

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

MARCIA A KEELING, ADMINISTRATOR  
OF THE ESTATE OF  
DAVAGEAH K. JONES, Deceased,

Plaintiff,

v.

Case Nos. 2:19-cv-225 (AWA-DEM) and  
2:20-cv-245 (AWA-DEM)

CORRECT CARE SOLUTIONS, LLC,  
now conducting business as  
WELLPATH LLC, *et al.*,

Defendants.

**ORDER APPROVING WRONGFUL-DEATH SETTLEMENT**

THIS day came Plaintiff Marcia A Keeling ("Keeling"), Administrator of the Estate of Davageah K. Jones, Deceased, in person and by counsel, and Respondent, by counsel, and, pursuant to Virginia Code§ 8.01-55 and upon Petitioner's motion for approval of wrongful-death settlement, and notice to the statutory beneficiaries, Petitioner moved for approval of the wrongful-death settlement.

It appearing to the Court that the matters agreed upon by the parties as set forth here in be and the same hereby are ratified, approved, and confirmed.

Specifically, it appearing to the Court that:

1. All parties required by law to be convened are convened or are deemed convened by their signatures to this Order or by written notice of the hearing.
2. The parties have reached a settlement contingent upon Court approval.

3. On May 15, 2018 at 4:53 a.m., 18-year-old Davageah K. Jones ("DJ") was pronounced dead by EMS, after being found unresponsive in his cell at Hampton Roads Regional Jail (the "HRRJ").

4. On August 15, 2018, Plaintiff Keeling, the mother of Decedent DJ, duly qualified as Administrator of the Estate of Davageah K. Jones, Deceased, in the Norfolk Circuit Court, under the applicable provisions of law.

5. On April 30, 2019, Plaintiff Keeling, Administrator of the Estate of Davageah K. Jones, Deceased, filed a lawsuit in the U.S. District Court for the Eastern District of Virginia asserting claims pursuant to 42 U.S.C. § 1983, as well as claims pursuant to Virginia's wrongful-death and, in the alternative, survival claims statutes. (*Plaintiff Marcia A. Keeling, Administrator of the Estate of Davageah K. Jones, Deceased, by Counsel, v. Defendants Correct Care Solutions, LLC, now conducting business as Wellpath LLC, et al.*, Civil Action Nos. 2:19-cv-225).

6. On May 13, 2020, Plaintiff Keeling, Administrator of the Estate of Davageah K. Jones, Deceased, filed a lawsuit in the U.S. District Court for the Eastern District of Virginia asserting federal civil rights claims as well as state wrongful-death and, in the alternative, survival claims statutes, against Defendants Correct Care Solutions, LLC, now conducting business as Wellpath LLC, and three medical care employees stemming from DJ's injuries and death. (*Plaintiff Marcia A. Keeling, Administrator of the Estate of Davageah K. Jones, Deceased, by Counsel, v. Defendants Correct Care Solutions, LLC, now conducting business as Wellpath LLC, et al.*, Civil Action No. 2:20-cv-245.)

7. On June 3, 2020, with the consent of all parties, the foregoing actions were consolidated and are collectively referred to herein as the "Lawsuit."

8. In consideration of the release set forth above, and subject to Court approval, CCS, Baron, and HRRJA agree to make cash and/or future periodic payments to the Decedent's Statutory

Beneficiaries and/or entities and individuals designated by them ("Payees") with a present value of Eight Hundred Thousand Dollars (\$800,000.00). Specifically, Defendant CCS shall pay, or cause to be paid, cash payments to the Decedents' Statutory Beneficiaries and/or designated Payees totaling Four Hundred Thirty Thousand Dollars (\$430,000.00), and on behalf of Defendants HRRJA, Hackworth, Frey, Jordan, Kithcart, and Baron, the Commonwealth of Virginia, Division of Risk Management ("CommonwealthVA") shall pay, or cause to be paid, cash and future periodic payments to the Decedents' Statutory Beneficiaries and/or designated Payees with a present value of Three Hundred Seventy Thousand and 00/100 Dollars (\$370,000.00), in complete settlement of the above-referenced Lawsuit and Plaintiffs' claims.

9. The Court finds that Plaintiff had the authority to file this petition on behalf of the Estate of Davageah K. Jones, Deceased; to negotiate and agree to a settlement; to sign the Settlement Agreement and Release ("Agreement") on behalf of the Estate of Davageah K. Jones, Deceased, consenting to the resolution of the claims as provided for in the Agreement; and to notice this petition for hearing for approval of the compromise settlement.

10. The settlement of this case for cash and future periodic payments, and the disbursement of the settlement proceeds as outlined herein and in the Disbursements Sheet, have been approved by Ros Willis, Esq. as Guardian *ad litem* for minors C.C., T.C., and A.C.<sup>1</sup> Mr. Willis's findings as Guardian *ad litem* are set forth in his Answer and Report of the Guardian *ad litem* (ECF No. 122), and fully considered by the Court.

11. The settlement of this case for cash and future periodic payments, and the disbursement of the settlement proceeds as outlined herein and in the Disbursements Sheet, have been approved by Kevin Diamonstein, Esq. as Guardian *ad litem* for minors L.M., T.M., and D.M.

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<sup>1</sup> In conformance with this Court's Local Rule 7 and Fed.R.Civ.P. 5.2, personal identifiers have been redacted. A " Disbursements Sheet," which contains complete identifiers for all relevant persons, has been filed Under Seal in this matter. *See* ECF No. 116.

Mr. Diamonstein's findings as Guardian *ad litem* are set forth in his Report of the Guardian *ad litem* (ECF No. 123), and fully considered by the Court.

12. The Court finds the settlement to be fair and reasonable under all the circumstances.

13. The parties represent that the Decedent, DJ, is survived by the following:

**a. Parents**

Plaintiff **Marcia A. Keeling**, Administrator of the Estate of Davageah K. Jones, Deceased. Plaintiff is also DJ's mother and one of his statutory beneficiaries.

**DeAngelo McClenny**, father and statutory beneficiary of DJ.

**b. Siblings**

i. Mother- Marcia Keeling

**C.C.**, half-sibling and Statutory Beneficiary of DJ.

**T.C.**, half-sibling and Statutory Beneficiary of DJ.

**A.C.**, half-sibling and Statutory Beneficiary of DJ.

ii. Father - DeAngelo McClemw

**Lataveon McClenny**, half-sibling and Statutory Beneficiary of DJ.

**L.M.**, half-sibling and Statutory Beneficiary of DJ.

**T.M.**, half-sibling and Statutory Beneficiary of DJ.

**D.M.**, half-sibling and Statutory Beneficiary of DJ.

As discussed at note 1, the Court observes that the full names, current addresses, and dates of birth of the foregoing minors are set out in the Disbursement Sheet, which has been filed Under Seal herewith.

That, as per Virginia Code § 8.01-53 (1950, as amended), which designates applicable classes of beneficiaries, the foregoing parents and siblings DJ are DJ's statutory beneficiaries (the "Statutory Beneficiaries").

Regarding funeral and burial expenses, the following has been represented to the Court:

- The expenses for DJ's funeral with Keith Matthews Funeral Home in Norfolk, VA totaled \$6,098.20 (it was originally estimated higher at \$6,598.20 and then decreased). DJ's maternal grandmother Mary Jones has paid \$4,300.00 of the total. A balance of \$1,798.20 remains, which Ms. Jones plans to pay.
- Cemetery services and burial plot for DJ from the City of Norfolk Bureau of Cemeteries totaled \$2,075.00. These expenses were paid by Hilton Harrell, Plaintiff's cousin, and nephew of Mary Jones, DJ's maternal grandmother.
- The family has been informed that total charges for a headstone for DJ's grave from Norfolk Monument Co. would be \$2,555.60. DJ does not yet have a headstone as the family has been unable to afford these expenses. Ms. Jones also plans to pay for a headstone for DJ's grave.
- Expenses of \$110.19 were incurred by DJ's grandmother Mary Jones for DJ's burial clothing.

Based upon the foregoing, the Court ORDERS that Mary Jones be reimbursed in the amount of \$8,763.99 and Hilton Harrell in the amount of \$2,075.00.

It has further been represented to the Court that the City of Portsmouth has provided to the Plaintiff a Final Notice and Request for Payment lien document for charges incurred with Portsmouth Fire and EMS for services on May 15, 2018. Total charges are \$185.00.

Additionally, the Commonwealth of Virginia Division of Child Support Enforcement has asserted a lien in the amount of \$85,357.45 as to any proceeds paid to DeAngelo McClenny.

The parties represent that after a reasonable investigation, which included contacting the Child Support Services Division in South Carolina (the applicable jurisdiction of certain minor statutory beneficiaries), the parties are not aware of any other obligated liens in this matter.

The Court ORDERS that payments be made to the City of Portsmouth and, as further discussed below, to the Commonwealth of Virginia Division of Child Support Enforcement (in connection with distribution of monies to DeAngelo McClenny) to satisfy the foregoing liens.

Following the review and acceptance of the report of Guardian *ad litem*, Ros Willis, Esq., it is ORDERED that the Guardian's fees and costs totaling \$2,500.00 be equally satisfied by the Defendants (collectively paying \$1,250.00) and Plaintiffs counsel (collectively paying \$1,250.00; Plaintiffs counsel agreed to reduce their fee to make the payment).

Following the review and acceptance of the report of Guardian *ad litem*, Kevin Diamonstein, Esq., it is ORDERED that the Guardian's fees and costs totaling \$2,500.00 be equally satisfied by the Defendants (collectively paying \$1,250.00) and Plaintiffs counsel (collectively paying \$1,250.00; Plaintiffs counsel agreed to reduce their fee to make the payment).

It appearing to the Court that Swartz Taliaferro Swartz & Goodove, The Krudys Law Firm, PLC, and John Preis, Esq., have provided valuable legal assistance to the Plaintiff in the prosecution of this matter and that their fees are reasonable, it is hereby ORDERED that Swartz Taliaferro Swartz & Goodove be awarded \$120,350.00, The Krudys Law Firm, PLC be awarded \$194,420.00, and John F. Preis, Esq. be awarded \$2,730.00. These sums will be paid out of the settlement proceeds in this matter; and,

It further appearing to the Court that certain costs and reimbursable expenses have been incurred and advanced by counsel in this matter, it is hereby ORDERED that Swartz Taliaferro Swartz & Goodove be reimbursed for costs advanced in the amount of 42,036.79,<sup>2</sup> and The Krudys Law Firm, PLC be reimbursed for costs advanced in the amount of \$66,761.71, which sum is to be paid out of the settlement proceeds in this matter; and,

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<sup>2</sup> Includes \$1,000.00 to be held in escrow to satisfy any additional costs, with any remainder to be paid to Marcia Keeling.

The foregoing payments set forth herein and in the Disbursements Sheet constitute damages on account of personal physical injuries and physical sickness, within the meaning of Section 104 (a)(2) of the Internal Revenue Code of 1986, as amended. The entire payment is compensatory in nature to compensate the beneficiaries for the loss of DJ, there being no finding warranting punitive damages, and none of these funds are in any way deemed to relate to any punitive claims that were brought or could have been brought against any defendant.

The Court ORDERS that the distributions to the statutory beneficiaries, as detailed in the Distribution Sheet and further specified below, be made.

As to the payment to DeAngelo McClenny, Plaintiffs counsel are ORDERED to make payment in the amount of \$85,357.45 to satisfy the Commonwealth of Virginia Division of Child Support Enforcement lien. (The net amount distributed to DeAngelo McClenny is \$49,778.49.)

With regard to the obligation to make periodic payments to A.C. and L.M, the CommonwealthVA(the "Assignor") shall make a "qualified assignment" within the meaning and subject to the conditions of Section 130(c) of the Internal Revenue Code of 1986, as amended (the "Code") to Prudential Assigned Settlement Services Corporation ("Pru Assignee"). With regard to the obligation to make periodic payments to T. M. and D.M., the CommonwealthVA (the "Assignor") shall make a "qualified assignment" within the meaning and subject to the conditions of Section 130(c) of the Internal Revenue Code of 1986, as amended (the "Code") to USAA Annuity Services Corporation ("USAA Assignee").

Upon the effective dates, the Assignor shall be released and discharged from all obligations to make periodic payments as assigned in each assignment, and the Assignee shall be substituted as obligor of such payments for the Commonwealth VA. Pru Assignee will fund the Periodic Payments by purchasing a "qualified funding asset," as defined in Section 130(d) of the Code, in the form of an annuity contract providing for periodic payments from The Prudential Insurance

Company of America. USAA Assignee will fund the Periodic Payments by purchasing a "qualified funding asset," as defined in Section 130(d) of the Code, in the form of an annuity contract providing for periodic payments from USAA Life Insurance Company. Both life insurance companies are authorized to do business in the Commonwealth of Virginia and is rated at least "A+" by Best Insurance Reports. The periodic payments will be paid according to the schedule included with the Disbursement Sheet.

With regard to minor half-siblings C.C. and T.C., payments in the amount of \$12,870.09 each, will be distributed by the Defendants to Commonwealth Community Trust for the creation of a First-Party Pooled Special Needs Trust, pursuant to a joinder agreement signed by Administrator Marcia Keeling.

Upon tender of the settlement funds detailed in the Disbursements Sheet and/or referenced herein, it is ORDERED that the Defendants Correct Care Solutions, LLC, now conducting business as Wellpath LLC, Hampton Roads Regional Jail Authority, David A. Hackworth, Nichole Marie Frey, Tyree Jordan, Michael Kithcart, and Joseph P. Baron (herein referred to as " Defendants"), and their heirs, insurers, or reinsurers, their past, present and future owners, officers, directors, stockholders, attorneys, agents, servants, representatives, employees, independent contractors, subsidiaries, parent corporations, affiliated corporations, partners, predecessors and successors in interest, heirs, executors and administrators, and assigns of any of the foregoing, are released and fully discharged from all liability for any and all claims, including any claim for payment by a healthcare treatment provider, third party payer, including Medicare and Medicaid, any claim for attorneys' fees, costs, and interest, which may or can be asserted against any or all of the Defendants or employees or independent contractors either now or in the past employed or retained by the Defendants, arising out of the detention, incarceration,



imprisonment and death of DJ, including all claims asserted or which could be asserted in the Lawsuit, except as otherwise stated herein.

ORDERED, that upon Defendants making the payments referenced above, all Defendants will be released from any and all liability and claims arising from the injuries to and the death of DJ and that this matter be DISMISSED WITH PREJUDICE as to all Defendants; and it is further

ORDERED, that the Clerk of the Court issue certified copies of this Order to all counsel.

ORDERED, that the Settlement Agreement and Release executed by the Plaintiff and counsel for the Plaintiff, as well as the Special Needs Trust joinder agreement(s), are incorporated herein and made a part of this Order, although the Disbursements Sheet and the foregoing documents, shall be sealed.

ORDERED, that the Clerk of the Court issue certified copies of this Order to all counsel forthwith.

ENTER this 5 day of October, 2020.

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/s/  
Arenda L. Wright Allen  
United States District Judge