

Suits on Veterans' Insurance Contracts

HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON FINANCE UNITED STATES SENATE

SEVENTY-SECOND CONGRESS

FIRST SESSION

ON

S. 2324

**A BILL TO EXTEND THE TIME FOR ALLOWING SUITS
ON INSURANCE CONTRACTS UNDER SECTION 19 OF
THE WORLD WAR VETERANS' ACT, 1924, AS AMENDED**

S. 2440

**A BILL TO AMEND SECTION 19 OF THE WORLD WAR
VETERANS' ACT, 1924, AS AMENDED (RELATING
TO SUITS ON INSURANCE CLAIMS)**

AND

S. 3591

**A BILL TO AMEND THE WORLD WAR VETERANS' ACT
1924, AS AMENDED**

MARCH 16, 1932

Printed for the use of the Committee on Finance



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SUITS ON VETERANS' INSURANCE CONTRACTS

WEDNESDAY, MARCH 16, 1932

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

The subcommittee met at 11 o'clock a. m., pursuant to call.
Present: Senator Walsh of Massachusetts.

STATEMENT OF J. H. STOLPER, MUSKOGEE, OKLA., GENERAL COUNSEL AND CHAIRMAN NATIONAL EXECUTIVE COMMITTEE, AMERICAN VETERANS OF ALL WARS

Senator WALSH of Massachusetts. Give your full name, please.

Mr. STOLPER. J. H. Stolper.

Senator WALSH of Massachusetts. Where do you reside?

Mr. STOLPER. Muskogee, Okla.

Senator WALSH of Massachusetts. You are an attorney at law?

Mr. STOLPER. I am an attorney at law. I am here upon my own part, and I am general counsel of the American Veterans of All Wars.

Senator WALSH of Massachusetts. Are you a veteran yourself?

Mr. STOLPER. I am a veteran myself; yes, sir; a lieutenant colonel, United States Army Reserve, retired.

Senator WALSH of Massachusetts. And you are general counsel for what organization?

Mr. STOLPER. American Veterans of All Wars.

Senator WALSH of Massachusetts. How large an organization is that?

Mr. STOLPER. Our organization is a very small paying organization. We have pretty close to 22,000 nonpaying members, purely charity members. We call that class of membership beneficiary membership. The members do not pay anything.

Senator WALSH of Massachusetts. Where are the headquarters of your organization?

Mr. STOLPER. Muskogee, Okla.

Senator WALSH of Massachusetts. Who is the president of your organization?

Mr. STOLPER. We have no president, sir. Our organization is made up in the following manner: There are two executive heads. Here is a copy of the constitution, which gives the names of the officers. It is made up of two executive heads. The national commander is Col. T. J. Rogers, United States Army, retired, Oklahoma City, Okla.; and I am the chairman of the national executive committee.

Senator WALSH of Massachusetts. What bills are you interested in?

Mr. STOLPER. I am here to—

Senator WALSH of Massachusetts. You are a lawyer. Please answer my questions and we will get along more quickly. What bills are you interested in? Give me the numbers.

Mr. STOLPER. I am interested in Senate bill 2324, Senate bill 2440, and Senate bill 3591, by Senator George McGill.

Senator WALSH of Massachusetts. Pending before this committee are only two of these bills, as I understand.

Mr. STOLPER. All three bills are pending.

Senator WALSH of Massachusetts. S. 2324 and S. 2440 are before the committee. Is Senate bill 3591 before the committee?

The CLERK. That is a new one, Senator. The administration has not reported on it.

Senator WALSH of Massachusetts. But it is before this committee?

Mr. STOLPER. It is.

Senator WALSH of Massachusetts. So, the three are here.

(The bills referred to are here printed in full, as follows:)

[S. 2324, Seventy-second Congress, first session]

A BILL To extend the time for allowing suits on insurance contracts under section 10 of the World War veterans' act, 1924, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of the second paragraph of section 10 of the World War veterans' act, 1924, as amended, is amended by striking out "within one year after the date of approval of this amendatory act" and inserting in lieu thereof "within three years after July 3, 1931."

[S. 2440, Seventy-second Congress, first session]

A BILL To amend section 19 of the World War veterans' act, 1924, as amended (relating to suits on insurance claims)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second proviso in the second paragraph of section 19 of the World War veterans' act, 1924, as amended, is amended to read as follows: "Provided further, That the limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and a date six months from the date of the denial of said claim by the director."

SEC. 2. The seventh paragraph of section 19 of such act, as amended, is amended by adding after the first sentence thereof the following new sentence: "If, within three months after any such claim is filed in the bureau, there is neither a denial in writing of the claim nor an acceptance by the claimant of an offer to settle such claim in whole or in part, then such claim shall be held to be denied at the expiration of such three months' period."

[S. 3591, Seventy-second Congress, first session]

A BILL To amend the World War veterans' act, 1924, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second paragraph of section 19 of the World War veterans' act, 1924, as amended, is amended to read as follows: "There shall be no limitation on the time when suits may be instituted under this section. Judgments heretofore rendered against a person or persons claiming under a contract of war-risk insurance on the ground that the claim was barred by the statute of limitations shall not be a bar to the institution of another suit on the same claim, nor shall any State or other statute of limitations be applicable to suits filed under this section. This section shall apply

to all suits now pending against the United States under the provisions of this section, and in any suit brought under this section the plaintiff shall not be liable for costs of any nature if he recovers judgment.

"In all suits filed on war-risk insurance the regional attorney of the Veterans' Administration and the United States district attorney in the Federal court district where such suits are instituted shall have full power and authority to settle all such suits, without trial, with the approval of the court in such district, and such settlement and disposition shall be final.

"Failure on the part of the Veterans' Administration to either deny or allow a claim for insurance within ninety days of receipt thereof shall constitute a disagreement within the provisions of this section."

SEC. 2. The first proviso in the first paragraph of section 200 of such act, as amended, is amended by striking out the first sentence thereof and inserting in lieu thereof the following:

"That no compensation shall be denied by reason of willful misconduct (a) to any person who by such misconduct contracted any disease, unless it can be shown by positive evidence that the disease was contracted by such person with the knowledge that he was by his misconduct contracting such disease, (b) to any person who is suffering from paralysis, paresis, or blindness, (c) to any person who is helpless or bedridden as a result of any disability, or (d) to any person on account of any disease contracted prior to his examination, acceptance, and enrollment for service."

SEC. 3. The first sentence of the second paragraph of section 200 of such act, as amended, is amended by striking out "ninety" and inserting in lieu thereof "fifty."

SEC. 4. Section 201 of such act, as amended, is amended by inserting at the end thereof the following new subdivision:

"(g) Where an ex-service man who (1) entered the service prior to November 11, 1918, and (2) either served honorably fifty days or more during the World War or was discharged for disability incurred in the service, dies on or after the date this section as amended takes effect, his widow and/or children shall be paid a monthly allowance in an amount equal to the amount of the compensation payable under this section to the widow and/or children of an ex-service man who dies as a result of injuries incurred in the service. Payment of such allowances shall be made in the same manner and shall be subject to the same terms and conditions as payments of compensation under this section. Applications for such allowances shall be in such form as the Administrator of Veterans' Affairs may prescribe, but no allowance payable hereunder shall commence prior to the date of the filing of the application therefor. As used in Titles I and V of this act, the term 'compensation' shall be deemed to include the term 'allowance' as used in this subdivision."

SEC. 5. Section 203 of such act, as amended, is amended by inserting at the end thereof the following new paragraph:

"In considering claims for compensation, disability allowance, or hospitalization under the provisions of this act the same credence shall be given to the statements of physicians in private practice as is given to the statements of physicians attached to the Veterans' Administration, and the statements of lay physicians shall be presumed to be true until proven false."

SEC. 6. Section 205 of such act, as amended, is amended by striking out after the section number all down to the first comma in such section and inserting in lieu thereof the following: "Upon application of the claimant, and not otherwise, the Veterans' Administration may at any time review an award and."

SEC. 7. Section 210 of such act, as amended, is amended to read as follows:

"SEC. 210. No compensation or increased compensation shall be payable for any period prior to the date of discharge or resignation. Except in cases of fraud participated in by the beneficiary no reduction in compensation shall be made retroactive."

Senator WALSH of Massachusetts. I want you to take up these bills one by one; first, S. 2324, which was the first one that was introduced. That is a bill to extend the time for allowing suits on insurance contracts under section 19 of the World War veterans' act of 1924 as amended.

Mr. STOLPER. Yes.

Senator WALSH of Massachusetts. How does that bill seek to change the present law?

Mr. STOLPER. The bill seeks to change the present law as follows: At present the courts are closed to the veterans, and a veteran can not file any suit against the United States upon a purely insurance basis. Congress has put a statute of limitations in several bills, the last one in the bill that was approved on July 3, 1930, by which the courts were closed a year after such date. To-day the courts are closed for any claims that have not been made up to that date.

Senator WALSH of Massachusetts. That is not true, is it? You know differently, as a lawyer.

Mr. STOLPER. If you will allow me, I am not going to make any statement here that is not true.

Senator WALSH of Massachusetts. You said the courts are closed.

Mr. STOLPER. I said the courts are closed to any claims that have not been filed up to that time either with the courts or with the Veterans' Bureau.

Senator WALSH of Massachusetts. That is not true, either.

Mr. STOLPER. If you will allow me, there are exceptions to it, as in the case of minors and in the case of mental deficiency.

Senator WALSH of Massachusetts. That is not true, either. Any veteran can file a suit for six years on an insurance policy, provided he has made a claim for his insurance to the Veterans' Bureau.

Mr. STOLPER. That is exactly why I said—

Senator WALSH of Massachusetts. Why do you say the courts are closed?

Mr. STOLPER. If he has not made any claim before the Veterans' Bureau and has not filed a suit before the courts, he can not file any suits any longer. The courts are closed to the man who has not made any claim nor filed any suit.

There is another situation, about the 6-year proposition.

Senator WALSH of Massachusetts. Wait a moment. You admit, do you, that there is a statute of limitations applying to suits brought by veterans or their beneficiaries, on insurance, that gives the veteran or his beneficiary the right to institute suit within six years after the time of filing his claim with the Veterans' Bureau? Is that true?

Mr. STOLPER. That is not the law. If you will allow me, I will give you the statutes.

Senator WALSH of Massachusetts. Will you state what the law is, please?

Mr. ROBERTS. The law provides, Senator Walsh, that the suit must be instituted within six years after the date of the contingency upon which the claim is founded.

Mr. STOLPER. Exactly.

Mr. ROBERTS. At any time within that 6-year period, a man can institute suit, provided he has a disagreement, and a final disallowance from the Veterans' Administration. If, during that period, he files claim with the Veterans' Administration, the statute is suspended for the period the claim is pending before the administration. The only types of claims which are barred from filing suit at the present time are those which lapsed more than six years ago, and in which no claim was filed either in the administration, or suit instituted prior to July 3, 1930.

Mr. STOLPER. That is correct.

Senator WALSH of Massachusetts. That is what I supposed, that they only bar those that are more than six years old, speaking generally.

Mr. ROBERTS. That is correct, speaking generally.

Mr. STOLPER. Now, if the Senator please, here is the situation. The six years—

Senator WALSH of Massachusetts. So that what you are seeking to-day through this bill and other bills is to go behind that 6-year period?

Mr. STOLPER. Exactly.

Senator WALSH of Massachusetts. And give those who failed to file claims, who had a case prior to six years ago, or who thought they had a case prior to six years ago, the right to institute suits?

Mr. STOLPER. I want to say to the Senator that I would like to be indulged while I make a connected statement. It will be very short and to the point.

Senator WALSH of Massachusetts. I asked you what your purpose was in this legislation, and you started to define what the present law was, which I took exception to, because you did not admit, until Mr. Roberts stated it, that all claims which have matured, or which developed within six years, are active suits, and court proceedings can be brought upon them.

Mr. STOLPER. Senator, I will get to that, but Mr. Roberts's statement itself bears out what I was going to say to you, that that 6-year provision now is absolutely dead and obsolete.

Here is the situation, if you will bear with me. The war practically ended, for all purposes, in 1918 and 1919. With respect to any claim which the veteran has, the contingency did arise either in 1918 or 1919, either right before the discharge, or after the discharge. If you add to that six years, it would bring it up to 1925. We are now in 1932, so the six years' clause is absolutely dead.

The only veteran who could be aided in any way by the six years' clause is a man whose insurance was in force up to 1925 or 1926, like my insurance. My insurance is still in force. Now, if I should become entitled to the insurance, then I would have six years' time within which to get a settlement or bring suit.

Senator WALSH of Massachusetts. We understand that.

Mr. STOLPER. But the man to whom the contingency happened in 1919 is absolutely without any remedy, if he has not made claim, or if he has not filed suit. Am I correct, Mr. Roberts?

Mr. ROBERTS. Provided he has not reinstated at any time subsequently.

Mr. STOLPER. Provided he has not reinstated at any time subsequently; yes. We are speaking about a man where the contingency happened in 1919.

Senator WALSH of Massachusetts. But legislation was passed two years ago, was it not—

Mr. STOLPER. Legislation was passed in 1930.

Senator WALSH of Massachusetts (continuing). Opening up all those cases, and giving an opportunity for all who had claims to file them prior to July 1 or July 3, 1931.

Mr. STOLPER. That is correct; July 3, 1931.

Senator WALSH of Massachusetts. And this committee was of the opinion that all claims that were legitimate were filed during that period of time.

Mr. STOLPER. In referring to the adverse report of the committee on one of these bills, S. 2324, that is about the view that the Administrator of Veterans' Affairs, General Hines, takes upon the subject.

I want to say to you, and through you to the committee, and to Congress, that there are thousands of claims that have not been filed. There are thousands of claims that would have been filed, and there is a very good reason why they have not been filed. I want to say right at the beginning—

Senator WALSH of Massachusetts. Tell us about those.

Mr. STOLPER. That is what I am going to say. I want to say right at the beginning that I have a high personal regard for Gen. Frank T. Hines, Administrator of Veterans' Affairs, and whatever I am going to say here is not intended to reflect upon him, nor to be offensive in any way. But what I am going to say will reflect, and must reflect, upon the administration of the veterans' affairs in the field.

I have the most profound respect for the truth, sir, and I want to say that I am not going to make one single statement unless I have something to substantiate the statement I am making.

A good many men who are absolutely helpless—and I want the Senator to be reminded that only the men who are totally and permanently disabled are in a position to expect anything from a suit on war risk insurance. So, consequently, we are dealing with permanently and totally disabled men.

If the Senator please, I hold in my hand a letter that was written on January 26, 1932. That letter was written by H. Collins, a veteran from National City, Calif. He uses the following expression, and that is representative:

I know that I am entitled to draw my insurance, but I am afraid to file suit for it, for fear they will cut my compensation off.

He refers to the Veterans' Administration.

That is about the sum and substance of the feeling of a good many veterans—veterans by the thousands.

That has been passed on below. I do not believe it has emanated from General Hines, nor do I believe that it has emanated from Mr. Roberts, but the fact is that that has been the feeling that has been instilled into the veterans throughout the country. They are afraid that if they make any claim for insurance, they will lose their compensation.

General Hines, in his letter to the committee, says that he believes all just claims have been filed. General Hines has in his own files, and gets every day, claims which, it is true, are questioned by the Veterans' Administration, but the veterans who file them believe the claims are just, and those are judicial questions.

The Supreme Court of the United States has held that insurance is purely a business proposition between the Government and the insured. When a business proposition raises questions that are disputed by one side or the other, then the only fair thing, and the square thing, is to present them to an unbiased tribunal to decide the matter.

Here is the situation. Congress has placed judicial powers in the hands of an executive department, the Veterans' Administration, and no matter how hard the head of the Veterans' Administration is trying to be fair, he has thousands of men, anywhere from 23,000 to 30,000 employees, I believe, and he has them of all types, temperaments, and personalities. The men in the field have been intimidated.

I have here letters, to which I shall merely refer, in order not to encumber the record, that show that men have been called in, in different field offices, and have been told that they must absolutely renounce any claim on their insurance, and that if they do not do that, they will lose their compensation.

In a matter that was pending in the District Court of the United States at Muskogee, in the eastern district of Oklahoma, and which is styled *Charley R. Davis v. United States of America*, and is No. 5685 at law, the case has been filed for over two years. It was actually ready and was called by the court for trial. The attorney for the Veterans' Administration presented a petition, signed by the veteran and supported by affidavit, that he wanted the matter dismissed. Upon the face of it it was a voluntary proposition on the part of the veteran, and there was nothing else for the court to do but to dismiss it.

Senator WALSH of Massachusetts. Did the veteran have a lawyer?

Mr. STOLPER. The veteran had a lawyer. The lawyer did not know what was going on. The lawyer was taken by surprise. They sprung it at the last moment. Nobody knew anything about it. They had not advised counsel in any way.

Senator WALSH of Massachusetts. Did the veteran say he was forced to do that?

Mr. STOLPER. I am coming to that. I have the veteran's affidavit as to what has happened.

Senator WALSH of Massachusetts. Did he file that affidavit in court?

Mr. STOLPER. He filed his affidavit later.

Senator WALSH of Massachusetts. Did he ask to have the record changed?

Mr. STOLPER. Yes.

Senator WALSH of Massachusetts. Was the record changed?

Mr. STOLPER. It is still pending.

If the Senator please, I will read the affidavit [reading]:

STATE OF OKLAHOMA,
Oklahoma County, ss:

Before me, the undersigned notary public, duly qualified and acting, personally appeared Charley R. Davis, of Muskogee County, Okla., to me well known to be such identical person, and he having been sworn according to law, upon his oath deposes and says: I am Charley R. Davis, of lawful age. My residence is Muskogee County, State of Oklahoma. I am the Charley R. Davis that was the plaintiff in a suit for the recovery of war-risk insurance due me from the United States of America, and the said United States of America was the defendant in case No. 5685, law, in the United States District Court for the Eastern District of Oklahoma wherein the defendant has filed an affidavit to dismiss said cause on the 25th day of January, 1932.

Affiant upon oath further says: That the affidavit I have signed was made, prepared, and submitted to me by one of the attorneys for the defendant in the absence and without the knowledge of my attorneys; that I was urged and requested to sign the same and that if I have signed the same it is not clear

in my mind, and I can give no reason why if I have signed said affidavit, why I have done so, except and unless that due to the fact that my mind is often wandering and frequently not clear when I do not know and have no clear idea of what I do or say.

I further upon my oath say that due to such peculiar behavior of my mind I feel that it is to my best interest and for my protection that a guardian be appointed for me and I authorize J. H. Stolper and M. D. Hartsell, my attorneys, of Muskogee, Okla., to have my wife, Rhoda Davis, or any other competent person appointed as my guardian to act for me and in my place, and I do here request my aforesaid attorneys and the Hon. R. L. Williams, judge of the United States District Court for the Eastern District of Oklahoma, to either reinstate my case as hereinabove described or to bring a new suit as may be best in the premises.

I further upon my oath say that I make this affidavit and request voluntarily and without any coercion from anyone and that all of the above statements are each and all true, so help me God.

CHARLEY R. DAVIS, *Affiant.*

Witness: Rhoda Davis, wife of Charley R. Davis.

Subscribed and sworn to before me this 29th day of January, 1932.

[SEAL.]

DAN NELSON, *Notary Public.*

My commission expires July 16, 1935.

He makes the request here that a guardian be appointed. If the Senator please, I can leave that here for the record.

Here is the petition to dismiss.

(The petition referred to is as follows:)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA

Charley R. Davis, plaintiff, v. The United States of America, defendant.
No. 5685, law

PETITION TO DISMISS CAUSE OF ACTION

Comes now Charley R. Davis, plaintiff, in person, and prays the court that the above-entitled cause be dismissed without prejudice.

CHARLEY R. DAVIS, *Plaintiff.*

AFFIDAVIT

I, Charlie R. Davis, plaintiff in the above-entitled cause, swear that I have read the above petition to dismiss cause of action, and that the same was executed by me by my own free will and accord, without any suggestions from the defendant, the United States of America, or any of its attorneys or representatives.

CHARLEY R. DAVIS, *Plaintiff.*

Subscribed and sworn to before me this — day of —, 193—.

—————, *Notary Public.*

Here is the situation. We have a feeble-minded veteran, not knowing what he was doing, being advised by representatives of the Veterans' Administration to take an action entirely adverse to himself.

Senator WALSH of Massachusetts. This case is still pending in the courts?

Mr. STOLPER. This case is still pending in court.

Senator WALSH of Massachusetts. So that man would not get any benefit by these changes?

Mr. STOLPER. No. I am merely calling attention to that to show the tactics that are being used by representatives of the Veterans' Administration in the field. I doubt whether the Administrator of Veterans' Affairs knows anything about it. We have a number of such cases that I can cite here.

Senator WALSH of Massachusetts. Has this case been called to the attention of a Senator or Congressman?

Mr. STOLPER. A good many.

Senator WALSH of Massachusetts. Have they been able to find out whether there has been any injustice done these men or not?

Mr. STOLPER. I do not want to be unreasonable, but there has been so much injustice done—allow me to say, sir, that you yourself, and your own office, have been burdened with a great number of these claims. I have in my office a record of numerous claims from Massachusetts that I know have gone to your office. I have referred them back to the veterans, saying, "Now, you have able Senators and Congressmen. Go to them for help." Every Senator and every Congressman is burdened with those claims.

Senator WALSH of Massachusetts. I think I ought to say, though, that I have handled thousands of these claims, and I do not know of a single solitary instance where an injustice has been done a man. I know this to be a fact. I know of cases where the men in the Veterans' Bureau have misjudged the case, and have underestimated the man's disabilities, or have failed to make the connection with service that I thought they ought to make, but I must say that I can not recall a single case where there was any malice or deliberate injustice perpetrated upon anybody.

Mr. STOLPER. I want to say to you that, as I have said right at the beginning, I personally do not charge malice to anybody.

Senator WALSH of Massachusetts. Mistakes happen everywhere in life. We make mistakes in our votes. The President makes mistakes. Everybody does.

Mr. STOLPER. Unfortunately, these mistakes are not the exception. These mistakes are becoming the rule. These mistakes are such now that it is absolutely a question whether or not there are more errors than just actions taken.

Mr. Roberts here knows that he is called upon every day to correct mistakes in the field, but what are we asking here? Senator, we are not asking for anything except the right that you, in your great sense of justice—

Senator WALSH of Massachusetts. Can you bring me one case of one veteran who would be benefited by the enactment of any of these bills?

Mr. STOLPER. I can bring you hundreds.

Senator WALSH of Massachusetts. Where are they?

Mr. STOLPER. They are all over the country. I can mention cases to you right here and bring you hundreds of them.

Senator WALSH of Massachusetts. Let us mention them, so that we can look them up and see what the cases are.

Mr. STOLPER. With your permission, I will supply for the record a number of cases that will astonish you.

Senator WALSH of Massachusetts. We want to know the name of any veteran who is barred from bringing suit because of the statute of limitations, against the Government, on his insurance.

Mr. STOLPER. Senator, I am going to ask your indulgence to allow me a little time, so that I can supply those cases. I will supply a list of them. I shall be very glad to do it. If you say so, I will send Mr. Roberts a copy of that list.

Senator WALSH of Massachusetts. I wish you would do that.

Mr. STOLPER. In fact, I will send you just as many cases as I have time to collect in the time you give me. I can send them to you from Massachusetts, Oklahoma, New York, and everywhere from Maine to California.

Now, I want to thank you for your generosity in giving me the time to supply that list. I want to say that all we are asking for is, first, that the courts be opened to every just claim that may be filed.

Senator WALSH of Massachusetts. In other words, you want the veteran to be permitted at any time to bring a suit on his insurance?

Mr. STOLPER. Yes; for the simple reason that if he has a just claim, he is entitled to have it justly adjudicated, purely as a matter of fairness and justice all around. Even if the man has not a just claim—and I believe Mr. Roberts will bear me out when I say that a great many of these claims are lost, and judgment is given for the defendant, the United States, if the veteran does not make out a sound case. The Government does not stand to lose a single thing by being fair, just, and generous.

It has been held by the circuit court of appeals, the highest court that can consider these cases, that the burden of proof is upon the veteran. The district courts of the United States have all been fair, to the highest degree, to such an extent that a good many of these cases have been tried before the court itself, where a jury trial has been waived. I could name courts all over the United States, where a veteran would submit his case and take what is given to him, knowing that he is getting justice.

All that we are asking here from Congress is that the veteran's right be not taken away from him, and that the courts be not estopped from considering these claims.

There is another proposition, if the Senator please. Congress has attached a proviso that before any of these suits can be filed, before any of these suits can go before a court, the Veterans' Bureau, or Veterans' Administration, must first give either a refusal, or signify that it stands willing to pay the claim. Of course, if it stands willing to pay the claim, there is no suit in the matter. If it denies the claim, it has come to be known as a "disagreement" in the case. The "disagreement" is one of the requirements in order to lodge a case in court.

Our experience has been that we have had the greatest possible trouble in getting the bureau to act in the matter. I believe Mr. Roberts will bear me out, and if there is any question of it, I have the proof. There have been cases that have been pending before the bureau for 1, 2, and 3 years, and the claimants can not get any action.

Here is the injustice of the situation—and I say "injustice" advisedly—

Senator WALSH of Massachusetts. Do I understand, Mr. Roberts, that during that period of time, whatever it may be, whether it is 1, 2, or 3 years, the statute of limitations is suspended?

Mr. ROBERTS. The statute of limitations is suspended during the period the claim is pending.

Senator WALSH of Massachusetts. Therefore, we are concerned about trying to put a limit upon the patience of the veteran by trying to speed up action, and not oblige him to wait so long for a decision.

Mr. STOLPER. True, but the veteran has nothing to do with it. The Veterans' Bureau have the information in their files.

Senator WALSH of Massachusetts. But you are trying, by legislation, to compel an earlier decision by the Veterans' Administration, are you not?

Mr. STOLPER. We are trying to get you to say to them, "Here, you have to act with efficiency."

Senator WALSH of Massachusetts. What is your proposition on that?

Mr. STOLPER. We want Congress to look into the matter, and we want to put a definite time in the law, and say to the Veterans' Bureau, "You must act within that time, and if you are negligent, if you are careless, if you do not act within the time, we will waive the necessity of your positive action."

Senator WALSH of Massachusetts. One of the bills suggests six months.

Mr. STOLPER. We have asked for three months.

Senator WALSH of Massachusetts. The objection made by the Veterans' Administration to that, if I remember correctly, Mr. Roberts, is that a good deal of the information which the Veterans' Administration has to obtain comes from the veteran himself, and that it would be possible, if one wanted to do so, to delay giving that information until the six months' time had expired, during which the Veterans' Administration would have an opportunity to make decision.

Mr. ROBERTS. That is correct. Also, Senator, the majority of these claims are based upon alleged permanent and total disability existing back in 1918 and 1919. Therefore, when the claim is filed before the bureau, it is necessary for us to go back into that period and investigate and determine what was the industrial history of the man. It means a lengthy investigation, covering, possibly, many States, and to put a six months' automatic limit on it would not give ample opportunity for a fair investigation and determination of the merits of the claim.

I would just like to point this out, because the witness has referred to me on several occasions. At the present time there are approximately 8,000 suits pending in court. We are preparing those cases for trial. I know of no district in which the courts are hearing those cases so rapidly that they have heard all the cases pending before them, and the cases pending with us are being delayed for hearing in the courts because of the time they are pending in the administration. If the courts were to hear these cases from the present time on, it would take at least two years, in my estimation, even though they were given the right of way, to complete hearings on all those cases. As you know, the criminal cases have precedence over all others, and, therefore, approximately 1,000 cases a year are being tried by the courts.

Senator WALSH of Massachusetts. These cases are all cases that have been heard by the Veterans' Bureau and disallowed?

Mr. ROBERTS. The ones in court; yes, sir.

Mr. STOLPER. If the Senator please—

Senator WALSH of Massachusetts. I am quite sympathetic with the suggestion that the veteran ought not to be delayed or obliged to wait for two or three years to get a decision.

Mr. STOLPER. Senator, I can quote to you case after case where a veteran filed his claim before the Veterans' Bureau and died before they took any action.

Mr. ROBERTS. I would like to ask, Senator Walsh, for the names of any cases that have been pending three years.

Senator WALSH of Massachusetts. I am going to ask him for those; and I would like to get, also, from the Veterans' Administration the number of cases you have handled.

Mr. ROBERTS. You understand that there are approximately 40,000 pending.

Senator WALSH of Massachusetts. In the Veterans' Administration?

Mr. ROBERTS. Yes.

Mr. STOLPER. General Hines, in his letter to the Senate, says that 56,000 are pending.

Mr. ROBERTS. That is approximately the number. There are 40,000 now.

Mr. STOLPER. Here is the situation: That letter shows that the United States attorney for the western district of Oklahoma, in January, came into the United States court and asked a continuance, up to October, 1932, for 10 months, in the cases that have already been pending two or three years. The excuse given me for asking such a continuance was that the Veterans' Bureau has not supplied them facts upon which to bring in any pleadings.

I want to say this, with all due fairness: Congress can pass any legislation, but the Veterans' Administration almost has the life of the veteran in its hands. But there is one thing that neither Congress, nor the Veterans' Bureau, nor any executive department can do. They can not maintain life.

I am glad Mr. Roberts asked for this information, and I will be very glad to supply it. They know that any information we have in our files is available to them. I will be very glad to cite the cases that have been pending two or three years without any action by the Veterans' Administration, both to the Senate and to Mr. Roberts.

I am glad that Mr. Roberts spoke about the troublesome way of getting the evidence. I want the Senator to bear in mind that they have in their own files all the evidence they have to get.

For example, a man came out of the Army, we will say, in 1918 or 1919. He made a claim to the bureau for war-risk insurance. If you remember, you passed an act on that early in 1916, I believe. Then, after the bureau of war-risk insurance was legislated out of existence, and the Veterans' Bureau was created, sometimes every three months, sometimes every six months, they had the man in their hospitals. Every man has a file that big [indicating]. All they have to do in those cases is merely to take their folder and see what is there. They have the information from their own doctors, from their own examination, and from their own hospitals. They can decide, in six hours, whether it is a just or unjust claim.

It is merely when the man has not got a friend in court that the man's case is neglected, where inefficiency is rampant, and it takes months and months, and years and years. There is the trouble.

As I have said before, I do not want to be understood, in anything I say, as reflecting upon the head of the Veterans' Administration,

nor upon the men near the head of the Veterans' Administration, but I do want to say to you that you will hear this same complaint reiterated from Maine to California. You will hear it in Massachusetts. You will hear it in New York. You will hear it in Oklahoma. You will hear it in Kansas. The men come in and put up their cases to the Veterans' Bureau, and it is an endless task, a hopeless task.

That is why we want you, who have the power of legislation, to say to them, "Now, you have a certain time within which to act; you must be efficient. You must be alert. You are a public servant. You must serve the public."

The Veterans' Administration are not public servants any more. They are handling the veteran now, absolutely at their mercy.

I say that with all kindness to the Veterans' Administration, but I am talking about the field, and it is the field that is handling the men. Mr. Roberts can not see every veteran that is being handled in the regional offices.

There is another situation. In those war-risk insurance cases, when it comes to a question of disagreement, up to now, there was absolute stagnation. Up to now, you had to send everything to Washington, and a small body of men had to pass upon those 56,000 cases, and if that small body of men were entrusted with the duty of passing upon those 56,000 cases, I would be dead, Mr. Roberts would be dead, and the veterans surely would be dead, before any action took place. There is the situation. That shows the necessity of these measures.

There is another thing. Neither the Veterans' Administration, nor the Government, can be injured in any way by taking a definite time in which they must submit a disagreement. Suppose they have not had time, as they say. Suppose they were too busy with other things, and could not attend to Mr. John Henry's case. All right. The time will expire, and there will be a presumptive disagreement, and the case will be pending in court. During the time the case is pending in court, if they get ready to pay the man off, the man will dismiss the case without hesitation. They can not lose anything by that. The man is the loser, whichever way it goes, because the Veterans' Administration has the whole matter under its control.

I know of a certain case that has been hanging fire for nearly 12 years. Suit finally was brought. The matter was put up to me, and I have construed that there was a constructive disagreement in the case. After suit was brought and the case was ready for trial the Veterans' Administration finally recognized, pretty late, that that was a just case, and they signified willingness to pay. That case was dismissed and they were given a chance to make settlement.

There is not any reason on God's green earth, as a matter of justice, as a matter of fairness, why there should not be a time limit within which the Veterans' Administration should act. We have other departments of the United States Government. Take the Internal Revenue Department. Take the Income Tax Bureau. A man has to make a report by a certain time and has to pay his income tax by a certain time, or there are penalties attached to it. Here is a great bureau that deals with whom? With sick men, with disabled men, and in these cases dealing with men who must be totally disabled. They must be permanently disabled. All hope of recovery

must have gone from them. And yet, with respect to those men, there is no limitation as to how long the bureau can hold up settlement of their cases. So much for the question of disagreement.

I believe, in all fairness to everybody, in all fairness to all the men in the 48 States of the Union, that there should be a limitation within which the Veterans' Bureau must act, and if they do not act, the courts of the United States should be given the right to act without regard to the Veterans' Administration, making the disagreement presumptive.

We have all confidence in the courts of the United States. There is no reason why the Veterans' Administration should have the last say upon the man's fate. If the Veterans' Administration can not decide whether or not the case is just, why not submit it to the courts, as Congress has said they have jurisdiction, and let the courts of the United States say whether it is a just claim or not? If it is a just claim, the man will get what he is entitled to. If it is not a just claim, the judges of the United States courts will do what is right and just, and the man will get nothing.

Why, then, deny the man his day in court? Why drag it out forever—often until the veteran is dead?

I have in mind a case pending in Arkansas. I will give you the number, and the whole thing, Mr. Roberts. The case has been pending so long that the man died while the case was pending. He will remain dead forever. I can cite case after case where absolutely no action at the hands of the Veterans' Administration could be had. If you write to the Veterans' Bureau, they send you a stereotyped letter, "As soon as possible we will give it consideration."

There is another thing I want to call to the Senator's attention. When the Congress of the United States prescribes certain conditions, and when Congress says it means a certain thing, that ought to be binding upon the executive departments. Congress has stated what a man should do in order to establish a claim before the Veterans' Bureau. The bureau was not satisfied with that. On top of the requirements provided by Congress the Veterans' Administration built up a whole structure that is absolutely unwarranted by law.

A man makes a claim, and what does he get? The law says that informal claims are good. All that a man has to do under the law is merely to indicate that he is making a demand for his insurance. The bureau is not satisfied with that. They went and got up a number of blanks, and I submit the blanks here for the Senator's consideration. They say, "All the information we have does not mean anything. Start all over again."

I want to show to the Senator the attitude that different people have had, and that organizations have had. Here is a letter—and I have taken a real carbon copy of a letter, so that it can not be said it is a spurious affair. This letter was addressed, the 1st of June, 1929, to Mr. William A. Gard, of Hooker, Okla. I want to show you the veteran's point of view. This is a carbon copy of a letter written by me on June 1, 1929, in reply to a question about a claim for insurance [reading]:

JUNE 1, 1929.

MR. WILLIAM A. GARD,
Hooker, Okla.

DEAR SIR: Referring to your request and my promise to obtain relief for you in your war-risk insurance claim against the Government, you are informed

that I have taken the necessary steps to protect you against the running of the statute of limitations; in other words, we have protected you against the time running against you, and you will hear directly from the Veterans' Bureau—

There is another thing. You make a claim to the Veterans' Bureau, and you never know what they are going to do about the matter. [Continuing reading:]

When you get the letter from the bureau, send it immediately to this office, and we will tend to it.

It is now up to you to furnish us with the best evidence you can possibly obtain, so as to convince a court and possibly a jury of the justice of your claim, and in connection with this claim we desire to remind you that your claim is not against any private party, but the Government of the United States, and this office will under no condition bring any suit against the United States Government, unless we are convinced that it is a just case.

That is the attitude we take.

The Government of the United States is our Government, that is yours and mine; it is entitled to all the protection from us we are possibly able to give it; should you and your evidence prove to me, beyond every doubt, that you can not follow any gainful occupation continuously, I will do my utmost to fight your case in court and get the insurance money for you, for in such case, the Government wishes you to have the money, for just as it is your and my duty to protect the Government, so it is the Government's duty to protect the rights of its citizens, and when a citizen wins a case when such citizen is right, both he and the Government are the winner. So please get together your evidence, send me the names and address of the witness, medical and nonmedical, that you rely upon to prove your case, and tell me in as few words as possible what each witness can and would testify to, and you will hear from me.

This is an exact carbon copy of the letter. That is the attitude of veterans and veterans' organizations. In other words, we are not going to bring suit against the Government unless it is justified. The veteran has to try his case before me before I let that case go to court.

That man is put to the trouble of trying his case before me first, and then before the court. If we can not get any action from the Veterans' Bureau, we are absolutely helpless. So much, if the Senator please, on disagreement.

I want to call your attention particularly to page 2, line 22, of Senate bill 3591, known as the McGill bill. There is a situation that the Congress of the United States ought to give consideration. We have had a great body of men brought together, and brought together under military conditions. Certain diseases have developed, and a good many of the draft boards inducted sick men into service, whose diseases have become aggravated. Some of those diseases have been classified by the Veterans' Bureau as "misconduct" diseases. These men have been helpless. These men, for 14 years, have received absolutely no help at all, and here is where the pity comes. Congress said in its generous way, "Now, if this man becomes bedridden, if this man becomes blind, if this man becomes insane, then, notwithstanding that it may be a misconduct disease, let us help him and let us pay the compensation."

What do we find has been done? The Veterans' Bureau of the comptroller has decided that in the event that man was inducted into service against his will, and he was taken in a sick man, and his condition became aggravated just because he was taken into the service, because he had that condition before, he should not be paid anything,

and the will of Congress is absolutely destroyed by an executive officer.

I have here a particularly aggravated case, and I have brought the original letter with me. Here is a case of a man desperately sick with paresis. Paresis, if the Senator please—and I speak now as a doctor. I happen to be both a physician and a lawyer. Paresis is supposed to be caused by the third stage of syphilis. The man, under the present conditions of medical science, is absolutely beyond help. The case is admitted to be so, but here is what has been done. The Comptroller General of the United States, in a ruling, has held that any disability such as paralysis, paresis, and so forth, resulting from syphilis, which the claimant admits he contracted prior to enlistment in the military service, may not be held as of service origin. This policy is further enunciated in central office circular 444.

Here is the situation. Congress, the Senate, and the House, in their generous way, have said that when a man gets beyond any hope of recovery, if he suffers from paresis, notwithstanding the fact that it may be a "misconduct" disease, you should pay him, and you should help him, and not let him starve. Yet, two executive officers, the Comptroller of the Treasury, and the Administrator of Veterans' Affairs, say, "No; it does not make any difference what Congress says. We will just deny him that."

Senator WALSH of Massachusetts. When was that decision?

Mr. ROBERTS. It started in 1923. There was a series of decisions, known as the "misconduct" decisions, starting in 1923. I think the last one was rendered in about 1927. The statement by Colonel Stolper is hardly correct. If the man can show service origin of the disease, and that it was acquired while he was in the military service, or if he can show that it existed prior to the time he went into the service, and that it was aggravated while in the service, nevertheless, notwithstanding its misconduct origin, if it develops into paresis, paralysis, blindness, or helplessness, he is entitled to compensation and pay. The difficulty in those cases—and this is one of them, apparently—where the disability existed before going into service, is to show aggravation, as contrasted with natural progress. The physicians will all tell you that it is natural progress and not aggravation.

Mr. STOLPER. I believe Mr. Roberts will allow me to speak for my profession—and I speak advisedly. A great university of your own State, Senator, has certified that I have a right to speak on medical subjects.

Senator WALSH of Massachusetts. What university is that?

Mr. STOLPER. Harvard University, post graduate course. I do not appear here as a doctor, but all my services are at the disposal of my country and of the veterans. I want to say to you that I am going to be courteous to Mr. Roberts, but when two men conflict, with directly opposite views, it sometimes requires restraint in order not to appear discourteous. Here is the situation. If there is any disease that is aggravated by military discipline, nothing is more aggravated than syphilis. That does not require any proof in the matter. In the case of syphilis and in the case of tuberculosis, mere exertion will merely greatly aggravate the condition. Every disease is a

progressive disease. Tuberculosis is a progressive disease. Pneumonia is a progressive disease. Bronchitis is a progressive disease.

Now, Congress has said that when a man gets to that stage, he should be taken care of. It was a generous Congress—broad-minded Senators and broad-minded Representatives, supported by the people of the United States. Here come two executive officers who say, "Notwithstanding what Congress has done, we will just impose our will."

The case I have in mind is as pitiful a case as I know of in the State of Oklahoma. The man is dying inch by inch, going insane, and yet he has a family to support and can not get 1 cent from the Veterans' Administration.

If the Senator please, that [indicating] is an official letter.

Mr. ROBERTS. May I interpose right there, Senator Walsh?

Senator WALSH of Massachusetts. Yes.

Mr. ROBERTS. The rulings to which Colonel Stolper referred are rulings of the Comptroller General, who overruled the rulings of the Veterans' Administration. Within the last 30 days, as solicitor of the Veterans' Administration, I have rendered an opinion to the administrator on this subject, and that has been referred to the Attorney General, for the reason that it would involve a change in the Comptroller General's decision, and we have asked him the question as to whether, in the light of the amendment of July 3, 1930, giving the administrator finality of decision on questions of law as well as of fact—whether, as a matter of law, he would be justified in reversing a ruling made by the Comptroller General, which stood through the succeeding sessions of Congress without amendment to the law. The Attorney General has tentatively acknowledged that, and I have a conference arranged with him for some time next week. As to what the final outcome will be, I do not know.

Mr. STOLPER. I am very glad to hear Mr. Roberts say that. I am glad that some relief will come from somewhere, because it is time, after 14 years.

Mr. ROBERTS. Do not misunderstand me. I do not say the relief will come. I do not know what the result will be.

Mr. STOLPER. I hope it will. If not, Senator Walsh is here, and we will come back to him and ask him for relief.

Senator WALSH of Massachusetts. As you know, of course, this whole question of misconduct has been before the Congress for a great many years, and I have always favored liberalizing the law in misconduct cases, and have advocated it upon the floor of the Senate, but we have been defeated time and time again, and the law stands as originally made, permitting compensation in the extreme cases that you describe, cases of blindness, paralysis, and paresis.

Mr. STOLPER. Now, if the Senator please, I want to call attention to another matter. Taking the law as it stands to-day, and the practice of the Veterans' Bureau, the Veterans' Bureau is making conditions absolutely intolerable, and it is absolutely imperative that we have legislative expression in order to clear the atmosphere.

I want to read a paragraph for your information. That is an official copy, coming from H. L. McCoy, director of insurance, addressed on December 8, 1931, to Mrs. Lula Denton Lee, care of H. A.

Hicks, attorney at law, Ardmore, Okla. It pertains to the insurance claim of Irven Horine Denton, XC-732-816. Here is what is stated:

DEAR MADAM: This is with further reference to the above-entitled claim. You have been informed that a decision was rendered on September 4, 1931, by the insurance claims council to the effect that the evidence is not sufficient to establish as a fact that the former insured was totally and permanently disabled at a time when the contract of insurance was in force, and therefore the claim has been denied.

You may consider such denial final for the purposes of instituting suit under section 19 of the World War veterans' act, 1924, as amended.

With the permission of the Senator, I desire to call your attention to this paragraph, because it is the meat of the thing:

If you accept the denial of the claim by the council as final, the suspension of the statute of limitations provided by section 19 shall cease from and after the date of this letter plus the number of days usually required by the Post Office Department for the transmission of regular mail from Washington, D. C., to your last address of record.

Here is the situation. The act of Congress here provides that the statute shall be suspended for the time it takes the Veterans' Bureau to consider the claim. Some courts have held that only during the time the Veterans' Bureau is considering the claim, the statute is suspended. In other words, unless the case is promptly filed, the moment the letter carrier blows his whistle and brings the letter in and hands the letter to the party, if that case is not filed on that day, it can not be filed in court. That is the construction the Veterans' Administration has placed upon it, and that is the construction some courts have placed upon it.

Now, it is absolutely a physical impossibility, after a case has been held, sometimes for months and months, or years and years, to have the case filed on the day when the Post Office Department delivers the letter. If that is not done, the Veterans' Administration many times has come into court stating that a case has been brought too late. The Veterans' Administration has taken the position that—and that is what it says in this letter—the suspension of the statute ends on the day that this letter is delivered. That is imposing an impossible physical condition. Nobody can anticipate; nobody knows what the Veterans' Bureau will do. They do not give any advance information. The mail comes in, and the letter carrier hands you the mail. They have come into the court in a number of instances and have moved to dismiss the suits on account of the laches of the plaintiff; that he came in too late, and did not bring suit on the day when he received the letter. That is a physical impossibility. Every lawyer in Congress will tell you that it is impossible to prepare a suit and to file a suit in its final form, to lodge in court on the day that the post office delivers the letter.

I believe that Congress will be generous enough to say, "We will give the man some time in which to act," and therefore we ask that we have six months' time from the time of the denial, in which to bring suit.

At least, if equity should be done, equity should be done on both sides. We are willing to give them six months' time in which they should either allow or deny the claim, and we are asking for six months' time for the veteran to bring the suit in the event they deny the claim, because otherwise it is absolutely physically impossible, if

a person has to do the thing simultaneously with the delivery of the letter. He will never be able to bring suit.

In conclusion—

Mr. ROBERTS. May I interpose there, Senator, so that the record will be a little clearer?

Senator WALSH of Massachusetts. Yes.

Mr. ROBERTS. The statute provides that the running of the statute of limitations shall be suspended for the period the claim is pending before the administration. The only case I know of wherein it would be necessary for them to file suit on the same day that they receive the letter, would be where the man filed his claim with the administration on the last day permitted by the statute of limitations, and even in those cases I am surprised to know that the statute was pleaded if the suit was timely filed, and there was no unreasonable delay beyond that period, because we went to the trouble of securing from the Attorney General a letter to all United States attorneys directing them to give this added period which, really, under the statute, is not allowed. That is the period taken between the date of our mailing of the notice and the date of its receipt by the veteran, in order that he might have ample time to file suit.

Mr. STOLPER. Senator, may I ask Mr. Roberts to supply this record with a copy of that letter so that it will be in the record? I am willing to supply copies of anything he wants. We would like to have a copy of that. That has been my construction of the statute, and it has been construed that way by Judge Martineau, of the eastern district of Arkansas; but that is not the way it is being construed by the director of insurance and by a good many courts. That is really the logical, proper construction of it, but, unfortunately, it is not getting that construction.

In conclusion, I want to say that I want to thank Senator Walsh for his patience and his kindness in giving us this hearing. I want to say, speaking for myself—and in speaking for myself I speak for the veterans I represent—that I do not think I am making a mistake in saying that every veteran in the United States, when he knows of this action, will be just as grateful as I am for your kindness in giving us a hearing before this committee.

The attitude of the Veterans' Administration, unfortunately, in every claim—and I have before me all the veterans' legislation that a generous Congress has passed, from 1916 up to 1931—I will say that the Veterans' Bureau and the Veterans' Administration has made an unfavorable report upon every piece of legislation that was before Congress, with the exception—and no thanks is due to them for that exception—of that compromise monstrosity of July 3, 1930. Of course, that was an administration measure, and whether they favored it or not, I have no record of it. But I want to say to you, and I want to say to the generous Congress, that you can not find here in this veterans' legislation—and I have here every act, from 1916 to 1931—where the Veterans' Bureau and the Veterans' Administration ever recommended favorably a single act in favor of the veterans.

When we came in here, and we were fighting the battles of the veteran, we were always met with an adverse recommendation from the Veterans' Administration.

I want to say to you, Senator, that there is not a kinder, more amiable gentleman than General Hines personally, but there is not a more hard-hearted man officially than General Hines. Whether he signs his name on paper or not, I do not know. There is a lovely man, an amiable man, a generous man, who has always been, officially, against the veterans. Whether that is General Hines's attitude, I do not know. It may be that he has received orders from above. I can not say, but that is how we in the field feel.

We are grateful to you, Senator Walsh. We are grateful to the Finance Committee for giving us this hearing, and I want to say to you, in the name of the totally and permanently disabled veterans, that I hope you will be generous and reopen the courts to them, and that you will be wise in the future, as you have been wise in the past. I hope you will say to your servants, the agents you have created, the Veterans' Administration, that they must be alert, that they must be efficient, and that they will have a certain time within which they must act. Use your own sound judgment. Make it 90 days, or make it 6 months. Make it whatever you see proper. But for God's sake put a time limit on them, in which they must take some action.

Senator, I thank you.

(Whereupon, at 12 o'clock noon, the committee adjourned.)