Filing # 146161151 E-Filed 03/22/2022 11:13:19 AM

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION DIVISION

CASE NO: 2021-015089-CA-01
SECTION: CA43
JUDGE: MICHAEL HANZMAN

In re:

Champlain Towers South Collapse Litigation
_____/

NOTICE OF FILING

Tali Naibryf, sister of the deceased, Ilan Naibryf, hereby gives Notice of Filing the attached letter dated March 8, 2022 raising points for the Court's consideration as to the Allocation Settlement Agreement.

Dated March 22, 2022.

Respectfully submitted,

/s/ Stuart Z. Grossman
Stuart Z. Grossman (FBN 156113)
GROSSMAN ROTH YAFFA COHEN, P.A.
2525 Ponce de Leon Boulevard
Suite 1150
Coral Gables, FL 33134
Tel: (305) 442-8666
szg@grossmanroth.com

Dear Judge Hanzman,

Thank you for your continued sensitivity and attention to the tragedy, which occured on June 24th, 2021. As a reminder, my family lost my 21 year old brother, Ilan Naibryf, who was visiting his girlfriend, Deborah Berezdivin in the combined units of 811 and 812.

As you may know, I participated in the mediation conversations that took place on February 4th. While much was discussed during the mediation, many of the details included in the ALLOCATION SETTLEMENT AGREEMENT were discussed post-February 4th between lawyers (where I did not participate). As such, there are a number of points we would like to raise for your attention as it relates to the current ALLOCATION SETTLEMENT AGREEMENT.

INSURANCE RECOVERIES The agreement is currently silent on whether or not insurance proceeds already collected by unit owners for their structure (i.e., not contents) will be deducted from their allocation. The $83M cap on homeowner compensation was rooted in the idea that no homeowner would "profit" from the tragedy and death of 98 victims. If the appraised value of the units (i.e., pre-collapse) is ~$96M, and the repairs assessment was ~$16M, anything over ~$80M could be perceived as profit, especially when "*...in a negligence action, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault…*" (FL statute, 768.81.2). To clarify, we do not object to the $83M cap, but would like to emphasize that this recovery would in essence make homeowners whole, and we'd like to suggest that any insurance recoveries made by unit owners be deducted from the "Common Fund" allocated to them.

LEGAL COSTS As expected, the case continues to incur costs that will later need to be paid out of the recovery funds, including by not limited to the potential award for the attorneys who continue to work tirelessly on this case. How will these costs be addressed, if funds are distributed prior to the conclusion of the case? It seems as though there are two ways to potentially go about this issue:

a) Estimate the costs of the case thus far and deduct from the homeowners' recovery, similar to how future costs will be deducted from the recovery made in the class action;
b) Funds are not distributed until the case costs / fees are finalized. Obviously, this does not provide immediate relief to any affected party.

We struggle with the ambiguity around these points, and believe that for a fair and open agreement to be made, these issues must be clarified prior to its approval. For example, statements such as "*the Court will determine at a later date whether or not the proceeds of such 'dwelling coverage' is properly applied to reduce the Participating Unit Owner's share of the Common Fund*" are unclear. What will be the later date, and will it be prior to the release of any funds?

SURVIVING CLAIMS According to ALLOCATION SETTLEMENT AGREEMENT, section **3-k**,

> *"...Former and current members of the Association's Board of Directors, Scott Stewart and Participating Unit Owners* ***who did not have a tenant or guest at the time of the Collapse will have no remaining liability to the Association or WDC****; provided, however, that (i) direct claims by tenants and guests of Unit Owners against Participating Unit Owners, if any, and (ii) claims of the Receiver to recover solely from any policy of insurance, will be carved out of the Bar Order (collectively, the 'Surviving Claims')..."*

While there is no obvious reason to withhold the distribution of funds from homeowners with **no potential wrongful death claims** against their unit (N = 89 units), the same may not be said for homeowners of **units where individuals died** (N = 47 units total, 21 of those units have deceased renters and visitors). Many units have liability for deceased inhabitants far in excess of their insurance policies (if any policy was in place). In an effort to prevent a continued and drawn out legal battle between descendant survivors and unit owners, we would like to suggest that their pro-rata share of the $83M be withheld by the receiver in the event that their individual insurance does not satisfy the claims against them. Similar to how accepting insurance proceeds would release homeowners of individual liability, settling on the value of the unit inhabited at the time by the deceased could function as a similar release.

Thank you again for your consideration of the above and your tireless effort to adjudicate this complex and sobering case in the most fair and just manner.

Sincerely,
Tali Naibryf