

**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 FOR ENTRY OF AN ORDER APPROVING
DISTRIBUTION OF U.S. CURRENCY FOUND AT COLLAPSE SITE**

Michael I. Goldberg (the "Receiver"), pursuant to Rule 4 of the Complex Business Litigation Rules, files this Motion For Entry of an Order Approving Distribution of U.S. Currency Found at the Collapse Site to those specific victims who the Miami Dade Police have identified as the legal owners of specific currency and distributing the remaining "unidentifiable" cash, on a *pro-rata* basis, to Champlain Tower South Victims who resided in the Champlain Tower South Condominium ("the Property") on a per unit basis. In support of this Motion, the Receiver states as follows:

Background

1. Following the tragic collapse of the Property, first responders recovered, among many other items, approximately \$814,667.46 in "paper" cash and \$1,460.40 in coins at the Property. The Miami Dade Police Department was able to trace \$363,390.00 of the "paper" cash and \$127.57 in coins to specific Victims because of the manner in which they were found (i.e., in wallets, purses, and other containers whose owner the police was easily able to identify).¹

¹ As set forth in the Receiver's Motion of Sept. 23, 2021 on this issue, because the recovered cash was contaminated with or exposed to toxic materials (and in many cases had significantly deteriorated), the Receiver had to return the recovered cash to the United States Treasury, where it was destroyed. The Treasury then issued a check to the Receiver for the recovered amount. This exchange process took several months.

The range of cash that is identifiable to a particular victim ranges from \$1 to nearly \$122,000. The Receiver currently holds these funds in a segregated account.

2. The Receiver seeks permission to return the cash and coins to the "identifiable" victims or their estate. The Receiver is not disclosing the names of such identifiable victims in this motion out of concerns for the privacy of such victims. If this motion is approved, the Receiver will contact the appropriate person(s) in order to distribute to them the "identifiable" currency.

3. Pursuant to this Court's Order Approving Protocol for Processing and Returning Personal Property Items ("Order") of October 1, 2021, a procedure for allowing Victims to make claims on the recovered currency was created. Pursuant to the Order, the Receiver posted a Proof of Claim Form for Cash Found at Property on the Receiver's website dedicated to this case, with instructions for filling it out, providing any documentation of ownership of the cash claimed, and returning both by email by November 30, 2021.

Results and Receiver's Recommendation

4. Through the aforementioned process, approximately two dozen claims totaling in excess of \$1 million were filed with the Receiver. The amount claimed is more than double the remaining cash after the Receiver returns the identifiable cash to its owners.

5. As might be expected in these circumstances, because of the fungible nature of cash, none of the Victims who submitted claims was able to provide documentation to support their claims (through no fault of their own). Thus, there is no way for the Receiver to reasonably decide who among the Victims is entitled to the remaining "unidentifiable" cash and to how much they are entitled.

6. A further complication is that the claims process provided no reasonable way for estates of the deceased Victims to claim any of the recovered cash. Relatives and other Personal

Representatives of the deceased Victims simply could not know under these circumstances whether their loved ones had cash with them at the time of the collapse and, if so, how much. Accordingly, any distribution solely to surviving Victims who were able to file claims would unfairly exclude the estates of the deceased Victims.

7. After considering all of these factors, the Receiver believes the fairest and most equitable way to distribute the remaining "unidentifiable" cash that was recovered would be in equal *pro rata* shares to each of the Property units occupied at the time of the collapse. In other words, there were 136 units in the Champlain Towers South Condominium. However, one unit was a "double" unit which the Receiver believes is more appropriately treated as a single unit for purposes of this motion as a single family occupied the double unit. Therefore, the Receiver proposes that each unit would receive 1/135th of the remaining cash or \$3,342.80 if the Court approves this recommendation.² The cash would be distributed either to the living Victims or the estates of the deceased Victims in the event there is no surviving person in a unit.³ Importantly, the Receiver proposes that cash be distributed to the occupants of the unit and not the owner of the unit in the event the unit was rented as it is highly doubtful that an owner renting a unit would keep cash in the unit.

Receiver and Court's Authority

8. Florida trial courts have broad and inherent discretion to appoint a receiver and establish the receiver's duties. *Granada Lakes Villas Condo. Ass'n v. Metro-Dade Invs. Co.*, 125 So. 3d 756, 758 (Fla. 2013); *Ross-Williams v. Leali*, 337 So. 3d 523, 526 (Fla. 3d DCA 2022). Accordingly, the court may use its discretion during the pendency of the action to "make such

² Remaining cash equals total cash found of \$814,667.46- identifiable cash of \$363,390 = \$451,277.46. \$451,277.46 divided by 135 separate occupied units = \$3,342.80)

³ Due to the small amount of this distribution and the cost of administration, the Receiver respectfully requests authorization to write the check to the title holder on the unit in the event that proves the most administratively convenient.

further orders as are necessary and proper for the protection of the property and interests concerned.” *Puma Enters. Corp. v. Vitale*, 566 So. 2d 1343, 1345 (Fla. 3d DCA 1990) (quoting *Abramson v. Brant*, 141 So. 2d 777, 778 (Fla. 3d DCA), *cert. denied*, 146 So. 2d 752 (Fla. 1962)).

9. The trial court’s broad discretion stems from the “inherent powers of an equity court to fashion relief.” *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). *See also SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005); *SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001).

10. Because the trial court possesses such wide discretion, it has the authority “to classify claims sensibly in receivership proceedings.” *SEC v. Enter. Trust Co.*, 559 F.3d 649, 652 (7th Cir. 2009). *See also Basic Energy*, 273 F.3d at 670 (“Thus, the district court used its discretion in a logical way to divide the money, and therefore, did not abuse its discretion in approving the plan.”).

11. In situations such as this one, where the amount of claims exceeds the funds available for distribution, a trial court must devise an equitable system of distribution with the goal of treating each claimant fairly and as equally as possible. *United States v. Cabe*, 311 F. Supp. 2d 501, 504 (D.S.C. 2003). Under the principals of equity, similarly situated claimants should be treated alike. *SEC v. Credit Bancorp. Ltd.*, 2000 WL 1752979 at *13 (S.D.N.Y. 2000); *Capital Consultants*, 397 F.3d at 738-39; *SEC v. Drucker*, 318 F. Supp. 2d 1205 (N.D. Ga. 2004); *United States v. Real Property Located at 13328 and 13324 State Highway 75 North*, 89 F.3d 551, 553 (9th Cir. 1996).

12. Receivership courts therefore generally favor a *pro rata* distribution formula. *See, e.g., SEC v. Forex Asset Management, LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (federal district court did not abuse its discretion in approving *pro rata* distribution plan); *United States v. Durham*,

86 F.3d 70, 73 (5th Cir. 1996) (district court was within its discretion to use *pro rata* distribution method even though it could have traced specific funds to specific investors).

13. Under the circumstances in this case, the Receiver recommends that this Court follow established case law and enter an Order allowing the Receiver to distribute the remaining recovered cash *pro rata* based on the number of units at the Property. There is simply no other fair or equitable way to distribute the remaining unidentifiable cash involved here. The claimants, understandably have no way to document any claims, and the Receiver consequently has no reasonable way of apportioning the remaining cash other than on a *pro rata* basis.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order approving distribution of the "identifiable" cash to those victims identified by the Miami Dade Police Department and the remaining unidentifiable cash on a *pro rata* basis to each of the 135 units at the Property, whether that be to surviving Victims or deceased Victims' estates and grant such other relief as is just and proper.

Date: March 8, 2023

Respectfully submitted,

/s/ Michael I. Goldberg

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 8, 2023, a copy of the foregoing was electronically filed with the Clerk of Court by using the Florida Courts E-Filing Portal and a copy of same was furnished to all counsel of record through the Florida Court's E-Filing Portal.

/s/ Michael I. Goldberg

Michael I. Goldberg, Esq.