

The Jerome N. Frank Legal Services Organization

Y A L E L A W S C H O O L

February 25, 2022
Department of Veterans Affairs
Office of General Counsel
Torts Law Group
810 Vermont Avenue NW
Washington, DC 20420

RE: FTCA Claim on Behalf of Conley Monk

To Whom It May Concern:

The Jerome N. Frank Legal Services Organization represents Mr. Conley F. Monk, Jr. Enclosed please find an administrative claim we are filing on his behalf under the Federal Tort Claims Act. The claim consists of:

1. A Standard Form 95; and
2. An Attachment to the Standard Form 95 detailing the basis of his claim

In the attached, we detail how multiple Secretaries of Veterans Affairs and, previously, Administrators of the Veterans Administration, violated their statutory obligations and duty of care by administering the agency's veterans benefits system in a manner they knew or should have known was racially discriminatory, which harmed Mr. Monk. We submit this claim without the benefit of formal discovery. Mr. Monk reserves the right to amend or supplement his claim.

Sincerely,

/s/ Michael J. Wishnie

Jonathan Epps, Law Student Intern
Ryan Liu, Law Student Intern
Michael Loedel, Law Student Intern
Beatrice Pollard, Law Student Intern
Aubrey Stoddard, Law Student Intern
Angela L. Zhang, Law Student Intern
Michael Wishnie, Supervising Attorney

Counsel for Conley Monk

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.			FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: U.S. Department of Veterans Affairs				2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. Conley F. Monk, Jr. c/o Michael Wishnie Jerome N. Frank Legal Services Organization 127 Wall Street New Haven, CT 06511		
3. TYPE OF EMPLOYMENT <input checked="" type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN		4. DATE OF BIRTH XXXXXX	5. MARITAL STATUS XXXXXX	6. DATE AND DAY OF ACCIDENT Ongoing		7. TIME (A.M. OR P.M.)
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). See attached.						
9. PROPERTY DAMAGE						
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). N/A						
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). N/A						
10. PERSONAL INJURY/WRONGFUL DEATH						
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. See attached.						
11. WITNESSES						
NAME			ADDRESS (Number, Street, City, State, and Zip Code)			
See attached.						
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)						
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY		12c. WRONGFUL DEATH		12d. TOTAL (Failure to specify may cause forfeiture of your rights).
N/A		\$1,000,000		N/A		\$1,000,000
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.						
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).				13b. PHONE NUMBER OF PERSON SIGNING FORM XXXXXX		14. DATE OF SIGNATURE 02/25/2022
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM				CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS		
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).				Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. No

N/A

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? Yes No 17. If deductible, state amount.

N/A

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

N/A

19. Do you carry public liability and property damage insurance? Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). No

N/A

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
- (d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

Answer 8: Basis of Claim

Conley F. Monk, Jr. is a disabled Marine Corps veteran who served in combat in the Vietnam War with a primary Military Occupational Specialty (“MOS”) of motor transport and a secondary MOS of infantry. He currently receives disability compensation benefits from the U.S. Department of Veterans Affairs (“VA”), which has rated him 100% disabled due to his wartime injuries. For decades, however, the VA rejected Mr. Monk’s requests for education, housing, and disability benefits, as it did the applications of thousands of Black veterans like Mr. Monk.

Mr. Monk brings this claim because current and former VA Secretaries (and before the Department was established by Congress, Administrators of the Veterans’ Administration) have violated their statutory duty of care by administering veterans benefits in a negligent and racially discriminatory manner. *See* 38 U.S.C. § 303 (“The Secretary is responsible for the proper execution and administration of all laws administered by the Department”); *see also* 38 U.S.C. § 210(b)(1) (1958) (“The Administrator . . . is responsible for the proper execution and administration of all laws administered by the Veterans’ Administration”). These Secretaries and Administrators knew or should have known of pervasive, longstanding racial disparities in the award of VA benefits, and they have negligently failed to redress this longstanding racial discrimination. The result of this negligence has been to deprive Mr. Monk, thousands of Black veterans like him, and their families of services, benefits, and care that they earned through their service. This negligence also exacerbates the consequences of racial disparities in military justice, such as when Black veterans like Mr. Monk are unjustly disciplined and subsequently receive discharges under other than honorable conditions. *See* Answer 8, Part II (describing the circumstances surrounding Mr. Monk’s discharge); Don Christensen & Yelena Tsilker, *Racial Disparities in Military Justice*, PROTECT OUR DEFS., at i (2017), <https://perma.cc/3F9M-DG39> (“[B]lack service members were at least 1.29 times and as much as 2.61 times more likely than white service members to have [a disciplinary] action taken against them in an average year.”); U.S. Department of Defense, REPORT OF THE TASK FORCE ON THE ADMINISTRATION OF MILITARY JUSTICE IN THE ARMED FORCES, vol. I (Nov. 30, 1972) (finding Black service members subjected to disproportionate discipline, punishment, and discharge).

Mr. Monk learned of VA’s longstanding racial disparities, and of the agency’s knowledge of such disparities, only recently, after VA disclosed records in summer 2021 in response to Freedom of Information Act (“FOIA”) litigation brought by the Black Veterans Project (“BVP”) and the National Veterans Council for Legal Redress (“NVCLR”), an organization Mr. Monk co-founded. After receiving VA’s disclosures, the plaintiff organizations consulted with a statistician to analyze the records, which revealed longstanding racial disparities in VA benefits. Mr. Monk acted promptly and with diligence in submitting this claim shortly after learning of VA’s pervasive racial discrimination, and of other records disclosed in response to the FOIA litigation demonstrating knowledge at senior levels of VA leadership about these disparities.

This claim does *not* seek to relitigate Mr. Monk’s individual requests for education, housing, and disability compensation benefits, which the VA wrongfully rejected in 1976, 1982, 1983, and 2010. Rather, it seeks to recover for the negligence of VA leadership in failing to redress the longstanding racial disparities in VA benefits administration, about which VA leadership has known or should have known for decades.

I. VA's Improper Administration of VA Benefits

On February 22, 2021, NVCLR, in partnership with BVP, filed FOIA requests to the Board of Veterans' Appeals ("BVA") Veterans Benefits Administration ("VBA"), and Veterans Health Administration ("VHA"). Over the following months, BVA (21-03747-F), VBA (21-03679-F), and VHA (21-03677-F) sent thousands of pages of data to BVP and NVCLR in response to the FOIA requests. NVCLR and BVP filed a federal lawsuit (No: 3:21-cv-00935-VLB (D.Conn.)) against the VA on July 8, 2021, for failure to conduct a reasonable search and produce the requested records as required by law. This action is pending.

Through their counsel, BVP and NVCLR consulted a Yale University statistician to analyze the data. The statistician determined that there was a statistically significant difference in VA claim outcomes (the number of claims denied, partially granted, or granted) between: (1) Black veterans and white veterans; (2) Black male veterans and white male veterans; and (3) Black female veterans and white female veterans. Black veterans, Black male veterans, and Black female veterans were denied disability benefits at statistically higher rates than their white counterparts. For instance, between 2001 to 2020, the average denial rate for disability benefits was 29.5% for Black veterans and 24.2% for white veterans. Meanwhile, the average grant rate for disability benefits was 30.3% for Black veterans and 37.1% for white veterans. In addition, the statistician also observed that the average disability rating assigned to granted claims – that is, the severity of the disability recognized by VA – differed between Black veterans and white veterans, with the disabilities of Black veterans rated less severe by a statistically significant margin. Because VA's monthly cash payments increase based on the severity of disability, this second difference means that even those Black veterans recognized as disabled by the VA received lower monthly payments than white veterans.

Federal law imposes a duty of care on the Secretary to administer veterans benefits in a non-discriminatory manner. Congress first enacted this duty in 1930 when it established the Veterans Administration. Under former law, the VA Administrator, "under the direction of the President, shall have the control, direction, and management of the various agencies and activities enumerated in and referred to in section 11 of this title" concerning the "administration of the laws relating to the relief and other benefits provided by laws" for veterans. 38 U.S.C. § 11 (1934). In 1958, Congress amended the statute, providing that "[t]he Administrator . . . is responsible for the *proper execution and administration of all laws* administered by the Veterans' Administration and for the control, direction, and management of the Veterans' Administration." 38 U.S.C. § 210(b)(1) (1958) (emphasis added). Today, the statute still provides "[t]he Secretary is responsible for the *proper execution and administration of all laws* administered by the Department and for the control, direction, and management of the Department." 38 U.S.C. § 303 (2018) (emphasis added). VA leaders violate this statutory obligation and duty of care to "proper[ly] execute and administer the law" when they administer veterans' benefits in a manner they know or should know results in racial disparate outcomes, and when VA leadership negligently fails to redress those pervasive racial disparities.

The records that NVCLR and BVP received from the VA through their FOIA requests demonstrate that for decades VA leadership, including the VA Secretaries, knew or should have

known of pervasive, longstanding racial disparities in veterans benefits for Black veterans, including during the years that VA repeatedly denied education, housing, and disability benefits to Mr. Monk. And for years, VA leadership has negligently failed to redress these disparities.

Academic studies known to the agency have demonstrated that racial discrimination is widespread throughout the VA. *See, e.g.,* Rickles, Domínguez & Amaro, *Perceptions of Healthcare, Health Status, and Discrimination Among African-American Veterans*, 4 J. HEALTH DISPARITIES RES. & PRAC. 50, 50 (2010) (“[A] significant proportion of African-American veteran participants . . . reported perceived discrimination in healthcare, low perceived quality of care, and low levels of satisfaction with the healthcare they receive [from the VA.]”); Saha, Freeman, Toure, Tippens, Weeks & Ibrahim, *Racial and Ethnic Disparities in the VA Health Care System: A Systematic Review*, 23 J. GENERAL INTERNAL MED. 654, 654 (2008) (“Racial disparities in the VA exist across a wide range of clinical areas and service types.”); Murdoch, Hodges, Cowper, Fortier & van Ryn, *Racial Disparities in VA Service Connection for Posttraumatic Stress Disorder Disability*, 41 MEDICAL CARE 536, 536 (2003) (“Black persons’ rates of service connection for PTSD were substantially lower than other veterans even after adjusting for differences in PTSD severity and functional status.”).

Public coverage of the VA confirms the same. Alex Horton, *VA Will be Investigated After ‘Staggering Accounts of Racism,’ Sen. Warren Says*, WASH. POST (Oct. 1, 2020), <https://perma.cc/E5NV-H6F5> (“White and Black veterans [were] treated differently while in crisis. Black veterans were removed from this facility for aggressive behavior that was overlooked for White veterans.”); Alex Horton, *Most VA Workers See Racism Against Colleagues and Veterans, Union Survey Finds*, WASH. POST (Aug. 7, 2020), <https://perma.cc/JXH2-RQ7J> (“Nearly 80 percent of Veterans Affairs employees surveyed by their workers union in July said endemic racism within the federal government’s second-largest organization is a moderate or serious problem, with more than half reporting they have witnessed discrimination against the veterans whom the agency serves.”); Matt Evans, *Protestors Calling for End to Racial Discrimination at Kansas City VA Medical Center*, KMBC News (June 15, 2020), <https://perma.cc/LM85-HGGK> (reporting on allegations of “racial discrimination against black veterans and black staff members” at a VA hospital, which included “an emergency room nurse who allegedly called a black veteran a racial slur”).

The VA’s records and coverage of the VA by researchers and the media have established racial disparities and discrimination within the agency’s programs. VA leadership has been aware of these findings for years. Yet, VA leaders have negligently failed to redress this longstanding, well-known race discrimination. Because VA leadership continued to administer the veterans’ benefits system in a discriminatory manner, including in the years that Mr. Monk – a Black veteran – was denied education, housing, and disability benefits, VA leaders failed to exercise their duty of care to properly execute and administer all laws administered by the VA. As such, the VA Secretaries and other VA leadership acted negligently and injured Mr. Monk. The VA Secretaries failed to properly control, direct, and manage the VA, which impacted Mr. Monk’s claims for education, housing, and disability benefits over several decades.

Mr. Monk reserves the right to supplement this claim in the future.

II. Mr. Monk's History of Military Service and Repeated Denials for VA Benefits

Mr. Monk is a proud Black Vietnam War veteran who has been a leader, advocate, and counselor for other veterans for over 40 years. In 1982, Mr. Monk co-founded NVCLR, a not-for-profit veterans services organization. For four decades, NVCLR has served the Connecticut community offering social, legal, and technical assistance for veterans. One of NVCLR's first major contributions to the New Haven community was the creation of the Vietnam Veterans Memorial Park at the Long Wharf. The memorial continues to serve as an important local, state, and national institution. Today, under Mr. Monk's leadership, NVCLR works with community leaders to hold Veterans Day events, advocates before state legislatures, and brings strategic civil rights litigation on behalf of veterans. *See e.g.*, Allan Appel, *Vietnam Vet Traces the Past at Long Wharf Veterans Day Commemoration*, NEW HAVEN INDEPENDENT, (Nov. 11, 2021), <https://perma.cc/UR45-QJ57>; *Public Hearing for H.B. 7371 and H.B. 7287 Before the H. Comm. on General L.*, 2019 Leg., (Conn. 2019) (statement of Conley Monk, Co-Founder and Director of the National Veterans Council for Legal Redress); *Manker v. Spencer*, 329 F.R.D. 110 (D.Conn. 2018) (certifying a nationwide class action led by NVCLR of disabled post-September 11 Navy and Marine Corps veterans); *Monk v. Shulkin*, 855 F.3d 1312 (Fed. Cir. 2017) (overturning nearly thirty years of precedent through a case brought by Mr. Monk to hold that the Court of Appeals for Veterans Claim has the authority to certify class action and aggregate claims).

Mr. Monk was born in 1948 in Rocky Mount, North Carolina, into the accomplished Monk family that includes the jazz musician Thelonius Monk, the Hall of Fame football player James Arthur Monk, and generations of teachers, police officers, and public servants. Mr. Monk's father, Conley Monk, Sr., served in the U.S. Army during World War II and participated in the Normandy invasion. When Mr. Monk was young, his parents moved to New Haven, Connecticut, where Mr. Monk primarily grew up, apart from regular trips to the family home in North Carolina.

As a high school student in the 1960s, Mr. Monk worked part-time at the VA Medical Center in West Haven, Connecticut. When he was 20 years old, Mr. Monk voluntarily enlisted in the U.S. Marine Corps, on November 12, 1968, and joined a family tradition of military service. Mr. Monk deployed to Vietnam as an infantryman and faced frequent ambushes and deaths within his unit. These experiences caused him to develop severe post-traumatic stress disorder ("PTSD"). Despite these circumstances, Mr. Monk continued to perform his duties in Vietnam with distinction, earned decorations, and encountered no disciplinary problems. However, after his unit was rotated to Japan, his condition quickly degenerated. He experienced hypervigilance and fear, which prompted him to self-medicate with drugs. Disciplinary problems arose as Mr. Monk dealt with his declining mental health, such as his disobedience of a lawful order and drunk and disorderly conduct. While Mr. Monk should have been medically separated because of his PTSD, he instead was discharged for the good of the service in 1970 to avoid facing a special court martial. Mr. Monk received an "undesirable discharge" (otherwise known as a discharge "under other than honorable conditions").

Mr. Monk returned home to New Haven with the mental scars from his combat service. He struggled with his undiagnosed, untreated PTSD, at times resorting to self-medication to cope with his symptoms. Eventually, he overcame his drug addiction. However, his "undesirable

discharge” and the VA’s failure to engage in a meaningful character-of-discharge determination affected his ability to reintegrate into society. *See* 38 C.F.R. § 3.12(c) (2021) (providing that VA may determine “that an other than honorable discharge was issued under conditions other than dishonorable”). When he sought to return to his high school job at the VA, the VA refused his request and cited his discharge status.

The year after he left the Marine Corps, Mr. Monk applied for unemployment compensation in Connecticut. The state agency sought information from the VA regarding Mr. Monk’s eligibility. In a March 1971 administrative decision, the VA determined that Mr. Monk’s request for discharge for the good of the service was an admission of guilt for his charges of willful and persistent misconduct. The VA failed to engage in a character-of-discharge determination informed by all the facts and circumstances surrounding the incidents that led to Mr. Monk’s discharge, as required by law. As a result, Mr. Monk was denied unemployment.

In 1976, Mr. Monk applied for VA education benefits in connection with his enrollment in a degree program at the University of New Haven. By decision dated April 12, 1976, the VA disallowed this application based on Mr. Monk’s discharge status. The VA did not make a character-of-discharge (“COD”) determination in connection with this application for educational assistance, nor did it review the prior 1971 determination.

In 1982, Mr. Monk applied for disability compensation benefits for PTSD. The VA rejected his application, continuing to rely on the cursory 1971 status of discharge determination and not engaging in a COD determination.

In 1983, Mr. Monk applied for VA Home Loan Benefits. The next month, the VA concluded he was ineligible for VA home loan guaranty benefits due to his discharge status. The VA did not review the 1971 determination nor reconsider its conclusion.

In 2010, Mr. Monk applied for VA disability compensation benefits again, this time for type II diabetes mellitus. By decision dated December 8, 2010, the VA rejected his application, reminding him that it had previously rejected his 1976 and 1982 applications for assistance as well.

In February 2012, this time represented by undersigned counsel, Mr. Monk applied again for disability compensation, for PTSD, diabetes, and diabetic peripheral neuropathy in his arms and legs. By decision back-dated to August 2012, the VA denied his application, again relying on his discharge status. Mr. Monk appealed. In September 2015, after Mr. Monk obtained an upgrade of his discharge status through a separate application to the Board for Correction of Naval Records (“BCNR”) and federal litigation, *see Monk v. Mabus*, No. 3:14-cv-0260-WWE (D.Conn.), the VA granted him disability compensation for PTSD with a 100% rating, as well as for diabetes and associated peripheral neuropathy. However, the VA relied solely on the BCNR discharge upgrade and failed to revisit its own 1971 COD determination, as Mr. Monk had requested. This VA error resulted in an improper July 2012 effective date for Mr. Monk’s benefits. After he appealed, the U.S. Court of Appeals for Veterans Claims vacated the VA decision, *Monk v. Wilkie*, 2020 WL 2461722 (Vet.App. May 13, 2020), and on remand the VA

finally reviewed its 1971 COD determination, changed its position, and awarded a February 2012 effective date.

For over four decades, the VA repeatedly denied Mr. Monk's requests for VA education, housing, and disability compensation benefits. Only after Mr. Monk had retained counsel and filed two different federal lawsuits did the VA correct its negligent refusal to undertake a meaningful COD determination, as required by law. *See* 38 C.F.R. § 3.12 (2021). In these years, VA Secretaries and Administrators knew or should have known about pervasive, long-standing racial disparities in the award of VA benefits and failed to redress them, which led to systematic benefits obstruction. VA leadership's negligent supervision of VA managers and adjudicators violated their statutory duty to ensure the proper execution of VA laws, injuring Mr. Monk and thousands of Black veterans like him.

Answer 10, Personal Injury/Wrongful Death

Mr. Monk has been injured as a result of the negligence of VA leadership, including VA Administrators' and Secretaries' negligence in failing to meet its statutory duty of care because they administered the veterans benefits system in a discriminatory manner and negligently failed to redress longstanding, pervasive race discrimination of which they knew or should have known. Due to this benefits obstruction, among other things, Mr. Monk was denied hundreds of thousands of dollars' worth of education, housing, and disability benefits. Claimant demands no less than \$1,000,000 for damages resulting from the VA's negligent administration of housing, education, and disability benefits.

Answer 11, Witnesses

- Denis McDonough, VA Secretary
- Dat Tran, Acting VA Secretary
- Robert Wilkie, VA Secretary
- Peter O'Rourke, Acting VA Secretary
- David Shulkin, VA Secretary and Under Secretary of Veterans Health Administration
- Robert Snyder, Acting VA Secretary
- Robert McDonald, VA Secretary
- Sloan D. Gibson, Acting VA Secretary
- Eric Shinseki, VA Secretary
- James Peake, VA Secretary
- Jim Nicholson, VA Secretary
- Anthony Principi, VA Secretary
- Hershel W. Gober, Acting VA Secretary
- Thomas J. Murphy, Acting Under Secretary of Veterans Affairs for Benefits
- Paul R. Lawrence, Under Secretary of Veterans Affairs for Benefits
- Allison A. Hickey, Under Secretary of Veterans Affairs for Benefits
- Michael Walcoff, Under Secretary of Veterans Affairs for Benefits
- Richard A. Stone, Acting Under Secretary of Veterans Health Administration
- James Wilson Holsinger, Jr., Under Secretary of Veterans Health Administration

- Kenneth Kizer, Under Secretary of Veterans Health Administration
- Thomas L. Garthwaite, Under Secretary of Veterans Health Administration
- Robert H. Roswell, Under Secretary of Veterans Health Administration
- Jonathan Perlin, Under Secretary of Veterans Health Administration
- Robert Petzel, Under Secretary of Veterans Health Administration
- Carolyn M. Clancy, Interim Under Secretary of Veterans Health Administration

This is not intended to be an exhaustive list of possible witnesses.