

J. CROSSAN COOPER, JR.  
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LUKE MARBURY  
STUART H. ROME  
C. VAN LEUVEN STEWART  
LAWRENCE S. WESCOTT  
ANTHONY M. CAREY

VENABLE, BAETJER AND HOWARD

ATTORNEYS AT LAW  
1800 MERCANTILE BANK & TRUST BUILDING  
2 HOPKINS PLAZA  
BALTIMORE, MARYLAND 21201

TELEPHONE 752-6780  
AREA CODE 301

WILBUR E. SIMMONS, JR.  
JAMES L. LEKIN  
HARRY D. SHAPIRO  
GEORGE C. DOUB, JR.  
JOHN HENRY LEWIN, JR.  
ARNOLD P. SCHUSTER  
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JUDITH A. ARMOLD  
RALPH A. FORD

OF COUNSEL  
JOSEPH FRANCE

December 12, 1972

Mr. Harold Weisberg  
Coq d'Or Press  
Route 8  
Frederick, Maryland 21701

Dear Harold:

I met with Mr. Davis and Judge Thomsen today as scheduled. Of course, Judge Thomsen agreed that the case should be postponed. No definite schedule was set but we did make a list of issues and a list of preliminary steps that must be taken prior to trial.

Since Mr. Davis will not be handling the trial, Judge Thomsen asked the U.S. Attorney, Mr. Beall, to assign a new U.S. Attorney to the case. After that person has become familiar with the case, I am to meet with him and work out a schedule and report back to Judge Thomsen sometime next week.

The various discovery steps are self-evident. The legal issues that we discussed were:

Whether any federal official could waive the statute of limitations. If so, whether he was waiving the statute of limitations under the military claims act or under the federal tort claims act.

2. Whether the pleadings could be amended to include the allegation of willful and deliberate tortious invasions and whether the pleadings could be amended to permit an allegation of taking under §1346(a)(2). You mention that Mr. Taft had discussed taking a case to the Court of Claims. The action for a "taking" can be brought in the District Court for a "taking" of up to \$10,000, but claims over \$10,000 should have been brought in the Court of Claims.

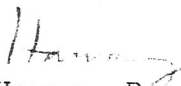
Mr. Harold Weisberg  
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However, there is an argument that the taking should be an element of damages under the federal tort claims act. If it is, it is subject to the same limitations problems.

Also discussed was the issue of claims for mental suffering, whether they are allowed in this type of action and whether or not they have to be concurrent with a physical injury.

I will contact you when I meet with the new U.S. Attorney in this case. In the meantime, I hope you are contacting any experts on the economic capacity of your farm. I will write Mr. Helliger to inquire about the availability of medical experts.

Very truly yours,

  
Harvey R. Clapp, III

HRC,III:bjw