EXTENDING PERIOD OF SUSPENSION OF LIMITATION GOVERNING FILING OF SUIT UNDER SECTION 19 WORLD WAR VETERANS' ACT, 1924 AS AMENDED

HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON FINANCE UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

SECOND SESSION

ON

S. J. Res. 200

A JOINT RESOLUTION TO EXTEND THE PERIOD OF SUSPENSION OF THE LIMITATION GOVERNING THE FILING OF SUIT UNDER SECTION 19, WORLD WAR VETERANS' ACT 1924, AS AMENDED

MARCH 27, 1936

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EXTENDING PERIOD OF SUSPENSION OF LIMITATION GOVERNING FILING OF SUIT UNDER SECTION 19, WORLD WAR VETERANS' ACT, 1924, AS AMENDED

FRIDAY, MARCH 27, 1936

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON FINANCE,
Washington, D. C.

The subcommittee met, pursuant to call, in room 310, Senate Office Building, Senator Walter F. George presiding, at 11:15 a. m.

Present: Senators George (presiding), Walsh, Barkley, Connally, La Follette, and Capper.

Also present: Senator Hugo L. Black, of Alabama.

The subcommittee had under consideration the following bill, Senate Joint Resolution 200:

JOINT RESOLUTION To extend the period of suspension of the limitation governing the filing of suit under section 19, World War Veterans' Act, 1924, as amended

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in addition to the suspension of the limitation for the period elapsing between the filing in the Veterans' Administration of the claim under a contract of insurance and the denial thereof by the Administrator of Veterans' Affairs or someone acting in his name, the claimant shall have ninety days from the date of such denial within which to file suit as herein provided. This resolution is made effective as of July 3, 1930, and shall apply to all suits now pending against the United States under the provisions of section 19, World War Veterans' Act, 1924, as amended; and any suit which has been dismissed solely on the ground that the period for filing suit has elapsed but wherein the extension of the period for filing suit as prescribed herein would have permitted such suit to have been heard and determined may be reinstated within ninety days from the date of enactment of this resolution: *Provided,* That on and after the date of enactment of this resolution, notice of denial of the claim under a contract of insurance by the Administrator of Veterans' Affairs or someone acting in his name shall be by registered mail directed to the claimant's last address of record.

Senator GEORGE. Senator Black, you have a matter here, Docket No. 155, S. J. Res. 200, which is in the nature of a general bill. There are representatives here of the Veterans' Bureau, Captain Miller and Colonel Taylor, and others. Do you want them in on this matter?

Senator BLACK. I have no objection if the committee would like to hear them, I think they would be very illuminative.

Senator GEORGE. We will call them in to be present at the hearing, and when they do come in, I suggest that you state what your bill does. It has been brought to my attention that if this bill is to be recommended and passed again, it should be so amended as to include cases maybe that are not included in it at the present time.

Senator BLACK. I have quite a number of letters from various parts of the country on the bill.

Senator GEORGE. Senator Black, will you make a statement with regard to the bill?

STATEMENT OF HON. HUGO L. BLACK, UNITED STATES SENATOR FROM THE STATE OF ALABAMA

Senator BLACK. I will be glad to make a brief statement as to the effect of this bill. I might state in the beginning this is an exact duplicate of a measure that was passed by the Senate and the House last year, and to my great surprise it was vetoed by the President after Congress adjourned.

Senator WALSH. It was a pocket veto.

Senator BLACK. I have seen the veto, and it was a very short veto, but I was surprised that the Veterans' Bureau has now reported unfavorably on this bill.

The committee will recall last year I offered to put this amendment on another pending bill, representatives of the Veterans' Bureau were present, and they stated they favored the bill and they would aid in drawing up a law to be passed separately, and I stated at the meeting then, and I think the record will disclose it, that I wanted to be sure the Veterans' Bureau was going to assist before I would forego my rights to offer it as an amendment on the pending measure.

The Veterans' Bureau informed us definitely that they would help write up the resolution, which they did.

To my surprise after the bill was passed and Congress had adjourned, the President vetoed it on information given him by some Government agency, whether it was the Veterans' Bureau that gave that information I do not know, although I was informed the Veterans' Bureau had advised with the President on the bill.

The bill itself is very short and simple. During the war a large number of veterans took out insurance policies, and I helped to get the veterans to take those insurance policies while I was in the training camp.

Not only were they invited to take the insurance policies, but in the camp I went to they were practically required to take the insurance policies. I know, because I was sent out by the commanding officer for the purpose of inviting them, urging them, and insisting if they did not take the policies they must report to their captain. So far as I recall there was only one man who declined to take a policy. I recall very vividly that shortly thereafter he visited the officers.

That policy provided that in case of total permanent disability no further premium should be due and that the policy would immediately mature, and the Government should pay it.

A large number of veterans contracted tuberculosis and other diseases, and the result was they were entitled to recover under the terms of that policy from the very moment they became totally and permanently disabled.

Many of them did not know that to be the case, and later a law was passed which gave a certain length of time to file these claims and as the law is construed, it requires suit to be filed now by a reso-

lution adopted by the Bureau within the length of time that it would take a letter to go from Washington to the home of the veteran after his claim is denied.

As the result of that my office has been endeavoring to ascertain each time a policy is denied, so that we could wire the veteran, because otherwise we knew he would not receive the information, and would not have an opportunity to file the suit. A large number of veterans have been deprived of having their case tried in court because of a plea, not to the merits, as a decent, respectable insurance company would file under like circumstances, but on the ground that the veteran failed to file his suit within 1 or 2 days or 3 days after the claim was denied in Washington.

My object in this bill was to give a reasonable length of time after a claim was denied for the veteran to file his suit, in order that his case might be tried on the merits. It went a little further and provided that where cases had been dismissed solely on this technical defense, which, I might add parenthetically, the courts of the Nation have uniformly criticized whenever any insurance company raises it, but this provided if they have been dismissed solely on that technical ground, the case shall be reinstated and they shall have the right to try the case on the merit.

So that the long and short of it is, all I am asking is that the veterans who have paid for their insurance policies, who can prove in court they were totally and permanently disabled and therefore the Government owes them the money, they shall have the right to have every one of those claims filed and tried by a jury.

I notice, in a report, the Bureau arbitrarily says all of them have had their money that are entitled to it, but the law never did authorize the Veterans' Bureau to arbitrarily set itself up and say that there is not a single one pending of all of these, where they should recover.

They have permitted others to file their suit and have them tried on the merits, and I take the position these veterans have paid for these policies; and if there is one single veteran who has paid for a policy and who is entitled to recover and could recover in court, this bill should be passed, rather than have him shut off on account of an iniquitous technical defense.

There is not a court in the land, in my judgment, that would permit a private insurance company to raise such a question. Further, I am glad to say, the private insurance companies have long ago found out they cannot set up such a technical defense, because the courts have prevented it.

I object to having the Government of the United States placed in an attitude of defending suits filed by veterans who served in war on the ground of technicality, and that, in my judgment, is contrary to public honesty and decency.

Senator CONNALLY. You would not destroy all of the statutes of limitation, would you?

Senator BLACK. No; I would not, but this does not raise the statute of limitations. As I said a while ago, hundreds of veterans have had their cases shut off on the basis they did not file their suit within 1 or 2 or 3 days after it was denied in Washington. Those veterans live away out in the country. I sent one of them a telegram on one occasion, and even then, according to the information given me at my

office, it was difficult for him to get it out in the country where he was in time to file his suit soon enough to get his claim tried.

I do not think the Government ought to set up any such defense as that. I think they should let these cases be tried on their merits. Naturally there will be a lot of them, and there are many of them who have sued that ought not to recover, and many have been denied recovery, but I take the position the veteran who has paid for this policy and is entitled to recover should not be shut off.

This bill simply gives them the right to come in and try their case in court without having this technical defense interposed. I understand since the bill was drawn up some of the courts have rendered some opinions still further adding to the network of technicalities which makes it impossible for the soldier to get into court. Mr. Taylor told me yesterday afternoon about some cases, and spoke to the chairman about coming up, and I told him as far as I was concerned I would be delighted to have any information that the committee wanted, and I understood the chairman wanted to hear from him.

Senator GEORGE. We will be glad to hear Colonel Taylor.

Do you wish to make a statement about this matter at this time?

Colonel TAYLOR. Yes; I would like to make a few remarks.

STATEMENT OF COL. JOHN THOMAS TAYLOR, NATIONAL DIRECTOR OF LEGISLATION, THE AMERICAN LEGION

Colonel TAYLOR. Mr. Chairman and members of the committee, Senator Black has covered it so thoroughly it seems unnecessary to say anything further.

What the Senator's bill does, and did last session, was to grant a period of 90 days, and the Senator has touched upon the two points involved here, one of which is the question of denial, and one of which is the question of trying the case upon its merits.

Before any suit may be instituted upon a term or converted insurance contract against the Government, it is essential that a claim be presented to and denied by the Veterans' Administration, in order for the court to have jurisdiction, and that is what the Senator referred to. This has been the situation from the beginning.

I think just the day before the act was passed, or immediately afterward, a letter was sent out by the Veterans' Administration reading:

> Recent instructions have been received from the Veterans' Administration at Washington, D. C., concerning claims for yearly renewable term insurance, or for automatic insurance, by veterans of the World War. It is desired to advise you as follows concerning such claims.
>
> The provisions of the act of March 20, 1933, entitled "An act to maintain the credit of the United States Government" specifically repealed all laws drafted or pertaining to yearly renewable term insurance except as to cases wherein contract of yearly renewable term insurance have matured prior to March 20, 1933, and under which payments have been commenced or in which judgments have been rendered in a court of competent jurisdiction in any suit on a contract of yearly renewable term insurance or which judgments may hereafter be rendered in any such suits now pending. Under these provisions favorable consideration of your claim for benefits under a contract of yearly renewable term insurance is barred and no further action in connection with your claim can be taken by the Veterans' Administration. Under these circumstances, I regret to advise you that further inquiry or correspondence from you seeking further consideration of this claim will necessarily be of no avail.

This letter was sent only for the purpose of advising veterans that the law did not permit a further consideration of their claims and was not intended to be a denial of the claim for the purpose of conferring jurisdiction upon the court for the institution of suit.

However, the court in the *Harris case* held that was a denial.

Under the circumstances, where it is now construed that this is a denial, we asked the Senator's permission yesterday, and he said that he was agreeable that this bill be amended in one slight instance with respect to the denial and also to amend it so that the case may be tried upon its merits.

I have Captain Miller here, and I will ask that he be permitted to say a few words on this question.

Senator GEORGE. What is the suggested amendment, Captain Miller?

STATEMENT OF CAPT. WATSON B. MILLER, NATIONAL DIRECTOR OF REHABILITATION, THE AMERICAN LEGION

Captain MILLER. I have the amendment here. We ask that, in line 8, on page 1, after the word "of", should be inserted the words "mailing notice of", so that the clause shall read, "The claimant shall have 90 days from the date of mailing notice of such denial within which to file suit."

Then in the original resolution strike out the words "as herein provided", beginning on line 8 and ending at the beginning of line 9.

That will cure the repugnance existing between the fourth and fifth circuits in the matter of regulations issued by the Veterans' Administration, that the statute would not begin to run against the veteran until the lapse of the average number of days required to dispatch mail from Washington under ordinary conditions to the claimant's last address of record.

The courts are in disagreement as between the fourth and fifth circuits on that. In one circuit the court equitably says, "There is nothing in the law that seems to prohibit it; certainly it is a decent procedure, and we adopt that viewpoint." In the other circuit, in the *Tyson case*, the court in substance says that Congress could have given them the mailing time if they wanted to, but did not, and used the word "denial", and so the statute runs from the time of denial.

We took one case to the Supreme Court, but the Court took no notice of it because it happened in the *Tyson case;* the plaintiff would be out of court either way; so that if it could be provided that the words I have suggested could be placed in the resolution, it would clarify that point.

Colonel Taylor did not say to the committee that the recent and very remarkable opinion on the subject of this letter being a denial was from the ninth circuit. Justice Wilbur speaking for the court in relation to this long letter says, in part, referring to this letter which Colonel Taylor has given to the committee [reading]:

> This letter was a flat denial of applicant's claim. He claimed a right to recover on his policy. The Government denied that right. This was a "disagreement" which left the veteran no recourse except in the courts. It mattered not that the action of the Veterans' Bureau in denying the claim was based upon an unconstitutional act of Congress also denying the right.

After the opinions in these cases by the Supreme Court, holding the attempted repeal of all rights and remedies in renewable insurance as unconstitutional in June 1934, the Veterans' Administration shortly thereafter began to reconsider these claims administratively. From that time on, with some interruptions, they have been continuing to hand down denials, on which it was thought the man had the right to sue if he wanted to; but this conclusion of the court in the ninth circuit, if followed, makes any action relating to the denial subsequent to March 20, 1933, more than 3 years ago, ineffective, because they are all thrown out of court, and literally no man may come into court if Justice Wilbur is finally sustained.

The Department of Justice has recently issued instructions to all of the United States attorneys to plead to the jurisdiction, based upon the ninth circuit opinion as shown by their circular no. 2818, which is dated March 11, 1936, and reads as follows:

To all United States attorneys and Department of Justice attorneys engaged in war-risk litigation:

SIR: Your attention is invited to the decision rendered by the Ninth Circuit Court of Appeals on December 6, 1935, in the case of *Thomas G. Harris* v. *United States*, a copy of which has heretofore been forwarded to you.

In this case it appeared that the claimant duly filed for war-risk-insurance benefits prior to July 3, 1931. Subsequent to March 20, 1933, and while said claim was still pending, the Veterans' Administration advised the plaintiff that by reason of the passage of the Economy Act, Public, No. 2, Seventy-third Congress, 38 U. S. C. A. 717, which repealed all laws pertaining to * * * yearly renewable term insurance, further consideration could not be given to plaintiff's claim for yearly renewable war-risk term-insurance benefits. The trial court held that this letter did not constitute a disagreement within the meaning of section 19 of the World War Veterans' Act, as amended July 3, 1930, 38 U. S. C. A. 707-721.

In reversing the decision of the trial court the Ninth Circuit Court of Appeals in the decision above referred to in effect held that this letter was a flat denial of the plaintiff's claim and constituted a disagreement within the meaning of section 19, supra.

If the view of the Ninth Circuit Court of Appeal is sound, it is obvious that a disagreement came into existence in all similar cases, at least upon receipt of a letter from the Veterans' Administration like the one referred to in the *Harris case*, and that the World War Veterans' Act terminated upon receipt of such letter, and a plaintiff may not further toll the statute by reason of later action taken by the Veterans' Administration.

While the ruling stated in the *Harris case* has not heretofore been suggested in defense of war-risk insurance cases, and there is grave doubt whether such ruling will be followed in other circuits, it is requested that in all cases where suit has been instituted subsequent to March 20, 1933, and after receipt of a letter similar to the one above described, the answer filed on behalf of the Government contains a plea of the statute of limitations unless it otherwise appears that suit was seasonably commenced.

Yours very truly,

WILL G. BEARDSLEE, *Director.*

So that it will be seen that Senator Black's rather perfect instrument, as it was originally introduced, would be absolutely of no effect if it is not amended by some such words as this, in the form of a proviso:

Provided further, the term "denial of claim" means denial of the claim after consideration of its merits.

The jurisdictional side of this whole insurance matter is now and has been rather a mess, and many relatively small matters are yet unquieted, but I think it inexpedient to ask the time of this committee to discuss them, or to ask further amendments to the

pending measure, except to emphasize that of all of the considerations which have faced us in the difficult question of jurisdiction, the decision of the ninth circuit is of the greatest importance. I say again no man can come into court with his claim or effectively file a petition unless this matter is amended as suggested.

Senator GEORGE. Let me ask you, if this is amended as you suggest, how would that affect, for instance, the *Lynch case?*

Captain MILLER. The *Lynch case* was always out of court, because the claim was not filed before the Veterans' Administration until after the dead line, which was established by Congress as being July 3, 1931. The present state of the statute of limitations is that the suit must be filed within 6 years after the happening of the contingency upon which the action may be based, or within 1 year after the act of July 3, 1930.

Senator GEORGE. So that it is now 1 year?

Captain MILLER. His claim was not filed, and of necessity, under the general statute of limitations, his suit must fail. There would be only one way to help the *Lynch case*, and that would be by a special enactment of some sort.

Senator LA FOLLETTE. Would this resolution change the statute of limitations in any way?

Captain MILLER. Not in any way. It would merely provide that a denial upon which suit must be predicated must be a denial based upon consideration of the merits of the claim, and in no way changes the existing status of the law and regulations, barring the final effectiveness of the conclusion of the ninth circuit. The amendment suggested here would allow 90 days after mailing notice of denial in which to lodge a suit.

Senator CONNALLY. What is the law now? Within what length of time after the denial is the suit to be brought?

Captain MILLER. The situation is this—the claim must be filed before July 3, 1931. If it should be filed—and I am speaking of the Veterans' Administration now—if it should be filed 30 days before July 3, 1931, he would have 30 days in which to perfect his petition and file it. If it had been filed 3 days before July 3, 1931, he would have only 3 days after the denial.

Senator CONNALLY. He cannot sue at all until after the denial; is that right?

Captain MILLER. That is right.

Senator CONNALLY. That would, of course, amount to extending the limitation, because under the law he had to sue before the 3d of July 1931.

Captain MILLER. He did not have to sue before the 3d of July 1931, as he has the time that elapses between the filing of the claim prior to that date and the date itself after the denial was given to him.

Senator CONNALLY. You mean if he filed it 30 days before that date he would still have 30 days after the denial?

Captain MILLER. Yes; he would have 30 days after the denial. What constitutes the time of denial has been the troublesome thing. One court says it is the date of the denial, and another court says it is another date.

Senator CONNALLY. Suppose he filed his suit in 1930, would he have a whole year?

Captain MILLER. Not file his suit, but file his claim. There is a difference there. But he would have a year after denial.

Senator BARKLEY. Of course, if he filed his claim in 1930 and it took 3 years for the Bureau to pass on it, the limitation would not begin to run on it.

Captain MILLER. The number of days elapsed after the claim is filed, for administrative consideration and July 3, 1931, is added after the date of denial; so that in case a man filed a claim in 1930 he would have practically a year after denial, no matter how long the Bureau took to deny it.

If the claim were filed as a claim after July 3, 1931, the man would be out of court in any case.

Senator CONNALLY. He has to file it before July 3, 1931, then he has the same length of time after denial if his claim has been on file with the Bureau.

Captain MILLER. That is correct; the only qualification being the difference of opinion in the courts as to the regulations of the Veterans' Administration allowing the additional days required to mail a letter from Washington to his last address.

Senator CONNALLY. Suppose he filed it on the 29th of June 1931, he would only have 1 day?

Captain MILLER. He would have 3 days after the denial.

Senator CONNALLY. Is that in the statute; and if so, it seems to me a funny statute?

Captain MILLER. It is not in the statute; it is in the regulations which give the statute effect. If the man had 2 days only, and the denial, as the court in one circuit says, is at the moment the document of denial is signed, then that man, if he was on the west coast, unless the air mail were used, would not be in court at all, whereas the man who had his petition already prepared and lived close by here, could probably get into court. That situation is exactly what the Senator is attempting to cure by allowing 90 days after denial of the claim, so that the man may get in meritoriously and not be suddenly assaulted by small technical pleas of jurisdiction.

Senator BARKLEY. You recommend the passage of this resolution with the amendment you have suggested?

Captain MILLER. We earnestly recommend it because it is the last chance the men have.

Senator LA FOLLETTE. Have you any idea approximately how many veterans would be affected by this?

Captain MILLER. We have no idea, except to say that probably by far the majority of the men who file suit do not recover. I think the Veterans' Administration can give you the exact figures covering the last year or so, because the picture has varied through the years. There was a time when it seemed to be the tendency of juries to take a crack some way at the Veterans' Administration. The liberality of juries in these cases seems to run in cycles. Just now few cases seem to be won by veterans.

What this does is not to pay a man money but merely allow them to have judicial inspection of their claims, as has always been permitted by statutes since the beginning.

Senator CONNALLY. Why is this resolution made effective as of July 3, 1930, instead of 1931?

Captain MILLER. There were filed between 1930 and 1931 a number of claims. Unless it was made July 3, 1930, which was the date

of the enactment, they would not be cared for. This says, "No suit shall be allowed under this section unless suit shall have been brought 6 years after the claim is made, or within 1 year after the date of approval of this amendatory act." That act for the first time attempted to define the terms "claim" and "disagreement." These questions have been in doubt in many causes before the court, and in thus attempting to clarify them it was natural that the Congress would allow an additional year in which to file suits as to which there has been a question of jurisdiction.

Senator BLACK. Mr. Chairman, I would like to say I am perfectly willing to accept the amendment, and I think it should be in. At the time I wrote the resolution I knew nothing about the opinion of Judge Wilbur, because it had not been rendered.

I understand that opinion held the denial of the veterans, based purely on the Economy Act, was a denial of all claims, and therefore every veteran who had a claim pending is barred from proceeding at all.

Of course, the veterans refrained from suing at that time, or many of them, because they had no understanding that the Supreme Court would hold that law unconstitutional, but the Supreme Court came along and held the act unconstitutional insofar as it attempted to abrogate these contracts. This circuit court has held, in spite of the fact the law was held unconstitutional, it would accomplish indirectly what the Supreme Court held could not be accomplished directly.

Of course, I would be glad to accept the amendment.

Captain MILLER. Mr. Chairman and members of the subcommittee, if you please, I would like to have in the record a copy of the actual opinion of the ninth circuit, together with a memorandum on it, which I have prepared on behalf of my Legion committee.

Senator GEORGE. That may be made a part of the record.

Captain MILLER. The memorandum and the opinion are this:

Before suit may be instituted upon a term or converted insurance contract against the Government, it is essential that a claim be presented to and denied by the Veterans' Administration in order for the court to have jurisdiction, under the provisions of section 19, World War Veterans' Act, 1924, as amended.

The law as now written does not specify precisely when the denial of a claim for insurance benefits becomes effective. Considerable confusion has, therefore, arisen upon this point. The United States Circuit Court of Appeals for the Fifth Circuit, in the case of *United States* v. *Walker* (reported in 77 Fed. 2d, 415), held a denial became effective at the time of receipt of notice of adverse action, while the United States Circuit Court of Appeals for the Fourth Circuit, in the case of *Tyson* v. *United States* (76 Fed. 2d, 533), held the denial effective at the time administrative action is taken by the Veterans' Administration upon the claim, irrespective of when the veteran receives notice of the adverse action, and further held as ineffective certain regulations promulgated by the Administrator of Veterans' Affairs which suspended the statute of limitations for the number of days usually required for the transmission of regular mail from Washington to the veteran's address of record.

The Supreme Court of the United States, when considering the *Tyson case* recently declined to pass upon the question of when the denial became effective, as a ruling upon this point was not essential in its disposition of that case. This leaves the question still open and the correct answer uncertain. The question ought to be clearly settled.

There are instances where veterans were not advised of the final denials of their claims until after the time had already expired in which they could institute suit under the construction placed upon the law by the Tyson decision. Relying upon the regulations promulgated by the Veterans' Administration,

some suits have been instituted in good faith, and it is the opinion of the committee that such suits should be recognized.

It is the opinion of this committee that a uniform period of 90 days after denial of claims should exist before suit must be filed. The denial should be effective upon the mailing of notice by registered mail of the adverse decision by the Veterans' Administration to the last known address of record of the veteran. This would simplify the matter of the Government proving when notice is given.

In a recent decision of the United States Court of Appeals for the Ninth Circuit, in the case of *Harris* v. *United States* (80 Fed. 2d, 612), it was held that certain form letters constituted denials of these claims, which letters were written by the Veterans' Administration to claimants advising them that further consideration of their claims could not be had. These letters were as follows:

"Recent instructions have been received from the Veterans' Administration at Washington, D. C., concerning claims for yearly renewable term insurance or for automatic insurance by veterans of the World War. It is desired to advise you as follows concerning such claims:

"'The provisions of the act of March 20, 1933, entitled "An act to maintain the credit of the United States Government", specifically repealed all laws drafting or pertaining to yearly renewable term insurance except as to cases wherein contracts of yearly renewable term insurance have matured prior to March 20, 1933, and under which payments have been commenced or in which judgments have been rendered in court of competent jurisdiction in any suit on a contract of yearly renewable term insurance or in which judgments may hereafter be rendered in any such suit now pending. Under these provisions favorable consideration of your claim for benefits under a contract of yearly renewable term insurance is barred and no further action in connection with your claim can be taken by the Veterans' Administration. Under these circumstances I regret to advise you that further inquiry or correspondence from you seeking further consideration of this claim will necessarily be of no avail.'"

This letter was sent only for the purpose of advising veterans that the law did not permit a further consideration of their claims and was not intended to be a denial of the claim for the purpose of conferring jurisdiction upon the court for the institution of suit.

However, the court in the *Harris case* said, in part:

"This letter was a flat denial of appellant's claim. He claimed a right to recover on his policy. The Government denied that right. This was a 'disagreement' which left the veteran no recourse except in the courts."

These letters were not intended by the Veterans' Administration to operate as notices of denials of these claims upon their merits, and were mailed without the Veterans' Administration having considered the merits of such claims. The reason the letters were sent was because the Veterans' Administration assumed that that portion of Public, No. 2, Seventy-third Congress, which was later held by the United States Supreme Court to be void, was a valid provision and precluded any consideration whatever of such claims. Since the decision of the United States Supreme Court the Veterans' Administration has proceeded to consider those claims for the first time on their merits, and it seems reasonable that if there be a disagreement with respect thereto that the insured or his beneficiary should have the right to their day in court as well as all others similarly heretofore situated.

The Harris decision is clearly contrary to the long-established practice of the Veterans' Administration and the general body of law relating to the necessity for administrative action as a condition precedent to the right to litigation. It ignores the extensive machinery set up in the Veterans' Administration for the purpose of considering these claims, and appears to this committee to be unfair to the veterans. It is also contrary to the intent of Congress previously expressed in House Report No. 874, Seventy-first Congress, second session, as follows:

"Your committee felt that in view of the fact that the Government has set up in the Bureau extensive machinery for hearing claims it was unfair for a veteran to disregard this machinery on the basis of the disallowance of his claim by some subordinate board and enter suit."

In general, and summarizing, it is the view of this committee, if, as has been already determined, Congress is to permit a veteran or his beneficiary to have his day in court in connection with his claim on his insurance contract, that the right to bring and maintain such suit should be exercised in a reasonable, simple, and direct manner and that no good purpose can be served, beneficial either to the veteran or to the Government in hedging about the exercise of the

right to judicial inquiry by technical artificial barriers. The right and the means of exercising it should be clear, direct, and simple, and a reasonable time should be afforded for these claimants to obtain counsel and initiate proceedings in an orderly manner.

Harris v. *United States.* No. 7458. Circuit Court of Appeals, Ninth Circuit, December 6, 1935. Army and Navy. 51½ (60)

Rejection of claim under war-risk policy by letter from regional director of Veterans' Administration, stating that claim for benefits under policy was barred and that Veterans' Administration could take no further action, constituted "disagreement", giving claimant right to bring action on policy (38 U. S. C. A. 445, 445c).

(ED. NOTE.—For other definitions of "Disagree, disagreement", see Words and Phrases.)

Appeal from the District Court of the United States for the District of Idaho, Eastern Division; Charles C. Cavanah, Judge.

Action by Thomas G. Harris, an insane person, by Guy Harris, his guardian, against the United States of America. Judgment for defendant and plaintiff appeals. On rehearing.

Former opinion affirmed and judgment of the district court (5 F. Supp. 368) reversed.

For former opinion, see 76 F. (2) 1010.

A. L. Merrill and R. D. Merrill, both of Pocatello, Idaho, and Jess Hawley and Oscar W. Worthwine, both of Boise, Idaho, for appellant.

John A. Carver, United States attorney, of Boise, Idaho, Will G. Beardslee, director, Bureau of War Risk Litigation, of Washington, D. C., and Wilbur C. Pickett and Fendall Marbury, Special Assistants to Attorney General, for the United States.

Before Wilbur, Denman, and Haney, circuit judges.

Wilbur, circuit judge.

During the pendency of this action on appeal, Congress adopted a joint resolution (Jan. 28, 1935 (38 U. S. C. A., par. 445c)) retroactive to July 3, 1930, and applying to all pending cases, to the effect "that a denial of a claim based upon a war risk *insurance* policy by the Administrator of Veterans' Affairs, or any employee or agency of the Veterans' Administration heretofore or hereafter designated therefor by the Administrator, shall constitute a disagreement for the purposes of section 19 of the World War Veterans' Act, 1924, as amended (U. S. C. Supp. VII, title 38, sec. 445)." The appeal was heard before Circuit Judges Wilbur and Garrecht, and District Judge Norcross. After the submission of the case and before the joint resolution above mentioned was called to our attention, a decision written by Judge Norcross and concurred in by both circuit judges was handed down on May 6, 1935, affirming the judgment of the lower court dismissing the action. Four days later the opinion was withdrawn by the court sua sponte and the judgment was reversed ((D. C.) 5 F. Supp. 368, 370). The Government petitioned for a rehearing, claiming that the decision was of momentous importance and that it had not had an opportunity to present its views concerning the effect of the joint resolution. The appellant replied to this petition in part as follows: "That the attorneys for the appellant believe that as officers of this court they owe a duty to the court to state frankly and fully what they deem the law to be and after due consideration of this matter, and with the highest regard for the opinion of this court, counsel for appellant desire to state that it does not appear to them that Public Resolution No. 1 of the Seventy-fourth Congress, approved January 28, 1935, has anything to do with this case and has no bearing one way or another upon it, and that, consequently, the reasons for reversal given in the opinion, filed May 10, 1935, were erroneous."

It appears that both the Government and the appellant were in ignorance as to the scope and effect of the opinion of Judge Norcross which had been withdrawn, because of the clerk, believing that this was the intent of the order of withdrawal had not disclosed the previous opinion. Both parties assumed, therefore, that this court had based its second opinion upon the conclusion that the joint resolution per se made a disagreement out of the correspondence between the Veterans' Bureau and the veterans. The Government contended in its petition for rehearing that the purpose of the joint resolution was to make the adverse rulings of others than the Director in the Bureau sufficient to constitute a disagreement on behalf of the Government, and not to determine what constituted such a disagreement. With this position we are in full accord.

In the opinion of Judge Norcross it was assumed for the purpose of the decision that the letter from the regional director, hereinafter quoted, was a sufficient rejection of the appellant's claim to constitute a "disagreement" as to his right to recover on the policy, but held that this official was not qualified under the World War Veterans' Act to act for the Director in finally rejecting appellant's claim. That authority has been since confirmed by the joint resolution of January 28, 1935, which ratified the act of Veterans' Administration at Washington, which it is alleged was acting through the manager of the United States Veterans' Administration at Boise, Idaho, in denying appellant's claim. Our opinion of May 10, 1935, was based upon the conclusion which had been assumed in the prior opinion of May 6, 1935, by Judge Norcross that the letter of the regional director rejecting the appellant's claim was a "disagreement" within the meaning of section 19 of the World War Veterans' Act, as amended (38 U. S. C. A., par. 445). The letter referred to reads as follows:

"Recent instructions have been received from the Veterans' Administration at Washington, D. C., concerning claims for yearly renewable term insurance, or for automatic insurance, by veterans of the World War. It is desired to advise you as follows concerning such claims:

"'The provisions of the act of March 20, 1933, entitled an act to maintain the credit of the United States Government, specifically repealed all laws drafting or pertaining to yearly renewable term insurance except as to cases wherein contracts of yearly renewable term insurance have matured prior to March 20, 1933, and under which payments have been commenced on in which judgments have been rendered in a court of competent jurisdiction in any suit on a contract of yearly renewable term insurance or in which judgments may hereafter be rendered in any such suit now pending. Under these provisions favorable consideration of your claim is barred and no further action in connection with your claim can be taken by the Veterans' Administration. Under these circumstances I regret to advise you that further inquiry or correspondence from you seeking further consideration of this claim will necessarily be of no avail.'"

This letter was a flat denial of appellant's claim. He claimed a right to recover on his policy. The Government denied that right. This was a "disagreement" which left the veteran no recourse except in the courts. It mattered not that the action of the Veterans' Bureau in denying the claim was based upon an unconstitutional act of Congress also denying the right. Judge Cavanah anticipated the decision of the Supreme Court (see *Lynch* v. *U. S.*, 292 U. S. 571, 54 S. Ct. 840, 78 L. ed. 1434), holding that provisions of the Economy Act of March 20, 1933 (48 Stat. 8), as applied to the vested rights of veterans under their policies of insurance, were unconstitutional, but, also, he held that the rejection of appellant's claim was not sufficient because not by the "Director or some one acting in his name on an appeal to the Director." With this view we agreed, but Congress, by its joint retroactive resolution, has made necessary the reversal of a decision of the district court which was correct when rendered. This explanation is due the able trial judge who rendered the judgment herein.

Judgment reversed.

Captain MILLER. I would also like to submit for the record the amended resolution, in form in which we recommend. Thank you, Mr. Chairman.

Senator GEORGE. That may be inserted in the record.

(The said resolution as amended is as follows:)

To extend the period of suspension of the limitation governing the filing of suit under section 19, World War Veterans' Act, 1924, as amended

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in addition to the suspension of the limitation for the period elapsing between the filing in the Veterans' Administration of the claim under a contract of insurance and the denial thereof by the Administrator of Veterans' Affairs or someone acting in his name, the claimant shall have 90 days from the date of mailing notice of such denial within which to file suit. This resolution is made effective as of July 3, 1930, and shall apply to all suit now pending against the United States under the provisions of section 19, World War Veterans' Act, 1924, as amended; and any suit which has been dismissed solely on the ground that the period for filing suit has elapsed, but wherein the extension of the period for filing suit as prescribed herein would

have permitted such suit to have been heard and determined may be reinstated within 90 days from the date of enactment of this resolution: *Provided*, That on and after the date of enactment of this resolution, notice of denial of the claim under a contract of insurance by the Administrator of Veterans' Affairs or someone acting in his name shall be by registered mail directed to the claimant's last address of record. *Provided further*, That the term "denial of the claim" means the denial of the claim after consideration of its merits.

Senator GEORGE. Mr. Brady, is there anything you wish to say on this matter?

STATEMENT OF JAMES T. BRADY, SOLICITOR, VETERANS' ADMINISTRATION

Mr. BRADY. Mr. Chairman and Senators, General Hines has asked me to come today to answer any question which you may desire to ask. We, of course, do not have the defense of these cases in the Veterans' Administration, as that is in the Department of Justice.

If the Senators would like to ask any questions, I will be glad to try to answer them.

Senator CONNALLY. What is your view on this bill?

Mr. BRADY. Our report is against the bill of Senator Black, speaking of the Senator's bill alone, as it does extend the statute of limitations as it was contained in the act of July 3, 1930. I state that in answer to the Senator's inquiry as to why that date was used.

Senator CONNALLY. I think I understand; it was because of the date of the original act.

Mr. BRADY. Yes, sir; and this does extend the statute to that extent. The other point Captain Miller has raised, about the opinion in the *Harris case*, arises following a question of whether or not a subordinate official of the Administrator could create a disagreement. That question was raised in the *Frederick case*, and was pending in the Supreme Court when Public Resolution No. 1 of the last session of this Congress was drafted to overcome it.

Whether the ninth circuit decision will go to the Supreme Court or whether it will stand, I do not know. That does not involve the statute of limitations. It is a curative statute, and it might be desirable if the Harris opinion is to stand.

Senator GEORGE. Are there any questions?

Senator BLACK. Yes; I would like to ask Mr. Brady: You are familiar with the fact the Veterans' Bureau drew up my resolution?

Mr. BRADY. Senator, I am familiar with it, because I drew it for you, after appearing before this committee.

Senator BLACK. My recollection is correct, is it not, that the amendment I was about to offer on another bill was held off because it was suggested the Veterans' Bureau would favor my resolution?

Mr. BRADY. I do not recall the matter of holding off from another bill, but I do recall in connection with discussion of this extra mailing time and the question involved in it, that I personally said I saw no objection to it. Thereafter the Veterans' Administration in reporting to the House committee on the same resolution or a resolution similar to yours, indicated it was a matter for the Department of Justice.

Thereafter when the bill passed both Houses of Congress and was presented to the President he vetoed the bill and issued a news release on it. Our position now largely follows the course of action of the President in vetoing it.

Senator BLACK. Do you know who gave the information on the bill to the President on which he based his veto after Congress had adjourned?

Mr. BRADY. I do not know.

Senator CONNALLY. Is it your attitude you are for the bill, but because the President is against it you are against it?

Mr. BRADY. My attitude here, representing the Veterans' Administration, is that we are opposed to the bill.

Senator BARKLEY. Regardless of that, is there any real injustice that will be done the Government by this extension? I do not want to embarrass you by asking you a question that might involve you personally.

Mr. BRADY. There is this in it, Senator, the statute of limitations, as has been explained here this morning, was 6 years, or between July 3, 1930, and until July 3, 1931, whichever date was the later date, plus an added time equal to the time the Bureau took to adjudicate the claim. In addition to that, the Bureau, whether or not they had the power has added the extra days which it took that notice to get from Washington to the address of the particular man.

If the man acted promptly upon receipt of that notice, through his attorney, his case would have been in court, and if he did not act promptly then he would be too late.

It gets down to this, it seems to me; it is just a question of the statute of limitations; he is either in or out as the statute stands.

Senator BARKLEY. May it not be a fact that because of this brief period a man has got to be like a cat at a rat hole in order to be watching for a letter in order that he may not be guilty of letting the time run by and that some meritorious case may be denied trial on suit because of a technicality?

Mr. BRADY. If the statute of limitations may be considered a technicality, the answer is "Yes." I think all statutes of limitations prevent hearings on the merits.

Senator BARKLEY. I grant there must be statutes of limitations in order that old claims may not pile up in the Federal Court, but at the same time a statute depending on the length of time of the receipt of a letter from the Bureau is not proper.

Mr. BRADY. That matter of the time of receiving a letter from the Bureau was an extension of the limitation fixed by the statute. For instance, if a man made a claim to the Bureau on June 1, 1931, then the statute said all he would have would be the amount of time elapsing between June 1, 1931, and July 3, 1931, after the Bureau had acted. In other words, that was tacked on after the Bureau had acted. Then the Bureau by its own regulations added to that the 4 or 5 days, if the claim was denied, for a letter to go to, say, San Francisco.

Senator BARKLEY. In other words, if it took the Bureau 6 months to pass on the claim that was added?

Mr. BRADY. Yes; then there was added 30 days' time of the statute; and then the Veterans' Bureau, in addition to what the statute provided, added by regulation the amount of mailing time.

Senator CONNALLY. Ordinarily a statute of limitations begins to run from the accrual of the action.

Mr. BRADY. Yes, sir.

Senator CONNALLY. Then there was another provision added that he could not sue at all on his claim until it was denied.

Mr. BRADY. That is so.

Senator CONNALLY. Then it looks to me that the time the denial was made should be the time the statute of limitations should begin to run, because if a man had a claim and took 10 years to deny the claim, he should have time in which to bring his suit.

Senator BLACK. Mr. Brady, let us suppose you deny the claim, the man could not sue until he had his claim denied?

Mr. BRADY. That is right.

Senator BLACK. Suppose you denied his claim, and he lived down in the country, down in Alabama, how many days does he have after you deny it here to bring suit?

Mr. BRADY. I will have to add one more element first to make it complete. First, he should have the time between the time he filed his claim in the Bureau and that date of July 3, 1931.

Senator BLACK. Suppose he filed it the day before?

Mr. BRADY. He would have 1 day by virtue of the statute, and he would have 3 days for this mailing time from here to Alabama.

Senator BLACK. Down in the country, in Alabama, of course, you know, as a matter of fact that a soldier does not understand that if a thing reaches there one day they have got to go to town and get a lawyer before night.

Senator CONNALLY. What I would like to do is to have something that gives the veteran 90 days after the claim is denied.

Senator BLACK. That is what I intend by my bill.

Senator CONNALLY. I do not want to shorten up the other period, but I think he should have 90 days after the claim is denied before he has to sue, because he has got to get a lawyer and prepare for his case.

Senator GEORGE. The committee will have to adjourn now, and pursuant to a general order I am going to ask the clerk to prorate among the members of this committee certain special bills on which the reports have come in, and I think it will be necessary for us to meet next week on several other general bills that are here before us.

What is the wish of the committee on reporting this bill?

Senator BARKLEY. I move we report it favorably.

Senator GEORGE. Report it favorably to the full committee with the amendments?

Senator BARKLEY. Yes.

Senator GEORGE. That will be done. We will now adjourn until some day next week.

(The chairman (Senator George) subsequently received the following statement submitted by Mr. Millard W. Rice, national legislative representative for the Veterans of Foreign Wars of the United States, which was ordered placed in the record:)

STATEMENT OF MILLARD W. RICE, NATIONAL LEGISLATIVE REPRESENTATIVE FOR THE VETERANS OF FOREIGN WARS OF THE UNITED STATES

The Veterans of Foreign Wars of the United States does not believe that veteran claimants of Government insurance benefits should be penalized because of varying interpretations of/or stringent requirements relative to the statute of limitations, providing that a claim for such insurance benefits must have been instituted prior to July 3, 1931. To correct this situation and the manifest injustices and inequalities which have thereby arisen, we urge favorable action on the provisions of Senate Joint Resolution 200.

We fully concur with the evident intention of the author of this bill; that is, that a veteran who has instituted a claim for benefits on his Government

insurance policy on the ground that he has been permanently and totally disabled should have a reasonable length of time within which to institute a legal suit after the official denial of his claim for such insurance benefits by the Veterans' Administration. Previous witnesses have cited many cases of gross injustice which have arisen because of varying interpretations by the court as to the date of denial of the claim by the Veterans' Administration and because of the fact that such a very short period of time elapsed between the date of such denial and the time before which under the present law he would be privileged to institute a legal suit against the United States Government on such insurance claims, if any, that he would be precluded from exercising that right to institute such legal suit. All of the cases which have been cited by the previous witnesses, and which have apparently favorably impressed the members of this committee, were concerning veterans who did lose their right to institute such legal suit, and most of whom therefore failed to go through the futile motion of filing a legal petition or complaint.

I am sure that it is the intention of this committee that such rights should be saved for these men, and therefore I respectfully call to the attention of the committee that the language of this resolution fails to restore this right to these men, unless they had gone through the futile action of filing a petition or complaint which was then dismissed by the court as being outside of the statutes of limitations.

The bill as now written would restore this right only to those who had gone through the futile action of filing a complaint which was ruled out by the court as being outside of the statutes of limitations, and lengthens the period of time within which such a legal suit may be instituted after official denial by the Veterans' Administration as to those veterans whose insurance claims are hereafter denied.

It would be inequitable to restore this right to those who disregarded the fact that the statutes of limitations had expired against them and nevertheless filed a formal petition, if this right is not also to be restored to those who respected the law and realized that it was impossible for them to institute such a suit and still be within the statutes of limitations.

Although our organization has taken the general stand that there ought to be no statutes of limitations as to the claims of veterans for compensation or other benefits from the Veterans' Administration, nevertheless we are not at this time proposing that there should be any further extension of the statutes of limitations as to these insurance suits, but we do believe that the full intention of the author of this bill ought to be incorporated in the bill so as to cover all of the cases which have been cited before this committee, and we therefore propose that the resolution should read as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in addition to the suspension of the limitation for the period elapsing between the filing in the Veterans' Administration of the claim under a contract of insurance and the denial thereof by the Administrator of Veterans' Affairs or someone acting in his name, the claimant shall have ninety days from the date of the mailing of such denial within which to file suit. This resolution is made effective as of July 3, 1930, and shall apply to all suits now pending against the United States under the provisions of section 19, World War Veterans' Act, 1924, as amended; and any suit which has been dismissed solely on the ground that the period of filing suit has elapsed but wherein the extension of the period for filing suit as prescribed herein would have permitted such suit to have been heard and determined may be reinstated within ninety days from the date of enactment of this resolution: *Provided,* That where the claimant shall, prior to the enactment hereof, have had a denial of his claim, and was then legally entitled to less than ninety days thereafter within which to file suit and failed to do so, then he shall have the right to file suit within one year after the passage of this Act: *Provided,* That on and after the date of enactment of this resolution, notice of denial of the claim under a contract of insurance by the Administrator of Veterans' Affairs or someone acting in his name shall be by registered mail directed to the claimant's last address of record: *Provided further,* That the term "denial of claim" means the denial of the claim after consideration of its merits.

The additional amendments which we propose to this bill appear in the language above underlined.

We concur with the purpose of this bill and urge that it be perfected as above suggested, and that it then be favorably acted upon by your committee and by Congress.

(Whereupon, at 12 o'clock noon, the hearing was closed.)

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