



Mediation fails to end fed case against Waterford farmer

Wednesday

Posted Mar 22, 2017 at 2:00 AM

Not only did Robert Brace, owner of Robert Brace Farms, fail to reach a settlement with the Environmental Protection Agency, but Brace is now seeking punitive action against the government.

By

Follow

A Waterford area farmer's recent attempt to settle a decades-old case with the federal government through mediation has come up empty.

Not only did Robert Brace, owner of Robert Brace Farms, fail to reach a settlement with the Environmental Protection Agency, but Brace, whose case began 30 years ago over his right to repair drainage pipes on his farm, is now seeking punitive action against the government.

The case seemed to have reached a resolution in 1996 when Brace signed a consent decree with the government, agreeing to pay \$10,000 and to remove the drainage lines in his fields. In exchange, the government agreed to dismiss civil claims against him.

Brace said in the years since then he has spent more than \$1 million arguing the case in court and in a failed attempt to have his case heard by the U.S. Supreme Court.

Brace's battle with the federal government was renewed earlier this year when the Department of Justice filed a motion in federal court to enforce the consent decree, claiming that he is liable for millions of dollars in penalties for again farming that land.

Lawrence Kogan, a New York City lawyer who now represents Brace, along with Erie lawyer Neil Devlin, said he was hopeful that the mediation session might produce results.

"I am looking forward to the open-mindedness of the EPA and DOJ under new leadership," Kogan said earlier this month.

Not only did the mediation session not produce a settlement, but within a week of that session, Brace's lawyers had filed a request for legal sanctions against the government, claiming the government did not send representatives to the session who were authorized to settle the case.

If that was the case, David Cook, the lawyer who was serving as the mediator or so-called neutral party in the case, seemed not to have noticed.

In a one-page report, he wrote: "The parties and counsel appeared at the mediation with expressed intentions and settlement authority to resolve the case. Unfortunately, they were not able to reach an agreement."

Brace apparently saw things differently.

In a March 13 motion, his lawyers said the plaintiffs attended the session in Harrisburg with only trial counsel, a witness and counsel for the EPA.

None of them, lawyers for Brace wrote, "has to the greatest extent feasible, full settlement authority ..."

Brace contends the failure of the plaintiff to be fully prepared cost him money.

"The Defendants' necessary decision-makers traveled long distances and many hours and incurred considerable travel, lodging and other expenses, as well as, attorney fees and related costs."

The government has not responded to Brace's motion for sanctions. But on Friday, the Department of Justice did file a motion to strike many of Brace's defenses.

There continues to be an opportunity to settle the case through mediation.

In his report to the court, the mediator wrote: "It is the opinion of the neutral that mediation may prove more fruitful at a later date after the case has progressed."

Jim Martin can be reached at 870-1668 or by email. Follow him on Twitter at twitter.com/ETNMartin.