

**Matter of Becker**

2016 NY Slip Op 32158(U)

October 19, 2016

Surrogate's Court, Nassau County

Docket Number: 2012-370395/A

Judge: Margaret C. Reilly

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This opinion is uncorrected and not selected for official publication.

**SURROGATE’S COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

**In the Matter of the Application of Lawrence C. Becker,  
as Administrator of the Estate of**

**DECISION  
File No.2012-370395/A  
Dec. No. 31743**

**JACQUELINE A. BECKER,**

**Deceased,**

**for Leave to Distribute the Net Proceeds on Decedent’s  
Cause of Action for Wrongful Death, Settled in the  
Supreme Court.**

**PRESENT: HON. MARGARET C. REILLY**

The following papers were considered in the preparation of this decision:

Petition with Exhibits.....	1
Attorney’s Affirmation . . . . .	2
Attorney’s Supplemental Affirmations (3) . . . . .	3
Waiver and Consent of New York State Department of Taxation and Finance.....	4
Account . . . . .	5
Report of Guardian ad Litem . . . . .	6
Proposed Decree . . . . .	7

In this proceeding for allocation of the net proceeds of a wrongful death recovery, the petitioner seeks a decree: authorizing and empowering Lawrence C. Becker (the administrator) to compromise and settle a claim for the wrongful death of Jacqueline A. Becker (the decedent) for the sum of \$1,250,000.00; allocating the entire recovery to the cause of action for the decedent’s wrongful death; modifying the letters issued to the administrator to permit the administrator to compromise or collect upon this claim and to permit periodic payments from Prudential Assigned Settlement Services Corp. and/or The Prudential Insurance Company of America to be mailed directly to the decedent’s infant children, Alyssa Becker and Lawrence Becker II; dispensing with the filing of a bond;

judicially settling the administrator's account; directing Ian Stein, M.D., a/k/a Ian Abraham G. Stein, M.D. or his insurance company to pay \$275,000.00 out of the settlement proceeds to the administrator's counsel, Davidson & Cohen, P.C., and \$485,647.50 out of the settlement proceeds to Lawrence C. Becker, as his share of the net recovery as the surviving spouse of the decedent, pursuant to the *Matter of Kaiser* (198 Misc 582 [Sur Ct, Kings County 1950]), and the balance of the proceeds of \$489,352.50 to Prudential Assigned Settlement Services Corp. to fund the purchase of structured settlement annuities through The Prudential Insurance Company of America, which will pay future periodic payments to Alyssa Becker and Lawrence Becker II.

The decedent was a married mother of two infant children who died at the age of 45. The cause of action arose after the decedent died in her sleep, allegedly as a result of taking medication prescribed by Ian Stein, M.D. The decedent's surviving spouse was appointed as administrator of his wife's estate, and an action was commenced in Supreme Court, Nassau County. Following several pre-trial conferences, the parties agreed to attend an out-of-court mediation through Resolute Systems on October 7, 2015, during which they reached a settlement of \$1,250,000.00. Counsel then commenced the present proceeding in Surrogate's Court. Other than the payment of \$275,000.00, counsel for the administrator has waived its costs and disbursements, so that the balance of the settlement proceeds will be paid to the distributees. The petition alleges that the funeral bill has been paid in full and that no reimbursement is sought.

The guardian ad litem, Steven V. Dalton, Esq., appointed to represent the interests of the infant children has filed his report and indicated that he has no objection to the relief requested. The court has reviewed the affirmation of legal services submitted by the

guardian ad litem. He advised the court that he expended 14.25 hours on this proceeding, reviewing the Surrogate's Court file, researching law and promulgating the report. The court fixes the fee of the guardian ad litem in the sum of \$3,562.50 (*see Matter of Burk*, 6 AD2d 429 [1st Dept 1958]; *Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *affd* 23 NY2d 700 [1968]).

Accordingly, compromise of the proceeding for the sum of \$1,250,000.00 is approved, as is the allocation of the proceeds entirely to the cause of action for wrongful death and none to the cause of action for conscious pain and suffering (*see Cummins v. County of Onondaga*, 84 NY2d 322 [1994]). Attorneys' fees in the sum of \$275,000.00 are approved, and disbursements have been waived. The letters issued to the petitioner are modified to permit him to compromise or collect upon this claim and to permit future periodic payments from Prudential Assigned Settlement Services Corp. and/or The Prudential Insurance Company of America to be mailed directly to Alyssa Becker and Lawrence Becker II. The court dispenses with a bond, and approves the administrator's account.

The surviving spouse and infant children will share in the net recovery of \$975,000.00 in proportion to the pecuniary loss suffered by each (*see Matter of Kaiser*, 198 Misc 582 [Sur Ct, Kings County 1950]). After payment of the fee for the guardian ad litem, the surviving spouse, Lawrence C. Becker, is entitled to 49.81%; the infant child, Alyssa Becker, is entitled to 22.28%; and the infant child, Lawrence Becker II, is entitled to 27.91%.

As indicated above, the portion of the net settlement proceeds payable to the infants will be paid to Prudential Assigned Settlement Services Corp. to fund the purchase of structured settlement annuities through The Prudential Insurance Company of America, which are currently rated "A+" (Superior) or better by A.M. Best Company, and which will

pay future periodic payments directly to Alyssa Becker and Lawrence Becker II. Since the projected structured settlement submitted with the petition did not allow for a fee for the guardian ad litem, and was originally based on an older life expectancy table, the actual structure will likely vary slightly from that set forth in the petition. The decree to be entered must contain the final cost of the annuity and the guaranteed payments to be made. If any portion of an infant's respective share of the settlement proceeds is not used to purchase an annuity, such portion shall be paid to the guardian of the infant's property who has been, or will be, appointed by the court and said funds to be deposited in a guardianship account.

Settle decree on five days' notice with five additional days if service is by mail.

Dated: October 19, 2016  
Mineola, New York

**E N T E R:**

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**HON. MARGARET C. REILLY**  
**Judge of the Surrogate's Court**

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