

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

SANDRA WOUNDED FOOT GRAHAM, )  
individually, and as SPECIAL ADMINISTRATOR )  
AND PERSONAL REPRESENTATIVE )  
of the ESTATE of SHERRY WOUNDED FOOT. )  
)  
Deceased, )  
)  
Plaintiffs, )  
)  
v. )  
)  
THE UNITED STATES OF AMERICA )  
)  
)  
Defendant. )

Civil File No.: 19-5092

COMPLAINT

COME NOW the above named Plaintiffs, Sandra Wounded Foot Graham and the Estate of Sherry Wounded Foot (Deceased), by and through their counsel, and for their Complaint and cause of action against the above named Defendant United States of America (i.e. "USA" or "U.S."), including its agencies, subagencies and federal officials, state and allege as follows:

1. That the Plaintiff Sandra Wounded Foot Graham is a resident of Porcupine, Oglala Lakota County, South Dakota, on the Pine Ridge Indian Reservation in Southwest South Dakota. Plaintiff Sandra Wounded Foot Graham is Native American and a member of the Oglala Sioux Tribe. Sherry Wounded Foot (Deceased), Sandra's natural mother, also lived in Porcupine, Oglala Lakota County, South Dakota, at or about the time of her death. Sandra Wounded Foot Graham was appointed as the Special Administrator and/or Personal Representative of the Estate of Sherry Wounded Foot (Deceased) on or about February 9, 2017.

The jurisdictional requirements are met for both subject matter and personal jurisdiction in that the sum pleaded herein is in excess of the jurisdictional requirement, and that the Plaintiffs reside in Oglala Lakota County, State of South Dakota, and the cause of action arose in Oglala Lakota County, South Dakota which is within the exterior boundaries of the Pine Ridge Indian Reservation in Southwestern South Dakota.

2. That the Decedent, Dr. Ralph E. Alving (deceased), was a resident of Incline Village, Washoe County, Nevada at the time of this incident and the relevant events described herein, and according to Plaintiffs' best knowledge and reasonable belief, at the time of his death.

3. The Estate of Ralph E. Alving, was established in Washoe County, Nevada and named Defendant Amy E. Alving is an Estate Representative, [i.e. Special Administrator/Personal Respective], according to Plaintiffs' best knowledge and good faith, and reasonable belief, and said Estate is the legal entity responsible for payment of damages resulting from Decedent Ralph E. Alving's negligent acts committed while he was alive. Amy E. Alving, is a resident of the State of Virginia, and was sued as one of the personal representatives/special administrators of the Decedent's estate, the Estate of Dr. Ralph E. Alving. Irina Axelrod-Angres, according to Plaintiffs' best knowledge and reasonable belief, is the other co-representative/co-administrator. Both representatives therefore are united in interest.

4. At all times relevant hereto, the Department of Health and Human Services, a federal agency of the Defendant United States of America, was and is now the owner, operator, and/or manager of the Pine Ridge Indian Health Service Hospital and Oglala Sioux Tribe ("OST") Ambulance Service in Pine Ridge, Oglala Lakota County, South Dakota. According to Plaintiffs' best knowledge and reasonable belief, AB Staffing Solutions, LLC, a

private entity out of the state of Arizona, was hired and/or independently contracted by the Defendant United States' agency, the Department of Health and Human Services to provide medical staffing and/or medical emergency room services to the Pine Ridge Indian Health Services Hospital in Pine Ridge, Oglala Lakota County, South Dakota, shortly before the Decedent was transported there on or about August 5, 2016. Dr. Ralph E. Alving (Deceased) and John Does Numbers One (1) through Three (3) are heretofore unnamed/unknown persons who were employed by AB Staffing Solutions, LLC as of August 5 and 6, 2016, and who were either working at the Pine Ridge I.H.S. Hospital at that time and/or were directly involved in providing care and/or the oversight to the care of the Decedent Sherry Wounded Foot while she was at the Pine Ridge I.H.S. Hospital on or about August 5 and 6, 2016. John Does number Four (4) through Six (6), are heretofore unnamed/unknown persons who were employed [federal officials under the FTCA] by the Pine Ridge I.H.S. Hospital as of August 5 and 6, 2016, and who were either working at the Pine Ridge I.H.S. Hospital at the time and/or were directly involved in providing care and/or oversight to the care of the Decedent Sherry Wounded Foot while she was at the Pine Ridge I.H.S. on or about August 5 and 6, 2016. The Pine Ridge Indian Health Service Hospital and OST Ambulance Service are located within the exterior boundaries of the Pine Ridge Indian Reservation, and both entities are legally obligated to provide health care services to Native Americans by statutory and treaty mandates. The Pine Ridge Indian Health Service Hospital and the OST Ambulance Service and the Department of Health Human Services are covered under the Federal Tort Claims Act (FTCA) for negligent acts/conduct. A recent FTCA administrative claim has been filed naming those entities, as well as the two (2) individual OST ambulance employees (Matthew Lordino and Jared Jordan). The FTCA claim was made to

pursue FTCA remedies, and both Lordino and/or Jordan, according to Plaintiffs' best knowledge and reasonable belief, are construed to be federal officials under the FTCA and are therefore "covered" employees.

5. The amount in controversy exceeds the jurisdictional requirements of this Court, and venue is proper in this Court in that this action arose within the exterior boundaries of the Pine Ridge Indian Reservation in Pine Ridge, Oglala Lakota County, South Dakota, and under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), 2401(b), 2671-80, 2672. Plaintiffs served an administrative FTCA claim upon the Defendant and its agencies on April 18, 2017. The Defendant denied said administrative claim on November 2, 2017. Plaintiffs served their Request for Reconsideration of said FTCA claim upon Defendant's agencies on May 1, 2018. Defendant denied said Request for Reconsideration of said FTCA claim on November 8, 2018. Therefore, Plaintiffs have a right to sue the Defendant, and have exhausted all administrative remedies.

#### **FIRST CAUSE OF ACTION: NEGLIGENCE**

Plaintiffs specifically incorporate the statements and allegations made in Paragraphs 1-5 as set forth above.

6. On or about August 5 and/or 6, 2016, Sherry Wounded Foot was a victim of a bodily assault sometime on August 5, 2016 in White Clay, Sheridan County, Nebraska, and became unresponsive, which led her then boyfriend, Greeley White Face, to allegedly call an ambulance from the closest service area of the nearest hospital, which was the Pine Ridge I.H.S. Hospital, in Pine Ridge, S.D. which is 2 miles north of White Clay.

7. Shortly thereafter and at or about 9:45 a.m., employees of Defendant's "federal officials", the OST Ambulance Service, Matthew Lordino and Jared Jordan, arrived at the scene

in White Clay, NE. Decedent Sherry Wounded Foot was allegedly triaged and checked out by the EMS personnel on scene, and they then loaded Sherry on to a gurney, and her vitals were allegedly taken as she was transported to the Defendant's facility, the Pine Ridge Indian Health Service Hospital's Emergency room as "non-emergent". There was no indication in the triage of the EMS officials that Sherry had any potential head injury (mild, moderate, or severe). Pine Ridge is 2 miles north of White Clay, Nebraska.

8. Due to its horrendous previous long standing track record of mistreatment, maltreatment, abandonment, disservice, and neglect of its Native American medical patients at the Pine Ridge I.H.S. Hospital, the Emergency Medical Department ("E.R.") had been "placed" under the temporary administrative and medical decision-making control of the private "for-profit" corporation called AB Staffing Solutions, LLC. AB Staffing Solutions, LLC is an Arizona Corporation designated to provide independent private contract health "services" and medical administration services to its clients (such as the Pine Ridge I.H.S. Hospital and the United States and its DHHS), for profit. "Rent-a-doc" private corporations such as AB Staffing routinely solicit and negotiate with public health (and also Indian Health Service facilities and officials) to provide onsite temporary (potentially permanent) medical services and staffing services to troubled or desperate healthcare facilities such as the Pine Ridge I.H.S. Hospital.

9. AB Staffing Solutions, LLC and other like kind "rent-a-docs" staffing services, are supposed to provide duly licensed, experienced and professionally competent doctors, nurses and administrators, under a Locum Tenens basis to either compliment and/or substitute for the absence of and/or lack of competent professionally trained or reliable professional medical staff to serve such hospitals in need.

10. However, many times throughout the past decades, these “rent-a-doc” for-profit private corporations hire and/or bring their own staff of locum tenens staff who themselves may be troubled or incompetent or possibly even not properly licensed and/or certified. Many times these “rent-a-doc” private entities use the services of medical staff and/or administrators that have had either criminal and/or professionally compromised backgrounds or records.

11. Plaintiffs reasonably believe the relationship between these “rent-a-doc” for-profit entities to come in and take over operations at I.H.S healthcare facilities, like the Pine Ridge I.H.S. Hospital, is designed to perpetuate a planned long term goal to let the I.H.S. treaty-based healthcare obligation to the Native American people, die on the vine by facilitating a downward spiral in the vicious cycle which is politically determined to reach its goal of complete privatization of the treaty based obligation of the U.S. to provide healthcare benefits and facilities to the Native American people. The proposed plan and vicious cycle is intended to create a pattern of neglect and abuse so bad that the Native American people will quit visiting these hospitals, and if the people quit coming, then the U.S. politicians can slash the I.H.S budgets based upon the declining numbers of patients. When the money is slashed, the ability to provide reasonable, safe and quality healthcare suffers, prompting more people to quit coming, leading to more budget cuts, which will ultimately end up in a scenario fairly close to where things are now presently. The goal, it is believed by Plaintiffs, is to provide those federal and state politicians that never liked the treaty obligation of providing healthcare benefits and services to the “Indians” forever, to begin with, an opportunity to stand in front of the cameras and the people and declare that “privatization” of the entire I.H.S. healthcare system is urgent and necessary, and then to allow the influential and well connected monied interests of Wall Street bankers and venture

capitalists to swoop in and prop up a so called “substitute” for-profit model to replace the treaty-based free system. According to many Native Peoples’ belief, including Plaintiffs here, it is all a part of a continuing and growing kleptocracy of all rights, remedies, benefits, and holdings of the Native American people, to be bought off or stolen from them, and handed over to the highest wealthy bidder. It is believed of course, that once the I.H.S. system becomes completely privatized, then the Native American people will no longer be able to afford it, and the financial waste and abuse will enrich the private health care investors to the point the system will no longer exist.

12. At all times relevant hereto, there existed a physician-patient relationship between the Defendant, its employees and/or agents, including Dr. Ralph Alving, Matthew Lorigo, the Pine Ridge I.H.S. and/or AB Staffing ER physicians/staff, Jared Jordan, and John Does Nos. One through Six, and the patient in need, Sherry Wounded Foot. (Deceased).

13. According to the medical records that were provided, the following information is provided as to what led up to Sherry Wounded Foot’s tragic incident and lack of reasonable diagnosis, triage and/or treatment by the Oglala Sioux Tribe Ambulance Service and/or the Pine Ridge Indian Health Service Hospital and the AB Staffing Solutions, LLC, physicians and employees, including the deceased Dr. Ralph E. Alving. Sherry was a victim of an assault on August 4 and/or 5, 2016 in White Clay, Nebraska. In the early morning hours of August 5, 2016 following the assault, Sherry became unresponsive, which led her then boyfriend Greeley White Face to call for an ambulance at approximately 9:40 a.m.. Upon the arrival of the OST Ambulance Service, Sherry was checked out by the EMS personnel, who indicated the following: that the patient was breathing at a shallow depth and low rate, that there were no obvious signs of

trauma to the patient's body, (despite the presence of blood and bruising), that the body would withdraw to pain and that her SP02% was low so she was put on 2 liters of oxygen via nasal cannula. Sherry was loaded onto a stretcher and her vitals were allegedly taken as she was transported to the Pine Ridge Indian Health Service Emergency room as "non-emergent". The EMS OST Ambulance Service officials Matthew Lordino and Jared Jordan, made a determination that no emergency existed, when indeed this was a critical life threatening situation.

14. When the ambulance transporting Sherry Wounded Foot reached the Pine Ridge Indian Health Service Hospital in Pine Ridge, at approximately 10:05 am, Sherry was allegedly assessed/evaluated by the ED Triage nurse RN Melva Clifford. Clifford noted in her notes that the patient was brought in by EMS, unresponsive, [and it was] reported and that she has been drinking x3 days. This was at 10:10 am. Nurse Clifford's assessment indicated that Sherry was unresponsive, [she] does try to cough, but it's non productive. Airway assistive devices: [were used, and] oxygen was placed at 10:10 Liter per minute via Nasal Cannula, [with] breathing spontaneous. Good color, capillary refill is normal, warm, well perfused extremities and pulse was Palpable. Bowel sounds: present and soft, Extremities: injuries/comments, none. Cardiac monitoring was started at 10:33 am, with a rate of 118 rhythm; sinus tacy. Nurse Clifford's notes indicate that the patient is sleeping, non communicative, moves when you touch her, flinches when you start IV. Skin is warm and dry. The IV insertion time was at 10:15.

15. At 10:50, Nurse Clifford makes another note that the patient's O2 had dropped down to 74%. [This is a known indicator of a severe head injury.] Clifford notified the provider, and suction was started. O2 increased from 2L-6L. The patient tried to cough, [but] non productive, [and a] non rebreather [was] ordered with 20L O2. Intubation was ordered.



Continuous bagging [was] needed. Other nursing notes by Nurse Clifford included adding a 2<sup>nd</sup> IV access, [for] transferring patient to Rapid City Regional and patient had xrays completed both at 12:00 and patient was taken to CT, patient still has continuous bagging at 12:07. At 12:40 a Foley catheter was placed and UA collected and results sent to lab, with 650 amber urine output. 12:53 HR 85, BP 144/91, O2 100%, bagging 15R, 13:15 PA gave fentanyl 100mg IV push. 10cc NSS flush after. EMS arrived, at 13:25 [and] all care is turned over, medications were passed on to give in flight.

16. Dr. Ralph E. Alving, of AB Staffing Solutions, LLC, completed an assessment, and his medical record notes indicated that the patient arrives with history of being on a binge with her husband for several days, but [boyfriend] called the EMS because she was not waking up. While Sherry was held in a “bay” in the ED, she allegedly had a seizure, and she needed to be intubated to protect her airway. Her ETOH had been measured to be only 222.

17. A CT of her head was finally, ultimately, done which showed intracerebral bleeding. After this, her “husband” showed up and said that yesterday she had been assaulted and hit her head. Complete history unobtainable due to [her] altered mental status. The time listed for Alving’s order for labs was 10:33; Catheter at 11:34; medications at 13:18; 13:22 and 13:26. Alving’s records indicated that Assessment and plan: 1) Altered mental status, unarousable etoh = 222 (P), 2) Alcohol abuse, (s), 3) seizure, brief, observed in ED (S); Intracranial hemorrhage following injury without intracranial wound and with moderate loss of consciousness (1-24) hours.

18. Sherry Wounded Foot had a record of history in her medical file at the Pine Ridge I.H.S. Hospital ER for physical abuse by this White Face individual. White Face had told the ER

doctors and nurses in Pine Ridge on August 5, 2016, that Sherry had been drinking heavy and had gone into an “alcoholic seizure”. Sherry had no history of seizures of any kind. The officials at the Pine Ridge I.H.S. Hospital ER, at one point administered seizure medication. Sherry had been left in one of the ER “bays” unattended, until she started to code as a result of the seizure. Sherry, although there were many indicators suggesting a severe head injury, was not evaluated in that manner by the staff, and not treated as an urgent case. There was no CT scan contemplated or given to her, in a reasonable or timely fashion, which would have easily revealed her severe brain/head injury. Historically, the staff at the I.H.S Hospital do not request or order CT scans because they do not wish to incur the cost, regardless of the severity of the injury, even if they have a working CT scan machine. The doctors on staff, including Dr. Alving, never requested a CT scan of Sherry’s head, until after she later started convulsing in a seizure. It was only then, that Dr. Alving and other staff had phoned Rapid City Regional Hospital. Officials at RCRH then advised the Pine Ridge I.H.S. Hospital staff and Alving, that RCRH would not accept Sherry unless or until there was CT scan done. It was only after these events occurred, that Alving and the Pine Ridge IHS and/or AB Staffing Solutions Staff, had a CT scan done, which indicated the urgent severity of Sherry’s life threatening brain/head injury. The Golden Hour considerations in order to save her life and to have the best chance to treat such a severe head injury, had passed, by the time that a CT scan was done, and the staff at Pine Ridge IHS Hospital and/or the OST Ambulance Service neglected to treat Sherry as an urgent care case, and they had just left her unattended in the bay at the ER for hours.

19. The Patient Sherry Wounded Foot was to then be transferred to Rapid City Regional Hospital. The transfer was accepted by: Manning 05 Aug 2016, 12:50 via Helicopter,

with Advanced Life Support. Alving also notes that, before patient left, I discussed the case with the neurosurgeon. [in Rapid City]. He suggested 1000 mg kepra, and 50 GM Mannitol. These were started. Alving's notes were signed at 13:33. The Radiology department record indicates that Dr. Alving requested the first CT Head w/o contrast. Alving indicated that the reason for the study was an: Altered mental status. The technician present with Alving was Lyle J. Witt. Radiologist: James E. Rohan dictated the record at 12:32. The record was printed at 13:47.

20. It should be noted that in past circumstances and previous claims involving negligent care for severe head trauma cases in patients at the Pine Ridge I.H.S. Hospital, [both with and without the participation of "independent contractors"] that the staff and doctors have not had reasonable use of any C.T. scan machines, and/or are prohibited from using CT scans even in cases where severe head trauma may be present and happening. Plaintiffs know and assert that said negligent conduct by independent contractors (such as AB Staffing Solutions and/or Alving and/or John Does Nos. 1, 2 and 3) and the Defendant's IHS officials at the Pine Ridge IHS Hospital, occurs, because of reckless and grossly negligent decision making based upon economic concerns and/or callous indifference and/or racial discrimination. It is an intentional and/or a negligent decision and conduct, in denying critical patients, such as Sherry Wounded Foot, reasonable urgent care, based upon the notion of attempting to save money, or of just being totally unprepared as a healthcare facility. This type of situation is ongoing, for years, with no learning from previous mistakes and deaths. This type of conduct is oppressive, callous, grossly reckless and is done with a reckless disregard for the health, safety, welfare and lives of the Native American patients, such as Decedent here.

21. Sherry Wounded Foot had a seizure, had to be intubated and was unresponsive,

but was responding to touch. According to the times noted, Ms. Wounded Foot finally had x-rays ordered and completed at 12:00 noon and was taken for a CT at 12:09 p.m. which was about two (2) hours after she was delivered to the Pine Ridge Indian Health Service Hospital Emergency Department. The CT indicated that Ms. Wounded Foot had intracerebral bleeding and was in need of immediate surgery, a higher level of care than the facility could provide [according to how the Pine Ridge IHS officials claim]. It was only then, that the IHS officials and Alving and John Does Nos. 1, 2 and 3, decided to transport her to the Rapid City Regional Hospital in Rapid City, S.D. which is 110 miles to the north of Pine Ridge. Ms. Wounded Foot was not transported to Rapid City until 13:25 hours (1:25p.m.), over three hours later. The delay in proper assessment of her priority 1 life threatening condition, extended well beyond the “Golden Hour” considerations for such a severe, life-threatening head injury. According to Plaintiffs’ best knowledge and belief, the severe head injury, the lack of a reasonable and/or timely triage and CT scan, the “abandonment” of Decedent at the ER for over 2 hours, and the lack of urgent head injury protocol and treatment, wasted the valuable “Golden Hour” window of time.

22. Upon the arrival by Life Flight to Rapid City Regional Hospital, according to the nurse and doctors notes at about 15:20. Ms. Wounded Foot was evaluated and assessed by ED nurse Elizabeth Harding and Dr. Robert Miller. Nurse Harding notes that Ms. Wounded Foot was intubated, EENT: R pupil sluggish 2 L pupil non reactive at a 4. Pupil Irregular Pupil Non-Reactive (left) Pupils not Equal Bilateral. Ms. Wounded Foot had bruising to the chin and under her right eye, she also had superficial scratches to bilat butt [bilateral buttocks], no bleeding noted. Dr. Miller did bedside assessment, getting labs and x-ray. Ms. Wounded Foot was taken to have another CT and it was confirmed once again that Ms. Wounded Foot had a traumatic subdural

hematoma, head bleed with midline shift and also right sided rib fractures and intra abdominal fluid. That it was noted it was likely blood. Dr. Rodney Samuelson, with Neurosurgery was contacted and also examined Ms. Wounded Foot in the ED and evaluated the patient. Samuelson indicated that his personal review of the patient's recent head CT, in his notes, said there was substantial mass effect in the left hemisphere, which includes a 1 cm midline shift and that the subdural hematoma measured 11 mm in greatest diameter. Samuelson noted that the patient is appropriate for emergent left-sided craniotomy or craniectomy for subdural hematoma evacuation. He will evaluate the brain at the time of surgery to determine whether or not the bone flap should be left off. Ms. Wounded Foot was taken emergently to the emergency room and prepped for surgery which was performed by Dr. Mark Monasky with PA-C Terri Tieman assisting with the operation of left frontoparietal craniotomy and evacuation of acute subdural hematoma to relieve the brain hemorrhage. The operative times for the procedure were: Into OR at 16:42, Timeout time: 17:19, Start Procedure time 17:29, Closing time 18:43, Stop Procedure time 19:07, out of OR time 19:19. After the procedure was completed, Ms. Wounded Foot was kept intubated and taken to the intensive care unit in stable condition. It was noted that the patient tolerated the procedure well without apparent complication.

23. Unfortunately, 5 days later, Ms. Wounded Foot never regained consciousness from her deep coma with dilated pupils. The CT scan showed nice resolution of the hematoma and pressure after the surgery, and even though the pressure monitor revealed normal pressure, Ms. Wounded Foot remained in the deep coma. Sherry had suffered permanent irreversible brain injury. Periodically, to Sandra, it appeared that her mother had periods of conscious reactions, efforts to communicate, and indicia of feeling pain. Dr. Mark Monasky and other hospital staff

met with the family on August 10, 2016 and explained the options and that if the life support were withdrawn that it would not be likely that she would survive on her own and ever come out of her coma. The family of Sherry A. Wounded Foot had to struggle and suffer to make the final decision to remove her life support. Ms. Wounded Foot was transferred back to the Pine Ridge Indian Health Service for inpatient end of life care. Sherry Wounded Foot was transported back to Pine Ridge on August 17, 2016, where she passed away at 21:00 with her family at her side, including Plaintiff Sandra Wound Foot Graham.

24. On or about August 5 and 6, 2016, the agents and employees of the Pine Ridge Indian Health Service Hospital, the OST Ambulance Service, (whether part time or full time), AB Staffing Solutions, LLC, and specifically, Dr. Ralph Alving, and John Does Numbers 1, 2 and 3, failed to exercise reasonable care and/or the level of care according to the standard of care required of medical specialty in the community, when they abandoned the urgently needed critical healthcare needs, failed to investigate, triage, immediately transport and to provide proper and adequate diagnosis and medical care to Sherry Wounded Foot. Subsequently, twelve days later, Sherry Wounded Foot passed away from her traumatic head injury on or about August 17, 2016, in the Pine Ridge I.H.S. Hospital.

25. Defendant's federal official employees, Lordino, Jordan, Clifford, John Does Nos. One through Six, and Defendant's hired "rent-a-docs" from AB Staffing and/or Ralph E. Alving, at all times relevant in their contact with the Decedent Sherry Wounded Foot, were employees of AB Staffing Solutions, LLC, and/or Defendant, were/are legally liable to Decedent, [and her next of kin], for, including but not limited to the following:

A. Negligence;

- B. Medical Negligence;
- C. Negligent infliction of emotional distress;
- D. Intentional infliction of emotional distress;
- E. Wrongful Death;
- F. Survival Damages;
- G. Failure to follow proper procedure and protocol;
- H. Failure to follow South Dakota, Tribal and/or Federal law;
- I. Being deliberately indifferent to the physical and mental needs of the Decedent.

26. Decedent, endured substantial and significant bodily injury, mental stress, severe anxiety, loss of public trust, loss of peace of mind, worry, and psychological and emotional trauma at the time of and following this incident as a result of the negligent injurious conduct of Defendant for which compensation is sought by the Plaintiffs in an amount that reasonably compensates the Plaintiffs and the Estate of the Decedent for such damages. Decedent died on August 17, 2016. Said damages survive Decedent's death and are hereby pursued by her Estate and the Plaintiff.

27. As a direct and proximate result, and in consequence of, the individual and/or joint or combined negligence of the Defendant and/or its agents and employees, specifically including Lordino, Jordan, Clifford, John Does Nos. One through Six, and Defendant's hired "rent-a-docs" from AB Staffing and/or Dr. Ralph Alving and the other emergency room employees, (both I.H.S. and/or AB Staffing Solutions), including the OST Ambulance EMS employees, the decedent Sherry Wounded Foot, and/or Decedent's Estate experienced pain and suffering, embarrassment, humiliation, psychological/mental anguish, permanent brain damage, loss of impairment, loss of

bodily function, imminent fear of death, mortal pain and suffering, loss of enjoyment of life, loss of income, loss of opportunity, loss of future earning capacity, loss of normal human capacity, disfigurement, emotional distress, medical expense, funeral expense, memorial expenses and anxiety.

28. As a further direct and proximate result of the individual, and joint and several negligence of the Defendant, and of all of the emergency and OST Ambulance personnel involved, as alleged herein, Sherry Wounded Foot, was injured and suffered life threatening and permanent injury, as a proximate and direct result of the individual and joint and several negligence of the Defendants, the Pine Ridge Indian Health Service physicians, nurses, ER staff and OST Ambulance Service, the AB Staffing Solutions staff including Dr. Alving, and/or the AB Staff John Does (Nos. 1, 2, 3) and I.H.S. John Does (Nos. 4, 5, 6).

29. As a further direct and proximate result of the individual and joint and several negligence of the Defendant, as alleged herein, Plaintiff Sandra Wounded Foot Graham, individually, has experienced loss of enjoyment of life, worry, frustration, negligent infliction of emotional distress, embarrassment, humiliation, grief, past and future pain and suffering, mental anguish, a bystander claim/loss, loss of companionship, loss of support, loss of advice, loss of counsel, and other permanent loss.

30. On April 18, 2017, the Plaintiff Sandra Wounded Foot Graham submitted a FTCA administrative claim based on the allegations herein, to the Pine Ridge Indian Health Service Hospital, the OST Ambulance Service, the Department of Health and Human Services, and the United States of America. A copy of that claim is attached as **Exhibit 1**. That federal tort administrative claim has been denied, but more than six months have passed since the filing of



said claim. Plaintiffs filed and served a reconsideration request on the FTCA Tort Claim on May 1, 2018. The Reconsideration request was formally denied on November 8, 2018. Plaintiffs submitted a private written notice of claim to the private entity known as AB Staffing Solutions, LLC on or about January 23, 2017, March 17, 2017 and on May 26, 2017, but have received no formal response thereto, to the present time, but only an obvious silence and unresponsiveness. It was learned that Dr. Alving had passed away in Nevada some three weeks after the events on August 5, 2016.

31. The Defendant United States of America has confirmed that the Pine Ridge Indian Health Service Hospital, the OST Ambulance Service, and John Does Nos. 4, 5 and 6, and/or its administrators and officials are covered under the FTCA. The Pine Ridge Indian Health Service Hospital, the OST Ambulance Service and its officials, have failed to exercise its federal trust responsibility to the Oglala Sioux Tribe and its individual members, including Plaintiffs here, by negligently failing to protect the decedent Sherry Wounded Foot and others similarly situated, from the negligent and harmful refusal of emergency reasonable and necessary medical care, triage, diagnosis, treatment, and immediate transportation which is to be provided such is to be provided to Native American patients, such as decedent Sherry Wounded Foot, under these circumstances in this case on August 5 and 6, 2016. This includes the negligence in independently contracting with negligent actors such as AB Staffing Solutions, LLC and Dr. Ralph E. Alving (deceased), and John Does 1, 2 and 3.

32. The Pine Ridge Indian Health Service Hospital, and OST Ambulance Service and/or its administrators and officials are covered under the FTCA, for the negligence referenced above on behalf of Pine Ridge Indian Health Service Hospital and the OST Ambulance Service

officials, in failing to reasonably screen, hire, investigate, train and/or supervise their medical employees (including any and/or all I.H.S., OST Ambulance, AB Staffing Solutions employees and/or Alving) specifically, so as to reasonably, fairly and adequately, protect, and assure, and not to “abandon”, the Native American patients who call for urgently needed ambulance services, and/or who are transported to and treated by the Hospital and its staff, are not unreasonably harmed, disfigured, humiliated and/or permanently injured by the conduct of those employees.

33. That as a direct and proximate result of the above referenced conduct and breaches of duty described in paragraphs 1 through 32, above, the Plaintiffs’ damages were directly and proximately caused, thereby, and will continue into the future.

SECOND CAUSE OF ACTION: NEGLIGENT SCREENING AGAINST DEFENDANT U.S.

Specifically incorporate paragraphs 1-33, inclusive, as if set forth in full.

34. Dr. Ralph E. Alving and/or John Does Nos. One (1), Two (2), and Three (3), at all times relevant in their contact with the Decedent Sherry Wounded Foot, were employed as a doctor (Alving) and staff (John Does 1, 2, 3, 4, 5 and 6) at AB Staffing Solutions, LLC, and AB Staffing Solutions, LLC was contracted by Defendant United States, and the Indian Health Service, Pine Ridge IHS Hospital, and was legally liable to Decedent, and her next of kin, for, including but not limited to the following:

- A. Negligence;
- B. Medical Negligence;
- C. Negligent infliction of emotional distress;
- D. Intentional infliction of emotional distress;
- E. Wrongful death;

- F. Survival damages;
- G. Failure to follow proper procedure and protocol;
- H. Failure to follow South Dakota, Tribal and/or Federal law;
- I. Being deliberately indifferent to the physical and mental needs of the Decedent.
- J. Having knowledge or should have had knowledge of Alving's past work

experience, licensure and complaint problems, and the potential exposure of harm to patients.

35. As a proximate cause and cause in fact of the negligent conduct of the Defendant U.S. and its Pine Ridge IHS employees, AB Staffing Solutions, LLC, employee Dr. Ralph E. Alving, and/or John Does Nos. 1, 2, 3, 4, 5 and 6, the OST Ambulance Service employees, Decedent suffered bodily injury, loss of enjoyment of life, mental distress, severe anxiety, depression, shame, fear of imminent death, humiliation, loss of public trust, loss of peace of mind, worry, and medical expenses, and psychological and emotional trauma before and leading up to her death on August 17, 2016.

36. Decedent, endured substantial and significant bodily injury, mental stress, severe anxiety, loss of public trust, loss of peace of mind, worry, and psychological and emotional trauma at the time of and following this incident as a result of the negligent injurious conduct of Defendant U.S., AB Staffing Solutions, LLC employee Dr. Ralph E. Alving and/or John Does Nos. 1, 2, 3, 4, 5 and 6, and the OST Ambulance Service employees, for which compensation is sought by the Plaintiffs in an amount that reasonably compensates the Estate of the Decedent for such damages.

37. Decedent Sherry Wounded Foot and her heirs incurred medical, hospital and psychological expense as a result of the Defendant U.S., the Pine Ridge IHS officials, the OST

Ambulance Service employees, AB Staffing Solutions, LLC and its employee Dr. Ralph E. Alving's, negligent conduct, which conduct caused Decedent and the Plaintiffs subsequent injuries for which reimbursement is sought.

38. At all times relevant hereto, there existed a physician-patient relationship between the Defendant U.S., AB Staffing Solutions, LLC and the United States Indian Health Service, the Pine Ridge IHS Hospital, the OST Ambulance Service, their employees and/or agents, including Dr. Ralph E. Alving and John Does Nos. 1, 2, 3, 4, 5 and 6, and the Decedent Sherry Wounded Foot.

39. The agents and employees of the Pine Ridge the IHS Hospital, the OST Ambulance Service, AB Staffing Solutions, LLC and/or the United States Indian Health Service, (whether part time or full time), and specifically, Dr. Ralph E. Alving, and John Does Nos. 1, 2, 3, 4, 5 and 6, failed to exercise reasonable care and/or the level of care according to the standard of care required of medical specialty, when they failed to investigate Defendant Ralph E. Alving's medical experience and/or licensure and/or record and background, and in failing to provide proper and adequate medical care to Decedent Sherry Wounded Foot.

40. As a direct and proximate result, and in consequence of, the individually and/or joint or combined negligence of the Defendants or their agents and employees, specifically including the U.S., the Pine Ridge IHS officials, the OST Ambulance Service employees, John Does Nos. 1 to 6, and Dr. Ralph E. Alving, Decedent Sherry Wounded Foot and her Estate, experienced conscious pain and suffering, loss of enjoyment of life, fear of imminent death, embarrassment, humiliation, psychological/mental anguish, medical expense, funeral expense, memorial expense, emotional distress and anxiety.

41. As a further direct and proximate result of the negligence of the Defendants, specifically, the U.S., the Pine Ridge IHS officials, the OST Ambulance Service employees, John Does Nos. 1 to 6 and Dr. Ralph E. Alving, as alleged herein, Plaintiff Sandra Wounded Foot Graham suffered pain and suffering, negligent infliction of emotional stress, embarrassment, humiliation, psychological/mental anguish, emotional distress and anxiety, loss of support, loss of companionship, loss of counsel, loss of advice, grief, emotional distress, medical expense, funeral expense, memorial expense, as a proximate and direct result of the negligence of the AB Staffing Solutions, LLC employee Dr. Ralph E. Alving, and of AB Staffing Solutions, LLC and/or the United States Indian Health Service and the Pine Ridge IHS Hospital, the OST Ambulance Service, and John Does Nos. 1, 2, 3, 4, 5 and 6.

42. AB Staffing Solutions and/or Defendant United States and its Indian Health Service at the Pine Ridge IHS Hospital failed to reasonably screen, hire, investigate, train and/or supervise medical employees such as Dr. Ralph E. Alving and/or Defendant John Does Nos. 1, 2, 3, 4, 5 and 6, here, specifically, so as to reasonably, fairly and adequately to protect, and assure, the Native American patients who are in the care of the Pine Ridge IHS Hospital, are not unreasonably harmed, disfigured, abandoned, humiliated and/or permanently injured or killed by the conduct of those employees, such as Defendants' employee Dr. Ralph E. Alving and/or John Does Nos. 1, 2, 3, 4, 5 and 6, here.

43. That as a direct and proximate result of the above referenced conduct and breaches of duty described in paragraphs one through 42, above, the Plaintiffs' damages were directly and proximately caused, thereby.

THIRD CAUSE OF ACTION: NEGLIGENT TRAINING AGAINST DEFENDANT U.S.

Plaintiffs, specifically incorporate Paragraphs 1-43, inclusive, herein, as if set forth in full.

44. To Plaintiff's best reasonable knowledge and belief, the Defendant U.S., and its Pine Ridge I.H.S., the OST Ambulance Service, and AB Staffing Solutions, LLC, were negligent in their failure to adequately and reasonably train its agents against negligently abandoning, harming and/or killing innocent and undeserving patients, such as Decedent Sherry Wounded Foot.

45. That the negligence of AB Staffing Solutions, LLC and/or the United States Indian Health Service of the Pine Ridge IHS Hospital and the OST Ambulance Service, to adequately and reasonably train its agents was a direct and proximate cause of the injuries sustained by Decedent, and Plaintiffs, which directly and proximately resulted in the injuries and damages to Decedent and Plaintiffs on or about August 5 through 17, 2016 and thereafter.

FOURTH CAUSE OF ACTION: NEGLIGENT SUPERVISION AGAINST DEFENDANT U.S.

Plaintiffs specifically incorporate Paragraphs 1-45, inclusive, herein, as if set forth in full.

46. AB Staffing Solutions, LLC and/or the United States Indian Health Service at the Pine Ridge IHS Hospital, and the OST Ambulance Service, were negligent in their failure to adequately and reasonably supervise its agents, to wit: Dr. Ralph E. Alving, Lordino, Jordan, Clifford, and/or John Does Nos. 1, 2, 3, 4, 5, and 6, in that the Defendant AB Staffing Solutions, LLC and/or the United States Indian Health Service at the Pine Ridge I.H.S. Hospital, and/or OST Ambulance Service, failed to supervise its inexperienced agents in order to reasonably provide medical care and protect patients from medical negligence/harm/death, such as Decedent Sherry Wounded Foot.

47. That the negligence of AB Staffing Solutions and/or the United States in failing to

adequately and reasonably supervise its agents was a direct and proximate cause of the injuries sustained by Decedent Sherry Wounded Foot, and the Plaintiffs, which directly and proximately resulted in the injuries and damages of Decedent and Plaintiffs on or about August 5 through 17, 2016 and thereafter.

FIFTH CAUSE OF ACTION: NEGLIGENT HIRING AGAINST DEFENDANT U.S.

Plaintiffs, specifically, incorporate Paragraphs 1-47 inclusive, herein, as if set forth in full.

48. To Plaintiffs' best reasonable knowledge and belief, the Defendant AB Staffing Solutions, LLC and/or the United States Indian Health Service at the Pine Ridge IHS Hospital, and/or the OST Ambulance Service, were negligent in its hiring of Dr. Ralph E. Alving, Lordino, Jordan, Clifford, and/or John Does Nos. 1, 2, 3, 4, 5 and 6, as officials, in that the AB Staffing Solutions, LLC and/or the United States Indian Health Service at the Pine Ridge IHS Hospital, and/or OST Ambulance Service, failed to adequately and reasonably inquire into the background of their employees to determine if they were fit to perform their duties, and properly trained to perform their duties, and not pose a threat and danger to Decedent and her health and life, or to the Plaintiffs.

WHEREFORE, Plaintiffs request judgment against the Defendant U.S. as follows:

1. For the actual expenses incurred in the treatment of the injuries sustained by Decedent Sherry Wounded Foot and funeral, medical and memorial expenses resulting from the subject incident (in excess of \$100,000.00) and for the actual expenses, attorney fees and costs, and prejudgment interest on medical bills, funeral bills, and memorial expenses and other special damages.
2. For such monetary compensation as shall fully compensate for the pain, suffering,

mortal fear of imminent death, conscious pain and suffering, anxiety, humiliation, embarrassment, grief, loss of companionship, loss of opportunity, loss of income, loss of support, loss of counsel, loss of advice, shame, depression, worry, frustration, memorial expenses, loss of earning capacity, loss of motor function, loss of human capacity, permanent impairment, loss of mental capability, medical transportation expenses, scarring, mental distress, negligent infliction of emotional distress, anguish and loss of enjoyment of life, and other consequential loss and damage sustained by either and/or both Plaintiffs Sandra Wounded Foot-Graham and/or Decedent Sherry Wounded Foot and the Estate (mainly by Decedent Sherry Wounded Foot and/or her Estate), to the date of trial and which is likely to continue into the future, in a sum to be determined by a jury in this case.

3. For other and further relief deemed just and necessary in this matter.

Dated this 5<sup>th</sup> day of March, 2019.

ABOUREZK, ZEPHIER & LAFLEUR, PC

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Robin L. Zephier  
Attorneys for Plaintiffs  
PO Box 9460  
2020 West Omaha  
Rapid City, SD 57709-9460  
(605) 342-0097



19-5092

JS 44 (Rev. 07/16)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Sandra Wounded Foot Graham, individually and as Special Administrator & Personal Representative of the Estate of Sherry Wounded Foot (Deceased)

(b) County of Residence of First Listed Plaintiff Oglala Lakota County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Robin L. Zephier, Abourezk, Zephier & LaFleur, P.C., P.O. Box 9460, Rapid City, SD 57709, 605-342-0097

**DEFENDANTS**

UNITED STATES OF AMERICA

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1332.

Brief description of cause:  
Medical Malpractice, wrongful death.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 10,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

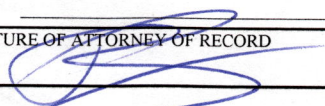
JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

3-5-19

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_