

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

In Re: ) LEAD CASE NO. BC 133 643  
LINCOLN MEMORIAL PARK )  
LITIGATION ) CLASS ACTION  
\_\_\_\_\_ )

NOTICE OF PENDENCY OF CLASS ACTION  
AND PROPOSED PARTIAL SETTLEMENT

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THIS NOTICE MAY AFFECT YOUR RIGHTS -- PLEASE READ IT CAREFULLY

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**A. INTRODUCTION**

THE FOLLOWING PERSONS MAY HAVE A CLAIM AGAINST VARIOUS MORTUARY DEFENDANTS:

Persons who are or were vested with the right, pursuant to California Health & Safety Code §7100, to control the disposition of the remains of any decedent who was buried at Lincoln Memorial Park Cemetery ("Lincoln"), located at 16701 South Central Avenue, Carson, California;

or

Persons who contracted with one or more of the Mortuary Defendants for funeral or burial services of any decedent interred at Lincoln;

or

Persons who are close family members of any decedent interred at Lincoln; are relatives who lived in the household of the decedent at the time of death; or are qualified individuals with "exceptional circumstances," and who: (a) were aware of the death of the decedent; (b) were aware that funeral or burial services were being performed for the decedent; and (c) were among those on whose behalf or for whose benefit the funeral or burial services were performed.

IF YOUR DECEDENT WAS BURIED AT LINCOLN MEMORIAL PARK YOU MAY BE A MEMBER OF THE IN RE: LINCOLN MEMORIAL PARK LITIGATION SETTLEMENT CLASS. YOUR RIGHTS MAY BE AFFECTED BY THIS SETTLEMENT.

THIS NOTICE IS NOT AN EXPRESSION BY THE COURT OF AN OPINION CONCERNING THE MERITS OF ANY CLAIM OR DEFENSE OR THE TRUTH OR FALSITY OF ANY OF THE ALLEGATIONS OF THE PARTIES.

The purpose of this Notice is to advise you that:

◆ Your rights may be affected by the proposed settlement pending in this Court.

◆ By Order dated June 29, 1998, the Court has conditionally certified this as a **mandatory non-opt-out** class action for settlement purposes and determined that the proposed settlement deserves consideration as a fair, reasonable and adequate resolution of the pending claims against **all** Mortuary Defendants HOUSE OF WINSTON, INC. ANGELUS FUNERAL HOME, HARRISON-ROSS FUNERAL HOME, SOUTH LOS ANGELES MORTUARY, ASHLEY-GRIGSBY MORTUARY, INC., ELBA LEE HOBBS, JR. CORP. DBA HOBBS-J.S. WILLIAMS-ALBERT L. COOPER MORTUARY, PEOPLES FUNERAL HOME, ADAMS FUNERAL HOME, WILLIE HOUSTON DBA HOUSTON'S MORTUARY, PARADISE CHAPEL, SOLOMON'S MORTUARY, SPALDING MORTUARY, LONG BEACH COLONIAL MORTUARY, INC., ARMSTRONG FAMILY MORTUARY, a California Corporation DBA ARMSTRONG FAMILY MALLOY-MITTEN MORTUARY, RHODA BOYD DBA BOYD FUNERAL HOME, REGINALD BOYD DBA BOYD FUNERAL HOME, HYDE PARK MORTUARY, STRICKLIN-SNIVELY MORTUARY, RISHER MORTUARY DBA RISHER MONTEBELLO MORTUARY, CAJALCO FUNERAL HOME, CONNER-JOHNSON, DRAPER MORTUARY, JAMES D. HINES FUNERAL HOME, LEGGETT & KING, McMILLEN & McCORMICK MORTUARY, PARADISE MORTUARY, RACHAL'S MORTUARY, SIMPSON & McGEE, SIMPSON FUNERAL HOME, SPONGBERG MORTUARY, PALMS CHAPEL, AVALON MORTUARY, CHAMBERS-WARDLOW FUNERAL HOME, DILDAY MOTTEL'S MORTUARY, FREEMAN FAMILY MORTUARY, IMPERIAL FUNERAL HOME, JOE D. LEWIS FUNERAL HOME, LYLES FUNERAL HOME, PARAMOUNT MORTUARY, PRESTON RASNUSSEN MORTUARY, ZEFERINO-RAMIREZ MEMORIAL CHAPEL, RAMIREZ MORTUARY, W.D. FISHER & SON, RIVERSIDE MORTUARY only (hereinafter "Mortuary Defendants").

◆ **This is a partial settlement and this and other actions are continuing against various Cemetery Defendants and others, although no class has been certified to date against the Cemetery Defendants.**

◆ **The distribution of settlement proceeds to individual claimants, from this partial settlement, will not take place until all claims have been resolved against all of the remaining defendants. You will be advised in the future when you will be required to file a completed Proof of Claim Form.**

◆ If you wish to object to this settlement you must follow the procedures described in paragraphs **11 through 16**, below, by the objection postmark deadline.

## **B. DESCRIPTION OF THE ACTION**

1. In August, 1995, shortly after allegations of improper handling of human remains at Lincoln Memorial Cemetery were made, lawsuits were filed against the Cemetery by a number of surviving relatives and persons who contracted for funeral services, on behalf of themselves and others similarly situated. Subsequently, lawsuits were filed by many of the same surviving relatives against various Mortuaries. The lawsuits were consolidated by the Los Angeles County Superior Court and are referred to as In Re: Lincoln Memorial Park Litigation. From 1995 through the present time, Commissioner Bruce E. Mitchell (the "Court") has presided over pre-trial proceedings and motions in these cases.

2. The Consolidated actions against the Mortuary Defendants alleged that Mortuary Defendants, among other things, knew or should know of the mishandled, improperly buried, and otherwise improperly handled remains of

the decedents entrusted to them, in a manner offensive to human sensibilities and/or expressly prohibited by law. On June 29, 1998, the Court granted preliminary approval of a settlement with the Mortuary Defendants only. Following final approval of this settlement, and final resolution of all Class claims, proceeds will be distributed to certain qualified claimants.

3. Mortuary Defendants have denied, and continue to deny, any wrongdoing and deny any liability whatsoever.

#### **C. CLASS CERTIFICATION**

4. On June 29, 1998, the Court certified a **mandatory non-opt-out** Settlement Class to include persons who:

(a) Pursuant to California Health & Safety Code §7100, are or were vested with the right to control the disposition of the remains of any person who was buried at Lincoln Memorial Park Cemetery ("Lincoln"), located at 16701 South Central Avenue, Carson, California; or

(b) contracted with one or more of the Mortuary Defendants for funeral or burial services of any Decedent; or

(c) are close family members of any Decedent; relatives of any Decedent who were residing in the household of the Decedent at the time of death; or relatives with "exceptional relationships" with the Decedent; or

(d) are persons with non-class actions pending against any mortuary defendant herein in connection with a burial at Lincoln; and who:

- (1) were aware of the death of the Decedent;
- (2) were aware that funeral or burial services were being performed for the Decedent; and
- (3) were among those on whose behalf or for whose benefit the funeral or burial services were performed.

The court further determined that two (2) subclasses would be certified as follows:

Sub-class No. 1 shall include all class members whose Decedent was interred at Lincoln on or after January 1, 1983.

Sub-class No. 2 shall include all class members whose Decedent was interred at Lincoln prior to January 1, 1983.

#### **D. CLASS COUNSEL AND CLASS REPRESENTATIVES**

5. The Court has appointed the following Plaintiff Class Counsel: Mike Arias, Esq., Arias & Ozzello, P.C., 11766 Wilshire Boulevard, Suite 720, Los Angeles, California 90025; J. Paul Gignac, Esq., Cappello & McCann, 831 State Street, Santa Barbara, California 93101; Bruce C. Fishelman, Esq., Stanbury & Fishelman, 9200 Sunset Boulevard, Penthouse 30, Los Angeles, California 90069; and Richard M. Franco, Esq., Lieff, Cabraser, Heimann & Berstein, LLP and has certified the following Class Representatives to represent the Settlement Class: DELINA MILLER, ROBBIE KEYS, HERMAN MITCHELL, AUDREY SMITH, VIRGIE SIMON, SHARON HOLLOWAY, ROSE JOHNSON, WILLIE HUNTER, FRANKIE BATES, JUANTIA CULLEN AUSTIN, IDA McGOWAN, BERNICE WIMBLEY, DOROTHY JONES, ESTHER ALLEN, CLAUDIA WASHINGTON, ROSA COOK, TONETTE BROWN, ANITA ADAMS, CAROLYN REEVES, ROOSEVELT HUDSDON, ALBERT MOORE, REGINA WINSTON, LORENA SMITH, SOLISA MATTHEWS-SHERRILLS, LOUIS BARBER, RUBY L. JONES, BESSIE WILLIAMS, DORA

DANIEL, CHERYL A. HESTER, and GERALDINE BROOKS.

**E. TERMS OF THE SETTLEMENT WITH MORTUARY DEFENDANTS ONLY**

6. Class Counsel and counsel for **all** Mortuary Defendants have reached a proposed settlement which has obtained the preliminary approval of the Court. The proposed settlement provides for injunctive relief against the Mortuary Defendants and generates, under certain terms and conditions, a fund of **\$1 million** to be allocated and distributed, under Court supervision, to members of the Settlement Class. The injunctive relief includes Mortuary Defendants agreement:

- (a) to refrain from the business of buying or selling, leasing or exchanging cemetery property or interment services unless properly licensed to do so;
- (b) to refrain from offering to buy, sell, lease or exchange cemetery property or interment services unless properly licensed to do so;
- (c) not to receive any compensation for the performance of any activity in connection with buying, selling, leasing or exchanging cemetery property or interment services unless properly licensed to do so;
- (d) not to act as a cemetery broker or salesperson without the appropriate license;
- (e) not to advertise themselves as cemetery brokers or salespersons without the appropriate license;
- (f) to provide their customers who state or indicate an intent to bury an individual at Lincoln Cemetery with information concerning allegations of problems at Lincoln Cemetery and the fact that litigation was brought concerning the same.
- (g) to provide Lincoln Cemetery with an edited version of their computerized database in order to assist in creating a swift and effective method for the future operators of that cemetery to determine the burial location of Decedents and for use by plaintiffs' counsel to assist with class notice.

The proposed settlement is subject to certain conditions. In exchange for the injunctive relief and the payment of the settlement fund, all members of the class will release all claims which have been or could have been asserted in the In Re: Lincoln Memorial Park Litigation cases against Mortuary Defendants. This release includes a waiver of the rights set forth in **Civil Code** section 1542 which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THIS RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

This settlement is the result of extensive Court-supervised and approved negotiations by counsel conducted after Class Counsel engaged in substantial investigation, document review and discovery into the allegations against Mortuary Defendants.

7. The amount each class-member claimant will receive is not known at this time, but will depend on the type of damage suffered to claimant, relationship to the decedent and number of qualified timely filed claims.

## **F. RECOMMENDATION OF CLASS COUNSEL**

8. Plaintiffs' Counsel believe that class members are best served by participating in the proposed settlement. Plaintiffs' Counsels' extensive investigation, document review, discovery and insurance issues evaluation has lead them to the conclusion that the Preliminary Approval Settlement is in the best interests of all class members.

## **G. ATTORNEYS' FEES AND COSTS**

9. All petitions for attorneys' fees and expenses are subject to Court approval. Since the inception of this litigation in August, 1995, Class Counsel have incurred out-of-pocket costs and have invested substantial time, on a priority basis, to protect and prosecute the Class claims, without receiving compensation of any kind. In class actions, counsel who generate a monetary recovery for the benefit of the class are entitled to an award of attorneys' fees and costs representing a reasonable percentage of the recovery in recognition of their efforts, expenses, risks, and performance. This percentage generally ranges from 25% to 40% of the class action Settlement Fund. In this case, Class Counsel will apply to the Court for reimbursement of their actual out-of-pocket costs, and an award of attorneys' fees in an aggregate amount which represents 30% of the class action Settlement Fund. It is also possible that other attorneys will file fee applications. The Settlement Fund, less Court-approved attorneys' fees and costs (the "Net Settlement Fund"), will be available for distribution to the Class.

10. Class members have the right to comment in support of, or in opposition to, this application. In order to do so, you must follow the procedure described below.

11. In addition, it is anticipated that the Court appointed Receiver and his Counsel will also apply to the Court for payment of un-reimbursed out-of-pocket costs and fees, incurred by the Receiver and his counsel in this case in the amount of approximately \$60,000, some or all of which may be approved for payment from the class action Settlement Fund.

## **H. THE SETTLEMENT APPROVAL PROCESS**

12. **FINAL APPROVAL HEARING** - A final Settlement Approval Hearing will be held on September 24, 1998, at the hour of 9:00 a.m., before Commissioner Bruce E. Mitchell, Department 59, of the Los Angeles County Superior Court, 111 North Hill Street, Los Angeles, California 90012, to hear evidence and argument regarding the fairness, adequacy and reasonableness of the proposed settlement, so that the Court may determine whether it should be granted final approval; whether the action should be dismissed on the merits with prejudice as to Settling Defendants pursuant to the settlement agreement; and the amount of any award of attorneys' fees and costs to plaintiffs' counsel.

13. **IF YOU WISH TO COMMENT ON THE SETTLEMENT** - Class members are entitled, but not required, to attend. If you wish to comment in support of or opposition to any aspect of the settlement or applications described in this Notice, you are entitled to do so. You must submit any written comments postmarked or e-mailed no later than September 1, 1998. Written comments must be mailed or e-mailed to the following:

Co-Lead Counsel for Class Plaintiffs:  
Mike Arias, Esq.  
Arias & Ozzello, P.C.  
11766 Wilshire Boulevard, Suite 720  
Los Angeles, California 90025  
e-mail: [aolaw@ariasozzello.com](mailto:aolaw@ariasozzello.com)

14. **IF YOU WISH TO APPEAR AT THE HEARING** - In order to be considered by the Court, all written comments must be postmarked by the September 1, 1998, deadline. If you wish to appear and be heard in person at the final approval hearing, you must mail a letter stating your intention to appear to Plaintiffs' Co-Lead Class Counsel and the Court as listed above and below, by the September 1, 1998, deadline. The Court may, in its discretion, limit the number of persons and time permitted for comments at the hearing.

Commissioner Bruce C. Mitchell  
Los Angeles County Superior Court  
Department 59  
111 North Hill Street  
Los Angeles, California 90012

15. Any member of the Class may comment in writing or in person on whether: (1) the terms of the settlement are fair, reasonable and adequate; (2) the action should be dismissed as to Mortuary Defendants; or (3) an award should be made to Plaintiffs' Counsel of their reasonable fees and costs.

16. Whether or not you submit any written comments, appear at the hearing, or submit a timely Claim Form, as a class member you will be bound by the determination, order and judgment of the Court on final settlement approval.

17. If you come within the Class definition, you are bound by all orders of the Court regarding the final approval of the settlement, and the release of claims, described in this Notice, whether or not you make a claim.

18. Any member of the Class will be able to file a Claim Form and share in the Net Settlement Fund whether or not they have objected to the proposed settlement. ANY MEMBER OF THE CLASS WHO DOES NOT TIMELY RETURN A COMPLETED CLAIM FORM (ONCE THE CLAIMS PROCESS BEGINS) WILL NOT BE PERMITTED TO SHARE IN THE DISTRIBUTION OF THE NET SETTLEMENT FUND BUT WILL NEVERTHELESS BE BOUND BY THE PROPOSED SETTLEMENT AND JUDGMENT ENTERED IN THIS LITIGATION.

**YOU WILL BE NOTIFIED BY A SEPARATE FUTURE MAILING OF THE SCHEDULE FOR SUBMITTING A CLAIM.**

19. Additional Notices can be obtained by writing to the following address:

Lincoln Memorial Park Litigation  
2801 Ocean Park Boulevard, #12  
Santa Monica, California 90405  
Website: <http://web.usxc.net/classaction/>

**I. REPRESENTATION BY COUNSEL AND FURTHER PROCEEDINGS**

20. As a member of the Class, you may communicate with, seek the advice of, or enter an appearance through counsel of your own choice. Any member of the Class who does not enter an appearance either individually or through his or her own counsel will be represented by counsel for the Class Plaintiffs, who are proponents of the settlement, and will have no individual liability for attorneys' fees and costs, both of which will be payable from the Settlement Fund.

21. If the settlement does not receive final approval by the Court, the case will continue to be prepared for trial. In any event, this case will continue to be prosecuted against all other non-settling defendants.

**J. FOR MORE INFORMATION**

22. This Notice summarizes the basic terms of the settlement. For more detailed information you may review and copy the pleadings, records and other papers on file in this litigation during regular business hours at the office of the Clerk, Los Angeles County Superior Court, 111 North Hill Street, Room 111, Los Angeles, California, 90012 or you may contact Co-Lead Counsel for Class Plaintiffs:

Mike Arias, Esq.  
ARIAS & OZZELLO, P.C.  
6701 Center Drive West, Suite 950  
Los Angeles, CA 90045  
Telephone: (310) 670-1600  
e-mail: aolaw@ariasozzello.com

**PLEASE DO NOT ADDRESS QUESTIONS OR REQUESTS FOR INFORMATION TO THE COURT.**

DATED: June 29, 1998

BRUCE E. MITCHELL  
Commissioner of the Superior Court