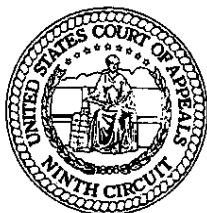


MORRIS ...

JUL 25 2008

USCA DOCKET # (IF KNOWN)



FOR DATE(S) _____
BY RS

RECEIVED

JUL 25 2008

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CIVIL APPEALS DOCKETING STATEMENT

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL: VETERANS FOR COMMON SENSE, et al. v. UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, et al. (See Attachment for Full Title.)	DISTRICT: Northern District of California JUDGE: Hon. Samuel Conti	
	DISTRICT COURT NUMBER: CV 07-3758 SC	
	DATE NOTICE OF APPEAL FILED: July 25, 2008	IS THIS A CROSS-APPEAL? <input type="checkbox"/> YES
	IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY):	

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:

Plaintiffs, on behalf of a putative class, challenged the Department of Veterans Affairs', et al. ("VA") failure to provide statutorily mandated benefits and medical care for veterans with Post Traumatic Stress Disorder in violation of 38 U.S.C. § 1710 and various other statutes relating to veterans' benefits, the adequacy of the procedures for benefits adjudication and for challenging the denial of health care, and the VA's failure to timely adjudicate benefits claims in compliance with the Due Process Clause of the 5th Amendment to the United States Constitution. On June 25, 2008, after a two-week bench trial, the District Court granted judgment in favor of Defendants.

PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL:

Whether VA violated 38 U.S.C. § 1710, various other statutes relating to veterans' benefits, and the Administrative Procedure Act, §§ 701 et seq. in failing to provide mandated healthcare and timely benefits decisions to veterans; whether the extensive delays and the procedural inadequacies in the benefits adjudication process violate the Due Process Clause of the 5th Amendment to the United States Constitution; the scope of federal court jurisdiction in light of the Veterans' Judicial Review Act, 38 U.S.C. §§ 502, 511; the errors committed pre-trial, in evidentiary rulings, and in the District Court's Findings of Fact and Conclusions of Law, and whether the VA was protected by Sovereign Immunity.

PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POSTJUDGMENT MOTIONS):

DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:

- Possibility of settlement
- Likelihood that intervening precedent will control outcome of appeal
- Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (Specify) _____
Appellants intend to request priority scheduling of the hearing pursuant to Local Rule 34-3.
- Any other information relevant to the inclusion of this case in the Mediation Program _____

Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges

LOWER COURT INFORMATION

JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT/ORDER APPEALED	RELIEF
<input checked="" type="checkbox"/> FEDERAL QUESTION <input type="checkbox"/> DIVERSITY <input type="checkbox"/> OTHER (SPECIFY):	<input checked="" type="checkbox"/> FINAL DECISION OF DISTRICT COURT <input type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT <input type="checkbox"/> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY): <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> DEFAULT JUDGMENT <input type="checkbox"/> DISMISSAL/JURISDICTION <input type="checkbox"/> DISMISSAL/MERITS <input type="checkbox"/> SUMMARY JUDGMENT <input checked="" type="checkbox"/> JUDGMENT/COURT DECISION <input type="checkbox"/> JUDGMENT/JURY VERDICT <input type="checkbox"/> DECLARATORY JUDGMENT <input type="checkbox"/> JUDGMENT AS A MATTER OF LAW <input checked="" type="checkbox"/> OTHER (SPECIFY): All interlocutory orders relating to final judgment (attached)	<input type="checkbox"/> DAMAGES: SOUGHT \$ _____ AWARDED \$ _____ <input checked="" type="checkbox"/> INJUNCTIONS: <input checked="" type="checkbox"/> PRELIMINARY <input checked="" type="checkbox"/> PERMANENT <input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED <input type="checkbox"/> ATTORNEY FEES: SOUGHT \$ _____ AWARDED \$ _____ <input type="checkbox"/> PENDING <input type="checkbox"/> COSTS: \$ _____

CERTIFICATION OF COUNSEL

I CERTIFY THAT:

1. COPIES OF ORDER/JUDGMENT APPEALED FROM ARE ATTACHED.
2. A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2).
3. A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
4. I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.



 Signature

July 25, 2008

 Date

COUNSEL WHO COMPLETED THIS FORM

NAME: Stacey M. Sprengel
 FIRM: Morrison & Foerster LLP
 ADDRESS: 425 Market Street
 San Francisco, California 94105-2482
 E-MAIL: SSprengel@mfo.com
 TELEPHONE: 415.268.7000
 FAX: 415.268.7522

THIS DOCUMENT SHOULD BE FILED IN THE DISTRICT COURT WITH THE NOTICE OF APPEAL
IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS

Court of Appeals No. _____

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VETERANS FOR COMMON SENSE, and
VETERANS UNITED FOR TRUTH, INC.,

Plaintiffs-Appellants,

vs.

JAMES B. PEAKE, M.D., Secretary of Veterans Affairs, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
Northern District Of California
District Court No. C-07-3758-SC
The Honorable Samuel Conti

REPRESENTATION STATEMENT

SIDNEY M. WOLINSKY
RONALD L. ELSBERRY
KATRINA KASEY CORBIT
DISABILITY RIGHTS ADVOCATES
2001 Center Street, Third Floor
Berkeley, California 94704-1204
Telephone: 510.665.8644

GORDON P. ERSPAMER
ARTURO J. GONZÁLEZ
HEATHER A. MOSER
RYAN G. HASSANEIN
STACEY M. SPRENKEL
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: 415.268.7000

Attorneys for Plaintiffs-Appellants

VETERANS FOR COMMON SENSE AND VETERANS UNITED FOR TRUTH, INC.

The undersigned represent Plaintiffs-Appellants Veterans for Common Sense and Veterans United for Truth, Inc., in this matter and no other party. The information below shows all of the parties to the action, and identifies their counsel by name, firm, address, and telephone number, where appropriate. (Fed. R. App. P. 12(b); Circuit Rule 3-2(b)).

1) Attorneys for Plaintiffs-Appellants Veterans for Common Sense and Veterans United for Truth, Inc.

Gordon P. Erspamer, Esq.
Arturo J. González, Esq.
Heather A. Moser, Esq.
Ryan G. Hassanein, Esq.
Stacey M. Sprenkel, Esq.
Natalie Naugle, Esq.
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: 415.268.7000
Facsimile: 415.268.7522

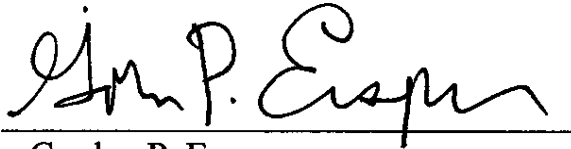
Sidney M. Wolinsky, Esq.
Ronald L. Elsberry, Esq.
Katrina Kasey Corbit, Esq.
DISABILITY RIGHTS ADVOCATES
2001 Center Street, Third Floor
Berkeley, California 94704-1204
Telephone: 510.665.8644
Facsimile: 510.665.8511

2) **Attorneys for Defendants-Appellees James B. Peake, M.D., Secretary of Veterans Affairs, et al.,**

Daniel E. Bensing, Esq.
Ronald J. Wiltsie, Esq.
James J. Schwartz, Esq.
Kyle R. Freeny, Esq.
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Room 6114
Washington, DC 20001
Telephone: 202.305.0693
Facsimile: 202.616.8460

Dated: July 25, 2008

MORRISON & FOERSTER LLP

By: 

Gordon P. Erspamer
Attorneys for Plaintiffs-Appellants
Veterans for Common Sense and Veterans
United for Truth, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX TO ATTACHMENTS

Document Description

Exhibit

January 10, 2008 Order Granting in Part and Denying in Part
Defendants' Motion to Dismiss; Finding as Moot Motion for Protective Order;
and Granting Motion to Seal Documents..... A

February 21, 2008 Order Granting in Part and Denying in Part Motion to SealB

February 29, 2008 Order Granting Motion for Protective Order;
Granting Motion for Leave to file Surreply, and Motion for Stay of DiscoveryC

March 13, 2008 Order Granting Motion to Dismiss..... D

March 13, 2008 Order Regarding Scope of Discovery.....E

April 7, 2008 Order Denying Request for Continuance (Final Transcript of Hearing on
Discovery-Related Issues at 21:7 – 22:24)..... F

April 7, 2008 Minute Order Granting in Part and Denying in Part
Plaintiffs' Motions to Compel..... G

April 10, 2008 Discovery Order..... H

April 21, 2008 Order on Plaintiffs' Motions in Limine
(Final Trial Transcript at 20:19 – 23:24)..... I

April 24, 2008 Order Denying Plaintiffs' Motion to Add Suicide Prevention
Coordinator to Witness List for Trial (Final Trial Transcript at 856:3 – 857:17).....J

April 28, 2008 Order Denying Plaintiffs' Motion to Exclude Testimony of Defendants'
Undisclosed Rebuttal Witness (Final Trial Transcript at 873:18 – 876:8) K

April 29, 2008 Order Denying Motion to Compel Response to Interrogatory 10
(Final Trial Transcript at 1143:7-15) L

April 30, 2008 Order Denying Motion for Rebuttal Witness to Dr. Berman's Testimony
(Final Trial Transcript at 1341:9 – 1345:9).....M

April 30, 2008 Order Denying Motion to Admit Incident Briefs into Evidence
(Final Trial Transcript at 1349:3 – 1351:1)..... N

June 10, 2008 Order Denying Plaintiffs' Request for Additional Discovery
and Request for Sanctions..... O

June 25, 2008 Findings of Fact and Conclusions of Law P

June 25, 2008 Judgment..... Q