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WAR CLAIMS ACT AMENDMENTS

LEGISLATIVE COMMITTEE
ON THE JUDICIARY
1974-1975

HEARING

BEFORE AN

AD HOC SUBCOMMITTEE

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

S. 1728

TO INCREASE BENEFITS PROVIDED TO AMERICAN
CIVILIAN INTERNEES IN SOUTHEAST ASIA

DECEMBER 3, 1974

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(II)

**TO INCREASE BENEFITS PROVIDED TO AMERICAN
CIVILIAN INTERNEES IN SOUTHEAST ASIA**

TUESDAY, DECEMBER 3, 1974

U.S. SENATE,
AD HOC SUBCOMMITTEE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 6202, Dirksen Senate Office Building, Senator Quentin N. Burdick presiding.

Present: Senators Burdick and Fong.

Also present: William P. Westphal, chief counsel; Brian C. Southwell, deputy counsel; and Kathy M. Coulter, clerk.

Senator BURDICK. This morning we are meeting to receive testimony on S. 1728 which contains proposed amendments to the War Claims Act of 1948.

There are two separate amendments, the first providing an increase in benefits paid to civilian internees in Southeast Asia from the present \$60 per month to \$150 per month. This would be paid out of the War Claims Fund and would amount to a total of approximately \$275,000.

This measure was passed by the Senate on October 8, 1973, and sent to the House. It was amended by the House to provide certain priorities in payment of claims by individuals and corporations for property lost in World War II which is the subject of today's hearing.

The War Claims Act was intended to provide some measure of relief to U.S. citizens and U.S. corporations who suffered injury, death or property loss as a result of the hostilities with Japan and Germany. They were to be paid as a matter of grace from the moneys received from the sale of enemy assets.

Because the claimants had no vested rights in the fund and because full payment of all claims was unlikely, Congress authorized payment through a system of priorities based on equity.

Personal injury and death claims were given first priority, with claims of small businesses, and those of \$10,000 or less also paid in full. In 1970 further amendments gave full satisfaction of claims by religious, charitable, and similar nonprofit organizations and authorized additional payments not to exceed \$35,000 of which \$11,000 has been paid to date. All claims not yet fully satisfied were to take from the balance on a pro rata basis.

Six thousand six hundred and ninety-two claims have been fully satisfied of approximately 7,000 total claims. The total expenditure to date is approximately \$350 million. The remaining 161 corporate and 187 individual claims represent the largest of the nonpriority awards.

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The payments which have been made to date can best be summarized as follows:

Thirty-four death and personal injury awards paid in full totalling \$510,035.

Two hundred and fifty-one small business awards paid in full totalling \$12,026,093.

Five thousand six hundred and thirty-four awards of \$10,000 or less paid in full totalling \$13,059,352.

Thirty-three religious, charitable and nonprofit awards paid in full totalling \$24,189,313.

Eight hundred and eighty-six individuals have received payment of \$35,276,571 leaving 187 individuals with a remaining unpaid claim balance of \$6,578,916.

One hundred and ninety-nine corporations have received payment of \$249,441,491 leaving 161 corporations with a remaining unpaid claim balance of \$94,700,830.

The amendment made by the House has now proposed a payment priority which would satisfy all individual claims up to \$500,000 and pay up to \$50,000 on each corporate claim with the balance of any funds remaining after these priority awards to be divided pro rata by the corporations. This proposal would require an additional \$6 million in priority payments and reduce the pro rata fund accordingly.

It is anticipated that a total of \$20 million will be available for both the priority and the pro rata disbursement from the fund. Under the present law, priority payments would take approximately \$5,300,000 leaving a fund of \$14,700,000 to be distributed pro rata. The House amendment would require \$11,300,000 in priority payments and reduce the pro rata fund to \$8,700,000.

At our hearing today we will hear from various claimants, individual and corporate, who, variously support or oppose the House amendment. Before calling our first witness a copy of S. 1728 as passed by the House will be incorporated in the hearing record and be received without objection.

[The bill, S. 1728, follows:]

Union Calendar No. 560

93^D CONGRESS
2^D SESSION

S. 1728

[Report No. 93-1179]

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 1973

Referred to the Committee on Interstate and Foreign Commerce

JULY 3, 1974

Reported with amendments, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To increase benefits provided to American civilian internees in
Southeast Asia.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 ~~That section 5(i)(3) of the War Claims Act of 1948~~
4 ~~(50 App. U.S.C. 2004(i)(3)) is amended to substitute~~
5 ~~“\$150” for “\$60”.~~

6 *That section 5(i)(3) of the War Claims Act of 1948 (50*
7 *App. U.S.C. 2004(i)(3)) is amended by striking out*
8 *“\$60” and inserting in lieu thereof “\$150”.*

9 *SEC. 2. (a) Section 213(a)(3) of the War Claims Act*
10 *of 1948 (50 App. U.S.C. 20171(a)(3)) is amended to*
11 *read as follows:*

I

1 “(3) Thereafter, payments from time to time on ac-
2 count of the other awards made to individuals pursuant to
3 section 202 and not compensated in full under paragraph
4 (1) or (2) of this subsection in an amount which shall be
5 the same for each award or in the amount of the award,
6 whichever is less. The total payment pursuant to this para-
7 graph on account of any award shall not exceed \$500,000.”.

8 (b) Section 213(a) of such Act is amended by redesi-
9 gnating paragraph (4) as paragraph (5) and inserting after
10 paragraph (3) the following new paragraph:

11 “(4) Thereafter, payments from time to time on account
12 of the other awards made to corporations pursuant to section
13 202 and not compensated in full under paragraph (1) or
14 (2) of this subsection in an amount which shall be the same
15 for each award or in the amount of the award, whichever is
16 less. The total payment pursuant to this paragraph on account
17 of any award shall not exceed \$50,000.”.

Amend the title so as to read: “An Act to amend the War Claims Act of 1948 to increase benefits provided to American civilian internees in Southeast Asia and to provide for additional payments on awards made to individuals and corporations under that Act.”.

Passed the Senate October 8, 1973.

Attest:

FRANCIS R. VALEO,

Secretary.

Senator BURDICK. Also the House hearing record will be incorporated by reference only.

Our first witness is Congressman Eckhardt.

Welcome, Congressman.

**STATEMENT OF HON. BOB ECKHARDT, A REPRESENTATIVE IN
CONGRESS FROM THE EIGHTH CONGRESSIONAL DISTRICT OF
THE STATE OF TEXAS**

Mr. ECKHARDT. Mr. Chairman, I certainly appreciate this committee's hearing me today, and I appear here only because I was most active in setting up the hearing in the subcommittee on the House side, since John Moss, the chairman of my subcommittee, was at the time recuperating from an operation.

I must say frankly that the merits of the bill that passed the House ultimately, that is, S. 1728, came to me as the result of studying the problem here involved, and hearing the witnesses to it. I think it first must be clearly understood—and I am sure that the members of the committee do understand it, but perhaps it is not generally understood by members of either body—that this of course is not the same as a claim in bankruptcy in which various claimants are making a claim against a contractual interest. It constitutes in effect a rather bounteous grace on the part of the Government to try to do the best that can be done to relieve the suffering of certain American citizens who suffered loss because of action taken by the enemy. Typically, these claims arise from Nazis taking over a family-owned corporation or a family-owned business in which there was an American interest, for instance, the case of the children of someone who may have been a national of Germany.

Now of course the claims include both corporate and private individual claims. As is known, the amount available is very inadequate to satisfy all the claims and the chairman has set out basically what I have said in the first few pages of my testimony. I would only repeat to say that there remain unpaid portions of 186 awards to individuals. My figures indicate a total of \$6,525,000, Mr. Chairman. I think that is roughly the same as the chairman stated. There also remains 161 awards to corporations, totaling \$94,700,000. The remaining assets of the War Claims Fund, however, are far less than the total of these unpaid awards.

Mr. Chairman, under existing law each award holder would receive up to \$24,000 plus a pro rata share of the amount remaining in the Fund, if any, after the \$24,000 distribution. Thus, under the existing law the corporate award holders would receive 96 percent of all pro rata distribution.

Now we in the House, recognizing that the funds are not adequate and recognizing that to follow the present system would result in rather small recovery by those who had lost everything they had in connection with certain actions by enemy forces, typically of course the Nazis seizing the business of Jewish extraction in Germany—we felt that preference should be given to the individual claims. This would cost the corporate claim holders approximately 20 cents on the dollar, but it would give really substantial reparation to those who lost all they had. In other words, it is the difference between making

whole those who were the victims of a disaster and making whole those who engaged in a business enterprise and ultimately lost.

Mr. Chairman, to give a typical example of one of the major corporate contender's case, I could use the case of Boise Cascade. I hope the committee will understand that what I say here is of course in no way to detract from counsel who represent the various corporate claim holders, because of course they are concerned about recovery of several million dollars for their clients and it is quite understandable that they would take the position that the present law should continue in effect.

When I was practicing law, you know, I used to say to some of my colleagues on the other side of the table somewhat facetiously that I wished I was on their side because if they won, they had a degree of victory, and if they lost, they knew that justice had been done. And I am also quite sure that even some of the advocates must understand that this is a question really of fundamental justice.

But getting back to the case of Boise Cascade, it goes something like this. Boise's claim arises from the loss of Shanghai Power Co., which was purchased by or was a part of American & Foreign Power Co. American and Foreign had completely written off Shanghai as worthless at the time that it consolidated with Ebasco Industries. Subsequently Ebasco was purchased by Boise Cascade, and therefore, after 30 years with four changes in corporate structure and with purchasers always anticipating the lack of any value with respect to Shanghai, Boise was nevertheless able to recover \$5 million up to the present time on the claim for Shanghai. And if this bill is not passed, it will recover another \$3 million.

On the other side of the scale we had a number of persons—and incidentally, that happens to be information that was contained in Boise Cascade's corporate publication, which I have a copy of, and I should like to ask permission to have it made a part of the record at this point.

Senator BUEDECK. It will be so inserted.

[The corporate publication referred to follows:]

THE VENERABLE SHANGHAI POWER COMPANY

(By Alice Dieter)

Boise Cascade may benefit financially from the dramatic and sudden change in relations between the U.S. and China. The money, which the company has never really counted on and doesn't today, would come from a settlement of U.S. claims totaling \$200 million for American property expropriated by the Chinese in 1950.

Boise Cascade's claim is based on its ownership of 80 percent of the common stock of the venerable Shanghai Power Company, a property worth \$56 million which came to Boise Cascade in 1969 through its merger with Ebasco Industries. The Shanghai property has never been carried by Boise Cascade as either an asset or a liability. In fact, even Ebasco's predecessors had written the property off many years ago.

Interest in the Shanghai Power matter has heightened considerably since it became evident that relations between the U.S. and China were moving toward relative cordiality. Settling old business debts is an invariable prelude to re-establishing formal diplomatic recognition, which is considered a virtual certainty in the case of China and the U.S.

The story of Shanghai Power is a fascinating bit of recent history. When the government of the People's Republic of China took over the electrical utility it acquired what was by anyone's standards one of the world's important utility properties.

Shanghai Power began in 1901 as the electrical department of the municipal council administering Shanghai's famous International Settlement. Under the now repudiated concept of "extraterritoriality," foreign nationals doing business in China operated under laws of their own countries. Thus the International Settlement was, in effect, a western city within China.

The Shanghai Municipal Council sought a buyer for the utility in 1929 because management responsibilities were becoming more than the council wanted to handle. The successful bidder was the Shanghai Power Company, an offshoot of American & Foreign Power Company, a U.S. corporation with extensive utility holdings in Latin America. American & Foreign Power eventually merged with Electric Bond and Share to become Ebasco just two years before Ebasco merged with Boise Cascade.

After its successful bid, Shanghai Power found itself with a steam generation and electrical distribution system already producing 535 million kilowatt hours annually.

During the 1930s, both Chinese and foreign industrial developers were attracted to Shanghai by the power company's rates, then the lowest in the world; its abundant supply of electrical energy; the treaty port status of Shanghai; and the relative stability of the area, in part made possible by the presence of powerful foreign gunboats. During this period, from 50 to 75% of China's industrial capacity was in the Shanghai area, and Shanghai Power's annual kilowatt output eventually passed the billion mark. Even today all of Alaska is consuming only a little over one billion kilowatt hours.

Letters written by the power company's original officers describe with enthusiasm the size and potential of their new acquisition's operating area. With somewhat less enthusiasm, the American businessmen reflected on the British way of doing business, marked by the tradition of taking time for tea no matter what and on dealing with the Chinese, whose thousands of years of highly cultured existence dictated that in all things they be subtle, oblique and, of course, inscrutable.

Reginald Edwards, Shanghai Power's secretary-treasurer and the last U.S. manager to leave following the expropriation, reported that from the very beginning the policy was to gradually build a management nucleus of Chinese. As a result, the western executive corps of 70 was reduced to 25 by 1945, when Shanghai Power began to rebuild following the end of the war with Japan.

The impact of the Japanese incursion into China was first felt by Shanghai Power in 1937 and reflected in the American & Foreign Power Company's annual report for that year. The Japanese Army had captured Shanghai. The company suffered some loss of transmission and distribution equipment during the infamous bombing of Shanghai. There was also a significant drop in power usage and revenue.

The 1937 bombing and subsequent fighting were reported to shareholders as the "Shanghai incident." Considering the magnitude of the struggle, the damage was slight and by year's end demand for power was again on the upswing.

Under Japanese influence, the International Settlement continued to exist initially. One newspaper described it as "a small piece of neutral territory in the middle of a battlefield." Local Chinese officials were simply displaced by Japanese.

Subsequent reports to stockholders indicated a growing electrical output, but any business benefits were outweighed by political and economic instability. Inflation kept exchange rates zooming as Chinese currency lost value, the output of Chinese coal mines was lost and the cost of fuel to operate the electrical generators increased significantly. Transportation costs climbed, too, as the war in Europe began and much of the world's merchant shipping fleet was drawn into the task of supplying the allied war effort.

By 1941, even Shanghai lost its unique status. Japanese presence became military occupation. Officers of Shanghai Power were interned. As far as shareholders were concerned, the property in China was written off in 1941 and never again appeared as an asset on the books.

When the war in the Pacific ended in 1945, the officers of Shanghai Power, some still living in internment camps, quickly repossessed the company. Its generating plant had been severely disabled and its crucial supply of coal totally depleted.

For the next four years Shanghai Power, along with the city of Shanghai, worked to rebuild and expand. Shareholders of American & Foreign Power

were given yearly reports of plant repairs and additions and of expanding power capacity as the area grew and the economy revived.

But turmoil in China continued. The civil war, interrupted by the Japanese invasion, resumed. It was a titanic struggle for control of a sleeping giant of 800 million people, untold natural resources and developmental potential. No matter who won, the future of foreign investors was to remain uncertain. Shanghai Power Company operated entirely on its local income and resources. Authorities allowed no exchange for payout to foreign shareholders.

So, in spite of the optimistic reports of increased power capacity and a growing market, realities dictated that the investment could not be safely reinstated as a corporate asset.

In 1950, with the final triumph of the People's Army led by Mao Tse-tung and the flight of Chiang Kai-shek and the Nationalists to Formosa, came the last word: "None of the foreign staff remains in Shanghai. Shanghai Power now has no contact with the Chinese locations and no direct knowledge of their operations."

Before that final leave-taking, company officials witnessed Nationalist planes from Formosa break a pledge not to bomb the company's operating facilities. After the deliberate bombing, which Mao's regime viewed as U.S. inspired, company officers were required to spend daylight hours within the company's main generating plant as insurance against further bombing.

From that day on the major concern was to secure exit visas and transportation to get western personnel safely out of China.

Shanghai Power existed for western interests only as sheaves of corporate records, volumes of annual reports, correspondence, charts and photographs, and in the testimony before war claims commissions convened to establish the value of expropriated property.

That value was first recognized in 1967 when Ebasco was awarded \$4.8 million in compensation for damage and loss to property sustained during the war years. Claim payments came from the liquidation of Japanese and German holdings seized at the start of World War II. The payments amounted to 61.3¢ on the dollar.

In a quirk of legal fate, the claims payment to Shanghai Power was again frozen by the U.S., this time as a Chinese asset because, by law, the company is a "Chinese entity." Ebasco was allowed only reimbursement for pension payments made to retired Shanghai Power employees and an additional sum to continue their pensions and cover expenses entailed in claims actions.

The current claim for \$56 million was certified under the International Claims Act of 1949 and, with claims for other expropriations, is the subject of negotiations with Peking now. These negotiations will determine what share, if any, of a settlement Boise Cascade will realize. And the situation is certainly not simple.

Negotiations must also decide the final release of \$78 million in Chinese assets frozen and held in this country since 1950, including funds belonging to Shanghai Power.

And, although Congress would probably not be receptive, there may be pressures to present additional claims against China, claims that were not filed during the 18-month period in the mid-1960s when the International Claims Commission existed. New claims allowed now would undoubtedly reduce the size of the eventual share each valid claimant would receive on its lost investment or property.

Even if all these loose ends are tied up, there is still another roadblock to a final closing of Shanghai Power's books. Some stocks and bonds issued by the company exclusively within China in the early 1930s were pegged to the Shanghai tael, a local currency.

Hoping to facilitate settlement, Boise Cascade asked a Delaware court to determine the value of these Chinese securities. In a recent decision which is still subject to appeal, the court held to the classical economic theory that a currency is only as valuable as its government can guarantee. Political disruption and consequent inflation erased the value of the Shanghai tael and succeeding currency issues, the court said. Near the end of the 1940s, \$11.5 million Chinese dollars were equal to only \$1 (U.S.).

The pace of justice and diplomacy considered, it will be some time before the matter of Shanghai Power is ended.

The human side of this small part of history is the story of men and women who worked to build the largest electrical generating and distribution facility in all of China.

Reginald Edwards, the former Shanghai Power executive, writes about his experience from his retirement home in England. "Looking back on the 20-odd

years period the company existed under American management, from a detached point of view as I can see now, it was quite magnificently run under fantastic conditions. Throughout there was virtually no return to the shareholders. But by 1949 we were able to hand over the plant and materials in the same state as in 1941. The plant had been renewed and rehabilitated completely and converted twice—coal to oil, oil to coal.

"The importance to China generally and to Shanghai itself cannot be over-emphasized. The company had nothing to show for 20 years of endeavour except total loss. The gain went to China."

Mr. ECKHARDT. On the other side of the coin, Mr. Chairman, the claims of the individuals are typically of this nature, for instance, someone may have had a family business like say a bakery. They may have escaped confiscation of the bakery for a particular period of time by using some family business name or family corporation, but ultimately it was discovered that it was say, the Greenberg bakery and was ultimately seized by the Nazis. Everything was lost in that case. The persons involved in such a venture were not in a position to choose where they engaged in risk. They were simply doing the best they could to hold their family business intact.

I should hasten to say that none of these claims can be made by other than citizens of the United States who at the time of the loss were citizens of the United States. So I think that there is a vast difference between the two categories of the plaintiffs. The person losing say, the family bakery would ultimately receive only a relatively small part of the loss of an entire family fortune if we do not change the law at this time.

Now those it seems to me are the points which sustain the merits of the action that has been taken up to this time. I certainly thank the committee for this opportunity.

Senator BURDICK. Well, Congressman, you have presented a good case for your proposition.

Mr. ECKHARDT. Thank you, sir.

Senator BURDICK. I have some questions. You say that if the individual claims are paid in full, that the corporate claims will be paid out at the rate of 80 cents on the dollar?

Mr. ECKHARDT. I don't believe it would run that high.

Senator BURDICK. Well you said it would cost them 20 cents on the dollar.

Mr. ECKHARDT. It would cost them 20 cents on the dollar of their recovery. Their recovery would be reduced by 20 percent if the individual claims were paid first, in other words.

Senator BURDICK. I am still saying that they get 80 percent of their claim?

Mr. ECKHARDT. They get 80 percent of their entitlement under this claim. I think we may just be bickering with words. I think generally though what you say is correct; yes.

Senator BURDICK. With the \$20 million available for payout, if the individuals are paid in full, then their entitlement, Mr. Eckhardt, based upon the \$20 million, would be reduced 20 cents on the dollar. Is that another way of putting it?

Mr. ECKHARDT. Yes; the amount they would receive if the House amendment became the law, Senator, would be reduced by 20 percent.

Senator BURDICK. In other words your \$20 million is undivided at this particular moment, correct? Let us say it is. And if the individ-

uals are paid out in full on this entitlement, the corporations then would have to be reduced by 20 percent?

Mr. ECKHARDT. That is right.

Senator BURDICK. Why should we take a different rule than we use in bankruptcy cases? There is no such preference when you have a bankruptcy claim, is there?

Mr. ECKHARDT. Mr. Chairman, that is what I started out saying, that I think this has to be distinguished from a case in which persons are making a claim against a fund to which they have a contractual right. In such a case I think as a matter of constitutional law, we cannot destroy their contract. Sometimes we do individuals injustice by following that rule, but we are bound to do it because there is a contractual right to a claim against the fund which remains, which is less than enough to pay the whole amount.

And in this instance of course, nobody has a contractual right or any property right in the fund at all. The entitlement which is created, was created by statute. The fund comes from the sale of enemy assets that we seized and of course those assets had nothing to do with the assets of say Boise Cascade or any of the individuals involved. The question is, to what extent and in what manner will we divide this fund, which we have complete control over and in which nobody has a contractual right or a property right, and how do we best handle this to achieve the highest degree of equity? That I think is the difference between the bankruptcy situation and the one here.

Senator BURDICK. You say that when weighing or balancing the equities, an individual has lost everything and the corporations are still in existence.

Mr. ECKHARDT. That is correct. The corporation in the first place risked only a small part of its total capital, but they would take up the major part of the remaining amount. But, as I say, as a proportion of the total investment of the corporation, the claim was very small.

As I pointed out, it is extremely difficult to get funds back to those who lost them 30 years ago in a corporate situation because the corporation's stockholders have changed even in the normal situation. And as I say, the example I gave of Boise Cascade, well, in that one there were even a number of acquisitions; there were three or four acquisitions or consolidations that occurred in the 30-year period.

But in the case of an individual, Senator Burdick, it is that person who has the loss and it is that person who is recompensed for the loss. I should also mention that a number of these claims are insurance claims. In a case like that, of course, the insurance company was willing to take a risk overseas say in Germany and willing to take a risk overseas say in France. The insurance company was drawing premiums from all its risk taking. Now in Germany it lost whereas in France perhaps it didn't. Of course, also it has great investments in the United States.

The thing is that the insurance company was in the business of risk taking and was paid for that risk taking through premiums. but it is now attempting to recover the losses where it bet and lost. Now that is not the situation of the individual.

Senator FONG. May I interject here?

Senator BURDICK. Certainly.

Senator FONG. You say the insurance company is in the business of taking losses and is paid premiums to take that risk. If you say that, why do you class insurance corporations with other corporations in the same class?

Mr. ECKHARDT. Well, Senator Fong, perhaps there is a different equity there too. It is difficult for me to see much justification for an insurance company's recovery, but even in the case of a large corporation, the large corporation is risking only a small part of its capital because it expects a gain with respect to its investment. Perhaps that gain was considerable before the taking of the property. So it at least had the choice of running the risk overseas or not running it.

In the case of virtually all of the individual claims, there was no choice at all. This was a matter of family savings.

Senator FONG. Now the insurance company claims, are these subrogation claims?

Mr. ECKHARDT. I think some of them are. I am not sure about that, but I think that is correct. Counsel could probably verify that.

Mr. WESTPHAL. That is my understanding, Senator Fong, that they are filed on a subrogated basis and they have received about 65 percent to date.

Senator FONG. I see. So insurance companies are actually now taking the place of the person who was at a loss? In other words it paid the person under the insurance policy, and now they are asking to be subrogated in the place of that person, is that correct?

Mr. ECKHARDT. That would be the case of those subrogations for corporate losses of the same type as the corporate claims.

Senator FONG. Wouldn't it be fair to give that premium back?

Mr. ECKHARDT. We haven't asked that, and that has not been raised.

Senator FONG. What I am trying to show is, in this business this is a risk they take.

Mr. ECKHARDT. I think it is.

Senator FONG. And now they are asking to be reimbursed in full plus the premiums that they have received?

Mr. ECKHARDT. Frankly, I don't think that is too different from the situation of a company that say purchases Shanghai Power Co. That was a risk too and it was an understood risk at the time it was taken. Frequently overseas investment may reap very large and even windfall profits. On the other hand they may result in the kind of losses that occurred here.

Senator FONG. Now a corporation under your formula would lose 20 cents on every dollar. Is that correct?

Mr. ECKHARDT. Well, what I am trying to distinguish between is that they are not receiving 20 percent less than their entire losses, but they would receive 20 percent less on their recovery than if the law remains as it is today. In other words, we would reduce their recovery by passage of this bill by 20 cents on the dollar in order to give individual preference.

Senator FONG. In other words if we didn't enact this bill, they would recover 20 percent more?

Mr. ECKHARDT. That is correct.

Senator FONG. But still they would not be made whole?

Mr. ECKHARDT. Nobody would be made whole.

Senator FONG. Yes. Now with the passage of this bill as passed the House how much would the corporations lose as distinguished from the individuals? Would the individual be wholly paid?

Mr. ECKHARDT. The individuals have remaining awards totaling \$6,525,000. That is 186 awards. Out of the fund they could be paid wholly for this amount as I understand. Of course they are really never wholly paid because what they are getting is their capital losses after 30 years, so nobody is really getting true value.

Senator FONG. That is right, but what we are trying to do now, you see, we are trying to establish equities. Everybody has suffered. The corporations have suffered. They haven't used their money. The individual has not gotten his money and hasn't used the money.

How would the difference between the individual and the corporation come about if this bill is passed by the Senate, which was passed by the House?

Mr. ECKHARDT. Well, let me see. There remains in the fund unpaid portions of 186 awards to individuals, which is \$6,525,000, and there remains 161 awards to corporations, totaling \$94,700,000.

Mr. WESTPHAL. Mr. Chairman, I believe I could supply the information the Senator wants.

Senator FONG. Would you supply it for us later on?

Mr. WESTPHAL. Well, I could give it to you right now.

Senator FONG. All right.

Mr. WESTPHAL. Under the House amendment, \$6.5 million approximately would be paid to individuals. This would pay individuals in full. On the part of the House amendment under which each corporation or corporate claimant would get up to \$50,000 on its claim, that would require \$4.8 million. That would leave a balance of \$8.7 million, assuming a total fund of \$20 million. So it would leave a balance of \$8.7 million available for pro rata distributions to corporations.

So that under the House amendment the total payments that would go to corporations, assuming the \$20 million is available, would be approximately \$12.5 million.

Senator FONG. You say \$15.5 million?

Mr. WESTPHAL. No; \$12.5 million.

Senator FONG. What was that?

Mr. WESTPHAL. No, excuse me, \$13 million.

Mr. ECKHARDT. So roughly two-thirds to the corporations and one-third to the individuals.

Senator FONG. You divided the corporations into big corporations and small corporations, didn't you?

Mr. ECKHARDT. Yes; that was under the McCollister amendment, which honored first up to \$50,000, which is an advantage to those with the relatively smaller claims. That wouldn't necessarily be the smaller corporations though, but there has been consideration in previous payments with respect to small business.

Senator FONG. So some small corporations have been paid in full already?

Mr. ECKHARDT. I don't believe anybody has been paid in full.

Mr. WESTPHAL. Small corporations as defined by the Small Business Administration have been paid in full.

Mr. ECKHARDT. Oh, yes.

Senator FONG. And what is the rationale on this \$50,000?

Mr. ECKHARDT. The rationale was that when there is—well, actually this was a compromise that ultimately sort of sold the bill. Mr. McCollister on the Republican side offered this, which seemed pretty equitable; that is, that relatively small claims should have a preference over relatively big ones.

Senator FONG. Do you know what happened in World War I? Do you know what we did then? I mean, with respect to claims in World War I did we follow something like this?

Mr. ECKHARDT. No, sir, I don't. I don't know what happened in World War I.

Senator FONG. You don't know how they distributed the money?

Mr. ECKHARDT. No, sir.

Senator FONG. Mr. Chairman, we would like to find that out.

Senator BURDICK. All right, we will do what we can and make it a part of the record.

[The information referred to follows:]

MEMORANDUM PREPARED BY THE STAFF OF THE AD HOC SUBCOMMITTEE, JANUARY 8, 1975

Re: World War I War Claim Priorities

Claims of damage to person or property as a result of the hostile action of World War I were governed by the "Settlement of War Claims Act of 1928", 45 Stat. 254. These claims and awards were administered by the Mixed Claims Settlement Commission.

World War I claims varied most markedly from the claims arising from World War II in that awards were given not only to U.S. nationals for their claims against the Axis powers but also to German, Austrian and Hungarian nationals for certain losses caused by the United States.

To pay these various awards seized assets were liquidated to create the "German Special Deposit Account" from which all claims were paid.

Section 4(c) of the Act enumerated the priorities of payment from the fund. Awards of U.S. nationals were given first priority and were distributed as follows:

- (1) Payment of all expenses of administration of the Act
- (2) Payment of all awards of U.S. nationals for death and personal injury
- (3) Payment of all awards of U.S. nationals other than death or personal injury and up to \$100,000
- (4) Payment of all U.S. nationals with awards over \$100,000 up to 80 per cent of the remaining balance after payment under priority 3.

The remaining distribution priorities are directed to awards of foreign nationals and the United States government.

Senator FONG. I have no further questions.

Senator BURDICK. What are the facts in regard to the corporations taking tax losses on their claims whereas individuals I am advised have not? Would you tell us about that?

Mr. ECKHARDT. Well there was a difference in the results from tax benefits enjoyed by the corporate award holders because of their losses. The corporate award holders have collectively taken more than \$37 million in tax benefits as the result of the deduction taken from U.S. income taxes. Such tax benefits, coupled with subsequent payments under the War Claims Act, have allowed many corporations to recover almost the entire amount of their loss.

These tax deductions were not of benefit to individuals because even though the individuals were all U.S. citizens at the time of their loss under the terms of the War Claims Act, judicial interpretation of the deduction provisions of the Internal Revenue Code relating to presumed rate of loss prevented most individuals from taking the deduc-

tions. U.S. corporations were unaffected by this interpretation and remained free to deduct their losses.

Senator BURDICK. What you are saying is that if the corporations have gotten a benefit of some \$37 million, they actually got a great deal of tax benefit and no individual got any tax benefit in income tax returns?

Mr. ECKHARDT. I think that our records before our committee show they didn't. There is also this problem that in order to show a tax loss, Senator, you have to make something in which you could write off your losses against. The corporations were always in a position to write this off against their earnings, but of course a lot of the individuals simply were making nothing. A lot of them were elderly people and a lot of them were simply living off the interest of their investment, which was then removed.

Now at this point there was nothing for them to take a loss against.

Senator FONG. But if they did take a tax loss, don't you think that should be taken into consideration?

Mr. ECKHARDT. There has been some consideration taken with respect to deductions for tax losses; yes.

Senator FONG. For individuals?

Mr. ECKHARDT. In the cases of all claimants, as I understand it; yes. But of course that consideration can't correct the fact that some people have been totally reimbursed through tax losses.

Mr. WESTPHAL. Mr. Chairman, if I could just ask a couple of clarifying questions here?

Senator BURDICK. Fine.

Mr. WESTPHAL. Under the War Claims Act of 1948 there was a provision which said that any corporation which claimed a tax loss on account of any of these war losses had to report their claim of a tax loss to the War Claims Commission, and in turn the War Claims Commission was required to deduct the amount of tax benefit resulting from that claimed tax loss, that is, deduct it from the amount of the award which was made to that corporate claimant.

Now by virtue I believe of section 206 of the War Claims Act, which is section 2017(E) under title 50 of the appendix, any corporation which reported a tax loss was then granted a tax exemption insofar as any payments made on their claim was concerned. So that a corporation for example which claimed a tax loss, whether it be \$400 or \$4,000, and thereafter received any payments at all on its claim, it would be exempt from any income taxation on it.

Now to the extent that a corporation might receive a claim of 100 percent from the War Claims Commission, that payment would be entirely tax exempt whether it were treated as a capital or ordinary income or on any other basis. If it is taxable, it is granted an exemption. Now that applies only to corporations. That is my understanding of the law, Mr. Chairman. Is that yours, Congressman?

Mr. ECKHARDT. I certainly thank counsel for the clarifying statement. I understand it the same way.

Senator BURDICK. But because of the operation of the Internal Revenue Service Code or because an individual had no income, he had no tax benefits from tax losses?

Mr. ECKHARDT. That is generally the case from the testimony we received, and I think it is uniformly the case.

Senator FONG. May I ask a question. When the corporation filed its claim was the tax loss a deductible item in that claim or did they file a full claim disregarding the tax loss they took?

Mr. WESTPHAL. Senator, my understanding—and it can be corrected by Mr. McClellan who will be a later witness—but my understanding is that the corporation filed its claim in the full amount and the Commission determined the value of the property which it lost in the full amount, and then by virtue of this law, it was required to deduct from that full value the amount of any tax benefit received by that corporation as the result of a claimed tax loss.

Senator FONG. Take, for example, if the corporation had a \$1 million loss and they took \$50,000 out of it as tax loss, what would their claim be?

Mr. WESTPHAL. That would reduce their claim to \$950,000.

Senator FONG. So the figure is \$950,000?

Mr. WESTPHAL. That is correct.

Senator FONG. And you said the corporation's stockholders are entirely different from the stockholders who were then the stockholders?

Mr. ECKHARDT. In 30 years it would be a very great change, yes. In some instances there has been an entire supplanting of previous corporations by sale or merger in which these losses have already been taken into account.

Senator FONG. As I understand it, some of these corporations were incorporated by persons who wanted to get away from losing their property so they took their personal property and made several organizations or corporations?

Mr. ECKHARDT. No, sir. Actually the claims by a corporation are only for corporate losses, the individual claims may be the interest of an individual in a corporation and he must be an American citizen—in other words, you see, I am talking about totally owned family type corporations.

Senator FONG. And how did you treat them?

Mr. ECKHARDT. They are the individual claimed losses, you see?

Senator FONG. And they are treated as individuals and are not treated as corporations?

Mr. ECKHARDT. That is right.

Mr. WESTPHAL. Mr. Chairman, may I just ask one question here?

Senator BURDICK. Yes.

Mr. WESTPHAL. You make reference to Boise Cascade involving the Shanghai powerplant. It is my understanding that the claim was filed and allowed in the amount of approximately \$7 million and some fraction and that in 1967 or 1969, as a result of the payment authorized by Congress, some \$4 million was paid on that claim. Now that was paid, according to my understanding, to Ebasco and not to Boise Cascade; Ebasco being a predecessor of Boise Cascade. \$4 million was paid and I think you refer to it as a \$5 million payment. Now that payment was made to Ebasco prior to 1969 when Boise Cascade acquired all the corporate stock and assets of Ebasco. Do you have anything to indicate that my understanding is incorrect?

Mr. ECKHARDT. I think that is correct. I think that is probably covered in this attachment.

Mr. WESTPHAL. There will be a witness from Boise Cascade later on and we can attempt to clarify the facts at that time. That is my understanding of what the facts and the record shows though.

Mr. ECKHARDT. The attachment I have here is called the Venerable Shanghai Power Co. and is written by Alice Dieter. As I understand it, Boise Cascade's claim is based on its ownership of 80 percent of the common stock of the Venerable Shanghai Power Co., a property worth \$56 million, which came to Boise Cascade in 1969 through its merger with Ebasco industries. The Shanghai property has never been carried by Boise Cascade as either an asset or liability. In fact, even Ebasco's predecessor had written the property off many years ago. By 1941 even Shanghai lost its unique status and the offices of Shanghai Power Co. were interned. As far as the shareholders are concerned, the property in China was written off in 1941 and never again appeared as an asset on the books.

So, Mr. Westphal, I am not sure who got the money or whether it was one of the successors in line, but I am sure that you must be correct if you have looked into the matter, Mr. Westphal, that Ebasco was the one that received it.

Mr. WESTPHAL. In any event that can be clarified by a later witness.

Mr. ECKHARDT. That is right. Whoever was the owner of Shanghai at the time of that claim I am sure received the money and that would of course appear clearly on the record.

Senator BURDICK. Well Ebasco became a part of Boise Cascade?

Mr. ECKHARDT. That is right.

Senator BURDICK. So when they got the money, whether that became a part of Boise Cascade or not is a question we will have to ask a later witness.

Mr. ECKHARDT. That is right, and of course, Boise is now claiming the additional amount.

Senator BURDICK. Well thank you very much, Congressman.

Mr. ECKHARDT. Thank you very much. Mr. Chairman, may I ask that the full statement be incorporated into the record?

Senator BURDICK. Without objection, that will be received and placed in the record.

[The prepared statement of Bob Eckhardt follows:]

ON AMENDING THE WAR CLAIMS ACT

STATEMENT OF CONGRESSMAN BOB ECKHARDT (D-TEXAS), BEFORE A SUBCOMMITTEE OF THE SENATE JUDICIARY COMMITTEE, DECEMBER 3, 1974

I appreciate the opportunity to testify before this Subcommittee in support of S. 1728, as amended by the House of Representatives. I am a member of the Subcommittee on Commerce and Finance of the House Interstate and Foreign Commerce Committee which held hearings on this bill and which added the House amendments.

On October 8, 1973, the Senate passed S. 1728 to amend the War Claims Act to provide additional compensation to U.S. civilians who had been held prisoner during the Vietnam war to give them the same benefits as those enjoyed by military prisoners of war. On November 7, 1973, the House Subcommittee on Commerce and Finance held hearings on S. 1728 and also on two House bills to amend the War Claims Act to give individuals a priority over corporations in the payment for awards for property losses suffered during World War II. The Subcommittee examined these proposals in great detail, approved them, and combined them into a single bill, S. 1728. That bill was subsequently further amended and reported by the full Interstate and Foreign Commerce Committee, and it was passed by the House by a vote of 368-17 on August 12, 1974. Since then S. 1728 has been awaiting Senate action on the House amendments.

The War Claims Act was passed to compensate U.S. citizens for losses suffered in World War II out of the assets of German and Japanese nationals seized by the U.S. Government during the War. The Act created the Foreign Claims Settle-

ment Commission to adjudicate each claim for an award. All claims have now been adjudicated. Awardholders in four priority categories created by previous legislation have been paid in full, as follows: (1) awards based on death or personal injury; (2) awards to small business corporations; (3) awards under \$10,000; and (4) awards to charitable and religious organizations. There remain unpaid portions of 186 awards to individuals (totaling \$6,525,000) and 161 awards to corporations (totaling \$94,700,000). The remaining assets of the War Claims Fund, however, are far less than the total of these unpaid awards. Under existing law, each awardholder would receive up to \$24,000, plus a pro rata share of the amount remaining in the Fund, if any, after the \$24,000 distribution. Thus, under existing law, the corporate awardholders would receive over 96 percent of all pro rata distributions.

Recognizing that all the remaining outstanding awards cannot be paid in full, the Subcommittee, the full Committee and the House of Representatives concluded that the losses suffered by individuals as a class were of such a fundamentally different character from the losses of corporations as a class that the individual awardholders should be given priority in the payment of their awards. The marked contrast between the two kinds of losses compelled such legislative conclusion. The individuals' awards were the result of loss of homes, personal belongings and small family-owned and operated businesses. In most cases the individuals lost everything they had. In every case in which an individual award was based on a business loss that business was family owned. Some of these businesses were corporations, some not, but the critical point, in my view was that the individuals did not simply lose an investment; they lost the core to economic survival. In comparison, the corporate awardholders lost assets of foreign subsidiaries that constituted a very small portion of their overall net assets. Every major corporate awardholders is a large, publicly held multinational corporation which emerged from the war relatively unscathed, well prepared to do business as usual. Thus, the personal disasters suffered by the individuals differed so fundamentally from the relatively insignificant investment losses suffered by the corporations in their immediacy, severity and totality as to justify a priority to individual awards within the spirit and intent of the War Claims Act.

It is pertinent here, I think, to note that many of the individual awardholders who sustained those losses are now elderly persons living on small fixed incomes. Most of them receive scant Social Security benefits since they spent most of their productive years abroad. Full payment of their War Claims awards would go a long way toward providing a final financial stake for them now. Such payments would be at small cost to the corporations because the aggregate amount of the individual awards is so small compared to the aggregate amount of the corporate awards that enactment of S. 1728 would cost the corporate awardholders only about twenty cents on each dollar of their award balance.

It is also pertinent to note that the individual awardholders either suffered the loss themselves or are the widows or children of those who did. Many of the corporate awardholders, on the other hand, are conglomerates that derive their claims as a result of the acquisition of the companies suffering the loss many years after the loss had occurred. In some cases the acquiring company paid little or nothing for the stock of the acquired company since its assets had been substantially reduced by the loss they had sustained. A good example of such an acquisition involves Boise Cascade, one of the most vocal opponents of S. 1728. Boise's loss is based on a loss suffered by the Shanghai Power Company in 1941. At the time of the loss, Shanghai Power was a subsidiary of American and Foreign Power. Many years ago, A&FP wrote the assets of Shanghai Power down to zero. A&FP merged with Ebasco in 1967 and Ebasco was acquired by Boise Cascade in 1969. Both Boise and Ebasco have always carried the Shanghai Power stock on their books at zero. Boise now seeks to recover \$3 million in compensation for the losses suffered by Shanghai Power (A&FP having already received almost \$5 million from the War Claims Fund). These facts are set forth in an item that appeared in the "Boise Cascade Quarterly" of February 1974, which I ask to be included in this record of hearings.

Boise Cascade's claim for compensation is far more remote and far less compelling than the claim of an individual who saw his home, personal property or small family business destroyed in the war. Under any principle of equity these two claims cannot be regarded as equivalent. S. 1728 would not deny Boise a right to compensation. It would merely give priority to claims of greater immediacy.

Even in those cases in which the present corporate award-holder is the company that suffered the loss, many of the present stockholders are not the stockholders of 30 years ago that suffered the loss. By contrast, the individual awardholders are the very persons or the widows or children of the persons who suffered the loss.

Every individual awardholder is a United States citizen. It was the basic purpose of the War Claims Act to compensate U.S. citizens for their loss. Some of the stockholders of the corporate awardholders are foreign nationals who have participated and will participate in payments from the Fund.

In addition to the fundamental difference in the character and personal impact of the war losses between individuals as a class and corporations as a class there is a significant difference in the benefits already received by the two classes. This difference results from the tax benefits enjoyed by the corporate awardholders because of their losses. The corporate awardholders have collectively taken more than \$27,000,000 in tax benefits as a result of deductions from U.S. income tax. Such tax benefits, coupled with subsequent payments under the War Claims Act, have allowed many corporations to recover almost the entire amount of their loss. These tax deductions were not of benefit to individuals because, even though the individuals were all U.S. citizens at the time of their loss under the terms of the War Claims Act, judicial interpretation of the deduction provision of the Internal Revenue Code (relating to presumed date of loss) prevented most individuals from taking a deduction. U.S. corporations were unaffected by this interpretation and remained free to deduct their losses.

Furthermore, corporate claimants may also have taken substantial deductions from state and local taxes as a result of their war losses. These tax benefits were not taken into account at all in granting of war claims awards.

Many corporate awardholders may also have received substantial tax and other benefits after the war from foreign governments because of their war losses. These benefits were unavailable to individuals. Foreign tax benefits were not taken into account in the granting of war claims awards.

Many of the corporate claimants are insurance companies which insured risks at high rates during the war years and paid out proceeds on the policies they had written. These insurance companies, which have been subrogated to the rights of the insured corporations, have already received significant compensation for their losses through their premiums.

The present corporate awardholders have already received more than \$150 million from the War Claims Fund. Through this recovery, together with their tax benefits, they have received in compensation for their losses more than 11 times as much as the individual awardholders.

In summary, the individual awardholders suffered losses that were more severe than those of the corporations, but they have recovered a smaller portion of their losses.

In the past, the Congress has created numerous priorities for payment under the War Claims Act. Therefore, creation of a priority for individual awardholders as provided by S. 1728 would set no precedent, but rather would continue the established pattern of weighing the equities among different classes of awardholders.

It is especially important that the Congress enact this bill during this session. Another distribution from the War Claims Fund—perhaps the final distribution—is scheduled to be made early in 1975. Therefore, if this bill is not enacted now the issue may well be rendered moot by this prospective distribution. I believe that a compelling case for S. 1728 has been made, and I urge the Subcommittee to recommend that the Senate adopt the bill as amended by the House.

Senator BURDYCK. Our next witness is Mr. Wayland McClellan, General Counsel for the Foreign Claims Settlement Commission.

**STATEMENT OF WAYLAND McCLELLAN, GENERAL COUNSEL,
FOREIGN CLAIMS SETTLEMENT COMMISSION**

Mr. McCLELLAN. Good morning, Mr. Chairman, and members of the subcommittee. I appreciate this opportunity of appearing here this morning. I have to apologize for not having a written statement. I explained to Mr. Westphal that we at the Commission had made a

full report on this legislation and the amendment by the House committee that was chaired by Congressman Eckhardt in his subcommittee, and we would just like to reiterate our position that we are opposed to the changing of the payment priorities as reported out and passed by the House of Representatives.

We feel that all of the small claimants have already been taken care of. We feel that even though there are individual claimants who have unpaid balances on awards, that these are not the so-called small claimants. The Congress in the initial enactment of this legislation took care of what they thought the equities were insofar as small claimants were concerned. They paid the death claims first and they paid the small business corporations and small business people as determined by the Small Business Administration. They paid up to \$10,000. After that they had a pro rata payment then based upon the money that was available in the war claims fund.

The Congress also decided at a later date that there were other people who should be taken care of and these were the charitable groups that the chairman referred to this morning.

Initially the Commission opposed that change but we compromised or rather the Congress compromised by adding an amendment to say that they would pay the charitable groups in full, but they also raised the amount from \$10,000 to \$35,000. The Commission then withdrew its opposition to that amendment when they raised the priority to \$35,000 and we felt that this would be sufficient to take care of all of the so-called small claimants and the equities would be served by doing this.

Now the amendment that the House has passed in our opinion is bad precedent. We feel that this could affect—I mean we feel the International Claims Settlement Act, which the Commission also administers, would be affected, and it could hamper the Department of State in its negotiations with various countries on claims agreements if they feel that once an agreement is concluded based on a set of rules, that we go back and change the rules in the middle of the game. I think that would be bad precedent for the Congress to do.

Now, of course, as Mr. Eckhardt has said, this is strictly a matter that is within the purview of the Congress. You can do this. There is no law that will prevent the Congress from doing this, but we feel that it is bad precedent. And I don't want to prolong this because I think Mr. Eckhardt has made a very good statement. I notice we have a lot of witnesses here. So our position is already in the record and I think that my time and the committee's time would be better served if I just referred by reference to our statement, which you already incorporated, and also answered any questions that the committee may have.

I think that this would be a better procedure if you so desire.

Senator BURDICK. Well, we certainly appreciate that approach. It is always helpful to get at the meat of the thing. You say that all claims of individuals up to \$35,000 were either paid or will have been paid under present law?

Mr. McCLELLAN. They probably will be paid under present law. That is correct. They have already received up to \$10,000. Let us say you have \$100,000 or a \$200,000 claim. So they got \$10,000 initially. And when the program was completed in May of 1967 and we made

our final report to the Secretary of the Treasury, who is the paying agent, he was able to pay an additional 61.3 percent of the award in excess of the \$10,000; of the amount of the award in excess of \$10,000.

In 1972 or 1973 there was another deposit. The charitable and religious groups received a priority and then they paid out an additional \$11,000. So the claimants we are talking about now have received substantial amounts on the awards that have been granted. All the small claimants in our opinion have been paid in full.

Senator BURDICK. That is what I am getting at. Under the present law they haven't been paid all yet, but they will be paid up to \$35,000?

Mr. McCLELLAN. Up to \$35,000; yes.

Senator BURDICK. For each individual claim?

Mr. McCLELLAN. That is correct.

Senator BURDICK. Then we are talking about claims between \$35,000 and \$500,000, aren't we, in the House amendment?

Mr. McCLELLAN. Well, that is approximately what we are talking about.

Senator BURDICK. Well, when the \$35,000 payments are completed, what percentage of the small claimants will that take care of?

Mr. McCLELLAN. Well this should be all of them. It all depends really, on what we are calling small claimants.

Senator BURDICK. My staff tells me all the small claimants will be taken care of except 43.

Mr. McCLELLAN. That is correct.

Senator BURDICK. Of course, their claims would range from upwards of \$35,000 to \$500,000?

Mr. McCLELLAN. Yes, sir, that is correct.

Senator BURDICK. Now in this group of individual claimants are there small companies?

Mr. McCLELLAN. I wouldn't consider them very small. We made a study when this bill was first introduced and we examined all of the individual awards that had unpaid balances. Many of them were based upon ownership interests in corporations that themselves couldn't qualify. I mean, the statute that we administer requires that in order to qualify as a corporate claimant, the corporation had to be organized in one of the 50 States or one of the territories or the District of Columbia, and the outstanding stock must have been owned by natural persons who were U.S. citizens to the extent of at least 50 percent.

Now some of these individuals who have unpaid balances, claimed through corporations that were incorporated in Germany, for example, while that corporation itself could not qualify as a claimant, individuals came in for their proportionate stockholder interest in this German corporation. Frankly, we just don't see the difference between that type of a corporation and an American corporation. We feel that this is discriminatory toward the American corporations. I am not going to argue the relative merits of whether or not a family holding was cloaked in a corporate structure to try to protect themselves from confiscation under the Nazis. This may have been true in some cases, but I am sure this is not true in every case where you have individuals with unpaid balances.

Senator FONG. If I as an individual had \$10,000 in a German corporation as a stockholder, then I would have a claim then for \$10,000?

Mr. McCLELLAN. For your stockholder interest. Let us say you had

100,000 outstanding shares of stocks, and you owned 10,000, you would be entitled to claim 10 percent of the total loss sustained by the German corporation.

Senator FONG. But if I had that share in the American corporation, I would not be?

Mr. McCLELLAN. You could not file.

Senator FONG. I could not file?

Mr. McCLELLAN. Only the corporation could file.

Senator FONG. Only the corporation?

Mr. McCLELLAN. That is correct.

Senator FONG. It is my understanding that any Federal tax savings were deducted from the amount of the awards made to the corporations.

Mr. McCLELLAN. That is correct. The statute required the Commission to deduct this from the total amount of the award. Mr. Westphal, I think, directly stated in answer to your previous question, Senator, that if you had a loss of let us say \$100,000 and the corporation received tax benefits of \$10,000, we would say that the loss was \$100,000, but the award granted would be \$90,000 because the law requires the Commission to deduct from the loss the tax benefits received on account of this loss.

Senator FONG. Was any consideration given to deductions for corporate, State, or local tax savings?

Mr. McCLELLAN. No.

Senator FONG. That is to say you took the tax saving as a Federal tax saving?

Mr. McCLELLAN. That is correct.

Senator FONG. What about the State tax savings?

Mr. McCLELLAN. I don't think this entered into it.

Senator FONG. That didn't enter in?

Mr. McCLELLAN. No.

Senator FONG. So if the corporation say out of \$10,000, which he saved because of Federal tax losses, saved that much and then he saved \$1,000 on a State loss, that \$1,000 would not have been computed?

Mr. McCLELLAN. Well, it may have been. I can't answer that definitely because the practical administration of this was as follows: The corporations were required to submit a statement under oath that stated the amount of tax benefits that they had received on account of the same loss for which the claim was made.

Senator FONG. I see. That would have been included?

Mr. McCLELLAN. They may have included this in their affidavit. I can't answer definitely they did not include this into their consideration. I am sure, some of the representatives of the corporations would be able to answer that because they are, I am sure, thoroughly familiar with how they arrived at the affidavits that they presented to the Commission under oath as to what benefits they did receive.

Senator FONG. I see. So the benefits were not confined to Federal tax losses?

Mr. McCLELLAN. That could be. I just can't answer that definitely because I don't know what they considered when the corporations furnished this information to the Commission, and I would guess that any accountant on the corporate staff would probably include the State taxes also.

Senator FONG. Could you ascertain that for us?

Mr. McCLELLAN. Yes we can. There was one other question that maybe I just ought to clarify just a little bit and that was asked of Mr. Eckhardt in connection with the insurance company claims.

As you all know, during World War II the U.S. Government in order to get supplies to Europe and to the war areas encouraged insurance companies to underwrite these losses in order to encourage private shipment to send supplies to our forces who were fighting all over the world. Now the statute that we have administered required the Commission to pay the net losses to the insurance company. This would mean that any premiums that they had received would have to be deducted from the amount of the losses for which they would certify in their favor. So it is not a windfall in that the insurance companies got the premiums, they paid out, and then they recovered the full amount of the loss. This is the net loss the insurance company receives.

Senator FONG. Subsequent to the war when these corporations went back and reestablished their businesses there, were there any tax considerations given to these corporations?

Mr. McCLELLAN. Most of these corporations in Germany, for example, were required to pay into a fund in Germany. They have what they call an equalization of burdens law in Germany which required many of the corporations that made money during the war to pay into a fund to pay certain benefits to people who sustained losses in Germany that were not covered by our particular statute.

Senator FONG. Do you know whether these companies that reestablished their businesses were paid by foreign governments?

Mr. McCLELLAN. I would doubt very seriously that an American corporation that sustained losses would receive any benefits from a foreign government. I can't say definitely, but I doubt this very seriously because I don't think that the laws that were enacted by the West German Government after World War II made any provision for this type of thing, and I am sure that some of the representatives here, who have corporations that did reestablish operations in Germany, could answer this.

Senator FONG. Do you know how we took care of the war claims in World War I?

Mr. McCLELLAN. It was a mixed claims commission that was established. It was a German-American mixed claims commission. My Commission of course, wasn't even in existence then.

The German Government did make payments, but I am not sure exactly what the payment priorities were. As a matter of fact, some payments are still being made by the Treasury Department on some of these awards that were granted by the mixed claims commission. I am not sure whether there was any priority established on this.

Senator FONG. And you say that the War Claims Commission is against this amendment by the House?

Mr. McCLELLAN. Yes, we are opposed to it. We just don't feel that the precedent is good. We feel that the small claimants, or the so-called needy claimants have already been taken care of, and we feel that this is discriminatory toward the American corporations. We feel that at this point in the payment procedure all the very needy people have already been paid.

I don't think there are any welfare cases at this point of time. Most of these individuals were large claimants. And if you look at the unpaid balances on the charts that appear in the House hearing record that the Commission submitted, many of these unpaid balances are well in excess of \$1 million. I don't call this a very small claim.

Senator FONG. Does the War Claims Commission feel that the law should be left alone?

Mr. McCLELLAN. We think it should be left exactly the way it is now.

Senator FONG. Do you think that is fair?

Mr. McCLELLAN. We think it is fair. We think that the Congress has already expanded the priorities which would take care of the so-called needy cases and the small claimants.

Senator FONG. In the case of the corporations you said that if they had a claim of \$200,000, they were paid initially \$10,000?

Mr. McCLELLAN. \$10,000.

Senator FONG. Was that increased to \$35,000 afterward?

Mr. McCLELLAN. No. What happened is they got the \$10,000 and then they got 61.3 percent of the amount in excess of \$10,000, the unpaid balance, and then they got an additional \$11,000.

Senator FONG. Oh, they get an additional \$11,000?

Mr. McCLELLAN. Yes, sir.

Senator FONG. And that \$11,000 came from what?

Mr. McCLELLAN. A deposit that was made in the war claims fund around 1970 or 1971 or 1972.

Senator FONG. So a claimant who had \$200,000 in a claim would get \$10,000?

Mr. McCLELLAN. That is correct.

Senator FONG. And then he would get how much of the balance, of the \$190,000?

Mr. McCLELLAN. Well the second payment he got was 61.3 percent of \$190,000 and then he got a third payment of \$11,000.

Senator FONG. So he would have gotten about \$136,000 already?

Mr. McCLELLAN. Yes; and you see the pro ration under the present law doesn't come into effect until the \$35,000 is paid.

They have to pay across-the-board payments up to \$35,000 so there wouldn't be any pro ration under the present statute until another \$24,000 is paid.

Senator FONG. You mean the \$10,000 will be increased then by another \$14,000? No, by another \$24,000?

Mr. McCLELLAN. Well this is a question that the lawyers in the Treasury Department are going to have to figure out if the statute remains the same; that is, whether or not this amount we set at \$35,000 means \$35,000 in addition to the \$10,000 or whether or not it means an additional \$25,000. The language is not clear.

Senator FONG. That is not clear.

Mr. McCLELLAN. It is not clear on that but the Treasury Department lawyers are studying this. I don't think they have reached any conclusion as to whether or not they would interpret that to mean an additional \$35,000—no, an additional \$25,000. My personal view is that it means an additional \$35,000. So this would be the \$10,000 plus the \$35,000.

Senator FONG. So initially you had \$10,000 and then from your interpretation they would have to have another \$35,000.

Mr. McCLELLAN. That is correct.

Senator BURDICK. I think I have this figured out now. Are you through?

Senator FONG. Yes.

Senator BURDICK. Now as I understand it, in April of 1967 a \$10,000 payment was made to all claimants?

Mr. McCLELLAN. Well that is not exactly true. In some cases it was true.

Senator BURDICK. What cases wouldn't it be true?

Mr. McCLELLAN. It would depend on when the claim was adjudicated by the Commission. You see, we started this program back in 1963 and between 1964 and 1965 we issued decisions on claims. There came a point in time when the Treasury Department figured that they had enough money in the fund in order to pay at least \$10,000 after they had paid the priority payments of death, personal injury, and small business claims. And when they had enough money in the program and we had progressed into the program to the extent that they felt they could safely pay \$10,000 without depleting the fund, then they started making the initial payments on these claims.

For example, somebody brought up the Shanghai Power claim this morning. It just happened that in April of 1967 a \$10,000 payment was made on that particular claim and—

Senator BURDICK. My point is sometime the \$10,000 was paid?

Mr. McCLELLAN. That is correct.

Senator BURDICK. Let me give you an example here. Let us take a man with a \$100,000 claim. He got \$10,000; correct?

Mr. McCLELLAN. Yes, sir.

Senator BURDICK. And that reduced it to \$90,000. And then he got 61.3 percent in October of 1967 of the \$90,000. And I figured it out, and that would be \$55,170. Then he got on November 11 of 1971 another \$11,000; correct?

Mr. McCLELLAN. That is right.

Senator BURDICK. Now, if the present law is carried out where he gets another \$24,000 to make up the balance of the amount, then when I add that up I get \$100,170.

Mr. McCLELLAN. Well, he wouldn't get more than what the award was.

Senator BURDICK. No.

Mr. McCLELLAN. It would be up to. Let us say he had an unpaid balance of \$12,000, then he would get \$12,000.

Senator BURDICK. In that you are right. My point is if the present law is carried out, a man with \$100,000 in a claim would be paid in full?

Mr. McCLELLAN. That is correct. That is assuming we get the money.

Senator BURDICK. You say the present law guarantees the balance of \$24,000 to make that \$35,000 payment, correct?

Mr. McCLELLAN. This is assuming that the funds are put into the war claims fund. You see, what has happened is that the only money that is currently available to go into the war claims funds is \$5 million. You see, the Department of Justice through its Civil Division liquidates the German assets. They turn over what they call their freed

balance to the Commission for deposits to the war claims fund. Now, the mechanics is this. Say we can get \$5 million to put in the war claims fund. The Commission gets a check from the Treasury Department for \$5 million made out to the Foreign Claims Settlement Commission. We in turn deposit 10 percent of this to the general fund of the Treasury to reimburse the United States for administrative expenses and the 90 percent is put into the war claims fund. This is how the Commission's administration expenses are reimbursed from the U.S. Government. Then when this money goes into the fund, the Treasury Department figures out how much can be paid for each claimant. Now, so far as we know, there is only \$5 million currently available. Now, \$15 million more may be available at some future time, but nobody can guarantee this because some of these assets are still tied up in litigation. They may have to return it to the original owner, you see. So when we talk about \$20 million, I am just not sure of the exact figure.

Senator BURDICK. But you are talking about the mechanics now. What I am saying is the law authorizes the payment of \$24,000 when and if it is available.

Mr. McCLELLAN. Only if it is available.

Senator BURDICK. Yes, sir, that is correct. The mechanics of how it becomes available have been described, but what I am saying—

Mr. McCLELLAN. Then, if it becomes available, your example is correct, Senator.

Senator FONG. The corporations would get that \$24,000, too?

Mr. McCLELLAN. Yes, everybody.

Senator FONG. So if you don't have enough money, they wouldn't get theirs?

Senator BURDICK. You say they would have to be paid back, too?

Mr. McCLELLAN. Everybody is treated the same way across the board. If they have enough money to get another \$10,000, then everybody will get another \$10,000.

Senator FONG. And if you have enough money to get the \$24,000—

Mr. McCLELLAN. Then they would get their \$24,000.

Senator BURDICK. On my example of \$100,000, they would be paid in full?

Mr. McCLELLAN. Yes, sir.

Senator BURDICK. That is under the present law?

Mr. McCLELLAN. Yes, sir.

Senator BURDICK. And that would take care of nonprofit organizations and everybody else?

Mr. McCLELLAN. Well, nonprofit people have been paid in full already.

Senator BURDICK. Then over and above this are still the 43 claimants who under this formula would not be paid in full?

Mr. McCLELLAN. That is correct.

Senator BURDICK. These are individual claimants. And under your recommendation they should share with the corporations the balance of the fund?

Mr. McCLELLAN. That is correct.

Senator BURDICK. Thank you, I understand your position now.

Senator FONG. The 43 individuals, concerning those, what would be the lowest claim that would be made for these 43 individuals?

Mr. McCLELLAN. I am not sure I have that, but we can figure it out. I can furnish it to the staff person when I get back to my office.

Senator FONG. Will you furnish it to the committee?

Mr. McCLELLAN. Yes, sir.

Senator FONG. And this would take care of those individuals above a certain claim?

Mr. McCLELLAN. Yes, sir. We can get that.

Senator BURDICK. I have also figured out on my little pad here that for one who had a \$200,000 claim, under the present law he would have received up to this date \$165,400 leaving a balance of some \$34,600 and some, which would be paid under a fair distribution, pro rata basis.

Mr. McCLELLAN. Not on a pro rata basis yet. It won't be until you get up to \$35,000.

Senator BURDICK. Well, I have the \$24,000 in there. I said he would have a \$34,600 balance and he would share the remaining money with everybody else?

Mr. McCLELLAN. That is correct.

Senator BURDICK. And that would bring it up, of course, much higher, too?

Mr. McCLELLAN. Yes, sir.

Senator BURDICK. So we have a little bit of the picture.

Mr. McCLELLAN. Of course, we are also interested in the other part of this bill that we haven't discussed here this morning.

Senator BURDICK. Well, let's discuss it.

Mr. McCLELLAN. And the Senate passed it some time ago. We are getting quite a bit of correspondence from civilian Americans who were interned in Southeast Asia during the Vietnam conflict, and of course we have told them that this body has passed that legislation, but it has been held up. We do have to answer a lot of correspondence on these type of claims, and I would hope that the committee would take this into consideration.

Senator FONG. You are for the first part of the bill that the Senate passed?

Mr. McCLELLAN. Oh, yes, sir; that we are in favor of.

Senator BURDICK. I understand there isn't much objection to that either?

Mr. McCLELLAN. No, I don't think anybody could object to that.

Senator BURDICK. The staff has a couple of questions.

Mr. WESTPHAL. Mr. McClellan, on the last point you mentioned, this bill as it originally passed the Senate over a year ago provided that civilian internees' compensation for the period of their internment in Southeast Asia would be increased from \$60 a month to \$150 a month. Is that the part you refer to?

Mr. McCLELLAN. Yes, sir.

Mr. WESTPHAL. Now, that payment to them, whether it is \$60 or \$150, would be made out of this same war claims fund that we are talking about. Correct?

Mr. McCLELLAN. No, sir; that isn't correct.

Mr. WESTPHAL. What fund are those payments to civilian internees from?

Mr. McCLELLAN. Those are appropriated funds. You see, the war claims are being paid out of the war claims fund which is separate. We have two funds, in effect. We have two different funds within the

Treasury Department. The claims covered by the House amendment are paid from liquidated assets, but the claims for the civilian internees in Southeast Asia are paid from moneys appropriated from Congress from taxpayer funds.

Mr. WESTPHAL. All right. Now then, on the matter of the claims that are covered by these two House amendments to the Senate bill and thus to clear this thing up, this arises under the original War Claims Act of 1948, does it not?

Mr. McCLELLAN. That is correct.

Mr. WESTPHAL. And without being technical, briefly what is involved here is that when that was first passed, it provided a means of liquidating these belligerent assets that were in this country, and the job of liquidating of those assets was turned over to the Justice Department.

Mr. McCLELLAN. Yes, sir.

Mr. WESTPHAL. And from 1948 when that law was passed and for the next 12 or 14 years, the Justice Department was engaged in liquidating a large number of those assets, were they not?

Mr. McCLELLAN. Yes, sir.

Mr. WESTPHAL. During that period of time, was the Commission, of which you are counsel, in existence? Was the War Claims Commission in existence?

Mr. McCLELLAN. We, the Commission, came into existence in—well, we were officially organized in 1949.

Mr. WESTPHAL. All right. Now, then, by 1962 the Justice Department liquidated enough claims and turned the money over to the Treasury Department, earmarked for this war claims fund, so that there were some funds available for distribution?

Mr. McCLELLAN. That is correct, sir.

Mr. WESTPHAL. And in the original provisions of the law, Congress did state some priorities, did they not?

Mr. McCLELLAN. Yes, they did.

Mr. WESTPHAL. They first created a priority to pay in full all claims for death or personal injury arising out of belligerent actions?

Mr. McCLELLAN. That is correct.

Mr. WESTPHAL. And the second priority that Congress created was a priority for all small business claims?

Mr. McCLELLAN. Yes; that is right.

Mr. WESTPHAL. And as the Chairman's opening statement indicated, some 251 small business claims in the total amount of \$12 million were paid?

Mr. McCLELLAN. Yes, sir.

Mr. WESTPHAL. And a third priority that Congress created in the history of this war claims legislation was a priority to pay all claims under \$10,000; to pay them in full?

Mr. McCLELLAN. Yes, sir; that is correct.

Mr. WESTPHAL. Whether these were corporate claims or individual claims, but still to pay them in full?

Mr. McCLELLAN. It didn't make a bit of difference.

Mr. WESTPHAL. If the claim was under \$10,000, then it was paid in full and some 5,630 of those claims were paid in full at a cost of some \$13 million?

Mr. McCLELLAN. That is correct.

Mr. WESTPHAL. Now then, in 1962 there were still about 1,000 claims left that involved essentially property loss. These were claims made by corporate insurance companies, corporations, and by individuals and by individuals representing their ownership in a so-called family corporation that was used as a guise to hide assets that otherwise the Nazis would have confiscated?

Mr. McCLELLAN. Yes, sir. The exception to this is, as you say, 1962. Well, the 1962 act was the statute that provided for the death and personal injury as well as the small business and—

Mr. WESTPHAL. Yes; but what I am saying is that Congress originally started out and created three priorities.

Mr. McCLELLAN. That is correct.

Mr. WESTPHAL. All right. And those priorities were for the death and personal claims, small businesses, and all claims under \$10,000, whether filed by corporations or by individuals?

Mr. McCLELLAN. That is right.

Mr. WESTPHAL. And then in 1962 Congress passed an amendment which said that every claimant, both corporate and individual, should get \$10,000 paid on the claims?

Mr. McCLELLAN. The chronology here is not exactly right. In October of 1962 Congress passed title 2 of the War Claims Act. You see, Public Law 87-846 was enacted on October 22 of 1962. This is the statute that authorized the death and personal injury claims and the small business claims or any war damage claims that arose during World War II in certain areas of Europe and the Pacific.

Now, that statute had a section which set forth the priorities that you have just enumerated. Now, this is the way the statute stayed until around 1971, I believe, which was when the Congress changed the payment provision and they authorized another priority, and this was the priority that said that charitable, religious, and other groups shall be paid in full. They had already received initial payments, so they got the unpaid balances of that money at that date. This is when the Justice Department turned over approximately \$13 million, which was put into the fund, and that money enabled the Treasury Department to wipe the books clean so far as the charitable groups were concerned and allowed them to pay the \$11,000 in 1972 that we talked about a little earlier.

Mr. WESTPHAL. All right. So basically, what has happened in the history of this payment on claims under the War Claims Act of 1948 is that when funds were available for payout, Congress created certain priorities. The first priority they created was the payment in full of all claims for death or personal injury. The second priority they created was the payment in full of all claims by small business. The third priority they created was the payment of all claims under \$10,000 in full. The fourth priority they created was the payments of all claims by religious, charitable, and nonprofit corporations. Those claims were paid off?

Mr. McCLELLAN. Yes.

Mr. WESTPHAL. So then—and I am referring now to a table that was published in the House report on this bill on page 5—so that again what we had was a total of 886 individual claims, 199 corporate claims, and 1 claim apparently by the United States. Now, in regard to those claims, what Congress authorized was the payment of \$10,000

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on each of those claims plus 61.3 percent of the amount of the award to each and every one of those claimants, whether corporate, individual, insurance, or whatever?

Mr. McCLELLAN. Right.

Mr. WESTPHAL. Now, then in the 1970 amendments, what Congress authorized was a total payment of \$35,000, or rather up to \$35,000 on each and every claim remaining unpaid after these prior payments that I have referred to; isn't that true?

Mr. McCLELLAN. Yes, sir.

Mr. WESTPHAL. And some time after that 1970 amendment, the Commission paid \$11,000 of that \$35,000 congressional authorization correct?

Mr. McCLELLAN. That is right.

Mr. WESTPHAL. And as the law now stands, there remains to be paid \$24,000 of that \$35,000 previously authorized by the Congress?

Mr. McCLELLAN. That is right.

Mr. WESTPHAL. Now you have suggested that there may be some question as to whether there is \$24,000 remaining to be paid, or only \$14,000 to be paid, but in any event, the hearings in the House and the House consideration of the bill and in fact, the position taken by all the claimants is that the prior \$10,000 payment is not a deduction from the \$35,000 and only the \$11,000 payment is a deduction from it, and there remains to be paid \$24,000?

Mr. McCLELLAN. That is my interpretation.

Mr. WESTPHAL. All right.

Mr. McCLELLAN. But the Treasury Department lawyers will have to make this interpretation. Maybe this is good to have this on record now and to let them know what your feeling is on this because there is some disagreement on it.

Senator BURDICK. Is there some question about this?

Mr. McCLELLAN. I think there is some question.

Senator BURDICK. Well, we better fix the question.

Senator FONG. The question is on whether the \$24,000 is to be paid or the \$35,000 is to be paid?

Mr. WESTPHAL. Or whether the \$24,000 is to be paid or \$14,000 is to be paid.

Mr. WESTPHAL. There is some question as to whether or not when the \$35,000 figure was put in by the Congress, whether this meant an additional \$35,000 or whether this meant an additional \$25,000, to the \$10,000. So if you add the additional \$10,000 and then \$25,000 and then \$35,000, there is some question as to—

Senator BURDICK. Well, we would like to have an opinion by your counsel because this makes a difference on how we act.

We would like to have a firm opinion from you.

Mr. McCLELLAN. Well, I will submit it to you on this. I will have to ask—

Senator BURDICK. Because I have been going on the assumption there is another \$24,000 to be paid to everybody. I am assuming that.

Mr. McCLELLAN. Well, this is the question we ought to clarify, and our position is that you are correct that there is another \$24,000. Now, there is some question within the Treasury Department,

I believe. I have talked to some of the lawyers over there as to how they view this, and there is some question.

I gave them my opinion. At the time it wasn't in writing, but I would be glad to put it into writing for this subcommittee as to what this means.

Senator FONG. So the question will be whether another \$14,000 is due?

Senator BURDICK. No. Another \$24,000.

Senator FONG. Oh, another \$24,000? Is that the question?

Mr. McCLELLAN. Yes.

Senator FONG. And your position is another \$24,000 is due?

Mr. McCLELLAN. Another \$24,000, yes, sir; that is correct.

Senator FONG. That is you are giving them the full benefit of the \$35,000?

Mr. McCLELLAN. Right.

Senator FONG. With no deduction?

Mr. McCLELLAN. With no deductions, yes, sir. That is correct.

Mr. WESTPHAL. So that from where we stand today or where we stand now or where we stood at the time the House made this amendment to the bill, it is that after these other payments and priorities and everything that we previously discussed today, there remains 187 individual claims which are unpaid to the extent of approximately \$6.5 million?

Mr. McCLELLAN. Yes, sir, that is correct.

Mr. WESTPHAL. And there are 161 corporate claims that are unpaid in the amount of \$94.7 million?

Mr. McCLELLAN. That is correct.

Mr. WESTPHAL. So that there is a total of \$101.2 million of claims that are presently unsatisfied?

Mr. McCLELLAN. That is correct.

Mr. WESTPHAL. And again, the assumption made in the House proceedings is that there would be approximately \$20 million yet to become available under this War Claims Act system of payments. That would be approximately the maximum?

Mr. McCLELLAN. We feel that that would be the maximum.

Mr. WESTPHAL. All right.

Now, then, what the House did was, looking in anticipation of \$20 million becoming available, they then legislated yet another priority to apply to the \$20 million that is anticipated. Is that correct?

Mr. McCLELLAN. I would have to assume that this is what they did, sir.

Mr. WESTPHAL. Well, they did. They gave a priority to individual claims to pay them in full, did they not?

Mr. McCLELLAN. Yes.

Mr. WESTPHAL. All right. Now, then, as to what is the status of the 187 individual claims and the 160 and some corporate claims the committee has received and incorporated into the record by reference to the House hearing report on this legislation, on pages 32 through 37 of that report are tables that list each and every one of these 187 individual claims and each and every one of the 161 corporate claims. Is that not true?

Mr. McCLELLAN. Yes, sir.

Mr. WESTPHAL. All right, now. Those tables show four categories of claims remaining; there are corporate insurance claims, which as

shown by the summary on page 33 total \$15 million to begin with, and they have already received \$9.9 million, which is approximately on the average 65.1 percent of the face of the claim, and there is an unpaid balance of \$5.2 million. Is that correct?

Mr. McCLELLAN. Yes.

Mr. WESTPHAL. All right. Now, then, if you look at the individual claims within that category, for example, Guarantee Insurance Co. has received 98.9 percent of its original award, and no insurance company has received less than 61.3 percent of its original award. Isn't that true?

Mr. McCLELLAN. Yes, sir, it is.

Mr. WESTPHAL. Excuse me, 61.1 as shown in the table.

Mr. McCLELLAN. Yes.

Mr. WESTPHAL. Now, then, for corporate and partnership and such claims, generally there was a total amount awarded to that category of \$230.9 million in awards made by your Commission of which \$141.5 million has already been paid, and those corporate claims generally have been paid on the average of 60 percent of their claim, leaving them a balance of \$89 million yet to be paid or actually, 89.4. So that between the corporate insurance and the corporate general claims, they add up to the \$94.6 million or the \$94.7 million that is still unpaid insofar as corporate claims are concerned?

Mr. McCLELLAN. That is right.

Mr. WESTPHAL. Now, continuing on by reference to this House report, they then list three categories of claims that are treated as individual claims. One is labeled "Corporate and Partnership Individual Claims"; this again being generally regarded as situations where claims resulted from the fact that a family in Germany formed a corporation in order to keep their property from being confiscated had the individual been learned. That is generally the type of situation, is it not?

Mr. McCLELLAN. I would assume that some of these claims would involve that situation. I can't say that all of them do, but some.

Mr. WESTPHAL. All right. But in any event, they fell into one of the categories by statute which you were authorized to treat as a claim?

Mr. McCLELLAN. That is right.

Mr. WESTPHAL. Now, those claims total \$7.3 million, of which \$5.1 million has already been paid or an average of 70.6 percent, leaving \$2.1 million still unpaid? Then you have a category of individual claims which originally totaled \$7.2 million, of which they have received \$5.5 million, for an average of 76.3 percent of the award being paid. There remains \$1.7 million yet to be paid, correct?

Mr. McCLELLAN. That is correct.

Mr. WESTPHAL. Then you have a mixed claims category, which again is an individual classification, and they totaled originally \$8.9 million. They have already been paid \$6.2 million. The average percent there is 69.8 percent of awards being paid; they have an unpaid balance of \$2.7 million. Correct?

Senator FONG. On that point, on the mixed claims, may I ask about the three claims here almost at the end of the schedule?

Mr. McCLELLAN. Yes, sir, I see those.

Senator FONG. Eric Warburg, Gisela Wyanski, and Anita Warburg.

Mr. McCLELLAN. Yes, sir; I see.

Senator FONG. The award to Eric Warburg was \$389,863.23 and the same amount for the other two. One has been paid \$372,152.05 and another has been paid \$381,007.64 and another has been paid the same amount. So in one case, 95.5 percent had been paid, and in the other two cases, 97.7 percent had been paid. How were they paid so much in relation to the others?

Mr. McCLELLAN. The only explanation that I can give for this is that I would have to go back and look at the decision on this.

There is a possibility that some portion of the award may have been paid as small business. You see what happened is that we had some claims that were based on individually owned property and we also had corporate owned property. Now the corporate owned property may have qualified as a small business concern, and it may have been paid in full on that particular part of the award, and the pro ration on the other part comes in on the individually owned property as opposed to the small business award. I know that there are some individual claimants here who would fit that example that I gave, but anyway, on these three, I just don't know unless I looked at the files on those. I would be glad to do so.

Senator FONG. There is a claim here of almost \$400,000, and they got about 97 percent of their claim already paid.

Mr. McCLELLAN. That is correct. It took a lot of work to get these charts together, and we have a very small staff. We devoted a lot of time to do this. We thought that the Congress ought to have the figures so that they would know exactly what each person is getting and the types of claims that we are talking about. I mean, you can talk about individual claims, which may be completely different, than a corporation claim, or where a person is operating a two-man partnership. I mean, you could have a situation where they had a small apartment house that they used to make income off of as opposed to a big corporation. This is different from some of these claims, where you had family owned businesses which were really not small businesses at all. They were very big businesses, and they have interest in these corporations or they inherited interest in these corporations in Germany or Europe or wherever the damage has occurred, and they are not really small. This is why we feel that it is important that these statistics be studied because this indicates that what we are talking about now at this point in the payment stage are really people who have received substantial payments on their awards. And nobody ever can really be made whole in legislation like this. It was never intended for it. Congress knew when they initially passed this legislation that everybody wouldn't be made whole. This is an effort to alleviate some of the losses that American citizens sustained as a result of World War II.

Senator BURDICK. You said that small corporations were paid out?

Mr. McCLELLAN. Yes, sir.

Senator BURDICK. What is your definition of small? What is your definition of a small business?

Mr. McCLELLAN. We didn't get into this. They had to qualify under the Small Business Act. There was a question on our claim form which asked whether or not they qualified as a small business concern. If they said yes, we sent a questionnaire to the Small Business Administration and they made that determination based on the provisions of the Small Business Act. They communicated with the claimants

and they secured the information as to the number of employees and things like this, and their income. I am sure that this was the basis on which the Small Business Administration made the determination and they would certify to the figures that John Doe is a small business concern, and so on.

Senator BURDICK. He may have a claim of \$300,000 or \$400,000 or \$500,000, though?

Mr. McCLELLAN. Oh, sure.

Senator BURDICK. And they were paid in full?

Mr. McCLELLAN. Yes, sir.

Mr. WESTPHAL. I have just two more points I would like to clarify, Mr. Chairman.

As I read the House report and their amendment, they set forth basically as the basis for their amendment, which would give a preference to individuals as compared to corporations, the fact that under the law, corporations got tax benefits and tax exemptions, which no individual got. Now, in our conversation on Monday after you returned to Washington, I asked you whether the Commission could furnish us with a list of those corporations which took a tax loss and reported that tax loss to you so that this committee might know which of those 161 remaining corporate claimants took a tax loss which you deducted from their award, and then which in turn were granted a tax exemption on any payments made by the Commission under this War Claims Act. Now, would you explain to the committee what your capacity is to furnish the committee with a list itemizing which of the corporations took the tax loss, and how much of it they took?

Mr. McCLELLAN. We can furnish that information to the committee. We don't have it today, but we can furnish it. Our files are retired to the Federal Records Center out in Maryland. It takes some time to get some of these files back. We will furnish this information to the committee.

I think a study has been made by some of the witnesses that may appear here today as to how many of these corporations did that.

Mr. WESTPHAL. Well, one of the witnesses has attached to his prepared statement that he is to submit to the committee a list of corporations and the amount of the tax loss which they claimed, but until we hear from that witness, we don't know what source compiled that list, or whether it is accurate.

Mr. McCLELLAN. They probably got it from our own agency. We have been very cooperative to both sides on this issue. We made what records we could available to them.

Mr. WESTPHAL. Let me ask you, how long do you think it would take to do this?

Mr. McCLELLAN. I think you could do it in a couple of days.

Mr. WESTPHAL. Mr. Chairman, I would suggest the witness be required to furnish that to the committee as soon as possible.

Mr. McCLELLAN. I would be glad to.

Senator BURDICK. Fine, and that will be placed in the record.

[The information referred to follows:]

[Editor's Note: The following is the response of Mr. McClellan to the tax information request of the subcommittee:]

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

Washington, D.C., December 10, 1974.

HON. QUENTIN N. BURDICK,
Chairman, Ad Hoc Subcommittee, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: At the hearing on the bill, S. 1728, held December 3, 1974, you requested that the Commission furnish information concerning the tax benefits derived by corporations having unpaid balances on awards granted under Title II of the War Claims Act of 1948, as amended. Enclosed is a list of the corporations with the tax benefits derived, if any, on account of the losses that were the subject matter of the claims. This list generally corresponds to the list that appears on pages 32-34 of the transcript of the hearing held on November 7, 1973, by the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives.

I would like to clarify my response to certain questions relative to whether the tax benefits deducted from awards by the Commission included state or foreign tax benefits that may have been derived by these corporations. Under Section 206(b) of the War Claims Act of 1948 (50 U.S.C. App. 2017e, the Commission was required to deduct from these corporate awards the *Federal tax benefits*. State or foreign tax benefits were not considered. It should also be noted that this statute did not require the deduction of any tax benefit that individuals may have received. Thus, our claim forms were not designed to obtain this information.

During the course of the hearing, the issue arose regarding whether paragraph 3, which was added to Section 213(a) of the War Claims Act by Public Law 91-571, approved December 24, 1970, required that the \$10,000 payment authorized in paragraph 2 be counted when computing the \$35,000 ceiling set forth in the said paragraph. While there is testimony on the bills, H.R. 2669 and S. 941, the proposals which became Public Law 91-571 to the effect that the \$10,000 should be counted to reach the \$35,000 ceiling, the Senate report (S. Rept. No. 91-1375) on H.R. 2669, makes it clear that the new \$35,000 ceiling on payments in paragraph 3 was in addition to the \$10,000 referred to in paragraph 2. Therefore, the Commission is in full agreement with the view on this issue expressed by the Chairman at the hearing.

The Commission is pleased to furnish this information.

Very truly yours,

WAYLAND D. McCLELLAN,
General Counsel.

Go. Approval Partnership Claims (Insurance):

CLAIM NO.	PRECISION NO.	CLAIM OF	TAX BENEFITS DERIVED
10921	11157	Home Insurance Company	None
4329	11279	Home Insurance Company	\$ 1,941.09
5560	11279	Insurance Co. of No. America	4,672.32
4319	12027	Home Insurance Company	986.18
6556	12027	Insurance Co. of No. America	10,506.90
5595	13521	Guardian Life Ins. Company of America	None
6561	14803	Insurance Co. of No. America	6,356.58
4331	14967	Home Insurance Company	634.82
6957	14967	Aetna Casualty & Surety Co.	11,967.53
8548	19237	Northeastern Insurance Co. of Hartford	None
8550	19231	Quaker City Insurance Co.	None
8556	19253	Rhode Island Insurance Co.	None
8592	19627	N. Y. Underwriters Ins. Co.	None
8596	19628	Pacific Ins. Co. of New York	None
8610	19629	Vigilant Insurance Co.	19,402.86
8567	19647	Bankers & Shippers Ins. Co. of New York	None
8578	19649	Guaranty Security Ins. Co.	None
8599	19787	Providence Wash. Insurance Co.	None
8609	19817	Universal Insurance Co.	24,811.36
6810	19969	Aetna Casualty & Surety Co.	6,039.81
8560	20012	Aetna Casualty & Surety Co.	None
8561	20013	Agriculture Insurance Co.	None
8562	20014	Agriculture Insurance Co.	None
3553	20015	American Home Insurance Co.	7,292.31
8564	20016	American Home Insurance Co.	None
8565	20017	American Re-Insurance Co.	None
8571	20019	Continental Insurance Co.	None
8572	20020	Continental Insurance Co.	None
8573	20021	Federal Insurance Co.	None
8575	20022	Fireman's Ins. Co. of Newark, New Jersey	None
8577	20024	Great American Ins. Company	None
8579	20025	Hanover Insurance Company	None
8580	20026	Hartford Fire Insurance Co.	None
8584	19943	Home Insurance Company	None
		National Fire Ins. Co. of	

CLAIM NO.	REGISTRATION NO.	CLAIM OF	TAX BENEFITS DERIVED
8907	20107	St. Paul Fire & Marine Ins. Company	None
8997	20104	Phoenix Insurance Company	None
8998	20105	Providence Wash. Ins. Co.	None
8990	20105	Reinsurance Corporation of New York	\$ 11,822.84
8993	20103	Niagara Fire Ins. Company	None
8903	20007	Reliance Insurance Co.	None
8904	20008	Reliance Insurance Co.	None
8957	20306	Aetna Insurance Co.	None
8957	20306	Aetna Insurance Co.	441.72
8958	20308	Aetna Casualty & Surety Co.	None
8958	20308	Aetna Casualty & Surety Co.	4,232.00
8970	20309	Phoenix Insurance Co.	None
8970	20309	Phoenix Insurance Co.	462.00
8981	20180	Fireman's Fund Ins. Co.	None
8982	20189	Fireman's Fund Ins. Co.	None
8986	20131	Insurance Co. of No. America	63,475.14
8902	20128	Reliance Insurance Co.	None
8906	20129	Monarch Life Insurance Co.	74,959.32
8983	20492	Home Insurance Company	None
8901	20494	Reliance Insurance Company	None
8905	20495	Security Insurance Company	None
8966	20018	Atlantic Mutual Ins. Company	None
8976	20023	Glens Falls Insurance Co.	None
8968	20955	Boston Old Colony Ins. Co.	None
8994	20957	North River Insurance Co.	40,014.90
8911	20960	Wastchester Fire Ins. Co.	6,936.08
8908	20959	U.S. Fire Insurance Co.	195,555.29
8908	20959	U.S. Fire Insurance Co.	398.45
8995	21249	Boston Old Colony Ins. Co.	None
8995	21249	Boston Old Colony Ins. Co.	None
8974	20958	Fireman's Fund Insurance Co.	None
8989	20101	Merchants Fire Assurance Corp. of New York	None
8987	21250	Insurance Co. of No. America	144,078.50
8995	21249	Boston Old Colony Ins. Co.	None
10731	20961	Equitable Life Society of U.S.	None
8977	19223	Reliance Insurance Co., etc.	None

Corporate and Partnership Claims (Continued)

CLAIM NO.	DECISION NO.	CLAIM OF	TAX BENEFITS DERIVED
9537	5715	Universal Leaf Tobacco Co., Inc.	\$ 20,319.05
1440	10075	Matson Navigation Company	27,107.43
8916	10424	California Texas Oil Corp.	None
10921	11157	Borg-Warner Corporation	None
13522	11130	California Texas Oil Corp.	None
1257	11291	Archer-Daniels-Midland Co.	80,877.12
13474	11834	Union Oil Co. of California	105,878.27
8619	11869	Standard Oil Co. of California	None
8619	11869	Texaco, Incorporated	None
9523	12456	Shanghai Wharf & Warehouse Co., Fed Inc. USA	None
20670	13041	United States of America on High Seas	None
20670	13041	United States of America Philippine Limit	None
11180	13282	Westinghouse Air Brake Co.	124,228.00
11176	14766	America Express Co., Inc.	246,220.40
12062-3	14966	Paramount International Films Inc.	None
12062-3	14966	Paramount Pictures Company	None
8203	16725	The Rieser Company, Inc.	None
8204	17286	Belle River Holding Co., Inc.	32,800.23
7227	18560	Reliance Motors Federal Inc. USA	None
7819	19227	First National City Bank	11,319.93
7815	19226	Shanghai Power Company	None
10010	16118	S. S. Kresge Company	80,660.80
17977	18197	The Gillette Company	227,772.00
2298	15065	Mobile Oil Corporation	475,004.00
2300	15067	Mobile Oil Corporation	245,547.00
2297	15064	Mobile Oil Corporation	590,306.13
2299	15066	Mobile Oil Corporation	1,090,404.73
2302	15068	Mobile Oil Corporation	45,000.19

CLAIM NO.	DECISION NO.	CLAIM OF	TAX BENEFITS DERIVED
3346	18432	Tidewater Oil Company	None
3038	18716	The Robert Dollar Company of California	\$ 1,077.21
9774	18734	Warren Brothers Company	None
14805 14808	19016	Columbia Pictures Corp.	14,492.61
12138	19410	Humble Oil Refinery Co.	780,175.68
5041	19225	Standard Car Finance Corp.	None
17575	20140	Caltex (Asia) Limited	527,090.59
22740	19903	International Telephone & Telegraph Corporation	7,768.00
8323	20496	Creole Petroleum Corp., etc.	79,954.12
8323	20496	Creole Petroleum Corp., etc.	None
9603	20954	Eastman Kodak Company	23,646.73
2301	18241	Mobile Oil Corporation	1,203,350.00
17536	18559	Ford Motor Company	311,090.00
22724	19228	International Telephone & Telegraph Corporation	10,231.00
22745	19229	International Telephone & Telegraph Corporation	65,199.01
5896	21325	Otis Elevator Company	596,493.00
22742	20057	International Telephone & Telegraph Corporation	5,027.36
18270	21314	International Harvester Co.	913,493.34
20235	21313	Corn Products Company	1,386,698.21
9468	21450	Chicago Pneumatic Tool Co.	346,224.00
9604	21458	Eastman Kodak Company	694,536.55
17426	21449	Atlantic Richfield Co.	None
17528	21441	Esso Standard Eastern Inc.	20,961.00
17531	21444	Esso Standard Eastern Inc.	41,956.00
18151	21451	American Radiator & Standard Sanitary Corp.	1,566,965.39
9796	21327	United Shoe Machinery Corp.	None
7115	18764	F.W. Woolworth Company	1,331,008.51
22739	19904	International Telephone & Telegraph Corporation	767.00

CLAIM NO.	DECISION NO.	CLAIM OF	TAX BENEFITS DERIVED
22741	19905	International Telephone & Telegraph Corporation	\$ 6,221.00
22743	19902	International Telephone & Telegraph Corporation	4,313.36
674	21519	Mobile Oil Corporation	177,459.00
10619	21487	General Motors Corporation	16,831,806.21
10619	21487	General Motors Overseas Corp. (China)	41,725.67
10619	21487	General Motors Overseas Corp. (Phil.)	41,725.67
18150	21319	Standard Oil Co. of Calif.	None
18150	21319	Texaco, Incorporated	None
18884	19130	Worthington Corporation	29,224.47
20237	20974	Corn Products Company	2,353,181.61
8470	21326	Swift & Company (Illinois)	13,563.26
17526	21439	Esso Standard Eastern Inc.	163,632.00
17527	21440	Esso Standard Eastern Inc.	937,778.00
17529	21442	Esso Standard Eastern Inc.	52,941.00
17530	21443	Esso Standard Eastern Inc.	324,814.00
17532	21445	Esso Standard Eastern Inc.	None
17533	21446	Esso Standard Eastern Inc.	None
17534	21447	Esso Standard Eastern Inc.	None
1987	21522	United Fruit Company	390,030.49
2295	21499	General Milk Company	None
7359	17015	IBM World Trade Corporation	24,041.60
7625	21483	Standard Oil Co. of N. J.	None
7825	21526	International Telephone & Telegraph Company	19,456.08
8612	21534	General Electric Company	1,033,909.00
8613	21362	Texaco Incorporated	325,500.00
8617	21544	International Securities Co.	None
8617	21544	The Singer Company	251,423.74
10328	21535	The Anaconda Company	40,429.00
11641	21393	Sea Oil & General Corp.	None
20236	20553	Corn Products Company	None
22725	21523	International Telephone & Telegraph Company	993,344.00
9605	20954	Eastman Kodak Company	23,646.73
8614	17639	The Budd Company	None

Senator FONG. You have here mentioned claims under the amendment which was passed by the House. Now, would mixed claims be considered an individual claim?

Mr. McCLELLAN. A portion of it would be an individual claim, and the way we classify it is another portion would be through ownership interests in a corporation. In other words, what we have is this. We have, let us say, a house; for example, a private dwelling, and maybe the individual owned this outright in his own name, but another part of the claim may have been based upon a stockholder interest in a corporation that sustained a loss. This is why we made the distinction between the individual corporate claimants and the individual solely individually owned property and the mixed claims so the mixed claims would be a little bit of both.

Senator FONG. So the way the amendment reads is a mixed claim would be considered an individual claim?

Mr. McCLELLAN. That is correct.

Senator FONG. So that if the bill is passed with the amendment, the people with the mixed claims will get paid in full?

Mr. McCLELLAN. That is my understanding.

Senator BURDICK. And some of that can be corporate claims?

Mr. McCLELLAN. It could be, yes, sir.

Mr. WESTPHAL. One last question, if I might, Mr. Chairman. At the time your commission determined the amount of the awards on all of these claims, that determination was made sometime in the 1960's, as I understand it, and in determining the amount of the award, you attempted to determine the value of the property as of what date?

Mr. McCLELLAN. At the time of loss.

Mr. WESTPHAL. Which would be somewhere in the 1930's or early 1940's?

Mr. McCLELLAN. Between 1939 and May 8, 1945, with respect to Europe, and September of 1945 with respect to the Pacific.

Mr. WESTPHAL. So the dollar amounts shown in these schedules that are included in the House hearing record, those are dollar values as of some time in the late 1930's or early 1940's?

Mr. McCLELLAN. That is right.

Mr. WESTPHAL. That is all the questions I have.

Senator BURDICK. On page 34 of the House hearings, which we have been referring to during this last period of interrogation, are listed the corporate and partnership—individual—claims and a quick rundown indicates that when the \$24,000 is paid, there are only 15 remaining in that group, by my calculation. On the individual claims, then, if the remaining \$24,000 is paid, there will only be 17 individuals claims left unpaid. On the mixed claims, if the \$24,000 is paid, there will only be 11.

Mr. McCLELLAN. A substantial number, and I would say the majority of these claims, would be paid off under the present law.

Senator BURDICK. That is the present law as you and I understand it?

Mr. McCLELLAN. Yes, sir.

Senator BURDICK. So there have already been some priorities established?

Mr. McCLELLAN. Yes, sir.

Senator BURDICK. Any more questions?

Senator FONG. No.

Senator BURDICK. Mr. Westphal?

Mr. WESTPHAL. No.

Senator BURDICK. Well, thank you very much.

Mr. McCLELLAN. Thank you.

Senator BURDICK. Our next witness is Mr. Luis C. Roever from Hingham, Mass. Welcome to the committee, Mr. Roever.

STATEMENT OF LUIS C. ROEVER, HINGHAM, MASS.

Mr. ROEVER. Mr. Chairman and members of the subcommittee, my name is Luis C. Roever, and I reside in Hingham, Mass. I am here to testify in support of S. 1728, as amended and passed by the House of Representatives. This bill provides a priority for individual U.S. citizens who have been granted awards under the War Claims Act as compensation for losses they suffered in World War II.

My claim arises from the seizure and ultimate loss of my family's vegetable oil manufacturing plant in Wittenberge, Germany. This business had been in our family for many years. My father was German-born, and the business provided our family's principal support before the war. I am a native-born American citizen and I served with the U.S. Army in World War II in combat in North Africa and in Italy. I am currently the treasurer of a company in Massachusetts and have a background in tax and corporate finance.

I am sure that the subcommittee is aware of the hardship suffered by individuals whose homes, personal possessions, and family businesses were lost or destroyed during World War II and why these losses are of such an altogether different and more damaging nature from those of large multinational corporations as to justify a priority for individuals. I would like to address myself to another aspect of the problem: The fact that multinational corporations received significant tax benefits because of their war losses that were unavailable to individuals. As a result of the availability of these tax provisions, together with the amounts already received from their war claims awards, the corporate claimants, and indirectly their stockholders, have recovered a very high percentage of the losses they suffered during World War II. The 37 corporations that received war claims awards in excess of \$500,000 have received \$35.6 million collectively in U.S. tax benefits.

For several reasons, individuals were unable to take tax deductions for property losses that were available to multinational corporations.

First, even if an individual were eligible to take a deduction, substantial income in the year of loss would be required in order to make the deduction valuable. Many of the individual awardholders were recent refugees to the United States with little or no taxable income against which to take the losses. In my own case, which was typical of many individual awardholders, I was in the armed services during World War II and consequently my income was minimal during the war years.

Moreover, in many cases, especially those involving the loss of personal residences, other personal property or real estate—categories which comprise the vast majority of losses suffered by individuals—the availability of a deduction in most of the relevant years was dependent upon a taxpayer's having large capital gains, regardless of

his ordinary income. Since many claimants had had their bank accounts confiscated, a loss not compensable under the War Claims Act, it was extremely unlikely that they would have capital at all by the time of their emigration to the United States, much less capital gains. As a practical matter, then, the great majority of individual claimants had neither sufficient income nor income of the right kind to make a confiscation loss or a war loss available or worthwhile—a problem that most corporations did not have.

Second, since many of the claimants were recent refugees with no knowledge of the complexity of U.S. tax law, they were unlikely to take advantage of such tax deductions as were available to them. U.S. corporations did not have this problem.

Third, in many cases, ownership of the property confiscated was unclear because records located in Europe had been lost or were otherwise unavailable, and proof of loss in a hostile foreign country was difficult to establish, thus precluding a tax deduction. U.S. corporations would not have similar problems of establishing ownership.

To correct a misunderstanding that somebody was testifying to before, I can make it clear as to individual claimants who filed a claim and received an award based on ownership of a German corporation. These were family corporations. These were not public held corporations. There is a big difference.

Fourth, the special war loss deduction that many multinational corporations took advantage of was not available to persons who lost their property before December 11, 1941, the date on which the United States declared war on Germany. The property of many individuals had been confiscated by the Nazis long before this date. The most sweeping confiscation order of the period was issued by Hitler on November 25, 1941. Ironically, the effect of this order, issued less than 3 weeks before the declaration of war, deprived many individuals of potential tax benefits under U.S. law.

The confiscation decrees of Nazi Germany issued before the United States entry into the war were aimed at individuals, Jews, other non-Aryans, and political enemies of the Nazi Party. These decrees did not confiscate the property of U.S. corporations.

Thus, while many individuals had lost their property before December 11, 1941, and were unable to take the war loss deduction, very few U.S. corporations were in the same position; for most corporations the war loss deduction was available to them. For all these reasons it can be stated with certainty that very few, if any, individual claimants received U.S. tax benefits as a result of the confiscation, loss, or destruction of their property. After taking a survey of the individual claimants and examining the files of the Foreign Claims Settlement Commission, our group of individual awardholders has been unable to find a single case of an individual claimant taking a war loss or confiscation loss deduction.

Because of the tax deductions taken by corporate awardholders on account of war losses, those corporations have received a substantially greater percentage of compensation for their actual loss than have the individuals. The corporations have contended that since they were required to deduct their tax savings from the amount of their claim, they are in approximately the same position as the individuals. As the following example illustrates, however, it can be demonstrated

that corporations taking tax deductions as a result of their losses have recovered a greater percentage of their loss than individual claimants who were not able to take such deduction.

Assume that an individual suffered a \$1 million loss and took no tax deduction. He would have received an award from the Foreign Claims Settlement Commission in that amount. To date, he would have received actual compensation as follows: \$10,000, under a priority for claims up to that amount; plus \$606,870, because all award-holders received 61.3 percent of their remaining awards in 1967; plus \$11,000, under a second priority. His total compensation to date would have been \$627,870, about 62.8 percent of his loss.

Assume that a corporation suffered a loss of exactly the same amount, \$1 million, but took a tax deduction. If the corporation was paying taxes at the rate of 50 percent of its net income, its savings would have been \$500,000. In calculating the award to the corporation, the Foreign Claims Settlement Commission would have subtracted this amount from the award itself. Note that the tax saving is subtracted at this point, from the base award, and is not a debit against actual payments from the War Claims Fund. To date, the corporation would have received compensations as follows: \$500,000, which is the tax savings mentioned above; plus \$10,000 and plus \$300,370. The \$300,370 is the result of 61.3 percent times \$490,000. So you have the \$300,000 plus \$11,000, for a total of \$821,370 total compensation.

The corporation has been compensated for about 82.1 percent of its loss.

Thus, it is clear that the tax deductions taken by corporations have resulted in their receiving greater compensation for their losses than individuals have received. Indeed, one single corporation, General Motors, took a war loss tax deduction almost three times as large as the total of all outstanding individual awards.

In addition, many of the corporate awardholders may have taken deductions from State and local taxes as a result of their wartime losses. These tax savings were not deducted from their War Claims awards. Furthermore, those corporations that reestablished operations in Germany after the war were eligible for very substantial tax benefits from their German tax obligations as a result of war losses. These tax benefits were not deducted from their War Claims awards. Thus, it is possible that some of these corporate awardholders have already received 100 percent or more of their actual losses when all their awards and tax benefits are considered.

In addition, the ability of these multinational corporations to take substantial deductions in the forties allowed them to recover part of their losses immediately rather than to wait until the late sixties as the individual claimants were forced to do. In effect, a corporation taking a war loss in 1942 worth \$1 has had the use of that \$1 for 32 years. The financial compound interest and annuity tables published by the Financial Publishing Co. of Boston state that \$1 left at compound interest of 10 percent will grow to \$21.10 in 32 years. At 5 percent, \$1 will grow to \$4.80 in 32 years.

Consider, for example, the case of I.T. & T., one of the largest award-holders, which took tax benefits of \$1,956,000. I.T. & T. has had an average return on capital of well over 10 percent. At 10 percent, I.T. & T.'s tax savings would have grown to over \$41 million by 1973. Even if

the money derived from the tax saving had merely been placed in a savings bank at 5 percent interest, it would have grown to over \$9,200,000, an increase far in excess of the total unpaid individual awards.

I also want to point out that no interest is added to any amount paid as a result of war claim. Therefore, individuals have not had their funds working for them, whereas corporations have been able to put their tax savings to work for them for many years.

Before I flew down from Boston yesterday I was curious what the effect would be if the total unpaid amounts due individual claimants, namely \$6,500,000, were paid to all corporate claimants. I simply used three large companies which are corporate claimants in the list of, if I remember, 160 corporate claimants, namely Standard Oil of New Jersey, ITT, and General Motors. Their total net worth is \$26 billion for just the three corporations. It is \$26,696,493,000. If they received the full amount of the \$6,500,000 due the individual claimants, this would increase their net worth by 2/100 percent. If you look at the total shares outstanding of the three corporations, these corporations have 607,370,000 shares outstanding. On a per share basis this would increase their earnings by 1.1 cents per share.

Obviously if I had used all 160 corporations, the amounts would be absolutely minimal.

The point I am making here is that the unpaid amounts due the individual claimants is of a most serious magnitude to them. In the event that any portion due these claimants is not paid to them but is paid to the multinational corporations, the effect of these windfall profits to the stockholders of these multinational corporations is negligible and hardly measurable.

Finally, because the value of the dollar has plummeted during these years, a corporation taking a war loss deduction worth \$100,000 in 1942 thereby realized more than twice as much value as a claimant receiving a \$100,000 payment on his award in the late 1960's or now. In sum, as stated by Senator Smathers on the Senate floor during debate on the 1962 war claims legislation:

"Already some of the large businesses have, in effect, been repaid as a result of tax deductions and other businesses they operated." Congressional Record, September 12, 1962, Vol. 108, p. 19221.

Thus, even if the losses suffered by the individual awardholders are not regarded as fundamentally different from the corporation losses—although I am totally convinced that they are very much different—the tax saving enjoyed by corporations is a valid basis for establishing a priority for individual awards.

As I was coming here to testify this morning, I had a thought for whatever it is worth, and it is worth a lot to me. I was the fellow who 30 years ago who lost his property. I am the fellow who filed his claim about 15 years ago and I received awards. Thirty years later I am here somewhat gray testifying again hoping to have you gentlemen consider all the individual war claimants because we think—and I certainly think that our position is fair—that is equitable and just.

Thank you, Mr. Chairman.

Senator BURDICK. Thank you for your contribution this morning. I just have a few questions to ask you. First of all, what was the legal character of your business and the family business in Germany?

Mr. ROEVER. My family business in Germany was a family business I believe 95 percent owned by the family. It was a corporation.

Senator BURDICK. It was a corporation?

Mr. ROEVER. Yes.

Senator BURDICK. That is one of the problems I see we are going to have as to how we separate corporations. It wasn't publicly owned but it was incorporated?

Mr. ROEVER. It was incorporated. I assume because my father was a businessman that that would be a normal way for a family to run a business.

Senator BURDICK. So you don't claim to be a small business?

Mr. ROEVER. No; I did not claim a small business.

Senator BURDICK. You were a family corporation duly incorporated?

Mr. ROEVER. Yes, sir.

Senator BURDICK. I notice on page 35 of the House report your name. Are you Luis or Rudolph?

Mr. ROEVER. I am Luis. My brother Rudolph would be here, but the gentleman is 69 years old. His wife is in the hospital and has been there for 6 weeks.

Senator BURDICK. You filed a claim for \$254,000 and Rudolph filed a claim for \$254,000—oh, no, \$254 million?

Mr. ROEVER. Oh, no, it is thousand.

Senator BURDICK. You are right, it is thousand. I better get a new pair of glasses.

Mr. ROEVER. The claim was for \$254,618 each.

Senator BURDICK. According to the record, you already received 67.1 percent and your brother has received 67.1 percent?

Mr. ROEVER. Yes, Senator.

Senator BURDICK. I've done a little calculation of this here. When you receive another \$24,000, you would have received \$194,951 instead of \$170,951 and that would leave a balance of \$59,600?

Mr. ROEVER. I am sure your arithmetic is right.

Senator BURDICK. That would be just about 80 percent of the claim and if the law is not changed, you still share in the general proportion?

Mr. ROEVER. I understand that, Senator.

Senator BURDICK. And you think that your category is entitled to different treatment than other corporations?

Mr. ROEVER. Than the large U.S. corporations, yes, because it was my family corporation. When the family corporation was lost during World War II every single penny went down the drain. I was very fortunate. I served in the U.S. Army and was able to finish my schooling under I think one of the greatest pieces of legislation, namely the GI bill, but I had nothing in the bank account.

Senator FONG. I have no questions, Senator. You had a very fine statement.

Mr. WESTPHAL. No questions.

Senator BURDICK. We are just going to have to play it as best we can because we have some important votes coming up this afternoon. We have one more witness this morning and then we will have to adjourn until 2. Does anybody have travel plans that will present a problem?

All right, we will take you then. Would you identify yourself please.

STATEMENT OF ERNEST G. HERMAN, LOS ANGELES, CALIF.

Mr. HERMAN. Mr. Chairman and members of the subcommittee, my name is Ernest Herman, and I live in Los Angeles, and I hope to return to Los Angeles this afternoon.

I am grateful for the opportunity to appear before this subcommittee to testify in support of S. 1728 as amended and passed by the House of Representatives. My claim under the War Claims Act derives from the loss of my family's printing business in Berlin. This business had been founded by my great-grandfather in 1834 and my family owned and operated the business for four generations. The business was expropriated by the Nazis. It was destroyed by bombing during the war. I emigrated to the United States in 1936. I became a U.S. citizen in 1942 and served in the U.S. Army.

As is the case with most of the individual awardholders, I came to this country as a refugee from a totalitarian dictatorship. I will always be grateful for the opportunity to live and work in freedom. It is in this spirit of gratitude to this country that I present my testimony today, recognizing as I do, how unique a privilege it is to be part of a government that is concerned with the welfare of individuals and takes the time and interest to listen to their problems.

I do not appear to advance a claim against the United States Government or to seek any relief that is payable out of the tax dollars of American citizens. The issue before this subcommittee, I believe, is simply a question of relative equity between two distinct groups of claimants to a fund that is inadequate to pay both of them in full. I realize that this is not an issue of major importance to the Nation as a whole. Out of a population of 210 million persons, only 186 individuals and 161 corporations have a direct stake in this matter.

Because so few persons are directly involved, it is quite simple to characterize this legislation as a bill for the benefit of special interests. It is therefore not surprising that those who oppose this legislation have made this contention.

The argument has been advanced, in its baldest terms, that this bill is unprincipled special interest legislation for the benefit of a few rich individuals. I strongly disagree. I believe that this legislation is premised upon a clear principle of equity and justice; that the individuals' awards are restitution for far greater hardship, suffering and loss than those of the corporate awardholders.

My award, with an unpaid balance of about \$471,000, is one of the largest individual awards. Since coming to this country I have been active in business, as well as in charitable and civic affairs. I have been fortunate enough to have achieved some success. My standard of living will not be affected by the payment of my war claim award. I have worked hard for the passage of this legislation for over 5 years for two reasons: first, to establish the principle that the devastating personal losses that we individuals suffered should be recognized by the Congress as losses of an altogether different nature from the relatively insignificant investment losses incurred by the corporations; and second, because, unlike myself, the great majority of individual awardholders are old, middle- and low-income individuals who do need their full war claims awards to provide essential financial support.

S. 1728 would benefit all 186 individual awardholders. Under existing law, each awardholder, both individual and corporate, will receive \$24,000 and thereafter payments will be made on a pro rata basis. The corporate awardholders have argued, therefore, that this bill will benefit only the 43 individuals whose awards are greater than \$24,000. This is not the case.

It will take over \$5 million to pay all individual and corporate awards up to \$24,000 and, while it presently seems likely that the war claims fund will be large enough to meet these payments, there is certainly no assurance that this will be the case.

If the individual awardholders are given priority, it will take only about \$2 million to pay each individual award up to \$24,000. Thus, enactment of S. 1728 would increase the likelihood that those individual awards under \$24,000 will be paid in full. It would, moreover, make prompt payment of these awards more likely.

The Justice Department, which administers the war claims fund, has been quite conservative in authorizing payments from the fund and has always sought to keep a substantial reserve in the fund. Thus, even if the fund itself totals more than \$5 million, it is very possible that a much lesser amount will be distributed in the near future while the remainder is held in reserve. This could well result in awardholders receiving less than \$24,000 in the next distribution.

For many of the individual awardholders who are elderly and in poor health, the deferral of payment could mean that they will never be paid. The passage of S. 1728 will help assure that their legitimate interests are not compromised by siphoning off funds to pay the corporate awardholders who have already received more than \$150 million from the war claims fund.

The corporate awardholders who have termed S. 1728 "special interest" legislation have chosen to overlook the benefits of S. 1728 to all individual awardholders and instead, have concentrated their fire on the 43 individuals whose unpaid awards exceed \$24,000.

The charge of special interest totally ignores the vast difference between the devastating losses suffered by individuals on the one hand and the relatively inconsequential losses suffered by the corporations on the other. We individuals derive our awards from the losses of our homes, our personal belongings, or our small family business. Except for part of one award for \$132.50, not one of our claims derives from the war losses of large, publicly held corporations.

Except for this single instance, those of our awards based on the loss of businesses involved businesses that were owned and operated by the family suffering the loss. In some cases, this was done in an effort to disguise the fact that the business was owned by Jews or other persons who were in disfavor with the Nazi government. Whether or not the corporate form was used, these businesses remained family businesses and constituted our primary means of support. Our investment in these businesses is in no way comparable to the foreign investments of the publicly held multinational corporations.

In most cases, we lost everything we had. In a number of cases, members of our group were imprisoned in Japanese and German concentration camps as a result of their American citizenship. Many of those who were fortunate enough to escape in time to avoid imprisonment later served in our Armed Forces during the war.

The losses that we experienced are of a totally different character from the investment losses of large multinational corporations. These companies invested a portion of their capital in foreign subsidiaries. Most of that investment survived the war. Some small part of it was lost. The kind of losses the corporations suffered are in no way comparable to the catastrophic losses of the individuals.

Moreover, these corporations have already received substantial compensation for their losses. Indeed, for most of them their large tax benefits, plus their previous payments under the War Claims Act have given them a greater degree of recovery than the individual awardholders have received.

Three groups of awardholders, including all U.S. small business corporations, have already received a priority over our awards and have been paid in full. Because of these previous priorities, our awards have been paid only in part. We do not question the judgment of Congress which provided for full payment to all small U.S. business corporations and particularly not to religious and charitable organizations prior to payment to individuals. But these awards have now been paid in full. The remaining corporate awards are, without exception, awards to corporations that are not small businesses. We think that there is a clear and decisive difference between the total loss of our homes, our personal belongings, and our family businesses on the one hand and an investment loss that appears only as a footnote on the corporate balance sheet on the other.

It is true that all awardholders—individual and corporate alike—have been partially compensated for their losses. It is true that some individual awards are substantially larger than others because of the disparity in the size of the individuals' losses and that some individuals will benefit more in absolute dollars than others. It is also true that some, but by no means all, of the individual awardholders have rebuilt from their devastating wartime losses and now have some financial security.

But none of these facts should obscure the fundamental difference between individual losses and multinational corporate losses—a difference that is as real in terms of equity and economic impact as those differences that Congress has already determined justified priorities for small businesses and religious and charitable organizations.

In working for the enactment of this legislation for the past 5 years, I have come to know many of the individual awardholders and have become familiar with the tragic details surrounding their losses. The passage of the War Claims Act in 1948 was a generous humanitarian act on the part of the U.S. Congress to provide restitution, at least in part, to those U.S. citizens who suffered shattering personal experiences. Now, more than a quarter of a century later, there is opportunity for the Congress to restate this commitment to equity and generosity.

I urge the subcommittee to recommend that the Senate accept the House amendments to S. 1728.

Thank you very much.

Senator BURDICK. Thank you very much for your contribution this morning. You, like the preceding witness, derived your claim from a family corporation. Is that right?

Mr. HERMAN. Yes, Senator.

Senator BURDICK. And are you the brother of Gunther Herman?

Mr. HERMAN. Yes I am.

Senator BURDICK. I notice by the records here that your claim is for \$1,257,999, and your brother Gunther has a claim for a like amount?

Mr. HERMAN. That is correct.

Senator BURDICK. That is over \$2.5 million. Is that just the shares of you two brothers?

Mr. HERMAN. We are the sole surviving owners of the business.

Senator BURDICK. When was the business incorporated?

Mr. HERMAN. It was incorporated at different times under different names for different purposes.

Senator BURDICK. When was the original incorporation incorporated? What year?

Mr. HERMAN. I believe after World War I.

Senator BURDICK. That would make it 1919 or 1920?

Mr. HERMAN. I believe so. I was too young to know.

Senator BURDICK. And it was continually the corporation from that time until it was destroyed?

Mr. HERMAN. Yes, sir.

Senator BURDICK. Any questions?

Senator FONG. No questions.

Senator BURDICK. Any questions?

Mr. WESTPHAL. I have none.

Senator BURDICK. We have a vote now and we will have to adjourn, but I would like to ask one question of Mr. Roever if he is still here.

Mr. ROEVER. Yes.

Senator BURDICK. Could you supply us with the incorporation date of your family company in Germany?

Mr. ROEVER. I frankly don't know, Senator, because I don't know if the papers are available.

Senator BURDICK. Well, you can give us some kind of a date. About how long do you think from your memory?

Mr. ROEVER. I would say it was in my family 16 years prior to 1945, so you can work it back. I would say in the thirties.

Senator BURDICK. If you get the exact date would you let us know?

Mr. ROEVER. If I can, I will certainly, Senator.

Senator BURDICK. We will be in recess until 2.

[Whereupon, at 12:45 p.m., the hearing was recessed to reconvene at 2 p.m.]

AFTERNOON SESSION

Senator BURDICK. Our next witness will be Mr. John E. Clute, senior vice president, Boise Cascade Corp., and president of Shanghai Power Co.

We are glad to have you here, Mr. Clute.

STATEMENT OF JOHN E. CLUTE, SENIOR VICE PRESIDENT OF BOISE CASCADE CORP., AND PRESIDENT OF SHANGHAI POWER CO., ACCOMPANIED BY WENDELL LUND, COUNSEL

Mr. CLUTE. Thank you, Mr. Chairman, and Senator Fong. I am John E. Clute and am senior vice president and general counsel of Boise Cascade Corp., and president of Shanghai Power Co. And with me is Wendell Lund, counsel for Shanghai Power Co.

Mr. Chairman, we appreciate the committee's scheduling these public hearings and providing us the opportunity to testify in opposition to the House amendments to S. 1728, which are now under consideration by this committee.

As you are aware, legislation proposing preferential treatment for certain claimants, similar to that now being put forward, was last considered by the House Judiciary Committee in 1970 and was firmly rejected. We again urge the rejection of these inequitable preferences.

Mr. Chairman, I have submitted in advance to the committee a written statement. I would not propose to read that statement at this time although I would like it inserted in the written record and I would like to highlight certain points made in that statement.

Senator BURDICK. Your suggestion to give highlights and summarize is highly appreciated. It will be made a part of the record without objection.

[The prepared statement of John E. Clute follows:]

TESTIMONY OF JOHN E. CLUTE, SENIOR VICE PRESIDENT OF BOISE CASCADE CORP., AND PRESIDENT OF SHANGHAI POWER CO.

Mr. Chairman: Thank you for the opportunity to appear. My name is John E. Clute. I am Senior Vice President and General Counsel of Boise Cascade Corporation. I am also President of its subsidiary, Shanghai Power Company, a United States corporation having a remaining unpaid award of over \$3 million under the War Claims Act of 1948, as amended. It is important to us to recover the largest part of this amount possible under existing law.

Our claim arises out of damage sustained by Shanghai Power Company properties during World War II. The electric properties which were located in Shanghai, China, were seized by the Japanese in 1941 and, except for equipment removed by the Japanese during the war, recovered by the company in 1945. The company was required to spend substantial funds to rehabilitate the properties which represented one of the largest U.S. investments in China before and after World War II. The properties were lost again in 1950 to the Chinese Communists who up to the present time have neither paid nor offered compensation. The properties were valued at \$56 million at the time they were lost.

Boise Cascade is a forest products company with its principal office in Boise, Idaho, and with operations throughout the United States and in a number of foreign countries. Shanghai Power was acquired by Boise Cascade in 1969 as part of Ebasco Industries.

As passed by the Senate, S. 1728 increases payments to U.S. civilian internees in Southeast Asia out of already appropriated funds to the level of payments to military prisoners. To this non-controversial measure the House added two extraneous riders that have nothing at all to do with the bill as passed by the Senate.

The first House amendment grants an absolute preference to individual claimants over corporate claimants, a brand new priority that departs from present law that now treats individual and corporate claimants alike in the payment of their awards under the War Claims Act.

The second House amendment provides for paying all corporate claimants the same amount up to \$50,000 regardless of the size of their claim or their unpaid balance after the awards to individuals are fully paid. This too is a departure from present law.

In 1970, your Senate Judiciary Committee, after public hearings, rejected a similar proposal to grant an absolute preference to individual claimants. Instead, with the approval of the Foreign Claims Settlement Commission, which in the House hearings had opposed granting the preference to individual claimants, your Judiciary Committee recommended and the Senate adopted a provision to pay the remaining corporate and individual claimants \$35,000, or the full amount of their unpaid claim, whichever was less, before resuming pro rata payments on the claims to individual and corporate claimants alike.

The purpose of this action was to accommodate in some part the individual preference issue and thus hopefully to dispose of it, while at the same time pay-

ing off a substantial number of corporate and individual claims that had unpaid balances of \$35,000 or less. Eleven thousand dollars of this \$35,000 has already been paid, and we are assured that the remaining \$24,000 will be paid out of the \$5 million that is now available for this purpose.

In addition to this \$11,000, claimants have previously been paid \$10,000 plus 61.3% of their claim, or the full amounts of their claim, whichever was less. Small business claims have also been paid in full as have also the claims of churches and charities. As a consequence of these payments there remain only 348 claims with unpaid balances, out of the 7,039 claims that were adjudicated by the Foreign Claims Settlement Commission. After the \$24,000 is paid, there will remain only 153 claims with unpaid balances, 43 of them individual claims and 110 of them corporate claims.

What I wish to emphasize is that no change in present law is required to pay off in full 144 of the 187 individual claims with unpaid balances.

Thus, the focus of our discussion is *not* the 187 individual claims with unpaid balances, but rather the 43 individual claims that will remain after the payment of \$24,000 for which money is now available.

The House amendment would repeal the provision in the law passed by the Senate in 1970 that directs the \$35,000 payment, thus cancelling the remaining \$24,000 payment, and substitute therefore the absolute priority for individual claims over corporate claims.

In a letter to the House Commerce Committee, printed in the hearings on this bill, the Justice Department stated that because of pending litigation, private bills, and various claims it cannot be certain how much will remain of approximately \$20 million now in the fund. It appears that all we can be certain of is that \$5 million will be available to be applied on unpaid balances.

Approximately \$6.5 million will be required to pay off the individual claims under the House individual preference amendment. Nine of these 43 claimants will receive 62% of this \$6.5 million. Including previous payments received, these nine claimants will have received from the fund a total of \$6,502,027 or an average of \$726,670 apiece if the House amendment is enacted.

It should also be noted that after the \$24,000 payment has been made under present law, the remaining 43 individuals with unpaid balances will have been paid 64% to 99.8% of their claims. This percentage will, of course, be increased further by any amounts paid out pro rata from funds that may become available over and above the \$5 million.

The point is that under existing law, any cases of serious hardship that have not been taken care of already will be taken care of by the payment of the additional \$24,000 and that then all the individual claimants will have been compensated either in full or for the largest part of their loss.

My purpose in presenting these facts as regards the individual claimants is in no sense to disparage the merits of their claims as adjudicated by the Foreign Claims Settlement Commission. It is rather to point out that hardship cases have already been taken care of or will be taken care of by payment of the additional \$24,000 under present law, and that all individual claimants, both small and large, have been treated at least as favorable as the corporate claimants to the extent available funds permit.

We believe therefore that there is no fair and reasonable basis for giving the 43 individual claimants who will have unpaid balances preferred treatment over corporate claimants by the payments of 100% of their unpaid balances.

The principal argument made by the proponents of granting a preference to individual claimants over corporate claimants in the payment of unpaid balances under the War Claims Act of 1948 is that corporate claimants have received substantial tax benefits that were not received by the individual claimants. In their testimony in the House hearings, proponents compute these tax benefits at 50% of the loss, and the assumption is that corporate claimants generally received tax benefits at this rate, or at an even higher rate.

Facts in the files of the Foreign Claims Settlement Commission flatly contradict this assumption. These facts show that of the 161 corporate claimants with unpaid balances, 77, or almost half, received no tax benefit whatsoever from their war losses, and further that the total tax benefits received for war losses was only 14%, not 50% or more, of all corporate losses here involved.

Section 206(b) of the Act requires corporations to disclose, under oath, any tax benefits received from losses claimed. These benefits are then deducted from their awards. The Act, however, makes no such requirements of individual claimants. They are not required to disclose tax benefits received and such tax

benefits, if received, are not therefore deducted from their awards. The tax benefits received by individual claimants are therefore not a matter of record with the Commission. There has to date been no independent survey of tax benefits received by the individual claimants. There are only self-serving statements in the record that individuals were not in a position to take deductions for their losses. No one knows whether this is so.

But even if it is so, the fact remains that it is also so regarding 77 corporate claimants that received no tax benefits from the loss. The fact is a matter of record with the Foreign Claims Settlement Commission. We are one of these 77 corporate claimants that received no tax benefit from the war losses.

Is it right to penalize these 77 corporate claimants for tax benefits they never received?

The proponents of the individual preference amendment also attempt to justify the priority payment for individuals by arguing that the present shareholders of a corporate claimant were not shareholders at the time the loss was sustained. But the same is also true of many of these 43 claimants. They also are not the same individuals who suffered the loss, but are rather their heirs and successors. Many of the individual claims also are for the loss of property that was owned by foreign corporations, not U.S. corporations. By paying off these claims, the amendment would discriminate against shareholders of U.S. corporations. This point was well made in the testimony of the Foreign Claims Settlement Commission in the House hearings, in part as follows:

"We believe that the establishment of a payment priority for awards to individuals is discriminatory and unfair to corporate awardees. * * *

"Individual stockholders who were nationals of the United States were permitted under Section 205(b) of the Act to file claims for losses sustained by non-United States national corporations based on their stockholder or other proprietary per centum interest therein. Thus, some awards have been granted to individuals based on losses sustained by foreign corporations which could not qualify as United States national corporations. * * *

"In effect, therefore, this proposal would result in the inequitable situation under which United States national corporations would be discriminated against in favor of one group of award holders, including those whose interests are indirect through foreign corporations." (Hearing before the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, 93rd Congress, 1st Session, November 7, 1973, Serial No. 93-44, pp. 25-26.)

It has been asserted that the recovery for the loss of Shanghai Power Company property by Boise Cascade is unjustified for the reason that the loss had been written off by a predecessor company. Boise Cascade acquired Shanghai Power Company in 1969 as part of its acquisition of Ebasco Industries. The Shanghai Power war claim had already been adjudicated by the Foreign Claims Settlement Commission and partial payment had already been received by Ebasco Industries.

The write-off—which was occasioned by the Japanese occupation of the property—was a bookkeeping transaction necessitated by conservative accounting practice. It did not relate to the company's award certified by the Foreign Claims Settlement Commission, and this claim is the only recourse available for the realization of any compensation for war damage to this property.

If this loss had been sustained by a corporation less than 50% owned by U.S. nationals, it would be in the same category under the Act as the claims of many of the 43 individual claimants with unpaid balances whose claims are based on their interest as shareholders in corporations less than 50% owned by U.S. nationals, and thus be eligible under the proposed individual preference amendment for a 100% recovery rather than recovery of a substantially lesser amount as a corporation more than 50% owned by U.S. nationals.

The second House amendment to S. 1728, §2(b), would pay corporate claimants, out of any funds remaining, up to \$50,000 without regard to the size of their unpaid balance. This amendment, as stated in the Separate Views printed in the House Report, "must be based on a premise that the more one lost, the less entitled he is to reimbursement." This amendment has no relation to the size of company, size of claim, or to any equitable principle of need or the like. Moreover, it ignores the fact that all small business claims have already been paid in full under the present law.

For these reasons, Boise Cascade strongly opposes the amendments to S. 1728. Our company is not in an economic position to forego any part of the funds

that may otherwise be realized from this claim. It is important to our company, to our employees, and to our stockholders.

Both amendments are inequitable. They also would establish an improper precedent that is a radical departure from U.S. claims laws as developed over the years for the payment of claims of U.S. nationals for war and expropriation losses incurred abroad.

The argument is made that the individual preference amendment cannot become a precedent in Federal claims law because other claims laws administered by the Foreign Claims Settlement Commission do not provide for individual preference but treat individual and corporate claimants alike. Precedents, of course, affect future not past actions of the Congress. There will undoubtedly be other claims laws in the years ahead as there is even now at least one other such bill under consideration by the Committees of the Congress. The absence of individual preference provisions in previously enacted claims laws is in itself significant because it shows that it has always been adjudged fair and right to treat individual and corporate claimants alike.

It is wrong to talk about the individual preference amendment as though it is a form of equitable relief for 187 needy individual claimants. This simply is not true. The individual preference amendment is designed wholly and exclusively for the benefit of 43 individual claimants whose claims derive in large part from inheritances and from the losses of non-U.S. owned corporations.

The idea that the individual preference amendment is needed to achieve the equitable objective of paying for the loss of personal residences and belongings is also wrong. Existing law with no exceptions that we know of has or will pay off in full claims for the losses of residences and personal belongings. The individual preference amendment is simply not needed for this purpose.

Moreover, the way it works out is that a number of the 144 individuals with smaller unpaid balances will in fact receive less under the individual preference amendment than under existing law from the \$5 million now available for payment. So here again the individual preference amendment does them no good, but in fact can hurt them.

In summary, we believe that the treatment of this matter adopted by the Senate Judiciary Committee and the Congress in 1970 was equitable and should be preserved. We believe that the amendment to reverse this treatment should again be rejected for the same reasons it was rejected at that time and for the additional reasons we have set forth here today.

Again, thank you very much.

Mr. CLUTE. Thank you. In the first instance, Mr. Chairman, I think it is very misleading and very wrong to talk about the individual preference amendment as though it is a form of equitable relief for 187 needy individual claimants. This is simply not true. The individual preference amendment is designed wholly and exclusively for the benefit of 43 individual claimants whose claims are large and derive in large part from inheritance and from the losses of non-U.S. owned corporations.

The idea that the individual preference amendment is needed to achieve the equitable objective of paying for the loss of personal residences and belongings is also wrong. Existing law with no exceptions that we know of has or will pay off in full claims for the losses of residences and personal belongings. The individual preference amendment is not needed for this purpose.

Moreover, the 144 individuals with smaller unpaid balances will in fact receive less under the individual preference amendment than under existing law from the \$5 million now available for payment. Mr. Chairman, the figure of \$20 million has been mentioned earlier today but only \$5 million of that is available for distribution in the near future and the remaining \$15 million is subject to litigation and there are many other claims against it or obstacles to be resolved.

Senator FONG. You made a statement about 143 individuals that will receive less under the House amendment. Is that predicated on the proposition that only \$5 million is available?

Mr. CLUTE. That is correct.

Senator BURDICK. But it has been submitted that \$20 million will be available.

Mr. CLUTE. According to the Justice Department information, which is I believe in the record, or has been put in the record on the House side, there is no assurance that that money will become available, or if it does become available, at what point in time. There is litigation involved with it, as I understand it, and it has not in effect been made available.

Senator BURDICK. It is not a fact then that we have \$20 million to distribute?

Mr. CLUTE. No; it is \$5 million we are talking about as of this point in time, and that is very important. I believe there was also referred to in the House report the following:

There can be no assurance that any substantial portion of the \$20 million will be available for such transfer or any assurance as to when such transfer can be made.

And it goes on to say that according to their information, the war fund is insufficient at this point, and that is quoting from a letter from the Justice Department.

Senator BURDICK. On page 3 you say that \$11,000 of the \$35,000 has already been paid and you are assured that the remaining \$24,000 will be paid out of the \$5 million that is available for that purpose. So after you deduct the \$24,000 for the claimants, how much to you have left of that \$5 million?

Mr. CLUTE. None. It will be about \$300,000 short as a matter of fact. If you spread \$24,000 to each of the claimants under the existing law, there is an aggregate of \$5,300,000 so there is a \$300,000 shortfall. The individual claimants—however, if you aggregate all the individual claimants, they total \$6.6 million. So if you spread the same \$5 million to those individual claimants alone proportionately, then the 144 who would normally under the existing law receive their entire balances, they will not receive their entire balances but will only receive a proportionate part. In other words, there is \$1.6 million shortfall and part of that goes to the more substantial claimants or in other words, the 43.

Senator FONG. Under the existing law the corporations receive the \$24,000 too?

Mr. CLUTE. That is correct.

Senator FONG. So what we are addressing ourselves to now is something very problematical, namely, the \$20 million as differentiated from the \$5 million. Only \$5 million is to be had now and nothing more is expected, correct? Actually we are not talking about anything more than that now.

Mr. CLUTE. Well, we are speaking only of the \$5 million as of this time.

Senator FONG. Yes, but if we only have \$5 million and we follow the old law, then everybody will be paid equally, is that right?

Mr. CLUTE. Yes, under the old law or the existing law as it stands today, Senator, each of the claimants, both corporate and individual, would each receive \$24,000 or the remaining balance, whichever is less.

Senator BURDICK. That would fall \$300,000 short of covering all claims.

Mr. CLUTE. Yes.

Senator BURDICK. What amount are we talking about?

Senator FONG. May I say that then we are fighting about a problematical \$15 million?

Mr. CLUTE. No; we are talking about how that \$5 million is distributed. Under the proposed amendments, Senator, that entire \$5 million would go to the individual claimants. The corporate claimants would receive nothing. The individual claimants would receive the entire \$5 million on a proportionate basis.

Senator FONG. If we had only \$5 million and if the amendments were passed, you as a corporation would lose \$24,000?

Mr. CLUTE. That is correct.

Senator FONG. That is what we are talking about?

Mr. CLUTE. That is correct.

Senator FONG. If we do not change this, then you will get \$24,000?

Mr. CLUTE. That is correct.

Senator FONG. Minus pro rata deduction of whatever it is?

Mr. CLUTE. That is correct. But the important thing, Senator, is the fact that of the 187 individual claimants under the existing law, if they were each to receive the payment of \$24,000 or their claim, whichever is less, then 144 of those claimants will be paid in their entirety. So this amendment is defined solely to insure that the 43 more substantial individual claimants receive the bulk of the \$5 million.

As a matter of fact, 13 of those individual claimants of that 43 group will receive 80 percent of that additional money.

Senator FONG. So what you are saying is this; namely, that if we let the matter alone, only 43 more persons will not receive as much as the others?

Mr. CLUTE. Only 43 individual claimants will have balances remaining, yes.

Mr. Chairman, I would like to submit at this time for the record a tabulation of the 43 claimants who would have a balance remaining after the payment of \$24,000 under the existing law, and then I would like to direct some comments to those 43.

Senator BURDICK. Do you have a copy of that? Without objection, it will be received.

[The document referred to follows:]

S 1728, 93d: Beneficiaries
of House §2(a) Amendment

INDIVIDUALS' FOREIGN CORPORATION, PARTNERSHIP, OTHER PROPERTY
AWARDS REMAINING AFTER \$24,000 PAYMENT DUE UNDER EXISTING LAW

CLAIM			AWARD		PAID	
No.	Name	Type <u>1/</u>	Total	Unpaid <u>2/</u>	Amount	%
6239	LANDAU	I	\$ 87,512	\$ 2,120	\$ 85,392	97.6
13660	UNGER	C-P	101,746	506	101,240	99.5
11418	PALM, Carla	I	100,867	165	100,701	99.8
12987	" Hildegard	I	103,920	1,347	102,573	98.7
10206	STECKLER.	I	104,748	1,667	103,081	98.4
10698	STANTON	C-P	110,565	3,919	106,646	96.4
16779	PARKER	C-P-I	114,419	5,410	109,009	95.3
4453	HARDY	I	129,891	11,398	118,493	91.2
6234	BACH	C-P	132,623	17,863	114,761	86.5
3394	TROKENHEIM	I	150,000	19,180	130,820	87.2
14160	VON GONTARD	I	155,544	21,326	134,219	86.3
22752	STRAUSS <u>3/</u>	C-P	156,881	36,713	120,168	76.6
17051	STEIN	I	121,851	8,286	113,565	93.0
11293	DICKEY	I	163,661	24,467	139,194	85.0
8734	COLEMAN	I	174,222	28,544	145,668	83.6
12725	CHRONOWSKI	I	182,000	31,564	150,436	82.7
8615	BUDD	C-P	182,899	31,912	150,987	82.6
9207	WOLFF	I	188,667	34,144	154,523	81.9
15519	VON SCHUCHING	I	194,650	36,460	158,190	81.3
7695	MESICK	I	206,915	41,206	165,709	80.1
493	DEVENIS	I	220,370	46,413	173,957	78.9
7460	KAUFMAN	C-P-I	230,253	50,238	180,015	78.2
7630	ROEVER, Luis	C-P	254,619	59,668	194,541	76.6
"	" Rudolph	C-P	254,619	59,668	194,541	76.6
8390	KOC	C-P	261,659	62,393	199,267	76.2

1/ I = property owned Individually, C-P = property owned by Foreign Corporation or Partnership.

2/ To share prorata (with US Corporations) in remaining War Claims Fund.

3/ Same claimant at No. 12067.

CLAIM			AWARD		PAID	
No.	Name	Type ^{1/}	Total	Unpaid ^{2/}	Amount	%
9923	SIGMAN, Hannah	C-P	\$ 293,965	\$ 74,894	\$219,070	74.5
"	" Stanley	C-P	119,433	7,350	112,082	93.0
11175	PAPANEK	I	339,949	92,690	247,259	72.7
7173	RIESS	C-P	374,799	106,177	268,622	71.7
4214	NEBENZAL	C-P	412,000	120,574	291,426	70.7
1876	SPENNER	C-P-I	472,319	143,917	328,401	69.5
10671	MARON	C-P-I	481,140	147,331	333,809	69.4
10120	SCHWERIN	C-P-I	631,752	205,618	426,134	67.4
12067	STRAUSS ^{3/}	C-P-I	637,131	207,700	429,431	67.4
9333	GARBATY, Maurice	I	570,462	181,899	388,564	68.1
"	" Marie	I	757,543	254,899	502,644	66.4
4502	BERNSTEIN	C-P	1,054,385	369,177	685,208	65.0
8825	SCHULTZ	C-P	1,202,183	426,375	775,808	64.5
9528	HERMAN, Ernest	C-P-I	1,257,990	447,972	810,018	63.4
"	" Gunter	C-P-I	1,257,990	447,972	810,018	63.4
6840	TIETZ, Edith	C-P-I	1,278,995	459,819	819,177	64.0
"	" Rosli	C-P-I	213,166	56,636	156,529	73.0
"	" Herman	C-P-I	213,165	56,636	156,529	73.0
TOTAL (43)			\$4,443,258			

^{1/} On preceding page.

Source: House Hearings on War Claims Act Amendments, 34-37, including \$24,000 payment due each under existing law (Nov. 1973).

Senator FONG. You are at the same time addressing yourself to only \$5 million?

Mr. CLUTE. That is correct. Now of these 43 individuals—and again I wish to emphasize they are the only ones who will be benefited by this amount—only 18 of those 43 are based on property directly owned by individuals, that is, property loss which was directly owned by the individuals. Seven of these 18 awards have but small balances, that is, after the \$24,000 is paid they have but small balances, and these balances will be between \$165, which is the smallest, up to \$5,400 for the largest. So, of these 18 then, 7 of those fit in that category.

We have also surveyed the records of the War Claims Commission to find out some information about these individuals as to whether they were impoverished as a lot of the advocates have contended. We found one estate tax filed in 1966 by one of these claimants in this 18 group category. His estate was valued at \$2 million. There was another filed in 1969 indicating an estate of \$2 million. Others within this category of 18 have received awards under the International Claims Settlement Act for \$4.9 million and also awards under the Polish War Claims Act.

As to the remaining 25 individuals and this is the 25 other than the first 18 which I just mentioned, these involve foreign business losses, and they are not based on total loss to the family business as I think has been contended. For example, one claim involves loss of a ship that was one ship of a fleet owned by the claimant's father, nor were all of these businesses totally owned by these 25 individuals. For example, one claim involves loss of a 27 percent interest by the claimant's father in a foreign business.

Now these 25 claimants' recoveries under existing law for these foreign business losses will total \$8.1 million of the \$11.7 million in awards. I think this is an indication that they have been treated favorably or equitably under the existing law.

My purpose in presenting these facts as regards individual claimants is in no sense to disparage the merits of their claims as adjudicated by the Foreign Claims Settlement Commission or the unfortunate circumstances leading to the losses. It is rather to point out that hardship cases have already been taken care of by payments under present law, and that all individual claimants both small and large have been treated at least as favorably as the corporate claimants to the extent available funds permit.

I would like now to address some of the specific arguments that have been directed——

Senator FONG. Just one point. On this sheet here you said individual foreign corporations, partnerships, or other and so you are taking into consideration also here that the corporations have been paid the \$24,000?

Mr. CLUTE. Yes; this would be the remaining balances of these 43 individual claimants after the \$24,000 payment to all claimants, both corporate and individual, under existing law is made.

Senator FONG. I see. So under the amendment passed by the House say there was \$4 million or \$5 million, then all these individuals would be paid?

Mr. CLUTE. On a pro rata basis, yes, under existing law.

Senator FONG. No; but what I mean is this. Under the amendment passed by the House, if we had another \$5 million over the \$5 million that is now presently in the bank, then the individuals would be fully paid?

Mr. CLUTE. That is correct.

Senator FONG. And the corporations then would not have anything from that \$5 million?

Mr. CLUTE. From the \$5 million that is available for paying out now, yes. And if you added more—

Senator FONG. That is what I wondered. Suppose you had another \$5 million and that other \$5 million would go to pay all of these individuals; correct? Here on page 2 you have an unpaid amount of \$4,443,000 and that represents individual claims and corporate claims also?

Mr. CLUTE. That is right. Oh, no, these are individual claims so discussed here today.

Senator FONG. You say individual claims?

Mr. CLUTE. If you had another \$5 million in addition to the existing \$5 million that we understand is to be available, then under the amendment passed by the House it is my understanding that the bulk of that additional \$5 million would go to pay these individual claims. Now there is a \$500,000 limit in the House amendment, so that would cut off some of them, but—

Senator FONG. Yes. In other words, the \$5 million would go to these people but none to the corporations?

Mr. CLUTE. The bulk of the \$5 million would go to these individuals.

Senator BURDICK. Up to \$500,000 a piece.

Mr. CLUTE. Yes, that is correct.

Now one point was made this morning by I believe two of the witnesses that the losses represented family business and in effect the livelihood of the family. I might mention at this time the Shanghai Power Co., which is a subsidiary of Boise Cascade Corp. is only 80-percent owned by Boise Cascade. The other 20 percent is owned by individual and other corporate shareholders. Under the law, under the War Claims Act a shareholder in a U.S. corporation could not file claims on their own behalf if the corporation was more than 50-percent owned by U.S. nationals.

The corporation itself had to file that claim and the individual shareholders were precluded. The individual shareholders must look to that corporation and the liquidation of that corporation to participate in the proceeds received in payment in any claim. So that truly what we have here under the amendment is a preference to shareholders of foreign corporations, because if it were a foreign corporation which was more than 50 percent owned by a foreign national, then the shareholders had to file on an individual basis because the corporation itself was precluded from filing.

Senator FONG. Now if shareholder A of Shanghai Power Co. had sold his stocks to shareholder B and you recovered for the power company, then how would the money be distributed?

Mr. CLUTE. When the corporation is liquidated, it will be distributed in accordance with the laws of the State of Delaware because Shanghai Power is a Delaware corporation. It would be distributed proportionately to the shareholders.

Senator FONG. No, I am asking you about shareholder A, who originally had the shares and he lost the money when you lost the power company and his share had diminished in value, and then if he had sold to shareholder B, then how would you distribute that money that you get from the War Claims Commission?

Mr. CLUTE. It would go to shareholder B if shareholder A has lawfully and validly transferred his interests to shareholder B just as with the individual claimants in many cases it was the ancestors or rather the present claimants are heirs of the people who actually suffered the losses in some cases. So just as their interest had been transferred to their heirs, so too a shareholder of Shanghai Power who transmitted or transferred his interests, assuming he did it in a lawful manner, to another shareholder, then that other shareholder—

Senator FONG. Oh, I see, was that on the theory that shareholder B, after he bought it from A, he was also buying a contingent interest on repayment?

Mr. CLUTE. Yes; as a matter of fact many of the companies that have suffered foreign losses of this nature, well, there is active trading in the shares.

Advocates of the absolute preference have stated that the preference is justified because a corporate claimant received tax benefits from the war losses they suffered. The facts in the files of the Foreign Claims Settlement Commission flatly contradict this assumption. They show 161 corporate claimants with unpaid balances and 77 of them, or almost half, received no tax benefit whatsoever from their war losses, and further that the total tax benefits received for war losses was only 14 percent and not 50 percent or more that has been stated by some of the proponents of the preferential amendment.

Senator FONG. Right at this point may I ask you this. At the point of filing of the claim you stated that you had recovered so much money from tax losses. Is that correct?

Mr. CLUTE. No; I have stated that of the 161, Senator, there are 77 who had no tax benefits.

Senator FONG. Yes, I understand that, but for those that filed a claim say for \$1 million and there was a tax advantage of say \$100,000, he would file a claim for \$900,000, is that not correct?

Mr. CLUTE. That is correct.

Senator FONG. On the \$100,000 tax advantage, did that include State and local taxes?

Mr. CLUTE. I believe it did, but I am not certain on that.

Senator FONG. You are not certain?

Mr. CLUTE. No; I believe it did but I am not certain.

Section 206(b) of the War Claims Act requires corporations to disclose under oath any tax benefits received from losses claimed.

Senator FONG. Therefore, you must have?

Mr. CLUTE. Pardon me?

Senator FONG. You must have if it is under the law.

Mr. WESTPHAL. It is only Federal tax benefits which is specified in the statute.

Mr. CLUTE. Then I stand corrected.

These benefits apparently from Federal tax benefits are then deducted from their awards. The act, however, makes no such requirements of individual claimants. They are not required to disclose tax

benefits received and such tax benefits, if received, are not, therefore, deducted from their awards. The tax benefits received by individual claimants are, therefore, not a matter of record with the Commission. There has to date been no independent survey of tax benefits received by the individual claimants, which we know of other than the survey apparently mentioned this morning by one of the witnesses. There are only self-serving statements in the record that individuals were not in a position to take deductions for their losses. No one knows whether this is so or at least we certainly do not know whether this is so or not.

But even if it is so, the fact remains that it is also so regarding 77 corporate claimants that received no tax benefits from the war losses. That fact is a matter of record with the Foreign Claims Settlement Commission, and Shanghai Power Co., is one of those 77 claimants. Shanghai Power Co. received no tax benefits from the war losses.

Senator FONG. Out of 184 you say that 77—

Mr. CLUTE. No; 161, which was total corporate claimants, and 77 of those received no tax benefits at all in accordance with the records of the Commission.

It has been asserted that the recovery for the loss of Shanghai Power Co., by Boise Cascade is unjustified for the reason that the losses underwriting the war claim have been written off. Congressman Eckhardt referred to this this morning when he quoted or when he referred to an article in our quarterly financial report called the Boise Cascade Quarterly. With great respect for Congressman Eckhardt, I believe the quote was inaccurate and the impression created by taking that article out of context is very misleading.

The writeoff and the property of Shanghai Power Co., was written off in 1941 when it was seized by the Japanese which was occasioned by the Japanese's occupation of the property and it was a bookkeeping transaction necessitated by accounting convention. It did not in any way relate to the company's award certified by the Foreign Claims Settlement Commission, and this claim is the only recourse available for the realization of any compensation for war damage to this property.

Mr. Chairman, I would be surprised indeed if the individual claimants, who are advocating preferential treatment for the foreign corporations in which they were shareholders, carry these claims or their claims on either their personal or corporate financial statement as assets. I would think that any financial institution or any organization to which they delivered such statements, if they had it down as an asset, would be surprised and it would be very conditional and contingent indeed.

Congressman Eckhardt indicated that the article to which he referred stated that Boise Cascade had written the Shanghai Power off as worthless. That is not the case. The article clearly states—and it has been entered into the record—that it is not carried as an asset or liability and says that the predecessors had written the property off many years ago and it says nothing about it being written off as worthless.

For those who are familiar with accounting practices, that is a standard and routine action to take when property is seized or when it is not otherwise realizable at the time.

Advocates of the preferential treatment have characterized recovery by Shanghai Power under its claim as a windfall to its parent company who acquired it by merger with Ebasco Industries, Inc., in 1969. Again this is simply not true. Mr. Chairman, I participated in those negotiations and they extended over several months. The first offer made to Ebasco management was about half of what the final offer was. It was based upon the fact that we did not wish to take title to or take assets representing these foreign claims and other foreign assets the Ebasco Industries had. We were not interested in those assets. That offer was rejected. We were forced to go into a deeper analysis of these assets, and we included them all; these plus many others Ebasco had. We came back a second time and made an offer which included these assets, which included all of these assets, and that offer in turn was rejected as being too low.

We, for the third time, did another analysis and came in with a final offer, which was accepted. That final offer was in excess of \$500 million and almost half of it was for assets which will include the Shanghai Power Claim.

Senator FONG. What you are saying is this, namely that Boise Cascade paid for a possibility in this?

Mr. CLUTE. Yes, and we paid significantly for it.

Senator FONG. And originally you didn't take that into consideration in your first offer?

Mr. CLUTE. The first time we did not wish it. We did not wish to have these assets or some of the others because they were risky and they were contingent, but the shareholders of Ebasco Industries and the management of Ebasco Industries wanted to sell the package.

And they said there was value to these and so it resulted in two additional—

Senator BURDICK. It was just as a country bookkeeper; you bought it as accounts receivable?

Mr. CLUTE. Yes, it was very contingent.

Also, it has been mentioned that this is a windfall to Boise Cascade or that Boise Cascade received a windfall in the previous payments made under the auspices of the Foreign Claims Settlement Commission. The fact is that the assets go into Shanghai Power Co. That company possesses assets, all that company's assets are frozen under the terms of the China Claims Act and can only be paid out for certain expenses under licenses issued by the Treasury Department. They have not been distributed to Boise Corp. They are being held in Shanghai Power Corp. for the benefit of its shareholders.

So as I say, Boise Cascade owns 85 percent of it, but there are other individuals; there are other corporations and there are other preferred shareholders in addition. And the proxy statement, which was issued in connection with the merger of Ebasco Industries in 1969, clearly referenced the \$4 million approximate award, or payment rather, which had been received by Shanghai Power, and that was displayed in a prominent place and was certainly part of the total picture which the shareholders of Boise Cascade Corp. had before them when they voted for the merger.

So to say this is a windfall or that it is going into the coffers of Boise Cascade is not correct.

The advocates of the preferential treatment have also quoted and supported their position statements contained in this article referred and introduced into the record this morning, which indicated that Boise Cascade really had not counted on recovering on Shanghai Power's claim. Again that is a misreading of the article. The history of that article is this. It appeared in the first quarter of 1974's Financial Report that Boise Cascade puts out to its shareholders. As you may recall, there was a lot of interest at that time because of the renewed relations with Communist China and the article speaks in terms of the claim against the People's Republic of China and only indirectly and as a matter of historical interest the war claims. It is directed toward the People's Republic of China for compensation. It was motivated in great part by the interest sparked because of the relations with Communist China, which resulted in many security analysts and shareholders and other investors calling the company and asking what is the situation of Shanghai Power and are you going to receive the money and when are you going to receive it. So we put out a report written in article form in the Financial Quarterly.

It is interesting to note, since Congressman Eckhardt and others have used this article quite liberally and I believe again with all due respect misconstrued it, that there is one section or one statement in there which in fact they have studiously avoided quoting. I would like to read that. It is a very short statement made by Reginald Edwards, who is a former Shanghai Power executive and who was the source of much of the information in the article, and it reads—

Mr. WESTPHAL. What page of the article?

Mr. CLUTE. Page 17, or actually the second or third page of the article but page 17 out of the original Quarterly. It is the third column toward the bottom. It says:

Reginald Edwards, the former Shanghai Power executive writes about his experience from his retirement home in England: "Looking back on the 20 odd years period the company existed under American management from a detached point of view as I can see now, it was quite magnificently run under fantastic conditions. Throughout there was virtually no return to shareholders."

Skipping down, it says: "The company had nothing to show for 20 years of endeavor except total loss."

Lastly, Mr. Chairman, we have been shown copies of the memorandum prepared by proponents of the preference and circulated to committee members we understand. This memorandum reports to respond to 10 of the reasons which have been given why the preferences proposed are unjustified and inequitable. I would like to submit for the record a memorandum and a supporting schedule, which we had drafted, clearly pointing out the inaccuracies in the responses of the proponents of this preference amendment.

In my opinion, Mr. Chairman, the so-called refutations of the proponents set out in their memorandum to the committee members are inaccurate and characterized by so many misstatements and misleading statements, that an objective observer could question the good faith of those who prepared the memorandum. In any event, we have set out the facts in the submission we are making now. I believe those facts will speak for themselves.

Senator BURDICK. It will be received along with the memorandum in support of the amendments.

[The documents referred to follow:]

MEMORANDUM: REASONS WHY S. 1728 SHOULD BE ENACTED

Purpose of S. 1728.—S. 1728 would amend the War Claims Act of 1948 (1) to provide additional benefits for U.S. civilians held as prisoners of war during the Vietnam War; (2) to permit individual U.S. citizens to recover the unpaid portions of awards received in compensation for property losses suffered in World War II before further payments are made to U.S. corporations having war claims awards; and (3) to provide for payment thereafter of corporate awards under the Act up to \$50,000 before pro rata payments are made.

Summary of Existing Law.—In 1948 the Congress enacted the War Claims Act to permit U.S. citizens and corporations incorporated in the U.S. to receive awards to compensate them for losses suffered as a result of World War II. The Act created the Foreign Claims Settlement Commission to adjudicate each claim and determine the amount of each award. Payments were to be made not out of general revenues but out of a War Claims Fund consisting of the assets of enemy nationals in the U.S. seized by the U.S. government during the war. Pursuant to the Act, the Commission granted 7039 awards, totaling over \$350,000,000. (Over 15,000 claims were rejected by the Commission.) To date, 6,692 awards, totaling about \$250,000,600 have been fully paid. Of all previous payments, approximately 75% has been paid to corporations and 25% to individuals.

There remain unpaid portions of 186 awards to individuals (totaling \$6,525,000) and portions of 161 awards to corporations (totaling \$94,700,000). It now appears certain that assets in the War Claims Fund will not be sufficient to pay all of the awards in full.

Awards in certain categories, which received priority status under previous legislation enacted by Congress, have already been paid in full. These priority categories are awards based on death or personal injury; awards to small business concerns certified by the Small Business Administration; awards under \$10,000; and awards to charitable and religious organizations.

In 1969 the House passed a bill similar to S. 1728 that would have created an additional priority for awards to individual U.S. citizens. This provision was dropped in conference and instead a provision was inserted giving priority to all claims (corporate as well as individual) up to \$35,000. Under this priority, \$11,000 has been paid to each awardholder.

Under existing law, individual and corporate awardholders would share equally in future pay-outs up to \$24,000 per award, but beyond that point, awards would be paid on a pro rata basis.

Legislative History of S. 1728.—S. 1728 unanimously passed the Senate on October 8, 1973. The Senate-passed bill amends the War Claims Act of 1948 to allow civilian U.S. citizens who were held as prisoners of war during the Vietnam war to receive the same level of benefits as military prisoners of war. Most of these civilians were employees of the U.S. government, such as Foreign Service Officers, or of U.S. government contractors. On November 7, 1973, the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce held simultaneous hearings on S. 1728 and two House bills, H.R. 4870, introduced by Rep. Henry Smith (R-N.Y.) and H.R. 1729, introduced by Rep. Glenn Davis (R-Wis.). These two identical bills amended the War Claims Act to permit individual U.S. citizens to recover the unpaid portions of awards received in compensation for property losses suffered in World War II before further payments are made to corporations having war claims awards. The Subcommittee unanimously approved both S. 1728 and the two House bills and incorporated the language of the House bills into S. 1728. S. 1728, as amended, was reported unanimously by the Subcommittee on January 31, 1974.

S. 1728 was considered in mark-up sessions by the full Committee on Interstate and Foreign Commerce on June 7 and 18, 1974 and was ordered reported by voice vote on June 18. One amendment was added by the full Committee. This amendment, introduced by Rep. John McCollister (R-Neb.), provides that after full payment of war claims awards to individuals, corporate awardholders will be paid equally up to \$50,000 per award, and, after that, on a pro rata basis.

The bill received an open rule from the Rules Committee on August 8, 1974. On August 12, 1974 the House passed S. 1728, as amended, by a vote of 368-17.

REASONS FOR ENACTMENT OF S. 1728

There are several reasons why S. 1728 should be enacted:

(1) Losses suffered by individuals involved the loss of homes, personal belongings and family businesses. By contrast, corporate losses principally in-

volved damage to or loss of certain assets held as investments abroad by U.S. corporations. The kinds of assets lost by individuals were of far greater economic (and personal) significance to them than were the corporate losses to the corporate awardholders.

Many of the individual awardholders are elderly persons beyond their productive years who live on small fixed incomes. Most of them receive relatively small Social Security benefits since many of their working years were spent abroad. They are relying on the War Claims awards to provide a final financial stake to support them in their declining years.

(2) The losses suffered by individuals in most cases involved the total loss of all that an individual owned. Corporate losses, on the other hand, in virtually all cases involved only a small fraction of the corporation's net worth.¹

(3) Corporations suffering losses could take advantage of very substantial U.S. tax benefits resulting from their losses. The corporate claimants with awards over \$500,000, for example, in the aggregate took more than \$35,000,000 in deductions from U.S. income tax. Such tax benefits, coupled with subsequent payments under the War Claims Act, have allowed many corporations to recover almost the entire amount of their loss. These tax deductions were not of benefit to individuals, even though all of the individuals were U.S. citizens at the time they suffered their losses. Ironically, while the individuals were all U.S. citizens at the time of their loss under the terms of the War Claims Act, judicial interpretation of the deduction provisions of the Internal Revenue Code prevented many such individuals from taking a deduction. U.S. corporations were unaffected by this interpretation and remained free to deduct their losses.

Furthermore, corporate claimants may also have taken substantial deductions from state and local taxes as result of their war losses. These tax benefits were not taken into account at all in the granting of war claims awards. A memorandum analyzing the U.S. income tax aspects in detail is attached at Tab D.

(4) Many corporate awardholders may also have received substantial tax and other benefits after the war from foreign governments because of their war losses. These benefits were unavailable to individuals. Foreign tax benefits were not taken into account in the granting of war claims awards.

(5) Many of the corporate claimants are insurance companies which insured risks at high rates during the war years and paid out proceeds on the policies they had written. These insurance companies, which have been subrogated to the rights of the insured corporations, have already received significant compensation for their losses through their premiums.

(6) Under existing law, given the amounts likely to become available for distribution from the War Claims Fund, it is unlikely that the corporate claimants would receive more than 10 to 15 cents on the dollar for the remaining amounts of their awards. Enactment of S. 1728, which would allow priority to individual claims, would reduce this amount by only a few cents on the dollar since the total unpaid amount of individual awards is only about \$6.5 million. In relation to the total amount of unpaid corporate awards—\$94.7 million—this is a small amount. By contrast, however, the failure to enact S. 1728 would severely reduce the amounts available for distribution to individuals in relation to the size of their awards.

(7) In order to receive an award, claimants had to provide documentary proof of their ownership of the property that had been lost. Many individuals lost their documents in the war. U.S. corporations, which maintained extensive records in this country, were able to document a much greater percentage of their losses and hence received awards to cover a larger portion of their losses.

RESPONSES TO ARGUMENTS AGAINST S. 1728

Several arguments have been made against giving preference to individual awardholders:

(1) It has been argued that no distinction should be made between corporate awards and individual awards since several of the individual awards are based on losses sustained by individuals owning stock in business corporations. It is argued that these individual losses are indistinguishable from the losses suffered by corporations.

Response.—The majority of the individual awards are not based on business losses at all, but involve the loss of residences and personal property. With

¹ For example, two of the largest corporate awardholders, Exxon and IT&T, have unpaid award balances of about \$15,000,000 and \$11,000,000 respectively; in both cases a small fraction of the corporate net worth.

respect to those individual awards based on business losses, *every one is based on the total loss of a family business, not on a diminution in corporate net worth resulting from the loss of a tiny fraction of a corporation's worldwide holdings.*

(2) It has been argued that individual claimants who were stockholders in "foreign" corporations should not receive preference over "U.S." corporations.

Response.—This argument ignores the fact that in order to receive an award based on a loss to a "foreign" corporation, an individual had to be himself a U.S. citizen at the time of the loss. By contrast, a corporation need only have been incorporated in the U.S. and 50% of its stock owned by U.S. nationals in order to receive an award, regardless of the citizenship of its stockholders. Furthermore, with respect to the corporate awards, the stockholders who suffered the loss were the stockholders of 30 to 35 years ago, *not* the subsequent and present stockholders who invested on the basis of the corporation's net worth after adjustment for the loss. By contrast, the individual awardholders are the very persons or, in some cases, the heirs of the very persons, who suffered the loss.

(3) It has been argued that the Congress should not set a "precedent" by creation of further priorities in payment.

Response.—Creation of this priority would not constitute a precedent since the Congress has previously created numerous priorities for payment under the War Claims Act. Creation of priorities in this legislation has no bearing on claims made for priorities under other statutes; Congress will deal with each such claim on its own merits.

(4) It has been argued that individual awardholders have already received a greater percentage of their awards than corporate awardholders and, therefore, that no priority should be granted to individual awardholders.

Response.—This argument is irrelevant, if not misleading. Individual awardholders have so far received a greater percentage of their awards than corporate awardholders because total dollar awards to individuals are far smaller than total dollar awards to corporations. Since \$21,000 has already been paid to each awardholder, regardless of the size of his or its total award, the \$21,000 payment represents a greater percentage of the individuals' total awards. It is more relevant to note that approximately 75 percent of all funds paid out under the War Claims Act has been paid to corporate awardholders and only about 25 percent to individual awardholders. The essential fact, in any event, is that by virtue of tax deductions taken by corporations (but not by individuals) the corporate awardholders have, in fact, recovered *a greater percentage* of their war losses than have individual awardholders.

(5) It has been argued that enactment of S. 1728 would benefit relatively few individual awardholders since under present law all individual and corporate awardholders would share equally, up to \$24,000 per award, and pro rata payments would begin only after this amount had been paid.

Response.—Arguments directed against the relative sizes of awards among individual claimants are an unworthy attempt to stigmatize certain individual claims as "excessive" in comparison to other individual claims. The charge badly misconceives the statutory purpose of S. 1728, which is to treat all individual claims as a class and all corporate claims as a class, without making subjective judgments as to how much is "enough" within each class. S. 1728 is predicated on the facts cited previously in this memorandum: that the losses suffered by individuals deprived them of homes, personal belongings, and family businesses; that the losses to individuals in most cases involved the loss of all that an individual had; that individuals were unable to take advantage of substantial tax benefits available to corporations; that individuals did not benefit from tax and other benefits extended to corporations by foreign governments after the war; that individuals, unlike the many insurance companies that comprise a substantial percentage of corporate claimants, received no insurance premiums to compensate them for the risk of loss; and that enactment of S. 1728 would not substantially diminish the amount available to large corporate awardholders in relation to the size of their awards. All of these facts show that individual awards constitute a separate and distinct category—a category that deserves priority in the payment of war claims awards. The dollar value of an individual's loss in relation to that of other individuals is wholly irrelevant to the reasons for enactment of S. 1728.

In addition, the bill would benefit all 186 individual awardholders. Under existing law, all shareholders, corporate and individual, would receive equal amounts up to \$24,000 per award and thereafter payment would be made on a pro rata basis. With respect to individual awardholders with awards of \$24,000 or less,

this means that, since the 161 corporate awardholders would participate in the \$24,000-per award distribution, there would have to be well over \$5,000,000 available for distribution for the War Claims Fund in order to pay their \$24,000 and less in full. Corporate awardholders with multiple claims, such as IT&T, would do extremely well under this system since they would receive \$24,000 on each award. Thus, IT&T would receive a total of \$216,000 even before pro rata distributions began, while no individual would receive more than \$24,000. If S. 1728 were enacted and the 161 corporate awardholders did not share in this distribution, there would have to be only about \$2 million available in the War Claims Fund in order to pay all awards up to \$24,000 in full. Since the amount available from the War Claims Fund is not known, it may well be that enactment of S. 1728 would be of substantial benefit to many individual awardholders with unpaid balances under \$24,000.

Individual awardholders with unpaid balances over \$24,000 would obviously benefit from the enactment of S. 1728 since, under existing law, corporate awardholders would receive about 93 percent of all distributions in excess of \$24,000 and the vast majority of individual awards would go uncompensated in full. There are 43 individual awardholders with unpaid awards of more than \$24,000.

(6) Opponents of the bill argue that if S. 1728 is passed, after distribution of \$24,000 to each awardholder, 13 individuals would receive 79 percent of the amounts distributed.

Response.—This argument is both misleading and irrelevant. As has been shown above, enactment of S. 1728 would help ensure that individual awardholders with unpaid balances under \$24,000 are paid in full. It is misleading to quote a figure that ignores this fact. Second, under existing law, payments would be made on an even more disproportionate basis, because the 13 largest corporate awardholders would receive over 83 percent of all awards paid on a pro rata basis. Third, arguments of this nature are entirely irrelevant, since the size of an awardholder's loss is an improper measure of his right to recovery. More relevant in this respect are the nature of the property lost, the personal and economic significance of the loss to the awardholder, and the percentage recovery of the total loss the awardholder has had through tax benefits and previous payments under the War Claims Act.

(7) Opponents of S. 1728 have argued that the individual awardholders are "rich" and therefore undeserving of a priority.

Response.—The vast majority of the individual awardholders are persons in middle and lower income brackets. They represent a diversity of ethnic and religious backgrounds. A large number of them are quite elderly and beyond their productive years. Some are in nursing homes. Several individual awardholders were interned in concentration camps by enemy governments during World War II. There are some individual awardholders who, having lost all they had in their country of origin, came to the United States and have since achieved financial security and, in a few cases, substantial wealth. The fact that a minority of the individual awardholders are wealthy, however, is entirely irrelevant to the reasons for enactment of S. 1728. The pertinent arguments are those that concern the extent and nature of the individuals' losses and the tax benefits enjoyed only by the corporate awardholders. It is these arguments that provide a valid basis for the creation of a priority for the entire class of individual awardholders.

(8) Opponents of S. 1728 have argued that no distinction should be made between individual and corporate awardholders, since corporations are in fact owned by individuals who suffered an indirect loss through the diminution of corporate assets.

Response.—This argument is based on the erroneous assumption that the stockholders of the corporate awardholders are the same stockholders who suffered the loss. At least 96 percent of all unpaid general corporate awards are held by corporations whose stock, or the stock of whose parent corporation, is publicly traded on either the New York or American Stock Exchange. The stockholders of 1974 are a far different group than the stockholders of 30 years ago who suffered the loss. By contrast, most of the individuals are the very persons who suffered the loss. Many of these persons are now very old and beyond their productive years. In some cases, individual awards are held by children or grandchildren of the individuals who suffered the loss, but in all cases, the individual awardholders are members of the family that suffered the loss.

Many of the present corporate awardholders are large conglomerates that acquired the corporations that suffered losses many years after the loss had been.

incurred. In some cases the acquiring company paid little or nothing for the stock of these companies since their assets had been substantially reduced by the loss they had suffered.

One outstanding instance of such an acquisition involves Boise Cascade, one of the most vocal opponents of S. 1728. Boise's loss is based on a loss suffered by the Shanghai Power Company in 1941. At the time of the loss, Shanghai Power was a subsidiary of American and Foreign Power. Many years ago, A&FP wrote the assets of Shanghai Power down to zero. A&FP merged with Ebasco in 1967 and Ebasco was acquired by Boise Cascade in 1969. Both Boise and Ebasco have always carried the Shanghai Power stock on their books at zero. Boise now seeks to recover \$3 million in compensation for the losses suffered by Shanghai Power. These facts are all confirmed in an article that appeared in Boise Cascade Quarterly, February 1974, which is attached at Tab E.

It is quite clear that Boise Cascade's claim for compensation is far more remote and far less compelling than the claim of an individual who saw his own home, personal property, or small family business destroyed in the war. Under no conceivable principle of equity could these two claims be regarded as equivalent. S. 1728 would not deny Boise a right to compensation. It would merely give priority to claims of greater immediacy.

(9) Opponents of S. 1728 have argued that this issue has been settled by previous legislation and should not be re-opened.

Response.—Prior to each previous distribution from the War Claims Fund, the Congress has enacted new priorities to compensate first those categories of unpaid awardholders it deemed most entitled to compensation. Thus, in 1970, the Congress created a priority for charitable and religious institutions. All awardholders in this category were paid in full in the 1971 distribution from the War Claims Fund. With the possibility of further payments in the near future, the Congress is fully justified in determining which categories of unpaid awardholders are now deserving of a priority.

When similar legislation was pending before the Congress in 1970, Chairman Eastland requested an opinion from the Attorney General on the constitutionality of creating a priority for charitable and religious organizations and for individuals. The Attorney General determined that creation of such priorities would be constitutional. He stated:

The equal protection issue posed by H.R. 2669 arises because individuals and non-profit organizations would be treated differently than corporate claimants. The difference in treatment obviously constitutes a classification, but classifications are not per se forbidden. In our view, the classification here is not an arbitrary one. Congress could reasonably make the judgment that corporate claimants should be paid last. In reaching that judgment, Congress might reasonably take into consideration the fact that corporate claimants have received the great bulk of the money which has been paid out under the War Claims Act. Of approximately \$219 million distributed, almost \$154 million has been distributed to large corporations. . . .

The funds involved arise from the sale of enemy assets which became the property of the United States when they were seized by the United States and are being made available by Congress as a matter of grace. (1970 U.S. Code Congressional and Administrative News, pp. 5062, 5063, emphasis added.)

(10) Opponents of S. 1728 have argued that the entire idea of assigning priorities to awardholders is wrong.

Response.—Regardless of the merits of creating priorities, it is a fact that four priority categories have been created by previous legislation and that the awardholders in these categories have been paid in full. The individuals who lost their homes, personal belongings and small family businesses have been deprived of compensation by the creation of these previous priorities. Whether or not the principle of priorities is justified in the abstract, a priority for these individuals would in substantial part simply restore to them what they had lost by virtue of the creation of the previous priorities. It is quite ironic that these awardholders, who have waited so long for compensation because other priority categories were created and awards in these categories paid in full, now hear the argument raised against them that the creation of a priority for them is unjustified.

Re House amendment of S. 1728: Preference for 43 individuals.

An amendment added to S. 1728 by the House would grant 43 individuals a preference for the payment of the remaining unpaid portion of their awards under the War Claims Act, over the remaining unpaid awards of U.S. corpora-

An extensive document prepared for the 43 beneficiaries of that amendment discusses, or argues against, ten major objections to that amendment.

This memorandum and attachment respond to those arguments. This memorandum and attachment follow the same format for those ten objections that document chose to discuss, as follows:

1. Many Individual Awards Based On Foreign Business Corporation Losses (at p. 1 attached).
2. Shareholders In Foreign Corporations Should Not Be Preferred Over Shareholders In U.S. Corporations (p. 2).
3. Congress Should Not Create A Precedent For Priority Payment Of Such Individual Claims (p. 3).
4. Individuals Have Already Recovered A Greater Percentage Of Their Awards (p. 3).
5. The Amendment Benefits Relatively Few Individuals (p. 4).
6. Thirteen Receive 80 Percent Of The Money Benefit (a. 6).
7. The Individuals That Would Take The Share Due Others Under Existing Law Are Wealthy (p. 6).
8. The Amendment Subordinates Awards For US Corporation Losses To Individual Awards For Foreign Corporation Losses (p. 7).
9. Congress Rejected Such A Proposal In 1970 (p. 7).
10. The Concept Of This Desired Priority Is Wrong (p. 8).

All figures used in the attached are taken from or based on those presented on this amendment by the Foreign Claims Settlement Commission.

It is respectfully submitted that the equities of the 43 claims benefitted by this amendment do not justify its adoption.

It is respectfully submitted that it should again be rejected by the Senate, as the Senate Judiciary Committee, the Senate, and the Congress rejected such a proposal when it was before them in 1970.

1. MANY INDIVIDUAL AWARDS ARE BASED ON FOREIGN BUSINESS CORPORATION LOSSES

Response: (A) "The majority" of individual awards are based on loss of personal residences and property. (B) Individuals' awards based on business losses are based on "total loss of a family business".

Corrections: The Response, phrased in terms of 187 individual awards, seeks to obscure or evade the primary fact that this amendment benefits only 43 individuals: only those with unpaid balances over \$24,000. Unlike the other 144 individuals with balances under \$24,000 (all of whom are fully compensated under existing law and cannot be benefitted by the amendment in any way), only those 43 are not fully compensated by their additional \$24,000 priority payment due under existing law.¹ It therefore is misleading, or irrelevant, to urge this amendment in terms of those other 144 individuals fully compensated under existing law, whom this amendment cannot benefit in any way.

(Note: The importance of stressing this point here is due to recent distribution of a Memorandum titled: "Financial Condition of Individual Awardholders". It describes eleven so-called "typical cases" illustrating a claimed hardship need on their part for this amendment. What that "Memorandum" fails to disclose is that: (i) under existing law, all eleven receive an additional mandatory payment of \$24,000 each, or the balance of their claim if less, (ii) nearly all eleven thus receive 100 percent payment under existing law and cannot possibly benefit from the amendment, and (iii) that the amendment benefits only those 43 individuals having a remaining balance after they receive their additional \$24,000 payment.)

(A). "The majority" of these 43 are not based on loss of personal residences and property. Only 18 are based on property directly owned by individuals. Even if all properties on which these 18 are based were residences (they in fact include such things as a large brewery, claim 12725, for a US born citizen), their recoveries to date, \$3.1 million on their 18 awards totalling \$3.9 million, more than compensate them for their cost of those "residences". It thus appears all claims for any personal residences lost are fully paid out under existing law.

Seven of these 18 awards have but small balances, \$165 to \$5,400, remaining after their \$24,000 priority payment and will have recovered 95% to 99.8% of their awards. The property of another of these 18, in China, "was located in

¹ Existing law, enacted in 1970, requires that each remaining claimant be paid an additional \$35,000, or his unliquidated balance if less, before pro rata payment (PL 91-571, 50 U.S.C. App. 2017-1 (a) (3)). Each claimant has received \$11,000 of this and will receive his remaining \$24,000 from monies now available in the War Claims Fund.

the best residential district and even there was conspicuous for its pretentiousness" (decision 14738, claim 7965, for a U.S. born citizen). The estate tax filed in 1966 for another by his wife reported his estate at \$2 million, another filed in 1969 by his wife reported his estate at \$2 million (consolidated claims 6333); others have received other awards under the International Claims Settlement Act for \$4.9 million (claim 11175), and the Polish War Claim Act (claim 3394).

(B). The remaining 25 individual awards involving foreign business losses are not based on "total loss of a family business". All those businesses were not "total losses". For example, claim 8825 involves loss of a ship that was but one of a fleet owned by claimant's father (she being a U.S. born citizen). Nor were all those businesses totally owned by these 25 individuals. For example, claim 12067 involves loss of a 27% interest (by claimant's father) in a foreign business. These 25 claimants' recoveries under existing law of their foreign business losses, \$8.1 million of their 25 awards totalling \$11.7 million, assures recovery of their investment in those foreign businesses.

2. SHAREHOLDERS IN FOREIGN CORPORATIONS SHOULD NOT BE PREFERRED OVER SHAREHOLDERS IN U.S. CORPORATIONS

Response (A) Shareholders in the foreign corporations had become U.S. citizens by the time of the loss. (B) Shareholders in foreign corporations "are the very persons" who suffered the loss or in some cases their heirs.

Corrections: (A) The prior citizenship of shareholders in foreign corporations does not alter the proposition that the U.S. government should not prefer shareholders of foreign corporations over shareholders of U.S. corporations. (At least eight of these 43 claimants were born in U.S.)

(B). Relatively few of the 25 claimants here seeking priority payment for losses in foreign business corporations or similar business organizations experienced such losses. At least sixteen of them are but heirs of those who did. (Of all 43 individual claimants, at least 27 of them are only heirs of those that experienced the loss.)

3. CONGRESS SHOULD NOT CREATE A PRECEDENT FOR PRIORITY PAYMENT OF SUCH INDIVIDUAL CLAIMS

Response: Creation of a precedent for priority payment of these 43 claims would not constitute a precedent for priority payment of such claims, because Congress created different priorities for the payment of other claims under the Act.

Corrections: None of these 43 individual claims qualify for any of the four priority categories Congress established, for: death, personal disability, non-profit organizations, and small corporate and other businesses. All 43 qualify for the total \$45,000 priority payments Congress authorized for all other claimants (50 U.S.C. App. 2017-1 (a) (2) and (3)). All 43 also have already shared in the recovery of their unpaid balances pro rata with other claimants. All 43 will continue to do so.

In 1970 the Senate Judiciary Committee, the Senate, and Congress expressly rejected demands that it create a priority for these individuals. Congress has never created a priority for payment of such claims under this or any other law. The demand that it do so now is again unjustifiable. Granting it will stimulate demands that Congress do so in other situations involving loss of past, good faith, or needed U.S. investment in underdeveloped or other foreign countries.

4. INDIVIDUALS HAVE ALREADY RECOVERED A GREATER PERCENTAGE OF THEIR AWARDS

Response: This is only because individuals' losses were "far larger" than U.S. corporations' losses; "the essential fact" is that due to tax benefits received by some U.S. corporations, they "have in fact, recovered a greater percentage" of their losses than the individuals have.

Corrections: Including tax benefits received, the recovery to be received under existing law by all remaining corporate claimants before any further pro rata sharing amounts to 68% of their losses.² The recovery to be received under existing law by all remaining individual claimants before any further pro rata

²Total tax benefits of \$39 million for such war losses plus total award payments of \$154.5 million for additional losses (or \$193.5 million), as a percentage of total tax benefits of \$39 million plus total awards of \$246.1 million for those additional losses (or \$285.1 million).

sharing amounts to 81% of their losses. (The Act does not require individuals, unlike corporations, to disclose "under oath" any federal tax benefits received as a result of such losses, and that such tax benefits be excluded from awards made individuals.)

5. THE AMENDMENT BENEFITS RELATIVELY FEW INDIVIDUALS

Responses: (A) The fact that "relatively few" of the 43 remaining individuals get most of the money the amendment would provide them "is wholly irrelevant" and "badly misconceives" its purpose, which is to treat these "individual claims as a class". (B) The amendment benefits all 187 individual awards, including the 144 with remaining balances under \$24,000, by giving them the Fund money needed to pay U.S. corporations their \$24,000 or less payments due them under existing law.

Corrections: (A). In considering an amendment taking money from one group for another not entitled to it under existing law, it is not wholly irrelevant" to note that most of it would be taken for "relatively few" individuals.

The unpaid amount of all 187 remaining individual awards is \$6.5 million. After all 187 receive their additional \$24,000 priority payment, or full balance where less, due under existing law, only 43 individual awards remain, and the total of their remaining unpaid claims over \$24,000 is \$4.4 million.³ The amendment seeks to give them full payment priority for that additional amount also. Most of that amount in the limited War Claims Fund is needed to pay U.S. corporations their statutory \$24,000 or less payments due under existing law. Of this \$4.4 million the amendment thus would take for (only) these 43 individual awards: two brothers would get over 20% of it, five individuals 50%, and ten individuals 75% (two of them brothers, two of them husband and wife). This fact is not "wholly irrelevant" and does not "badly misconceive" the amendment's purpose.

Correction: (B). The amendment does not benefit all 187 individuals. It definitely does not benefit the other 144 individuals with claims under \$24,000 that are fully paid off under existing law. In fact, it damages them. It only benefits the 43 claims over \$24,000.

Presently there is \$5 million available for distribution from the War Claims Fund, or approximately the total \$5.3 million required to pay all remaining 187 individuals and 161 US corporate claimants their additional \$24,000 or less payments required by under existing law.⁴ Disbursement of this available \$5 million pursuant to existing law (prevented by consideration of this amendment,) virtually pays off in full all 144 individuals claims under \$24,000. The amendment, however, requires this \$5 million to be distributed (only) over all 187 individual claims, which total \$6.6 million, or \$1.3 million more than the claims of \$5.3 million the available \$5 million will be distributed over under existing law. Consequently, the portion of the available \$5 million, or their remaining claim, each of those 144 individuals receives under existing law is substantially larger than the portion each receives under the amendment. The amendment's only beneficiaries are the other 43 individuals, who get the difference between the portion of the available \$5 million those 144 get under existing law and the lesser portion they get under the amendment.

This substantial reduction for these 144 individuals is significant because: (i) other Fund monies are subject to litigation, private bills and similar claims and "there can be no assurance" when they will become available, according to the Justice Department, (ii) the literature, noted at page 1 above, being distributed in an effort to show, erroneously, that the amendment is needed by these 144 individuals says they are "elderly persons" with "few sources of income" who need their award payments now "to support them in their declining years," and (iii) none of these 43 individuals that now would receive a larger amount under the amendment, at the expense of these 144, is in necessitous circumstances.

6. THIRTEEN RECEIVE 80 PERCENT OF THE MONEY BENEFIT

Responses: (A) This fact "is irrelevant." (B) "More relevant . . . are the nature of the property lost, the personal and economic significance of the loss to

³ Remaining 187 individual awards of \$6.5 million, minus full payment of 144 claims under \$24,000 (\$1,103,658), minus \$24,000 for 43 with claims over \$24,000 (\$1,032,000), equals \$4.4 million.

⁴ \$1.1 million to fully pay off 144 individual claims under \$24,000, plus \$1.032 million for 43 individual claims over \$24,000, plus \$.524 million to fully pay off all 51 corporate claims under \$24,000, plus \$2.6 million for 110 corporate claims over \$24,000, equals \$5.3 million.

the awardholder, and the percentage recovery of the total loss the awardholder has had".

Corrections: (A) The relevance of the fact that the amendment would benefit relatively few of the 43 individuals is covered at page 4.

(B) Regarding the nature of the property lost, the costs for personal residence and property have been fully paid, page 2. Regarding the significance of the loss, the great majority of the amendment's 43 beneficiaries suffered no loss at all and are but heirs of those who did, page 3. Regarding the percentage recovery these 43 enjoy under existing law, it ranges from a low of 63.4% (involving a foreign corporation property) to 99.8%, or a low of over \$85,000 to \$819,177.

7. THE INDIVIDUALS WHO TAKE THE SHARE DUE OTHERS UNDER EXISTING LAW ARE WEALTHY

Responses: (A) "The vast majority" of those individuals are "in middle or lower income brackets." (B) "The fact that a minority are wealthy, however, is irrelevant."

Corrections: (A) The Response, phrased in terms of 187 individuals rather than the only 43 the amendment benefits, seeks to obscure the fact that those individuals who would take the share due others under existing law are wealthy. They have been well treated by existing law.

(B) Regarding the financial condition of the 43 individuals: none is in necessitous circumstances. Each has already received between \$61,000 to \$796,000 under existing law. Each receives an assured additional \$24,000. And each share pro rata in Fund monies to become available hereafter. All of them are successful, well established people. One of them has two claims. Thirteen of the others are related as brothers, sisters, husband and wife, or mother and daughter. The thirteen who get most (80%) of the money the amendment would take are all wealthy.

8. THE AMENDMENT SUBORDINATES AWARDS FOR US CORPORATION LOSSES TO INDIVIDUAL AWARDS FOR FOREIGN CORPORATION LOSSES

Responses: (A) The stockholders of US corporations that suffered the losses are not their stockholders today. "In contrast, most of the individuals are the very persons who suffered the loss." (B) The assets lost or destroyed of one such U.S. corporation, Shanghai Power Company, with a remaining unpaid balance of \$3 million, have been written down to zero on the books of its present owner.

Corrections: (A) Most of the amendment's 43 beneficiaries are not the persons who suffered the loss. In contrast, at least 27 are but heirs of those who suffered the loss.

(B) Good accounting practice requires assets that become worthless to be written down to zero. Good accounting practice requires the same treatment for losses sustained by corporations less than 50 percent owned by non-U.S. nationals.

9. CONGRESS REJECTED SUCH A PROPOSAL IN 1970

Responses: A Justice Department report of that year stated that Congress is constitutionally free to legislate on this matter as it chooses.

Corrections: After considering that report, Congress concluded it should not grant individuals the priority these 43 request. In its report on this amendment to the House this session, the Justice Department deferred to the views of the Foreign Claims Settlement Commission. The Commission, the Department of State, and the Office of Management and Budget oppose this amendment.

10. THE CONCEPT OF THIS DESIRED PREFERENCE IS WRONG

The reasons for this have already been stated.

Mr. CLUTE. We also have one more memorandum, which is in response to some material which has been circulated by the proponents of the preference amendment. It is entitled, "Memorandum: Financial Conditions of Individual Shareholders" and purports to give the present financial circumstances of 11 representative individual claimants. Mr. Chairman, of these 11, only 4 are included in the 43. Seven

are included in the 144 individual claimants who would receive their entire balances under the distribution of the \$5 million and who under the preference amendment would not receive their full balances.

So this I would like to submit for the record also along with a survey that we have done again from public information in the Foreign Claims Settlement Commission files, which I believe presents a little bit less distorted picture of the situation.

Finally, Mr. Chairman—

Senator BURDICK. Has that been offered?

Mr. CLUTE. Yes.

Senator BURDICK. It will be received without objection.

[The information referred to follows:]

MEMORANDUM: FINANCIAL CONDITION OF INDIVIDUAL AWARDHOLDERS

The following are specific examples illustrating the financial condition of the individual awardholders under the War Claims Act of 1948. The following cases are typical.

Lilli Bernstein of New York City is a widow 78 years old. The firm of which her husband was a partner is in bankruptcy and the vast majority of her previous recoveries under the War Claims Act have gone to pay creditors. She lives on the balance of her award in a small apartment. The unpaid balance of her award is \$393,000, payment of which would make her financially secure.

Ulrich Strauss of Los Angeles is in his 70's and works as a short order cook. His income is less than \$5,000 per year. The unpaid portion of his two awards total about \$300,000.

Siegfried Aram of New York is 81 years old and has an income of about \$3,000 per year. While the unpaid portion of his award is quite small, any amount he can recover would be an important addition to his meager income.

Herbert Jewell of Long Island City, New York, is an elderly man with an income of about \$5,000 per year. Payment of his \$24,000 award would make a substantial difference in his financial condition.

Eli Trockenheim of Brooklyn, New York is 80 years old and lives with his ailing wife on an income of \$9,000 per year. Much of his income goes to meet her medical expenses. Payment of their \$43,000 award would be of enormous benefit to the couple.

The Bell family of San Francisco consists of 10 children of Edward Bell. All of them were interned in a Japanese concentration camp during the war. While their incomes vary, all are modest, and payment of their relatively small awards would be a significant benefit to them.

Helen Allington of New York is a 78-year-old widow living on small Social Security payments. Since the bulk of her husband's career was spent in Germany the Social Security payments she receives are very small. Mrs. Allington is ill, and payment of her \$7,000 award would help her greatly.

Ernest Lorman of New York lives on a small income. Though both he and his wife are past 70, both still hold jobs to support themselves. Their \$14,000 award substantially exceeds their current combined incomes.

Ernst Rathanau, nephew of the German minister who signed the Versailles Treaty ending World War I, lives in New York on an income of about \$9,000. Mr. Rathanau is elderly and has relatively few productive years ahead of him.

Adele Geyer is over 90 years old and lives in a nursing home. Payment of her \$19,000 award would alleviate the financial burden of maintaining her in the home.

Carla Palm of Fort Thomas, Kentucky is 81 years old and an invalid requiring constant care. Payment of her \$25,000 award would help pay the heavy cost of this care.

Ernest Herman of Los Angeles is a wealthy man who does not require payment of his award in order to live comfortably. He has supported the effort to pass S. 1728 primarily because he believes that the principle of S. 1728 is sound and that these individuals, many of whom he has come to know, are deserving of this relief and need it badly.

The above cases are generally typical of the entire class of individual awardholders. Most of these individuals are elderly persons beyond their productive years and have few sources of income. Many do not qualify for substantial Social

Security payments because their productive years were spent outside the United States. The fruits of their labors were lost in the war and are the basis of their War Claims awards. Enactment of S. 1728 would provide for many of them a final financial stake to support them in their declining years.

MEMORANDUM: FINANCIAL FACTS RE TWELVE INDIVIDUAL AWARDHOLDERS CITED AS TYPICAL HARDSHIP CASES

Lilli Bernstein. Claim No. 4502, Decision No. 21545, Arnold Bernstein. This claim was filed in the name of her husband, since deceased. The amount of award paid to date is \$631,207.95. Under present law an additional \$24,000 will be paid. Total payment will be approximately 65 percent of the award.

Ulrich Strauss. Claim No. 22752, Decision No. 20485 and Claim No. 12067, Decision No. 20493. Inherited claims through Otto Strauss. Payments to date are \$405,431.30 on Claim No. 12067 and \$96,168.26 on Claim No. 22752. Total paid is \$501,599.56. Unpaid amount on first award is \$231,699.70, on second award \$60,713.07. Because he has two claims, Strauss will receive \$48,000 (plus any pro ration) under the present law or a total of \$549,599.56, approximately 70 percent of his claim.

Siegfried Aram. Claim No. 9910, Decision No. 13325. Has been paid \$38,824.81, leaving balance of \$253.19. Will be paid out 100 percent under present law.

Herbert Jewell. Claim No. 6599, Decision No. 21107. Has been paid to date \$76,170.00. Amount of unpaid award \$23,830. Thus he will be 100 percent paid out under present law.

Eli Trockenheim. Claim No. 3394, Decision No. 18694. Has been paid \$106,820.00. After payment of \$24,000 under present law, Trockenheim will have an unpaid balance of only \$19,000, thus being approximately 87 percent paid out.

The Bell family. Claim No. 9368, Decision No. 20570. Each of the 10 children of Edward Bell has received \$5,103.70, leaving a balance of \$796.30 to be paid to each of them. Under present law they will be completely paid out.

Helen Allington. Claim No. 8137, Decision No. 11854. In name of Howard Allington, deceased. Has been paid \$49,179.00. Balance of \$6,790.01 will be fully paid under present law, thus making a 100 percent pay out.

Ernest Lorman. Claim No. 16004, Decision No. 20994. Has been paid \$60,458.90. Balance of \$13,911.25 will be fully paid under present law, thus making a 100 percent pay out.

Ernest Rathenau. Claim No. 7320, Decision No. 20472. Has been paid \$39,786.13. Balance of \$1,238.87 will be fully paid under present law. Another 100 percent pay out.

Adele Geyer. Unable to find this case among individual claimants. It appears from note in the Kennedy memorandum that the unpaid amount is \$19,000. Under present law this amount would, of course, be fully paid.

Carla Palm. Claim No. 11418, Decision No. 20380. Has been paid \$76,701.16. Her unpaid balance is \$24,165.34. Under present law she will be fully paid out because of pro rata payments after the \$24,000 (Provided additional money available is around \$5 million, which is probably since the Justice Department is, we understand, prepared now to transmit \$5 million to the Foreign Claims Settlement Commission for award payments).

Ernest Herman. Claim No. 9528, Decision No. 2111. Ernest Herman and Gunter Herman. Ernest and Gunter have each been paid \$786,018.18. Balance unpaid is \$171,972.32 for each brother. After payment of the \$24,000 each will have received approximately 64 percent of his claim.

In sum, eight of the twelve cases cited will be fully paid out under present law. Three of the four remaining are among the top six individual claimants who together receive nearly 60 percent of the total funds earmarked for individuals under S. 1728.

Mr. CLUTE. Finally, Mr. Chairman, just one other point which I would like to make, which we were not intending to make, but because it occurred to us, because of some statements made this morning by preceding witnesses, we felt we would make.

There were very unfortunate circumstances in the background of many of the individual claimants and I again wish to emphasize that we are not trying to disparage the meritoriousness of their claim, nor try to make little of the unfortunate circumstances which gave

rise to those claims. That is not our purpose at all. We are very much in opposition though to the preference treatment because we think that is inequitable. One instance of such inequity that I can recite is the case of one shareholder of Shanghai Power that I am familiar with.

He is an individual shareholder and was an executive of Shanghai Power and was incarcerated by the Japanese in 1941. He was an American citizen and remained in the Japanese prison for 4 years. In 1945, when the Japanese surrendered, he was released and came back and assumed his position in charge of Shanghai Power. As I mentioned previously, he being a shareholder of an American company that is classified as a U.S. national under the act, he was not entitled to submit a claim. He must rely on Shanghai Power. He is now deceased. He died in the 1950's. His heirs have his interests.

Although I don't think it is particularly relevant to go into the individual circumstances, of shareholders, I think that those kinds of instances—and there are other similar shareholders of Shanghai Power and I am sure other corporations who have losses here—the investment that they had in Shanghai Power probably represented a greater part of their individual estate than some of the individual claimants.

In any event, to grant preference to these 43 individuals which this amendment would do, would be at the expense in part of people like that individual.

And finally, Mr. Chairman, we would be glad to respond to any questions you or Senator Fong may have.

Senator BURDICK. Senator Fong?

Senator FONG. What you have given us in this second memorandum is for refutation of what has been said, is that correct?

Mr. CLUTE. That is correct.

Senator FONG. The first two pages is what has been given to us in evidence and then the refutation follows that?

Mr. CLUTE. That is right, Senator.

Senator FONG. Now could you tell us about the \$7,800,000. Now does that represent the total value of Shanghai Power's claims?

Mr. CLUTE. No, that was the property that was either taken away by the Japanese or lost. It was moved in some cases to Mongolia, and it was equipment that was pirated to other parts of China in the war. It was in part because of loss of inventory and various things of that nature. It was not compensation for the property that was returned in 1949.

Senator FONG. I see. What was the total assets of the company at that time?

Mr. CLUTE. I am going to have to check. I am not sure. It was about \$56 million.

Senator FONG. \$56 million you say and they took about \$7 million worth of goods?

Mr. CLUTE. Yes.

Senator FONG. And this is a claim that you are making?

Mr. CLUTE. Yes.

Senator FONG. That was subsequently taken over by the People's Republic of China, correct?

Mr. CLUTE. Yes, in 1950.

Senator FONG. So you have a claim there?

Mr. CLUTE. There is a claim by Shanghai Power Co., that has been approved and adjudicated by the Foreign Claims Settlement Commission of \$53 million.

Senator FONG. Of \$53 million.

Mr. CLUTE. Yes.

Senator FONG. So actually the claims against the War Claims Commission would be around \$60 million altogether?

Mr. CLUTE. Yes; approximately.

Senator FONG. Would you tell us how much did you acquire the Shanghai Power Co. for?

Mr. CLUTE. The figure has not been set with any accuracy. It was part of a conglomeration if you will of foreign assets consisting of some notes of foreign governments and this claim—and incidentally, Senator, the \$60 million is not under the War Claims Act; the \$7 million is under the War Claims Act and the \$53 million is under the China Claims Act, which is a separate section. It was impossible to set a precise value upon the individual assets. We were looking at them in the aggregate. Each individual asset was reviewed and then when we got down to the final time, we said it would be within this figure, and that is how we arrived at the final figure.

But there was a claim I think in Cuba and there were several assets in Latin America.

Senator FONG. Could you give us a figure as to what is the amount that was paid for all the assets?

Mr. CLUTE. Of all the assets?

Senator FONG. Of everything, including Shanghai Power at that particular time.

Mr. CLUTE. Yes, it was in excess of \$500 million.

Senator FONG. I see. And you bought a lot of other things?

Mr. CLUTE. Pardon?

Senator FONG. Did Shanghai Power Co. have assets of over \$500 million?

Mr. CLUTE. No. Shanghai Power Co. at that time had assets representing the payment under the War Claims Act of something in excess of \$4 million. That was cash assets within Shanghai Power at that time, and then they had the claims. The business or in effect the values of our stock that we gave when Ebasco merged into Boise Cascade was in excess of \$500 million.

Senator FONG. When was that?

Mr. CLUTE. That was in 1969.

Senator FONG. That was after the Chinese took over the power company?

Mr. CLUTE. Yes.

Senator FONG. So you negotiated a deal after there were claims?

Mr. CLUTE. That is correct.

Senator BURDICK. Maybe the staff has a question or two.

Mr. WESTPHAL. As I understood your testimony, you said that when you entered into negotiations to merge Ebasco into Boise Cascade, your first offer to Ebasco, which did not include the acquisition of any foreign companies or foreign assets, was about half of what you finally paid. So it was somewhere in the nature of \$250 million, correct?

Mr. CLUTE. I am dealing with round figures.

Mr. WESTPHAL. All right. And then you apparently were told by Ebasco that they wouldn't consider any merger that did not provide for your acquisition—that is, Boise Cascade's acquisition—of all their assets, including these foreign companies and foreign properties. Isn't that true?

Mr. CLUTE. That is right.

Mr. WESTPHAL. And then you told us that you then sat down and were forced to then analyze each of these assets which you had theretofore excluded from your consideration and to try to put a value on them. Now can you tell us what value you put on the assets; being all the stock and all the property owned by the Shanghai Power part of Ebasco, which you were negotiating to acquire?

Mr. CLUTE. No; we did not break the values down. In mergers that large it is not normal that you would break the values down by each individual asset. We looked at the entire group of foreign assets and we analyzed each one and then we said—and incidentally, we analyzed it from both the earnings standpoint and from the prospect on these claims of recovery on the other assets as to what the risks were and we came to a rough estimate as to how much we would pay in our stock.

Mr. WESTPHAL. At the time you were undertaking this you knew that among the assets of Ebasco was its complete ownership of the Shanghai Power Co., or 80-percent ownership, correct?

Mr. CLUTE. That is right.

Mr. WESTPHAL. All right. And you knew that that asset was in the group of assets you were negotiating to merge into your own company, correct?

Mr. CLUTE. Yes.

Mr. WESTPHAL. All right. And you knew whether it was or was not a going concern at that time, did you not?

Mr. CLUTE. Yes.

Mr. WESTPHAL. And you knew at that time that that physical property—that is, the powerplant—had been taken over by the People's Republic of China around 1950. Isn't that true?

Mr. CLUTE. That is right.

Mr. WESTPHAL. And you were conducting these negotiations some time in the late 1960's?

Mr. CLUTE. Either late 1968 or early 1969.

Mr. WESTPHAL. All right. And at that time you knew then that insofar as being an operating property was concerned, that there was no way you were going to physically operate the Shanghai powerplant located over in the People's Republic of China, so you did not attribute to it any value insofar as a going business was concerned, correct?

Mr. CLUTE. That is correct.

Mr. WESTPHAL. You would put a value on it for the \$4 million and a fraction which had already been paid for Shanghai Power in the early payouts by the War Claims Commission, and a value on that \$7 million claim in the name of Shanghai Power. As I understand it, that \$4 million was a frozen asset under the China Claims Act and could not be disbursed to stockholders or anybody else without the permission from the proper authority. Is that not true?

Mr. CLUTE. That is true.

Mr. WESTPHAL. So that the value you paid for Shanghai Power or the value that you assigned to it in your appraisal of these assets must

have included at least a dollar match for the \$4.5 million that they had in frozen assets, isn't that true, or at least your share of it?

Mr. CLUTE. That would be true.

Mr. WESTPHAL. All right. Now then the question is—oh, and you also knew that they had a \$56 million claim potential to be placed against the People's Republic of China, which was involved in the China Claims Act being handled by the Foreign Claims Settlement Commission. You knew that, did you not?

Mr. CLUTE. Yes, sir. It was \$53 million I think.

Mr. WESTPHAL. All right. And you knew that there is another \$3 million some odd of unpaid claim that had been filed with the War Claims Commission, correct? Now in your appraisal and analysis of those assets, at the time you engaged in this merger agreement with Ebasco, what was the approximate value you assigned the \$4 million in cash, a contingent claim of the remaining \$3 million some, and a contingent claim of \$56 million which could be pursued against the People's Republic of China?

Mr. CLUTE. As I have indicated, we did not individually value the various assets. If you will, we could make an analogy of it, as the Chairman did, to an accounts receivable. In an accounts receivable you make some subjective judgments as to whether you are going to get 100 percent or 50 percent or what and you come to rough estimates. You are not accurate. It is just a feel. It could be analogous to a household of furniture. You usually don't go in and appraise every individual piece but take it—

Mr. WESTPHAL. What was the subjective judgment or evaluation you placed on those three items which were all assets that Shanghai Power had, namely, the \$56 million claim, the \$3 million claim, and the \$4 million?

Mr. CLUTE. I told you, Mr. Westphal, we did not value individual items. We valued the aggregate. There was a whole series of foreign claims, foreign assets, rather, which we valued and we valued them in the aggregate and we had some pluses on some and had some minuses on others. We did not go through an individual check list and say, you know, we are going to put *x* dollars against this one and *x* dollars against that one. It is valued in the aggregate and that is the normal way those transactions are done.

Mr. WESTPHAL. The \$4 million was a plus because that was \$4 million sitting there and you were buying 80 percent of it, correct?

Mr. CLUTE. It was \$4 million that was definite.

Mr. WESTPHAL. Now the \$56 million claim, now was that a plus or minus?

Mr. CLUTE. As I recollect, the \$56 million claim would not have been given too much value because at that time there was not very much hope that there would ever be any improvement in the relations with Communist China but on the other hand, the War Claims part of it, since it had been a recovery, since there was known that there were other assets, which were already in the hands of the United States, that was valued or looked upon as a more valuable asset than the \$56 million claim dollar for dollar, obviously. But if you say what precise value did you place upon it, it cannot be answered because it was not valued precisely in that sense.

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Mr. WESTPHAL. But you value it in percentages based upon a percentage of estimated recovery?

Mr. CLUTE. Mr. Westphal, I have said we had valued it in the aggregate. I can answer that question only in that way. That is a fact. That is the way these are normally done.

Mr. WESTPHAL. What value did you put on the \$4 million that was there in cash?

Mr. CLUTE. Mr. Westphal, I have testified that as to the aggregate of foreign assets—you see, I have the Ebasco property statement here if you would like it entered into the record, which lists all the foreign assets—and to the best of my recollection we placed the value at approximately half the total purchase price of the entire company, which was in excess of \$500 million.

Mr. WESTPHAL. And you are telling us you cannot give us no breakdown below a quarter of a billion dollars?

Mr. CLUTE. That is right.

Mr. WESTPHAL. And this included a lot of claims other than what claims Shanghai Power had?

Mr. CLUTE. It included all the aggregate foreign assets broadly speaking of Ebasco Industries, and they had extensive ones.

Mr. WESTPHAL. Now in 1971 or 1972 Shanghai Power received an \$11,000 payment, did they not?

Mr. CLUTE. I believe so, yes.

Mr. WESTPHAL. In your accounting transactions for receiving that \$11,000 payment you debited that against what kind of value representing the \$3, some million contingent figure?

Mr. CLUTE. I am sorry but I will have to admit my ignorance of accounting practices. I do not know how that was booked.

Mr. WESTPHAL. Well, you are the President of the company. You can find out and tell us.

Mr. CLUTE. I am sure we can. Maybe counsel here knows.

Mr. LUND. No.

Mr. CLUTE. We will be glad to find that out for you.

[The information referred to follows:]

BOISE CASCADE CORP.,
Boise, Idaho, December 9, 1974.

WILLIAM P. WESTPHAL, Esq.,
Chief Counsel, Subcommittee on Improvements in Judicial Machinery, Senate
Judiciary Committee, Dirksen Building, Washington, D.C.

DEAR MR. WESTPHAL: As you requested, I have asked our accountants to provide the accounting treatment accorded the \$11,000 payment received November 30, 1971 by Shanghai Power Co. under the War Claims Act.

I am informed that since Shanghai Power has not been an operating company for many years that only memo accounts are maintained. The \$11,000 payment was debited to cash and credited to a reserve account established for the war claims.

If I can be of further assistance, please let me know.

Very truly yours,

J. E. CLUTE,
Senior Vice President and General Counsel.

Mr. WESTPHAL. Now do you still have any of your papers relating to your claimed valuation back at the time of the merger of 1969 that would supplement the proxy statement that would give the information as to what value you assigned the \$56 million or the \$3 million.

Mr. CLUTE. Negotiations were conducted confidentially amongst a group of the higher management of Boise Cascade and the higher management of Ebasco Industries. We do have the information, which was the information existing in the files. They were also conducting an investigation of Boise Cascade too. It was not done that way though, Mr. Westphal. That would not be normally the way it is done, no.

Mr. WESTPHAL. What you are saying is that if there is any of that information available as to the value analysis made during the course of your three offers, that that information is confidential and you don't care to give it to the committee?

Mr. CLUTE. No, I am not saying that at all. I am saying it doesn't exist because it was the subject of lots of discussions and everything, but in transactions of this nature you do not do that kind of analysis because, if you did, it would require involving a large number of staff of your company and a large number of staff of the other company. As you are I am sure aware, negotiations of this nature, until they are publicly announced, must be kept secret and in strictest confidence so you restrict the number of people involved and necessarily make a lot of subjective judgments.

Mr. WESTPHAL. The only merger I have ever been connected with was a railroad merger and I know there they counted every acre of land grant and what the coal potential and oil potential and timber potential of it was and they made an evaluation of it in an attempt to arrive at a figure which would represent the relative stockownership that the old stockholders had in the company. I know that is normal for merger procedures.

I am wondering if that is the same practice you had in spending over \$500 million on this merger?

Mr. CLUTE. No, it was not.

Senator BURDICK. Thank you very much then. Do you have any other documents to present?

Mr. CLUTE. No.

Senator BURDICK. Our next witness will be Mr. Charles Mack, director of public and government affairs, CPC International, Inc.

STATEMENT OF CHARLES MACK, DIRECTOR OF PUBLIC AND GOVERNMENT AFFAIRS, CPC INTERNATIONAL, INC., ACCOMPANIED BY HAROLD PLIMPTON, JR., VICE PRESIDENT, NATIONAL AFFAIRS, AND STEPHEN R. CONAFAY, STAFF ATTORNEY

Mr. PLIMPTON. Mr. Chairman, I am Harold Plimpton, Jr., vice president of CPC International formerly known as Corn Products Co. I am here to introduce my associates, Mr. Mack, who will deliver our testimony, and Mr. Conafay, but I wanted if I could, Mr. Chairman, to stress the fact that our new name of CPC International in no way evolved from any merger, acquisition, or divestment of the corporation. It is the same company it was. We didn't think the name of Corn Products Co. properly described the diversity of the growing corporation.

CPC is a company with \$8.5 million of unpaid claim balances. That underscores pretty strenuously our intensive efforts and also our gratefulness at the opportunity to be here.

I would like to introduce Charles S. Mack, director of public and government affairs of the corporation, and also Stephen R. Conafay, attorney in our company.

We are here to answer questions later on if it seems necessary.

Senator BURDICK. Very fine.

Mr. MACK. Thank you, Mr. Plimpton and Mr. Chairman. We are grateful to the subcommittee for this opportunity to appear before you this afternoon to express the objections of CPC International, Inc., to enactment of the House amendments to S. 1728.

We do have a statement, which we would be grateful if it might appear in the record. With your permission I will try to hit simply some of the highlights in an effort to save some of the subcommittee's time.

Senator BURDICK. That is very good. Your full statement will be made a part of the record without objection.

[The prepared statement of Charles S. Mack follows:]

STATEMENT OF CHARLES S. MACK, DIRECTOR OF PUBLIC AND GOVERNMENT AFFAIRS, CPC INTERNATIONAL, INC., ACCOMPANIED BY HAROLD PLIMPTON, JR., VICE PRESIDENT-NATIONAL AFFAIRS, AND STEPHEN R. CONAFAY, STAFF ATTORNEY

Mr. Chairman and members of the subcommittee, we are grateful for this opportunity to express the objections of CPC International, Inc., to enactment of the House amendments to S. 1728. My name is Charles S. Mack, Director of Public and Government Affairs for CPC. With me are Harold Plimpton, Jr., Vice President-National Affairs, and Stephen R. Conafay, Staff Attorney.

S. 1728 AND HOUSE AMENDMENTS

As originally proposed, S. 1728 sought to amend Section 5 of the War Claims Act for the purpose of increasing the detention benefits of civilian internees of the Southeast Asia conflict. This is meritorious legislation and it is unfortunate that it has been clouded by two irrelevant and highly controversial amendments.

The House amendments address themselves not to internee benefits, but rather to establishing new priorities for payments from the War Claims Fund. The first House amendment grants priority of payment to all individual awardees, before any distribution to corporate claimants. The second House amendment proposes that each corporate awardee receive an award in equal amounts up to \$50,000 or the amount of the award, whichever is less.

BASIS OF CPC'S CLAIM

CPC International—then Corn Products Refining Company—was one of the first U. S. Corporations to invest in productive facilities abroad. By the time of World War II, CPC had large interests in Europe and the Far East, principally in food manufacturing plants. By the end of the War, however, virtually all of CPC's properties in Germany, Czechoslovakia, and the Far East, had been expropriated or otherwise lost. Included in this loss was a corn milling plant in Barby, Germany which was at the time, the largest food processing plant in Central Europe. The Barby plant was one of a number dismantled and shipped to the Soviet Union, with the consent of the United States Government, under the Potsdam Agreement.

Under the War Claims Act, CPC was able to claim a portion of these losses. We received a gross award from the Foreign Claims Settlement Commission of some \$26 million, for a net award of approximately \$22 million. Of this sum, some \$14 million has been recovered, leaving about \$8 million of proven losses for which CPC has not yet been compensated. It is this substantial unpaid balance which is the basis of CPC's vital concern with the proposed amendments.

It should be emphasized at this point that no Federal appropriations have ever been involved in these payments. The source of payments derive entirely from German and Japanese assets seized by the United States during World War II.

I. OBJECTIONS TO INDIVIDUAL PRIORITY AMENDMENT

a. The individual amendments will benefit only 43 individuals, with nine of the individuals getting the lion's share.

The present law requires that each individual and corporate awardee be granted an additional \$24,000 (or the amount of their award whichever is less) from any additional monies which become available to the War Crimes Fund, before pro rata distribution begins. It is significant then, that under the present law, 146 of the 189 individual claimants will be fully compensated for the amount of their awards—without any further action by the Congress. In other words, only 43 individuals stand to benefit by enactment of this amendment.

b. These 43 individuals have already received substantial amounts from prior war claims distributions (see Exhibit).

It is interesting to note that of these 43 awardees, 31 have already been paid at least \$100,000 each. And under present law (which grants an additional \$24,000 to each) 42 of the 43 awardees will eventually receive over \$100,000—without any change in the law. Furthermore, enactment of the individual priority amendment will result in these same 43 individuals getting 83% of all payments to individuals. (That is, these 43 will receive some \$5.5 million of the approximately \$6.5 million which would be distributed to individuals under the amendment.) Even more disturbing is the fact that of these select 43 individuals who would benefit by a change in the law, a mere nine will receive nearly two-thirds of the funds distributed to individuals. (These 9 individuals will receive \$3.6 million of the \$5.5 million awarded to the 43.)

CPC seriously questions whether the Senate will want to enact legislation which benefits principally such a handful of individuals—particularly, since previous legislation has long since satisfied proven hardship cases, including death and injury, small businesses, and charitable, religious, and non-profit organizations.

c. CPC believes that enactment of the amendment will establish an unjustifiable precedent.

The situation before us is akin to a bankruptcy proceeding, in that there are insufficient funds available to satisfy all claimants. We see no reason to break from the long standing law or pro rata distribution, particularly when most of the individuals seeking priority of payment would have difficulty establishing themselves as "hardship" cases.

d. It is wrong to enact preferential rights for individuals because of alleged tax benefits received by some corporations.

Some individual claimants argue that an injustice exists since corporations received tax deductions for their war losses while individuals did not. Therefore, they argue, this injustice should be remedied by giving individual claimants a priority to the monies available in the War Claims Fund.

We refute this argument as nonsense. Some corporations did not get any tax deductions for their losses. And while other corporations, like ourselves, did obtain tax benefits, these benefits were deducted from the awards granted by the Commission. In other words, all present corporate awards are net of tax benefits. There has been no double benefit as implied by individual claimants.

II. OBJECTIONS TO AMENDMENT WHICH WOULD GRANT UP TO \$50,000 TO EACH CORPORATE CLAIMANT

CPC holds that the second amendment, which proposes that each corporate awardee receive equal payments of up to \$50,000 or the amount of their award, has even less validity than the individual priority amendment.

In its report, the House Committee reasoned that "equitable considerations" led the Committee members to adopt the amendment. However, the Committee report did not explain "equitable considerations" and, therefore, we can only guess at why the Committee felt it necessary to give preference to small awardees. We suppose that the House Committee must have reasoned: "The smaller the award, the smaller the company. Therefore, to help the small businessman, we will give him preference on his claims."

A close examination of the facts, however, indicates that this reasoning is fallacious, and, in fact, should the amendment pass, the effect would be to create an inequitable situation.

¹One awardee, Ulrich Strauss, is a double awardee—having been granted an "Individual" award and a "Mixed" award. For the purpose of this data, each award is treated separately.

Specifically, we object to this amendment on the following grounds:

a. Those Claimants Qualifying as Small Businessmen Have Already Received Compensation for the Full Amount of Their Award.

It is important to remember that previous War Claims legislation enacted in 1962, has already made provisions for small business claimants. Those claimants qualifying as small businessmen were granted a priority, and, therefore, have been fully compensated for the amount of their claim. This fact refutes the reasoning that this amendment will benefit the "small businessmen."

b. CPC Objects to This Amendment Because it is Erroneous to Believe that "Small Claims" Means Small Corporations.

On the contrary, some of the smaller claims outstanding are held by such corporate giants as Westinghouse, Borg-Warner, S. S. Kresge, and Studebaker-Worthington. Some of the claimants who will benefit the most by passage of the amendment are not small corporations, but are very large.

c. Enactment of the Amendment Will Have the Effect of Reverse Pro Rata Distribution.

This amendment favors the small corporate awardee, at the expense of the large awardee. Those corporations who have \$50,000 or less will receive full compensation for their award, while large awardees will have the amount available for pro rata distribution reduced by the amount awarded to the small claimants. Traditionally, when claimants face a situation in which insufficient amounts are available to satisfy all claims, the amount available is awarded on a pro rata basis. Under the proposed amendment, this approach would be overthrown. The inherent unfairness of the amendment is best summarized by Congressman Kuykendall's remarks in his supplemental views to the House report. He said: "Such a scheme cannot commend itself as good law or simple justice. It must be based on the premise that the more one lost, the less entitled he is to reimbursement."

d. This Amendment Discriminates in Favor of Insurance Claimants Over Manufacturing Claimants.

Total corporate awards (combining insurance and manufacturing corporations) amount to approximately \$94.7 million. Of this, approximately \$5.3 million, or 6%, constitutes awards to insurance companies. The remainder, approximately \$89.4 million, or 94%, is attributable to manufacturing corporate claims. However, if the amendment is passed, insurance companies will receive about 20% of the benefits assuming \$10 million remains for distribution. It is difficult, in view of these statistics, to discern how "equitable considerations" will be served when insurance companies will get disproportionate relief.

CONCLUSION

Both of these amendments are inequitable and ill-founded. The first amendment would benefit only a handful of individuals, while the second amendment provides discriminatory relief to those who have lost the least, over those who have lost the most.

Moreover, CPC asks that the continued legislative crippling of our claims should stop. The War Claims Act has already established a string of precedents for priority of payouts; first death and personal injury claims were given priority; then small businesses; later, religious, charitable, and non-profit organizations; and finally, in effect, all other small claimants up to \$35,000.

Whether some or all of these priorities have some merit is not the point, what is important is that the legislation now before you is not unique, but rather the latest in a succession of actions which have steadily undermined the ability of companies such as ours to obtain our rightful share of the limited funds available for recompense of our losses—losses which we suffered in the first place with the tacit consent of the U.S. Government.

In light of these factors, CPC International urges that the subcommittee recommend against both the House Amendments.

This list gives the names of the 43 individuals who would benefit by enactment of the individual priority amendment—the amounts they have received to date—and the minimum amount they will eventually receive if no change is made in the present law.²

² See note 1, *supra*.

Amount paid to date and claimants name :	<i>Minimum amount anticipated under present law, prior to pro rata distribution</i>
\$795,177, Edith Tietz-----	\$819,177
\$786,018, Gunter Herman-----	801,018
\$786,018, Ernest Herman-----	810,018
\$751,808, Elsieer Schultz-----	775,805
\$661,208, Arnold Bernstein-----	685,208
\$478,644, Marie Garbaty-----	502,644
\$405,431, Ulrick Strauss-----	429,431
\$402,123, Stefanie Schwerin-----	426,123
\$364,564, Ella Garbaty-----	388,564
\$309,809, Alfred Maron-----	333,809
\$304,401, Albert Spenner-----	328,401
\$267,426, Harold Nebenzal-----	291,426
\$244,622, Gertrude Reiss-----	268,622
\$223,256, Betty Papanek-----	247,256
\$195,070, Hannah Sigman-----	219,070
\$175,267, Adam Koc-----	199,267
\$170,951, Luis Roever-----	194,951
\$170,951, Rudolf Roever-----	194,951
\$156,015, Eric Kaufman-----	180,015
\$149,957, Michael Devenis-----	173,957
\$141,709, Lotise Mestek-----	165,709
\$134,190, Suzanne Von Schuching-----	158,190
\$132,529, Herman Tietz-----	156,529
\$132,529, Rosalie Tietz-----	156,529
\$130,523, Heinz Wolf-----	154,523
\$126,987, Ed Budd, Jr-----	150,987
\$126,436, Alois Chronowsk-----	150,436
\$121,668, Sarauel Coleman-----	145,668
\$115,194, Rachel Dickey-----	139,194
\$110,219, Adalbert von Gontard-----	134,219
\$106,820, EH Tronkenhiem-----	130,820
\$96,168, Ulrick Strauss-----	120,168
\$94,493, Louise May Hardy-----	118,493
\$90,761, Alfred Bach-----	114,761
\$89,565, Robert Stein-----	113,565
\$88,080, Stanley Sigman-----	112,080
\$85,009, Evelyn Parker-----	109,009
\$82,646, Hella Stanton-----	106,646
\$79,081, Robert Steckler-----	103,081
\$78,573, Hildegard Palm-----	102,573
\$77,240, Ann Unger-----	101,240
\$76,701, Carla Palm-----	100,701
\$61,392, Samael Landau-----	85,392

Mr. MACK. Thank you. CPC International, as Mr. Plimpton said, was then known as Corn Products Refining Co., and was one of the first U.S. corporations to invest in productive facilities abroad. In fact, 1919 was the year in which we opened our first overseas plant. By the time of World War II, CPC had large interests in Europe and the Far East, principally in food manufacturing plants. By the end of the war, however, virtually all of CPC's properties in Germany, Czechoslovakia, and the Far East, had been expropriated or otherwise lost.

Included in this loss was a corn milling plant in Barby, Germany, which was at the time the largest food-producing plant in central Europe. The Barby plant was one of a number of plants physically dismantled and shipped back to the Soviet Union, with the consent of the U.S. Government, under the Potsdam agreement.

Under the War Claims Act CPC was able to claim part of these losses for a net worth of approximately \$22 million and of which some \$14 million has been recovered, leaving about \$8 million in proven losses

for which we have not yet been compensated. It is this very substantial unpaid balance which is the basis of our vital concern about the proposed amendments.

Mr. Clute addressed himself very eloquently and very knowledgeably to the objections which we would certainly share, too, in enactment of the individual preference amendment, and I would simply highlight a couple of those before moving on and discussing the second amendment in a little greater detail.

We would note with reference to the preference amendment that it will benefit only 43 individuals with 9 of those individuals getting the lion's share; that is, some two-thirds in fact of the benefits which would accrue to the individuals under this legislation. If the amendment is enacted, the amount that would be received by nine individuals and the details on that can be found in the appendix exhibit to our statement.

Second, these 43 individuals have already received substantial amounts from prior war claims distributions and, indeed, without any change in the law all but one will eventually receive over \$100,000.

Mr. Chairman, we certainly question whether the Senate at this time of national economic crises will really want to spend its time and really want to spend the Nation's resources in enacting legislation which benefits principally such a handful of individuals, particularly since it has been noted that previous legislation has long since satisfied proven hardship cases including death and injury, small business, and charitable and religious organizations.

We concur too that the statement that enactment of the preference amendment will establish an unjustifiable and perhaps a dangerous legal precedent, and we think it is wrong to enact preference for individuals because of alleged tax benefits received by some corporations.

Mr. Chairman, there is no double benefits. In our case our award was net of tax benefits.

Now let me move on if I may, Mr. Chairman, and spend a moment or two on the second amendment, which would grant up to \$50,000 to each corporate claimant.

CPC holds that the second amendment, which proposes that each corporate awardee receive equal payments of up to \$50,000 or the amount of their award, has even less validity than the individual priority amendment.

In fact, Mr. Chairman, it is a mystery amendment. Nobody is really sure who is for this and nobody has come before this subcommittee to speak for it and it suggests a mystery as to why it was even put into the law.

The House report talked about "equitable considerations" which led committee members to adopt the amendment, but the report does not state what those equitable considerations are. In fact, I was present at the meeting of the full House committee when this was added to the bill and there was hardly any discussion of what "equitable considerations" were, so we can only speculate that the committee must have somehow felt it necessary to give preference to small awardees on the reasoning that the smaller the award, the smaller the company and therefore it helped the small businessman.

A close examination on the facts, indicate this reasoning is fallacious, and, in fact, should the amendment pass, we believe the effect will be to create an inequitable situation.

Our specific objections are these :

First of all, those claimants qualifying as small businessmen have already received compensation for the full amount of their award. This was done in the legislation enacted in 1962. It fully compensated them, and therefore those who are small businessmen have been taken care of and so we will not address ourselves to them.

Second fallacy we believe is that small claims do not denote small corporations. On the contrary, some of the smaller claims outstanding are held by companies such as Westinghouse, Borg-Warner, S. S. Kresge, and Studebaker-Worthington. These are distinguished corporations, but they are very large corporations.

The third point is that enactment of the amendment will have the effect of reverse pro rata distribution. This amendment favors the small corporate awardee, who has, as I just said, not necessarily been a small company and he gets awarded at the expense of the large awardee. Those corporations who have \$50,000 or less outstanding will receive full compensation for their awards, while large awardees will have the amount available for pro rata distribution reduced by the amount awarded to the small claimants.

Traditionally, when claimants face a situation in which insufficient amounts are available to satisfy all claims, the amount available is awarded on a pro rata basis. Under the proposed amendment, this approach would be overthrown. The inherent unfairness of the amendment is best summarized by Congressman Kuykendall's remarks in his supplemental views to the House report. He said—

Such a scheme cannot commend itself as good law or simple justice. It must be based on the premise that the more one lost, the less entitled he is to reimbursement.

Fourth, this amendment discriminates in favor of insurance claimants over manufacturing claimants and other companies. Total corporate awards, that is combining insurance and manufacturing corporations, amount to approximately \$94.7 million. Of this, approximately \$5.3 million, or 6 percent, constitutes awards to insurance companies. The remainder, approximately \$80.4 million, or 94 percent, is attributable to manufacturing corporate claims. However, if the amendment is passed, insurance companies will receive about 20 percent of the benefits assuming \$10 million remains for distribution. It is very difficult to discern how "equitable considerations" will be served when insurance companies will get disproportionate relief.

I would add that this morning Congressman Eckhardt sitting in this chair noted that insurance companies were paid to take risks. I would ask if indeed the House committee felt that way, then I, for one, am at a complete loss why they would want to give these insurance companies a special break, which the McCollister amendment would indeed do.

Both of these amendments are inequitable and ill-founded. The first amendment would benefit only a handful of individuals, while the second amendment provides discriminatory relief to those who have lost the least, over those who have lost the most.

Perhaps most important though, Mr. Chairman, is that CPC asks that the continued legislative crippling of our claims should stop. The War Claims Act has already established a string of precedents

for priority of payouts; first death and personal injury claims were given priority; then small businesses; later, religious, charitable, and nonprofit organizations; and finally, in effect, all other small claimants up to \$35,000.

Whether some or all of these priorities have some merit is not the point, what is important is that the legislation now before you is not unique, but rather the latest in a succession of actions which have steadily undermined the ability of companies such as ours to obtain our rightful share of the limited funds available for recompense of our losses; losses which we suffered in the first place with the tacit consent of the U.S. Government.

In light of these factors, CPC International urges that the subcommittee recommend against both the House amendments.

We thank you for your attention and consideration, Mr. Chairman.

Senator BURDICK. Thank you very much for your contribution today. In this list of claimants I presume you start with the largest figure first and then go on down?

Mr. MACK. Yes, sir.

Senator BURDICK. You go down as the amount decreases?

Mr. MACK. Yes.

Senator BURDICK. You said that individual preferences will benefit only 43 individuals with 9 individuals getting the lion's share. Now would those nine be the first nine of the list?

Mr. MACK. Yes they are. They would receive, Mr. Chairman, in dollar totals, that is of the \$5.5 million total awards \$3.6 million would go to those nine.

Senator BURDICK. I understand. I was just wondering if you started from the top on down and I presume it would be from the top on down?

Mr. MACK. Yes, sir.

Mr. WESTPHAL. I just have a couple of questions. How many claims does CPC or Corn Products Co., have pending before the War Claims Commission?

Mr. MACK. Three.

Mr. WESTPHAL. And one was in the original awarded amount of \$15.3 million and another one was in the amount of \$6.3 million and the third one was in the amount of approximately \$800,000, is that not correct?

Mr. MACK. I think those are correct. Mr. Conafay has those but, yes, sir, that is substantially correct, totaling about \$22 million in our net award.

Mr. WESTPHAL. Right, now those awards were made to CPC by the War Claims Commission after first deducting some \$2,353,000 of tax benefits which CPC received?

Mr. MACK. That would be slightly more—I mean, there would be slightly more than that. Our gross award was \$26 million. The tax benefit was \$4 million in round figures.

Mr. WESTPHAL. The \$4 million was the tax benefit in round numbers?

Mr. MACK. Yes, sir.

Mr. WESTPHAL. Now on those three claims you have received as I understand it from your statement, approximately \$14 million. Is that right?

Mr. MACK. That is right.

Mr. WESTPHAL. So out of \$26 million worth of property you have received in tax benefits plus claims made some \$18 million?

Mr. MACK. That would be correct.

Mr. WESTPHAL. And the \$14 million which you have received by virtue of the law has been exempt from all forms of taxation whether it is ordinary income or capital gains by virtue of you having reported the tax loss benefit which you received?

Mr. MACK. I would yield to Mr. Conafay on that question.

Mr. CONAFAY. That is correct.

Mr. WESTPHAL. I have no further questions.

Mr. CONAFAY. I might point out there that I know that some of the individual claimants have said that they are not entitled to this tax-free income or their awards will be subject to taxation or may be subject to taxation, and I will submit a memorandum concerning that opinion to the committee.

Mr. WESTPHAL. Would you do so?

Mr. CONAFAY. Yes, sir.

Mr. WESTPHAL. And again these dollar values we are talking about are dollar values around 1939 or 1941?

Mr. MACK. Well these assets were overrun at the end of World War II.

Mr. WESTPHAL. All right. And the \$4 million worth of tax benefit—well, in other words, you have \$4 million in taxes. What returns for what years was the \$4 million saved in?

Mr. MACK. 1941.

Mr. WESTPHAL. So the assets were at 1941 valuations and the tax dollars you saved were at 1941 valuations and the \$4 million in 1941 is worth more than \$4 million today?

Mr. MACK. Well I might note that while that is true, Mr. Westphal, there is another aspect here which hasn't been discussed. We talked about cash flow. Mr. Roeber talked about cash flow earlier. The entire basis of our award was the physical assets. Most of our manufacturing facilities were in Eastern Europe. This is a gigantic market which grew even more in the 30 years since and which would have been served by the Barby plant. There is no way a dollar figure can be put on the market loss which would be attributed to that plant, but that would also have been worth vastly more than the \$4 million then or now.

Mr. WESTPHAL. Did you reestablish any of these plants after World War II?

Mr. MACK. Not in the East. We have plants in the West. We have plants in West Germany, but none in East Germany.

Mr. WESTPHAL. In reestablishing those plants, there has been a continuing allegation here by some of the individual proponents of the House amendment that some of those governments made tax concessions when businesses were reestablished over there. Did you receive any such tax concessions for the businesses you did start?

Mr. MACK. To the best of my knowledge, no.

Mr. CONAFAY. We are unaware of any. That was a new argument that came up and we were just made aware of it today. I will look into it but in talking to our tax counsel today he has been unaware of any we did receive.

Mr. MACK. We will doublecheck that, but to the best of our knowledge we have received none.

Senator BURDICK. You made an interesting observation that the size of the claim didn't necessarily reflect the size of the corporation.

Mr. MACK. That is right.

Senator BURDICK. Are there examples in this list of claims where the claim, let us say, of a small business corporation is larger than the claim of a large business corporation?

Mr. MACK. I am sure—and it is very easy to go through this list—but I am sure you can find relatively smaller companies with larger claims than some of the large corporations.

Mr. PLIMPTON. Mr. Chairman, Westinghouse has a \$17,000 claim. I think that pretty well answers that question.

Senator BURDICK. That is all, gentlemen. Thank you very much.

Our next witness will be Mr. William Munroe, USM Corp. Welcome to the committee, Mr. Munroe.

**STATEMENT OF WILLIAM C. MUNROE, JR., INTERNATIONAL
COUNSEL, USM CORP.**

Mr. MUNROE. Mr. Chairman, I am here in place of our general counsel, Mr. Robert Maynard who has been ill and is unable to come on doctor's orders. He prepared our claim. He traveled through Germany and central Europe in the sixties putting this together and is certainly the person most knowledgeable of it.

USM Corp. appears in the claim as United Shoe Machinery Corp., which was our name up until about 1968.

Now I will give you a little bit about the background of our claim. The losses were suffered primarily due to damage to factories, warehouses, and manufacturing equipment from air raids during World War II. As documented in our claim, the damage to the business premises of some of our subsidiaries ranged to 90 percent of some buildings. There were four separate companies involved, with three in Germany. Of these three, two were 100 percent owned subsidiaries and had been since the early 1900's. The third in Germany was 79 percent owned at the time of loss and is now 100 percent owned.

There was a small company in Denmark that suffered some losses that were covered by the War Claims Act.

USM Corp. asked to testify today basically for two reasons: first because we read in the House testimony and again a point was made this morning of claims that the corporations had all received tax benefits. As I recite in our statement, our foreign claims settlement decision, W-21327 states:

On the basis of the entire record, the Commission concludes that claimant is entitled to an award in the amount of \$5,231,219 for losses due to military operations of war or special measures under Section 202(a) of the Act. Claimant has stated under oath that no tax benefit has been derived on account of the losses which are the subject of this claim.

In support of that, Mr. Manard asked our independent auditors Coopers and Lybrand to determine and certify that we had received no tax benefit and by letter to Mr. Manard dated November 23 of 1966, they wrote—and I will quote in part, and if you want a copy of this I can get it for you—they wrote:

In connection with your application for compensation under the War Claims Act of 1948 as amended for certain losses of real and tangible property incurred during World War II you have asked us to make a limited review of

your Federal income tax returns and those of certain subsidiary corporations for the purpose of determining the amount, if any, of Federal tax benefits derived from any deductions claimed for the losses for which you have filed your claim.

They then proceed to list our foreign companies covered by the claims, the years which they reviewed which were 1938 through 1965, and then in their final paragraph stated :

Based upon this review we have concluded that in none of the years covered thereby did you or any of the domestic subsidiary corporations listed above take any deduction or loss which relates to the investment in any of the foreign corporations listed above. Accordingly in our opinion neither you nor any of said domestic subsidiary corporations has received any federal tax benefits in any of the above years with respect to the investment in such foreign corporations.

The other reason for appearing today was that in bringing this bill to the attention of various Members of the Congress we received from one of them a copy of this memorandum, which I believe is the same one alluded to earlier entitled "Memorandum: Financial Condition of Individual Awardholders." This memorandum recited I believe 12 cases and not the 11 that was alluded to earlier, and says in part, without referring to any of the named individuals, but reads:

The following are specific examples illustrating the financial condition of the individual awardholders under the War Claims Act of 1948 and the following cases are typical.

After reciting the cases it says:

The above cases are generally typical of the entire class of award holders. Most of these individuals are elderly persons beyond their productive years and have few sources of income, and many do not qualify for substantial social security payments because their productive years were spent out of the U.S.

It finally concludes:

Enactment of S. 1728 would provide for many of them a financial state adequate to support them in their declining years.

And we wish to bring that to the attention of the committee, if it has not already been brought to their attention, that of the persons listed eight will already be fully compensated under the \$24,000 that they will receive under the present law and the implication it appeared to us was that they needed this amount to be compensated and that is not the case.

Senator BURDICK. Does that paper show the 11 you are referring to?

Mr. MUNROE. The document lists 12 persons and if you take these 12 persons and then look at pages 32 to 37 of the committee hearings before the House, you will see that most of these individuals have—well, in one case as little as a few hundred dollars to recover, which would be more than covered by the \$24,000 payment.

Senator BURDICK. I mean did that memorandum show the names of the 11 people?

Mr. MUNROE. Yes, sir, it does have the names. Would you like a copy?

Senator BURDICK. Would you mind putting a star beside those that will have been fully paid before you submit it?

Mr. MUNROE. Certainly. They have not been fully paid. They will be fully paid with the \$24,000.

Senator BURDICK. Before you submit it to the desk up here, would you do that so we can see it?

Mr. MUNROE. Yes.

In summary, sir, we believe that every justifiable preference for individual and small claimants has already been granted and preferences which would be granted under the proposed amendments are for the reasons stated inequitable to USM Corp. and its shareholders and it should therefore be opposed.

[The prepared statement of William Munroe follows:]

STATEMENT OF WILLIAM C. MUNROE, JR., ON S. 1728 AT A HEARING HELD BY THE SENATE COMMITTEE ON THE JUDICIARY

Mr. Chairman: USM Corporation is a United States corporation having a remaining unpaid award of just over two million dollars under the War Claim Act of 1948, as amended. Until 1968 we were known as United Shoe Machinery Corporation, and it is in that name that our claim and award appear in the records of the Foreign Claims Settlement Commission.

USM's award arises out of its share ownership in three German and one Danish subsidiary. In three of these cases the ownership was, and remains, one hundred per cent. In the fourth, the ownership at the time of loss was 79%, but is now 100%. In each case, USM has owned these companies since the early 1900's.

The losses suffered were primarily damage to factories, warehouses, offices and manufacturing equipment from air raids during the War. As documented in USM's claim, damage to the business premises of USM's subsidiaries ranged up to 99% of some buildings.

Proponents of the preference for individual claimants over corporate claimants have made much of the tax benefits received by the corporate claimants under Section 127 of the Internal Revenue Code.

USM Corporation received no tax benefits under this or other Sections of the Code, because USM at no time deducted its losses in these subsidiaries. USM's Foreign Claims Settlement Decision W-21327 states:

"On the basis of the entire record, the Commission concludes that claimant is entitled to an award in the amount of \$5,231,219 for losses due to military operations of war or special measures under Section 202(a) of the Act. Claimant has stated under oath that no tax benefit has been derived on account of the losses which are the subject of this claim."

The validity of USM's statement under oath has been verified by independent auditors, Coopers & Lybrand.

USM Corporation did not appear in opposition to the 1970 amendment to the War Claims Act which assured all claimants an additional \$24,000 or full payment, whichever was less. The 1970 amendment would provide full payment for 144 of the 187 individual claimants who still have unpaid balances. USM strongly believes that no basis has been shown for now further amending the law to provide an absolute preference for the remaining 43 largest individual claimants over U.S. corporate claimants.

Furthermore, from the statistics set forth on pages 32-37 of the Hearings held November 7, 1973, before the Subcommittee on Commerce and Finance of the Commerce Committee of the House, it would appear that of these 43 individuals, payment in full of the remaining balances of the five largest individual claims would total almost 2.3 million dollars.

USM has seen no persuasive reasons for granting preference to such substantial individual claimants over U.S. corporate claimants.

USM Corporation has been in existence since 1899. The large majority of its shareholders have during that time been U.S. citizens and for many years it has encouraged share ownership by its employees and through direct and indirect ownership a substantial percentage of USM's present and retired American employees are shareholders of this Corporation.

We believe that every justifiable preference for individual and small claimants has already been granted and that the preferences which would be granted under the proposed amendment are, for the reasons stated, inequitable to USM Corporation and its shareholders, and should therefore be opposed.

Thank you.

WILLIAM C. MUNROE, JR.,
International Counsel.

Memorandum: Financial Condition of Individual Awardholders

The following are specific examples illustrating the financial condition of the individual awardholders under the War Claims Act of 1948. The following cases are typical.

Lilli Bernstein of New York City is a widow 78 years old. The firm of which her husband was a partner is in bankruptcy and the vast majority of her previous recoveries under the War Claims Act have gone to pay creditors. She lives on the balance of her award in a small apartment. The unpaid balance of her award is \$393,000, payment of which would make her financially secure.

Ulrich Strauss of Los Angeles is in his 70's and works as a short order cook. His income is less than \$5,000 per year. The unpaid portions of his two awards total about \$300,000.

*Siegfried Aram** of New York is 81 years old and has an income of about \$3,000 per year. While the unpaid portion of his award is quite small, any amount he can recover would be an important addition to his meager income.

*Herbert Jewell** of Long Island City, New York, is an elderly man with an income of about \$5,000 per year. Payment of his \$24,000 award would make a substantial difference in his financial condition.

Eli Trockenheim of Brooklyn, New York is 80 years old and lives with his ailing wife on an income of \$9,000 per year. Much of his income goes to meet her medical expenses. Payment of their \$43,000 award would be of enormous benefit to the couple.

*The Bell family** of San Francisco consists of 10 children of Edward Bell. All of them were interned in a Japanese concentration camp during the war. While their incomes vary, all are modest, and payment of their relatively small awards would be a significant benefit to them.

*Helen Allington** of New York is a 78-year-old widow living on small Social Security payments. Since the bulk of her husband's career was spent in Germany the Social Security payments she receives are very small. Mrs. Allington is ill, and payment of her \$7,000 award would help her greatly.

*Ernest Lorman** of New York lives on a small income. Though both he and his wife are past 70, both still hold jobs to support themselves. Their \$14,000 award substantially exceeds their current combined incomes.

*Ernst Rathenau**, nephew of the German minister who signed the Versailles Treaty ending World War I, lives in New York on an income of about \$9,000. Mr. Rathenau is elderly and has relatively few productive years ahead of him.

*Adele Geyer** is over 90 years old and lives in a nursing home. Payment of her \$19,000 award would alleviate the financial burden of maintaining her in the home.

*Carla Palm** of Fort Thomas, Kentucky is 81 years old and an invalid requiring constant care. Payment of her \$25,000 award would help pay the heavy cost of this care. \$24,165.34 (\$165.34) will remain unpaid.

Ernest Herman of Los Angeles is a wealthy man who does not require payment of his award in order to live comfortably. He has supported the effort to pass S. 1728 primarily because he believes that the principle of S. 1728 is sound and that these individuals, many of whom he has come to know, are deserving of this relief and need it badly.

The above cases are generally typical of the entire class of individual awardholders. Most of these individuals are elderly persons beyond their productive years and have few sources of income. Many do not qualify for substantial Social Security payments because their productive years were spent outside the United States. The fruits of their labors were lost in the war and are the basis of their War Claims awards. Enactment of S. 1728 would provide for many of them a final financial stake to support them in their declining years.

Senator BURDICK. Is that your statement then?

Mr. MUNROE. Yes.

Senator BURDICK. All right. Thank you very much. Can you explain, Mr. Munroe, the reason why USM did not take a tax loss in the '40's when the property was lost or destroyed?

Mr. MUNROE. Sir, we tried to determine that. We were unable to. The best conclusion that we were able to reach was that we had owned

*These individuals will be fully paid under the present law providing an additional \$24,000 or remaining unpaid award, whichever is less.

these properties going back prior to World War I and we had gotten them back after World War I and we think we must have assumed we were going to win this one also and we kept them on the books. We did not take a tax loss for them.

That may seem inadequate, but that is the only thing I can—well, we have been unable to determine really why they did not take a tax loss at that time. There was basis and it could have been done.

Senator BURDICK. If we assume under any formula of priorities that USM will never receive 100 percent payment of claims of \$5.2 million, could it claim a tax loss in the year in which the Claims Commission makes its final payment leaving a balance due and owing on your claim?

Mr. MUNROE. I am not a tax attorney, sir, but I don't believe that we could.

Senator BURDICK. In other words you would suppose that if \$2 million was paid out of the \$5 million claim you could not claim the \$3 million at that point?

Mr. MUNROE. I don't believe that we could, but, as I say I am not a tax attorney.

Senator BURDICK. If you find to the contrary, would you let us know?

Mr. MUNROE. Yes.

Senator BURDICK. After the award did USM reactivate these three German and one Danish subsidiaries?

Mr. MUNROE. They did, sir.

Senator BURDICK. They are operating?

Mr. MUNROE. They are operating now and we have rebuilt them.

Senator BURDICK. In doing so did you receive any concessions, either tax or otherwise, because of the loss sustained in the war?

Mr. MUNROE. We could find no tax benefits that we received. Mr. McClellan I believe this morning alluded to something called the equalization of burdens taxes, which were payments required from corporations to be made to the Government of Germany by German corporations and it is my understanding that we did make such payments, but we did receive no benefits.

Also as for just taking deductive losses, in reviewing the financial statements of those companies for those years, it would appear to us that we operated at a loss during the years immediately subsequent to World War II and therefore didn't have profits against which we could take such losses.

[ED NOTE. The following is Mr. Munroe's response to the tax information request by the subcommittee.]

USM CORPORATION,
Boston, Mass., December 6, 1974.

HON. QUENTIN N. BURDICK,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BURDICK: In my testimony last Tuesday afternoon in opposition to granting additional preferences to individuals as proposed by S. 1728 (amendment to the War Claims Act of 1948), I stated that USM Corporation had received no Federal Income Tax benefit from the losses it suffered due to damage to and loss of property of its German subsidiaries in World War II.

Following my testimony, you inquired whether USM would be able to obtain any tax benefit from these losses in the event that USM was unable to recover

the full amount of its foreign claim award. I advised you that I did not see that it could but I was not a tax specialist, and you asked that I verify this.

I have since reviewed the matter with our Tax Counsel, and I am assured that it is much too late to take a deduction for the original loss, that we cannot at any time take any deduction for the difference between our award and such lesser amounts as we receive, and further, that all amounts received by USM under the award are subject to Federal Income Tax.

I wish to take this opportunity to express my thanks to the Committee on behalf of USM Corporation for the opportunity to be heard on this matter. I have not previously had occasion to testify before a Senate Committee and I was most impressed by the willingness of both you and Senator Fong to devote the better part of a day to serious consideration of this rather complex matter, which, though important to us, undoubtedly constitutes such a minor part of your concerns.

Sincerely yours,

WILLIAM C. MUNROE, JR.

Senator BURDICK. Any questions?

Mr. WESTPHAL. I don't know whether they are questions, but I would like to clear up one thing for the record, Mr. Chairman. Several of the witnesses have made reference to various memorandums that were circulated. I think the record should show or will show that the memorandums, which Mr. Munroe has referred to, which contains the name of 12 of the individual claimants by name and which you are marking up to show which eight will be paid in full, was prepared by and included in a brochure that was prepared by attorneys Crolius and Greenwold on behalf of individual claimants as a group and that memorandum may have been submitted by them directly to every Member of the Senate or every member of the full committee as far as I know.

As far as the staff of this ad hoc subcommittee is concerned, Senator, the only memorandums that were submitted for perusal for the three members of the ad hoc subcommittee were these: One was a memorandum entitled "Summary of Arguments" in favor of the House amendments to S. 1728, which was copied or Xeroxed from the presentation made by Crolius and Greenwold on behalf of the individuals; and the other memorandum was a memorandum prepared by CPC International, which seemed to the committee staff to summarize the contentions made by corporate claimants as a group and for the purpose of the record I would at this time ask that both of these memorandums be made a part of the record so that all persons involved could see that staff attempted to make a fair presentation to the three members of the ad hoc committee by submitting summary arguments made on behalf of both individuals and corporations.

If that could be marked as a committee exhibit and received, I would appreciate it.

Senator BURDICK. That will be received.
[The memorandum referred to follows:]

COMMITTEE EXHIBIT 1

SHORT SUMMARY OF ARGUMENTS IN FAVOR OF THE HOUSE AMENDMENTS TO S. 1728

1. Individual awards are based on the loss of homes, personal belongings and small family businesses. In most cases, the individuals lost all they had. The corporate awardholders are almost exclusively

large multinational corporations that lost only a small fraction of their total assets. The corporations suffered losses, but the individuals suffered disasters.

2. The corporate awardholders have taken more than \$35 million in tax deductions as a result of their losses and have had the use of the money they saved for over 30 years. A thorough and diligent search has disclosed no individual shareholders who took tax deductions. Corporations have therefore recovered a much higher percentage of their losses. (A detailed memo on this subject is attached at tab D.)

3. The majority of individual awardholders are elderly persons. Many of them live on small fixed incomes and receive little in the way of social security payments since their productive years were spent abroad. Their war claims awards represent a final financial stake to support them in their declining years. (A detailed memorandum on this subject is attached at tab C.) By contrast, at least 96 percent of the unpaid corporate awards are held by large companies whose stock, or whose parent company's stock, is traded on the New York or American Stock Exchange. All small business corporations have already been paid in full under a previous priority.

4. Granting priority to individuals would reduce the amounts available to corporate awardholders by only about 5 cents on the dollar. By contrast, the failure to give individuals a priority would result in a permanent loss to individuals of about 70 percent of their unpaid awards. Under existing law, corporations would receive about 93 percent of all pro rata payments and more than 83 percent of all payments to corporate awardholders would go to the 13 largest corporate awardholders.

5. Many corporate awards are held by corporations that acquired the stock of the company that actually suffered the loss many years after the loss was incurred. In some cases, the acquiring corporation paid little or nothing for the stock of the company suffering the loss. Recovery by such acquiring corporations would be a total windfall to these corporations. The individuals are the very persons who suffered the losses, or, in some cases, the children of those who suffered the loss. In all cases, the individual awards have remained in the family.

6. Corporations received large tax and other benefits from foreign governments in compensation for their losses when they reestablished their operations abroad after the war. Individuals received no such benefit.

7. In order to receive an award, claimants had to provide documentary proof of their ownership of the property that had been lost. Many individuals lost their documents in the war. U.S. corporations, which maintained extensive records in this country, were able to document a much greater percentage of their losses and hence received awards to cover a larger portion of their losses.

8. All individual awardholders are U.S. citizens. Many of the stockholders of the corporate awards are foreign nationals. The basic theory of the War Claims Act is to compensate U.S. citizens. The priority for individuals furthers that purpose.

9. S. 1728, as amended, passed the House by a vote of 368-17.

MEMORANDUM--RE: WAR CLAIMS ACT AMENDMENTS

Summary:

It is suggested that because of the reasons outlined in this memorandum the Senate reject the amendments proposed by the House. In the alternative, we suggest that the issues are of sufficient import to warrant at least a hearing by the committee, before resolution.

Background:

The War Claims Act (50 U.S.C. app. 2017) was enacted to pay awards to those Americans who lost their lives and had property destroyed in enemy lands during the Second World War. As the law presently stands, all awardees (both individuals and corporations) are to be paid up to \$35,000, or the amount of their award, whichever is less. All awardees (with a few exceptions¹) have been paid at least \$11,000 of their award. In fact, as will be shown later, some awardees have received in excess of \$100,000. In any case, awardees can expect to receive an additional \$24,000 (or the full amount of their remaining claim, if their award does not total \$35,000) before pro rata distribution begins.

Proposed legislation:

Senate bill 1728 (S-1728) was passed by the Senate last year containing but one section, which increased payments to American civilians held as prisoners of war during the Vietnam conflict. The House Commerce Committee then adopted amendments which were passed by the House in July 1974. The House amendments proposed:

- (1) That all individual awardees receive the full amount of their award prior to any funds being distributed to corporate awardees; and
- (2) That before pro rata distribution shall take place among corporations, all corporate awardees shall be paid \$50,000, or the full amount of their award, whichever is less.

Discussion

REASONS WHY AMENDMENT--WHICH GIVES INDIVIDUAL AWARDEES PREFERENCE OVER CORPORATIONS--SHOULD NOT BE ENACTED

1. No legal precedent

Under present law, there is no legal precedent which places individuals on a separate and higher footing than corporations. On the contrary, the law of bankruptcy, corporate liquidations, commercial credit, et cetera, places corporations and individuals on an equal footing. That is, where inadequate funds remain to satisfy all claims, the funds are distributed pro rata to those claimants with the greatest claim. No distinction is made as to whether the claimants are individuals or corporations.

The instant case should provide no rationale for exception. In fact, establishment of such a priority could prove a dangerous precedent; particularly in light of similar claims which may arise out of nationalizations in Cuba, et cetera.

¹ Some awardees, those who suffered physical injury, small business claimants, and eleemosynary institutions, have been paid in full.

2. Only 43 individuals will benefit by enactment of this amendment

Enactment of this amendment will benefit only 43 individuals. All other individual awardees will receive the full amount of their award, when under the present law, distribution of \$24,000 is made. Many of the remaining 43 claimants who will not receive the full amount of their award are wealthy individuals who cannot be considered to be living under "necessitous circumstances." In fact, even a cursory review of the statistics filed by the Foreign Claims Settlement Commission (see page 35 of the House hearings) shows that many of these individuals have already been compensated to a large degree. For example:

(1) If the present law granting \$24,000 per claimant is allowed to stand, the average amount received by the 43 claimants will be in excess of \$200,000 apiece;

(2) If the present law granting \$24,000 per claimant is allowed to stand, 16 of the 43 claimants will have been awarded in excess of \$200,000 apiece;

(3) If the present law granting \$24,000 per claimant is allowed to stand, 41 of the 43 claimants will have been awarded in excess of \$100,000 apiece;

(4) Finally, if the amendment is allowed to pass, 9 of these 43 claimants will take a lion's portion of 62 percent of the individual awards.

In light of these statistics, it is difficult to justify that individuals should receive preference over corporations.

3. It would be wrong to enact preferential rights for individuals because of alleged tax benefits received by corporations

Some individual claimants argue that an injustice exists in that corporations received tax deductions for their war claims while individuals did not. Therefore, they argue, this injustice should be remedied by giving individual claimants a priority to the moneys available—the war claims fund.

We refute this argument as nonsense. A review of the facts show that some corporations did not get any tax deductions for their war claims. And while other corporations did obtain tax benefits, these benefits were deducted from the awards granted by the Commission. In other words, all present corporate awards are net of tax benefits. There has been no double benefit as implied by some individuals.

REASONS WHY AMENDMENT—WHICH ALLOWS \$50,000 FOR EVERY CORPORATE CLAIMANT OR AMOUNT OF AWARD, WHICHEVER IS LESS—SHOULD BE REJECTED

In its report, the House committee reasoned that "equitable considerations" led the committee members to adopt the amendment. However, the committee report did not explain "equitable considerations" and, therefore, we can only guess at why the committee felt it necessary to give preference to small awardees. Nevertheless, it seems reasonable to assume that the committee reasoned: "The smaller the award, the smaller the company. Therefore, to help the small businessman, we will give him preference on his claims." A close examination of the facts, however, indicates that this reasoning is fallacious; and in fact, should the amendment pass, the effect would be to create an inequitable situation.

Specifically, we object to the amendment on three grounds. They are:

1. Those claimants qualifying as small businessmen have received compensation for the full amount of their award

It is important to remember that the War Claims Act has already made provision for small business claimants under section 2017-1 (50 App. USCA 2017). Those claimants qualifying as small businessmen (along with charitable nonprofit organizations) received compensation for the full amount of their claim. Secondly, some of the smaller outstanding claims are held by such corporate giants as Westinghouse, Borg-Warner, S. S. Kresge, and Studebaker-Worthington. Our point is this: The amendment does not actually favor the small businessman. The truly small businessman has already been compensated for his loss, and furthermore, some of the claimants who will benefit the most by passage of the amendment are not small corporations, but on the contrary, are very large.

2. The proposed amendment discriminates against manufacturing corporations, in favor of insurance companies

To illustrate this point, consider the following statistics:

Total corporate awards (combining insurance and manufacturing corporations) amount to approximately \$94.7 million. Of this, approximately \$5.3 million, or 6 percent, constitutes awards to insurance companies. The remainder, approximately \$89.4 million, or 94 percent, is attributable to manufacturing corporate claims. However, if the amendment is passed, insurance companies will receive 20 percent of the fund's moneys, assuming \$10 million remains for distribution (see app. A). It is difficult, in view of these statistics, to discern how "equitable considerations" will be served when the amendment obviously benefits insurance companies to the detriment of manufacturing corporations.

3. Enactment of the amendment will give preference to those corporations who have lost the least, over those corporations who have suffered the most

This amendment favors the small corporate awardee, at the expense of the large awardee. Those corporations who have \$50,000 or less will receive full compensation for their award, while large awardees will have the amount available for pro rata distribution reduced by the amount awarded to the small claimants. Traditionally, when claimants face a situation in which insufficient amounts are available to satisfy all claims, the amount available is awarded on a pro rata basis. Under the proposed amendment, this approach would be overthrown. The inherent unfairness of the amendment is best summarized by Congressman Kuykendall's remarks in his supplemental views. He said: "Such a scheme cannot commend itself as good law or simple justice. It (this amendment) must be based on the premise that the more one lost, the less entitled he is to reimbursement." Obviously, this is an inequitable proposal.

In summary, then, we feel that the amendment is patently inequitable because it does not necessarily help the small businessman; it discriminates in favor of insurance companies, and it overthrows the normal priorities by compensating one who has lost the least, before compensating those who have lost the most.

Senator BURDICK. This is not a court of law, but we are trying to get the exhibits pretty well identified here. Any more questions?

Mr. WESTPHAL. No, I have none.

Senator BURDICK. Well, thank you very much.

The next and I believe the last witness is Mr. Thomas Davenport, corporate counsel for Budd Co.

STATEMENT OF THOMAS DAVENPORT, CORPORATE COUNSEL, BUDD CO., ACCOMPANIED BY RICHARD TOWSLEY, MANAGER, TAX ADMINISTRATION

Mr. DAVENPORT. This is Mr. Towsley who is our tax expert, and he is with me in case you have some questions that he can fill in, sir.

Senator BURDICK. All right. I might ask him a question right now. Mr. Towsley, suppose after the fund is liquidated and we find out that company A has only been paid half of the claim and there is 50 percent of the claim unpaid. Now, at that point could a corporation claim any kind of a tax loss?

Mr. TOWSLEY. No, there would be no loss deduction available for that difference. There might conceivably be a loss of liquidation measured by the difference between the cost of the subsidiary and the assets received, whatever they may be, if the company were less than 80-percent owned. That is all. The answer to your question is no.

Senator BURDICK. Well, I carry some low-priced stock with the ever-present hope that some day it may do something. Five years from now I may decide to call it worthless. I have the option at that point, haven't I, to declare a loss?

Mr. TOWSLEY. As an individual, as a shareholder, if your stock becomes worthless, this is a capital loss, yes.

Senator BURDICK. But you can't use the same argument with the war claims? You always have hopes that they might be paid in full?

Mr. TOWSLEY. Yes, but I know of no provision in the law which would permit you to take a deduction for the amount of the claim specifically.

Senator BURDICK. All right. Thank you very much for the professional opinion. You may proceed.

Mr. DAVENPORT. We have presented a copy of our statement so I won't proceed to read it, but I would like to emphasize a few points. We are representing the Budd Co., and the Budd Co. has some 23,000 shareholders and some 18,000 employees, and all of them and us, too, are interested in the House amendments. We are primarily an automobile parts supplier. We are, along with the industry, having problems and facing a liquidity crisis. Any further payment on this award is of great importance to us.

We are here to say that we believe the proposed amendment is unfair because on the one hand it proposes to distinguish treatment of a class of individual claimants from the class of corporate claimants which amounts to an ultimate denial of the balance of the corporate claims, but on the other hand, the proposed amendment would ignore distinct differences within the class of individuals and within the class of corporate claimants. We believe that the only equitable alternative to pro rata payments would be to give separate consideration to the situation of each claimant. Conversely, we do not believe that

all corporations should be penalized as a class because some received major tax benefits or were otherwise able to reduce the effect of their losses.

Significantly the Budd Co. did receive a tax benefit but the award was in the order of \$2,860,000. The tax effect was \$16,300.58. This is less than 6/10 of a percent of the recognized loss.

The tax treatment of the Budd Co. was dictated by the subsidiary structure of the investments in prewar Germany. We can't exactly tell you the reason why no greater tax effect was available, but we can assure you that that was the total tax effect of the war loss. There was no further significant tax consideration until Budd finally dissolved the subsidiary structure some 30 years later.

In 1971 the Budd Co.'s corporate income tax was reduced by an amount equivalent to 30 percent of the unpaid balance of the award. It is significant, however, that that 30 percent will be reassessed whenever and to whatever extent Budd receives a further payment on the balance of the award.

Concerning the statement made on page 20 of the hearing of November 7, 1973, which indicated a typical corporation with a war loss of \$1 million would receive some 90 percent of its loss in tax benefits. Well, we fail to find any way of identifying such a typical corporation. Certainly the Budd Co. is not such a corporation. We don't believe that that median corporation exists.

We have put in some of the statistics in our formal statement as to that, but I don't think I need to repeat them. I would just like to say that we have no objection to a small claim preference on a level to be determined by Congress. It has already fixed it at \$35,000, but we think the proposal to give individuals full priority clearly constitutes an unfair and unreasonable preference. We have knowledge only of the Budd Co.'s situation specifically as to this.

Mr. Chairman, we had insignificant tax benefits, and we have reason to believe that many other corporations also have not realized the significant benefits that are attributed to their situation.

We respectfully oppose the amendments and are willing to answer any questions you may have.

Senator BURDICK. Thank you very much for your contribution. Any questions?

Mr. WESTPHAL. I just have a couple, Mr. Chairman. Your statement, Mr. Davenport, says that in 1971 the Budd Co.'s corporate income tax was reduced by an amount calculated at 30 percent of the unpaid balance of the award, that is, the award of \$2.8 million. Now I understood the chairman to ask Mr. Towsley, your tax counsel, whether it was possible to claim a tax loss at such time as the War Claims Commission determines that they have made their final payout and there is no more money to be paid out, and here you are, under the chairman's example, with an unpaid claim of \$3 million and he asked, assuming you had been carrying that claim as an asset on your books, could you then write that off. Mr. Towsley told the chairman that you couldn't, yet in 1971, apparently a loss was taken for some assets that were destroyed back during 1939 to 1945. Could either you or Mr. Towsley explain that?

Mr. DAVENPORT. We would like to. I should have perhaps given some more detail. We had a manufacturing facility in what became East

Berlin. It made automobile stampings and made automobile bodies as such. We lost all of that production facility. There was left a corporate shell that had some patent properties, and that corporate shell was continued. Then eventually the corporate shell was liquidated. At the time of the liquidation it was necessary for us to show that we had received this war claim award.

Mr. WESTPHAL. In other words what you are saying is that the amount you had received up to 1971 on your claim of \$2.8 million had to be taken into account when you determined what loss you had sustained by liquidation of one of your wholly owned subsidiaries. Is that about what you are trying to tell me?

Mr. DAVENPORT. That is about it.

Mr. WESTPHAL. Is that essentially it, Mr. Towsley?

Mr. TOWSLEY. That is essentially it. The question I believe from Mr. Burdick was, could we take a loss when the claim against the War Claims Commission became worthless and the answer is that no we could not.

In this case we had a subsidiary and that subsidiary domestically owned the foreign subsidiary. The foreign subsidiary Ambe Budd did survive the war although it had nothing left. It was continued in business, but not as an operating company. When it continued in business, it collected some royalties and so forth. Eventually 30 years later that foreign subsidiary Ambe Budd was liquidated. When it was liquidated, we received some \$27,000 as our share of the assets in liquidation. That was all. Our loss, which we deducted at that time as a capital loss, is the loss resulting from the liquidation of an investment in stock of a foreign corporation.

The loss is measured as the difference between our investment costs and that \$27,000. There is one more point I wish to make. The point I wish to make is that the \$1.7 million payment on our award did not come home tax free. It was treated by the Internal Revenue Service as a reduction of the basis of our investment.

Mr. WESTPHAL. In the return that you filed for the taxable year 1971?

Mr. TOWSLEY. Yes.

Mr. WESTPHAL. All right; now then, as I understand what you have explained to me, it is that you had a wholly owned subsidiary that you carried on the books of USM as having certain value——

Mr. TOWSLEY. The Budd Co. and not USM.

Mr. WESTPHAL. Excuse me, the Budd Co., as having a certain value. Now when that wholly owned subsidiary was liquidated——

Mr. TOWSLEY. Not wholly owned, sir.

Mr. WESTPHAL. In which you had an interest.

Mr. TOWSLEY. Yes.

Mr. WESTPHAL. Now when that was liquidated, you received \$27,000 from the liquidation?

Mr. TOWSLEY. Yes.

Mr. WESTPHAL. You had been carrying your stock ownership on your books at a higher value?

Mr. TOWSLEY. No, sir; we get a little bit more complicated here. The investment had disappeared from the books back in the 1940's. I can go into more detail if need be——

Mr. WESTPHAL. No.

Mr. TOWSLEY. But there was no investment whatsoever on our books; however, the tax basis is a matter of record entirely apart from what we had on our books. We had a tax basis of \$2.7 million, which is coincidentally about the same as the amount of the award.

Mr. WESTPHAL. So that here we have the situation you just explained to us which is a situation where one corporation owned part but not all of the shares of stock of another corporation and whether it carried it on its books as having a value or not, it nevertheless had an acquisition cost basis which for tax purposes would allow you to claim a tax loss at the time you received only \$27,000 in liquidation?

Mr. TOWSLEY. That is correct.

Mr. WESTPHAL. Were you present in the hearing room when I was trying to determine what the cost basis was of Shanghai Power Co. as acquired by Boise Cascade?

Mr. TOWSLEY. Yes, sir.

Mr. WESTPHAL. Would you care to present an opinion as to whether the tax treatment you received might be available under the same provision of the Internal Revenue Service to Boise Cascade in connection with this Ebasco matter?

Mr. TOWSLEY. I don't believe I can give any opinion or any comment on the Boise Cascade situation. It appeared to be a rather complicated and complex merger situation involving exchanges of stock and groups of assets, et cetera. I could say nothing further on that.

Mr. WESTPHAL. Thank you. I have nothing further.

Senator BURRICK. Thank you very much.

[The prepared statement of Thomas Davenport in full follows:]

TESTIMONY OF THOMAS I. DAVENPORT

My name is Thomas I. Davenport. I am Corporate Counsel for The Budd Company, Troy, Michigan. Mr. Richard F. Tuscley, our Manager, Tax Administration, also represents The Budd Company. I have a very short statement; Mr. Towsley prepared to give more details and we are both ready to answer any questions.

We appreciate the opportunity to give the viewpoint of one corporation in opposition to any unfair discrimination among claimants. There are some 18,000 employees and some 23,000 shareholders receiving our newsletters, all having an interest in the health and assets of The Budd Company. Though perhaps better known for its railway passenger cars, 80% of the Company's production is for the automotive industry.

We believe the proposed amendment is unfair because, on the one hand, it proposes to distinguish treatment of the class of individual claimants from the class of corporate claimants, amounting to an ultimate denial of the balance of the corporate claims. On the other hand, however, the proposed amendment ignores distinct differences within the class of individual and within the class of corporate claimants. The definition of but two classes appears to us to create greater rather than lesser inequity.

We believe that the only equitable alternative to pro rata payments will be to give separate consideration to the situation of each claimant. If there still remain special hardship cases, they could be singled out rather than being obliterated by class treatment. Conversely, we do not believe that all corporations should be penalized as a class because some received major tax benefits or were otherwise able to palliate their losses.

The original award to The Budd Company was \$2,860,363.85. It was reduced by \$16,300.58, the total of all realized tax benefits. That \$16,000 tax effect was less than 0.6% of the recognized loss. Tax treatment of The Budd Company was dictated by the subsidiary structure of its investments in pre-war Germany. There was no significant tax effect until Budd finally dissolved the subsidiary structure thirty years later. In 1971 The Budd Company's corporate income tax was reduced by an amount calculated at 30% of the unpaid balance of the award. Please note, however, that the 30% will be reassessed whenever and to the extent that Budd receives any further payment on the balance of the award.

A statement is made at page 20 of the Hearing of November 7, 1973, indicating that a typical corporation with a war loss of \$1,000,000 would have recovered \$898,770 or approximately 90% of its loss through tax benefits and payments received under the War Claims Act. Where is this "typical" corporation? As previously shown herein, The Budd Company received a gross award of \$2,860,363.85, representing only a part of its losses, and received a war loss tax benefit of only \$16,300.58 reducing such award to the net amount of \$2,844,063.27. Payment of \$1,728,051.51, amounting to 61.4% of the net award, has been received. No war loss tax benefit other than the \$16,300.58 has been realized by The Budd Company, or its dissolved subsidiary, Budd International Corporation.

The philosophy of "small claim" priority is recognized in the existing law whereby unpaid balances up to \$35,000 are to be paid in full before pro rata payments are to be made on remaining balances above that amount. To date, \$11,000 of the \$35,000 has already been paid, and the payment of the remaining \$24,000 will pay in full most of the claimants classified as "Corporate and Partnership (Individual) Claims", "Individual Claims", and "Mixed Claims" as tabulated at pages 34 through 37 of the Hearing of November 7, 1973, Serial No. 93-44.

As indicated, the existing \$35,000 preference for small claims will result in the full payoff of 145 individual claims (42 plus 84 plus 19) leaving only 42 unpaid. It is significant that of the 42 which would then remain unpaid, 4 of them amount to \$1,878,138.02, and 9 others (each in excess of \$100,000.00) amount to \$1,344,386.37.

Clearly it cannot be said that the proponents of individual claim for priority are asking for such priority on the basis of size of their claims.

I have no objection to small claim preference at a level to be determined by the Congress (already fixed at \$35,000), but the proposal to give individuals full priority before any further payments are made to corporations clearly constitutes an unfair and unreasonable preference. I have knowledge only of The Budd Company's situation (insignificant tax benefits from war losses) but I have reason to believe that many other corporations also have not realized significant tax benefits from their war losses.

I respectfully ask that the Committee delete Section 2 of S. 1728 which would grant priority of war claims payments to individuals, on the grounds that this represents unfair discrimination.

Thank you.

Senator BURDICK. At this time I want to include in the record a statement of Robert N. Norris, president of International Trade Council, Inc., at his request and have that made a part of the record—

Mr. FACH. Mr. Chairman, if I may, I am the tax director of the trade council, and I would like to present some oral testimony. We didn't realize we had been scheduled at the hearing, and—

Senator BURDICK. Well we did have you scheduled and we got a letter from the President requesting this method of procedure.

Mr. FACH. I appreciate that, Sir. I just found out last night we had been scheduled for oral testimony. I will make it brief if I may.

Senator BURDICK. Can you make it in 5 minutes, because I have to go to the floor at 4 o'clock.

Mr. FACH. Yes.

Senator BURDICK. All right, then under these conditions the statement of Robert M. Norris will be received and you may proceed.

[The prepared statement of Robert M. Norris follows:]

STATEMENT OF THE NATIONAL FOREIGN TRADE COUNCIL, INC., ON S. 1728

The membership of the National Foreign Trade Council, Inc. which was founded in 1914, comprises a broad cross section of United States companies engaged in all major fields of international trade and investment including manufacturers, exporters, importers, bankers, insurance underwriters and companies engaged in rail, sea and air transportation. The Council is opposed to S. 1728 because of the arbitrary preferences for individual claimants and corporations with small claims that were incorporated into the bill by two amendments made in the House of Representatives.

The provisions of S. 1728, which would equalize payments to U.S. civilian internees in Southwest Asia with payment to military prisoners, is non-controversial. Yet, the two House amendments are unrelated to the Senate bill as passed.

Let us examine the two amendments. The first amendment would establish an absolute preference to individual over corporate claimants, contrary to existing law which under the War Claims Act are accorded equal treatment in the payments of their awards.

The second amendment would also constitute a departure from present law in that it would provide that after individual awards were fully paid, corporate claimants would be paid the same amount up to \$50,000 regardless of the size of their claims.

For many years the Council has been deeply concerned about the policy of the United States in respect of the protection of overseas investment and the treatment of international claims. The policy of the United States Government in these areas is of vital importance not only to our membership but, indeed, to the entire international business community.

The National Foreign Trade Council is opposed to S. 1728 because the preferences it would create would discriminate arbitrarily and unfairly in favor of individual claimants to the detriment of corporate claimants. Just as we opposed in 1970 the discriminatory preferences provided for under H.R. 2669 on the basis that the granting of such preferences would establish an unfortunate precedent for opening up international claims programs to preferences and special interests benefits, we maintain that S. 1728 would establish a further very unfortunate precedent. The discriminatory preferences of the bill would not only harm American business, but it would also damage the faith of American business in the fairness of future international claims programs and subsequently would operate to the detriment of any foreign trade or investment in which the United States companies may engage in the future.

All claims under the 1962 amendments to the War Claims Act of 1948 have been determined and adjudicated. Of the 7,039 claims approved under the War Claims Act, 6,691 have been paid in full. These include all claims to individuals and estates arising from death or personal injuries, all claims of small businesses, all claims of charitable organizations, and all other claims up to \$10,000. Under present law, claimants with unpaid balances will be paid an additional \$35,000 and to date \$11,000 of this has been paid. If this balance of \$24,000 is paid, there will remain only 153 claims in the unpaid balances, 43 for individuals and 110 for corporate claimants.

We maintain that it is altogether unfair and inequitable to exclude the corporate claimants from further participation in distributions on a pro-rata basis. It would amount to an unfair reordering of priorities for adjudicated claims with retroactive effect on the distribution pattern established by Congress in 1962 and 1970.

The Federal bankruptcy statutes provide the model for fair distribution of limited assets to a number of claimants. It would not be acceptable under bankruptcy law for individual creditors to be paid in full before other creditors. Congress has refused to grant bankruptcy priorities to special interest claimants, and there is no reason in our view to depart from the precedent of the Bankruptcy Act by establishing preferences which prefer one type of war claimant over another for the same type of claim.

In the event of a bank failure, no one would contend that individual depositors should be paid in full before corporate depositors are paid anything. Pro-rata distribution is the only fair rule.

It has been suggested that individuals should be preferred over corporations because the corporations have already received a large portion of the money paid out under the War Claims Act.

This argument has no merit because the corporations suffered the great bulk of the losses. Furthermore, even without the discriminatory preferences of S. 1728, corporations will suffer most of the uncompensated losses.

It has also been suggested that corporations should have a lower priority than individuals because they have already received some compensation in the form of income tax deductions. This argument is invalid because under existing law, the Foreign Claims Settlement Commission has already deducted from awards amounts equal to the value of tax benefits previously claimed. Moreover, not all of the corporations took a tax deduction for their war losses. Out of the twenty-six highest awards to corporations, nine of these corporations did not take any

deductions. Thus a careful examination of the tax aspects highlights again the arbitrary and unfair nature of the proposed new preferences.

Finally, it is most important that the Senate should take into account the effect which the creation of additional preferences would have on future claims programs. If S. 1728 were to be enacted, it would only strengthen the hand of those who would urge Congress to create similar special interest preferences in all future claims programs of whatever kind.

**STATEMENT OF WESLEY FACH, DIRECTOR OF THE TAX LEGAL
DIVISION OF THE NATIONAL AMERICAN FOREIGN TRADE
COUNCIL**

Mr. FACH. Mr. Chairman, my name is Wesley Fach and I am director of the Tax Legal Division of the National Foreign Trade Council. I am appearing in place of Mr. Norris, our president, who could not make it today.

As you noted, we have previously submitted a statement to be incorporated in the record, and I just wished to state here pretty much a summary of that statement.

I appreciate this opportunity to appear personally on behalf of the council, which is a private nonprofit organization which was established in 1914 to represent a broad tri-section of highly diversified business interests involved in all aspects of the conduct of international trade and investment.

We have reviewed today the provisions of S. 1728, the original bill, which is substantially noncontroversial, and the two amendments, with the first giving absolute preference to the individual and the second providing that after the individual awards were made, that corporate claimants would be paid the same amount up to \$50,000 regardless of the size of their claim.

Now for many years the council has been deeply concerned about the policy of the United States with respect to the protection of overseas investment and the treatment of international claims. The policy of the U.S. Government in both these areas is of vital importance not only to our membership but indeed to the entire international business community.

The council is opposed to this bill because the preference it would create would discriminate arbitrarily and unfairly in favor of individual claimants to the detriment of the corporate claimants. In 1970 we opposed the discriminatory preferences in H.R. 2669 for the same reasons; namely, the establishment of precedents for opening up international claims programs to preferences and special interest benefits. We maintain that this bill would establish a further unfortunate precedent in that area.

The discriminatory preference in this bill would not only harm American business but it would also damage the faith of American business in the fairness of any future international claims programs and subsequently would operate to the detriment of any foreign trade or investment in which the U.S. companies may in the future engage.

I have included in the statement some brief notes on the number of claims, which you have gone through and most of the other witnesses have gone over too. I just wish to add we agree with Mr. McClellan's interpretation of the balance due; namely, that the \$35,000 preference is in addition to the original \$10,000 and not in-

cluding the \$10,000 and accordingly with the \$11,000 payment the additional amount due is \$24,000. This, of course, will mean that if it is paid there will only be 43 unpaid individual balances at that time.

We maintain that it is unfair and inequitable to exclude the corporate claimants from further participation. This would amount to an unfair reordering of priorities for adjudicated claims with retroactive effect on the distribution pattern established by Congress in 1962 and in 1970.

The Federal bankruptcy statutes provide a model for fair distribution of limited assets to a number of claimants. It would not be acceptable under bankruptcy law for individual creditors to be paid in full before corporate creditors. Congress may refuse to grant bankruptcy priorities to special interest claimants and there is no reason in our view to depart from the precedent of the Bankruptcy Act by establishing preferences which prefer one type of war claimant over another for the same type of claim.

In the event of bank failure no one would contend that an individual depositor should be paid in full before corporate depositors are paid. Pro rata distribution is the only fair rule.

I will skip through the comments that we have made about the fact that the corporations were not entitled to preference because they had received the benefit of tax deductions. I think the other witnesses have covered this point and just wish to summarize it to say that we too think this argument is invalid because under existing law the Foreign Claim Settlement Commission has already deducted from awards amounts equal to the value of the tax benefits already claimed. Moreover not all of the corporations took a tax deduction for war losses as was noted.

We have noted that out of the 26 highest awards to corporations that 9 of these corporations did not take any deductions. Thus a careful examination of the tax aspects highlights again the arbitrary and we feel unfair nature of the new preferences.

Finally, it is most important in our opinion that the Senate should take into account the effect which the creation of additional preferences would have on future claims programs. S. 1728, if it were to be enacted, it would only strengthen the hand of those who would urge Congress to create similar special interest preferences for all future claims programs of whatever kind or nature.

Thank you, sir.

Senator BURDICK. Thank you very much.

On behalf of the individual claimants I have here a statement for the record of Mrs. Parker who hoped to testify today which will be received in the record.

[The statement of Mrs. Parker follows:]

STATEMENT OF MS. EVELYN PARKER ON S. 1728

Mr. Chairman and members of the Subcommittee: My name is Evelyn Parker. I am a research biologist at the National Institutes of Health, and I live at 4365 N. 26th Street, Arlington, Virginia. I am submitting this statement in support of S. 1728, as amended by the House of Representatives.

My war claims award, which I share with five other heirs of my late father, arose out of the destruction of residential property in Berlin and Köln during World War II. I will confine my statement to two points: (1) the fact that many individual claims that technically arose out of the ownership of stock in

a foreign corporation are of a totally different nature from the claims of the large corporations, and (2) the fact that individuals had to invest more time, money, and effort in proving their claims before the Foreign Claims Settlement Commission than did those large corporate claimants.

First, under the War Claims Act individuals were given the right to maintain claims based on their ownership of stock in corporations that suffered losses compensable under the Act, provided that the corporations were at least 50 percent owned by non-U.S. nationals. With respect to corporations more than 50 percent owned by U.S. nationals, only the corporation itself was permitted to maintain the claim, and the stockholders' recovery was to be through the corporation. It has been argued that the creation of a priority for individual claimants would be discriminatory and unfair to corporations more than 50 percent owned by the U.S. nationals since some of the individual claims that would be given priority also arise, at least in form, from losses sustained by corporations.

This argument is wrong for several reasons. First, the large majority of individual claims are not derived from corporate losses at all but are exclusively losses of personally held property. Second, many of the individual claimants who derive a part of their claim from corporate losses derive a greater portion from personally held property. Third, and most important, the vast majority of the "corporate" losses of individuals were corporate in form only and involved corporations that did little more than hold a family's assets or at most operate a family business.

My claim, which I might add is relatively modest, is a classic example of just that situation. My father was a Jew who owned residential property in Berlin and Köln. When Hitler began to issue decrees depriving Jews of their civil rights and restricting their economic activities in the 1930's, it became clear that sooner or later property owned by Jews and others considered undesirable by the Nazi government would be confiscated.

To avoid confiscation, my father set up a number of corporations to hold property he ordinarily would have held as an individual. This was a common practice in Germany for persons who feared that their personal property would be taken because of their race or political beliefs. Thus, many claims are based on so-called "corporate" losses were direct and immediate losses to families and individuals. These losses are totally different from the business losses of a billion-dollar multinational corporation. To consider them as part of the same category is entirely unjustified.

Second, individual claimants were unavoidably at a disadvantage compared to corporate claimants in proving their claims before the Foreign Claims Settlement Commission. Most corporate claimants were large public corporations that had easily available a complete and thorough record of their property ownership throughout the world. For individuals, however, proof of ownership and loss was far more difficult. Many claimants had fled from Europe leaving their financial records behind. A great number of these records were lost or destroyed in the chaos of war. Piecing together proof of ownership and date of destruction of property years later was a formidable and expensive task—especially for individuals with relatively small claims. Consequently individuals spent far more to prove claims worth far less than did corporations. My mother and I spent months gathering and presenting evidence to prove our claim. Moreover, providing this proof was expensive as well as time-consuming. Corporations whose records were intact had substantially less trouble and expense.

Finally, I might add that there is one other important difference between awards to individual claimants and those to corporate claimants. The awards to individuals go to the individuals who actually were damaged, or in some cases to their families, whereas in the case of the large publicly held corporations the present stockholders who will receive the benefit of further payments in general have no relationship at all to the people who were shareholders during the war and actually sustained the losses.

For these reasons I believe individuals should receive payments of their awards before corporations.

Senator BURDICK. We also have some things to put in the record here. At this time, without objection, the letters and telegrams of those interested in this hearing but unable to appear, will be received by the subcommittee and any additional material designated in the course

of the hearings will also be made a part of the record at this point without objection.

[The above referred to material follows:]

STATEMENT OF REPRESENTATIVE HENRY P. SMITH III ON S. 1728

Mr. Chairman and members of the Subcommittee: This statement is submitted in support of S. 1728 as amended by the House of Representatives. In 1973 I introduced legislation to amend the War Claims Act to give individual U.S. citizens priority over corporations in the payment of War Claims awards arising out of losses suffered in World War II. The Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce held hearings on this bill, in conjunction with hearings on S. 1728 as passed by the Senate, and reported the text of the bill I had introduced as an amendment to S. 1728. This bill was subsequently passed by the House on August 12, 1974 by a vote of 368 to 17.

I strongly urge this Subcommittee to recommend that the Senate accept the House amendments to S. 1728.

The purpose of the War Claims Act of 1948 was to compensate U.S. citizens for the losses they suffered in World War II. Every citizen claiming an award was required to prove his claim before the Foreign Claims Settlement Commission. All the awardholders who would benefit from this bill have already proved their claims and been granted an award. Most awardholders have already been paid in full under previous priority categories created by the Congress. There remain unpaid portions of awards to 186 individuals totalling \$6.5 million and 161 corporations totalling \$94.7 million. The amount remaining in the War Claims Fund, however, is far too small to pay all these awards in full. Under present law, the vast majority of the money in the fund would go to corporate awardholders, and many individuals would receive only a few cents on the dollar for their awards.

The enactment of S. 1728 is thus necessary to assure that these individuals will finally receive payment of their awards in full. There are many reasons why the individual awardholders are entitled to this priority:

First. Most corporate awardholders took very substantial tax deductions as a result of their war losses. The corporate awardholders with balances in excess of \$500,000 took a collective total of more than \$35 million in tax benefits as a result of deductions for their losses. These corporations have for more than 30 years had the use of the money they saved. The House Subcommittee on Commerce and Finance which held hearings on this bill found no individual awardholder who had taken a tax deduction. These corporate tax benefits, combined with previous payments from the War Claims Fund, have allowed the corporate awardholders to recover a substantially greater percentage of their actual loss than have the individuals.

Second. The losses of the individuals were of far greater personal and economic significance to them than the corporate losses were to the corporate awardholders. The individuals lost their homes, their small family business, and their personal belongings, while the losses to the corporations involved only a small fraction of the total corporate assets of the awardholders.

Third. A high percentage of the individual awardholders are elderly persons beyond their productive years who live on small fixed incomes. Many of them spent most of their working years outside the United States and hence receive little or no social security benefits. These people are relying on the payment of their war claims awards to now help provide them support.

Fourth. In many cases, the present stockholders of the corporate awardholders are not the stockholders of 30 years ago when the war loss was sustained. In some cases, the corporation holding the award is not even the same company that suffered the loss. For example, in one case, involving one of the largest corporate awards, the company that suffered the loss was a subsidiary of an American corporation which long ago wrote the subsidiary's assets down to zero. In 1969 the present awardholder acquired the stock of the parent corporation, paying absolutely nothing for the stock of the subsidiary that had suffered the loss. The present awardholders—which not only did not suffer the loss but paid nothing for the stock of the company that did—thus would receive a windfall by reason of any further payments. There are numerous instances among the corporate awards in which the company that actually suffered the loss has long since been acquired by the present awardholder. By contrast, the individual awards are

all held by the persons who suffered the loss or by members of the family that suffered the loss.

Fifth. Many corporate awardholders were eligible for substantial tax and other benefits from foreign governments after the war as incentives for reestablishing their operations in those countries. These benefits, which further compensated the corporations for their losses, were in no way taken into account in the calculation of their war claims awards. Such benefits were unavailable to the individual awardholders.

Sixth. Many of the corporate awardholders are insurance companies that insured risks overseas at premium rates to reflect the risks of war. These companies were then subrogated to the rights of the insured. The substantial premiums received by these insurance companies were not taken account of in the calculation of war claims awards. No individual awardholder is in a comparable position.

Seventh. Full payment of the individual awards will not substantially affect the amounts that will be available to pay corporate awards. The corporate awards total about \$94.7 million. There will be only about \$20 million at most available for payment of all awards—both corporate and individual. Thus, even under existing law, the corporations will receive at most about 20 cents on the dollar. Since the total amount payable to individuals is only \$6.5 million, giving a priority to individuals will reduce the corporate recovery by only a few cents on the dollar.

Eighth. The corporate awards represent a greater percentage of the actual losses of the corporate awardholders than the individual awards represent of the actual losses of the individuals. In the granting of awards, the Foreign Claims Settlement Commission required documentary proof of the loss for which an award was sought. Many individuals who suffered property losses also lost their documentary proof of ownership in the war. Large U.S. corporations that maintained extensive records in this country did not have similar problems and hence were able to document a much higher percentage of their actual loss than were individuals.

Ninth. All the individual awardholders are U.S. citizens. The War Claims Act required that an individual be a U.S. citizen at the time his loss in order to be eligible for an award. By contrast, a corporation need only have been incorporated in the United States and 50 percent of its assets owned by U.S. nationals in order to qualify. A not insubstantial portion of the stock of many corporate awardholders is held by foreign nationals. Since the basic purpose of the War Claims Act was to compensate U.S. citizens for their losses, this purpose is more consistently served by allowing individual awardholders, all of whom are U.S. citizens, a priority.

These are compelling reasons I submit, in behalf of enactment of a priority for individuals in the payment of World War II war claims awards. I hope, therefore, that the Subcommittee will recommend acceptance by the Senate of the House amendment of S. 1728.

DEPARTMENT OF STATE,
Washington, D.C., December 2, 1974.

HON. QUENTIN N. BURDICK,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR BURDICK: I am writing to urge favorable consideration of S. 1728 by the special Subcommittee you are chairing for the Committee on the Judiciary. The basic purpose of this bill is to increase detention benefits for our civilian prisoners of war under the War Claims Act to \$150 per month—equivalent to the benefit provided for our military POW's. It is now more than twenty months since our men returned from captivity in Indochina, which makes this a matter of urgent priority. By the action of your Subcommittee I hope it will be possible to move to final approval of this legislation before the Congress adjourns.

We recognize that the bill as approved by the House contains a second section relating to a different provision of the War Claims Act. The Department has testified against this amendment because it would discriminate against corporate claimants in favor of certain individual claimants and would establish an undesirable precedent. The Department favors equal treatment of all claimants without preference.

In fairness to our civilian POW's, however, and regardless of the merits of this other section, we hope a way can be found to gain final approval of the civilian benefit section before the Congress adjourns.

Cordially,

LINWOOD HOLTON,
*Assistant Secretary
for Congressional Relations.*

GENERAL ELECTRIC CO.,
New York, N.Y., November 27, 1974.

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

DEAR CHAIRMAN EASTLAND: This letter is in opposition to S. 1728, as amended by the House to alter the preferences established for payments under the War Claims Act of 1948 by providing for priority payments to individual claimants in the full amount of their award before any further pro-rata distributions to other claimants may be made.

We are in agreement with the statement in opposition to the amendments by the Foreign Claims Settlement Commission. We would like to present this brief additional statement viewing the proposed legislation from the viewpoint of General Electric Company shareholders.

As it stands, the statute already contains significant preferences for individual claimants. Under these preferences, claimants with an award of \$100,000 or less will be paid in full before any further pro-rata distributions will be made. This results from the fact that an individual claimant will have received \$10,000 under paragraph 2 of Section 213(a) of the Act, as well as 61.5% of the remaining \$90,000 of his award, i.e., \$55,170. Thereafter, the additional \$35,000 preference added in 1970 through a new paragraph 3 comes into application. Under this preference an additional payment of \$11,000 to each claimant has already been made. As the funds become available, an additional "non pro-rata" payment of \$24,000 must be made for an aggregate preference payment of \$100,000.

We believe that claims in excess of \$100,000 should not be considered to be small claims entitled to preferential treatment. This is particularly true when claims of such size are considered in the context of the shareholders of General Electric. We have nearly 300,000 shareholders who own less than 50 shares of stock, an investment of less than \$2,000 at current market. There are roughly 200,000 shareholders who own between 50 and 500 shares, an investment between \$2,000 and \$20,000. Fairness and equity between individuals, whether they be corporate shareholders or direct claimants, require that preference to individuals not be extended beyond the full compensation to claimants with awards of up to \$100,000, which is already provided for.

Very truly yours,

WALTER H. GLASS,
Counsel.

Senator BURRICK. And then there follows a list of letters beginning with Mr. Ernest H. Lorman of New York City and ending with Norma Joffo of Silver Spring, Md., which will be put in the record without objection.

[The letters referred to follow:]

ERNEST H. LORMAN,
New York N.Y., July 25, 1974.

HON. JAMES O. EASTLAND,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR EASTLAND: I am asking your support of S. 1728, as amended, a bill to amend the War Claims Act of 1948, which has been reported by the House Committee on Interstate and Foreign Commerce and is at present pending before the House Rules Committee. This bill originated in the Senate Judiciary Committee and passed the Senate on October 8, 1973. The House Committee on Interstate and Foreign Commerce reported this bill on July 3, 1974, and added an amendment to the War Claims Act previously embodied in two House bills, H.R. 4870 and H.R. 1729, giving individual U.S. citizens who are awardholders under

that Act a priority over corporate awardholders in further payments from the War Claims Fund in compensation for losses suffered in World War II. The Subcommittee on Commerce and Finance unanimously approved it during comprehensive hearings.

I am an individual awardholder claiming payment for the loss of two fully equipped factories and adjacent property. I received an award from the Foreign Claims Settlement Commission to compensate me for this loss, but unless S. 1728 is passed, most of the funds available for payment of this award will go instead to big corporations, such as Exxon and IT&T, rather than to individuals such as myself. Since the War Claims Fund—consisting entirely of enemy assets seized by the United States Government during World War II, and containing no funds appropriated by Congress—is too small to pay all awards fully, a substantial part of my loss will never be paid unless S. 1728 is enacted.

There are two important reasons for this legislation:

(1) The large corporate awardholders lost a minute fraction of their corporate assets, while individual U.S. citizens, such as myself, lost homes, personal belongings, and small family businesses, in short, all they had.

(2) The corporations could claim millions of dollars in tax deductions under a special provision of the Tax Code as a result of their losses, while individuals were unable to take advantage of these deductions. Thus, between their tax deductions and the large payments already received by corporations under the War Claims Act, the corporate awardholders have recovered a much greater part of their loss than have individual U.S. citizens.

I do hope that S. 1728 will be passed by the House very soon, as I am no longer young and have already waited a long time for this final settlement. I therefore urge you to give your active support in assuring that the Senate will concur in the House amendment of S. 1728 when the bill returns to the Senate.

Sincerely yours,

ERNEST H. LORMAN.

JULY 19, 1974.

Hon. JAMES O. EASTLAND,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: This is to ask your support for bill S. 1728 which is to amend the War Claims Act of 1948, and now pending before the House Rules Committee. It would amend the War Claims Act to give individual U.S. citizens, who have been awarded but not fully paid priority over corporate awardholders in any further payments for losses suffered during World War II. The Subcommittee on Commerce and Finance held comprehensive hearings on this amendment and unanimously approved it.

My husband is a retired physician, 80 years old, I am 70. I am deriving my awards from the loss of my private house, and the loss of considerable business assets. The award was received by the Foreign Claims Settlement Commission to compensate these losses. Unless S. 1728 is passed a substantial part of my losses will not be compensated, and the vast majority of the funds available will go to big corporate awardholders such as Exxon, and ITT. The War Claims Fund consists entirely of enemy assets seized by the U.S. Government during World War II, and no funds appropriated by Congress.

The important reasons for this legislation are:

(1) The individual U.S. citizens, such as myself, lost homes, personal belongings, and small businesses. Most individual awardholders lost nearly all they had.

(2) Corporate awardholders took tax deductions of millions of dollars under a special provision of the Tax-Code as result of their losses and used and saved their money over 30 years. The individual awardholders did not have these advantages. Therefore through their tax deductions and the large payments already made to the corporations under the War Claims Act the corporate awardholders have recovered a significantly greater percentage of their loss than the individual U.S. citizens.

I am hopeful that S. 1728 will be passed by the House in the near future, and I urge you to do your utmost in assuring that the Senate will concur in the House amendment of S. 1728 when the bill returns to the Senate.

Thank you very much for your help on this legislation.

Very sincerely yours,

KATHE OSTWALD,
185 1/2 Vallejo Street,
San Francisco, Calif.

WALTER A. MARON,
152 Mill Spring Road,
Munhasset, N.Y., August 21, 1974.

HON. JAMES EASTLAND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: I understand that the House has approved the above bill as amended, and am writing to enlist your support when it comes up for joint action.

I am an individual awardholder, having received my award from the Foreign Claims Settlement Commission in compensation for the loss of property in East Germany.

As you know, the moneys remaining in the War Claims Fund do not suffice to pay all claims fully; and unless S. 1728 as amended is enacted, by far the largest part of these funds will go to big corporate awardholders like EXXON and ITT, leaving a substantial portion of my loss—and the losses of all individual awardholders—uncompensated.

As you also know, corporate awardholders (whose losses in any event amounted to only small fractions of their total assets) have already recovered a considerably larger percentage of their losses than individuals, on basis of corporate tax deductions permitted them in addition to the original War Claims Fund payments they received.

It would therefore, in my thinking, be no more than fair and equitable that S. 1728 as amended be made into law, to assist all individual awardholders such as myself.

Very truly yours,

WALTER A. MARON.

HEINZ O. WOLFF, M.D.,
42 Sunnybrook Road,
Bronxville, N.Y., July 31, 1974.

HON. JAMES O. EASTLAND,
U.S. Senate, Washington, D.C.

DEAR SENATOR: I am writing to ask your support for S. 1728, as amended, a bill to amend the War Claims Act of 1948, which has been reported by the House Committee on Interstate and Foreign Commerce and is now pending before the House Rules Committee. This bill originated in the Senate Judiciary Committee and passed the Senate on October 8, 1973. The House Committee on Interstate and Foreign Commerce reported this bill on July 3, 1974, and added an amendment (previously embodied in two House bills, H.R. 4870 and H.R. 1729) which would amend the War Claims Act to give individual U.S. citizens under that Act a priority over corporate awardholders in further payments from the War Claims Fund, for losses suffered in World War II. The Subcommittee on Commerce and Finance held extensive hearings on this amendment and unanimously approved it.

I received an award for the loss of real property in Germany, but unless S. 1728 is passed the vast majority of the funds available for payment for this award will go instead to big corporate awardholders such as Exxon and IT&T. Since the War Claims Fund—consisting entirely of enemy assets seized by the United States Government during World War II—is too small to pay all awards, this means that a substantial part of my loss will go uncompensated unless S. 1728 is enacted.

There are two main reasons for the proposed legislation:

(1) In contrast to the large corporations who lost a fraction of their corporate assets, individual U.S. citizens who suffered losses, such as myself, lost homes, personal belongings, and small family businesses. Most of them lost all or nearly all they had.

(2) The corporate awardholders took large tax deductions, under a special provision of the Tax Code, as a result of their losses. Individuals, however, could not take tax deductions for their losses. Thus, between their tax deductions and the large payments already made to corporations under the War Claims Act, the corporate awardholders have recovered a significantly greater percentage of their loss than have individual U.S. citizens.

I hope that S. 1728 will be passed by the House in the near future, and I ask you to take an active role in assuring that the Senate will concur in the House amendment of S. 1728 when the bill returns to the Senate.

Thank you for your assistance in this legislation.
Sincerely yours,

HEINZ WOLFF.

JULY 20, 1974.

HON. JAMES O. EASTLAND,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR EASTLAND: Please support *Bill S. 1728*. I am a U.S. Citizen, who has suffered great losses in World War 2. My former residence, personal belongings and business interests have all been lost. As a senior citizen I will never be able to recoup these losses. Please help me by supporting *Bill S. 1728*. Thank you very much.

(Mrs.) LILLI SAMPSON,
*1080 Chestnut Street,
San Francisco, Calif.*

NANCY GEPHART,
*1777 Stonehouse Lane,
Cincinnati, Ohio, August 10, 1974.*

Senator QUENTIN M. BURDICK,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR BURDICK: It is my understanding that the Senate will soon receive the War Claims Act of 1948, bill number S. 1728 as amended. I would like for the Senate to consider this as soon as possible and to approve S. 1728.

This bill originated in the Senate on October 8, 1973. The House Committee on Interstate and Foreign Commerce reported this bill on July 3, 1974 and added an amendment, previously embodied in two House bills, H.R. 4870 and H.R. 1729, which would amend the War Claims Act to give individual U.S. citizens priority over corporate claimants in further payments of World War II losses. The House Rules Committee heard testimony on this issue on July 30, 1974 and was to consider it on August 6, 1974.

I need your support on this bill so that payment to U.S. citizens for World War II losses can be settled in the near future.

Corporate claimants took millions of dollars in tax deductions for their losses which individual claimants were not able to take.

My personal interest is a part of Claim W. 9529; decision W. 21512 for a total of \$70,425 dated May 3, 1967 of which \$58,040.33 has been paid. This leaves an unpaid balance of \$12,384.67.

This claim is for real estate located in Hamburg, Germany which was bombed during the war.

The property mentioned above was owned by my grandmother who died in 1943. My father was the administrator of her estate and spent considerable time for many years until his death last year in efforts to receive compensation due the estate.

I would greatly appreciate your assistance in helping us receive the unpaid balance due so that the claim can be settled.

Sincerely yours,

NANCY GEPHART.

[Mailgram]

WHITESTONE, N.Y.,
August 13, 1974.

Senator JAMES O. EASTLAND,
*Chairman, Senate Judiciary Committee,
Washington, D.C.:*

Urge your support of Senate bill No. S-1728, allowing individual U.S. citizens to receive awards for losses suffered in World War II under the War Claims Act of 1948.

RUDOLF ROEVER.

[Telegram]

BEVERLY HILLS, CALIF.,
August 13, 1974.

Senator JAMES O. EASTLAND,
Capitol Hill, D.C.:

I respectfully urge your concurrence in the House amendments to S. 1728. This would restore priority payments to individual war claimants without use of appropriate funds and extend benefits to us civilian prisoners held in North Vietnam.

Sincerely,

HAROLD NEBENZAL.

[Telegram]

NEW YORK, N.Y.,
August 13, 1974.

Senator JAMES EASTLAND,
Senate Office Building,
Washington, D.C.:

Please urge the Senate to concur in the House amendment to S. 1728 adopted yesterday by a vote of 368 to 17 to provide just compensation to individual U.S. citizens who suffered losses in World War II. The bill also provides benefits for U.S. civilians held as prisoners of war in North Vietnam.

NICHOLAS R. DOMAN.

[Telegram]

NEW YORK, N.Y.,
August 14, 1974.

Senator JAMES EASTLAND,
Senate Office Building,
Washington, D.C.:

As an award holder, I urge you to favorably consider and support bill S. 1728 when it comes up for action in the Judiciary Committee.

Respectfully,

HENRY H. ARNHOLD.

[Telegram]

ST. PETERSBURG, FLA.,
August 13, 1974.

Hon. JAMES EASTLAND,
Washington, D.C.

Please vote for S. 1728, the purpose of which is to restore to individuals equality with corporations in their claims for damages sustained in World War II.

U. C. BARRETT.

[Telegram]

SILVER SPRING, MD.,
August 26, 1974.

Senator JAMES EASTLAND,
Washington, D.C.

Earnestly solicit your endorsement of pending bill S. 1728 regarding foreign claims.

NORMA JOFFO.

Senator RUDOLPH. I also would like to include a statement of the staff of the Senate Finance Committee on the tax implications of this legislation and that will be received without objection.

[The statement referred to follows:]

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C., December 2, 1974.

MEMORANDUM

To: Senator Quentin N. Burdick, chairman, Subcommittee on Improvements in Judicial Machinery.
From: Michael Stern, staff director, Committee on Finance.
Re: Brief summary of Federal income tax consequences of individuals and corporations receiving war loss recoveries under the War Claims Act of 1948, as amended.

Pursuant to the request of your Chief Counsel, Mr. William P. Westphal, the following information is provided.

The Internal Revenue Code presently contains a series of provisions governing the tax treatment of war loss recoveries (sections 1331-1337). In general individuals receiving compensation for war losses and/or recovering previously seized property may elect to treat such recoveries for Federal income tax purposes in the following manner:

(1) If the taxpayer has previously claimed a deduction for property seized or destroyed (equal to the adjusted basis for such property) and now recovers an award for that loss, such proceeds are taxed only to the extent the previous claimed loss caused a reduction in the prior year's tax. The portion of the recovery which does not exceed the original deduction is taxed as ordinary income. Any amount in excess of the deduction claimed is treated as a gain upon an involuntary conversion. The taxpayer may elect to recognize the gain immediately (usually as a long-term capital gain where the property has been held more than 6 months). Or, the taxpayer can elect not to recognize gain by replacing the converted property with property which is "similar or related in service or use." The period for making such a replacement ordinarily ends 2 years after the close of the first taxable year in which any part of the gain upon the conversion is realized. (A further explanation of this provision is contained in section 1033 of the Internal Revenue Code and the regulations issued under that section.)

(2) A taxpayer can elect not to include the value of a recovery in income for the year of recovery. Where such an election is made, the deduction claimed for a prior year must be reduced by the amount of the recovery and the tax for the prior year must be recomputed. Any increased tax liability for the prior year must be added to and paid as part of the tax for the year of the recovery. If the amount of the recovery is greater than the deduction, the excess is included in gross income for the taxable year of the recovery as gain on the involuntary conversion of property. This gain may be treated in the same fashion as outlined about under section 1033 of the code.

(3) Where property has been recovered by a claimant, special rules are provided for determining the basis of the property.

(4) In the case of corporations, a series of examples involving the taxation of their recoveries has been published by the Internal Revenue Service in revenue ruling 66-115. A copy of that ruling is attached for your information.

(5) The fact that the property involved was located outside the United States generally does not affect the taxation of gains or losses for the purpose of sections 1331-1337.

(6) Information has been requested regarding the "real" tax benefit for corporations claiming war loss deductions or recoveries.

recoveries under the applicable provisions of the War Claims Act Amendments and the Internal Revenue Code.

The tax laws permit individuals, partners, corporations, etc. to offset any losses incurred during the taxable year against other income for that year. Under the War Claims Act, individuals and corporations are compensated for their losses. In the case of corporations, the 1948 Act as amended requires that any award be reduced by the amount of any tax benefit the corporation obtained through its original deduction of the loss. Although this provision prevents corporations from obtaining the benefits of a "double dip," it is still very advantageous for a corporation to obtain the deduction allowed initially since it permits that corporation in effect to obtain an interest-free loan from the Government until such time as a reduced award is made. The exemption of any payments from corporate income tax also works in favor of corporations.

The following example illustrates how favorable treatment occurs:

Corporation X has taxable income of \$1 million for 1944 and is subject to the excess profits tax. Its effective tax rate for Federal income tax purposes is the maximum rate of 70 percent. In 1944, corporation X properly deducted a "war loss" of \$100,000. The deduction resulted in a tax savings of \$70,000.

Between 1944 and 1974, the accumulated value of this \$70,000 tax savings compounded annually at approximately 5.3 percent (roughly approximating the average yield on high grade corporate securities during that period) would have grown to approximately \$330,000. (Each dollar received in 1944 is now worth about \$4.71.)

The current award of \$30,000 exempt from Federal income taxes to compensate corporation X for the balance of its war loss is equal to a taxable payment of about \$57,700 (each dollar of tax exempt income is equivalent to \$1.92 of taxable income for corporation X, assuming it is subject to a marginal tax rate of 48 percent).

The accumulated value of a tax free \$30,000 award, had it been made in 1944 and compounded annually at about 5.3 percent would now total approximately \$142,000.

[p. 192]

SECTION 1332.—INCLUSION IN GROSS INCOME OF WAR LOSS RECOVERIES

(Rev. Rul. 66-11)

26 CFR 1.1332-1 : Inclusion in gross income of war loss recoveries.
(Also Part II, Section 127 (c) ; Regulations 118, Section 39.127 (a)-1.)

(A series of questions is answered by the Internal Revenue Service relative to the tax treatment of awards received by corporations from the Foreign Claims Settlement Commission under the War Claims Act of 1948, as amended.)

Advice has been requested with respect to the tax consequences of awards received by claimants from the Foreign Claims Settlement Commission, under the circumstances described below, as the result of the enactment of Public Law 87-846, approved October 22, 1962. (76 Stat. 1107), C.B. 1962-3, 205.

Public Law 87-846 amended the War Claims Act of 1948 (62 Stat. 1240) to authorize the Foreign Claims Settlement Commission of the United States to determine certain claims of nationals for payment of losses arising out of World War II for loss, destruction, or physical damage to real property and items of identifiable tangible personal property located in certain countries of Europe and the Far East. The Foreign Claims Settlement Commission is the primary

agency concerned in the administration of the act and is charged with the responsibility of reducing a gross award by the amount of related tax benefits. Assistance has been requested of the Internal Revenue Service in the determination of prior tax benefits and the tax consequences of awards made in certain situations.

Section 206(a) of the act provides, in effect, that the Commission in determining the amount of any award, shall deduct all amounts the claimant has previously received on account of the same loss (or losses) for which an award is sought under the act.

Section 206(b) of the act provides that each claim in excess of \$10,000 filed under title II of the act by a corporation shall include a statement under oath disclosing the aggregate amount of Federal tax benefits derived by such corporation in any prior taxable year or years resulting from any deduction or deductions claimed for the loss or losses with respect to which the claim is filed. The subsection further provides that in determining the amount of any award where the allowable loss exceeds \$10,000 there shall be deducted an amount equal to the aggregate of the amounts by which the claimant's taxes for such year or years under chapters 1, 8A, 8B, 8D, and 8E of the Internal [p. 195] Revenue Code of 1939 or subtitle A of the Internal Revenue Code of 1954 were decreased with respect to such loss or losses. Section 206(b) of the act concludes with a provision that any payments made on an award reduced by reason of the foregoing requirements are to be exempt from Federal income taxes.

It is presumed that the Federal tax benefits described in section 206(b) of the act refer primarily to reductions of the amount of prior Federal taxes which were obtained by reason of the provisions of section 127 of the 1939 Code, relating to war losses. Thus, the question is principally directed to the ultimate effect of prior tax benefits based on such losses which were obtained under section 127 of the 1939 Code since these benefits are to be taken into account by the Foreign Claims Settlement Commission under section 206(b) of the act in determining the amount of an award to a claimant.

Under section 127(a)(2) of the 1939 Code, property located in a country against which the United States has declared war or in a country under enemy control on the date of declaration of war is deemed destroyed or seized. A loss deduction resulting from this provision which produced a tax reduction in the taxable year in which the loss was sustained or in any other taxable year affected by such loss, such as one affected by a net operating loss carryback from such year, is considered to be a tax benefit, to the extent of the tax reduction, within the meaning of section 206(b) of the act, the amount of which tax reduction is to be deducted from the otherwise allowable loss found by reducing the amount of the gross loss by the amount of prior loss recoveries, if any, pursuant to section 206(a) of the act.

However, an additional adjustment is necessary where the taxpayer has had a prior war loss recovery which was taxable in accordance with the provisions of section 1331 and section 1332 or section 1333 (as the result of an election under section 1335) of the 1954 Code (or corresponding provisions of the 1939 Code). In such a case, the amount of tax benefit attributable to the war loss for purposes of section 206(b) of the act is confined to the tax benefit remaining after taking into account the tax consequences resulting from the prior war loss recovery. Thus, the net amount of the tax benefit (for purposes of the deduction required by section 206(b) of the act) is to be found by subtracting from the amount which would otherwise constitute the tax benefit attributable to the war loss in question the amount of any additional tax resulting from the applicability, for example, of section 1332 of the 1954 Code to a prior recovery.

The following situations and resulting Federal income tax consequences, while not all inclusive, are generally representative of the cases which have been or may be encountered in connection with the application of the War Claims Act, as amended. As used in these situations, the term "Federal income tax" refers to all applicable taxes under the above-cited chapters of the 1939 Code and under subtitle A of the 1954 Code.

SITUATION (1). W Corporation sustained a war loss within the meaning of section 127(a)(2) of the 1939 Code of a single piece of property. However, the loss did not result in a deduction which reduced the amount of tax due as shown on the taxpayers return. A [p. 194] cash award was made by the Foreign Claims Settlement Commission to the taxpayer.

Answer. Since the war loss did not result in any Federal income tax reduction, W Corporation received no tax benefit within the meaning of section 206(b)

of the act and there was no reduction in the amount of the award from the Foreign Claims Settlement Commission by reason of that section. No portion of the award is excludable from gross income under section 206(b) of the act. However, the award is a recovery within the meaning of section 1332 of the 1954 Code and its taxability is determined in accordance with the provisions contained therein.

SITUATION (2). X Corporation sustained a war loss within the meaning of section 127(a)(2) of the 1939 Code of a single piece of property. The amount of the loss was $5x$ dollars. The portion of the loss which resulted in a deduction which reduced taxpayer's Federal income tax for the year of the loss amounted to $4x$ dollars and taxpayer's income tax was reduced by $2x$ dollars. Prior to applying the provisions of section 206(b) of the act, the Foreign Claims Settlement Commission determined that the gross award to the taxpayer for his claim should be in the amount of $5x$ dollars.

Answer. The gross award approved by the Foreign Claims Settlement Commission in the amount of $5x$ dollars was reduced by the amount of Federal income tax benefits previously received, an income tax reduction here of $2x$ dollars which resulted from the deduction of $4x$ dollars of the loss. Consequently X Corporation's net award determined by the Foreign Claims Settlement Commission of $3x$ dollars ($5x$ dollars less $2x$ dollars) is exempt from tax under section 206(b) of the act.

SITUATION (3). Y Corporation sustained a war loss within the meaning of section 127(a)(2) of the 1939 Code of a single piece of property in the amount of $12x$ dollars. A reduction of income tax of Y Corporation of $4x$ dollars resulted from the deduction of the $10x$ dollars of the war loss, the remaining $2x$ dollars of the war loss not resulting in any tax benefit to Y Corporation. In a subsequent taxable year prior to its present claim with the Foreign Claims Settlement Commission, Y Corporation experienced a recovery with respect to the war loss in the amount of $5x$ dollars, $2x$ dollars of which was excluded from its taxable income for that taxable year ($12x$ dollars less $10x$ dollars being $2x$ dollars) and $3x$ dollars of which resulted in an increase of Federal income tax of $1x$ dollars for that year pursuant to section 1332 of the 1954 Code.

Answer. Since the taxpayer received a prior recovery of $5x$ dollars on account of the same loss, the Foreign Claims Settlement Commission first reduced the gross award of $12x$ dollars determined by it with respect to the loss by the amount of such $5x$ dollars pursuant to the provisions of section 206(a) of the act, leaving an amount of $7x$ dollars. Under section 206(b) of the act, the Commission determined that the prior tax benefit of $4x$ dollars had been reduced by the increase of tax of $1x$ dollars in the taxable year of the prior recovery of $5x$ dollars, resulting in a net tax benefit of $3x$ dollars by which the gross award of $7x$ dollars was to be reduced. Hence, the net award determined by the Commission of $4x$ dollars ($7x$ dollars less $3x$ dollars) is exempt from Federal income taxes under section 206(b) of the act. It will [p. 195] be noted that a similar computation would have been made by the Foreign Claims Settlement Commission if the prior recovery had resulted in an increase in Federal income tax in the taxable year of recovery as the result of the provisions of section 1333 of the 1954 Code (if an election had been made by the taxpayer in accordance with the provisions of section 1335 of the 1954 Code) except that the amount of the reduction of the prior tax benefit might have been different. This would depend on whether the increase of the Federal income tax of the taxpayer for the taxable year of recovery under section 1333 of the 1954 Code was other than the amount of $1x$ dollars actually found in connection with the application of section 1332 of the 1954 Code to the recovery.

SITUATION (4). Z Corporation sustained a war loss within the meaning of section 127(a)(2) of the 1939 Code of two properties in the amount of $8x$ dollars and $4x$ dollars, respectively. The total amount of the loss was deducted by Z Corporation on its return and its tax was reduced $6x$ dollars thereby. Z Corporation's claim in the amount of $4x$ dollars covering the loss of the second property was approved by the Foreign Claims Settlement Commission in an amount of $3x$ dollars. There was no award with respect to the first property.

Answer. Where a war loss deduction is taken with respect to two or more properties and an award is made for only one property, the amount of the reduction in the award of the Foreign Claims Settlement Commission for any prior tax benefit is determined by the Commission by reference to the portion of the prior tax benefit attributable to the deduction taken for the loss on the property for which the award is to be made. Thus, Z Corporation is considered to have a tax benefit of $2x$ dollars attributable to the loss on the property for which the Foreign

Claims Settlement Commission has made an award since 4x dollars bears the same ratio to the total loss of 12x dollars as 2x dollars bears to the total prior tax benefit of 6x dollars. The gross award of 3x dollars was therefore reduced by 2x dollars and the balance of 1x dollars is excludable from gross income under section 206(b) of the act.

[En. NOTE. The following is Mr. Conafay's response to the tax information request by the subcommittee.]

INTERNATIONAL PLAZA,
Englewood Cliffs, N.J., December 11, 1974.

Re Taxation of awards granted to individual awardees.

Mr. WILLIAM WESTPHAL,
Chief Counsel, Subcommittee on Improvements of Judicial Machinery, Dirksen
Senate Office Building, Washington, D.C.

DEAR MR. WESTPHAL: Pursuant to the request of the Subcommittee on the War Claims Act amendments made at the time of our testimony, I herewith submit a statement regarding the contention of Messrs. Herman and Roever that Section 206 (b) of the Act places corporate awardees in a more advantageous tax position than individual awardees are able to obtain.

This statement said: All individual awards are subject to taxation, and where the payment of a War Claims award has resulted in a gain, individual award holders have paid taxes on that gain. Thus, corporate recoveries, by virtue of being tax free, have been of greater benefit to corporations than individual recoveries have been to individual award holders.

In response to this contention, we submit the following points for your consideration.

(1) The proponents of the individual priority amendment are not stating that *any* awards received by individuals are taxable, but that "where payment of a War Claims award has resulted in a *gain* (emphasis added) individual award holders have paid tax on that gain."

(2) Special provisions of the Internal Revenue Code apply to War Loss Recoveries (see Sections 1331-1337 and applicable regulations). Briefly stated, these sections provide that recoveries are exempt from inclusion in gross income until the taxpayer has recovered an amount equal to his unused "allowable deductions" in prior years. Allowable deductions are defined as "any deduction to which the taxpayer is entitled on account of any war loss property, *regardless of whether or not such deduction was claimed by the taxpayer . . .*" (See Regulations Section 1.1332-1(b)(4)). In no case is an individual awardee's payment taxed at ordinary rates, except to the extent of actual deductions taken by the taxpayer, which resulted in tax benefits in prior years. Furthermore, amounts recovered which are in excess of the allowable deductions are subject to special rules including treatment as gain from the involuntary conversion of property.

(3) A hypothetical case will provide an example of the law's applicability. Suppose an individual sustained \$50,000 in war losses which were deductible but, for one reason or another, was not able to avail himself of any tax benefits (this being contended by Messrs. Herman and Roever. See Statement, pages 9-11). Upon receipt of his \$50,000 award payment, the individual would not be required to include his award as gross income because his award is offset by the amount of "allowable deductions" which he was unable to utilize at the time of the loss.

(4) It clearly follows then, that if an individual did not take any deductions at the time the loss was sustained, then the individual's recovery is, to the extent of the allowable deductions, tax exempt and it is wrong to suggest otherwise.

We would be grateful if this letter could be made a part of the hearing record immediately following our testimony.

If I may answer any further questions regarding this matter please do not hesitate to contact me.

Very truly yours,

STEPHEN R. CONAFAY.

Senator BURDICK. That concludes our hearings and the committee will be in adjournment.

[Whereupon, at 4 p.m., the subcommittee adjourned subject to the call of the Chair.]