



U.S. Department of Justice  
Civil Division, Appellate Staff  
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Washington, D.C. 20530-0001

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March 5, 2003

Mr. Frederick K. Ohlrich  
Supreme Court Clerk and Administrator  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4783

Re: Taiheiyo Cement Corp. v. Superior Court (No. S113759)

Dear Mr. Ohlrich:

Pursuant to California Rule of Court 28(g), the United States of America respectfully submits the enclosed amicus curiae letter in support of the Petition for Review in the above-referenced matter. In accordance with Rule 44(b)(1)(i), we enclose an original and thirteen (13) copies of the amicus letter.

In addition, please find enclosed for filing in the above-referenced matter the United States' Request for Judicial Notice of Diplomatic Correspondence from the Government of Japan to the Government of the United States and Proposed Order. In accordance with Rule 44(b)(1)(iii), we enclose an original and eight (8) copies of the request for judicial notice.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Douglas Hallward-Driemeier".

Douglas Hallward-Driemeier

cc: As Listed on Certificate of Services



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March 5, 2003

Honorable Ronald M. George, Chief Justice  
and Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4783

Re: Taiheiyo Cement Corp. v. Superior Court (No. S113759)

Dear Justices:

The decision of the Court of Appeal in this case implicates the most fundamental powers that our Constitution assigns to the Federal Government – the power to make war and to establish peace. As the Framers understood, and the United States Supreme Court has repeatedly emphasized, these responsibilities, above all others, must be located in a single government speaking for the Nation as a whole. See, e.g., Hines v. Davidowitz, 312 U.S. 52, 63 (1941) ("The Federal Government \* \* \* is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties."); United States v. Pink, 315 U.S. 203, 233 (1942) ("Power over external affairs is not shared by the States," but instead "is vested in the national government exclusively."); Id. at 240 (Frankfurter, J., concurring) ("That the President's control of foreign relations includes the settlement of claims is indisputable."). See also Deutsch v. Turner Corp., 317 F.3d 1005, 1025 (9th Cir. 2003) ("[T]he Constitution allocates the power over foreign affairs to the federal government exclusively, and the power to make and resolve war, including the authority to resolve war claims, is central to the foreign affairs power in the constitutional design."). Neither the California legislature nor the courts are free to disregard the determinations of the Federal Government in matters of war and peace.

At the end of World War II, the United States government made the difficult policy decision that all claims arising out of the war with Japan must be resolved comprehensively. The United States was determined to avoid a retributive peace treaty such as the Treaty of Versailles, which was regarded as having sowed the seeds of further war. Instead, the United States resolved to establish peace on terms that allowed Japan to re-enter the international community as a self-sufficient, democratic ally and an anchor of peace and stability in Asia.

In the view of our Nation's leaders, this policy required resolution of all claims, both public and private, of all nations and their citizens. In furtherance of this policy, the 1951 Treaty of Peace between Japan, the United States and over forty other Allied nations, expressly waived the claims of the Allied parties and their nationals against Japan and Japanese nationals. See 3 U.S.T. 3169, Art. 14(b) (Allies "waive all \* \* \* claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war"). The United States and its Allies recognized that the claims of China and Korea, which were not parties to the Treaty, against Japan and its nationals were likewise so large that their continued pendency would frustrate the Treaty's goal of allowing Japan "to maintain a viable economy." Id. at Art. 14(a). Thus, the Treaty specifically provided that the claims of non-party countries and their nationals should similarly be resolved by inter-governmental arrangements. See, e.g., id. at Art. 4(a) (the "claims \* \* \* of [Korean] authorities and residents against Japan and its nationals, shall be the subject of special arrangements between Japan and [Korean] authorities" (emphasis added)). Indeed, the Treaty established the basis for such resolution by ensuring that these non-party nations received the same benefits that the United States and other Allied parties had obtained for themselves under the Treaty. See id. Art. 21. Over the past half century, the Treaty has served as the cornerstone of peace and cooperation between the United States and Japan.

Now, fifty years after the fact, the State of California seeks unilaterally to set aside the framework for peace adopted by the Federal Government. The California legislature is apparently of the view that the Treaty of Peace did not adequately promote the interests of those who suffered during the war as forced laborers. Thus, in Section 354.6, California has arrogated to itself the power to create a cause of action and to establish uniquely favorable procedures for those who were forced by our war-time enemies to perform uncompensated labor, though only a fraction of the eligible plaintiffs have any connection whatsoever to California, and none of the wrongful conduct occurred there. Even in the absence of specific treaty language preempting state authority, an individual State would lack the power to exact war reparations from our former enemies and their nationals, especially when the wrongs at issue were committed far beyond the State's boundaries. See Deutsch, 317 F.3d at 1025. Even less does a State have authority to create or promote litigation of war-related claims when the peace treaty entered into by the President with the overwhelming consent of the Senate on behalf of the United States has relegated such claims to resolution by other means.

The Court of Appeal's decision in this case is flawed and poses a significant risk of seriously disrupting international relations in East Asia at a time when such relations are already extremely sensitive. These errors and the potential for serious international consequences require that this Court exercise immediate review of that decision.

As an initial matter, the Court of Appeal wholly failed to give effect to the foreign policy of the United States as reflected in the Treaty. The court acknowledged that the Treaty reflected the United States' policy in favor of plaintiff's claims being resolved by arrangements between the governments of Korea and Japan. See Taiheiyo Cement Corp. v. Superior Court, 105 Cal. App. 4th 398, 411 (2d Dist. 2003). Inexplicably, however, the Court held that the adoption of this policy in the Treaty, which is a part of federal law and as binding on the States as a statute, had no effect on the ability of the State of California to enact legislation directly at odds with that policy. Whether the statute is recognized as an attempt to create a war-related cause of action, as the United States Court of Appeals for the Ninth Circuit and the California Court of Appeal for the Fourth Appellate District have each held,<sup>1</sup> or the law is refashioned, as by the court below, into a purely procedural statute,<sup>2</sup> Section 354.6 is plainly at odds with federal policy with respect to the war-related claims of Korean nationals. Whether the law is characterized as "substantive" or "procedural," it is clear that section 354.6 is directed solely at war-related claims and actively facilitates and encourages litigation of such claims in California courts under a uniquely favorable set of rules. Another Court of Appeal has already held that the 1951 Treaty of Peace bars our own POWs from pursuing claims under Section 354.6. See Mitsubishi Materials Corp. v. Superior Court, 2003 WL 253877, \*1 & nn. 1, 2 (Cal. App. 4th Dist. Feb. 6, 2003). The Treaty further reflects the Federal Government's clear policy that the war-related claims of Korean natives, such as plaintiff, should receive no better treatment than those of our own servicemen.

Even in the absence of the Treaty, such encouragement by California of war-related claims would constitute impermissible "state involvement in foreign affairs and international relations." Zschernig v. Miller, 389 U.S. 429, 436 (1968). See also Crosby v. National Foreign Trade Council, 530 U.S. 363, 379 (2000) (a State is without authority to pursue its own independent approach to foreign policy matters, even if the United States and the State "share the same goals," because "[t]he fact of a common end hardly neutralizes conflicting means"). It is even more clear that California has overstepped its authority in light of the fact

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<sup>1</sup> See Deutsch, 317 F.3d at 1019; Mitsubishi Materials Corp. v. Superior Court, 2003 WL 253877, \*1 & nn. 1, 2 (Cal. App. 4th Dist. Feb. 6, 2003).

<sup>2</sup> See Taiheiyo Cement Corp., 105 Cal. App. 4th at 417. Notably, in reaching the conclusion that Section 354.6 was purely procedural, the Court of Appeal expressly declined to consider the two most self-evidently substantive aspects of the statute – the damages provision, Cal. Civ. Pro. § 354.6(a)(3), and the special rule with respect to the liability of corporate affiliates, § 354.6(b). See Taiheiyo Cement Corp., 105 Cal. App. 4th at 407 n.4. While the Court maintained that these provisions had not been addressed in the briefs, id., that is not accurate. Indeed, the United States' brief addressed the substantive nature of these provisions in almost precisely the same terms that the Deutsch opinion does. Compare Brief of the United States at 37-38 with Deutsch, 317 F.3d at 1019.

that California's policy is directly opposite to that of the Federal Government as reflected in the Treaty.

Immediate review by this Court is urgently required, as the Court of Appeal's decision threatens to have an adverse impact on foreign relations with and among the nations of East Asia. The Government of Japan has already protested to the United States in particularly strong language that the Court of Appeal's decision could have grave consequences. See The Views of the Government of Japan on section 354.6 of Code of Civil Procedure of the State of California (submitted, together with a request for judicial notice, herewith); id. at ¶ 5 (lawsuits under section 354.6 "would jeopardize the peace and stability in Asia and Pacific region that has been sustained by [the] settlement [of claims in the 1951 Treaty and subsequent bilateral treaties] for more than half a century"). The Japanese government has expressed the view that litigation of such claims in the face of the policies expressed in the Treaty of Peace "undermine[s] the credibility of the United States" in its dealings with foreign nations. Moreover, Japan views the California statute and litigation under it as "reopening the war claims settlements attained by the Peace Treaty" and warns that "such a decision would have negative repercussions that would result in the reopening or the revisiting of various war-related issues by" other nations, including Japan. By reopening so sensitive issue as the wrongs of World War II, both real and perceived, California threatens to disrupt relations in East Asia at a time when they are particularly sensitive. As the United States informed the Court of Appeal, the availability of California courts to litigate wartime claims could reasonably be expected to impair discussions between Japan and North Korea regarding the normalization of relations, talks that had grown to encompass North Korea's nuclear weapons program. The diplomatic note from Japan reinforces this concern. The communique specifically states that the Government of Japan "is gravely concerned that section 354.6 would prejudice the ongoing talks with North Korea."

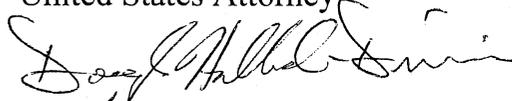
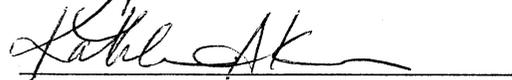
It is not for plaintiffs or the courts to discount the potential implications of such diplomatic objections for United States foreign policy, especially at a time of international tension when relations in East Asia are at their most sensitive. State government officials, who are not part of the process through which the Nation formulates and conducts its international relations, are not well positioned to evaluate what adverse impact their actions may have for those relations. They cannot, for example, be expected to make an informed assessment of whether, or how, or when a foreign government might respond to provocative state legislation, or how detrimental the response might be to various important interests of the United States as a whole. "Experience has shown that international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to another's subjects inflicted, or permitted, by a government." Zschemig, 389 U.S. at 441. Precisely "because [t]he union will undoubtedly be answerable to foreign powers for the conduct of its members," the Framers recognized that "the peace of the WHOLE ought not to be left at the disposal of a PART." Crosby, 530 U.S. 382 n.16 (quoting The Federalist No. 80, pp. 535-536 (J. Cooke ed. 1961) (A Hamilton)).

For the foregoing reasons, the critically important issues raised by this litigation require that this Court take immediate review of the Court of Appeal's decision.

Respectfully submitted,

ROBERT D. McCALLUM, JR.  
Assistant Attorney General

JOHN S. GORDON  
United States Attorney

Of Counsel:  
JAMES G. HERGEN  
United States Department of State  
Office of the Legal Adviser  
Washington, D.C. 20037

MARK STERN  
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Civil Division, Room 9113  
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Washington, DC 20530-0001  
Attorneys for the United States

cc: As Indicated on Certificate of Services

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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TAIHEIYO CEMENT CORPORATION, a Japanese business association;  
TAIHEIYO CEMENT U.S.A., INC., a California corporation;  
CALIFORNIA PORTLAND CEMENT CO., a California corporation;  
GLACIER NORTHWEST, INC. (f/k/a LONE STAR NORTHWEST, INC.),  
a Washington corporation.

Petitioners and Defendants,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
FOR THE COUNTY OF LOS ANGELES,

Respondent.

JAE WONG JEONG,

Real Party in Interest and Plaintiff

---

Court of Appeal of the State of California, 2nd Appellate District, Civil No. B155736  
Superior Court of the States of California, County of Los Angeles,  
The Honorable Peter D. Lichtman, Judge, Presiding  
Civil Case No. BC217805

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REQUEST FOR JUDICIAL NOTICE OF DIPLOMATIC  
CORRESPONDENCE FROM THE GOVERNMENT OF JAPAN TO  
THE GOVERNMENT OF THE UNITED STATES; PROPOSED ORDER

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ROBERT D. McCALLUM, JR.  
Assistant Attorney General

JOHN S. GORDON  
United States Attorney

MARK STERN  
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ATTORNEYS FOR AMICUS CURIAE THE UNITED STATES OF AMERICA

TO THE HONORABLE CHIEF JUSTICE RONALD GEORGE AND  
THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to California Rule of Court 41.5, amicus curiae the United States of America respectfully requests that the Court take judicial notice of diplomatic correspondence that the United States Department of State has received from the Government of Japan, which relates to the impact of California Code of Civil Procedure, Section 354.6, on international relations between and among the United States and nations of East Asia.

The correspondence, entitled "Views of the Government of Japan on Section 354.6 of Code of Civil Procedure of the State of California," duly authenticated by the Department of State, is attached hereto as Exhibit B. The note was delivered to the Department of State by the Embassy of Japan on February 20, 2003. See Declaration of James Hergen, attached hereto as Exhibit A.

In the correspondence, Japan protests the Court of Appeal's decision and states that lawsuits under section 354.6 "would jeopardize the peace and stability in Asia and Pacific region that has been sustained by [the] settlement [of claims in the 1951 Treaty and subsequent bilateral treaties] for more than half a century." The Japanese government expresses the view that litigation of such claims in the face of the policies expressed in the Treaty of Peace "undermine[s] the credibility of the United States" in its dealings with foreign nations. Moreover, Japan regards the California statute and litigation under it as "reopening the war claims settlements attained by the Peace Treaty" and warns that "such a decision would

have negative repercussions that would result in the reopening or the revisiting of various war-related issues by" other nations, including Japan. In addition, the communique specifically states that the Government of Japan "is gravely concerned that section 354.6 would prejudice the ongoing talks with North Korea" regarding the normalization of relations, talks that are especially sensitive at this moment in light of North Korea's recently revived nuclear weapons program.

Rule 41.5 provides that the Supreme Court may take judicial notice of new material consistent with Section 459 of the Evidence Code, which authorizes a reviewing court to take judicial notice of any matter specified in Section 452. Among the matters that the Court may notice are "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination." Cal. Evid. Code, § 452(f). The fact that the United States Department of State received diplomatic correspondence with the content and in the form attached, as attested by Mr. Hergen and duly certified by the Department of State, is not reasonably subject to dispute.

Such diplomatic notes have been frequently noted by the courts as competent evidence of the impact of state legislation on the nation's foreign relations. See, e.g., Crosby v. National Foreign Trade Council, 530 U.S. 363, 382 (2000) (observing that "a number of this country's allies and trading partners filed formal protests with the National Government"); Zschemig v. Miller, 389 U.S. 429, 437 n.7 (1968) (noting complaint by government of Bulgaria to State Department). See also Ono v. United States, 167 F. 359, 362 (9th Cir. 1920) (taking "judicial notice" of fact that "the Japanese government made objection" to

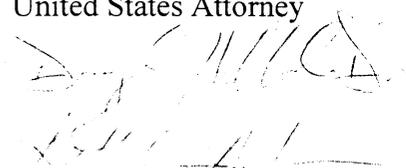
executive proclamation, and that its language had been amended in response).

WHEREFORE, amicus curiae the United States of America respectfully requests the Court to take judicial notice of the diplomatic correspondence from the Government of Japan to the United States Department of State, authenticated and appended hereto as Attachment B.

Respectfully submitted,

ROBERT D. McCALLUM, JR.  
Assistant Attorney General

JOHN S. GORDON  
United States Attorney



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DOUGLAS HALLWARD-DRIEMEIER  
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ATTORNEYS FOR AMICUS CURIAE  
THE UNITED STATES OF AMERICA

March 5, 2003

Case No. S113759

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

---

TAIHEIYO CEMENT CORPORATION, a Japanese business association;  
TAIHEIYO CEMENT U.S.A., INC., a California corporation;  
CALIFORNIA PORTLAND CEMENT CO., a California corporation;  
GLACIER NORTHWEST, INC. (f/k/a LONE STAR NORTHWEST, INC.),  
a Washington corporation.

Petitioners and Defendants,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
FOR THE COUNTY OF LOS ANGELES,

Respondent.

JAE WONG JEONG,

Real Party in Interest and Plaintiff

---

Court of Appeal of the State of California, 2nd Appellate District, Civil No. B155736  
Superior Court of the States of California, County of Los Angeles,  
The Honorable Peter D. Lichtman, Judge, Presiding  
Civil Case No. BC217805

---

[PROPOSED] ORDER GRANTING REQUEST FOR JUDICIAL NOTICE OF  
DIPLOMATIC CORRESPONDENCE FROM THE GOVERNMENT OF  
JAPAN TO THE GOVERNMENT OF THE UNITED STATES

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The request of amicus curiae the United States of America for judicial notice of the February 20, 2003, correspondence from the Government of Japan to the United States Department of State, entitled "Views of the Government of Japan on Section 354.6 of Code of Civil Procedure of the State of California," is GRANTED.

Dated: March \_\_, 2003

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Chief Justice

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY THAT, the foregoing motion is printed in Times New Roman, 13-point, font and that, according to the word-count function on WordPerfect 9, the foregoing motion contains 587 words.

  
\_\_\_\_\_  
Douglas Hallward-Driemeier

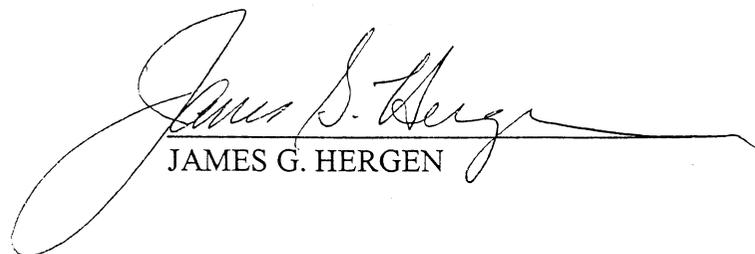
AFFIDAVIT OF JAMES G. HERGEN

I, JAMES G. HERGEN, do swear and affirm the following, based upon information known to me personally:

1. I am the Assistant Legal Adviser for East Asian and Pacific Affairs in the Office of the Legal Adviser in the United States Department of State. I am the attorney within the Office of the Legal Adviser with primary responsibility respecting litigation in United States courts against Japan and Japanese corporations arising out of World War II. In that capacity, I am responsible for receiving communications from the Government of Japan with regard to such lawsuits.

2. On February 20, 2003, I received diplomatic correspondence from the Embassy of Japan, on behalf of the Government of Japan, protesting the continued litigation of claims under California Code of Civil Procedure, section 354.6, as inconsistent with the principles underlying the 1951 Treaty of Peace with Japan and as posing a grave threat to relations between the United States and Japan and among the nations of East Asia. The Government of Japan's diplomatic note, as duly authenticated by the Department of State as an official diplomatic communication of the Government of Japan, is attached hereto as Exhibit B.

I DECLARE under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 5, 2003, at Washington, D.C.

  
JAMES G. HERGEN



**EMBASSY OF JAPAN  
WASHINGTON, D.C.**

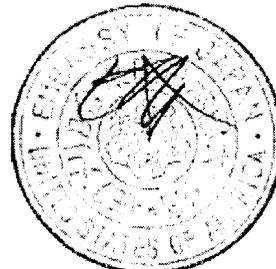
February 20, 2003

P - 21

The Embassy of Japan presents its compliments to the Department of State and has the honor to transmit to the Department, enclosed herewith, the Views of the Government of Japan on section 354.6 of Code of Civil Procedure of the State of California.

The Embassy of Japan avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C.



The Views of the Government of Japan on section 354.6  
of Code of Civil Procedure of the State of California

The lawsuits brought against Japanese companies pursuant to section 354.6 of Code of Civil Procedure of the State of California ("section 354.6") constitute one of the important diplomatic issues being addressed by both the Government of Japan ("GOJ") and the Government of the United States ("USG"). The GOJ appreciates the USG's good faith and efforts, but section 354.6 is still being implemented and there are recent court rulings upholding the claims based on it, including the decision of the California Court of Appeal in the Jeong case. Although the GOJ has twice expressed its views on these lawsuits,<sup>1,2</sup> it must once again express its detailed views on section 354.6.

2. The Peace Treaty with Japan in 1951 was made to formally terminate a state of war between Japan and the Allied Powers and to settle questions then outstanding as a result of the existence of a state of war in terms of territory, security, economic interests, military tribunals, claims and property, etc. The U.S. was the main drafter of the treaty and incorporated into it the policy of all the combatants and interested nations of putting to rest once and for all the issue of the liability of Japan and its nationals for WWII damage claims in the greater interest of securing regional peace and security. In faithfully fulfilling all its treaty obligations, Japan provided reparations to an extent never seen in modern time, gave the parties to the Peace Treaty and non-parties such as China and Korea the right to seize and dispose of public and private Japanese assets located in their territories and waived all claims of Japan and its nationals against the Allied Powers and their nationals arising out of the war. In return, the Allied Powers waived claims of themselves and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war in accordance with Article 14(b).

This waiver clause settled completely and finally the issue of claims between the Allied Powers and their nationals, on one hand, and Japan and its nationals, on the other hand. It is clear from

history that Japan has been a most important and trusted ally of the U.S. and that the Peace Treaty has been providing the basic framework for the peace and stability in the Asian-Pacific region and the international society as a whole.

3 Section 354.6, enacted by the State of California in 1999, enables former U.S. prisoners of war, as well as others, to bring actions to recover damages allegedly inflicted on them by Japanese companies in the course of the prosecution of the war, even though their claims were waived by the Peace Treaty and in accordance with the fundamental policy it embodies. Assertion of claims under this statute would overturn the final and complete claims settlement realized by the Peace Treaty and would be inconsistent with the provisions of the treaty. The GOJ is deeply concerned that, encouraged by this new statute, a wave of lawsuits has been brought against a number of Japanese companies. If upheld, section 354.6 would nullify the provisions of the Peace Treaty which settled all issues arising out of the war, would undermine the credibility of the United States, the main sponsor of the Peace Treaty, in performing its treaty obligations, and would impair the U.S.- Japan relationship. If a U.S. court permits the reopening the war claims settlements attained by the Peace Treaty, such a decision would have negative repercussions that would result in the reopening or the revisiting of various war-related issues by Japan, its Asian neighbors, the U.S. and other former Allied Powers. Such a result would disturb Japan's relationship with those countries and its foreign policy toward them.

4 Articles 4 (a) and 26 of the Peace Treaty specifically provide that the claims of non-parties to the treaty such as China and Korea and those of their nationals were also to be addressed through government-to-government negotiations, not individual damage claims. However, the State of California established a mechanism where any person meeting the criteria set forth in section 354.6 can assert individual claims against Japanese nationals in California. Assertion of claims under this statute would overturn the issues Japan settled with the Republic of Korea ("ROK")

and China through highly political and sensitive negotiations decades ago. The GOJ is deeply concerned that, encouraged by the enactment of section 354.6, many nationals of ROK and China, including former ROK or Chinese citizens who are now U.S. citizens, have brought numerous actions against Japanese nationals under this section to seek recovery of damages. The GOJ is even more concerned that California state courts, including in the Jeong case, have recently declined to dismiss the plaintiffs' claims, allowing the lawsuits to proceed further under section 354.6.

5 Japan and North Korea are presently engaged in sensitive normalization talks. Although the issues of property and claims between Japan and North Korea arising out of the World War II era are to be addressed and settled through the ongoing talks, section 354.6 does not preclude, and actually presumes, that such issues are also to be dealt with by courts in the U.S through private legal actions. The GOJ is gravely concerned that section 354.6 would prejudice the ongoing talks with North Korea. The existence of section 354.6 and the lawsuits against Japanese nationals under it would overturn the final and complete settlement of the issue of claims arising from the WWII era against Japan and its nationals and would jeopardize the peace and stability in Asia and Pacific region that has been sustained by such settlement for more than half a century. If the credibility of the U.S. commitment is undermined by these lawsuits, it would adversely affect the present and future efforts by the U.S., Japan and others with regard to the Korean peninsula.

6 In conclusion, as a result of the lawsuits brought under section 354.6, that statute reopens the issues settled between Japan and the U.S. and between Japan and other nations. It would also prejudice the resolution of issues to be settled between Japan and North Korea in ongoing talks. Moreover, the statute and the lawsuits are significantly disturbing the long-standing foreign policy of the U.S., Japan and its Asian neighbors. The GOJ is convinced that the issues raised by the legal actions under section 354.6 should not be adjudicated in the courts in the U.S. The GOJ

requests that the United States take appropriate measures, such as elimination or invalidation of section 354.6.

Notes

1. See ATTACHMENT 1, The Views of the Government of Japan on the Lawsuits against Japanese Companies by the Former American Prisoners of War and Others, issued on August 8, 2000.

2. See ATTACHMENT 2, The Views of the Government of Japan on the Lawsuits against Japanese Companies by the Nationals of the Countries not being a Party to the San Francisco Peace Treaty, issued on November 17, 2000.

ATTACHMENT

The Views of the Government of Japan  
on the Lawsuits against Japanese Companies  
by the Former American Prisoners of War and Others

During World War II, Japan caused tremendous damage and suffering to the people of many countries -- including the United States -- for which actions the Government of Japan has expressed its feelings of deep remorse and its heartfelt apology. (Please refer to the attached statement of Japanese Prime Minister Murayama in commemoration of the fiftieth anniversary of the end of the World War II, which was announced in 1995 and widely circulated, including to all Member States of the United Nations.)

In the aftermath of World War II, the settlement of claims arising from the conduct during the war was a diplomatic and political imperative for all affected states. A principal object and purpose of the Treaty of Peace with Japan of September 8, 1951 was the final resolution of war-related claims by the Allied Powers and their nationals against Japan and its nationals. Conclusion of this Treaty enabled Japan to start new relations with other nations as a peaceful, democratic member of the international community.

The Government of Japan fully shares the position of the United States Government that claims of the United States and its nationals (including prisoners of war) against Japan and its nationals arising out of their actions during World War II were settled by the Peace Treaty.

The Peace Treaty with Japan was ratified by the United States with overwhelming bipartisan support after thorough deliberation by the United States Senate, and Japan has scrupulously and faithfully fulfilled all of its pecuniary and other obligations thereunder.

Article 14 of the Peace Treaty specifically provides that "the Allied Powers shall waive all ... claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course

of the prosecution of the war." Under the same Article, Japan acknowledged the United States and other Allied Powers the right to seize and dispose of Japanese assets that were subject to their jurisdiction. As has been explained by the Government of the United States, out of approximately \$90 million of Japanese assets seized in the United States, approximately \$20 million were used to take care of claims on behalf of the internees, civilians and prisoners of war under the remedy scheme of the United States. Please note that both figures were estimated in 1952, not being the current value.

With respect to Article 26 of the Peace Treaty, it should be noted that no party to the Peace Treaty has ever invoked that Article in order to obtain the same advantage as provided in peace settlement or war claims settlement Japan made with other states.

The Government of Japan considers that recent efforts to seek further compensation in United States courts for actions taken by Japanese nationals during World War II would be inconsistent with both the letter and the spirit of the Peace Treaty, and would necessarily be detrimental to bilateral relations between our two countries.

After formally terminating one of history's most destructive wars by concluding the Peace Treaty, Japan and the United States built one of the most constructive and beneficial international partnerships that the world has ever seen -- a relationship that is built upon mutual respect, trust and shared values such as democracy, free market economies, the rule of law and respect for fundamental human rights. It would be unfortunate, indeed, if this magnificent edifice were to be adversely affected by efforts to reopen reparations issues that, as both Japan and the United States agreed, were finally laid to rest over 50 years ago.

(Attachment is omitted.)

ATTACHMENT 2

The Views of the Government of Japan  
on the Lawsuits against Japanese Companies by the Nationals  
of the Countries not being a Party to the San Francisco Peace Treaty

During the last war, Japan caused tremendous damage and suffering to the people of many countries -- including the Chinese people and the people of the Korean Peninsula -- for which actions the Government of Japan has expressed its feelings of deep remorse and its heartfelt apology<sup>1</sup>.

In the aftermath of the war, the settlement of claims arising out of the conduct during the war was a diplomatic and political imperative for all affected countries. The San Francisco Peace Treaty of September 8, 1951 terminated the state of war between Japan and most of the countries with which Japan was at war, and completely settled all war related claims between Japan and these countries. Under this Peace Treaty, both Japan and these countries waived their own claims and claims of their nationals.

With respect to the countries that are not parties to the San Francisco Peace Treaty, Japan has settled the issue of claims with these countries through bilateral diplomatic negotiations. The process of the settlements was substantially affected by the cold war in East Asia and the structural changes of the international relationship in this region. In particular, the settlement with China with which Japan was at war, and the settlement with the Republic of Korea which became independent from Japan after the period of annexation, were high on the diplomatic agenda long after the end of the war as issues of utmost importance, difficulty and sensitivity.

China was in a position to be invited to the Peace Conference in San Francisco as one of the Allied Powers. However, neither the Government of the People's Republic of China nor "the National Government of the Republic of China"<sup>2</sup> was invited to the Peace Conference, due to various political and diplomatic developments then taking place, including the establishment of the People's Republic of China in 1949 and the outbreak of the Korean War in 1950. The Allied Powers left Japan to choose which government it would conclude a peace treaty with. After serious

consideration, Japan chose "the National Government of the Republic of China, which [had] the seat, voice and vote of China in the United Nations"<sup>2</sup>, with a view to making sure that the Senate of the United States should approve the San Francisco Peace Treaty<sup>3</sup>.

Accordingly, Japan signed the "Treaty of Peace Between Japan and the Republic of China" on 28 April 1952: the day on which the San Francisco Peace Treaty came into force. This Treaty terminated the state of war between the two countries, and settled the issue of reparations and other war related claims.

Twenty years later, following U.S. President Nixon's visit to China, the Government of Japan normalized relationship with the Government of the People's Republic of China by signing the Joint Communiqué on 29 September 1972. The two governments succeeded in drafting the Joint Communiqué, a political instrument, in spite of substantial differences in their basic positions. The Government of Japan was of the view that the "Treaty of Peace of 1952" settled all issues related to the war including the issue of reparations claims with China as a state, while the Government of the People's Republic of China asserted that the "Treaty of Peace of 1952" was from the very beginning null and void. With respect to settlement of claims, the Joint Communiqué provided, in paragraph 5, that "The Government of the People's Republic of China declares that in the interest of the friendship between the Chinese and the Japanese people, it renounces its demand for war reparation from Japan." This wording is not exactly the same as Article 14(b) of the San Francisco Peace Treaty. This was partly because the Government of Japan held the position that the "Treaty of Peace of 1952" had settled the issues related to the war with China.

The Joint Communiqué has been the foundation of reconciliation between Japan and China. The preamble of the "Treaty for Peace and Friendship between Japan and the People's Republic of China", signed on 12 August 1978, confirms that the Joint Communiqué should be the basis of the relations of peace and friendship between the two countries and that the principles enunciated in the Joint Communiqué should be strictly observed. Since the Joint Communiqué was issued in 1972, leaders of the People's Republic of China have expressed the view of the Government by repeatedly stating

that they would like to build a positive and peaceful relationship with Japan while recognizing things in the past as they were. "What happened in the past is gone. Hereafter, we should take the attitude of looking forward to the future in building up peaceful relations between our two countries." was the words of Deng Xiaoping, Vice Premier of the People's Republic of China, to Emperor Hirohito in 1978<sup>4</sup>. It is the shared view of the two Governments that the issue of claims related to the war ceased to exist as a bilateral legal issue between Japan and China after the Joint Communique was issued in 1972.

With respect to Korea, which was not at war with Japan, lights should be shed from a different angle. The San Francisco Peace Treaty guides the settlement of questions between Japan and the areas that were to be separated from Japan. Article 2 (a) provides that Japan recognizes the independence of Korea, and Article 4 (a) that the disposition of property and claims between Japan and its nationals on the one hand, and the authority and residents in Korea on the other, shall be the subject of a special arrangement between Japan and that authority.

Before entry into force of the San Francisco Peace Treaty, Japan, under the good offices of the United States, started negotiations with the Republic of Korea in October 1951 in order to settle issues between the two countries, including the issue of property and claims. Following the lengthy and difficult negotiations, the two countries finally reached an agreement in 1965 and signed the "Treaty on Basic Relations Between Japan and the Republic of Korea" and the "Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Cooperation Between Japan and the Republic of Korea." Under the former treaty, the two countries normalized their relations. Under the latter agreement, they confirmed that the problem concerning "property, rights, interests and claims" of the two countries and their nationals, including claims of Korean nationals against Japanese nationals, was settled completely and finally.

The problem concerning property and claims between Japan and North Korea is to be the subject of a special arrangement stipulated in Article 4 (a) of the San Francisco Peace Treaty, as well. The Government of Japan has conducted normalization talks with North Korea eight times from 1991

to 1992 and already three times after the resumption of the negotiations in April 2000. The Government of Japan hopes that, through the normalization talks, Japan and North Korea will come to an agreement that will settle this issue.

Thus, Japan has made utmost efforts for the settlement of the issue of claims with countries not being a party to the San Francisco Peace Treaty through bilateral diplomatic negotiations. The Government of the United States has consistently supported this foreign policy of Japan.

Plaintiff's claims, based on the Code of Civil Procedure of the State of California amended last year, allegedly relate to the actions taken by non-U.S. nationals against other non-U.S. nationals outside the State of California, even outside the United States, during the last war, more than fifty years ago. Such issues were settled or are being settled through diplomatic negotiations between Japan and the countries concerned, with the support of the Government of the United States.

Permitting plaintiff's claims will put the courts in the United States in an unwarranted place to inevitably affect relations between the countries concerned, including the bilateral settlement reached after highly political and sensitive negotiations. Such involvement of the courts in the United States could complicate and impede relationships between Japan and those countries as well as the bilateral relationship between the United States and Japan. The Government of Japan is convinced that these issues should not be adjudicated in the courts in the United States.

(Notes)

1. The statement of Japanese Prime Minister Murayama in commemoration of the fiftieth anniversary of the end of the World War II, which was announced in 1995 upon Cabinet decision and widely circulated, including to all Member States of the United Nations. See attachment 1.
2. Letter from the Prime Minister of Japan (Yoshida) to the Consultant to the Secretary (Dulles), pp1466-1467, Foreign Relations of the United States, 1951, Volume VI. See attachment 2. The purpose of this letter

was to facilitate the Senate hearing for the ratification of the San Francisco Peace Treaty (See also footnote 3). Also, Copy of Draft Letter Handed the Prime Minister of Japan (Yoshida) by the Consultant to the Secretary (Dulles), reprinted in the Foreign Relation of the United States, 1951, Volume IV (pp.1445-1447), indicates that this letter was drafted based upon the suggestion of the United States.

3. Memorandum by the Consultant to the Secretary (Dulles) to the Secretary of State, pp.1467-1470, Foreign Relations of the United States, 1951, Volume VI. See attachment 3. Also, Congressional Record, Proceedings and Debates of the 82d Congress, Second Session, Senate, Wednesday, January 16, 1952, No.6. See attachment 4.

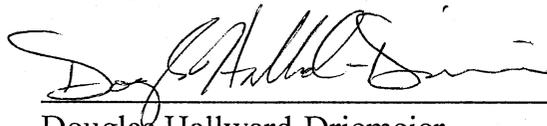
4. Xinhua News (Official News Agency of People's Republic of China, Peking NCNA in English), October 23, 1978. Foreign Broadcast Information Service of the United States of America, Daily Report, People's Republic of China, October 24, 1978. See attachment 5.

(Attachments are omitted.)

I HEREBY CERTIFY THAT true and correct copies of the foregoing letter in support of further review and Request for Judicial Notice of Diplomatic Correspondence from the Government of Japan to the Government of the United States; Proposed Order were served this 5th day of March, 2003, upon the following, by placing the document listed above in a sealed Federal Express package and affixing a pre-paid air bill, and causing the package to be delivered to a Federal Express agency for delivery.

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