

Charlie Minix
88652-079
P.O. Box 019001
Atwater, Ca
95301

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FILED

NOV 13 2006

CITRUS U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

CHARLIE MINIX #88652-079,
PLAINTIFF,
VS.

CASE NO. 1: 06 CV 01647 AWI SMS PC

UNITED STATES,

DEFENDANT.

COMPLAINT

Plaintiff, Charlie Minix, pro se, brings the above-captioned action, pursuant to 28 U.S.C. sec. 1346(b) of the Federal Tort Claims Act (F.T.C.A.) requesting this court to grant him the relief requested herein.

The plaintiff is a federal prisoner housed at U.S.P.

Atwater, located at #1 Federal Way, Atwater, CA 95301 where the cause of this action occurred.

The Plaintiff has exhausted his administrative remedies, pursuant to 28 U.S.C. sec. 2675(a) of the Federal Tort Claims Act. See Tort Claim attached as exhibit A. The claim was denied on 10/10/06. See response attached as exhibit B.

STATEMENT OF CLAIM

1. On May 29, 2006 at approximately 9:45 a.m., plaintiff was assaulted by another inmate, in possession of a razor blade, while in the recreational area of the Special Housing Unit (SHU).

(PC) Minix v. United States

Doc. 9 Att. 3

2. As a result of this attack, plaintiff was slashed on the left side of his face from his ear along the jaw line to just beneath his lower lip. It took a total of 87 stitches and 12 staples to close the wound.

3. Plaintiff's attacker was a known member of the Gangster Disciples (GD). He had requested removal from the general population due to a safety concern involving other GD members.

4. Plaintiff Minix is a GD member who was being detained in SHU pending the outcome of a disciplinary report.

5. Upon information and belief, shaving razors in SHU are a controlled item; once they are passed out by the SHU officer, they "must be" collected with the blade intact. At some point-in-time, this was not done.

6. Prior to entering the recreational area in SHU, strip and cavity searches are required of each inmate to prevent the introduction of contraband in the area.

7. Pursuant to 18 U.S.C. sec. 4042, federal employees are required to exercise "ordinary diligence to keep prisoners free from harm." The minimum duty of care imposed on the prison is to exercise reasonable care and diligence to keep prisoners from danger known to or which might reasonably be known by the prison. See *Jones v. United States*, 543 F.2d 53, 54 (5th Cir. 1976).

8. Plaintiff argues that the U.S. is liable for the injuries he suffered caused by the negligence of its employees while acting within the scope of his/her employment. 28 U.S.C. sec. 1346(b).

Exhibit A

CLAIMS FOR DAMAGES, APPROVED INJURY, OR DEATH

Box:1 Western Regional Office

7950 Dublin Boulevard, 3rd floor

Dublin, CA 94568

Box:2 Charlie Minix #88652-079

USP-Atwater

P.O. Box 019001

Atwater, CA 95301

Box:3 Type of Employment Civilian ;

Box:4 Date of Birth: 11-16-80 ;

Box:5 Martial Status married ;

Box:6 Date of accident 5/29/06 ;

Box:7 Time 9:45 a.m. ;

Box:8 Basis of Claim: ON THE ABOVE STATED DATE AND TIME, I WAS ATTACKED BY ANOTHER INMATE IN THE POSSESSION OF A RAZOR BLADE WHILE IN THE RECREATION CAGE LOCATED IN THE SPECIAL HOUSING UNIT (SHU) AT USP ATWATER.

UPON INFORMATION AND BELIEF, MY ATTACKER IS A MEMBER OF THE GANGSTER DISCIPLES (GD) BROTHERHOOD WHO HAD REQUESTED SEPARATION FROM OTHER GD MEMBERS IN THE GENERAL POPULATION. THEREFORE, HE WAS PLACED IN SHU ON PROTECTIVE CUSTODY (PC) STATUS.

I, TOO, AM A GD MEMBER, AND I WAS IN SHU PENDING INVESTIGATION OF A DISCIPLINARY INFRACTION. THEREFORE, MY ATTACKER AND I SHOULD NOT HAVE BEEN PLACED IN THE SAME REC. CAGE. MY ATTACKER SHOULD NOT HAVE BEEN ALLOWED TO CONCEAL A BLADE FROM A RAZOR AND SMUGGLE IT IN TO THE REC. AREA.

10. Plaintiff states that the prison staff was negligent in placing him and his attacker in the same recreational cage "knowing" that his attacker had requested separation from other GD members.

11. Plaintiff believes that his assault could have been prevented had prison staff performed a routine screening of all SHU inmates prior to placing them in the same area.

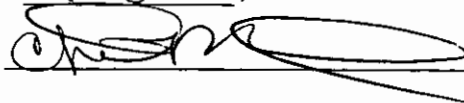
12. Prison staff was negligent in placing a protective custody inmate in the same rec. cage with an inmate pending disciplinary segregation.

RELIEF REQUESTED

13. Plaintiff Minix seeks the sum of \$4,000,000.00 in compensation for the injuries he suffered which include mental, emotional, and physical pain, reoccurring nightmares of the attack, facial disfigurement, which is likely to require cosmetic surgery, and numbness in the jaw, which could be due to severe nerve damage, also, requiring surgery. signed this 11th day of November, 2006

I declare under the penalty of perjury that the foregoing is true and correct. Date 11-8-, 2006

Signature of Plaintiff

.

UPON INFORMATION AND BELIEF, SHU OFFICERS ARE RESPONSIBLE FOR ENSURING THAT RAZORS ARE TURNED BACK IN WITH THEIR BLADES INTACT. OBVIOUSLY, AT SOME POINT-IN-TIME, THIS WAS NOT DONE.

MEASURES SHOULD HAVE BEEN TAKEN TO ISOLATE MY ATTACKER FROM OTHER INMATES WHEN HE TURNED IN A RAZOR WITHOUT THE BLADE INTACT. ALSO, THE INCIDENT SHOULD HAVE BEEN DOCUMENTED, AND A SHAKEDOWN SHOULD HAVE BEEN WARRANTED.

PRIOR TO ENTERING THE REC. CAGE, SHU INMATES ARE REQUIRED TO SUBMIT TO STRIP AND CAVITY SEARCHES. UPON BELIEF, A THOROUGH SEARCH OF MY ATTACKER WAS NOT PERFORMED ON THE DAY I WAS ASSAULTED.

BOX:9 PROPERTY DAMAGE N/A

BOX:10 PERSONAL INJURY: DUE TO THE ASSAULT, I RECEIVED A PERMANANT SCAR ON THE LEFT SIDE OF MY FACE JUST BENEATH MY EAR ALONG THE JAW-LINE TO JUST BELOW MY LOWER LIP. IT TOOK 37 STITCHES AND STAPLES TO CLOSE MY WOUND. THE LEFT SIDE OF MY FACE IS DISFIGURED. I EXPERIENCE NUMBNESS, REOCCURRING NIGHTMARES OF THE ATTACK AND PARANOIA WHEN AROUND UNKNOWN INMATES. I'VE BEEN TRAUMATIZED BY THE THOUGHTS OF WHAT COULD HAVE HAPPENED HAD MY ATTACKER GOT ME IN THE NECK AND/OR THROAT. I'VE ATTEMPTED TO SEEK COUNSELING FROM THE PSYCHOLOGIST, BUT TO NO AVAIL.

BOX:11 WITNESSES-OFC. PATRICK, SHU OFFICER.

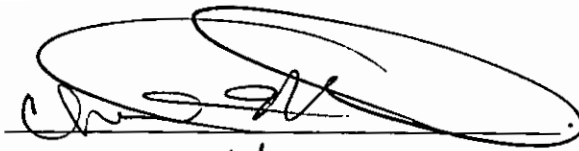
BOX:12a. N/A; BOX:12b. \$4,000,000.00

BOX:12c. TOTAL \$4,000,000.00

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS

CLAIM.

BOX:13a. SIGNATURE

A handwritten signature in black ink, appearing to be "C. J. Smith", written over a horizontal line.

BOX:13b. PHONE NUMBER

N/A

DATE OF CLAIM:

8-2-06



Exhibit B

U.S. Department of Justice

Federal Bureau of Prisons

Western Regional Office
7950 Dublin Boulevard, Third Floor
Dublin, California 94568

VIA CERTIFIED MAIL

OCT 10 2006

Charlie Minix
Reg. No. 88652-079
United States Penitentiary
P.O. Box 019001
Atwater, CA 95301

Re: Administrative Claim No. TRT-WXR-2006-04637

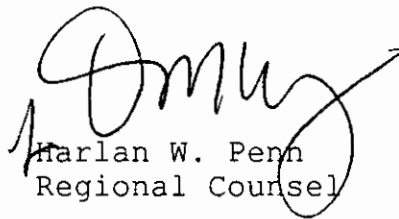
Dear Mr. Minix:

This is in response to the administrative claim submitted to this office under the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671, et seq. You seek \$4,000,000.00 in compensation for the alleged loss or personal injury as a result of events at the United States Penitentiary, Atwater, California on May 30, 2006.

Investigation fails to disclose any evidence of negligence or other conduct for which the United States is liable. You have failed to establish that you have suffered a loss or personal injury as a result of staff negligence in this matter.

Accordingly, your claim is denied. If you are not satisfied with this determination, you are afforded six months from the date of the mailing of this letter via certified mail within which to bring suit in the appropriate United States District Court.

Sincerely,



Harlan W. Penn
Regional Counsel

cc: Warden
USP Atwater

HWP/mcs