

KIRKLAND & ELLIS

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November 30, 1982

To Call Writer Direct
202 857- 5044

Victor J. Yannacone, Jr.
Yannacone & Associates
P. O. Drawer 109
Patchogue, New York 11772

Re: United States v. Allen,
Civ. No. 80-C-133 (W.D. Wis.)

Dear Mr. Yannacone:

As I mentioned in our telephone conversation on November 24, 1982, and as I mentioned to Keith Kavenagh in an earlier conversation, we had expected to receive "the actual time and expense sheets" supporting your time statement submitted in the above-referenced action soon after November 15, 1982, as indicated in your November 8, 1982 affidavit submitted to the Court. In our conversation, you indicated that as of November 24 your computer was not operational, that you did not know whether time vouchers in this case more than a year old had been retained or destroyed, that any destroyed time vouchers would have been recorded on microfilm, and that some time charges were recorded on papers in your files rather than on time vouchers.

As you know, Judge Crabb's briefing schedule requires that Dow's brief opposing the requests of the respondents and veterans for attorneys fees be filed no later than December 20, 1982. Thus, it is imperative that I receive any records underlying your request for fees and costs as soon as possible.

Accordingly, I request that you provide me with copies of the following documents no later than December 6, two weeks before the December 20 filing deadline:

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- 1) The original time vouchers for each of the entries, for each lawyer, included in your time statement.
- 2) For time vouchers which have been destroyed or lost, a copy of the microfilm recording of such time voucher.
- 3) For entries which were recorded on papers in your files rather than on time vouchers, a copy of the document(s) on which such entry appears.

You also indicated that your computer would become operational over this past weekend, and that you would provide a copy of the computer printout for each of the entries on the time statement submitted with your affidavit. I would appreciate receiving a copy of the printout as soon as possible.

Your November 8 affidavit describes the appended time statement as a "reconstructed statement of time," but does not identify the person or persons who compiled the statement, nor the sources of information used in preparing the statement. Accordingly, please provide the following information:

- 1) Identify each person who participated or assisted in the preparation of the statement, and if more than one person participated or assisted in such preparation, specify the task or tasks performed by each.
- 2) Identify the source or sources of information used in preparing the statement, and if more than one source was used, specify the source used for each entry.

Finally, as we discussed by telephone, "Yannacone and Associates" does not appear in Martindale-Hubbell. Please provide biographical information on each lawyer for whom fees are requested, including at least the following:

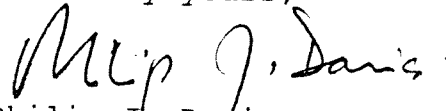
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- 1) Law school and date of law school graduation.
- 2) Bar memberships and the date of admission to each bar.
- 3) Legal experience, including all judicial clerkships, law firm associations, or government legal service, specifying for each the dates on which the position was assumed and relinquished. For law firm associations, specify any period during which the lawyer served as an associate with the firm, and any period during which the lawyer was a partner in the firm.
- 4) Specify each period following law school graduation during which any lawyer was not engaged in the active practice of law.

As we discussed, I expect that a resume would be sufficient to supply this information.

Sincerely yours,



Philip J. Davis
Counsel for The Dow
Chemical Company

:dr

YANNAACONE & YANNAACONE

Professional Corporation

Attorneys and Counselors at Law

Victor J. Yannacone (Dec'd)
Victor John Yannacone, jr.
W. Keith Kavenagh, Ph.D.
Michael T. Sullivan

December 3, 1982

FILE

Workers Compensation Division:	475-0231 (nights also)
Retirement & Social Security Division:	654-0231
Medical-Legal & Litigation Division:	654-2299
General Practice Division:	654-2222
Environmental, Consumer & Public Interest Law Division:	654-2662

Hon. Barbara Crabb
United States District Judge
United States District Court
Western District of Wisconsin
215 Monona Avenue
Madison, Wisconsin 53703

re: EPA/Dow Chemical Company v. Allen/Veterans

Dear Judge Crabb:

In addition to being professionally demeaning and beneath the dignity of an informal response, the enclosed letter from Philip J. Davis of Kirkland & Ellis representing The Dow Chemical Company raises some interesting and novel legal issues for your consideration.

The application made by and on behalf of the intervening respondent veterans is that a valuable, perhaps priceless academic perquisite -- the right to chose the time for release and publication of experimental data -- was vindicated largely through the efforts of the intervening respondents who were represented by a team of attorneys, including the undersigned. Yannacone & Associates are lead counsel for the entire class of plaintiff veterans in the "Agent Orange Product Liability Litigation (MDL 381)," the largest personal injury product liability class action in American history. Valuable time and resources were diverted from the veterans' cases to turn back the efforts of The Dow Chemical Company to accomplish through manipulation of administrative proceedings what they could not do in the laboratories or in the courtroom before your colleague, Judge Pratt.

The value of the services Yannacone & Associates has performed is not to be found in a Martindale-Hubbell listing or even a simple recital of the professional accomplishments of the undersigned and his colleagues; rather, it is to be found in the fact that the veterans won and The Dow Chemical Company lost. It is the veterans' contention that, as a matter of law, counsel for the successful party to a legal proceeding should be remunerated at no less a rate and in no less an amount than counsel for the unsuccessful party. The measure of the value of our services is to be found in some multiple of the cost of Kirkland & Ellis' services to their client. Such a contention carries additional weight when one considers that successful counsel acted in a representative capacity for a class of two and half million veterans who lack sufficient means to fund adequate legal services for themselves.

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Also to be considered is the fact that the intervening respondent veterans and their attorneys were also asked to represent a number of graduate students whose professional futures were intimately associated with the outcome of this matter. The students also lacked any significant access to legal services. However, in order to avoid any possible appearance of impropriety, the intervening respondent veterans arranged for the firm of Aberg & Jorgenson to represent the interests of the academic respondents and is in striking contrast to Kirkland & Ellis whose Chicago office represents Monsanto and whose Washington office represents The Dow Chemical Company, both of which corporations are defendants in the Agent Orange litigation, the subject matter of which is a competitive product manufactured by each company and in which action each company has filed cross claims against the other.

We submit that before any further inquiry can be had by counsel for The Dow Chemical Company into the propriety of the fees sought for professional services by successful counsel for the respondents and respondent intervenors, full and complete disclosure should be made of the amount of the fees charged by Kirkland & Ellis to The Dow Chemical Company.

The fact that Mr. Davis is unaware of the professional attainments of his principal adversary in this case indicates that he has either led a rather sheltered life, is deaf and blind, or has reached his present professional position by overcoming the handicap of being less than literate. The mere fact that our law firm is not listed in Martindale-Hubbell is of no moment, since we were overlooked in the Book of Genesis as well.

My telephone conference with Mr. Davis, a conference which lasted 13 minutes on November 24, and for which I am not billing, was the kind of arrogant assault upon the professional integrity of a fellow attorney, albeit one more successful in public interest litigation, as to suggest that perhaps there really is a double standard in the profession, and that partners in certain large firms honestly believe that their position entitles them to behave in a manner that less than a century ago would have called for a public thrashing.

If counsel for Dow wishes to present his demands in the form of a motion and present it to Your Honor, Yannacone & Associates will make the appropriate cross-motion. Otherwise, we will ignore his improper demand and overlook the arrogance of his attempt to usurp the position of Your Honor and this Court.

YANNACONE & YANNACONE *Attorneys and Counselors at Law*

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On behalf of the intervening respondent veterans, we respectfully request Your Honor to make an award of attorneys' fees in the amount demanded, together with such other and further relief as to Your Honor shall seem just and proper under the circumstances. We herewith state, as we did in our sworn affidavit, that the amount demanded represents the fair and reasonable value of our services. Unless Kirkland & Ellis is willing to come forward and say that their total billings to The Dow Chemical Company in their unsuccessful effort amounted to less than our claim for successfully opposing their improper efforts, there is no further need for any additional material to burden the consideration of this Court. If counsel for Dow does represent that they billed their client less than we are claiming as the fair and reasonable value of our services, then a triable issue exists on the fair and reasonable value of each party's services and whether or not a multiplier should be applied to the billings of the unsuccessful attorneys in a controverted matter. At that point, Your Honor may wish to consider further evidence or conduct a hearing on the matter.

We stand ready to appear before Your Honor as required and present further evidence as Your Honor may direct in the resolution of this matter.

Thank you again for your courtesy and consideration on behalf of the intervening respondent veterans.

Respectfully yours,

YANNACONE & YANNACONE, P.C.

Victor John Yannacone, jr.

VJYjr:dw

YANNACONE & YANNACONE

Attorneys and Counselors at Law

Professional Corporation

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cc: Philip J. Davis, Esq.
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December 14, 1982

Victor J. Yannacone, Jr., Esq.
Yannacone & Yannacone
35 Baker Street
Patchogue, New York 11772

Re: United States, et al. v. Allen, et al.,
No. 80 C 133 (W.D. Wis.)

Dear Mr. Yannacone:

We were stunned and dismayed by your letter of December 3 refusing to produce the time records and other materials relative to your request for attorneys' fees and costs in the above-referenced action. Not only were the unwarranted personal attacks in your letter in distinct contrast to the cordial conversation we had the week before regarding these matters, but the letter evidences a complete turnabout from your prior representations to the Court and to me that such materials would be forthcoming. The letter also contrasts sharply with the cooperation we have received from the other fee applicants in this case, including your co-counsel for the Vietnam Veterans.

You will recall that I had telephoned you in response to your statement in your affidavit to the Court that you would "submit for the perusal of any of the counsel involved . . . the actual time and expense sheets which support the attached statement of services." During our conversation, you reiterated your invitation to us to review your files and records.

It was at your explicit request that I described in writing the materials we thought would be useful to us in reviewing your fee application. Even though the burden is on a fee applicant to support fully and completely the application,*/ we thought

*/ See, e.g., Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 720 (5th Cir. 1974).

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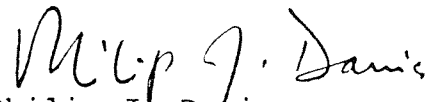
that a review of time records would prove useful in expediting this matter by narrowing the issues to be presented to the Court. This has been the case with the records provided by Robert Aberg, counsel for respondents, and the law firms of Schlegel & Trafelet and Sullivan & Associates. Moreover, we are entitled to such material "as a matter of right." National Ass'n of Concerned Veterans v. Secretary of Defense, 675 F.2d 1319, 1326-27, 1329 (D.C. Cir. 1982).

Your reference to Martindale-Hubbell misses the point altogether. While we are familiar with your credentials, none of the 12 or so otherwise unidentified lawyers has entered his appearance in this case or appeared on any pleadings. Except for you, none of the other lawyers, with one possible exception, is listed under Mineola or Patchogue, New York in Martindale-Hubbell, the standard reference for biographic data on lawyers. We were thus compelled to request information regarding your colleagues which might support your request for fees of \$250-300 per hour for these people.

In view of your refusal to cooperate in a manner comparable to that of your colleagues, we have no option but to challenge your claim for fees on a broad basis as lacking appropriate support.

So that there is no question, we understand your position now to be that you are refusing to produce your time records and related materials -- a position which is not only contrary to the law and your sworn statement to the Court, but contrary to your prior invitation to us to review your files and contrary to the position of your fellow fee applicants.

Sincerely yours,



Philip J. Davis
Counsel for The Dow Chemical
Company

cc: The Hon. Barbara B. Crabb
All Counsel of Record

PJD:dc