



Vietnam Veterans of America, Inc.  
1224 M Street, NW  
Washington, DC 20005-5183

(202) 628-2700  
(202) 628-5880 fax

"1992 - The Year of The Vietnam Veteran"  
*Standing Tall Together*

JAN 27 1992

January 24, 1992

Honorable Don Edwards, Chairman  
House Judiciary Subcommittee on  
Civil and Constitutional Rights  
806 O'Neill House Office Building  
Washington, D.C. 20515

Dear Chairman Edwards:

As you know, there is a growing concern with the propriety of federal district court decision-making in the case styled Ivy vs. Diamond Shamrock. This is a class action case originally entered in the Texas state courts in which a trial was sought to obtain relief from several chemical companies for Vietnam veterans and their families whose diseases are said to have resulted from exposure to Agent Orange and other toxic herbicides in Vietnam. This case was removed from the Texas state courts to the Federal District Court for the Eastern District of New York per request of the chemical companies. This is the same court and the same judge having presided over a similar class action that was settled in 1984. In early October the federal judge presiding over the Ivy litigation dismissed the case essentially ruling the class petitioning in the Ivy matter were part of the same class that accepted settlement in the earlier 1984 Agent Orange litigation.

There are a variety of issues raised by the recent court developments that are troubling and perplexing. The purpose of this letter is to add the voice of Vietnam Veterans of America (VVA) to those asking for a thorough public review of the issues at stake. While the VVA has no particular interest in seeing a dismantling of the 1984 settlement such that funds already distributed to the class would have to be returned, we are keenly interested in seeing veterans treated as fairly by the courts as non-veteran litigants in their legal actions against the chemical companies for exposures to the same chemicals contained in Agent Orange.

In this regard there does appear to be a difference in the way courts are treating non-veterans in their tort litigation as against the treatment of veterans in theirs. Several cases having been brought by farmers or other workers in industries where the chemical dioxin is present are prevailing. This emergent trend for non-veterans is undoubtedly a direct result of continuously mounting evidence showing ever clearer relationships between exposure and disease. Unfortunately, veterans are being denied the same opportunity given non-veterans to make their cases before a jury in a trial.

The extent to which this differential treatment of veterans and non-veterans is a result of the 1984 Agent Orange settlement seems clear enough. However, the extent to which the judge in both 1984 settlement and Ivy should be allowed to permanently foreclose legal avenues for veterans remains unsettled. The veteran plaintiffs and their families in Ivy claim their diseases became manifest after the 1984 settlement and they, therefore, should not be considered part of the same class that settled. We are inclined to agree with these veterans.

Moreover, significant new scientific evidence of a relationship between exposure and disease that was unavailable in 1984 makes the case against the chemical companies far stronger today than in 1984. Added to this, these same chemical companies have continued to manufacture products containing dioxin or use production processes that produce dioxin in the workplace even though they know the scientific evidence of toxicity has steadily mounted. With these chemical companies having failed to repair since the 1984 settlement, and in the face of increasingly compelling evidence of danger from exposure to dioxin, not to mention their growing losses in litigation, the obvious question arises as to what extent a 1984 settlement should forever indemnify these companies from tort litigation brought by veterans.

Chairman Edwards, we find a great deal of confusion in the veterans community over the issue of Agent Orange. Many veterans are unclear about the differences between tort litigation yielding compensation based on negligence by the chemical companies on the one hand and compensation provided by the government as a result of disabilities incurred during active duty in the military. To help clear up this confusion we urge you to hold oversight hearings for the purpose of fleshing out the legal questions at stake in the matter of Ivy. In addition to this, we hope we can rely on your leadership in leveling the playing field for veterans in their efforts against the chemical companies in court. Legislation diminishing the binding effect of the 1984 class action settlement and weakening the fortress-like federal contractors defense would undoubtedly be useful here.

Ultimately, and we know you agree with us on this, the federal government must assume responsibility for compensating veterans through regular VA-provided disability compensation. This assumption of responsibility by the federal government will remain even if the chemical companies are bankrupted by tort litigation. Nevertheless, veterans are just as much citizens as non-veterans and their due process rights and legal protections should be just as guaranteed.

Sincerely,

A handwritten signature in black ink, reading "James L. Brazee, Jr.", written in a cursive style.

James L. Brazee, Jr.  
President