

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELSIE PLUMMER : CIVIL ACTION  
 :  
 v. :  
 :  
 HAYS TUG & LAUNCH SERVICE, INC., :  
 et al. : NO. 09-0127

MEMORANDUM

Bartle, C.J.

July 14, 2010

On January 9, 2009, plaintiff Elsie Plummer, as administratrix of the estate of Floyd Nelson and on behalf of all heirs and next of kin, filed this wrongful death and survival action against Hays Tug & Launch Service, Inc., Purple Hays Tugboat Company, and the Tugboat Purple Hays. Plaintiff alleges that on August 30, 2007, Nelson died when he fell from the Tugboat Purple Hays into the Delaware River and drowned. The tugboat regularly conducted its business in Chester, Pennsylvania. Nelson died intestate.

The Complaint alleged wrongful death and damages for pain and suffering under either the Jones Act, 46 U.S.C. § 688 et seq., or the Longshore and Harbor Workers' Act, 33 U.S.C. § 901 et seq. The defendants agreed to settle these claims for a sum total of \$250,000. Of this sum, \$1,000 was to be apportioned as liability under the Longshore and Harbor Workers' Act, which required approval by the Department of Labor. This approval has been recently granted. The remaining \$249,000 was to be

apportioned as liability under the Jones Act. At a hearing, plaintiff's counsel stated that he believes this settlement amount to be proper and reasonable. We agree.

Floyd Nelson was survived by his common law wife Elsie Plummer and his biological children Tamira Yvette Nelson, Floyd Nelson Jr., Jameer Nelson, and Maurice Jabree Nelson. He was also survived by Althea Janette Hanna, who has no biological tie to him but whom he had raised as his daughter.

At the time of the filing of the Complaint, Maurice Jabree Nelson was a minor, which would have necessitated court approval of this settlement. See Local Civil Rule 41.2. Since that time, Maurice Jabree Nelson has reached the age of majority. He turned 18 years old on December 4, 2009.

At the hearing, Jameer Nelson renounced his share of the settlement proceeds. The widow of Floyd Nelson and all his children agreed that the settlement proceeds of \$249,000, after deduction of counsel fees and costs, should be divided equally among Elsie Plummer, Tamira Yvette Nelson, Floyd Nelson Jr., Maurice Jabree Nelson, and Althea Janette Hanna. The \$1,000 Longshore and Harbor Workers' Act settlement is statutorily required to be split between Elsie Plummer and Maurice Jabree Nelson, who will receive \$250 and \$750 respectively.

Furthermore, plaintiff's counsel has submitted to the court his fees and costs. He has submitted to the court his costs totaling \$31,388.68. Also, per his retainer agreement with plaintiff Elsie Plummer, he is entitled to a one-third fee, which

amounts to \$83,333.32. Considering all of the circumstances, these costs and fees appear reasonable to the court.

We will approve this agreement among the parties and the costs and fees requested by counsel.

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ORDER

AND NOW, this 14th day of July, 2010, after a hearing and upon agreement of all parties, it is hereby ORDERED that:

(1) the settlement of the wrongful death claim for \$250,000 is approved, with distribution of the monies as follows;

(2) attorney's fees, at 1/3 of the total settlement, are approved in the amount of \$83,333.32;

(3) attorney's costs are approved in the amount of \$31,388.68;

(4) the \$1,000 payment for settlement of the wrongful death claim under the Longshore and Harbor Workers' Act is apportioned as follows:

(a) Elsie Plummer - \$250; and

(b) Maurice Jabree Nelson - \$750; and

(5) the remaining monies, totaling \$134,278, for settlement of the wrongful death claim under the Jones Act is apportioned as follows:

(a) Elsie Plummer - \$26,855.60;

(b) Tamira Yvette Nelson - \$26,855.60;

- (c) Floyd Nelson Jr. - \$26,855.60;
- (d) Maurice Jabree Nelson - \$26,855.60; and
- (e) Althea Janette Hanna - \$26,855.60.

BY THE COURT:

/s/ Harvey Bartle III  
C.J.