

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT COURT  
IN AND FOR ESCAMBIA COUNTY, FLORIDA

CLARKE ALLEN, et al.,	)	
	)	Case No. 2015-CA-000722
Plaintiffs,	)	
	)	Division No. C
A.E. NEW, JR., INC., et al.,	)	
	)	
Defendants.	)	CLASS REPRESENTATION

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ORDER

Pursuant to the agreed Scheduling Order entered by this Court after the conference with the parties, on November 5, 2018, this matter came on to be heard on February 11, 2019, at 9:00 AM for the purposes of (i) the Settlement Fairness Hearing to determine if the proposed Class Settlement is due to be approved, which is addressed in a separate Order; and (ii) resolving objections tendered by 37 class members with respect to how the Settlement Administrator, Ed Gentle, scored them under the Claim Form with its Claimant Grid that is Exhibit 1 to this Court's November 8, 2017 Preliminary Approval Order and is part of Settlement Administrator Exhibit 3A (the "Grid"). These class members have made it clear to the Court that they do not object to the proposed Settlement, but only to how they were scored under the Grid by the Settlement Administrator. They are referred to hereinafter as the "Scoring Objectors."

The 35 Scoring Objectors who appeared were:

- A. Thomas Dumas, Calvin Lyons and Veronica Stanton, represented by Vanessa Brice, Esq. (collectively, the "Brice Scoring Objectors");
- B. Adam Prudhomme, pro se;

- C. Steven Harris, pro se, and appearing telephonically;
- D. Laverio Crooks, Joel Eaves, Hannah Hamilton, Ebony Demps McCants Lawrence, Kentari Leonard, Johnathan Holloway, Teresa Newbern, and Christine Toca, being 8 Scoring Objectors and appearing through their counsel, Ward & Barnes (collectively, the "Ward & Barnes Scoring Objectors"); and
- E. Ilyaas Ashanti, Deanna Byrd, Reanna Cravatt, Jill Dickey, Matthew Flores, James Foster, Diane Gaszak, Melissa Hicks, Randy Holiday, Jalissa Johnson, Estate of James Marciniak, Albert Mattis, John Moore, Cherie Phillips, Jonathan Robinson, Joseph Ryals, John Satterwhite, Jeffrey Sawyer, Sherri Sullivan, Taris Tolliver, Elizabeth White and Angela Wilson, being 22 Scoring Objectors and appearing through their counsel Michles Booth (collectively, the "Michles & Booth Scoring Objectors").

The appearing Scoring Objectors submitted evidentiary exhibits that were admitted into evidence under seal due to confidentiality concerns as follows:

<u>Scoring Objector(s)</u>	<u>Exhibit</u>
Thomas Dumas	8E
Calvin Lyons	8F
Veronica Stanton	8G
Adam Prudhomme	8D
Steven Harris	8B
The Ward & Barnes Scoring Objectors	4
The Michles & Booth Scoring Objectors	6 and 6A

The Settlement Administrator submitted rebuttal evidence exhibits that were also admitted into evidence under seal due to confidentiality concerns as follows:

<u>Scoring Objector(s)</u>	<u>Exhibit</u>
The Brice Scoring Objectors	9
Prudhomme and Harris	9
The Ward & Barnes Scoring Objectors	5
The Michles & Booth Scoring Objectors	7

Two additional Pro Se Scoring Objectors, Eve Harris and Anthony Hull, pre-filed evidence in Exhibits 8A and 8C, respectively, which were admitted into evidence under seal due to confidentiality concerns, and with the Settlement Administrator's rebuttal evidence thereto being in Exhibit 9 and also being admitted under seal due to confidentiality concerns. These two Scoring Objectors did not appear at the Hearing.

Also appearing at the Hearing, but not providing the Court with advance notice of his intention to do so or of his request to speak, was class member Antonio Quiles.

Additional Parties appeared in person or telephonically as set forth in the transcript.

Prior to the Court's addressing the individual claims of the Scoring Objectors, Mr. Gentle provided general testimony concerning the Grid.

Mr. Gentle provided the Court with his educational background and work experience, which are summarized in his resumé in Exhibit 1A. The Court finds that he has a vast experience in creating and administering mass settlements, including class action settlements. More specifically, he has considerable experience in designing and carrying out settlement grids. He testified that the Grid in this Settlement was designed in collaboration with the lead Plaintiffs' Counsel in this case. According to Mr. Gentle, all

Scoring Objectors participated in the process of completing the Grid, and selecting where each thought he or she should be graded on the Grid and by providing supporting documentation which had to exist by the December 8, 2017 cutoff date set forth in the Grid, which was one month after the date of the Preliminary Approval Order, and with the cutoff date being established to be fair to all class members. Each class member, in deciding whether to accept the Settlement or not, was then provided his Grid score and an updated estimate of the resulting payment he or she would receive.

All 37 Scoring Objectors expressed their dissatisfaction with their Grid scoring results and updated estimated payment, and all but one timely appealed. Each appellant then received an appeals decision, with 7 being granted, one not appealing, and 29 being denied. The Grid is contained the Claim Form in Exhibit 3A, which was admitted into evidence.

Mr. Gentle reviewed the Grid in detail during his testimony.

Mr. Gentle emphasized the following 4 points concerning the Grid and the gridding process that all participating class members, including the Scoring Objectors, agreed to:

First, on pages 31 and 32 of the Claim Form the class members agreed that the Settlement Administrator's gridding decision, after appeals to the Settlement Administrator, is final and if that they did not agree with the scoring or the updated monetary award under the Grid, they could either (i) object to the Settlement itself such as the Objectors represented by Mr. Shane Lucado at the January 7, 2019, Hearing; or (ii) they could opt-out. The Scoring Objectors decided not to do either and the deadline for doing so was September 1, 2018, under the Preliminary Approval Order.

Second, the Claim Form itself contains an initial projection of the amount to be received for each Grid category. This was based on hundreds of hours of workshops with Plaintiffs' Counsel for the first year of Mr. Gentle's engagement, grading hundreds of claimants using medical and other applicable documents, to create the Grid. The Grid's initial payment projections were based on a large sample of 452 or about 2/3 of the class members but, when the Settlement moved forward, numerous additional records were provided by Plaintiffs' Counsel, so that the average grade under the Grid per claimant rose, with the average payment under the given Grid category commensurately dropping. As a result, the actual Grid scores were about 15% more than originally projected, with the updated Grid awards provided to the class members with their Grid score going down about 15%.

Third, the Claim Form states that the Settlement Administrator was only providing in the Grid a payment estimate subject to change at pages 24 to 25: "a claimant could receive less or more depending on the final claimant categories for the approximately 665 Additional Claimants (meaning the non-grave claimants), and whether or not they will all participate. This is our best estimate based upon the facts and circumstances now known." Also, on page 25, the Claim Form discusses what happens if there isn't enough money: a ratable reduction in the payments to the class members.

Fourth, all 512 Settlement participating class members were graded with the same Grid using the same methods. Nothing is different about how the Settlement Administrator scored the 37 Scoring Objectors compared to the other 475 claimants who are not challenging their Grid scores.

In closing his general testimony, Mr. Gentle cited the Honorable Kenneth Feinberg, who administered the 9/11 Settlement, for the following proposition: "In mass tort settlements, consistency is fairness." Mr. Gentle stated that, in his opinion, the fairest decision the Court can make is to treat the 37 Scoring Objectors in the same way as the 475 class members who did not object, by upholding the Settlement Administrator's Grid decision on each.

All persons in the courtroom then signed a HIPAA Confidentiality Agreement provided by Mr. Gentle, in order to protect the individual confidential information of the Scoring Objectors submitted in testimony or their presentations. As an additional accommodation, pro se Scoring Objectors or counsel representing Scoring Objectors that were not testifying or making a presentation at the time cleared the courtroom, and were only called into the courtroom when it was their turn to testify or make a presentation.

The 3 Brice Scoring Objectors testified first. Their testimony was followed by the testimony of Mr. Gentle with respect to each of their specific claims and how they were scored under the Grid. Ms. Brice also submitted oral argument.

Mr. Prudhomme then testified, and Mr. Gentle provided rebuttal testimony on his specific claim and on how he was scored under the Grid. Mr. Steven Harris then testified telephonically, and Mr. Gentle provided rebuttal testimony on his specific claim and on how he was scored under the Grid.

Mr. Quiles was then allowed to testify. The Settlement Administrator informed the Court that Mr. Quiles has completed a Claim Form, but he has not signed it. Mr. Quiles has been scored under the Grid and has received notice of his Grid score and proposed

payment. According to the Settlement Administrator, Mr. Quiles can sign the Claim Form and participate in the Settlement if he desires to do so.

Testimony was not provided by the Ward & Barnes Scoring Objectors or by the Michles & Booth Scoring Objectors, but their attorneys made oral argument. Mr. Gentle provided rebuttal testimony indicating how he graded the claims of each of the Wards & Barnes and Michles & Booth Objectors under the Grid.

Having considered the evidence presented in the Hearing, the briefs of the Parties and the argument of Counsel and being fully informed of the premises, the Court makes the following rulings:

1. The Scoring Objectors' objections with respect to how they were scored under the Grid by the Settlement Administrator are all OVERRULED for the following reasons:

A. The Scoring Objectors presented no evidence that they were scored any differently from the other class members scored under the Grid, and it would be inconsistent and unfair to score them differently from all other class members.


B. Scoring Objectors, Eve Harris and Anthony Hull, did not appear the Hearing.

2. The Settlement Administrator presented convincing and detailed testimony indicating how he scored each of the Scoring Objectors under the Grid applying grid factors uniformly and objectively.

3. Because the Scoring Objectors did not timely opt-out of the Settlement or object to the Settlement, by the September 1, 2018 deadline, they are unable to do either at this time.

For these reasons, all objections of the Scoring Objectors are fully and finally  
OVERRULED. These scoring objections will not be further addressed by the Court.

Entered this \_\_\_\_ day of \_\_\_\_\_, 2019.

  
eSigned by CIRCUIT JUDGE JAN SHACKELFORD in 2015 CA 000722  
on 02/22/2019 15:18:09 DeG73nAb