

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Kathy Hainey, <u>et al.</u> ,)	
)	
Plaintiffs,)	Case No. 1:02-CV-733
)	
vs.)	
)	
Dr. Carl Parrott, Jr.,)	
<u>et al.</u> ,)	
)	
Defendants.)	

ORDER APPROVING SPECIAL MASTER'S DISTRIBUTION PLAN

This matter came before the Court on November 28, 2007 for a fairness hearing on the Special Master's Plan for Distribution of the common fund (Doc. No. 96). Individual copies of the proposed distribution plan were mailed to class members approximately two weeks prior to the hearing.

By way of background, Plaintiffs filed a lawsuit against Hamilton County, Ohio and Dr. Carl Parrott, Jr., the former county coroner, pursuant to 42 U.S.C. § 1983 challenging the constitutionality of the practice or policy of the coroner's office of disposing body parts retained for autopsies without prior notice to the decedent's next of kin. This Court certified this matter as a class action and entered judgment on behalf of Plaintiffs on the merits of their claims. While the case was pending appeal from that judgment, the parties reached a settlement agreement which, among other things, called for the

creation of \$6,000,000 common fund and the entry of a consent decree abandoning the former practice and adopting a new policy in which notice to next-of-kin is provided.

The Court preliminarily approved the settlement on June 6, 2006. Notice of the proposed settlement hearing was distributed to the class and a fairness hearing on the settlement was held on September 10, 2007. The Court received written objections and heard oral objections to the settlement plan during the fairness hearing. On September 20, 2007, the Court entered an order (Doc. No. 82) overruling objections to the proposed settlement and approving the settlement as fair, reasonable, and adequate. After receiving additional billing records from class counsel, the Court entered an order (Doc. No. 89) approving an attorney's fee award of \$1,800,000 from the common fund as well as payment of a total of \$200,000 in incentive awards to the named class representatives.

It is now the duty of the Court to approve or disapprove the Special Master's Plan for Distribution of the common fund to the class members. In determining whether to approve the proposed plan for distribution, the standard for approval of the class action settlement is applicable - it will be approved if it is fair, reasonable, and adequate. In re Computron Software, Inc., 6 F. Supp.2d 313, 321 (D.N.J. 1998). The Court finds that the Special Master's Plan for Distribution

is fair, reasonable, and adequate.

The Special Master's Plan for Distribution treats the class members fairly in that the fund will be distributed equally among family units where at least one eligible claimant has timely filed a claim form. In other words, as stated in the plan, "[t]he amount per decedent will be the same for all decedents." Further distribution of these funds will be made according to a priority schedule which generally tracks the ones set forth in Ohio Rev. Code § 313.131(E) and Ohio Rev. Code § 2108.02. The Special Master has the authority and discretion to determine eligibility for an award, but there is a process in the plan for appealing the Special Master's determinations to a United States Magistrate Judge. The Plan for Distribution also contains a reasonable and practical mechanism for addressing emotional distress claims through provision of four group counseling sessions with a qualified grief counselor, Dr. Steve Sunderland. The group counseling sessions are available to all class members. The Court notes that it received no written objections to the Special Master's Plan for Distribution and none were raised during the fairness hearing on the plan.

Under all of the circumstances, the Court finds that the Special Master's Plan for Distribution is fair, reasonable, and adequate. The Plan treats the class members equally, there is a logical and understandable process for determining

eligibility for awards from the fund, and there is provision for appealing the eligibility determinations of the Special Master. The Plan for Distribution establishes a fair, reasonable, and cost-efficient process for distribution of the common fund to eligible claimants. Accordingly, the Special Master's Plan for Distribution is hereby **APPROVED**.

NOTICE

THIS IS A FINAL AND APPEALABLE ORDER. PURSUANT TO RULE 4(a) OF THE FEDERAL RULES OF APPELLATE PROCEDURE, ANY NOTICE OF APPEAL FROM THE FOLLOWING ORDERS OF THE COURT:

**ORDER APPROVING CLASS ACTION SETTLEMENT (DOC. NO. 82);
ORDER APPROVING ATTORNEY'S FEES AND INCENTIVE AWARDS
(DOC. NO. 89); AND
ORDER APPROVING SPECIAL MASTER'S DISTRIBUTION PLAN
(DOC. NO. 90)**

MUST BE FILED WITH THE CLERK OF COURT FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WITHIN THIRTY (30) DAYS OF THE DATE OF THIS ORDER. FAILURE TO FILE A TIMELY NOTICE OF APPEAL WITH THE CLERK OF COURT MAY RESULT IN WAIVER OF THE RIGHT TO APPEAL THESE ORDERS.

IT IS SO ORDERED

Date December 3, 2007

s/Sandra S. Beckwith
Sandra S. Beckwith, Chief Judge
United States District Court