

Valley Fever suit by prisoners revived

Men's Federal Tort Claims Act suit can proceed, 9th Circuit rules

By Phil Johnson

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Two men who contracted Valley Fever during their time in Taft Correctional Institution won the right Friday to sue the United States after a three-judge panel at the 9th U.S. Circuit Court of Appeals overturned an Eastern District judge's ruling.

The panel found the Federal Tort Claims Act does not bar the men from pursuing claims that the U.S. government breached its duty to prisoners housed at the federally owned prison operated by independent contractors. *Edison et. al. v. United States, et. al.*, 2016 DJDAR 4768.

According to Ian Wallach, a partner at Feldman & Wallach LLP representing plaintiffs Gregory Edison and Richard Nuwintore, the

men separately sued the U.S. government, Management & Training Corp. and GEO Group Inc. in 2012.

The lung infection in both men spread from the lungs to other parts of the body. When the fungal infection spreads, it is often fatal.

They alleged the government did not adequately warn the men, both of whom are black, of the acute risk they faced of contracting Valley Fever, which according to the Center for Disease Control poses a greater threat of serious infection to African Americans.

The men also alleged the government failed to provide a safe and habitable prison when it neglected to implement preventative measures and failed to adequately respond to the 2003 outbreak of Valley Fever in the San Joaquin Valley facility.

Writing the court's unanimous ruling, Judge A. Wallace Tashima acknowledged "courts have construed the independent contract exception to protect the U.S. from vicarious liability for the negligent acts of its independent contractors," but wrote that the exception has no bearing on the government's own acts or omissions.

Management contracts with GEO Group, which managed the prison from 1997 to 2007, and MTC, which signed a 10-year management agreement in 2007, relate to day-to-day operations of the prison, but the government retained control over construction and other activities at Taft.

By retaining that control, the panel found the government exposed itself to liability where the Eastern District previously found none.

Circuit Judges Tashima and William A. Fletcher, along with Senior U.S. District Judge Robert W. Gettleman of the Northern District of Illinois, who was sitting by designation, formed the panel. The ruling also noted the "heightened duty of care" California imposes on jailers due to prisoner's inherently vulnerable condition.

The panel found the men can advance their claims that the federal Bureau of Prisons was negligent in not building covered walkways or other protective structures to help the men avoid the dust that can lead to the contraction of the potentially fatal disease.

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