

## **NOTICE OF CLASS ACTION SETTLEMENT**

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

*Please read this Notice as it affects your legal rights.*

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

### **Attention: If you own or owned a Generac home standby generator with a fuel plenum that was part of Generac’s voluntary fuel plenum inspection program, you may be entitled to benefits from a class action settlement.<sup>1</sup>**

- A settlement has been proposed in a class action against Generac Power Systems, Inc. (“Generac”).
- The case concerns an Inspection Notice Letter that was sent to owners of certain Generac air cooled home standby generators in specific regions of the United States for units that were manufactured between 2008–2016.
- The Inspection Notice Letter offered inspections of generators’ fuel plenums for a discounted \$80 fee that would be refunded if a plenum had significant corrosion (the “Inspection Program”).
- The Plaintiffs allege that Generac should not have had fees associated with the inspections, and that doing so amounted to a breach of Generac’s express or implied warranties.
- Generac denies any liability and has moved to dismiss the Plaintiffs’ claims. The parties subsequently settled the lawsuit in order to avoid the costs, uncertainty, and inconvenience of litigation.
- The Settlement provides three kinds of potential benefits to Settlement Class Members: reimbursement, inspection, and, if necessary, replacement.
  - First, Settlement Class Members who paid for an inspection of their Class Generator pursuant to the Inspection Program and the Inspection Notice Letter can file a claim (a “Reimbursement Claim”) for a refund of their unreimbursed, out-of-pocket \$80 inspection fee.
  - Second, Settlement Class Members who have not had their generator plenum inspected through the Inspection Program can submit a claim for a cost-free plenum inspection of their Class Generator by an Authorized Service Dealer (an “Inspection Claim”). To do so, Claimants must: (i) attest that the Class Generator has not received general maintenance or service from an Authorized Service Dealer since the start of the Inspection Program; (ii) attest that, although the Class Generator has received general maintenance or service from an Authorized Service Dealer since the start of the Inspection Program, it nevertheless was not examined for corrosion on the plenum surface (and must submit a supporting narrative statement to that effect with their claim); or (iii) attest that the Class Generator has corrosion on the plenum surface (and must submit supporting photographic evidence with their Inspection Claim).
  - Third, if inspections of the Settlement Class Members’ Class Generators finds corrosion on the plenum surface, they are eligible for a free replacement of the fuel plenum (inclusive of parts and labor) to be performed by a Generac Authorized Service Dealer.
- The Court has preliminarily approved the Settlement. This Notice provides information about the Lawsuit, the Settlement, and your options as a Settlement Class Member.

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<sup>1</sup> The definition of any capitalized term not defined herein can be found in the Settlement Agreement which can be downloaded at the Settlement Website: [www.fuelplenumsettlement.com](http://www.fuelplenumsettlement.com).

## Your Legal Rights and Options in This Settlement

<b>Submit a Claim Deadline: September 25, 2023</b>	To receive a benefit, you must submit a Claim Form by the deadline described below and listed on the Settlement Website, <a href="http://www.fuelplenumsettlement.com">www.fuelplenumsettlement.com</a> .
<b>Request Exclusion / Opt-Out Deadline: August 26, 2023</b>	This option, described in Sections 13 and 14 below, allows you to sue or continue to sue Generac regarding claims that Generac should have provided free generator plenum inspections to owners of Generac home standby generators subject to the Inspection Program and that not doing so amounted to a breach of an express or implied warranty. If you opt out, you will not be bound by any of the terms of the Settlement but you will also not be entitled to submit a Claim Form for benefits under the Settlement or object to the terms of the Settlement.
<b>Objection Deadline: August 26, 2023</b>	You are entitled to submit a written objection telling the Court what you do not like about the Settlement pursuant to the procedures described in Section 15 below.
<b>Attend the Final Approval Hearing Scheduled for September 27, 2023</b>	You are entitled to attend the Final Approval Hearing at which the Court will consider whether to grant final approval of the Settlement. The date and time of the Final Approval Hearing may be changed by the Court. Please check the Settlement Website at <a href="http://www.fuelplenumsettlement.com">www.fuelplenumsettlement.com</a> for updates.
<b>Do Nothing</b>	If you are a Settlement Class Member and do nothing, you will be bound by the terms of the Settlement if it is approved by the Court, whether or not you submit a Claim Form, and you will be subject to the Release set forth in the Settlement.

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## **1. WHY WAS THIS NOTICE ISSUED?**

You received notice of Settlement because Generac's records indicate that you may own or have owned a Class Generator.

The United States District Court for the Eastern District of Pennsylvania preliminarily approved the Settlement and authorized this Notice to inform you about your options before it decides whether to grant final approval of the Settlement. Additional information about the Settlement can be found at [www.fuelplenumsettlement.com](http://www.fuelplenumsettlement.com).

## **2. WHAT IS THE LAWSUIT ABOUT?**

A settlement has been proposed in a class action against Generac Power Systems, Inc. ("Generac"). The case concerns an Inspection Notice Letter that was sent to owners of certain Generac air cooled home standby generators in specific regions of the United States for units that were manufactured between 2008–2016. The Inspection Notice Letter offered inspections of the generators' fuel plenums for a discounted \$80 fee that would be refunded if a plenum had significant corrosion (the "Inspection Program"). The Plaintiffs claimed that Generac should not have had a fee associated with the inspection, and that doing so amounted to a breach of its express and implied warranties. Generac denies any liability and maintains that it did not violate any warranties. Generac has historically instructed and expected Authorized Service Dealers to examine fuel systems (including the fuel plenum) during any general maintenance or service visits. The parties subsequently settled the lawsuit in order to avoid the costs, uncertainty, and inconvenience of litigation.

**The Settlement does not include, or release, any claims for personal injury, property damage (other than damage to the Class Generators related to the plenum), or subrogation.**

## **3. WHAT IS A CLASS ACTION?**

In a class action lawsuit, one or more people sue on behalf of other people who allegedly have similar claims. For purposes of this Settlement, one court will resolve the issues alleged in the Lawsuit for all Settlement Class Members.

## **4. WHY IS THERE A SETTLEMENT?**

Generac denies that it has done anything wrong and admits no liability. The Court has not decided that the Plaintiffs or Generac should win the Lawsuit. Instead, both sides agreed to a Settlement Agreement. That way, they avoid the cost of a trial, and the Settlement Class Members will receive benefits now rather than years from now, if at all.

## **5. AM I A SETTLEMENT CLASS MEMBER?**

The term "Settlement Class" is defined in the Settlement Agreement as:

- (1) all current or former owners of a Class Generator who paid an Inspection Program fee up to \$80 that was not reimbursed prior to the Preliminary Approval Date, and
- (2) all current owners of Class Generators that were not inspected pursuant to the Inspection Program prior to the Preliminary Approval Date.

Excluded from the Settlement Class are: (i) Generac, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Generac has a controlling interest; (ii) the judge presiding over the Lawsuit and any member of the Court's staff and immediate family; and (iii) local, municipal, state, and federal governmental entities.

The term “Class Generators” means Generac home standby generators that were part of the Inspection Program.

The term “Inspection Program” means the voluntary inspection program previously offered by Generac pursuant to the Inspection Notice Letter, in which owners of Class Generators could schedule an inspection of their Class Generator’s fuel plenum for a discounted, \$80 inspection fee that would be reimbursed if the fuel plenum had significant corrosion.

The term “Inspection Notice Letter” means a letter from Generac, to the owners of Class Generators, containing notice of the Inspection Program.

## **6. HOW DO I KNOW IF MY RESIDENCE OR BUILDING HAS THESE PRODUCTS?**

Class Generators can be identified by serial number. The Settlement Website will have a dedicated page to help you locate the serial number on the Class Generators and verify whether the unit is included within the class.

## **7. WHAT BENEFITS ARE AVAILABLE UNDER THE SETTLEMENT?**

The Settlement will provide the following benefits to Eligible Claimants who submit a valid and timely Claim Form to the Settlement Administrator:

**Reimbursement Claims.** Settlement Class Members who paid for an inspection pursuant to the Inspection Program and the Inspection Notice Letter prior to April 18, 2023 can file a claim (a “Reimbursement Claim”) for their unreimbursed, out-of-pocket inspection fee of \$80.

**Inspection Claims.** Settlement Class Members who have not had their generator plenum inspected through the Inspection Program can submit a claim for a cost-free plenum inspection of their Class Generator by an Authorized Service Dealer (an “Inspection Claim”). To do so, Claimants must: (i) attest that the Class Generator has not received general maintenance or service from an Authorized Service Dealer since the start of the Inspection Program; (ii) attest that, although the Class Generator has received general maintenance or service from an Authorized Service Dealer since the start of the Inspection Program, it nevertheless was not examined for corrosion on the plenum surface (and must submit a supporting narrative statement to that effect with their claim); or (iii) attest that the Class Generator has corrosion on the plenum surface (and must submit photographic support with their Inspection Claim). Generac will identify local Authorized Service Dealers who will perform the free inspections for approved claimants.

**Replacements.** If inspection of the Settlement Class Member’s Class Generator inspection finds corrosion on the plenum surface, that Settlement Class Member would be eligible for a free replacement of the fuel plenum (inclusive of parts and labor) to be performed by a Generac Authorized Service Dealer.

## **8. WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT OR INSPECTION?**

The Court will hold a hearing on September 27, 2023 at 10:00 a.m. to decide whether to approve the Settlement Agreement. If the Court approves the Settlement, there may then be appeals which may delay the conclusion of the case. It is always uncertain whether such appeals will result in a favorable decision for the Settlement Class, and concluding them can take time, perhaps more than a year. You can check on the progress of the case on the Settlement Website at [www.fuelplenumsettlement.com](http://www.fuelplenumsettlement.com). *Please be patient.*

## **9. HOW DO I SUBMIT A CLAIM FORM?**

To be eligible to receive any of the benefits described above, you must complete and submit a valid and timely Claim Form. Your Claim Form and supporting documentation may be submitted:

- through the claim portal on the Settlement Website, [www.fuelplenumsettlement.com](http://www.fuelplenumsettlement.com);
- by email to the Settlement Administrator using the email address [info@fuelplenumsettlement.com](mailto:info@fuelplenumsettlement.com); or
- by U.S. Mail to the Settlement Administrator using the address: *McMahon v. Generac Power Systems* Settlement Administrator, P.O. Box 301132, Los Angeles, CA 90030-1132.

Claim Forms are available for download at [www.fuelplenumsettlement.com](http://www.fuelplenumsettlement.com), and are also available by email or by writing to the Settlement Administrator using the information above.

The deadline for submitting a Claim is September 25, 2023.

Please check the Settlement Website at [www.fuelplenumsettlement.com](http://www.fuelplenumsettlement.com), for updates regarding the Effective Date and corresponding Claim Form Deadline dates. **In any event, please file your Claim Form as soon as possible.**

## **10. WHAT ARE THE RELEASED CLAIMS?**

**Release.** Upon the Effective Date of the Settlement, the Releasing Parties will release and forever discharge the Released Parties from the Released Claims. Those terms are defined as follows:

- **Releasing Parties:** Plaintiffs and all Settlement Class Members (whether or not they submit a Claim Form or are Eligible Claimants), and their respective assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, and employees (each solely in their respective capacity as such), and all those who assert or could assert claims on their behalf (but excluding any Person who timely opted out of the Settlement).
- **Released Parties:** Generac and each of its past, present, and future members, owners, direct and indirect parents, subsidiaries, managers, divisions, predecessors, successors, holding companies, and affiliated companies and corporations, and each of the past, present, and future directors, officers, managers, members, employees, contractors, general partners, limited partners, investors, controlling persons, owners, trustees, principals, agents, associates, administrators, insurers, reinsurers, shareholders, attorneys, accountants, advisors, consultants, assignors, assignees, representatives, fiduciaries, predecessors, successors, divisions, joint ventures, or related entities of those companies including, but not limited to, vendors, subvendors, contractors, subcontractors, authorized service dealers, and other service providers.
- **Released Claims:** Any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, latent or patent, actual or contingent, liquidated or unliquidated, punitive or compensatory, of every nature and description whatsoever, as of the date of the Final Approval Order, that arise out of or relate in any way to the Class Generators' plenums, the Inspection Program, and/or the Inspection Notice Letter. Without limiting the generality of the foregoing, Released Claims shall include, with regard to the foregoing subject matter: (1) any class, group, collective or individual claim for any breach or violation of any federal or state statute, case law, common law or other law; (2) any claim for breach of any duty imposed by law, by contract or otherwise; and (3) any claim for damages, injunctive relief, declaratory relief, class damages or relief, penalties, punitive damages, exemplary damages, restitution, rescission or any claim for damages based upon any multiplication or enhancement of compensatory damages arising out of or relating to the above.
- **Exclusions from Released Claims:** The Released Claims exclude any claims for death, personal injury, property damage (other than damage to the Class Generators related to the plenum), or subrogation.
- **Important Note:** The releases are a consequence of membership in the Settlement Class and the Court's approval process, and are not conditional on receipt of inspections, replacement plenums, or any payment or other benefit by any particular member of the Settlement Class.

## **11. WHO IS CLASS COUNSEL?**

In its Preliminary Approval Order, the Court appointed Sauder Schelkopf LLC as Class Counsel to represent Plaintiffs and the Settlement Class Members. You will not be charged for these lawyers. If you wish to be represented by your own lawyer, you may hire one at your own expense. The contact information for Class Counsel is set forth below:

Joseph G. Sauder  
Joseph B. Kenney  
Sauder Schelkopf LLC  
1109 Lancaster Avenue  
Berwyn, PA 19312  
Telephone: 1-888-711-9975  
Email: info@sstriallawyers.com  
Website: www.sauderschelkopf.com

## **12. CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS**

Within the time period established by the Court and no later than fourteen (14) days prior to the Objection and Opt-Out Deadline, Class Counsel will file a Motion for Approval of Attorneys' Fees, Cost and Service Awards to be paid by Generac, which shall be included on the Settlement Website. Class Counsel in the Lawsuit shall apply for the following: (a) attorneys' fees and costs not to exceed \$1,500,000 and (b) Service Awards of \$2,500 for Greg McMahon and Adam Goldberg, in recognition of their time, costs and effort in the Lawsuit, including, for example, gathering documents and materials and performing other representative duties.

## **13. HOW DO I OPT OUT OF THE SETTLEMENT?**

Settlement Class Members may submit a Request for Exclusion from (*i.e.*, "opt out" of) the Settlement to preserve their individual rights to sue or continue to sue Generac with respect to the Class Generators' plenums, the Inspection Program, and/or the Inspection Notice. A member of the Settlement Class who submits a valid Request for Exclusion cannot object to the Settlement and is not eligible to receive benefits under the Settlement. If you have requested exclusion from the Settlement, you may not speak at the Final Approval Hearing because you are not bound by the Settlement.

To validly request exclusion from the Settlement Class, a Settlement Class Member must submit a written request to opt out to the Settlement Administrator that is postmarked by August 26, 2023 stating "I wish to exclude myself from the Settlement Class in the Plenum Inspection Program Class Action Settlement" (or substantially similar clear and unambiguous language). That written request shall contain the Settlement Class Member's printed name, address, telephone number, email address (if any), and date of birth, generator serial number, and the address at which the generator is installed. The Request for Exclusion must contain the actual written signature of the Settlement Class Member seeking to exclude himself or herself from the Settlement Class. Requests for Exclusion cannot be made on a group or class basis, except that joint owners of the same residence or structure may opt out by using the same form so long as it is individually signed by each joint owner.

All Requests for Exclusion must be sent to the Settlement Administrator at the following address: *McMahon v. Generac Power Systems* Settlement Administrator, P.O. Box 301132, Los Angeles, CA 90030-1132.

A Settlement Class Member who opts out can, on or before the Objection and Opt-Out Deadline, withdraw their Request for Exclusion by submitting a written request to the Settlement Administrator stating their desire to revoke their Request for Exclusion along with their written signature.

**14. WHAT HAPPENS IF I DO NOT OPT OUT OF THE SETTLEMENT?**

Any Settlement Class Member who does not submit a valid and timely written Request for Exclusion shall be bound by all subsequent proceedings, orders and judgments in this Lawsuit, including, but not limited to, the Release, the Final Approval Order, and the Final Judgment, even if such Settlement Class Member has litigation pending, or subsequently initiates litigation, against any Released Party relating to the Released Claims.

**15. HOW DO I OBJECT TO THE SETTLEMENT?**

Settlement Class Members who do not submit a written Request for Exclusion may present a written objection to the Settlement explaining why they believe that the Settlement should not be approved by the Court as fair, reasonable, and adequate. To object to the Settlement, a Settlement Class Member must submit a written objection to the Settlement Administrator that is postmarked on or before August 26, 2023, and include a detailed written statement of the objection(s) and the aspect(s) of the Settlement being challenged, as well as the specific reasons, if any, for each such objection, including any evidence and legal authority that the Settlement Class Member wishes to bring to the Court's attention. Any objection after that time will not be considered. All written objections must be sent to the Settlement Administrator at the following address: *McMahon v. Generac Power Systems* Settlement Administrator, P.O. Box 301132, Los Angeles, CA 90030-1132.

That written statement shall contain (a) the Settlement Class Member's printed name, address, telephone number, email address (if any), and date of birth; (b) evidence showing that the objector is a Settlement Class Member, including the address of the residence or structure that contains or contained the Class Generator and proof that the residence or structure contains or contained the Class Generator (photographs, contemporaneous installation records, etc.); (c) any other supporting papers, materials, or briefs that the objecting Settlement Class Member wishes the Court to consider when reviewing the objection; (d) the actual written signature of the Settlement Class Member making the objection; and (e) a statement whether the objecting Settlement Class Member and/or his, her, or its counsel intend to appear at the Final Approval Hearing.

A Settlement Class Member may object on his or her own behalf or through an attorney; however, even if represented, the Settlement Class Member must individually sign the objection, and all attorneys who are involved in any way asserting objections on behalf of the Settlement Class Member must be listed on the objection papers. Counsel for the Parties may take the deposition of any objector prior to the Final Approval Hearing in a location convenient for the objector.

If a Settlement Class Member or counsel for the Settlement Class Member who submits an objection to this Settlement has objected to a class action settlement on any prior occasion, the objection shall also disclose all cases in which they have filed an objection by caption, court and case number, and for each case, the disposition of the objection.

Any objector who files and serves a timely written objection as described above may appear and speak at the Final Approval Hearing, either in person at their own expense or through personal counsel hired at the objector's expense, to object to the fairness, reasonableness, or adequacy of any aspect of the Settlement on the basis set forth in the written objection. As noted above, objectors or their attorneys who intend to make an appearance at the Final Approval Hearing must state their intention to appear in the objection.

An objector shall be entitled to all of the benefits of the Settlement if this Settlement Agreement and the terms contained herein are approved, as long as the objector complies with all requirements of this Settlement Agreement applicable to Settlement Class Members, including the timely and complete submission of a Claim Form and other requirements herein. A Settlement Class Member who objects can, on or before the Final Approval Hearing, withdraw their objection by submitting a written request to the Settlement Administrator stating their desire to withdraw their objection along with their signature.

**16. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND OPTING OUT?**

Objecting is simply telling the Court that you disagree with something about the Settlement Agreement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

**17. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?**

The Court will hold a Final Approval Hearing on September 27, 2023 at 10:00 a.m., at the United States District Court for the Eastern District of Pennsylvania at 601 Market St., Philadelphia, PA 19106, before Judge Gerald J. Pappert, to consider whether the Settlement is fair, adequate, and reasonable, and whether it should be finally approved. If there are objections, the Court will consider them at that time. The Court will also consider at this time Class Counsel's Motion for Attorneys' Fees, Costs and Service Awards.

**Important:** The date and time of the Final Approval Hearing may be changed by the Court. Please check the Settlement Website at [www.fuelplenumsettlement.com](http://www.fuelplenumsettlement.com) for updates.

Please note that Class Counsel is working on your behalf and will answer any questions that the Court may have about the Settlement. You are welcome to attend the Final Approval Hearing, but your appearance is not necessary to receive any benefits available under the Settlement.

**18. HOW DO I GET MORE INFORMATION?**

This Notice only summarizes the Settlement. The full Settlement Agreement and Exhibits (including copies of this Notice and the Claim Form) are located on the Settlement Website, [www.fuelplenumsettlement.com](http://www.fuelplenumsettlement.com).

If you need more information or have any questions, you may contact the Settlement Administrator via the Settlement Website, [www.fuelplenumsettlement.com](http://www.fuelplenumsettlement.com), by toll-free telephone at 1-855-664-1559, or by email at [info@fuelplenumsettlement.com](mailto:info@fuelplenumsettlement.com).

**PLEASE DO NOT WRITE OR CALL THE COURT, THE CLERK OF THE COURT, GENERAC, OR COUNSEL FOR GENERAC FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT.**

**19. WHAT IF MY INFORMATION CHANGES AFTER I SUBMITTED A CLAIM?**

It is your responsibility to inform the Settlement Administrator of your updated information. You may do so at the address below:

*McMahon v. Generac Power Systems* Settlement Administrator  
P.O. Box 301132  
Los Angeles, CA 90030-1132