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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARY TOLLIVER, et al.,
Plaintiffs,
v.
ILLINOIS TOOL WORKS INC.,
Defendant.

Case No. 18-cv-01078-KAW

**ORDER GRANTING MOTION TO
APPROVE MINOR'S SETTLEMENT**

Re: Dkt. No. 144

Plaintiffs filed the instant case against Defendant Illinois Tool Works Inc., asserting product liability and negligence claims with respect to the death of Johnny Tolliver, Sr. (*See* First Amended Compl. (“FAC”) ¶ 1, Dkt. No. 30.) Pending before the Court is Plaintiff I.T.’s motion to approve a minor’s settlement. (Pl.’s Mot. to Approve, Dkt. No. 144.) No oppositions were filed.

The Court deemed this matter suitable for disposition without a hearing pursuant to Civil Local Rule 7-1(b). (Dkt. No. 136.) Having considered the parties’ filings and the relevant legal authority, the Court GRANTS the motion to approve.

I. BACKGROUND

Decedent was a Solid Waste Truck Driver, employed by the City of Berkeley’s Public Works Zero Waste Division. (Order re Mot. for Summ. J. at 1, Dkt. No. 69.) On January 11, 2016, the truck Decedent was operating began to roll downhill. (*Id.* at 2.) Decedent attempted to stop the truck, but suffered blunt force injuries, possibly when the truck crushed him against a utility pole or tree. (*Id.*)

Plaintiffs then filed the instant case against Defendant, asserting that the truck had a defective air brake system. (Order re Mot. for Summ. J. at 4.) On October 2, 2019, Defendant

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1 filed a motion for summary judgment. (*Id.* at 6.) On November 22, 2019, the Court granted
 2 Defendant’s motion for summary judgment as to the failure to warn claim but denied Defendant’s
 3 motion as to all other claims. (*Id.* at 19.)

4 In January 2020, the parties reached a settlement. (Cartwright Decl. ¶ 3, Dkt. No. 144-1.)
 5 With respect to Plaintiff I.T., Defendant agreed to pay \$437,500. (Cartwright Decl. ¶ 3.) The
 6 settlement includes \$85,476.75 in attorney’s fees, \$95,593.01 in attorney’s costs, and \$50,000 in a
 7 lien payment to the City of Berkeley, leaving a net amount of \$206,430.24 to Plaintiff I.T. (Pl.’s
 8 Mot. to Approve at 3; Cartwright Decl. ¶¶ 14, 16.) Guardian Ad Litem Arie Crockett intends to
 9 put the net amount in a structured annuity which will make payments to Plaintiff I.T. as follows:
 10 \$50,000 at age 18, \$100,000 at age 21, and \$74,273 at age 25, for a total of \$224,273. (Cartwright
 11 Decl. ¶ 18.) The \$437,500 settlement is in addition to approximately \$482,367.28 in workman’s
 12 compensation being paid by the City of Berkeley. (Cartwright Decl. ¶ 16.)

13 II. LEGAL STANDARD

14 “District courts have a special duty, derived from Federal Rule of Civil Procedure 17(c), to
 15 safeguard the interests of litigants who are minors.” *Robidoux v. Rosengren*, 638 F.3d 1177, 1181
 16 (9th Cir. 2011). “[T]his special duty requires a district court to conduct its own inquiry to
 17 determine whether the settlement serves the best interests of the minor.” *Id.* (internal quotation
 18 omitted). Thus, the district court considers whether the settlement, including any net recovery, “is
 19 fair and reasonable as to each minor plaintiff.” *Id.* at 1182.

20 III. DISCUSSION

21 The Court finds that the proposed settlement is fair and reasonable. Plaintiff’s counsel
 22 explains that liability was a significant question in this case, particularly in light of “[d]iscovery
 23 and investigation [that] showed that the City of Berkeley is primarily responsible for [Decedent]’s
 24 death.” (Cartwright Decl. ¶ 15; *see also* Cartwright Decl. ¶ 9.) For example, maintenance and
 25 service records of the truck showed it had reached the end of its useful life and had been served for
 26 related issues only six days before Decedent’s death. (Cartwright Decl. ¶ 15.) The City of
 27 Berkeley also failed to train its employees to properly apply the parking brake. (Cartwright Decl.
 28 ¶ 15.) The City of Berkeley was ultimately assessed numerous OSHA citations and paid \$31,810

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1 in penalties. (Cartwright Decl. ¶ 15.)

2 Further, the settlement amount is reasonable. Plaintiff’s counsel estimates that Plaintiff
3 I.T.’s future economic losses total \$293,499.00, in addition to emotional harm from the loss of his
4 father. (Cartwright Decl. ¶¶ 6, 7.) Here, Defendant will pay \$437,500, or a net of \$206,430.24
5 after payment of attorney’s fees, costs, and a settlement of the City of Berkeley’s lien and credit
6 rights. (Cartwright Decl. ¶¶ 3, 18.) Plaintiff’s counsel has agreed to reduce their fees to 25% of
7 the net recovery after costs, although their retainer agreement allows for recovery of 40%.
8 (Cartwright Decl. ¶¶ 4, 10.) Plaintiff’s counsel has also provided their records regarding costs,
9 which the Court has reviewed and finds reasonable, particularly given the significant work
10 required by numerous expert witnesses. (See Cartwright Decl., Exhs. E-G.) Additionally, the City
11 of Berkeley’s workman’s compensation carrier has paid Ms. Crockett, on behalf of Plaintiff I.T.,
12 \$312,804.08 through August 28, 2020, and will continue to make bi-weekly payments of
13 \$2,119.54 through Plaintiff I.T.’s 18th birthday. (Cartwright Decl. ¶ 16.) In total, the City of
14 Berkeley will have paid approximately \$482,367.28 to Plaintiff I.T. (Cartwright Decl. ¶ 16.)

15 Thus, considering both the risks as to liability, the value of the case, and the amount of net
16 recovery, the Court concludes that the settlement reflects a fair and reasonable compromise
17 intended for Plaintiff I.T.’s benefit. Accordingly, the Court approves the settlement.

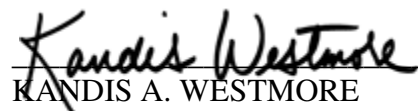
18 **IV. CONCLUSION**

19 The Court GRANTS the motion to approve the settlement as follows:

- 20 (1) The award of attorney’s fees is \$85,476.75;
- 21 (2) The award of attorney’s costs is \$95,593.01;
- 22 (3) The settlement of the City of Berkeley’s lien and credit rights is \$50,000; and
- 23 (4) The net sum of \$206,430.24 shall be put in a structured annuity and distributed in the
24 amount of \$50,000 at age 18, \$100,000 at age 21, and \$74,273 at age 25.

25 IT IS SO ORDERED.

26 Dated: January 21, 2021

27 
28 KANDIS A. WESTMORE
United States Magistrate Judge