

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL MOLLOY and
JACQUELINE MOLLOY, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

AETNA LIFE INSURANCE COMPANY and
AETNA, INC.,

Defendants.

Civil Action

No. 19-CV-03902

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT &
DIRECTING ISSUANCE OF
NOTICE**

Plaintiffs, PAUL and JACQUELINE MOLLOY, on behalf of themselves and the proposed Settlement Class, and Defendants, AETNA LIFE INSURANCE COMPANY (“ALIC”) and AETNA INC. (collectively, “Defendants”), all acting by and through their respective counsel, have agreed, subject to Court approval following sending of the Settlement Class Notice to the Settlement Class and a hearing, to settle this Action upon the terms and conditions in the Settlement Agreement and Release, (also sometimes referred to as the “Settlement” or “Agreement”), filed with the Court on March 3, 2023;¹ and

Plaintiffs have made an application pursuant to Fed. R. Civ. P. 23 for preliminary approval of the Settlement of this Action, as set forth in the Agreement; and

The Court having read and considered the Agreement and the exhibits thereto and has read and considered all other papers filed and proceedings had herein, and is otherwise fully informed, and with good cause appearing,

IT IS HEREBY ORDERED:

¹ This Preliminary Approval Order incorporates by reference the definitions in the Agreement. *See* para. 1, *infra*.

1. This Preliminary Approval Order incorporates by reference the definitions in the Agreement.

2. The Court has jurisdiction over the subject matter of this Action and over all Parties to this Action, including the named Plaintiffs, all Settlement Class Members and Defendants.

3. On August 28, 2019, Plaintiffs filed a Class Action Complaint in the United States District Court for the Eastern District of Pennsylvania, No. 2:19-cv-03902-AB. [ECF 1].

4. In the Action Plaintiffs asserted a breach of fiduciary duty claim against Defendants pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”) on behalf of members, participants, and beneficiaries of employee welfare benefit plans (the “Plan”) administered by ALIC who were denied proton beam therapy (“PBT”) treatment. By agreeing to the proposed Agreement, Defendants are not admitting liability with respect to any of Plaintiffs’ allegations raised in this lawsuit.

5. On November 15, 2019, Defendants filed their Motion to Dismiss Plaintiffs’ Class Action Complaint for failure to state a claim. [ECF 21].

6. On December 13, 2019, Plaintiffs filed their First Amended Complaint, in relevant part, refining their breach of fiduciary duty claim under 29 U.S.C. § 1132(a)(3). [ECF 23].

7. On January 6, 2020, Defendants filed their Motion to Dismiss Plaintiffs’ First Amended Class Action Complaint for failure to state a claim [ECF 26], to which Plaintiffs filed a Response in Opposition on January 28, 2020 [ECF 28].

8. On February 11, 2020, Defendants filed a Reply in Support of its Motion to Dismiss Plaintiffs’ First Amended Complaint [ECF 29] and a Notice of Supplemental Authority on April 14, 2020 [ECF 33].

9. Plaintiffs filed a Response to Defendants' Notice of Supplemental Authority on April 22, 2020. [ECF 34].

10. On October 13, 2020, the Parties jointly requested the Court to defer ruling on Defendants' Motion to Dismiss the First Amended Complaint while the Parties explored the possibility of settlement of this matter. [ECF 39].

11. On November 11, 2020, the Court entered an Order holding Defendants' Motion to Dismiss in abeyance, which was extended by the Court's December 28, 2020 and March 23, 2021 Orders. [ECF 40; 42; 45].

12. On June 20, 2021, the Court stayed proceedings in this matter and transferred it to Civil Suspense. [ECF 49].

13. As set forth more fully in the Agreement, the Settlement provides, in part that:

- a. Each Settlement Class Member who satisfies the Class Definition and timely submits a valid Settlement Claim Form will receive a minimum cash award of \$10,000;
- b. Each Settlement Class Member who timely submits a valid Settlement Claim Form with Required Proof, may receive up to \$24,000 in total, based upon the value of their Settlement Claim as determined by the Claims Administrator; and
- c. Should any portion of the Settlement Amount remain unclaimed, undistributed, or undistributable, said amount will be paid as a *cy pres* award to NRG Oncology Foundation, Inc. (or any other *cy pres* recipient that the Court may approve). There will be no reversion of any funds to Defendants.

14. Good cause exists for the Court to conclude that the Settlement satisfies the prerequisites for class certification under Fed. R. Civ. P. 23 for settlement purposes only.

15. The Court finds that, for settlement purposes only, the requirements for Rule 23 Conditional Settlement Certification have been met, and certifies the following Settlement Class, for settlement purposes only, defined as follows:

All members, participants, and beneficiaries of ERISA-governed employee welfare benefit plans administered and/or insured by ALIC, who themselves, or who, as a subscriber, had a beneficiary covered by their benefits plan, who:

- Had a denied PBT benefit claim and/or denied PBT precertification request, for which either the claim was incurred, or the request was submitted, between June 1, 2017 and October 9, 2020 (“Class Period”); and
- Had a diagnosis code for head, neck, or brain cancer within the list of codes covered under Section 1 of the October 2020 revision to Clinical Policy Bulletin No. 0270; and
- Did not have benefit claims for intensity-modulated radiation therapy paid or adjudicated as paid by ALIC.
- The following persons are excluded from the Class: all individuals under the age of 21 at the time the claim for benefits was incurred or request was submitted; and all individuals covered by a Medicare Advantage plan administered or insured by ALIC. Also excluded from this definition are Defendants, as well as Defendants’ attorneys, agents, insurers, the attorneys representing Defendants in this case, the Judge(s) to whom this case is assigned and their immediate family members, all persons who request exclusion from (opt-out of) the Settlement, and all persons who previously released any claims encompassed in this Settlement.

16. The Court preliminarily finds that the proposed Settlement is fair, reasonable, and adequate, was negotiated at arm’s-length and was entered into by the Parties in order to avoid the costs, uncertainty and risks of continuing litigation.

17. For purposes of determining whether the terms of the proposed Settlement should be finally approved as fair, reasonable and adequate, and contingent upon the Settlement being finally approved, named Plaintiffs Paul Molloy and Jacqueline Molloy are appointed as Class Representatives, and the following counsel are designated as counsel for the Class (“Class Counsel”):

David S. Senoff, Esquire
First Law Strategy Group, LLC
121 S. Broad Street, Suite 300
Philadelphia, PA 19107

Richard M. Ochroch, Esquire
Brett N. Benton, Esquire
Andrew R. Ochroch, Esquire
Richard M. Ochroch & Associates, P.C.
318 S. 16th Street
Philadelphia, PA 19102

18. If final approval of the proposed Settlement is not obtained, or if final judgment as contemplated herein is not granted, this Order shall be vacated *ab initio* and the Parties shall be restored without prejudice to their respective litigation positions prior to the date of this Order of Preliminary Approval.

19. Pending final determination of whether the proposed Settlement should be approved, all proceedings in the Action shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement the proposed Settlement or to comply with or effectuate the terms of the Settlement.

20. The Court preliminarily finds that the dissemination of the Settlement Class Notice and Claim Form under the terms and in the format provided for in this Order and the Agreement constitutes the best notice practicable under the circumstances, and is due and sufficient notice for

all purposes to all persons entitled to such notice, and fully satisfies the requirements of due process, the Federal Rules of Civil Procedure and all other applicable laws.

21. Carroll Services, LLC is hereby appointed as the Claims Administrator.

22. Defendants and Defendants' Counsel are hereby authorized to receive and disclose information about the proposed Settlement Class Members and their benefit claims and/or precertification requests, including the Class List and personal health information ("PHI") necessary for settlement administration, to the Claims Administrator and Class Counsel in order to effectuate notice and implement the Settlement.

23. The Claims Administrator shall execute the Acknowledgement and Agreement appended to the Confidentiality and Qualified Protective Order, which was approved by the Court on April 28, 2021, and shall adhere to all aspects of that Confidentiality and Qualified Protective Order, and keep confidential from all persons, except as authorized in writing by a Settlement Class Member or as ordered by the Court, the Class List and all PHI of members of the Class. Any permitted disclosures of Settlement Class Member information in connection with the Settlement shall be limited to the minimum necessary to satisfy the Settlement's requirements.

24. Within ten (10) business days after the entry of this Order, ALIC shall provide the Class List to Class Counsel, and Class Counsel shall provide the Class List to the Claims Administrator as soon as practicable after receipt.

25. Within ten (10) business days after receiving the Class List, the Claims Administrator shall issue the Settlement Class Notice and Claim Form to the Settlement Class Members listed on the Class List via mail or other method of service that satisfies Rule 23.

26. The deadline for all Settlement Claims to be submitted by Settlement Class Members shall be sixty (60) days after the Settlement Class Notices are disseminated (the “Submission Deadline”).

27. Settlement Class Members who wish to exclude themselves from or object to the Settlement shall submit an appropriate and timely written Request for Exclusion or Objection within sixty (60) days after the Settlement Class Notices are disseminated (the “Opt-Out Deadline” or “Objection Deadline”).

28. Any Settlement Class Members who wish to appear to object to the Settlement Agreement at the Final Approval Hearing shall submit an appropriate and timely written statement within sixty (60) days after Settlement Class Notices are disseminated.

29. Any attorneys representing any objecting Settlement Class Members individually, at the objecting Settlement Class Members’ expense, and at the time the objection is filed (but in any event no later than the Objection Deadline), shall file a notice of appearance.

30. After the expiration of the deadline for submitting a Request for Exclusion or Objection and prior to Final Approval of the Settlement, Settlement Class Members are preliminarily enjoined from asserting any Released Claims against Defendants or Affiliated Entities, pending a decision by the Court on final approval of this Settlement.

31. The Claims Administrator shall send to Class Counsel and Defendants’ Counsel an affidavit no less than forty-five (45) days prior to the Final Approval Hearing: (i) indicating the number and initials of Settlement Class Members who submitted Requests for Exclusions to date; and (ii) attesting that the Settlement Class Notice and Claim Form were disseminated in a manner consistent with the terms of the Settlement and this Order.

32. Class Counsel shall file their motion for an award of Class Counsel Fees and Expenses, and Class Representative Service Payments, at least thirty (30) days prior to the Final Approval Hearing.

33. Class Counsel shall file their Final Approval Motion at least thirty (30) days prior to the Final Approval hearing.

34. A Final Approval Hearing shall be held on _____, 2023, at ____ o'clock a.m. Courtroom _____, to determine whether the proposed Settlement of this Action (including the payment of attorneys' fees and costs to Class Counsel) should be approved as fair, reasonable, and adequate, and to determine whether final judgment approving the proposed Settlement and dismissing all claims asserted in this Action on the merits, with prejudice and without leave to amend, should be entered. The Final Approval Hearing may be postponed, adjourned or rescheduled by order of the Court without further notice to the Class Members.

35. Objections to the Settlement shall be heard, and any papers or briefs submitted in support of said objections, shall be considered by the Court (unless the Court in its discretion shall otherwise direct) only if they comply with the objection procedures set forth in the Settlement and Settlement Class Notice. Specifically, members of the Class who have not previously opted out of the Class must file a notice of intent to object to the Settlement. To be effective, a notice of intent to object to the Settlement must: (a) contain a heading that includes the name of the case and case number; (b) provide the name, address, telephone number and signature of the Class Member filing the objection; (c) state whether the objection applies only to the objecting Settlement Class Member, to a specific subset of the Class, or to the entire Class; (d) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position; and (e) provide any documents the objector wishes to submit in support of his/her

position. Objections must be filed with the Clerk of Court and served upon Class Counsel and Defendants' Counsel by the Objection Deadline. Any Settlement Class Member who has not filed an objection in complete accordance with the deadlines and other specifications set forth herein will be deemed to have waived any objections to the Settlement and will be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

36. Should any objecting Settlement Class Member wish to appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or object to any requests for Class Counsel Fees and Expenses, or Class Representative Service Payments, the objecting Settlement Class Member must file with the Clerk of Court and serve upon Class Counsel and Defendants' Counsel a Notice of Intention to Appear by the Objection Deadline. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file and serve a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth herein, will be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

37. All Class Members who do not opt out of the Class shall be bound by any Final Approval Order and Judgment entered pursuant to the Settlement, and shall be barred and enjoined, now and in the future, from asserting any and all of the Released Claims, as defined in the Settlement, and any such Class Member shall be conclusively deemed to have released any and all such Released Claims.

38. The Settlement fits within the parameters necessary for potential final approval, and is therefore hereby preliminarily approved, but is not to be deemed an admission of liability or fault by Defendants or by any other person or entity, or a finding of the validity of any claims asserted in the Action or of any wrongdoing or of any violation of law by Defendants. The Settlement is not a concession and shall not be used as an admission of any fault or omission by Defendants or any other person or entity. Neither the terms or provisions of the Settlement, nor any related document, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding, to establish any liability or admission by Defendants except in any proceedings brought to enforce the Settlement, except that the Defendants and/or Affiliated Entities may file this Order in any action that may be brought against any of them 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, or similar defense or counterclaim.

39. Upon motion of any Party, the Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Class.

Based upon the above, IT IS SO ORDERED.

United States District Court Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Paul Molloy and Jacqueline Molloy, h/w on behalf of themselves and all others similarly situated,	:	CIVIL ACTION
	:	CLASS ACTION
	:	
	:	
Plaintiffs,	:	
	:	No. 2:19-cv-03902
v.	:	
	:	
Aetna Life Insurance Company and Aetna Inc.	:	
	:	
Defendants.	:	
	:	

**PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Plaintiffs, Paul and Jaqueline Molloy, husband and wife, on behalf of themselves and all others similarly situated, by and through their attorneys, First Law Strategy Group, LLC and Richard M. Ochroch & Associates, P.C., hereby submit this Unopposed Motion for Preliminary Approval of Class Action Settlement, and incorporate by reference their Memorandum of Law, as though set forth at length herein.

Defendants do not oppose this Motion. *See* E.D. Pa. L.R. 7.1.

WHEREFORE, for the reasons set forth in the accompanying Memorandum of Law, Plaintiffs respectfully request that this Honorable Court enter the attached proposed Order and:

- a. Grant preliminary approval of the Parties’ Settlement Agreement;
- b. For settlement purposes, preliminarily certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23;

- c. Preliminarily approve Plaintiffs, Paul Molloy and Jacqueline Molloy as the Class Representatives of the Settlement Class;
- d. Preliminarily approve First Law Strategy Group, LLC and Richard M. Ochroch & Associates, P.C. as Class Counsel for the Settlement Class;
- e. Preliminarily approve Carroll Services, LLC as the Claims Administrator;
- f. Approve the Settlement Class Notice and Settlement Claim Form;
- g. Approve the proposed schedule and procedure for completing the final approval process as set forth in the Parties' Settlement Agreement; and
- h. Provide any other relief deemed just and proper.

DATED: MARCH 3, 2023

Respectfully submitted,

BY: 
FIRST LAW STRATEGY GROUP, LLC
David S. Senoff, Esquire
Attorney I.D. No. 65278
121 S. Broad Street, Suite 300
Philadelphia, PA 19107
Phone: (215) 258-4700
Facsimile: (215) 258-4777
dsenoff@firstlawstrategy.com

RICHARD M. OCHROCH & ASSOCIATES, P.C.
Richard Ochroch, Esquire
Brett N. Benton, Esquire
Andrew R. Ochroch, Esquire
Attorney I.D. Nos. 21432 / 93267 / 315797
318 South 16th Street
Philadelphia, PA 19102
Facsimile: (215) 893-4209
bbenton@ochroch-law.com
rochroch@ochroch-law.com
aochroch@ochroch-law.com

Attorneys for Plaintiffs and members of the putative class

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Paul Molloy and Jacqueline Molloy, h/w	:	CIVIL ACTION
on behalf of themselves and all others	:	CLASS ACTION
similarly situated,	:	
	:	
	:	
Plaintiffs,	:	
	:	No. 2:19-cv-03902
v.	:	
	:	
Aetna Life Insurance Company and	:	
Aetna Inc.	:	
	:	
Defendants.	:	
	:	

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
EXHIBIT INDEX	vii
I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGORUND.....	2
III. THE PROPOSED SETTLEMENT	5
A. The Settlement Class.....	5
B. Benefits to Class Members	6
C. Settlement Class Notice	7
D. Class Counsel Fees and Expenses and Class Representative Service Payments.....	8
E. Release	9
IV. ARGUMENT	9
A. Legal Standard	9
B. The Settlement Should be Preliminarily Approved by the Court.....	10
1. Adequacy of Representation and Arm’s Length Negotiation.....	10
2. Adequacy of Relief	13
a. Costs, Risk, and Delay of Trial and Appeal.....	13
b. Effectiveness of Proposed Method of Distributing Relief to the Class, Including the Method of Processing Class Member Claims	16
c. The Class Counsel Fees and Expenses and the Class Representative Service Payments are Subject to the Court’s Approval, Justified, and Included in the Settlement Class Notice	17
d. Copy of Settlement Agreement.....	21

3.	The Settlement Treats Each Respective Settlement Class Member Equitably	21
C.	The Settlement Class Should be Preliminarily Certified	21
1.	The Settlement Class is Sufficiently Numerous	22
2.	The Settlement Class Seeks Resolution of Common Questions.....	23
3.	The Claims of the Named Plaintiffs are Typical of the Settlement Class Members	23
4.	Class Counsel and Plaintiffs Satisfy the Adequacy Requirements	24
5.	The Settlement Class Satisfies the Predominance and Superiority Requirements of Federal Rule of Civil Procedure 23(b)(3)	24
6.	The Settlement Class is Ascertainable.....	25
D.	The Proposed Settlement Class Notice Provides Adequate Notice to the Settlement Class Members and Satisfies Due Process.....	26
E.	The Proposed Implementation Schedule	27
V.	CONCLUSION.....	28

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	22
<i>Baby Neal v. Casey</i> , 43 F.3d 48, 55 (3d Cir. 1994).....	21
<i>Byrd v. Aaron’s Inc.</i> , 784 F.3d 154 (3d Cir. 2015).....	25
<i>Cullen v. Whitman Med. Corp.</i> , 197 F.R.D. 136 (E.D. Pa. 2000).....	15, 19
<i>Deitz v. Budget Renovations & Roofing, Inc.</i> , 2013 WL 2338496 (M.D. Pa. May 29, 2013).....	15
<i>Dewey v. Volkswagen Aktiengesellschaft</i> , 558 F. App’x 191 (3d Cir. 2014)	18
<i>Esslinger v. HSBC Bank Nevada, N.A.</i> , 2012 WL 5866074 (E.D. Pa. Nov. 20, 2012)	19
<i>Flores v. Express Servs., Inc.</i> , 2017 WL 1177098 (E.D. Pa. Mar. 30, 2017).....	18
<i>Glaberson v. Comcast Corp.</i> , 2014 WL 7008539 (E.D. Pa. Dec. 12, 2014).....	26
<i>Hassine v. Jeffes</i> , 846 F.2d 169 (3d Cir. 1988).....	24
<i>In re Certainteed Fiber Cement Siding Litig.</i> , 303 F.R.D. 199 (E.D. Pa. 2014).....	15
<i>In re Constar Int’l, Inc. Sec. Litig.</i> , 585 F.3d 774 (3d Cir. 2009).....	22
<i>In re Corel Corp. Sec. Litig.</i> , 293 F. Supp. 2d 484 (E.D. Pa. 2003)	15, 26
<i>In re Domestic Drywall Antitrust Litig.</i> , 2018 WL 3439454 (E.D. July 17, 2018).....	20

In re Gen. Motors Corp.,
55 F.3d 768 (3d Cir. 1995).....18, 21

In re Ikon Office Solutions, Inc. Sec. Litig.,
194 F.R.D. 166 (E.D. Pa. 2000).....26

In re Nat’l Football League Players Concussion Injury Litig.,
307 F.R.D. 351 (E.D. Pa. 2015).....22

In re Nat’l Football League Players Concussion Injury Litig.,
821 F.3d 410 (3d Cir. 2016).....24

In re Prudential Ins. Co. of Am. Sales Practices Litig.,
148 F.3d 283 (3d Cir. 1998).....24

In re Rent-Way Sec. Litig.,
305 F. Supp. 2d 491 (W.D. Pa. 2003).....11

In re Warfarin Sodium Antitrust Litig.,
391 F.3d 516 (3d Cir. 2004).....22

King Drug Co. of Florence, Inc. v. Cephalon, Inc.,
2015 WL 12843830 (E.D. Pa. Oct. 15, 2015).....20

Krimes v. JPMorgan Chase Bank, N.A.,
2017 WL 2262998 (E.D. Pa. May 24, 2017).....20

Lake Forest Partners, LP v. Sprint Commc’ns Co. LP,
2013 WL 3048919 (W.D. Pa. June 17, 2013).....19

Marchbanks Truck Serv., v. Comdata Network, Inc.,
2014 WL 12738907 (E.D. Pa. July 14, 2014).....21

McRobie v. Credit Prot. Ass’n,
2020 WL 6822970 (E.D. Pa. Nov. 20, 2020)10

Mehling v. New York Life Ins. Co.,
248 F.R.D. 455 (E.D. Pa. 2008).....15, 26

Mullane v. Central Hanover Bank & Trust Co.,
339 U.S. 306 (1950).....26

Reed v. Gen. Motors Corp.,
703 F.2d 170 (5th Cir. 1983)11

<i>Schwartz v. Dallas Cowboys Football Club, Ltd.</i> , 157 F. Supp. 2d 561 (E.D. Pa. 2001).....	10
<i>Stewart v. Abraham</i> , 275 F.3d 220 (3d Cir. 2001).....	23
<i>Sullivan v. DB Invs., Inc.</i> , 667 F.3d 273 (3d Cir. 2011).....	20
<i>Sweda v. University of Pa.</i> , 2021 WL 5907947 (E.D. Pa. Dec. 14, 2021).....	20
<i>Vista Healthplan, Inc. v. Cephalon Inc.</i> , 2020 WL 1922902 (E.D. Pa. Apr. 21, 2020).....	15, 20
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338 (2011).....	23
<i>Weiss v. York Hosp.</i> , 745 F.2d 786 (3d Cir. 1984).....	22
<i>Weiss v. York Hosp.</i> , 470 U.S. 1060 (1985).....	22
<i>Wetzel v. Liberty Mut. Ins. Co.</i> , 508 F.2d 239 (3d Cir. 1975).....	21
<i>Wetzel v. Liberty Mut. Ins. Co.</i> , 421 U.S. 1011 (1975).....	21
Statutes, Regulations, Rules	
E.D. Pa. L.R. 7.1.....	2
Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, <i>et seq.</i> (ERISA).....	<i>passim</i>
Fed. R. Civ. P. 12(b)(6).....	4
Fed. R. Civ. P. 23.....	2, 21, 25
Fed. R. Civ. P. 23(a).....	21, 22
Fed. R. Civ. P. 23(a)(1).....	22
Fed. R. Civ. P. 23(a)(2).....	23

Fed. R. Civ. P. 23(a)(3).....	24
Fed. R. Civ. P. 23(a)(4).....	24
Fed. R. Civ. P. 23(b).....	21
Fed. R. Civ. P. 23(b)(3).....	22, 24, 25
Fed. R. Civ. P. 23(c)(2)(B).....	26
Fed. R. Civ. P. 23(e).....	9, 21
Fed. R. Civ. P. 23(e)(1).....	9
Fed. R. Civ. P. 23(e)(1)(B)(i)-(ii).....	10
Fed. R. Civ. P. 23(e)(1)(B)(i).....	10
Fed. R. Civ. P. 23(e)(1)(B)(ii).....	10
Fed. R. Civ. P. 23(e)(2).....	9
Fed. R. Civ. P. 23(e)(2)(A)-(D).....	10
Fed. R. Civ. P. 23(e)(2)(C).....	13
Fed. R. Civ. P. 23(e)(2)(C)(iv).....	21
Fed. R. Civ. P. 23(e)(2)(D).....	21
Fed. R. Civ. P. 23(e)(3).....	10
Fed. R. Civ. P. 23(h)(1).....	18
Fed. R. Civ. P. 23, 2018 Amendment Advisory Committee Notes.....	10
Other Authorities	
MANUAL FOR COMPLEX LITIGATION, FOURTH § 21.632.....	9
MANUAL FOR COMPLEX LITIGATION, FOURTH § 21.7.....	19
MANUAL FOR COMPLEX LITIGATION, SECOND § 30.44.....	10

EXHIBIT INDEX

EXHIBIT	DOCUMENT
1	Settlement Agreement and Release
2	Decl. of D. Senoff in Support of Pls.' Unopposed Mot. for Prelim. Approval of Settlement
3	United States District Court Docket
4	John P. Carroll C.V.

Plaintiffs, Paul and Jacqueline Molloy, husband and wife, (“Paul” and “Jacqueline,” respectively, and collectively “Plaintiffs”), on behalf of themselves and all others similarly situated, by and through their attorneys, First Law Strategy Group, LLC and Richard M. Ochroch & Associates, P.C., hereby present this Memorandum of Law in Support of their Unopposed Motion for Preliminary Approval of Class Action Settlement.²

I. INTRODUCTION

The Parties have reached a settlement of this class action. *See* Settlement Agreement and Release, attached as Exhibit “1” (hereinafter referred to as “Settlement Agreement” and cited as “SA”). This settlement represents an exemplary result for the Settlement Class Members of claims that were vigorously contested by Defendants, and that faced significant uncertainties both at class certification and at trial. The Parties engaged in numerous arms-length negotiations over an extended period of time. Ultimately, the Parties’ good-faith efforts to resolve this litigation resulted in a settlement representing a thoughtful compromise, which takes into consideration the Parties’ respective concerns, together with substantial guaranteed payments to the 142 Settlement Class Members in the minimum amount of \$10,000 each, and as high as \$24,000 each.

The Settlement Class consists of all members, participants, or beneficiaries of an ERISA sponsored health plan administered and/or insured by Defendant, Aetna Life Insurance Company (“ALIC”) who between June 1, 2017 and October 9, 2020: (1) had a request for coverage of Proton Beam Therapy (“PBT”) denied; (2) were diagnosed with a type of head, neck, or brain cancer identified in the October 2020 version of Clinical Policy Bulletin No. 0270 concerning PBT (“CPB No. 0270”); and (3) did not receive coverage under their ERISA plan for intensity-modulated radiation therapy. SA pp. 4-5, ¶ 1.D. This is a claims-made settlement. Class Counsel and

² This Memorandum of Law incorporates by reference the defined terms of the Settlement Agreement.

Defendants have determined that there are approximately 142 Settlement Class Members as of the date the parties executed the Settlement Agreement. Accordingly, the Settlement provides for potential direct payments to the Settlement Class Members totaling \$3,408,000.

Class Counsel respectfully submits that the Settlement is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class. Class Counsel respectfully requests that the Court:

- a. Grant preliminary approval of the proposed Settlement and enter the attached proposed Order;
- b. Certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23;
- c. Designate Plaintiffs as Class Representatives and Plaintiffs' counsel as Class Counsel;
- d. Direct that notice of the proposed Settlement and Final Approval Hearing be provided to the Settlement Class in the manner set forth in the Settlement Agreement; and
- e. Schedule a Final Approval Hearing to consider final approval.

Defendants do not oppose this Motion.³ See E.D. Pa. L.R. 7.1.

II. FACTUAL AND PROCEDURAL BACKGROUND

In May 2017, Plaintiff Paul Molloy was diagnosed with a brain tumor (specifically, an oligodendroglioma) in his right temporal lobe. (First Am. Compl. ¶ 35.) On June 19, 2017, Paul underwent a craniotomy (*i.e.*, brain surgery) of his right temporal lobe at the Hospital of the University of Pennsylvania, which was successful in removing approximately 80% of his tumor.

³ Defendants deny liability with respect to the matters alleged in this Action, including that the case could be properly certified as a litigation class action as opposed to a class action for settlement purposes only. Defendants entered into the Settlement as a compromise of disputed claims and for the purpose of avoiding the uncertainty, costs, and delay of continued litigation, and retain all rights to assert that this Action should not be certified as a class action should final approval of the proposed settlement not be granted. SA pp. 2-3; *id.* p. 15, ¶¶ 2.A.vi, vii. See also *id.* pp. 36-37, ¶ 24. Although Defendants do not oppose the instant Motion, all statements in the Motion and this Memorandum are being made by Plaintiffs, not Defendants, and nothing herein constitutes an admission by Defendants with respect to anything related to this matter.

(*Id.* ¶ 37.) Following that surgery, his surgical team and his physician, Dr. Robert Lustig (professor of Clinical Radiation Oncology of the Perelman School of Medicine at the University of Pennsylvania and a board-certified therapeutic radiologist at the Hospital of the University of Pennsylvania), recommended that Paul receive post-operative radiation with PBT. (*Id.* ¶¶ 13 n.3, 38; *see also id.* Ex. “B” at 1.) PBT is a type of external beam radiation therapy that utilizes protons (positively charged subatomic particles) that are targeted to a specific tissue mass. This is due to the precise delivery of the accelerated particles from the Proton Beam. (*See id.* ¶ 39.)

Prior to May 2017, Plaintiff Jacqueline Molloy was (and currently is) employed by Vanguard Group, Inc. As a benefit of her employment with Vanguard, at all times relevant hereto, Jacqueline was entitled to, and did, participate in Vanguard’s Employee Welfare Benefit Fund known as the “Choice POS II with Aetna Health Fund Benefit Plan” (hereinafter, the “Plan”). Due to the fact that Plaintiff Paul Molloy was and continues to be married to Plaintiff Jacqueline Molloy, Paul was (and continues to be) a Beneficiary of the Plan.

ALIC denied Paul’s pre-certification request for PBT. (*See generally id.* ¶¶ 47-77 (pre-certification denials).) As a result, Paul self-paid for his PBT treatment. (*Id.* ¶ 78.) Paul subsequently made a request for reimbursement, and ALIC again denied Paul’s claim. (*See generally id.* ¶¶ 78-95 (post-service denials).)

On August 19, 2019, Plaintiffs commenced this case by filing a Class Action Complaint against Defendants, on behalf of members, participants and beneficiaries of ERISA-governed plans administered by ALIC who were denied coverage for PBT. [ECF 1]. On November 15, 2019, Defendants filed a Motion to Dismiss Plaintiffs’ Complaint contending the Complaint was impermissibly vague, and further, that the original Complaint failed to place Defendants on notice of the claims against them, thus inhibiting their ability to prepare a defense. [ECF 21].

On December 13, 2019, Plaintiffs filed their Amended Class Action Complaint. [ECF 23]. On January 6, 2020, Defendants filed a Motion to Dismiss the First Amended Class Action Complaint pursuant to Fed. R. Civ. P. 12(b)(6) alleging that Plaintiffs' Amended Class Action Complaint fails to state a cause of action upon which relief can be granted. [ECF 26]. Plaintiffs filed their response in opposition to this motion on January 28, 2020. [ECF 28]. On February 11, 2020, Defendants filed a reply in further support of their motion. [ECF 29]. Subsequently, Defendants filed a notice of supplemental authority on April 14, 2020 [ECF 33], to which Plaintiffs filed a response on April 22, 2020 [ECF 34].

In and around October 2020, CPB No. 0270 was revised as to the scope of cancer types for which PBT would be considered as medically necessary. SA Ex. "A" at pp. 1-2. The revisions to CPB No. 0270 included, among other things, removing Oligodendroglioma from the list of "indications" for which PBT was "consider[ed] experimental and investigational for . . . adults (over age 21)" *Id.* pp. 2-3.

On October 13, 2020, the Parties jointly requested the Court to defer ruling on Defendants' Motion to Dismiss the First Amended Complaint while the Parties explored the possibility of settlement of this matter. In light of the Parties' efforts to reach a settlement, on June 1, 2021, the Court transferred this case to the Civil Suspense File, until further Order of this Court. [ECF 49].

Following extended negotiations, which took place throughout the remainder of 2020, 2021, and the first half of 2022, in June 2022, the Parties agreed in principle to settlement of Plaintiffs' claims on behalf of the Settlement Class, and over the course of the next several months continued to negotiate, draft, and finalize the Settlement Agreement submitted herewith.⁴ *See*

⁴ To be sure, part of the time spent negotiating the settlement was due to delays occasioned by the COVID-19 pandemic. The pandemic delayed receipt of certain discovery responses from ALIC that were integral to Plaintiffs' ability to retain an expert and to confirm the economic terms of the proposed agreement. This delay was in no way

Decl. of D. Senoff in Support of Pls.’ Unopposed Mot. for Prelim. Approval of Settlement ¶¶ 19-24, attached as Exhibit “2” (hereinafter cited as “D. Senoff Decl.”).

III. THE PROPOSED SETTLEMENT

A. The Settlement Class

The Settlement Class comprises:

All members, participants, and beneficiaries of ERISA-governed employee welfare benefit plans administered and/or insured by ALIC, who themselves, or who, as a subscriber, had a beneficiary covered by their benefits plan, who:

- Had a denied PBT benefit claim and/or denied PBT precertification request, for which either the claim was incurred, or the request was submitted, between June 1, 2017 and October 9, 2020 (“Class Period”); and
- Had a diagnosis code for head, neck, or brain cancer within the list of codes covered under Section 1 of the October 2020 revision to Clinical Policy Bulletin No. 0270 (a copy of which is attached to the Settlement Agreement as Exhibit A); and
- Did not have benefit claims for intensity-modulated radiation therapy paid or adjudicated as paid by ALIC.
- The following persons are excluded from the Class: all individuals under the age of 21 at the time the claim for benefits was incurred or request was submitted; and all individuals covered by a Medicare Advantage plan administered or insured by ALIC. Also excluded from this definition are Defendants, as well as Defendants’ attorneys, agents, insurers, the attorneys representing Defendants in this case, the Judge(s) to whom this case is assigned and their immediate family members, all persons who request exclusion from (opt-out of) the Settlement, and all persons who previously released any claims encompassed in this Settlement.

SA pp. 4-5, ¶ 1.D.

caused by or intentional on the part of Defendants or their counsel, as much of the information requested and ultimately produced had to be retrieved manually from written records and documents stored in various locations.

B. Benefits to Class Members

Each Settlement Class Member who timely submits a Settlement Claim Form shall be entitled to a minimum guaranteed payment of \$10,000. *See* SA p. 16, ¶ 3.A. Each Settlement Class Member also will be afforded the opportunity to receive up to \$24,000 (inclusive of the \$10,000 minimum guaranteed payment). *See* SA p. 9, ¶ 1.H.; *id.* p. 16, ¶ 3.B.

In order to receive more than the \$10,000 minimum, guaranteed payment, a Settlement Class Member will be required to submit sufficient Proof of Payment or Proof of Indebtedness for their receipt of PBT treatment. *See* SA p. 18, ¶ 4. Said Proof of Payment or Proof of Indebtedness shall be submitted with their Settlement Claim Form demonstrating that any claim for an amount in excess of \$10,000 was paid, is payable, or remains owed, in connection with their receipt of PBT treatment. *See* SA p. 18, ¶ 4. Proof of Payment includes, but is not limited to: receipts showing payment for PBT treatment from a hospital, treatment center, or physician; cancelled checks; credit card records; notarized affidavits or notarized sworn statements from the individual who made such payment (or an authorized representative of such individual or his or her estate); or any other proof of payment for PBT treatment, including documentation from ALIC itself, if any. *See* SA p. 18, ¶ 4. Proof of Indebtedness includes, but is not limited to: loan documentation; collection notices; demands for payment on unpaid bills; notarized affidavits or notarized sworn statements from the individual who incurred such debt (or an authorized representative of such individual or his or her estate); or self-pay agreements with a medical care provider that administered the PBT treatment. *See* SA p. 18, ¶ 4.

“[I]t is the intent of the Parties to make all reasonable efforts such that cash awards are made to those individuals whose status as a Settlement Class Member has been confirmed by records provided in discovery and who file a Settlement Claim Form,” as well as “all reasonable

efforts to assist Settlement Class Members in the process of submitting Settlement and to rehabilitate inconsistent, confusing, or incomplete Settlement Claims Forms” will be made. SA p. 17, ¶ 3.F, G.

Accordingly, the amount of the settlement funds to which ALIC has committed to paying to the Settlement Class Members totals: \$3,408,000, assuming every one of the 142 Settlement Class Members qualifies for the maximum payment of \$24,000 (*i.e.*, $142 * \$24,000 = \$3,408,000$). To the extent any portion of the \$3,408,000 in settlement funds that ALIC agreed to make available for payment to the Settlement Class Members remains unclaimed by the Settlement Class Members, any remainder will be the subject of a *cy pres* award to NRG Oncology Foundation, Inc. (or any other *cy pres* recipient the Court may approve). SA pp. 16-17, ¶ 3.D.

C. Settlement Class Notice

Within ten (10) business days of the entry of the Preliminary Approval Order, and as directed in the Preliminary Approval Order, ALIC will provide Class Counsel with the Class List of the Settlement Class Members (pursuant to the terms of the Confidentiality and Qualified Protective Order), along with a verification that the list is both accurate and complete to the best of ALIC’s knowledge. SA p. 22, ¶ 11. The information on the Settlement Class List will include names, last known addresses, phone numbers, and email addresses, where known, for the 142 Settlement Class Members previously identified during discovery. SA p. 22, ¶ 11.

Thereafter, Class Counsel will then forward this list to the Claims Administrator, as soon as practicable. SA p. 22, ¶ 11. Within ten (10) business days of receiving the Class List, the Claims Administrator will send each Settlement Class Member a Settlement Class Notice and Settlement Claim Form via first class mail. SA pp. 22-23, ¶ 12. Prior to issuing the Settlement Class Notice and Settlement Claim Form to the Settlement Class Members, the Claims

Administrator will establish both an informational website and toll-free phone number. *See* SA Ex. “B” (Settlement Class Notice); SA Ex. “C” (Settlement Claim Form).

If any Settlement Class Notice and Settlement Claim Form mailed to any Settlement Class Member is returned as undeliverable with a forwarding address, the Claims Administrator will re-issue these documents to the Settlement Class Member’s new address. SA pp. 22-23, ¶ 12. If mail is returned without a forwarding address, or if a Settlement Class Member fails to return a Settlement Claim Form, the Claims Administrator may perform an electronic search to attempt to locate an updated address for that Settlement Class Member, and re-serve these documents to that new address. SA pp. 22-23, ¶ 12.

Following the Claims Administrator’s issuance of the Settlement Class Notice and Settlement Claim Form, the Settlement Class Members will be afforded an adequate opportunity to either opt-out of the proposed settlement, or object to its terms. SA pp. 24-27, ¶¶ 13-14. The Settlement Class Members also will be afforded the opportunity to appeal any decisions made by the Claims Administrator. SA p. 20, ¶ 7.

D. Class Counsel Fees and Expenses and Class Representative Service Payments

After agreeing to the principal terms of the Settlement Agreement, including the Settlement Amount, Class Counsel and Defendants’ counsel separately negotiated the Class Counsel Fees and Expenses and Class Representative Service Payments that, following application to the Court and subject to Court approval, would be paid by ALIC. SA pp. 31-32, ¶¶ 17-19; D. Senoff Decl. ¶¶ 30-31.

The Settlement Agreement provides Defendants will not contest an award of counsel fees and expenses of up to \$1,502,000 (the Class Counsel Fees and Expenses), inclusive of the costs of administering the Settlement and Class Representative Service Payments for the Plaintiffs of up to

\$25,000 each. SA pp. 31-32, ¶¶ 17-18. These funds are being paid in addition to, and separate and apart from, the payments to be awarded to the Settlement Class Members. Accordingly, this will not reduce the monetary relief available to the Settlement Class. SA p. 32, ¶ 19.

E. Release

Pursuant to the Settlement Agreement, and subject to the Court’s final approval, the Settlement Class Members who do not opt-out of the proposed settlement will release Defendants and their Affiliated Entities with respect to all Released Claims. SA pp. 7-8, ¶ 1.Z; *id.* pp. 28-31, ¶ 15. The release will not be a policy general release. SA pp. 28-31, ¶ 15. Other claims for benefits for unrelated diseases or treatment are not impacted by the release contemplated by the Settlement Agreement. SA pp. 28-31, ¶ 15.

IV. ARGUMENT

A. Legal Standard

Federal Rule of Civil Procedure 23(e) requires the Court’s approval for class action settlements. Fed. R. Civ. P. 23(e). Federal Rule of Civil Procedure 23(e) outlines a two-step process by which district courts must first determine whether a proposed class action settlement warrants preliminary approval and then, after notice of the settlement is given to class members, whether final approval is justified. *See, e.g.*, Federal Judicial Center, MANUAL FOR COMPLEX LITIGATION, FOURTH § 21.632. Plaintiffs now seek preliminary approval of the Settlement pursuant to Federal Rule of Civil Procedure 23(e).

Rule 23(e)(1) provides that notice should be given to the class, and hence, preliminary approval may be granted where the Court “will likely be able to”: (i) finally approve the settlement under Rule 23(e)(2); and (ii) certify the class for settlement purposes. Fed. R. Civ. P.

23(e)(1)(B)(i)-(ii). *See also id.* 2018 Amendment Advisory Committee Notes; *McRobie v. Credit Prot. Ass'n*, 2020 WL 6822970, at *5 (E.D. Pa. Nov. 20, 2020).

First, as to Rule 23(e)(1)(B)(i), final approval is proper upon a finding that the settlement is “fair, reasonable, and adequate” after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2)(A)-(D). Here, the Court will “likely be able to” finally approve this Settlement.

Second, as explained in Section IV(C), below, the Class also meets the criteria for certification of a settlement class, including all aspects of numerosity, commonality, typicality, adequacy, and predominance. The requirement under Rule 23(e)(1)(B)(ii) is therefore met as well.

B. The Settlement Should be Preliminarily Approved by the Court

1. Adequacy of Representation and Arm’s-Length Negotiation

In determining whether a proposed settlement should be preliminarily approved, courts may consider whether “the proposed settlement appears to be the product of serious, informed, non-collusive negotiations.” *Schwartz v. Dallas Cowboys Football Club, Ltd.*, 157 F. Supp. 2d 561, 570 n.12 (E.D. Pa. 2001) (quoting MANUAL FOR COMPLEX LITIGATION, SECOND § 30.44). Courts are to give considerable weight to the experience of the attorneys who litigated the

case and participated in settlement negotiations. *See, e.g., Reed v. Gen. Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983) (“[T]he value of the assessment of able counsel negotiation at arm’s-length cannot be gainsaid. Lawyers know their strengths and they know where the bones are buried.”); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 509 (W.D. Pa. 2003) (“[S]ettlement negotiations took place at arm’s-length between highly experience[d] and competent counsel. Their assessment of the settlement as fair and reasonable is entitled to considerable weight.” (citations omitted)).

Plaintiffs and Class Counsel have adequately represented the Class. Class Counsel extensively investigated the applicable law as applied to the relevant facts, and potential defenses thereto. Class Counsel are experienced and respected class action and insurance litigators. D. Senoff Decl. ¶¶ 1-8. The Settlement Amount was based upon an extensive review of the facts and law, as well as consultation with eminently qualified experts. D. Senoff Decl. ¶¶ 10, 15-17. Based on Class Counsel’s knowledge and expertise, Class Counsel believe this Settlement will provide a substantial benefit to the Settlement Class Members. D. Senoff Decl. ¶¶ 25-27 34, 37, 46-47.

The Settlement was the result of contested litigation and theories of liability, the exchange of information, and arm’s-length negotiation. The proposed Settlement was reached only after: (1) the Parties’ theories of liabilities and defenses were briefed through two separate Motions to Dismiss filed by Defendants; (2) the review of a significant amount of claims data pertaining to ALIC’s handling of PBT claims for the treatment of certain central nervous system, head, and neck cancers; (3) Plaintiffs’ consultation with highly qualified experts to ensure the information obtained was properly analyzed and understood; and (4) and a lengthy negotiation process that took more than 2 years to conclude. D. Senoff Decl. ¶¶ 18-24, 34.

The Settlement distribution amounts were carefully negotiated based on a substantial investigation and review of information conducted by Class Counsel. Preliminary settlement discussions began in October 2020, during the pendency of Defendants' Motion to Dismiss with respect to Plaintiffs' Amended Complaint. These discussions began after CPB No. 0270 was revised to no longer classify PBT as experimental and investigational as to Paul's diagnosis.

Given the nature of the claims presented, the most crucial component of Class Counsel's investigation required obtaining claims data from ALIC. Specifically, Class Counsel required information concerning PBT pre-certification and claim denials ALIC issued to plan participants and/or their beneficiaries diagnosed with, *inter alia*, the primary central nervous system, head, and neck cancers identified by diagnosis code in the October 2020 version of CPB No. 0270. *See SA Ex. "A."* Class Counsel subsequently obtained this information from ALIC in May-June 2021. Specifically, the data obtained included all PBT pre-certification and claim information for any ERISA plan participant and/or beneficiary with at least one PBT pre-certification or claim denial issued during the Class Period. The information obtained included, among other things: dates of services; claim adjudication dates; unit/treatment counts per claim; procedure codes; amounts billed; amounts allowed; amounts paid; and diagnosis codes. A number of the plan participants and/or beneficiaries with at least one PBT pre-certification or claim denial, had other PBT claims adjudicated as payable by ALIC. The information concerning these paid claims was included in the information obtained by Class Counsel. Class Counsel reviewed this extensive data in conjunction with their forensic accounting and economic expert Stephen J. Scherf, CPA/CFF, CFE, who assisted Class Counsel in concluding that the prospective payments to Settlement Class Members were reasonable.

Plaintiffs worked with Class Counsel for years to achieve this settlement, providing background information about themselves, their finances, Paul's health, and Paul's medical treatment. D. Senoff Decl. ¶¶ 11, 35. While this action was not filed until 2019, Plaintiffs worked with Class Counsel since 2017 providing information and assistance to evaluate their claim. D. Senoff Decl. ¶¶ 10-11. Plaintiffs provided substantial assistance to Class Counsel in their efforts to prepare this action to be filed, and provided information and feedback throughout the lengthy negotiation process that resulted in the executed Settlement Agreement. D. Senoff Decl. ¶¶ 10-11, 35.

Only after agreeing to the Settlement Amount did Class Counsel and Defendants' Counsel begin negotiating the Class Counsel Fees and Expenses and Class Representative Service Payments, to be paid separate and apart from the Settlement Amount, upon approval of the Court. D. Senoff Decl. ¶¶ 30-31.

2. Adequacy of Relief

Each of the sub-factors identified in Rule 23(e)(2)(C) weigh in favor of a finding that the relief is adequate.

a. Costs, Risk, and Delay of Trial and Appeal

This Settlement represents an exemplary result for the Settlement Class of this vigorously contested matter. This litigation has been ongoing for more than 3 years. *See* United States District Court Docket, attached as Exhibit "3." Class Counsel have remained the same throughout the 3-plus years of litigation and have a firm grasp of the recovery, Settlement Class Member information produced by ALIC, and applicable legal theories. D. Senoff Decl. ¶¶ 16, 43. Plaintiffs have obtained significant amounts of claims data concerning PBT treatment from ALIC,

investigated the facts and underlying events related to the claims, and carefully analyzed the applicable legal principles. D. Senoff Decl. ¶¶ 10, 15-16

Class Counsel are aware of the burden of proof necessary to establish liability for the alleged claims and of Defendants' defenses thereto. D. Senoff Decl. ¶¶ 43-45, 47. Further, Class Counsel recognize the risk and duration of continued proceedings necessary to continue the litigation against Defendants through trial and possible appeals. *Id.* There is an additional element of risk where, like in this case, the issue of class certification has not been determined. *Id.*

The distribution amounts the Settlement Agreement provides to the Settlement Class Members represents a substantial portion of the benefits they would have received if their requests for PBT treatment had been approved, without the need to establish anything other than confirming they meet the Settlement Class definition. Further, the settlement takes into account that Settlement Class Members may have incurred sums in excess of this \$10,000 minimum, guaranteed payment to obtain PBT treatment, and provides a mechanism which allows them to recover up to \$24,000 each.

Based on the opinion of Plaintiffs' forensic accounting and economic expert, the \$24,000 maximum recovery available to Settlement Class Members represents a recovery between 71% and 86% of the amount that would have been covered for a full course of PBT treatment for the Settlement Class Members. Plaintiffs' expert further opined that, even comparing the \$24,000 maximum payment to the average amount *billed* for a course of PBT treatment, the proposed Settlement represents an average recovery of more than 38% of this amount.⁵ The recovery secured through the Settlement Agreement compares favorably to class action settlements

⁵ Defendants have not reviewed, and thus take no position with respect to the expert report of Stephen J. Scherf. In addition, Mr. Scherf's expert report contains confidential information protected by the Court's April 28, 2021 Stipulated Confidentiality and Qualified Protective Order [ECF 48]. While not attached hereto, Plaintiffs remain ready to provide a copy of this report to the Court upon its request.

receiving final approval in this Court. *See Vista Healthplan, Inc. v. Cephalon Inc.*, 2020 WL 1922902, at *21-22 (E.D. Pa. Apr. 21, 2020) (granting final approval of class action settlement that was 11.5% of best possible recovery and comparing the settlement to other class action settlements ranging from 8.1% to 19.69% of provable damages); *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 462 (E.D. Pa. 2008) (granting final approval of class action settlement that was approximately 20% of the “best possible recovery”) (citing *In re Corel Corp. Sec. Litig.*, 293 F. Supp. 2d 484, 490 (E.D. Pa. 2003) (approving settlement of 15% of provable damages)); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 144 (E.D. Pa. 2000) (approving final settlement of approximately 17% of damages).

Where, in comparison to the proposed Settlement, proceeding with litigation would require a substantial amount of time to yield a benefit to the Settlement Class Members, it is an indication that the proposed Settlement is fair, reasonable, and adequate. *See In re Certaineed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 216 (E.D. Pa. 2014) (“[I]f the parties were to continue to litigate this case, further proceedings would be complex, expensive and lengthy, with contested issues of law and fact. . . . That a settlement would eliminate delay and expense and provide immediate benefit to the class militates in favor of approval.”); *Deitz v. Budget Renovations & Roofing, Inc.*, 2013 WL 2338496, at *5 (M.D. Pa. May 29, 2013) (“The Court sees no reason to needlessly expend judicial resources on a matter that neither party has any interest in continuing to litigate.”) (citation omitted)).

Taking into account the risks, uncertainties, burdens, and costs of further prosecution of the claims, and taking into account the substantial benefits received pursuant to the proposed Settlement, it is, in the view of the Class Representatives and Class Counsel, fair, reasonable,

adequate, and in the best interests of the Plaintiffs and the Settlement Class. D. Senoff Decl. ¶¶ 25, 37, 47

b. Effectiveness of Proposed Method of Distributing Relief to the Class, Including the Method of Processing Class Member Claims

The proposed claims administrator, Carroll Services, LLC (“Carroll”), has substantial experience with court-appointed engagements involved in the performance of fiduciary services. See John P. Carroll C.V., attached as Exhibit “4.”

Carroll will effectuate the Settlement Class Notice (explained above) and claims procedures set forth above and contemplated by the Settlement.

Those procedures are simple and straight forward. ALIC will use its best efforts to provide an up-to-date Class List, along with a verification confirming the list is accurate to the best of ALIC’s knowledge, information, and belief, within ten (10) business days of the entry of the Preliminary Approval Order. SA ¶ 11. Class Counsel will then forward the Class List to the Claims Administrator as soon as practicable thereafter. *Id.* Within ten (10) business days of receiving the Class List, the Claims Administrator will send the Settlement Class Members, via first-class mail, a Settlement Class Notice and Settlement Claim Form to their last known address (identified on the Class List).

The Settlement Claim Form contains two options. The first option permits the Settlement Class Member to claim only the \$10,000 minimum, guaranteed payment. In order to make a claim for this payment, the Settlement Class Member need only confirm they are a member of the Settlement Class by signing and completing Section I of the Settlement Claim Form. SA Ex. “C,” p. 3. The second option permits the Settlement Class Member to make a claim for up to \$24,000, based upon the amount of money spent and/or the amount of debt incurred, in order to secure PBT treatment. Any Settlement Class Member seeking to make such a claim must complete Section II

of the Settlement Claim Form by first identifying the total amount paid and/or owed for PBT treatment. SA Ex. “C,” p. 4. Along with this information, the Settlement Class Member must also provide Proof of Payment or Proof of Indebtedness. SA Ex. “C,” pp. 4-5. The Claims Administrator will review this information upon receipt and make a determination as to the amount awarded to each Settlement Class Member submitting such a claim, up to the \$24,000 maximum. SA p. 16, ¶ 3.B; *id.* p. 18, ¶ 4.

Any Settlement Class Member whose claim for more than the \$10,000 minimum, guaranteed payment is denied in whole or in part, will receive a written explanation of the Claim Administrator’s decision that also informs the Settlement Class Member of their right to appeal that decision. SA p. 20, ¶ 7. For any timely filed appeals, Class Counsel and Defendants’ Counsel will review and confer on whether the appeals should be granted. SA p. 20, ¶ 8. In the event Class Counsel and Defendants’ Counsel cannot reach an agreement, the matter will be submitted to the Court for review. *Id.*

Importantly, “it is the intent of the Parties to make all reasonable efforts such that cash awards are made to those individuals whose status as a Settlement Class Member has been confirmed by records provided in discovery and who file a Settlement Claim Form,” as well as “all reasonable efforts to assist Settlement Class Members in the process of submitting Settlement Claims and to rehabilitate inconsistent, confusing, or incomplete Settlement Claims Forms” will be made. SA p. 17, ¶ 3.F, G.

c. *The Class Counsel Fees and Expenses and the Class Representative Service Payments are Subject to the Court’s Approval, Justified, and Included in the Settlement Class Notice*

After agreeing to the principal terms of compensation to the Settlement Class Members, Class Counsel and Defendants’ Counsel negotiated the payment of up to \$1,502,000 total for Class

Counsel Fees and Expenses and Class Representative Service Payments that, following application to the Court and subject to Court approval, would be paid by ALIC. This amount is inclusive of previously expended litigation costs and expenses, as well as the future costs of administering the settlement, together with the potential Class Representative Service Payments for Plaintiffs of up to \$25,000 each. SA pp. 31-32, ¶¶ 16-18; D. Senoff Decl. ¶¶ 30-31. These funds will be paid in addition to, and separate and apart from, the payments to be awarded to the Settlement Class Members and will not reduce the monetary relief paid to the Settlement Class. SA p. 32, ¶ 19.

The potential award of the Class Counsel Fees and Expenses and Class Representative Service Payments will be in the Settlement Class Notice. SA Ex. “B” p. 3.

Class Counsel will submit their requests for the Class Representative Service Payments and Class Counsel Fees and Expenses in accordance with the schedule set by the Court. All of the reasons justifying these requests will be set forth in Class Counsel’s application prior to the final approval hearing. As set forth below, on their face, the Class Counsel Fees and Expenses and Class Representative Service Payments are reasonable.

“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h)(1). Generally, the two methods used to calculate attorneys’ fees are the percentage of recovery method and the lodestar method. See *Flores v. Express Servs., Inc.*, 2017 WL 1177098, at *1-2 (E.D. Pa. Mar. 30, 2017). “[W]here the reality is that the fund and the fee are paid from the same source—in this case, [the defendant]—the arrangement ‘is, for practical purposes, a constructive common fund,’ and courts may still apply the percent-of-fund analysis in calculating attorney’s fees.” *Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App’x 191, 197 (3d Cir. 2014) (quoting *In re Gen. Motors Corp.*, 55 F.3d 768, 820-821 (3d Cir. 1995)). Courts evaluate the percentage of recovery by

dividing the requested fee award by the sum of the benefits to the class, which is the sum of: (a) the benefits available to the class; and (b) class counsels' attorneys' fees and litigation expenses that defendant agreed to pay separate and apart from class relief⁶. "In the Third Circuit, fee awards in common fund cases generally range from 19% to 45% of the fund." *Esslinger v. HSBC Bank Nevada, N.A.*, 2012 WL 5866074, at *14 (E.D. Pa. Nov. 20, 2012).

Class Counsel has prioritized the direct benefit to the Settlement Class and will continue to do so. Class Counsel worked diligently for more than five years to secure a hard-fought settlement that provided significant guaranteed benefits to the Settlement Class Members. D. Senoff Decl. ¶¶ 26-28. The benefits available to the Class are \$4,860,000:

Settlement Amount	\$3,408,000
Class Counsel Fees and Expenses (less maximum Class Representative Service Payments)	\$1,452,000
TOTAL	\$4,860,000

The percentage of 29.88% is within the "general[] range" of percentages approved by this Court solely for attorneys' fees. *See Esslinger, supra*. In this case, the amount described above includes not only attorneys' fees, but also includes past costs of litigation, including expert fees, as well as the future costs of administering the settlement, including the fees charged by the Claims Administrator.

In addition, "courts routinely approve incentive awards to compensate named plaintiffs for services they provided and the risks they incurred during the course of the class action litigation." *Cullen*, 197 F.R.D. at 145 (internal citation omitted). Class representative "[s]ervice awards

⁶ Federal Judicial Center, MANUAL FOR COMPLEX LITIGATION, FOURTH § 21.7 ("If an agreement is reached on the amount of a settlement fund and a separate amount for attorney fees and expenses, both amounts must be disclosed to the class. Moreover, the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit of the class, with the agreed-on fee amount constituting the upper limit on the fees that can be awarded to counsel."); *e.g. Lake Forest Partners, LP v. Sprint Commc'ns Co. LP*, 2013 WL 3048919, at *2 (W.D. Pa. June 17, 2013).

‘compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation and [] reward the public service of contributing to the enforcement of mandatory laws.’” *Krimes v. JPMorgan Chase Bank, N.A.*, 2017 WL 2262998, at *11 (E.D. Pa. May 24, 2017) (quoting *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 333 n.65 (3d Cir. 2011)). “Incentive awards are not uncommon in class action litigation. . . . Even very generous incentive awards such as those proposed here [\$25,000 each] are not uncommon.” *Sweda v. University of Pa.*, 2021 WL 5907947, at *8 n.5 (E.D. Pa. Dec. 14, 2021) (alterations and citation omitted). “Courts have considered [class representative incentive / service] awards around 3.1 to 3.5 percent of the total recovery as proportional.” *Id.* at *8 (citation omitted).

Here, the proposed Class Representative Service Payments are justified by the benefits that named Plaintiffs’ diligent efforts have brought to the Settlement Class. Plaintiffs worked with Class Counsel for years, providing background information about themselves, their finances, Paul’s health, and his medical treatment. D. Senoff Decl. ¶¶ 11, 35. While this action was not filed until 2019, Plaintiffs worked with Class Counsel since 2017 providing information and assistance to evaluate Plaintiffs’ claims. D. Senoff Decl. ¶¶ 10-11. Plaintiffs provided substantial assistance to Class Counsel in their efforts to prepare this action to be filed, and provided information and feedback throughout the lengthy negotiation process that resulted in the executed Settlement Agreement. D. Senoff Decl. ¶¶ 10-11, 35. The proposed Class Representative Service Payments of \$25,000 each is significantly below the 3.1% to 3.5% of the total recovery that courts have deemed proportional, *see Sweda, supra*, and are also in line with those approved in class actions throughout the Third Circuit.⁷

⁷ *See, e.g., Vista Healthplan, Inc.*, 2020 WL 1922902, at *33-34 (approving incentive awards of \$15,000 or \$50,000 to each of the plaintiffs) (citing *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, 2015 WL 12843830, at *6 (E.D. Pa. Oct. 15, 2015) (approving \$100,000 incentive award for four class representatives, and \$50,000 incentive awards for two other class representatives); *In re Domestic Drywall Antitrust Litig.*, 2018 WL 3439454, at *20 (E.D. July 17,

d. Copy of Settlement Agreement

The Settlement Agreement is attached hereto as Exhibit “1.” There are no other agreements that fall under Rule 23(e)(2)(C)(iv).

3. The Settlement Treats Each Respective Settlement Class Member Equitably

The last requirement of Rule 23(e) is that the Settlement “treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). Here the Settlement treats all class members equitably relative to one another because each Settlement Class Member is entitled to a minimum, guaranteed payment of \$10,000 – without having to provide any information concerning their specific claim. For those Settlement Class Members who wish to receive an amount in excess of \$10,000, those individuals must provide additional information supporting their claims. Awards to these Settlement Class Members will be equal to the amount spent or incurred to secure PBT treatment – up to \$24,000. SA pp. 16-17, ¶ 3.B-D.

C. The Settlement Class Should be Preliminarily Certified

A party that seeks to certify a settlement class must satisfy the same requirements necessary to maintain a litigation class under Federal Rule of Civil Procedure 23. *In re Gen. Motors. Corp.*, 55 F.3d at 778 (discussing and approving use of settlement-only classes).

In order to obtain class certification, a party must show that all four prerequisites of Rule 23(a) are met and that the case qualifies as at least one of the matters identified in Rule 23(b). *See Baby Neal v. Casey*, 43 F.3d 48, 55 (3d Cir. 1994) (citing *Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239 (3d Cir. 1975), *cert. denied*, 421 U.S. 1011 (1975)). A case may be certified as a class action under Rule 23 when:

2018) (approving incentive awards to the four named Plaintiffs in the amount of \$50,000); *Marchbanks Truck Serv., v. Comdata Network, Inc.*, 2014 WL 12738907, at *3-4 (E.D. Pa. July 14, 2014) (awarding incentives in the amount of \$150,000 to one class representative, \$75,000 each to two others, and \$15,000 to the fourth)).

- (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 representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a); *Weiss v. York Hosp.*, 745 F.2d 786, 807 (3d Cir. 1984), *cert. denied*, 470 U.S. 1060 (1985). These four threshold requirements are commonly referred to as “numerosity,” “commonality,” “typicality,” and “adequacy of representation,” respectively. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 527 (3d Cir. 2004).

Federal Rule of Civil Procedure 23(b)(3) permits the court to certify a class in cases where “questions of law or fact common to class members predominate over any questions affecting only individual members,” and “a class action is superior to other available methods of fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). These dual requirements are commonly referred to as “predominance” and “superiority,” respectively. *See, e.g., In re Constar Int’l, Inc. Sec. Litig.*, 585 F.3d 774, 780 (3d Cir. 2009).

Further, the substantive terms of the settlement agreement may factor into certain aspects of the certification calculus. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619 (1997). Pursuant to the terms of the Settlement Agreement, Defendants have stipulated, for settlement purposes only, their agreement to the certification of a Settlement Class. SA p. 3. Plaintiffs move for preliminary certification of the Settlement Class and request that the Court preliminarily find that all the requirements for class certification are satisfied for settlement purposes only.

1. The Settlement Class is Sufficiently Numerous

Fed. R. Civ. P. 23(a)(1) “requires that a class be so numerous that joinder of all members is impracticable.” *In re Nat’l Football League Players Concussion Injury Litig.*, 307 F.R.D. 351,

371 (E.D. Pa. 2015) (quotation omitted). Generally, if the number of plaintiffs exceeds 40, the numerosity requirement is satisfied. *See Stewart v. Abraham*, 275 F.3d 220, 227-228 (3d Cir. 2001). The proposed Settlement Class here easily meets the numerosity requirement because at least 142 Settlement Class Members have been identified through ALIC's records. SA p. 16, ¶ 3.C.

2. The Settlement Class Seeks Resolution of Common Questions

The commonality requirement of Fed. R. Civ. P. 23(a)(2) is satisfied if the named plaintiff shares at least one question of fact or law with the grievances of the prospective class. *See Stewart*, 275 F.3d at 227. "For purposes of Rule 23(a)(2) even a single common question will do." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011).

Here, for purposes of settlement, Plaintiffs and the Settlement Class Members share common issues of law or fact, including:

- All Settlement Class Members sought PBT to treat head, neck, or brain cancer diagnoses;
- All Settlement Class Members were participants or beneficiaries in ERISA-governed plans administered by ALIC; and
- All Settlement Class Members had pre-certification requests and/or post-service claims for PBT denied by ALIC between June 1, 2017 and October 9, 2020, during which time CPB No. 0270 provided that PBT for treating head, neck, or brain cancer was experimental and investigational.

These common questions are sufficient to satisfy the commonality requirement for purposes of settlement.

3. The Claims of the Named Plaintiffs are Typical of the Settlement Class Members

The "typicality requirement is designed to align the interests of the class and the class representatives so that the latter will work to benefit the entire class through the pursuit of their

own goals.” *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 311 (3d Cir. 1998) (citations omitted). “[The Third Circuit] also ha[s] set a low threshold for typicality.” *In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 428 (3d Cir. 2016) (internal quotes and citations omitted). The typicality requirement of Rule 23(a)(3) is satisfied for purposes of approving the Settlement because Plaintiffs’ claims are reasonably coextensive with those of absent Settlement Class Members, and because Plaintiffs possess the same interest and suffered the same injury as the absent Settlement Class Members. For purposes of settlement, Plaintiffs’ claim for benefits for PBT treatment is typical of the claims of the Settlement Class Members.

4. Class Counsel and Plaintiffs Satisfy the Adequacy Requirements

To meet the adequacy of representation requirement of Fed. R. Civ. P. 23(a)(4), a named plaintiff must show that: (1) the potential named plaintiff has the ability and the incentive to represent the claims of the class vigorously; (2) he or she has obtained adequate counsel; and (3) there is no conflict between the individual’s claims and those asserted on behalf of the class. *Hassine v. Jeffes*, 846 F.2d 169, 179 (3d Cir. 1988).

The adequacy of representation requirement is met here for purposes of settlement because Plaintiffs have the same interests as the Settlement Class Members. There is no conflict between the Plaintiffs and the Settlement Class Members in this case, and Plaintiffs’ claims are in line with the claims of the Class. The Plaintiffs have and will continue to aggressively and competently assert the interests of the Settlement Class Members, and Class Counsel are skilled and experienced in insurance litigation and insurance class actions. D. Senoff. Decl. ¶¶ 1-8, 38-42.

5. The Settlement Class Satisfies the Predominance and Superiority Requirements of Federal Rule of Civil Procedure 23(b)(3)

Under Fed. R. Civ. P. 23(b)(3), class certification is appropriate if “the court finds that the questions of law or fact common to the members of the class predominate over any questions

affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3).

For the reasons discussed above, the Settlement Class satisfies the predominance requirement for purposes of settlement. In addition, allowing the Settlement Class Members the opportunity to participate in a class settlement that yields an immediate and substantial benefit is superior to having a multiplicity of individual and duplicative proceedings based on the nature of the specific claims here. It is also superior to the alternative of leaving the Settlement Class Members’ rights unaddressed due to the difficulty of finding legal representation and filing claims on an individual basis. Accordingly, Plaintiffs respectfully request that the Court provisionally certify the Settlement Class for settlement purposes only.

6. The Settlement Class is Ascertainable

In addition to the Rule 23 requirements, courts in the Third Circuit also analyze the judicially created doctrine of ascertainability when evaluating whether to certify a class. A class is ascertainable if (1) the class is defined with reference to objective criteria; and (2) there is a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition.” *Byrd v. Aaron’s Inc.*, 784 F.3d 154, 163 (3d Cir. 2015). Here, the Settlement Class is defined based on objective criteria. *See* Sec. III.A, *supra*. Determining whether someone is a Settlement Class Member is administratively feasible because such a determination may be made based on ALIC’s records. The identity of the Settlement Class Member, their diagnosis code, and whether their pre-certification request and/or claim for PBT was denied are all identifiable through ALIC’s records.

D. The Proposed Settlement Class Notice Provides Adequate Notice to the Settlement Class Members and Satisfies Due Process

The United State Supreme Court has held that notice of a class action settlement must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Further:

“[T]o satisfy due process, notice to class members must be reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 174 (E.D. Pa. 2000) (citations and internal quotations omitted); *see also* [Mehling, 246 F.R.D. at 477] (approving proposed notice for settlement class when notice “adequately informs potential class members in clear, understandable language”). Individual notice should be provided to all members who can be identified through reasonable efforts. *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d [at 491].

Glaberson v. Comcast Corp., 2014 WL 7008539, at *6 (E.D. Pa. Dec. 12, 2014).

Here, the proposed Settlement Class Notice and manner of distribution negotiated and agreed upon by the parties is “the best notice that is practicable under the circumstances” as required under Fed. R. Civ. P. 23(c)(2)(B). In fact, it is the best notice practicable as the Parties have agreed to provide individual notice to all Settlement Class Members at their last known mailing address. In addition, the Claims Administrator will resend those Settlement Class Notices to their proper forwarding addresses, should any of the Notices be returned.

ALIC has demonstrated the ability to identify a class list from the claim information in their records, and the Settlement Class Notice and Settlement Claim Form will be mailed directly to the last known address for each member. SA p. 22, ¶ 11. The Claims Administrator will conduct an additional search of addresses for Notices returned without a forwarding address, as well as for any Settlement Class Member who does not return a Claim Form. SA pp. 22-23, ¶ 12. The

proposed Settlement Class Notice, which is attached to the Settlement Agreement as Exhibit “B,” is clear and straightforward, and provides information on the meaning and nature of the terms and provisions of the Settlement Agreement, the monetary awards that the Settlement will provide to eligible Settlement Class Members, the scope of the release, the request for Class Counsel Fees and Expenses and Class Representative Service Payments, and the procedures and deadlines for making a Settlement Claim, opting out of the Settlement, or submitting objections. *Id.* Accordingly, the Settlement Class Notice complies with the standards of fairness, completeness, and neutrality required of a settlement class or collective notice disseminated under authority of the Court, and should be approved.

E. The Proposed Implementation Schedule

The proposed schedule for the dates in the proposed order, which the Parties respectfully request, is as follows:

Date	Event
Within 10 Business Days After Entry of Preliminary Approval Order	ALIC provides Class Counsel with the Class List with a verification it is accurate and complete to the best of its knowledge. SA p. 22, ¶ 11; <i>id.</i> p. 11, ¶ 2.A.i.f; <i>id.</i> p. 12, ¶ 2.A.iii.
Within 10 Business Days of Claims Administrator Receiving Class List	Claims Administrator mails Settlement Class Notice and Settlement Claim Form to each Settlement Class Member. SA pp. 22-23, ¶ 12; <i>id.</i> p. 11, ¶ 2.A.i.g.
60 Days After Settlement Class Notices Sent	Claim Submission Deadline, Opt-Out Deadline, and Objection Deadline. SA p. 9, ¶ 1.HH; <i>id.</i> pp. 11-12, ¶ 2.A.i.j.-k.
Within 60 Days After Submission Deadline	Claims Administrator provides report to Class Counsel and Defendants’ Counsel re Settlement Class Member claims and amounts. SA p. 19, ¶ 6.A. Claims Administrator sends Settlement Class Members letter explaining reason for denial. SA p. 20, ¶ 7.
30 Days After Denial	Settlement Class Member deadline to appeal denial. SA p. 20, ¶ 7.
30 Days After Claim Appeal	Class Counsel and Defendants’ Counsel confer regarding Settlement Class Member appeal. SA p. 20, ¶ 8.

Within 30 Days After Claims Administrator Report	Defendants may object to the approval of a Settlement Claim in an amount in excess of \$10,000, in writing to Class Counsel, based on evidence that the Settlement Claim: (i) relates to a denied PBT benefit claim or PBT precertification request that was ultimately approved; (ii) relates to indebtedness for a denied PBT benefit claim or PBT precertification request that was previously forgiven in full by a healthcare provider, hospital, or other medical care provider who administered the PBT treatment to the respective Settlement Class Member (or such individual or entity's assignee); (iii) is submitted by someone excluded from the Settlement Class; or (iv) is fraudulently submitted. SA p. 19, ¶ 6.B.i.-iv.
At Least 45 Days Prior to Final Approval Hearing	Claims Administrator to send Class Counsel and Defendants' Counsel an affidavit re manner of Settlement Class Notice distribution and any Requests for Exclusion. SA p. 12, ¶ 2.A.i.o.
At Least 30 Days Prior to Final Approval Hearing	Plaintiff's Motion(s) for Final Settlement Approval, Class Counsel Fees and Expenses and Class Representative Service Payments. SA p. 13 ¶ 2.A.i.p.-q; <i>id.</i> p. 14, ¶ 2.A.v.
At least 225 Days After Entry of Preliminary Approval Order	Final Approval Hearing. SA p. 11, ¶ 2.A.i.i.
Effective Date	"Effective Date," means the date on which the Final Approval Order becomes final as a matter of law, which the Parties hereby deem to be thirty-five (35) days after entry of the judgment if no appeal is filed. If an appeal is filed, the Effective Date shall be the date on which the final mandate is issued affirming the judgment. SA p. 6, ¶ 1.M.
Within 10 Days After Effective Date	Claims Administrator establishes Settlement Account. SA pp. 20-21, ¶ 9.A.
Within 15 Days After Effective Date	ALIC will deposit the Settlement Amount into the Settlement Account. SA p. 20, ¶ 9.B.
30 Days After Effective Date	Claims Administrator begins issuing checks to Settlement Class Members. SA p. 21, ¶ 9.C.
120 Days After Check Issued	Period for Settlement Class Members to deposit checks. SA pp. 21-22, ¶ 9.E.
130 Days After Checks Issued	Claims Administrator closes out Settlement Account and issues remaining balance to cy pres. SA pp. 21-22, ¶ 9.E.

V. CONCLUSION

Based upon the foregoing reasons, Plaintiffs respectfully request that this Court grant their Motion for Preliminary Approval and enter the accompanying Proposed Preliminary Approval Order.

Respectfully submitted,

DATED: MARCH 3, 2023

BY: 
FIRST LAW STRATEGY GROUP, LLC
David S. Senoff, Esquire
Attorney I.D. No. 65278
121 S. Broad Street, Suite 300
Philadelphia, PA 19107
Phone: (215) 258-4700
Facsimile: (215) 258-4777
dsenoff@firstlawstrategy.com

RICHARD M. OCHROCH & ASSOCIATES, P.C.
Richard Ochroch, Esquire
Brett N. Benton, Esquire
Andrew R. Ochroch, Esquire
Attorney I.D. Nos. 21432 / 93267 / 315797
318 South 16th Street
Philadelphia, PA 19102
Facsimile: (215) 893-4209
bbenton@ochroch-law.com
rochroch@ochroch-law.com
aochroch@ochroch-law.com

Attorneys for Plaintiffs and members of the putative class

CERTIFICATE OF SERVICE

I, David S. Senoff, Esquire, hereby certify that on the date below a true and correct copy of the forgoing Unopposed Motion and Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement were served via the Court's CM/ECF electronic filing system.

DATED: MARCH 3, 2023

BY: 
FIRST LAW STRATEGY GROUP, LLC
David S. Senoff, Esquire
Attorney I.D. No. 65278
121 S. Broad Street, Suite 300
Philadelphia, PA 19107
Phone: (215) 258-4700
Facsimile: (215) 258-4777
dsenoff@firstlawstrategy.com

RICHARD M. OCHROCH & ASSOCIATES, P.C.
Richard Ochroch, Esquire
Brett N. Benton, Esquire
Andrew R. Ochroch, Esquire
Attorney I.D. Nos. 21432 / 93267 / 315797
318 South 16th Street
Philadelphia, PA 19102
Facsimile: (215) 893-4209
bbenton@ochroch-law.com
rochroch@ochroch-law.com
aochroch@ochroch-law.com

Attorneys for Plaintiffs and the putative class