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A statement from Monsanto management:

Why Monsanto settled the Agent Orange case



Senior Vice President and General Counsel Richard W. Duesenberg, left, and Robert T. Berendi, assistant general counsel-litigation, have directed Monsanto's defense in the Agent Orange litigation.

Editor's note:

Editorial reaction to the Agent Orange settlement has been favorable to the chemical companies.

In its editorial, "The Vietnam 'Buy-Off,'" The Wall Street Journal suggested that as strong as the defendant companies' scientific arguments were, they knew "what they were facing in the courts and from the publicity mills of their critics. They faced the whims of a jury, after a trial conducted by perhaps the most skillfully activist judge on the federal bench" and while the companies "might prevail on appeal, the legal costs would be staggering."

The Washington Post said, "One clearly good thing about the settlement ... is that it minimizes the possibility that the only real beneficiaries of the Agent Orange dispute would be the lawyers. For the companies, the settlement ... at least avoids the prospects of still more staggering liability from a jury whose sympathies would almost surely run to the veterans."

National Public Radio reported that "sources close to the case say they've uncovered other factors in the veterans' and their families' lives that could explain their health problems a lot more easily than dioxin exposure."

Perhaps the most insightful of all the editorial comment, reviewed to date, came from the The New York Times. It is reprinted here in its entirety.

The New York Times Justice, Mercy and Agent Orange

The tentative settlement reached in the Agent Orange trial is not a triumph of justice, because no one knows what justice in the case might be. It's not a triumph for the judicial system, because what drove the parties to settle was fear of the law's cost and delays. But it's the best feasible solution to an intractable problem. Both the makers of Agent Orange and the Vietnam veterans who blame the herbicide for their disabilities stand to gain if the settlement is accepted.

The Agent Orange used in Vietnam was contaminated with fractional amounts of dioxin, a potent poison. No one knows if that could really have caused the various diseases that veterans associate with Agent Orange. The pilots who flew the spray planes were exposed to a thousand times more Agent Orange than ground troops, but a recently completed survey of their health turned up no clear sign of dioxin-induced disease. Larger surveys may provide a different answer, but so far the only veterans' illness clearly causable by dioxin is the rare skin disease chloracne.

We settled this controversial case because, when all the factors are weighed, it was the right thing to do. Contrary to what you might have heard or read in the media, we settled in spite of our firm belief that we had a very strong case, and in spite of the lack of scientific evidence that exposure to trace amounts of dioxin could cause the human health effects claimed by the veterans.

But it sometimes happens in life that the right thing to do is different from being right. Even though we believe that Monsanto and the other chemical companies involved in the suit were "right" on the legal issues, there were compelling reasons for not letting the suit go to trial.

For many years, this painful and complex case has been an enduring symbol for some Vietnam veterans. They believe that our country has treated veterans, at best, as invisible, and, at worst, as reminders of America's first military defeat.

The anger and resentment of these veterans and their families focused, not surprisingly, on what they saw as a very concrete example of their coun-

try's lack of concern for their welfare. The Agent Orange case to them, and many average citizens watching this issue debated on the evening news, was no longer simply a lawsuit against chemical companies. The question of whether or not dioxin exposure could reasonably be cited as a cause of their health problems was often confused by the larger social and political issues. To many observers, the case had become a "cause", a rallying point, representing the failure of our government to discharge its responsibility to those who had served it well.

It should be noted that Judge Weinstein helped both the plaintiffs and the defendants focus our thinking on these larger issues; in other words, whether it was in the interests of either side for this case to go to trial, regardless of who was right or wrong.

Seen from that perspective, the entire cause, if not the case itself, was a loser, regardless of the outcome before a Brooklyn jury. As experience has taught us, causes are not won in courts of law — they are decided

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The difficulty of proving cause and effect gave the plaintiffs an incentive to settle. For the seven chemical companies that made Agent Orange, a buyout brings certainty and relief from the threat of years of costly lawsuits. The companies will contribute to a \$250 million pool from which the court can dispense prompt, equitable compensation to the veterans. For the court to validate claims and issue disbursements administratively avoids the venom and hazard of protracted litigation.

That's a far better solution than the chaos of the asbestos case, where the manufacturers have gone bankrupt and the victims still await compensation while the lawyers squabble over fees. The settlement achieved by U.S. District Judge Jack Weinstein may provide a model for similar cases involving benzene, radiation or formaldehyde. But first there are many loose ends to be tied up about Agent Orange. One is the central issue of the case: Who deserves compensation?

If only chloracne were to be recog-

nized, few veterans would receive compensation, and the settlement would certainly unravel. The court will therefore have to compensate a much wider class of illnesses. Lacking a scientific basis for doing so, it will presumably let severity of disease by a major criterion.

The Veterans Administration already treats any illness that a veteran declares was caused by Agent Orange, and is willing to give compensation for chloracne. Should a veteran collect damages for a disease that could have nothing to do with his service? That may or may not be justice, but it's surely mercy. Those who fought in Vietnam experienced a savage war and an apathetic homecoming. The veterans who have now fallen ill deserve particular compassion, and giving them the presumption of validity is one way to provide compensation.

But if society truly means to dispense mercy, there's a strange absence among the defendants in the Agent Orange case. Devastating

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Why we settled Agent Orange

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before the people in the court of public opinion.

We knew that there was no way to get the public or the veterans to focus on the more narrow legal issues in the case. The level of passion was too high, and the spotlights were too bright. In the final analysis, Monsanto did not believe that anyone benefitted from our company becoming part of the last battleground of the most divisive and painful incident in our nation's recent history, the Vietnam War.

By settling prior to the trial, Monsanto and the other defendants are agreeing to establish a \$180 million fund from which the veterans and their families will be reimbursed for relevant medical expenses. Although the amounts proposed to be contributed by individual companies have been ordered by the judge to remain confidential, details have been leaked to the press. An insurance industry source has reported that Monsanto's share was the largest, approximately \$80 million.

Are the claims of these veterans and their families legitimate? Some veterans are suffering, as are members of their families. Their exposure, emotional tensions and risks were many and unusual in the Vietnam conflict. No reasonable person could remain unmoved by what we've all seen and read, but we unequivocally maintain that there is no credible scientific evidence to suggest that their medical problems are caused by dioxin. Despite the evidence, the veterans, their families, and many Americans will never believe that. Had we not settled, the case would have continued for years, and our being right in our own minds on the facts may not have been enough to convince the courts — or the world. We do not believe that the expense of a long trial, the nega-

tive media attention, and most important, the potential damage to Monsanto's reputation as a concerned, sensitive, socially responsible company was an acceptable price to pay. On the other hand, the settlement is, in our opinion, a fair arrangement to put the Agent Orange case behind us once and for all.

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Our agreement to settle the case, however, should not be taken as a signal to others that it's open season on Monsanto. There are still other dioxin-related lawsuits in which Monsanto is a defendant. The circumstances in those cases are vastly different, and each will be judged on its own merit. Recent scientific studies have confirmed our position that dioxin is not the dangerous chemical the public has been led to believe, and we have no intention of allowing our decision on the Agent Orange case to be used as precedent in other cases.

Monsanto was the second largest producer of Agent Orange for the government (Dow Chemical was first). The defoliant was a 50-50 mixture of the herbicides 2,4-D (made at the Krummrich plant) and 2,4,5-T (made at the Nitro plant). □

Studies examine effects of dioxin

There is a growing and substantial body of scientific/medical evidence on the record which clearly indicates there is no link between Agent Orange and/or its dioxin contaminant and serious long term human health effects. Following is a list of some of the more recent and most significant studies:

1. A study of long-term health effects of occupational exposure to 2, 4, 5-T and its dioxin contaminants, conducted by Raymond A. Suskind, M.D., University of Cincinnati. The study examined the current health status of 254 present and former Monsanto employees who had worked in the 2, 4, 5-T production unit at the company's Nitro, W. Va., plant between 1948 and 1969 compared to the status of a control group of 63 employees who worked in the other areas of the plant during the same time frame. The results were published in the May 11, 1984, issue of the *Journal of the American Medical Association (JAMA)*.
2. Two recently completed mortality (cause of death) studies on groups of former Monsanto employees who had worked with 2, 4, 5-T since 1948. One group experienced high peak exposure over 30 years ago.
3. Investigations of the health effects in U.S. Air Force Personnel ("Ranch Hand Studies") following exposure to Herbicide Orange: A Baseline Mortality Assessment and a follow-up Baseline Morbidity Study, USAF School of Aerospace Medicine, San Antonio, Tex., July, 1983, and February, 1984.
4. A review of the medical evidence regarding the long-term health effects of Agent Orange and dioxin contaminants, conducted by the American Medical Association's Council on Scientific Affairs and published in the Oct. 15, 1982 issue of the *Journal of the American Medical Association (JAMA)*.
5. Special review of the latest evidence on the safety of phenoxy herbicides, including 2, 4, 5-T, by R. Kilpatrick, et al., the Advisory Committee on Pesticides, Ministry of Agriculture, Fisheries and Food, United Kingdom, December, 1982.
6. "Agent Orange Toxicity: A Quantitative Perspective," *Human Toxicol*, (1981, 1, 31-39, Kingsley M. Stevens, M.D., Department of Medicine, State University of New York at Stony Brook.

Justice, Mercy and Agent Orange

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crops and forests in Vietnam was the Government's idea, and the Government's moral duty to the veterans transcends that of the chemical companies that supplied the herbicide. Whether or not Agent Orange is a real cause of disease, it has become a metaphor for the veterans' sufferings.

Washington takes refuge in the doctrine that the Government may

not be sued for injuries incurred in military service. That's a necessary posture in general. But Agent Orange is a special case. By participating in the settlement Judge Weinstein has devised, the Government can show that it, too, knows the difference between justice and mercy.

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Annual Meeting: Mahoney describes the game plan for future success

After describing the stiff competition ahead, President and Chief Executive Officer Richard J. Mahoney characterized Monsanto's game plan for future success as striving to be the "best in whatever we choose to do."

Speaking at the company's Annual Meeting in St. Louis April 27, Mr. Mahoney said that "being the best means carefully selecting markets where we have, or can develop, a strong competitive edge — not doing everything — but selecting a few important things to do — things of substance — then doing them very well indeed."

"For our employees, being the best means nurturing an urge for action — an impatience with delays — a willingness to try," Mr. Mahoney declared. "For management, it means direction — understanding and reaching for new opportunities — training and motivating our employees — and then getting out of the way so our employees can, in fact, be the best."

Being the best has an important societal component, he declared. And our behavior as a progressive company must be exemplary. To meet the fear

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Strategy for Monsanto success is outlined by President and CEO Richard J. Mahoney at Annual Meeting of shareholders. Seated from left are Richard W. Duesenberg, senior vice president, secretary and general counsel, and Chairman Louis Fernandez.