

Morrison & Foerster Wins Ninth Circuit Victory for Class of Veterans That Participated in the Army's Decades-Long Chemical Testing Program

Appeals court panel confirms U.S. Army's duty to inform affected veterans about their health and to treat them; MoFo has represented vets pro bono since case was filed in 2009

SAN FRANCISCO (July 1, 2015) – A team of lawyers from **Morrison & Foerster LLP** secured a strong victory on behalf of veterans organizations and individual service members at the Ninth Circuit Court of Appeals when the appellate panel affirmed an injunction requiring the U.S. Army to keep affected veterans apprised of health information relating to their participation in chemical and biological tests spanning five decades. The decision, issued on June 30, also required the Army to provide medical treatment to these veterans for any “disabilities, injuries, or illnesses” caused by their participation in the testing programs.

In upholding the 2013 injunction that U.S. Senior District Judge Claudia Wilken issued against the Army, the three appellate judges agreed with the plaintiffs’ argument that Army Regulation 70-25 “imposes unequivocal commands on the Army to provide former test subjects with current information about their health, and to provide medical care for diseases caused by the experiments.”

The Morrison & Foerster team working on behalf of the plaintiffs consists of partners **Eugene Illovsky**, **James Bennett**, and **Stacey Sprenkel**, and associates Ben Patterson and Grant Schrader.

The firm has handled the case pro bono since it was filed as an individual and class action in 2009, naming the Army, Defense Department, and others as defendants and seeking injunctive and declaratory relief. The research programs at issue, many of which were concentrated at the Army's facilities at the Edgewood Arsenal and Fort Detrick, Maryland, allegedly involved the testing of more than 400 different chemical and biological substances during a period spanning five decades, and involved tens of thousands of active duty military personnel. The substances tested ranged from drugs or chemicals (sarin, LSD, BZ, mustard gas, and a THC analog called “red oil”) to biological weapon agents such as tularemia and Q-Fever. The plaintiffs claimed that the Army did not pass on scientific and health information to the former test subjects as it became available, and that the Army withheld treatment for conditions arising from the testing.

The district court’s 2013 ruling concluded that the Army was obligated to treat veterans involved in the tests, but that an injunction was unnecessary in light of veterans’ access to medical care from the VA. The appellate

panel vacated this portion of the lower court's decision, writing, "we cannot agree that the Army's duty to provide care is excused by the availability of medical care from another government agency, even if that care that would overlap to some degree and in some manner with the care that the Army is required to provide." The panel instructed the district court to formulate an appropriate injunction on remand.

Mr. Illovsky said, "We're not surprised the court of appeals upheld the district court's carefully crafted injunction requiring the Army to warn the test subject veterans of newly acquired information affecting their health."

He added, "We're gratified the court of appeals affirmed the district court's decision that the test subject veterans are entitled to medical care. And we're very pleased the case has been remanded so the district court can now formulate an injunction that will get the Army to provide medical care to those veterans who so desperately need it."

For more information about this case, see <http://www.edgewoodtestvets.org>.

ABOUT MOFO

We are Morrison & Foerster — a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, and Fortune 100, technology, and life sciences companies. We've been included on *The American Lawyer's* A-List for 11 straight years, and the *Financial Times* named the firm number six on its 2013 list of the 40 most innovative firms in the United States. *Chambers USA* honored the firm as its sole 2014 Corporate/M&A Client Service Award winner, and recognized us as both the 2013 Intellectual Property and Bankruptcy Firm of the Year. Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger.