

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: PORSCHE CARS NORTH
AMERICA, INC., PLASTIC COOLANT
TUBES PRODUCTS LIABILITY
LITIGATION**

This Document relates to ALL ACTIONS

Case No. 2:11-md-2233

Judge Gregory L. Frost

Magistrate Judge Preston-Deavers

[PROPOSED] PRELIMINARY APPROVAL ORDER

WHEREAS, Plaintiffs have made a motion, (the “Motion”), pursuant to Federal Rule of Civil Procedure 23, for an order preliminarily approving the settlement of the above captioned action, (the “Action”), in accordance with the Settlement Agreement and Release of Claims dated May 6, 2013, (including its exhibits, the “Agreement”), which sets forth the terms and conditions for a proposed settlement of the Action and its dismissal with prejudice;

WHEREAS, as a condition of the Agreement, Plaintiffs, on behalf of themselves individually, and, (upon class certification for settlement purposes only) on behalf of each of the Settlement Class Members, have agreed to release all claims as specified in Section 50 of the Agreement; and

WHEREAS, the Court has read and considered Plaintiffs’ Motion, the Agreement, and all arguments and submissions related to the Motion;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Preliminary Approval Order incorporates by reference the definitions in the Agreement, and all defined terms used herein shall have the same meanings as set forth in the Agreement.

2. The Court has subject matter jurisdiction over this Action and, for purposes of this settlement only, has personal jurisdiction over all the Parties, including all members of the Settlement Class.

3. The Court preliminarily approves the Agreement as being fair, reasonable and adequate and within the range of possible approval, subject to consideration at the Final Fairness Hearing as set forth below in Paragraph 10.

4. For purposes of this settlement only, the Court preliminarily certifies the “Settlement Class” defined as:

All persons in the United States who currently own or lease, or who previously owned or leased, a Class Vehicle. Excluded from the Settlement Class are the following: (a) officers and directors of PCNA; (b) the judge to whom this Action is assigned and any member of that judge’s immediate family; (c) persons with personal injury claims; and (d) persons who have submitted a timely and valid request for exclusion from the Settlement Class.

“Class Vehicle(s)” consists of model year 2003 to 2006 Porsche Cayenne vehicles with V8 engines (all types), manufactured between January 28, 2002 and December 5, 2006.

The Court hereby finds and orders that, by not objecting to the certification of the Settlement Class for purposes of the settlement only, and by taking other steps to negotiate, execute and implement the Agreement, Defendants are not in any way waiving any rights or defenses other than as expressly set forth in the Agreement.

5. The Settlement Class is preliminarily certified pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), and all members of the Settlement Class shall have

the right to exclude themselves by way of the opt-out procedure set forth below in Paragraph 15.

6. The Court preliminarily finds, solely for purposes of the settlement, that the Action may be maintained as a class action on behalf of the Settlement Class because: (a) the members of the Settlement Class are so numerous that joinder of all members of Settlement Class is impracticable; (b) there are questions of law and fact common to the members of the Settlement Class which predominate over any individual questions; (c) Plaintiffs' claims are typical of the claims of those members of the Settlement Class; (d) Plaintiffs and Settlement Class Counsel have fairly and adequately represented and protected the interests of all the members of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

7. The Court preliminary finds that any applicable requirements of the Class Action Fairness Act have been met.

8. The Court preliminarily finds that Plaintiffs fairly and adequately represent the interests of the Settlement Class and therefore designates Plaintiffs as representatives of the Settlement Class.

9. Pursuant to Federal Rule of Civil Procedure 23(g), and after consideration of the factors described therein and oral and written arguments, the Court designates as Settlement Class Counsel the law firms of Isaac Wiles Burkholder & Teetor, LLC, Klein Kavanagh Costello, LLP, Cotchett, Pitre & McCarthy, LLP and Grant & Eisenhofer, P.A. The Court preliminarily finds that based on the work Settlement Class Counsel have done in identifying, investigating and prosecuting the claims in the Action, Settlement Class

Counsel's experience in handling class actions, other complex litigation and the claims of the type asserted in the Action, Settlement Class Counsel's knowledge of the applicable law and the resources Settlement Class Counsel have committed and will commit to representing the Settlement Class, Settlement Class Counsel have and will fairly and adequately represent the interests of the Settlement Class. The Court authorizes Plaintiffs and Settlement Class Counsel to enter into the Agreement on behalf of the Settlement Class, subject to final approval by this Court of the settlement. Plaintiffs and Settlement Class Counsel, on behalf of the Settlement Class, are authorized to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to the Agreement to effectuate its terms.

10. The Final Fairness Hearing shall take place before the Honorable Gregory L. Frost at 9:00 a.m. on _____ at the United States District Court, Southern District of Ohio, Courtroom #169 Joseph P. Kinneary U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215, to determine: whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, reasonable and adequate as to the Settlement Class Members and should be approved; whether the Judgment, as provided for in the Agreement, should be entered; the amount of fees and costs, if any, that should be awarded to Settlement Class Counsel, and the amount of the service payment, if any, that should be awarded to Plaintiffs, as provided for in the Agreement. The Court will also hear and consider any timely and proper objections at that time.

11. The Court finds that the notice provisions as set forth in Section IV of the Agreement are the only notice required, and that such notice satisfies the requirements of Due Process, the Federal Rules of Civil Procedure and any other applicable laws and

rules, and constitutes the best notice that is practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto. The Court approves the form and content of the Claims Form and Notice attached as Exhibits A and B, respectively, to the Agreement. The Court directs that notice be sent to Settlement Class Members within 30 days of receipt of the final mailing list from Experian.

12. PCNA, through the Settlement Administrator will arrange for the printing and mailing (via U.S. Mail) of the class Notice to all Settlement Class members. Using information provided by PCNA, as well as information it has collected on its own, Experian will compile and send to the Settlement Administrator the mailing list of potential Settlement Class Members consisting of all identifiable registered current and prior owners or lessees of Class Vehicles in the United States at their last known address. In the event an Experian and PCNA address for the same individual conflicts, the Experian address will control.

13. Experian is hereby authorized to use the information provided by PCNA to obtain the names and most current addresses of Class Vehicle owners through state agencies. Any state agency in possession of names or addresses of Class Members is hereby authorized and directed to release that information to Experian upon request.

14. Such class Notice shall be mailed by the Settlement Administrator with the Claims Form, in the form attached to the Agreement as Exhibits A & B. The Settlement Administrator shall complete mailing of the Notice within 30 days after receiving the final mailing list from Experian. The Settlement Administrator will utilize national address databases (such as the NCOA) and will otherwise make reasonable efforts to determine updated address information in order to promptly re-mail notices by

first class mail to any Class Member whose notice is returned as undeliverable, and will update contact data of Class Members as otherwise provided in the Agreement. PCNA shall have no further obligation to locate or mail additional copies of the Notice.

15. The Settlement Administrator will maintain a website that contains information about the Settlement, copies of documents filed with the Court, frequently asked questions (FAQs), the class Notice and Claim Form. The Settlement Administrator will also set up a toll-free phone number available to Class Members who have questions about the claims process or need additional information.

16. PCNA is authorized to respond to members of the Settlement Class about the Action and the terms of the proposed Settlement provided for in the Agreement, and to engage in any other communication within the normal course of its business.

17. Within ten (10) days of the filing of the Preliminary Approval Motion, PCNA will have complied with the requirements of 28 U.S.C. § 1715(b) and served notice of the proposed settlement upon the appropriate Federal official and appropriate State official of each State in which a Class Member resides.

18. The Court approves the claims procedures set forth in Section VI of the Agreement. To be treated as valid, Claims Forms must be properly completed and postmarked within one year from the mailing of the Notice.

19. All members of the Settlement Class who do not request exclusion (“opt-out”) from the Settlement Class pursuant to the requirements of Paragraph 21 below shall be bound by all determinations and judgments in the Action concerning the settlement, including, but not limited to, the dismissal of the Action with prejudice and the validity,

binding nature and effectiveness of the release set forth in Paragraph 50 of the Agreement.

20. The Court approves the Garden City Group, Inc., located at 1531 Utah Avenue South, Suite 600, Seattle, Washington, 98134, as the Settlement Administrator.

21. Any member of the Settlement Class who wishes to opt-out of the Settlement Class shall submit to the Settlement Administrator, with a postmark no later than _____, an appropriate written request for exclusion by First Class U.S. Mail, postage paid, to the United States Post Office Box established by the Settlement Administrator for the purposes of the settlement. The request for exclusion must be personally signed by the Settlement Class Member, and include: (a) his/her full name and current address; (b) the model year and model of his/her Class Vehicle(s) and the approximate date(s) of purchase or lease; (c) a statement whether the Settlement Class Member requesting exclusion still owns or leases the Class Vehicle; and (d) a statement that he/she desires to be excluded from the Settlement Class. Any current or prior owner or lessee of a Class Vehicle who submits a request for exclusion must also provide the vehicle identification number (VIN) of the Class Vehicle. No member of the Settlement Class, or any person acting on behalf of or in concert or participation with that member of the Settlement Class, may exclude any other member of the Settlement Class from the Settlement Class.

22. Any member of the Settlement Class who has not previously opted-out in accordance with the terms of Paragraph 21 above (a "Settlement Class Member") may appear at the Final Fairness Hearing to argue that the proposed settlement should not be approved and/or to oppose any application for an award of attorneys fees and costs or

service payments to Plaintiffs; provided, however, that no Settlement Class Member shall be heard, and no objection may be considered, unless the Settlement Class Member has filed with this Court a valid written statement of the objection postmarked no later than _____. Copies of all objection papers must be mailed by First Class U.S. Mail, postage paid, to the United States Post Office Box established and maintained by the Settlement Administrator for the purposes of this class settlement. All objections must also be filed with the Court and served on Settlement Class Counsel and on counsel for PCNA at the following addresses:

As to Settlement Class Counsel:

Mark Landes
Gregory M. Travaglio
Mark H. Troutman
ISAAC, WILES, BURKHOLDER & TEETOR, LLC
Two Miranova Place, Suite 700
Columbus, Ohio 43215

Gary Klein
Shennan Kavanagh
KLEIN KAVANAGH COSTELLO, LLP
85 Merrimac Street, 4th Floor
Boston, Massachusetts 02114

Adam J. Levitt
John E. Tangren
GRANT & EISENHOFER P.A.
30 North LaSalle Street, Suite 1200
Chicago, Illinois 60602

Niall P. McCarthy
Justin T. Berger
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road, Suite 200
Burlingame, California 94010

As to PCNA:

William F. Kiniry, Jr.
DLA PIPER LLP (US)

One Liberty Place
1650 Market Street, Suite 4900
Philadelphia, Pennsylvania 19103

To be valid, all objections must be in writing and include: (a) the objector's full name, current address, and telephone number; (b) the model year of the objector's Class Vehicle(s), as well as the vehicle identification number (VIN) of the Class Vehicle(s); (c) a statement of whether the objector is a current or prior owner or lessee; (d) a statement of when the objector purchased or leased the Class Vehicle(s); (e) a statement of the position the objector wishes to assert, including the factual and legal grounds for the position; and (f) copies of all documents that the objector wishes to submit in support of his/her position.

23. The costs of notice and settlement administration shall be paid as described in Paragraph 45 of the Settlement Agreement.

24. This Preliminary Approval Order, the Agreement, and any act performed or document executed pursuant to, in furtherance thereof, or in seeking entry of this Preliminary Approval Order:

(a) Will not be offered or received against any of the Released Parties as evidence of, or be construed as or deemed to be evidence of, any admission or concession by any of the Released Parties as to the truth or relevance of any fact alleged by Plaintiff, the existence of any class alleged by Plaintiff, the propriety of class certification had the Action been litigated rather than settled, or the validity of any claim that has been or could have been asserted in the Action or in any other litigation, or the validity of any defense that has been or could have been asserted in the Action or in any

other litigation, or of any liability, negligence, fault, or wrongdoing of any of the Released Parties;

(b) Will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, or of any liability or wrongdoing whatsoever, by Defendants or any of the other Released Parties, or of the truth of any of the claims or allegations in this Action. Evidence relating to the Agreement shall not be discoverable or used, directly or indirectly, in any way, whether the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing or enforcing the terms and conditions of the Agreement, this Order the Final Approval Order, and/or the Final Judgment and Order of Dismissal;

(c) Will not be construed against Defendants or any of the Released Parties as an admission or concession that the consideration to be given under the Agreement represents the amount which could be or would have been recovered after trial.

25. Pending final determination of whether the settlement should be approved, Plaintiff, all Settlement Class Members and any person or entity allegedly acting on behalf of Settlement Class Members (directly, indirectly, representatively, as *parens patriae*, or in any other capacity) are preliminarily enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting, bringing, joining or enforcing, directly or indirectly, in any judicial, administrative, arbitral, or other forum, any Released Claim(s), or any claim(s) relating to any action taken by a Released Party that is authorized or required by the Agreement or this Order. This injunction is necessary to

protect and effectuate the settlement, this Preliminary Approval Order, and the Court's flexibility and authority to effectuate this settlement and to enter judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. Section 1651(a).

26. The Court reserves the right to adjourn or continue the date of the Final Fairness Hearing without further notice to Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the settlement. The Court may approve the settlement without further notice to Settlement Class Members.

27. No later than three (3) weeks before the deadline for Settlement Class Members to file objections, Settlement Class Counsel shall file with the Court an application for an award of attorney's fees not to exceed a total of \$4.5 million, and for the reimbursement of costs, expenses, and service payments to all Representative Class Plaintiffs not to exceed a total of \$250,000.

28. In the event that any of the provisions of this Preliminary Approval Order is asserted by any Released Party as a defense in whole or in part to any Released Claim, or otherwise asserted (including, without limitation, as a basis for a stay), in any other suit, action, arbitration or other proceeding brought by a Settlement Class Member or any person actually or purportedly acting on behalf of any Settlement Class Member(s), that suit, action, arbitration or other proceeding shall be immediately stayed and enjoined until the Court has entered an order or judgment finally determining any issues relating to such defense or assertion and no further judicial review of such order or judgment is possible. Solely for purposes of such suit, action, arbitration or other proceeding, to the fullest

extent they may effectively do so under applicable law, the Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court, or that the Court is, in any way, an improper venue or an inconvenient forum. This paragraph is necessary to protect and effectuate the Agreement, this Order, and the Court's flexibility and authority to effectuate the Agreement, and is ordered in aid of the Court's jurisdiction and to protect its judgments.

29. The Court further finds that if Final Settlement Approval does not occur or if the Agreement terminates prior to Final Settlement Approval, the Parties shall return to the *status quo ante* in the Action, without prejudice to the right of any Party to assert any right or position that it could have asserted if the Agreement had never been reached, proposed, or preliminarily approved by the Court. In such an event, nothing in (1) the Agreement (as well as the negotiation, execution or implementation of the Agreement), (2) the Preliminary Approval Order, or (3) filed in connection with seeking entry of the Preliminary Approval Order, shall be construed as an admission or concession by Defendants of any of the allegations raised in the Action or any other action, of any fault, wrongdoing or liability of any kind, or of the propriety of certification of a litigation class, nor are Defendants estopped from (i) challenging those allegations in further proceedings in the Action or in any other action, or (i) opposing any subsequent class certification motion(s). Moreover in such event, the Parties shall be deemed to have preserved all of their rights or defenses, and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or any member of the proposed Settlement Class, including, without limitation, the right to

move to compel arbitration as to any claims that might be asserted by any of the Plaintiffs or by any member of the proposed Settlement Class and the right to oppose any class certification motion(s) on any ground. In addition, in such event, the certification of the Settlement Class shall be vacated, and the operative complaint in the Action shall be the Master Consolidated Amended Class Action Complaint filed on August 25, 2011 and the certification of the Settlement Class for settlement purposes shall not be considered as a factor in connection with any subsequent class certification motion(s).

30. All proceedings in this Action are stayed pending final approval of the settlement, except as may be necessary to implement the settlement or comply with or enforce the terms of the Agreement or District Court Orders.

DATED: _____

By: _____

Hon. Gregory L. Frost
UNITED STATES DISTRICT JUDGE