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Court turns down Agent Orange cases

http://hosted.ap.org/dynamic/stories/S/SCOTUS_AGENT_ORANGE?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2009-03-02-10-21-40

Mar 2, 10:21 AM EST

WASHINGTON (AP) -- The Supreme Court has turned down American and Vietnamese victims of Agent Orange who wanted to pursue lawsuits against companies that made the toxic chemical defoliant used in the Vietnam War.

The justices offer no comment on their action Monday, rejecting appeals in three separate cases, in favor of Dow Chemical, Monsanto and other companies that made Agent Orange and other herbicides used by the military in Vietnam.

Agent Orange has been linked to cancer, diabetes and birth defects among Vietnamese soldiers and civilians and American veterans.

The American plaintiffs blame their cancer on exposure to Agent Orange during the military service in Vietnam. The Vietnamese said the U.S.' sustained program to prevent the enemy from using vegetation for cover and sustenance caused miscarriages, birth defects, breast cancer, ovarian tumors, lung cancer, Hodgkin's disease and prostate tumors.

All three cases had been dismissed by the 2nd U.S. Circuit Court of Appeals in New York. The appeals court said that lawsuit brought by the Vietnamese plaintiffs could not go forward because Agent Orange was used to protect U.S. troops against ambush and not as a weapon of war against human populations.

The other two suits were filed by U.S. veterans who got sick too late to claim a piece of the \$180 million settlement with makers of the chemical in 1984. In 2006, the Supreme Court deadlocked 4-4 on whether those lawsuits could proceed.

The appeals court ultimately said no to both. In one case, the court said companies are shielded from lawsuits brought by U.S. military veterans or their relatives because the law protects government contractors in certain circumstances who provide defective products.

In the third suit, the appeals court ruled that the companies could transfer claims from state to federal courts.

The cases are Isaacson v. Dow Chemical Co., 08-460, Stephenson v. Dow Chemical Co., 08-461, and Vietnam Association for Victims of Agent Orange v. Dow Chemical Co., 08-470.

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FW: DR. SMOGER; Re: US SUPREME COURT TURNS DOWN AGENT ORANGE CASES

Monday, March 2, 2009 5:46 PM

From: "Gerson H. Smoger" <gerson@texasinjurylaw.com>

Enclosed for everyone on this listserve is a courtesy copy of a letter we are sending out to the literally thousands and thousands of people who have contacted us over the past 18 years of this work. Let us all continue the fight!

Gerson Smoger

THE LETTER BEING SENT TO THOSE THAT HAVE CONTACTED US, INCLUDING OUR CLIENTS:

As many of you know, I have been working on the Agent Orange issue since 1991 when I was first asked by Admiral Zumwalt to assist the Agent Orange Coordinating Council. The Council, comprised of a broad array of veterans groups, was established to do two things: 1) to try to get benefits from the government for diseases caused by Agent Orange; and 2) to try to get compensation from the chemical companies for exposing our veterans to the toxic dioxin that was in their 2,4,5-T.

As of January 1991, not a single disease was recognized for compensation by the U.S. government. While not all of the diseases we believe were caused by the "Agents" are being compensated today, I believe we have come a long way since 1991 in getting the U.S. government to provide compensation for many veterans and their families. However, today we received very distressing news regarding the lawsuits we filed against the companies who were truly responsible for the Agent Orange tragedy. This morning the U.S. Supreme Court refused to take our request for certiorari in the Agent Orange cases. To put the Supreme Court's refusal to review the case in perspective, I will briefly detail below the extent of the companies' malicious conduct. (Also, I will gladly supply supportive documentation to any of you who want it. Please note that some of it may already be found on our website at www.agentorangelaw.net).

1. There is absolutely no question that the chemical companies used defective manufacturing processes. They were aware that since the 1950's the German company Boehringer used a process that produced no detectable dioxin. However, that process was slower than the American companies wanted, because the American chemical companies were aware that faster production meant greater profits. Whereas the Germans slowly cooked their 2,4,5-T (the chemical which contained the dioxin contaminant) for 13 hours, the American companies, like Dow, used extremely high temperatures to cook it in as few as twenty minutes. However, the higher the temperature, the more dioxin that was produced. Because of this, the chemical manufacturers SECRETLY tested their chemicals for dioxin. They DID NOT TELL the government how they made it (calling it proprietary). They DID NOT tell the government dioxin was even in the chemicals! They DID NOT TELL the government that they secretly tested their product for levels of dioxin contamination. They DID NOT TELL the government that hundreds of their production workers were sick due to dioxin contamination. In fact, 76 of the chemical companies' employees have been deposed and NOT ONE testified that he told the government about the dioxin contamination.

2. A myth has been created by the chemical companies that the U.S. government somehow designed Agent Orange and that this was a special, unique chemical. This IS NOT TRUE. Agent Orange is ½ 2,4,-D and ½ 2,4,5-T. It is the 2,4,5-T that contained the toxic dioxin. 2,4,5-T was not chosen for use in Vietnam because it was newly discovered. It was chosen because every year 50 million tons of 2,4,5-T were being sprayed on farms, along railroad tracks and on the sides of roads. In fact, the U.S. government wanted a chemical that was already being made, because that was the only way they could get enough produced for their needs in Vietnam. Dow even held a patent on Agent Purple and made Monsanto pay royalties on its use.

3. What we have found out to the best of our ability is that the U.S. government officials believed that the chemicals being sprayed were safe. Many people do not know that more than 100 government personnel have been deposed during the course of this litigation. Not a single one has ever testified to knowing that 2,4,5-T was contaminated with dioxin when it was sold to the government. After review of over a million pages of documents, we have not located a single one stating that anyone in the government knew that the 2,4,5-T shipped to the government was contaminated with dioxin. What we absolutely do know is that the government – UNLIKE THE COMPANIES -- did not even have the means to test for dioxin contamination in 2,4,5-T. And most importantly, the companies lied to the government. Even though hundreds of their workers suffered various diseases and they knew that dioxin was the MOST TOXIC chemical they had ever encountered, they CERTIFIED to the U.S. government that not a single worker had ever suffered from a health problem while manufacturing 2,4,5-T.

Now, despite literally years of work and knowing that we are right, we do not know that there is anything more that we

can do. Previously we told you that we were fearful that the courts, including the Supreme Court, would weigh the economic interests of the chemical companies over the health interests of you, your families and the rest of our veterans. The decision we have received does not go specifically to whether veterans were injured by the chemical companies' products. Instead, the courts have, in my opinion, rather cynically held that we cannot even present this issue to a jury because even if the companies had not hidden everything from the government, our government would have used Agent Orange anyway. How we can possibly know that or possibly believe that is difficult for me to understand. At minimum, it should have been left up to a jury to decide. This cannot be the law, but it has been made the law in this case..

I thank you very much for your time and patience and I certainly commiserate with all of those who have suffered from these deadly chemicals.

If you have any questions, I will be more than happy to answer them. I only wish that some way, somehow, I could have done more.

Sincerely,

Gerson Smoger, J.D., Ph.D.

Smoger & Associates, P.C.

gerson@agentorangelaw.net

gerson@texasinjurylaw.com

510-531-4529