

THE PENSACOLA JAIL EXPLOSION SETTLEMENT
ATTN: ED GENTLE, SETTLEMENT ADMINISTRATOR
SUITE 100
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February 12, 2020

MEMORANDUM

VIA U.S. MAIL
CONFIDENTIAL

TO: FIELD(Name)
FIELD(Mailing Address)
FIELD(Mailing City), FIELD(Mailing State) FIELD(Mailing Zip)

FROM: Edgar C. Gentle, III, Esq.

RE: The Pensacola Jail Explosion - Update; Our File No. 6338-1 {B}

Dear Claimant: :

I hope you are well.

The purpose of this memorandum is to update you on the status of this case.

I. The Status of the Appeal: INCOMPLETE

On February 22, 2019, the Court entered two Orders, both of which can be found at our website, www.pensacolasettlement.com. The first Order was the Court's "Findings of Fact, Conclusions of Law, and Final Order Approving Settlement, Entering Permanent Injunction and Judgment of Dismissal." The second Order overruled (denied) the objections of 37 Class Members who had objected to how the Settlement Administrator scored them under the Claim Form and the Claimant Grid.

On March 6, 2019, three Class Member Objectors filed their Notice of Appeal to the First District Court of Appeals, appealing the above Orders entered on February 22, 2019. On March 25, 2019, Class Counsel and Counsel for Defendants filed a Motion for Sanctions with the First District Court of Appeals, alleging that the appeal filed by the three Objectors is frivolous and without substantiation. The Parties have filed their briefs in support of their arguments along with their replies.

We are awaiting the Court's decision with respect to these matters and will update you once a decision is rendered.

II. The Status of Claims Processing: COMPLETE

We consider that **ALL** submitted Claims have been completed to the extent possible given that we have gone through a very detailed vetting process allowing the Claimants numerous opportunities to cure any deficiencies.

On December 11, 2017, Claim Form packets, as found on our website, were mailed to Claimants, describing the Settlement, providing information about deadlines, and instructing them to return the completed Claim Form to us by March 10, 2018. Claimants provided medical records, and my staff reviewed those records to score the claims based upon the description on pages 10 through 20 of the Claim Form. During the scoring process, Claimants were assigned a ranking within each category, except for in Categories 1 and 2, and tentative awards were assigned based upon this ranking. There was an internal 5% hold-back bucket (\$269,390) for any scoring error appeals.

Furthermore, we allocated \$206,489 for Extraordinary Damages, which has been reduced by Plaintiffs' Counsel's discovery expenses totaling \$18,200.21. We reserved approximately 5% of the Extraordinary Damages bucket amount for additional appeals related solely to Extraordinary Damages Claims.

From the Extraordinary Damages Fund, we have also allocated \$119,070 for the 90 Representative Claimants, who will be paid \$1,323 each.

Those Claimants scored in Category 1 and who were treated in the Emergency Room, received an "ER Bump" of \$1,000 each. There were 34 Claimants in Category 1 who are eligible of an ER Bump, for a total of \$34,000.

On April 13, 2018, we mailed to each Claimant a letter, noting whether his or her claim was complete or deficient and what was needed to cure the deficiencies. Thereafter, on July 13, 2018, March 18, 2019, and October 18, 2019, we mailed to Claimants whose claim was deficient, a deficiency notice, giving them the opportunity to cure such deficiencies. The October 18, 2019 letter provided a November 18, 2019 Deadline to Cure Deficiencies. With a FINAL OPPORTUNITY Deadline to complete the required Releases by November 18, 2019 having passed, we now consider the claims processing complete.

There were 49 Claimants who requested Extraordinary Damages. However, 8 of those Claimants did not provide any documentation. For the 41 Claimants who provided documentation of their Extraordinary Damages, each was awarded \$500.00, for a total of \$23,500.

Once the scoring was complete, Scoring Agreements were mailed to each Claimant, either to each personally or in the care of his or her attorneys, with instructions as to the appeal process.

We received 112 timely-filed appeals of our scores* and 58 late-filed appeals*, for a total of 170 appeals*. We have re-reviewed the medical records of the appeals, and granted or partially granted 31 appeals, and denied 139 appeals. No other appeals are being accepted at this time AS THE TIME TO APPEAL HAS LONG RUN. Of the \$269,390 available for appeals, as detailed in the Claimant Net Payment Grid previously provided to you with your Claimant Scoring Agreement and which is in **Attachment A** to this letter, we awarded \$160,390, leaving approximately \$109,000 remaining in the internal 5% holdback appeals bucket that was not used. We also have approximately \$11,000 remaining in the Extraordinary Damages bucket after appeals related solely to the Extraordinary Damage Claims.

After the appeals process, the categories and scores are broken down as follows by (i) Inmates and (ii) Employees:

A. Inmates

<u>Category</u>	<u>Number of Claimants</u>	<u>Tentative Dollar Award**</u>
First Responders	22	\$500
1	338	\$1,530
2	85	\$2,800
3(1)	25	\$4,192.50
3(2)	52	\$5,590
3(3)	21	\$6,987.50
4(1)	11	\$9,423.75
4(2)	23	\$12,565
4(3)	10	\$15,706.25
5(1)	11	\$18,866.25
5(2)	8	\$25,155
5(3)	7	\$31,443.75
6(1)	7	\$42,127.50
6(2)	9	\$56,170
6(3)	7	\$70,212.50
7(1)	0	-----
7(2)	1	\$92,685
7(3)	0	-----

* These were appeals of our scores and NOT an appeal of the Settlement. Thus, these appeals did not challenge the Settlement going forward.

** These payments (other than First Responders and Category 1, who do not pay any of this hold back) are subject to a reduction equal to each Claimant's ratable share of the \$645,000 being held back for the 3 Opt-Out Claimants under Section 9 of the Confidential Settlement Agreement, and is approved by the Court's Order dated November 16, 2018 in **Attachment B**. This entire hold back amount may not be needed to satisfy the 3 Opt-Out Claims. To the extent that monies are left from this hold back, they will be ratably allocated back to all of the Claimants who were charged with this hold back.

B. Employees

<u>Category</u>	<u>Number of Claimants</u>	<u>Tentative Dollar Award**</u>
1	6	\$1,200
2	3	\$2,150
3(1)	1	\$3,225
3(2)	1	\$4,300
3(3)	1	\$5,375
4(1)	1	\$7,166.25
4(2)	1	\$9,555
4(3)	1	\$11,943.75
5(1)	1	\$14,332.50
5(2)	1	\$19,110
5(3)	2	\$23,887.50
6(1)	4	\$36,187.50
6(2)	3	\$48,250
6(3)	3	\$60,312.50
7(1)	2	\$59,715
7(2)	6	\$79,620
7(3)	2	\$99,525

C. Gravely Injured Claimants

<u>Category</u>	<u>Number of Claimants</u>	<u>Tentative Dollar Award**</u>
A	1	\$4,625,000
B	1	\$2,137,500
C	1	\$1,737,500

See the Claimant Net Payment Grid in **Attachment A**, which reconciles these amounts to the \$17.5 million total amount for the Settlement.

III. Requested Defendant Vetting of Releases: INCOMPLETE

On December 27, 2019, we sent to the Defendants copies of all 466 completed Releases, 33 incomplete Releases, and 16 Releases requiring the spouse's signature, asking the Defendants to approve the Releases. We gave the Defendants 30 days (or until January 26, 2020) to approve the Releases, but Defendants have requested an additional 30 days to review the Releases to determine if each is complete, which expires on February 25, 2020.

Subject to a vetting process with notice to those involved, Defendants have agreed that the Releases requiring the spouse's signature be presented to the Court to determine if the Release is complete. We are now drafting the proposed notice and vetting procedures.

We consider the remaining 33 Releases to be incomplete.***

IV. Three Late-Filed Claims: INCOMPLETE

We have received inquiries or Claim Forms from 3 potential additional Claimants after the March 10, 2018 Claim Form filing deadline expired. Each of the three late Claimants was given a Category 1 score, for a total potential award for the 3 of \$4,590.

These Claim Forms or requests were received on September 18, 2019, December 18, 2019, and January 2020, respectively.

We plan to present to the Court a Request for Instructions, addressing these three late potential Claimants. Because their awards represent a small portion of the awards and would not materially financially impact the Settlement based upon the funds remaining in the Settlement, we plan to recommend that they be allowed to participate in the Settlement.

PLEASE LET US KNOW WITHIN 30 DAYS IF YOU OBJECT.

V. Michles & Booth Worker's Compensation Claims: INCOMPLETE

The law firm of Michles & Booth, which represents a number of Claimants, has proposed to negotiate the Worker's Compensation liens of their clients. Defense Counsel agrees to Michles & Booth doing the work to satisfy such Worker's Compensation Liens, provided that the Firm fully complies with the satisfaction requirements of the Confidential Settlement Agreement.

WITH THIS MEMORANDUM, WE ARE INSTRUCTING MICHLES & BOOTH SO TO PROCEED.

VI. Lien Processing: INCOMPLETE

We have begun to process the Claimants' liens. This includes vetting the Claimants with Medicare and Medicaid, compiling all DHR and restitution liens, loading the data from the lien forms completed by the Claimants in completing their Claim Form packets, and related steps.

We are moving forward as quickly as possible with the lien vetting process, in order to pay the Claimants as soon as possible after the other necessary steps under the Settlement Agreement to pay a given Claimant are met.

*** The payment or non-payment of the claims represented by the Incomplete Releases is unresolved.

February 12, 2020

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Thank you for the opportunity to work with you in this Settlement. Please contact me should you have any questions or concerns.

Yours very truly,



Edgar C. Gentle, III
Settlement Administrator

ECGIII/jcs
Attachments

cc: (via email)(confidential)(with attachments)
Katherine A. Benson, Esq.
J. Christopher Smith, Esq.
Jennifer L. Blankenship, Esq.

ATTACHMENT A

Reconciliation of the Allocation of the \$17.5M in the Settlement

Non-Gravely Injured Claimants

First Responder	# of Claimants	AVG Payment		Total	First Responder	# of Claimant	AVG Payment		Total
		Amount Per Claim					Amount Per Claim		
Cat 1	22	\$ 500.00	\$	11,000.00	Cat 1	22	\$ 500.00	\$	11,000.00
Inmate	346	\$ 1,530.00	\$	529,380.00	Inmate	346	\$ 1,530.00	\$	529,380.00
Other	6	\$ 1,200.00	\$	7,200.00	Other	6	\$ 1,200.00	\$	7,200.00
Cat 2	88	\$ 2,800.00	\$	246,400.00	Cat 2	88	\$ 3,440.00	\$	302,720.00
Inmate	88	\$ 2,800.00	\$	246,400.00	Inmate	88	\$ 3,440.00	\$	302,720.00
Other	3	\$ 2,150.00	\$	6,450.00	Other	3	\$ 2,700.00	\$	8,100.00
Cat 3	97	\$ 5,590.00	\$	542,230.00	Cat 3	97	\$ 6,870.00	\$	666,390.00
Inmate	97	\$ 5,590.00	\$	542,230.00	Inmate	97	\$ 6,870.00	\$	666,390.00
Other	3	\$ 4,300.00	\$	12,900.00	Other	3	\$ 5,400.00	\$	16,200.00
Cat 4	39	\$ 12,565.00	\$	490,035.00	Cat 4	39	\$ 15,420.00	\$	601,380.00
Inmate	39	\$ 12,565.00	\$	490,035.00	Inmate	39	\$ 15,420.00	\$	601,380.00
Other	3	\$ 9,555.00	\$	28,665.00	Other	3	\$ 12,000.00	\$	36,000.00
Cat 5	21	\$ 25,155.00	\$	528,255.00	Cat 5	21	\$ 30,870.00	\$	648,270.00
Inmate	21	\$ 25,155.00	\$	528,255.00	Inmate	21	\$ 30,870.00	\$	648,270.00
Other	5	\$ 19,110.00	\$	95,550.00	Other	5	\$ 24,000.00	\$	120,000.00
Cat 6	23	\$ 56,170.00	\$	1,291,910.00	Cat 6	23	\$ 69,600.00	\$	1,600,800.00
Inmate	23	\$ 56,170.00	\$	1,291,910.00	Inmate	23	\$ 69,600.00	\$	1,600,800.00
Other	9	\$ 48,250.00	\$	434,250.00	Other	9	\$ 60,600.00	\$	545,400.00
Cat 7	1	\$ 92,685.00	\$	92,685.00	Cat 7	1	\$ 114,850.00	\$	114,850.00
Inmate	1	\$ 92,685.00	\$	92,685.00	Inmate	1	\$ 114,850.00	\$	114,850.00
Other	10	\$ 79,620.00	\$	796,200.00	Other	10	\$ 100,000.00	\$	1,000,000.00
	676			<u>\$ 5,113,110.00</u>		676			<u>\$ 6,207,690.00</u>
		Inmate	\$ 3,720,895.00						
		FR & Cat 1 (Inmate)	\$ 18,200.00						
		Others	\$ 1,374,015.00	\$ 5,113,110.00					

Net Revenue for Non-Gravely Injured Claimants \$ 5,588,989.00

5% Holdback on All Claims \$ 269,390.00

Net Extraordinary Damages Total Net Payments Minus Holdback and Extraordinary Damages \$ 206,489.00

Three Gravely Injured Claimants \$ 5,113,110.00

5% Holdback on All Claims \$ 8,369,661.00

Extraordinary Damages \$ 269,390.00

Legal Fees (other than the 3 Gravely Injured), Admin Fees, and Advance Payments \$ 206,489.00

Legal Fees (other than the 3 Gravely Injured), Admin Fees, and Advance Payments \$ 3,541,350.00

\$ 17,500,000.00

ATTACHMENT B

**November 11, 2018 Order regarding
Hold Back Amount**

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA FOR ESCAMBIA COUNTY

CLARK ALLEN, ET AL,)
)
Plaintiffs,)
)
v.)
)
A.E. NEW JR, INC.;)
CALDWELL ASSOCIATES)
ARCHITECTS, INC.;; and)
ESCAMBIA COUNTY FLORIDA,)
)
Defendants)

Case No. 2015-CA-722
Division J
Judge: Jan Shackelford

ORDER RESULTING FROM NOVEMBER 5, 2018 STATUS CONFERENCE

On November 5, 2018, the Court held a Status Conference regarding the above-styled matter. Appearing in person as Counsel for the Plaintiffs were Adrian Bridges, Casey Lott and Rachel Gilmer, with Chris Klotz appearing telephonically. Appearing on behalf of objecting Claimants were Vanessa Brice and Shane Lucado. Ed Gentle and Chris Smith appeared for the Settlement. Appearing in person and telephonically for Defendants were the following: Dave Jester; Linda Wade; Bruce Partington; Jason Peterson; Tom Guilday; Stuart Poague; Vincent Noletto; Tom Alleman; Adam White; Breanne Zarzour; Gregory Diaga; Lawson Hester; Charles Pepler; and Steve Bauman.

Following a brief introduction by Dave Jester, Ed Gentle, the Settlement Administrator, assisted the Court in directing the status conference through the October 26, 2018 Proposed Status Conference Agenda.

1. Objectors

Mr. Gentle informed the Court that there are two types of objectors in the case. Three Claimants object to the settlement structure and grid not accounting for possible future unknown injuries involving possible inhaled substances and future possible psychological damage and are represented by Shane Lucado (the "Lucado Objectors"). One of these Lucado Objectors, who was formerly represented by Stevenson & Klotz, appealed the Settlement Administrator's award late and was denied. Another Lucado Objector has been a *pro se* Claimant, who filed a Claim Form but made no appeal of the Settlement Administrator's award. The third Lucado Objector, also a former Stevenson & Klotz client, filed a Claim Form but did not appeal the Settlement Administrator's award. Mr. Gentle reminded the Court that none of the Lucado Objectors had raised the latent injury theory with the Settlement prior to the filing of their Objections.

The second type of objectors are those who filed an objection with the Court as to the amount of the award but do not challenge the Settlement itself. There were four such objectors. Steve Harris is a *pro se* objector as to the amount of his award, and his late appeal of his Settlement award was denied by the Settlement Administrator. Ms. Brice represents three such objectors, whose appeals of their awards were all denied by the Settlement Administrator. The Court agrees that these four objectors may be heard at the February 11, 2019 Fairness Hearing. The Court is of the opinion that the Settlement Administrator, in collaboration with those 4 objectors, may submit evidence in camera with respect to these four objectors with a narrative summary of the scoring process.

Mr. Lucado agreed to have his objections heard before the Fairness Hearing, but reserves the right to assert that they be heard at the Fairness Hearing if they are not already denied by the

Court.

Immediately after the Status Conference, the Parties met and conferred on this matter and agree to the following briefing schedule:

1. Lucado Objectors' brief is due December 5, 2018
2. Settlement Proponents (Class Counsel of Plaintiffs) briefs are due January 4, 2019.

The Court will hear the Lucado Objectors on January 7, 2019, at 1:30 p.m.

2. Putative Opt-Outs

Mr. Gentle reported that originally there were five Opt-Outs. However, three of these individuals now wish to be a part of the Settlement: Eve Harris, Larry Michael Ivey and Angela Diane Wilson (the "Three Putative Opt-Outs"). The Court finds that none of the Parties have objected to the inclusion of the Three Putative Opt-Outs in the Settlement. Thus, the Court hereby finds, orders and decrees that these Three Putative Opt-Outs are admitted to and are participants in the Settlement. The Court further finds that only two remaining individuals, Taylor Rhodes and Robert Wagers, are putative Opt-Outs at this time (the "Remaining Opt-Outs"), with the Court making no determination on their status until the February 11, 2019 Fairness Hearing. Mr. Gentle reported that he will invite the Remaining Opt-Outs to rejoin the Settlement if they like, and advise them that they should seek independent legal advice to determine the implications of the statute of limitations. According to the Parties, these two putative Opt-Outs have until September 26, 2020 to assert a cause of action with respect to this explosion, or the statute of limitations will run.¹ The Court orders the Settlement Administrator to send to these

¹ Opt-Out requests were received from both Taylor Rhodes and Robert Wagers on September 4, 2018. The applicable statute of limitations found in Florida Statute Section 95.11(3) (four years for negligence resulting in injury) appears to be applicable. The explosion occurred on April 30, 2014, and 707 days elapsed prior to the statute of limitation being tolled via the interim term sheets signed by the Parties. Thus, 753 days remain for injured individuals to file suit. This 753-day period began running again once the Settlement Administrator received the requests from the Remaining Opt-Outs.

two remaining putative Opt-Outs a copy of this Order with a letter describing the deadline by which they must file a lawsuit or be time barred, and inviting them to rejoin the Settlement if they like, and advising them that they should seek alternative Counsel, with the letter and Order to be sent by regular first class and certified mail to the last known address and by any other reasonable medium, such as email, to the extent known.

3. Opt-Out Hold Back

The Opt-Out Hold Back Amount is defined in Section 1.18 of the Settlement Agreement, as “those sums withheld from the Settlement Amount to protect Defendants and Insurers against (a) the claims of opt-outs; and/or (b) other contingencies agreed to by the Defendants and the Insurers with Class Counsel or approved by the Court.” Mr. Gentle reported that, pursuant to Section 9 of the Settlement Agreement, the Parties, including Class Counsel and Defense Counsel, have agreed and recommend that the holdback amount shall be \$645,000, less the money that is to be paid to the 3 Opt-Outs who desire to be a part of the Class totaling \$42,340.50, as addressed in the Settlement Administrator’s October 15, 2018 Request for Instructions Respecting the Settlement Status of Three Claimants, if the Court grants their request to be a part of the Class and PROVIDED that no objectors are allowed to opt out.

The Court hereby determines that the Hold Back Amount will be \$645,000 less \$42,340.50, which will be apportioned to the three apparent Opt-Outs coming back in the Settlement, for a net Hold Back Amount of \$602,659.50, PROVIDED THAT NO OBJECTORS ARE ALLOWED TO OPT-OUT. If any objectors are allowed to opt-out, the Hold Back Amount will have to be renegotiated by the Settlement proponents.

4. Late Registrants

Mr. Gentle reported that his office received 2 Claim Forms late after the March 10, 2018 deadline, filed by Bryan Dueward Taylor, Jr. and Willie Tynell Dixon. No objections being raised, the Court orders these Claim Forms shall be accepted and processed by the Settlement, with these Claimants' Claims being bound by the Settlement.

5. February 11, 2019, 9:00 a.m. Fairness Hearing Planning

Mr. Gentle reported that approximately 512 Claim Forms were filed and that 170 Claimants appealed their score, with 27 appeals granted either partially or fully. There are an estimated 667 total Class Members. While the Parties hope to complete the hearing within 3 hours, the Court has set aside the full day for the hearing. Mr. Gentle will file with the Court a proposed Agenda for the Fairness Hearing.

DONE and ORDERED this ___ day of November, 2018.


eSigned by CIRCUIT JUDGE JAN SHACKELFORD in 2015 CA 000722
on 11/16/2018 11:23:06 MbErJzCe

Jan Shackelford, Circuit Judge