

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Solicitor
Washington

M-28615.

August 10, 1936.

The Honorable

The Secretary of the Interior.

My dear Mr. Secretary:

Roy W. James, Michael J. Hanley, and H. A. Montgomery, all of Grand Canyon, Arizona, have filed claims in the amounts of \$51, \$84.50, and \$873.45, respectively, against the United States for compensation for the loss of clothing, household furnishings, and other personal effects as the result of a fire in a Government-owned apartment building in Grand Canyon National Park. The question whether the claims should be allowed and certified to Congress under the act of December 28, 1922 (42 Stat. 1066), has been submitted to me for opinion. Since the losses have the same origin, the claims will be considered together for convenience.

The fire occurred on September 1, 1935. All the claimants were employees of the National Park Service and with their families occupied a three-family apartment building. The fire completely destroyed the Montgomery apartment and damaged the others. Little evidence of the exact cause of the fire appears to be available, apart from the belief that it was caused by a defective stove pipe. The following is quoted

from a letter addressed to the Director of the National Park Service by Chief Engineer F. A. Kittredge, of San Francisco:

" * * * the fire was not only due to no fault of the occupant, but was 'assumed to have been caused from stove pipe,' although the cause can never be definitely known because of the extent of damage by fire. The cause of the fire seems obviously to have been the stove pipe, not only from the official report of Fire Chief James P. Brooks, but because there are other buildings in that park which are now in a hazardous condition by the proximity of the chimney to the stove pipe. True, in one instance noted, the present stove pipe is separated from the wall by sheet asbestos, but even with this protection there is an obvious hazard because the buildings are so constructed that the stove pipe must be in close proximity to the wall."

Inquiry reveals that none of the claimants was concerned with the construction of the building nor charged with its maintenance. All were mere occupants, employed by the Government in other pursuits. It is therefore my opinion that the record as a whole requires the application of the doctrine of res pisa loquitur, creating a presumption of negligence on the part of Government employees in permitting the continued existence of the conditions mentioned above. There being no explanation by the Government overcoming this presumption, the claims should be allowed. The Department has so held in Royal J. Turley (M-28375), decided May 13, 1936, also a claim based on a loss by fire.

Each of the claimants has submitted his own sworn itemized statement of the value of property lost. The record, however, contains no findings or recommendations by an investigating officer with reference to the amount or value of the property. The claims accordingly should be

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allowed in whatever amounts the superintendent of Grand Canyon National Park or other appropriate officer may find to be the reasonable values of the property destroyed.

Respectfully,

(Sgd) Frederic L. Kirgis,
Acting Solicitor.

Approved: August 10, 1936.

(Sgd) Oscar L. Chapman,
Assistant Secretary.