

**FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO**

No. SF 96-2430(c)

ERMELINDA WILLIAMS, et al.,

Plaintiffs,

vs.

MICHAEL W. STEWART, M.D.,

Defendant.

**NOTICE OF PROPOSED SETTLEMENT WITH DEFENDANT
STEWART AND OF HEARING ON PROPOSED SETTLEMENT**

THIS NOTICE MAY AFFECT YOUR RIGHTS - PLEASE READ IT CAREFULLY

TO: THE NEXT OF KIN AND IMMEDIATE FAMILY MEMBERS OF DECEASED PERSONS FROM WHOSE BODIES ORGANS AND TISSUES WERE REMOVED DURING AUTOPSIES AT LOS ALAMOS UNRELATED TO DETERMINATION OF CAUSE OF DEATH, DURING AND AFTER AUTOPSIES PERFORMED AT THE LOS ALAMOS MEDICAL CENTER AND AT OTHER FACILITIES IN THE STATE OF NEW MEXICO BETWEEN 1965 AND 1978.

Pursuant to Rule 23 NMRA 1998, you are hereby notified:

1. The above-captioned class action (“Lawsuit”) is pending in this Court. A Subclass (“Subclass”) has been identified consisting of the next of kin and/or immediate family members of former Los Alamos Scientific Laboratory / Los Alamos National Laboratory employees and members of the general public from whose bodies organs and/or tissues were retained during and after autopsies performed by Settling Defendant Stewart at the Los Alamos Medical Center and at other medical facilities in the State of New Mexico, allegedly without consent for use in scientific research and experimentation unrelated to determination of cause of death and in alleged violation of the rights of Subclass Members under state or federal law.

2. This notice is given to you in the belief that you may be a member of the Subclass whose rights may be affected by this Lawsuit. It should not be understood as an expression of any opinion by the Court concerning the merits of this action. This notice is intended to advise you of (1) the pendency of this Lawsuit, (2) a proposed settlement with Defendant Michael W. Stewart, M.D. (“Settling Defendant Stewart”), (3) the hearing to be held by the Court to consider the fairness, reasonableness and adequacy of the proposed settlement, and (4) your rights with respect thereto.

BRIEF DESCRIPTION OF THE ACTION

3. This Lawsuit was commenced on October 15, 1996, when the original Complaint for Personal Injuries and Civil Rights Violations was filed in this Court by Doris E. Kelley and

Katie Kelley Mareau, on their own behalfs and as representatives of classes of similarly situated persons. An amended complaint was filed on May 18, 1999, adding additional Plaintiffs and class representatives, additional causes of action, and additional Defendants, including Settling Defendant Stewart.

4. The Plaintiffs claim that beginning in 1959, Defendant Regents of the University of California (who operated and managed Los Alamos National Laboratory), Lutheran Hospitals & Homes Society of America, Inc. (“Lutheran”) (which, during 1964– 2002, owned and operated Los Alamos Medical Center), Clarence C. Lushbaugh, M.D. (during 1959-1963), Donald Petersen, Ph.D., James F. McInroy, Ph.D. (from 1972), Settling Defendant Stewart (during 1965-1978), George Voelz, M.D. (from 1970), and William D. Moss (from 1959) engaged in a program (the “Human Tissue Analysis Program”) pursuant to which Defendants, acting in concert with one another, collected, or caused to be collected, organs, tissues and samples from persons who died at Los Alamos Medical Center or were brought there after their deaths (“Decedents”) for scientific study by Los Alamos National Laboratory, without consent of next of kin, during the course of autopsies conducted at Los Alamos Medical Center and/or other medical facilities in northern New Mexico.

5. Tissue from 407 Decedents was collected in New Mexico as a part of the Human Tissue Analysis Program. Tissue from 304 Decedents was collected during the time period that Settling Defendant Stewart was conducting autopsies. A list of those 304 Decedents is attached hereto as Exhibit 1. The Subclass Members are the next of kin and/or immediate family members of the Decedents listed in Exhibit 1.

6. Defendants generally admitted the existence of the Human Tissue Analysis Program but denied that their conduct was wrongful. In particular, Defendants, including Settling Defendant Stewart, maintained that each autopsy was fully authorized by appropriate family members or by state statutes defining the duties of coroners and state medical examiners; that the relevant state law, medical ethics, and standards of pathology practice permitted the retention for scientific purposes of tissue removed during validly authorized autopsies; and that, in any event, Defendants and Settling Defendant Stewart were entitled to rely on other persons to obtain any necessary consent to — or other authorization of — the retention of tissue for scientific purposes.

7. On March 9, 1999, the Court granted Plaintiffs’ motion for class certification. At a hearing held on December 13, 2000, the Court reaffirmed that ruling.

8. The amended complaint filed in May 1999 sought unspecified damages for emotional distress from all Defendants, and punitive damages from all Defendants except the Regents of the University of California, under the following theories: (a) intentional infliction of emotional distress; (b) conversion; (c) fraud; (d) negligence; (e) mistreatment of a corpse; (f) breach of contract; (g) civil conspiracy; (h) aiding and abetting; and (I) civil rights violations under 42 U.S.C. § 1983. At hearings held between December 1999 and December 2000, the Court dismissed (or granted summary judgment in Defendants’ favor on) the claims of conversion, fraud, breach of contract, and civil rights violations. The Court denied the Defendants’ motion to dismiss the negligence claims, but acknowledged that while willful mistreatment of a corpse was a cause of action recognized under prior New Mexico law, negligent mistreatment of a corpse under § 868 of the Restatement (Second) of Torts had not

been previously recognized by the New Mexico appellate courts, nor had negligent infliction of emotional distress been previously extended to claims for mistreatment of a corpse by the New Mexico appellate courts.

9. The parties engaged in extensive discovery over a period of four and one-half years, including document production, interrogatories, requests for admissions, and depositions of each of the individual Defendants and Class Representatives.

10. Following protracted settlement negotiations over a period of several years, settlements were reached with all defendants other than Settling Defendant Stewart in 2001. These settlements were filed with the district court on October 4, 2001, and preliminary approval was granted by the district court on October 19, 2001. Notices of the pendency of this class action and the proposed settlements were sent to approximately 1,500 members of the class, located throughout the United States, beginning in November, 2001. The district court held a final fairness hearing on the settlements on January 25, 2002. At that time, the district court granted final approval of the settlements and entered an order dismissing all Defendants from the case, except for Settling Defendant Stewart.

11. Settling Defendant Stewart originally filed a motion for summary judgment based on the statute of limitations on April 28, 2000. That motion was denied. Settling Defendant Stewart filed a motion for reconsideration on April 16, 2002, following the settlement with and dismissal of the other Defendants. The district court held a hearing on the motion for reconsideration on October 11, 2002 and granted the motion. Class Representatives filed an appeal to the New Mexico Court of Appeals. On March 22, 2005, the New Mexico Court of Appeals reversed the district court's entry of summary judgment and remanded this matter to the district court for further proceedings.

12. Class Representatives and Settling Defendant Stewart participated in formal mediation sessions on October 3, 2000, August 30, 2001, and January 24, 2002. Arms-length negotiations continued thereafter and another formal mediation session was held on April 27, 2006, at which time, Class Representatives and Settling Defendant Stewart reached the agreement described below.

13. Settling Defendant Stewart has denied, and continues to deny, all allegations of wrongdoing, liability, and damage. If the case were to proceed, Settling Defendant Stewart would vigorously contest those allegations, and would continue to assert multiple defenses to Class Representatives' Claims. Settling Defendant Stewart has nonetheless concluded that a litigated resolution of the Lawsuit would be time-consuming and costly, and its outcome uncertain.

PLAINTIFFS' CLASS COUNSEL

14. The Court has appointed the following Plaintiffs' Class Counsel to represent the Subclass: John C. Bienvenu and Richard W. Hughes, Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu, P.O. Box 8180, Santa Fe, NM 87504-8180, (505) 988-8004.

PLAINTIFFS' SUBCLASS REPRESENTATIVES

15. The Court has appointed the following Class Representatives to represent the Subclass: Ermelinda Williams, Nasario Lopez, Lillian Starzyk, Olivama Sandoval, and Erlinda Trujillo.

WHAT CLASS MEMBERSHIP MEANS

16. If you are a member of the Subclass as described above, your rights and interests will automatically be represented by the Plaintiffs' Class Counsel and Plaintiffs' Subclass Representatives listed in paragraphs 14 and 15, unless you request to be excluded from the Subclass in the manner and by the date set forth below. The judgment, whether favorable or not, will include all members of the Subclass who do not request exclusion. If the judgment is favorable, members of the Subclass who do not request exclusion may still be required to provide individual proof of their entitlement to make a claim and recover damages. If the Court approves the settlement described below, or if there is any additional recovery by settlement, members of the Subclass who do not request exclusion will be entitled to share in the proceeds less Plaintiffs' costs, expenses and attorneys' fees which the Court may allow. If there is a recovery after trial, members of the Subclass who do not request exclusion will receive the damages awarded them less their proportionate share of attorneys' fees and costs. Any member of the Subclass who does not request exclusion may, if the member desires, enter an appearance through counsel.

PROPOSED SETTLEMENT WITH SETTLING DEFENDANT STEWART

17. A proposed settlement has been reached between the Class Representatives, on behalf of themselves and the Subclass, and Settling Defendant Stewart, as set forth in the Class Action Settlement Agreement and Release ("Settlement Agreement") filed with the Court on November 6, 2006.

18. The Settlement Agreement provides that Settling Defendant Stewart agrees to pay a lump sum of Eight Hundred Thousand Dollars (\$800,000.00) ("Settlement Amount"), on or before May 28, 2006, to an interest-bearing account created by Class Counsel for the benefit of the Subclass which shall be considered by and treated by the parties as a Qualified Settlement Fund for federal income tax purposes pursuant to United States Department of Treasury Regulation § 1.468B-1, in full settlement of all individual and Class claims that were or could have been asserted against Settling Defendant Stewart in the Lawsuit as more particularly set forth in paragraph 4 of the Settlement Agreement.

19. Pursuant to the Settlement Agreement, Class Representatives intend to ask the Court to approve allocation and distribution of the Settlement Amount as follows and Settling Defendant Stewart has agreed that such requested allocation is fair and reasonable and that he does not oppose such request: (a) a maximum of 33 1/3% of the Settlement Amount, plus gross receipts tax thereon, for a total of \$287,000, to Class Counsel as attorneys' fees (the actual amount requested for attorneys' fees may be less); (b) \$2,500 each to Class Representatives Ermelinda Williams, Nasario Lopez, Lillian Starzyk, Olivama Sandoval, and Erlinda Trujillo in recognition of their services benefitting the Class, in addition to whatever amounts they may otherwise be entitled to as Subclass Members; (c) litigation costs actually incurred by Class

Representatives and Class Counsel in their prosecution of the Lawsuit, together with interest thereon, currently estimated at \$7,500; (d) actual costs of sending notice to the Subclass, processing Subclass Members' claims, responding to communications from Subclass members, and otherwise administering the settlement, along with any taxes, interest payable to taxing authorities, or tax penalties incurred by Class Counsel or their designees in administering the settlement funds; and (e) the balance ("Balance") to Subclass Members who do not timely request exclusion from the Subclass, who are not deemed to have excluded themselves from the Subclass under the circumstances described in the Settlement Agreement and this notice, and who submit valid claims in accordance with instructions contained in this notice.

20. Pursuant to the Settlement Agreement, Class Representatives intend to ask the Court to approve the following Plan of Allocation, and Settling Defendant Stewart has agreed that such Plan of Allocation is fair and reasonable and he does not oppose such Plan of Allocation:

A. First, payment would be made of attorneys' fees, gross receipts taxes, costs, expenses and interest, including expenses of notice and administration of the Settlement Fund.

B. Second, payment would be made to each of the Class Representatives in recognition of their services in that capacity.

C. Third, the balance remaining would be divided by the total number of Stewart Decedents with respect to whom no Subclass Member timely elects to opt out of the class, and with respect to whom at least one of the following timely submits a valid claim: the Decedent's (1) spouse, (2) parents, (3) children, (4) siblings, (5) next of kin who gave permission for the Decedent's autopsy, or (6) grandchildren, but only if there is no living spouse, parent, child or sibling of the Decedent. The resulting sum would constitute the "Decedent's Family Share" and would be distributed pursuant to the following plan:

- (i) If the Decedent's spouse timely submits a valid claim, then one-half of the Decedent's Family Share would be paid to the Decedent's spouse. The remaining one-half of the Decedent's Family Share would be paid in equal shares to each of the Decedent's (1) parents, (2) children, (3) siblings, and (4) next of kin who gave permission for the Decedent's autopsy, who timely submits a valid claim. In the event that none of the Decedent's parents, children, siblings or next of kin who gave permission for the Decedent's autopsy timely submits a valid claim, then the remaining one-half of the Decedent's Family Share would be paid to the Decedent's spouse.
- (ii) If the Decedent's spouse does not timely submit a valid claim, then the Decedent's Family Share would be paid in equal shares to each of the Decedent's (1) parents, (2) children, (3) siblings, and (4) next of kin who gave permission for the Decedent's autopsy, who timely submits a valid claim.
- (iii) If there is no living spouse, parent, child, or sibling of the Decedent, or next of kin who gave permission for the Decedent's autopsy, then the Decedent's Family Share shall be paid in equal shares to each of the Decedent's grandchildren who timely submits a valid claim.

21. The obligation of Settling Defendant Stewart to carry out the terms of the Settlement Agreement is subject to and dependent upon (a) execution of the Settlement Agreement by each of the Class Representatives and Class Counsel; (b) final Court approval of the Agreement, as described below, and, in particular, a finding that the Settlement Amount is fair, reasonable, adequate, and in the best interests of the Class, and affirmance of all such rulings on appeal, if any; and (c) a determination by the parties (or, if the parties cannot agree, by the District Court), after the opt-out deadline, that the number of Decedents (if any) with respect to whom at least one Class Member has timely elected to opt out of the Class does not exceed the threshold set forth in a separate letter agreement between the parties. If condition (a) or (b) fails to occur, the Settlement Agreement will be canceled, void, and of no effect. If the opt-out threshold is exceeded (condition (c)), Settling Defendant Stewart may, in his sole discretion, void the Settlement Agreement, continue to pursue the settlement, or pursue any other settlement that the parties may then negotiate.

22. The settlement set forth in the Settlement Agreement is intended by the parties to resolve fully, finally, and irrevocably any and all claims that were or could have been asserted by or on behalf of Class Representatives or Subclass Members against Settling Defendant Stewart arising out of or related to the circumstances alleged in the Lawsuit, including but not limited to any and all claims arising out of or related to Settling Defendant Stewart's alleged removal of, collection of, retention of, analysis of, performance or publication of research concerning, creation or maintenance of records regarding, "mistreatment" of, "mutilation" of, "experimentation" upon, or any other use, handling, or treatment of, organs, bones, and tissue from the Decedents of Class Representatives and Subclass Members, or arising out of or related to Settling Defendant Stewart's alleged advocacy of, procurement of, aiding and abetting of, or conspiracy to bring about such conduct; and including all claims, arising out of or related to the foregoing matters, that were or could have been asserted in any forum under any law, for equitable or monetary relief (including attorneys' fees and costs) for injuries, losses, and damages of any kind, actual or potential, known or unknown, suspected or unsuspected, and past, present, or future. If the settlement is approved, Class Representatives release — and by refraining from opting out of the Subclass, Subclass members shall be deemed to release — all such claims on behalf of themselves and their respective heirs, executors, wards, administrators, estates, agents, successors, and assigns against Settling Defendant Stewart and each of his affiliates, representatives, employees, employers, co-employees, heirs, executors, wards, administrators, estates, attorneys, agents, predecessors and successors, assigns, insurers, and indemnitors. By entering into the Settlement Agreement, Class Representatives intend to afford Settling Defendant Stewart the fullest possible protection from exposure or liability (whether such liability is several or joint and several) to Subclass Members, or to anyone claiming damages through or on behalf of Subclass Members directly or by assignment or through principles of subrogation, reimbursement, indemnity, contribution, or otherwise. A release given as set forth herein would be null and void in the event that Settling Defendant Stewart or any of his affiliates, representatives, employees, employers, co-employees, heirs, executors, wards, administrators, estates, attorneys, agents, predecessors and successors, assigns, insurers, or indemnitors brings a claim in a court of law against the maker of such release arising out of or related to the Lawsuit, other than a claim to enforce the terms of the Settlement Agreement.

23. The Settlement Agreement does not constitute evidence of any violations of law, regulation, order, or rule. Settling Defendant Stewart's voluntary entry into the Settlement

Agreement does not constitute an admission, express or implied, that Settling Defendant Stewart is liable to Class Representatives or Subclass Members. On the contrary, Settling Defendant Stewart expressly denies liability and enters into the Settlement Agreement solely to compromise disputed claims and to avoid further expense, inconvenience, and uncertainty of litigation.

24. The parties to the Settlement Agreement believe that the terms of the settlement in the Settlement Agreement are fair, just, reasonable, and adequate. The Class Representatives believe that the terms of the settlement are in the best interests of the Subclass. The parties reached these conclusions after investigating and considering, among other things, the strengths and weaknesses of Subclass Members' claims against Settling Defendant Stewart, the uncertainties inherent in this complex litigation, and the substantial benefit provided by the Settlement Agreement to the Subclass Members. While denying any liability in this Lawsuit, Settling Defendant Stewart considers it desirable and in his interest that this Lawsuit be dismissed on the terms set forth in the Settlement Agreement and the proposed Final Judgment in order to avoid further expense, inconvenience, distraction, and to avoid protracted litigation.

25. The complete terms of the proposed settlement are set forth in the Settlement Agreement which may be inspected during normal business hours, at the office of the Clerk of the Court, First Judicial District Court, Steve Herrera Judicial Complex, Grant and Catron Streets, Santa Fe, NM, or by accessing the following website: www.stewartsettlement.com.

NOTICE OF HEARING ON APPROVAL OF SETTLEMENT

26. The Court has given its preliminary approval to the proposed settlement described above. A hearing on final approval of the proposed settlement will be held on March 2, 2007 at 2:30 p.m. at the First Judicial District Court, Steve Herrera Judicial Complex, Grant and Catron Streets, Santa Fe, NM.

27. At the hearing, the Court will consider all valid and timely objections to the proposed settlement. In addition, the Court will address whether the settlement as set forth in the Settlement Agreement is fair, reasonable and adequate in all respects pursuant to Rule 1-023(E) NMRA 2001, and whether the parties should be ordered to consummate the settlement in accordance with the Settlement Agreement.

28. Attendance at the hearing is not required. Any Subclass Member wishing to be heard orally in opposition to the proposed settlement must submit timely objections in writing as set forth below. Subclass Members who support the proposed settlement do not need to appear at the hearing or take any further action to indicate their approval. (However, Subclass Members must submit a Claim Form as set forth below in order to participate in the monetary compensation made available under the proposed settlement.)

SUBCLASS MEMBERS' OPTIONS

29. If you are a member of the Subclass as defined above, you have the following rights and options:

YOU MAY REMAIN A CLASS MEMBER

30. If you do not request exclusion from the Subclass by timely opting out of the Subclass as set forth below, you will be deemed included within the Subclass. As a member of the Subclass, you will be bound by any final judgment with respect to Settling Defendant Stewart, and you may be eligible to share in the monetary compensation made available under the proposed settlement, if the proposed settlement is approved by the Court.

31. In order to be eligible to receive monetary compensation under the proposed settlement, you must complete the Claim Form attached hereto, provide any and all documentation required by the Claim Form, sign the Claim Form under penalty of perjury, and return it to the following address: Claims Administrator, Post Office Box 10867, Tallahassee, FL 32302-2867, so that it is postmarked or otherwise delivered no later than the following date: April 2, 2007. Claim Forms are also available on the following web-site: www.stewartsettlement.com and by calling the following toll-free number: (866) 854-6043.

32. Failure to submit a Claim Form within the deadline (for any reason whatsoever) will bar your claim and preclude a monetary award from the settlement fund. If the claims administrator receives an incomplete Claim Form within the deadline, he or she will contact you to request that the Claim Form be completed. Failure to complete the Claim Form within 21 days after the claims administrator's request will result in denial of the claim.

33. Any Subclass Member who does not opt out of the Subclass will be deemed to have released Settling Defendant Stewart from the claims described in the Settlement Agreement.

34. In addition to submitting a Claim Form, if you do not opt out of the Subclass, you may present written objections to the proposed settlement by mailing or otherwise delivering them to the following address: Claims Administrator, Post Office Box 10867, Tallahassee, FL 32302-2867, so that they are received by February 15, 2007. The written objections must include:

- A. A statement of each objection asserted;
- B. A description of the facts underlying each objection;
- C. A description of the legal authorities, if any, supporting each objection;
- D. A statement of whether you intend to appear and argue at the fairness hearing and, if so, how long you anticipate needing to present the objection;
- E. A list of witnesses whom you may call during the fairness hearing; and
- F. A list of exhibits which you may offer during the fairness hearing, along with copies of such exhibits.

35. Objections which are not timely submitted or which do not contain all of the information set forth above will not be considered by the Court and any such objections will be deemed to have been waived.

36. If you do not opt out of the Subclass you may, if you wish, enter an appearance through your own counsel, at your own expense.

37. Even if you submit a timely and valid Claim Form, you may be deemed to have opted out of the Subclass for purposes of the Settlement Agreement if any other Subclass Member purporting to have claims with respect to the same Decedent or Decedents files a timely election to opt out, unless each such Subclass Member electing to opt out of the Subclass rescinds his or her election to opt out of the Class as described in paragraph 10(d) of the Settlement Agreement, or unless the Settling Defendant elects that you should not be deemed to have opted out of the Class.

YOU MAY REQUEST EXCLUSION FROM THE SUBCLASS AND OPT OUT

38. You may request exclusion from the Subclass by mailing or otherwise delivering a completed Opt-Out Form to the following address: Claims Administrator, Post Office Box 10867, Tallahassee, FL 32302-2867, so that it is received no later than February 15, 2007. Opt-Out Forms are available on the following web-site: www.stewartsettlement.com or by calling the following toll-free number: (866) 854-6043. If you request exclusion from the Subclass in this manner, you will not share in the proposed settlement with Settling Defendant Stewart, you will not be entitled to object to the proposed settlement with Settling Defendant Stewart, you will not be bound by any further orders or judgments entered in the Lawsuit, and you may pursue any claims you may have against Settling Defendant Stewart at your own expense. Opt-Out Forms and requests for exclusion will not be accepted if made verbally, by facsimile, e-mail, or other means than as set forth above. Subclass Members who do not opt out of the Class in the manner and within the time specified herein will be deemed included within the Class.

WITHDRAWAL OF OPT-OUT STATEMENT OR OBJECTIONS

39. You are permitted to withdraw or rescind opt-out statements or objections by giving written notice to the claims administrator in any manner calculated to satisfy the claims administrator of the genuineness of the election, provided that any such communication is received by the claims administrator before the parties or the Court has detrimentally relied on the original opt-out election or objection (by, for example, canceling or amending or disapproving the Settlement Agreement or mailing out settlement finds to other Subclass Members).

FOR MORE INFORMATION

40. The pleadings and other papers filed in this lawsuit are available for inspection at the office of the Clerk of the Court.

41. Any inquiry you may wish to make concerning this notice should be addressed in writing to the Plaintiffs' Class Counsel at the addresses in paragraph 14, by visiting the following web-site: www.stewartsettlement.com or by calling the following toll-free number: (866) 854-6043.

DATED: November 6, 2006

HON. JAMES A. HALL
DISTRICT JUDGE