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STEPHAN HARRIS, CLERK
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

LEMUEL CLAYTON BRAY

KAZUKO HAYASHI BRAY,

Plaintiffs,

vs.

THE UNITED STATES GOVERNMENT,

Defendant

Case No.: 17-CV-206-F

TORT COMPLAINT FOR NEGLIGENCE

This action arises under the 14th Amendment of the Constitution, article 4(d) and The Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b) and § 2671-2680 which provides for monetary compensation when a Government employee, acting within the scope of employment, injures another by a negligent or wrongful act or omission.

In this case "employees" repeating errors in acts of inattentive blindness following the previous errors of other "professionals."

A Jury Trial is demanded.

This complaint is multi-district and includes many deceptions by the military and the Department of Veterans' Affairs as listed below.

On 10/20/1969 the U S Navy minimalized the Narrative Summary of Treatment of Plaintiff Mr. Bray for a traumatic brain injury leading to additional negligent errors in the U S Navy's and the VA's treatment of Plaintiff Mr. Bray's injuries. On 9/17/1990 mistreatment with the drug, Tegretol caused MR. Bray's symptoms to worsen. On 2/24/1992 an erroneous cover-up diagnosis of pseudo seizures was entered. As the result and because of additional deceptions and negligent errors listed below Plaintiff Mr. Bray lost over 40 years of diminished income, suffered years of physical and mental pain and suffering. Plaintiff Mr. Bray's wife, Kazuko Hayashi Bray suffered the mental pain of poverty and loss of honor status, shame and degradation in the eyes of her family having become dependent upon them in their finale years

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1 instead of being able to take care of them out without depending upon their retirement resources
2 because of the Plaintiff, Mr. Bray's inability to be a "good provider" as the result of the VA's
3 failure to follow "Generally Accepted Clinical Practices" and recognize, based upon objective
4 evidence consistent with subjective complaints, the subtlety in the presentation of the Plaintiff's
5 severe employment problem caused by a failure to correctly diagnose and treat his seizures.

6 The Plaintiffs are therefore demanding the sum of \$3,750,000.00 plus costs.

7 Plaintiff, Mr. Bray, filed SF -95 claims with the Department of the Navy and the
8 Department of Veterans' Affairs on April 26, 2016. Denial was issued by the Department of
9 Veterans' Affairs on behalf of the Navy and the VA on September 8, 2016. A timely request for
10 reconsideration citing errors in the denial was submitted on February 23, 2017. It has now been
11 more than three months past the 6 months allowed for reconsideration. The required
12 administrative actions have been met and civil action is now warranted.

13 **The Plaintiff claims a Statute of Limitations date per Title 28, Section 2401**
14 **(a) of 3 years from January 1, 2016 instead of (b) and further claims a "Misrepresentation**
15 **of Facts" under the citation of Title 41 in Title 28, Section 2401 (a); Section §7101 (9)**
16 **definitions of Title 41.** A motion to toll the SOL is submitted with this complaint.

17 **FACTS SPECIFIC TO INJURY AND TOLLING FROM THE RECORD**
18 **BEFORE THE AGENCY DATED OCTOBER 31, 2017 PROVIDED BY THE VA**
19 **GENERAL COUNSEL ON A CD:**

- 20 1) On September 17, 1990, Record Before the Agency (RBA) page 3289, "altered
21 states of consciousness" seizures were confirmed because of an earlier EEG and
22 an MVA from a lapse of consciousness. Tegretol was started as a therapy, which
23 is not indicated for the Plaintiff's complaints according to the Physician's Desk
24 Reference, (PDR). Tegretol, exacerbated Plaintiff Mr. Bray's symptoms, as
25 indicated by the PDR that it would, and led the Plaintiff to wean off and quit the
Tegretol because the VA Seizure Clinic at the West Los Angeles VA Regional
Medical and Research Center wouldn't change medications. Subsequently, it is
alleged the VA physicians to which Plaintiff Mr. Bray entrusted his health care to
would not start seizure therapy instead diagnosing pseudo seizures as a cover-up

1 of the error. The Plaintiff, Mr. Bray, couldn't understand the insistence on
2 continuation of Tegretol after 5 months of getting worse.

3 2) On August 24, 2015 treatment was started by Dr. Roy Alan Kanter of the
4 Cheyenne VA Medical Center with Keppra and by January 1, 2016 it was
5 determined by the Plaintiff, Mr. Bray, to have obtained control of his symptoms.
6 Documentation is not in the RBA.

7 3) RBA page 3778, The Naval Hospital Oakland, CA, Narrative Summary, dated
8 Oct 20, 1969, had DECEPTIVELY minimized the head injury leading to a failure
9 in neurological follow up and immediate severe diminishment in performance per
10 Enlisted Evaluation Reports denied as a result of the medical condition of
11 anosognosia by Plaintiff, Mr. Bray, which continued to affect the plaintiff's
12 judgement about the effect of the injury and his atonic, partial and complex
13 partial seizures until pointed out to him by friends in conjunction with working
14 environments in the mid-1980s. The Plaintiff, Mr. Bray, because of the medical
15 condition of anosognosia, remained frequently in a state of denial until 3 months
16 after being medicated with the drug Keppra.

17 4) The minimization of potential organic brain syndrome residuals is further
18 indicated to be a military policy of deception, or interference by lobbyists, causing
19 harm, not only to the Plaintiff, but to many other veterans and the use of
20 predetermined outcome studies that even affect the civilian population as well, all
21 to yield to the corporate lobby effort to garner budget dollars for contracts instead
22 of them going to the veterans to compensate and treat conditions that are a result
23 of service to the United States. This minimization is additionally found in the use
24 of the rehabilitation phase Narrative Summary, with its minimal symptoms and
25 laboratory results, of treatment for cerebral malaria of other veterans without
 stipulating it as such and no acute phase Narrative Summary of the treatment is
 entered in the health record that followed the victims to their VA record unless
 inpatient treatment records were specifically requested.

- 1 5) Partial and complex partial seizures began to be suspected by the Department of
2 Veterans' Affairs treating physicians by Plaintiff Bray's complaints after the
3 physician doing a Compensation and Pension Examination of Plaintiff, Mr. Bray,
4 on May 13, 1985, decided the Plaintiff's loss of sensation on the left side of his
5 face and left posterior forearm coupled with his mental complaints and history of
6 a head injury with 50 hours of unconsciousness and an additional 30 hours of
7 amnesic semi-consciousness warranted neurological follow up. An EEG was
8 performed that showed a lesion in the left anterior temporal region, with or
9 without seizures, warranting follow up by Neurobehavioral Testing followed.
- 10 6) RBA page 3889, date 8/30/85, The Neurobehavioral Testing had shown "deficits
11 consistent with brain damage" "... exhibits visual spatial skill deficits consistent
12 with head injury involving the posterior right cortex..." "Testing suggests both
13 depressive and hysterical features in his behavior that are manifested in
14 complaints of loss of efficiency, periods of confusion, and inability to concentrate.
15 These features may also account for any unusual complaints the patient presents.
16 This adjustment is likely to be chronic and resistant to change with patterns of
17 withdrawal, unrealistic feelings of guilt, anxiety and agitation..." "... Moderate to
18 severe levels of anxiety and tension make simple routine life tasks difficult for
19 this man. Mr. bray's use of repression and denial is either ineffective, or at best,
20 wards off psychological discomfort at the cost of considerable psychic energy..."
21 (definition of anosognosia) "...and resultant rigidity." "... Brain involvement and
22 reduced efficiency due to head trauma cannot, however, be ruled out based on the
23 patient's history, the neuro-psychological testing presented above, and the
24 similarity of patient's complaints to those presented by individuals **with subtle**
25 **frontal brain impairment.** **Which was confirmed by numerous EEGs.** An
indication of absence seizures is recorded as "His performance in solving
problems was characterized by an overall good to excellent performance that
would sometimes abruptly become poor and took more than average time to
improve to an efficient level once again. A similar difficulty occurred in
remembering complex memory passages."

7) Both the testing above and the EEG report recommended "A careful clinical history would be necessary to shed further light..." which was delayed until 1992 because the VA's telemetry units, unknown to the Plaintiff, were in use by the Yale University Medical School Neurology, in a trade, allowing research for brain cauterization as a treatment for status epileptus and Parkinson's Tremors, for research on a cutting edge theory that sharp wave temporal lobe EEG tracings were not epileptiform but were psychogenic in nature. This theory has since been disproven and the neurologists again consider sharp wave anterior temporal lobe EEG tracings as indicative of possible absence, atonic, partial, complex partial, and myoclonic seizures.

8) The above is not the total of the deceptions and negligent errors, just the most obvious from the record as analyzed to date.

Dated this Fifteenth day of December 2017.

Samuel M. Edwards, Jr.

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