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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

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| JACQUELINE CHESHER, et al., | : | Case No. C-1-01-566 | |
| | : | | |
| Plaintiffs, | : | Judge Spiegel | |
| | : | | |
| vs. | : | Magistrate Judge Hogan | |
| | : | | |
| TOM NEYER, JR., et al., | : | NOTICE OF PROPOSED | |
| | : | SETTLEMENT WITH | |
| Defendants. | : | DEFENDANTS HAMILTON | |
| | : | COUNTY, CARL L. PARROTT, | |
| | : | JR., M.D., ROBERT | |
| | : | PFALZGRAF, M.D., GARY | |
| | : | UTZ, M.D., JONATHAN | |
| | : | TOBIAS, M.D., AND ROBERT | |
| | : | T. DALY. | |

NOTICE TO CLASS MEMBERS
FROM THE UNITED STATES DISTRICT COURT

This notice is sent in accordance with an Order of the Court. The Plaintiffs have now entered into a settlement agreement with all of the remaining Defendants in this case. This notice explains who is in the class and states the terms of a proposed settlement between the class and the Defendants Hamilton County, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Gary Utz, M.D., Jonathan Tobias, M.D., and Robert T. Daly. **As a result of this settlement the jury trial set for September 5, 2007 will not go forward.**

DESCRIPTION OF THE LAWSUIT

This is a class action for damages brought by the families of deceased persons whose bodies were in the custody of the Hamilton County Coroner between August 2000 and January 2001. Their claims are brought under 42 U.S.C. §1983 for alleged violations

of substantive due process, procedural due process, and privacy rights protected by the Fourteenth Amendment to the United States Constitution. Plaintiffs also bring state tort claims for intentional and negligent infliction of emotional distress and civil conspiracy, the source of which is the death of their loved one and the subsequent circumstance of this matter. Plaintiffs seek damages from all Defendants. On August 14, 2007, the court preliminarily approved a stipulated judgment between the Plaintiff class and Defendant Thomas Condon. This notice informs the class about a second, more comprehensive settlement with the remaining Defendants. Together both of these settlements resolve the entire case.

COURT ORDER ON CLASS CERTIFICATION

The Court has certified the following as a class in this case:

The family members of all the deceased whose remains, for other than a proper government purpose, were accessed, viewed, manipulated, or photographed by Thomas Condon or Jonathan Tobias, M.D., or one of their agents between August 2000 and January 2001 (inclusive) while such bodies were in the custody of the Hamilton County Coroner's Office, without permission from the legal representatives of the deceased.

(Doc. 96). There are two subclasses. One involves those families whose loved ones were photographed and another consists of those whose loved ones were accessed, viewed or manipulated by Thomas Condon or Jonathan Tobias but for whom there is no photograph. (Doc. 366.) The Court has appointed James Brady and Mary Smith as the class representatives and Stanley Chesley, Paul De Marco, Renee Infante and Alphonse Gerhardstein have been named as Class Counsel for the Plaintiffs.

**PROPOSED SETTLEMENT AGREEMENT BETWEEN THE CLASS AND
THE DEFENDANTS**

A. Summary of Terms

The settlement agreement with Hamilton County, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Gary Utz, M.D., Jonathan Tobias, M.D., and Robert T. Daly provides as follows:

1. Defendants will issue a formal written apology to the members of the Class;
2. All involved personal property in the form of photos and images, jpegs, and prints etc. of any photos of class members' loved ones will be transferred to class counsel for destruction;
3. With the full support and encouragement of the County, the Class shall enter into discussions with the current Hamilton County Coroner, Dr. O'Dell Owens, to (a) create a memorial to appropriately commemorate the deceased family members and remind all Coroner employees to remain vigilant in their duty to safeguard the loved ones in their custody; (b) reopen the viewing room under an appropriate protocol; (c) assist the Coroner in securing funding for grief counseling services; (d) establish an advisory panel of *Chesher* class members to meet with the Coroner two times a year for review of security, morgue policies and related matters. Dr. Owens has made no commitments on these items but will pursue the proposals with the Class in good faith.
4. Hamilton County will Pay to the *Chesher* Class Qualified Settlement Fund the sum of Eight Million Dollars (\$8,000,000.00) paid in three unequal installments over six months in complete satisfaction of all claims for damages by member of

the Class, who shall provide a full release to the Defendants in exchange for this payment, which includes attorney fees and expenses as approved by the Court under 42 U. S. C. §1988. All damages received are compensatory in nature. No payments will be or have been made for punitive damages of any kind.

B. How the Money Will Be Allocated

The estimate for attorney fees and costs is approximately \$2,000,000.00. If, after review of time records and receipts, that sum is approved by the court, the balance of the fund, \$6,000,000 plus interest, will be available for damage awards to the class and administration fees and expenses. The *Chesher* Class Qualified Settlement Fund will be administered by an Administrator appointed by the Court. The QSF Administrator will propose an allocation plan to the Court, which must be approved at the Fairness Hearing. In summary, the allocation plan will include the following features:

1. Sub-class Two. One Million Dollars will be available to the members of subclass two. One award will be made per family. That award will be divided among the members of the family unit as defined by the Court. Awards will be based on the net value of the fund¹ after administrative expenses and fees are deducted. The final allocation plan will be guided in part by (but not fixed on) the amount of \$2,000.00 per family utilized by the parties in negotiation. The actual amount distributed to each family unit will be a function of the number of family units in each sub-class and the pro-rata share of Fund administrative fees and expenses. The final allocation plan will reflect the

¹ Net Value of the Fund shall be the Fund Value after the 42 U.S.C. §1988 attorney fees and associated expenses, which are the responsibility of the Defendant, and included in the global settlement, are paid as ordered by the Court.

contribution of those families officially designated as bellwether families in the litigation.

2. Sub-Class One. The balance of the Net Value of the Fund after their pro-rata share of the Fund Administration Fees and Expenses will be available to the members of subclass one, also on a per-family basis. The QSF Administrator will propose that awards to subclass one be highest for those whose loved ones were manipulated and photographed, followed by those whose loved ones' photograph was in the custody of Mr. Condon but for whom there is no evidence of manipulation. She will propose to be guided in part by (but not fixed on) the distinctions first proposed by the Defendants in their recent Rule 68 offer of judgment.

The Court has previously established that Awards will be allocated by decedent and the award for each decedent will be distributed to the "family members." The Court defined family members as "surviving spouse, children, parents, and other next of kin who suffered severe emotional distress." Doc. 381. Whether a person is a "next of kin" included in a "family" shall be determined with guidance from the Ohio Wrongful Death Statute, ORC §2125.02(A) (1) and case law interpreting that statute. See Doc. 381. The Court defined serious emotional distress as distress that is both severe and debilitating and renders a reasonable person, normally constituted unable to cope adequately with mental distress. Seriousness might also suffice in the mishandling of a corpse arena where the Plaintiffs were horrified, angry, saddened, wept, and were unable to sleep. Doc. 380.

In order to provide maximum awards to family members with the least administrative costs, the QSF Administrator is likely to propose a large allocation to the “surviving spouses, children and parents” with the other next of kin that have suffered serious emotional distress sharing the remaining percent. Exceptions will be made on a case by case basis. Appeals will be available to the United States Magistrate Judge. Under the proposed plan, the decisions of the Magistrate Judge will be final. No distribution will be made within a subclass until all payments have been paid by the Defendants, the Plan has been approved by the Court, the Class has been closed by Order of the Court; applications have been made for distribution providing the addresses of all distributees in a family unit; all matters before the Court have been satisfied; and Settlement Agreements with the Fund have been executed by all distributees in a given family.

FINAL APPROVAL HEARING AND OBJECTION PROCEDURE

The hearing for the final approval of the settlement with Defendants Hamilton County, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Gary Utz, M.D., Jonathan Tobias, M.D., and Robert T. Daly has been scheduled for October 9, 2007 at 2:30 p.m. in front of the Honorable S. Arthur Spiegel, District Judge for the Federal District Court for the Southern District of Ohio, Potter Stewart U.S. Courthouse, Room 838, 100 E. Fifth Street, Cincinnati, OH 45202. The hearing for the final approval of the settlement with Thomas Condon, which previously had been scheduled for August 28, 2007 at 3 p.m., has been rescheduled so that it will now take place at the same time as the hearing on the settlement with Defendants Hamilton County, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf,

M.D., Gary Utz, M.D., Jonathan Tobias, M.D. and Robert T. Daly, on October 9, 2007, at 2:30 p.m.

Class members who wish to object to the settlement with Defendants Hamilton County, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Gary Utz, M.D., Jonathan Tobias, M.D., and Robert T. Daly should file written objections stating their name and address, indicating the basis for their objection no later than October 3, 2007, and mailing objections to the Clerk of Court at the Court's address above and a copy to the following address: Stanley M. Chesley, 1 W. Fourth Street, Suite 1513, Cincinnati, OH 45202.

QUESTIONS

Do not contact the Court regarding this case. Any questions should be directed in writing to class counsel, Stanley M. Chesley, 1 W. Fourth Street, Suite 1513, Cincinnati, OH 45202 (513) 621-0267.

James Bonini, Clerk

By:  Deputy Clerk
Clerk of the United States District Court