

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

CASE NO. CACE13018792 DIVISION 08 JUDGE David A Haimes

GAIL PIERCE

Plaintiff(s) / Petitioner(s)

v.

ALLSTATE INSURANCE COMPANY

Defendant(s) / Respondent(s)

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FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

THIS CAUSE came before the Court on September 14, 2020, concerning the parties' joint motion for final approval of class action settlement agreement and stipulation.

WHEREAS, this action having been filed in this Court as a class action ("the Action");

WHEREAS, the parties have entered into a Class Action Settlement Agreement and Stipulation dated February 18, 2020, and amended on March 26, 2020, which together with the Exhibits attached thereto, sets the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendants upon the terms and conditions set forth therein ("the Settlement Agreement");

WHEREAS, Defendants deny that they have committed any wrongful acts or breached any duties as alleged in the Action, and the settlement of the Action does not constitute any such admission; and

WHEREAS, this matter having come before the Court for hearing, pursuant to the Order of this Court, dated April 29, 2020 (the "Preliminary Approval Order"), on the parties' joint motion for preliminary approval of the Settlement Agreement, and due and adequate notice having been given to the Settlement Class as defined below as required by the Preliminary Approval Order, and confirmatory discovery having been done to ensure the settlement is fair, adequate and reasonable, the Court having considered all papers filed and proceedings herein and otherwise being fully informed in the premises, and good cause appearing, it is therefore ORDERED, ADJUDGED AND DECREED THAT:

1. The capitalized terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement and in the Preliminary Approval Order.
2. This Court has jurisdiction over the subject matter of this Action and over all parties to this Action, including all Settlement Class Members.
3. The Court has reviewed the two Notices of Intent to Object and Notices of Intent to Intervene and Motions to Intervene filed on behalf of Millennium Diagnostic Imaging Center, Inc., and Oasis Diagnostic Center, Inc. on August 3, 2020 (the "Objections"), and the two Amended Notices of Intent to Object and Notices of Intent to Intervene and Motions to Intervene filed on behalf of those same entities on August 4, 2020 (the "Amended Objections"). Pursuant to the parties' representations, the Objections and Amended Objections have been settled. Millennium Diagnostic Imaging Center, Inc., and Oasis Diagnostic Center, Inc. have withdrawn their Objections and Amended Objections. As reflected in Appendix 1, Millennium Diagnostic Imaging Center, Inc., and Oasis Diagnostic Center, Inc. shall be deemed to have elected to opt-out of the Settlement Agreement as if they had filed timely opt-out notices.
4. The Court previously gave its preliminary approval to the Settlement Agreement. The Court hereby gives its final approval to the settlement set forth in the Settlement

Agreement, finds that said Settlement Agreement is in full compliance with all applicable requirements of the Florida Rules of Civil Procedure and any other applicable rules or law, and, in all respects, is fair, reasonable and adequate to, and in the best interests of, the Settlement Class, and hereby directs that it shall be effectuated in accordance with its terms. The Settlement Agreement is the result of lengthy, adversarial, arms-length negotiations and is not the product of collusion between the parties. It has been entered into in good faith and is in the best interests of Class Representative and the Class Members. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth, and shall have the full force of an Order of this Court.

5. The notices of the settlement pursuant to the Preliminary Approval Order and the Settlement Agreement were the best notices practicable under the circumstances. Said notices provided valid, due and sufficient notice of those proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfies the requirements of Rule 1.220 of the Florida Rules of Civil Procedure and of Due Process.

6. The Settlement Class certified for settlement purposes was defines as:

“EIP Class Members” and “Provider Class Members,” including “Allstate Post-Review Settlement Subclass Members.”

EIP Class Members are persons who were or are:

- i. An Eligible Injured Person under a Defendant Florida Auto Policy;
- ii. Where the Eligible Injured Person was injured in an automobile accident covered by the PIP coverage of a Defendant Florida Auto Policy which was governed by Florida law and the Florida PIP statute;

- iii. Where the PIP coverage for such Eligible Injured Person was subject to a PIP deductible;
and

- iv. Where payment of PIP benefits was calculated by applying the PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the full amount billed for medical services rendered to the Eligible Injured person.

Provider Class Members are persons or entities who were or are:

- i. An assignee of an Eligible Injured Person under a Defendant Florida Auto Policy;

- ii. Where the Eligible Injured Person was injured in an automobile accident covered by the PIP coverage of a Defendant Florida Auto Policy which was governed by Florida law and the Florida PIP statute;

- iii. Where the PIP coverage for such Eligible Injured Person was subject to a PIP deductible;
and

- iv. Where payment of PIP benefits was calculated by applying the PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the full amount billed for medical services rendered to the Eligible Injured Person.

The Allstate Post-Review Settlement Subclass Members (“Subclass Members”) are EIP Class Members or Provider Class Members whose payment of PIP benefits;

- i. was calculated by applying the PIP deductible, or portion thereof, to a statutorily

authorized limitation amount as opposed to the full amount billed for medical services rendered to the Eligible Injured Person;

ii. was determined on or after March 8, 2018 and before December 29, 2018;

iii. and was not remediated under the Allstate Deductible Mitigation Plan, as described in the Agreement.

7. Excluded from the Settlement Class are: (a) the Defendant Insurers and any parent, subsidiary, affiliate, or controlled person of Defendant Insurers, as well as the officers and directors of Defendant Insurers; and (b) any trial judge that may preside over the Action. Additionally, certain claims of Class Members shall not be entitled to any payment under this Settlement ("Claim Exclusions") as follows:

- i. any actual claim for benefits specifically alleging an improper payment of PIP benefits due to application of a PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the amount billed for medical services rendered to the Eligible Injured Person that was asserted against one of the Defendant Insurers that has been adjudicated, released, settled, or otherwise lawfully satisfied or discharged prior to the date of the Agreement;
- ii. any claim that was paid in response to a pre-suit demand subsequent to an initial denial of coverage;
- iii. any claim which was paid by a Defendant Insurer pursuant to the "Allstate Deductible Mitigation Plan" or "Encompass Deductible Mitigation Plan" as described herein and more fully explained in the Agreement, which is on file in this case with the Circuit Court of Broward County and available for review as described herein;
- iv. any bill for which no PIP coverage is applicable;
- v. any bill which was a duplicate of any bill previously submitted to a Defendant Insurer, for the same services rendered to the same Eligible Injured Person for the same date of service;
- vi. any claim where the available benefits of the Eligible Injured Person have been exhausted; and
- vii. all claims against a Defendant Insurer under a Florida Auto Policy that on the date of Preliminary Approval of this Settlement are the subject of a Deductible Lawsuit, unless such claimant should affirmatively elect to include such claims for payment under this settlement as provided in the Agreement.

The “Allstate Deductible Mitigation Plan” shall refer to the Allstate Defendants’ payments, beginning on December 31, 2018, of additional amounts for claims where there had been a previous application of a PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the amount billed for medical services rendered to the Eligible Injured Person. The “Encompass Deductible Mitigation Plan” shall refer to the Encompass Defendants’ payments on April 8, 2019 of additional amounts for claims where there had been a previous application of a PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the amount billed for medical services rendered to the Eligible Injured Person.

8. Also excluded from the Settlement Class are those persons who have submitted valid and timely requests for exclusion pursuant to the Preliminary Approval Order and the Class Notices sent to Settlement Class Members. Annexed hereto as Appendix 1 is a schedule of all such persons requesting exclusion, who are herewith excluded from the Settlement Class.
9. As previously noted, all claims against a Defendant Insurer under a Florida Auto Policy that on the date of Preliminary Approval of this Settlement which were the subject of a Deductible Lawsuit are excluded unless a claimant affirmatively elected to include such claims for payment under this settlement. No such requests for inclusion were received.
10. The Settlement Claim Forms and claims process is approved as simple, fair, reasonable, and adequate. The Court further finds that Class Members have a reasonable and ample time in which to complete and submit the Claim Forms.
11. The Settlement Payments to be made to the members of the Settlement Class pursuant to ¶¶ 23-24 of the Settlement Agreement shall be paid to Class Members submitting valid Claim Forms by check made payable to Class Member as described in ¶¶ 24 and 37 of the Settlement Agreement. The Settlement Payments to be made to Allstate Post-

Review Settlement Subclass Members pursuant to ¶¶ 17-18 shall be paid by check made payable to Allstate Post-Review Settlement Subclass Member as described in ¶ 24.

12. The Court finds that Class Counsel and Class Representative have fully and adequately represented the Class for purposes of entering into and implementing the settlement and have satisfied the requirements of Fla. R. Civ. P. 1.220.
13. Subject to the terms and conditions of the Settlement Agreement and the Court's reservation of jurisdiction set forth in ¶ 19 herein, this Court hereby dismisses the Action on the merits and with prejudice.
14. Upon the Settlement Effective Date defined in ¶ 1.30 of the Settlement Agreement, the Class Representatives and each and every Settlement Class Member who has not timely filed a request to be excluded from the Settlement Class, and his, her or its heirs, trustees, personal representatives, beneficiaries, successors and assigns hereby covenant and agree that the Defendants, individually and collectively and their officers, directors, members, agents, attorneys, and employees, whether present or former, shall be forever released and fully and finally discharged from any and all liability for any and all claims that were or could have been asserted by or on behalf of any Class Members against Defendants, and that arose prior to the date the Court entered the Order granting Preliminary Approval of this Agreement, arising out of or related to the Defendants' application of a PIP deductible, or portion thereof, to a statutorily authorized limitation amount as opposed to the amount billed for medical services rendered to the Eligible Injured Person, regardless of the legal theory or factual basis for the claim, including but not limited to claims, tort claims, contract claim, claims for violation of Section 627.736, Florida Statutes, claims for unfair business practices, claims for statutory or common law bad faith, or claims for punitive or exemplary damages,

equitable relief, costs, interest and/or attorneys' fees. However, this release does not apply to Deductible Lawsuits pending at the time of Preliminary Approval of this Settlement as to which a Class Member has chosen not to opt in to this Settlement, or any claims which are excluded from the scope of the Settlement Agreement under paragraphs 1.1 through 1.14.7.

15. The Court enters judgment on Defendants' Counterclaim for Declaratory Judgment in favor of Defendants, declaring that Defendants' Deductible Mitigation Plans properly calculated PIP benefits payable under policies with a PIP deductible under Florida law by applying a PIP deductible, or portion thereof, to the amount billed for medical services rendered to the Eligible Injured Person as opposed to a statutorily authorized limitation amount.
16. The Court awards the payment by Defendants of attorneys' fees and expenses in the amount of Four Hundred Twenty Five Thousand Dollars (\$425,000.00) to Class Counsel. Such payment shall be sent by wire transfer issued by the Defendants within thirty (30) business days after the Final Judgment becomes Final as defined in the Settlement Agreement, to Lawrence M. Kopelman, 7900 Peters Road, Suite B200, Fort Lauderdale, FL 33324-4023, and Grygiel Law, LLC, 301 Warren Avenue, #405, Baltimore, MD 21230.
17. The Court awards the payment by Defendants of Ten Thousand Dollars (\$10,000.00) to Class Representative, Gail Pierce, as an incentive award for taking on the risks of litigation and helping to achieve the results to be made available to the Settlement Class, in accordance with the provisions of ¶ 3.8 of the Settlement Agreement. Such payment shall be sent by wire transfer by the Defendants within thirty (30) business days after the Final Judgment becomes Final as defined by the Settlement Agreement, to Lawrence M. Kopelman, 7900 Peters Road, Suite B200, Fort Lauderdale, FL 33324-

4023. Mr. Kopelman shall be responsible for disbursing those funds to the Class Representative.
18. The parties shall bear their own costs and attorneys' fees, except as otherwise provided in the Settlement Agreement and this Order.
 19. The Court hereby directs the entry of this Final Judgment and order of Dismissal with Prejudice based upon the Court's finding that there is no just reason for delay of enforcement or appeal of this Final Judgment and Order of Approval notwithstanding the Court's retention of jurisdiction to oversee implementation and enforcement of the Settlement Agreement.
 20. This Final Judgment and order of Dismissal With Prejudice, the Settlement Agreement, the settlement that it reflects, and any and all acts, statements, documents, or proceedings relating to the Settlement Agreement are not, and shall not be construed as, or used as an admission by or against Defendants of any fault, wrongdoing, or liability on any Defendant's part, or of the validity of any claim or of the existence or amount of damages.
 21. Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over, inter alia, (a) implementation, enforcement, and administration of the Settlement Agreement, including any releases in connection therewith; (b) resolution of any disputes concerning class membership or entitlement to benefits under the terms of the Settlement Agreement; and (c) all parties hereto, for the purpose of enforcing and administering the Settlement Agreement and the Action until each and every act agreed to be performed by the parties has been performed pursuant to the Settlement Agreement.
 22. The Court finds that the parties and their counsel have expressed no opinions concerning the tax consequences of the settlement to Class Members and have made

no representations, warranties or other assurances regarding any such consequences. No opinions, representations, warranties, or other assurances shall be deemed to have been made by the parties or their counsel with respect to any such tax consequences by virtue of the Settlement Agreement or by effectuating the settlement, and the parties and their counsel shall not be responsible or liable for any such tax consequences that may occur.

DONE and ORDERED in Chambers, at Broward County, Florida on 09-16-2020.

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Hon. David A Haimes

CIRCUIT JUDGE

Electronically Signed by David A Haimes

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