

IN THE DISTRICT COURT OF TRAVIS COUNTY TEXAS

KAREN HYDER AND  
JOSEPH SCHLADANT,

Plaintiffs

v.

CONSUMERS COUNTY MUTUAL  
INSURANCE COMPANY,

Defendant.

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

353rd JUDICIAL DISTRICT

FINAL ORDER APPROVING SETTLEMENT AND JUDGMENT OF DISMISSAL WITH  
PREJUDICE [PROPOSED]

On the \_\_\_\_ day of \_\_\_\_\_, 2019, the matter of the Court's final approval of the Stipulation of Settlement submitted on \_\_\_\_, 2019, as part of the Motion for Order Preliminarily Approving Settlement, Approving Notice to Class Members, and Setting Date for Settlement Fairness Hearing, came before the Court for consideration. Appearing on behalf of Plaintiffs and the Settlement Class were Adam S. Ward, Allison & Ward Attorneys at Law, and David S. Lill, Lill Firm, P.C. ("Class Counsel"). Appearing on behalf of Defendant were Leanna M. Anderson and Mark Hanover, Dentons US LLP.

WHEREAS, the Named Plaintiffs, Karen Hyder and Joseph Schladant, and Defendant, Consumers County Mutual Insurance Company or its Affiliates (as defined in the Stipulation of Settlement, and hereinafter referred to as "Defendant") have executed and filed a Stipulation of Settlement ("Stipulation" or "Agreement") with the Court on \_\_\_\_, 2018; and

WHEREAS, all capitalized terms used herein shall have the same meaning as set forth in the Agreement and are hereby incorporated by reference; and

WHEREAS, the Court, on \_\_, 2018, entered the Order Preliminarily Approving Settlement and Directing Notice to the Class (“Preliminary Approval Order”), preliminarily approving the Proposed Settlement and conditionally certifying this Action, for settlement purposes only, as a class action; and

WHEREAS, Karen Hyder and Joseph Schladant were approved in the Preliminary Approval Order as the class representatives, the Court having preliminarily found them, for settlement purposes only, to be adequate Class Representatives; and

WHEREAS, the Court, as part of its Preliminary Approval Order, directed that a plan for disseminating Notice of the Settlement (“Notice Plan”) be implemented, and scheduled a hearing to be held on \_\_\_\_\_, 2019, to determine whether the Proposed Settlement should be approved as fair, reasonable and adequate.

WHEREAS, Defendant and Class Counsel have satisfactorily indicated to the Court that the Notice Plan was followed; and

WHEREAS, a Final Settlement Hearing was held on \_\_\_\_\_ 2019, at which all interested persons were given an opportunity to be heard, and all objections to the Settlement were duly considered;

NOW, THEREFORE, the Court, having read and considered all submissions made in connection with the Proposed Settlement, and having reviewed and considered the files and records herein, finds and concludes as follows:

A. The Complaint filed in this action alleges 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.

B. As part of the Preliminary Approval Order, the Court certified the Settlement Class, for settlement purposes only, defined as follows: 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 Settlement Class are: Class Counsel; Released Persons; 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. The Court hereby affirms this definition of the Settlement Class for purposes of this Final Order.

C. The Court certifies this Action, for settlement purposes only, as a Class Action under Texas Rule of Civil Procedure 42, and, in so doing, finds that, for settlement purposes only, the requirements for maintaining a class action have been met. The Court reaffirms that, for settlement purposes only, the Named Plaintiffs are adequate Class Representatives.

D. The Named Plaintiffs and Defendant have entered into the Stipulation which has been filed with the Court. The Agreement provides for the Settlement of this Action with Defendant on behalf of the Named Plaintiffs and the Class Members, subject to approval by the Court of its terms. The Court scheduled a hearing to consider the approval of the Stipulation, and directed that Notice of the Proposed Settlement and of this hearing be disseminated in accordance with the terms of the Preliminary Approval Order.

E. In accordance with the terms of the Agreement and the Preliminary Approval Order, the Parties implemented the Notice Plan approved by the Court. Defendant's

counsel and Class Counsel have confirmed to the Court that the Parties complied with the Notice Plan. The Notice Plan constituted the best Notice practicable under the circumstances, and constituted valid, due and sufficient notice to Potential Class Members.

F. The Named Plaintiff and Defendant have applied to the Court for approval of the terms of the Proposed Settlement and for the entry of this Final Order. Pursuant to the Notice Plan, and upon notice to all Parties, a hearing was held before this Court, on \_\_\_\_\_, 2019, to determine whether the Proposed Settlement of the Action should be approved as fair, reasonable, and adequate, and whether the Final Order approving the Settlement and dismissing all claims in the Action on the merits, with prejudice and without leave to amend, should be entered.

G. The Court hereby finds that approval of the Stipulation and the Settlement embodied therein will result in substantial savings of time and money to the Court and the litigants and will further the interests of justice.

H. The Court hereby finds that the Proposed Settlement is the result of good faith arm's length negotiations by the Parties thereto.

NOW, THEREFORE, GOOD CAUSE APPEARING, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Court possesses jurisdiction over the subject matter of this Action, the Named Plaintiffs, the Settlement Class Members, Defendant and the Released Persons.

2. \_\_\_\_\_ members of the Settlement Class have filed requests for exclusion. All remaining members of the Settlement Class are therefore bound by this Final Order and by the Stipulation and the Settlement embodied therein, including the Releases provided for in the Stipulation and this Final Order.

3. All provisions and terms of the Stipulation and Settlement are hereby found to be fair, reasonable and adequate as to the Settlement Class Members and the Named Plaintiffs, and all provisions and terms of the Stipulation and Settlement are hereby finally approved in all respects.

4. The Parties to the Stipulation are hereby directed to consummate the Stipulation in accordance with its terms.

5. This Action is dismissed in its entirety, on the merits, with prejudice and without leave to amend, and all members of the Settlement Class shall be forever barred and permanently enjoined from starting, continuing, or participating in, litigating or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative or regulatory proceeding or order based on or relating to the claims, facts or circumstances in this Action and/or the Released Claims. As of the Effective Date and by operation of the entry of the Final Order, each Settlement Class Member shall be deemed to have fully released, waived, relinquished and discharged, to the fullest extent permitted by law, all Released Claims that the Settlement Class Member may have against the Released Persons.

6. "Released Claims" means and includes 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.

7. "Released Persons" means (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 legal representatives of the entities set forth in (i).

8. "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 this 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.

9. It is hereby determined that the Notice Plan was the best Notice practicable under the circumstances to all members of the Settlement Class, and is therefore finally approved as fair, reasonable and adequate. Specifically, the Class Notice was 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 not paid or reduced based on the theory alleged in the Action. However, because there is no reasonable way to sufficiently identify any 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 was 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. dismiss'd 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.”). Due and adequate Notice of the pendency of this Action and of this Settlement has been provided to members of the Settlement Class, and this Court hereby finds that the Notice Plan described in the Preliminary Approval Order and completed by Defendant complied fully with the requirements of due process, the Texas Rules of Civil Procedure, and the requirements of due process under the Texas and United States Constitutions, and any other applicable laws.

10. Any and all documentation identified by Defendant as confidential, and provided by Defendant to the Named Plaintiffs, Class Counsel, Class Counsel’s experts, or anyone else employed by Class Counsel, and all copies thereof, shall be returned to Defendant or certified as destroyed within 90 days of the Effective Date. Class Counsel shall submit an affidavit to Defendant confirming that any such documentation has been returned or destroyed..

11. Neither Defendant nor Class Counsel shall make any mass and/or generalized communications about the Settlement directed to Class Members without joint approval by both Class Counsel and Defendant.

12. Class Counsel further agree that any representation of any person seeking exclusion from the Settlement Class, or any other person seeking to litigate with Defendant over any of the Released Claims, would place Class Counsel in an untenable conflict of interest with the Settlement Class. Accordingly, Class Counsel shall not represent any person in requesting exclusion from the Settlement Class. Additionally, Class Counsel shall not represent, in any subsequent litigation that may arise against Defendant or its Affiliates that

relates in any way to the Released Claims, any person who requested exclusion from the Settlement Class or any Class Member who was not excluded from the Settlement Class.

13. The Stipulation, the Settlement and this Final Order are not to be deemed admissions of liability or fault by Defendant or a finding of the validity of any claims in the Action or of any wrongdoing or 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 Final 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 Final 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. Neither Defendant nor Plaintiffs, nor any of the Parties' counsel, shall be liable for any act, or failure to act, of the Class Administrator.

14. The Court has considered the request for a class representative fee, and hereby approves and awards Karen Hyder the amount of \$ \_\_\_\_\_ and Joseph Schladant the amount of \$ \_\_\_\_\_ in recognition of the time and effort spent by each Plaintiff as a class representative and for serving the interests for the Class Members. These awards are in addition to, and not in

lieu of, any payments due these Named Plaintiffs for their individual Claims, if any, made under the Settlement. The class representative fees shall be paid by Defendant in accordance with the terms of the Agreement.

15. The Court has considered Class Counsel's request for an attorneys' fees and cost award for the prosecution of this Action, and hereby makes an attorneys' fees and cost award in the amount of \$ \_\_\_\_\_ as reasonable, fair, and appropriate to compensate Class Counsel for the time and effort spent to investigate, file, litigate and settle the action. These fees and costs shall be paid by Defendant in accordance with the terms of the Agreement.

16. Neither Defendant nor Class Counsel shall be responsible in any way for any attorneys' lien submitted by any prior counsel for any of the Settlement Class Members, nor shall any attorneys' lien be created by any of the efforts by the Parties to the Stipulation to effectuate any of the terms of the Settlement.

17. This Order is a final judgment in the Action within the meaning of the Texas Rules of Civil Procedure as to all claims among Defendant on the one hand, and the Named Plaintiffs and all Class Members on the other. Without in any way affecting the finality of this Final Judgment, this Court shall retain continuing jurisdiction over this Action for purposes of:

- A. Enforcing this Final Order, the Stipulation and the Settlement;
- B. Hearing and determining any application by any Party to the Stipulation for a settlement bar order; and
- C. Any other matters related or ancillary to any of the foregoing.

IT IS SO ORDERED.

DATED: \_\_\_\_\_, 2019

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Honorable \_\_\_\_\_

Presented By:

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