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Victor J. Yannacone (Dec'd)

Victor John Yannacone, jr.

December 4, 1990

Hon. Jack B. Weinstein
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Dear Judge Weinstein:

Enclosed is a memo from an EPA chemist concerning Monsanto's deliberate falsification of information supplied to the government on dioxin. The information on which the memo is based raises serious questions about some of the comments that have been made in the past challenging the validity of the claims that some of the illness, disease, disability, and death among the Viet Nam combat veterans can be associated with their exposure to Dioxin contaminated herbicides in Viet Nam.

Particularly troubling is the information that there was deliberate falsification or misrepresentation of data concerning the manufacture of 2,4-D, the "other" component of Agent Orange.

In addition, the information on the dioxin contamination of pentachlorophenol, its chemical antecedents and process intermediates vindicates my early concern expressed in the response to the first motions to dismiss the Agent Orange complaints in July 1979.

Unfortunately, the members of the Plaintiff's Management Committee lacked sufficient background in chemical engineering and industrial chemical processes to adequately pursue this line of inquiry during examination of the chemical company witnesses in the later stages of the litigation.

It appears that the several insurance carriers involved in the "Agent Orange" settlement utilized my original apportionment formula developed in 1979 which established the contribution each company made to the overall amount of 2,3,7,8-tetrachloro-dibenzo-p-dioxin to which the troops were exposed in Southeast Asia. By my reckoning, the contributions should have been approximately 30% from Dow and Hercules, and 60% from Monsanto and Diamond Shamrock.

Since it is no longer any secret that settlement negotiations were conducted with Dow representatives in February of 1983, I can tell you that at the time of those settlement negotiations, the nominal demand on behalf of the estimated 25,000 members of the class that we felt were capable of establishing causal relation and substantial special damages was \$2.5 billion. Allowing a substantial discount factor for

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resolving significant liability issues raised by major corporations facing significant liability for toxic torts, I believe that the Agent Orange settlement you fashioned must hold because it represents the only successful way of resolving a mass toxic tort claim as complex as the "Agent Orange" litigation. However, I do not believe that Monsanto and Diamond Shamrock should be allowed to profit from their wrongdoing.

My original estimate was that the combined liability Monsanto and Diamond Shamrock should be approximately \$300 million based on the \$150 million I felt was properly chargeable to Dow and Hercules. I certainly believe that Monsanto has adequate resources to contribute additional funds to the Agent Orange settlement trust provided such contributions are made as originally suggested in my first Agent Orange class action complaint -- from the current earnings of the company together with whatever additional insurance may be available.

As you know, the primary goal of the Viet Nam veterans and their families who brought the "Agent Orange" litigation to this Court as a class action was, as it still is, to obtain the benefits to which they are entitled under Title 38. The assistance available to the veterans in obtaining Title 38 benefits from the VA at the present time is not adequate to meet their needs either in terms of processing the volume of claims or handling the complex medical issues involved. There is only so much that I can do for the veterans on a pro bono basis. The additional funds that could be obtained from Monsanto and eventually Diamond Shamrock could assure the veterans their ultimate right to benefits under Title 38 and do much to complete the healing process that you began when you negotiated the original settlement of the Agent Orange case.

Thank you again for your consideration and concern for the Viet Nam combat veterans and their families.

Very truly yours,

YANNAcone & YANNAcone

Victor John Yannacone, jr.

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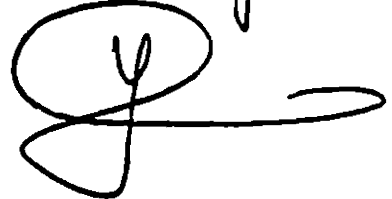
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✓ Thanks so much for
help.


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