R

TRUST TERRITORY OF THE PACIFIC ISLANDS
OFFICE OF THE HIGH COMMISSIONER
SAIPAN, MARIANA ISLANDS 96950

CABLE ADDRESS
HICOTT SAIPAN

401519

MAR 28 1978

The Honorable Ruth G. Van Cleve, Director
Office of Territorial Affairs
U. S. Department of Interior
Office of the Secretary
Washington, D. C. 20240

Dear Mrs. Van Cleve:

This letter is in response to your correspondence of February 23, 1978 and to further apprise you of other matters which have created problems in the administration of P.L. 95-134.

Recently a member of the Trust Territory Attorney General's Office accompanied the DOE Medical Survey Team to the Atolls of Bikini, Rongelap, and Utirik. His primary mission on this trip was to meet with the People of Rongelap and Utirik as well as their councils to discuss Public Law 95-134. Among other things he discussed the community payments under Section 104(b) and informed the councils of the impending appropriation and the method by which such funds could be expended. His basic outline of sub-paragraph 104(b) was as follows:

(1) That the $100,000 payment was to be used for a Community purpose which would be determined by the respective Island councils,

(2) That if technical assistance was needed, it would be supplied from Headquarters or the District. Such technical personnel would provide services in identifying Community projects and provide support in planning, costing and construction, and

(3) That the moneys, when received in the Trust Territory, would be held by the Office of the High Commissioner pending an identification of the Community purpose,

05542

[redacted] 5010929

(4) That when the councils were ready to discuss the Community project they should notify the District Administrator. He would in turn notify the High Commissioner's Office who would see that the necessary support personnel are provided.

The Assistant Attorney General informs me that both on Rongelap and Utirik the councils wanted some time with which to discuss the Community purpose payment with the people before asking for assistance. Additionally, the councils have each asked that the moneys, when received by the High Commissioner, be deposited in an interest bearing account in the name of the people of the individual atolls.

With regard to the people of Bikini, it seems premature at this time to consider any community project in view of the Rehabilitation and Resettlement Programs now being proposed. You have mentioned that an interpretation could be made so that the $100,000 could be used for a community project on Kili Island. I will meet with the Bikini council to discuss this point.

Upon his return to Saipan, I spoke at length with the Assistant Attorney General who made the preliminary survey in the Marshall Islands. He is of the opinion that due to difficulties found within the language of the act, we cannot properly administer payment until we receive clarification or the act is amended. In order of their importance I submit to you the following:

(1) SECTION 104(c) RELEASE CLAUSE

Subsection (c) of the act provides as follows:

"A payment made under the provisions of this section shall be in full settlement and discharge of all claims against the United States arising out of the thermonuclear detonation on March 1, 1954."

The Attorney General's Office has advised me that any claimant receiving payment under the terms of the act, even if he did not sign a release form, would be releasing the Government as the act itself provides a release by operation of law. Thus, for example, if a Utirikese claimant received a $1,000 payment for being exposed, he would later be precluded from making claim for compensation if he should become ill as a result of the exposure. Great concern was expressed by the possible recipients in that they did not want to jeopardize possible future payments by accepting nominal payments at this time.

[redacted]

It is my understanding that Congress did not intend that a preliminary payment under one subsection would prohibit compensation under another subsection, should a new claim arise. This however is contrary to the written language of the act and my attorneys believe that even under the most liberal of interpretations, any payment would constitute a complete release. There is the problem that many people, especially on Utirik, may not be willing to accept the $1,000 payment as a full and final release against any claims which might arise in the future against the United States Government as a result of the 1954 incident. In contemplation that the act was not meant to be as prohibitive as the release clause provides, we suggest that an amendment be submitted in the following form:

> (c) Payment made under one paragraph of this act shall not preclude the filing and payment of a claim under another paragraph. Payment under one paragraph, however, shall be in full and final settlement of all claims, arising out of that paragraph, against the United States as a result of the thermo nuclear detonation on March 1, 1954.

(2) SECTION 104(a) IDENTITY OF CLAIMANTS

Subsection (a) of Section 104 provides in part:

> "***to make the payments as hereafter provided in this paragraph to individuals or to their heirs or legatees, as the case may be, who were on March 1, 1954, residents of Rongelap Atoll or Utirik Atoll in the Marshall Islands": (Emphasis ours)

The Attorney General's Office has informed me that the word "resident"--has been interpreted to include a multitude of meanings. In the instant case, Congress probably determined that the word "resident" meant people who where actually physically located on Rongelap Atoll or Utirik Atoll on March 1, 1954. Congress on the other hand, could just as well have meant that a person who maintained a residence on either of the atolls, but who was not physically present on the island may come within the meaning of the act. A precise definition of the term "resident" is extremely important for proper administration of this act, especially

when dealing with Utirikese or Rongelapese who were not initially exposed, but later became ill and filed a claim. We suggest that the act be amended to provide as follows:

> "***to make the payments as hereafter provided in this paragaph to exposed residents, or to their heirs or legatees, as the case may be, who were on March 1, 1954, physically located on Rongelap Atoll or Utirk Atoll in the Marshall Islands." + Ailinginae Atoll ?

(3) NEW PROPOSED SUBSECTION (f)

We are aware that some mainland attorneys may have an interest in any compensation payments granted to exposed individuals on Utirik or Rongelap. Micronesian Legal Services Corporation is presently involved and does represent some individuals. We cannot, however, be assured that this organization will continue to represent their present clients. For that reason and to preclude excessive grants of legal fees, we feel that the following language be inserted in the act as subsection (f).

> Attorney's fees paid by claimants to counsel representing them may not exceed __% of any award. Any agreement to the contrary shall be null and void. Whoever, in the United States or elsewhere demands or receives any remuneration in excess of the maximum permitted by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or suffer imprisonment for a term not to exceed twelve (12) months or both.

(4) SECTION 104(a)(3)

The above subparagraph provides as follows:

> "Where circumstances warrant, as he shall determine, the Secretary shall pay an amount not in excess of $25,000 as he determines to be an appropriate compassionate compensation to each such individual who has suffered any physical injury or harm from a radiation - related cause but who is not an individual described in paragraph (1)." (Emphasis Ours)

[redacted]

The Attorney General's Office informs me that Micronesian Legal Services lawyers have inquired as to whether the above paragraph might provide for compensation for loss of personal or real property. While our counsel indicated that such section did not include payment for property damage, the provision may leave room for the initiation of claims and/or lawsuits. While I consider this paragraph to be clear as to its meaning, I would suggest, if the act is to be amended in any event, that this paragraph be altered to specifically include only "physical injury or physical harm." That amendment should satisfy the concern of the Attorney General's Office and clearly set forth the intent of Congress. Again, only if the act is to be otherwise amended should this suggested change be included.

(5) APPROPRIATIONS

As you have pointed out, there are not sufficient funds on hand to make total payment under the act for those persons presently entitled to payment. The Trust Territory Department of Finance has received the sum of $1,083,000, but present known claims exceed this sum by $682,000. A breakdown of the additional funds needed, as of this date, is as follows:

(a) Community payment, Bikini, Rongelap and Utirik. . $ 300,000
(b) Payment to parents of . . . . . $ 50,000
(c) Payment to heirs of (note this individual died as a result of stomach cancer. As a result of the stomach cancer the Brookhaven Medical personnel listed him as a claimant for $25,000.) Under the act his heirs are entitled to further payment equal to that paid to heirs of . . . . . $ 75,000
(d) Payment to heirs of contracted radiation illness and was taken from Rongelap to Brookhaven National Lab in New York. There she was treated and returned to Rongelap where she died soon thereafter. was added to the list of persons entitled to the $25,000, however, there is no indication that her heirs are entitled to the $100,000, or at least we should say Congress has not appropriated that amount for her heirs. . . . . $ 75,000

(e) New additions per Dr. Conrad letter dated January 4, 1978 . . . . . $ 175,000

(f) Payment for Utirikese who are additionally entitled to $25,000 (Note: Those people were exposed thus they are entitled to $1,000. Additionally, they contracted radiation illness

[redacted]

for which they are entitled to $25,000. The total claim per person should be $26,000. Congress did not appropriate the additional $1,000 for these people) . . . . . $ 7,000

Under the present program it will be necessary to go back to Congress on a frequent basis to seek additional funds as new cases arise. Such an approach is time consuming and frustrating to all concerned, especially the Micronesians who do not understand our system of appropriations. I would suggest that an approach be made to Congress to appropriate a sufficient sum for the purpose of paying present and possible future claims. The Brookhaven people might be able to estimate the total amount.

The cost for administering payments under this act is very high. Present budgetary constraints place a heavy financial burden on this office in its administration of the act. The Attorney General's Office informs me that their budget is not such that they can absorb the additional cost. They have further informed me that Micronesian Legal Services has similar budget problems. It will be necessary to make several other visits to the atolls as well as Ponape, Ebeye, Majuro, and Honolulu. If the program was administered by a separate body created for that purpose such as the Micronesian War Claims Commission, funds would be provided for the cost of administration, as well as that of Micronesian Legal Services. Thus, we suggest that any amendment to the act provide for funds to be appropriated for the administration of the act, including Micronesian Legal Services' costs, if possible.

When I am in Washington, D. C. shortly, I will appreciate discussing this matter more fully with you.

Very truly yours,

Adrian P. Winkel
High Commissioner

xc: Courtesy copy

[redacted]

5010934