

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

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WAYNE JAMESON and DYNAMIC  
PHYSICAL THERAPY & AQUATIC  
REHABILITATION CENTERS, on behalf of  
and all others similarly  
situated,

Case No. 10-310-RGA-CJB

Plaintiff,

v.

NON-ARBITRATION

METROPOLITAN GROUP PROPERTY  
AND CASUALTY INSURANCE  
COMPANY d/b/a METLIFE AUTO  
& HOME,

TRIAL-BY JURY DEMANDED

CLASS ACTION

Defendant.

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**~~PROPOSED~~ ORDER FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

On the 22nd day of May, 2014, the matter of the Court's final approval of the Stipulation of Settlement submitted on December 20, 2013, as part of the Motion for Preliminary Approval of Class Action Settlement and Notice to the Class, came before the Court for consideration. Appearing on behalf of Plaintiffs and the Settlement Class was Richard H. Cross, Jr. of Cross & Simon, LLC ("Class Counsel"). Appearing on behalf of Defendants were David Maltesta of Kent/McBride, P.C. and Lisa M. Lilly of Lisa M. Lilly LLC.

WHEREAS, the Named Plaintiffs, Wayne Jameson and Dynamic Physical Therapy & Aquatic Rehabilitation Centers ("Dynamic Physical Therapy," as further defined in the Stipulation of Settlement) and Defendant Metropolitan Group Property and Casualty Insurance Company, incorrectly named as Metropolitan Group Property and Casualty Insurance Company d/b/a MetLife Auto & Home ("Met Group," as further defined in the Stipulation of Settlement)

have executed and filed a Stipulation of Settlement (“Stipulation” or “Agreement”) with the Court on December 20, 2013; and

WHEREAS, all capitalized terms used herein shall have the same meaning as set forth in the Agreement and are hereby incorporated by reference; and

WHEREAS, the Court, on January 23, 2014, entered the Order Preliminarily Approving the Class Action Settlement and Notice to the Class (“Preliminary Approval Order”), preliminarily approving the Proposed Settlement and conditionally certifying this Action, for settlement purposes only, as a class action and, on February 7, 2014, entered an Amended Order Reflecting a New Hearing Date for Preliminary Approval and Notice to the Class (“Amended Order”); and

WHEREAS, Wayne Jameson and Dynamic Physical Therapy were approved in the Preliminary Approval Order as the class representatives; and

WHEREAS, the Court, as part of its Preliminary Approval Order and Amended Order, directed that a plan for disseminating Notice of the Settlement (“Notice Plan”) be implemented, and scheduled a hearing to be held on May 22, 2014, to determine whether the Proposed Settlement should be approved as fair, reasonable and adequate; and

WHEREAS, Met Group and Class Counsel have satisfactorily indicated to the Court that the Notice Plan was followed; and

WHEREAS, a Final Settlement Hearing was held on May 22, 2014;

NOW, THEREFORE, the Court, having read and considered all submissions made in connection with the Proposed Settlement, and having reviewed and considered the files and records herein, finds and concludes as follows:

A. The Complaint filed in this action alleges generally that Met Group improperly paid less than the full amount for medical bills submitted under PIP or Med Pay coverage

afforded in Met Group policies in Delaware based upon a use of a computerized bill review system or audit to aid in evaluating whether the amount billed was usual, customary and/or reasonable (a “UCR Adjustment”);

B. As part of the Preliminary Approval Order, the Court certified the Settlement Class, for settlement purposes only, defined as follows:

(1) All persons covered by a Met Group Delaware automobile insurance policy who (a) submitted first-party medical expense claims to Met Group pursuant to PIP or Med Pay coverage; (b) had their claim(s) reviewed and adjusted by Met Group with the aid of computerized medical bill review based on whether the amount charged was usual, customary and/or reasonable (a “UCR Adjustment”) during the period from January 1, 1997 through June 11, 2013; (c) received or were tendered payment but in an amount less than the submitted medical charges based upon a UCR Adjustment(s) of the charges; and (d) received or were tendered an amount less than the stated policy limits; and (2) All healthcare providers and entities who have the legal right to assert the claims described in (1). The Settlement Class shall exclude, however, all Class Counsel, all Released Persons, the Neutral Evaluator and all directors and officers of Met Group.

The Court hereby affirms this definition of the Settlement Class for purposes of this Final Order.

C. The Court certifies this Action, for settlement purposes only, as a Class Action under Fed. R. Civ. P. 23(b)(3), and, in so doing, finds that, for settlement purposes only, the requirements for maintaining a class action have been met in particular because: (1) the Class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the Class; (3) the claims or defenses of the representative parties are typical of the

claims or defenses of the Class; and (4) the Named Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Class.

D. The Named Plaintiffs and Met Group have entered into the Stipulation which has been filed with the Court. The Agreement provides for the Settlement of this Action with Met Group on behalf of the Named Plaintiffs and the Class Members, subject to approval by the Court of its terms. The Court scheduled a hearing to consider the approval of the Stipulation, and directed that Notice of the Proposed Settlement and of this hearing be disseminated in accordance with the terms of the Preliminary Approval Order.

E. In accordance with the terms of the Agreement and the Preliminary Approval Order, the Parties implemented the Notice Plan approved by the Court. Met Group's counsel and Class Counsel have confirmed to the Court that the Parties complied with the Notice Plan.

F. The Court hereby finds that the Notice Plan constituted the best Notice practicable under the circumstances, and constituted valid, due and sufficient notice to Potential Class Members, and that the CAFA Notice was fully compliant with all the applicable laws.

G. The Named Plaintiffs and Met Group have applied to the Court for approval of the terms of the Proposed Settlement and for the entry of this Final Order. Pursuant to the Notice Plan, and upon notice to all Parties, a hearing was held before this Court, on May 22, 2014, to determine whether the Proposed Settlement of the Action should be approved as fair, reasonable, and adequate, and whether the Final Order approving the Settlement and dismissing all claims in the Action on the merits, with prejudice and without leave to amend, should be entered.

H. The Court hereby finds that approval of the Stipulation and the Settlement embodied therein will result in substantial savings of time and money to the Court and the litigants and will further the interests of justice.

I. The Court hereby finds that the Proposed Settlement is the result of good faith arm's length negotiations by the Parties thereto.

NOW, THEREFORE, GOOD CAUSE APPEARING, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Court possesses jurisdiction over the subject matter of this Action, the Named Plaintiffs, the Settlement Class Members, Met Group, and the Released Persons.

2. One member of the Settlement Class filed a request for exclusion. All remaining members of the Settlement Class are therefore bound by this Final Order and by the Stipulation and the Settlement embodied therein, including the Releases provided for in the Stipulation and this Final Order.

3. All provisions and terms of the Stipulation and Settlement are hereby found to be fair, reasonable and adequate, and all provisions and terms of the Stipulation and Settlement are hereby finally approved in all respects.

4. The Parties to the Stipulation are hereby directed to consummate the Stipulation in accordance with its terms.

5. This Action is dismissed in its entirety, on the merits, with prejudice and without leave to amend, and all members of the Settlement Class shall be forever barred and permanently enjoined from starting, continuing, or participating in, litigating or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative or regulatory proceeding or order based on or relating to the claims, facts or circumstances in this Action and/or the Released Claims.

6. As of the Effective Date, by operation of the entry of the Final Order, each Settlement Class Member shall be deemed to have fully released, waived, relinquished and

discharged, to the fullest extent permitted by law, all Released Claims that the Settlement Class Member may have against all the Released Persons.

7. “Released Claims” means and includes any and all claims, including known and Unknown Claims, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, interest, costs, expenses or losses, for the acts alleged or which are or could have been alleged by the Named Plaintiffs or the Potential Class Members in the Actions, or which relate in any way whatsoever to the Actions regarding the use of any type of computer pricing review or computer recommended reductions to assess whether fees for healthcare services are usual, customary, and/or reasonable, including, but not limited to, statutory and non-statutory attorneys’ fees, breach of contract, unjust enrichment, breach of any covenant of good faith and/or fair dealing, premium overcharges, fraudulent inducement, fraud, misrepresentation, deception, consumer fraud, antitrust, defamation, tortious interference with contract or business expectations, Racketeer Influenced and Corrupt Organizations Act violations, violations of any consumer protection act, punitive damages, interest, injunctive relief, declaratory judgment, costs, unfair trade practices, unfair insurance practices, unfair competition, deceptive practices, statutory violations, unfair business practices, breach of fiduciary duty, mental or emotional distress and/or bad faith relating in any way whatsoever to Met Group’s review, handling, payment, adjustment or denial in whole or in part of claims for Medical Payments or Personal Injury Protection benefits where a computer recommended pricing reduction or review was utilized, including, but not limited to, any claims which were brought or could have been brought or which relate in any way whatsoever to the Actions, or which relate in any way whatsoever to the Accidents or the Policies in connection with the subject matter of the Actions.

8. “Released Persons” means Met Group, Met Group’s counsel, and any of Met Group’s past, present or future officers, stockholders, directors, agents, employees and/or independent contractors, and/or any other successors, assigns, or legal representatives thereof.

9. “Unknown Claims” means claims arising out of new facts or facts found hereafter to be other than or different from the facts now believed to be true, relating to any matter covered by the Stipulation, as to any of the Released Claims, so that each Class Member shall be deemed to have expressly waived any and all Unknown Claims relating to any matter covered by the Stipulation and related to Medical Payments or Personal Injury Protection benefits as defined in the Stipulation and to the full extent of claim preclusion and *res judicata* protections.

10. Nothing in the Stipulation or in this Final Approval Order shall be construed as affecting or limiting Met Group’s policies or practices nor having any preclusive effect on future practices.

11. It is hereby determined that the Notice Plan was the best Notice practicable under the circumstances to all members of the Settlement Class, and is therefore finally approved as fair, reasonable and adequate. Due and adequate Notice of the pendency of this Action and of this Settlement has been provided to members of the Settlement Class, and this Court hereby finds that the Notice Plan described in the Preliminary Approval Order and completed by Met Group and the CAFA Notice complied fully with the requirements of due process, the Federal Rules of Civil Procedure, the Class Action Fairness Act and the requirements of due process under the Delaware and United States Constitutions, and any other applicable laws.

12. Any and all documentation identified by Met Group as confidential (exclusive of documents filed with the Court), and provided by Met Group to the Named Plaintiffs, Class Counsel, Class Counsel’s experts, or anyone else employed by Class Counsel, and all copies thereof, shall be returned to Met Group or certified as destroyed within 30 days of the last Claim

Adjudication. Class Counsel shall submit an affidavit to Met Group confirming that any such documentation has been returned or destroyed.

13. Class Counsel and the Named Plaintiffs shall not make any statements to the media or in any public forum, orally or in writing, about the Action, or the Stipulation, other than statements which are fully consistent with the Stipulation and the Class Notice.

14. The Stipulation, the Settlement and this Final Order are not to be deemed admissions of liability or fault by Met Group, or a finding of the validity of any claims in the Action or of any wrongdoing or violation of law by Met Group. The Agreement and Settlement are not a concession by the Parties and, to the extent permitted by law, neither this Final Order nor the Stipulation shall be used as evidence of any admission of any fault or omission by Met Group or any other Person. Neither this Final Order nor the Agreement, nor the terms and provisions of the Settlement, nor any of the negotiations or proceedings connected therewith, shall be offered or received in evidence in any pending or future civil, criminal or administrative action or proceeding, other than such proceedings which may be necessary to consummate or enforce the Agreement; however, Met Group may use the Stipulation or the exhibits thereto, and the Settlement, and/or any related document, in any action that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion.

15. The Court has considered the request for class representative fees, and hereby approves and awards Wayne Jameson the amount of \$10,000 and Dynamic Physical Therapy & Aquatic Rehabilitation Centers the amount of \$5,000. These awards are in addition to, and not in lieu of, any payments due these Named Plaintiffs for their individual Claims, if any, made under the Settlement. The class representative fees shall be paid by Met Group in accordance with the



terms of the Agreement. In this regard, the Court has been informed and finds that the class representative fees were agreed to only after the Named Plaintiffs had indicated agreement with all the substantive terms of the Settlement, and were in no way used as an inducement for that agreement.

16. The Court has considered Class Counsel's request for an attorneys' fees and cost award for the prosecution of this Action, and hereby makes an attorneys' fees and cost award in the amount of \$190,000.

17. Neither Met Group 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 the Stipulation to effectuate any of the terms of the Settlement.

18. Adam Balick is approved and appointed as the Neutral Evaluator to carry out the duties and responsibilities as set forth in the Stipulation. Neither Plaintiffs, nor Met Group, nor the Parties' Counsel shall be liable for any act, or failure to act, of the Neutral Evaluator.

19. This Order is a final judgment in the Action as to all claims among Defendants on the one hand, and the Named Plaintiffs and all Class Members on the other. Without in any way affecting the finality of this Final Judgment, this Court shall retain continuing jurisdiction over this Action for purposes of:

- A. Enforcing this Final Order, the Stipulation and the Settlement;
- B. Hearing and determining any application by any Party to the Stipulation for a settlement bar order; and

C. Any other matters related or ancillary to any of the foregoing.

Dated: May 22, 2014.

IT IS SO ORDERED.

Richard G. Andrews

Honorable RICHARD G. ANDREWS