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SENATE

{ REPORT  
{ No. 1376

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## TO AMEND SETTLEMENT OF WAR CLAIMS ACT OF 1928, AS AMENDED

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JUNE 6 (calendar day, JUNE 11), 1934.—Ordered to be printed

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Mr. HARRISON, from the Committee on Finance, submitted the following

### REPORT

[To accompany S.J.Res. 135]

The Committee on Finance, to whom was referred the joint resolution (S.J.Res. 135) to amend the Settlement of War Claims Act of 1928, as amended, having considered the same, report favorably thereon with amendments, and recommend that the resolution, as amended, do pass.

Following the war, German nationals had claims against the United States such as claims arising from our seizure of property owned by German nationals. Similarly, American nationals had claims against the German Government arising out of the war. On July 2, 1921, Congress passed the Knox-Porter Peace Resolution (later incorporated in the Peace Treaty between the United States and Germany) which provided that none of the property of the German Government and German nationals which was seized during the war should be returned until Germany had made suitable provision for the satisfaction of the claims of the United States and its nationals against Germany arising out of the war.

Germany was not in a position to make a lump payment of the amount due to Americans. Accordingly, the United States consented to the German-American Debt Agreement (June 23, 1930) under which Germany agreed (among other things) to make payment in installments over a period of years of an aggregate amount equal to the estimated amount due to American nationals. The installments were not sufficiently large to permit of early payments in substantial amounts. Accordingly, the American Congress appropriated \$86,000,000 to be deposited in an account known as the "German Special Deposit Account", out of which payments were to be made in accordance with priorities established in the Settlement of War Claims Act

of March 10, 1928. Of this \$86,000,000, approximately \$43,000,000 was paid to American nationals and \$43,000,000 to German nationals.

The German Government took advantage of the provisions of the German-American debt agreement permitting postponement of its principal installment payments for a period not exceeding 2½ years. On March 31 of this year both the postponed installments and the installment due on that date became payable, but were not paid. The German Government did, however, make payment of interest as required by the agreement until last September, when, instead of making the interest payment to the United States, it notified the United States that it had established a credit in marks in a German bank corresponding to the interest due. On March 31 of this year Germany made payment in dollars in the United States of the current interest due; but as previously stated, failed to make payment of the principal installments due. Furthermore, the German Government has failed to make satisfactory assurances as to when those installments will be paid.

The result is that while the United States has fulfilled its undertakings, Germany has failed to make suitable provision for the satisfaction of the claims of the United States and its nationals called for in the Knox-Porter peace resolution. Under these circumstances it would appear to be in accord with the policy of the Congress as declared in that resolution to postpone any further liquidation of the claims of German nationals against the United States until the German Government fulfills its undertakings to provide for satisfaction of the claims of American nationals against it. The resolution reported is designed to carry out this policy.

The foregoing is stated in very general terms for the reason that it would be difficult to present in brief form a picture of the whole question of the war claims were an attempt made, at the same time, to set out the details and the necessary qualifications covering variations not essential to the point at issue.

A detailed statement of the situation, together with an explanation of amendments similar to those agreed to by your committee, and which are clarifying in character, is contained in the report (appended herewith) of the House Committee on Ways and Means upon a companion resolution, House Joint Resolution 365.

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[H.Rept. No. 1924, 73d Cong., 2d sess.]

The Committee on Ways and Means, to whom was referred the joint resolution (H.J.Res. 365) to amend the Settlement of War Claims Act of 1928, as amended, having had the same under consideration, report it back to the House with amendments and recommend that the joint resolution as amended do pass.

The amendments are as follows:

On page 3, line 11, strike out "any or".

On page 4, line 14, after "postponed" insert "under this resolution".

On page 4 strike out in lines 15 to 18, inclusive, the following: "the action of the President in determining the period or periods in which Germany is in arrears in the payments hereinbefore described shall not be subject to judicial review" and insert in lieu thereof "the President is authorized to determine, for the purposes of this resolution, the period or periods in which Germany is in arrears in the payments hereinbefore described and his determination thereof shall not be subject to judicial review".

The purpose of this resolution is to postpone (a) further payments to German nationals from the German special deposit account in the Treasury Department,

established under section 4 of the Settlement of War Claims Act of 1928, on account of awards made by the War Claims Arbitrator for ships, patents, and a radio station seized and used by this Government during the war, and (b) further return of property belonging to German nationals held by the Alien Property Custodian, while Germany is in arrears on her payments on claims of American nationals under the debt agreement of June 23, 1930.

By the terms of the settlement of War Claims Act, the awards in favor of German nationals for ships, patents, and a radio station and the awards entered by the Mixed Claims Commission against Germany in favor of American nationals were to be paid in accordance with the scheme of priorities established in section 4 (c) of the act.

Germany is now in arrears on the payments due under the debt agreement of June 23, 1930, and there is no assurance when those arrears will be discharged or further annual payments made. It is not felt that this Government should make further payments to German nationals from the limited funds that may be available in the German special-deposit account, or that it should return the small amount of property still held by the Alien Property Custodian while Germany's obligations under the debt agreement remain in their present state.

The resolution withholds all amounts which may become payable to German nationals under the Settlement of War Claims Act of 1928 and withholds the return of all property belonging to German nationals now held by the Alien Property Custodian under the Trading with the Enemy Act as amended. In view of the many complicated matters involved it is believed that a review of the problems before Congress at the time it passed the Settlement of War Claims Act and a review of subsequent events may be useful to the Members of the House.

The Settlement of War Claims Act of 1928 was approved March 10, 1928. The act is complicated by reason of the innumerable complex situations covered by it and also by the complexities of the Trading with the Enemy Act, which was amended in several particulars by the Settlement of War Claims Act.

There were three major problems involving the United States and its nationals and the German Government and its nationals arising out of the war which the act attempted to settle. In order not to unduly complicate the matter, similar problems involving the United States and its nationals in their relation to the Austrian and Hungarian Governments and their nationals, also covered in the act, are not covered in this report. The three major problems referred to were as follows:

1. *Alien property.*—Property of German nationals in the United States was seized during the war by the Alien Property Custodian under the provisions of the Trading with the Enemy Act, as amended, and a large part, estimated at a value of over \$200,000,000, was being held at the time of the enactment of the Settlement of War Claims Act with no authority in the Executive to return it. Under the Knox-Porter peace resolution of July 2, 1921, quoted in part in the first paragraph of the preamble of House Joint Resolution 365 and which was incorporated in full in the Treaty of Berlin, the United States unquestionably possessed the right to retain this property until Germany had made suitable provision for the satisfaction of the claims of American nationals against the German Government. Congress in the Settlement of War Claims Act authorized the return of 80 percent of the aggregate value of the property of German nationals so held, and further authorized that the remaining 20 percent of the aggregate value of such property be retained and invested in 5 percent certificates which participate under certain conditions and in a certain order of priority in the funds in the German special deposit account in the Treasury created by the Settlement of War Claims Act.

2. *Mixed claims.*—The United States Government and many American nationals suffered losses during the war period by reason of acts for which the German Government was responsible, and their claims had to be satisfied. A commission, known as the "Mixed Claims Commission, United States and Germany", was created by the agreement of August 10, 1922, to hear and determine the claims and to enter awards for the losses for which Germany was responsible. Through arrangements made by the Secretary of State with the Allied Governments, there had been allocated to the United States under the provisions of the Finance Ministers' agreement of January 14, 1925, 2½ percent of all receipts paid by Germany which were available for reparation payments, with a proviso that the sum so allocated should not exceed 45,000,000 gold marks in any one year. The United States was, therefore, receiving at the time of the enactment of the Settlement of War Claims Act approximately \$11,000,000 per annum through the Reparation Commission for account of Germany's obligations.

By passing the Settlement of War Claims Act, Congress in effect recognized that arrangements had been made which if fulfilled constituted a "suitable provision for the satisfaction of all claims" against Germany required by the joint resolution of July 2, 1921. By the debt agreement of June 23, 1930, an arrangement was made directly with Germany which superseded the previously mentioned arrangement and provided for the gradual liquidation of the Mixed Claims awards through the payment of an annual sum of 40,800,000 reichsmarks (\$9,700,000) for a period of 52 years, in semiannual installments of 20,400,000 reichsmarks each. Congress approved this agreement. But if the American claimants had been forced to rely upon only the distributive share in the payments to be made under the two arrangements mentioned, more than 70 years would have been required for payment in full. It was necessary, therefore, that some method be provided by which the American claimants could obtain a more immediate payment.

3. *Awards of War Claims Arbiter in favor of German nationals.*—The United States Government, under the authority of a joint resolution of Congress, during the war seized and took title to a large number of ships owned by citizens of Germany and acquired for its own use during the war a large number of patents and a radio station. The United States recognized a duty to make compensation on these accounts to the German nationals for the value of their property so taken and used. The Settlement of War Claims Act created the office of War Claims Arbiter and authorized the Arbiter to hear the claims of the German nationals and to determine the fair compensation to be paid by the United States. Some provision had to be made for the payment of the amounts determined to be due.

The Settlement of War Claims Act recognized the close relationship between the three problems and their solution as a whole. Under the circumstances, it was not possible to provide for the immediate payment of all American claimants, nor the immediate payment of all owners of the ships, patents, and the radio station, nor the immediate return of all the alien property. The act did, however, provide for the immediate payment of as large a percentage as possible of the claims of the American nationals and the German nationals, and for the return as of large a percentage as possible of the alien property, with a provision for the payment of the balance due over a period of years.

The act created in the Treasury a German special deposit account into which the Secretary of the Treasury was directed to deposit the following funds:

(a) All sums invested by the Alien Property Custodian under the provisions of section 25 (a) of the Trading with the Enemy Act, as amended, which represents 20 percent of the aggregate value of the property of German nationals temporarily retained by the Alien Property Custodian. As the funds are invested as required by the Trading with the Enemy Act and deposited in the German special deposit account, the Secretary of the Treasury issues to the Alien Property Custodian a 5 percent participating certificate, which is payable in accordance with the priorities hereinafter enumerated.

(b) All sums transferred by the Alien Property Custodian under the provisions of section 25 (b) of the Trading with the Enemy Act, as amended, which was referred to as the "Unallocated interest fund" and which represented the interest accrued prior to March 4, 1923, on investments of funds of the Alien Property Custodian, plus interest on the investment of such interest after March 4, 1923. No authority of law existed for distributing any interest accruing on the investment of the funds prior to March 4, 1923, the date of the approval of the Winslow Act, which act authorized the return of not to exceed \$10,000 per annum to any one person, of the income accruing after that date.

(c) Amounts appropriated by Congress for the payment of awards of the War Claims Arbiter in favor of German nationals for ships, patents, and a radio station.

(d) All moneys received from Germany on account of the awards of the Mixed Claims Commission in favor of American nationals.

(e) Earnings on investments of funds in the deposit account.

The act authorized and directed the Secretary of the Treasury to make payments out of the German special deposit account in the following order of priority:

(1) Payment of expenses of administration.  
 (2) Payment in full of awards in favor of American nationals attributable to death and personal injury, together with interest thereon up to the date of payment.

(3) Payment in full of awards in favor of American nationals the amount of which, including interest to January 1, 1928, does not exceed \$100,000, together with interest on such amount from January 1, 1928, to the date of payment.

(4) Payment of \$100,000 on account of awards in favor of an American national, the amount of which, including accrued interest to January 1, 1928, is in excess of \$100,000, provided no person shall be paid an amount in excess of \$100,000 under this priority, irrespective of the number of awards made in his behalf.

(5) Additional payments on awards in excess of \$100,000, including interest to January 1, 1928, entered in favor of American nationals, as and when funds are available for this purpose as determined by the Secretary of the Treasury, until the aggregate payments authorized by priorities 2 to 5 equal 80 percent of the aggregate amount of the awards entered, including interest to January 1, 1928.

It is pointed out that all the payments authorized by paragraphs 2, 3, and 4 above have been practically completed. There are a few cases remaining unpaid because the claimants cannot be located and for other reasons, but funds have been reserved for their complete payment. As to paragraph 5, payments have been made which aggregate about 74½ percent of the amount authorized to be paid under these priorities. There remains, therefore, approximately 5½ percent (about \$2,000,000) to complete this priority to American nationals.

(6) Payment to German nationals of 50 percent of the awards entered by the War Claims Arbiter for ships, patents, and a radio station, including interest to December 31, 1928. The Secretary of the Treasury was authorized to pay this amount without regard to any of the other priorities.

(7) Payment of accrued interest upon the 5-percent participating certificates evidencing the amounts invested by the Alien Property Custodian.

(8) Payment of accrued interest since January 1, 1928, on awards of the Mixed Claims Commission in excess of \$100,000 in amount, including accrued interest to January 1, 1928, in favor of American nationals and accrued interest since December 31, 1928, on awards of the War Claims Arbiter in favor of German nationals for ships, patents, and a radio station, including accrued interest to December 31, 1928.

(9) Pro-rata payments, to the extent funds are available, (a) to the Alien Property Custodian on the 5 percent participating certificates held by him as evidence of the investment of funds representing 20 percent of German property temporarily retained; (b) to German nationals on account of the balance due on their awards entered by the War Claims Arbiter for ships, patents, and a radio station, including interest to December 31, 1928; and (c) to American nationals on account of the balance due on awards in excess of \$100,000 in amount, including interest to January 1, 1928, entered by the Mixed Claims Commission.

(10) Payment to German nationals on account of the "Unallocated interest fund." No interest accrues on this sum.

(11) Payment to the United States Government on account of awards entered in its behalf by the Mixed Claims Commission, together with interest on such awards.

The Trading with the Enemy Act, as amended by the Settlement of War Claims Act, authorized the return of 80 percent of the aggregate value of the property of German nationals, as determined by the Alien Property Custodian; authorized the temporary retention of the remaining 20 percent; and authorized that funds equal to the value of such property so retained be paid to the German nationals from the German special deposit account in the order of priority established by the Settlement of War Claims Act.

The following is a statement showing the amounts of the various classes of claims, the payments made on account of each class, and the balance due as of March 31, 1934:

I. Principal of awards of Mixed Claims Commission.....	\$128, 500, 000
Interest to Jan. 1, 1928.....	40, 500, 000
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Amount due Jan. 1, 1928.....	169, 000, 000
Payments made on account.....	134, 000, 000
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	35, 000, 000
Interest accrued at 5 percent per annum, from Jan. 1, 1928, to Mar. 31, 1934.....	19, 000, 000
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Balance due as of Mar. 31, 1934.....	\$54, 000, 000

II. Principal of awards of War Claims Arbitrator.....	\$63, 200, 000	
Interest to Dec. 31, 1928.....	23, 500, 000	
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Amount due Dec. 31, 1928.....	86, 700, 000	
Payments made on account.....	43, 400, 000	
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	43, 300, 000	
Interest accrued at 5 percent per annum from Dec. 31, 1928, to Mar. 31, 1934.....	16, 100, 000	
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Balance due as of Mar. 31, 1934.....		\$59, 400, 000
III. Twenty percent of German property temporarily retained:		
Investment by Alien Property Custodian.....	17, 550, 000	
Investment yet to be made by Alien Property Custodian (\$15,500,000).		
Interest accrued on investment to Mar. 31, 1934.....	3, 600, 000	
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Balance due as of Mar. 31, 1934.....		21, 150, 000
IV. Unallocated interest fund.....		21, 750, 000
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Amount due private claimants from German special deposit account as of Mar. 31, 1934.....		156, 300, 000
V. Principal of awards entered in behalf of the United States Government.....	42, 035, 000	
Interest to Mar. 31, 1934.....	38, 300, 000	
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		80, 335, 000
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Total including accrued interest.....		236, 635, 000

In addition it is understood that the Alien Property Custodian has property in his hands valued at approximately \$10,000,000, of which 80 or 90 percent is estimated to belong to German nationals. Under the law as it now stands, 80 percent of this property would probably be returned this calendar year, the remaining 20 percent to be retained for deposit in the German special-deposit account.

The following shows the funds made, or to be made, available to the German special-deposit account and the payments that have been made out of such account:

Receipts:

From investments of Alien Property Custodian under Trading with the Enemy Act, as amended:		
Unallocated interest fund.....	\$21, 750, 000	
20 percent German property retained.....	17, 550, 000	
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Total.....		\$39, 300, 000
From Germany:		
2¼ percent of receipts as authorized by Finance Ministers' agreement of Jan. 14, 1925.....	32, 183, 000	
Under debt agreement of June 23, 1930..	20, 198, 000	
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Total.....		52, 381, 000
Appropriation made by Congress for ships, patents, and radio station (awards for War Claims Arbitrator).....		86, 852, 000
Earnings and profits on investments.....		4, 181, 000
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Total receipts.....		182, 714, 000

## Payments:

On account of awards of the Mixed Claims Commission.....	\$134, 000, 000
On account of awards of the War Claims Arbitrator.....	43, 368, 000
Miscellaneous payments (expenses, etc.).....	817, 000
<b>Total.....</b>	<b>\$178, 185, 000</b>
Balance in German special-deposit account.....	4, 529, 000
Funds in hands of Alien Property Custodian available for deposit in German special-deposit account.....	15, 500, 000
<b>Total available to German special-deposit account.....</b>	<b>20, 029, 000</b>

It will be noted that the funds now available to the German special deposit account amount to about \$20,000,000, which are being reserved to make payment on account of any awards which the Mixed Claims Commission might enter on the claims now pending before it. In case awards are entered on account of the claims now pending before the Commission, payments will be made in the same manner and to the same extent as payments have already been made on account of awards entered and certified for payment. On the other hand, if the claims pending before the Commission are disallowed, the \$20,000,000 held in reserve will be released and distributed to American and German nationals in accordance with priorities specified in section 4 (c) of the Settlement of War Claims Act, hereinabove enumerated. In such case the funds made available, together with 80 percent of the value of the property in the hands of the Alien Property Custodian estimated at \$6,500,000, or a total of \$26,500,000, would be distributed approximately as follows:

## To American nationals:

Balance of 80 percent of awards of Mixed Claims Commission under priority no. 5 (5½ percent remaining unpaid).....	\$2, 000, 000
On account of interest accrued since Jan. 1, 1928 (approximately 40 percent of such interest).....	7, 800, 000

Total to American nationals..... \$9, 800, 000

## To German nationals:

Interest on 5-percent participating certificates (20 percent of German property temporarily retained).....	3, 600, 000
On account of interest accrued since Dec. 31, 1928, on awards of War Claims Arbitrator (approximately 40 percent of such interest).....	6, 600, 000
Return of property in hands of Alien Property Custodian.....	6, 500, 000

Total to German nationals..... 16, 700, 000

Total available for distribution..... 26, 500, 000

Under the debt agreement of June 23, 1930, the German Government is obligated to pay semiannually to the United States for a period of 52 years on account of the awards of the Mixed Claims Commission, the sum of 20,400,000 reichsmarks (\$4,850,000 at the time the agreement was concluded, or about \$8,150,000 at the present mint parity of the mark). Under the debt agreement that Government has the option of postponing payment of the installments due for a period of 2½ years, but the amounts so postponed bear interest at the rate of 5 percent per annum, payable semiannually.

The Hoover moratorium was declared in June 1931 and covered payments falling due during the year July 1, 1931, to June 30, 1932. It excepted private obligations, and the joint resolution of December 23, 1931, authorizing that moratorium, treated the payments due on account of mixed claims as falling under the exception. Germany, however, took advantage of the option in the agreement to postpone the payments due, and has exercised that option ever since up to and including the payment due September 30, 1933. It paid the interest semiannually up to March 31, 1933, but the semiannual payment of interest due on September 30, 1933, was paid in reichsmarks into an account in Germany

and was not transferred to the United States, as required by the terms of the debt agreement. It is understood that the United States advised the German Government that it could not accept the payment in reichsmarks as a compliance with the debt agreement.

On March 31, 1934, all of the installments aggregating 102,000,000 reichsmarks, previously postponed since September 30, 1931, together with the semiannual installment of 20,400,000 reichsmarks and semiannual interest of 2,550,000 reichsmarks, or a total of 122,400,000 reichsmarks (about \$50,000,000), were due and payable. Germany advised that it could not meet the principal payments falling due, but would and did pay the interest due of 2,550,000 reichsmarks (about \$1,000,000).

The Treasury holds German bonds for account of mixed claims in the face amount of 2,040,000,000 reichsmarks (\$500,000,000 at time of acquisition but \$800,000,000 at present rates).

The debt agreement of June 23, 1930, provides that the obligation of Germany to make the payments specified therein shall cease as soon as all of the payments contemplated by the Settlement of War Claims Act of 1928 have been completed and the bonds of Germany held by the United States not then matured shall be canceled and returned to Germany.

The amendment to the joint resolution striking out "any or" and the amendment inserting "under this resolution" are clerical clarifying amendments. The amendment to the last proviso specifically empowers the President to determine the period or periods in which Germany is in arrears on her payments and retains the substance of the provision stricken out so that judicial review of the President's determination is denied.

