

# **NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION**

**TO:** Every person who, from March 14, 2012 to March 13, 2019, was insured under a Policy underwritten by Defendant, Consumers County Mutual Insurance Company, or any of its Affiliates, and who filed a claim for Personal Injury Protection (“PIP”) benefits where the claim or a portion thereof was not paid solely because the medical bill(s) were paid by a third party insurer.

**THIS NOTICE MAY AFFECT YOUR RIGHTS PLEASE READ IT CAREFULLY**

**IF YOU MEET THE CRITERIA SET OUT BELOW AND TIMELY SUBMIT A VALID CLAIM FORM, YOU MAY BE ELIGIBLE FOR A CASH PAYMENT**

## **1. Why should I read this Notice?**

The purpose of this Notice is to inform you that your rights may be affected by the Proposed Settlement of the above captioned Action. This Notice is issued pursuant to Texas Rule of Civil Procedure 42 and by order of the District Court of Travis County, Texas. The Notice has been sent only to the Potential Class Members, not to any of their personal counsel, whether known or unknown, in connection with any specific Accident.

## **2. What is the Lawsuit about?**

This Notice describes the Proposed Settlement of a class action lawsuit concerning alleged violation of Texas law by Defendant, Consumers County Mutual Insurance Company or its Affiliates (as further defined in the Settlement Agreement). The Plaintiffs allege generally that, in violation of Texas state law, Defendant improperly denied in whole or in part PIP benefits on the basis that a third party insurance company paid all or part of the subject medical bills.

## **3. What are the terms of the Settlement Agreement?**

Class Members who timely submit a Valid Claim Form are entitled to receive 95% of any amounts not paid by Defendant solely or in part because medical bill(s) were paid by a third party insurer, according to Defendant’s records. Recovery is available for all valid claims, with no aggregate cap. However, if a settlement payment would otherwise result in the Class Member recovering more than the PIP Policy Limit, then the settlement payment will be reduced to the part of that Policy Limit available, if any.

Defendant will pay claims based only on what its records show. If there is a disagreement between Defendant and Class Counsel regarding a payment amount, and that disagreement cannot be resolved between them, the dispute will be resolved by the Court.

## **4. Who is covered by the case?**

On March 13, 2019, the Court provisionally certified the Class described above. To be excluded from the class, you must follow the “opt out” procedure described in this Notice.

**Questions? Call 1-877-854-4541 or visit [www.HyderClassSettlement.com](http://www.HyderClassSettlement.com)**

## 5. How do I make a claim?

A Claim Form is provided with this Notice. You must fully complete the Claim Form and mail it to the Claims Administrator at the address listed on the form. In order to be eligible, the completed Claim Form must be postmarked not later than **September 13, 2019**.

## 6. Do I need to do anything to participate or can I exclude myself from the Class?

Yes. If you wish to participate in the Settlement, you must submit a Claim Form as provided in the previous paragraph. Your Claim will then be resolved and paid, if valid, upon approval of the Settlement and within the time frames specified therein. You will not be charged anything individually to remain in the Class.

If you fit the class description but do not file a claim, you will not receive the benefits of the Settlement, but will still be bound by any final judgment entered, including the Release of your claims, and will be permanently enjoined from prosecuting any of the Released Claims in this matter at any time in the future.

Notwithstanding the preceding paragraph, you may “opt out” of the Class by using the procedure described below. If you elect to opt out, the Court will exclude you from this case and you will not receive any payment in this case. If you validly opt out, you will also not be bound by this Settlement or any final judgment entered in the case.

To opt out, send a letter addressed to Hyder v Consumers Class Action Settlement, Claims Administrator, PO Box 5110, Portland, OR 97208-5110. The letter must state your name, address, and telephone number, must state that you do not wish to be a member of the Class and are “opting out,” and must be signed by the person who is opting out. The letter must be postmarked no later than **July 01, 2019**.

## 7. Who represents the Class?

For purposes of the Settlement, the Named Plaintiffs, Karen Hyder and Joseph Schladant, have been designated by the Court as the Class Representatives. The Class is represented by the following attorneys (“Class Counsel”):

Adam S. Ward  
Allison & Ward Attorneys at Law  
7718 Wood Hollow Drive, Suite 220  
Austin, TX 78731  
(512) 474-8153  
Email: allison-ward@sbcglobal.net

David S. Lill  
Lill Firm, P.C.  
4407 Bee Caves Road  
Suite 111, Bldg 1  
Austin, TX 78746  
(512) 330-0252  
Email: david@lillfirm.com

## 8. Reasons for the Settlement

The Named Plaintiffs and Class Counsel support the Settlement Agreement because it provides  
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for prompt, efficient, and fair relief. In ultimately deciding to recommend this Settlement, Class Counsel considered the relative risks and benefits to the Class of settlement or continuing litigation. Class Members incur no risk or cost in obtaining the relief provided for in the Settlement.

While Defendant has agreed to the terms of this Settlement, Defendant has denied and continues to deny liability on each and every claim asserted by the Named Plaintiffs. More specifically, Defendant has denied and continues to deny all charges of wrongdoing or liability, on any theory, arising out of any conduct, statements, acts or omissions of Defendant or its employees, agents or representatives, in connection with the Action. Defendant has denied and continues to deny any assertion that the Named Plaintiffs or Settlement Class Members suffered any damages that were proximately caused by any act or omission of Defendant or its employees, agents or representatives, or that a Class Action would otherwise be proper in this case.

#### **9. Who pays the attorneys' fees and costs?**

At the Fairness Hearing set for **July 30, 2019 at 9:00 a.m.**, Class Counsel will seek Court approval for an attorneys' fee and cost award not to exceed \$250,000. Any fees and cost award will be paid separately by Defendant, and will not reduce or diminish the amounts paid to Class Members.

Subject to Court approval, Defendant has also agreed to pay a class representative fee of up to \$6,000 for Named Plaintiff Hyder and \$2,000 for Named Plaintiff Schladant for their time, effort and risk in prosecuting this Action. These payments are in addition to and will not reduce or diminish the amounts paid to Class Members.

#### **10. Settlement approval procedure**

The Court will hold a Fairness Hearing on **July 30, 2019 at 9:00 a.m.**, in the Courtroom of the Honorable Karin Crump, of the 250<sup>th</sup> District Court of Travis County, 1000 Guadalupe St., 4<sup>th</sup> floor, Austin, TX 78701. At the Fairness Hearing, the Court will consider whether the Proposed Settlement should be granted final approval as fair, adequate, and reasonable and in the best interests of the Class as a whole. The Court will also consider the request of Class Counsel for an award of attorneys' fees and costs and the proposed class representative payment by Defendant. You may attend this hearing if you wish, but are not required to do so in order to participate in the Settlement.

If you decide to opt out of the Class, you are not entitled to object to the Proposed Settlement. If you decide to remain in the Class, and you wish to object to any aspect of the Settlement, you may do so, provided that you submit your objections, in writing, to the Court, at Clerk of the Court, District Court of Travis County, 1000 Guadalupe St., Austin, TX 78701, and to Hyder v Consumers Class Action Settlement, Claims Administrator, PO Box 5110, Portland, OR 97208-5110 not later than **July 1, 2019**.

If you wish to appear at the Fairness Hearing and be heard orally in objecting to the Settlement, you may do so if you file with the Clerk of the Court, and send to the address listed above, a written notification of your desire to appear personally, indicating briefly the nature of your intended objection. Such notice must be postmarked not later than **July 1, 2019**.

If you intend to object to the Settlement, you must submit in writing the following information: (a) a heading which refers to the Action; (b) a statement whether the objector intends to appear at the Final Settlement Hearing, either in person or through counsel, and, if through counsel, identifying that counsel by name, address and phone number; (c) a clear and detailed statement of the specific legal and factual bases for each and every objection, and, if through counsel, a statement of authorities in support of the objection; and (d) proof that the objector is in fact a Settlement Class Member. If the Class Member is represented by an attorney, he/she or it must comply with all applicable Texas laws and rules for filing pleadings and documents in Texas courts.

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## 11. Effect of Settlement Approval, including Release of All Claims

Unless you exclude yourself from the Class in the manner set forth herein, if the Final Judgment and Order Approving Settlement is entered by the Court, you shall be deemed to have given (i) Defendant or its Affiliates, and all of their past and present divisions, parent entities, associated entities, affiliates, partners, and subsidiaries; and (ii) all past and present officers, directors, shareholders, agents, attorneys, employees, stockholders, successors, assigns, independent contractors and/or any other successors, assigns, independent contractors and legal representatives of the entities set forth in (i) and any of its past, present or future officers, stockholders, directors, agents, employees and/or independent contractors and/or any other successors, assigns, or legal representatives thereof (the “Released Persons”) a General Release.

Under this General Release, you, your heirs, executors, administrators, successors and assigns shall release, waive, withdraw, retract and forever discharge any and all known and Unknown Claims, rights, demands, actions, causes of action, allegations, or suits of whatever kind or nature, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, attorneys’ fees, costs, penalties, interest, expenses, losses or damages (including actual, consequential, statutory, extra-contractual, treble, punitive, exemplary, or other) arising from or in any way related to the acts alleged or which are or could have been alleged by the Named Plaintiffs or the Class Members in this Action, to the full extent of *res judicata* protections, and which relate in any way to the theories in the Action, or which could have been brought relating in any way whatsoever to the subject matter of the Action. This includes, but is not limited to, claims for declaratory judgment, violations of the Texas Insurance Code, §§ 1952.156 and 1952.157, breach of contract, unfair or deceptive acts (including violation of various provisions of Tex. Ins. Code. §§ 541.060 and 541.061), statutory and non-statutory attorneys’ fees; unjust enrichment; breach of any covenant of good faith and/or fair dealing; premium overcharges; fraudulent inducement; fraud; misrepresentation; deception; consumer fraud; antitrust; defamation; tortious interference with contract or business expectations; Racketeer Influenced and Corrupt Organizations Act violations; violations of any consumer protection act or unfair claims settlement practices law; conversion; punitive damages; interest; injunctive relief; costs; unfair trade practices; unfair insurance practices; unfair competition; deceptive practices; statutory violations; regulatory violations; unfair business practices; breach of fiduciary duty; mental or emotional distress; and/or bad faith, relating in any way whatsoever to the denial, in whole or in part, of claims for PIP benefits where the medical bills(s) were paid in whole or in part by a third party insurer, and/or any claims which were brought or could have been brought or relate in any way whatsoever to the Action.

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

If the Settlement is not approved by the Court, the case will proceed as active litigation. If there are further actions that are taken in this lawsuit that affect your rights, you will receive notice as ordered by the Court.

## 12. Where do I get additional information?

The foregoing is only a summary of the circumstances surrounding the lawsuit, the claims asserted, the Proposed Settlement, and related matters. You may seek the advice and guidance of Class Counsel, or of your own private attorney at your own expense if you desire.

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For more detailed information, you may review the pleadings, records, and other papers on file in this lawsuit, which may be inspected during regular business hours at the Clerk's Office, District Court of Travis County, Texas. In addition, you can obtain further information by writing to Hyder v Consumers Class Action Settlement, Claims Administrator, PO Box 5110, Portland, OR 97208-5110 or by calling the following toll-free number: (877) 854-4541. Copies of the Settlement Agreement are also available from Class Counsel. If you wish to communicate with Class Counsel, you may do so by phoning, writing to or e-mailing Class Counsel at the number and/or addresses listed on Page 3. Please do not contact Defendant regarding this Settlement.

**ALSO, PLEASE DO NOT CONTACT THE COURT FOR INFORMATION.**

Dated: April 26, 2019

Clerk, Travis County District Court

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