

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

CASE NO.: 98-11208 CA 31

CARL L. MASZTAL, JOSEPH A.
GRAUPIER JUANA MARTINEZ and
MARISOL FERNANDEZ, on behalf of
themselves and all others so similarly
situated,

Plaintiffs,

v.

THE CITY OF MIAMI, FLORIDA and
ADORNO & YOSS, LLP,

Defendants.

**ORDER GRANTING PRELIMINARY APPROVAL
OF THE ADORNO AMENDED SETTLEMENT AGREEMENT AND
CITY SETTLEMENT AGREEMENT AND SETTING DATE FOR
FAIRNESS HEARING**

THIS CAUSE having come before the Court on a Joint Motion for Preliminary Approval of Class Action Settlements, pursuant to Fla. R. Civ. P. 1.220(e), and the Court having reviewed and considered the Joint Motion for Preliminary Approval of Class Action Settlement Agreement and Release reached by Plaintiffs, the Class and the City ("City Settlement") and the Class Motion for

Preliminary Approval of Revised Law Firm Settlement Agreement and Release reached by the Plaintiffs, the Class, and Adorno & Yoss, LL.P. ("Adorno Settlement"), having heard argument of counsel, testimony of witnesses, reviewed the amended settlement agreements, and having considered the terms and conditions of the proposed City Settlement and Adorno Settlement, and all prior proceedings had in this matter, and good cause for this Order having been shown,

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the motion is **GRANTED**.

It is **FURTHER ORDERED** that:

1. The terms of the City Settlement Agreement and Release and the Revised Adorno Settlement and Release are hereby *preliminarily* approved, subject to further consideration at the Final Fairness Hearing provided for below. The Court concludes that the Settlements are sufficiently within the range of reasonableness to warrant the conditional certification of the settlement Class, the scheduling of the Final Fairness Hearing and the circulation of notice to members of the Class, each as provided for in this Order.

2. The Court finds that the proposed Settlement Agreements and Releases, filed of record, appear, upon preliminary review, to be fair, adequate, and reasonable, and shall be submitted to the class members for their consideration and for a final fairness hearing to determine whether the settlement will be approved by this Court.

3. All terms of the Settlement Agreements are expressly incorporated herein by reference and made part of this Order as if fully set forth herein. As to all capitalized terms not expressly defined in this Order, the definitions set forth in the Settlements are controlling.

CONDITIONAL CERTIFICATION OF THE CLASS

4. For purposes of settlement only, pursuant to Fla. R. Civ. P. 1.220, the action styled Carl L. Masztal, Joseph A. Graupier, Juana Martinez, and Marisol Fernandez, on behalf of the themselves and all others similarly situated v. The City of Miami, Florida and Adorno & Yoss, LLP, Case No. 98-11208 CA 01, is conditionally certified as a class action on behalf of the following persons (the "Class"):

all persons or entities (including qualified legal successors as defined in paragraph 1.18 of the Settlement Agreements) that owned property in the City of Miami, Florida, including the City's former and current employees, agents, representatives, officials, officers, and their immediate family members, standing in their individual capacity as taxpayers, that paid the Fire/Rescue Assessment and/or Fire Assessment collected by the City from fiscal year 1997-1998 through and including fiscal year 2006-2007. The City of Miami is excluded from the Class.

5. The named Representative Plaintiffs, Carl L. Masztal, Joseph A. Graupier, Juana Martinez and Marisol Fernandez, are temporarily certified as representatives of the Class. This conditional certification of the Class and class representatives is solely for purposes of effectuating the Settlements. If the Settlement Agreements are terminated or are not consummated for any reason,

the foregoing conditional certification of the Class and appointment of class representatives shall be void and of no further effect and the parties to the Settlements shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement Agreements might have asserted but for the Settlement Agreements.

6. Class certification under Fla. R. Civ. P. 1.220 is the fairest and most efficient and economical way of dealing with a multitude of individual claims that have been or could have been filed against the City and/or Adorno & Yoss. Pursuant to the Settlements between the parties, the Court finds that:

- a. The Class members are so numerous that joinder is impracticable;
- b. The claims of Carl L. Maszta, Joseph A Graupier, Juana Martinez and Marisol Fernandez, the class representatives, raise questions of law and fact common to the claims of the Class members and such questions of law and fact predominate;
- c. The claims of Carl L. Maszta, Joseph A Graupier, Juana Martinez and Marisol Fernandez, the class representatives, are typical of the claims of each Class member;
- d. Carl L. Maszta, Joseph A Graupier, Juana Martinez and Marisol Fernandez, are appropriate and adequate representatives for the Class that can protect the interest of all Class members that comprise the Settlement Class;
- e. Class counsel Richard L. Williams, Patrick A. Scott and Michael Garcia-Petit, are experienced and capable class counsel and shall serve as lead counsel for the Class; and
- f. A class action is an appropriate method for the fair and efficient adjudication of the claims of the Class members in this case.

Class Notice and Right to Opt-Out

7. The Class Notice combining notice of both Settlement Agreements and of the Final Fairness Hearing shall be provided to the Class by the Plaintiff both by mail and publication, in substantially the form submitted to the Court in its last hearing. The Class Notice is found to be an adequate and reasonable method of notice that satisfies the requirements of Fla. R. Civ. P. 1.220, the Rules of this Court and due process.

8. The Class Notice Period will run for a period of forty-five (45) days commencing on April 8, 2008 and ending on May 23, 2008. Publication of Class Notice will run for a period of twenty (20) continuous days.

9. The Court also finds that the content of the Class Notice satisfies all of the necessary requirements in that it informs the class members as to (1) the nature of the pending litigation, (2) the right to object or opt out, (3) the fact that they will be bound by the Final Judgment, if they choose not to opt out, (4) the general terms of the settlements, (5) the complete information being available in the Court files; and (6) the fact that any class member may be heard at the specified date, time, and place of the fairness hearing.

10. A Class Member may opt-out of the class at any time prior to June 3, 2008. Any class member that wishes to opt out or exclude themselves from the Settlements must file their written request for exclusion with the Clerk of the Court no later than June 3, 2008 as well as mail a copy to the Administrator

postmarked no later than June 3, 2008 (twenty (20) days before the Fairness Hearing) at the following addresses.

To the Administrator: Masztal v. City of Miami
Settlement Administrator
P.O. Box 3170
Portland, OR 97208-3170

To the Clerk of Court: Clerk of Court
11th Judicial Circuit
73 West Flagler St.
Miami, FL 33130

11. The Court finds that the "opt-out" procedures as set forth in the Settlement Agreements are fair, reasonable and adequate.

12. The Court finds that the Class Notice and the Request for Refund Forms, and the post-settlement methodology set forth in the Settlement Agreements and Release are reasonably calculated, under all of the circumstances, to apprise class members of their rights pursuant to the settlements and that those materials satisfy the requirements of due process, Fla. R. Civ. P. 1.220, and the Rules of this Court.

FINAL FAIRNESS HEARING: RIGHT TO APPEAR AND OBJECT

13. A Final Fairness Hearing shall take place before the undersigned, at the Eleventh Circuit Court, Dade County Courthouse, 73 West Flagler St., Miami, FL 33130, Courtroom 11-1, on Monday, June 23, 2008 at 10:00 A.M. to determine:

(a) whether the Court should certify the Class and whether Representative Plaintiffs and their counsel have adequately represented the Class;

(b) whether the Settlements, on the terms and conditions provided for in the Settlement Agreements, should be finally approved by the Court as fair, reasonable and adequate;

(c) whether the Action should be dismissed on the merits and with prejudice;

(d) whether the application for attorneys' fees and costs submitted by Class Counsel should be approved; and

(e) such other matters as the Court may deem necessary or appropriate.

14. Counsel for the Parties should be prepared at the hearing to respond to any objections filed by the class members and to provide other information, as appropriate, bearing on whether or not the settlements should be approved.

15. The Court may finally approve the Settlements at or after the Final Fairness Settlement Hearing with any modifications agreed to by the parties and without further notice to the Class.

16. Any member of the Class that files and serves a written objection in the manner set forth below may appear at the Final Fairness Hearing in person or by counsel (a notice of appearance must be filed) and be heard, to the extent allowed by the Court, to object. However, no person shall be heard, and no papers, briefs, or other submissions shall be considered by the Court in connection with its consideration of those matters, **unless** on or before June 3, 2008 (twenty (20) days before the final fairness hearing), such person:

(a) files with the Clerk of the Circuit Court a notice of such person's intention to appear, together with a statement setting forth such person's objections to the matters to be considered and the basis therefore including specific legal authority and factual bases, together with any documentation that such person intends to rely upon at the Final Fairness Hearing, and

(b) serves copies of all such materials either by hand delivery or by first-class mail, postage prepaid, upon the following counsel:

To Adorno's Counsel: Hinshaw & Culbertson LLP
Ronald L. Kammer, Esq.
David P. Hartnett, Esq.
9155 S. Dadeland Blvd.
Suite 1600
Miami, FL 33156

To Class Counsel: Patrick A. Scott, Esq.
Richard L. Williams, Esq.
Michael Garcia-Petit, Esq.
2800 Miami Center
201 S. Biscayne Blvd.
Miami, FL 33131-4330

To Counsel for City: Julie O. Bru, City Attorney
Office of the City Attorney
444 SW Second Ave, Ste. 945
Miami, FL 33131

Thomas E. Scott, Esq.
Scott A. Cole, Esq.
Krista A. Fowler, Esq.
Cole, Scott & Kissane, P.A.
1390 Brickell Ave., Third Floor
Miami, FL 33131

17. In accordance with the Settlement Agreements, if final approval is granted, the Class will release the City of Miami, Florida, including all of its current and former directors, officers, officials, employees, agents, representatives,

attorneys, and managers; Adorno & Yoss, LLP, its insurers and reinsurers, its current or former attorneys, shareholders, staff, employees, officers, directors, representatives or agents, Henry Adorno, Mitchell Bloomberg, Robin Campbell; the Original Plaintiffs Eva Nagymihaly, Gordon Willits, Kenneth Merker, Jean and Jocelyn Prosper; and Judy Clark, Peter Clancy, Tenants and Taxpayers United for Fairness, Inc., and TTUFF, Inc., from any and all, and all manner of action and actions, cause and causes of action, claims, contracts, controversies, covenants, damages, legal and administrative relief, whether based upon federal, state, or local law, statute or ordinance, regulation, common law, contract, or any other source, including any claims relating to federal or state law, that have been, could have been, may or could be alleged or asserted, now or in the future by Plaintiffs, or any Class member, against the above parties, persons or entities.

18. In addition, upon final approval of the Settlement Agreements by the Court, each Class member who has not timely excluded himself, herself or itself, will be deemed to have covenanted and agreed that he or she will forever refrain from instituting, maintaining, collecting or proceeding against any of the parties contemplated to be released hereby, as more fully set forth in the paragraph above.

19. The Administrator is directed to give notice of the hearing and the Proposed Settlements to the Class members pursuant to the Settlement Agreements and Releases.

20. All Class members are barred and enjoined from prosecuting or continuing to prosecute any claims that are settled pursuant to the Settlement Agreements and Releases until such time as the Court considers this matter for final approval.

DONE AND ORDERED in Chambers, Miami, Florida, this 7 day of April, 2008.



The Honorable Jose Rodriguez
Circuit Court Judge

Copies furnished to:

Richard L. Williams, Esquire
Patrick A. Scott, Esquire
Michael Garcia-Petit, Esquire
Lewis N. Brown, Esquire
Dyanne Feinberg, Esquire
Clifford Kornfield, Esquire
William Sullivan, Esquire
Norman Malinski, Esquire
Jaqueline Calderin, Esquire
Ronald L. Kammer, Esquire
David Hartnett, Esquire
Scott A. Cole, Esquire