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October 18, 1993

The Honorable Janet Reno
Attorney General of the United States
Department of Justice
Constitution Avenue and 10th Street
Washington, DC 20530

Dear Madam Attorney General:

As Chairman of the Agent Orange Coordinating Council comprised of over twenty veterans organizations and veterans' service organizations, we strongly urge that you take the initiative on behalf of the administration to issue an Amicus Curiae Brief from the Executive Branch in the case of Ivy v. Diamond Shamrock.

In this case, veterans whose injuries arose after the 1984 Agent Orange class action settlement have attempted to secure justice and reverse the effects of the 1984 settlement upon their cases. In the process of concluding the 1984 settlement most veterans had little or no say, while the lawyers nominally representing them settled future unknown, unaccrued injuries. As a result of that settlement, only veterans with death or total disability claims received anything, and that was, on average, a mere \$3200 each.

At the time of the settlement it was entirely unprecedented for future unknown claims, e.g. cancer which had not yet manifested itself, to be settled within the context of a class action. The unfortunate opinion of the Second Circuit in the Ivy case, which approved of the 1984 settlement, is the only appellate decision willing to endorse the sellout of such "future, unaccrued" claims. In it, the Second Circuit has upheld the settlement of "future" claims of uninjured Vietnam veterans who had neither notice of nor separate representation during the course of the 1984 settlement. After consultation with distinguished attorneys, I have come to believe that this procedure constitutes an unconstitutional deprivation of the right to trial by jury. I further believe that the United States Supreme Court will not allow such a deprivation if the matter is properly presented.

The courts can no longer argue that there is insufficient evidence to prove that Agent Orange, as well as dioxin, causes health problems, which was one of the bases for the Second Circuit's opinion. In its appellate decision the Second Circuit stated:

...despite continuing research, the crucial issue of 'general causation', i.e., whether any injuries are attributable to Agent Orange, remains unsettled.

...the chances of recovery are nearly as speculative today as they were at the time of settlement (in 1984). Appellants' challenges to the adequacy of their representation therefore must be rejected.

Ivy v. Diamond Shamrock Chemicals Co., June 24, 1993, (Slip Op.) at 4200-01.

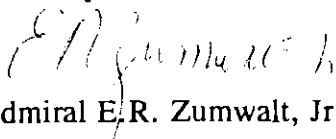
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The prestigious National Academy of Sciences, Institute of Medicine has now found, in a report commissioned by Congress under the Agent Orange Act of 1991, Public Law 102-4, that there is "sufficient evidence of an association" between exposure to Agent Orange and a number of injuries suffered by veterans. These diseases include soft tissue sarcoma, non-Hodgkin's lymphoma, Hodgkin's disease, chloracne, and porphyria cutanea tarda. The Report further found "limited/suggestive evidence" of Agent Orange's linkage to other cancers including multiple myeloma and respiratory cancers (cancers of the lung, larynx and trachea) The Department of Veterans' Affairs now lists all nine of these diseases as service-connected and related to Agent Orange exposure.

Twenty-one State Attorneys General have supported our position on the Ivy case. We expect these and others to support us in the Supreme Court.

Countless Vietnam veterans and their families would welcome the President's demonstration of reaching out to them through the issuance of an Amicus Curiae Brief from the Executive Branch in support of our appeal to the Supreme Court.

Sincerely,



Admiral E. R. Zumwalt, Jr., USN (Ret.)

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