

**United States Court of Appeals
for the Federal Circuit**

TREVOR LANGKAMP,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2018-2052

Appeal from the United States Court of Federal Claims
in No. 1:15-cv-00764-LKG, Judge Lydia Kay Griggsby.

Decided: November 27, 2019

JAMES H. LISTER, Birch, Horton, Bittner & Cherot, PC,
Washington, DC, argued for plaintiff-appellant.

MOLLIE LENORE FINNAN, Commercial Litigation
Branch, Civil Division, United States Department of Jus-
tice, Washington, DC, argued for defendant-appellee. Also
represented by JOSEPH H. HUNT, DEBORAH ANN BYNUM,
ROBERT EDWARD KIRSCHMAN, JR.

Before LOURIE, MAYER, and TARANTO, *Circuit Judges*.

MAYER, *Circuit Judge*.

Trevor Langkamp appeals the judgment of the United States Court of Federal Claims granting the government's motion for summary judgment and rejecting his claim seeking damages for breach of a tort settlement agreement. *See Langkamp v. United States*, 131 Fed. Cl. 85 (2017) (“*Court of Federal Claims Decision*”). Because we conclude that the court erred in holding that the United States had no continuing liability for the future monthly and periodic lump-sum payments specified in the agreement, we reverse and remand.

BACKGROUND

In 1980, Langkamp, who was then a toddler, suffered severe burn injuries at a property owned and operated by the United States Army. Langkamp's parents, Joseph and Christina Langkamp, subsequently brought an action against the United States under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2674, in the U.S. District Court for the Western District of Michigan. On November 15, 1984, the parties entered into a settlement agreement (the “Settlement Agreement”). That agreement, in pertinent part, provides:

STIPULATION FOR COMPROMISE SETTLEMENT

IT IS HEREBY STIPULATED by and between the plaintiffs, Joseph P. Langkamp, et al., and the defendants, United States of America and United States Department of Army, by and through their respective attorneys, as follows:

1. That the parties do hereby agree to settle and compromise the above-entitled action upon the terms indicated below.
2. That the defendants, United States of America and United States Department of Army, will pay to the plaintiffs, Joseph P. Langkamp, et

al., in their own right, the sum of \$239,425.45 as an upfront payment which includes attorney fees and costs and a structured settlement for the benefit of Trevor Langkamp, which sum shall be in full settlement and satisfaction of any and all claims said plaintiffs now have or may hereafter acquire against the defendants, United States of America and United States Department of Army, on account of the incident or circumstances giving rise to this suit.

3. That the aforesaid amount shall be paid as follows: \$350.00 per month beginning by the beginning of January, 1985[,] through October 15, 1996, then \$3,100.00 per month, 3 percent compounded annually for life, guaranteed for 15 years, beginning November 15, 1996, and Lump Sum Payments as follows:

\$15,000.00	on	December 15, 1996
50,000.00	on	December 15, 2000
100,000.00	on	December 15, 2008
250,000.00	on	December 15, 2018
1,000,000.00	on	December 15, 2028

4. That the plaintiffs hereby agree to accept said sum in full settlement and satisfaction of any and all claims and demands, including attorney[] fees and any other costs of this action, which it or its agents or assigns may have against the defendants, United States of America and United States Department of Army, and its agents and employees on account of the incident or circumstances giving rise to this suit.

5. That this agreement shall not constitute an admission of liability or fault on the part of the defendants, United States of America and United States Department of Army, or on the part of its agents or employees.

6. That in exchange for the payment of the sum stated above and contemporaneous with the delivery of the check therefor, plaintiffs will file with the Clerk of the above Court a dismissal of the above action with prejudice and without costs, and will execute and deliver to the defendants, United States of America and United States Department of Army, a full and final release of any and all claims set forth in paragraphs 2, 3 and 4 above, against the United States of America and United States Department of Army and its agents and employees.

J.A. 133–35.

After execution of the agreement, the government issued a check for \$239,425.45 payable to Joseph and Christina Langkamp, as guardians of Langkamp, and a check for \$160,574.55 payable to JMW Settlements, Inc. (“JMW”), an annuity broker. On November 30, 1984, JMW purchased two single-premium annuity policies from Executive Life Insurance Company of New York (“ELNY”) to fund the monthly and periodic lump-sum payments delineated in paragraph three of the Settlement Agreement. The Langkamps thereafter stipulated to the dismissal of their FTCA action and executed a release of their tort claims against the United States.

For nearly thirty years, from January 1985 to July 2013, ELNY sent Langkamp the monthly and periodic lump-sum payments specified in the Settlement Agreement. Following ELNY’s insolvency and court-approved restructuring, however, Langkamp’s structured settlement payments were reduced to approximately forty percent of the original payment amount. Langkamp, through counsel, then contacted the government, explaining that as a result of ELNY’s insolvency he was no longer receiving the full payments required by the Settlement Agreement and asserting that the United

States bore responsibility for the shortfall in payments. After the United States denied liability, Langkamp filed suit in the Court of Federal Claims.

The Court of Federal Claims rejected Langkamp's argument that the United States had continuing liability for the monthly and periodic lump-sum payments set forth in the Settlement Agreement. *See Court of Federal Claims Decision*, 131 Fed. Cl. at 93–97. In the court's view, the government fulfilled its responsibilities under the agreement when it disbursed the required upfront payment and purchased annuities on Langkamp's behalf. *Id.* at 94–95. The court determined that the United States had no obligation to cover the shortfall in payments which occurred in the wake of ELNY's insolvency because there was "no language in the Settlement Agreement that expressly and unequivocally require[d] that the government guarantee the monthly and periodic lump-sum payments delineated in that agreement." *Id.* at 95.

The court further determined that "the government could not have entered into a contract that requires [it] to pay more than the \$400,000 disbursed at the time of settlement to resolve [Langkamp's] FTCA claim." *Id.* at 96. According to the court, because "the government disbursed this authorized amount in 1984, in the form of a one-time, lump-sum payment of \$239,425.45 and by paying a structured settlement broker \$160,574.55 to purchase two structured settlement annuities for the benefit of [Langkamp]," it could not have been legally bound by a contract additionally requiring it to guarantee any shortfalls in annuity payments. *Id.* at 96–97.

After Langkamp's motion for reconsideration was denied, he filed a timely appeal with this court. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

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