

APPROVED

OCT 08 1976

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THE WHITE HOUSE

WASHINGTON

October 4, 1976

ACTION

Last Day: October 12

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON *JAC*

SUBJECT:

S. 3146 - Relief of Leo J. Conway

*Postcard
10/9/76*

*archive
10/12/76*

Attached for your consideration is S. 3146, sponsored by Senator Taft.

The enrolled bill would authorize and direct the Secretary of the Treasury to pay \$5,000 to the beneficiary in full satisfaction of his claim against the U.S resulting from an April 29, 1919 explosion and crash of a government plane he was piloting. At the time of the crash, Mr. Conway was an employee of the Treasury Department promoting the Victory Liberty Loan Campaign.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Kilberg) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 3146 at Tab B.





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3146 - Relief of Leo J. Conway
Sponsor - Sen. Taft (R) Ohio

Last Day for Action

October 12, 1976 - Tuesday

Purpose

Provides for the payment of \$5,000 to the beneficiary.

Agency Recommendations

Office of Management and Budget Approval

Department of Treasury Approval

Discussion

The enrolled bill would authorize and direct the Secretary of the Treasury to pay \$5,000 to Mr. Leo J. Conway in full satisfaction of his claim against the United States for injuries sustained in an April 29, 1919 explosion and crash of a United States Government airplane he was piloting over Ashtabula, Ohio. The bill would also limit attorney or agent fees for services rendered in connection with this matter to 10 percent of the appropriated payment.

At the time of the crash, Mr. Conway was an employee of the Treasury Department promoting the Victory Liberty Loan Campaign by dropping pamphlets from an airplane. As a result of the crash, the beneficiary required extensive medical treatment of his legs and lengthy confinement in a hospital and at home. In the ensuing years, he has had to return periodically to a hospital for further treatment, and in March 1973, part of his right foot was amputated.

Mr. Conway's file indicates that he received his initial hospital expenses and salary during hospitalization from the Government but no other compensation related to the accident. This arrangement was apparently consistent with the intent of a June 18, 1919, letter from the Central Liberty Loan Committee to Mr. Conway in the Ashtabula General Hospital which stated that "your salary will go on until you are entirely well and are able to go back to work" and that "we will also take care of your expenses and doctor bills while in the hospital." After his initial hospitalization, the beneficiary later attempted, without success, to obtain compensation for expenses related to his injuries from the United States Employees' Compensation Commission in 1930 and from the Veterans Administration in 1933.

For a variety of reasons no legal basis for Mr. Conway's claim for relief could be established. A claim of negligence against the United States, without its consent thereto, cannot be brought under the Federal Tort Claims Act because that Act did not become law until 1946. Similarly, a claim of disability under the Workmen's Compensation Act of 1916 is not recognizable if the claim is not made within 60 days of the injury, or in special cases, within 1 year. In an April 7, 1976 letter to former Senator Lausche, his attorney, Mr. Conway admitted that he had failed to file in a timely fashion because he had "progressed in business and did not think there was a need for a pension or financial relief."

In a June 21, 1976 letter on this matter to Senator Eastland, Chairman of the Judiciary Committee, the Treasury Department stated its belief that there "is neither legal nor equitable basis for the relief proposed..." and that "enactment of this legislation could establish a precedent for granting relief to citizens on grounds other than law or equity, and could open the flood gates to specious claims." The Department recommended that if the Congress was nevertheless inclined to consider favorably this legislation, the matter should be referred by the Senate to the Court of Claims "for a more precise determination of the facts and circumstances."

The Congress, in enacting S. 3146, did not choose to refer the matter to the Court of Claims, but did reduce the payment to be awarded to Mr. Conway from \$30,000 to \$5,000.

The Treasury Department, in its attached views letter, recommends approval of the enrolled bill. In view of these circumstances we see no basis for challenging the judgment of the Congress and accordingly also recommend approval.

James M. Frey
Assistant Director for
Legislative Reference

Enclosures



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

SEP 30 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative
Referencee

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of S. 3146, "For the relief of Leo J. Conway."

This enrolled bill would provide for a payment of \$5,000 to Leo J. Conway, in full satisfaction of all claims arising out of the crash of a U.S. airplane, which Conway, in his capacity as Treasury Department employee, was flying over Ashtabula, Ohio, on April 29, 1919, in connection with the promotion of the Victory Liberty Loan Campaign.

Section 2 of the bill would limit attorney's or agent's fees to 10 percent of the amount appropriated.

The Department recommends that this enrolled enactment be approved by the President.

Sincerely yours,

General Counsel
Richard R. Albrecht

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 2

Time: 600pm

FOR ACTION:

Baul Leach *ja*
Max Friederädorf *an*
Bobbie Kilberg *la*

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 4

Time: noon

SUBJECT:

S.3146-Relief of Leo J. Conway

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to gudy 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

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 2

Time: 600pm

FOR ACTION: Paul Leach
Max Friedersdorf
Bobbie Kilberg

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

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Time: noon

SUBJECT:

S.3146-Relief of Leo J. Conway

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

No objection

Barry Roth 10/4

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

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 2

Time: 600pm

FOR ACTION: Paul Leach
Max Friedersdorf
Bobbie Kilberg *M.G.*

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 4

Time: noon

SUBJECT:

S.3146-Relief of Leo J. Conway

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. [Signature]

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

LEO J. CONWAY

AUGUST 6, 1976.—Ordered to be printed

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

REPORT

[To accompany S. 3146]

The Committee on the Judiciary, to which was referred the bill, (S. 3146), for the relief of Leo J. Conway, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

AMENDMENT

On page 1, in line 5, strike the figure of "\$30,000" and insert in lieu thereof "\$5,000".

PURPOSE OF THE AMENDMENT

The purpose of the amendment is to change the amount of compensation accorded the claimant from \$30,000 to \$5,000.

PURPOSE

The purpose of the proposed legislation, as amended, is to authorize and direct the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Mr. Leo J. Conway of Cleveland, Ohio, the sum of \$5,000 in full satisfaction of his claim against the United States Government arising out of the crash of a United States Government airplane, which Mr. Conway, as an employee of the Department of the Treasury, was flying over Ashtabula, Ohio, on April 29, 1919, in connection with the promotion of the Victory Liberty Loan Campaign.

STATEMENT

The facts of this case, as presented by Senator Robert Taft, Jr., in introducing the bill S. 3146 on March 16, 1976, are as follows:

Mr. Leo J. Conway of Cleveland, Ohio, was severely injured in an aircraft accident which occurred in April of 1919, while he was an employee of the U.S. Treasury Department. After several years and many attempts to obtain compensatory relief for his injuries, Mr. Conway has been unsuccessful with the various Government agencies which have jurisdiction over this problem. It is now appropriate for the Congress to provide him with some necessary financial assistance. . . .

Mr. Conway was discharged from the U.S. Army Air Force in March of 1919. Soon thereafter he joined the 4th Federal District of the U.S. Treasury Department to work on behalf of the Liberty Loan Organization, an instrumentality of the U.S. Government. Pursuant to his duties and responsibilities on behalf of the Treasury Department, he had occasion to secure a Government airplane at Selfridge Air Force Base in Michigan in April of 1919, where he was to fly over the 4th Federal District to advertise the 5th Victory Loan drive. Mr. Conway distributed advertising pamphlets while flying over these cities.

In the course of carrying out his duties, Mr. Conway landed in Ashtabula, Ohio, to replenish the airplane's gas tanks. Shortly thereafter he took off from Ashtabula to fly to Erie, Pa. When he was approximately 200 feet off the ground, the gas tanks exploded. Fortunately, he survived and was taken to Ashtabula General Hospital for treatment to his legs which were badly burned as a result of the explosion.

Mr. Conway had extensive medical treatment on his legs. He remained in the Ashtabula General Hospital from the date of the accident to July 4, 1919, where he was removed to Charity Hospital in Cleveland, Ohio. He remained there for the next eight months where seven skin grafts were performed. He was released from that hospital in March of 1920 and spent the next year living in Cleveland so that he could return to the Charity Hospital for continued treatment. He attempted to gain other employment in July of 1922, but was able to work only one day because of the continuation of bleeding in his legs.

Approximately every five years after he was initially hospitalized, he had to return to the hospital for a week for treatment of the skin grafts which broke open. He never applied for any welfare because he was too proud to ask. He has had continuous pain in both legs for the past 55 years, but has learned to live with it.

In March of 1973, he had a partial amputation on his right foot.

Despite the injuries he received while a Government employee in the course of Government business, while using

Government property, he has never received any compensation therefore.

Although the General Counsel of the Treasury in its report on this bill recommended referral to the Court of Claims, the Committee is favorably disposed toward this bill and recommends its passage.

Attached and made a part of this report is the letter from The Department of the Treasury.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., June 21, 1976.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 3146, "For the relief of Leo J. Conway."

The bill would authorize and direct the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Mr. Leo J. Conway of Cleveland, Ohio, the sum of \$30,000 in full satisfaction of his claims against the United States Government arising out of the crash of a United States Government airplane, which Mr. Conway, as an employee of the Department of the Treasury, was flying over Ashtabula, Ohio on April 29, 1919 in connection with the promotion of the Victory Liberty Loan Campaign.

The enclosed documents are chiefly from the files of the Department's Bureau of the Public Debt. They are the only factual material on this case that the Department has been able to locate at this time. However, these documents are predominantly letters and as such present an incomplete picture of the situation, and further are not substantiated by any independent evidence.

According to an affidavit sent to the Veterans Administration in 1919 and letters sent to Mr. Lausche, his attorney, Mr. Conway was piloting a plane, on April 29, 1919, for the Central Liberty Loan Committee which plane exploded upon take-off from a refueling stop in Ashtabula, Ohio. Mr. Conway states that the accident was not his fault. As a result of this accident, he states that he suffered burns on the lower parts of both legs and that he was confined to "the hospital and home for 2 years and 3 months," and was left "permanently disabled." According to the affidavit, at the time of the accident Mr. Conway was a reserve officer and was employed by the Treasury Department through the Central Liberty Loan Committee.

The statements in the affidavit and letters concerning Mr. Conway's accident and employment appear to be substantiated by a June 18, 1919 letter to him from a Mr. L. C. Vinson of the Central Liberty Loan Committee and a October 29, 1919 letter to him from a Mr. W. A. Kleet, Chief Accountant of the Federal Reserve Bank of Cleveland.

It appears from the file that Mr. Conway received his initial hospital expenses and salary during hospitalization from the Government but no other compensation related to this accident. The letter from the Central Liberty Loan Committee states that "your salary will go on until you are entirely well and are able to go back to work" and that "we will also take care of your expenses and doctor bills while in the

hospital." In his April 15, 1976 letter to Mr. Lausche, Mr. Conway states that he received his salary from the Treasury while he was in the hospital and that he assumes his hospital expenses were taken care of. Mr. Conway apparently made unsuccessful attempts to seek compensation for expenses related to his injuries from the United States Employees' Compensation Commission in 1930 and from the Veterans Administration in 1933.

Mr. Conway's letter to Senator Lausche dated February 26, 1976 states that he has never completely recovered from his accident and has continued to receive medical treatment for the injury on a periodic basis. This has necessitated his hospitalization for about a week, approximately every five years, and caused a partial amputation of his right foot in 1973.

S. 3146 would require that Mr. Conway be paid \$30,000 in "full satisfaction of all claims against the United States." Any such claims appear to involve only those expenses incurred by Mr. Conway after his initial hospitalization, since he has stated in a letter to Mr. Lausche that he assumes those initial expenses were taken care of.

A claim of negligence against United States, without its consent thereto, is not available to Conway as the Federal Tort Claims Act was not enacted until 1946. The only cause of action available to Mr. Conway would be under the Workmen's Compensation Act of 1916, 5 U.S.C. 8101, *et seq.* However, the statute of limitations for claims under the Act (5 U.S.C. 8122, as revised), only recognizes disability claims made within 60 days of the injury, or in special cases, within 1 year. Even if the facts would support a workmen's compensation claim, the action would be barred by the statute of limitations. Thus, we do not believe that there is now any legal basis for the claim.

Based on the statements found in the enclosed documents, the equities of the case appear to be as follows. It is possible that the letter from the Liberty Loan Committee stating that the organization would pay all Mr. Conway's "expenses and doctor bills while in the hospital" could be interpreted to include any subsequent hospital expenses arising from the accident. This interpretation would be weakened, however, by the fact that the letter was addressed to Mr. Conway in the Ashtabula General Hospital and that it states that the Committee would be closed down by the time Mr. Conway was discharged from the hospital.

It was apparently not the promises of the Liberty Loan Committee which kept Mr. Conway from filing a claim in a timely fashion. In his April 7, 1976 letter to Mr. Lausche, he states that his claim "should have been presented years ago" but was not because "I progressed in business and did not think there was a need for a pension or financial relief."

The present claim by Mr. Conway is made 57 years after the accident and the letter from the Liberty Loan Committee, and 46 years after his workmen's compensation claim. Any equities present in the case would be subject to a defense of laches. So much time has passed since the accident and subsequent related events that the truth of allegations and clarity of evidence are obscured.

Thus, the Department believes there is neither legal nor equitable basis for the relief proposed in S. 3146. Further, we are concerned

that enactment of this legislation could establish a precedent for granting relief to citizens on grounds other than law or equity, and could open the floodgates to specious claims.

However, if the Committee is favorably inclined to consider this legislation, the Department recommends referral by the Senate to the Court of Claims, pursuant to 28 U.S.C. 1492 and 28 U.S.C. 2509, for a more precise determination of the facts and circumstances. (See particularly section 2509(c)).

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

HENRY C. STOCKELL, Jr.,
Acting General Counsel.

Enclosures filed with the Committee.

○

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 Leo J. Conway.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$5,000 to Leo J. Conway of Cleveland, Ohio, in full satisfaction of all claims against the United States of the said Leo J. Conway arising out of the crash of an airplane of the United States Government which the said Leo J. Conway, as an employee of the Department of the Treasury, was flying over Ashtabula, Ohio, on April 29, 1919, in connection with the promotion of the Victory Liberty Loan Campaign.

SEC. 2. No part of the amount appropriated by 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. Violation of this section shall be a misdemeanor punishable by a fine in any amount not exceeding \$1,000.

Speaker of the House of Representatives.

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