

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

CASE NO: 2021-015089-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

In Re: Champlain Towers South Collapse Litigation

Plaintiff(s)

vs.

N/A

Defendant(s)

_____ /

SUA SPONTE ORDER ON ATTORNEYS' FEES CLAIMS

THIS CAUSE came before the Court on June 23, 2022, in the context of the Court's holding the Final Fairness Hearing pursuant to the *Order Granting Class Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Certification of the Settlement Class*. At that time, the Court deferred consideration of Class Counsel's *Application for Award of Attorneys' Fees, Costs, and Expenses* (filed June 12, 2022). During the discussion of attorneys' fees, the issue arose regarding possible attorneys' fees claims by attorneys not within the Class Action Leadership Structure appointed by the Court in the *Order Appointing Plaintiffs' Counsel and Addressing Certain Case Management Issues* ("Appointment Order") and the *Amended Order Appointing Plaintiffs' Counsel and Addressing Certain Case Management Issues* ("Amended Appointment Order"; and, with the *Appointment Order*, "Class Leadership Orders") (both entered July 16, 2021). **In particular, the Court was advised that certain attorneys not appointed by the Court, and who did not contribute in securing the settlement funds to be paid to class members, have claimed - or intend to claim - an entitlement to attorneys fees from class members pursuant to private fee agreements. To avoid any misunderstandings, the Court hereby Orders:**

1. At the outset of these consolidated proceedings, the Court advised all counsel that this was not going to be a normal proceeding and that attorneys serving victims of the Champlain Towers South collapse would only be allowed to become members of the Class Action Leadership Structure upon the condition that they accept terms of representation with absolutely no assurance of payment or legal entitlement to any fees whatsoever. *See* Transcript of July 7, 2021, Hearing at 16-17.
2. The Court also advised all counsel that it would reserve the right and the discretion to award reasonable compensation based primarily upon counsels' "lodestar". The Court summed up the situation by explaining that counsel who agreed to this representation would have their time completely at risk with absolutely no assurance of payment whatsoever and no legal right to payment. *See id.*
3. The Court expressly only addressed fees to be earned in what could eventually be certified classes, if they were certified, and noted that if either a class(es) was/were not certified, because the action was not amenable to certification, or a class(es) was/were certified and a person opted-out and chose to proceed with his or her own lawyer, such person's fee arrangements with his/her lawyers would not be impacted by the Court's conditions for representation. *See id.* at 25.
4. The Court was explicit that it was proposing what the fee structure would be for class proceedings and for lawyers who sought to receive compensation derived from the class mechanism. *Id.*
5. A number of counsel who were initially considering representing victims of the Champlain Towers South collapse may have elected not to seek a leadership role in this case because of the parameters demanded by the Court.
6. In sharp contrast, some of the best lawyers in South Florida – and, indeed, the nation – accepted the Court's terms of representation and, in the Court's vernacular, "Stepped up to

the plate.”

7. Accordingly, the Court entered the *Class Leadership Orders*, requiring that all claims be brought on behalf of all putative class members be advanced in a single consolidated action and establishing various “tracks” for categories of claims. *See generally id.* The Court “commend[ed] counsel for assuming this weighty responsibility as a public service, recognizing the possibility that they will not be compensated for the time expended in this Case. *See id.* at § V (bold omitted).
8. The Court appointed counsel as lead counsel for the various tracks, established a Plaintiffs’ Steering Committee, and appointed Co-Chair Lead Counsel (all, collectively, “Class Counsel”). *See Amended Order* at 4.
9. The efforts of Class Counsel led to an outstanding result for all class members. On May 28, 2022, the Court preliminarily approved the “In re: Champlain Towers South Collapse Litigation Class Action Settlement Agreement” (“Settlement Agreement”) and preliminarily certified the Settlement Class. *See Order Granting Class Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and Certification of the Settlement Class (“Preliminary Approval Order”)* at 3-4. The Court also appointed Settlement Class Counsel. *See id.*
10. Significantly for purposes of this Order, the *Preliminary Approval Order* approved the Class Notice and ordered its widespread publication. *See id.* at ¶¶ 8-9. The Class Notice was widely publicized as ordered by the Court. *See Notice of Filing Receiver’s Declaration* (filed June 16, 2022) (detailing publication steps).
11. The *Preliminary Approval Order* gave Settlement Class Members until June 16, 2022, to opt out of the Settlement. *See id.* at ¶ 14. No Settlement Class Member chose to opt out.
12. The Settlement Agreement gave rise to a common fund (the “Settlement Fund”), totaling approximately \$1,021,199,000.00 to make cash payments to the Settlement Class Members. *See Class Notice* at § 5.

13. As stated in the Notice, “Applications for attorneys’ fees or expenses must be filed no later than June 12, 2022.” *See id.* at § 12. As also stated in the Notice, “Any such award would be paid from the Settlement Fund.” *Id.*
14. In compliance with the deadline approved by the Court and publicized in the Notice, Settlement Class Counsel timely filed their *Application for Award of Attorneys’ Fees, Costs, and Expenses*.
15. In addition, on June 17, 2022, Calil Law P.A. filed the Declaration of Jorge A. Calil in support of a request for attorneys’ fees from the Settlement Fund. *See Calil Law P.A.’s Notice of Filing*.
16. No other applications for attorneys’ fees have been filed as of the date of this Order.
17. The Court issued the *Final Judgment and Order* finally approving the Settlement Agreement and certifying the Settlement Class on June 24, 2022.
18. The Court’s authority to govern attorneys’ fees in the context of a class action settlement common fund is well established. “In a common-fund case like the one before us, the defendant[s] pay[] a specified sum for the benefit of class members. The class attorneys can then petition the court to obtain fees from the fund although contingency fee agreements were entered by only a small number of class members . . .” *Kuhnlein v. Dep’t of Revenue*, 662 So. 2d 309, 310 (Fla. 1995) (emphasis added).
19. Indeed, as the First District Court of Appeal stated in *Nelson v. Wakulla County*, 985 So. 2d 564 (Fla. 1st DCA 2008):

to fully discharge its duty to review and approve class action settlement agreements, a court **must** assess the reasonableness of the attorneys’ fees. *See Piambino [v. Bailey]*, 610 F.2d [1306] at 1328 [(5th Cir. 2980)]. The purpose of this requirement is to protect the nonparty members of the class from unjust or unfair settlements affecting their rights and to minimize conflicts that may arise between the attorney and the class, named plaintiffs and absentees, and various subclasses. *Id.* at 1327-28. Moreover, the court’s examination of attorneys’ fees guards against the public

perception that attorneys exploit the class action device to obtain large fees at the expense of the class. *See Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 801 (3d Cir.1995).

Id. at 573 (all emphasis added).

20. Accordingly, as a matter of law as well as consistent with the parameters the Court established for recovery of attorneys' fees from any class resolution at the very beginning of this proceeding, the Court has an obligation to and will supervise and control any payment of attorneys' fees (and/or costs) out of awards to Settlement Class Members from the Settlement Fund, including, but not limited to, any attempt by an attorney to claim an entitlement to a payment of fees or costs out of any award to a Settlement Class Member, either pursuant to the terms of a private fee contract or otherwise. It is therefore further ORDERED:

1. No Settlement Class Member is obligated to pay **any** sum to any attorney as an attorneys' fee or cost out of his/her award from the Settlement Fund – directly or indirectly – unless that attorney has filed an application for attorneys' fees or costs which is approved by the Court, regardless of whether that Settlement Class Member has signed a contingency fee or other agreement. Put simply, no class member is obligated to directly pay any fees or costs to any attorney - period. Rather, fees and costs will be paid by the Receiver out of the settlement fund pursuant to - and **only** pursuant to - orders of this Court awarding such fees/costs. No attorneys fees/costs will be paid by class members, or accepted by any attorney, outside the confines of this action
2. This Order does not prohibit payment by a Settlement Class Member from his/her award from the Settlement Fund to a probate or estate lawyer engaged pursuant to a standard hourly fee retainer agreement at reasonable and customary rates in Miami-Dade County for such work.
3. This Order also does not prohibit a Settlement Class Member from hiring an expert to

support his or her claim pursuant to a standard hourly fee retainer agreement at reasonable and customary rates in Miami-Dade County for such work, with the charges for such expert to be paid from an award.

4. **The Court hereby ENJOINS any attorney from attempting to recover, or accepting payment of, any attorneys fees/costs from any class member unless such fees/costs are awarded by this Court pursuant to a timely filed application.**
5. **Any attorney seeking to recover a fee out of an award to a Settlement Class Member may file an application for attorneys' fees within thirty (30) days of the date of this Order.**
6. **Failure of an attorney to file an application for attorneys' fees by the deadline set this by Order will result in the attorney being BARRED from recovering any fees or costs out of Settlement Class Member's award from the Settlement Fund.**
7. The Receiver is ordered to post this Order on the ctsreceivership.com website maintained to provide information to victims and other members of the public about this proceeding.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 27th day of June, 2022.



2021-015089-CA-01 06-27-2022 4:31 PM

Hon. Michael Hanzman

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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