LES AUCOIN
1ST DISTRICT, OREGON

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

June 8, 1979

Dear Colleague:

During the past several weeks, attorneys for D.K. Ludwig, owner of Citricos de Chiriqui, have contacted numerous members urging the adoption of an amendment to the Panama Canal Act. The amendment would prohibit the payment of any money to Panama under the 1977 Treaty as long as a U.S. investor had a claim against Panama which had not been settled to the satisfaction of the investor. Despite its superficial appeal, the amendment is flatly inconsistent with the Treaty and extremely unwise as a matter of policy.

The proposed amendment attempts to condition U.S. Treaty obligations to Panama on Panama's performance in an area completely unrelated to the Treaty. If we have a right to impose this condition, then Panama, by analogy, could withhold performance of its obligations under the Treaty, unless the U.S. performed certain acts to Panama's satisfaction. Clearly, neither party has the right to link its obligations under the Treaty to the performance of unrelated acts by the other. To do so destroys the very concept of an agreement between nations.

Its sponsors have attempted to argue that the amendment does not violate the Treaty by asserting that H.R. 111 imposes other conditions on our obligations to Panama. They point to the requirement that the payments to Panama be appropriated, and to the prohibition of payments if Panama imposes retroactive taxes. There are obvious distinctions in both cases. Use of the appropriations process is not a condition on our obligation to Panama; it merely establishes how expenses of the Panama Canal Commission, including the payments, will be financed under our domestic law. The retroactive tax provisions do impose a condition, but not one extraneous to the Treaty. Article IX of the Treaty prohibits the imposition of such taxes.

Mr. Ludwig's representatives have pointed out that Senator Glenn, in the course of Senate debate on the Treaty, expressed the hope that the Citricos case would be settled promptly. On the basis of this statement they contend that the Senate in effect approved the Treaty subject to the implicit condition that Mr. Ludwig be compensated to his satisfaction. Since that condition has failed, it is argued that Congress may now, in effect, amend the Treaty for the benefit of Mr. Ludwig.

No express condition regarding the welfare of American investors was added to the Treaty. In fact, the Senate on April 18 rejected such a condition by a large majority. The reservation rejected was much milder than the amendment being pressed upon us now. It would have cut off our voluntary foreign aid to Panama if claims certified as compensable by the Secretary of State and (in

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the event of a dispute) adjudicated by the Foreign Claims Settlement Commission were refused by Panama. The present amendment requires Panama to pay the price named by the investor (so long as the claim is not frivilous) or face the loss of payments to which it is entitled under the Treaty.

Aside from causing the U.S. to violate the Treaty whenever a U.S. investor felt he had not received as much as he might desire, passage of the amendment would establish a very dangerous precedent. It is a private bill for the benefit of a single investor. It is entirely non-germane. It should not be attached to a significant piece of legislation.

Anyone would strongly support the efforts of Mr. Ludwig to obtain just compensation for his property and Administration representatives have been asked to use all means at their disposal to bring about a reasonable, negotiated settlement. The House should be opposed, however, to legislation which would give an investor carte blanche to impose whatever type of settlement he considered desirable. Congress should not permit itself to be used in this manner.

Sincerely,

Dante B. Fascell

LES AuCOIN
Member of Congress

DANTE FASCELL
Member of Congress

EDWARD J. DERWINSKI
Member of Congress

Canal Pact Bill Could Benefit Sole Billionaire

By TOM FIEDLER
Herald Washington Bureau

WASHINGTON — Several congressmen are attempting to attach to the bill implementing Panama Canal treaties an innocent-sounding provision that would require Panama to settle all expropriation claims by American businesses.

But that amendment, according to officials, would benefit only one man -- America's only billionaire, Daniel K. Ludwig, a shipping and real estate tycoon with worldwide holdings.

Under the provision, Ludwig could collect up to $20 million for a Panamanian citrus plantation that he shut down in 1974 as unprofitable.

Ludwig's attorneys now claim that the plantation was expropriated — taken for public use — because the Panamanian government took it over a month after the shutdown citing a need to keep the 800 workers employed.

Canal Treaty Could Boost Billionaire

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THE GOVERNMENT began negotiating to buy the land from Ludwig's Panamanian company, Citricos, and made clear that Ludwig could have it back if he'd continue to operate it.

But those negotiations have bogged down amid charges of bad-faith bargaining on both sides. Ludwig's attorneys have claimed the 11,000-acre plantation is worth as much as $20 million. The Panamanian government's best offer has been $5.9 million, payable partly in cash and the rest in long-term notes.

LUDWIG

This impasse has fueled speculation that the so-called Citricos amendment is being used as a club by Ludwig to pound Panama into accepting his price. He is the only American businessman with an outstanding claim against Panama.

The amendment prohibits the United States from making any payments to Panama under the treaties if there are any claims alleging that Panama has expropriated, "occupied" or "seized" property owned by U.S. citizens.

IT ALSO REQUIRES the United States to consider the claim valid as long as it is "not frivolous and without any meritorious basis." But the United States is powerless to question whether the amount of compensation being sought by the corporation is reasonable.

"If there's $1 worth of merit to the claim, we'd have to cut off all payments under the treaty even if the owner was asking an outrageous settlement," one government source said.

But the implications of the amendment go far beyond the desires of one businessman to collect on a sour investment.

One source bluntly characterized the provision as an attempt to "blackmail" the Panamanian government into paying Ludwig's $20 million asking price or risk the loss of nearly $1 billion in U.S. payments to maintain the canal.

An internal strategy paper prepared by some House opponents of the Citricos amendment says it "clearly violates" the treaties by requiring Panama to make a payment that wasn't contemplated in the treaty negotiations.

THIS PAPER ALSO describes the measure as a "private bill for the benefit of one powerful American investor" and warns that it "subjects U.S. foreign policy to private interests."

The State Department has warned some congressmen that the United States stands to lose even more than Panama if the povision were approved and Panama refused to settle at Ludwig's price.

As soon as the United States stopped meeting its treaty obligations, administration officials say, Panama could legally declare the treaties void and immediately take sole possession of the canal — a situation that otherwise wouldn't occur until Dec. 31, 1999.

Despite these possibilities, the Citricos amendment has picked up considerable support in Congress, particularly among those who oppose the Panama Canal treaties.

Much of that is due to the effective lobbying of Ludwig's Washington-based law firm, Ragen and Mason, known for its political connections.

ONE OF THE partners, former Rep. James V. Stanton of Cleveland, has used his personal friendships with former House colleagues to lobby the measure, according to sources.

Stanton has declined to comment, citing the attorneys-client privilege.