

HONORABLE ROBERT S. LASNIK

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARTHUR DELISLE and MYONG
DELISLE, as a marital community,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

NO. 2:17-CV-00905-RSL

**STIPULATION AND ORDER
TO FILE FIRST AMENDED
COMPLAINT**

Pursuant to FRCP 15, plaintiffs, Arthur Delisle and Myong Delisle, and defendant, United States of America, by and through their counsel of record, hereby submits this stipulation permitting the plaintiffs to file an Amended Complaint and setting Defendant's time to respond to the Amended Complaint.

On June 13, 2017, plaintiffs filed their Complaint for Damages. On August 16, 2017, counsel for defendant filed a notice of appearance. The parties conferred regarding allegations involving plaintiff, Myong Delisle. Plaintiffs wish to amend their complaint

**STIPULATION AND ORDER TO FILE AMENDED
COMPLAINT**

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1 to dismiss Myong Delisle as a named plaintiff. Defendant will have twenty (20) days to
2 respond to Plaintiffs' Amended Complaint once filed.

3 THEREFORE, IT IS HEREBY STIPULATED by and between the parties hereto
4 through their respective attorneys of records that Plaintiffs may, pursuant to Rule 15(a) of
5 the Federal Rules of Civil Procedure, file an Amended Complaint in this action, a true
6 and correct copy of which is attached as Exhibit A hereto.

7
8 DATED this 18th day of August 2017.

9 DAVIES PEARSON, P.C.

10 /s/ Sok-Khieng K. Lim

11 Sok-Khieng K. Lim, WSB#30607

12 Attorneys for Plaintiff

13 Davies Pearson, P.C.

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15 Tacoma, WA 98402

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17 Email: slim@dpearson.com

18 ANNETTE L. HAYES

19 United States Attorney

20 /s/ Tricia Boerger

21 TRICIA BOERGER, WSBA #38581

22 Assistant United States Attorney

23 Western District of Washington

24 United States Attorney's Office

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STIPULATION AND ORDER TO FILE AMENDED
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ORDER

Based on the written stipulation of the parties and good cause appearing in support thereof, plaintiffs may file the Amended Complaint, which is attached as Exhibit

A. Defendant need not respond to the June 13, 2017 Complaint, but instead shall have up to and including twenty (20) days to respond to the Amended Complaint once filed.

IT IS SO ORDERED.

Dated: Aug. 22, 2017

M. S. Casnik
United States District Judge

Respectfully submitted by:

DAVIES PEARSON, P.C.

/s/ Sok-Khieng K. Lim
Sok-Khieng K. Lim, WSB#30607
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EXHIBIT A

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WESTERN DISTRICT OF WASHINGTON
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ARTHUR DELISLE and MYONG
DELISLE, as a marital community,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

NO. 2:17-CV-00905-RSL

~~AMENDED~~

**COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES**

COME NOW the Plaintiffs, Arthur Delisle and Myong Delisle, by and through
~~their~~ attorney of record, Sok-Khieng K. Lim of Davies Pearson, P.C., and allege as
follows:

I. INTRODUCTION

1.1 This is an action against the Defendant United State of America under the
Federal Tort Claims Act, (28 U.S.C. §2671, *et seq.*) and 28 U.S.C. §1346(b)(1), for
negligence and professional malpractice in connection with medical care provided to
Plaintiff Arthur Delisle at the Seattle Veterans Affairs Medical Center.

~~AMENDED COMPLAINT FOR PERSONAL INJURIES
AND DAMAGES~~

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1 1.2 The claims herein are brought against the Defendant pursuant to the
2 Federal Tort Claims Act (28 U.S.C. §2671, *et seq.*) and 28 U.S.C. §1346(b)(1), for
3 money damages as compensation for personal injuries caused by the Defendant's
4 negligence.

5 1.3 Plaintiff ~~s~~ have fully complied with the provisions of 28 U.S.C. §2675 of
6 the Federal Tort Claims Act. *Standard Form 95 attached as Exhibit 1.*

7 1.4 This suit has been timely filed, in that Plaintiff ~~s~~ have timely served notice
8 of their claim on both the Department of Veterans Affairs and the United States
9 Department of Justice less than two years aft the incident forming the basis of this suit.

10 1.5 Plaintiff ~~s~~ have now filing this Complaint pursuant to 28 U.S.C. §2401(b)
11 after receiving the Department of Veterans Affairs' February 6, 2017 notice of "final
12 denial" of Plaintiffs' claim. *Administrative Tort Claim Denial Letter attached as Exhibit*
13 *2.*

14 **II. PARTIES, JURISDICTION AND VENUE**

15 2.1 Plaintiffs Arthur Delisle ~~and Myong Delisle are husband and wife~~ and at
16 all times relevant hereto, were residents of Pierce County, Washington.

17 2.2 Defendant United States of America, through its agency, the Department
18 of Veterans Affairs, operates the Veterans Affairs Medical Center located at 1660 S.
19 Columbian Way, Seattle, WA 98108.

20 2.3 Defendant United States of America, including its directors, officers,
21 operators, administrators, employees, agents, and staff at the Seattle Veterans Affairs
22

23 AMENDED COMPLAINT FOR PERSONAL INJURIES
24 AND DAMAGES

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1 Medical Center are hereinafter collectively referred to as "Seattle VA Medical Center."

2 2.4 At all times relevant to this Complaint, the Seattle VA Medical Center
3 held themselves out to the Plaintiffs as a provider of high quality health care services,
4 with the expertise necessary to maintain the health and safety of patients like Plaintiff
5 ~~Arthur Delisle.~~

6 2.5 At all times relevant to this Complaint, the directors, officers, operators,
7 administrators, employees, agents, and staff were employed by and/or acting on behalf of
8 the Defendant. Furthermore, the Defendant is responsible for the negligent acts of their
9 employees and agents under respondeat superior.
10

11 2.6 Jurisdiction is proper under 28 U.S.C. 1346(b)(1).

12 2.7 Venue is properly in the Western District of Washington at Seattle under
13 U.S.C. 28 1402(b) in that Plaintiffs reside in Pierce County, Washington.
14

15 **III. FACTUAL ALLEGATIONS**

16 3.1 On or about July 30, 2014, plaintiff, Arthur Delisle, underwent a coronary
17 artery stent placement at the Seattle VA Medical Center. During the procedure by
18 surgeon, Dr. Michael Stadius, a stent was displaced and lodged into the wall of the right
19 common femoral artery by the cardiac surgeon.
20

21 3.2 On or about July 31, 2014, a resident physician, Shakirat Oyetunju, MD
22 and Chief of Vascular Surgery, Dr. Ted Kohler, at Seattle WA Medical Center were
23

24 **AMENDED COMPLAINT FOR PERSONAL INJURIES
AND DAMAGES**

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1 consulted and asked to examine the Plaintiff and the displaced cardiac stent. After
2 examination of the Plaintiff and the cardiac stent, Dr. Oyetunju and Dr. Kohler
3 recommended that no intervention for the coronary stent be performed and made the
4 decision to leave the displaced cardiac stent lodged within the wall Plaintiff's right
5 common femoral artery.

6 3.3 Over the next few months, Plaintiff continued to have on-going
7 radiculopathy symptoms and pain shooting from his groin into his right leg and foot.
8 Plaintiff continued to follow-up at the Seattle VA Medical Center for on-going groin and
9 right leg pain, but nothing was initially done to help relieve Plaintiff's on-going pain
10 complaints.
11

12 3.4 On or about October 8, 2014, Plaintiff sought emergency care treatment at
13 St. Francis Hospital in Federal Way, Washington for chest pain and groin pain. X-rays
14 were taken which revealed the cardiac stent that was lodged into the right common
15 femoral artery to be the source of Plaintiff's groin pain. Plaintiff then followed up with
16 physicians at Seattle VA Medical Center who recommended that Plaintiff have surgery to
17 remove the cardiac stent from his groin as the cardiac stent had pierced into the wall of
18 the artery.
19

20 3.5 On or about October 27, 2014, the cardiac stent that was left in Plaintiff's
21 right common femoral artery was removed and portions of Plaintiff's right common
22

23
24 **AMENDED COMPLAINT FOR PERSONAL INJURIES
AND DAMAGES**

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1 femoral artery had to be repaired as the cardiac stent had lodged itself to the wall of the
2 artery.

3 3.6 Since the initial surgery of July 30, 2014, Plaintiff continues to have on-
4 going right leg pain and has never been the same due to a permanent nerve injury.

5 3.7 Plaintiff, Arthur Delisle, sustained nerve damage/injury to his right
6 common femoral artery from a cardiac artery stent placement performed by physicians
7 employed by and/or agents of the Seattle VA Medical Center

8 3.8 As a result of the Defendant's breaches of the standard of care, Plaintiffs
9 suffered significant injuries and required surgery and on-going medical care to treat said
10 injuries.
11 injuries.

12 **IV. CAUSES OF ACTION**

13 **COUNT I – NEGLIGENCE**

14 4.1 Plaintiffs reallege and reincorporate each and every allegation above as if
15 fully set forth herein.
16 fully set forth herein.

17 4.2 The Defendant had a duty to provide quality care, and to exercise a
18 standard of care and skill required of health care providers, consistent with the expertise
19 that the Defendant presented to the community at large.
20 that the Defendant presented to the community at large.

21 4.3 The Defendant breached its duty of care to Mr. Delisle.

22 4.4 At all times relevant to this Complaint, the Defendant had a duty to hire
23

24 **AMENDED COMPLAINT FOR PERSONAL INJURIES
AND DAMAGES**

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1 competent operators, administrators, employees, agents and staff in order to meet its
2 standards of quality care of its patients, including Mr. Delisle. The Defendant knew, or
3 should have known, that the medical staff of the facility was not properly trained, and/or
4 supervised, in a manner necessary to provide a level of care for Mr. Delisle that met all
5 applicable legal requirements; that demonstrated the standard and degree of care and skill
6 required of competent health care providers; and was consistent with the expertise that
7 the Defendant presented to the community at large.
8

9 4.5 The Defendant breached its duty by negligently hiring incompetent,
10 inexperienced and/or unqualified operators, administrators, employee, agents and staff.

11 4.6 The Defendant had a duty to retain only competent and adequately
12 trained operators, administrators, employees, agents and staff in order to meet its
13 standards of quality of care of its patients, including Mr. Delisle.
14

15 4.7 The Defendant breached its duty by negligently retaining incompetent,
16 inexperienced, unqualified and/or inadequately trained operators, administrators,
17 employees, agents and staff.

18 4.8 Defendant also failed to obtain proper consent to allow a displaced cardiac
19 stent that was lodged into the right common femoral artery to be left in place right after
20 surgery instead of immediately removing said foreign object before it punctured into the
21 artery causing permanent nerve damage.
22

23 ~~AMENDED~~ COMPLAINT FOR PERSONAL INJURIES
24 AND DAMAGES
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1 **COUNT II – VICARIOUS LIABILITY, RESPONDEAT SUPERIOR,**
2 **OSTENSIBLE AGENCY AND/OR AGENCY**

3 4.9 Plaintiffs reallege and reincorporate each and every allegation above as if
4 fully set forth herein.

5 4.10 At all times relevant to this Complaint, the directors, officers, operators,
6 administrators, employees, agents, staff were employed by and /or acting on behalf of the
7 Defendant.

8 4.11 At all times relevant to this Complaint, the directors, officers, operators,
9 administrators, employees, agents and staff acted within their respective capacities and
10 scopes of employment for the Defendant.
11

12 4.12 The directors, officers, operators, administrators, employees, agents and
13 staff negligently and/or recklessly, directly and proximately caused personal injury to Mr.
14 Delisle, including both acts of omission and acts of commission.
15

16 **V. DAMAGES**

17 5.1 As a direct and proximate result of Defendant's negligence, Plaintiffs have
18 sustained damages including, but not limited to, the following:

19 **A. Special Damages:**

20 (1) Reasonable and necessary expenses incurred for hospitals, physicians,
21 therapy, drugs, medicine and appliances, the exact amount of which has not
22 been ascertained.
23

24 **AMENDED COMPLAINT FOR PERSONAL INJURIES**
25 **AND DAMAGES**

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(2) Such other out-of-pocket expenses as shall be alleged, proven and determined herein, both past and future.

B. General Damages:

(1) The nature and extent of the injuries.

(2) The disability, both mental and physical, experienced and to be experienced in the future.

(3) The disfigurements suffered, both mental and physical, past and future.

(4) Loss of capacity to enjoy life, past and future.

(5) Pain and suffering, both mental and physical, experienced and reasonably expected to be experienced in the future.

~~(6) Loss of consortium.~~

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for damages and judgment against Defendant in an amount to be proven at trial, but not limited to:

A. Special damages, now and in the future;

B. General damages, now and in the future; and

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AMENDED COMPLAINT FOR PERSONAL INJURIES
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1 C. Such other and further relief as the Court may deem just and equitable.

2 DATED this 12th day of June 2017.

3 DAVIES PEARSON, P.C.

4 /s/ Sok-Khieng K. Lim

5 Sok-Khieng K. Lim, WSB#30607

6 Attorneys for Plaintiff

7 Davies Pearson, P.C.

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