

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JOSÉ SANTANA NIEVES,
ALEJANDRINA NIEVES-ORENGO,
ALBA SANTANA NIEVES, ANA
SANTANA NIEVES, JOSUÉ SANTANA
ORTÍZ, VÍCTOR SANTANA NIEVES

PLAINTIFFS,

vs.

UNITED STATES OF AMERICA, as
operator of the VETERANS AFFAIRS
HOSPITAL OF SAN JUAN, PUERTO
RICO,

DEFENDANT.

CIVIL NO. 08- 1506 ()

TORT ACTION FOR NEGLIGENCE;
MEDICAL MALPRACTICE.
FEDERAL TORT CLAIMS ACT

COMPLAINT

TO THE HONORABLE COURT:

APPEAR NOW the Plaintiffs in this action, through the undersigned attorneys, and respectfully states, alleges and request as follows:

JURISDICTIONAL BASIS AND VENUE

1. Defendant, the United States of America, operates the Veterans Affairs Hospital of San Juan, Puerto Rico.
2. Federal question jurisdiction exists under 28 U.S.C. § 1346 (b).
3. On August 31, 2007, timely administrative claims were presented to the Department of Veterans Affairs on behalf of all Plaintiffs. *See* Exhibit 1.
4. Since then, a period in excess of six (6) months has elapsed without the administrative claim

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being adjudicated, thereby permitting plaintiffs to address this court with their claims.

5. Venue lies in this District, pursuant to 28 U.S.C. § 1402 (b) since the majority of the Plaintiffs reside within this District and since this is the District in which the acts or omissions giving rise to this Complaint took place.

PARTIES

6. Plaintiff, Jose Santana Nieves is a citizen of the United States, the son of the deceased, and a legal resident of the Commonwealth of Puerto Rico.
7. Plaintiff, Josue Santana Ortiz is a citizen of the United States, the son of the deceased, and a legal resident of the Commonwealth of Puerto Rico.
8. Plaintiff, Alba Santana Nieves is a citizen of the United States, the daughter of the deceased, and a legal resident of the Commonwealth of Puerto Rico.
9. Plaintiff, Ana Santana Nieves is a citizen of the United States, the daughter of the deceased, and a legal resident of the Commonwealth of Puerto Rico.
10. Plaintiff, Alejandrina Nieves Orengo is a citizen of the United States, the widow of the deceased at the time of his death, and a legal resident of the Commonwealth of Puerto Rico.
11. Plaintiff, Victor Santiago Nieves is a citizen of the United States and son of the deceased, and a legal resident of the Commonwealth of Puerto Rico.
12. Plaintiff, the estate of Víctor Santana Ortiz (the deceased), is represented by his heirs, his herein appearing children, who have inherited his cause of action for pain and suffering caused by the Defendant's negligent actions or inactions in this case.
13. Defendant is the United States of America, as operators of the Veterans Affairs Hospital of

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San Juan, which provides medical services to Veterans in Puerto Rico.

GENERAL ALLEGATIONS

14. On October 8, 2006, Mr. Víctor Santana Ortiz was feeling chest pain (with ischemic characteristics), diaphoresis, and shortness of breath.
15. At approximately 8:30pm, Mr. Santana Ortiz was taken to the emergency ward of the VA Medical Center in San Juan, P.R.
16. That same night at approximately, around 2:30 am, Mr. Santana Ortiz was released from the VA Medical Center and sent home, even though he was in an unstable condition.
17. Mr. Santana Ortiz questioned the doctors' decision to send him home because he was not feeling well.
18. At the time of discharge, Mr. Santana Ortiz' was suffering from several medical conditions, among these were the following conditions: congestive heart failure, acute renal failure, hyperkalemia and hypotension.
19. Despite Mr. Santana Ortiz' acute renal failure, he was not admitted, but sent home.
20. Mr. Santana Ortiz medical record at the VA Medical Center reflects that he was suffering from acute renal failure.
21. Mr. Santana Ortiz was improperly discharged with a life threatening medical emergency condition which was not treated adequately or stabilized by VA medical personnel.
22. Mr. Santana Ortiz was improperly discharged with a plan to follow up electrolytes in one week and the assumption that the patients renal failure was pre-renal.
23. Mr. Santana Ortiz was not discharged with clear instructions in the medical record.

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24. Mr. Santana Ortiz had a life threatening condition of acute renal failure and hyperkalemia at the time of discharge by the VA emergency department.
25. The same day Mr. Santana Ortiz was discharged by the VA, he was rehospitalized at San Pablo Hospital.
26. One day later, Mr. Santana Ortiz died of an alleged chronic heart failure.
27. The VA Medical Center failed to provide Mr. Santana Ortiz with adequate medical attention that satisfied the exigencies generally recognized by the medical profession in light of the modern means of communication and teaching, and acceptable health care, as measured by the standards of the profession, which caused his wrongful death.
28. The Veterans Affairs Hospital failed to provide Mr. Santana Ortiz with adequate and timely medical attention that satisfied the exigencies generally recognized by the medical profession in light of the modern means of communication and teaching, and acceptable health care, as measured by the standards of the medical profession. These failures caused Mr. Santana Ortiz' death.
29. All Plaintiffs filed an administrative claim with the Department of Veterans Affairs on August 21, 2007.
30. All of the aforementioned administrative claims have either been denied or no action was taken on them by the Department of Veterans affairs.

CAUSE OF ACTION

31. The allegations contained in paragraphs 1 through 30 of this Complaint are incorporated herein by reference as if again fully set forth.

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32. Defendant owed a duty of care to Mr. Santana Ortiz and the Plaintiffs in this case.
33. Defendant breached its duty of care by failing to provide Mr. Santana Ortiz with adequate and timely medical, attention and care.
34. At all times herein pertinent, Defendant was negligent and breached its duty of care by failing to provide the proper medical attention, in failing to provide timely medical care, and otherwise failing to exercise due care and caution to prevent the damages sustained by Plaintiffs through the negligent medical treatment of Mr. Santana Ortiz.
35. Defendant did not provide the timely medical services and timely perform the necessary diagnostic tests which were required for a patient in Mr. Santana Ortiz' condition and with his medical history.
36. Defendant failed to provide Mr. Santana Ortiz with adequate medical attention that satisfied the exigencies generally recognized by the medical profession in light of the modern means of communication and teaching, as measured by the standards of the profession, thereby causing Mr. Santana Ortiz' death.
37. Among other acts or omissions that fell below the applicable standard of care, Defendant should have admitted instead of discharge this patient.
38. Among other acts or omissions that fell below the applicable standard of care, Defendant had a duty to treat, stabilize this patient that was suffering from: congestive heart failure, renal failure, hyperkalemia and hypotension.
39. All of Defendant's negligent acts and omissions, falling below the applicable standard of care, combined to contribute to Mr. Santana Ortiz' death on October 9, 2006, and in the

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absence of Defendant's negligent acts or omissions (if Defendant had been given the proper care) it is certainly more likely than not that he would not have died that day.

40. As a direct and proximate result of Defendant's lack of organization, supervision, care and failure to properly test and treat Mr. Santana Ortiz, the Plaintiffs have suffered damages as described below.

DAMAGES

41. The allegations contained in paragraphs 1 through 40 of this Complaint are incorporated herein by reference as if again fully set forth.

42. As a direct and proximate result of the Defendant's negligence, Plaintiffs lost the life of their beloved father, husband and friend, Víctor Santana Ortiz, and will continue to suffer that irreparable loss.

43. As a direct and proximate result of the Defendant's negligence, Plaintiffs will continue to suffer emotional distress and anguish from experiencing the death of Víctor Santana Ortiz.

44. In addition to their individual emotional pain and suffering, Víctor Santana Ortiz' children inherited his cause of action for the pain and suffering he experienced as a result of the Defendant's negligent acts.

46. Víctor Santana Ortiz' damages, as inherited by his five (5) children, are equal to a sum not less than \$500,000.

44. The negligent acts of the Defendant have caused Plaintiffs extensive emotional distress and anguish resulting in damages in an amount not less than:

a) Alejandrina Nieves-Orengo \$2,500,000.00

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| b) | Alba Santana-Nieves | \$900,000.00 |
| c) | Ana Santana-Nieves | \$900,000.00 |
| d) | José Santana-Nieves | \$900,000.00 |
| e) | Josué Santana-Ortiz | \$900,000.00 |
| f) | Víctor Santana-Nieves | \$900,000.00 |

for a total of \$7,500,000 in emotional damages suffered and inherited by the Plaintiffs collectively.

WHEREFORE, Plaintiffs demand judgment against the United States, in the amount of not less than \$7,500,000, as well as costs incurred, and reasonable attorney's fees, if warranted by the provisions of the Equal Access to Justice Act, and any further relief which this Honorable Court may deem just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 1st day of May, 2008.

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