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BLUE WATER NAVY VETERANS SUE SECRETARY OF VETERANS AFFAIRS ERIC SHINSEKI FOR FAILURE TO GRANT DISABILITY BENEFITS.

In a suit filed in federal court in Washington DC, two veterans organizations have filed suit against the Secretary of Veterans Affairs, Eric Shinseki, for failing to provide benefits to a group of Vietnam War veterans who served aboard ship off the coast of Vietnam. Over a hundred thousand of these Blue Water veterans were exposed to Agent Orange through their drinking water while providing gunfire support, air support and logistic support in the territorial seas off the coast of the republic of Vietnam.

The Blue Water Navy Vietnam Veterans Association, (BWNVVA) a not for profit corporation chartered to advance the cause of the Blue Water Navy veterans, along with Military-Veterans Advocacy (MVA) another non-profit who advocated for veterans, filed the 32 page suit charging that the Secretary ignored scientific evidence which showed the presence of Agent Orange in the waters off shore as well as solid proof that the shipboard distillation process, which converted saltwater to potable drinking water, enriched the effect of the dioxin.

Attorney John Wells, who brought the suit, is a retired Navy Commander and served as Chief Engineer on three Navy ships. "I am very familiar with the naval operations at the time and the distillation equipment that enriched the dioxin." Wells said. "We have taken this evidence to two separate committees of the Institute of Medicine, and they agree that the distillation process, based on Henry's law of thermodynamics, would have co-distilled and enriched the dioxin. This confirmed an earlier study by the University of Queensland."

Wells is the Executive Director of MVA and previously serves as Director of Legal and Legislative Affairs for the BWNVVA. After retiring as a surface warfare officer he opened a law practice in Slidell Louisiana with emphasis on military and veterans law.

John Paul Rossie, a retired Information Technology expert, served in the Navy off the coast of Vietnam. Rossie has served the BWNVVA since its inception as its Executive Director. He said as follows: "Sea service personnel operating in the war zone were given a straight shot of Agent Orange into their drinking water. They drank it, showered in it and had their food prepared with it," Rossie continued, "but the VA has just ignored them. Now they are dying and leaving their families without the VA compensation that they earned."

Prior to 2002, the Blue Water Navy veterans were granted the presumption of exposure. This was rescinded based on a 1997 VA General Counsel's opinion that concluded the words "service in the Republic of Vietnam" meant "service in-country." Australia, an American ally in Vietnam, has been granting benefits to their naval personnel since 2003.

The Blue Water Navy veterans actually won a restoration in benefits from the Court of Appeals for Veterans Claims in 2006 but that decision was set aside on administrative law grounds by the United States Court for the Federal Circuit in 2008.

“This suit covers different grounds,” Wells noted. “We are not attacking the lack of rulemaking as was the case in the previous suit, but we are showing that the Secretary’s decision was arbitrary and capricious, unsupported by substantial evidence and in violation of existing law. The VA currently grants the presumption of exposure for ships that steamed into inland waterways that they have arbitrarily defined as rivers. What the VA either did not know or intentionally ignored, is that the 1958 Convention on the Territorial Seas and the Contiguous Zone, which the United States has signed and ratified, includes bays and harbors as inland waterways. Additionally the treaty makes the territorial seas part of the sovereign territory of the nation.

“I sat down with John Gingrich, who at the time was the Chief of Staff for the VA and showed him a picture of Da Nang Harbor (attached), which is surrounded on three sides by land. He thought that the harbor was covered. I had to show him his own manual which specifically excepted the harbors. He agreed that the VA’s position did not make sense and agreed to re-visit it. Instead last December, the VA published a Notice saying that they would not change their policy. The VA did not return the telephone calls I made to them after the notice was published.”

The plight of the Blue Water Navy veterans has support in Congress. Presently 127 members of the House (including Rep Mike Michaud (D-ME) ranking member of the Veterans Affairs Committee) are co-sponsoring a bill by Rep. Chris Gibson (R-NY) to restore the presumption of exposure to those who served in the territorial seas of the Republic of Vietnam. “We are heartened by the bi-partisan support of this bill,” Rossie said, “but despite the support, it is still stalled in Committee. So while we are continuing to gather support in Congress, we felt the need to also move forward in court. Our people are dropping like flies and we need to try any avenue we can to obtain these benefits.”

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