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MGM Grand to finalize settlement this month

By RHONDA L. RUNDLE

LAS VEGAS, Nev.—MGM Grand Hotels Inc. will formalize on May 20 its settlement of all but a few of the remaining 450 liability lawsuits stemming from a 1980 fire at its Las Vegas hotel.

All but about 40 of the 112 other defendants sued in the fire litigation also are participating in the largest out-of-court tort settlement in U.S. history (*BI*, April 11).

More than 1,350 fire victims and surviving family members will share almost \$140 million paid by MGM Grand and the other defendants into a settlement fund held in a bank escrow account.

"The money isn't all there yet, but that's how much is projected based on actual settlements and settlements in principle," said a spokesperson for the court.

MGM Grand is expected to make a second \$25 million payment to the escrow account 21 days following delivery by the Plaintiffs' Legal Committee of final paperwork on the settlements.

The hotel-casino company will complete its \$75 million contribution to the master settlement with a final \$25 million payment in two years. It made its first payment early this year.

But, plaintiffs will receive checks for 80.5% of their individual agreed-upon settlement amounts beginning in early summer. A court-approved payment schedule calls for additional payouts in September 1984 and September 1985.

As part of the master plan, MGM Grand also has agreed to indemnify the settling defendants against compensatory damages claimed by a few holdout plaintiffs. This will not be necessary, those plaintiffs settle soon, as some legal observers expect.

"All of the death claims have been settled," noted

Wendell Gauthier, the co-chairman of the Plaintiffs' Legal Committee. The holdouts are smoke inhalation cases, he said.

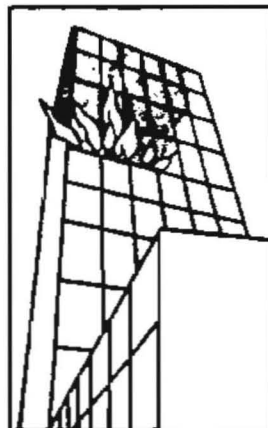
Eighty-five people died and about 700 suffered smoke inhalation and other injuries in the November 1980 fire that started in a hotel restaurant and quickly spread into the adjoining casino area.

The settlement virtually eliminates MGM Grand and the other settling defendants from further legal involvement in an upcoming trial that will decide liability

against non-settling defendants. About 40 defendants will meet a small group of plaintiffs on July 11 in the U.S. District Court in Las Vegas.

"The plaintiffs who have reached partial settlements have the right to conclude their cases before the non-settling plaintiffs are heard," explained Mr. Gauthier.

Among the defendants going to trial are many small companies that furnished plastic products to the hotel. Some of them also are being sued in a sub-



rogation action by MGM Grand's excess property insurer, American Protection Insurance Co., a unit of Kemper Group (*BI*, April 18).

MGM and the settling defendants—although excused from the upcoming trial—could still be dragged into court in a couple of years by the holdout plaintiffs if

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settlements with them are not reached in the interim.

Seventeen of the 450 lawsuits against the non-settling defendants were selected by U.S. District Court Judge Louis C. Bechtle for the first trial. The court could not hear all of the cases in one trial and these 17 were selected as representative of the others, said the court spokesman.

The suits going to trial in the first group include a sampling of the victims who were killed or injured in different elevators, stairwells, guest rooms and other locations throughout the hotel and casino. This smattering of cases will enable the court to "get all the issues of liability into the first trial," said the court spokesman.

This approach will create a "res judicata" situation, meaning that the court's judgment will be conclusive upon the parties in subsequent trials involving the same cause of action, a defense attorney explained.

The issue of liability against each defendant will be decided on a worst-case basis in which the most damaging evidence is presented in the first trial.

Once the liability issues are resolved, the cases can be bifurcated into groups to determine damages.

"This approach is fair to both plaintiffs and defendants," said Mr. Gauthier. "If the defendant prevails in the first case, it would be foolish for plaintiffs with weaker cases to proceed against the defendant."

However, a defense attorney whose client settled in the case explained that the court's approach was a high-pressure tactic to settle. Defense attorneys would rather defend the weakest cases first in order to establish favorable precedents in later, tougher cases.

If this trial—and others that may

follow—result in damage awards to plaintiffs against the non-settling defendants, the total amount of money available to pay fire claims will exceed \$140 million. Any money in the fund exceeding \$135 million, which is the minimum amount set by the court to satisfy 1,356 individual claims, will be allocated to plaintiffs on a pro-rata basis.

For example, a smoke inhalation victim whose court-approved award was \$25,000 will receive that sum plus a percent of the amount in the fund above \$135 million based on the size of the victim's court-approved award. The fund already contains nearly \$5 million in pledges above \$135 million.

The amount of each individual settlement was determined by Judge Bechtle who met with plaintiffs' attorneys in private conferences. The attorney would present a demand on behalf of the client and, based on medical information and other evidence, the judge would concur or counter with a lower figure.

Eventually, compromises were reached in all but a few cases based on a principle of parity intended to award comparable amounts to victims with comparable damages.

Although Judge Bechtle, who presided over the multidistrict action, has no jurisdiction over state courts, plaintiffs who filed their suits in Nevada and California state courts also entered into settlements.

MGM Grand's decision to consummate the settlement plan clears the way for final settlement by most of the other defendants.

"It's a very positive development for my client," said Richard L. Hartman, a Los Angeles attorney representing Air Balance Co. Inc. "We can see the light at the end of the tunnel."

For the moment, Mr. Hartman and other attorneys representing settling defendants are waiting to receive the written indemnification document from MGM. The exact form this document will take is still under discussion.

Mr. Hartman believes his client will be dismissed from the litigation altogether within the next few weeks. Air Balance contributed \$500,000 to the settlement fund.

"Our case was defensible but we couldn't afford to go to court," said Mr. Hartman. The legal fees alone would have been a multiple of \$500,000, he said. "So we recommended settlement to the (insurance) carrier."

Air Balance tests the air and water balance for heating, ventilation and air conditioning systems.

"My client's total involvement with the MGM Grand was four days on the job site at the time the hotel was built to water balance the HVAC system," said Mr. Hartman.

As of the middle of last month, the non-settling defendants expected to go to trial are: Adams Elevator Equipment Co.; American Multiplex Systems Inc.; American Society for Testing & Materials; Amfac Distribution Corp., doing business as Amfac Electrical Supply Co. Inc.; Apache Plastics Inc., a subsidiary of Apache Corp. and successor in interest to Kerona Plastic Extrusion Co. Inc. and Kerona Inc.; Bally Manufacturing Corp.; Barber-Colman Inc.; B&M Air Balance; Cadillac Plastic & Chemical Co.; Cohama Inc.; Columbus Coated Fabrics Inc., a unit of Borden Industries; Corona Plastic; C.R. Laurence Co. Inc.; Crystals & Oils Decorators Supply Corp.; Dan Cashdan & Associates; Del E. Webb Corp.; Don Schmitt; Duo-Flex Corp.; and E.I. du pont de Nemours & Co.

Also, Essex Chemical Corp.; Fabricon Products; Fairfax Elec-

tronics Inc.; Frigitemp Corp., successor in interest to Samsen West Corp.; General Felt Products of California Inc.; General Tire & Rubber Co.; Graybar Electric Supply Inc.; Heitman & Associates, formerly L.H. Antoine & Associates; Imperial Glass Co.; J. Josephson Inc.; Johnson Controls Inc.; Kerona Inc.; Kerona Plastic Extrusion Co. Inc.; Lawless Brothers Inc., doing business as Lawless Detroit Diesel;

JM Co.; Mason Electric Co.; Master Protection Enterprises, successor in interest to Clark County Fire Equipment Inc.; Olson Glass Co. Inc.; Owens-Corning Fiberglas Corp.; Pari Craftsmen Inc.; Ralph Anderson Co.; Rohm & Haas; Sav-Mor Upholstery Supply; Schneider Inc., formerly known as Schneider Sheet Metal Inc.; Simpson Timber Co.; and United States Elevator Corp.