

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

ATHENA BACHTEL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:08CV00049 AGF
)	
CITY OF MOBERLY, MISSOURI, et al.,)	
)	
Defendants.)	

ORDER AND JUDGMENT APPROVING WRONGFUL DEATH SETTLEMENT

This matter came before the Court¹ following a hearing held on June 22, 2009 on Plaintiffs' Application for Approval of Wrongful Death Settlement comes on for hearing. Plaintiffs Athena Bachtel and B. H. (a minor, by his grandmother and next friend, Athena Bachtel) appeared in person and by their attorney, Stephen M. Ryals. Plaintiff Darrell Harlan appeared in person and by his attorney, David C. Nelson. Defendants appeared by attorney Robert J. Krehbiel.

The parties present, having advised the Court that Plaintiffs have, subject to the approval of the Court, agreed to a compromised settlement of any and all claims they have or may have against Defendants City of Moberly, Missouri, Jeremy Baird, and Carmen Newbrough, and certain other parties as set forth in the Settlement Agreement and Partial Release executed by the parties (collectively the Released Parties), arising out of or in any way related to or connected with the death of Stanley James William Harlan, deceased, who died on or about August 28, 2008. Plaintiffs have

¹ The parties have consented to the exercise of authority by the undersigned United States Magistrate Judge under 28 U.S.C. § 636(c).

made it clear and the Court understands that such a settlement shall not have any impact or effect on any claim Plaintiffs have or in the future may have against any party other than the Released Parties, all such claims being expressly hereby reserved and preserved.

The terms and conditions of the aforesaid settlement are (1) the payment of the total sum of *Two Million Four Hundred Thousand and no/100 Dollars (\$2,400,000.00)* to those individuals who are entitled to share in the proceeds of this compromise, and (2) Defendant City of Moberly's agreement to perform certain acts which are set forth in Exhibit 1 hereto, which is incorporated herein by reference. In consideration for Defendants' performance, Plaintiffs Athena Bachtel, B. H. (a minor, by his grandmother and next friend, Athena Bachtel), and Darrell Harlan, on behalf of themselves and on behalf of all others who have or may at any time in the future have a claim against the Released Parties or any of them connected with or in any way arising out of or related to the death of Stanley James William Harlan, shall execute a Partial Release which extinguishes any and all claims which they or anyone else has or may hereafter have against the Released Parties arising from, relating to, or in any way connected with the death of Stanley James William Harlan, deceased; however, said Partial Release shall not be applicable with regard to any and all claims and theories which may be advanced against any party other than the Released Parties, said claims and theories being expressly reserved and preserved.

Further, Plaintiffs have agreed that a fair and reasonable apportionment of the gross monetary proceeds of this settlement is set forth in Exhibit 2 hereto, filed under seal, which is incorporated herein by reference. See Exhibit 2, p. 2.

Plaintiffs have entered into contracts with their counsel and represent that a fair and reasonable allocation of attorney's fees and expenses in connection with this matter is as set forth in

Exhibit 2 at p. 2, and that said amounts are approved and shall be paid from the monetary proceeds of this settlement .

WHEREUPON, the Court, having heard evidence and having been fully advised in the premises, upon the Application for Approval of Wrongful Death Settlement, hereby orders, adjudges and decrees as follows:

1. The proposed monetary settlement between Plaintiffs and Defendants in the total amount of *Two Million Four Hundred Thousand and no/100 Dollars (\$2,400,000.00)* is fair and reasonable, is in the best interest of Plaintiffs and all individuals who are entitled to share in those proceeds and/or have or in the future may have any claim and the Released Parties arising from or in any way related to the death of Stanley James William Harlan, and is hereby approved.

2. The following persons are the only persons entitled to share under the laws of the State of Missouri in the apportionment of this settlement: B. H. (surviving minor son of decedent), Athena Bachtel (mother of decedent), and Darrell Harlan (father of decedent).

3. Plaintiffs and Defendants have freely, knowingly, and voluntarily waived their right to a jury trial and have consented to the submission of all issues regarding this proposed settlement to the Court for determination.

4. Pursuant to Mo. Rev. Stat. § 537.080, the only members of the class of persons entitled to bring an action for the wrongful death of Stanley James William Harlan, deceased, or to participate in the distribution of settlement proceeds in this matter are: B. H. (surviving minor son of decedent), Athena Bachtel (mother of decedent), and Darrell Harlan (father of decedent).

5. Pursuant to the provisions of Mo. Rev. Stat. § 537.095, all persons entitled to bring an action for the wrongful death of Stanley James William Harlan, deceased, have had an opportunity

to join in this action and the settlement, and Plaintiffs have exercised due diligence in providing written notification concerning the hearing regarding the Application for Approval of Wrongful Death Settlement to all persons entitled to bring an action for the wrongful death of Stanley James William Harlan, deceased, and/or participate in the settlement proceeds.

6. The attorney's fees and expenses as set forth in Exhibit 2 at p. 2 are fair and reasonable and shall be paid by Plaintiffs from the settlement proceeds.

7. The monetary settlement proceeds shall be apportioned and distributed as set forth in Exhibit 1 at p. 4.

8. Because of the minority status of B. H., Exhibit 2, which details the amount distributed to each Plaintiff, shall be filed and maintained under seal, until further order of the Court.

9. Plaintiffs' counsel shall, as soon as the funds are available for distribution, cause the funds set aside for B.H. to be deposited in a federally insured, interest bearing account in the name of Katlyn Kendall and Athena Bachtel where such funds shall be held solely for the benefit of B. H., until such time as a trust indenture for the benefit of B.H., containing the terms set forth in evidence at the hearing, is created and available to receive the funds. Thereafter, Katlyn Kendall and Athena Bachtel shall cause the funds to be paid to the Trustee of said trust, in trust for the benefit of B.H.

10. Plaintiffs Athena Bachtel, B. H. (a minor, by his grandmother and next friend, Athena Bachtel), and Darrell Harlan are ordered to execute a Partial Release in favor of Defendant City of Moberly, Defendant Baird, Defendant Newbrough, and the other related parties set forth therein (the Released Parties), releasing them from any and all liability, claims, demands, and actions arising from, related to, or in any way connected with the death of Stanley James William Harlan, deceased; said

Partial Release to expressly reserve and preserve any and all claims Plaintiffs may have against any party other than the Released Parties.

11. Defendant City of Moberly shall perform the acts set forth in Exhibit 1 hereto within the time periods set forth therein.

12. Plaintiffs and their counsel shall collect and provide receipt for the payment of the settlement proceeds.

13. Plaintiffs and their counsel shall acknowledge satisfaction of the monetary settlement proceeds.

14. Within 30 days of the date of this Order, the parties shall file a Stipulation of Dismissal with Prejudice.

IT IS SO ORDERED.


AUDREY G. FLEISSIG
U.S. Magistrate Judge

St. Louis, Missouri

Dated: June 24, 2009

NON-MONETARY SETTLEMENT ISSUES

The City of Moberly agrees that as part of the settlement in the *Bachtel, et al. v. City of Moberly, et al.* lawsuit, which is currently pending in the United States District Court for the Eastern District of Missouri, Case No.: 08CV0049-AGF, it will do each of the following:

1. There shall be a moratorium on the use of any Taser or other conducted energy device by the Moberly Police Department until two town hall meetings have been held and the Police Department has issued a revised Taser policy.
2. Each of these town hall meetings will be open to the public and the media.
3. Each of these town hall meetings will be held at least four (4) weeks apart.
4. Notice of the dates and times of both town hall meetings shall be published and posted ten (10) days in advance of the first meeting. Notice of each individual meeting will be published and posted five (5) days before that meeting. Publication Notices shall appear in the Moberly Monitor and posted Notices shall be posted in City Hall in the same fashion as for all public meetings.
5. Any person who desires to address the City on the issue of the use of Tasers or other ECD's, and on any limitations in their use if the City determines that it will continue to use them, shall be heard at the town hall meetings.
6. As long as the comments and presentations are not overly repetitive, every person attending the town hall meetings who wishes to speak will have an opportunity to do so.
7. Each town hall meeting will be chaired by the City Manager or his designee. The chair shall assure that each meeting proceeds in an orderly manner and that each party wishing to be heard be extended the same courtesy as any other party. The chair will maintain order and decorum consistent with other public meetings. Each speaker shall sign in before speaking.
8. Each town hall meeting shall be attended by the Chief of Police, the Assistant Chief of Police, and all commanders who have input into the Taser policy in Moberly.
9. Any interested person may make an audio, video, audio-video recording of all or any part of each town hall meeting and/or may capture the statements via a court reporter.
10. The chair will recognize two types of speakers at the town hall meetings. One type of speaker will be members of the public who have brief comments, questions or concerns. The second type of speaker will be an interested person who wishes to make a more detailed presentation.



11. The speakers who desire to make brief comments or ask questions, shall be allotted approximately three minutes each, to have the floor. The Chair shall not summarily terminate a speaker's right to speak simply because of the expiration of three minutes, rather, the chair will exercise discretion to allow a given speaker to wrap up his/her comments, or to respond to any questions, or to ask any natural follow up questions.

12. The speakers who wish to make a more formal presentation, shall be allotted time based on the substance of the presentation and based on the request of the speaker. Generally, the chair should limit presenters to 15 minutes. Presenters shall, no less than three days prior to each meeting, submit to the City Clerk, a request to present and state the general substance of the presentation, along with whether the presentation is pro Taser use or anti-Taser use. The Chair shall determine which presenters shall be given the floor and for how long. In making the determination, the chair should assure that there is a balance in the substance of the positions of the presenters-that pro-Taser presenters and anti-Taser presenters be given equal time. The Chair should only limit a presenter if the presenter purely duplicates another presenter's information, if there is an imbalance between points of view or if fairness to all who wish to be heard would be compromised.

13. Any person may present a statement, article or position paper or any other written material to the Chair and such writing shall become part of the record. In addition, any person may utilize audio visual aids in any statement or presentation and may offer copies of anything presented to be included in the record. The record of all presenter requests shall become part of the record and shall be maintained by the City Clerk. The entirety of the record will be available for public viewing at no charge and for copying at the rate charged for requests under the Missouri Sunshine Law.

14. Any policy regarding Tasers that emerges from the processes described herein, shall be published and posted.

15. By September 1, 2009, the City will complete all necessary prerequisites (including compliance with § 190.092 R.S.Mo.) to deploy Automated External Defibrillators (AEDs). Upon completion of the prerequisites, it will be the written policy of the Moberly Police Department that, to the extent practicable, AEDs shall be assigned to at least one on-duty patrol unit and to other locations in the City to best meet the needs of the citizens of Moberly.

16. The City will notify plaintiffs, through their respective counsel, when this activity has been accomplished. The deadline for completion may be extended by mutual agreement of the parties, and such agreement will not be unreasonably withheld.

17. By December 31, 2010, all officers of the City's Police Department who are reasonably expected to have significant involvement in conducting Internal Affairs investigations shall complete a POST certified course of instruction in the conduct of Internal Affairs investigations and Internal Affairs policies and protocol.

18. The City will notify plaintiffs, through their respective counsel, when this activity has been accomplished. The deadline for completion may be extended by mutual agreement of the parties, and such agreement will not be unreasonably withheld.

19. By December 1, 2009, all commissioned officers of the City's Police Department will complete a training course in recognizing and appropriately responding to individuals in medical distress. The training will be conducted by a physician and/or emergency room nurse and/or paramedic, or any combination of such people.

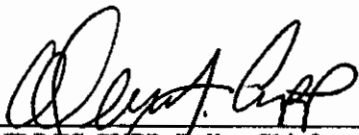
20. The City will notify plaintiffs, through their respective counsel, when this activity has been accomplished. The deadline for completion may be extended by mutual agreement of the parties, and such agreement will not be unreasonably withheld.

21. In addition, it will be the City's policy that all newly commissioned police officers shall receive the training referred to in paragraph 19 above within the first six (6) months of their release of probationary status.

22. The City will take all necessary steps to ensure that its Taser unit, Model X26 Serial #X00-044654, is preserved, is not used or tampered with, and is secured according to evidentiary protocols until at least December 31, 2013. Additionally, the City will make available this Taser unit for inspection by counsel for Plaintiffs at the Moberly Police Department or such other place as the parties agree, upon reasonable prior written request.

AGREED TO ON BEHALF OF THE CITY OF MOBERLY BY DENNIS CUPP,
MOBERLY POLICE CHIEF.

Dated: 6-19-09.



DENNIS CUPP, Police Chief
Moberly Police Department