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SENATE

{ REPORT
No. 476 }

DEPOSITIONS IN CASES ARISING UNDER SECTION 19 OF THE WORLD WAR VETERANS' ACT

MARCH 23 (calendar day, MARCH 28), 1932. —Ordered to be printed

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

REPORT

[To accompany S. 929]

The Committee on Finance, to whom was referred the bill (S. 929) relating to the taking of depositions in cases arising under section 19 of the World War veterans' act, 1924, as amended, having considered the same, report it back to the Senate with amendments and as amended recommend that the bill do pass.

The committee amendments are as follows:

Page 2, line 9, after the word "unless" insert a comma and the words, "if the court so orders in exceptional cases,".

Page 2, line 11, strike out "\$25" and insert "\$15".

Page 2, line 11, after the word "necessary," insert "in the discretion of the court,"

Page 2, line 13, after the word "deposition" strike out the period and insert a colon and thereafter the words:

Provided, That any part of such sum not required therefor shall be returned to the United States: *Provided further*, That whenever a judgment or decree shall be rendered against the Government in an action brought pursuant to this section, the amount expended under the provisions of this paragraph shall be deducted from the fees allowed the attorneys under section 500 of this act and returned to the United States.

Page 2, lines 13, 14, and 15, strike out the words "Any part of such sum not required therefor shall be returned to the United States."

The report of the Veterans' Administration is as follows:

VETERANS' ADMINISTRATION,
Washington, February 11, 1932.

Hon. REED SMOOT,
Chairman Committee on Finance,
United States Senate, Washington, D. C.

MY DEAR SENATOR SMOOT: This is in response to your request for a report from this administration concerning S. 929, a bill relating to the taking of depositions in cases arising under section 19 of the World War Veterans' act, 1924, as amended. The proposed amendment is as follows:

"In any suit, action, or proceeding brought under the provisions of this section no deposition shall be taken at a greater distance from the place of trial than one

hundred miles without permission of the court being first had upon proper application and cause shown. No such permission shall be granted unless (1) the application is accompanied by an affidavit setting forth the fact intended to be established by such deposition, and (2) reasonable opportunity has been afforded the opposite party to be present at the hearing upon such application. Where the claimant is suing as a poor person pursuant to the act entitled 'An act providing when plaintiff may sue as a poor person and when counsel shall be assigned by the court,' approved July 20, 1892, as amended, no such permission shall be granted upon application by the United States unless there is deposited with the clerk of the trial court the sum of \$25 which sum, or so much thereof as may be necessary, shall be available to the claimant for obtaining representation at the taking of such deposition. Any part of such sum not required therefor shall be returned to the United States. Reasonable notice of the name of the witness and the time and place of the taking of the deposition shall be given in writing to the claimant."

That part of the proposed bill that requires an affidavit setting forth the fact intended to be established by such deposition is objectionable because it compels the Government to disclose in advance of the trial a part of its defense. In other words it amounts to fishing.

That part of the proposed bill which requires that reasonable opportunity has been afforded the opposite party to be present at the hearing of the application seems unnecessary since it is not thought that any court would grant such application on an ex parte hearing.

Section 500 of the World War veterans' act, as amended, provides that the court may allow the attorney for the successful party to a suit on a war-risk insurance contract a fee not exceeding 10 per cent of the amount recovered. Furthermore, it has been held that in addition to the fee provided for in section 500, the attorney for the successful party may have his necessary expenses.

The proposed bill provides that in addition to the foregoing the Government shall pay an attorney's fee of \$25 for each deposition taken. Under the practice of the administration to take the depositions of its doctors rather than for them to appear in court personally many depositions will be taken in each case, and therefore, to compel the Government to pay a fee of \$25 in each case would result in large expenditure being made by the Government. Also the proposed amendment would add to the amount to be received by the attorneys for a plaintiff. On the basis of our present load it is estimated some 50,000 depositions will be taken on behalf of the United States so the expenditure required by the bill would total approximately \$2,500,000. The bill does not set forth the department of the Government which will be called upon to advance the money but presumably it would be the Department of Justice.

It is, of course, to be assumed that no attorney will file a suit on a contract of war-risk insurance unless he thinks he can secure judgment. Most courts allow an attorney 10 per cent of the full amount of the contract, which results in the attorney receiving the sum of \$1,380 in each case in which he is successful. This seems to this administration to be a very liberal fee and that out of such fee the plaintiff's attorney should be required if necessary to pay an attorney for representing his client at the taking of the depositions. This seems especially so since in the general practice of law where an attorney takes a case on a contingent fee he can easily secure attorneys to represent his client at the taking of depositions who will do so for a contingent fee.

The bill is probably objectionable since it seeks to amend an act approved July 20, 1892, which is a general act by an amendment to a section of a strictly separate act which is in the nature of a special act.

In view of the foregoing reasons this administration is not in favor of the proposed legislation.

A copy of this letter is inclosed for your use.

Very truly yours,

FRANK T. HINES, *Administrator.*

