MEMORANDUM

IN SUPPORT OF THE BILL (S.1431) FOR THE RELIEF OF THE COLLIER MANUFACTURING COMPANY

OF BARNESVILLE, GEORGIA

—I—

STATEMENT OF CLAIM

A few weeks before the beginning of the World War, and in anticipation thereof, the Collier Manufacturing Company of Barnesville, Georgia, hereinafter referred to as claimant, was approached by representatives of the Government from the Quartermaster's depots of St. Louis, Mo., and Atlanta, Ga., with a view of securing the services of the claimant in the manufacture of undershirts for the U. S. Army.

Although the claimants had a profitable and satisfactory business in the manufacture of goods for the civilian trade, its officers felt that it was their patriotic duty to undertake this work since the Government desired it to do so.

Accordingly, the contracts that are involved in this claim were entered into on March 7, 1918, May 7, 1918, and June 11, 1918. Each contract called for the manufacture of 120,000 garments (undershirts). The price specified in the first of these contracts was 52½ cents per garment; in the second contract 56 cents per garment, and in the third contract 58 cents per garment.

At the time of the executing of these contracts Clift & Goodrich of New York were the Selling Agents of Claimant. Clift & Goodrich were large brokers of cotton goods and were the selling agents of many cotton manufacturing concerns. At the time the first contract was executed some of the officials of the Government (Knit Goods Cotton Committee) suggested that as Clift & Goodrich had already given bond and were well and favorably known to the War Department it would greatly facilitate matters if the contracts were taken in the name of Clift & Goodrich, and that haste in getting to work on these contracts was most important to the Government and necessary to the prosecution of the War. Claimant readily acceded to this suggestion, for the reasons stated, but in the letters of award appended to each of the contracts was the statement that these goods were to be made by the Collier Manufacturing Company

of Barnesville, Ga., showing that the Government knew that claimant was the real party to the contract, Clift & Goodrich being interested only to the extent of a brokerage fee or selling agents commission on the amount to be realized by the claimant from the transaction.

At first there was no trouble whatever about the satisfactory performance of the contract or the acceptance by the Government of the goods manufactured. There being only SIX final rejections of the first 60,000 garments manufactured, the amazing average of one garment to every ten thousand manufactured!

The subsequent award to claimant of the contracts of May 7, 1919, and of June 11, 1918, both at increased prices over and above that fixed in the original contract, with the greatest increase in the price fixed in the last contract is complete and conclusive proof that at least up to June 11, 1918 the government was entirely satisfied with the goods furnished by the claimant.

Everything continued to work out satisfactorily to both parties until sometime in July, 1918, when all of the garments called for by the first contract, except 13668 had been manufactured and 10480 of the garments called for in the second contract had been manufactured and none of those called for in the third contract had been manufactured.

About this time the congestion of work in the Quartermaster's Depot at Atlanta has so slowed up inspections that goods began to pile up in the plant of claimant, slowing up its production and inflicting heavy losses upon it both in the execution of its government contracts and its other business.

Claimants complained and protested about this situation, repeatedly and continuously. It urged that competent inspectors be sent by the government to its plant at Barnesville, Ga., and that inspections, acceptances and shipping orders be given there.

The Government finally acceded to this suggestion and sent three inspectors to the plant of claimant. Instead of this improving the situation it only made it worse. The inspectors sent to claimants plant were entirely without experience or competency for the work. The only previous business experience of one of them was as a bundle wrapper in the clothing store of George Muse in Atlanta; the other two had some experience as machinists, but none in the work of inspecting cotton mill products. They were, consequently, slow and inexperts in the work and slowed down production and shipments even more than the congestion in the Quartermaster's Depot at Atlanta had slowed it down. Instead of using the ordinary and general tests uniformly employed in the trade to test the tensile strength of garments, which is by a machine especially made for the purpose, they undertook to test them by tearing them apart with their hands, in this way they mutilated many perfectly good garments that were all right so that they had to be rejected.

The Government officials (Knit Goods Committee) admitted the unfairness and unreasonableness of this kind of inspection and conceded that the Government ought to pay for the garments so injured and rejected.

This situation continued to grow worse until finally on September 5, 1918, the Government (through the Quartermaster's Department) finally wired claimant to the effect that no further shipments would be accepted "until satisfactory garments could be delivered".

On September 18, 1918 the Government (through the Knit Goods Committee) after conference with claimant agreed that the Government should at least pay claimant for the undershirts already manufactured and on hand, but later claimed they were without authority to accomplish that.

Finally on October 18, 19 and 20, 1918, the Government by an agreement with Clift & Goodrich cancelled all the contracts, Clift & Goodrich agreeing to release the Government from all liability thereon. This agreement was not acquiesced in by the claimant and was unknown to them until May 14, 1919, nearly seven months thereafter. In fact on November 5, 1918, more than two weeks after the alleged "cancellation" Clift & Goodrich sent to claimant a letter from the Knit Goods Committee (Government) proposing a new and different method of inspection, not provided for in the contracts, for the merchandise in the **plant of claimant**, manufactured under these contracts.

It was a matter of common and general knowledge, at the time of the "cancellation" that the War was about to end, in fact, it did end in three weeks thereafter.

The officials of the Government both in the Knit Goods Committee and in the Quartermaster's Department freely admitted to officers of claimant that the government was overcontracted for goods of this character and that they were cancelling contracts wherever it was possible for them to do so. In this case that was done because of the purely technical contention that the contract was in the name of Clift & Goodrich, and not in the name of claimant. Claimant has never been unwilling that these contracts should be cancelled after the Government no longer needed the goods it had contracted for, but it has always insisted and still insists that when the Government does cancel a contract for such goods, it shall at least pay to the opposite party at interest its actual losses occasioned by such cancellation. This is all that this bill accomplishes, or seeks to accomplish. In the following section of this memorandum a detailed account of the subsequent efforts of claimant to obtain relief will be given.

LOSSES OF CLAIMANTS.

These losses are fully set out at the bottom of page 28 of the Hearing before the sub-committee of the Committee on

Claims of the Senate (February 14, 1934) recapitulating and explaining that statement:

1. It was necessary to make certain changes in both the plant itself and the machinery in order to execute the Government contract. This was done in the spring of 1918 at a cost of $2,801.03; in the winter of 1918 it was necessary to change the plant back for civilian manufacture, and some of the machinery bought for the war contract had to be scrapped, sold or held at a loss; the cost of this was $2,147.30. There was also an expense incurred for freight and other incidentals, not included in above, $113.50; the total of the three items being $5,061.91

2. Loss on merchandise on hand (undershirts) manufactured for the Government, and afterwards sold at the market to H. Goldstein & Company, of New Cork, after the Government refused to accept same; the actual cost to claimants of these shirts was $25,813.86. They were sold to Goldstein & Co. August 17, 1919 for $11,731.57, making the net loss $14,082.29
(S. Rep. P. 15)

3. Loss on Yarns. In order to execute the Government contracts claimant had bought 110.000 pounds of yarn, of a kind different from that used in civilian trade, at a cost of $67,300 (Sen. Rep. P. 15). A year later, early in 1919, when the Government ceased all negotiation with respect to these contracts and finally abandoned the contracts (May 1919) the value of these yarns had fallen to $41,210 (Sen. Rep. PP. 15 & 16) involving a loss of $26,090.00

4. Loss on ten flat lock W & G machines, not included in Item One hereof $2,750.00
(Sen. Rep. P. 28)

5. Loss on miscellaneous items of machinery and materials, also not included in Item One $735.50
(Sen. Rep. P. 28)

Total actual loss in cash (Items 1—5.) $48,719.70

—III—

PERSISTENT AND CONTINUED EFFORTS OF CLAIMANT TO OBTAIN RELIEF.

If the thought should occur to anyone that this claim is stale (17 years after the war) or that claimant has been guilty of laches in prosecuting it a rectal of the numerous efforts of claimant to obtain relief will thoroughly dispel that idea.

It will be recalled that it was not until May 14, 1919, about seven months after it occurred, that claimant had any knowledge or any notice from either Clift & Goodrich or from the Government that its contracts had been "cancelled". In the

meantime the Act of March 2, 1919, for the relief of certain war contracts, had been passed by Congress.

Claimant promptly sought to avail itself of its provisions and to have its claims for losses on account of the unjust cancellation of its contracts adjusted, but after taking evidence, the War Department Board of Contract Adjustment decided on June 22, 1920 (Decision of War Dept. Board of Contract Adjustment Vol. 6, P. 469) that since claimant was not a **formal** party to the contract it had no power to adjust his losses, under the terms of the Act.

Upon appeal to the Secretary of War this decision was, on November 4, 1920, upheld by the Secretary of War (1 bid. Vol 8, P. 8).

On September 11, 1923 Claimant proceeding under the provisions of the Act of March 2, 1919 sought to obtain relief from the Court of Claims.

On June 1, 1925, the Court of Claims, after taking a great deal of evidence on the merits, in effect sustained a demurrer to the evidence (61 Court of Claims Reports, P. 32) holding, as had the War Department Board, and the Secretary of War, that the claimant was not entitled under the provisions of the Act of March 2, 1919 to relief, because it was not a **formal party** to the contracts. On June 1, 1926, the Supreme Court of United States refused to sanction a writ of Certiorari seeking to review this ruling (271 U. S. 680)

It is worthy of note that every single one of these adjudications rest on the single and sole proposition that since claimant was not a **formal** party to the contracts, and that it had no legal rights thereunder, according to the provisions of the Act of March 2, 1919. In other words they all held that **under the law** claimant had no rights and had suffered no wrongs that either the War Department or the Court of Claims could adjust under the general Act.

With the Act of March 2, 1919 given this strict and narrow construction as to the meaning of the word "contractor" employed in it, claimant was entirely **remediless at law**, and then turned to Congress for the relief to which in **equity and good conscience** it was justly entitled, for it is one of the first and foremost functions of private bills in Congress to do **justice** and **equity** to those parties having dealings with the Government **who are without remedy at law.**

Early in the 73rd Congress Senator George introduced a bill for the relief of claimant. A hearing was held by a sub-committee, it was favorably reported by the sub-committee and then by the Senate Committee on Claims, and was finally passed by unanimous vote by the Senate on May 28, 1934, after full explanation and discussion.

It failed of passage in the jam in the House at the end of the last Congress.

This bill was reintroduced in the Senate early during the present session, again favorably reported by its Committee on Claims, and again passed the Senate, without opposition and after explanation and discussion on March 29, 1935.

It has been favorably reported by one of its sub-committees to the House Committee on Claims, and favorably reported by the whole Committee on Claims, by unanimous vote, to the House.

It is true that under date of January 27, 1934, the Secretary of War advised the Senate Committee on Claims against the passage of this bill, but his report against the bill had no effect either upon the Senate Committee or the Senate itself, because the Secretary merely recited the several occasions, already set forth fully herein, on which the War Department and the Court of Claims held that the claimant had no standing in law because it was not a **formal** party to the contracts, without taking issue in any way upon the merits, or denying that the claimant was entitled to this **relief, as a matter of equity and good conscience,** to make good its actual losses sustained in its effort to serve the government, when urged to do so by the Government officials, in spite of the fact that it was not the actual **formal** party to the contracts; again, because in the interest of expediting manufacture, at the beginning of the war, officials of the Government had urged that the contracts be taken that way.

—IV—

CONCLUSION

This matter cannot be better summarized than by quoting, literally, the statement made by Senator George, a learned jurist who is fully acquainted with the facts, made on the floor of the Senate on March 29, 1935, in support of this bill:

Mr. George: "Mr. President if the Senator will permit me, I will make a brief explanation of the bill.

"This is an old claim, one that grew out of the World War. It was first submitted to the Ward Department Contract Board which decided that the claimant was not entitled to relief because he was not a formal party to the contract; that is, that there was no contract with this claimant. Subsequently suit was brought in the Court of Claims, and that court found all the material facts going to the merits of the case in favor of the claimant, but decided the case adversely to the claimant upon the ground that the Collier Manufacturing Company was not a party to the contract with the Government.

"The contract was for the production of certain garments to be used by the Army during the war period. The merits of the case, so far as the loss is concerned, are not questioned; that is to say, the Court of Claims found with the claimant on every point that involved the actual merits of the claim.

"The facts are these: The contract was made between the

governmental agency on the one part and Clift & Goodrich of New York. Clift & Goodrich were the selling agents of the Collier Manufacturing Co. The selling agents had already executed bond; they were already able to take the contract and go forward with it immediately, without the delay incident to the execution of a bond, and the approval of the sureties, and other arrangements. Clift & Goodrich, being the selling agents of the Collier Manufacturing Co., themselves made the contract, but the contract was to be executed by the Collier Manufacturing Co.; indeed, the contract provided that the goods were to be manufactured by the Collier Manufacturing Co. That company, however, was not a formal party to the contract; but it did reorganize its plant, put in new machinery, and actually produced the goods. The end of the war rapidly approaching, some excuse was found upon which the contract was canceled.

"The cancelation was made with Clift & Goodrich, but they clearly had no legal right to put an end to the contract so far as the Collier Manufacturing Co., the real party to the contract, the party having the beneficial interest in the contract, was concerned. They did not undertake to do that, but they did consent to a formal cancelation of the contract at one time.

"A similar bill has been before the Senate previously and passed in the last Congress. It did not pass the House. It seems to me this is a case where the Congress should afford relief, because the party beneficially interested, the real party involved, is not able to assert its claim in the Court of Claims, not being formally a party to the contract; that is to say, the Court of Claims based its decision squarely on the point that the contractual relation did not exist between the Collier Manufacturing Co. and the Government, but did exist between Clift & Goodrich and the Government."

The claim is just and metritorious and it ought to be paid. When the Government cancels contracts, under the circumstances herein outlined, the **very least it should** do is to **reimburse the actual contractors for their actual losses** sustained and paid in cash out of their funds.

The bill carries no appropriation for profits, interest or expenses; nothing but **actual losses.**

No man fully acquainted with the facts can possibly object to it.

Respectfully submitted,

THOMAS W. HARDWICK,

500 Shoreham Bldg., Washington, D. C.

November 19, 1935. Attorney for Claimant.