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August 13, 1979

Mr. Harold Weisberg  
Route 12  
Frederick, Maryland 21701

Dear Harold:

My apologies for the delay in responding to your letter of July 24, 1979. I have only just returned to the office after a six-week absence.

To say the least, your letter comes as a disturbing surprise. I use the word disturbing for it appears that there has been a breakdown in our communications. Your recent letter infers that I agreed to take some action in your behalf relative to Dell Publishing Company. In short answer to your questions: I have not filed "the Dell complaint." I do not know if the statute has run.

Having refreshed my memory by consulting our file, let me reconstruct what I believe transpired between us. We (Jim Lesar, a young lawyer-author who worked for Morgan, Lewis & Bockius, you and I) met here on September 28, 1978. Prior to our meeting, Jim and you had forwarded for my review copies of the relevant Dell materials. At our meeting, we discussed approximately six different areas of potential claims against Dell:

1. Litigation costs in Bringuier;
2. More copies printed and sold than claimed by Dell;
3. "New promise to pay" of April 28, 1976;
4. Dell's contractual obligation of "best efforts";
5. Unauthorized use of Whitewash II Epilogue;
6. Claims against Friedman.

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It was my bottom-line conclusion that the claims were absolutely barred (because of statute of limitations problems), legally speculative, or likely to involve litigation expenses in excess of amounts recovered. In particular, we discussed at length Dell's "new promise to pay" as reflected in Stephen L. Bair's letter of April 28, 1976 and Paragraph 12 of the contract by which Dell promised to use its "best efforts." You were quite persistent about these two claims and I agreed to give them further thought. By letter of September 29 I promised to be back in touch with you within two weeks.

After our meeting, I set to work with one of our law clerks reconsidering the two aspects of your case. On October 25, our work was complete. While it was my view that Mr. Bair's new promise to pay was enforceable, I continued to believe, as we had discussed previously, that at least initially "self-help" collection efforts was the preferred course of action. The "best effort" claim I found extremely attractive intellectually but, as a practical matter, not the kind of case we were able to take on a contingency fee basis. I communicated these conclusions to you by letter of the same date. Until your letter of July 24, I believe this was our last contact with each other. And in view of this account, I hope you can understand my dismay because of your recent letter.

Let me add a word or two concerning my uncertain statement about the statute of limitations. As you may remember, your contract with Dell calls for the application of New York law. In a contract setting, New York law provides for a six-year statute of limitations. It is a logical extension to argue that it is the New York statute which should apply in measuring a cause of action based upon Mr. Bair's April 28, 1976 letter. Thus, you have until April 28, 1982 in which to initiate litigation. On the other hand, if the Maryland statute of limitations, which is three years, were to apply the statute ran on April 28 of this year. While I find the argument in behalf of the Maryland statute less persuasive, it is possible that a court would be persuaded to the contrary, particularly, if an action were to be instituted in Maryland.

Though I was tempted to telephone you, immediately upon reading your letter, I thought it would be better to reduce all of this to writing for your review. Nevertheless, I am still eager to talk with you. As soon as enough time has elapsed for you to receive this letter, I shall give you a call. Bud's plans

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for weekends at the lake are uncertain. I am happy to forward your materials by mail or leave them with Jim -- whichever you prefer. You can let me know when we speak with each other.

I trust we shall be able to clear the confusion. In the meantime, best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to be 'M' followed by a stylized 'R' or 'F'.

Marc Feldman

MF/is