

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE CINCINNATI POLICING

Case No. C-1-99-3170

Judge Dlott

ELSIE CARPENTER,

Case No. C-1-99-227

Plaintiff

Judge Dlott

vs.

CITY OF CINCINNATI, et al.

Defendants

ANGELA LEISURE, et al.,

Case No. C-1-01-286

Plaintiffs

Judge Spiegel

vs.

CITY OF CINCINNATI, et al.

Defendants

BOMANI A. TYEHIMBA,

Case No. C-1-99-317

Plaintiff

Judge Dlott

vs.

CITY OF CINCINNATI, et al.

Defendants

| | | |
|-----------------------------------|---|-----------------------------|
| MARK A. WARD, et al, | : | Case No. C-1-99-494 |
| | : | |
| Plaintiffs | : | Judge Dlott |
| | : | |
| vs. | : | |
| | : | |
| CITY OF CINCINNATI, et al. | : | |
| | : | |
| Defendants | : | |
| ***** | | |
| ANTONIO JOHNSON, et al, | : | Case No. C-1-99-1063 |
| | : | |
| Plaintiffs | : | Judge Dlott |
| | : | |
| vs. | : | |
| | : | |
| DONALD LUCK, et al. | : | |
| | : | |
| Defendants | : | |
| ***** | | |
| MATTHEW SHAW, | : | Case No. C-1-99-1064 |
| | : | |
| Plaintiff | : | Judge Dlott |
| | : | |
| vs. | : | |
| | : | |
| DONALD LUCK, et al. | : | |
| | : | |
| Defendants | : | |
| ***** | | |
| CHARLES A. WILEY, | : | Case No. C-1-00-267 |
| | : | |
| Plaintiff | : | Judge Dlott |
| | : | |
| vs. | : | |
| | : | |
| CITY OF CINCINNATI, et al. | : | |
| | : | |
| Defendants | : | |
| ***** | | |

LISA YOUNGBLOOD-SMITH,

Plaintiff

vs.

CHARLES GARDNER, et al.

Defendants

Case No. C-1-00-434

Judge Dlott

VINCENT CLARK, et al.,

Plaintiffs

vs.

CITY OF CINCINNATI, et al.

Defendants

Case No. C-1-02-645

Judge Dlott

JOHN HARRIS,

Plaintiff

vs.

CITY OF CINCINNATI, et al.

Defendants

Case No. C-1-02-761

Judge Dlott

PAUL KEITH, et al.,

Plaintiffs

vs.

CITY OF CINCINNATI, et al.

Defendants

Case No. C-1-02-777

Judge Dlott

ENRICO MARTIN, : Case No. C-1-02-762
 :
 Plaintiff : Judge Dlott
 :
 vs. :
 :
 CITY OF CINCINNATI, et al. :
 :
 Defendants :

RODERICK GLENN, : Case No. C-1-02-760
 :
 Plaintiff : Judge Dlott
 :
 vs. :
 :
 CITY OF CINCINNATI, et al. :
 :
 Defendants :

ARNOLD WHITE, : Case No. C-1-02-759
 :
 Plaintiff : Judge Dlott
 :
 vs. :
 :
 CITY OF CINCINNATI, et al. :
 :
 Defendants :

ADELL STILLWELL, : Case No. C-1-02-763
 :
 Plaintiff : Judge Dlott
 :
 vs. :
 :
 CITY OF CINCINNATI, et al. :
 :
 Defendants :

| | | |
|-----------------------------------|---|----------------------------|
| SHEILA BARNES, | : | Case No. C-1-02-758 |
| | : | |
| Plaintiff | : | Judge Dlott |
| | : | |
| vs. | : | |
| | : | |
| CITY OF CINCINNATI, et al. | : | |
| | : | |
| Defendants | : | |

**JOINT MOTION TO ESTABLISH QUALIFIED SETTLEMENT FUND AND
ESTABLISH FUND ADMINISTRATOR**

Elsie Carpenter, Angela Leisure, Tywon Deamontay Wilcox, Bomani Tyehimba, Mark Ward, Ronald Cuthbertson, Antonio Johnson, Antonio Hollifield, Dana Hollifield, Matthew Shaw, Charles Wiley, Lisa Youngblood-Smith, Vincent Clark, Terry Horton, John Harris, Stephanie Keith, Paul Keith, Enrico Martin, Roderick Glenn, Arnold White, Adell Stillwell, and Sheila Barnes, the Plaintiffs in the above-captioned individual damage actions listed in paragraph 115 of the Collaborative Agreement in *In re Cincinnati Policing* and Plaintiff in action C-1-01-286 (collectively the “Listed Plaintiffs”); and Defendant City of Cincinnati and Defendant Police Officers named in these individual actions (collectively, “Movants”) by and through their attorneys of record, appear in this United States District Court and move for the formal entry of an Order by this Court (i) **to** establish a fund, which shall be called the *In re Cincinnati Policing* Damage Claims Qualified Settlement Fund (the “Fund”); (ii) **to** completely extinguish any liability of all plaintiffs and defendants named in the above captioned damage actions with respect to claims arising out of certain events, described in the above captioned damage actions, once the monies have been paid in the requisite amount into the Fund’s account, as specified below; and, iii) appoint an administrator for the Fund. The Court has consolidated *Angela Leisure, et al. v. City of Cincinnati, et al.* (C1-01-286) with above-captioned individual damage

actions for purposes of settlement. In support of this Motion, Movants respectfully state:

1. The Listed Plaintiffs are individuals all of whom were allegedly subjected to some use of force or excessive force by members of the Cincinnati Police Department (hereinafter collectively called "The Incidents"). The Incidents allegedly caused some personal physical injury and / or the wrongful death of all of the Listed Plaintiffs or Listed Plaintiffs' decedents.

2. Defendants are alleged to be liable to the Listed Plaintiffs for personal and bodily injuries, and/or other claims arising out of the Incidents.

3. Said Defendants were either self insured or insured by various known and unknown insurers at the time of the Incidents, or potentially subject to receive contribution and/or indemnification from their employer.

4. It is anticipated that the Parties will fully settle these claims at a time when distribution and allocation is not yet finalized, and the Parties shall receive mutual releases. Hence the Court is ordering the establishment of The Fund to facilitate collection, allocation and disbursement of funds.

5. The City of Cincinnati shall pay into the Fund the sum of \$4,500,000.00 within sixty days from the date of the Court's Order granting both the motion and the Collaborative Agreement Global Damage Claims Settlement Agreement. Plaintiffs agree that said Fund as well as the \$4,500,000.00 is fair and in their respective best interest. Each Plaintiff has been presented a value range based upon their claim profile and agrees that said range and profile is fair and reasonable. Furthermore, each plaintiff has agreed to accept the Administrator's final determination of settlement value within his or her respective range.

6. The Fund shall be a qualified settlement fund as described in Treas. Reg. 1.468B-1, established by order of this Court and the Fund shall remain subject to the continuing jurisdiction of this Court.

7. The Fund shall fully settle claims arising from the Incidents with the approval of and upon the order of the Court by entering into subsequent Qualified Settlement Fund Agreements and Releases (the “Fund Agreements”) with Listed Plaintiffs asserting those claims.

8. The Fund shall be liable to make payments to those Listed Plaintiffs as the Fund Agreements specify.

9. The Fund may, with the consent of Listed Plaintiffs with whom it enters into Fund Agreements, purchase and assign any structured settlements created under any Fund Agreements. Any structured settlement shall be issued by a life insurance company that is rated A+ or better by A.M. Best Company.¹

10. The claims made against Defendants as a result of the Incidents are made on account of some personal physical injury, and arise out of alleged liability in tort or violation of law. Listed Plaintiffs entering into Fund Agreements with the Fund shall agree in writing to a discharge of the Fund’s liabilities to make any structured settlement payments, also known as periodic payments, under the Fund Agreements by executing, along with the Fund any necessary documents required or related to the discharge of said liabilities.

11. Movants request that the Court approve the engagement of Matthew L. Garretson, Esq. and The Garretson Law Firm (TGLF) as the Fund Administrator. Matthew Garretson is an attorney in good standing in Ohio with extensive experience with 468B QSF administration. In addition to being an attorney, Mr. Garretson is a principal in Little, Meyer, Garretson & Associates, Ltd. (LMGA) located in Cincinnati, Ohio. LMGA is a licensed Structured Settlement brokerage and settlement trust (e.g. trusts to preserve government benefits) consulting /

¹ Structured Settlement Payments are assigned to a qualified assignee by entering into qualified assignments of such structured settlement payments within the meaning of Section 130(c) of the Internal Revenue Code. The qualified assignee shall, respecting each person who is to receive periodic payments under a settlement agreement, purchase one or more qualified funding assets within the meaning of Section 130(d) of the Internal Revenue Code to fund any structured settlement payments assigned to the qualified assignee.

placement firm. Matthew Garretson's address is 2651 Observatory Avenue, Cincinnati, Ohio 45208.

12. The parties request that no bond shall be required, provided that all monies received by the Fund shall be deposited in an account comprised of government obligations (bonds) or FDIC-insured account.

13. The parties request that the Fund Administrator be authorized to incur costs necessary to administer the Fund and hire such professionals as is necessary to administer the Fund, including but not limited to accountants, counsel, and mediators or arbitrators as are necessary.

14. The Fund Administrator will submit to the Court a declaration that the claims of the Listed Plaintiffs of which the Fund Administrator has actual knowledge, including all claims identified in paragraph (A), (1), (2) and (3) of the Parties' separate Global Damage Claims Settlement Agreement signed May 21, 2003, in accordance with the terms of that Global Damage Claims Settlement Agreement, have been fully settled and ask this Court to enter an Order acknowledging disbursement of the funds pursuant to the Fund Agreements. It is anticipated that some Listed Plaintiffs will determine more quickly than others that they are not interested in any form-of-settlement options (i.e. structured settlement and / or trusts to preserve government benefits) besides a lump sum award. Such Listed Plaintiffs may request lump distributions before those Listed Plaintiffs that require further counseling regarding "form-of-settlement" options. The Fund Administrator shall be empowered to distribute said lump sum proceeds upon written consent of all Listed Plaintiff counsel and execution of the appropriate Fund Agreement. Upon distribution of a settlement, in lump or structured form, to any Listed Plaintiff, that Listed Plaintiff and the Defendants in the individual action shall execute mutual releases. The Fund Administrator shall be authorized to distribute all attorney fees to the Listed

Plaintiffs' counsel, upon written request signed by all counsel, consistent with existing contingency fee contracts, upon approval of this Court.

15. All expenses incurred in the settlement of claims shall be allocated among the Listed Plaintiffs on a pro rata basis including any escrow fees and the fees of the Fund Administrator and shall not be the responsibility of the City of Cincinnati or any other named defendant. The fee of the Fund Administrator shall be \$200.00 per hour and shall be capped at \$2,000.00 total. Any commission received by LMGA as a result of the brokering of annuities for structured settlements or placement of Trusts to preserve government benefits shall be credits against the Fund Administrator's (TGLF) fees.

16. Upon completion of all Fund Agreements and final distribution of all monies to be paid into the Fund, the administrator shall submit an accounting to the Court along with his receipts. After notice has been given to all persons whom the Fund Administrator has actual knowledge to have rights against the Fund, the Court shall enter an Order closing the Fund Administration and discharging the Fund Administrator from any further responsibility with respect to the Fund.

17. The Administrator has obtained a federal Taxpayer Identification Number for the *In re Cincinnati Policing Damage Claims Qualified Settlement Fund*, such number being 75-3115602.

WHEREFORE, Movants respectfully request that the Court enter an Order:

1. Establishing said Fund as a qualified settlement fund within the meaning of Treasury Regulation 1.468B-1;

2. Appointing Matthew L. Garretson and The Garretson Law Firm as Fund Administrator and giving said Fund Administrator the authority to conduct any and all activities necessary to administer this Fund as described in this Motion.

3. Completely extinguishing any alleged civil liability or actual civil liability of any Defendant participating in the Fund with respect to any injury or death of any Listed Plaintiff arising out of the Incidents.

4. Authorizing the Fund to enter into Fund Agreements with persons claiming damages, injury or death as a result of the Incidents, including the use of settlements with periodic payments in a manner prescribed and approved by the court; and

5. Authorizing the Fund to effect qualified assignments of any resulting structured settlement liability within the meaning of Section 130(c) of the Internal Revenue Code to the qualified assignee.

DATED this 21st day of May, 2003.

Respectfully submitted,

For the Listed Plaintiffs:

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Attorneys for Individual Officer
Defendants in their Individual Capacities

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May 2003, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing, **JOINT MOTION TO ESTABLISH QUALIFIED SETTLEMENT FUND AND APPOINT FUND ADMINISTRATOR**

to:

Jeffrey Mando
Maryanne Stewart
Adams, Steiner,
 Woltermann & Dusing
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