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THE WHITE HOUSE
WASHINGTON

November 6, 1975

ADMINISTRATIVELY CONFIDENTIAL

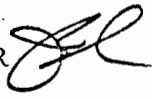
MEMORANDUM FOR:

EDWARD C. SCHMULTS

THROUGH:

PHILIP BUCHEN

FROM:

JAMES E. CONNOR 

SUBJECT:

Claim of the Olson Family
for the Death of Dr. Olson

The President reviewed your memorandum of November 5 on the above subject and approved the recommendation that the CIA with the assistance of the Department of Justice be requested to prepare a private relief bill in the amount of \$1,250,000 to settle the claim of the Olson family and that the Administration support prompt passage of the bill by Congress.

Please follow-up with appropriate action.

cc: Dick Cheney

THE PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

November 5, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: PHILIP BUCHEN *P.W.B.*
RICHARD CHENEY *Rich*

FROM: EDWARD C. SCHMULTS *EC*

SUBJECT: Claim of the Olson Family
for the Death of Dr. Olson

Status of Settlement Discussions and
Recommendation from Director Colby

Pursuant to Rod Hills' earlier memorandum, Mitchell Rogovin, Special Counsel to the Director of the CIA, entered into discussions with attorneys for the Olson family and secured a commitment from them that they would settle their claim for the amount of \$1,250,000. The family would also retain the Federal Employees Compensation Act benefits of approximately \$150,000 paid to date.

Attached at Tab A is a letter to you from CIA Director Colby, dated October 29, 1975, advising that the Olson family has agreed to settle its claim for \$1,250,000, but that the Attorney General is not prepared to certify under existing law that such a settlement is appropriate. In his letter, Director Colby recommends that Congress be requested to pass a private relief bill for the settlement amount. As indicated below, Director Colby appears to be correct in concluding that a routine settlement is not possible and so the options are a private relief bill or litigation with the Olsons.

Problems with a Settlement without
Litigation

Pursuant to the procedure set forth in Rod Hills' earlier memorandum, we have had an informal discussion with the

Labor Department to determine whether the Labor Department (Workmen's Compensation) is likely to reverse its 22-year-old decision that Dr. Olson did die in the course of his employment.

While the Labor Department believes it likely that they will vacate their decision of 22 years ago on the grounds that Mrs. Olson was not given an opportunity to bring a Federal Torts Claim Act case,^{*/} they are not willing, on the facts that they now know, to reverse that decision and find that he did not die in the course of his employment.

After weighing the Government's chances of ultimate success in a lawsuit by the Olson family, the Department of Justice has concluded that the settlement value of the Olsons' claim should be no more than \$650,000. This amount is obtained by taking, in Justice's view, the highest conceivable settlement value of \$1 million, subtracting a discount of \$500,000 for the risk of litigation which Justice believes is substantially in favor of the Government's position, and adding the Federal Employees Compensation Act benefits which the Olsons have received to date of approximately \$150,000. As support for its conclusion, Justice cites the fact that its original \$1 million starting point exceeds by \$250,000 the highest unappealed award for a single death under the Federal Torts Claim Act and exceeds by \$500,000 the advice the Department has received from eminent Maryland counsel as to a fair settlement value. Accordingly, the Department contends that the Attorney General is not in a position to approve a settlement under the Federal Torts Claim Act in the amount of \$1,250,000, the amount tentatively agreed to by the CIA and the Olsons. Attached at Tab B is a memorandum, dated September 24, 1975, from the Attorney General to Rod Hills evaluating the claim of the Olson family.

Thus, absent a private bill, the CIA will be required to reject the Olson family claim and a lawsuit will ensue. The Justice Department will raise two defenses: (1) that Dr. Olson was deemed 22 years ago to have died in the course of his employment and that

^{*/} They reason that she was given false facts concerning her husband's death which could have caused her to bring a suit rather than file for benefits under the Federal Employees Compensation Act.

determination is not now reviewable, and (2) in any event, Dr. Olson did die in the ordinary course of his employment. The Justice Department realizes that it may lose the first issue on the grounds that false information kept Mrs. Olson from electing the remedy of a lawsuit 22 years ago, but the Department feels confident that it will prevail on the second ground.

If the matter goes to trial, the court may well order discovery about the circumstances of Dr. Olson's employment, but we are now informed by the Justice Department that the CIA would not resist discovery of those matters and that no national security issues would be imperiled by such discovery.

Private Relief Bill

Since our efforts at a routine settlement without legislation appear to be frustrated, a private relief bill appears to be the only method to reach an amicable accord with the Olsons out of court. Normally, a private relief bill is a three step procedure: (1) a bill is passed referring the matter to the Court of Claims for a damages hearing; (2) a bill is enacted approving the damages found by the Court of Claims and authorizing payment; and (3) an appropriations bill is passed for the authorized payment. However, Justice has informed me that on rare occasion a relief bill short circuits this procedure and is not referred to the Court of Claims. If you agree with the private bill approach, I believe Legislative Affairs should explore with the Senate and House Judiciary Committees the prospects for a streamlined procedure to achieve rapid passage.

Based on some very preliminary discussions, Max Friedersdorf believes that the House Subcommittee on Claims and Governmental Relations may handle the bill in a low key, routine way and, in any event, would not have jurisdiction to review any other cases that might involve the same subject matter.

If you favor a private relief bill, presumably an attempt would be made to have the bill introduced by Representative Goodloe E. Byron (D. Md.) who represents the Olsons' district. The CIA would be the appropriate agency to express its views as to the amount requested. The Department of Justice would support

such a bill, but, if asked, would indicate that, while not unreasonable, the amount called for by the bill is more than Justice's view of the amount of the damages which would be found if litigation were to occur.

Of course, there are pitfalls in following the legislative trail. Congress may make an issue of the matter. Certain members may wish to have constituent cases treated similarly. Finally, although they now appear ready to follow a private bill route, the Olsons may become impatient and decide to sue.

Recommendation

Because of the history of the settlement negotiations with the Olsons and the unique circumstances of their claim, as well as the difficulty of predicting what the emotional impact of the case would be on a court in applying relevant legal principles, we recommend that the CIA with the assistance of the Department of Justice be requested to prepare a private relief bill in the amount of \$1,250,000 to settle the claim of the Olson family and that the Administration support prompt passage of the bill by Congress. The alternative is to acknowledge that it was not possible to negotiate an acceptable settlement with the Olsons and be prepared to articulate the legal problems that frustrated a settlement. We must be prepared in this regard in any event because the legislative route may fail.

Agree _____ 

Disagree _____

Comment _____

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

29 October 1975

The President
The White House
Washington, D. C. 20500

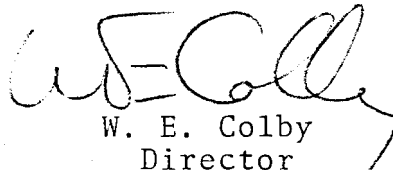
Dear Mr. President:

Pursuant to your instructions, efforts were made to negotiate a settlement of the claim of the family of Mr. Frank R. Olson against the Government based on the circumstances of his untimely death. Although the family has agreed to settle its far larger initial claim for \$1,250,000, the Attorney General is not prepared to certify under existing law that such a settlement is appropriate.

The Olson family is prepared to file suit. Such litigation would doubtless be prolonged and in the view of the Department of Justice, it would fail. Under the circumstances this would not appear to be in the best interests of the nation or the Olson family. I believe in good conscience that the circumstances of this case require an equitable response from the Government.

The only vehicle by which to obtain such recompense would be by passage of private legislation. Consequently, I recommend that you forward a request to the Congress for passage of a private bill in the sum of \$1,250,000.

Respectfully,



W. E. Colby
Director

B



Office of the Attorney General
Washington, D. C.

September 24, 1975

TO: Mr. Roderick M. Hills
Counsel to the President

FROM: The Attorney General *JG*

SUBJECT: Olson Family Compensation Claim.

An amicable disposition of the Olson family claim for damages can be accomplished without litigation either by settlement or private bill. In this regard, the Justice Department has determined that the reasonable settlement value of the Olson family claim is \$500,000. We have also determined that a private bill could reasonably provide compensation in the range \$1 million to \$1.25 million. Some of the factors which generated these values are described below.

I. Settlement Value - \$500,000.

A Tort Claims Act suit can be appropriately settled by the Justice Department at a dollar figure which represents the reasonable value of the claim (absent any defense) minus a discount for the effect of available defenses on the probability that claimants would succeed in litigation.

We have determined that the highest conceivable settlement value of the Olson claim absent any defenses is \$1 million. This figure exceeds by \$250,000 the highest unappealed awards for a single death under the Tort Claims Act -- awards achieved in cases where the decedent left three to five children and possessed an earning capacity many times that of Frank Olson. In addition, this settlement figure exceeds by \$500,000

what Mr. William Marbury recommends as a fair settlement value while matching his estimate of the highest conceivable compensation award in this case.

In reaching this figure, we have appreciated fully the emotional appeal of the unique circumstances of the Olson claim and its likely impact on any court's interpretation of applicable legal principles. On the other hand, we have not ignored the fact that damages in Federal Tort Claims Act suits are established by a judge and not a jury (28 U.S.C. §2402); punitive damages are not permitted (28 U.S.C. §2674); and no action is available for misrepresentation or deceit (28 U.S.C. §2680). In addition, applicable Maryland law may well limit compensation to pecuniary losses. See Plant v. Simmons Co., 321 F.Supp. 735 (D. Md. 1970).

In order to arrive at an appropriate settlement value, we have discounted the \$1 million figure by the possibility that the government will ultimately succeed in this case. We have concluded that whether or not the present FECA decision is vitiated by fraud, the courts will, according to their uniform practice, stay judicial proceedings pending an administrative decision on FECA applicability. Moreover, it seems clear that, consistent with available precedent, the FECA administrators will again find Olson's death compensable under the statute. Therefore, we judge the government's chances of ultimate success to be substantial and claimants' chances to be correspondingly remote. Even substantially overindulging the potential for claimants' success in court, we conclude that the settlement value must be discounted by one-half. Thus, \$500,000 represents the appropriate settlement value of the Tort Claims Act element of this suit. In addition, we have concluded that under the circumstances no offset should be made for the FECA benefits which the Olsons improperly received without any fault of their own. Thus, the total settlement value of the claim to the Olsons reaches \$650,000.

II. Values Appropriate For A Private Bill.

The Justice Department recommendation on compensation values to be included in a private bill would necessarily be responsive to the language and purpose of that legislation. Legislation designed simply to remove the FECA defense to a compensation award should provide for no more than \$1 million - the highest conceivable value of the claim absent defenses. On the other hand, a bill could be designed to explicitly compensate for categories of damages which may not be available in a Tort Claims Act suit. Thus, Congress might provide compensation for the extraordinary deceit in this case, as well as a punitive award. While these elements of damage can not be valued with any precision, we would judge a reasonable value in compensation for these factors to be \$250,000, raising the total compensation award to \$1.25 million. Once again, it may be appropriate to forgo an offset for the FECA benefits received by the Olsons. Such a decision would raise the practical value of this compensation bill to the Olson family by approximately \$150,000.

I assume that if the Olsons are to seek a private bill, the agency which would express its views, if asked, as to the amount would be the DOD or the CIA.