

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CLEVERA MARIE DORTCH,
individually and as Personal
Representative of the Estate of
Melvin Dortch,

Plaintiff,

v.

CASE NO. 3:21-cv-613-BJD-JBT

CASTIEL SHIPPING
INCORPORATED, as owner and
operator of the M/V AAL GENOA, the
M/V AAL GENOA, *in rem*, and
SEABOARD MARINE, LTD.,

Defendants.

_____ /

REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on Plaintiff's Renewed Petition to Approve Settlement ("Petition") (Doc. 24). The undersigned denied the prior petition (Doc. 17) without prejudice and ordered Plaintiff to file a new petition responding to concerns identified in the Order. (Doc. 22.) Upon review, for the reasons stated herein, the undersigned respectfully **RECOMMENDS** that the Petition be **GRANTED** and the proposed settlement be **APPROVED**.

I. Background

This action arose out of a workplace accident that occurred on October 6, 2019, resulting in the death of Melvin Dortch. (Doc. 17 at 2.) On that date, Mr. Dortch was employed as a longshoreman working in container loading operations

for Tri-State Maritime Services, Inc. (*Id.*) He was working aboard the AAL GENOA within the Port of Panama City in Panama City, Florida. (*Id.*) Mr. Dortch was on the deck of the AAL GENOA and was locking down shipping containers, which were being locked and secured with an auto-locking device called a twistlock. (*Id.*) The twistlock is fastened to a container and is intended to remain on the container throughout the loading process and transit. (*Id.*) However, as one container was being moved overhead, one of its twistlocks failed and broke off. (*Id.* at 3.) A piece of the broken twistlock then fell approximately twenty feet, struck Mr. Dortch in the head, and caused him to fall into an unprotected opening between container platforms. (*Id.*) Consequently, Mr. Dortch sustained fatal injuries. (*Id.*)

As a result of the accident, Plaintiff, who is Mr. Dortch's mother, brought claims as Personal Representative of the Estate of Melvin Dortch, seeking damages under general maritime law pursuant to 33 U.S.C. § 905(b) of the Longshore and Harbor Workers' Compensation Act, and the Florida Wrongful Death Act, Fla. Stat. § 768.20. (Docs. 6, 17 at 1–4.) The lawsuit asserted claims on behalf of Mr. Dortch's children as beneficiaries: G.D. (age 18), who was a minor when this action was filed and reached the age of majority during its pendency; Melvin Seay (age 35); and Ladarrian Watkins (age 32). (Doc. 17 at 2.)¹

The parties have reached an agreement to settle all claims for \$750,000.

¹ Mr. Dortch left no surviving spouse. (Doc. 6 at 3.)

(See Doc. 20-1.) Plaintiff, who was appointed Personal Representative of Mr. Dortch's estate in Alabama probate court (Doc. 24 at 2), desires to follow Alabama's statute of distributions ("Statute of Distributions"), Ala. Code § 43-8-42, to determine the allocation of the proceeds because Plaintiff and all claimants are domiciled in Alabama, as was the decedent prior to his death.² (*Id.* at 6.) Applying the Statute of Distributions results in each claimant taking an equal one-third share.³ (*Id.* at 9.) Plaintiff now seeks court approval of the global settlement, permission to execute the release of all claims, and approval of the proposed distribution. (*Id.* at 10.)

II. Applicable Law

For the Court to approve the settlement of a minor's claim:

The Court must resolve two issues to approve the settlement agreement: whether the appointment of a guardian ad litem is necessary to protect [the minor's] interests and whether the settlement agreement is in the best interests of [the minor].

. . .

² Applying the Statute of Distributions is also required in claims brought pursuant to Alabama's Wrongful Death Act. Ala. Code, § 6-5-410. Though Plaintiff's claims were not brought pursuant to Alabama's Wrongful Death Act, the undersigned recommends that it can provide a reasonable model to follow in this case.

³ After attorneys' fees and costs, G.D.'s net recovery will be \$147,989.45. (Doc. 17-3 at 2.) Prior to the settlement, G.D. also received \$61,700 in longshore death benefits as the result of a successful claim brought under the Longshore and Harbor Workers' Compensation Act. (Doc. 24 at 10.) However, it appears that he must pay back \$47,000 to satisfy the workers' compensation lien, pending approval by an Administrative Law Judge. (Doc. 16 at 8.)

Court approval of any settlement after an action involving a child is commenced is required [under Florida law]. The settlement must be for the best interest of the ward. When determining if a settlement agreement should be approved, [t]he cardinal rule is that the District Court must find that the settlement is fair, adequate, and reasonable and is not the product of collusion of the parties. The purpose of court approval is to protect the interests of the minor and the guardian and to ensure that any release given on behalf of the minor is legally effective.

L.P. v. School Bd. of Brevard Cty., No. 6:19-cv-2308-Orl-37GJK, 2020 WL 7079143, at *2–3 (M.D. Fla. Nov. 18, 2020) (internal citations and quotation marks omitted), report and recommendation adopted, 2020 WL 7074537 (M.D. Fla. Dec. 3, 2020).⁴

III. Analysis

The undersigned recommends that the Court approve the proposed settlement as being in the best interest of G.D. The Court need not consider if a guardian ad litem is necessary to protect G.D.’s interests because R. Scott Constantino, Esq., has already been appointed guardian ad litem in this case. (See Doc. 14.) He recommends that the settlement be approved. (See Doc. 16.)

In determining whether the settlement is in the best interest of G.D., the

⁴ “[T]he Court should follow Florida law . . . ‘as a matter of judicial policy.’” *Meyers v. United States*, No. 6:13-cv-1555-Orl-41TBS, 2014 WL 5038585, at *4 (M.D. Fla. Sept. 29, 2014) (quoting *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 728 (1979)) (collecting cases applying state law to issues regarding settlements of federal claims involving a minor).

Court must determine whether “the settlement is fair, adequate, and reasonable and is not the product of collusion of the parties.” See *L.P.*, 2020 WL 7079143, at *3. The total settlement is for \$750,000. (Doc. 24 at 5.) The undersigned recommends that the total settlement amount of \$750,000 is fair, adequate, and reasonable given its significant size and there being no indication that it was the product of collusion of the parties. Moreover, Plaintiff is G.D.’s grandmother, who shares his interest in maximizing the amount of the settlement for all of the beneficiaries. (Doc. 24 at 2.)

Plaintiff desires that the settlement be allocated to the claimants according to the Statute of Distributions, resulting in each claimant receiving an equal share. (*Id.* at 10.) The undersigned recommends that applying the Statute of Distributions in this case is acceptable. The claimants are all Alabama domiciliaries, as was the decedent. (*Id.* at 6.) The Petition was filed with the knowledge and consent of both G.D., who is no longer a minor, and his mother. (*Id.* at 10.) The guardian ad litem found the settlement, including its proposed allocation, to be in the best interests of G.D. (See Doc. 16.) Given that the decedent had close relationships with his two adult children, Melvin Seay and Ladarrian Watkins, and that G.D. was nearing the age of majority when the accident occurred, an equal distribution appears reasonable. (Doc. 24 at 2.) Therefore, the undersigned recommends that the Court approve the proposed settlement.

IV. Conclusion

Accordingly, it is respectfully **RECOMMENDED** that:

1. The Petition (**Doc. 24**) be **GRANTED**.
2. The Settlement Agreement and Release (**Doc. 20-1**) and the proposed Distribution Grid (**Doc. 17-3**) be **APPROVED**.
3. R. Scott Constantino, Esq., be authorized to accept the settlement payment(s) and execute any document(s) necessary to effectuate the settlement on behalf of G.D.⁵

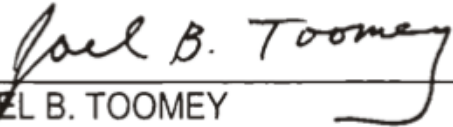
Notice to Parties

“Within 14 days after being served with a copy of [this Report and Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2). “A party may respond to another party’s objections within 14 days after being served with a copy.” *Id.* A party’s failure to serve and file specific objections to the proposed findings and recommendations alters the scope of review by the District Judge and the United States Court of Appeals for the Eleventh Circuit, including waiver of the right to challenge anything to which no specific objection was made. See Fed. R.

⁵ “The Court may authorize the natural guardians to collect the amount of the settlement or judgment and to execute a release or satisfaction.” See *Doe v. School Bd. of Brevard Cty.*, No. 6:18-cv-1114-Orl-41TBS, 2019 WL 1547307, at *2 (M.D. Fla. Apr. 1, 2019) (quotations omitted), *report and recommendation adopted*, 2019 WL 1531923 (M.D. Fla. Apr. 9, 2019).

Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1)(B); 11th Cir. R. 3-1.

DONE AND ENTERED in Jacksonville, Florida, on March 2, 2022.



JOEL B. TOOMEY
United States Magistrate Judge

Copies to:

The Honorable Brian J. Davis
United States District Judge

Counsel of Record