

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

RICHARD DICKMAN; KENT)
ALDERSON; LESLEY S. RICH, as)
trustee for the RICHARD S. WALLBERG)
INSURANCE TRUST, *individually and*)
on behalf of all those similarly situated,)

Plaintiffs,)

v.)

BANNER LIFE INSURANCE)
COMPANY; WILLIAM PENN LIFE)
INSURANCE COMPANY OF NEW)
YORK,)

Defendants.)

Civil Action Nos.

1:16-cv-00192-RDB

1:17-cv-02026-GLR

[Proposed]

**ORDER REGARDING DISPOSITION OF UNCLAIMED AND/OR UNPAYABLE
SETTLEMENT CLASS FUNDS**

Before the Court is Plaintiffs’ Motion for Approval of Disposition of Unclaimed and/or Unpayable Settlement Class Funds (ECF No. 418).

The facts, figures and circumstances of the distribution of settlement funds and implementation of the settlement, including the amount of unclaimed settlement funds, are adequately set-forth in the status reports filed by Co-Lead Class Counsel (ECF Nos. 411, 412, 413, and 415) and the instant Motion (ECF No. 418) now before the Court, and will not be repeated herein.

As of April 1, 2023, there is currently \$789,464.48 in “unclaimed” funds which consist of checks that have not been cashed (and are beyond the stale date) and returned mail for which new mailing information for those class members has not been found. (See ECF No. 418-1).

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In this Court's Final Approval Order (ECF No. 361), affirmed by the United States Court of Appeals for the Fourth Circuit (*1988 Trust for Allen Children v. Banner Life Ins. Co.*, 28 F. 4th 513 (4th Cir. 2022)), the Court incorporated and made part of its Final Approval Order the Settlement Agreement. (ECF. No. 361, p. 4, ¶2). Pursuant to paragraph 17 of the Final Approval Order, this Court retains jurisdiction over the implementation of the Settlement Agreement. (ECF No. 361, p. 10) Further, pursuant to paragraph 86 (c) of the Settlement Agreement, the issue related to unclaimed or unpayable distributions of the Common Settlement Fund was reserved for this Court's approval. (ECF No. 250-3, p. 18).

The Court agrees with Co-Lead Class Counsel that of the four (4) potential options for the distribution of unclaimed funds, only two (2) are potential options in these consolidated cases. Those two options are a pro rata redistribution to the class member or a *cy pres* distribution. *See generally Krakauer v. Dish Network L.L.C.*, 2020 U.S. Dist. LEXIS 19912 (M.D.N.C. May 21, 2020). In exercising this Court's discretion with respect to the distribution of the unclaimed funds, the Court is persuaded by the reasoning of the Seventh Circuit in *Ira Holtzman, CPA, & Assocs. v. Turza*, 728 F. 3d 682, 689-90 (7th Cir. 2013), wherein that court held that, "[m]oney not claimed by class members should be used for the class's benefit to the extent that is feasible."

This Court is of the opinion that a redistribution of the unclaimed funds is the best solution and in the best interests of the Class as compared to a *cy pres* award. The Court is further persuaded that given the history and length of this litigation, a pro rata distribution would be more efficient and effective than the appointment of a special master to make recommendations related to a *cy pres* distribution. According, it is ORDERED, ADJUDGED and DECREED as follows:


1. The Motion for Approval of Disposition of Unclaimed and/or Unpayable Settlement Class Funds (ECF No. 418) is GRANTED, and the Court orders a redistribution on a pro rata basis of the unclaimed and/or unpayable Settlement Class funds to any policyholder who received a monetary distribution under the Settlement, excluding any

Class Member who received, but has not cashed, a check (and the check is beyond the stale date), or where the Settlement Administrator, KCC Class Action Services (“KCC”), received returned mail for certain class members and for which new mailing information for such class members has not been found.;

2. Class Counsel will advise the Court of the amount of the balance of the unclaimed and/or unpayable Settlement Class funds at the conclusion of the forty-five (45) day period set forth herein.
3. The Settlement Administrator, KCC, is DIRECTED to distribute, or assist in distributing, the balance of the unclaimed and/or unpayable Settlement Class funds that exist forty-five (45) days from the date of this Order to the class members who received monetary relief under the Settlement Agreement (ECF No. 250-3) and Final Approval Order (ECF No. 361), whether by check (for which KCC will mail individual payments or additions to existing policy accounts for in-force policyholders (which payments will be made by Banner Life Insurance Company and William Penn Life Insurance Company of New York (collectively “Banner”), subject to the following:
 - i. KCC is approved and authorized to deduct from the balance of the unclaimed and/or unpayable Settlement Class funds up to Twenty-Thousand Dollars (\$20,000) to cover the costs of the pro rata redistribution;
 - ii. The threshold amount for any pro rata redistribution by check or credit shall be greater than Five Dollars (\$5.00) such that no class member who would receive less than Five Dollars (\$5.00) by check or credit shall be entitled to a share of the pro rata redistribution;
 - iii. The Settlement Administrator, KCC, is DIRECTED to post this Order to the settlement website and to continue all reasonable efforts during the forty-five (45) day period set forth herein to locate and/or contact class members who have either not negotiated a settlement check or whose mailing was returned as undeliverable;
 - iv. The Settlement Administrator, KCC, is Directed to calculate the amount of the pro rata redistribution for each Class Member who is entitled to receive such redistribution within fifty-five (55) days from the date of this Order; and
 - v. The Settlement Administrator, KCC, is DIRECTED to coordinate with counsel for Banner with respect to: (i) providing counsel a copy of the policyholders, by policy number, entitled to receive a redistribution and the amount of such redistribution; (ii) transferring to Banner part of the unclaimed and/or unpayable Settlement Class funds needed for Banner to add the pro rata redistribution to each in-force policyholder’s account.

IT IS SO ORDERED.

Date: APRIL 28, 2023



Richard D. Bennett
United States Senior District Judge