

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

ALBERT L. GRAY, Administrator, et al., :
Plaintiffs, :
 :
vs. : C.A. No. 04-312L
 :
JEFFREY DERDERIAN, et al., :
Defendants. :

**NOTICE OF SUBMISSION OF SPECIAL MASTER MCGOVERN’S
PLAN OF DISTRIBUTION**

On November 27, 2007, Professor Francis McGovern was appointed as Special Master concerning distribution of settlement proceeds in all Station Fire cases pending before this Court. The Order of Reference to Special Master McGovern directs that he “devis[e] a plan for the distribution of settlement proceeds among Plaintiffs” and then “submit[] said plan for distribution of settlement proceeds to this Court for approval.” Gray Doc. No. 1735, ¶1.

Counsel for Plaintiffs have attached Special Master McGovern’s Plan of Distribution herewith and submit said Plan on Special Master McGovern’s behalf for this Court’s consideration.

Pursuant to Paragraph 4 of the Order of Reference to Special Master McGovern and Paragraph 3 of the Consent Order of Reference to Special Master William Poore, Special Master McGovern is submitting this Plan contemporaneously with Special Master Poore’s filing of his Report. Gray Doc. No. 1735, ¶4; Gray Doc. No. 1934, ¶3.

Respectfully submitted for Special Master McGovern by Mark Mandell and Max Wistow,

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#133 through #190, inclusive, #255 through #233,
inclusive, #240, and #251 through #257, inclusive,
and Napolitano Plaintiffs,
By their Attorneys,

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and Napolitano Plaintiffs,
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CERTIFICATION

I hereby certify that an exact copy of the within document was electronically mailed to the Electronic Case Filing system of the United States District Court for its distribution to all counsel of record and a copy was electronically mailed to *pro se* defendants on the 9th day of January 2009. A listing of said counsel of record and *pro se* defendants is as follows:

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9 January 2009

Proposed Plan of Distribution

The purpose of this plan of distribution is to present a methodology for distributing settlement funds in the Station Fire Case in a manner that 1) is acceptable to the beneficiaries of the funds; 2) maintains a unified approach to the litigation among the beneficiaries; 3) is speedy; 4) is inexpensive; 5) is fair; 6) is based upon objective, easily applied criteria; and 7) avoids the pitfalls often found in group litigation. The plan of distribution cannot solve all the inequities created by the Station fire. The plan of distribution cannot solve, or even address, every problem for every beneficiary. The plan of distribution cannot increase the amount of funds available for distribution. The goals of the plan of distribution are much more modest. These goals involve a methodology for distributing settlement funds that can be applied in a principled manner to every beneficiary. The methodology is not perfect, but is sufficiently acceptable so that there can be rapid payments made at low cost to each beneficiary. The plan is subject to approval by the United States District Court for the District of Rhode Island and review by the Guardian ad Litem.

The design of the plan of distribution was created during a series of over twenty meetings on nine days among the special master, Professor Francis E. McGovern, and approximately 306 victims and their families and lawyers. These meetings occurred between December 27, 2007 and January 30, 2008. In addition, there were numerous telephone conferences with victims/families and their lawyers; and meetings among the special master and the lawyers for the beneficiaries.

This proposed plan of distribution will be reviewed by the lawyers and their clients before it is presented to the court.

This collaborative effort was intended to create a consensus among the lawyers and their clients so that there can be a quick process for distributing settlement funds. The meetings have been difficult for everyone because of a realization that no amount of money could possibly be adequate compensation for the horrors caused by the Station fire. It has taken great fortitude for the beneficiaries and their families even to attend these meetings. They have comported themselves with poise, fortitude, and united purpose.

The meetings with the beneficiaries and their families have focused on an examination of all available approaches to a plan of distribution. These alternative approaches have been considered in detail with significant questioning and interaction among the special master, the lawyers, and the victims and their families. There were also extensive discussions and deliberations concerning other comparable cases, and the methods that were used to distribute settlement funds. Most of the meetings were at the Community College of Rhode Island, lasted between 45 minutes and 90 minutes, and

were attended by 5 to 40 persons. A total of approximately 306 persons attended the meetings. The meetings with the special master and the lawyers have varied from 2 hours to 8 hours and attendance has been between 10 and 15.

The following proposal attempts to represent a consensus approach among the beneficiaries, their families and their lawyers. The consensus revolves around a “point system” with points based upon the tort litigation system. Each category of harm has been assigned a number of points using the tort system as a yardstick to assign the relative amounts of points for each category. Each person will be assigned a total number of points based upon the categories of harm that apply to that person. Once all the beneficiaries have been assigned their total number of points, all the assigned points for all the beneficiaries will be added together to reach the aggregate number of points for the entire group of beneficiaries. Then, that aggregate total number of points can be divided into the total amount of available settlement funds to reach a dollar amount for each point. Once a dollar amount for each point has been determined, each person’s total points can be multiplied by that dollar amount for each point to determine the dollar amount available for distribution to each beneficiary.

Death Claims

One hundred (100) points shall be awarded for pain and suffering, loss of earning capacity, and funeral and burial expenses.

Additional points shall be awarded as follows:

Age of decedent – 0.5 points for each year less than the median age of all wrongful death plaintiffs at the time of death to account for additional loss of wages, life expectancy, and enjoyment of life. (By way of example, a decedent who was 31 years 11 months will be deemed to be 31; a decedent 28 years 6 months will be deemed to be 28)

Spousal consortium – 24 points if married, unless both spouses died together, in which case, 12 points for each individual. Dollars associated with spousal points will be paid to the surviving spouse.

Minor children – 20 points for each minor child plus 1 point for each year that each minor child was below the age of 18 as of 2/20/2003. Dollars associated with minor children’s points shall be paid to each child in accordance with the manner approved by a Guardian Ad Litem.

Income adjustment – 1 point additional for each \$10,000 gross annual earnings above \$50,000.00

Education Adjustment – 1 point per year of post-secondary education for decedents with an earnings history of less than \$60,000, if the decedent died within the five years immediately following the last date of post-secondary education.

Survival claim – 1 point for each \$8,000 of Medical Expenses.

“Medical Expenses” as used herein shall include all related expenses attributable to hospitals, physicians, nursing care, rehabilitation, medicines, therapies, medical appliances, mental health care providers and other licensed health care professionals or facilities.

With the exception of payments flowing from spousal or minor children’s consortium claims, all compensation for wrongful death shall be distributed pursuant to the Rhode Island Wrongful Death Statute, R.I.G.L. 10-7-1 et seq. as follows: 95% being distributed pursuant to 10-7-1 to 10-7-4 and 5% being distributed pursuant to 10-7-5 to 10-7-7.

Several estates (death claims) have been opened in states other than Rhode Island for non-Rhode Island domiciled decedents. Notwithstanding the above, attorneys for each estate opened outside of Rhode Island shall disperse the total net proceeds arising from a death under this distribution plan to each estate administrator, who will then be obligated, in the absence of an agreement by all beneficiaries of the estate, to follow the laws of the state of administration as to its distribution.

Personal Injury Claims

Points shall be awarded for physical injury, psychological injury, pain and suffering, permanent disability, scarring, lost earning capacity, and lost earnings as follows:

A “Claimant” is a person who was physically present inside the Station Nightclub on February 20, 2003 at 11pm and who brought suit on or before February 20, 2006.

No Claimant shall be awarded less than 4 points.

Claimants with some medical expenses less than \$5,000 as of the cut-off date for the filing of all claim forms (hereinafter “cut-off date”) shall be awarded 4.5 points.

Claimants with medical expenses more than \$5,000 but less than \$12,000 as of the cut-off date shall receive 5 points.

Claimants with medical expenses of \$12,000 or more as of the cut-off date shall receive 1 point for each \$2,000.

The “medical expense” value of the free treatment received at Shriner’s Hospital, whether an injury or death case, will be calculated by an independent expert.

Implementation

Claim forms will be completed by counsel for each beneficiary and presented, along with the required documentation, to a neutral verification expert to be appointed by agreement of all Plaintiffs' counsel. The neutral expert will verify that each completed form is accurate and accompanied by the requisite documentation. The neutral expert will develop these claim forms and submit them to Plaintiffs counsel no more than 10 days after his appointment. A cut-off date will be set by the Court for the filing of all claim forms. For any points to be given for medical expenses incurred after 2/20/08, the expenses must relate to ongoing (and not new) treatment and care.

Documentation

Points above the base points will be awarded based upon documentary proof only. If causal connection to the fire is not clear from the medical records, a licensed health care professional must provide an opinion that medical expenses were causally related to the claim made in the lawsuit; gross income must be proved by W-2, 1099, tax return, or schedule C, based upon the 2002 income or the average of the prior 3 years, whichever is greater; and education must be proved by transcript.

Collateral Sources, Subrogation, and Liens

Some of the most difficult issues in any plan of distribution deal with collateral sources and subrogation. Collateral sources are sources of money that a person may receive from something other than a tort lawsuit. Collateral sources include health insurance, life insurance, unemployment benefits, gifts, governmental grants, and any other monetary or in-kind benefit. Subrogation and liens relate to the right of the entity that provided the benefit (an insurance company, for example) to be paid back the amount of the benefit from any award in the tort system. Most health insurance policies provide that a plaintiff must reimburse their health insurer from a tort recovery for health benefits that have been received before the plaintiff can keep the total amount of tort award.

Prior to any disbursements of settlement funds, counsel shall have the opportunity to negotiate all liens with lien holders for each individual plaintiff.

The tort system generally does not allow evidence of any collateral source to be introduced into evidence at the trial of a tort case. Each plaintiff is responsible for his or her own subrogation/lien obligations to be paid out of an eventual tort award. An attempt will be made by Plaintiffs' counsel to negotiate all liens and subrogation interests.

Distribution and Allocation Process

Distribution of settlement funds shall be completed as soon as practicable after court approval of this plan of distribution and any settlement that may be reached. There shall be as few distributions as possible in order to decrease the cost of distribution.

Counsel for each beneficiary shall be responsible for allocating distribution amounts for each beneficiary. It shall be presumed, in a personal injury claim, that each minor child and spouse who is properly a Plaintiff shall receive 5% of the net recovery unless this presumption is overcome by agreement of the involved parties.

Default Provisions

In the event that any beneficiary declines to accept a distribution of settlement funds, that distribution shall be returned to the settlement fund.

In the event that a claimant does not properly complete and submit a claim form by the date to be established by the Court as the BAR DATE, they will be forever barred from asserting or receiving payment for any claims asserted.

Appeal

There shall be a right of appeal within 30 days of the receipt of the initial evaluation notice to a neutral expert who is limited to reviewing a determination of points based upon mathematical errors or errors in the application of points. The neutral expert shall be selected by agreement of Plaintiffs' counsel and shall not have authority to increase or decrease awards based upon discretion.

Expenses

All expenses incurred in the development of and in order to implement this plan of distribution shall be paid from the settlement funds. Every effort shall be made to keep these expenses as low as possible.