

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

**COMPLEX BUSINESS
LITIGATION DIVISION**

**IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION.**

CLASS REPRESENTATION

RE: SETFLORE, LLC

CASE NO. 2021-015089-CA-01

**SETFLORE, LLC'S OBJECTION TO PROPOSED ALLOCATION AGREEMENT
AND LITIGATION BAR ORDER**

NOW COMES Plaintiff, SETFLORE, LLC, and moves this Court to consider the following objection and recommended relief regarding the proposed Common Fund settlement:

1. There is a subclass of Unit Owners who rented their units to tenants (or had guests) who perished in the collapse; may all of the people who perished be a blessed memory for their loved ones.
2. Setflore, LLC is a member of the subclass, hereinafter, the subclass of Unit Owners will be referenced for convenience here as the "Carve Out Owners".
3. The "Carve Out Owner" subclass is estimated to number eleven (11) unit owners to twenty-one (21) who had tenants/guests who perished; the number

of deaths is unknown due to the data not being readily accessible as of the writing.

4. The proposed settlement agreement would provide for complete releases of liability for all parties **except** the “Carve Out Owners.” It leaves in place actions that could be brought by their tenants and exposes these “Carve Out Owners” to lawsuits and liability despite being parties who should be fully released as all other parties.
5. The proposed settlement includes funds for liability coverage which will be paid to claims based on the loss of tenants. The insurers writing those policies have a duty to the “Carve Out Owners” as insureds. The proposed settlement leaving them unprotected is unfair.
6. The “Carve Out Owners” are left in a precarious situation. Whether they accept this proposed settlement or not, they will remain subject to claims.
7. From a legal liability analysis perspective, there is no difference between unit owners between those had tenants and those who did not; however, the proposed Common Fund Settlement treats the two very differently.
8. On one hand, by accepting the proposed settlement, it provides for limited recovery, and they would be in line with all unit owners.

9. Simultaneously, on the other hand, “Carve Out Owners” would be accepting unlimited exposure.
10. Under the proposed settlement, it is an open invitation litigation against the small number of “Carve Out Owners” where they would be bearing the full weight and responsibility for all the parties, including those who have been released, subject to a Fabre Affirmative Defense.
11. Additionally, there are unit owners, unit owners who died, and then “Carve Out Owners.” Meanwhile, the unit owners without tenants are fully released if they accept the current offer. If the unit owners who sustained deaths accept the offer, they too are fully released and are allowed to continue forward in receiving funds from third-party claimants even if they accept the terms of the proposed settlement. If the “Carve Out Owners” accept the proposed Common Fund offer, then the “Carve Out Owners” remain fully exposed as is there is no acceptance.
12. Hypothetically in either scenario, acceptance or opting out, the “Carve Out Owners” will be exposed to crushing legal expenses. In a recent filing in this action, a good faith estimation of legal fees through to a motion to dismiss, a first pleading, would cost an estimated \$350,000.00.
13. The proposed common Fund Settlement creates an unfair and unjustified unlimited exposure to the subclass of the “Carve Out Owners” which is

unfair and unwarranted. This is especially so given the disparate treatment of unit owners based on whether they had tenants/guests at the time.

14. The “Carve Out Owners” could accept the Common Fund Settlement, and then have the decedents of the unit owners then attempt to take funds from them in the form of a settlement or judgment, later. The Common Fund Settlement leaves the “Carve Out Owners” with any sense of tranquility or finality.

15. It is unknown as to what, if any, insurance claims between the “Carve Out Owners” and the claims of the Estates of the deceased tenants. So, in other words all claims, all Estates of the deceased the tenants, in essence have claims against the “Carve Out Owners.” Potential theories could expose the “Carve Out Owners” to claims by all 98 wrongful death cases.

16. The opt-out provision is an inadequate safeguard for the “Carve Out Owners”; they are in no different position than carrying the weight of the entire litigation.

17. This scenario defeats the purpose and intent and rulings of this court, and at the goal of this court is to encourage settlement where possible, but they must be fair and reasonable.

Relief sought:

- A. DENY the proposed Agreement for failing to account for these last claims in the overall Agreement, including Litigation Bar terms.
- B. DIRECT the parties to identify a resolution that protected all the Class Defendants completely, including the order of a Settlement Conference or Mediation, if the Court agrees.
- C. CONSIDER allowing for an extended opt out period for the “Carve Out Owners” exception class.
- D. ANY other relief as this court may deem proper and necessary.

Respectfully submitted this 22nd day of March, 2022.

/s/ Henry L. Perry

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