March 3, 2023

Department of Veterans Affairs
Office of General Counsel Torts Law Group
810 Vermont Avenue NW
Washington, D.C. 20420

RE: FTCA Claim on Behalf of [Redacted]

To Whom It May Concern:

The Jerome N. Frank Legal Services Organization represents Mr. [Redacted]. 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

We submit this claim without the benefit of formal discovery. Mr. [Redacted] reserves the right to amend or supplement his claim.

/s/ Michael J. Wishnie
Michelle Fraling, Law Student Intern
Rebecca Harris, Law Student Intern
Adam Henderson, Law Student Intern
Beatrice Pollard, Law Student Intern
Claire Sullivan, Law Student Intern
Michael Sullivan, Law Student Intern
Michael J. Wishnie, Supervising Attorney

Counsel for [Redacted]
ANSWER 2

Claimant:

Legal Representative:
Michael Wishnie
Jerome N. Frank Legal Services Organization
127 Wall Street
New Haven, CT 06511

ANSWER 8


In September 2021, I learned of VA’s longstanding racial disparities, and of the agency’s knowledge and failure to address such disparities after reviewing data that the Black Veterans Project obtained through Freedom of Information Act requests and was produced by VA. While I knew of anecdotal evidence of racial bias in the VA, I did not learn of systemic evidence illustrating racial disparities before September 2021.

This claim does not seek to relitigate benefit applications. 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 had a duty to correct under 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) (1958) (“The Administrator . . . is responsible for the proper execution and administration of all laws administered by the Veterans’ Administration”).

I reserve the right to amend or supplement this claim.

ANSWER 10

I was 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. The VA acted negligently by administering the veterans benefits system in a discriminatory manner and negligently failing to redress longstanding, pervasive race discrimination of which they knew or should have known. Due to this benefits obstruction, I suffered dignitary harm, emotional distress, moral injury, stigma and humiliation of being subjected to a racist system.

For this reason, I demand no less than $1,000,000 for damages resulting from the VA’s negligent administration of housing, education, and disability compensation benefits.
ANSWER 11

- Denis McDonough, VA Secretary
- Dr. Shereef Elnahal, Under Secretary for Health at the United States Department of Veterans Affairs
- Joshua Jacobs, Under Secretary of Veterans Affairs for Benefits at the United States Department of Veterans Affairs

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

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.
   See Attachment.

3. TYPE OF EMPLOYMENT
   ☑️ MILITARY ☐ CIVILIAN
   Date of Birth:
   Marital Status:
   Single
   Ongoing

4. DATE OF OCCIDENT
   N/A

5. 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. Also additional pages if necessary)
   See Attachment.

6. PROPERTY DAMAGE
   Name and address of owner, if other than claimant (Number, Street, City, State, and Zip Code).
   See Attachment.

7. PERSONAL INJURY/WRONFUL DEATH
   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).
   See Attachment.

8. WITNESSES
   Name
   Address (Number, Street, City, State, and Zip Code)
   See Attachment.

9. AMOUNT OF CLAIM (in dollars)
   12a. PROPERTY DAMAGE: 1,000,000
   12b. PERSONAL INJURY: 12c. WRONGFUL DEATH: 0.00
   12d. TOTAL (Failure to specify may cause forfeiture of your rights): 1,000,000

10. 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.

11. SIGNATURE OF CLAIMANT (See instructions on reverse)
   (917) 676 2233

12a. PHONE, NUMERFR OF PERSON SIGNING FORM

13a. CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM

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).

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STANDARD FORM 28 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
20 CFR 14.2
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. Did you carry accident insurance? □ Yes □ No 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

0.00

16. 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 liability and property damage insurance? □ Yes □ No 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.

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 FS OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY.

Failure to completely execute this form or to supply the requested materials 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 supplemental regulations. If more than one agency is involved, please state each agency.

The claim may be filed 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 full or legal capacity of the person signing, and be accompanied by evidence satisfactory to the Government, that the person so signing is authorized 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 #1. If none, use zero (0).

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 the injury, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, incapacitation, or partial earnings actually incurred.

(b) In support of claims for damage to property, which has been caused or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates, prepared by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipt 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, or fair market value, and the amount expended in the repair of or replacement of the property, with dates 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) (Not applicable to claims for personal injury or death.)

PRIVACY ACT NOTICE

The Federal Tort Claims Act (28 U.S.C. 1321 et seq.) provides that the following information is collected from the claimant for the purpose of the Federal Tort Claims Act.


B. Use: The use of this information is to assist in the review of claims and to provide the necessary information to the Federal Tort Claims Act.

C. Disclosure: The information requested is to be used in evaluating claims. None of the information is to be used in any manner that is inconsistent with the Act.

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."

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 on this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503, and to the Office of the Federal Register, National Archives and Records Administration, 8600 Galloway Ave., College Park, MD 20740.