

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

KENNETH SALYER and
LINDA SALYER, his wife,

Plaintiffs,

v.

CIVIL ACTION NO. 5:12-cv-00950

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM OPINION AND ORDER

The Court has reviewed the *United States Motion to Dismiss Linda Salyer's Loss of Consortium Claim for Lack of Subject Matter Jurisdiction* (Document 4) filed on May 15, 2012. In support, the Defendant argues this Court lacks subject matter jurisdiction with respect to the consortium claim because Plaintiff Linda Salyer did not file an administrative tort claim prior to filing the Complaint as required by Federal Tort Claims Act, 28 U.S.C. § 2675. (Document 5 at 1-2.) Further, the Defendant argues that pursuing an administrative claim is a jurisdictional requirement that cannot be waived. (*Id.* at 1.) (citing *Muth v. United States*, 1 F.3d 246, 249 (4th Cir. 1993)). In response, Plaintiffs state that “they have nothing to offer in opposition to defendant’s Motion to Dismiss Linda Salyer’s Loss of Consortium Claim for Lack of Subject Matter Jurisdiction.”

After careful consideration of the motion, the supporting memorandum, and Plaintiffs’ response, the Court finds it lacks subject matter jurisdiction with respect to Plaintiff Linda Salyer’s loss of consortium claim. Accordingly, the Court does hereby **ORDER** that Defendant’s Motion

to Dismiss Linda Salyer's Loss of Consortium Claim for Lack of Subject Matter Jurisdiction (Document 4) be **GRANTED** and that Count II (Loss of Consortium) of Plaintiffs' Complaint (Document 1) be **DISMISSED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and to any unrepresented party.

ENTER: June 7, 2012

A handwritten signature in blue ink that reads "Irene C. Berger". The signature is written in a cursive style with a horizontal line underneath it.

IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA