

IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA

MARY K. DEAN, Executrix of the
Estate Of CHARLES DEAN,

Plaintiff,

v.

Civil Action No.: _____
Honorable _____

UNITED STATES OF AMERICA,

Defendant.

VERIFIED PETITION FOR APPROVAL OF SETTLEMENT

COMES NOW the Plaintiff, Mary K. Dean, Executrix of the Estate of Charles Dean, deceased, pursuant to WV Code ' 55-7-7, and hereby represents unto this Honorable Court as follows:

1. This action arises out of the death of Charles Dean (sometimes referred to as "Decedent") on April 26, 2017.
2. Plaintiff contends that Decedent died on April 26, 2017, due to injuries he suffered when he was wrongfully injected with insulin due to multiple system failures by the employees and administration of Louis A. Johnson Veterans Administration Medical Center.
3. Plaintiff, Mary K. Dean, Executrix of the Estate of Charles Dean, deceased, is the personal representative of Charles Dean's estate within the meaning of WV Code §55-7-6(a). Plaintiff and her attorney have reached a tentative settlement in the amount of Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) with the United States of America, regarding compensation for damages as they relate to said wrongful death of Charles Dean. Under the terms of the tentative settlement, the United States of America, shall pay the sum of Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) in consideration of a complete release of all claims against

the United States of America, including pending Federal Tort Claims Act (FTCA) claims.

4. The Decedent is survived by potential beneficiaries all of whom are adults. The following persons are all the living potential legal beneficiaries pursuant to WV Code § 55-7-6(b) of Charles Dean:

- Mary K. Dean - wife;
- Courtney Luckasevic – daughter; and
- Travis Dean – son.

5. The Plaintiff in this action hired attorneys Tony L. O’Dell, Tiano O’Dell, PLLC, to prosecute this civil action on her behalf. Plaintiff’s attorneys have spent their time, effort and money in prosecuting this civil action, including their time and expenses for expert witnesses and other litigation related expenses. The Plaintiff requests that the previously agreed upon 25% contingency fee and litigation costs contract related to prosecuting this claim against the United States of America to be reduced to a 20% contingency fee and costs pursuant to 28 *U.S.C.* §2678, which fees and cost are to be paid from the proposed settlement, which is consistent with the attorney fees allowed under the Federal Tort Claims Act and 28 *U.S.C.* §2678, and that Tiano O’Dell, PLLC reimbursed for advanced litigation expenses, which sums are being finalized and will be presented to the Court.

6. The Plaintiff requests that the settlement with the United States of America be distributed as follows:

- a. That plaintiff’s 20% contingency fee on the total amount of the settlement be distributed to Tiano O’Dell, PLLC equally for attorney fees;
- b. That the costs for advanced litigation expenses in the amount presented be

reimbursed in full to Tiano O'Dell, PLLC in accordance with the terms of the fee agreement between Plaintiff and her attorney Tiano O'Dell, PLLC;

- c. That Plaintiff be permitted to pay the 1% medical malpractice settlement tax per West Virginia law.
- c. That the balance of the settlement funds after payment of the above be distributed in accordance with the signed Consents of Adult Beneficiaries or as otherwise Ordered by this Court.

7. Upon the receipt of all sums due and owing from the United States of America, the Plaintiff further requests that she be allowed to execute an appropriate release on behalf of herself and on behalf of the Estate of Charles Dean to release the United States of America from liability in this matter, and to execute all other papers and documents necessary to finalize all claims against the United States of America.

8. The Plaintiff further requests that the Court declare that this settlement is a good faith settlement under West Virginia law, and that the settlement is in the best interests of the Estate and its beneficiaries.

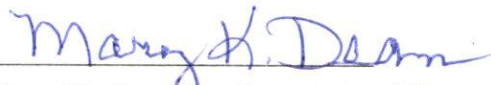
WHEREFORE, the Plaintiff respectfully requests that the Court set this matter for hearing to approve the terms of the settlement or by way of Agreed Order with the consent of each potential beneficiary, and to grant such other and further relief as this Court deems necessary.

**MARY K. DEAN, Executrix of the Estate of
CHARLES DEAN,**

By Counsel

/s/ Tony L. O'Dell
Tony L. O'Dell (WV Bar #5770)
Cheryl A. Fisher (WV Bar #6379)

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Counsel for plaintiff


Mary K. Dean, as Executrix of the
Estate of Charles Dean

VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF Upshur to-wit:

This day personally appeared before me, the undersigned authority, **Mary K. Dean**, whose name is signed to the foregoing Petition, and made oath that the statements and allegations contained therein are true, except insofar as they are therein stated to be upon information, he believes them to be true.

Taken, subscribed and sworn to before the undersigned authority this 24th day of April, 2021.

My commission expires: July 16, 2021




NOTARY PUBLIC