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MGM settlement plan irks co-defendants

By RHONDA L. RUNDLE

LAS VEGAS, Nev.—The fate of 112 companies that have been sued in the MGM Grand Hotel fire litigation hangs on the hotel-casino company's decision due later this month on whether to accept a court-approved settlement plan.

But, no matter what MGM decides, these co-defendants will not be celebrating. Many of them feel that the settlement plan has been ramrodded down their throats.

The prohibitive cost of a six- to nine-month trial, on top of thousands—in some cases millions—of dollars already paid to attorneys over the past 2½ years, is virtually forcing defendants to ante up the full limits of their insurance coverage to settle claims even when they think they have no liability for the fire.

So far, the Plaintiffs' Legal Committee has secured settlement commitments from 27 of the 112 non-MGM defendants for a total of about $60 million. Added to the $75 million that MGM will eventually contribute, this fills the settlement pot with about $135 million (*BI*, Jan. 10, Jan. 17).

The complex settlement plan will be triggered if MGM decides on or before April 29 to accept the releases the Plaintiffs' Legal Committee can muster by that time. There are about 450 lawsuits representing 1,311 claimants and as many releases, which the PLC is scrambling to collect, record with the court and submit to MGM for approval.

Midway through last week, about 200 claimants had not signed releases. However, the PLC expects all but 20 or 25 of them to do so before the April 29 deadline.

The holdouts will meet MGM—and other defendants who have not settled—in federal court in Las Vegas July 11.

The settlement plan gives MGM the option to reject the tendered releases unless every plaintiff participates, thus freeing the hotel company from the ordeal of a long, costly trial.

Bernard Segelin, MGM's vp and general counsel, says the plan specifies 100% of the releases and he will hold out for all of them.

"If we're going to go to trial, it might as well be against everybody as against 10 or 15," he said. "The whole purpose of settlement is to avoid going to trial."

Attorneys for both plaintiffs and defendents say, however, that such tough talk is pure posturing to keep up the pressure. MGM would be foolish to throw away settlements worth 98% of the dollar value of remaining claims against the company, they say.

If MGM accepts the settlement plan, it will make a

What the non-MGM defendants will pay*

(in millions of dollars)

Company	Amount
Continental Mechanical Corp.	$10.75
California Electric Construction Co.	10.00
Simpson Timber Co.	9.40
Otis Elevator Co.	7.50
Taylor Construction Co.	5.50
W.J. Thompson Co.	2.73
Clark County, Nev.	2.50
Martin Stern Jr. (architect)	1.40
Nay Mechanical Inc.	1.25
Familian Pipe & Supply Co.	1.20

* Partial list, including only defendants paying more than $1 million

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second $25 million payment into the escrow account held by the court for allocation among settling claimants according to a preset schedule.

At this stage, another provision of the plan will be activated, which directly impacts the other defendants.

In exchange for the other defendants' agreement to settle and contribute to the escrow fund, MGM must indemnify them against compensatory damages sought by the claimants who reject the settlement and go to trial.

This is the carrot to induce the other defendants to settle. But, there is a catch that troubles many of the companies that have not capitulated, as well as some that have: There is no guarantee that the holdout plaintiffs won't press punitive damage claims against the non-MGM defendants.

Such claims would mean more legal costs for the defendants—something they are gambling to avoid by joining in the settlement—as well as the possibility they could be hit with punitive judgments.

One attorney summed up the views of non-MGM defense counsel on the litigation. "The settlement negotiations have been one of the biggest blackjack contests ever played in the legal game," said John Bonelli, an Encino, Calif., attorney for Familian Pipe & Supply Co.

The major defendants that were named by plaintiffs in the litigation from the outset have settled, including Taylor Construction Co., Continental Mechanical Corp.; Otis Elevator Co., Clark County, Nev., California Electric Construction Co.; and architect Martin Stern Jr. (see chart, page 1)

Some of these companies and their attorneys would argue, however, that they were marked as major defendants because of their deep pockets rather than their degree of liability for the 1980 fire at the MGM Grand Hotel, which killed 84 people and injured more than 700 others.

Otis Elevator Co. fits this description, says the company's attorney, Nicholas Hornberger of the Los Angeles firm of Shield & Smith. Through its parent, United Technologies Inc., Otis was flush with $275 million in liability insurance, more than MGM Grand or any other defendant named in the case.

Elevators built by Otis continued to function during the fire and 10 people were found dead in them. The elevators did not malfunction; They just were not designed to stop running automatically.

MGM Grand employees were supposed to shut the elevators off in the event of fire, but they failed to do so.

Otis recently agreed to settle with the PLC for $7.5 million, down from earlier demands of $40 million. However, the company is still concerned about the possibility of being hit with punitive damage claims.

The vast majority of the 112 defendants were not named in the wrongful death and personal injury cases by plaintiffs until last fall. At that time, the plaintiffs amended their complaints to include a peripheral group of hotel materials suppliers and distributors involved in related suits brought by MGM Grand and the so-called major defendants.

Some of these companies did nothing more than deliver materials to the hotel. Familian Pipe & Supply Co., for example, bought some plastic pipe and sold it to MGM, says Mr. Bonelli. "They didn't alter it or modify it in any way."

The plaintiffs charged that some of the plastic pipe sold by Familian burned in the fire, emitting black, toxic fumes.

Orvin Engineering Co. manufactured sprinklers installed in the hotel. "Whenever the fire came within 15 feet of the sprinklers, it was put out," says attorney Peter Ezzell in Los Angeles.

"We were sort of heroes in this story. Orvin told MGM again and again they should have a sprinkler system," he says.

Although Mr. Ezzell believes Orvin had "absolutely no exposure," he was urged by Allianz Insurance Co. to settle to avoid mounting defense costs.

"The client was outraged," he said.

The PLC will get $300,000 after an initial demand of $500,000. Legal costs already exceeded the settlement amount. "We could have knocked them down further if we'd had more time," added Mr. Ezzell.

Another supplier furnished a laminate used on one of the doors that burned in the hotel and was willing to pay $200,000 to settle claims against it.

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torney.

This is a reference to the approach used by the PLC to focus its settlement negotiations on successive tiers of defendants. This tactic has created an impression in defendants' minds that they were target defendants at a given time because pressure to settle for policy limits—or at least large sums—has been so intense.

Now that the so-called major defendants have settled, there is a new set of "major defendants." The PLC has shifted its energies from the general contractors to subcontractors that actually performed electrical wiring and heating, ventilation and air conditioning work at the hotel.

The PLC's Mr. Gauthier explains that the discovery process is still going on and that new evidence tends to strengthen—or weaken—the liability case against certain defendants.

To show that this process can work in favor of defendants as well as against them, Mr. Gauthier points out that seven companies were recently dismissed from the litigation altogether.

Many experts who investigated the cause of the fire believe that smouldering wires in one wall of a hotel restaurant ignited when they came in contact with aluminum conduit.

The heating and ventilation system also has been blamed for the rapid spread of smoke and flames throughout the hotel (*BI*, Jan. 26, 1981).

"Aluminum conduit has a low ignition level and burns like a dynamite fuse," said Mr. Gauthier.

The defendants that have settled up to now are: Continental Mechanical Corp. for $10.75 million; California Electric Construction Co. for $10 million (parent company G.K. Technologies Inc. purchased retroactive liability insurance above existing limits of $40 million, which apparently will not be exhausted); Simpson Timber Co. for $9.4 million; Otis Elevator Co. for $7.5 million; Taylor Construction Co. for $5.5 million.

Also, W.J. Thompson Co. for $2.73 million; Clark County, Nev., for $2.5 million; Martin Stern Jr. for $1.4 million, all that remained of a $3 million policy after deduction of defense costs; Nay Mechanical Inc. for $1.25 million; and Familian Pipe & Supply Co. for $1.2 million.

Also, Air Balance Co., W.A. Perry Standard Cabinet Co., Advance Mechanical, RAH Construction Co. and Richard Hatfield Inc. doing business as Norm's Refrigeration & Ice Equipment for $500,000 each; NWS Construction Corp. Inc., Roberts Electric Inc. and Southwest Air Conditioning Inc. as a group for $800,000; Ralph Phillips Inc. for $75,000—all that remained of a $250,000 policy after defense costs; and Orvin Engineering Co. for $300,000.

Northrop Architectural Systems, Temtrol/Governaire, Wilkenson Co. Inc., Valley Distributing Co. Inc., Thorpe Insulation and RAM Products Co. also contributed unknown amounts. ▪

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Most of the settlement commitments have been in the $200,000-to-$500,000 range, many for the limits of the companies' comprehensive general liability policies

The legal costs for the peripheral defendants continuing to fight run about $35,000 to $40,000 per month, while they are five times that for a major defendant employing two or three law firms, a defense attorney in the litigation estimates. An educated guess of the aggregate cost of the litigation for about 100 defendants is $5 million a month.

Two major defendants—general contractor Taylor Construction Co. and heating and ventilation system contractor Continental Mechanical Corp.—are rumored to have spent $14 million and $11 million, respectively, in legal costs.

Spokesmen for both companies would not confirm or deny these reports.

Although some defendants are angry that their insurers insist on settling when liability is doubtful, insurers that want to take a tough stand can be caught in the middle between their policyholder and excess insurers.

If the primary insurer holds out and goes to trial and the eventual award exceeds the limits of its coverage, it could be sued for bad faith by its policyholder or an excess insurer.

PLC Co-chairman Wendell Gauthier is unsympathetic. The hotel was constructed using a fast-track method, he points out. Shortcuts and code violations were rampant. Most of the subcontractors either participated in code violations or turned their backs on them, he says.

One of the complaints hurled by defense attorneys at U.S. District Court Judge Louis C. Bechtle, who is presiding over the multidistrict litigation stemming from the fire, is that he is more interested in expediting the settlements than in applying the law.

Some defendants claim they have been unable to find out the nature of the evidence against them. They say the settlement plan has been cloaked in secrecy so that the non-MGM defendants do not know the terms of the court's agreement with MGM. Different deals have been cut by the PLC with different defendants.

"The judge got on the side of the plaintiffs early on and the tactic has been to divide and conquer the defendants," said one disgusted at-