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MAR 13 2019

At 12:17 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-16-000596

KAREN HYDER AND
JOSEPH SCHLADANT,

Plaintiffs

v.

CONSUMERS COUNTY MUTUAL
INSURANCE COMPANY,

Defendant.

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IN THE DISTRICT COURT

OF TRAVIS COUNTY TEXAS

353rd JUDICIAL DISTRICT

ORDER PRELIMINARILY APPROVING SETTLEMENT
AND DIRECTING NOTICE TO THE CLASS

WHEREAS, the Named Plaintiffs, Karen Hyder and Joseph Schladant, on behalf of themselves and the proposed Settlement Class, and Defendant, Consumers County Mutual Insurance Company or its Affiliates (as defined in the Stipulation of Settlement, hereinafter referred to as “Defendant”) (“Settlement” or “Agreement”), all acting by and through their respective counsel, have agreed, subject to Court approval following Notice to the Settlement Class, to settle this litigation upon the terms and conditions in the Agreement, filed with the Court on January 18, 2019; and

WHEREAS, the Parties have made an application pursuant to Texas Rule of Civil Procedure 42 for preliminary approval of the Settlement of this Action, as set forth in the Agreement;

WHEREAS, a hearing was held on March 7, 2019, on the Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement and Directing Notice to the Class;

WHEREAS Adam S. Ward, Allison & Ward, Attorneys at Law, and David S. Lill, Lill Firm, P.C., appeared on behalf of the named Plaintiffs and the Proposed Class, and Leanna M. Anderson and Mark Hanover, Dentons US LLP, appeared on behalf of Defendant and its Affiliates; and

WHEREAS, after hearing the argument of Counsel, and the Court having read and considered the Agreement and the exhibits thereto and having read and considered all other papers filed and proceedings had herein, and the Court being 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.
2. The Court has jurisdiction over the subject matter of this Action and over all Parties to this Action, including all members of the Class and Defendant.
3. The Court preliminarily approves the Settlement and preliminarily finds the Settlement to be fair, reasonable, and adequate to the Class, but such finding is not to be deemed an admission of liability or fault by Defendant or by any other person, or a finding of the validity of any claims asserted in the Action or of any wrongdoing or of any violation of law by Defendant. The Agreement and Settlement are not a concession by the Parties and, to the extent permitted by law, neither this Preliminary Order nor the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected therewith, shall be offered as evidence, received in evidence or used as precedent in any pending or future civil, criminal, or administrative action or proceeding, to establish any liability or admission by Defendant, except in any proceedings brought to enforce the Agreement. Neither this Preliminary Order nor the Stipulation, nor any pleading or other paper related in any way to the Stipulation, nor any act or communication in the course of negotiating, implementing or seeking approval of this Stipulation, shall be deemed an admission by Defendant that certification of a class or subclass is

appropriate in any other litigation, or otherwise shall preclude Defendant from opposing or asserting any argument it may have with respect to certification of any class or subclass in any other proceeding, or shall be used as precedent in any way against Defendant in any future legal or administrative proceeding of any kind.

4. The Court approves, as to form and content, the Notice of Pendency and Proposed Settlement of Class Action (“Class Notice”) and the Summary Notice of the same (“Summary Notice”), attached to the Agreement as Exhibits B and E, respectively.

5. All dates that are set forth in or that otherwise flow from the Preliminary Approval Order shall be added to the Class Notice before it is mailed to Class Members, and the Summary Notice before it is published.

6. The Court finds that the Class Notice and the Summary Notice, as set forth in the Agreement, constitutes the best notice practicable under the circumstances, by providing individual notice to all Class Members who can be identified through reasonable effort, and constitutes valid and sufficient published notice to all persons entitled thereto, complying fully with the requirements of the Texas Rules of Civil Procedure, and the requirements of due process under the Texas and United States Constitutions, and the requirements of any other applicable rules or laws.

7. The Notice procedure shall be as set forth below and in the Agreement. Within forty-five (45) days of this Order, Defendant shall cause, via the Class Administrator, Epiq Systems, which is hereby appointed Class Administrator by the Court, copies of the Class Notice and applicable Claim Form to be mailed to all Class Members in accordance with Part III of the Agreement, and the Summary Notice to be published in accordance with Part III of the Agreement. The Class Notice shall be sent only to the Potential Class Members, not to any of their personal counsel, whether known or unknown, in connection with any specific Accident.

The Class Notice shall be sent via first-class mail to the current or last known address of all Texas automobile insurance policyholders for whom Defendant has electronic records reflecting potential membership in the Class -- *i.e.*, where codes 472 & 563 are reflected on the relevant documentation which informed the claimant that a PIP payment was being denied or reduced based on the theory alleged in the Action. However, because there is no reasonable way to sufficiently identify any Potential Class Members who did not receive, in the documentation of the reason for the denial, in whole or in part, of their PIP claim, the codes referred to above, through reasonable effort based on Defendant's records, the Class Notice shall be supplemented via publication by the Summary Notice described in Part III of the Agreement. *See, e.g., Sun Coast Res., Inc. v. Cooper*, 967 S.W.2d 525, 536–37 (Tex. App. - Houston 1998, pet. dismissed w.o.j.) (“Rule 42 requires the trial court to devise only the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. . . . Publication notice is not precluded.”) (citation and internal quotation omitted); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 296 (W.D. Tex. 2007) (“Individual notice is not required when there is no reasonable way to sufficiently identify the class members.”); *Klein v. O'Neal, Inc.*, No. CIV.A. 7:03-CV-102-D, 2009 WL 1174638, at *2 (N.D. Tex. Apr. 29, 2009) (“It is well established that notice by publication can satisfy due process when information required to identify individual class members cannot be procured through reasonable effort.”). The Claim Form attached to the Agreement as Exhibit A is approved as the form to be sent to Class Members. Neither Defendant nor Plaintiffs, nor any of the Parties' counsel, shall be liable for any act, or failure to act, of the Class Administrator.

8. All costs and expenses incurred in identifying and providing notice to Class Members and in administering the Settlement shall be paid by Defendant as set forth in the

Agreement. However, if a Class Notice mailing is returned as undeliverable, Class Counsel reserve the right, at their own expense, and consistent with the remaining timeframes set forth in the Agreement, to take additional steps to obtain a valid address to which the Class Administrator can mail the Class Notice. Prior to the Final Settlement Hearing, Defendant shall file with the Court and serve on Class Counsel proof by declaration or affidavit that it has complied with the notice requirements described above and in the Agreement. In order to effectuate the terms of the Settlement, the Court appoints Epiq Systems as the Claims Administrator in this matter.

9. Consistent with the Agreement, the Court conditionally approves the following Settlement Class: Every Person who, at any time during the Class Period, was insured under a Policy, and who filed a claim for 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. Excluded from the Class are Class Counsel, Released Persons, and all directors and officers of Defendant or its Affiliates; and persons who were represented by counsel in litigation against Defendant or its Affiliates, where the litigation included a claim for PIP benefits, and where the person executed a settlement and/or release of any claim for PIP benefits.

10. If final approval of the Proposed Settlement is not obtained, this certification order, including the above description of the Settlement Class, shall be vacated and of no further force or effect.

11. The Court appoints Karen Hyder and Joseph Schladant as Class Representatives, and Adam S. Ward, Allison & Ward Attorneys at Law, and David S. Lill, Lill Firm, P.C., as Class Counsel. The Court expressly finds, for settlement purposes only, that Karen Hyder and Joseph Schladant are adequate Class Representatives.

12. Class Members who wish to object to or exclude themselves from the Settlement must do so in accordance with the Agreement and the instructions contained in the Class Notice.

All persons who properly submit requests for exclusion shall not be members of the Class and shall have no rights with respect to the Settlement. All Settlement Class Members who do not validly request exclusion shall be bound by any final judgment and order of dismissal entered pursuant to the Settlement, shall be barred and enjoined, now and in the future, from asserting any and all of the Released Claims, as defined in the Agreement, against the Released Persons, as defined in the Agreement, and any such Settlement Class Member shall be conclusively deemed to have released any and all such Released Claims.

13. Potential Class Members who wish to exclude themselves from the Settlement Class must prepare a written request for exclusion, postmarked not later than 30 days before the date set for the Final Settlement Hearing, which shall be sent to an address to be determined by the Class Administrator. Written requests for exclusion must be signed and include the Potential Class Member's name, address, and telephone number, and expressly state the desire to be excluded from the Settlement Class.

14. Any Class Member who has not requested to be excluded from the Class may object and appear and endeavor to show cause, if any, why the Court should or should not: (a) approve the Proposed Settlement as set forth in the Agreement as fair, reasonable and adequate; (b) provide for a class representative award; (c) provide for a fee and cost award to Class Counsel; and (d) enter a Final Order approving the Settlement; provided, however, that no person shall be heard with respect to, or shall be entitled to contest the foregoing matters by objection unless, no later than thirty (30) days prior to the Final Settlement Hearing, that person has properly filed with the Clerk of the Court, and served, in writing, to an address to be determined by the Class Administrator, the following information: (a) a heading which refers to the Action; (b) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying 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 or law firm, he/she or it must comply with all applicable Texas laws and rules for filing pleadings and documents in Texas courts. Any Class Member who does not make his or her objection in the manner provided for herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the foregoing matters.

15. A hearing shall be held on oral argument on July 30, 2019, at 9:00 a.m., before the Honorable Karin Crump, of the 250th District Court of Travis County, 1000 Guadalupe, 4th floor, Austin, TX 78701, for the purpose of determining (a) whether the Proposed Settlement as set forth in the Agreement is fair, reasonable and adequate and should be finally approved by the Court; (b) whether a Final Order approving the Settlement and dismissing the litigation with prejudice and without leave to amend should be entered; (c) whether the Named Plaintiffs should receive class representative fees and in what amount; (d) whether Class Counsel should receive a fees and costs award and in what amount; and (e) such other matters as the Agreement contemplates and as the Court may deem just and proper.

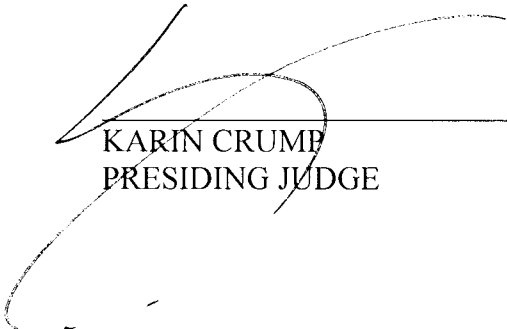
16. The Court may adjourn the Final Settlement Hearing from time to time and without further notice. The Court reserves the right to approve the Settlement at or after the Final Settlement Hearing with such modifications as may be consented to by the Parties and without further notice. The Court further reserves the right to enter a Final Order dismissing the action with prejudice as to Defendant and against the Named Plaintiffs and the Class Members at or after the Final Settlement Hearing and without further notice.

17. This Action shall be stayed pending further proceedings in connection with the effectuation of the Settlement.

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18. Pending final determination as to whether the Settlement should be approved, no Class Member shall commence, prosecute, pursue, or litigate any Released Claims against Defendant, whether directly, representatively, or in any capacity, and regardless of whether any such Class Member has appeared in the Action.

SIGNED on this the 13th day of March, 2019



KARIN CRUMP
PRESIDING JUDGE