

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

GOVERNMENT OF GUAM
RETIREMENT FUND, *et al.*,

Plaintiff,

vs.

INVACARE CORPORATION, *et al.*,

Defendants.

Case No. 1:13CV1165

JUDGE CHRISTOPHER A. BOYKO

~~PROPOSED~~ ORDER APPROVING DISTRIBUTION PLAN

Lead Plaintiff moved this Court for an order approving a distribution plan for the Net Settlement Fund in the above-captioned class action (the “Action”). Having considered all the materials and arguments submitted in support of the motion, including the Declaration of Angela Ferrante in Support of Lead Plaintiff’s Motion for Approval of Distribution Plan (the “Ferrante Declaration”), and the Memorandum in Support of Lead Plaintiff’s Motion for Approval of Distribution Plan, submitted therewith;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated June 2, 2015 (ECF No. 73) (the “Stipulation”) and the Ferrante Declaration, and all terms used herein shall have the same meanings as set forth in the Stipulation or in the Ferrante Declaration.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

3. Lead Plaintiff's plan for distribution of the Net Settlement Fund to Authorized Claimants is **APPROVED**. Accordingly:

(a) The administrative recommendations of the Court-approved Claims Administrator, Garden City Group, LLC ("GCG"), to accept the Timely Eligible Claims set forth in Exhibit B-1 to the Ferrante Declaration and the Late But Otherwise Eligible Claims set forth in Exhibit B-2 to the Ferrante Declaration, are adopted;

(b) The Claims Administrator's administrative recommendations to reject wholly ineligible Claims as set forth in Exhibit B-3 to the Ferrante Declaration are adopted;

(c) GCG is directed to distribute 100% of the Net Settlement Fund, after deducting all payments previously allowed and the payments approved by the Court on this motion, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, to Authorized Claimants who would receive at least \$10.00 based on their Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants, as further detailed in paragraph 44(a) of the Ferrante Declaration (the "Distribution"). GCG shall notify Authorized Claimants who do not satisfy the \$10.00 *de minimis* requirement that they will not be receiving any distribution from the proceeds of the Settlement;

(d) In order to encourage Authorized Claimants to promptly cash their checks, all Distribution checks shall bear the following notation: "CASH PROMPTLY, VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [120 DAYS AFTER ISSUE DATE]." Lead Counsel and GCG are authorized to take appropriate action to locate and/or

contact any Authorized Claimant who has not cashed his, her, or its check within said time as detailed in paragraph 44(a)(4) footnote 7 of the Ferrante Declaration;

(e) Authorized Claimants who do not cash their Distribution checks within the time allotted or on the conditions set forth in paragraph 44(a)(4) footnote 7 of the Ferrante Declaration shall irrevocably forfeit all recovery from the Settlement, and the funds allocated to all such stale-dated checks shall be available to be redistributed to other Authorized Claimants, if Lead Counsel, in consultation with GCG, determines that it is cost effective to conduct a second distribution. Similarly, Authorized Claimants who do not cash their second or subsequent distributions (should such distributions occur) within the time allotted or on the conditions set forth in paragraph 44(a)(4) footnote 7 of the Ferrante Declaration shall irrevocably forfeit any further recovery from the Net Settlement Fund;

(f) After GCG has made reasonable and diligent efforts to have Authorized Claimants cash their Distribution checks (as set forth in paragraph 44(a)(4) footnote 7 of the Ferrante Declaration), but no earlier than nine (9) months after the Distribution, GCG shall, if Lead Counsel, in consultation with GCG, determines that it is cost effective to do so, conduct a second distribution (the "Second Distribution"), pursuant to which any amounts remaining in the Net Settlement Fund after the Distribution, after deducting GCG's fees and expenses incurred in connection with administering the Settlement for which it has not yet been paid (including the estimated costs of such Second Distribution) and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be distributed to all Authorized Claimants in the Distribution who cashed their Distribution check and who are entitled to at least \$10.00 from such redistribution based on their *pro rata* share of the remaining funds. Additional redistributions, after

deduction of costs and expenses as described above and subject to the same conditions, may occur thereafter in six-month intervals until Lead Counsel, in consultation with GCG, determines that further redistribution is not cost effective;

(g) At such time as Lead Counsel, in consultation with GCG, determines that further redistribution of the funds remaining in the Net Settlement Fund is not cost effective, if sufficient funds remain to warrant the processing of Claims received after May 31, 2018, such Claims shall be processed and any otherwise valid Claims received after May 31, 2018, as well as any earlier received Claims for which an adjustment was received after May 31, 2018 which resulted in an increased Recognized Claim shall be paid in accordance with subparagraph (h) below. If any funds shall remain in the Net Settlement Fund after payment of any such late or late adjusted Claims, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be contributed to non-sectarian, not-for-profit 501(c)(3) organization(s), to be recommended by Lead Counsel and approved by the Court;

(h) No new Claims may be accepted after May 31, 2018, and no further adjustments to Claims received on or before May 31, 2018 that would result in an increased Recognized Claim amount may be made for any reason after May 31, 2018, subject to the following exception. If Claims are received or modified after May 31, 2018 that would have been eligible for payment or additional payment under the Plan of Allocation if timely received then, at the time that Lead Counsel, in consultation with GCG, determines that a redistribution is not cost effective as provided in subparagraph (g) above, then, after payment

of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, such Claimants, at the discretion of Lead Counsel, may be paid the distribution amounts or additional distribution amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks to the extent possible;

(i) All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted herein, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, are hereby released and discharged from any and all claims arising out of such involvement, and all Settlement Class Members, whether or not they receive payment from the Net Settlement Fund, are hereby barred from making any further claims against the Net Settlement Fund, Lead Plaintiff, Lead Counsel, the Claims Administrator, the Escrow Agent or any other agent retained by Lead Plaintiff or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund, or any other person released pursuant to the Settlement beyond the amounts allocated to Authorized Claimants;

(j) All of GCG's fees and expenses incurred in connection with the administration of the Settlement and estimated to be incurred in connection with the Distribution of the Net Settlement Fund as set forth in the invoices attached as Exhibit C to the Ferrante Declaration are approved, and Lead Counsel is directed to pay the outstanding balance of \$138,360.84 out of the Settlement Fund to GCG; and

(k) Unless otherwise ordered by the Court, one year after the Second Distribution if that occurs or, if there is no Second Distribution, two years after the Distribution, GCG

shall destroy the paper copies of the Claims and all supporting documentation and, one year after all funds in the Net Settlement Fund have been distributed, GCG shall destroy electronic copies of the same.

4. This Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as this Court deems appropriate.

SO ORDERED:

Dated: June 19, 2018

s/ Christopher A. Boyko

The Honorable Christopher A. Boyko
United States District Judge

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