UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

PAUL ARCHAMBAULT, individually, and as Administrator of the Estate of HARRIET ARCHAMBAULT, Deceased, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	)	CIVIL NO: 12-1022 PLAINTIFF'S RESPONSE BRIEF TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Paul Archambault by and through his counsel of record, submits his Plaintiff's Memorandum in Support of Plaintiff's Response to Defendant United States' Motion for Summary Judgment.

BACKGROUND

Plaintiff filed suit against Defendant, the United States of America. Plaintiff alleged the following causes of action as against the Defendant.

As against Defendant United States:

1. Medical malpractice;
2. Failing to reasonably screen, hire, investigate, train and/or supervise medical (federal) employees;

Plaintiff Paul Archambault is a surviving husband/spouse of his wife, the Decedent Harriet Archambault. Plaintiff was appointed as the Administrator of his wife's estate on or about March, 11, 2008. ("Plaintiff's Statement of Material Facts", referred to as "PSOMF#__).

(Doc. 1 ¶ 1). Throughout this brief, Plaintiff will make reference to the "Exhibit Nos." from the submitted Affidavit of Robin L. Zephier which is filed in the response to Defendant's Motion for Summary Judgment (See Doc. 31), and the exhibits are attached to the present Affidavit of Robin L. Zephier, with numbers thereto.

The Decedent was actually in the process of taking advantage of her right to receive free, reasonable, safe and competent care at the local IHS facility, the McLaughlin Indian Health Service (IHS) Clinic, in McLaughlin, Corson County, South Dakota on or about October 25, 2007 through November 27, 2007. (PSOMF# _____). The McLaughlin Indian Health Service Clinic is located on the Standing Rock Sioux Indian Reservation in North Central South Dakota. (**Ex. 49**).

The Defendant United States, over the last seventy or so years, has been utilizing IHS facilities in order to accommodate the physician and nurse medical needs and services to the Indian people throughout the country and on various reservations (Complaint ¶ , Doc. # 1). McLaughlin is one of these service areas. (**Ex. 31, 34, 49**).

It is known, according to Plaintiff's best knowledge and good faith belief, that the United States, by and through its IHS, to supply competent, licensed and privileged medical personnel to staff the needed medical positions at the IHS facilities serving the Native American people. The United States has treaty and federal legislative duties to the intended beneficiaries of those competent medical services to be provided at the IHS facilities, such as at the McLaughlin IHS Hospital in October 2009. (Complaint ¶ ____, Doc. # 1).

The United States further, it is surmised, maintained the ultimate responsibility to assure that it was fulfilling its obligations and duties to reasonably screen, train, supervise and hire,

competent, licensed, medical personnel, and medical directors (Claymore) to fulfill its contractual obligations to the United States, and to assist the U.S. in fulfilling its legal obligations to its Native American patients, including the Decedent Harriet Archambault, in October and November, 2007.

Plaintiff filed a federal tort claim under the Federal Tort Claims Act against the United States on or about October 22, 2009. In its claim investigation, the United States indicated that all employees of the McLaughlin IHS Clinic were federal employees under the FTCA. That administrative claim was initially denied on August 27, 2010, stating that Defendant was not negligent. There was no mention of any potential defense based upon a lack of a formal estate representative.

Plaintiff submitted a request for reconsideration of the initial denial of the administrative federal tort claim against the United States on or about February 23, 2011. The United States again denied the federal tort claim on or about February 15, 2012. Again, no mention whatsoever was made by the United States as to the potential lack of a formal estate representative as a means to negate jurisdiction or coverage. Plaintiff then initiated this civil action in federal district court alleging negligent acts against the named Defendant, by complaint filed on August 23, 2012. (Doc. #1 ¶ 4).

Defendant United States was personally served through an admission of service issued and signed by Assistant U.S. Attorney Diana Ryan on or about August 30, 2012, and by sending by Certified Mail, a copy of the Summons and Complaint to the United States Attorney in Washington, D.C., on or about August 27, 2012 . The United States filed its Answer. Again, no mention was made, nor any formal affirmative defense presented, indicating either a lack of

jurisdiction as to an improper estate representative, or as to a discretionary function.

SUMMARY JUDGMENT STANDARD

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ P. 56. Only disputes over facts that might affect the outcome of the case under the governing substantive law will properly preclude summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed 2d. 202 (1986). Summary judgment is not appropriate if a dispute about a material fact is genuine, that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving part. Id.

The moving party bears the burden of bringing forward sufficient evidence to establish that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L. Ed. 2d 265 (1986). The nonmoving party is entitled to the benefit of all reasonable inferences to be drawn from the underlying facts in the record. Vette Co. v. Aetna Cas. & Sur. Co., 612 F.2d 1076, 1077 (8th Cir. 1980).

ARGUMENT

1. PLAINTIFF DID NOT FAIL TO PRESENT PROPER EVIDENCE OF AUTHORITY AND IS NOT THEREFORE JURISDICTIONALLY BARRED FROM RECOVERY

On October 22, 2009, Form 95 was filed and listed the claimant's representative as Paul Archambault and Abourezk & Zephier, P.C. as legal representatives of the estate. (**Ex. 38**, Affidavit of Rebecca Kidder, ¶3.

On November 5, 2009, Abourezk & Zephier, P.C. received a response from IHS requesting in paragraph 6 additional "evidence of the appointment of the administrator or executor of the estate." (Id, ¶ 4).

On March 4, 2010, Attorney Rebecca Kidder prepared and filed a cover letter with attached exhibits including the Interim Letters of Administration issued by the Standing Rock Sioux Tribal Court appointing Paul Archambault, and the Declaration of the Personal Representative Paul Archambault designating Abourezk & Zephier, P.C. as attorneys for the estate. (Id, ¶ 5).

On April 9, 2010, Attorney Rebecca Kidder prepared for filing a cover letter and additional evidence submitted to IHS including a part thereof Exhibit 7, which was a Motion to Amend the Letters of Administration issued by the court previously to clarify that Abourezk & Zephier, P.C. and not Mr. James Cerney was legal counsel. Mr. Archambault filed this motion with the Standing Rock Sioux Tribal Court on March 16, 2010. That Exhibit 7 clearly stated, "Petitioner was appointed Administrator of the Estate of his deceased wife, Harriet Archambault on April 15, 2008 by order of this Court. Exhibit 1." There were in fact three Exhibits attached to that motion, with Exhibit 1 being the original Letters of Administration appointing Paul Archambault as the Administrator on April 15, 2008, Exhibit 2 being the designation of Abourezk & Zephier, P.C. as legal counsel, and Exhibit 3 being an Affidavit of Mr. Cerney that he was never the legal counsel to the estate. (Id, ¶ 6).

Attorney Rebecca Kidder did not receive any other requests for additional information from IHS in this matter. (Id, ¶ 7).

Abourezk & Zephier, P.C. received a letter from IHS dated August 27, 2010 denying the claim solely on the basis that, "The evidence fails to show that an employee of the federal government acting within the scope of employment was negligent." While Attorney Rebecca Kidder was employed by Abourezk & Zephier, P.C., IHS never communicated to her in any fashion that it had insufficient evidence of Mr. Archambault's legal status as administrator of the estate to consider the claim properly. (Id, ¶ 8).

II. HISTORY OF THE FTCA IN INDIAN COUNTRY

Plaintiff understands now how structurally, morally and ethically flawed the Federal Tort Claims Act process is, and especially as it is applied to Native American claimants who are harmed, injured or killed by negligent acts of Indian Health Service officials.

Plaintiff and his family have had to endure the sudden, unexpected and tragic death of his wife and their mother, Harriet Archambault, as a direct result of directives taken, or omissions made, by the IHS. The IHS is an agency legally mandated to treat Native American citizens/patients. However, as in this case, it is realized that the IHS does not always treat them as human beings, but as units of expense and inconvenience.

Harriet Archambault did not need to die on November 27, 2007. Had she been allowed the common human respect, dignity and recognition of humanity, to be examined by her primary care provider (physician) on any one of the occasions that she physically presented herself to the McLaughlin IHS Clinic between October 26, 2007 and November 27, 2007, it is quite probable (and likely) that her enlarged heart and cardiac condition would have or should have been

discovered by a reasonable cardiac "work-up" (Martinez depo. p. 55-60; Rand depo. p. 71-73; Bux report, p. 1-2). She could have been given immediate surgical or inpatient care intervention to avoid her sudden arrythmia event which caused her heart to fail. Bux report, **Ex. 37**, p. 1-2.

She was not given that opportunity because of the patient number limitation policy/directive implemented by the IHS. (**Ex. 30, 47**). And because of the IHS medical personnel's inability to treat her like a human being in need of help and direction.

The FTCA process is complex, expensive and unforgiving when it comes to these matters. The United States Indian Health Service and its employees are covered under the FTCA for medical negligence and ordinary negligence. (28 U.S.C. §1346). However, as a result, the FTCA is the only remedy available to claimants like Plaintiff and the Estate, here, when a negligent act or acts led to the death of an Indian patient at an Indian Health Service facility or because of the negligence of IHS officials.

An administrative claim is required to be filed. In reality, the Agency basically rubberstamps a denial, and a redenial if there is a request for reconsideration. Meanwhile, time passes. The Agency and its claim reviewers very rarely devote the time and effort to throughly investigate these types of claims out of Indian Country.

Once denied for the second time, the Native American claimant must then decide to sue to continue to pursue recovery of damages. This costs money in the form of filing fees and legal costs. Many times, such as Plaintiff here, the claimant is not in a very good financial position to absorb those. It is well known that many folks having to and needing to use the IHS as their only health care provider, are at, or below the poverty level. (**Ex. 1-6, 34, 34**

Then the U.S. Attorney steps in to defend the lawsuit, and because of the passage of time

and the Court rules and time limits, the claimants are again forced into a position to continue to spend more and more resources to comply with those requirements. It is an extremely rare situation over the past 10 years where the government will even consider paying on an FTCA claim. The government has unlimited resources at its disposal and the force of its authority to hire or use any personnel it chooses to, to assist the government in destroying the claimant's claims and to obtain a level of expenditure by the claimant where many just throw the towel in and give up.

The system getting up to the phase of Court proceedings, is stale, unworkable, inequitable and unjust in that it is the only remedy available for Native American claimants injured in this fashion.

Having said that, Plaintiff is now before the court after the parties have hired experts and taken about 20 depositions. Now the government moves to have all the Plaintiff's claims dismissed under the shield called "discretionary function" immunity.

III. INVESTIGATION OF THE IHS CARE PROVIDING MODEL

Senator Bryon Dorgan in 2009 began a congressional investigation into the corruption, malfeasance and critically poor standard of care that was being delivered by the IHS to the Native American people that it was mandated to serve. (**Ex. 1-6, 48** Affidavit of Faith Taken Alive, **Ex. 39**).

The IHS itself was established to fulfill treaty obligations, then mandated by federal statute, then executive order and case precedent, to fulfill the trust responsibility to the Indian people to provide medical care/services to the people (U.S. v. Sioux Nations of Indians, 448 U.S. 371 (1980); **Ex. 33**, p. 1-2 Authority). This is "medical" care - not housing, not public

assistance, not benevolent caretaking-but, real human, trustworthy and competent, medical care.

According to congressional mandate, the IHS and their doctors, nurses, PA's, and administrators, are all involved in fulfillment of that mandate, and to fulfill that sovereign commitment to serve the Native American people in this country who are eligible. (See **Ex. 19, 20, 21, 31, 34, 35**). There is no discretion to that mandate. It is an unwaivering mandate set forth in the Treaty of 1868 and codified and legally recognized by Acts of Congress. This medical care to be given to the Indians, is not based upon gifting, compromise or waivering discretion-it must be fulfilled, or treaties and laws are broken (again, as in the entire history of the U.S. dealing with the Indians).

This right of the Native Americans is so solidly codified deep in federal (and international) law, and because the right and the mandate has everything to do with "medicine" and/or "medical care" and/or "healthcare needs" of the Indians. There is no legal, moral or philosophical separation from the very basic foundation of the origin of the duty to provide healthcare (healing arts) to human beings found in the Hippocratic Oath. The Hippocratic Oath is something that every healthcare professional and those that serve healthcare needs, must adhere to. It is an age-old recognition of the original ethical and moral obligation from a "physician" to the "patient'. Do no harm to the patient.

The Ft. Laramie Treaty of 1868 which required/mandated that the US provide healthcare to the Lakota, forever-spoke of it in terms of providing a competent "physician" (15 Stat. 635, Art. 9, 13).

Defendant can say all they want about how the Treaty no longer controls the delivery of "healthcare" (or a competent "physician") to the benefit of the Lakota, and that subsequent

statutes and executive orders superseded it. But the undeniable truth is that 1868 Treaty is still good law, and has never been abrogated, legally repealed or superseded. See Sioux Nation of Indians, Id.

Therefore, the very existence of the Indian Health Service in the U.S. and specifically in the Great Plains Region (MN, SD, ND, NE, etc.) is entirely based upon the principles of providing the competent "physician" (and healthcare) to the Lakota and other Native Americans. (See **Ex. 31, 34, 48**).

The cases cited by Defendant in its brief, speak of the discretionary function doctrine as negating subject matter jurisdiction of Plaintiff's claims. Defendant argues that Plaintiff's claims should be tossed out because of this technical qualified immunity statute, that apparently, attempts to supersede the original intent of the 1868 Treaty obligations, by creating a loophole called immunity.

This is a different scenario in this case because the thrust of the case involving Harriet Archambault and her death, is a somewhat unique situation. It is not as if a doctor operated on her and left a sponge in her chest, or amputated the wrong arm, or performed a wrong site surgery on removal of a lump on her thigh. No, this case involves officials of the IHS clearly avoiding a specific governmental mandate to provide medical care/treatment to a deserving beneficiary Native American citizen//patient. (Sioux Nation, Id., 15 Stat. 635, Art. 9, 13; **Ex. 33**, p. 1-2 Authority). Decedent had fulfilled her duty and obligation on her part by recognizing that she was in need of specific medical care and examination in order to protect, maintain or secure her health, life and welfare. (**Ex. 47**). She knew she was out (or nearly out) of her high blood pressure prescription medication, and she knew that the doctors had told her she could not get

those medications refilled unless or until she actually was examined by her own primary care physician (at the McLaughlin IHS Clinic-18 miles from her home). (**Ex. 40, 41, 47;**).

Decedent did not have her own private healthcare insurance. They lived in a remote area in Bullhead, North Dakota. She was always busy caring for kids and grandkids, and the McLaughlin IHS Clinic was "implementing" a 10 patient in the morning, 10 patient in the afternoon limitation (See **Ex. 30**), at the IHS Clinic. So Harriet Archambault knew that she had to keep trying to get in to be seen at the IHS Clinic so she could look after her health the best she could. She kept trying. Kept trying until she finally, did die. (**Ex. 47**. PSOMF#36).

The "implementation" of the 10 patient limit was an illegal circumvention of a mandate that could not be deviated from by any form of "discretion".

The IHS had By Laws and a Patients Bill of Rights in place (founded upon the Treaty rights and federal statute) that every Indian patient who needed medical care would be given that care (PSOMF#15, 20). There was no discretion available for the medical care providers and/or the medical directors to deviate from that mandate. They were all federal officials of the IHS acting within the scope of their employment at the time in August, September, October and November 2007. (28 U.S.C. 1346).

Claymore, DeCoteau, Carter, Fischer, Giroux, Wimmer and the others, had no discretion to do anything but to provide care (or at least an examination or clear assistance and direction to utilize the physician and/or pharmaceutical care needed and required by Decedent) on those occasions when she showed up at the Clinic in McLaughlin looking to be seen by her doctor so she could get her necessary mediation refilled (PSOMF#27, 33, 34, 35, 36).

At the time that Harriet had gone in for an examination with nurse practitioner Allysa

DeCoteau aka Martinez on October 25, 2007 (approximately one month before her death), Harriet was there to get her mediation for high blood pressure renewed and refilled. (**Ex. 45**, p. 40-60).

In the medical record from that date, Martinez did take her blood pressure, weight and pulse. (**Ex. ___**). Harriet complained of "heartburn" as one of her symptoms. (**Ex. 45**, p. 56-62; **Ex. 44**, p. 71-73, **Ex. 37**, p. 1-2). Martinez was unaware totally of the existence of the 10 patient limit memo or that directive. (Martinez depo. p.52-60). Martinez refused to admit or even believe that such a limit on patients to be seen daily would even be used or considered (**Ex. 45**, p. 56-57). It was obvious that Martinez was of the mindset ("old school") that no one would or should be turned away, if they were presenting themselves at the IHS to be seen. (**Ex. 45**, p. 56-59; Giroux Depo. p. 13-33, **Ex. 41**). Martinez indicated that Harriet's high blood pressure prescription should still be good for her refill. She advised Decedent to try to stop smoking, exercise, and come back in for an exam. This would be the last time that Harriet would be subject to even a cursory medical exam before her death, despite presenting herself at the Clinic on at least five more occasions before November 27, 2007. (**Ex. 47**).

PLAINTIFF'S EXPERT OPINIONS

Plaintiff has provided an expert opinion as to the standard of care under similar circumstances and as to causation. Dr. Robert Bux, MD, who Defendant chose not to depose, has provided that information in this case. (See Bux Report, **Ex. 37**, p. 1-2). The information and opinions contained in Dr. Bux's expert report and his CV and testimony list, speak for themselves, but do provide an expert opinion bases from which a court may determine as to a matter of fact. Defendant's expert has an opinion as to their version of the facts, and Plaintiff

and Plaintiff's expert disputes those opinions. The Bux information and opinions at the very least, clearly indicate that genuine issues of material fact do exist and are in dispute, so as to preclude summary judgment on these issues.

The fact that Harriet complained of heartburn, was not addressed at all by Martinez on October 25, 2007. (**Ex. 45**, p. 56-63). This is despite the fact that heartburn symptoms can be an indicator of cardiac problems. (**Ex. 44**, 71-73). Even Dr. Rand concedes that point.

It surely was a reasonable opportunity upon hearing of the heartburn complaint of Decedent, for Martinez to potentially call a doctor in, or to at least consider doing some kind of cardiac "workup" (**Ex. 45**, p. 56-63). Especially in light of Harriet's high blood pressure issue, and the fact she said she had been without her pills for almost 2 months.

But no workup was considered, or done by Martinez. (**Ex. 45**, p. 56-63; Rand Depo. p. 71-73, Bux Report, p. 1-2).

Decedent was advised that she needed to see a doctor in order to fill her prescription. She was not adequately advised by anyone at the IHS that she could just go back to pharmacy with a "pink slip" and put her order in.

Paul Archambault had called in to the IHS and spoke to the pharmacy unit. Pharmacy had told him that Harriet needed to be seen before her meds could be refilled. (**Ex. 47**). That is why he and Harriet made her an appointment to be seen by a doctor at the IHS Clinic that day, November 27, 2007 at 1:00 p.m. (**Ex. 47**, PSOMF# ____).

However, Harriet suddenly died in the shower before that could happen. (**Ex. 47**, PSOMF# ____). So both Decedent and Plaintiff were left to believe by the IHS staff, that Decedent must be seen before she could get those meds.

Defendant's citation of the Dalehite, Gaubert and Varig decisions does not carry the day on the similarity to the case at hand. In each of those cases cited by Defendant, there was room for discretion in the decision making. In the case at hand, the situation is much different.

Marie Claymore as the Medical Director at the Clinic during the relevant time in 2007, put out the 10 patient per morning, 10 patient per afternoon limit directive. (**Ex. 30**). (Wimmer depo. p. 23-33; Schell depo. p.10-25).

However, in light of the IHS's mandate that the IHS must treat Indian patients presenting themselves to the IHS facility, and in light of the IHS's own recognition in its own mission statement documents. (**Ex. 7, 14, 19, 20, 21, 27, 31, 34**), and the fact that almost every IHS official interviewed or questioned about the December 27, 2007 memo (**Ex. 30**), indicates that it is unreasonable and unheard of or absurd. The IHS official Claymore clearly could not possess the "discretion" to overcome a mandate such as IHS as an agency possesses to actually provide care to Indian patients presenting themselves for care, such as Harriet here (multiple times over the last month of her life). Despite what Claymore attempted to do, the IHS personnel still saw more than 10 patients on certain days (Fischer Depo. p. 23-35). But as indicated no one at the IHS took the time to be concerned enough about Harriet Archambault's situation and her circumstances (not even Martinez, who actually examined her in late October (2007), to take the time to say to Harriet "hey, what is it that you exactly need? Let me explain the entire process to you. This is how you do it. You don't need to wait to get your prescription ordered if you don't want to, or can't," etc. But no one did.

So Harriet, in an obvious explosive health situation, was denied access even to the basest of reasonable care or medical instruction or direction. She was left to her own devices. Since

Martinez was only there to see Harriet that one time, and that is how it is at the IHS many times with locum tenens, no regular clinic employee knew or took the time to know what happened at the October 25, 2007 exam where she was complaining of heartburn and needing high blood pressure medication.

Had this been an emergency room situation it would have been a clear violation of the EMTALA. See Morales v. Sociedad Espanola de Auxillo Mutuo y Beneficencia, 524 F.3d 54 (1st Cir. 2008); Arrington v. Wong, 237 F.3d 1066 (9th Cir. 2001).

According to Gaubert, Id. at 322, the [discretionary function] exception does not apply if a federal statute, regulation, or policy specifically prescribes a course of action for an employee to follow, "because the employee has no rightful option but to adhere to the directive.

The Ninth Circuit has explained that for this prong, it is critical to distinguish between matters of design and those of implementation. "[W]e have generally held that the design of a course of governmental action is shielded by the discretionary function exception, whereas the implementation of that course of action is not. "Whisnant v. United States, 400 F.3d 1177, 1181 (9th Cir. 2005). The court also cautioned that "matters of scientific and professional judgment-particularly judgments concerning safety-are rarely considered to be susceptible to social, economic, or political policy." Id. Stated another way, once the government has undertaken responsibility for the safety of an event, the execution of that responsibility is not subject to the discretionary function exception. Marlys Bear Medicine v. U.S. ex rel. Secretary of Dept. Of Interior, 241 F.3d 1208 1215 (9th Cir. 2001). "The decision to adopt safety precautions may be based in policy considerations, but the implementation of those precautions is not". Id.

A good example of this distinction can be found in Fang v. United States, 140 F.3d 1238

(9th Cir. 1998(. In that case, the court held that the negligence of park service emergency medical technicians in failing to stabilize the spine of someone involved in a serious automobile accident was not protected by discretionary function exception. Id. at 1234. The defendants in Fang argued product of judgment driven by the consideration of competing policy-based choices. The court disagreed. "No social, economic, or political policy is implicated in the decision whether to stabilize the spine of a person who may have suffered a head, neck or back injury prior to treatment". Id. at 1234. Instead, the court indicated, it "is simply an ordinary judgment made by EMTs in applying their training and expertise to an emergency situation. Id. As such, the discretionary function exception did not apply.

The reasoning is reflected in many other decisions as well. See e.g. Marlys Bear Medicine v. U.S. ex rel. Secretary of Dept. of Interior, supra [negligence by Bureau of Indian Affairs in supervising and managing safety of logging operation not policy-based so as to warrant protection by discretionary function exception]; Gotha v. United States, 115 F.3d 176, 181 (3d Cir. 1997) [negligence in failing to maintain pathway on Navy's mission as it is possible to get]; and Routh v. United States, 941 F.2d 853, 856 (9th Cir. 1991) [government contracting officer's negligence in allowing contractor to operate a backhoe without a safety device was not a policy decision protected by the discretionary function test].

CONCLUSION

WHEREFORE, Plaintiff requests that this Honorable Court deny the Defendant's Motion for Summary Judgment in its entirety and deem that there is both subject matter and personal jurisdiction over the Defendant and its federal officials for any and all acts of negligence

giving rise to the denial of reasonable medical triage, examination, diagnosis and treatment of Decedent during the relevant time period of October and November, 2007, which proximately caused her sudden and untimely death on November 27, 2007.

Dated this _____day of October, 2014.

ABOUREZK & ZEPHIER, P.C.

/s/ Robin L. Zephier_____

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