

**SUPERIOR COURT OF WASHINGTON, COUNTY OF KING**

MYSPIKE, PS, a Washington professional services corporation; BODY RECOVERY CLINIC LLC, a Washington Limited Liability Company; and YAROSLAV KUTSY,

Plaintiffs,

v.

ALLSTATE FIRE & CASUALTY INSURANCE COMPANY, ALLSTATE INDEMNITY COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY, NORTHBROOK INDEMNITY COMPANY, ALLSTATE COUNTY MUTUAL INSURANCE COMPANY, DEERBROOK INSURANCE COMPANY, ENCOMPASS INSURANCE COMPANY, ENCOMPASS INSURANCE COMPANY OF AMERICA AND ENCOMPASS INDEMNITY COMPANY,

Defendants.

CASE NO. 12-2-31979-1 SEA

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

<b>TO:</b>	<p>PERSONS WHO, BETWEEN JULY 21, 2007 AND JUNE 1, 2011, (I) WERE INSURED UNDER AN ALLSTATE WASHINGTON POLICY; (II) SUFFERED A COVERED INJURY AND RECEIVED COVERED TREATMENT FOR SUCH INJURY; (III) SUBMITTED A SUBJECT CLAIM OR HAD A SUBJECT CLAIM SUBMITTED ON HIS OR HER BEHALF; (IV) RECEIVED FROM ALLSTATE AS THE TOTAL PAYMENT OR REIMBURSEMENT FOR ALL COVERED TREATMENT COVERED BY A SINGLE POLICY (THROUGH PAYMENTS TO HIMSELF, TO HERSELF, OR TO OTHERS ON HIS OR HER BEHALF) A TOTAL AMOUNT THAT WAS LESS THAN THE APPLICABLE PIP OR MED PAY LIMIT(S) STATED IN THAT POLICY; (V) RECEIVED FROM ALLSTATE AS PAYMENT OR REIMBURSEMENT FOR AT LEAST ONE COVERED TREATMENT (THROUGH PAYMENTS TO HIMSELF, TO HERSELF, OR TO OTHERS ON HIS OR HER BEHALF) AN AMOUNT THAT WAS LESS THAN THE CHARGE BILLED FOR THAT TREATMENT BECAUSE ALLSTATE OR ONE OF ITS AGENTS AND/OR EMPLOYEES DETERMINED, WITH THE AID OF A COMPUTERIZED BILL-REVIEW SYSTEM INCLUDING THE INGENIX DATABASE, THAT THE CHARGE BILLED FOR THAT TREATMENT EXCEEDED THE USUAL, CUSTOMARY, AND/OR REASONABLE AMOUNT FOR THAT TREATMENT; AND (VI) THE APPLICABLE MED PAY OR PIP POLICY LIMITS FOR THE INSURED/SUBCLASS MEMBER TREATED HAVE NOT BEEN EXHAUSTED (INSURED/CLAIMANT SUBCLASS), AND</p> <p>PERSONS WHO, BETWEEN JULY 21, 2007 AND JUNE 1, 2011, (I) PROVIDED COVERED TREATMENT, IN WASHINGTON, TO A MEMBER OF THE INSURED/CLAIMANT SUBCLASS FOR A COVERED INJURY; (II) SOUGHT PAYMENT FOR THAT COVERED TREATMENT UNDER THE PIP OR MED PAY COVERAGE PROVIDED BY A POLICY; (III) RECEIVED FROM ALLSTATE AS PAYMENT FOR THAT COVERED TREATMENT AN AMOUNT THAT WAS LESS THAN THE CHARGE BILLED FOR THAT TREATMENT BECAUSE ALLSTATE OR ONE OF ITS AGENTS AND/OR EMPLOYEES DETERMINED, WITH THE AID OF A COMPUTERIZED BILL-REVIEW SYSTEM INCLUDING THE INGENIX DATABASE, THAT THE CHARGE BILLED FOR THAT TREATMENT EXCEEDED THE USUAL, CUSTOMARY, OR REASONABLE AMOUNT FOR THAT TREATMENT; AND THE APPLICABLE MED PAY OR PIP POLICY LIMITS FOR THE INSURED/SUBCLASS MEMBER TREATED HAVE NOT BEEN EXHAUSTED (PROVIDER SUBCLASS).</p>
------------	---

**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 Washington Civil Rule 23 and by order of the Superior Court of King County, Washington. 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 or Covered Treatment.

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

This Notice describes the Proposed Settlement of a class action lawsuit concerning alleged violation of Washington law by defendants Allstate Fire & Casualty Insurance Company; Allstate Indemnity Company; Allstate Insurance Company; Allstate Property and Casualty Insurance Company; Allstate Vehicle and Property Insurance Company; Northbrook Indemnity Company; Allstate County Mutual Insurance Company; Deerbrook Insurance Company; Encompass Insurance Company; Encompass Insurance Company of America; and Encompass Indemnity Company (collectively, "Allstate," as further defined in the Settlement Agreement). The Plaintiffs allege generally that, in violation of Washington state law, Allstate improperly failed to pay, in whole or in part, medical expense benefits under the Med Pay and/or PIP coverages afforded in the Policies in Washington based on Allstate's use of a computerized bill-review process, including the Ingenix database, as a tool to assist in the adjustment of claims for payment of such benefits.

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

Class Members who timely submit a Valid Claim Form are entitled to receive 190% of the difference between the amount of the bills submitted and the amount previously paid by Allstate, subject to the provisions of the Settlement Agreement, and fully subject to and not in excess of the applicable Policy Limits.

If valid claims are made by both a member of the Insured/Claimant Subclass and a member of the Provider Subclass, or by more than one member of the Provider Subclass, for the same medical bill or claim, the competing claims will, unless they are amicably resolved, be submitted to the Neutral Evaluator, who will then determine, in binding fashion, the proper distribution.

Allstate shall be entitled, in good faith, to make a submission to refute, modify or supplement the Claim submitted by any Class Member. Such a challenge shall, unless amicably resolved, be submitted to the Neutral Evaluator for determination in binding fashion. The Neutral Evaluator may award a Class Member any amount between zero and the full amount of the Claim, subject to and not in excess of the applicable Policy Limit, based on the Claim Form(s) submitted, but Allstate may only be required to pay the total amount of a UCR Reduction for a particular line item on a particular bill once, regardless of the number of Class Members who make a claim as to that UCR Reduction.

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

On August 5, 2013, the Court provisionally certified the following Class, during the time period set forth on Page 1, for settlement purposes (included persons are "Class Members"):

The "Insured/Claimant Subclass" is defined as every Person who, at any time during the Class Period,

- i) was insured under an Allstate Washington Policy;
- ii) suffered a Covered Injury and received Covered Treatment for such injury;
- iii) submitted a Subject Claim or had a Subject Claim submitted on his or her behalf;

iv) received from Allstate as the total payment or reimbursement for all Covered Treatment covered by a single Policy (through payments to himself, to herself, or to others on his or her behalf) a total amount that was less than the applicable PIP or Med Pay limit(s) stated in that Policy;

v) received from Allstate as payment or reimbursement for at least one Covered Treatment (through payments to himself, to herself, or to others on his or her behalf) an amount that was less than the charge billed for that treatment because Allstate or one of its agents and/or employees determined, with the aid of a computerized bill-review system including the Ingenix database, that the charge billed for that treatment exceeded the usual, customary, and/or reasonable amount for that treatment; and

vi) the applicable Med Pay or PIP policy limits for the Insured/Subclass member treated have not been exhausted.

The "Provider Subclass" is defined as every Person who, during the Class Period,

- i) provided Covered Treatment, in Washington, to a member of the Insured/Claimant Subclass for a Covered Injury;
- ii) sought payment for that Covered Treatment under the PIP or Med Pay coverage provided by a Policy;

iii) received from Allstate as payment for that Covered Treatment an amount that was less than the charge billed for that treatment because Allstate or one of its agents and/or employees determined, with the aid of a computerized bill-review system including the Ingenix database, that the charge billed for that treatment exceeded the usual, customary, or reasonable amount for that treatment; and

v) the applicable Med Pay or PIP policy limits for the Insured/Subclass member treated have not been exhausted.

To be excluded from the class, you must follow the “opt out” procedure described in this Notice.

## **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 February 6, 2014.

## **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 PIP Fee Reduction Settlement, PO Box 4234, Portland, OR 97208-4234. The letter should state your name, address, and telephone number, should state that you do not wish to be a member of the Class and are “opting out,” and should be signed by the person who is opting out. The letter must be postmarked no later than October 9, 2013.

## **7. Who represents the Class?**

For purposes of the Settlement, the Named Plaintiffs, Body Recovery Clinic LLC, MySpine PS and Yaroslav Kutsy have been designated by the Court as the Class Representatives. The Class is represented by the following attorneys (“Class Counsel”):

David Breskin and Roger Townsend  
Breskin, Johnson & Townsend  
1111 Third Avenue, Suite 2230  
Seattle, WA 98101-3213  
(206) 652-8660  
www.bjtlegal.com

## **8. Reasons for the Settlement.**

The Named Plaintiffs and Class Counsel support the Settlement Agreement because it provides 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 Allstate has agreed to the terms of this Settlement, Allstate has denied and continues to deny liability on each and every claim asserted by the Named Plaintiffs. More specifically, Allstate 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 Allstate or its employees, agents or representatives, in connection with the Action. Allstate 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 Allstate 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 November 8, 2013 at 9:00 a.m., Class Counsel will seek Court approval for an attorneys’ fee and cost award not to exceed \$1,117,830.82, which is 26% of the funds available to be paid to Provider and Insured/Claimant Subclass Members. Any fees and cost award will be paid separately by Allstate, and will not reduce or diminish the amounts paid to Class Members.

Subject to Court approval, Allstate has also agreed to pay class representative fees of up to \$7,500 for each Named Plaintiff 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 November 8, 2013 at 9:00 a.m., in the Courtroom of the Honorable Michael C. Hayden in Seattle, Washington. The address of the Court is King County Superior Court, 516 3rd Ave, Seattle, Washington, Courtroom No. E-863. 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 payments by Allstate. 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 King County Superior Court, 516 3rd Ave, Seattle, Washington, Courtroom No. E-863, and to PIP Fee Reduction Settlement, PO Box 4234, Portland, OR 97208-4234, not later than thirty (30) days before the Fairness Hearing.

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 thirty (30) days before the Fairness Hearing.

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; provided, however, that an objection also may be entertained on any other basis deemed adequate by the Court. Any Class Member who does not so request to object waives the right to do so in the future, and shall be forever barred from making any objection to the Proposed Settlement. If the Class Member is represented by an attorney, he/she or it must comply with all applicable Washington laws and rules for filing pleadings and documents in Washington courts.

#### **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 Allstate, 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 Unknown Claims, known claims, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, interest, costs, expenses or losses, losses or damages (whether actual, consequential, treble, statutory and/or punitive or exemplary or other) for or arising out of the acts alleged or which are or could have been alleged by the Named Plaintiffs or the Potential Class Members in this Action and which relate in any way to the theories in the Action or which could have been brought relating to the subject matter of the Action, including, but not limited to, statutory and non-statutory attorneys' fees; unjust enrichment; breach of contract; 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 the Washington Consumer Protection Act, the Washington Insurance Fair Conduct Act, or any consumer protection act; unfair claims settlement practices; conversion; interest; injunctive relief; declaratory judgment; 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 Allstate's review, handling, payment, adjustment or denial, in whole or in part, of claims for Medical Payments or Personal Injury Protection benefits, including, but not limited to, through the use of a computer database including the Ingenix database, and/or any claims which were brought or could have been brought or relate in any way whatsoever to the Action, or which relate in any way whatsoever to the Accidents or the Policies, or the Accidents with respect to the Policies. "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 the Stipulation and related to Medical Payments or Personal Injury Protection benefits as defined in the Stipulation, 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.

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, Superior Court of King County, Washington. In addition, you can obtain further information by writing to PIP Fee Reduction Settlement, PO Box 4234, Portland, OR 97208-4234 or by calling the following toll-free number: (877) 854-4848. 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 Allstate regarding this Settlement.

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

Dated: August 30, 2013

Clerk, King County Superior Court