

Matter of Lee
2018 NY Slip Op 32292(U)
September 5, 2018
Surrogate's Court, Nassau County
Docket Number: 2014-381643/A,B,C,D
Judge: Margaret C. Reilly
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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

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**In the Matter of the Application of Wilene Lee, as
Administrator of the Estate of**

**JEFFREY LEE,
a/k/a JEFFREY W. LEE,**

Deceased,

DECISION

**File No. 2014-381643/A,B,C,D
Dec. No. 34979**

**for leave to compromise a certain cause of action for
personal injury and a cause of action for wrongful death
of the decedent and have judicially settled an account of
the proceedings as such Administrator.**

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PRESENT: HON. MARGARET C. REILLY

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

Verified Petition with Exhibits.	1
Waivers and Consents.	2
Attorney’s Affirmation.	3
Accounting.	4
Proposed Decree.	5

In this uncontested proceeding for leave to allocate and distribute the proceeds of causes of action for conscious pain and suffering and wrongful death, the petition seeks a decree: (1) removing the restrictions on the petitioner’s letters of administration and authorizing the petitioner to compromise, settle, collect and distribute a claim for conscious pain and suffering and wrongful death of the decedent against Mount Sinai Hospital, in the sum of \$1,000,000.00; (2) allocating 15% of the settlement to the claim for conscious pain and suffering; (3) allocating 85% of the settlement to the claim for wrongful death; (4) dispensing with the filing of a bond; (5) judicially settling the account of the petitioner as administrator in this proceeding; (6) allowing the petitioner’s commissions, pursuant to SCPA § 2307, in the amount of \$26,169.44, to be paid out of the settlement proceeds; (7)

authorizing and permitting the Jacob D. Fuchsberg Law Firm, LLP, to distribute the settlement proceeds as follows: (a) to the Jacob D. Fuchsberg Law Firm, LLP, the sum of \$261,018.70, as and for their attorneys' fees, as previously approved by the Supreme Court, New York County; (b) to Wilene Lee, individually, the sum of \$26,169.44, as and for her fiduciary commissions; (c) to Wilene Lee, individually, the sum of \$78,460.89, as and for her share of the net settlement proceeds allocated to the cause of action for the decedent's conscious pain and suffering, pursuant to EPTL § 4-1.1; (d) to Rashawn Lee, individually, \$14,230.44, as and for his share of the net settlement proceeds allocated to the cause of action for the decedent's conscious pain and suffering, pursuant to EPTL § 4-1.1; (e) to Janae Lee, individually, \$14,230.44, as and for her share of the net settlement proceeds allocated to the cause of action for the decedent's conscious pain and suffering, pursuant to EPTL § 4-1.1; (f) to Wilene Lee, individually, the sum of \$530,890.09, as and for her share of the net settlement proceeds allocated to the cause of action for the decedent's wrongful death, pursuant to EPTL § 5-4.4; and (g) to Janae Lee, individually, the sum of \$75,000.00, as and for her share of the net settlement proceeds allocated to the cause of action for the decedent's wrongful death, pursuant to EPTL § 5-4.4; and (8) discharging and releasing the Jacob D. Fuchsberg Law Firm, LLP, from all responsibility and liability with respect to the distribution of the settlement proceeds presently being held in escrow, upon compliance with the terms of the decree to be entered herein.

The decedent, Jeffrey Lee, died intestate on August 23, 2014, survived by his wife, Wilene Lee, who is the petitioner, and by two adult children, Rashawn Lee and Janae Lee. Letters of limited administration issued to the petitioner on October 15, 2014. The decedent's two children, as well as the New York State Department of Taxation and Finance, each filed

a waiver and consent in this proceeding. There are no other parties whose consent is necessary or who are entitled to notice of this proceeding (EPTL § 5-4.4 [a]; 22 NYCRR §207.38 [c]).

A medical malpractice action was commenced on behalf of the decedent in Supreme Court, New York County against Charles L. Madeira, M.D. and Mount Sinai Hospital. After the decedent's death, the complaint was amended to substitute the petitioner as administrator of the decedent's estate and to add a cause of action for wrongful death. After mediation, Mount Sinai Hospital offered \$1,000,000.00 in settlement of the matter.

By order dated July 12, 2017, Hon. Martin Shulman of Supreme Court, New York County approved the settlement with Mount Sinai Hospital in the sum of \$1,000,000.00 and approved the discontinuance of the matter as against Charles L. Madeira, M.D. By that same order, the court also approved disbursements of \$29,398.38 and attorneys' fees of \$231,620.32, for a total of \$261,018.70, to the Jacob D. Fuchsberg Law Firm, LLP. The order referred the matter to this court for distribution of the net settlement proceeds of \$738,981.30.

There are no known creditors of the estate. The decedent's funeral expenses have been paid in full and no reimbursement is sought. Petitioner seeks her statutory commissions herein, pursuant to SCPA § 2307, in the amount of \$26,169.44, which is hereby approved.

Given the circumstances of the decedent's death, the allocation of the settlement proceeds, 15% (\$150,000.00) to the cause of action for conscious pain and suffering and 85% (\$850,000.00) to the cause of action for wrongful death, is approved.

After deducting a proportionate amount of the attorneys' fees, disbursements and the petitioner's commission, the net settlement proceeds allocated to the cause of action for

conscious pain and suffering are to be distributed, pursuant to EPTL § 4-1.1 (a), as follows: \$78,460.89 to the petitioner, Wilene Lee, as the surviving spouse of the decedent; \$14,230.45 to Rashawn Lee, as the decedent's son; and \$14,230.44 to Janae Lee, as the decedent's daughter.

The net recovery in a wrongful death action is distributed to the decedent's distributees in accordance with the pecuniary injuries suffered by them (EPTL § 5-4.4). The petition alleges that both the decedent's spouse and the decedent's daughter, Janae Lee, relied upon the decedent for substantial financial support and suffered significant pecuniary loss. After deducting a proportionate amount of the attorneys' fees, disbursements and the petitioner's commission, the net settlement proceeds allocated to the cause of action for wrongful death are to be distributed as requested in the petition as follows: \$530,890.08 to the decedent's surviving spouse, Wilene Lee, and \$75,000 to the decedent's daughter, Janae Lee.

The petitioner is not required to file a bond herein. The account of the petitioner is judicially settled. The restrictions on the letters of limited administration previously issued to the petitioner shall be removed to allow her to effectuate the settlement.

The decree submitted has been reviewed, found to be in proper order, and will be signed.

Dated: September 5, 2018
Mineola, New York

E N T E R:

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

cc: Walter Osuna, Esq.
The Jacob D. Fuchsberg Law Firm, LLP
500 Fifth Avenue, 45th Floor
New York, New York 10110