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VETERANS ADMINISTRATION

AGENT ORANGE CONTINUING EDUCATION WORKSHOP

AUGUST 20, 1985

THE AGENT ORANGE CONTROVERSY IS ONE THAT HAS GENERATED A HIGH DEGREE OF INTEREST, EMOTION, AND I DARESAY, MISINFORMATION. SINCE IT FIRST PRESENTED ITSELF IN 1978, IT HAS BEEN FUELED BY INDIVIDUALS AND ORGANIZATIONS, SOME WELL INTENDED AND OTHERS PERHAPS NOT SO, WHO HAVE CONTRIBUTED TO THE CAULDRON. THIS ISSUE HAS ATTRACTED THE ATTENTION OF THE CONGRESS OF THE UNITED STATES, WHICH HAS HELD NUMEROUS HEARINGS, THE WHITE HOUSE WHICH ESTABLISHED AN INTERAGENCY WORK GROUP TO FOCUS ON THE ISSUE, AND THE INTERNATIONAL COMMUNITY. IT HAS ALSO GENERATED THE LARGEST CLASS ACTION LAWSUIT IN AMERICAN LEGAL HISTORY, A LAWSUIT WHICH IS UNIQUE DUE TO THE

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ENORMITY OF THE CLASS WHICH EXTENDED ACROSS INTERNATIONAL BOUNDERIES, AND THE AMOUNT OF LIABILITY THE DEFENDANTS WERE POTENTIALLY EXPOSED TO. IT IS THIS LAWSUIT THAT I WOULD LIKE TO SPEND A LITTLE TIME ON WITH YOU THIS MORNING.

THE ORIGINAL LAW SUIT, FILED IN 1979, ALLEGED INJURY TO VIETNAM VETERANS AND MEMBERS OF THEIR FAMILIES RESULTING FROM THE VIETNAM HERBICIDE PROGRAM. THE LEGAL THEORIES ADVANCED INCLUDED INDIVIDUAL NEGLIGENCE, STRICT PRODUCT LIABILITY, BREACH OF WARRANTY, INTENTIONAL TORT, AND NUISANCE. THE INJURIES CLAIMED INCLUDED CANCER, MISCARRIAGES AND BIRTH DEFECTS. APPROXIMATELY 600 ADDITIONAL CASES WERE FILED BEFORE THEY WERE CONSOLIDATED AND TRANSFERRED TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK WHERE A CLASS ACTION WAS CERTIFIED.

THE PLAINTIFF VETERANS AND THEIR FAMILY MEMBERS HAD BROUGHT SUIT AGAINST THE CHEMICAL MANUFACTURERS OF THE COMPONENTS OF AGENT ORANGE. THE MANUFACTURERS, IN TURN, SUED THE UNITED

STATES SEEKING CONTRIBUTION AND INDEMNIFICATION. JUDGE PRATT, THE FEDERAL JUDGE ORIGINALLY ASSIGNED THE CASE, AGREED WITH THE POSITION OF THE UNITED STATES THAT THE FERES DOCTRINE WHICH BARS AN ACTION AGAINST THE UNITED STATES FOR INJURIES ARISING INCIDENT TO MILITARY SERVICE WAS APPLICABLE IN THIS CASE AND HE DISMISSED THE ACTION AGAINST THE UNITED STATES. JUDGE PRATT WAS SUBSEQUENTLY ELEVATED TO THE COURT OF APPEALS AND JUDGE WEINSTEIN BECAME THE TRIAL JUDGE.

UNDER JUDGE WEINSTEIN, THE PACE QUICKENED AND TRIAL WAS SET FOR MAY 7, 1984. ON THE EVE OF THE TRIAL, THE PLAINTIFFS AND THE SEVEN DEFENDANT CHEMICAL COMPANIES ANNOUNCED A $180 MILLION SETTLEMENT. UNDER THE FEDERAL RULES OF CIVIL PROCEDURE, THE SETTLEMENT NEEDED TO BE APPROVED BY THE COURT. PRIOR TO GRANTING THAT APPROVAL, JUDGE WEINSTEIN DECIDED TO HOLD WHAT HE CHARACTERIZED AS "FAIRNESS HEARINGS" AT VARIOUS LOCATIONS AROUND THE COUNTRY. DURING THE COURSE OF THE HEARINGS, JUDGE WEINSTEIN WAS CONSIDERING WHETHER THE

SETTLEMENT WAS FAIR, REASONABLE, AND ADEQUATE. THE SPECIFIC FACTORS HE CONSIDERED WERE THE EXPENSE OF CONTINUING THE LITIGATION, THE REACTION OF THE CLASS TO THIS PROPOSED SETTLEMENT, THE ABILITY OF THE PLAINTIFFS TO ESTABLISH LIABILITY AND DAMAGES, AND THE REASONABLENESS OF THE SETTLEMENT FUND IN LIGHT OF THE MOST LIKELY RECOVERY.

IN HIS PRELIMINARY MEMORANDUM ISSUED ALMOST A YEAR AGO, JUDGE WEINSTEIN FOR THE FIRST TIME FORMALLY ADDRESSED THE CENTRAL ISSUE OF THE CASE, THE ABILITY OF THE PLAINTIFFS TO DEMONSTRATE THE NECESSARY CAUSAL CONNECTION BETWEEN THE EXPOSURE OF THE VETERANS TO AGENT ORANGE AND THE SUBSEQUENT DEVELOPMENT OF A VARIETY OF AILMENTS. JUDGE WEINSTEIN IN THIS AND SUBSEQUENT OPINIONS CONCLUDED THAT "ADEQUATE PROOF IS LACKING." A FEW, EXTENSIVE QUOTATIONS FROM THIS INITIAL OPINION WILL SERVE TO DEMONSTRATE THE FATAL GAP IN THE PLAINTIFF'S EVIDENCE:

" IN THE INTENSIVE STUDY OF THE RANCH HAND PERSONNEL WHO CONDUCTED MOST OF THE SPRAYING AND HAD MOST CONTACT WITH AGENT ORANGE, NO STATISTICALLY SIGNIFICANT DERMATOLOGICAL DIFFERENCES WERE FOUND BETWEEN THESE MEN AND A CONTROL GROUP.

THE EVIDENCE WITH RESPECT TO BIRTH DEFECTS IS EVEN MORE TENUOUS. MALE MEDIATED BIRTH DEFECTS MIGHT THEORETICALLY RESULT FROM EXPOSURE OF THE FATHER TO AGENT ORANGE, BUT NO SUPPORTING DATA ASSOCIATING DIOXIN EXPOSURE TO MALES WITH BIRTH DEFECTS OF CHILDREN HAS BEEN MADE AVAILABLE.

IN SHORT, THE EVIDENCE PROVIDED BY THE PLAINTIFFS TO DATE ON GENERAL CAUSALITY, WHILE SUPPORTIVE OF THE DESIRABILITY OF FURTHER STUDIES, LACKS SUFFICIENT PROBATIVE FORCE--EXCEPT IN THE CASE OF CHLORACNE--TO PERMIT A FINDING OF GENERAL CAUSALITY. IT MIGHT REQUIRE THE DIRECTION OF A VERDICT FOR DEFENDANTS AT THE END OF PLAINTIFFS' CASE. IT SIMPLY IS NOT SUFFICIENT TO

POINT TO AN INDIVIDUAL AND SHOW THAT HE WAS EXPOSED TO AGENT ORANGE AND HAD A CANCER. THE INCIDENCE OF CANCERS OF THE TYPE SUFFERED BY PLAINTIFFS IN THE POPULATION AS A WHOLE MAKE IT AT LEAST AS LIKELY, BASED UPON PRESENT KNOWLEDGE, THAT THE CANCER RESULTED FROM CAUSES OTHER THAN AGENT ORANGE. THE PROBLEMS WITH PLAINTIFFS' FACTUAL CASE ARE EVEN GREATER WITH RESPECT TO BIRTH DEFECTS AND MISCARRIAGES."

AFTER REVIEWING THE SCIENTIFIC LITERATURE, JUDGE WEINSTEIN CONCLUDED "ALL THAT CAN BE SAID IS THAT PERSUASIVE EVIDENCE OF CAUSALITY HAS NOT BEEN PRODUCED."

IN SUBSEQUENT OPINIONS ISSUED BY JUDGE WEINSTEIN, IN RELATED CASES, HE CONTINUED IN HIS CONCLUSION THAT THE MOST SERIOUS DEFICIENCY IN THE PLAINTIFFS' CASES WAS THEIR FAILURE TO PRESENT CREDIBLE EVIDENCE OF A CAUSAL LINK BETWEEN EXPOSURE TO AGENT ORANGE AND THE VARIOUS DISEASES FROM WHICH THEY WERE ALLEGEDLY SUFFERING. JUDGE WEINSTEIN STATED, "(A)LL RELI-

ABLE STUDIES OF THE EFFECT OF AGENT ORANGE ON MEMBERS OF THE CLASS SO FAR PUBLISHED PROVIDE NO SUPPORT FOR PLAINTIFFS' CLAIMS OF CAUSATION." JUDGE WEINSTEIN OBSERVED THAT THE PLAINTIFFS' EXPERTS IGNORED RELEVANT STUDIES AND FAILED TO SHOW HOW THE MYRIAD ILLNESSES ALLEGED BY THE PLAINTIFFS WERE MORE LIKELY TO HAVE BEEN CAUSED BY AGENT ORANGE THAN BY SOMETHING ELSE. FURTHER, HE STATED, "AS TIME GOES ON, PROOF OF CONNECTION TO AGENT ORANGE BECOMES LESS AND LESS LIKELY BECAUSE THE AGING VIETNAM VETERANS ARE CONTINUALLY EXPOSED TO CONFOUNDING SUBSTANCES AND MORBIDITY RISES SHARPLY WITH AGE FROM MANY NATURAL CAUSES."

ANOTHER SIGNIFICANT PROBLEM WAS PRESENTED BY THIS CASE. UNDER THE TRADITIONAL NOTIONS OF TORT LAW IN ORDER FOR A PLAINTIFF TO RECOVER, IT WAS NECESSARY TO SHOW THAT THE

PLAINTIFF HAD SUFFERED AN INJURY AS A DIRECT CONSEQUENCE OF AN ACT BY THE DEFENDANT. THIS TRADITIONAL CONCEPT WAS MODIFIED SEVERAL YEARS AGO IN A LANDMARK CALIFORNIA CASE WHICH INVOLVED AN INDIVIDUAL WHO HAD BEEN INJURED BY A PRODUCT THAT WAS MADE BY SEVERAL MANUFACTURERS. THE PLAINTIFF WHOM EVERYONE AGREED HAD BEEN INJURED, COULD NOT IDENTIFY WHICH OF THE MANUFACTURERS MADE THE SPECIFIC PRODUCT USED BY THE PLAINTIFF. WHAT WE HAD WAS THE PROBLEM OF THE INDETERMINATE DEFENDANT. EACH DEFENDANT COULD HAVE MADE THE SPECIFIC INJURY PRODUCING PRODUCT BUT WHICH DEFENDANT, IN FACT, DID? TO SOLVE THIS PROBLEM THE CALIFORNIA SUPREME COURT DECIDED TO HOLD EACH OF THE MANUFACTURERS LIABLE TO THE PLAINTIFF, BUT ONLY TO THE EXTENT THAT THEY SHARED THE MARKET. IF MANUFACTURER A SOLD 40% OF THE ITEMS IN THE MARKET AREA, HE WOULD BE ASSESSED 40% OF THE LIABILITY, IF MANUFACTURER B HAD 30% OF THE MARKET, HE WOULD BE LIABLE FOR 30% OF THE DAMAGES, AND SO FORTH.

IN A CASE SUCH AS AGENT ORANGE, THERE WAS THE INDETERMINATE DEFENDANT PROBLEM. A VIETNAM VETERAN WOULD HAVE NO WAY OF KNOWING WHICH CHEMICAL COMPANY MADE THE HERBICIDES TO WHICH HE WAS EXPOSED. THERE WAS, HOWEVER, A FURTHER COMPLICATION. EVEN IF THE PLAINTIFF CLASS HAD BEEN ABLE TO PROVE THAT THEY WERE INJURED BY EXPOSURE TO AGENT ORANGE, NO INDIVIDUAL ~~NUMBER~~ member OF THE CLASS WOULD BE ABLE TO PROVE THAT HIS OR HER SPECIFIC INJURY HAD BEEN CAUSED BY AGENT ORANGE. IN OTHER WORDS, WE WOULD HAVE THE UNUSUAL SITUATION OF INDETERMINATE PLAINTIFFS TRYING TO RECOVER FROM INDETERMINATE DEFENDANTS. IN THIS REGARD, JUDGE WEINSTEIN STATED:

> IN OUR COMPLEX INDUSTRIALIZED SOCIETY IT IS UNFORTUNATELY POSSIBLE THAT SOME PRODUCTS USED ON A WIDESPREAD SCALE WILL CAUSE SIGNIFICANT

HARM TO THE PUBLIC. WHILE, THROUGH THE USE OF SUCH PROOF AS LABORATORY TESTS ON ANIMALS AND EPIDEMIOLOGICAL EVIDENCE, IT MAY BE POSSIBLE TO PROVE THAT SUCH HARM, FOR EXAMPLE CANCER, CAN BE "CAUSED" BY A PARTICULAR SUBSTANCE, IT MAY BE IMPOSSIBLE TO PINPOINT WHICH PARTICULAR PERSON'S CANCER WOULD HAVE OCCURRED BUT FOR EXPOSURE TO THE SUBSTANCE.

> EPIDEMIOLOGICAL STATISTICS, WHICH CONSTITUTE THE BEST (IF NOT THE SOLE) AVAILABLE EVIDENCE IN MASS EXPOSURE CASES, CAN ONLY ATTRIBUTE A PROPORTION OF THE DISEASE INCIDENCE IN THE POPULATION TO EACH POTENTIAL SOURCE .... BUT

> ... IT IS IMPOSSIBLE TO PINPOINT THE ACTUAL SOURCE OF THE DISEASE AFFLICTING ANY SPECIFIC MEMBER OF THE EXPOSED POPULATION.

JUDGE WEINSTEIN THEN WENT ON TO DESCRIBE A VARIETY OF WAYS THAT THE INDETERMINATE PLAINTIFF PROBLEM MIGHT BE ADDRESSED. ULTIMATELY, HOWEVER, HE DID NOT RESOLVE THE ISSUE BUT RATHER CITED IT AS ONE MORE DIFFICULTY IN THE PLAINTIFFS' CASE THAT MADE THE SETTLEMENT APPEAR TO BE FAIR AND REASONABLE UNDER THE CIRCUMSTANCES.

GIVEN THE DIFFICULTIES FACED BY THE PLAINTIFFS IN SUCCESSFULLY PRESENTING THEIR CASE, YOU MIGHT LEGITIMATELY ASK WHY WOULD THE DEFENDANTS SETTLE, AND AGREE TO PAY $180 MILLION. FROM THE DEFENDANTS' POINT OF VIEW, THERE WERE PERHAPS FIVE REASONS WHY THE SETTLEMENT WAS REASONABLE. JUDGE WEINSTEIN SUMMARIZED THEM AS FOLLOWS:

FIRST, DEFENDING THE CASE WOULD HAVE COST MORE TENS OF MILLIONS OF DOLLARS IN LEGAL FEES AND EXPENSES, PLUS THE TIME OF EMPLOYEES AND EXECUTIVES WHO COULD BE DOING MORE PRODUCTIVE WORK. SECOND, THOUGH SLIGHT, THERE WAS A POSSIBILITY OF AN ULTIMATE FINDING OF LIABILITY WITH CLAIMS TOTALLING BILLIONS OF DOLLARS. THIRD, AN ONGOING EMOTIONAL TRIAL WOULD HAVE CREATED ADVERSE PUBLICITY (WHETHER OR NOT UNFAIR), PERHAPS CAUSING A SPILLOVER EFFECT AGAINST DEFENDANTS' OTHER PRODUCTS. FOURTH, CONTINUED LITIGATION AND THE POSSIBILITY OF AN ADVERSE RESULT HAS A NEGATIVE INFLUENCE ON THE FINANCIAL COMMUNITY, CAUSING GREATER FINANCING EXPENSES AS THE COMPANIES BECOME LESS ATTRACTIVE TO INVESTORS. AND, FIFTH, REPRESENTATIVES OF THE DEFENDANTS, LIKE OTHER AMERICANS, HAVE A SENSE OF COMPASSION

AND RESPECT FOR VETERANS OF THE VIETNAM WAR AND THEIR FAMILIES WHO, BECAUSE OF CIRCUMSTANCES ENTIRELY BEYOND THEIR CONTROL, HAVE BEEN TREATED WITH LESS FAVOR AND RESPECT THAN THEY SHOULD HAVE BEEN.

JUDGE WEINSTEIN, THEN, APPROVED THE SETTLEMENT DEEMING IT A FAIR AND JUST ONE GIVEN THE TOTALITY OF THE CIRCUMSTANCES. NEXT HE APPOINTED A SPECIAL MASTER TO ASSIST IN THE DEVELOPMENT OF A METHOD FOR DISTRIBUTING THE ASSETS OF THE TRUST FUND TO THE MEMBERS OF THE CLASS.

IN MAY 1985, ALMOST A YEAR TO THE DAY OF THE ANNOUNCEMENT OF THE SETTLEMENT, JUDGE WEINSTEIN ISSUED HIS PLAN. UNDER THE PLAN, ONLY TOTALLY DISABLED VETERANS AND THE SURVIVING SPOUSES OR CHILDREN OF DECEASED VETERANS WILL RECEIVE CASH AWARDS. EXPOSURE TO THE HERBICIDE WILL BE USED AS AN ELIGIBILITY CRITERION BECAUSE OF THE CLASS DEFINITION. (THE CLASS HAD BEEN

DEFINED AS PERSONS WHO WERE IN THE UNITED STATES, NEW ZEALAND, OR AUSTRALIAN ARMED FORCES AT ANY TIME FROM 1961 TO 1972 WHO WERE INJURED WHILE IN OR NEAR VIETNAM BY EXPOSURE TO AGENT ORANGE OR OTHER PHENOXY HERBICIDES AND THEIR SPOUSES, PARENTS AND CHILDREN.)

THE COURT REJECTED PROPOSALS THAT WOULD HAVE PAID ONLY VETERANS WHO WERE SUFFERING FROM A GROUP OF SPECIFIED DISEASES STATING THAT:

> GIVEN THE LACK OF SCIENTIFIC BASIS FOR GENERAL CAUSATION AND THE SIGNIFICANT UNCERTAINTIES INVOLVED IN PROOF OF INDIVIDUAL CAUSATION--THAT IS, THE INDETERMINATE PLAINTIFF PROBLEM--IT CANNOT NOW BE ESTABLISHED WITH ANY APPROPRIATE DEGREE OF PROBABILITY THAT

ANY INDIVIDUALS WHO SUFFER FROM THE DISEASES (SUGGESTED TO BE COVERED) INCURRED THEM AS A RESULT OF AGENT ORANGE EXPOSURE, OR THAT THESE DISEASES ARE MORE LIKELY THAN OTHERS TO BE CAUSALLY RELATED.

AS NOTED, THE COURT WILL REQUIRE CLAIMANTS TO DEMONSTRATE EXPOSURE TO AGENT ORANGE DURING MILITARY SERVICE IN OR NEAR VIETNAM. A PRESUMPTION OF EXPOSURE (SUCH AS THAT EMPLOYED BY THE VA) WOULD NOT BE WORKABLE BECAUSE IT "WOULD REDUCE THE MAXIMUM POSSIBLE PAYMENT LEVEL BECAUSE OF THE INCREASE IN OTHERWISE ELIGIBLE CLAIMS. THAT RESULT WOULD BE UNFAIR TO TRULY EXPOSED CLASS MEMBERS WHOSE AWARD OTHERWISE WOULD BE HIGHER."

INDIVIDUALS WHO PERFORMED CERTAIN JOBS THAT INVOLVED DIRECT HANDLING OR APPLICATION OF AGENT ORANGE, SUCH AS

BACKPACK SPRAYING OR THE LOADING OR HANDLING OF SPRAY EQUIPMENT, WOULD BE DEEMED EXPOSED. OTHER VETERANS WOULD BE PROCESSED UNDER AN "OBJECTIVE COMPUTERIZED EXPOSURE EVALUATION SYSTEM" THAT WOULD BE BASED UPON THE HERBS TAPE (A COMPUTERIZED RECORD OF INDIVIDUAL HERBICIDE DISSEMINATION MISSIONS IN VIETNAM) AND WOULD TAKE INTO ACCOUNT TEMPORAL AND GEOGRAPHIC PROXIMITY TO SPRAYED AREAS.

JUDGE WEINSTEIN SET FORTH A SCHEDULE OF PAYMENTS: FOR DISABILITIES THAT BEGAN BEFORE JANUARY 2, 1985, PAYMENTS AVERAGING $9,600 WILL BE AWARDED WITH A MAXIMUM PAYMENT OF $12,800. FOR DISABILITIES THAT BEGAN AFTER JANUARY 1985, AWARDS WILL AVERAGE $2,400, WITH A MAXIMUM PAYMENT OF $7,300. THE MAXIMUM PAYMENT FOR DEATH PAYMENTS WILL BE $3,400.

JUDGE WEINSTEIN ALSO AUTHORIZED THE ESTABLISHMENT OF A CLASS ASSISTANCE FOUNDATION, SETTING ASIDE $45 MILLION TO FUND

PROJECTS AND SERVICES THAT WILL BENEFIT THE ENTIRE CLASS. THE BROAD MANDATES OF THE CLASS ASSISTANCE FOUNDATION ARE TWOFOLD: FIRST, TO FUND PROJECTS TO AID CHILDREN WITH BIRTH DEFECTS AND THEIR FAMILIES AND ALLEVIATE REPRODUCTIVE PROBLEMS: AND SECOND, TO FUND PROJECTS TO HELP MEET THE SERVICE NEEDS OF THE CLASS AS A WHOLE. MORE SPECIFICALLY, THE FOUNDATION WOULD "ISSUE GRANTS OR CONTRACTS FOR PROJECTS THAT WILL HELP CHILDREN WITH BIRTH DEFECTS LEAD A MORE NORMAL LIFE AND WILL EASE THE HEAVY BURDEN ON THE FAMILIES OF THESE CHILDREN"; THE FOUNDATION WOULD ALSO "FUND PROJECTS TO MEET THE SERVICE NEEDS OF THOSE COUPLES SUFFERING FROM REPRODUCTIVE PROBLEMS, INCLUDING MISCARRIAGE-RELATED PROBLEMS AND FEAR OF PARENTING BECAUSE OF THE VETERAN'S EXPOSURE TO AGENT ORANGE." JUDGE WEINSTEIN FURTHER STATED:

THE PRIMARY GOAL FOR FUNDING OF CLASSWIDE SERVICES WOULD BE TO ISSUE GRANTS OR CONTRACTS FOR PROJECTS THAT WILL HELP MEET THE MEDICAL AND RELATED SOCIAL SERVICE NEEDS OF VIETNAM VETERANS AND THEIR FAMILIES....THE FOUNDATION.... COULD FUND PROJECTS TO HELP CLASS MEMBER VETERANS BETTER OBTAIN AND UTILIZE VA SERVICES AND TO MONITOR THE VA AND OTHER FEDERAL AND STATE SERVICES TO ENSURE THAT THEY ARE RESPONSIVE TO THE NEEDS OF THE CLASS....ALTHOUGH EXISTING ORGANIZATIONS ALREADY ENGAGE IN EXTENSIVE LEGISLATIVE AND LOBBYING EFFORTS AT THE FEDERAL AND STATE LEVELS AND PROVIDE INDIVIDUAL COUNSELING TO VETERANS ABOUT THEIR RIGHTS, IT

WAS FELT THAT AN ADDITIONAL NEED EXISTS FOR A NATIONAL LEGAL CENTER THAT WILL WORK FOR INCREASED VIETNAM VETERAN BENEFITS THROUGH LITIGATION AND FORMAL ADMINISTRATIVE PROCEEDINGS.

JUDGE WEINSTEIN ALSO PROVIDED A MECHANISM FOR THE DISTRIBUTION OF FUNDS FOR THOSE AUSTRALIAN AND NEW ZEALAND CLASS MEMBERS, NOTING THAT A SEPARATE MECHANISM WAS NECESSARY TO REFLECT THE DIFFERENT PROGRAMS THAT WERE AVAILABLE IN THOSE COUNTRIES.

FINALLY, JUDGE WEINSTEIN RULED THAT ACTUAL DISTRIBUTION OF THE FUND COULD NOT BEGIN UNTIL ALL APPEALS HAVE BEEN DECIDED. (JUDGE WEINSTEIN SPECULATED THAT THIS WOULD NOT OCCUR UNTIL SOME TIME IN 1986.) HE, NEVERTHELESS, DIRECTED THE SPECIAL MASTER TO BEGIN THE NECESSARY STEPS SO THAT PAYMENTS CAN BEGIN PROMPTLY SHOULD THE APPELLATE COURTS APPROVE THE SETTLEMENT.