

Mr. Secretary

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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DEC 22 1967

Dear Mr. Secretary:

By letter of November 13, 1967, the Under Secretary of the Navy requested our opinion concerning the legality and feasibility of a tort case settlement under the following plan and circumstances.

A tort suit against the United States has been instituted pursuant to section 1346 of title 28, United States Code, by Mrs. [redacted] through her guardians ad litem. The complaint alleges that employees of the United States Government were negligent in their treatment of Mrs. [redacted] at the United States Naval Hospital, San Diego, California, in November of 1965. Mrs. [redacted] has been in a coma at the Naval Hospital since November 3, 1965, and according to medical opinion will remain in a coma for the rest of her life. If this case goes to trial, a judgment in excess of \$200,000 against the United States is stated as being not improbable.

Plaintiff's attorney has indicated that the prime consideration for his client is to insure that she will have adequate medical treatment for the rest of her life and, more specifically, that an adequate sum is available to insure such treatment. The life span of plaintiff is a matter of conjecture and any compromise lump-sum settlement could well prove to be inadequate for the plaintiff in the event of a prolonged life span or grossly excessive for the Government in the event of an early death.

It has been proposed that the suit be compromised by the United States making payment of \$200,000 (possibly as an interest bearing United States obligation) in trust to a court appointed trustee for the care and treatment of the plaintiff, with power to invade the corpus if necessary, and with the proviso that upon the death of the plaintiff, the remainder of the corpus and income would revert to the United States. In addition, the United States, as part of the compromise settlement, would make a lump-sum payment to the guardians to cover all damages other than future care and treatment.

The Under Secretary points out that the annual income earned by the principal would cover the greater portion of the expense of care and treatment, and that it may be anticipated that a substantial portion of the \$200,000 would revert to the United States. The Department of Justice is stated to have indicated informally that although the proposed settlement would serve the interests of both parties, it would be unprecedented

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and might present accounting problems causing disapproval by the General Accounting Office. The Judge Advocate General has advised the Under Secretary that he perceives no legal objection to the trust arrangement proposed.

Subsection 1346(b) of Title 28, United States Code, provides district courts with exclusive jurisdiction over tort claims against the United States.

Section 2677 of Title 28, provides that:

"The Attorney General with the approval of the court, may arbitrate, compromise, or settle any claim cognizable under section 1346(b) of this title, after the commencement of an action thereon."

Section 2672 of Title 28, provides, in pertinent part, that:

"Any award made pursuant to this section, and any award, compromise, or settlement made by the Attorney General pursuant to section 2677 of this title, shall be paid by the head of the federal agency concerned out of appropriations available to such agency."

Public Law 89-506, approved July 18, 1966, 80 Stat. 306, made certain amendments to various pertinent sections of law including those cited. However, since these amendments apply only to claims accruing six months or more after the date of its enactment and the instant claim accrued in 1965, references above are to the 1964 edition of the United States Code prior to approval of Public Law 89-506.

In light of the statutory provisions cited, it is clear that the Attorney General would be authorized to compromise the claim involved in any amount he considered reasonable. We find no reason to object to any manner of compromise settlement which might ultimately result in a lesser cost to the Government but which would in no event result in a cost higher than settlement in a fixed reasonable amount.

In other words--using the figure cited in the Under Secretary's letter with respect to the medical expense portion of the claim--if the Attorney General determines that \$200,000 would constitute a reasonable compromise settlement for anticipated medical costs under the circumstances, we would have no objection to the court approving the proposed trust arrangement provided the Government's maximum obligation for medical care were fixed at \$200,000. Assuming that the compromise

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agreement would be approved by the court as opposed to being effected through a judgment rendered by the court, the trust corpus would be established through charge to appropriations available to your Department. 38 Comp. Gen. 338. ✓

In view of the interest of the Department of Justice in the matter a copy of this decision is being sent to the Attorney General. Nothing we have said is to be construed as expressing any opinion as to the desirability of the manner of compromise in question, that issue being exclusively within the jurisdiction of the Department of Justice to determine.

Sincerely yours,

FRANK H. WEITZEL

Assistant Comptroller General
of the United States

The Honorable
The Secretary of the Navy

