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United States District Court
Eastern District of New York
Post Office Box 887
Smithtown, New York 11787

March 9, 1984

In Re "Agent Orange" Product Liability Litigation/MDL 381

Pursuant to an Order of the United States District Court for the Eastern District of New York, enclosed is a Notice concerning a civil lawsuit. This lawsuit is a class action brought on behalf of persons who were in the United States, New Zealand, or Australian armed forces at any time from 1961 to 1972 who allege injury from exposure in or near Vietnam to Agent Orange or other similar herbicides. The class also includes spouses, parents, and children of the veterans who claim direct or derivative injury as a result of the exposure. The Order of the District Court establishes this case as a class action and directs that notice of the lawsuit be given to the class members.

Robert C. Heinemann

Robert C. Heinemann
Clerk
United States District Court
Eastern District of New York
Post Office Box 887
Smithtown, New York 11787

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re :
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"AGENT ORANGE" :
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Product Liability Litigation :
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MDL No. 381

LEGAL NOTICE TO CLASS MEMBERS
OF PENDENCY OF CLASS ACTION

This notice is given to you pursuant to an Order of the United States District Court for the Eastern District of New York and Rule 23(c)(2) of the Federal Rules of Civil Procedure. It is to inform you of the pendency of a class action in which you may be a member of the class, and of how to request exclusion from the class if you do not wish to be a class member. None of the claims described below have been proven. It is contemplated that a trial by court and jury will take place in this Court beginning in May, 1984.

1. There are now pending in the United States District Court for the Eastern District of New York claims brought by individuals who were in the United States, New Zealand, or Australian Armed Forces assigned to or near Vietnam at any time from 1961 to 1972, who allege personal injury from exposure to "Agent Orange" or other phenoxy herbicides, including those composed in whole or in part of 2,4,5-trichlorophenoxyacetic acid or containing some amount of 2,3,7,8-tetrachlorodibenzo-p-dioxin (collectively referred to as "Agent Orange").

2. The plaintiffs include spouses, parents, and children born before January 1, 1984, of the servicepersons who claim direct or derivative injury as a result of exposure. Plaintiffs include children asserting claims in their own right for genetic injury and birth defects caused by their parents' exposure to "Agent Orange" and other phenoxy herbicides. Wives of veterans exposed to "Agent Orange" in Vietnam seek to recover in their own right for miscarriages. Plaintiffs' theories of liability include negligence, strict products liability, breach of warranty, intentional tort, and nuisance. Damage claims of family members include pecuniary loss for wrongful death,

loss of society, comfort, companionship, services, consortium, guidance, and support. In addition, plaintiffs seek punitive damages for defendants' alleged misconduct in furnishing herbicides to the United States Government.

3. The defendants, who are alleged to have manufactured or sold "Agent Orange" to the United States Government, are Dow Chemical Company, Monsanto Company, T H Agriculture & Nutrition Company, Inc., Diamond Shamrock Chemicals Company, Uniroyal, Inc., Hercules Incorporated, and Thompson Chemical Corporation. All the defendants deny that the plaintiffs' alleged injuries were in any way caused by "Agent Orange." They assert that injury, if any, was not caused by a product produced by them. The defendants have challenged these suits on various other grounds including plaintiffs' lack of standing to sue, lack of jurisdiction, statutes of limitation, insufficiency in law, plaintiffs' contributory negligence, and plaintiffs' assumption of known risks. Each has also asserted such affirmative defenses as the "government contract defense" and the Government's misuse of its product. In third-party complaints, the defendants asserted claims against the United States of America seeking indemnification or contribution in the event the defendants are held liable to the plaintiffs. The Government has asserted power to prevent anyone from suing it.

4. This Court has certified a class action in this proceeding under Rule 23(b)(3) of the Federal Rules of Civil Procedure. The plaintiff class consists of those persons who were in the United States, New Zealand, or Australian Armed Forces assigned to Vietnam at any time from 1961 to 1972 who were injured while in or near Vietnam by exposure to "Agent Orange" or other phenoxy herbicides including those composed in whole or in part of 2,4,5-trichlorophenoxyacetic acid or containing some amount of 2,3,7,8-tetrachlorodibenzo-p-dioxin. The class also includes spouses, parents, and children born before January 1, 1984, directly or derivatively injured as a result of the exposure.

The court may reconsider this decision, by decertifying, modifying the definition of the class, or creating subclasses in the light of future developments in the case. The definition does not

imply a conclusion that anyone within the class was injured as a result of exposure to any herbicide.

5. The Court has also certified a Rule 23(b)(1)(B) class limited to claims for punitive damages. The class includes the same persons as are in the Rule 23(b)(3) class. The Court has decided not to permit members of the class to seek exclusion on the issue of punitive damages. You will, therefore, be bound by the Court's rulings on punitive damages whether or not you seek exclusion on the issue of compensatory damages.

6. Trial of the representative plaintiffs' claims is scheduled to commence before Jack B. Weinstein, Chief Judge of the United States District Court for the Eastern District of New York, and a jury on May 7, 1984.

7. If you are a member of the plaintiff class, you will be deemed a party to this action for all purposes unless you request exclusion from the Rule 23(b)(3) class action covering compensatory damages.

8. If you do not request exclusion from the class by May 1, 1984, you will be considered one of the plaintiffs of this class action for all purposes. You may enter an appearance through counsel of your own choice. You will be represented by counsel for the class representatives unless you choose to enter an appearance through your own legal counsel.

9. Class members who do not request exclusion will receive the benefit of, and will be bound by, any settlement or judgment favorable to the class covering compensatory damages. The class representatives' attorneys fees and costs will be paid out of any recovery of compensatory and other damages obtained by the class members. You will not be charged with costs or expenses whether or not you remain a member of the class. However, if you choose to enter an appearance through your own legal counsel, you will be liable for the legal fees of your personal counsel.

10. Class members who do not request exclusion will be bound by any judgment adverse to the class, and will not have the right to maintain a separate action even if they have already filed their own action.

11. If you wish to remain a member of the class for all purposes, you need do nothing at this stage of the proceedings.

12. If you wish to be excluded from the class for compensatory damages, you must submit a written request for exclusion. For your convenience, the request for exclusion may be submitted on the attached form, entitled "Request for Exclusion." If you received this notice by mail, a Request for Exclusion form should have accompanied it. If you did not receive a Request for Exclusion form, you may obtain a copy by writing the Clerk of the Court, P.O. Box 887, Smithtown, New York 11787. A written request for exclusion may be submitted without using the Request for Exclusion form, but it must refer to the litigation as "In re 'Agent Orange' Product Liability Litigation, MDL No. 381"; include your name and address in your statement requesting exclusion. Any request for exclusion must be received on or before May 1, 1984 by the Clerk of the United States District Court for the Eastern District of New York at P.O. Box 887, Smithtown, New York 11787 or at a federal courthouse in the Eastern District of New York.

13. Under the Court's Order, all potential plaintiffs are deemed to be members of a Rule 23(b)(1)(B) class on the issue of punitive damages. At the time of trial, the Court will determine whether the facts presented warrant the submission of a punitive damage claim to the jury. In the event that there is a recovery for punitive damages, it will be shared by those plaintiffs who are successful in prosecuting their claims in this or other suits on an appropriate basis to be determined by the Court. If you choose to exclude yourself from this class action on the issue of compensatory damages, you may do so without necessarily losing your right to share in any punitive damages.

14. The plaintiffs in this class action are represented by a group of attorneys who have been tentatively approved by the Court as the Agent Orange Plaintiffs' Management Committee. Members of this committee include:

Phillip E. Brown, Esq.
Hoberg, Finger, Brown,
Cox & Molligan
703 Market Street, 18th Floor
San Francisco, California 94103

Benton Musslewhite, Esq.
John O. O'Quinn, Esq.
609 Fannin, Suite 517
Houston, Texas 77002

Stanley M. Chesley, Esq.
Waite, Schneider, Bayless
& Chesley Co., L.P.A.
1513 Central Trust Tower
Cincinnati, Ohio 45202

Gene Locks, Esq.
Greitzer & Locks
1500 Walnut Street, 21st Floor
Philadelphia, Pennsylvania 19102

David J. Dean, Esq.
Dean, Falanga & Rose
One Old Country Road
Carle Place, New York 11514

Stephen J. Schlegel, Esq.
Schlegel & Trafelet, Ltd.
One North LaSalle Street
Suite 3900
Chicago, Illinois 60602

Thomas W. Henderson, Esq.
Henderson & Goldberg, P.C.
Frick Building, Suite 1612
Pittsburgh, Pennsylvania 15219

Newton B. Schwartz, P.C.
Houston Bar Center Building
723 Main, Suite 325
Houston, Texas 77002

In addition, David Dean, Esq. of the above address has been designated by the Court as plaintiffs' spokesman. The Management Committee is being aided in its duties of representing the interests of the plaintiffs by numerous other law firms, both in the United States and Australia.

15. Examination of pleadings and papers. This notice is not all inclusive. References to pleadings and other papers and proceedings are only summaries. For full details concerning the class action and the claims and defenses which have been asserted by the parties, you or your counsel may review the pleadings and other papers filed at the office of the Clerk of the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, on any business day from 9:00 a.m. to 5:00 p.m.

16. Interpretation of this Notice. Except as indicated in the orders and decisions of the United States District Court for the Eastern District of New York, no court has yet ruled on the merits of any of the claims or defenses asserted by the parties in this class action. This notice is not an expression of an opinion by the Court as to the merits of any claims or defenses. This notice is being sent to you solely to inform you of the nature of the litigation, your rights and obligations as a class member, the steps required should you desire to be excluded from the class, the Court's certification of the class, and the forthcoming trial.

Robert C. Heinemann

DATED: Brooklyn, New York
March 9, 1984

Robert C. Heinemann
Clerk, United States District Court
for the Eastern District of New York

EXCLUSION REQUEST FORM

Clerk
United States District Court
for the Eastern District of New York
P.O. Box 887
Smithtown, New York 11787

In re "Agent Orange" Product Liability Litigation MDL No. 381

I hereby request to be excluded from the class action in the
above captioned matter.

(signature)

Name (print): _____

Address: _____

If not a member of the armed forces who served in or near
Vietnam, how are you related to such a serviceperson?

Armed forces unit of serviceperson _____

Armed forces identifying number of serviceperson _____

Period of service in or near Vietnam _____

I learned about this suit by _____
