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To Members of the Agent Orange Coordinating Council:

I am writing you once again requesting your participation in an Amicus Curiae Brief to the United States Supreme Court which I have asked to be prepared in the case of Ivy v. Diamond Shamrock. As you know, in the case of Ivy v. Diamond Shamrock 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. I believe that recent events give us some reason for optimism that this may be accomplished. This optimism is occasioned by the new scientific findings regarding the harm caused by Agent Orange, as well as by the unprecedented and, I believe, unconstitutional nature of provisions of the 1984 class action settlement as described in Ivy.

As many veterans have come to realize, in the process of concluding the 1984 settlement most veterans had little or no say, while the lawyers nominally representing us were willing to settle future unknown, unaccrued injuries and take more than $13 million in fees. 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. I 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 to them.

A second reason for my optimism is that 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. Indeed, 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.
However, as you no doubt know, 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. It is my view that the diseases listed under the Report's category as "limited/suggestive evidence," namely, respiratory cancers, prostate cancer, and multiple myeloma as well as such other diseases as diabetes, will also soon be considered to be related to Agent Orange exposure.

While this list is not all-inclusive of the conditions which I believe are related to Agent Orange exposure, it certainly indicates that the Courts can no longer say that the issue as to "whether any injuries are attributable to Agent Orange remains unsettled." Indeed, the most recent study of the Seveso population in Italy, which was exposed to a dioxin release, has clearly shown an increased incidence of soft tissue sarcoma, non-Hodgkin's lymphoma, Hodgkin's disease, leukemia, and liver cancer. As stated by the Environmental Protection Agency's own director of environmental toxicology, "The weight of evidence is becoming overwhelming."

I have secured the agreement of Gerson H. Smoger, J.D., Ph.D., to prepare our Amicus Curiae Brief on a pro bono basis. Dr. Smoger has had significant experience with dioxin issues. He represented many of the people of Times Beach, Missouri who were exposed to dioxin, and in that capacity he won a $1.5 million judgment proving that a World War II veteran died from a soft tissue sarcoma as a result of his exposure to dioxin in Missouri. As another part of work in Missouri, Mr. Smoger has prepared several scientific papers on the health effects of dioxin, and he will be presenting papers on the immunological and neurobehavioral effects of dioxin exposure at the International Dioxin Conference in Vienna. Dr. Smoger has also been an instructor to Judges on proper settlement practices in mass tort cases at the National Judicial College in Reno, Nevada, and he is currently the chairman of the Association of Trial Lawyer's of America's Dioxin Litigation Group.

In our efforts we will not be alone. Twenty-one State Attorneys General have supported our position. We expect even more to support us in the Supreme Court.

In conclusion, I believe that at this time we have our greatest opportunity to reverse part of the most disturbing aspects of the 1984 settlement. However, we can only do this if we take a united stand in order to counteract the collective power of many major chemical companies, including Dow and Monsanto. It is for this reason that I am writing you and urging your organization to separately join our Amicus Curiae Brief.

I thank you very much for this consideration, and I am looking forward to your organization contacting me on its letterhead stationery, stating your willingness to join our Amicus Curiae Brief.

Sincerely,

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