

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

.....
HAROLD and LILLIAN WEISBERG,
Route 12
Frederick, Maryland 21701,
Plaintiffs,

v.

WILLIAMS, CONNOLLY & CALIFANO
1000 Hill Building
839 17th Street, N. W.
Washington, D. C. 20006

and

EDWARD BENNETT WILLIAMS
5715 Bent Branch Road
Tulip Hill, Md. 20016

and

WILLIAMS, WADDEN & STEIN
1000 Hill Building
839 17th Street, N. W.
Washington, D. C. 20006

and

WILLIAMS & CONNOLLY
1000 Hill Building
839 17th Street, N. W.
Washington, D. C. 20006

and

PAUL R. CONNOLLY
3005 45th Street, N. W.
Washington, D. C. 20016

and

THOMAS A. WADDEN, JR.
4530 Cathedral Avenue, N. W.
Washington, D. C. 20016

and

JOSEPH A. CALIFANO
3551 Springfield Lane, N. W.
Washington, D. C.

and

COLMAN B. STEIN
1730 M Street, N. W.
Washington, D. C. 20036

Civil Action No. 10118-76

Filed: 10-21-76

and
PETER R. TAFT
Land and Natural Resources
Division, Room 2143
U.S. Department of Justice
Washington, D. C. 20530

Defendants

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C O M P L A I N T
(Malpractice)

1. Jurisdiction is predicated on Title 11, Section 921, D.C. Code.
2. Plaintiffs Harold and Lillian Weisberg are citizens of the United States and reside at Route 12, Frederick, Maryland.
3. Defendant Williams, Connolly & Califano is engaged in the practice of law in the District of Columbia, with offices at 1000 Hill Building, 839 17th Street, N. W., Washington, D. C.
4. Defendant Williams, Connolly & Califano is the successor of two law partnerships, Williams, Wadden & Stein and Williams & Connolly, both named as defendants herein. At times relevant to this action, defendants Williams, Wadden & Stein and Williams & Califano engaged in the practice of law in the District of Columbia, with offices at 1000 Hill Building, 839 17th Street, N. W., Washington, D. C.
5. Defendant Edward Bennett Williams is a duly licensed attorney engaged in the practice of law in the District of Columbia.

At all times relevant to this action defendant Williams engaged in the practice of his profession as a member of Williams, Wadden & Stein, Williams & Connolly, and Williams, Connolly & Califano, all with offices at 1000 Hill Building, 839 17th Street, N. W., Wash-

ington, D. C. His last home address known to plaintiffs is 5715 Bent Branch Road, Tulip Hill, Md.

6. Defendant Paul R. Connolly is a duly licensed attorney and at times relevant to this action he has engaged in the practice of his profession as a member of Williams & Connolly, and Williams, Connolly & Califano, with offices at 1000 Hill Building, 839 17th Street, N. W., Washington, D. C. He resides at 3005 45th Street, N. W., Washington, D. C.

7. Defendant Thomas A. Wadden, Jr. is a duly licensed attorney and at times relevant to this action he engaged in the practice of his profession as a member of Williams, Wadden & Stein, with offices at 1000 Hill Building, Washington, D. C. He resides at 4530 Cathedral Avenue, N. W., Washington, D. C.

8. Defendant Joseph A. Califano is a duly licensed attorney and at times relevant to this action he has engaged in the practice of his profession as a member of Williams, Connolly & Califano, with offices at 1000 Hill Building, 839 17th Street, N. W., Washington, D. C.

9. Defendant Colman B. Stein is a duly licensed attorney and at times relevant to this action engaged in the practice of his profession as a member of Williams, Wadden & Stein, with offices at 1000 Hill Building, 839 17th Street, N. W., Washington, D. C. His home address is unknown to plaintiffs.

10. Defendant Peter R. Taft is a duly licensed attorney and at times relevant to this action he engaged in the practice of his profession as a member of Williams, Wadden & Stein, and Williams & Connolly. He is currently Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice. His home address is unknown to plaintiffs.

By way of complaint, plaintiffs allege the following:

COUNT ONE

11. From approximately 1951 through January 27, 1964, plaintiffs operated the Cog d'Or Farm, a business jointly owned by plaintiffs, on a 14-acre tract of land, also jointly owned by plaintiffs, located in Hyattstown, Maryland on the south side of Maryland Route 109, slightly to the west of Maryland Route 355. During these years plaintiffs' residence was also located on this tract of land.

12. The principal business and source of revenue of the Cog d'Or Farm was the raising of chickens, pheasant chickens, Rock Cornish game hens, waterfowl, and other poultry and the sale of said poultry and their eggs. Plaintiffs conducted this business in a manner to produce the highest quality poultry and egg product which brought premium prices on the Washington Metropolitan market.

13. The aforesaid business required the maintenance of a careful and controlled production environment, free from loud and disturbing noises and accountical shocks which induce hysterical activity among poultry.

14. Starting in 1956, helicopters owned by the United States government and operated by its agents and employees within the scope of their employment, made frequent low level flights within the neighborhood of, and directly over, plaintiffs' property and farm, all in violation of federal laws and regulations and in violation of the Annotated Code of Maryland, 1957, Article 1(a), §§7, 8, 9, 11. The noise and accountical shocks caused by said helicopters induced hysterical activity among plaintiffs' poultry, re-

sulting in the damage and destruction of individual birds, the "moulting" of laying hens, and reduced egg-laying productivity of laying flocks, making it impossible for plaintiffs' to meet market demands.

15. Plaintiffs brought suit for the years 1957 and 1958 under the Federal Tort Claims Act. The United States District Court of Maryland found in favor of plaintiffs. Weisberg v. United States, 193 F. Supp. 815 (D. Md. 1961).

16. Despite (1) the court decision in favor of plaintiffs, (2) briefings of the government's helicopter pilots, (3) the issuance of a regulation prohibiting flights in the neighborhood of plaintiffs' farm, and (4) repeated telephone calls by plaintiff Harold Weisberg to the appropriate governmental authorities immediately following overflights, as well as letters to and personal meetings with said authorities, low level flights of helicopters owned and operated by the United States government, its agents, and employees continued on a frequent and regular basis in the neighborhood, and directly over, plaintiffs' farm at altitudes of 800 feet and less.

17. The aforesaid helicopter flights were negligently and wrongfully made by agents and employees of the United States government within the scope of their office and employment and in disregard of the property, property rights, and personal rights of the plaintiffs.

18. The aforesaid helicopter flights were negligently and unlawfully made at low altitudes in violation of federal laws and regulations; and in violation of the Annotated Code of Maryland, 1957, Article 1(a), §§ 7, 8, 9, 11, in that said flights were at such low altitudes as to interfere with the then existing use to which plaintiffs' property was put by plaintiffs and were imminent-

ly dangerous to persons and property lawfully on plaintiffs' land.

19. In addition to the aforesaid helicopter flights, jet aircraft owned and operated by the United States government, its employees, agents, and assignees flew in the neighborhood of the plaintiffs' farm at speeds faster than the speed of sound, thereby creating acoustical shocks known as "sonic booms" which invaded the air space of plaintiffs' land and caused severe damage to property lawfully on plaintiffs' premises. Said jet aircraft were negligently and wrongfully flown faster than the speed of sound with full knowledge of the damaging effects the resulting sonic booms could have to property on the ground in the neighborhood of their flight path.

20. By reason of the aforesaid acts and omissions of the United States government, its agents and employees, the plaintiffs were damaged in their business, sustained a loss of earning capacity, lost the peaceful existing use of their property, and lost the value of their personal and real property.

21. By reason of the aforesaid acts and omissions of the United States government, the plaintiffs also suffered physical and mental damage.

22. By reason of the aforementioned acts and omissions of the United States government, the plaintiffs were forced to inquidate their business, the Cog d'Or Farm, and abandon their property on said farm.

23. In February, 1964, the plaintiffs retained the firms of Williams, Wadden & Stein to prosecute their claims against the United States government for the damages done to them, their property, and their business as a result of the aforementioned helicopter and jet aircraft flights over and in the neighborhood of their farm.

24. On July 3, 1964, defendant Peter Taft of Williams, Wadden & Stein notified the United States government that a court action incorporating all of plaintiffs' claims would be the best method of proceeding and that "We plan to file such an action shortly."

25. However, not until May 3, 1965, thirteen months after plaintiffs had retained defendant Williams, Wadden & Stein and ten months after said defendant had notified the government that a court action would be instituted "shortly," did said defendant finally file a complaint for plaintiffs under the Federal Tort Claims Act in the United States District Court for the District of Maryland.

26. Said complaint requested relief in the amount of \$150,000 for the damages to plaintiffs specified in paragraph 20 above, and an additional \$150,000 for the damages to plaintiffs specified in paragraph 21 above. Defendant Williams, Wadden & Stein failed to consult with plaintiffs as to the estimated value of their damages before filing said complaint; consequently, the complaint understated the amount of damages done to plaintiffs.

27. As a direct consequence of the delay of defendants Williams, Wadden & Stein and Peter Taft in filing plaintiffs' Federal Tort Claims Act complaint, the statute of limitations ran on the major part of plaintiffs' damage claims made under that Act.

28. Defendants William, Wadden & Stein and Peter Taft also failed to file a complaint for a "taking" under the Tucker Act. As a consequence, the statute of limitations on plaintiffs' Tucker Act claim also ran.

29. Subsequent to the filing of plaintiffs' Federal Tort Claims Act complaint, defendants Williams, Wadden & Stein, Williams & Connolly, and Peter Taft negligently failed to prosecute the case.

30. On March 23, 1966, plaintiffs propounded interrogatories to the United States government. The aforesaid defendants failed to obtain answers to any of plaintiffs' interrogatories or to file a second set of interrogatories which plaintiffs had prepared for their attorney, defendant Peter Taft.

31. The aforesaid defendants also failed to secure medical records relevant to plaintiffs' claim that they had suffered physical and mental damage as the result of the helicopter and jet aircraft overflights, even though their client, Harold Weisberg, had called attention to the importance of said medical records and requested that they be obtained. As a consequence, plaintiffs' physical and mental damage was allowed to be compounded.

32. Defendant Peter Taft failed to interview relevant witnesses or prepare for trial.

33. Although plaintiffs made numerous appointments with defendant Peter Taft to discuss their case, such meetings as transpired were brief and dealt with other matters, such as defendant Taft's apologies for not having been able to work on their case. On more than one occasion defendant Taft apologized for not having done work on the case and attributed it in part to the need to work on securing draft deferments for Washington Redskins' football players.

34. Between March 23, 1966, and May 7, 1971, the aforesaid defendants undertook no court action whatsoever to prosecute plaintiffs' Federal Tort Claims Act case.

35. In 1968 defendant Peter Taft sought to force his withdrawal from the case by delivering an ultimatum which made his continued representation of plaintiffs contingent upon their acquiescence to a settlement offer which he had made to the United States Attorney without consultation with plaintiffs. Subsequent-

ly, on January 27, 1969, defendant Taft filed a Petition to Withdraw as Counsel and an affidavit in support thereof. (Plaintiffs' Exhibit 1) Defendant Taft's Petition to Withdraw as Counsel was done in a manner extremely prejudicial to plaintiffs' and the affidavit which accompanied it contained false and baseless statements.

36. Faced with the fact that defendant Taft had resigned from the firm of Williams & Connolly and moved to California prior to his filing the Petition to Withdraw as Counsel, the court permitted him to withdraw. The firm of Williams & Connolly abandoned plaintiffs without securing, or even attempting to secure, other counsel to represent them. As a result, plaintiffs were unable to obtain new counsel to represent them until December 28, 1971, more than seven years after defendants Williams, Wadden & Stein and Peter Taft had undertaken to represent them and nearly three years after defendant Taft had filed a motion to withdraw from the case.

37. As a result of the aforesaid delays, acts, and omissions of the aforesaid defendants specified in paragraphs 25-36 above, plaintiffs' new counsel was severely handicapped in prosecuting the case and it was not possible to recover most of the damages to which plaintiffs were entitled at the time they retained defendant Williams, Wadden & Stein to represent them.

38. Not only had the statute of limitations run on the major part of plaintiffs' Federal Tort Act claims but as a result of the delays, acts, and omissions of the aforesaid defendants, witnesses with relevant testimony to give died or disappeared or forgot. Expert witnesses arranged for by plaintiff Harold Weisberg became unavailable.

39. In consequence of the long delay in obtaining the compensation due them for damages to themselves, their property, and their livelihood, plaintiffs were reduced to living in poverty.

This increased their willingness to compromise and to accept less than they were entitled to receive as damages on the remaining viable claims on which the statute of limitations had not run.

40. Faced with the damage done to their case by the delays, acts, and omissions of the aforesaid defendants and the economic, emotional, and psychological pressures which resulted, plaintiffs did settle for less than they were entitled to receive on their remaining viable claims and less than they otherwise would have settled for.

41. The delays, acts and omissions specified in paragraphs 25-36 above constitute negligence on the part of the aforesaid defendants, all to plaintiffs' injury.

42. The acts and omissions of the aforesaid defendants specified in paragraphs 25-36 above all constitute a failure to exercise the degree of care and skill exercised by attorneys in the vicinity in like cases.

43. Specifically, the acts and omissions of the aforesaid defendants in (1) failing to promptly file a complaint under the Federal Tort Claims Act, (2) allowing the statute of limitations to run on the major part of plaintiffs' Federal Tort Claims Act damages, (3) failing to file a complaint in the Court of Claims for a "taking" under the Tucker Act, (4) failing to prosecute the case, (5) failing to obtain answers to interrogatories or to file additional interrogatories, (6) failing to secure relevant medical records, (7) failing to interview relevant witnesses or prepare for trial, (8) failing to undertake any court action to prosecute the case during the five year period from March 23, 1966, through May 7, 1971, and (8) withdrawing from the case in a manner prejudicial to plaintiffs' and without securing, or attempting to secure, other counsel to represent them, all constitute a failure to exercise the

degree of care and skill exercised by attorneys in the vicinity in like cases.

WHEREFORE, in and for the first cause of action, plaintiffs Harold and Lillian Weisberg demand judgment against defendants in the amount of \$2,000,000 plus interest and the costs of bringing this action.

SECOND COUNT

44. The allegations in paragraphs 1-43, supra, are incorporated herein by reference.

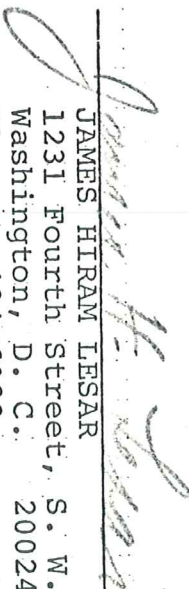
45. The conduct of defendant Peter Taft in concealing the running of the statutes of limitations under the Federal Tort Claims Act and the Tucker Act constitutes a wanton and wilful disregard of the duties owed by defendant Taft to plaintiffs and a reckless indifference to the legal rights of plaintiffs, all to the injury of plaintiffs.

46. The conduct of defendant Peter Taft in withdrawing from the federal Tort Claims Act lawsuit in a manner extremely prejudicial to plaintiffs and without attempting to secure other counsel to represent plaintiffs constitutes a wanton and wilful disregard of the duties owed by the aforesaid defendants to plaintiffs and a reckless indifference to the legal rights of plaintiffs, all to the injury of plaintiffs.

WHEREFORE, in and for a second cause of action, plaintiffs Harold and Lillian Weisberg demand punitive damages in the amount of \$2,000,000.

WHEREFORE, in and for the first cause of action plaintiffs Harold and Lillian Weisberg pray judgment in the sum of \$2,000,000 as compensatory damages, plus interest and the cost of bringing this action, and in and for the second cause of action, plaintiffs Harold and Lillian Weisberg pray judgment in the sum of \$2,000,000 as punitive damages.

PLAINTIFFS DEMAND A TRIAL BY JURY AS TO ALL ISSUES.



JAMES HIRAM LESAR
1231 Fourth Street, S. W.
Washington, D. C. 20024
Phone: 484-6023
D.C. Bar No. 114413

Attorney for Plaintiffs

Plaintiffs' Exhibit 1

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

HAROLD AND LILLIAN WEISBERG :
Plaintiffs :

v. : CIVIL ACTION NO. 16392

UNITED STATES OF AMERICA :
Defendant :

PETITION TO WITHDRAW AS COUNSEL

Your Petitioner, Peter R. Taft, petitions this Honorable Court to grant him leave to withdraw as counsel for Harold and Lillian Weisberg, plaintiffs, on the grounds that, (1) as of January 3, 1969, he has been a resident of Los Angeles, California, (2) plaintiffs have been unable to obtain local Baltimore counsel, and (3) relations between affiant and plaintiffs have reached an impasse, as is more fully stated in the affidavit attached hereto.

Petitioner further requests that plaintiffs be given a reasonable time to obtain counsel for prosecution of the above-captioned case.


Peter R. Taft, Attorney for
Harold and Lillian Weisberg

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

HAROLD AND LILLIAN WEISBERG :
Plaintiffs :

v. : CIVIL ACTION NO. 16392

UNITED STATES OF AMERICA :
Defendant :

AFFIDAVIT

PETER R. TAFT, being duly sworn, deposes and says:

1. I am counsel for the plaintiffs herein and I am filing this affidavit in support of my motion to withdraw as counsel.

2. The case at bar is a damage action against the United States based upon the Federal Tort Claims Act. It has been passed on the call of civil dockets for purposes of settlement.

3. Affiant, who has been an associate and partner in Williams & Connolly, 1000 Hill Building, Washington, D. C. 20006, since August, 1963, has resigned from the firm, effective December 31, 1968. Since January 3, 1969, affiant has been a permanent resident of Los Angeles, California, and is presently in Washington concluding his affairs. Consequently, affiant is unable to continue as counsel for the plaintiffs. Affiant advised plaintiffs by letter of the possibility that he would move permanently to California on or about May 29, 1968, and advised plaintiffs at that time that they should seek other counsel if they did not wish to settle.

4. Plaintiffs' local counsel in Baltimore has been Mr. Avrum K. Rifman. Mr. Rifman has recently received an appointment to the bench of Baltimore City as Municipal Court Judge and is unable to continue as local counsel. Affiant met with plaintiffs on July 25, 1968, and informed them that they would need to obtain additional local counsel in Baltimore. Plaintiffs have to date been unable to obtain local counsel.

5. In addition to the above grounds, relations between affiant and plaintiffs have reached an impasse incapable of resolution. This applies to conduct of the case, including plaintiffs' rejection of a government offer of settlement which is substantially more generous than plaintiffs recovery after a full trial on the merits in this Court in Weisberg v. U.S., 193 F. Supp. 815 (D. Md. 1961), which was an identical suit covering an earlier period. The impasse also concerns personal and political views which arise at most meetings between affiant and plaintiffs to the point where affiant has found it increasingly difficult to conduct the case in the plaintiffs' best interest. For all the foregoing reasons, affiant respectfully requests that he be permitted to withdraw as counsel in the action herein.


Peter R. Taft

Subscribed and sworn to before me this 16th day of
January, 1969.


Notary Public

My Commission Expires May 14, 1971

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing petition and affidavit were mailed this 16th day of January, 1969, to Alan I. Baron, Assistant United States Attorney, 409 Post Office Building, Baltimore, Maryland 21202, and to Harold and Lillian Weisberg, Coq d'Or Press, Route 8, Fredrick, Maryland 21701.

Pat R. King