DELEGATE JAMES (presiding): Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman, Delegate White, as this was first written, it was without limitation except description of the word "damage". It was amended to make the word "damage" defined by the legislature. The legislature has to have opportunity to meet and to come up with some kind of a definition. So we had to put a cut-off date, if the constitution meets or is effective as of July 1, 1968, the legislature will not meet until January, 1969. So there has to be some kind of a period for the legislature to act. Normally as you know, the statutes enacted by a session take effect the first of January, 1969. I do not see how we could possibly make it any earlier than July 1, 1969, by what we have done here.

DELEGATE JAMES (presiding): Delegate Willoner.

DELEGATE WILLONER: I was wondering in your definition of when the damages occurred, in a case of continuing damages, would not damage, essentially several causes of action, arise as a result of, say, one taking, and the cause of action arise after the first of July, 1969? Of course, it would be actionable, would it not?

DELEGATE HARDWICKE: I think you have in mind that kind of tort each day of which is supposed to be a new cause of action. Is that the sort of thing you are thinking of?

DELEGATE WILLONER: Yes.

DELEGATE HARDWICKE: If that is the kind of tort you are talking about, then since each day is a renewal of it de novo so to speak, I would expect the court to hold that the continuation of it beginning on July 1, 1969, would be compensable under this section.

DELEGATE WILLONER: I have another question that I may be wrong about. You referred to the General Assembly defining damages in this situation. I thought they could except areas of damage. That was the intent of the amendment, I thought, and in that case, if they did not act, the damage would be left up to development by the court, is that correct?

DELEGATE HARDWICKE: I do not propose to make any substitute definitions. As I read the amendment which was proposed, the limitation restriction could cut damages down to practically nothing.

DELEGATE WILLONER: I will not disagree with that, but I mean it is a matter of restriction opposed to definition, is it not?

DELEGATE JAMES (presiding): Mr. Kiefer.

DELEGATE KIEFER: Mr. Chairman, what Delegate Willoner says is correct but the legislature still has to have opportunity to act if it wants to. That's why we set that date. I do not know why we have to get excited about it. There is no earlier date that can be made.

DELEGATE JAMES (presiding): Delegate Willoner.

DELEGATE WILLONER: I am not criticizing the fact of the date. The discussion turned into matter of definition. We leave it up to them to define the matter of damage. This was a matter of allowing the General Assembly to protect this area and not as a matter of defining it so if they did define it, we would not have any damages.

DELEGATE JAMES (presiding): Delegate Hardwicke.

DELEGATE HARDWICKE: In terms of the amendment, I think the General Assembly shall make limitations and restrictions and they have to have one session in which to make limitations and restrictions.

DELEGATE JAMES (presiding): Delegate Willoner.

DELEGATE WILLONER: I would agree with that. My only point was it was a matter of defining the word. If they chose not to act in that year, we would have a definition made by the court.

DELEGATE HARDWICKE: That is correct.

DELEGATE JAMES (presiding): Delegate Henderson.

DELEGATE HENDERSON: I would suggest there is another point of the July 1 date which is a beginning of the new budget year and I assume when they passed this law, they will make some provision for actual payment in the budget. They have to do that. I do not see how you can set up a claim sooner than July 1 for that additional reason. It seems to me it is futile for us to argue as to what the extent of recovery might be, whether you can antedate the statute. All we are trying to do here is fix the date when the new provision goes into effect. I suggest July 1 is the earliest that can be done.