Originally Processed With FOIA(s):
2000-0715-F

FOIA Number:
2000-0715-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the George Bush Presidential Library Staff.

Record Group/Collection:	George H.W. Bush Presidential Records
Collection/Office of Origin:	Chief of Staff, White House Office of
Series:	Baker, James A., III, Files
Subseries:	Legislative Files

OA/ID Number:	93003
Folder ID Number:	93003-010

Folder Title:
S. 1569

Stack:	Row:	Section:	Shelf:	Position:
G	**0**	**0**	**0**	**0**

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515-6115

October 28, 1992

The Honorable Barbara H. Franklin
Secretary
Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Franklin:

Enclosed is a letter I have sent to the Secretary of Energy, the Attorney General, and the Director of the Office of Management and Budget regarding two bills S. 1569 and H.R. 6185. Both relate to the administration of the courts. As you can see, I have urged that the President sign H.R. 6185 and not S. 1569 because H.R. 6185 does not abolish the Temporary Emergency Court of Appeals (TECA).

I am advised that you and your Department, apparently at the urging of the National Chamber of Commerce, have recommended to the President that he not sign H.R. 6189 and that he sign S. 1569 which would provide for the abolishment of TECA. I view that as a totally improper recommendation from your agency which has nothing to do with TECA or the relevant oil overcharge cases, and wonder why you have decided to inject yourself and your Department into this matter. Indeed, I view this action by you, if true, as an unfriendly act and request that you explain why you have taken this position and that you identify and provide all communications to you or your Department about this matter. I believe that your recommendation is anti-consumer and could result in a delay of oil overcharge cases. Most importantly, it is capitulation to violators of the law.

I strongly urge that you quickly reconsider this recommendation and support my request to the above agencies.

With every good wish.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

cc: The Honorable James D. Watkins, Secretary
Department of Energy

The Honorable William P. Barr, Attorney General
Department of Justice

The Honorable Richard G. Darman, Director
Office of Management and Budget

The Honorable James A. Baker, Chief of Staff
The White House

Mr. Boyden Gray, Counsel to the President
The White House

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515-6115

October 15, 1992

The Honorable James D. Watkins
Secretary
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

The Honorable William P. Barr
Attorney General
Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530

The Honorable Richard G. Darman
Director
Office of Management and Budget
Old Executive Office Building
Washington, D.C. 20503

Dear Secretary Watkins, Attorney General Barr, and Mr. Darman:

During the last moments of the 102nd Congress, the Congress passed two bills, S. 1569 and H.R. 6185, both entitled the "Federal Courts Administration Act of 1992." Both are quite similar. H.R. 6185, however, unlike S. 1569, does not abolish the Temporary Emergency Court of Appeals (TECA) established by section 211 of the Economic Stabilization Act of 1970 to handle appeals in the case of oil overcharge enforcement cases still pending at the Department of Energy, the Federal Energy Regulatory Commission (FERC), the Federal District Courts, and the bankruptcy courts.

This significant and important difference is a result of this Committee's action on the House floor when I explained to the Leadership of the House Judiciary Committee that abolition of TECA was premature (since TECA still has pending cases and can expect more) and would favor the oil industry, not the Federal treasury, the States, or consumers. As a result, the TECA abolition provisions were deleted when the House returned H.R. 6185 to the Senate on October 6. The Senate then passed H.R.

6185 on October 7, as amended by the House. Unfortunately, this Committee did not learn of the provision in the companion bill, S. 1569, until after Senate action on that bill on October 7. Indeed, the Senate passed both bills on the same day and sent them to the President.

Completed enforcement actions in oil overcharge cases have resulted in over $12 billion in payments by oil companies and others to the treasury, the States, and consumers. I understand from the enclosed document from the Economic Regulatory Administration that there are at least 6 cases now pending in TECA, plus an additional 60 cases in the pipeline that could reach TECA. The total dollar value of these cases is over $3 billion. The "Cities Service" or "Occidental Petroleum" case is at the $1 billion level, including interest. An appeal on a DOE enforcement subpoena is one of the 6 matters at TECA. This Committee urged issuance of the subpoena because of fraud allegations. Occidental Petroleum has resisted the subpoena.

I want to emphasize that I am particularly disturbed that the Energy Department <u>never</u> discussed these bills with this Committee (or notified us of their impact on TECA) even though they <u>both</u> affected oil overcharge cases, including the $1 billion "Cities Service" case now at the FERC and TECA. The Energy Department knows that these cases and their resolution have long been a concern to this Committee. I request a DOE explanation. I also want to know why the House Judiciary Committee did not receive better information about the status of these cases from the DOE or the Administration generally.

S. 1569 amends the 1970 Act and the Natural Gas Policy Act; H.R. 6185 does not. Under S. 1569, the authority for TECA would end for cases not submitted to a TECA panel and such cases would hereafter be assigned to the United States Court of Appeals for the Federal Circuit. That court, which largely concentrates on patent matters, would have to learn this complex, regulatory oil overcharge violation scheme and probably establish new rules. That will take valuable time.

Just as importantly, the Federal Circuit would not be bound, under the bill, by the TECA precedents or rules. Predictability would be destroyed and rules could be changed that would hinder the ability of the DOE to obtain appropriate settlements and otherwise complete enforcement actions as contemplated by this Committee and Congress. That surely will delight the oil companies that are involved in the remaining cases.

Many of these cases involve the most intransigent firms. These firms dragged out the process, hoping to be saved by some action such as abolition of TECA. If S. 1569 is approved, their owners will smile and wink at the other oil firms that settled or had their cases decided by TECA. They certainly do not want predictability. They do not want this new court to be bound by TECA precedents.

There is no significant cost in retaining TECA. Indeed, keeping TECA is more efficient, as TECA judges do not need to learn about the law and regulations governing these cases. If the costs of a TECA clerk are a concern, I am sure that office can be consolidated on an administrative basis with other Federal court clerks.

I strongly urge that you recommend to the President that he approve H.R. 6185, rather than S. 1569. Except for TECA and a Court of Claims provision, I understand that H.R. 6185 and S. 1569 are identical. In short, S. 1569 is not necessary.

I also understand that DOE and the Justice Department, to their credit, did not seek abolition of TECA. That was apparently the recommendation of some involved in the Administrative Office of the U.S. Courts. That Office never communicated with this Committee about their proposal to abolish TECA or about its impact on pending cases.

I am providing a copy of this letter to the President's Chief of Staff and his Counsel. Please ensure that the President also is provided a copy of this letter.

With every good wish.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

cc: The Honorable Norman F. Lent, Ranking Minority Member
Committee on Energy and Commerce

The Honorable Jack Brooks, Chairman
Committee on the Judiciary

The Honorable William J. Hughes, Chairman
Subcommittee on Intellectual Property and
and Judicial Administration
Committee on the Judiciary

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power

The Honorable Carlos J. Moorhead, Ranking Minority Member
Subcommittee on Energy and Power

The Honorable Linda Stuntz, Deputy Secretary of Energy
Department of Energy

The Honorable James A. Baker, Chief of Staff
The White House

Mr. Boyden Gray, Counsel to the President
The White House

The Honorable Chandler L. van Orman, Acting Administrator
Economic Regulatory Administration

ECONOMIC REGULATORY ADMINISTRATION
UNITED STATES DEPARTMENT OF ENERGY

LISTING OF ERA PETROLEUM PRICE CONTROL
CASES CURRENTLY PENDING IN THE COURTS
AND ADMINISTRATIVE TRIBUNALS (10/13/92)

1. Pending Before the Temporary Emergency Court of Appeals.

Arco v. DOE	TECA No. DC-117
Federal Employer's Dist. Co. v. DOE	TECA No. 9-108
Mapco International, Inc. v. FERC	TECA No. DC-119
Mapco International, Inc. v. FERC	TECA No. DC-120
Propane Industrial, Inc. v. DOE	TECA No. 8-23
United States v. Oxy USA, Inc.	TECA No. 2-51

2. Pending Before the United States District Courts.

Centro Petroleum Co. v. DOE	H-90-341 (D. Conn.)
Great Lakes Carbon Corporation v. DOE	91-2601 (D.D.C.)
Sun Company, Inc. v. United States	83-204 (D. Del.)
Jones v. DOE	C.A. 78-1235 (D. Kan.)
Murfin, W.R. (Champlin) v. DOE	C.A. 79-1258 (D. Kan.)
Cities Service Company v. DOE	C.A. 78-1145 (D. Kan.)
Braden-Zenith v. FEA	C.A. 76-427-C6 (D. Kan.)
Santa Fe Energy v. DOE	3-79-1247F (D. Kan.)
Phillips Petroleum Co. v. DOE	C.A. 78-1140 (D. Kan.)
Mullins v. DOE	C.A. 90-0108P (W.D. Ky.)
United States v. Oxy USA, Inc.	91-CIV-4437 (MBM)(S.D.N.Y.)
Conoco, Inc. v. DOE	C.A. 3-78-321-D (N.D. Tex.)
Aminoil v. DOE	C.A. H-78-1702 (S.D. Tex.)
United States v. Scruggs Energy Co.	H-87-1315 (S.D. Tex.)

3. Pending Before the Bankruptcy Courts.

In Re: Powerine Oil Company	LA-84-07086 RM (Bk. C.D. Cal.)
In Re: Lajet, Inc.	87-01581 (Bk. E.D. La.)
In Re: Lajet, Pender v. Texas Napco, Inc.	91-1053K (Bk. E.D. La.)
In Re: Mapco International	92-00766-C (Bk.N.D. Okla.)
In Re: Shore Oil Co.	TY-82-00229 (Bk. E.D. Tex.)
In Re: Beta Energy Corp.	84-01337 (Bk.N.D. Okla.)
In Re: Dalco Petroleum	83-01074 (Bk.N.D. Okla.)
In Re: Shepherd Oil Co.	84-2015 (Bk. D. Ariz.)

4. Pending Before the Federal Energy Regulatory Commission.

J.W. Akin	RO90-4-000
Bayport Refining Co.	RO89-5-000
Beta Energy Corp.	RO86-26-000
CMC Oil Co.	RO87-2-000
Elk Trading Co.	RO88-8-000
Houston Oil & Refining, Inc.	RO88-10-000
Kenco Refining, Inc.	RO92-1-000
McWhirter Distributing Co.	RO90-2-000
Merit Petroleum, Inc. (I)	RO86-13-000
Merit Petroleum, Inc. (II)	RO90-3-000
Morrison Petroleum Co., Inc.	RO89-7-000
Murphy Oil Corp.	RO92-5-000
Mutual Petroleum Marketing Co., Inc.	RO91-4-000
National Hydrocarbons Corp., Inc.	RO87-24-000
Oxy USA, Inc. (I)	RO89-2-000
Pel-Star Energy, Inc.	RO87-19-000
Petrade International, Inc.	RO87-6-000
Phoenix Petroleum Co.	RO89-3-000
Port Petroleum, Inc.	RO88-11-000
Revere Petroleum Corp.	RO90-5-000
Rice Oil Co.	RO88-1-000
Storey Oil Co., Inc.	RO87-25-000
T.E. Reserve Corp.	RO91-5-000
The Crude Co.	RO92-2-000

5. <u>Pending Before the DOE's Office of Hearings and Appeals.</u>

Chevron USA, Inc.	LRO-0004
Dalco Petroleum Corp.	HRO-0074
Dana Energy Co.	HRO-0124
Gear Petroleum Co.	HRO-0144
Gordon Gregson	LRO-0001
Oxy USA, Inc. (II)	LRO-0003
Shephard Oil, Inc.	KRO-0220
Shore Oil, Inc.	HRO-0077

Total Number of ERA Cases Pending - 60 *

Total Violations Currently Alleged by DOE in Pending Enforcement Cases	$1,041,741,417
Estimate of Prejudgment Interest Currently Due on Pending Violations	2,000,000,000
Total Estimated Judgment Potential	$3,041,741,417

*These do not include routine collection cases and exception relief appeals which are within the jurisdiction of the General Counsel but which also have some potential for being appealed to the TECA.

CURTIS COOMBS
PO BX 7463
COLORADO SPRINGS CO 80933

WESTERN UNION MAILGRAM®

UNITED STATES POSTAL SERVICE

000757000918 10/21/92 WHSB

Caron -
Sample of
prop received
today.
B

MR JAMES A BAKER III
THE WHITE HOUSE
WASHINGTON DC 20500

DEAR MR. BAKER:

THE BUSINESS COMMUNITY URGES THE PRESIDENT TO SIGN S. 1569, THE FEDERAL COURTS STUDY COMMITTEE IMPLEMENTATION ACT OF 1992. S. 1569 IS A VITALLY IMPORTANT GOVERNMENT CONTRACTS BILL WHICH WILL PROVIDE U.S. BUSINESSES CLEARER GUIDELINES ON CERTIFYING GOVERNMENT CONTRACT CLAIMS.

THE CONGRESS PASSED TWO VERSIONS OF THIS BILL, BUT ONLY S. 1569 MAKES THE NECESSARY CLARIFICATIONS. PLEASE URGE THE PRESIDENT TO SIGN S. 1569 AS SOON AS POSSIBLE (AND TO POCKET VETO H.R. 6185). SIGNING S. 1569 INTO LAW WILL HELP SAVE BUSINESSES MILLIONS OF DOLLARS IN NEEDLESS LITIGATION EXPENSES.

SINCERELY,

CURTIS COOMBS
PO BX 7463
COLORADO SPRINGS CO 80933

51423

12:30 EST

MGMCOMP

MGM CS (10/89)

TO REPLY BY MAILGRAM MESSAGE, PHONE WESTERN UNION ANYTIME, DAY OR NIGHT:

FOR YOUR LOCAL NUMBER, SEE THE WHITE PAGES

OF YOUR LOCAL TELEPHONE DIRECTORY

OR

DIAL (TOLL-FREE) 800-325-6000

Bataco Industries, Inc.
3901 S.W. 58th Street
Ft. Lauderdale, Fl. 33312

October 21, 1992

The Honorable James A. Baker, III
Chief of Staff and Senior Counsellor
to the President
The White House
Washington, DC 20500

Dear Mr. Baker:

I am writing to request your support and urge the President to sign into law S. 1569, the Federal Courts Administration Act of 1992, and to pocket veto the alternative bill, HR. 6185, which has also been passed by both Houses of Congress.

S. 1569 solves a very serious problem regarding Contract Disputes Act Certifications and will streamline and expedite the resolution of contractor disputes and ensure that cases are decided on their merits.

In these recessionary times, it is very important for small businesses to have their meritorious claims handled expeditiously and without unnecessary and costly litigation for the Justice Department. For this reason, S. 1569 is very important to me.

Very truly yours,

Bataco Industries, Inc.
Stanley M. Spitzer, Pres.

PORTER, WRIGHT,
MORRIS & ARTHUR
ATTORNEYS AT LAW
41 SOUTH HIGH STREET, COLUMBUS, OHIO 43215-3406
TELECOPIER: (614) 227-2100
TELEX: 6503213584

DANIEL A. BELLMAN
COLUMBUS, OHIO
(614) 227-2220

OTHER FIRM LOCATIONS:
CINCINNATI, OHIO
CLEVELAND, OHIO
DAYTON, OHIO
NAPLES, FLORIDA
WASHINGTON, D.C.

October 20, 1992

VIA FAX: 202-456-2883

The Honorable James A. Baker, III
Chief of Staff and Senior Counsellor
to the President
The White House
Washington, DC 20500

Dear Mr. Baker:

I am writing to request your support and urge the President to sign into law S. 1569, the Federal Courts Administration Act of 1992, and to pocket veto the alternative bill, HR. 6185, which has also been passed by both Houses of Congress.

S. 1569 solves a very serious problem regarding Contract Disputes Act Certifications and will streamline and expedite the resolution of contractor disputes and ensure that cases are decided on their merits.

I represent several small businesses who have Federal contracts with the Government. During these times of reduced defense spending, it is very important for Federal contractors to have their meritorious claims processed expeditiously. The passage of this law will eliminate the unnecessary and costly litigation to which the Justice Department has subjected many small businesses.

Yours very truly,

Daniel A. Bellman

Daniel A. Bellman

BEL1184(51):elp

Max E. Bleck
President

Raytheon Company
141 Spring Street
Lexington MA 02173
617 860 2207

Raytheon

October 13, 1992

The Honorable James A. Baker, III
Chief of Staff and Senior Counsellor
to the President
The White House
Washington, D. C. 20500

Dear Mr. Baker:

I am writing to request your support and urge the President to sign into law S. 1569, The Federal Courts Administration Act of 1992, and to pocket veto the alternative bill, H.R. 6185, which has also been passed by both Houses of Congress.

S. 1569 solves a very serious problem regarding Contract Disputes Act Certifications and will streamline and expedite the resolution of contractor disputes and ensure that cases are decided on their merits.

S. 1569 would reinforce the certification requirement, while simultaneously clarifying once and for all the question of who can certify a claim on behalf of the contractor. This clarification will ensure that certification promotes rather than impedes the quest for substantive justice with regard to contract claims.

In contrast, H.R. 6185 will increase rather than eliminate pointless litigation over certification of claims. Certification would remain a jurisdictional requirement and in any case in which the certification is challenged it would be necessary, just as it is today, to litigate whether the certificate is defective.

We are confident that your administration shares the desire of industry for prompt resolution of claims based on the substantive merits of those claims, and appreciates the need to eliminate unnecessary procedural barriers to prompt resolution of those claims.

Accordingly, we once again urge that the President sign S. 1569 into law and pocket veto H.R. 6185.

Very truly yours,

Max E. Bleck

Subsidiary of GM Hughes Electronics

JOHN J. HIGGINS Senior Vice President and General Counsel

October 12, 1992

Via Facsimile & Overnight Courier

The Honorable James A. Baker, III
Chief of Staff and Senior Counsellor
to the President
The White House
Washington, D.C. 20500
(202) 456-6797
(202) 456-2397 Facsimile

Dear Mr. Baker:

The President should sign the Federal Courts Administration Act of 1992 (S. 1569), which includes much needed legislation to cure defects in a hypertechnical yet costly area of government contracting. The President should veto H.R. 6185, an alternative bill that does not cure these defects.

The Certification Requirement

At the time of its enactment, the Contract disputes Act of 1978 was a necessary piece of unifying legislation. The Act was intended to eliminate dispute resolution differences between the various Boards of Contract Appeals and between the Boards and the Old Court of Claims.[1] Unfortunately, the Act was imperfect. During passage of the Act, the U.S. Congress added a little-noticed amendment, which required certification of contract claims. This obscure requirement was intended to give contracting officers a more meaningful hand in the contract dispute resolution process by forcing early disclosure of relevant claims information by contractors. With that unsuspecting amendment, Congress created undoubtedly the most litigated several sentences of an act that was intended to streamline the dispute process. A litigation quagmire developed instead, with both government and private lawyers having a field day ever since.

The changes to the certification requirement in S. 1569 make reasonable tradeoffs between the original purpose of the requirement and subsequent case law which construed the requirement as jurisdictional. S. 1569 continues to recognize the certification requirement, but eliminates its jurisdictional nature when the contracting officer has denied any claim that was certified.

[1]Four years after the enactment of the Contract Disputes Act, the government passed the Federal Courts Improvement Act of 1982. The Court of Claims, with its trial and appellate departments, was replaced by a trial court, the Claims Court, and an appellate court, the Court of Appeals for the Federal Circuit.

Corporate Offices:
7200 Hughes Terrace, Los Angeles, CA 90045
P.O. Box 80028, Los Angeles, CA 90080-0028
(310) 568-7400
Fax (310) 649-1983

Claims Court's Jurisdiction Over Nonmonetary Disputes

Similarly, at the time of Contract Disputes Act enactment, the power of the Boards of Contract Appeals and the then Court of Claims to grant remedies was vastly different. One of the Act's objectives was to equalize between the two types of tribunals the legal and equitable remedies available. Unfortunately, because of another piece of legislation, the Tucker Act, the Claims Court has construed its jurisdiction to be limited to claims seeking monetary rather than nonmonetary relief. Conversely, the Boards of Contract Appeals will take jurisdiction over nonmonetary claims.

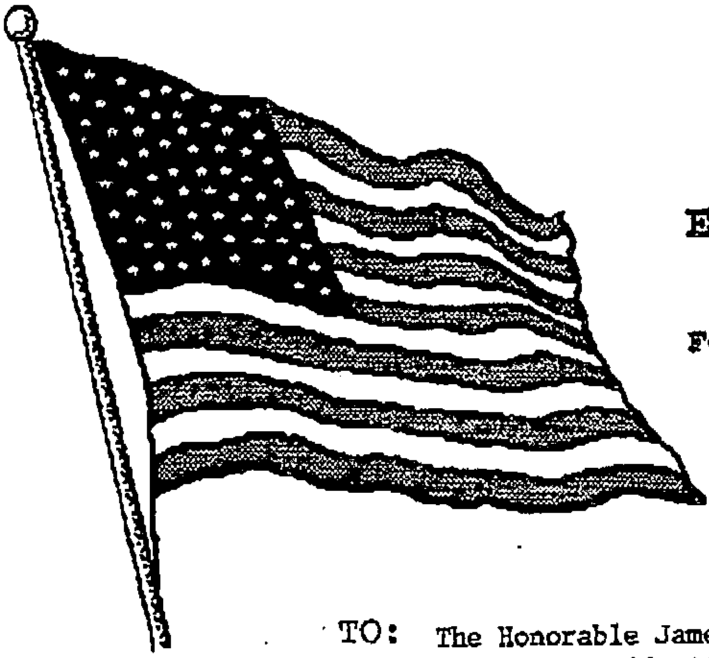
S. 1569 would clarify the Claims Court's jurisdiction to permit it to take jurisdiction over nonmonetary appeals. The amendment would once again place the Boards and the Claims Court on the same footing.

Very truly yours,

John J. Higgins

JJH:taa

c: (Via Facsimile & U.S. Mail)
Ms. Lorraine Maskin Lavet
Director
Human Resources, Legal, and Regulatory Affairs
U.S. Chamber of Commerce
Washington, D.C. 20062-2000
(202) 463-5528
(202) 887-3445 Facsimile



FAX MESSAGE:

EASTMAN KODAK COMPANY IMAGING GROUP

Federal Government Marketing & Sales

Government & Industry Liaison

TO: The Honorable James A. Baker III
Chief of Staff, Office of the President

FROM: Billy R. Cooper, Eastman Kodak Company

Page + Cover 2 DATE: October 12, 1992

Comments:

Contact: Diana Jones (703) 524-5174 or Knet/KMX 231-3700
1300 N. 17th Street Suite 1320, Arlington, Va. 22209
TELEFAX Number (703) 558-3740

Kodak

October 12, 1992

The Honorable James A. Baker III
Chief of Staff
Office of the President
The White House
Washington, D.C.20500

Dear Mr. Baker:

The Eastman Kodak Company is one of many companies that have been working with the U.S. Chamber of Commerce, the Electronics Industries Association and other groups to have the Congress clear up the confusion around certification of government contractor claims and to reduce the excessive litigation resulting from existing language in the Contract Disputes Act.

Section 907 of S. 1569, the "Federal Courts Administration Act of 1992," will fix the problem. It is our request that you recommend to the President that he sign S. 1569 and pocket veto H.R. 6185, an alternate version of the bill, which does not remedy the existing problem.

There has been an inordinate amount of confusion over Section 907 between Justice, the White House and the Judiciary Committees over what is really a fairly straightforward issue. This is an opportunity for the Administration to correct an inequity and allow claims cases to be tried on their merits; it will be extremely popular in the U.S. business community.

Thank you for your time, your consideration and your support.

Sincerely,

Billy R. Cooper

Billy R. Cooper
Director

Government & Industry Liaison
EASTMAN KODAK COMPANY
1300 N. Seventeenth Street, Suite 1320, Arlington, VA 22209-3801
(703) 524-5174 • (703) 558-3740 - FAX

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

RICHARD L. LESHER
PRESIDENT

1615 H STREET, N.W.
WASHINGTON, D. C. 20062
202/463-5300

October 9, 1992

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The U.S. Chamber of Commerce Federation of local and state chambers of commerce, businesses, and associations strongly supports the "Federal Courts Administration Act of 1992" (S. 1569). This legislation includes an important provision, Section 907, which is of great interest to the thousands of businesses nationwide engaged in federal government contracts, particularly the defense industry. S. 1569 enjoys the support of the aerospace, electronics, and shipbuilding industries, as well as technical and professional services companies. The Chamber respectfully requests that you sign this important legislation and pocket-veto H.R. 6185, an alternative version which does not remedy the inequities experienced by government contractors.

Section 907 of S. 1569 remedies the current confusion and reduces the excessive litigation over certification of government contractor claims. Furthermore, it reinstates the Federal Claims Court as an equal and alternative forum to the Boards of Contract Appeals for nonmonetary disputes. Enactment of this legislation is a key step toward achievement of this Administration's Civil Justice Reform initiative. As you know, the Chamber has been a key advocate of this initiative and has communicated your efforts to our membership.

Attached is a more extensive explanation of this legislation. The attached document also provides greater detail about the Chamber's concerns with H.R. 6185.

On behalf of the thousands of businesses interested in the enactment of S. 1569, thank you for your support.

Sincerely,

Dick

Richard L. Lesher

Attachment

U.S. Chamber of Commerce Urges Enactment of S. 1569
"Federal Courts Administration Act of 1992"

The U.S. Chamber of Commerce Federation of local and state chambers of commerce, businesses, and associations strongly supports the "Federal Courts Administration Act of 1992" (S. 1569). This legislation includes an important provision, Section 907, which is of great interest to all businesses engaged in federal government contracts, particularly the defense industry. S. 1569 enjoys the support of the aerospace, electronics, and shipbuilding industries, as well as technical and professional services companies. The Chamber respectfully requests that the President sign this important legislation.

On October 7, 1992, the U.S. Senate passed two versions of the "Federal Courts Administration Act of 1992," S. 1569, and H.R. 6185. Both bills had previously been passed by the House of Representatives. The two bills differ primarily in their treatment of contract claims certifications by government contractors and the jurisdiction of the Court of Federal Claims. Section 907 of S. 1569 was originally proposed to Congress by the U.S. Chamber of Commerce Federation. We believe that this provision provides the necessary remedies to the contract claims litigation problem. In contrast, we have major concerns with H.R. 6185, which does not solve this problem. Accordingly, the Chamber strongly urges the President to sign into law S. 1569, and to pocket-veto H.R. 6185.

Fourteen years ago, the Contract Disputes Act of 1978 established an equitable and efficient system for resolving disputes under government contracts. This was particularly helpful for the thousands of small businesses engaged in government contracts. Subsequent misguided court decisions have created technical procedural obstacles which have resulted in a morass of wasteful litigation. With increasing frequency, the Department of Justice has used these technicalities to delay the payment of legitimate contract claims. Our small business members have been especially hard hit by the unnecessary litigation costs. If the government procurement process is to function, contractors must believe that their legitimate claims will be fairly resolved, in a timely manner.

In response to this serious problem, the Chamber Federation sponsored an amendment to the "Federal Courts Administration Act of 1992" (S. 1569) that would eliminate the wasteful litigation and restore balance to the disputes process. Industry is strongly united in support of the Chamber amendment. The Chief Judge of the U.S. Claims Court also testified before Congress in support of the Chamber amendment.

On October 3, the Chamber-sponsored amendment was passed with bipartisan support in the House of Representatives as Section 907 of S. 1569. This legislation addressed several concerns expressed by the Department of Justice. Until October 6, the only impediment to Senate adoption of S. 1569 was a threat by the Department of Justice that they would recommend a veto if the bill was passed with the Chamber's amendment. In response to that threat, the House also passed H.R. 6185. This bill does not include the Chamber amendment, but rather it incorporates a provision previously passed by the Senate that further confuses the certification issue and does not address Claims Court jurisdiction over nonmonetary disputes. This was done to provide the Senate with options in the final days of the 102nd Congress.

On October 6, Stuart Gerson, Assistant Attorney General, Civil Division, Department of Justice, communicated directly to the U.S. Chamber's President that he was withdrawing the Department's veto threat of the Chamber amendment. He further indicated that his legislative staff would be instructed to communicate this to the Senate. The Chamber understands that Jim Dyer ultimately communicated the withdrawal of the Justice Department's veto threat to the Senate; however, it was too late to prevent passage of both bills.

S. 1569 is far superior than H.R. 6185. It protects the rights of both the government and contractors. Contractors are provided more than ample incentive to properly certify their contract claims. Under S. 1569, until a proper certification is provided, a claim cannot be decided or paid. S. 1569 will also require that the certifying official be authorized to bind the contractor, thus ensuring that the contractor must stand behind its claim and certification.

Furthermore, under S. 1569, the government will not lose any substantive rights in cases currently in litigation. Prior to passage by the House, Section 907 of S. 1569 was amended to provide that the certification amendments would not apply to claims which are already the subject of litigation in the Claims Court or a Board of Contract Appeals. In this regard, the retroactive effect of S. 1569 is identical to that of the certification provisions of H.R. 6185 – both bills would apply retroactively to pending claims except those already in litigation.

Moreover, S. 1569 specifically provides that interest will only run prospectively. Consequently, the government will not bear any extra expense for retroactive interest. The "nonmonetary disputes" portion of S. 1569 does not affect the parties' substantive rights at all, but simply reinstates the Claims Court as an equal and alternative forum to the Boards of Contract Appeals. Thus, the nonmonetary disputes portion does not affect the ultimate outcome of any case, but only the timing and the forum in which the case can be litigated.

In contrast, H.R. 6185 will increase rather than eliminate pointless litigation over certification of claims. Certification would remain a jurisdictional requirement, and in any case in which the certification is challenged, it would be necessary, just as it is today, to litigate whether the certification is defective. If it is defective, further litigation would be required to determine whether any defect is "technical" or substantive (the word "technical" is not defined), and further, whether any technical defect was due to bad faith, fraud, or gross negligence. H.R. 6185 also fails to resolve the confusion and increasing litigation over the artificial distinction between "monetary" and "nonmonetary" contract disputes. H.R. 6185 contradicts both the requirements and spirit of your Civil Justice Reform initiative and Executive Order 12778 on civil justice reform. H.R. 6185 is seriously flawed and should be pocket-vetoed.

Thousands of Chamber member companies contract with the federal government. Those companies are united in urging that the litigation over technicalities in the government contract disputes process come to an end. S. 1569 will accomplish that goal; H.R. 6185 will not. Accordingly, the U.S. Chamber of Commerce Federation urges you to sign S. 1569 and to pocket-veto H.R. 6185.

ROCKWELL INTERNATIONAL CORPORATION

625 LIBERTY AVENUE
PITTSBURGH, PA 15222-3123
USA

FAX TRANSMISSION

2 PAGE(S), INCLUDING LEAD

Date: October 8, 1992

To: The Honorable James Baker
Chief of Staff
Executive Office of the President
Washington,DC

Fax # 202/456-2883

From: Charles H. Harff
Phone # (412) 565-4004
Fax # (412) 565-2930

Message:

See attached letter

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION
PLEASE CALL Linda Huffington (412) 565-4005 (or Comnet 545-4005)

Charles H. Harff
Senior Vice President,
General Counsel & Secretary

Rockwell International Corporation
Corporate Office
625 Liberty Avenue
Pittsburgh, Pennsylvania 15222-3123

(412) 565-4004
FAX: (412) 565-2830

October 8, 1992

The Honorable James Baker
Chief of Staff
Executive Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Baker:

I urge you to recommend to the President that he sign Senate Bill 1569. That Bill, and its non-monetary disputes language in particular, will streamline and expedite the resolution of federal contract disputes and ensure that cases are decided on their merits.

As you doubtless are aware, the House and Senate have each passed two versions of legislation to implement changes in the administration of the Claims Court. One version, H.R. 6185 as passed by the House on October 5, 1992, does not include language pertaining to the Court's jurisdiction over non-monetary disputes and does not make other changes to the contractor claim certification process.

S. 1569 was amended and passed by the Senate for a second time on October 7, 1992. This Bill does include the vital language pertaining to non-monetary disputes and claims certification.

S. 1569 is the far preferable Bill. Its enactment is of significant importance to industry. I hope you will support its signature by the President.

Sincerely,

FAX TRANSMISSION

NEWPORT NEWS SHIPBUILDING
Committed to Quality

4101 Washington Avenue
Newport News, Virginia 23607

10/09/92

TO: James A. Baker, III	FROM: R. L. Petersen
LOCATION: The White House	LOCATION: Legal Department
FAX PHONE: (202) 456-2397	FAX PHONE: (804) 380-3875
VOICE PHONE: (202) 456-6797	VOICE PHONE: (804) 380-7449
(Including Cover Sheet) NUMBER OF PAGES: 2	

COMMENTS:

Newport News Shipbuilding
A Tenneco Company

4101 Washington Avenue
Newport News, Virginia 23607
(804) 380-2000

TENNECO

October 9, 1992

The Honorable James A. Baker, III
Chief of Staff and Senior Counsellor
to the President
The White House
Washington, D.C. 20500

The Honorable C. Boyden Gray, Esquire
Counsel to the President
The White House
Washington, D.C. 20500

The Honorable Allan B. Hubbard
Deputy Chief of Staff to
the Vice President
Room 200
Old Executive Office Building
Washington, D.C. 20501

Gentlemen:

You now have before you two bills designed to cure the current confusion over certification of claims submitted under U.S. Government contracts and to restore the jurisdiction of the Claims Court over default terminations issued under such contracts.

This Company supports the bill entitled, "The Federal Courts Administration Act of 1992," (S. 1569). Unfortunately a competing, ambiguous bill (H.R. 6185) was rushed through at the last minute. In our view, it falls way short of the mark in resolving the issues and will most likely increase litigation instead of decreasing it. For these reasons, we urge you to have the President sign S. 1569 and pocket veto H.R. 6185.

Thank you for your consideration.

Sincerely yours,

Robert L. Petersen, Jr.

Robert L. Petersen, Jr.
Assistant General Counsel -
Government Contracts

RLPjr:lam

Magnavox Electronic Systems Company
1313 PRODUCTION ROAD
FORT WAYNE, INDIANA 46808

GENE R. McALLISTER
PRESIDENT AND CHIEF EXECUTIVE OFFICER

9 October 1992

The Honorable James A. Baker, III
Chief of Staff and Senior Counsellor to the President
The White House
Washington, DC 20500

Subject: S.1569

Dear Mr. Baker:

I wish to express my strong support for S.1569 which is before the President for signature. An opposing piece of legislation, also before the President, is H.R.6185 which I oppose and would urge the President not to sign.

S.1569 will correct the problems associated with the certification of claims i.e., certifications will no longer be jurisdictional in nature. This will avoid a substantial number of law suits related to this issue. The courts have been unable to solve this problem.

S.1569, Section 907, would amend the underlying statute (the Contract Disputes Act), improve the administration of justice and most importantly, remove from already crowded court dockets numerous cases relating to the proper certification of claims and this issue of jurisdiction.

I urge you to express to the President my support for S.1569 and encourage him to sign this important legislation.

Sincerely,

Gene R. McAllister

GRM/sab

cc: Electronic Industries Association/Attn: Mr. Dan Heinemeier, Vice President, Government Div.

U.S. Chamber of Commerce/Attn: Ms. Lorraine Maskin Lavet, Director Human Resources, Legal, and Regulatory Affairs

Miller & Chevalier/Attn: Mr. Clarence T. Kipps, Jr.

Grumman Corporation
Bethpage, New York 11714-3580

Robert J. Myers
President and
Chief Operating Officer

October 8, 1992

The Honorable James A. Baker III
Chief of Staff and Senior Counsel to the President
The White House
Washington, D.C.
FAX (202) 456-2397

Dear Mr. Baker:

We at Grumman Corporation join with the U.S. Chamber of Commerce and the rest of our industry in urging that the President sign into law S.1569, the Federal Courts Administration Act of 1992, and pocket veto the alternative bill, H.R. 6185, which has also been passed by both houses of Congress.

Unlike the alternative bill, S.1569 solves a very serious problem regarding Contract Disputes Act certifications -- a problem which has led to outrageous miscarriages of justice, with procedural technicalities used to thwart a contractor's right to recover on claims that have been adjudicated in its favor on the merits. Instead of being a shield against fraud, the present certification requirements have become a trap for the unwary contractor and an unwarranted impediment to the prompt and fair resolution of legitimate contractor claims against the Government.

S.1569 would reinforce the certification requirement, while at the same time clarifying once and for all the question of who can certify a claim on behalf of the contractor. This will ensure that certification promotes rather than impedes the quest for substantive justice with regard to contract claims. The alternative bill, H.R. 6185, would not solve this pressing problem and, indeed, would introduce still more confused and confusing procedural guidelines that would further burden the Claims Court and the Armed Services Board of Contract Appeals with unnecessary procedural questions and other impediments to the resolution of claims on their substantive merits.

We are confident that your Administration shares the desire of industry for prompt resolution of claims based on the substantive merits of those claims, and appreciates the need to eliminate unnecessary procedural barriers to prompt resolution of those claims. Accordingly, we once again urge that the President sign S.1569 into law and pocket veto H.R. 6185.

Very truly yours,

Robert Myers

Robert J. Myers

RJM/MP:am

GENERAL DYNAMICS

3190 Fairview Park Drive
Falls Church, Virginia 22042-4523

Robert H. Duesenberg
Senior Vice President
General Counsel

703-876-3055

8 October 1992

Mr. James A. Baker III
Chief of Staff
Executive Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

C. Boyden Gray, Esq.
Counsel to the President
Executive Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Messrs. Baker and Gray:

This letter is to urge that the President sign S. 1569, the Federal Courts Study Committee Implementation Act of 1992.

S. 1569 is an essential piece of legislation, restoring, as it will, balance between the two forums created to resolve federal contract disputes. Government contracts litigation has become burdened in the last few years by delaying and wastefully expensive procedures over hypertechnical issues. This bill will streamline and expedite the resolution of such disputes and ensure that cases are decided on their merits.

As you know, the House and Senate have each passed two versions of legislation to implement changes in the administration of the Claims Court. One version, H.R. 6185, as passed by the House on 5 October 1992, does not include language pertaining to the Court's jurisdiction over non-monetary disputes and fails to make other changes to the contractor claim certification process. S. 1569, as amended and passed by the Senate on 7 October 1992, includes appropriate language pertaining to non-monetary disputes and claims certification. It is vital to fair and expeditious litigation in Government contracts litigation that this language become part of the federal courts processes and administration.

Mr. James A. Baker III
C. Boyden Gray, Esq.
8 October 1992
Page Two

I fully support S. 1569 and urge you to ensure that this version of the legislation is signed into law by the President. This is an issue of vital importance to the industry. I trust you will support it.

Sincerely,

Robert H. Duesenberg

RHD/dbn

cc. Mr. William Crystal
Mr. Allan Hubbard
Mr. David Macintosh
Mr. Daniel Cross

Frank Shrontz
Chairman
Chief Executive Officer

The Boeing Company
P.O. Box 3707
Seattle, WA 98124-2207

BOEING

October 12, 1992

Dear Mr. President:

Along with the U.S. Chamber of Commerce and a myriad of other companies, I am writing to urge you to sign the bill S.1569, the Federal Courts Study Committee Implementation Act of 1992. The bill, and its non-monetary disputes language in particular, is needed to restore the balance between the two forums created to resolve federal contract disputes. This bill will streamline and expedite the resolution of those disputes and will ensure that cases can proceed forward to be decided on their merits.

As you know, the House and Senate have each passed two versions of legislation to implement changes in the administration of the Claims Court. One version, H.R.6185 as passed by the House on October 5, 1992, does not include language pertaining to the court's jurisdiction over non-monetary disputes and does not make other changes to the contractor claim certification process.

S.1569 was amended and passed by the Senate for a second time on October 7, 1992. This bill does include the vital language pertaining to non-monetary disputes and claims certification.

I fully support S.1569 and urge you to sign this legislation into law. This is an issue of vital importance to Boeing and all Government suppliers and I certainly hope you will support us on this.

Sincerely,

Frank Shrontz

The Honorable George Bush
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

BOEING

cc: The Honorable James A. Baker, III
Chief of Staff and Senior Counsellor
to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

The Honorable C. Boyden Gray, Esq.
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

The Honorable Allan B. Hubbard
Deputy Chief of Staff to
the Vice President
Room 200
Old Executive Office Building
Washington, D.C. 20501

The Boeing Company
P.O. Box 3707
Seattle, WA 98124-2207

Action

BOEING

The Honorable James A. Baker, III
Chief of Staff and Senior Counsellor
to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

X-RAYED

Interstate-McBee, Inc.
Interstate Diesel Service, Inc.
McBee Supply Corp.

4901 LAKESIDE AVENUE
CLEVELAND, OHIO 44114
AREA CODE 216/881-0015
FAX: 216/881-0805
TELEX: 212579

October 21, 1992

VIA FAX: 202-456-2883

The Honorable James A. Baker, III
Chief of Staff and Senior Counsellor
to the President
The White House
Washington, DC 20500

Dear Mr. Baker:

I am writing to request your support and urge the President to sign into law S. 1569, the Federal Courts Administration Act of 1992, and to pocket veto the alternative bill, HR. 6185, which has also been passed by both Houses of Congress.

S. 1569 solves a very serious problem regarding Contract Disputes Act Certifications and will streamline and expedite the resolution of contractor disputes and ensure that cases are decided on their merits.

In these recessionary times, it is very important for small businesses to have their meritorious claims handled expeditiously and without unnecessary and costly litigation from the Justice Department. For this reason, S. 1569 is very important to me.

Very truly yours,

A. J. Buescher
President

AJB/sab

FACSIMILE COVER SHEET

DATE: October 21, 1992

FROM: Richard Lambert
(FAX: 313/462-3621)

- __ LPR LAND COMPANY
- __ GLENN WING POWER TOOLS
- ✓ MICHAEL INDUSTRIES
- __ LPR ASSOCIATES (POWERSCOURT)
- __ LAUREL PARK ELDERLY HOUSING
- __ LPR PROPERTIES
- __ OTHER

TOTAL PAGES: 2
(INCL. COVER SHEET)

TO: The Honorable James A. Baker, III

FAX #: 202-456-2883

COMMENTS:

We are transmitting from a RICOH fax machine. If you do not receive all the pages, please call back as soon as possible. Phone #: 313/462-2144.

D:\MASTER.FAX

MICHAEL INDUSTRIES, INC.

October 21, 1992

VIA FAX: 202-456-2883

The Honorable James A. Baker, III
Chief of Staff and Senior Counsellor
to the President
The White House
Washington, DC 20500

Dear Mr. Baker:

I am writing to request your support and urge the President to sign into law S. 1569, the Federal Courts Administration Act of 1992, and to pocket veto the alternative bill, HR. 6185, which has also been passed by both Houses of Congress.

S. 1569 solves a very serious problem regarding Contract Disputes Act Certifications and will streamline and expedite the resolution of contractor disputes and ensure that cases are decided on their merits.

In these recessionary times, it is very important for small businesses to have their meritorious claims handled expeditiously and without unnecessary and costly litigation from the Justice Department. For this reason, S. 1569 is very important to me.

Very truly yours,

Richard L. Lambert
Chairman of the Board

S:\MII\983

23 SISAL STREET, NEWARK, OHIO 43055, (614) 349-9473 TELEX NO. 4931301 FAX NO. (614) 345-5311