

MORRISON & FOERSTER WINS ANOTHER NINTH CIRCUIT VICTORY FOR CLASS OF VETERANS THAT PARTICIPATED IN ARMY'S DECADES-LONG CHEMICAL TESTING PROGRAM

Appeals court panel denies government's petition for rehearing; MoFo has represented vets pro bono since case was filed in 2009

SAN FRANCISCO (January 27, 2016) – A team of lawyers from Morrison & Foerster LLP secured a victory on behalf of veterans organizations and individual service members at the Ninth Circuit Court of Appeals when the court denied the government's petition for rehearing and rehearing en banc of the appellate panel's June 30, 2015 decision.

Last year, 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 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. Yesterday's decision leaves the appellate panel's rulings intact.

The Morrison & Foerster team working on behalf of the plaintiffs consists of partners 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.

In 2013, U.S. Senior District Judge Claudia Wilken 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.

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

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