

Sansoucie v New York & Presbyt. Hosp.

2021 NY Slip Op 32466(U)

November 18, 2021

Supreme Court, New York County

Docket Number: Index No. 805105/2020

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 6 of the Supreme Court of the State of New York, held in and for the County of New York at the Courthouse thereof located at ~~60 Centre~~ ^{71 Thomas} Street, County of New York, City and State of New York on the ~~15th~~ ^{16th} day of ~~November~~ ^{November} 2021.

P R E S E N T: Hon. Eileen A. Rakower, Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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DAVID SANSOUCIE, by the guardian of his Person and Property, ALLISON SANSOUCIE, and ALLISON SANSOUCIE, Individually,

**AMENDED
COMPROMISE
ORDER**

Plaintiffs,

-against-

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805105/2020

THE NEW YORK and PRESBYTERIAN HOSPITAL, NEW YORK PRESBYTERIAN HOSPITAL/ WEILL CORNELL MEDICAL CENTER, and NEW YORK-PRESBYTERIAN HOSPITAL,

Defendants.

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Upon reading and filing the affidavit of Petitioner, ALLISON SANSOUCIE, wife and guardian of the person and property of DAVID SANSOUCIE, duly sworn to the 17th day of November 2021 and the exhibits annexed thereto wherein the Petitioner seeks an Amended Compromise Order as being in the best interest of her ward, DAVID SANSOUCIE; the original petition of ALLISON SANSOUCIE, duly sworn to the 16th day of October 2021 and the exhibits annexed thereto; the affirmation of MICHAEL V. KAPLEN, ESQ. attorney for plaintiffs dated the 17th day of November 2021 and the exhibits annexed thereto submitted in support of the instant application for an Amended

Compromise Order; the original affirmation of MICHAEL V. KAPLEN, ESQ. dated the 19th day of October 2021, and the exhibits annexed thereto; and it appearing that ALLISON SANSOUCIE as the guardian of the person and property of DAVID SANSOUCIE has requested an amendment to the Compromise Order herein as being in the best interest of her ward, the plaintiff DAVID SANSOUCIE; and it appearing that the best interests of the judicially declared incapacitated person, DAVID SANSOUCIE will be served by amending the Compromise Order dated October 27, 2021 as requested herein; and upon all of the papers, pleadings and proceedings heretofore had herein,

NOW, on motion of MICHAEL V. KAPLEN, ESQ., Attorney for the plaintiffs, it is **ORDERED**, that the relief requested by ALLISON SANSOUCIE, as guardian of the person and property of DAVID SANSOUCIE seeking leave to amend the Compromise Order dated October 27, 2021 is in all respects granted; and it is further

ORDERED, that ALLISON SANSOUCIE, as guardian of the person and property of DAVID SANSOUCIE and ALLISON SANSOUCIE, individually be and hereby are authorized to enter into a settlement of the within action, pursuant to the terms set forth herein; and it is further

ORDERED, that the above matter is settled for future periodic payments and up-front cash at a cost in the total sum of FIVE MILLION THREE HUNDRED FIFTY THOUSAND DOLLARS (\$5,350,000.00) allocated Eighty Percent (80%) to the Guardian of the property of DAVID SANSOUCIE in the sum of FOUR MILLION TWO HUNDRED EIGHTY THOUSAND DOLLARS (\$4,280,000.00) and Twenty Percent (20%) to ALLISON SANSOUCIE, Individually, in the sum of ONE MILLION SEVENTY THOUSAND DOLLARS (\$1,070,000.00), which represents the total cost to

the defendants of the settlement herein inclusive of the structured settlement components whose costs the court has required the defendants to disclose; and it is further

ORDERED, that defendant New York-Presbyterian Hospital, is authorized and directed to pay the sum of ONE HUNDRED FORTY THOUSAND FOUR HUNDRED FIFTY-FIVE DOLLARS and NO CENTS (\$140,455.00) in up-front cash to DE CARO & KAPLEN, LLP, as a portion of their legal fee; and it is further

ORDERED, that defendant, New York-Presbyterian Hospital, is authorized and directed to pay disbursements to the law firm of DE CARO & KAPLEN, LLP in the amount of FIFTY THOUSAND FOUR HUNDRED NINE DOLLARS and FOURTEEN CENTS (\$50,409.14); and it further

ORDERED, that the defendant, New York-Presbyterian Hospital, shall be required to make the following periodic payments under the terms hereafter set forth,

(A) Future Periodic Payments to be paid as follows to the legal Guardian of the Property of David Sansoucic:

(i) Annuity Issuer: Metropolitan Tower Life Insurance Company

Beginning 10/1/2021, \$9,885.50 payable monthly, guaranteed for 10 years, increasing at a rate of 2% compounded annually, with the last guaranteed payment on 9/1/2031.

(cost of annuity: \$1,222,810.44)

(ii) Annuity Issuer: The United States Life Insurance Company in the City of New York

Beginning 10/1/2021, \$9,885.50 payable monthly, guaranteed for 10 years, increasing at a rate of 2% compounded annually, with the last guaranteed payment on 9/1/2031.

(cost of annuity: \$1,221,181.00)

(iii) Annuity Issuer: Pacific Life & Annuity Company

Beginning 10/1/2031, \$14,425.54 payable monthly for life, guaranteed for 5 years and 2 months, increasing at a rate of 2% compounded annually, with the last guaranteed payment on 11/1/2036.

(cost of annuity: \$912,752.00)

The above aforementioned payments stated as guaranteed shall be paid whether or not David Sansoucie is alive. In the event that David Sansoucie dies at any time prior to the receipt of all payments described as guaranteed, any remaining guaranteed payments shall be paid when due to his Estate; and it is further

(B) Future Periodic Payments to be paid as follows to DE CARO & KAPLEN, LLP:

The plaintiffs authorize and instruct payment to be made to plaintiffs' attorney as provided herein. The plaintiffs acknowledge and agree that these payment instructions are solely for the plaintiffs' convenience and do not provide the plaintiffs' attorney with any ownership interest in any portion of the annuity or the settlement other than the right to receive the payments in the future as more specifically set forth below.

Beginning 1/15/2022, \$8,300.00 payable monthly for 84 months, with the last guaranteed payment on 12/15/2028.

(cost of annuity: \$680,000.00; Annuity Issuer: The United States Life Insurance Company in the City of New York)

In the event of dissolution of DE CARO & KAPLEN, LLP, all guaranteed non-life contingent payments specified in (B) above that have not been paid as of the dissolution, shall be continued to be paid on the dates specified therein to its successor in interest.

This beneficiary designation is irrevocable; and it is further

ORDERED, that the obligation of the defendant, New York-Presbyterian Hospital, in paragraph (A)(i) above may be met by assigning to and arranging for an assumption by

MetLife Assignment Company, Inc. ("Assignee") of the said defendant's obligation to make the future periodic payments set forth in paragraph (A)(i) above, pursuant to Internal Revenue Code §130(c), and that MetLife Assignment Company, Inc. may fund the obligation assumed by the purchase of an annuity from Metropolitan Tower Life Insurance Company, an A.M. Best Company rated A+ insurer licensed to do business in the State of New York, which shall be owned by MetLife Assignment Company, Inc. pursuant to Internal Revenue Code §130(d). David Sansoucie shall have a security interest in the annuity. Metropolitan Tower Life Insurance Company shall guarantee the performance of MetLife Assignment Company, Inc.; and it is further

ORDERED, that the obligation of the defendant, New York-Presbyterian Hospital, in paragraph (A)(ii) above may be met by assigning to and arranging for an assumption by American General Annuity Service Corporation ("Assignee") of the said defendant's obligation to make the future periodic payments set forth in paragraph (A)(ii) above, pursuant to Internal Revenue Code §130(c), and that American General Annuity Service Corporation may fund the obligation assumed by the purchase of an annuity from The United States Life Insurance Company in the City of New York, an A.M. Best Company rated A insurer licensed to do business in the State of New York, which shall be owned by American General Annuity Service Corporation pursuant to Internal Revenue Code §130(d). David Sansoucie shall have a security interest in the annuity. AGC Life Insurance Company shall guarantee the performance of American General Annuity Service Corporation; and it is further

ORDERED, that the obligation of the defendant, New York-Presbyterian Hospital, in paragraph (A)(iii) above may be met by assigning to and arranging for an assumption by Pacific Life & Annuity Services, Inc. ("Assignee") of the said defendant's obligation to

make the future periodic payments set forth in paragraph (A)(iii) above, pursuant to Internal Revenue Code §130(c), and that Pacific Life & Annuity Services, Inc. may fund the obligation assumed by the purchase of an annuity from Pacific Life & Annuity Company, an A.M. Best Company rated A+ insurer licensed to do business in the State of New York, which shall be owned by Pacific Life & Annuity Services, Inc. pursuant to Internal Revenue Code §130(d). David Sansoucie shall have a security interest in the annuity. Pacific LifeCorp shall guarantee the performance of Pacific Life & Annuity Services, Inc.; and it is further

ORDERED, that the obligation of the defendant, New York-Presbyterian Hospital, in paragraph (B) above may be met by assigning to and arranging for an assumption by American General Annuity Service Corporation ("Assignee") of the said defendant's obligation to make the future periodic payments set forth in paragraph (B) above, pursuant to Internal Revenue Code §130(c), and that American General Annuity Service Corporation may fund the obligation assumed by the purchase of an annuity from The United States Life Insurance Company in the City of New York, an A.M. Best Company rated A insurer licensed to do business in the State of New York, which shall be owned by American General Annuity Service Corporation pursuant to Internal Revenue Code §130(d). AGC Life Insurance Company shall guarantee the performance of American General Annuity Service Corporation; and it is further

ORDERED, that the defendant, New York-Presbyterian Hospital, shall immediately forthwith fund the periodic payment obligation in paragraph (A)(i) by issuing a check, draft or wire transfer made payable to or wired to MetLife Assignment Company, Inc. in the sum of One Million Two Hundred Twenty-Two Thousand Eight Hundred Ten and 44/100 Dollars (\$1,222,810.44). If payment is made by check or draft, said check or

draft shall be delivered to Kipnes Crowley Group LLC, one the structured settlement brokers placing the case; and it is further

ORDERED, that the defendant, New York-Presbyterian Hospital, shall immediately forthwith fund the periodic payment obligations in paragraphs (A)(ii) and (B) by issuing a check, draft or wire transfer made payable to or wired to The United States Life Insurance Company in the City of New York in the sum of One Million Nine Hundred One Thousand One Hundred Eighty-One and 00/100 Dollars (\$1,901,181.00). If payment is made by check or draft, said check or draft shall be delivered to Kipnes Crowley Group LLC, one the structured settlement brokers placing the case; and it is further

ORDERED, that the defendant, New York-Presbyterian Hospital, shall immediately forthwith fund the periodic payment obligation in paragraph (A)(iii) by issuing a check, draft or wire transfer made payable to or wired to Pacific Life & Annuity Services, Inc. in the sum of Nine Hundred Twelve Thousand Seven Hundred Fifty-Two and 00/100 Dollars (\$912,752.00). If payment is made by check or draft, said check or draft shall be delivered to Kipnes Crowley Group LLC, one the structured settlement brokers placing the case; and it is further

ORDERED, that no part of the sum being paid by the defendant, New York-Presbyterian Hospital, to provide future periodic payments as set forth in this order may be paid directly to plaintiffs, this Court having determined that a structured settlement is in the best interest of the incapacitated plaintiff and that said periodic payments constitute damages on account of physical injury or physical sickness in a case involving physical injury or physical sickness within the meaning of §104(a)(2) and §130(c) of the Internal Revenue Code of 1986, as amended; and it is further

ORDERED, that the following cash payments be made by defendant, New York-Presbyterian Hospital, in settlement of the cause of action brought by ALLISON SANSOUCIE as the guardian of the person and property of DAVID SANSOUCIE:

(A) To the Guardian of the Property OF DAVID SANSOUCIE, the sum of ONE HUNDRED SIXTY-EIGHT THOUSAND SEVEN HUNDRED TWELVE DOLLARS and FIFTY-EIGHT CENTS (\$168,712.58), to be marshaled upon further Order of the Supreme Court, New York County Guardianship Part;

(B) To DE CARO & KAPLEN, LLP as and for their disbursements, the sum of FORTY THOUSAND THREE HUNDRED TWENTY-SEVEN DOLLARS and THIRTY-ONE CENTS (\$40,327.31);

(C) To DE CARO & KAPLEN, LLP as and for a portion of their legal fee, the sum of ONE HUNDRED FORTY THOUSAND FOUR HUNDRED FIFTY-FIVE DOLLARS and NO CENTS (\$140,455.00);

(D) To THE CITY OF NEW YORK as for their lien for Medicaid services provided to DAVID SANSOUCIE, the sum of ONE HUNDRED SIX THOUSAND ONE HUNDRED FORTY-NINE DOLLARS and TWENTY-EIGHT CENTS (\$106,149.28) in full satisfaction of their lien;

(E) To THE CENTERS FOR MEDICARE and MEDICAID SERVICES (CMS), the sum of FIVE THOUSAND FOUR HUNDRED SIXTY-SEVEN DOLLARS and SIXTY-THREE CENTS (\$5,467.63) for Medicare services provided to DAVID SANSOUCIE in full satisfaction of their lien;

(F) To the Guardian of the property of DAVID SANSOUCIE for the creation of a Liability Medicare Set Aside Trust (LMSA) in the sum of TWENTY-EIGHT THOUSAND SIX HUNDRED THIRTY TWO DOLLARS and FORTY NINE CENTS

(\$28,632.49) for future medical treatments and future prescription medication related to the brain injuries sustained by DAVID SANSOUCIE to protect the future interest of Medicare; and it is further

ORDERED, that the following cash payments be made by defendant, New York-Presbyterian Hospital, in settlement of the cause of action brought by ALLISON SANSOUCIE, individually:

(A) To ALLISON SANSOUCIE, the sum of EIGHT HUNDRED THIRTEEN THOUSAND FOUR HUNDRED THIRTY DOLLARS and FORTY-FOUR CENTS (\$813,430.44)

(B) To DE CARO & KAPLEN, LLP, the sum of TEN THOUSAND AND EIGHTY-ONE DOLLARS and EIGHTY-THREE CENTS (\$10,081.83) for expenses and disbursements allocable to the recovery of Allison Sansoucic; and it is further

ORDERED, that ALLISON SANSOUCIE as the guardian of the person and property of DAVID SANSOUCIE, and ALLISON SANSOUCIE, individually be and hereby is directed, authorized and empowered to execute such releases and other ancillary documents reasonably required by defendants to effectuate the settlement; and it is further

ORDERED, that upon making and receipt of all of the payments above directed in compliance with this order, as well as the assignments to MetLife Assignment Company, Inc., American General Annuity Service Corporation and Pacific Life & Annuity Services, Inc., as set forth above, the defendants shall then be discharged from any and all responsibility as to the causes of action set forth in this action; and it is further

ORDERED, that the defendants shall furnish evidence to plaintiffs' attorney of the issuance of appropriate annuity policies to effectuate the structured settlement set forth hereinbefore within (90) days from the date hereof; and it is further

ORDERED, that the making and filing a bond be and hereby is dispensed with herein; and it is further

ORDERED, that the Supreme Court, New York County, Guardianship Part shall retain ongoing jurisdiction concerning the use of these funds, the fixing of a bond and any Medicaid planning; and it is further

ORDERED, that ALLISON SANSOUCIE as Guardian of the Person and Property of DAVID SANSOUCIE shall not marshal any funds subject to this Compromise Order absent further Order of the Supreme Court, New York County, Guardianship Part.

Dated:

ENTER



J.S.C.

HON. EILEEN A. RAKOWER