

EXHIBIT 36

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF)
AMERICA, et al.,)
Plaintiffs,) Civil Action Number
vs.) CV 09-0037-CW
CENTRAL INTELLIGENCE)
AGENCY, et al.,)
Defendants.)

Videotaped Deposition of PAUL BLACK,
taken at Friday, 2000 Pennsylvania Avenue NW,
7th Floor, Washington, DC, November 4, 2011,
at 8:54 a.m., before CARMEN SMITH, a Notary
Public within and for the District of
Columbia.

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1 provide us any records that you have that we can go
2 do this.

3 Fire-related may not be a good example,
4 because there are places we go to the surgeon
5 general's office and places like that for some 09:29:31
6 records that we ask for in those cases.

7 But we will take evidence that is verified
8 evidence from any source, as long as it's pertinent
9 to what we're looking for.

10 For example, that same veteran, if he says 09:29:46
11 well, I don't have any records, but there was this
12 guy that was with me there and I have a statement
13 from him saying he saw me trip and hit my knee on
14 that rock, then we would take that as evidence for
15 that veteran's case. 09:29:58

16 BY MS. SPRENKEL:

17 Q Now, specifically relating to the chem-bio
18 claimants, chem-bio benefits, are you saying DOD is
19 not the sole method for verification of test
20 participants of participation for those veterans? 09:30:21

21 A No, I don't think I am saying that. What
22 I'm saying is that we rely on those service
23 departments to provide us those records.

24 If the service department doesn't provide
25 that record, if they weren't there, we would ask the 09:30:32

1 veteran do you have other evidence that you
2 participated in a test.

3 Q Let's --

4 A Let me just try another example. I don't
5 know of any specific cases, but for Edgewood, for 09:30:50
6 example, if a veteran -- if they're not in the DOD
7 database and the veteran comes in and says well, I
8 participated in this test at Edgewood, and he gives
9 us the name of the veteran that says I was there
10 with this veteran, and that veteran gives a 09:31:02
11 statement saying that this veteran was there with us
12 and we look and yeah, the veteran that he's saying
13 that he's using his lay statement for was at
14 Edgewood and did participate in these tests, and now
15 he's saying that Paul Black participated in this 09:31:15
16 test with him.

17 If that was consistent with the rest of
18 his military record, then we could say yeah, this
19 person participated in a test.

20 The problem with that is that we would 09:31:25
21 have no way of knowing any type of chemical agent
22 that was used in that test or any of that
23 information if it didn't come from DOD, because
24 these people, for the most part, didn't know what
25 they were being tested with. 09:31:39

1 Q What's the basis for your belief that a --
2 methods other than DOD verification are sufficient
3 to establish participation in the chem-bio testing
4 for purposes of a claim?

5 A Can you repeat that question? 09:32:02

6 Q Yes. So you said that if the DOD cannot
7 verify participation, a veteran could, for example,
8 submit a statement from a friend whose participation
9 is verified and say I was there with him, and if all
10 of the other records were consistent, then it 09:32:23
11 wouldn't matter that DOD couldn't verify the
12 participation. Is that -- did I understand you
13 correctly?

14 A Right. For the example I gave of Fort
15 Detrick, if this person was -- the service records 09:32:31
16 show, yeah, this person did participate in that and
17 this other person is saying I've got a lay statement
18 from him, and the one that's trying to file the
19 claim that we don't have the information from DOD,
20 we look in their service record and it says yeah, 09:32:44
21 this person was stationed at Fort Detrick during
22 this time period, same time period as that other
23 person, we would take that as evidence that this
24 person was there at that time and that the lay
25 statement from the other person saying that they 09:32:59

1 participated in this test with me.

2 That is evidence that we would use. We
3 use any evidence that we can gather in a veteran's
4 claim to try to grant the benefits that they're
5 entitled to.

09:33:14

6 Q And my question is, what's the basis for
7 your belief that you would use any evidence to
8 support the verification of participation?

9 A Because that's our standard procedures
10 for -- for developing evidence, is that we take all
11 evidence that is available to us to make a
12 determination. And if that evidence is available to
13 us, then we use it in that determination.

09:33:28

14 Q Have you personally adjudicated any claims
15 of chem-bio test participants?

09:33:43

16 A I have not.

17 Q Are you aware of claims by chem-bio test
18 participants where DOD could not verify
19 participation but where other evidence was accepted
20 in order to verify the participation?

09:33:56

21 A Am I aware of that?

22 Q Yes.

23 A No, I'm not aware of that.

24 Q And there are specific procedures that are
25 applicable to the chem-bio test veterans; is that

09:34:06

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1 Q Okay. VET -- the number ending in 5124.
2 Under "E-Mail C&P Service to Verify Participation in
3 CBRNE Testing," the second sentence in that
4 paragraph, second clause, you see that says, "DoD
5 has sole authority to validate whether an individual 09:38:21
6 participated in any chemical or biological test"?

7 A Yes, I see that.

8 Q So isn't that inconsistent with your
9 explanation -- the explanation that you just gave
10 that veterans can verify their participation in the 09:38:44
11 tests through other means?

12 A That is correct. This would be the
13 correct way that our field stations would look at
14 those. They would not go beyond that. So if what I
15 just told you was inconsistent with this, it would 09:38:58
16 have been wrong.

17 Q Okay. Okay. Is there -- what's the
18 regulatory authority for VA to allow DOD to be the
19 sole authority to verify participation?

20 MS. FAREL: Objection; calls for 09:39:16
21 speculation, outside the scope of the 30(b)(6)
22 notice.

23 The verification of service information
24 is, I think, in our CFRs, and I'm not sure which CFR
25 cite that that would be. I would have to get that 09:39:34

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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN SMITH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

Commission Expires: MARCH 14, 2013