

IMPORTANT: This document includes the Preliminary Approval Order dated July 24, 2014 and the Amendment to Preliminary Approval Order dated August 20, 2014.

***PLEASE READ BOTH DOCUMENTS FOR COMPLETE AND UPDATED INFORMATION.***

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

SAN ALLEN, INC., et al.,	)	NO. CV-07-644950
	)	
Plaintiffs,	)	
	)	JUDGE RICHARD J. McMONAGLE
v.	)	
	)	
STEPHEN BUEHRER,	)	
ADMINISTRATOR, OHIO BUREAU OF	)	<b><u>PRELIMINARY APPROVAL ORDER</u></b>
WORKERS' COMPENSATION,	)	
	)	
Defendant.	)	

This matter came before the Court on the Plaintiffs' Motion for an Order Preliminarily Approving Proposed Settlement, Approving Notice, and Scheduling Final Approval Hearing, filed July 24, 2014 ("Motion"), for an Order granting preliminary approval of a class action Settlement Agreement and Release reached between Plaintiffs, individually and on behalf of others similarly situated, and Defendant. No party opposes the relief now sought. Although the General Assembly amended R.C. 4123.29 to moot the injunction, the BWC nonetheless ceased the complained of conduct in the 2009 policy year.

Based on the written submissions and evidence presented in connection with the Motion, the Court makes the following findings and determinations for purposes of considering the class action settlement currently before the Court:

IT IS HEREBY DETERMINED AND ORDERED:

1. The settlement proposed in the Settlement Agreement, dated July 23, 2014 (the "Agreement"), a copy of which is attached as Exhibit A to the Motion, is within the range of

possible settlements suitable for final approval as fair, just, equitable, reasonable, adequate, and in the best interests of the Class,<sup>1</sup> and was negotiated at arm's-length.

2. The Agreement and the terms of the settlement, claims determination and processing, payment plan, administration and oversight are hereby preliminarily approved as fair, reasonable, adequate, proper, and in the best interests of the Class.

3. The proposed settlement is sufficient to justify giving notice of the settlement to the Class.

4. The proposal for establishment of the Settlement Fund is approved. The Fund shall remain in the hands of the BWC, but all payments to be made from the Fund shall be at the written direction of the Court and Settlement Administrator with the oversight of the Special Master in accordance with the terms of the Agreement and any further orders of this Court. Upon conclusion of the obligations and events provided by the Agreement, including payment of:

- i. Court costs; and
- ii. All reasonable out-of-pocket expenses incurred by the BWC and the costs of the services provided by the Special Master and the Settlement Administrator, both as referenced in Agreement, Section 5.1, including but not limited to the cost of producing notice and processing claims; and
- iii. The fee and expense award awarded by the Court to Class Counsel; and

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<sup>1</sup> Capitalized terms herein have the meaning provided in the Agreement.

- iv. The incentive compensation awarded by the Court to the named Plaintiffs; and
- v. Payment to authorized and eligible Class members up to the amount identified on the Appendix 1 spreadsheet to the Agreement, filed with the Court on electronic CD format, attached hereto and incorporated herein, but subject to pro rata reduction based on the aggregate amount of all eligible claims received pursuant to this Agreement and Court approval at the final approval hearing,

all monies remaining in the Fund shall remain in the State Insurance Fund for the benefit of Ohio employers and injured workers.

5. In the event that (1) the Agreement is not approved in all material respects by the Court; or (2) the Agreement, Preliminary Approval Order, Final Approval Order, and/or Final Judgment are reversed, vacated, or modified in any material respect by this or any other Court, then (a) all orders entered pursuant to the Agreement shall be vacated; (b) the instant action shall proceed as though an Agreement had never been reached; and (c) no reference to the Agreement, or any documents related thereto, shall be made for any purpose; provided, however, if any Party to the Agreement appeals an adverse ruling and the Agreement, Preliminary Approval Order, Final Approval Order, and Final Judgment are upheld on appeal in all material respects, then the Agreement, Preliminary Approval Order, Final Approval Order, and Final Judgment shall be given full force and effect. In the event of (1) or (2) in this Paragraph, all Parties reserve all of their rights existing prior to the execution of the Agreement (including, but not limited to,

prosecution of BWC's request for appellate review pending with the Ohio Supreme Court), and the doctrines of res judicata and collateral estoppel shall not be applied.

6. A hearing on the fairness and reasonableness of the Agreement and to determine whether final approval shall be given to it, and on the request for attorneys' fees and costs by Class Counsel and for incentive compensation, will be held before this Court on October 9, 2014, at 9:00a.m. (the "Final Approval Hearing"). Class Counsel is to file their petition for attorneys' fees and costs no later than September 15, 2014, with all supplementations if any to be filed no later than five (5) days before the Final Approval Hearing. The Final Approval Hearing may be adjourned or continued by the Court without further notice to members of the class, since any such adjournments or continuances will be on the court's public docket.

7. The Court approves the proposed forms of notice to the class (the "Class Notice"), attached as part of Exhibit 1 to the Motion (Exhibit A to the Agreement). As soon as practicable after receiving preliminary Court approval of the Agreement and by no later than fourteen (14) days following the entry of this Order granting preliminary approval, notice shall be provided to the Class and issued to each Class Member in accordance with the Agreement. Mailed Class Notice shall be sent by bulk or standard U.S. mail. Payments required to be made for such mailing shall be made by the Settlement Administrator with the oversight of the Special Master, who shall obtain receipts for the cost of postage, printing and any other third party service actually paid for same.

8. The Court further approves the publication of notice to be published in the size, location and manner directed by the Agreement, said publication to occur no earlier than fifteen (15) days from the date of this order.

9. The Class Notice constitutes the best notice practicable under the circumstances, is reasonably calculated to communicate actual notice of the litigation and proposed settlement to Persons in the Class, and is due and sufficient notice to all persons entitled to notice of the settlement of this Action. The Notice shall advise Class members of the size of the settlement fund, the percentage of attorneys' fees requested by Class Counsel and the means to make a claim and/or method to object to the Settlement Agreement or its terms. The Notice will specify that any objection to this Settlement Agreement by a Class Member, and any papers, briefs, arguments, evidence and any other material to be offered in support of said objection ("Supporting Materials"), will be considered by the Court at the Final Approval Hearing, only if, on or before September 22, 2014 as specified in the website and the Notice, the Class Member making an objection files notice of their intention to do so and at the same time files copies of such Supporting Materials with the Clerk of the Court, and properly serves by the same date copies of same to both Settlement Class Counsel and Defendant's Counsel.

Any Class Member that objects to this Settlement Agreement must include in the objection or attached thereto: a) their business name and policy number; b) the name of the officer, owner, bankruptcy trustee, or other authorized representative of that business making the objection; c) all arguments, citations, and Supporting Materials; d) a statement that the objector is a Class Member; and e) a statement whether the objector intends to appear at the Final Approval Hearing with or without counsel. Any Class Member failing to timely file and serve on Class Counsel and Defense Counsel its written objection with the Court, or whose objection does not accurately contain items (a) through (e) of this Section 4.6 shall not be permitted to object to this Settlement. Any Class Member timely filing and serving their objection accurately containing items (a) through (e) of this Section 4.6, but without notice of intent to appear at the

Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, shall not be permitted to appear or argue at the Final Approval Hearing, and their objection will be considered on the Supporting Materials only. Only those arguments contained in a timely filed and served objection, which accurately contains items (a) through (e) of this Section 4.6, will be considered by the Court. Any Class Member that does not timely file its objection, or does not accurately include items (a) through (e) of this Section 4.6 in the objection, is foreclosed from seeking any review of this Settlement Agreement by appeal or other means and shall be deemed to have waived its, their, or his or her objections and is forever barred from making any such objections in the Action or any other action or proceeding.

10. The Court approves the Claim Form, attached as Exhibit 1 to the Motion (Exhibit B to the Agreement). Class Members may submit a Claim Form by properly and fully completing it and mailing it to the address identified on the Claim Form so that it is postmarked no later than September 22, 2014. **No claims may be submitted by third party servicers, consolidators, factors, or other claims agents.** Any Claim that is not timely postmarked or properly completed, or that does not otherwise comply with the terms of the Agreement, shall be deemed invalid and Class Members submitting such claims shall forfeit any right to payment, objection, appeal, collateral attack, or any other challenge to this settlement, these proceeding, their representation therein, or any other related matter, and the Agreement, subject to final approval, shall in all other respects be fully enforceable against them.

11. Subject to final approval of settlement and the Agreement, and subject to the Parties giving the notice required by this Order, the Court approves the provisions of the Agreement making the settlement and its release of claims binding on all Class Members,

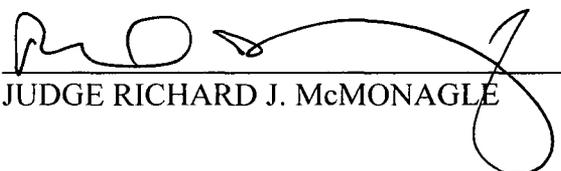
whether or not they actually received notice of the Action or its settlement, or submitted a Proof of Claim.

12. In aid of the Court's jurisdiction to implement and enforce the proposed settlement, Plaintiffs and all Class Members shall be preliminarily enjoined and barred from commencing or prosecuting any claim or action inconsistent with the Released Claims, either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency or other authority or forum wherever located. Nothing in this Paragraph shall be construed to prevent a Class Member from presenting objections to the Court regarding the Agreement in accordance with Paragraph 9 of this Preliminary Approval Order.

13. The court appoints Bricker & Eckler, LLP to serve as the Special Master and The Garden City Group, Inc. (subject to its bid being approved by the Special Master) to serve as the Settlement Administrator, and directs them to promptly, fully and faithfully carry out the duties imposed upon them under the Agreement, and to carefully see to the administration of, and administer, the Agreement, and all orders of this court. Payment to the Master and the Administrator for their services and for the discharge of the expenses in connection with this matter shall be made from the Fund at the written direction of the Master as approved by the Court, who shall submit periodic reports to the court of expenses incurred, progress made, and all other matters deemed appropriate by the Master or ordered by the Court.

SO ORDERED. PARTIAL.

DATED: July 25<sup>th</sup>, 2014

  
JUDGE RICHARD J. McMONAGLE

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CUYAHOGA COUNTY  
CLERK OF COURTS  
By  Deputy









Defendant and/or otherwise remain in the State Insurance Fund in accordance with Section 1.1(e) above.

Except for the above amendments and those set forth in the parties' Amendment to Settlement Agreement, the Settlement Agreement executed on July 23, 2014 and approved by the Court in the Preliminary Approval Order dated July 25, 2014, and the provisions of the Preliminary Approval Order, remain in full force and effect.

SO ORDERED. PARTIAL.

DATED: August 19, 2014

  
JUDGE RICHARD J. McMONAGLE

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AUG 20 2014

CUYAHOGA COUNTY  
CLERK OF COURTS  
BY 