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REGINA THOMPSON, on behalf of herself and others similarly situated, Plaintiff, vs. TRAVELERS INDEMNITY COMPANY, ST. PAUL PROTECTIVE INSURANCE COMPANY, and ABC Corporation (1-100), Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY DOCKET NO.: MID-L-002108-23 CIVIL ACTION

PLAINTIFF'S BRIEF IN SUPPORT OF UNOPPOSED MOTION TO GRANT PRELIMINARY APPROVAL TO PROPOSED CLASS ACTION SETTLEMENT, TO APPROVE DISTRIBUTION OF PROPOSED SETTLEMENT NOTICE AND TO SET A HEARING DATE FOR FINAL FAIRNESS HEARING ON PROPOSED SETTLEMENT

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Other Sources

1 H. Newberg, Newberg on Class Actions, §3.05 (2d Ed. 1985) 17

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Philip Stephen Fuoco & Joseph A. Osefchen, "Leveling the Playing Field in the Garden State: A Guide to New Jersey Class Action Case Law," 37 Rutgers L.J. 399 (2006)....................17

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Summary of Relief Sought

Pursuant to New Jersey Court Rule 4:32-1(e), Plaintiffs hereby move for an Order:

1) Granting preliminary, non-binding approval of the accompanying proposed Class Action Settlement Agreement (Exhibit 1);

2) Granting preliminary certification of the proposed Settlement Class;

3) Approving the proposed form of notice and the proposed plan of distributing notice to the Settlement Class (Exhibit 2);

4) Approving the proposed Claim Form (Exhibit 3); and

5) Scheduling a final approval hearing at least 105 days after preliminary approval.

Introduction to the Action

In this putative class action, Plaintiffs allege that two Travelers insurance entities, Travelers Indemnity Company and St. Paul Protective Insurance Company (collectively "Travelers" or "Defendants"), pursued an unlawful policy of selling New Jersey automobile insurance policies which purport to provide Personal Injury Protection (PIP) benefits in the legally mandated policy limits available under New Jersey law (as required by N.J.S.A. 39.6A-4.3(e)), but which actually reduce the amount of PIP benefits to below the statutorily mandated levels by subtracting co-pays and deductibles from the overall amount of coverage. As alleged in greater detail in the class complaint, the Appellate Division has held in a published opinion in Birmingham v. Travelers, 475 N.J. Super 246 (App. Div. 2023), that such a policy in a violation of N.J.S.A. 39.6A-4.3(e), although Travelers has contended in this litigation that there is an open question as to whether Birmingham applies retroactively. The complaint seeks declaratory, injunctive and monetary relief to end the challenged policy and to remedy its effects.

Defendants have denied, and expressly continue to deny, any wrongdoing or liability whatsoever. Defendants dispute the factual, legal, and other basis for Plaintiffs' claims, and they

do not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any allegations or claims that have been asserted against them in the Litigation or any violation of any law or duty. Defendants contend that they have always acted properly and also deny that Plaintiffs and/or Settlement Class Members are entitled to any form of damages or other relief based on the conduct alleged in the Litigation. Defendants have maintained, and continue to maintain, that they have meritorious defenses to all causes of action alleged in the Litigation; that certification of any class for litigation purposes would be improper; and that they were and are prepared to vigorously defend against the claims alleged in the Litigation; and that such claims are meritless.

Nevertheless, after carefully considering the facts and applicable law and the risks, costs, delay, inconvenience, and uncertainty of continued and protracted litigation, and after engaging in extensive, arm's-length negotiations, with the assistance of a mediator, retired Judge Peter Doyne, both Defendants and Plaintiffs have agreed to resolve the Litigation via the proposed class-wide Settlement.

Procedural History of the Litigation

The class complaint in this matter was filed in New Jersey Superior Court, Middlesex County, on April 13, 2023. Defendant removed the case to the District of New Jersey, alleging diversity jurisdiction under the Class Action Fairness Act ("CAFA") on May 15, 2023. On June 13, 2023, Plaintiffs filed a motion to remand the matter to State Court, contending that Defendants had failed to satisfy their burden of proof in establishing that CAFA jurisdiction existed – namely that the class size exceeded 100 individuals or that the amount in controversy exceeded $5,000,000. On January 30, 2024 the Hon. Zahid N. Quraishi USDJ, entered an opinion remanding this matter to State Court.

Two weeks after the complaint was filed in this matter, on April 27, 2023, a substantially similar matter, captioned Courtney Thorson and Michael J. Lucci Jr. v. The Travelers Companies, Inc. and St. Paul Protective Ins. Co. was filed in the United States District Court for the District of New Jersey and assigned docket number 1:23-cv-02332. On June 23, 2023 Defendants filed a pre-motion letter alerting the Court in Thorson that the complaint was substantially similar to the earlier filed Thompson matter. Plaintiffs in Thorson agreed to stay that matter pending resolution of the Thompson motion to remand. Once the motion to remand was granted in Thompson, the Plaintiffs in both cases reached an agreement to work cooperatively, and the Thorson complaint was voluntarily dismissed. The Plaintiffs and Plaintiffs' counsel in Thorson thereafter worked cooperatively with counsel in Thompson and are joined in the present settlement before the Court.

Summary of the Settlement Negotiations

Plaintiffs have been zealously litigating their claims against Defendants in both state and federal court for two and a half years. During that time, Defendants have been strenuously defending against Plaintiffs' claims, resulting in a complex Litigation that has been hotly contested, time-consuming and costly. The Parties recognize that any future phases of this case will likely be just as contentious and thoroughly litigated. The ultimate resolution of the disputed claims will likely take several additional years, as the Parties complete discovery and proceed to summary judgment and trial, with the expectation that each additional substantive ruling in the case will become the subject of an attempted appeal by the losing side.

Recognizing the risks facing each side and the enormous burden and cost in both time and money of more years of protracted litigation, the Parties began to seriously explore settlement on a class-wide basis in 2024. Originally through the auspices of mediator the Honorable Peter E. Doyne (Ret.), the Parties have engaged in protracted arms-length settlement negotiations which

lasted for over a year. These negotiations proceeded in stages, with the Parties first agreeing on all substantive terms of the Proposed Settlement, and only thereafter discussing and reaching an agreement on the attorneys' fees associated with the Proposed Settlement.

Summary of the Proposed Settlement

The proposed settlement calls for certification of a Settlement Class defined as:

> **All individuals (and their heirs, executors, administrators, successors and assigns) who, during the Class Period, were policyholders or insureds under New Jersey automobile insurance policies issued by Defendants which included PIP coverage, where the individual was paid under PIP coverage and (a) for claims which Defendants' computerized records reflect PIP policy limits available, where PIP benefits were paid in an amount within $3,000 of their policy limits; or (b) for claims which Defendants' computerized records do not reflect PIP policy limits available, where PIP benefits were paid in an amount within $3,000 of an actual New Jersey PIP limit.**

Under the proposed class action settlement, each class member shall receive an automatic payment of $70, regardless of whether they submit a Claim Form. Thus, the minimum award any class member will receive under the proposed settlement is $70 per class member and such payment shall occur automatically without any need to submit a claim form or proof of any out of pocket or other loss. In addition to the $70 per class member automatic payment, each class member shall also have the right to submit a claim form seeking an additional payment of up to 80% of any reduction in their PIP coverage which occurred due to the subtraction of deductibles or co-payments from their PIP policy limit, less the $70 payment already received by the class member. Thus, the maximum payout to proposed class member who submit a valid claims form under the proposed settlement is 80% of the aforementioned reduction in their PIP coverage.

It is submitted that the proposed settlement represents a fair and reasonable compromise of the disputed claims pleaded in the class complaint. Here, all class members will be eligible for an automatic payment of $70, without the need to submit any claim form or other documentation. In

addition, for those class members who submit a valid claim form, such class members are entitled to also recover an additional payment of up to 80% of any reduction in their PIP coverage which occurred due to the application of deductibles or co-payments, less the $70 automatic payment made to the class member. Such a recovery greatly exceeds the "normal" or "average" recovery in other approved class action settlements. See e.g. Educ. Station Day Care Ctr., Inc. v. Yellow Book USA, Inc., 2007 WL 1245971 at *2 (App. Div. 2007) (noting that the "average" recovery for class members in a **"typical class action"** settlement is "**nine to twelve percent of maximum possible damages."**).

Moreover, any analysis of the fairness and reasonableness of the proposed Settlement must be informed by an assessment of the genuine risk that, if litigation continues, the Class may get either a smaller recovery or potentially no recovery at all. Defendants have vigorously defended this matter, arguing, inter alia, that the Appellate Division opinion in Birmingham v. Travelers, 475 N.J. Super 246 (App. Div. 2023), was not retroactive and was instead prospective only. While Plaintiffs believe this defense contention is incorrect, and that the decision in Birmingham v. Travelers represents an application of long-standing New Jersey law, it must be recognized that this disputed issue represents a significant risk to the class liability claims. In striking contrast to such risks, the proposed settlement provides a guaranteed result which is both fair and reasonable.

I. THE PROPOSED CLASS ACTION SETTLEMENT SHOULD BE GRANTED PRELIMINARY APPROVAL.

A. The Standard for Preliminary Approval of a Proposed Class Settlement.

New Jersey state courts have long encouraged settlement of lawsuits, including the settlement of class actions. See Schmoll v. J.S. Hovnanian & Sons, LLC, 2006 WL 1520751 at *2 (N.J. Super. Ch. 2006), aff'd 394 N.J. Super. 415 (App. Div. 2007) (**"As in all cases, our courts have long subscribed to policy that encouraged the settlement of lawsuits between the parties,**

inclusive of class action proceedings.”). In evaluating and approving proposed class action settlements, New Jersey state courts have adopted federal procedures and have relied upon federal case law. See id. at *3 (**“The standards for approval of class actions that have been developed in the federal courts have been followed by our state courts.”**).

Approval of a proposed class action settlement takes place in two stages: 1) the preliminary, non-binding approval of the proposed settlement (which mainly serves as the basis for obtaining court authorization to send out a class notice informing class members of the proposed settlement terms and other information about how they may be heard regarding the proposed settlement); and 2) a final binding approval which takes place at a formal fairness hearing. See Jones v. Commerce Bancorp, Inc., 2007 WL 2085357 at *2 (D.N.J. 2007) (**“Review of a proposed class action settlement is a two step process: preliminary approval and a subsequent fairness hearing.”**); see also Manual for Complex Litig., Third § 30.41, at 236-37 (1995):

> **Approval of class action settlements involves a two step process. First, counsel submit the proposed terms of settlement and the court makes a preliminary fairness evaluation.**
>
> * * *
>
> **If the preliminary evaluation of the proposed settlements does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment to class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall without the range of possible approval, the court should direct that notice under Rule 23(e) be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of an in opposition to the settlement.**

Thus, at the preliminary approval stage, the court is not asked to make a binding determination as to whether the proposed class action settlement will ultimately be approved. See Jones, 2007 WL 2085357 at *2 (**“Preliminary approval is not binding, and it is granted unless a proposed settlement is obviously deficient.”**); In re Inter-Op Hop Prosthesis Liab. Litig., 204

F.R.D. 330, 350 (N.D. Ohio 2001) (stating on a preliminary approval application that **"[T]he Court, at this juncture, is not obligated to, nor could it reasonably, undertake a full and complete fairness review."**).

Rather, during the preliminary approval process, the court merely makes a cursory review of the proposed settlement to determine if there are any "glaring deficiencies" in the proposal. See West v. Circle K Stores, Inc., 2006 WL 1652598 at *9 (E.D. Cal. 2006), stating that on an application for preliminary approval of a proposed class action settlement: **"[T]he court will simply conduct a cursory review of the terms of the parties' settlement for the purpose of resolving any glaring deficiencies before ordering the parties to send the proposal to class members."**

At the preliminary approval stage, the court is not asked to determine whether the proposed settlement will ultimately be approved, but rather only whether it might conceivably be approved in the future, after additional briefing and an opportunity for class member comments, at a final hearing open to the public. See In re Nasdaq Mkt. Makers Antitrust Litig., 176 F.R.D. 99, 102 (S.D.N.Y. 1997) (quoting Manual for Complex Litig., 3d, § 30.41 (West 1995)) (**"Where the proposed settlement appears to be the product of serious, informed, non collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted."**); see also Gautreaux v. Pierce, 690 F.2d 616, 621 n. 3 (7th Cir. 1982) (noting that on a preliminary approval application the court is merely asked to **"determine whether the proposed settlement is within the range of possible approval."**); In re Prudential Secs. Inc. Ltd. P'ships, 163 F.R.D. 200, 209 (S.D.N.Y. 1995) (describing the court's

function on an application for preliminary approval as a limited search for "obvious deficiencies" and **"unduly preferential treatment of class representatives or of segments of the class"**).

Accordingly, the first stage of the class settlement approval process – the preliminary approval stage – is not binding. Rather, it merely: (1) triggers the mechanism for notice to potential class members; (2) sets in motion a process that will culminate in a full and final public fairness hearing (at which time the question of fairness is reviewed de novo); and (3) establishes a procedure for class members to "opt out" or register objections to the proposed settlement with the court. Id.

After notice of the proposed class action settlement is given to the class members, the second stage of the class settlement approval process takes place: the formal public fairness hearing. At the formal fairness hearing, the court, inter alia, entertains any objections by class members to the treatment of the litigation as a class action and/or the terms of the settlement. See Diaz v. Trust Territory of Pac. Islands, 876 F.2d 1401, 1408 (9th Cir. 1989). Following that formal fairness hearing, the court makes a de novo and final determination as to whether the parties should be allowed to settle a class action pursuant to the terms agreed upon. West, 2006 WL 1652598 at *9.

B. The Proposed Settlement Meets the Standards for Preliminary Approval.

At the current time, Plaintiffs are moving only for a non-binding, preliminary approval of the proposed class Settlement memorialized in the accompanying Settlement Agreement. See Exhibit 1, proposed Settlement Agreement.[1] Specifically, the Plaintiffs are seeking court

[1] While only preliminary approval is being sought here, the Plaintiffs will show at the final approval hearing that the proposed class Settlement is fair and reasonable, was arrived at by arms-length negotiations, and represents a fair value and valid compromise in light of the complexity, expense, and duration of the Litigation and the risks involved in establishing liability and damages, as well as the risks involved in obtaining certification of the class and maintain that certification through to the end of the trial.

permission to distribute the proposed class settlement Notice and Claim Form – by first-class mail to all class members and by website publication – informing the class of the terms of the proposed settlement, and notifying them of their rights (1) to file a claim; (2) to "opt out" of the proposed Settlement Class; (3) to object to the proposed Settlement; and/or (4) to appear and be heard at the formal fairness hearing. The Plaintiffs are also asking the Court to conditionally certify the Settlement Class for settlement purposes and to schedule a formal fairness hearing on the proposed Settlement on or about March 9, 2026, which class members may attend and at which the Plaintiff will present more full and detailed arguments as to why they believe the proposed Settlement should be granted final approval.[2] It is submitted that the proposed class action Settlement in the case at bar meets the standard for preliminary approval as set forth in the above-cited authorities.

The proposed class Settlement was negotiated at arms-length among zealous and experienced counsel for the Parties, with the help of well-respected retired Superior Court of New Jersey Judge Peter E. Doyne, A.J.S.C. (ret.), who is highly experienced at mediation. The result is a compromise of disputed claims which is both fair and reasonable. An automatic recovery of $70 without the need to submit any claim form at all, plus the ability of class members who do submit a valid claim to recover up to 80% of the relevant diminution of their PIP benefits represents an outstanding result for the Class. Indeed, as noted above, the New Jersey Appellate Division itself has found that the **"average"** recovery in a class action is between 9% and 12% of class members' out-of-pocket losses, and has described a recovery equal to 50% of class members' out-of-pocket losses a **"tremendous result."** <u>See</u> <u>Yellow Book</u>, 2007 WL 1245971 at *2. Consequently, the proposed class settlement is not only reasonable and just, but it should also be considered a

[2] Plaintiffs will submit more detailed briefing relating to the proposed class action Settlement, the risks associated with continued litigation, and the request for attorney's fees and costs in advance of that formal fairness hearing.

"tremendous result." See id.; see also, e.g., In re Rite Aid Corp. Sec. Litig., 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001) (citing studies noting that the average securities fraud class action settlement results in a recovery between 5% and 7% of the estimated out-of-pocket losses).

Nor can the risks faced by the Class, if litigation were to continue, be ignored. All litigation is inherently risky, but the class claims in this matter face significant additional litigation risks which threaten Class Members with either a smaller recovery than what they are being offered now in settlement or no recovery at all. For example, the Class could lose on a contested class certification motion, in which case Settlement Class Members would have to bring their own individual claims to recover anything at all. Alternatively, Plaintiffs could lose at summary judgment or at trial, in which case the Class Members would receive nothing.

Moreover, the proposed class Settlement provides a real cash benefit to the Class now, rather than years in the future after the completion of summary judgment, trial, and appeals. Defendants have raised complex defenses and have shown a willingness to litigate this matter vigorously. Plaintiffs believe that they would be able to overcome these defenses, but only after a long, contested litigation and potential appeals. In contrast, the proposed Settlement offers excellent relief to the Class now, without any further litigation and its associated risks. See Texas v. Organon USA Inc. (In re Remeron End-Payor Antitrust Litig.), 2005 U.S. Dist. LEXIS 27011 at *62 (D.N.J. Sep. 13, 2005) (**"Early settlements benefit everyone involved in the process and everything that can be done to encourage such settlements, especially in complex class action cases, should be done."**).

In light of all these circumstances, it is the opinion of Plaintiffs' Counsel that the proposed Settlement is an outstanding result for the Class, as compared to the time, expense, and myriad risks associated with continued litigation. Accordingly, Plaintiffs respectfully request that the

Court grant preliminary approval to the proposed class Settlement and allow notice of the proposed Settlement to be distributed to the putative class.

C. The Proposed Form of Notice to the Settlement Class Should Be Approved.

Attached as Exhibit 2 is the proposed Notice of Class Settlement which will be sent by first-class mail to all Class Members at their last known addresses in Travelers' records, subject to additional research by the claims administrator, and posted on the Settlement website (once established). Attached as Exhibit 3 is the proposed Claim Form by which Class Members may submit a claim for the 80% of the relevant PIP reductions (although they do not need to submit such a form to receive their automatic $70). It is submitted that the proposed form of notice and claim form gives class members a fair opportunity to consider the proposed Settlement, to file a valid and timely claim, to "opt out" of the Settlement, and/or to raise objections thereto. This includes: (1) appropriate information regarding the Litigation, the Class, the Class representatives, Class Counsel, and the essential terms of the Settlement Agreement; (2) appropriate information about Class Counsel's forthcoming application for attorney's fees and costs; (3) appropriate information about how to participate in, or opt out of, the Settlement; (4) appropriate information about this Court's final approval procedure; and (5) appropriate information about how to object to the proposed settlement. See Jones, 2007 WL 2085357 at *5; Rosenburg v. IBM Corp., 2007 WL 128232 at *5 (N.D. Cal. Jan. 11, 2007).

D. The Proposed Plan of Notice Distribution Should Be Approved.

The Parties have agreed that the proposed form of Settlement notice, once approved by the Court, will be sent by first class mail to all Settlement Class Members, in the manner set forth above. Additionally, the class notice, claim form, and Settlement Agreement, along with other relevant documents such as Plaintiffs' operative complaint, will be posted on a settlement website

established by the Settlement Administrator and will also be posted on Class Counsel's firm website.

This notice campaign satisfies due process and is more than adequate under the case law. See, e.g., Hagans v. Nat'l Mentor Healthcare, Inc., Civil Action No. 22-00128-KMW-SAK, 2023 U.S. Dist. LEXIS 45190, at *14 (D.N.J. Mar. 17, 2023) (**"first class mail has been the gold standard for court related notices"**); Easterday v. USPack Logistics LLC, No. 1:15-CV-07559 (RBK/AMD), 2023 U.S. Dist. LEXIS 116655, at *17 (D.N.J. July 6, 2023) ("**Notice by first-class mail is regularly deemed adequate notice"** in class actions).

II. A CONDITIONAL SETTLEMENT CLASS SHOULD BE CERTIFIED AS PART OF THE PRELIMINARY APPROVAL PROCESS [3]

The proposed Settlement calls for certification of the following Settlement Class:

> **All individuals (and their heirs, executors, administrators, successors and assigns) who, during the Class Period, were policyholders or insureds under New Jersey automobile insurance policies issued by Defendants which included PIP coverage, where the individual was paid under PIP coverage and (a) for claims which Defendants' computerized records reflect PIP policy limits available, where PIP benefits were paid in an amount within $3,000 of their policy limits; or (b) for claims which Defendants' computerized records do not reflect PIP policy limits available, where PIP benefits were paid in an amount within $3,000 of an actual New Jersey PIP limit.**

Courts have held that the standard for settlement class certification is more relaxed and requires less scrutiny than if certification was contested. See In re Payment Card Interchange Fee & Merch Disc. Antitrust Litg., 2012 U.S. Dist. Lexis 153637 at *1 (E.D.N.Y.2012); In re GSE Bonds Antitrust Litig., 414 F. Supp. 3d 686 (S.D.N.Y. 2019); In re Premera Blue Cross Customer

[3] Defendants have agreed to the certification of a settlement class in this matter in order to facilitate the proposed class action settlement, but they do not agree that a litigation class would be appropriate in this case if settlement does not eventuate for any reason, and reserve their right to object to class certification if the settlement is not approved and the matter continues to be litigated. Thus, all arguments stated herein as to the requirements of certification under R. 4:32 are the argument of Plaintiffs' counsel only.

Data Sec. Breach Litig., No. 3:15-MD-2633-SI, 2019 U.S. Dist. LEXIS 127093, 2019 WL 3410382, at *1 (D. Or. July 29, 2019); O'Connor v. Uber Techs., Inc., No. 13-CV-03826-EMC, 2019 U.S. Dist. LEXIS 54608, 2019 WL 1437101, at *4 (N.D. Cal. Mar. 29, 2019); Stoddart v. Express Servs., No. 212CV01054KJMCKD, 2019 U.S. Dist. LEXIS 17663, 2019 WL 414489, at *5 (E.D. Cal. Feb. 1, 2019).

A. New Jersey Law Strongly Favors Class Certification

1. New Jersey Law Requires that a Class Must be Certified Unless there is a Clear Showing that Certification is Improper

New Jersey state courts apply a more liberal standard to class certification than the federal courts. See e.g. Exhibit 4, Opinion and Order Granting Class Certification in Schmoll v. Hovnanian, Superior Court of New Jersey, Burlington County, Docket No. C-141-02 at Page 3, where Judge Bookbinder correctly held:

> **The Supreme Court of New Jersey has determined that the New Jersey class certification rule should be interpreted more liberally than the federal rule. In New Jersey a court must certify a class unless there is a clear showing that it would be inappropriate or improper. (emphasis added)**

See also Exhibit 5, Gurriere v. Bloomfield Condo. Assocs., LLC, Superior Court of New Jersey, Essex County, Docket No. C-101-15, 2015 N.J. Super. Unpub. LEXIS 2137, *52 at n.12 (Ch. Div. August 28, 2015):

> **New Jersey courts have interpreted R. 4:32-1 more liberally than the federal rule, often holding that a class must be certified unless there is a "clear showing that it is improper or inappropriate." (emphasis added)**

Indeed, unlike the federal courts, a New Jersey court should certify a class unless there has been a clear showing that class certification is either infeasible or improper. See Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 103 (2007) (**"Accordingly, a class action 'should lie unless it is clearly infeasible.'"**); Delgozzo v. Kenny, 266 N.J.Super. at 169, 179 (App.Div.1993) (**"a class**

action 'should be permitted unless there is a clear showing that it is inappropriate or improper'"); Lusky v. Capasso Bros., 118 N.J.Super.369, 373 (App.Div.), certif. denied, 60 N.J.433 (1972) (**"The class action rule should be liberally construed, and such an action should be permitted unless there is a clear showing that it is inappropriate or improper."**); See also Pressler, Current N.J. Court Rules, Comment R. 4:32: **"The rule is required to be liberally construed and the class action permitted to be maintained unless there is a clear showing that it is inappropriate or improper."**

In the case at bar, it is submitted that there can be no showing that class certification is improper or infeasible. This case involves allegations of a uniform policy and/or course of conduct and the legality of that policy/practice. Put simply, either it was unlawful for Defendants to pursue a policy of reducing available PIP benefits by the amount of co-pays and deductibles during the class period or it was lawful for them to do so. This common issue forms the core of this case and is the "glue" which holds this case together as a class action since both logic and the law provide that this over-arching common issue should be decided once by the Court on a class-wide basis, rather than have different courts decide this same issue over and over in a series of individual cases.

2. All Factual Allegations Pleaded in Plaintiffs' Complaint Must be Accepted as True on a Class Certification Motion in New Jersey State Court

Unlike federal court, a New Jersey state court considering a motion to certify a class under R. 4:32 must accept all factual allegations pleaded in Plaintiffs' complaint as true in deciding a motion for class certification. As stated by the New Jersey Supreme Court in Lee v. Carter Reed, 203 N.J. 496, 505 (2010):

> **In deciding whether to grant or deny class certification, a trial court does "not decid[e] the ultimate factual issues" underlying the plaintiff's cause of action. Rather, at the class-certification stage, a court must "accept as**

true all of the allegations in the complaint." (emphasis added) (citations omitted)

Nor was Lee the first time the New Jersey Supreme Court directed lower New Jersey courts that they must accept all factual allegations pleaded in the plaintiff's complaint as true in deciding whether to grant class certification. In Int'l. Union of Operating Eng'rs Local No. 68 Welfare Fund v. Merck & Co., 192 N.J. 372, 376 (2007), for example, the New Jersey Supreme Court held: **"We accept as true all of the allegations in the complaint in light of the fact that we are considering the issues in the context of a challenge to class certification."** See also Daniels v. Hollister Co., 440 N.J. Super. 359, 362-63 (App. Div. 2015) (**"Notwithstanding defendant's factual assertions, we review an order granting class certification by according plaintiff 'every favorable view' of the complaint. Accordingly, we proceed on the assumption that the facts contained in the complaint are true"**) (emphasis added) (citations omitted).

As outlined in the cases quoted above, all factual allegations set forth in Plaintiffs' Complaint must be accepted as true for the purposes of a class certification motion. There is no question that the factual allegations set forth in the Complaint, accepted as true for the purposes of this Motion as they must be under case precedent, meet the requirements for class certification by a wide margin.

3. Courts are Prohibited from Considering or Deciding the Merits of a Plaintiffs' Legal Claims in Deciding Whether to Grant Class Certification

It is black letter law in New Jersey that the merits of a plaintiff's claims – i.e., whether a plaintiff will ultimately win or lose on the underlying claims – are irrelevant to whether or not a class should be certified. See e.g. Olive v. Graceland Sales Corp., 61 N.J.182, 189 (1972) (**"the merits of a complaint are not involved in the determination as to whether a class action may be maintained"**); Muise v. GPU, Inc., 371 N.J. Super. 13, 46 (App. Div. 2004) (**"A court must**

not make a preliminary decision on the merits when determining whether a class should be certified."); Delgozzo v. Kenny, 266 N.J. Super. 169, 180-81 (App. Div. 1993) (**"When determining whether a class should be certified, a court is not to make a preliminary determination of the merits of the underlying claims."**). See also Pressler, Current N.J. Court Rules, comment on R. 4:32-5 (2017) at Page 1831 (**"The determination of certification must be made with reference to the criteria for maintaining a class action; plaintiff's chances of prevailing on the merits are not relevant to the maintainability decision."**) (emphasis added).

Thus, the fact that a defendant claims it will ultimately win on the merits of the class claims has no bearing on whether or not a class should be certified and is not a defense to class certification.

B. The Prerequisites of Class Certification Under R. 4:32-1(a) Are Met

Under R. 4:32-1(a), the party seeking class certification must satisfy four prerequisites: numerosity, commonality, typicality and adequacy of representation. In addition, the party seeking class treatment must also satisfy one of three alternatives under R. 4:32-1(b). Accepting the factual allegations of the Complaint as true for the purposes of this class certification motion – as required by Lee v. Carter Reed, 203 N.J. 496, 505 (2010) – the requirements for certification are clearly met in the case at bar.

1. R. 4:32-1(a)(1) Numerosity

The numerosity requirement demands that the class be so large that joinder of all members would be "impracticable." R. 4:32-1(a)(1). It is well-settled that 40 or more potential class members will satisfy the "numerosity" requirement. See Consol. Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir.1995) (stating that **"numerosity is presumed at a level of 40 members"**); Stewart v. Abraham, 275 F.3d 220, 226-227 (3d Cir.2001) (holding that numerosity

is met **"generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40"**). See also 1 H. Newberg, Newberg on Class Actions, §3.05, p.142 (2d Ed. 1985) (**"The difficulty in joining as few as 40 class members should raise a presumption that joinder is impracticable"**).

In the case at bar, the proposed class is clearly defined according to objective criteria. The parties have agreed that there are 543 proposed class members and, indeed, a list of such class members is attached to the Settlement Agreement as an exhibit. Accordingly, the proposed class exceeds the 40 potential members needed to satisfy R. 4:32-1(a)(1) "numerosity" by a substantial margin.

2. R. 4:32-1(a)(2) Commonality

In analyzing this factor, it is perhaps best to begin by noting what "commonality" does not require. Class certification does not require every issue in an action to be a common issue. Rather, class certification only requires that there be at least one common issue of law or fact – out of possibly many issues – for the "commonality" prerequisite to be met. See Delgozzo v. Kenny, 266 N.J.Super.169, 185 (App.Div.1993) (noting that **"a single common question is sufficient"** to meet R. 4:32-1(a)(2) commonality); Gross v. Johnson & Johnson, 303 N.J.Super. 336, 342 (Law Div.1997) (for R. 4:32-1(a)(2) to be met, **"the class as a whole must raise at least one common question of law or fact."**). See also Philip Stephen Fuoco & Joseph A. Osefchen, "Leveling the Playing Field in the Garden State: A Guide to New Jersey Class Action Case Law," 37 Rutgers L.J. 399, 440 (2006) :

> **New Jersey Court Rule 4:32-1(a)(2), usually referred to as the "commonality" prerequisite, does not require that every issue in the case be common to all class members, or even that most issues be common. Rather, New Jersey courts, like the federal courts, have held that a single common question will satisfy this requirement. Accordingly, the**

"threshold for commonality is relatively low in New Jersey." (emphasis added)

In this case, the class claims all arise from the same alleged uniform policy, the legality of which will not vary from person to person. Put simply, either it was lawful during the period in question for Defendants to reduce PIP benefits by the amount of co-pays and deductibles or it was not lawful. Based on the foregoing, this case clearly involves a core of common issues, including:

- **Whether it was lawful during the period in question for Defendants to pursue a policy of reducing PIP coverage by the amount of co-pays and deductibles;**
- **Whether the alleged policy violated N.J.S.A. 39.6A-4.3(e);**
- **Whether the holding in Birmingham v. Travelers, 475 N.J. Super 246 (App. Div. 2023) was retroactive or prospective only;**
- **Whether the alleged policy was an unlawful sales practice under N.J.S.A. § 56:8-1 of the New Jersey Consumer Fraud Act; and**
- **Whether the notices sent to class members that their PIP policy limits had been exhausted violated the clearly established rights of Plaintiffs and the class in violation of N.J.S.A. 56:12-15 of the New Jersey Truth in Consumer Contract, Warranty and Notice Act.**

As indicated in the case law cited previously, it is not relevant to class certification which side will ultimately win or lose at trial on the merits of each of the foregoing legal claims and/or factual or legal issues. What is important is that these issues are common to the proposed class as a whole. As such, these common issues need to be decided consistently by the court and that will happen only if they are decided on a class wide basis. Based on the foregoing, R. 4:32-1(a)(2) is plainly met.

3. R. 4:32-1(a)(3) Typicality

In explaining why the "typicality" requirement of R. 4:32-1(a)(3) is easily met, the Appellate Division in Laufer v. U. S. Life Ins. Co. in City of N.Y., 385 N.J. Super. 172, 180 (App. Div. 2006) stated:

> **The claims of a putative class representative are typical if they have the essential characteristics common to the claims of the class. Since the claims only need to share the same essential characteristics, and need not be identical, the typicality requirement is not highly demanding. (emphasis added) (citations omitted)**

It is a well-established principle of class action law that a class representative's claim is typical of the class if it **"arises from the same event or course of conduct which has given rise to the claims of the other class members."** Gross, 303 N.J.Super. at 342. As stated by the Appellate Division in Laufer v. U. S. Life Ins. Co. in City of N.Y., 385 N.J. Super. 172, 180 (App. Div. 2006): **"If the class representative's claims arise from the same events, practice, or conduct, and are based on the same legal theory, as those of other class members, the typicality requirement is satisfied."**

As noted by the Appellate Division in Laufer, "typicality" does not require that the circumstances of the named plaintiffs to be identical to the other class members. See Laufer, 385 N.J. Super. at 180-181. See also Gurriere v. Bloomfield Condo. Assocs., LLC, 2015 N.J. Super. Unpub. LEXIS 2137, *54 (Ch. Div. Aug. 28, 2015) (**"'typical' is not identical."**) (Exhibit 5). Rather, factual differences between the named plaintiff and the purported class will not render a claim atypical as long as the same legal theories underpin the claims. See Laufer, 385 N.J. Super. at 181 (**"[C]ases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims."**). See also Strawn v. Canuso, 140 N.J. 43, 67 (1995) (noting that the requirements of R. 4:32-1 can be satisfied even if **"substantial individual issues"** remain).

Plaintiffs are members of the proposed class in that they, like all proposed class members, were subjected to the same alleged uniform policy as all other class members. The claims of

Plaintiffs and all class members all challenge the same alleged unlawful policy and all such claims are based on the same legal theories. Plaintiffs have not pleaded any individual claims for themselves. Rather, they plead the exact same class-wide claims on behalf of the class as a whole. Nor do Plaintiffs seek any relief for themselves which is different than what they seek for every other class member. Based on the foregoing, typicality is clearly met.

4. R. 4:32-1(a)(4) Adequacy of Representation

The final question under R. 4:32-1(a) is whether the named Plaintiffs and Plaintiffs' counsel will fairly and adequately protect the interests of the class. See R. 4:32-1(a)(4). As explained by the Appellate Division in Laufer, 385 N.J. Super. at 182: **"To satisfy this requirement, 'the plaintiff must not have interests antagonistic to those of the class.'"**

Under this requirement, New Jersey law provides that defendant has the burden of proving that plaintiff or plaintiff's counsel are inadequate. See Delgozzo, 266 N.J.Super. at 188 (**"The defense bears the burden of demonstrating that the proposed representation will be inadequate."**); Gross, 303 N.J. Super. at 342 (**"the burden is on the opposing party to demonstrate that the proposed representations will be inadequate."**).

Plaintiffs are members of the proposed class they seek to represent. There are not any conflicts of interest between Plaintiffs and the class. Indeed, no conflicts of interest are possible given the nature of the class claims pleaded and the relief sought. Plaintiffs were subject to the exact same alleged unlawful policy as every other class member. Plaintiffs seek the same relief for themselves as they seek for all other class members under the exact same legal theories. Such relief, if obtained, will benefit all class members equally. Such relief cannot possibly benefit Plaintiffs more than the other class members and therefore any conflict of interest between Plaintiffs and the other class members is impossible. Put simply, if Plaintiffs win on their claims,

all class members will benefit equally. If Plaintiffs lose on their claims, all class members will share that same fate.

Moreover, Plaintiffs' conduct thus far illustrates that they are diligent and adequate representatives of the proposed class. Plaintiffs have pursued this action vigorously and have retained highly-experienced class counsel to represent themselves and the class. Plaintiffs have refused to discuss any individual settlement of their claims with Defendants because they are fully committed to winning relief, not just for themselves but for the class as a whole. As such, there can be no showing that Plaintiffs would be inadequate class representatives.

As to the second prong of R. 4:32-1(a)(4), there can be no doubt that Plaintiffs have retained experienced and competent counsel to represent Plaintiffs and the class. Collectively, proposed class co-counsel have participated in numerous certified class actions and have lectured on class actions and related topics at seminars and continuing legal education courses. See Certification of James A. Barry. Moreover, Defendants do not dispute that proposed class counsel are qualified to represent the class.

Based on the foregoing, R. 4:32-1(a)(4) "adequacy of representation" is satisfied.

C. The Requirements of R. 4:32-1(b)(3) Are Met

The case at bar meets the requirements of R. 4:32-1(b)(3) because: (a) common questions of law or fact predominate over individual issues, and (b) a class action is the superior method by which to resolve the case. In re Cadillac V8-6-4 Class Action, 93 N.J. 412, 426, 435-436 (1983); Delgozzo, 266 N.J. Super. at 189.

1. Predominance Is Met

Having a "predominance" of common issues does not require the absence of individual issues. Indeed, the Supreme Court of New Jersey has stated that a class may be certified under R.

4:32-1(b)(3) even where a court has found that **"substantial individual issues"** exist. Iliadis, 191 N.J. at 108. As explained by the New Jersey Supreme Court in Lee v. Carter, 203 N.J. at 520:

> **Significantly, to establish predominance, plaintiff does not have to show that there is an "absence of individual issues or that the common issues dispose of the entire dispute," or "that all issues [are] identical among class members or that each class member [is] affected in precisely the same manner." Indeed, in a class-action setting, "[i]ndividual questions of law or fact may remain following resolution of common questions." (emphasis added) (citations omitted)**

Nor do the presence of purported individualized defenses defeat predominance or class certification. As held by the New Jersey Supreme Court in Iliadis, 191 N.J. at 112:

> **So too, the individualized defenses advanced by Wal-Mart do not necessarily foreclose a finding of predominance. Although different factual situations may arise with respect to the defenses as to different plaintiffs, [such] does not derogate from the fact that the affirmative cause of action itself has the community of interests and of questions of law or fact which justify the class action concept.**

Nor do potential differences or variations in damages among class members defeat class certification. See Muise v. GPU, Inc., 371 N.J. Super. 13, 46 (App. Div. 2004) (**"Once the court finds that common questions of liability, and the fact of damage, predominate, individual variations in the calculation of damages does not preclude class certification."**); Lusky v. Capasso Bros., 118 N.J. Super. 369, 373 (App. Div. 1972) (certifying class, holding: **"Although the computation of damages among the members of the class would differ, this factor alone is not sufficient in itself to justify dismissal of a class action."**).

The question the "predominance" prong seeks to answer is not whether any individual issues or defenses exist, but rather does **"the core of the case concern common issues of fact and law."** Iliadis, 191 N.J. at 108. In cases where, as here, the Defendants are alleged to have engaged in a uniform policy or common course of conduct, the legality of that policy or course of conduct forms the core of the case and predominance is met. See Gurriere, 2015 N.J. Super. Unpub.

LEXIS 2137 at *63, quoting Varacallo v. Mass. Mut. Life Ins. Co., 226 F.R.D. 207, 231 (D.N.J. 2005) (**"[I]n cases where it is alleged that the defendant . . . engaged in a common course of conduct, courts have found that conduct to satisfy the commonality and predominance requirements."**).

It is submitted that the "core" of this case involves claims, facts and legal issues that are common to the entire class. Specifically, Plaintiffs contend that, during the period in question, Defendants pursued an unlawful and uniform policy of reducing PIP benefits by the amount of co-pays and deductibles. Either this alleged uniform policy existed or it did not. If it existed, then either this uniform policy was unlawful during the period in question or it was lawful. Consequently, the class claims constitute a **"common legal grievance"** which more than satisfies the requirements of (b)(3) "predominance" in this case.

2. Superiority Is Met

The other prerequisite for certification under R. 4:32-1(b)(3) is that a class action be **"superior to other available methods for the fair and efficient adjudication of the controversy."** Lee v. Carter-Reed, 203 N.J. at 520. In addressing the "superiority" requirement, the New Jersey Supreme Court has repeatedly held that class actions are the preferred and superior method of resolving claims where, as here, the members of the proposed class have suffered damages per person which are too low to make individual litigation practicable. See Lee, 203 N.J. at 520 (**"The whole point of a class action is to provide a diffuse group of persons, whose claims are too small to litigate individually, the opportunity to engage in collective action and to balance the scales of power between the putative class members and a corporate entity."**); Iliadis, 191 N.J. at 105 (**"When one inflicts minor harm across a dispersed population, 'the defendant is, as a practical matter, immune from liability unless a class is certified.'"**).

This factor is clearly present here. The maximum amount of any actual damage any individual class member suffered is $3,000 – the maximum amount of co-pays and deductibles allowed under New Jersey law given Travelers' policy limits and standard co-pays and deductibles. That amount is too small to make individual actions in New Jersey Superior Court economically feasible or practicable. Few, if any, lawyers would be willing to take a contingency case worth $3,000 where liability is hotly disputed. Nor would anyone likely be willing to pay an attorney on an hourly basis to chase a recovery of $3,000 where liability is contested and the attorney fees would quickly exceed the potential recovery. The only viable options other than class certification would be for persons victimized by the alleged unlawful policy to either "eat" their losses or proceed pro se in small claims court; where various small claims court judges would have to decide – over and over again – the exact same legal issue as to whether the challenged policy was unlawful. Such a procedure would be duplicative, inefficient and wasteful. Logic and case law dictate that such a common issue should be addressed once, in a class-wide proceeding. Indeed, it is submitted that a class action is not only the superior means of resolving this dispute, it is the most practical means of doing so. Consequently, the requirements of "superiority" are met.

Conclusion

For the foregoing reasons, Plaintiffs respectfully request the Court to enter the proposed order granting preliminary approval of class settlement agreement and directing dissemination of class notice, grant preliminary approval to the proposed class action Settlement, in the form of Exhibit 9 hereto, certify the proposed Settlement Class, appoint Plaintiffs as the class representatives and Plaintiffs' counsel as Class Counsel, authorize the distribution of the proposed notice of class Settlement to putative Settlement Class Members, and set a date for a formal fairness hearing on or after March 9, 2026.

DeNITTIS OSEFCHEN PRINCE, P.C.

Dated: November 4, 2025 BY: */s/James Barry*

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