

Richard W. Teare

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Lawrence Livermore National Laboratory
Pacific Northwest Laboratory, Battelle Memorial Institute
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Original Signed By
ROGER RAY

Roger Ray
Deputy for
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cc:

Martha Crosland, HQ (GC-34) FORSTL
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OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS
WASHINGTON, D.C. 20240

JAN 19 1983

MEMORANDUM

TO: Distribution
FROM: Richard W. Teare
SUBJECT: Nuclear Claims Cases

Pending nuclear claims litigation continues to bear directly upon our negotiations with the Republic of the Marshall Islands regarding the Compact and arrangements for the approval process. To assist ourselves and the other members of the Section 177 Working Group in keeping up to date on these claims and recent developments in the various court cases, OMSN has prepared the attached summaries.

Please review these summaries and advise OMSN of any corrections or additions which should be made. You will note that there are discrepancies in some of the acreage figures for Bikini and Enewetak. Please submit any refinements -- in this or any other respect -- to OMSN by COB January 31. OMSN will distribute a revised report based on any corrections or changes made as a result of comments received.

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BIKINI CASE - UNITED STATES CLAIMS COURT

TOMAKI JUDA vs. UNITED STATES
(No. 172-81L)

Damages Alleged:

1. Unlawful taking of land, 1946 to 1979	\$150 M
2. Deprived of use of land 1979 through next 20-60 years	\$150 M
3. Breach of fiduciary duty to compensate, protect and support displaced Bikini community	\$150 M
TOTAL	<u>\$450 M</u>

Counsel for Plaintiffs: Ginsburg, Feldman, Weil and Bress,
Washington D.C. (Jonathan Weisgall and James Hamilton)

Background

1. All 36 islands in Bikini Atoll (1,920 acres) contaminated, restricting habitation and use. This is DOE acreage estimate. TTPI annual report to U.N. (1981) indicates 1,485 acres. (1)

2. Displaced community moved to Rongerik and then Kwajalein, finally settled on Kili. 35 years have elapsed since removal from Bikini.

3. 140 persons returned by USG to Bikini in early '70's, but were removed in 1978 after their situation was determined to be unsafe. Bikini can not be resettled for 20 years at a minimum. Most estimates range from 30 to 90 years. Eneu Island in Bikini Atoll could possibly be resettled in near future, but risks and controls of food intake and activity not yet determined. Clean-up of Bikini sought by claimants but DOE indicates clean-up is not feasible at this time. (2)

4. Bikini class action brought by approximately 1,050 persons. The 1980 census indicates that the Bikini population at Kili is 492. The remainder of the Bikinians are scattered throughout the Marshall Islands, with small communities at Majuro, Ebeye, Ejit and Jabwor Island of Jaluit Atoll. The signed Section 177 agreement also provides funds to settle land claims arising from resettlement of "Marshallese people", presumably including Bikinians, Enewetakese and perhaps others, at Debet, Jar, Bukalaplapp and "Lojokar Weto" in Jaluit Atoll.

5. Juda suit filed March 16, 1981. USG, on August 14, 1981, filed motion to dismiss in this case, then in December of 1981 sought suspension of proceedings pending outcome of negotiations.

BIKINI CASE con't.

Plaintiffs joined in the motion of December 30, 1981, for suspension and in subsequent motions for suspension filed in 1982 on May 17, June 24, July 8 and September 3. However, these plaintiffs have now joined plaintiffs in related Enewetak and MIATLP Claims Court cases in opposing renewal of suspension which expired on December 1, 1982.

6. By order of December 23, 1982, the Court denied without prejudice the defendant's November 30 motion to suspend proceedings and allowed discovery in these cases with respect to defendant's contentions that further proceedings would have an adverse impact upon United States foreign policy, and that a new stay is necessary to allow the negotiations to continue free of such adverse impact. Court limited scope of this discovery, initially, to deposition of OMSN Deputy Chief Negotiator Richard Teare, and established schedule for parties to file briefs on the issues within the scope of discovery allowed. Deposition took place on January 6, 1983. Depending upon time taken by parties in filing briefs, and absent a decision by the plaintiffs to seek further depositions, a new motion by defendant for suspension should be ruled on in late February or early March.

MIATLP CASES - UNITED STATES CLAIMS COURT

LIMOJWA NITOL, ET AL vs. UNITED STATES
Twelve Consolidated Cases
(No. 543-81L)

Damages Alleged:

1. Unconstitutional takings, \$200 M in twelve cases.	\$2.40 B
2. Breach of fiduciary duty \$200 M in twelve cases.	<u>\$2.40 B</u>
TOTAL	\$4.80 B

Counsel for Plaintiffs: Marshall Islands Atomic Testing Litigation Project, a consortium, including Richard Gerry, San Diego; William Camusi and Gordon Stemple, Los Angeles; Jeffrey Jefferson and Robert Cowan; and others.

Background:

1. MIATLP clients include individuals from Rongelap and Utirik, and this provides the basis for allegations of damage to land due to radioactive debris which fell on those islands. MIATLP also alleges in the consolidated companion cases that fall-out on other atolls was greater than DOE has determined, and this is the basis of the claims in those companion cases.

2. MIATLP has signed up clients from throughout the Marshall Islands, total number approximately 3,000.

3. 1980 Census: Utirik, 328; Rongelap, 233; Rongerik (uninhabited); Ailinginae (uninhabited); Mejit, 329; Lae, 237; Ujae, 309; Wotho, 76; Ailuk, 420; Maloelap, 627; Wotje, 524; Taka (uninhabited); Bikar (uninhabited); Taongi (a.k.a. Bokaak - no census); Erikub (no census); Total 3,083.

4. The first eleven of these suits were filed on September 9, 1981, and consolidated under this heading by the Court's order of July 20, 1982. The twelfth case was filed on July 26, 1982 and consolidated under this heading on August 24, 1982. USG did not file motion to dismiss in this case. In February of 1982 Court suspended proceedings based on joint motion by plaintiffs and defendant. However, on July 28, 1982, plaintiff filed motion to terminate suspension, which Court denied on July 20, 1982. Plaintiffs are now opposing new stay requested in defendant's motion of November 30, 1982. (See background paragraphs 5 and 6 on Bikini case.)

ENEWETAK CASE - UNITED STATES CLAIMS COURT

PETER vs. UNITED STATES
(No. 461-82L)

Damages Alleged:

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|--|----------------|
| 1. Unlawful taking of land without compensation, 1947 through 1980, five islands vaporized, damage to remaining islands. | \$150 M |
| 2. Breach of implied contract to support, protect and compensate Enewetak people while away from home island. | \$150 M |
| 3. Failure to comply with Trusteeship Agreement by causing loss of land, use of land and self-sufficiency | \$150 M |
| 4. Breach of land use agreements returning land to Enewetak people due to uninhabitability of Enjebi and other islands | \$ 50 M |
| TOTAL | <u>\$500 M</u> |

Counsel for Plaintiffs: Wilmer, Cutler & Pickering, Washington, D.C. (David Anderson); Micronesian Legal Services Corporation, Saipan and Majuro (Thomas Mattson).

Background:

1. Approximately 1,100 acres out of 1,760 in Enewetak Atoll contaminated. These are DOE estimates. TTPI figures in U.N. annual report (1981) indicate 1,466 total acres, and DOE estimate of percentage damaged (63%) would indicate 912 acres contaminated if TTPI figures are correct.

2. Suit is in name of the approximately 800 people of Enewetak.

3. In 1947 people moved to Ujelang and not returned until 1980 after \$100-M-plus clean-up. Enjebi people still not returned to their home island in northern part of atoll.

4. 1980 Census: Enewetak, 548; Ujelang (resettlement area for Enewetak), 286; Total 834. Recent reports indicate most of those living on Ujelang as of 1980 have returned to Enewetak.

5. Suit was filed on September 15, 1982. USG has not filed motion to dismiss but is seeking suspension in this case coterminous with further suspensions in Bikini case (see paragraph 5) and MIATLP cases (see paragraph 4).

MIATLP CASES - U.S. DISTRICT COURT CENTRAL DISTRICT CALIFORNIA

ANTOLOK, CATHELINA, ET AL vs.
BROOKHAVEN NATIONAL LABORATORIES ET AL
No. CV 82-2364-LEW(JRX)

Damages Alleged:

1. Contractors, acting as agents of USG in testing program, caused physical injury and death, and as agents of USG (in its capacity as trustee for Marshallese people) breached fiduciary duty to protect health and well-being of plaintiffs. Civil rights violations also alleged. Plaintiffs seek damage for medical expenses past and future, damage to property, contamination of environment, suffering and, in addition, punitive damages of \$4 B.

Counsel for Plaintiffs: MIATLP (see Nitol cases in Claims Court).

Background:

1. Plaintiffs understood to be substantially the same as those in the Nitol cases in the Claims Court and some 35-40 Enewetakese who allege physical injury. (Enewetakese property claims appear in the Peter case in the Claims Court. No Bikinians are known to have alleged physical injuries.)
2. The defendants in these cases include Livermore Laboratories, Pacific National Laboratories, Battelle Memorial Institute, Los Alamos Scientific Laboratories, Sandia, ATT, Regents of University of California.
3. USG filed a suggestion of interest in these cases in support of motion for suspension of proceedings pending negotiations. Court denied this motion and discovery is expected to commence very soon.

MIATLP ADMINISTRATIVE CLAIMS

Background and Status:

1. Under the Federal Torts Claims Act persons having claims for personal injuries or property damage caused by the United States must submit an administrative claim to recover damages from the Federal agency responsible for the matter prior to bringing an action in a U.S. District Court based on such injury, (claims based upon contracts and Federal law but not sounding in tort are brought in the U.S. Claims Court, as were the MIATLP Claims Court Cases, without the requirement of prior administrative claims). If the Federal agency denies the claims, the claimant has six months to file a court action or the claim is barred. If the agency neither denies nor settles the claim within six months, there is a presumption of denial and the claimant is free to go to court. However, no six month time limitation applies to the court action where the Federal agency fails to act on the administrative claim.
2. According to DOE, MIATLP has filed approximately 3,000 administrative claims amounting to \$1 M each, totalling approximately \$3 B.
3. DOE is still investigating the MIATLP administrative claims. Because the six-month period for settlement or denial has expired, MIATLP may have the option of filing U.S. District Court cases based upon those claims. However, in June of 1982 a District Court in California ruled in the Kuhn case that the Federal Tort Claims Act does not apply to the Marshall Islands. This and other defenses which the U.S. could raise may discourage MIATLP from proceeding with court actions based on the administrative claims.

