

**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.

**RECEIVER'S MOTION TO CONFIRM COMPLIANCE WITH ARTICLE 6.7 OF THE
JUNE 2022 SETTLEMENT AGREEMENT IN CONTEMPLATION OF DISTRIBUTION**

Michael I. Goldberg (the "Receiver"), in his capacity of Settlement Administrator¹ and pursuant to Rule 4 of the Complex Business Litigation Rules, moves to confirm that the requirements of Article 6.7 of the June 2022 Settlement Agreement have been met such that the Settlement Fund may be disbursed, as authorized and directed by the Court, without any Temporary Holdback limitation on the sums available to be disbursed.

In support of this motion, the Receiver states as follows:

INTRODUCTION

In broad strokes, in return for resolution of all claims that could be raised against the Settling Parties, the June 2022 Settlement Agreement created a Settlement Fund funded by the Settling Parties insurers on behalf of their insureds – *i.e.*, the Settling Parties. *See id.*, Art. 4.1.1; Art. 4.4; Art. 6.1. The June 2022 Settlement Agreement provided for a dismissal with prejudice of all claims against the Settling Parties and a "Bar Order" barring all existing and potential claims

¹ Capitalized terms not defined herein are defined in the "In Re: Champlain Towers South Collapse Litigation Class Action Settlement Agreement" (the "June 2022 Settlement Agreement"), finally approved by the Court on June 24, 2022. All references to "Article" or "Art." are to Articles of the June 2022 Settlement Agreement or the "August 2022 Settlement Agreement" (defined below) as warranted by the context to the extent not expressly stated.

against the Settling Parties. *See id.* at Art. 10; Art. 11. The Court correspondingly entered the required *Final Order and Judgment*, on June 24, 2022, and the *Final Order Barring, Restraining, and Enjoining Claims (I) That Were or Could Have Been Asserted in the In Re: Champlain Towers Collapse Litigation and (II) All Other Claims Arising Out of or Related to the Champlain Towers South Collapse*, on August 5, 2022. No person sought to appeal either order.

The Holdback Provisions

The June 2022 Settlement Agreement has several provisions relating to “holdback” amounts, which are portions of the Settlement Fund potentially not subject to immediate distribution upon the satisfaction of the requirements of Article 3. These amounts are denominated the “Temporary Holdback,” which is defined in Article 2.1.147 as “funds from the Settlement Fund in the sum of: (a) the WDC Holdback Sum, plus (b) the Subrogation Holdback Sum.” *See id.*

The provisions governing release of the Temporary Holdback for distribution are set by Article 6.7:

6.7 Release of the Temporary Holdback. Subject to the terms and conditions of this Settlement Agreement, the Settlement Administrator may disburse the Temporary Holdback from the Settlement Fund ratably to the Settlement Class Members in proportion to their respective Monetary Awards as follows:

6.7.1 after the WDC Holdback Expiration Date, the balance of the WDC Holdback Sum; and

6.7.2 after the SCM Subrogation Deadline, the balance of the Subrogation Holdback Sum.

The WDC Holdback Expiration Date and WDC Holdback Sum are explicated in Article 2.1.159 through Article 2.1.161.² They are irrelevant to the issue before the Court; for there to be a WDC

² Article 2.1.159 through Article 2.1.161 state:

2.1.159 “WDC Holdback Expiration Date” means the date that is the later of the following to occur (a) all statutes of limitations applicable to all wrongful death actions that could have been asserted, or could be asserted, by all Non-Participating WDCs expire; or, in the event of a Non-Participating WDC Claim, (b) the earlier of (i) the date that the Claims Administrator, Class Counsel, or the Receiver has

Holdback Sum, an estate of a “Wrongful Death Claimant” – *i.e.*, “WDC” – would have to have not participated in the Claims Administration process. Since the estate of every WDC participated in the Claims Administration Process, there are no Non-Participating WDCs. Correspondingly, because there are no Non-Participating WDCs, there are no WDC Holdbacks. Therefore, there is no WDC Holdback Sum comprising part of the Temporary Holdback. *See* Art. 2.1.160 & Art. 2.1.161.

That leaves the Subrogation Holdback Sum – which is \$30,000,000, *see* Art. 2.1.144 – to be addressed by the Court. The provisions explicating the SCM Subrogation Deadline and Subrogation Holdback Sum are in Article 2.1.123 through Article 2.1.125:

2.1.123 “SCM Insurer” means any insurer of any Settlement Class Member that has paid or pays any insurance proceeds to, or on behalf of, any Settlement Class Member, on or before the Effective Date, including those insurers listed on the Schedule of SCM Insurers attached as Exhibit G hereto and made a part hereof.

2.1.124 “SCM Insurer Subrogation Claim” means the Universal Action, and any claim, lawsuit, action, demand, arbitration, or proceeding asserted by an SCM Insurer against any Released Party.

2.1.125 “SCM Subrogation Deadline” means the date that is the earlier of the following to occur: (a) the PSC delivers to the Settling Parties executed Insurer Waivers from Universal and all SCM Insurers as provided in this Settlement Agreement; (b) the Court, or such other appropriate state or federal courts or tribunals, enter final, non-appealable orders (other than the Final Order and Judgment or the Receivership Bar Order) that (i) permanently dismiss with

settled and resolved all Non-Participating WDC Claims, or (ii) the date that the Court, or such other appropriate state or federal courts or tribunals, enter final, non-appealable orders (other than the Final Order and Judgment or the Receivership Bar Order) that permanently dismiss with prejudice all Non-Participating WDC Claims, and enjoin and permanently bar all Non-Participating WDCs from commencing, continuing, or maintaining any Non-Participating WDC Claim against any Released Party.

2.1.160 “WDC Holdback(s)” means, for each Non-Participating WDC, an amount equal to the greater of: (a) the product of (i) two multiplied by (ii) such Non-Participating WDC’s actual Monetary Award; or (b) the product of (i) two multiplied by (ii) the Average WDC Monetary Award.

2.1.161 “WDC Holdback Sum” means the aggregate WDC Holdbacks for all Non-Participating WDCs.

prejudice, as against the Released Parties, the Universal Action and all other SCM Insurer Subrogation Claims, and (ii) enjoin and permanently bar all SCM Insurers from commencing, continuing, or maintaining all SCM Insurer Subrogation Claims against any Released Party; or (c) June 24, 2025, if there are no pending SCM Insurer Subrogation Claims.

Thus, Article 2.1.125 sets specific, alternative conditions for meeting the SCM Subrogation Deadline and thereby freeing the Subrogation Holdback Sum for distribution by the Settlement Administrator prior to June 24, 2025: (1) The necessary Insurer Waivers are provided to the Settling Parties or (2) the Court enters an order dismissing and barring all claims against the Released Parties. *See id.* As explained below, both alternative conditions have been satisfied.

The August 2022 Settlement Agreement

With respect to Article 2.1.125(b), in addition to reaching the settlement with the Settling Parties memorialized in the June 2022 Settlement Agreement, Class Counsel and the Receiver, on behalf of the CTSCA, continued to negotiate between themselves and with other potentially-responsible parties, which negotiations resulted in the *In Re: Champlain Towers South Collapse Litigation Class Action Settlement Agreement with the Champlain Towers South Condominium Association, Inc., Central Alarm Control, Inc., Infinite Aqua, LLC, and Premier Fire Alarms and Integration System, Installation Division, Inc.* (the “August 2022 Settlement Agreement”).

The August 2022 Settlement Agreement created the same broad strokes resolution for the “Additional Settling Parties”³ that the June 2022 Settlement Agreement did for the Settling Parties. In return for resolution of all claims that were or could be raised against the “Released Parties” – which term includes, but is not limited to, the Additional Settling Parties – by the Settlement Class and resolution of the CTSCA’s claims, the August 2022 Settlement Agreement provided that the Additional Settling Parties or their insurers would contribute to the Settlement Fund. *See id.* at

³ The “Additional Settling Parties” are Central Alarm Control, Inc., Infinite Aqua, LLC and Premier Fire Alarms and Integration System, Installation Division, Inc. *See id.* at 1.

Art. 3.1.1, Art. 5.1.1, Art. 5.3.1 The August 2022 Settlement Agreement provided for entry of a judgment and dismissal with prejudice of all claims that were or could have been asserted against any “Released Party” and a “Bar Order” barring all existing and potential claims. *See id.* at Art. 8.1 & Art. 8.2.

“Released Party(ies)” is expansively defined in the August 2022 Settlement Agreement:

“Released Party(ies)” means the CTSCA Releasees, the Central Alarm Releasees, the Infinite Aqua Releasees, and the Premier Fire Releasees, **any person or entity qualifying as an insured under any of the insurance policies contributing to the Settlement Fund**, and all of their respective past, present, and future administrators, Affiliates, heirs, legatees, executors, trusts, personal representatives, conservators, transferees, insurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, members of any management committee, shareholders, trustees, employees, employers, lienholders, subrogees, accountants, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, and managers of any of the foregoing). The term “insurer,” when referring to an insurer of a Released Party, means the insurer of such Released Party, but only in its capacity as an insurer of that Released Party.

Id. at Art. 2.1.70 (all emphasis added).

Accordingly, “Released Parties” as defined in the August 2022 Settlement Agreement encompasses every Settling Party in the June 2022 Settlement Agreement, because every one of them was an “insured under an[] ... insurance polic[y] contributing to the Settlement Fund.” *See id.*; *see also* June 2022 Settlement Agreement, Art. 4.1.1, Art. 4.4 & Art. 6.1. Thus, a “Settling Party” under the June 2022 Settlement Agreement is a “Released Party” under the August 2022 Settlement Agreement.

The August 2022 Settlement Agreement was approved through the *Final Order and Judgment* entered on August 30, 2022 the (“*August Final Order and Judgment*”). As part of the *August Final Order and Judgment*, the Court “enter[ed] a Complete Bar Order” in Paragraph 11 which provided:

a. Except as otherwise provided in Section 7.8 of the June 2022 Settlement Agreement, any and all persons or entities (each, a “Barred Party” and collectively, the “Barred Parties”) are hereby permanently BARRED, ENJOINED, and RESTRAINED from commencing, continuing, or maintaining **any claim of any kind, however styled, against any Released Party, including, without limitation, claims for indemnification, contribution, defense, or subrogation, arising out of, concerning, in any way connected with, or in any way relating, directly or indirectly, to the CTS Collapse, the Litigation, any Related Action, or the August 2022 Settlement Agreement, or that arise out of, or relate to, any claims that are or could have been asserted in the Litigation, any Related Action, or the Universal Action, or that arise out of, or relate to, any facts in connection with the Litigation, any Related Action, or the Universal Action,** whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the Litigation, the Universal Action, in any Related Action, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere provided however, consistent with Section 5.1.2 of the August 2022 Settlement Agreement, that direct claims held by a Resident and/or Invitee of a Unit against his/her respective landlord, host, and/or Unit Owner or such Unit Owner’s direct insurer (solely, and not as an insurer of a Unit Owner in any capacity under a CTSCA insurance policy) specific to a loss arising from tenancy of, occupancy of, or invitation to a Unit are excluded from the scope of this Bar Order and are not barred, as similarly set forth in the Final Bar Order entered by the Court on April 6, 2022. This Complete Bar Order does not alter or amend the rights and obligations, if any, of a Released Party and such Released Party’s respective insurers to each other under any policy of insurance. Furthermore, this Complete Bar Order does not apply to insurer claims under Fla. Stat. § 624.1055 or to claims by insurers against their reinsurers or their retrocessionnaires. In the event of any conflict between the terms of Section 7.8 of the June 2022 Settlement Agreement and this Complete Bar Order, the terms of Section 7.8 of the June 2022 Settlement Agreement shall control.

Id. (all emphasis added).

The *August Final Order and Judgment* concludes, “There is no just reason to delay the entry of this Final Order and Judgment **as a final judgment in the Litigation**. Accordingly, the Clerk of Court is hereby directed, in accordance with this Final Order and Judgment, to enter final judgment as set forth herein as to the CTSCA and Additional Settling Parties.” *Id.* at ¶ 16 (all emphasis added).

In addition to the *August Final Order and Judgment* and also pursuant to the August 2022 Settlement Agreement, on August 31, 2022, the Court entered the *Final Order Barring*,

Restraining, and Enjoining Claims (I) That Were or Could Have Been Asserted Against the Champlain Towers South Condominium Association, Inc., and the Additional Settling Parties in the In Re: Champlain Towers South Collapse Litigation and (II) All Other Claims Arising Out of or Relating Directly or Indirectly to The Champlain Towers South Collapse (“August Bar Order”).

The *August Bar Order* provides that “[t]he Barred Persons are permanently barred, enjoined, and restrained from engaging in the Barred Conduct against the Beneficiaries with respect to the Barred Claims[.]” *Id.* at ¶ 4 (bold and all-capitalization omitted). All of the capitalized terms – “Barred Persons,” “Barred Conduct,” “Beneficiaries,” and “Barred Claims” – are defined expansively:

“Barred Claims” is defined as:

except as otherwise provided in Sections 5.1.2, 5.3.3 & 5.8.2 of the August 2022 Settlement Agreement and Section 7.8 of the June 2022 Settlement Agreement and in this Paragraph 4(c), **any and all claims, actions, lawsuits, causes of action, investigation, demand, complaint, cross-claims, counterclaims, or third-party claims or proceeding of any nature, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States or elsewhere, whether arising under local, state, federal, or foreign law, regulation, or rule, that in any way relate to, are based upon, arise from, or are connected with the Released Claims or interests of any kind as set forth in the August 2022 Settlement Agreement, the facts and claims that were, or could have been asserted, in the Litigation, the Receivership Proceeding, or any other proceeding involving the CTSCA, the Receiver, the Receivership Estate, the Settlement Class Members, or the Parties, which arise directly or indirectly in any manner whatsoever from the CTSCA’s or the Parties’ activities, work, conduct, omissions, or services as relating, directly or indirectly, to Champlain Towers South, the CTS Collapse, or the Settlement Agreement, to the broadest extent permitted by law, provided however, that direct claims held by a Resident and/or Invitee of a Unit against his/her respective landlord, host, and/or Unit Owner and/or any claims against a Resident, Invitee, landlord, host and/or Unit Owner’s respective direct insurers, specific to a loss arising from tenancy of, occupancy of, or invitation to a Unit, are excluded from the scope of this Bar Order and are not barred, as similarly set forth in the Final Bar Order entered by the Court on April 6, 2022. Notwithstanding that exclusion, all other claims by a Resident, Invitee, landlord, host and/or Unit Owner against all persons or entities, are Barred Claims.**

Id. at ¶ 4(c). “Barred Conduct” is defined as:

instituting, reinstating, amending, intervening in, initiating, commencing, maintaining, continuing (including by filing any motion to vacate any previously issued order), filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, **based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;**

Id. at ¶ 4(b) (all emphasis added). “Barred Persons” is defined as “**any person or entity that possesses Barred Claims.**” *Id.* at ¶ 4(a) (all emphasis added). Finally, the “Beneficiaries” are:

(i) the CTSCA, (ii) the Receiver, (iii) the Receivership Estate, (iv) the Parties, (v) **the Released Parties**, (vi) the Settlement Class Members, and (vii) the Unit Owners (except as expressly provided herein), (viii) every present and former member of the board of directors of the CTSCA, and (ix) and any of their employees, independent contractors, attorneys, counselors, experts, or advisors.

Id. at ¶ 4(c) (all emphasis added).

The *August Bar Order* further provides,

Any person or entity prosecuting claims against the Beneficiaries in any proceeding including Barred Claims in any lawsuit, action, or the Litigation, are directed and authorized to dismiss their claims against any Beneficiary with prejudice, with no party admitting to wrongdoing or liability and all parties responsible for their own attorney’s fees and other litigation costs and expenses at any level of court proceeding.

Id. at ¶ 5 (all emphasis added).

No person appealed either the *August Final Order and Judgment* or the *August Bar Order*, and the deadline to do so was September 30, 2022. *See* Rule 9.110(b), Fla. R. App. P. (a notice of appeal must be filed within 30 days of rendition of an final order). Thus, as of October 1, 2022, both the *August Final Order and Judgment* and the *August Bar Order* were “final, non-appealable orders,” as required by Article 2.1.125(b) of the June 2022 Settlement Agreement.

The Insurer Waivers and Compliance with Article 3 of the June 2022 Settlement Agreement

As for the requirement of Article 2.1.125(a) regarding Insurer Waivers, on September 22, 2022, the Receiver moved to confirm the Receiver's and Class Counsel's compliance with Article 3 of the June 2022 Settlement Agreement, which governed when distributions from the Settlement Fund could commence. *See id.* at Art. 3.1 & Art. 3.2.2. The Court entered an *Agreed Order on Receiver's Motion to Confirm Compliance with Article 3 of the Settlement Agreement in Contemplation of Distribution* ("Agreed Order") on September 28, 2022, which required provision to the Settling Parties of (i) certain WDC Representative Releases ("Releases") and related orders and (ii) certain Insurer Waivers and/or affidavits. *See id.* at ¶¶ 1-4. The Releases, orders, and waivers/affidavits required by the *Agreed Order* were thereafter provided to the Settling Parties, thus fulfilling all obligations of Article 3. On October 28, 2022, the Receiver filed his *Third and Final Further Notice of Compliance with Agreed Order as to Certain Estates and of Intent to Commence Disbursement of Monetary Awards to Those Estates and Notice that All Agreed Order Obligations Have Been Fulfilled* ("Notice of Compliance with Agreed Order"). Thus, as of October 28, 2022, Article 3 of the June 2022 Settlement Agreement had been satisfied in full – *i.e.*, all required Insurer Waivers had been provided to the Settling Parties.⁴

* * *

Accordingly, (1) the Court has entered final, non-appealable orders dismissing and barring all claims against the Released Parties and (2) the requisite Insurer Waivers have been provided to the Settling Parties – *i.e.*, the two, alternative provisions of Article 2.1.125 of the June 2022 Settlement Agreement – thus allowing distribution of the \$30,000,000 Subrogation Holdback Sum under Article 6.7.2. Therefore, as set forth more fully below, the Court should find that Article

⁴ No Settling Party or any other person objected to the *Notice of Compliance with Agreed Order*, which was filed approximately a month before the filing of this motion.

6.7's requirements have been met such that the Receiver, in his capacity as Settlement Administrator, is authorized and directed to proceed to distribute the Subrogation Holdback Sum from the Settlement Fund.

ARGUMENT

I. THE “EARLIER OF” SUBROGATION HOLDBACK DEADLINE SET BY ARTICLE 2.1.125(b) HAS BEEN SATISFIED

Article 2.1.125(b) of the June 2022 Settlement Agreement provides that if “the Court ... enter[s] final, non-appealable orders” freeing the Settling Parties from any potential claims, then the Subrogation Holdback Sum may be distributed. *See id.* The *August Final Order and Judgment* and *August Bar Order* each do just that.

Both orders are final and non-appealable. The *August Final Order and Judgment* contains a “Complete Bar Order” barring possible all claims against any Released Party – which term includes the Settling Parties – and enters a final judgment. *See id.* at ¶ 11(a) & ¶ 16. The *August Bar Order* provides that “[t]he Barred Persons are permanently barred, enjoined, and restrained from engaging in the Barred Conduct against the Beneficiaries with respect to the Barred Claims[.]” *Id.* at ¶ 4 (bold and all-capitalization omitted). The Settling Parties are within the protected “Beneficiaries” group because, again, they are “Released Parties” under the August 2022 Settlement Agreement. *See id.* at Art. 2.1.70 (“... any person or entity qualifying as an insured under any of the insurance policies contributing to the Settlement Fund, ...”). The *August Bar Order* further requires any persons asserting claims against any Beneficiary to “dismiss their claims against any Beneficiary with prejudice[.]” *Id.* at 5.

Accordingly, this one of the two alternative conditions for releasing the \$30,000,000 Subrogation Holdback Sum has been satisfied, and the Settlement Administrator should be authorized to distribute those funds.

II. THE “EARLIER OF” SUBROGATION HOLDBACK DEADLINE SET BY ARTICLE 2.1.125(a) HAS ALSO BEEN SATISFIED.

As of October 28, 2022, all Insurer Waivers required by the June 2022 Settlement Agreement had been provided to the Settling Parties. *See Notice of Compliance with Agreed Order* at ¶ 8. Article 3.1 required the Receiver to deliver Insurer Waivers to the Settling Parties’ counsel, *see id.*; he did so. Article 2.1.125(a) sets as one of the alternative SCM Subrogation Deadlines delivery of “executed Insurer Waivers from Universal and all SCM Insurers as provided in this Settlement Agreement,” *see id.*, and all such Insurer Waivers have been provided.⁵ Accordingly, the this of the two alternative conditions for releasing the \$30,000,000 Subrogation Holdback Sum has been satisfied, and the Settlement Administrator should be authorized to distribute those funds for this additional reason.

CONCLUSION

Article 6.7 of the June 2022 Settlement Agreement authorizes distribution of the Temporary Holdback after expiration of the WDC Expiration Date – which is irrelevant to these issues – and expiration of the SCM Subrogation Deadline. *See id.* Two of the alternative, “earlier of” SCM Subrogation Deadlines set by Article 2.125 have been met through the Court’s entry of the *August Final Order and Judgment* and the *August Bar Order* and through provision of the required Insurer Waivers to the Settling Parties. Accordingly, the Court should enter an order

⁵ “SCM Insurer” is defined in the June 2022 Settlement Agreement as “any insurer of any Settlement Class Member that has paid or pays any insurance proceeds to, or on behalf of, any Settlement Class Member, on or before the Effective Date, including those insurers listed on the Schedule of SCM Insurers attached as Exhibit G hereto and made a part hereof.” *See* Art. 2.1.123. All Insurer Waivers listed on the Schedule of SCM Insurers have been provided, and the Receiver is not aware of any other insurer that has paid insurance proceeds to a Settlement Class Member other than with respect to Jonah Handler. That claimed lien amount has been withheld from the Handler distribution and is therefore irrelevant to this motion.

finding that the \$30,000,000 Temporary Holdback may be distributed at this time and direct the Settlement Administrator to proceed to distribute those funds.

WHEREFORE, the Receiver respectfully requests that the Court (i) grant this motion, (ii) find that the requirements of Article 6.7 of the June 2022 Settlement Agreement have been met, (iii) authorize and direct the Receiver, in his capacity as Settlement Administrator, to disburse the \$30,000,000 Temporary Holdback from the Settlement Fund, and (iv) grant such other and further relief as the Court deems just and proper.

Respectfully submitted;

Date: November 18, 2022

AKERMAN LLP
201 East Las Olas Boulevard, Suite 1800
Fort Lauderdale, Florida 33301-2229
Telephone: (954) 463-2700
Facsimile: (954) 463-2224

By: /s/ Christopher S. Carver
Christopher Carver, Esq.
Florida Bar No. 993580
christopher.carver@akerman.com
cary.gonzalez@akerman.com

Counsel for Receiver Michael I. Goldberg

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 18, 2022, a copy of the *Receiver's Motion to Confirm Compliance with Article 6.7 of the June 2022 Settlement Agreement in Contemplation of Distribution* was electronically filed with the Clerk of Court by using the Florida Courts E-Filing Portal and furnished a copy of same to all counsel of record through the Florida Court's E-Filing Portal.

By: /s/ Christopher S. Carver
Attorney