

**IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA**

**PRESGAR IMAGING OF CMI NORTH, LC,
and BEACHES OPEN MRI OF TAMARAC,
LLC**, as assignees, individually, and on behalf of
all similarly situated persons,

Plaintiffs,

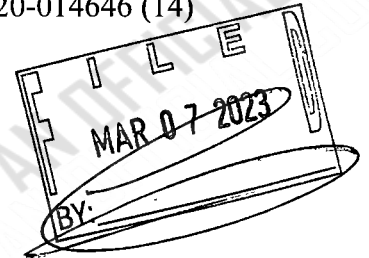
vs

**LM GENERAL INSURANCE COMPANY, et.
al.**,

Defendants.

CONSOLIDATED

Case Nos.: CACE-20-010138 (02)
CACE-20-013306 (18)
CACE-20-014759 (21)
CACE-20-014646 (14)



ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT

THIS CAUSE came before this Court on March 1, 2023, concerning the Joint Motion for Preliminary Approval of Class Settlement filed by the Plaintiffs, Presgar Imaging of CMI North, LC, Beaches Open MRI of Tamarac, LLC, and Beaches Open MRI of the Treasure Coast, LLC, as assignees, individually, and on behalf of all similarly situated persons, and as Class Representatives on behalf of a proposed Settlement Class, (collectively, the “Plaintiffs”), and Defendants LM General Insurance Company, Liberty Mutual Insurance Company, LM General Insurance Corporation, and The First Liberty Insurance Corporation (“Defendants” or “Liberty Mutual”). The Court, having considered the motion, the proposed settlement agreement, the arguments of counsel for the Plaintiffs and the Defendants, and the court-file, and being otherwise fully advised in the premises,

ORDERED AND ADJUDGED, as follows:

1. The Plaintiffs and the Defendants (collectively, the “Parties”), all acting by and through their respective counsel, have agreed, subject to Court approval, to settle this Action upon

the terms and conditions stated in the Class Action Settlement Agreement and Release (the “Agreement”).

2. The Agreement (including its Exhibits), attached hereto, is hereby incorporated by reference in this Order, and all terms defined in the Agreement will have the same meanings in this Order.

3. This Court has jurisdiction over all Settlement Class Members because one of the required criteria for defining the Settlement Class Members is that they are assignees of persons to whom Florida Automobile Insurance Policies were issued by the Defendants.

4. The Joint Motion for Preliminary Approval of Class Settlement is hereby granted, and the Court preliminarily approves the Agreement (including its Exhibits), finding that the Proposed Settlement is sufficiently fair, reasonable, and adequate to warrant providing notice to the Settlement Class. The Court finds that, for purposes of this agreed Settlement Class only, the class certification prerequisites set forth in Florida Rule of Civil Procedure 1.220 have been met for the purpose of the certification of a settlement class. By so doing, the Court does not take a position as to whether such class is appropriate for class certification in the event that the Proposed Settlement does not become final and the issue of class certification is contested.

5. For purposes of determining whether the terms of the Proposed Settlement should be finally approved as fair, reasonable and adequate, the following Settlement Class is preliminarily certified for settlement purposes only and is comprised of the following persons (“Settlement Class Members”):

Any person or entity (a) who is an assignee of an insured under a Florida automobile insurance Policy issued by any of the Defendants that provides coverage for PIP; (b) who provided services to an insured that were actually or potentially covered under the PIP coverage afforded to the insured; (c) who filed a claim for PIP benefits with one or more of the Defendants; (d) who did not receive payment of all or a portion of the claimed amount due to the applicable Defendant’s

determination that PIP benefits that otherwise may have been afforded for the claim had been exhausted upon the payment of \$10,000 in PIP benefits rather than \$12,500 in PIP benefits; and (e) whose claim was based upon services provided to the insured during the time period June 19, 2015 through the date of this Preliminary Approval Order.

Excluded from the Settlement Class are: (1) any in-house or outside counsel for Defendants and the immediate family members of such Persons; (2) employees of Defendants; (3) any members of the judiciary assigned to the Action and their staff; (4) the Parties' counsel in the Action; (5) any Persons with PIP claims which have already been fully paid or resolved, whether by direct payment, arbitration, release, or judgment, based upon the applicable Policy affording \$12,500 in potential maximum PIP benefits rather than \$10,000 in potential maximum PIP benefits; (6) any PIP claims of Persons who have provided any of the Defendants with a release of such PIP claims; (7) any PIP claims that are the subject of any lawsuit pending prior to the filing date of this Preliminary Approval Order; and (8) any Persons and/or claims otherwise excluded by Paragraphs 45, 47 and/or 53(b) of the Agreement.

6. The Court makes the following determinations as to certification of the Settlement

Class:

- a. The Court preliminarily and conditionally certifies the Settlement Class for purposes of settlement only, under Fla. R. Civ. P. 1.220(a) and (b)(3).
- b. The Settlement Class is so numerous that joinder of all members is impracticable;
- c. There are questions of law or fact common to the members of the Settlement Class;
- d. The claims of the Plaintiffs are typical of the claims of the other members of the Settlement Class;
- e. Plaintiffs are capable of fairly and adequately protecting the interests of the members of the Settlement Class, in connection with the Settlement Agreement;
- f. Common questions of law and fact predominate over questions affecting only individual members of the Settlement Class for purposes of enforcing

and implementing the Settlement Agreement;

- g. The Settlement Class, as defined, is ascertainable; and
- h. Resolution of the claims in this Action by way of a settlement class action is superior to other available methods for the fair and efficient resolution of the claims of the Settlement Class.

7. Plaintiffs are preliminarily appointed as representatives of the Settlement Class (“Class Representatives”), and the following attorneys are preliminarily appointed as counsel for the Settlement Class (“Class Counsel”):

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Secondary: service@simoelaw.com

8. The Court appoints KCC Class Action Services LLC to be responsible for performing the obligations of the Settlement Administrator under the Agreement.

9. The Parties have prepared a U.S. Mail Class Notice and an E-Mail Class Notice (which will incorporate the U.S. Mail Notice), which are attached to the Agreement (*see* Exhs. 1 and 2 to the Agreement). The Court has carefully reviewed and hereby approves the U.S. Mail Class Notice and an E-Mail Class Notice as to form and content and directs that they be without material alteration from those attached to the Agreement unless otherwise modified by agreement of the Parties and approved by the Court. The Court directs that the U.S. Mail Class Notice and the E-Mail Class Notice be sent to the potential Settlement Class Members as described and in the manner set forth in Section IV of the Agreement.

10. Class Notice to all Settlement Class Members is to be accomplished by U.S. Mail. In addition, for those Settlement Class Members for whom Defendants possess an e-mail address that is accessible to Defendants by electronic query in its records, Class Notice shall also be provided by e-mail. Defendants shall not be required to conduct any research, including any file-by-file review, to determine or obtain e-mail addresses. If an individual potential Settlement Class Member has submitted multiple claims, that potential Settlement Class Member need only be sent one U.S. Mail Class Notice and one E-Mail Class Notice (if an e-mail address is available); there is no requirement to send separate notices for each separate claim that the potential Settlement Class Member had submitted.

11. Class Notice will be sent to each Settlement Class Member for whom Defendants can reasonably ascertain a last known email and postal mailing address from a review of the Defendants' records, by email and by first class mail, postage pre-paid. If Defendants do not have an email address and/or a postal address for a Settlement Class Member, Defendants will provide

the Claims Administrator with the full name and EIN (if available) of the Settlement Class Member and the Claims Administrator shall take reasonable efforts to identify a valid address.

12. Within 60 days after the entry of this Preliminary Approval Order, Defendants shall: (a) make a reasonable search of its computer/electronic databases, and (b) shall provide the Claims Administrator with the name and current or last-known address, and email address provided pursuant to the limitations in Paragraph No. 40 of the Settlement Agreement, of each potential Settlement Class Member, and the date of loss for the Settlement Class Member's claim.

13. Within 90 days of the entry of this Preliminary Approval Order, the Claims Administrator shall initiate mailing of the Mail Notice by first-class mail to each potential Settlement Class Member, substantially in the form attached to the Settlement Agreement as Exhibit B ("U.S. Mail Notice").

14. Within 90 days of the entry of the Preliminary Approval Order, the Claims Administrator shall initiate emailing of the E-Mail Class Notice to all potential Settlement Class Members for whom an email address was provided, substantially in the form attached hereto as Exhibit A ("E-Mail Notice").

15. If any U.S. Mail Notice mailed to any potential Settlement Class Member is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each U.S. Mail Notice that is returned as undeliverable and provide copies of the log to Defendant and Class Counsel upon request. If the mailing is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the mailing to that address. The Court finds that the procedures set forth herein constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses of Settlement Class Members.

16. The Court preliminarily finds that the notice provided to potential Settlement Class Members: (a) is the best practicable notice; (b) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and of their right to object or

to exclude themselves from the Proposed Settlement; and (c) is reasonable and constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice.

17. Potential Settlement Class Members who wish to exclude themselves from the Settlement Class must submit timely, written requests for exclusion as set forth in the Settlement Agreement and the U.S. Mail Notice. To be effective, such a request must include the Settlement Class Member's name and address, a clear and unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class, and the signature of the Settlement Class Member or his or her Legally Authorized Representative. The request must be electronically filed with the Court not later than 120 days of the date of this Order, and must also be mailed to the Class Administrator and counsel for Plaintiffs and Defendants such that it is either postmarked not later than 120 days of the date of this Order, or if no postmark is applied, then received by the Class Administrator and counsel for Plaintiffs and Defendants not later than 15 days before the Fairness Hearing. No potential class member may affect an exclusion of a class or group of individuals.

18. No later than 10 days before the Fairness Hearing, the Settlement Administrator shall file proof of mailing of the U.S. Mail Class Notice, along with the Opt-Out List, which shall be a list of all Persons who timely and properly requested exclusion from the Settlement Class, and an affidavit or declaration attesting to the accuracy of the Opt-Out List.

19. Potential Class Members who submit timely and valid requests for exclusion in the manner set forth in the U.S. Mail Class Notice and the Settlement Agreement shall be excluded from the Settlement Class. Such Persons shall have no rights under the Proposed Settlement, shall not share in any distribution of funds under the Proposed Settlement, and shall not be bound by or otherwise affected by the Proposed Settlement or by any Final Order and Judgment approving the Proposed Settlement.

20. All Settlement Class Members who do not submit a timely, written request for exclusion in the manner set forth in the U.S. Mail Class Notice and Settlement Agreement shall be bound by any Final Order and Judgment entered, even if such Settlement Class Members never

received actual notice of this Action or this Proposed Settlement. If final approval of the Proposed Settlement is granted, Settlement Class Members who do not submit a timely, written request for exclusion, which meets the requirements of this Preliminary Approval Order, shall be barred, now and in the future, from asserting any of the Released Claims, as defined in the Agreement, against any Released Persons, as defined in the Agreement.

21. Settlement Class Members who do not request exclusion from the Settlement Class may object to the Proposed Settlement. Settlement Class Members who choose to object to the Proposed Settlement must file written notices of intent to object or intervene, as described in the Agreement and below. Any Settlement Class Member who has timely filed an objection in compliance with the Agreement and this Preliminary Approval Order may appear at the Fairness Hearing, in person or by counsel, and be heard to the extent allowed by the Court. The right to object to the Proposed Settlement must be exercised individually by an individual Settlement Class Member or his or her attorney or his or her Legally Authorized Representative, and not as a member of a group, class, or subclass.

22. To be timely, any objection or motion to intervene must be mailed to the Settlement Administrator, electronically filed with the Court, and electronically served on all counsel of record, all no later than 135 days of the date of this Order. Any untimely objection or motion to intervene may not be considered, at the discretion of the Court.

23. To be effective, a notice of intent to object to the Proposed Settlement must:

- a. Include the name of the case and case number;
- b. Provide the name, address, telephone number, and signature of the Settlement Class Member filing the objection;
- c. Indicate the specific reasons why the Settlement Class Member objects to the Proposed Settlement;
- d. Contain the name, address, bar number, and telephone number of the objecting Settlement Class Members' counsel, if represented by an attorney.

If the Settlement Class Member is represented by an attorney, he or she must comply with all applicable rules of the Court; and

- e. State whether the objecting Settlement Class Member intends to appear at the Fairness Hearing, either in person or through counsel.

Failure to comply with these requirements may result in the objection being overruled by the Court.

24. In addition, a notice of intent to object should contain the following additional information, if the Settlement Class Member or his/her or its attorney requests permission to speak at the Fairness Hearing:

- a. A detailed statement of the specific legal and factual basis for each objection;
- b. A list of any and all witnesses whom the Settlement Class Member may seek to call at the Fairness Hearing, with the address of each witness and a summary of his or her proposed testimony;
- c. A detailed description of any and all evidence the Settlement Class Member may seek to offer at the Fairness Hearing, including photocopies of any and all exhibits which the objector may seek to introduce at the Fairness Hearing;
- d. A list of any legal authority the Settlement Class Member will present at the Fairness Hearing; and
- e. Documentary proof of membership in the Settlement Class.

Failure to comply with these requirements may result in the Court denying the Settlement Class Member or his/her or its attorney the ability to speak at the Fairness Hearing. However, if the

ability to speak is denied, the Court will nonetheless consider any and all timely and complete written objections submitted by or on behalf of the Settlement Class Member.

25. Settlement Class Members have the right to exclude themselves from the Proposed Settlement and pursue a separate and independent remedy against the Defendant by complying with the exclusion provisions set forth herein. Settlement Class Members who object to the Proposed Settlement shall remain Settlement Class Members, and they waive their right to pursue an independent remedy against the Defendant. To the extent any Settlement Class Member objects to the Proposed Settlement, and such objection is overruled, such Settlement Class Member will be forever bound by the Final Order and Judgment of the Court.

26. The Settlement Administrator shall receive requests for exclusion, objections, notices of intention to appear, and any other settlement-related communications from potential Settlement Class Members, and provides that only the Settlement Administrator shall have access to the post office box or other address to which such communications are to be sent, except as otherwise expressly provided in the Agreement or by further order of the Court. The Settlement Administrator shall promptly furnish by email to Class Counsel and counsel for Defendant copies of any and all objections, written requests for exclusion, motions to intervene, notices of intention to appear, or all other communications from potential Settlement Class Members that come into its possession.

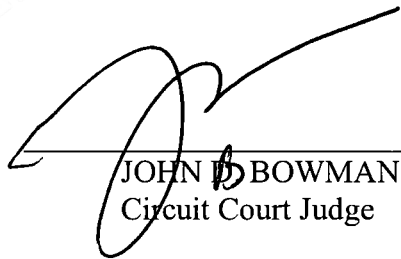
27. The Court will hold a Fairness Hearing to consider the fairness, reasonableness, and adequacy of the Proposed Settlement on September 18, 2023 at 2:00 PM at the Broward County Courthouse, 201 SE 6th St., Fort Lauderdale, Florida 33301, in Room 15165, or, in the alternative, via the Court's Zoom platform. During the Fairness Hearing, the Court will consider whether the Proposed Settlement described in the Agreement should be approved as fair,

reasonable, and adequate, and whether the Court should enter the proposed Final Order and Judgment approving the Proposed Settlement and dismissing this Action on the merits, with prejudice. The Court will also consider whether to make and the amount of any Service Awards to the Class Representatives.

28. The Proposed Settlement shall not be deemed an admission or concession by the Parties as to the truth or accuracy of any of the allegations made in the Action, as to any liability, fault, or wrongdoing of any kind whatsoever, and as to whether the Action should be certified for class treatment regarding any of the allegations concerning the merits of the Plaintiffs' claims or the Defendants' defenses.

29. Except for activities performed to comply with this Preliminary Approval Order, the Class Notice, and/or the Agreement, the Court stays all other proceedings in this Action until further order of the Court.

DONE and ORDERED in Chambers, at Broward County, Florida this 4 day of March, 2023.



JOHN D. BOWMAN
Circuit Court Judge

Cc All counsel of record