



Motion For Preliminary Approval of Class Settlement

and

Certification of The Settlement Class

MSPA Claims 1 v. Ocean Harbor

Case No: 2015-1946 CA 06

1



Settlement Timeline

2

223

Settlement Communications Between the Parties. Some Examples:





Cases Being Settled

11th Circuit Court, Miami-Dade County

MSPA CLAIMS 1 v. Ocean Harbor

1. Case No. 2015-1946-CA-06;
2. Case No. 2015-001765-CA-08;
3. Case No. 2016-023273-CA-11; and
4. Case No. 2015-01721-CA-11.

IN THE CIRCUIT COURT IN AND FOR
THE ELEVENTH CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO.: 2015-01721-CA

MSPA CLAIMS 1, LLC,

Plaintiff,

v.

OCEAN HARBOR CASUALTY
INSURANCE COMPANY,

Defendant.

IN THE CIRCUIT COURT IN AND FOR
THE ELEVENTH CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO.: 2015-1765-CA

MSPA CLAIMS 1, LLC,

Plaintiff,

v.

OCEAN HARBOR CASUALTY
INSURANCE COMPANY,

Defendant.

CLASS ACTION SETTLEMENT AGREEMENT



Quick Factual Background

4

- MSPA, is the assignee of Florida Healthcare Plus (“FHCP”), a Medicare Advantage Organization (“MAO”)
- Ocean Harbor Casualty Insurance (“Ocean Harbor”) is a Florida no-fault auto insurer.
- At the class certification hearing, MSPA presented the claims of R.G, L.B., S.D. and I.S., enrollees of FHCP (“Enrollee”) who sustained injuries related to a motor vehicle.



Settlement Basics

5

- **Resolves All Disputes Between The Parties.**
- **2 Classes:**
 - (1) **Main Class** (MAOs, MSOs, IPAs, CIN, PPO)
\$5,000,000 Walk Away Provision
 - (2) **Beneficiary Class** (Medicare Part C Beneficiaries)
\$100,000 to reimburse individuals for out of pocket costs
- **Attorneys Fees** – \$1,100,000
- **Settlement Administrator** – Notice, Processing and Payments.
- **Objection/ Intervenor/ Opt-Out** process and requirements.
- **Detailed Procedure** – to complete all aspects of settlement.

See Class Settlement Agreement Page 17,18



Settlement Agreement Applies To:

6

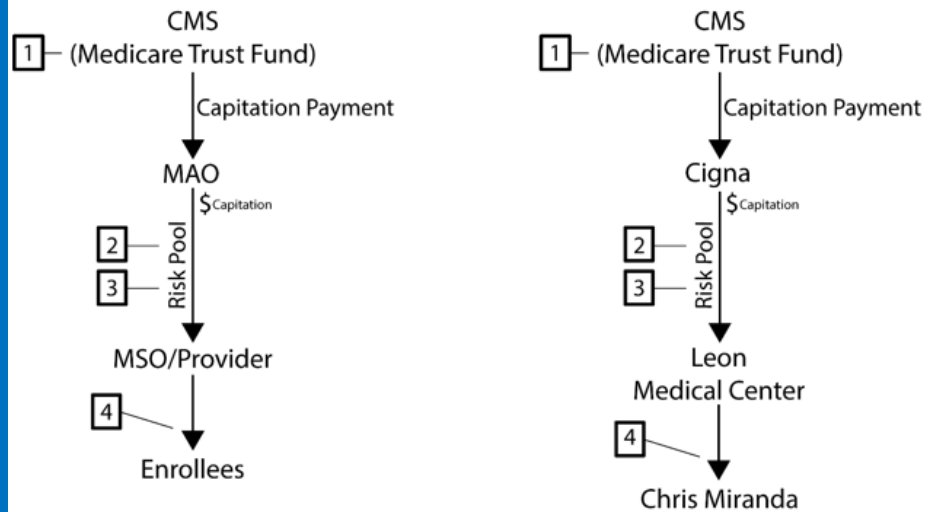
- **“MAO Entities”** – Medicare Advantage Organizations
- **“MAO Related Entities”** – which include:
 - First Tier Entity
 - Downstream Entity
 - Assignees
- **First Tier and Downstream Entities include:**
 - Management Services Organization (“MSO”)
 - Independent Practice Association (“IPA”)
 - Preferred Provider Organization (“PPO”)
 - Clinically Integrated Network (“CIN”)

See Class Settlement Agreement Page 17,18



Settlement Agreement Applies To:

III. Assignment of Risk Diagram



7



CLASS DEFINITIONS

8



Class Definition From Class Certification Order

1.220(b)(3) is thereby **GRANTED**, and the Court certifies the following class³ as:

9

entities that contracted directly with the Centers for Medicare and Medicaid Services ("CMS") and/or its assignee pursuant to Medicare Part C, including but not limited to, MAOs and other similar entities, to provide Medicare benefits through a Medicare Advantage plan to Medicare beneficiaries for medical services, treatment, and/or supplies as required and regulated by HHS and/or CMS as a direct payer of medical services/supplies and/or drugs on behalf of Medicare beneficiaries either for parts A, B and/or D, all of which pertain to the same medical services and/or supplies that were the primary obligation of the Defendant;

have made payment(s) for medical services, treatment and/or supplies subsequent to January 29, 2009, whereby the MAO, or its assignee, as a secondary payer, has the direct or indirect right and responsibility to obtain reimbursement for covered Medicare services, for which the Defendant, as the primary payer pursuant to Defendant's contract covering the Medicare enrollee pursuant to Florida No-Fault law (section 627.736(4), Florida Statute), was/is financially responsible to a Medicare beneficiary for medical bills incurred as a result of the use, maintenance or operation of a motor vehicle; and

where the Defendant failed to properly pay for medical bills on behalf of its insureds and has otherwise failed to reimburse the MAO's or its assignees for their payment(s) as calculated pursuant to the recognized Current Procedure Terminology ("CPT") codes based on the fee-for-service⁴ by the primary payer, as delineated by section 627.736, Florida Statutes, for medical services and/or supplies for their damages.⁵



Main Class Settlement Agreement

10

5.1. **Main Class Definition.** The **Main Class** is defined as MAO Entities and MAO Related Entities, as defined respectively in Sections 5.2.4 and 5.2.5 herein, that (1) have paid or are financially liable for the payment of Qualifying Motor Vehicle Accident Related Expenses (2) for the Medical Care and Treatment of one or more Florida Beneficiaries (3) where the Beneficiary is also an Insured under an Ocean Harbor automobile policy (4) where the Medical Care and Treatment was provided pursuant to a Medicare Advantage Contract with CMS (5) where Ocean Harbor is responsible under its Policy to pay PIP benefits for the Medical Care and Treatment and (6) where Ocean Harbor is a Primary Plan.



Beneficiary Class Settlement Agreement

11

6.1. **Class Definition.** The **Beneficiary Class** is defined as Beneficiaries (1) who have paid or who are legally obligated to pay Out of Pocket Costs for the payment of Qualifying Motor Vehicle Accident Related Expenses (2) for their own Medical Care and Treatment (3) where the Beneficiary is also an Insured under an Ocean Harbor automobile policy (4) where the Medical Care and Treatment was provided pursuant to a Medicare Advantage Contract with CMS (5) where Ocean Harbor is responsible under its Policy to pay PIP benefits for the Medical Care and Treatment and (6) where Ocean Harbor is a Primary Plan. A Subrogor Beneficiary who has paid or who is legally obligated to pay Out of Pocket Costs towards the Reimbursed Medical Expenses of a Main Class Member falls within the definition of a Beneficiary Class Member.



Settlement Summary

12

Main Class

- 7.3. Ocean Harbor will utilize its normal claims processing methods.
- 7.4. Ocean Harbor will pay reasonable, related and necessary medical expenses.
- 7.5. Ocean Harbor will approve claims where some treatment was rendered to the Beneficiary within at least 14 days of the date on which the motor vehicle accident took place (“Date of Loss”)

See Class Settlement Agreement Page 27



Summary of Settlement Terms

Main Class

- 7.6. Medicare Part A claims for emergency services and care provided by a hospital reimbursed at 3.5 times the Medicare Fee For Service Schedule Rate.
- 7.7. Other than for emergency services and care, Medicare Part A claims shall be reimbursed , at 80% of 200% of the applicable Medicare Fee for Service Schedule Rate

See Class Settlement Agreement Page 27



Summary of Settlement Terms

Main Class

- 7.9. Medicare Part B claims shall be reimbursed at 80% of 200% of the applicable Medicare Fee for Service Schedule Rate.
- 7.10. Medicare Part D claims shall be reimbursed at 3.5 times the Medicare Fee For Service Schedule Rate.
- 7.13. Ocean Harbor is entitled to the application of the Beneficiary's PIP Deductible Amount.

See Class Settlement Agreement Page 28



Summary of Settlement Terms

Beneficiary Class

8.3. Ocean Harbor agrees to pay 80% of the amount a Beneficiary Class Member has paid, or is obligated to pay, for Out of Pocket for the Reimbursed Medical Expenses.

6.2.4. “Out of Pocket Costs” means amounts paid for any Deductible, Copayment, or Coinsurance. Out of Pocket Costs does not include Plan Premiums.

See Class Settlement Agreement Page 26, 33



Summary of Settlement Terms

Class Counsel Fees

- Ocean Harbor shall pay the sum of One Million One Hundred Thousand Dollars (\$1,100,000.00) as attorneys' fees and litigation expenses to Class Counsel.



Summary of Settlement Terms

Opt Out Process

- 14.3. To validly “Opt Out” from the Settlement Class, a Class Member must personally sign and submit a written request to be excluded from the Settlement Agreement (Request for Exclusion).
- 14.4. So called “mass” or “class” opt outs shall not be allowed.
- 14.10. Any Settlement Class Member who elects to Opt Out pursuant to this Section shall be deemed to have waived any rights or benefits under this Settlement Agreement.

See Class Settlement Agreement Page 45,46



Summary of Settlement Terms

Objector Process

- 15.1. Any Class Member may file a petition to intervene or present objections explaining why he or she believes the Settlement Agreement should not be approved by the Court

See Class Settlement Agreement Page 47



Summary of Settlement Terms

19

Objector Process

15.3. Any Objection or Petition to Intervene shall contain the following:

- (1) full name, current address, current electronic mail address, and current telephone number;
- (2) sworn proof that the objector or intervenor is a Class Member as defined in this Settlement Agreement;
- (3) a statement of each objection being made;
- (4) a detailed description of the facts underlying each objection
- (5) a detailed description of the legal authorities underlying each objection;
- (6) a list of witnesses who may be called to testify;
- (7) a list of exhibits;

See Freebird, Inc. v. Cimarex Energy Co., 46 Kan. App. 2d 631, 264 P.3d 500, 505 (2011), review denied, (June 13, 2012) (quoting **Newberg on Class Actions**) ("In order to prevent spurious objections to a class action settlement, most notices of proposed settlement also contain a mandatory procedure that objectors must follow.").



Summary Of Settlement Terms

20

Administration

17.2. Ocean Harbor shall select . . . a third-party settlement and claims administrator to facilitate class notice, claims administration, claims identification, and claims handling.

17.6. The Settlement Administrator shall be responsible for the dissemination of Notice.

17.7. The Settlement Administrator shall also be responsible for the publication of Summary Notice.

See Class Settlement Agreement Page 55, 56



Process

21

