

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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ISABELE LEON, an infant by her Mother and Natural
Guardian, JUDITH LEON

Plaintiff(s),

-against-

LENOX HILL HOSPITAL

Defendant(s).
-----X

**Infant Compromise
Order**

Index No.:
700114/2011

Refer to Justice Fleg

Upon reading and filing of the annexed Affidavit of Judith Leon, Mother and Natural Guardian of the Infant Plaintiff, duly sworn this 5th day of June, 2014, the annexed affirmation of Robert Vilensky, Esq., affirmed the 5 day of June, 2014, the report of Daniel Adler, a pediatric neurologist, dated June 17, 2013, all of the pleadings and proceedings heretofore had herein, and the appearance of the infant having been waived and due deliberation having been had thereon, and the trial of this action having resulted in a defendant's verdict and it appearing to my satisfaction that the best interest of the infant plaintiff will be served.

Now on Motion of Robert Vilensky, Esq., attorney for the Plaintiff, it is

ORDERED, that the infant plaintiff, Isabelle Leon, is hereby ordered and deemed to be a "qualified plaintiff" within the meaning of Public Health Law 2999-h(4), having sustained a "birth related neurological injury" within the meaning of Public Health Law 2999-h(4); and it is further

ORDERED, that the infant plaintiff, Isabelle Leon, is hereby ordered and deemed to be a "qualified plaintiff" within the meaning of Public Health Law 2999-h(4), having sustained a

“birth related neurological injury” within the meaning of Public Health Law 2999-h(4); and it is further

ORDERED, that Judith Leon, as mother and natural guardian of the Infant Plaintiff, Isabel Leon, be and he is hereby authorized to enter into a compromise of the cause of action of said Infant Plaintiff, Isabel Leon, for up-front cash and future periodic payments and enrollment in the Medical Indemnity Fund in the total amount of \$250,000.00, being paid on behalf of Lenox Hill Hospital, with \$125,000.00 (or 50%) attributable to future medical expenses payable by and through the Medical Indemnity Fund (the “fund damages”) and \$125,000.00 (or 50%) attributable to all claims other than future medical expenses (the “non-fund damages”); and it is further

ORDERED, that defendant, Lenox Hill Hospital is to make immediate payments in the total sum of \$162,500.00 as follows:

- A. The sum of \$37,500.00 to be paid to Ronemus & Vilensky, LLP, attorneys for the plaintiffs, as and for their pro rata share of attorney’s fees on the “fund damages”;
- B. The sum of \$30,130.09 to be paid to Ronemus & Vilensky, LLP, attorneys for the plaintiffs, as and for their pro rata share of attorney’s fees on the “non-fund damages”;
- C. The sum of \$49,132.72 to be paid to Ronemus & Vilensky, LLP, attorneys for the plaintiffs, as and for the reimbursement for the cost and disbursements regarding the prosecution of this action;
- D. The sum of \$45,737.19 to the aforesaid parent and natural guardian of the said infant, jointly with an officer of the Hudson Valley Bank, located at 60 East 42nd Street, New York, NY 10017, said funds to be deposited in said Bank and held therein for the sole use and benefit of said infant, subject to the further order of this Court;

ORDERED, that the aforesaid depository Bank which, pursuant to this Order, receives funds jointly with the parent and natural guardian of the infant, shall place said funds in the highest interest bearing time accounts or certificates of deposit, and said certificates and accounts shall be renewed upon maturity, provided, however, the maturity date of such certificates and accounts or any renewal thereof, shall not extend beyond the date of the infant's eighteenth (18th) birthday; and it is further

ORDERED, that the attorney for the plaintiffs shall serve a copy of this Order upon said Bank and shall arrange for the deposit of said funds as expeditiously as is reasonably possible; and it is further

ORDERED, that within thirty (30) days of the deposit of said funds in the above-designated bank(s) the above guardian shall submit to the Office of the Clerk for the Court, a copy of each certificate of deposit(s) issued by said bank(s); and there shall be no right of withdrawal from any of the aforesaid account(s) and certificates of deposit until the infant plaintiff's eighteenth (18th) birthday, except upon further order of this Court, which said Order shall be certified by the Clerk of this Court; and it is further

ORDERED, that in the event that the amount on deposit at any Bank exceeds the then prevailing Federal Deposit Insurance Corporation limits, the officer-trustee of said Bank and the infant's guardian herein are directed to notify the Court so that a further designation of an additional depository may be made in order to keep the amount within federally insured limits; and it is further

ORDERED, that (each) said Bank shall pay over all monies held in the aforesaid certificates and accounts to the infant plaintiff herein upon demand and without further Court order when the infant reaches the age of eighteen (18) years upon presentation of proper proof

and compliance with the Bank rules of withdrawal; and it is further

ORDERED, that each year (or quarterly as the case may be) during the minority of the infant plaintiff, upon presentation to the Banks of a duly executed income tax return or other document showing the amount of income tax or estimated income tax due on behalf of the infant, said Bank shall provide the infant's guardian herein with checks made payable to the Internal Revenue Service and/or State and/or Municipal Taxing Authority to which said income tax is owed by said infant. However, said checks shall be only for the amounts as may be due and payable for that portion of the infant's personal income tax liability attributable to income earned on the accounts maintained pursuant to this Order [including interest and penalties thereon] as shown on any official bill therefor issued by the taxing authority. Said checks shall identify the infant and said infant's social security number in order to insure that said amounts are being made for the benefit of the infant; and it is further

ORDERED, that the Banks are hereby authorized without further order of this Court to pay out of the infant's bank accounts, reasonable fees for the preparation of any income tax return or estimated income tax return or accounting that may be required to be filed by or on the infant's behalf. Said fees shall not exceed (\$750.00) without the further order of the Court; and it is further

ORDERED, that the cause of action for loss of services and/or medical expenses of the guardian be and the same hereby is dismissed without costs and with prejudice; and it is further

ORDERED, that conditioned upon compliance with the terms of this order, the aforesaid parent and natural guardian of the infant plaintiff, be and hereby is authorized and empowered to execute and deliver a general release and all other instruments necessary to effectuate the settlement herein; and it is further

ORDERED, that upon the payment of the amounts set forth herein and execution of the settlement agreement and the assignment agreement, defendant(s) and their insurer(s) shall have no further liability herein; and it is further

ORDERED, that the filing of a bond be dispensed with in accordance with the applicable provisions of the Civil Practice Law and Rules.

Date

HON. PHYLLIS ORLIKOFF FLUG, J.S.C.

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