

Excerpts from the
VETERANS' GOALS & OBJECTIVES
in the
AGENT ORANGE LITIGATION
MDL 381 DOCKET DOCUMENT NO. 0033
Filed: 19 July 1979

- The plaintiff veterans seek medical care and treatment of their own afflictions, but most cry out for medical care and treatment of the afflictions visited upon those of their children who have suffered developmental defects.
- The plaintiff veterans do not want to be recipients of public assistance.
- The plaintiff veterans, as tax payers, do not believe that they and all the other tax payers in the United States should bear the burden of the cost of the medical care and treatment they require as a result of the toxic effects of contaminated phenoxy herbicides manufactured, formulated, advertised, marketed, promoted, and sold by the corporate defendants.
- The plaintiff veterans and their families seek to compel the corporate defendants to make restitution to the American people by reimbursing those federal and state agencies that have provided benefits, medical care and treatment to the plaintiff veterans and their families for conditions attributable to the toxic effects of contaminated phenoxy herbicides manufactured, formulated, advertised, marketed, promoted, and sold by the corporate defendants.
- The plaintiff veterans and their families seek a resolution of the scientific controversy over the toxic effects of phenoxy herbicides contaminated with toxic synthetic organic chemicals such as the polychlorinated dibenzo-*p*-dioxins (PCDDs) and the polychlorinated dibenzo furans (PCDFs) fomented by the promotional efforts of the corporate defendants which manufactured, formulated, advertised, marketed, promoted, and sold such contaminated phenoxy herbicides.
- The plaintiff veterans and their families seek to challenge the continuing claims of those corporate defendants still actively involved in the advertising, promotion, marketing, and sale of phenoxy herbicides known to be contaminated with toxic synthetic organic chemicals such as the polychlorinated dibenzo-*p*-dioxins (PCDDs) and the polychlorinated dibenzo furans (PCDFs) that such contaminated phenoxy herbicides are safe.
- The plaintiff veterans and their families seek to test those safety claims of the corporate defendants in the crucible of cross-examination before this Court of Equity not in administrative proceedings which have been dragging on for almost a decade since the Department of Defense recognized the danger inherent in contaminated phenoxy herbicides and discontinued their use as defoliants in Southeast Asia.
- The plaintiff veterans who served our Country in Southeast Asia assert that the corporate defendants owed them a non-delegable fiduciary duty of care.
- The plaintiff veterans seek punitive damages against the corporate defendants responsible for the advertising, promotion, marketing, and sale of phenoxy herbicides contaminated with toxic synthetic organic chemicals such as the polychlorinated dibenzo-*p*-dioxins (PCDDs) and the polychlorinated dibenzo furans (PCDFs) in an amount sufficient to convince corporate management they serve as trustees of the public health, safety and welfare to an extent commensurate with the economic power and technological resources of the corporations they manage.
- 2,400,000 veterans are not a statistically insignificant sample of the American population, considering that all of them were certified to be in good health when they left this country for service in Southeast Asia and the fact that those who came home without direct traumatic injury from that service are now suffering many clinical and subclinical effects attributable to chemical toxicants cries out for equitable relief.
- The plaintiff veterans are aware of their unique position at risk as a result of their already significant exposure to phenoxy herbicides contaminated with polychlorinated dibenzo-*p*-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs) and the bioaccumulative nature of the toxic effects associated with such exposure.
- The plaintiff veterans and their families are now becoming aware that other widely used products such as the phenoxy herbicides pentachlorophenol (PCP) and its salts are also contaminated with polychlorinated dibenzo-*p*-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs) and may represent significant additional risk to the plaintiff veterans and their families.
- The plaintiff veterans and their families are appalled at the lack of concern by federal regulatory agencies for their unique position as a population already exposed to contaminate phenoxy herbicides

and manifesting clinically ascertainable symptoms of such exposure.

With such a mandate from the plaintiff veterans who have sought the services of plaintiffs' counsel and relief from this Court, the amended verified complaint filed June 20, 1979 was drafted. * * *

The Demand for Judgment

In seven pages (79-06-20 Amended Verified Complaint) Plaintiff Veterans dearly described the relief demanded from this Court.

1. The equitable remedy of declaratory judgment (79-06-20 Amended Verified Complaint (AVC) pp. 163–165).
2. Further equitable relief imposing a constructive or resulting trust upon the corporate defendants and holding them to their fiduciary obligations as trustees of the public health safety and welfare. (79-06-20 AVC pp. 165–166).
3. The equitable remedy of injunction restraining the corporate defendants from continuing the advertising, promotion, marketing, and sale of phenoxy herbicides such as the 2,4,5-trichlorophenoxy aliphatics contaminated with toxic synthetic organic chemicals such as 2,3,7,8-tetrachloro-dibenzo-*p*-dioxin (TCDD or dioxin). (79-06-20 AVC p. 166)
4. The equitable remedy of restitution and the equitable procedure of appointing a conservator or trustee to the extent necessary to accumulate, manage, and administer a fund against which claims can eventually be paid from current earnings rather than the capital assets of the corporate defendants. (79-06-20 AVC pp. 166–170). * * *

The Plaintiffs' Claim for Damages

Plaintiffs' claim special, compensatory, general and punitive damages from the corporate defendants on a number of theories rooted in equity and sounding in tort. These damage claims are ancillary to and justiciable as a part of Plaintiffs' claim for equitable relief.

Plaintiffs' contend that the way to manage mass tort litigation where the claim is for damages attributable to the toxic effects of chemical biocides such as the polychlorinated dibenzo-*p*-dioxins (PCDDs) and the polychlorinated dibenzo furans (PCDFs); where the evidence is essentially epidemiological; and the damages potentially catastrophic—in a personal sense to the plaintiffs and in an economic sense to the defendants—is under the broad ambit of the equity jurisdiction of the United States.

There has been no consideration by the Courts (other than with the Price-Anderson nuclear liability limitation) of a mass disaster affecting so many people, so many years after the event, as is before this Court in the case of contaminated phenoxy herbicides. The law of torts in recent years has been concerned primarily with the rights of individuals rather than entire populations. In the philosophical and mathematical sense the law of torts has evolved in a deterministic rather than probabilistic fashion. Nevertheless, the law has long since recognized that even issues of fact are also determined in accordance with probabilistic considerations: reasonable doubt in criminal actions, and substantial evidence in civil actions such as this.

In an equity action such as that which the plaintiffs have brought before this court, no matter how large the effect on the parties, and no matter what the public import, each case is still tried on its own merits and any precedents that may be established are necessarily limited to the facts and circumstances of the particular case and controversy. It is to this end that Courts of Equity have always grappled with those fundamental issues that cry out to the conscience of the community.
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The Veterans' Goals & Objectives in the Agent Orange Litigation are stated in MDL 381 Docket Document No. 0033.

Document 0033 was written during an all-night work session on 19 July 1979 by Michael and Maureen Ryan, with their daughter Kerry, Ron DeBoer, John and Mildred Woods and their sons John and Jeffrey, Carol Yannacone and our daughter Claire, and on the phone, Frank McCarthy of AОВI and Joan McCarthy (no relation to Frank McCarthy) of VVA.

The statements were dictated by the veterans, their wives, and even some of the children and only slightly modified to fit the legal style of the document.