

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

CASE NO. CACE 20-010138 (Div. 2)

PRESGAR IMAGING OF CMI NORTH,
L.C. and BEACHES OPEN MRI OF
TAMARAC, LLC, as assignees, individually,
And on behalf of all similarly situated persons,

Plaintiffs,

v.

LM GENERAL INSURANCE COMPANY,

Defendant.
_____ /

BEACHES OPEN MRI OF TAMARAC, LLC,
as assignee, individually,
and on behalf of all similarly situated persons,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant.
_____ /

PRESGAR IMAGING OF CMI NORTH, L.C.,
d/b/a CMI NORTH as assignee, individually,
and on behalf of all similarly situated persons,

Plaintiff,

v.

LM INSURANCE CORPORATION,

Defendant.
_____ /

**CONSOLIDATED WITH:
CASE NO. CACE 20-013306**

**CONSOLIDATED WITH:
CASE NO. CACE 20-014646**

BEACHES OPEN MRI OF THE TREASURE
COAST, LLC, as assignees, individually,
and on behalf of all similarly situated persons,

**CONSOLIDATED WITH:
CASE NO. CACE-20-014759**

Plaintiffs,

v.

THE FIRST LIBERTY INSURANCE
CORPORATION,

Defendant.
_____ /

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made by and between the Named Class Plaintiffs, Presgar Imaging of CMI North, L.C. (“Presgar”); Beaches Open MRI of Tamarac, LLC (“Beaches Tamarac”); and Beaches Open MRI of the Treasure Coast, LLC (“Beaches Treasure”) (collectively, “Plaintiffs”), on behalf of themselves and on behalf of all others similarly situated, and Defendants LM General Insurance Company (“LM General”); Liberty Mutual Insurance Company (“Liberty Mutual”); LM Insurance Corp. (“LM Corp.”) and The First Liberty Insurance Corporation (“First Liberty”) (collectively, “Defendants”).

RECITALS

WHEREAS, Plaintiffs (individually or in a combination of two), filed the following class action lawsuits, which are now pending in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida (the “Court”):

(a) *Presgar and Beaches Tamarac v. LM General Insurance Company*, No. CACE 20-010138 (the “LM General Action”);

(b) *Beaches Tamarac v. Liberty Mutual Insurance Company*, No. CACE 20-013306 (the “Liberty Mutual Action”);

(c) *Presgar v. LM Corp.*, No. CACE 20-014646 (the “LM Corp. Action”);

(d) *Beaches Treasure v. First Liberty*, No. CACE 20-014759 (the “First Liberty Action”); and

WHEREAS, the Court consolidated the LM General Action, the Liberty Mutual Action, the LM Corp. Action and the First Liberty Action (the “Consolidated Actions”);

WHEREAS, the parties entered into a “Class Action Settlement Term Sheet” dated June 15, 2022, after formally mediating the Consolidated Actions on October 13, 2021 and Defendants agreeing to and later providing confidential claims data in April 2022; and

WHEREAS, through this Proposed Settlement, these referenced lawsuits, as modified by the expansion of the definition of the Settlement Class in each Action as described below, will be accepted as certified class actions for settlement purposes only on behalf of the Settlement Class; and

WHEREAS, Plaintiffs allege that they and all members of the putative Settlement Class were assignees of insureds with respect to Personal Injury Protection (“PIP”) claims that the insureds asserted stemming from automobile crashes involving vehicles insured by Defendants; and

WHEREAS, Plaintiffs allege that Defendants’ policies required Defendants to pay a maximum of \$12,500 in PIP benefits rather than a maximum of \$10,000; that Defendants failed to pay the PIP claims based upon a maximum of \$12,500 in PIP benefits rather than a maximum of \$10,000; and that Plaintiffs and putative class members were damaged by the failure to pay PIP benefits based upon a maximum of \$12,500 rather than a maximum of \$10,000; and

WHEREAS, Defendants have defended and vigorously contested each and every claim in the Action, deny that they breached the Policies, and further maintain that they have consistently

acted in accordance with the Policies and governing laws at all times; and

WHEREAS, Plaintiffs, through counsel, while believing that the claims asserted in the Consolidated Actions have substantial merit, examined the benefits to be obtained under the terms of the Proposed Settlement, considered the risks associated with the continued prosecution and possible appeal of this complex and time-consuming litigation, and the likelihood of success on the merits of the Consolidated Actions, and believe that, in consideration of all the circumstances, the Proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members; and

WHEREAS, Defendants, while denying wrongdoing of any kind whatsoever, and without admitting liability, nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation, and to be completely free of any further controversy with respect to the claims that were asserted in the Consolidated Actions;

NOW, THEREFORE, IT IS HEREBY AGREED by and between Plaintiffs and Defendants (collectively, the “Parties”) that the Consolidated Actions be settled and compromised as between the Plaintiffs, the Settlement Class, and Defendants upon approval of the Court after hearing as provided for in this Agreement, on the following terms and conditions:

I. DEFINITIONS

The following terms shall have the meanings set forth below:

1. “Agreement” means this Class Action Settlement Agreement, including all exhibits thereto.

2. “Claims Administrator” means the firm approved by the Court to administer all aspects of the Settlement. The Parties agree to jointly recommend to the Court that KCC Class Action Services LLC be appointed as the Claims Administrator.
3. “Class Counsel” means: J. Daniel Clark, Esq. of Clark & Martino, P.A. and David M. Caldevilla, Esq. of de la Parte & Gilbert (Lead Class Counsel), along with Thomas J. Wenzel, Esq. of Steinger, Greene & Feiner, Chad A. Barr, Esq. of Chad Barr Law, and Kimberly P. Simoes of The Simoes Law Group, P.A.
4. “Class Notice” means the notice provided to the Settlement Class as provided in Section IV of this Agreement.
5. “Class Period” means the period commencing June 19, 2015 through the date of the Preliminary Approval Order.
6. “Court” means the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida.
7. “E-mail Notice” means class notice by e-mail in substantially the same form as set out in Exhibit A to be sent to all Settlement Class Members for whom Defendants possess an e-mail address that is accessible by Defendant by electronic query in its records.
8. “Final Judgment” means the Court’s Final Approval Order and Final Judgment, which finally approves the Settlement and dismisses the Consolidated Actions with prejudice with respect to the Settlement Class Member Claims.
9. “Final Settlement Hearing” means any settlement approval hearing to be conducted by the Court in connection with the determination of the fairness, adequacy, and reasonableness of this Agreement, in accordance with the applicable Rules of Civil Procedure.

10. "Initial Notice Date" means the date upon which the notice of this Proposed Settlement is first mailed to Settlement Class Members pursuant to this Agreement, as further described below.
11. "Legally Authorized Representative" means: an administrator/administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member's estate; a legally-appointed guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other legally-appointed Person responsible for handling the business affairs of a Settlement Class Member.
12. "Mail Notice" means class notice by Mail to all Settlement Class Members in substantially the same form as set out in Exhibit B.
13. "Named Plaintiffs" means Presgar, Beaches Tamarac and Beaches Treasure.
14. "Opt-Out Period" means the time period during which Settlement Class Members are permitted to exclude themselves from the Settlement Class, as set forth in Section XI.
15. "Parties" means the Named Plaintiffs and Defendants.
16. "Person" means any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.
17. "PIP" means Personal Injury Protection insurance coverage.
18. "Policy" or "Policies" means a Florida private passenger auto policy issued by any of the Defendants, in effect during the Class Period, providing PIP coverage for a private passenger automobile using form number AS 2090 01 13 or a different form number using the same or substantially the same language regarding PIP coverage.

19. "Preliminary Approval Order" means the order that preliminarily approves the Proposed Settlement, which shall be in the form attached as Exhibit C to this Agreement, without material alteration, as further provided in Section III below.
20. "Proposed Settlement" means the terms agreed to by the Parties as set forth in this Agreement, prior to final court approval of the proposed settlement set forth herein.
21. "Qualifying Claim" means a Settlement Class Member Claim.
22. "Release" means those Releases set forth in Section XIV, which all Settlement Class Members who do not choose to exclude themselves from this Settlement will be deemed to have executed upon final approval of this Settlement.
23. "Released Claims" means those claims set forth in Section XIV which all Settlement Class Members who do not choose to exclude themselves from this Settlement will be deemed to have released upon final approval of this Settlement.
24. "Released Parties" means all Defendants, as defined above, and each of its present and former officers, directors, employees, insurers, attorneys, assigns, and/or anyone acting or purporting to act for it or on its behalf.
25. "Settlement" means the terms and conditions of the Agreement reached by the Parties.
26. "Settlement Class" means all Settlement Class Members who had a Settlement Class Member Claim.
27. "Settlement Class Member" means a Person who had a Settlement Class Member Claim.
28. "Settlement Class Member Claim" means a first-party claim for PIP benefits made by or on behalf of a Person:

(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; and

(c) 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

(d) Whose claim was based upon services provided to the insured during the Class Period;

except for Persons and/or claims excluded by Paragraphs 32, 45, 47, and/or 53(b) of this Agreement

29. "Settlement Class Payment" means the payments to Settlement Class Members described in Section VI below.

30. "Defendants" mean LM General Insurance Company, Liberty Mutual Insurance Company, LM Insurance Corp. and The First Liberty Insurance Corporation.

II. THE SETTLEMENT CLASS

31. Settlement Class Members will be identified exclusively based on information in Defendants' own records. Defendants are not required to do an individualized claim-by-claim review of all of their PIP claims within the Class Period. Rather, Defendants may rely on the electronic data maintained by Defendants in the regular course of their

business with regard to such claims. Class Counsel shall be entitled to reasonable confirmatory discovery of the information provided by Defendants. The discovery shall be comprised of affidavits to be provided by Defendants, which shall verify the information to be provided and depositions or face-to-face meetings if needed to complete Class Counsel's due diligence, which shall be agreed to by the Parties and, if an agreement cannot be reached, as ordered by the Court.

32. 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; and (7) any PIP claims that are the subject of any lawsuit pending prior to the filing date of the "Preliminary Approval Order."

III. PRELIMINARY CLASS CERTIFICATION

33. Upon execution of this Agreement, the Parties shall submit this Agreement to the Court and request the Court to enter a Preliminary Approval Order, preliminarily approving the certification of the Settlement Class and the Proposed Settlement, which shall be substantially in the form set forth in Exhibit C.

34. For purposes of this Proposed Settlement only, the Parties stipulate and agree to the certification of the Settlement Class defined in this Agreement and that: (i) the proposed

Settlement Class meets the requirements of Fla. R. Civ. P. 1.220(a) and (b)(3); (ii) the proposed Class Notice is the best and most practicable notice under the circumstances, and satisfies the requirements of Fla. R. Civ. P. 1.220 and due process; and (iii) the terms of the Proposed Settlement are fair and reasonable. For purposes of the Proposed Settlement, the Named Plaintiffs are agreed upon as suitable and adequate Class Representatives.

35. Preliminary certification of the Settlement Class, appointment of the Named Plaintiffs as representatives of the Settlement Class, and appointment of Class Counsel by the Court shall be binding only with respect to the Settlement of the Action. In the event this Agreement is terminated pursuant to its terms, or a Final Judgment approving the Settlement for any reason does not occur, the certification of the Settlement Class shall be nullified, and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to the Court's consideration, on the merits, of any properly submitted Motion for Class Certification. The Named Plaintiffs and Class Counsel agree that neither this Agreement nor any pleading or other paper related in any way to this Agreement, nor any act or communication in the course of negotiating, implementing or seeking approval of this Agreement, shall be deemed an admission by the Named Plaintiffs, Class Counsel, or Defendants of any matter related in any manner thereto, or by Defendants that certification of any class is appropriate in this Action or any other litigation, or otherwise shall preclude Defendants from opposing or asserting any argument it may have with respect to certification of a class in this Action or any other matter.

36. Upon the Preliminary Approval of this Proposed Settlement by the Court, as evidenced by entry of the Preliminary Approval Order, all proceedings in the Consolidated Actions shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement the Settlement or to comply with or effectuate the terms of this Agreement.

IV. CLASS NOTICE, COSTS OF CLASS NOTICE, AND ADMINISTRATION OF SETTLEMENT

37. The Parties agree to recommend to the Court KCC Class Action Services LLC as Claims Administrator, which entity will be designated as the “Claims Administrator.” The Claims Administrator shall (i) oversee the provision of the Class Notice; (ii) oversee identification of addresses for any returned mail, and remaining notice; (iii) forward inquiries and questions to Class Counsel; and (iv) provide a certification to the Court regarding the administration and processing of claims and, in the event that the Claims Administrator issues checks, the issuance of the Settlement Class Payments as set forth herein. The Claims Administrator shall be paid by Defendants for services rendered pursuant to this Agreement.

38. Notice of the pendency of the Action and of the Settlement shall be made by the Class Notice, which will be sent by the Claims Administrator.

39. 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. All costs and expenses of Class Notice shall be paid by Defendants.

40. Class Notice will be sent to each Settlement Class Member for whom Defendants can reasonably ascertain a last known mailing address from a review of its records, by first class mail, postage pre-paid, addressed to the Settlement Class Member's last known address, if any, as shown by the records of Defendants. If Defendants do not have an 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. 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.
41. Within 60 days after the entry of the Preliminary Approval Order, Defendants shall: (a) make a reasonable search of its computer/electronic databases, (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 herein, of each potential Settlement Class Member, and the date of loss for the Settlement Class Member's claim; and (c) for those Settlement Class Member Claims for which claims data sufficient to identify claim payments has not been previously produced to Class Counsel, shall produce to Class Counsel the claims data including the same electronic computer fields as contained in the preliminary spreadsheet of potential class members previously provided to Class Counsel during settlement negotiations in March 2022.

42. Within 90 days of the entry of the 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 hereto as Exhibit B (Mail Notice).
43. Within 90 days of the entry of the Preliminary Approval Order, the Claims Administrator shall initiate emailing of the Email Notice to all potential Settlement Class Members for whom an email address was provided, substantially in the form attached hereto as Exhibit A (Email Notice).
44. Neither Defendants, nor Plaintiffs, nor any of their counsel, shall be liable for any act, or failure to act, of the Claims Administrator.

V. CLAIM PROCEDURE/ ELIGIBILITY

45. To be eligible for payment under this Settlement, a Settlement Class Member must have a Qualifying Claim and must not have submitted a request for exclusion. In addition, in the event that a Settlement Class Member is a business entity (as opposed to a natural person), said business entity must, as of the date of the Preliminary Approval Order, not be inactive, dissolved, defunct, or otherwise unable to lawfully file a lawsuit in its own name under Florida law. Any business entity that is, as of the date of the Preliminary Approval Order, inactive, dissolved, defunct, or otherwise unable to lawfully file a lawsuit in its own name under Florida law is not a Settlement Class Member and shall be deemed excluded from, and unaffected by, this Agreement.

VI. CALCULATION OF PAYMENTS AND DEFENDANTS' MONETARY OBLIGATION UNDER THE SETTLEMENT

46. Subject to the terms of paragraph 47 below, Payments to a Settlement Class Member shall be calculated as follows:

- (i) Each Settlement Class Member shall be paid by direct payment, without the need for any proof of claim process, an amount calculated in the following manner:
 - (a) for each individual claim/exposure within the Class Period, Defendants shall first determine all bills that were not paid because benefits were determined to have been exhausted at \$10,000 for that claim/exposure, and shall determine the chronological order in which the bills were received by Defendants; (b) for each such bill, the amount of the bill to be considered when paying any benefits under this settlement shall be the applicable fee schedule amount identified by Fla. Stat. § 627.736(5)(a)1 a through f and 5(a)2; (c) for each claim/exposure, an additional \$2500 shall be made available as additional PIP benefits potentially payable for the bills that were submitted but not previously paid because of exhaustion at \$10,000; (d) benefits shall be paid for each bill by multiplying the applicable fee schedule amount identified by Fla. Stat. § 627.736(5)(a)1.a through f and (5)(a)2 by 85%, until such time that all bills within a claim/exposure have been paid using this formula or until such time that the \$2500 of additional PIP benefits has been exhausted, whichever comes first; (e) when calculating benefits within each claim/exposure, bills shall be considered in chronological order on “first in first out” basis; (f) no statutory interest, penalty or any other additional amount shall be included in the payments made to the Settlement Class Members. For sake of clarity, the amount in part (e) of this paragraph is the applicable statutory fee

schedule amount (per Section 627.736(5)(a)1.a through f and (5)(a)2) multiplied by the 80% contemplated by the terms of Section 627.736(5)(a)1, and then further multiplied by 85%.

(ii) All amounts paid for any bills under this settlement shall be considered to be payments of PIP benefits under the Policy applicable to the particular claim to which the bill is assigned, such that those payments shall count towards the exhaustion of any PIP benefits afforded by the Policy at issue.

(iii) In the event that potential class members opt out of the settlement, bills for those potential class members shall not be considered when determining the payments pursuant to this paragraph; notwithstanding, payments made for Settlement Class Members who are chronologically later than potential class members who opt out shall be considered towards exhaustion of the additional \$2500 as if the bills of those later-in-time Settlement Class Members were received before the potential class members who opt out, such that the additional \$2500 in benefits afforded by this settlement may be exhausted by payments to Settlement Class Members whose bills were actually received later than, but are considered to have been received before, bills from potential class members who opt out.

47. Prior to actually issuing any settlement checks, the Claims Administrator (or Defendants themselves if they choose to do so, or a combination of both) (collectively, the "Status Reviewer") shall review the records of the Florida Secretary of State or other similar source to determine the legal status of all Settlement Class Members who are otherwise eligible to receive a settlement check under the terms of this Settlement

Agreement. In the event that the Status Reviewer is able to determine that a Settlement Class Member does not have the appropriate legal status pursuant to paragraph 45 above, then the Status Reviewer shall notify Plaintiffs' counsel and Defendants' counsel of such a preliminary determination. That preliminary determination shall become final for purposes of this Settlement Agreement unless either: (a) within five (5) business days of the notification Plaintiffs' counsel and Defendants' counsel both agree and advise the Status Reviewer that both Plaintiffs and Defendants agree that the Claims Administrator's preliminary determination is incorrect; or (b) either Plaintiffs' counsel or Defendants' counsel files a motion with the Court asking the Court to make a determination as to the Settlement Class Member's eligibility to receive a settlement payment. If a Settlement Class Member is determined to be ineligible to receive a payment because of the Settlement Class Member's legal status (either through the determination of the Status Reviewer, agreement of the parties, or determination of the Court), then that Settlement Class Member shall not be entitled to receive payment under this Settlement Agreement, and instead, that Settlement Class Member shall be treated as if that Settlement Class Member had opted out of this Settlement Agreement pursuant to Section XI herein, and payments shall be handled in accordance with paragraph 46 above. Once a determination of a Settlement Class Member's legal status has been made (either through the determination of the Status Reviewer, agreement of the parties, or determination of the Court), that determination as to the legal status of the Settlement Class Member shall be final and determinative of that Settlement Class Member's eligibility to receive a settlement payment, even if that decision is determined at any later point to have been incorrect, and neither Plaintiffs nor

Defendants shall in any way be liable to the affected Settlement Class Member regarding that determination. The Status Reviewer's costs incurred in this process (as with all of other Claims Administrator costs) shall be borne by Defendants.

48. Except for incentive award payments as set forth herein to the Named Plaintiffs and attorneys' fees, costs, and expenses, no additional sums shall be paid to the Settlement Class Members pursuant to this Settlement.

49. All coverage terms or payment limitations provided for under the Defendants' Policies and the Florida Statutes applicable to the Settlement Class Members' claims shall continue to apply, except as provided herein.

50. Any disputes asserted by a Settlement Class Member as to amounts paid on individual settlement claims shall be submitted to the Court for resolution.

51. Defendants shall pay, either by direct payment or through payments funded by Defendants and issued by the Claims Administrator, within 60 days of Final Judgment or the expiration of any final appeals if filed, any payments due under this Settlement to Settlement Class Members, including any incentive payments; such payments, however, do not include any payment for attorneys' fees and costs to Class Counsel, which shall be paid by Defendants pursuant to Section VIII of this Agreement. If Defendants make direct payment to Settlement Class Members, they shall provide the Claims Administrator with a listing (amount and identity of payee) of each payment that is made to a Settlement Class Member so that the Claims Administrator is in possession of such information.

52. The claim payment shall be sent to the most recent known address (including any updated address identified by the Claims Administrator or the Settlement Class

Member). All payments will be made only to the Settlement Class Member and not to any third parties. The check shall be valid for 180 days after the date of the check. To the extent feasible, the claim payment envelope and check shall be of the same form that Defendants use in the normal course of its business to mail checks on first-party claims.

53. (a) The proceeds of any settlement check that is not cashed or otherwise negotiated within 180 days of the date of the check shall be governed by the requirements of Chapter 717, Florida Statutes, and the Settlement Class Member's claim associated with the uncashed settlement check shall still be subject to the terms of this Agreement, including the Release provision.

(b) Alternatively, if the Defendants elect to retain possession of the proceeds of any uncashed settlement check, the Settlement Class Member's claim associated with the uncashed settlement check shall be deemed excluded from the Release.

54. The Parties acknowledge and agree that this Agreement does not and shall not constitute an admission by Defendants that its prior payments for PIP benefits based upon a maximum of \$10,000 rather than \$12,500 on any individual claim or on the Settlement Class Members' claims was incorrect or improper.

55. Settlement Class Payments on non-disputed claims and payments for all attorneys' fees and costs, including incentive awards, will not be delayed by the pendency of any submission to the Court of a disputed claim.

56. The Release shall be effective upon final approval of the Settlement by entry of the Final Judgment, not upon the ultimate payment by Defendants to Settlement Class

Members, except that claims for non-payment of amounts due under this Agreement are not released until payments are made.

57. Defendants' liability under this Settlement shall be limited to (a) paying the Settlement Class Payments to eligible Settlement Class Members; (b) paying the costs of notice and settlement administration, including the fees and costs of the Claims Administrator; (c) paying any attorneys' fee and cost award granted by the Court or agreed to by the Parties with court approval; and (d) paying any incentive awards to the Named Plaintiffs awarded by the Court for each Named Plaintiff. In no event shall Defendants be liable under this Settlement to pay any additional amounts.

VII. COMMUNICATIONS WITH THE CLASS

58. The Class Notice shall list Class Counsel's address and telephone number. Communications relating to the Consolidated Actions or this Proposed Settlement with Persons receiving Class Notices and Settlement Class Members shall be handled through Class Counsel, and/or the Claims Administrator, as necessary. Nothing in this Agreement shall be construed to prevent Defendants, their employees, attorneys, agents or representatives from communicating with Settlement Class Members in the normal course of its business operations, from submitting notices or other documents relating to this Agreement directly to Settlement Class Members and/or from continuing to adjust and resolve pending or future claims, even if they otherwise fall within the scope of this Agreement, before this Agreement is finally approved.

59. Neither Defendants nor Class Counsel shall be responsible in any way for any attorneys' lien submitted by any prior counsel for any of the Settlement Class Members, nor shall any attorneys' lien be created by any of the efforts by the Parties to effectuate any of

the terms of this Agreement, and this provision shall be incorporated into the Final Judgment.

VIII. CLASS COUNSEL'S FEES AND COSTS AND CLASS REPRESENTATIVE FEES

60. No compensation for Class Counsel has been negotiated as part of this Proposed Settlement.

61. The Parties agree that Plaintiffs are entitled to reimbursement by Defendants for reasonable attorneys' fees and costs incurred in connection with the prosecution of the Consolidated Actions pursuant to Fla. Stat. § 627.428 and the case law interpreting that statute. The Parties agree that such reasonable attorneys' fees and costs shall be paid by Defendants in addition to the amounts paid to the Settlement Class Members as set forth above (*i.e.*, separate and apart from the payments to Settlement Class Members). The Parties shall either reach an agreement among themselves, or barring such an agreement, submit the issue to the Court for determination. In the event that no agreement can be reached and the issue is submitted to the Court, Class Counsel shall not be entitled to recovery of any fees or costs incurred due to litigation as to the amount of fees and costs. Defendants shall bear their own attorneys' fees and costs.

62. In the event that the Parties reach an agreement as to attorneys' fees and costs prior to entry of Final Judgment, such attorneys' fees and costs shall be payable within forty-five (45) days after the entry of Final Judgment if no appeal is taken from the Final Judgment; if an appeal is taken from the Final Judgment, the attorneys' fees and costs shall not be due until forty-five (45) days after the resolution of such appeal. In the event that the amount of attorneys' fees and costs is submitted to the Court, then such attorneys' fees and costs, plus applicable pre-judgment interest and post-judgment

interest, if any, shall be payable within forty-five (45) days after the entry of the judgment awarding same if no appeal is taken from said judgment; if an appeal is taken from said judgment, the attorneys' fees and costs shall not be due until forty-five (45) days after the resolution of such appeal. Defendants also shall not be obligated to pay any attorneys' fees and costs if the Settlement is not finally approved and/or sustained on appeal; in such event, the Parties shall be restored to the *status quo ante* in the Consolidated Actions. If this Proposed Settlement is not finally approved or sustained, then Defendants shall be entitled to contest Class Counsel's entitlement to an award of attorneys' fees and costs in each of the Consolidated Actions.

63. Defendants will not oppose a request by each of the class representative Named Plaintiffs as an incentive award for each of the Named Plaintiffs, so long as the amount for each Plaintiff is equal to or less than \$5,000 (regardless of how many of the individual Consolidated Actions that particular plaintiff is a party to). Such award shall be paid by Defendants separately and in addition to the amounts paid to the Settlement Class Members as set forth above (*i.e.*, separate and apart from the payments to Settlement Class Members) on the same payment schedule set for payment of attorneys' fees and costs.

IX. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION OF AGREEMENT

64. The Named Plaintiffs, the Settlement Class Members and Defendants will consent to the entry of a Final Judgment as provided herein.

65. If the Court disapproves this Agreement, or if the Court enters the Final Judgment but it is reversed or vacated on appeal, this Agreement shall be null and void and of no force and effect. If the Court materially modifies any provision of the Agreement or

proposed Final Judgment, or if either is materially modified on appeal or remanded to the Court for modification, or if any of the terms of this Agreement is impaired in any material way, then Defendants shall have the option of terminating this Agreement and withdrawing its consent to the entry of the Final Judgment, in which case this Agreement shall be null and void and of no force and effect, and the Parties will return to their respective positions in the litigation prior to the filing of the Motion for Preliminary Approval Order. Defendants shall have seven business days from the event triggering its option to inform Class Counsel that it is exercising its option of terminating this Agreement.

66. If the Court does not finally approve the Settlement, all obligations of Defendants under this Agreement terminate, including, but not limited to, any obligation to pay attorneys' fees, costs, and incentive awards, and the Parties will return to their respective positions in the litigation prior to the filing of the Motion for Preliminary Approval Order. Additionally, the Parties agree that neither this Agreement, nor any pleading or other paper related in any way to this Agreement, nor any act or communication in the course of negotiating, implementing or seeking approval of this Agreement, shall be deemed an admission by Defendants regarding the merits of the Action or that certification as a class is appropriate in this Action or any other litigation, or otherwise shall preclude Defendants from opposing or asserting any argument it may have with respect to certification of a class in this Action if the Settlement is not consummated.

X. FINAL APPROVAL OF SETTLEMENT

67. Class Counsel will file a motion seeking the Court's Final Judgment as to the Proposed Settlement at a Final Settlement Hearing to be held at a time, date, and location that

will be stated in the Preliminary Approval Order, and listed in the Class Notice. The Parties will request that the Final Settlement Hearing be held at the earliest date that is at least 150 days after the Preliminary Approval Order that the Court is available to hear the matter or as soon as possible thereafter. Class Counsel shall request the Court to enter a Final Judgment, approving the Proposed Settlement and directing the Parties and their counsel to comply with and consummate the terms of this Agreement, as well as:

- a) Certifying the Settlement Class for settlement purposes, which Settlement Class shall be specifically identified as having been expanded beyond the proposed settlement class defined in each of the individual Consolidated Actions;
- b) Finding that Class Counsel and the Named Plaintiffs have adequately represented the Settlement Class;
- c) Finding that the Court has personal jurisdiction over the Named Plaintiffs and all members of the Settlement Class for the purpose of this Proposed Settlement only, and that the Court has subject matter jurisdiction to approve the Settlement, this Agreement, and all exhibits thereto;
- d) Finding that the terms of the Settlement are fair, reasonable, and adequate to the Settlement Class and in compliance with due process and Florida law;
- e) Providing that each member of the Settlement Class who has not excluded himself, herself, or itself therefrom in accordance with the Court's prior orders shall be bound by the provisions of the Settlement, including the applicable Releases;

- f) Finding that the Class Notice implemented pursuant to this Proposed Settlement and approved by the Court was reasonable and the best practicable notice and satisfies the requirements of the Florida Rules of Civil Procedure, as well as all the requirements of due process under the Florida and United States Constitutions;
- g) Dismissing all claims in the Consolidated Actions, and as otherwise set forth in this Agreement, on the merits and with prejudice as to the Released Claims, and entering final judgment thereon with a finding that there is no just reason to delay enforcement or appeal;
- h) Approving the payment of the attorneys' fees and costs to Class Counsel in conformity with the provisions of the Settlement;
- i) Permanently barring and enjoining the Named Plaintiffs and each and every Settlement Class Member, and their respective heirs, executors, administrators, partners, and agents, and the successors and assigns of each and any of them, from asserting, either directly or indirectly, individually, or in a representative capacity or on behalf of or as part of a class, and whether under State or Federal statutory or common law, any Released Claim against any Released Person; and
- j) Retaining jurisdiction to enforce the Agreement and Final Judgment.

XI. OBJECTIONS, CLAIMS PARTICIPATION AND REQUESTS FOR EXCLUSION

68. Request for Exclusion.

- a. Potential class members who wish to exclude themselves from the Settlement Class must prepare a written request for exclusion, postmarked no later than 120 days after

the date of the Preliminary Approval Order, which shall be sent to the Claims Administrator at the address provided in the Class Notice. Written requests for exclusion must be signed and include the Settlement Class Member's name, address, and telephone number, and expressly state the desire to be excluded from the Settlement Class. No potential class member may affect an exclusion of a class or group of individuals.

- b. No Settlement Class member may opt out of specific aspects of the settled claims, while still participating for other aspects of this Settlement based on the same PIP claim.
- c. The Claims Administrator shall promptly log each request for timely exclusion that it receives and provide copies of the log and all such requests for exclusion to counsel for the Parties.
- d. To the extent, if any, that a Settlement Class Member's request for exclusion is determined by the Claims Administrator to be untimely or insufficient, the Claims Administrator shall notify the Settlement Class Member counsel for all Parties in writing of that determination at least 3 business days before the Final Settlement Hearing. If the Parties are unable to resolve a dispute concerning the timeliness or sufficiency of a Settlement Class Member's request for exclusion, the dispute shall be submitted to the Court for determination.
- e. Upon submitting a timely and complete request for exclusion, the Settlement Class Member shall be deemed excluded from and unaffected by this Settlement, with all

rights reserved, and the Defendants' defenses to any and all claims of the Settlement Class Member shall likewise be reserved.

69. Settlement Class Members who do not file a timely request for exclusion may file a notice of intent to object to the Proposed Settlement, or intervene in the Action for the purpose of contesting the Proposed Settlement. The written notice of intent to object and/or intervene must be: (a) filed with the Clerk of the Court not later than 135 days after the date of the Preliminary Approval Order; (b) sent to the Claims Administrator by first-class mail not later than 135 days after the date of the Preliminary Approval Order; and (c) sent by first-class mail not later than 135 days after the date of the Preliminary Approval Order, to Class Counsel:

J. Daniel Clark, Esq. (Co-Lead Class Counsel)
Clark & Martino, P.A.
3407 W. Kennedy Blvd.
Tampa, Florida 33609

And to Defendants' Counsel:

Gary J. Guzzi, Esq.
Antonio Morin, Esq.
Akerman LLP
98 S.E. 7th Street, Suite 1100
Miami, Florida 33131

70. Any Settlement Class Member who does not so request to object or intervene waives the right to do so in the future and shall be forever barred from intervening or making any objection to the Proposed Settlement or Final Judgment. Any Notice of Intent to Object or Intervene must contain the following: (a) a heading which refers to the Action; (b) the name, address, telephone number and signature of the Settlement Class Member filing the objection; (c) a statement whether the objector intends to appear at the Final Settlement Hearing, either in person or through counsel, and, if through

counsel, identifying counsel by name, address and phone number; (d) a detailed statement of the specific legal and factual bases for each and every objection, and if through counsel, a legal memorandum in support of the objection; (e) a list of any witnesses, along with the expected testimony of each such witness, and photocopies of exhibits which the objector intends to introduce at the Final Settlement Hearing; (f) a detailed description of any and all evidence the objector may offer at the Final Settlement Hearing, if the objector intends to speak at the hearing; and (g) documentary proof of membership in the Settlement Class. If the Settlement Class Member is represented by an attorney, he/she/it must comply with all applicable laws and rules for filing pleadings and documents. The Notice of Intent to Object, to be effective, also must be submitted by the objector or a Legally Authorized Representative on an individual basis and not as part of a group, class, or subclass.

XII. CONFIDENTIALITY OF PROPRIETARY INFORMATION

71. Defendants assert that the following constitutes highly confidential and/or proprietary business information of Defendants (the “Proprietary Information”): (a) any names, addresses, policy numbers, and other data concerning Settlement Class Members compiled by Defendants in effectuating the Proposed Settlement; and (b) any electronic data processing and other recordkeeping procedures and materials that may be utilized by Defendants in identifying the Settlement Class Members and effectuating Defendants’ other obligations under this Agreement and/or the Settlement. To the extent that any Proprietary Information is disclosed during the course of administration of the Settlement, all confidential information shall be treated as confidential and shall not be filed with the Court, shared with any non-parties, or otherwise disseminated

outside of Plaintiffs' counsel's offices, and shall be destroyed or returned to Defendants upon the termination of the Consolidated Actions.

72. No Persons other than Defendants, Defendants' counsel and clerical/administrative personnel employed by Defendants or Defendants' counsel, and such other Persons as the Court may order, after hearing on notice to all counsel of record, shall be allowed access to any Proprietary Information. To the extent necessary for the administration of the Settlement and as otherwise set forth herein, and only to the extent consented to by Defendants, Defendants may provide certain Proprietary Information to Class Counsel, the clerical/administrative personnel employed by Class Counsel, and/or the Claims Administrator, subject to those third parties agreeing to treat the information as confidential and not to share or disseminate it in any fashion and agreeing that it shall be destroyed or returned to Defendants upon the termination of the Consolidated Actions.

73. Within 30 days after all of Defendants' obligations under this Settlement are effectuated, Class Counsel and/or other attorneys for the Named Plaintiffs in this Action, or any Settlement Class Member or their counsel, shall destroy all Proprietary Information provided by Defendants to Class Counsel or anyone they employed or retained in these Consolidated Actions, either in discovery or in connection with this Agreement. Class Counsel shall deliver a letter to Defendants' counsel certifying their compliance with this Paragraph. Further, the Parties agree that neither Class Counsel, nor anyone employed with, retained by, or otherwise associated with Class Counsel, nor any other attorney or Person who shall have access to this information, shall use

any of this Proprietary Information in any other litigation or proceeding, current or future, or for any other purpose whatsoever.

XIII. RELEASED CLAIMS

74. Released Claims means:

any and all claims, actions, demands, lawsuits, rights, liabilities, declarations, damages, losses, attorneys' fees, interest, expenses, costs and causes of action, whether accrued or unaccrued, known or unknown, fixed or contingent, including without limitation contractual or extra-contractual claims or damages (inclusive of statutory and common law bad faith claims), claims or damages at law or in equity, or penalties and punitive claims or damages of any kind or description which now exist or heretofore existed, by or on behalf of any Settlement Class Member against the Released Parties, arising out of any Qualifying Claim covered by this Settlement.

XIV. DISMISSAL OF ACTION AND RELEASES

75. Upon the Court's final approval of this Agreement and the Settlement set forth herein, the Final Judgment shall be entered providing for the dismissal, with prejudice and without leave to amend, of the Consolidated Actions, and the effectiveness of the Release by the Settlement Class Members, including the Named Plaintiffs, and including their past, present or future agents, legal representatives, trustees, parents, relatives, estates, heirs, executors and administrators, of all Released Claims against the Released Parties.

76. By operation of the entry of the Final Judgment, each Settlement Class Member, including the Named Plaintiffs, and including their past, present or future agents, legal

representatives, trustees, parents, relatives, estates, heirs, executors and administrators, shall be held to have fully released, waived, relinquished and discharged the Released Parties from all the Released Claims.

77. By operation of the entry of the Final Judgment, the Settlement Class Members, including the Named Plaintiffs, and including their past, present or future agents, legal representatives, trustees, parents, relatives, estates, heirs, executors and administrators, expressly agree that they, acting individually or together, shall not seek to institute, maintain, prosecute, sue, or assert causes of action or proceedings against any of the Released Parties asserting any of the Released Claims.

78. Notwithstanding the Court's entry of the Final Judgment, the Court shall retain ongoing jurisdiction over these Consolidated Actions for purposes of enforcing and interpreting this Agreement and Final Judgment, including but not limited to entering such orders and injunctions to prevent any collateral litigation that may be filed by Settlement Class Members, if necessary, and/or enforcing the litigation bar as to the Released Claims provided for by this Settlement.

XV. DENIAL OF LIABILITY

79. Defendants maintain that they acted in accordance with the governing laws and regulations of the State of Florida and abided by the terms of the applicable insurance policies. Defendants nonetheless have concluded that it is in their best interests that the Consolidated Actions be settled on the terms and conditions set forth in this Agreement. Defendants reached this conclusion after considering the factual and legal issues in the Consolidated Actions, the substantial benefits of a final resolution of the Consolidated

Actions, and the expense that would be necessary to defend the Consolidated Actions through judgment, appeal, and any subsequent proceedings that may occur.

80. Defendants enter into this Agreement without admitting, conceding, or acknowledging any fault, liability, or wrongdoing of any kind. This Agreement shall not be construed as an admission or concession of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind.

81. Neither this Agreement, nor any pleading or other paper related in any way to this Agreement, nor any act or communication in the course of negotiating, implementing or seeking approval of this Agreement, shall be deemed an admission by Defendants that certification of a class or subclass is appropriate in these Consolidated Actions or any other litigation, or otherwise shall preclude Defendants from opposing or asserting any argument it may have with respect to certification of any class(es) or subclass(es) in any proceeding.

XVI. DECEASED CLASS MEMBERS

82. Upon the request by a Legally Authorized Representative on behalf of a deceased Settlement Class Member's estate, claim payments will be issued to the Legally Authorized Representative.

XVII. TAX OBLIGATIONS

83. Tax obligations which may arise by virtue of the Settlement Class Payments made pursuant to this Agreement, if any, are solely the responsibility of the Persons who receive such Settlement Class Payments and are not in any way the responsibility of Defendants or Class Counsel. The Parties to this Agreement do not in any way express any belief or opinion regarding the existence of such tax obligations and do not

undertake to provide any advice to any Settlement Class Member regarding any tax obligations which may arise by virtue of any Settlement Class Payments made pursuant to this Agreement.

XVIII. MISCELLANEOUS PROVISIONS

84. The Parties hereto agree to defend this Agreement against objections made to final approval of the Settlement or in any appeal of the Final Judgment or collateral attack on the Agreement or Final Judgment.
85. Except as otherwise provided, this Agreement contains the entire agreement between the Parties, and supersedes any prior agreements or understandings between them. All terms of this Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties hereto. The terms of this Agreement are and shall be binding upon each of the Parties hereto, their agents, attorneys, employees, successors and assigns, and upon all other Persons claiming any interest in the subject matter hereof through any of the Parties hereto, including any Settlement Class Member.
86. This Agreement may be amended or modified only by a written instrument signed by all Parties hereto. Non-material amendments and modifications may be made without

additional notice to the Settlement Class Members unless such notice is required by the Court.

87. This Agreement shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Florida, without regard to its conflicts of laws procedure.

88. The exhibits to this Agreement are an integral part of the Settlement and are hereby incorporated into and made a part of this Agreement.

89. To the extent permitted by law, this Agreement may, upon Final Judgment, be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

90. This Agreement shall be deemed to have been executed upon the last date of execution by all of the Parties.

91. This Agreement may be executed in counterparts, each of which shall constitute an original.

92. The Parties will request that the Court retain continuing jurisdiction for the specific purpose of enforcing any and all terms of this Agreement and to maintain jurisdiction of all Settlement Class Members for the purposes of: (a) implementation, enforcement, and administration of the Settlement, including any releases in connection therewith; (b) resolution of any disputes concerning Settlement Class membership or entitlement to benefits under the terms of the Settlement; (c) enforcing and administering the Settlement and the Final Judgment until each and every act agreed to be performed by

the Parties has been performed pursuant to this Agreement; and (d) other matters related to the foregoing.

93. Titles of sections to this Agreement are illustrative only and are neither binding on the Parties nor to be considered any part of the drafting history or other means of interpreting this Agreement.

IN WITNESS HEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the date it is executed by all of the undersigned.

Dated: _____, 2023

By: _____

Title: _____

As Authorized Agent of:
PRESGAR IMAGING OF CMI NORTH, LC

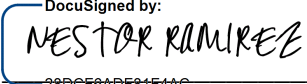
Dated: _____, 2023

By: _____

Title: _____

As Authorized Agent of:
BEACHES OPEN MRI OF TAMARAC, LLC and BEACHES OPEN MRI OF THE TREASURE COAST, LLC

Dated: February 27, 2023

By:  _____
288CF6ADF81F4AC...

Title: VP, Regional Litigation Mger.

As Authorized Agent of:
LM GENERAL INSURANCE COMPANY, LIBERTY MUTUAL INSURANCE COMPANY, LM INSURANCE CORPORATION, and THE FIRST LIBERTY INSURANCE CORPORATION