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PERSPECTIVE

## The Henrietta Lacks settlement: A step towards rectifying historical medical injustices

By K. Chike Odiwe

After more than 70 years after doctors at Johns Hopkins Hospital took Henrietta Lacks' cervical cells without her consent, an attorney for her descendants announced that they have reached a settlement with a biotechnology company that they alleged reaped billions of dollars from a racist medical system. See *Emily Davies, "70 Years Ago, Henrietta Lacks's Cells Were Taken Without Consent. Now, Her Family Wants Justice,"* WASH. POST (Oct. 4, 2021), (archived Mar. 10, 2022) (quoting the filed lawsuit).

In a brief filed in support of the Lacks' descendants, attorneys advocating for civil rights, women's rights, and health care equity, said the case is one of several in which United States doctors and scientists have exploited minority patients. "Henrietta Lacks' estate sued a company saying it used her 'stolen' cells for research," NPR (Oct. 2, 2021), (archived March 22, 2022) (citing the family's attorney, Ben Crump).

Tissue taken from Lacks' tumor before she died of cervical cancer became the first human cells to continuously grow and reproduce in lab dishes. Cf. "*Henrietta Lacks: Science Must Right a Historical Wrong,*" 585 NATURE 7, 7 (2020) (calling for a transition to a fair system of use of biomaterials based

on consent); Carne Wolinetz & Francis Collins, "Recognition of Research Participants' Need for Autonomy: Remembering the Legacy of Henrietta Lacks," 324 JAMA 1027, 1028 (2020) (declaring that it is time to "establish[] a Henrietta Lacks biospecimen consent policy"). HeLa cells went on to become a foundation of modern medicine, aiding countless scientific and medical innovations, including the development of the polio vaccine, genetic mapping, and COVID-19 vaccines. *Id.* However, despite that immeasurable impact of HeLa cells, the Lacks family had never been compensated. *Id.*

In October 2021, Lacks' family filed a lawsuit in the U.S. District Court in Maryland alleging that the company, Thermo Fisher Scientific, sold Lacks' cells and attempted to secure intellectual property rights on the products the cells had helped develop without consulting the family or seeking their permission or approval.

Lacks' cells were harvested in 1951, when it was not illegal to do so without a patient's consent. However, lawyers for Lacks' family argued that Thermo Fisher Scientific Inc., of Waltham, Massachusetts, continued to commercialize the results long after the origins of the HeLa cell line became well known.

The exploitation of Lacks' cells is a representation of the struggle experienced by Black people throughout history. Although Johns Hopkins said it never sold or profited from

the cell lines, several companies have patented ways of using the cells. The treatment of Lacks demonstrates a much larger issue that continues today: racism inside the U.S. medical system.

Thermo Fisher Scientific's decision to continue selling HeLa cells despite the cell lines' origin and the material harms it inflicts on the Lacks family can only be understood as a choice to embrace a legacy of racial injustice embedded in the United States research and medical systems. Lacks' story is a culmination of the truth that the human body, and to a greater extent, the Black body, has always been under the scrutiny of law. Although this fact is obvious, its recognition is only recently becoming a phenomenon. The human body used to be concealed and even dissolved in the person themselves, becoming inaccessible to the direct perception of the law, which, due to the peculiarities of legal technique permeated by the behavioral paradigm, discussed the human mainly as a person. Although there is no doubt that the state, which formed the law, was interested not in the person of the human, but in their body, See 1 William Hawkins & John Curwood, "*Treatise of the Pleas of the Crown,*" 107 (8th ed. 1824). Which is a source of physical and intellectual strength and, therefore, a valuable resource that can be consumed by the state. In this sense, the law's regulation of the human body is an open secret dating back

hundreds and thousands of years. It should be noted that the law regulated the human body, and the law was not interested in the separated parts of the body, which it did not pay attention to. Only recently, due to the development of science, have the separated parts of the body ceased to be perceived as something useless having, at best, a value for anatomical research. See, e.g., 1 Richard Weyl, "*Vorträge über das Bgb Für Praktiker,*" 181 (1898) (Ger.) (speculating on the utility of ownership in separated body parts in the context of conducting anatomical research).

A great majority of early American medical research is founded upon non-consensual experimentation upon systemically oppressed people. It should not be difficult to

**K. Chike Odiwe** is a civil rights attorney at Burris Nisenbaum Curry & Lacy.



say that the removed cancer cells from Lacks' body, from which the HeLa cells were produced, clearly had the closest personal link to Lacks; not the doctor, who excised them, nor to John Hopkins Hospital, where Lacks was treated. Here, the holder of the personal rights was clearly Lacks.

The case of Lacks is an opportunity to right the previous wrongs of a racist medical history and to

take a step forward in the perception of the nature of the equality of all human bodies, allowing the right in the body, regardless of race, to be filled with proprietary content, thereby making it truly valuable to the individual themselves. The acknowledgement of all person's ownership of their own body must contribute to this goal by explaining in a moral way why every person owns their body be-

fore separating certain parts from it, and why, after the act of separation, parts of the body belong to them by right of ownership, thereby granting them full and real pecuniary protection against any encroachment upon their body.

The Lacks settlement does not, on its own, set a legal precedent for future family members and descendants of people who faced medical abuses. But it adds to the

broader conversation on health equity. The settlement is part of recognizing and rectifying historical injustices, which is fundamental to anything that we, as civil rights attorneys, want to do. Future lawsuits seeking compensation for unethical medical practices, especially those based on racist discrimination, may look to this settlement as an indication that past wrongdoing can be remedied.

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