation is solely to confer jurisdiction upon the U.S. District Court for the Middle District of Georgia notwithstanding section 745 of title 46 of the U.S. Code, or any other statute of limitations, to hear suit filed within one year of the effective date of S. 3477 by claimants, arising from a boating accident that occurred on June 24, 1972, near George Andrews Dam on the Chattahoochee River, near Columbia, Alabama.

STATEMENT

The facts surrounding this case as taken from correspondence on file with the Committee between the Department of the Army and the two claimants' attorneys are as follows:

① Mary Jane Baker Nolan and her husband, John William Baker and Ricky Baker and Enoch Odell Baker, son and husband of claimant

Jeanette Green respectively, were boating on the Chattahoochee River near the George Andrews Dam on June 24, 1972. At about 9:30 p.m. the U.S. Army Corps of Engineers lock operator at the dam raised a gate to let a dead cow and some other objects pass on down the river. The resulting turbulence capsized the small boat containing the family, drowning the occupants save for Mary Jane Baker.

Claimants, through their attorneys filed timely notice of suit on the appropriate officials at the Corps of Engineers office in Mobile, Alabama. They were advised on July 17, 1974, by the officer in charge of the claim at the Office of the Judge Advocate, U.S. Army Claims Service that the matter would be handled under the Federal Tort Claims Act and that pursuant to Army regulation Chapt. 4 Army Regulation 27-20 and under the Tort claims statute, 28 U.S.C. 2671-80 as amended by Act of 18 July 1966, an administrative determination as to the validity of the claim would have to be made. After the determination, assuming it was negative, claimants were informed that they would have six months within which to file in U.S. district court. Negotiations over the next few months then ensued between the attorneys and the claims service.

Subsequently, the Army claims service advised the attorneys that a determination was made by the Department of Justice that the claim should be prosecuted under the Suits in Admiralty Act (46 U.S.C. 741-752). The latter act where applicable, preempts the Federal Tort Claims Act (28 U.S.C. 2671-2680), and the two-year statute of limitations provisions of the Admiralty Act are not tolled by the filing of an administrative claim under the Tort Claims Act. or any negotiations thereon. The attorneys were informed therefore that discussion on the merits would have to be postponed until the statute of limitations problem was resolved. The case is currently being continued pending action by the Congress.

The Committee notes that the determination by the Government that the claim arises under the acts of Admiralty Act is by no means a compelling one.

The traditional "locus" test for maritime tort jurisdiction was recently modified by the Supreme Court with respect to aircraft crashes impacting on navigable waters, *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972), to require that the tort bear some significant relationship to traditional maritime activities.

Although one court reads that opinion as altering the "locus" test only with respect of aircraft cases, *State of Maryland v. Amerada Hess Corp.*, 356 F. Supp. 975 (D. Md. 1973), other courts interpret *Executive Jet* as erecting a new "locus plus maritime connexity" test. See, e.g., *Earles v. Union Barge Line Corp.*, 486 F.2d 1097 (3rd Cir. 1973); *Teachey v. United States*, 363 F.Supp. 1197 (M.D. Fla. 1973).

Post *Executive Jet* decisions have directly considered whether torts involving small pleasure craft are within the admiralty and maritime jurisdiction. A minority finds no admiralty jurisdiction: *Crosson v. Vance*, 484 F.2d 840 (4th Cir. 1973); *King v. Harris-Joyner Co.*, 384 F. Supp. 1231 (E.D. Va. 1974); *Adams v. Montana Power Company*, 354 F.Supp. 1111 (D. Mont 1973). See also *Rubin v. Power Authority*, 356 F.Supp. 1169 (W.D.N.Y. 1973). The majority find admiralty jurisdiction in such cases: *St. Hilaire Moye v. Henderson*, 496 F.2d 252

(9th Cir. 1973); *Kelly v. Smith*, 485 F.2d 520 (5th Cir. 1973); *Oppen v. Aetna Insurance Co.*, 485 F.2d 252 (9th Cir. 1973).

The claims service concedes that it is often difficult to determine whether a claim falls under the Federal Tort Claims Act or the suits in admiralty Act as stated in a memo attached to letter of April 18, 1975, to claimants' attorneys from the claims service that the problem is such that:

In case of doubt, this Service is required to advise a claimant or potential claimant that he should file both an administrative claim with the Army and a protective complaint in an appropriate federal district court within two years of the date the cause of action accrued (within 18 months, if the claims are for injury or damage done and consummated on land) (see paragraphs 2-11b(5) and 8-8, AR 27-20; pp. 19, 20 DA Pam 27-50-17, The Army Lawyer).

The Committee notes that no such advice was given to the claimant or their attorneys by the claims service. In fact the attorneys were informed that the claim was to be handled by the Army under the Tort Claims Act.

Contained in the memo is a further admission that if the opinion on the part of the government that the claims are cognizable only in Admiralty is correct, "the advice not to sue was incorrect and resulted in barring claimants' cause of action."

The Committee believes that the facts of this case are such that it would be inequitable to bar claimants from proceeding with their claim due to the erroneous advice given by the Army Claims Service to claimants' attorneys. Further, the Committee takes note of the fact that there now exists a split in the circuits as to whether a case of this type would fall under the Federal Tort Claims Act or Suits in Admiralty Act. It is only the fortuitous fact that claimants' cause of action arises in a circuit where the government may argue their case is prosecutable only under the Maritime Act that claimants are prevented from proceeding with their claim. Therefore, the Committee believes that such a bar should be waived and recommends to the Senate that they act favorably in passing S. 3477.

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Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

For the relief of Jeanette Green, as mother of the minor child, Ricky Baker, deceased, and as widow and administratrix of the estate of Enoch Odell Baker, deceased; and for the relief of Mary Jane Baker Nolan, individually, and as widow and administratrix, of the estate of John William Baker, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the limitations of section 745 of title 46 of the United States Code, or any other statute of limitations, suits filed within one year of the effective date of this Act in the United States District Court for the Middle District of Georgia by Jeanette Green as mother of the minor child, Ricky Baker, deceased, and as widow and administratrix of the estate of Enoch Odell Baker, deceased, for the deaths of Ricky Baker, a minor, and Enoch Odell Baker, and by Mary Jane Baker Nolan, individually, and as administratrix of the estate of John William Baker for the death of John William Baker and for injuries to Mary Jane Baker Nolan, arising from a boating accident that occurred on or about June 24, 1972, near the George Andrews Dam on the Chattahoochee River, near Columbia, Alabama, shall be held to be timely suits, and shall be received, considered, settled, and if meritorious, paid in accordance with the otherwise applicable provisions of sections 741 through 752 of title 46 of the United States Code. Jurisdiction is hereby conferred upon the United States District Court for the Middle District of Georgia to receive, hear, and render judgment upon any suits filed with that court under the preceding provisions of this Act. Nothing in this Act shall be construed as inference of liability on the part of the United States.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*