SUPERIOR COURT OF WASHINGTON, COUNTY OF KING

|  |  |
| --- | --- |
| STAN SCHIFF, M.D., Ph.D., and class of similarly situated Washington health care providers,  Plaintiff,  v.  MAPFRE INS. GRP., d/b/a AMERICAN COMMERCE INSURANCE COMPANY and AMERICAN COMMERCE INSURANCE COMPANY WEST, a/k/a, COMMERCE WEST INSURANCE COMPANY, foreign insurance companies,  Defendants. | CASE NO. 14-2-11309-9 SEA  NOTICE OF PENDENCY AND  PROPOSED SETTLEMENT OF CLASS ACTION |

TO: ALL WASHINGTON HEALTH CARE PROVIDERS WHO FROM APRIL 22, 2010 TO JULY 2, 2014: (I) PROVIDED COVERED TREATMENT, IN WASHINGTON, TO A PERSON INSURED BY MAPFRE U.S.A. CORP AND ITS AFFILIATES AMERICAN COMMERCE INSURANCE COMPANY AND COMMERCE WEST INSURANCE COMPANY, FOR A COVERED INJURY, (II) SOUGHT PAYMENT FOR THAT COVERED TREATMENT UNDER THE PERSONAL INJURY PROTECTION (“PIP”) COVERAGE PROVIDED BY A POLICY ISSUED BY MAPFRE U.S.A. CORP, AMERICAN COMMERCE INSURANCE COMPANY OR COMMERCE WEST INSURANCE COMPANY; (III) RECEIVED PAYMENT OF AN AMOUNT THAT WAS LESS THAN THE CHARGE BILLED FOR THAT TREATMENT BASED SOLELY ON A UCR80 EXPLANATION CODE, AND THE APPLICABLE PIP POLICY LIMITS FOR THE PERSON TREATED HAVE NOT BEEN EXHAUSTED.

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.

1. **What is the Lawsuit about?**

This Notice describes the Proposed Settlement of a class action lawsuit concerning alleged violation of Washington law by defendants MAPFRE U.S.A. Corp. d/b/a MAPFRE Insurance and its affiliates American Commerce Insurance Company and Commerce West Insurance Company (collectively, “MAPFRE,” as further defined in the Stipulation of Settlement). The plaintiff alleges generally that, in violation of Washington state law, MAPFRE improperly failed to pay, in whole or in part, medical expense benefits under the PIP coverage afforded in the policies in Washington based on MAPFRE’s use of a computerized bill-review process as a tool to assist in the adjustment claims for payment of such benefits.

1. **What are the terms of the Stipulation of Settlement?**

Class Members who timely submit a Valid Claim Form are entitled to receive 170% of the difference between the amount of certain bills submitted and the amount previously paid by MAPFRE, subject to the provisions the Stipulation of Settlement, and fully subject to and not in excess of the applicable Policy Limits.

MAPFRE 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 on written submission 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 MAPFRE 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.

1. **Who is covered by the case?**

On October 27, 2014, the Court provisionally certified the following Class, during the time period set forth on Page 1, for settlement purposes (included persons are “Class Members”):

All Washington health care providers who from April 22, 2010 to July 2, 2014: (i) provided Covered Treatment, in Washington, to a person insured by MAPFRE U.S.A. Corp. and its affiliates American Commerce Insurance Company and Commerce West Insurance Company, for a Covered Injury, (ii) sought payment for that Covered Treatment under the Personal Injury Protection (“PIP”) coverage provided by a policy issued by MAPFRE U.S.A. Corp., American Commerce Insurance Company or Commerce West Insurance Company; (iii) received payment of an amount that was less than the charge billed for that treatment based solely on a UCR80 explanation code, and the applicable PIP Policy Limits for the person treated have not been exhausted.

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

1. **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 May 7, 2015.

1. **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 Claims Dept./Claim Support Services – CG04, The Commerce Insurance Company, 11 Gore Rd., Webster, MA 01570-9966. 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 January 17, 2015.

1. **Who represents the Class?**

For purposes of the Settlement, the Named Plaintiff, Stan Schiff, M.D., Ph. D., has been designated by the Court as the Class Representative. The Class is represented by the following attorneys (“Class Counsel”):

David Breskin and Roger Townsend

Breskin, Johnson & Townsend

1000 Second Avenue, Suite 3670

Seattle, WA 98104 (206) 652-8660

www.bjtlegal.com

1. **Reasons for the Settlement.**

The Named Plaintiff and Class Counsel support the Stipulation of Settlement 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 MAPFRE has agreed to the terms of this Settlement, MAPFRE has denied and continues to deny liability on each and every claim asserted by the Named Plaintiff. More specifically, MAPFRE 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 MAPFRE or its employees, agents or representatives, in connection with the Action. MAPFRE has denied and continues to deny any assertion that the Named Plaintiff or Settlement Class Members suffered any damages that were proximately caused by any act or omission of MAPFRE or its employees, agents or representatives, or that a Class Action would otherwise be proper in this case.

1. **Who pays the attorneys’ fees and costs?**

At the Fairness Hearing set for February 6, 2015 at 9:00 a.m., Class Counsel will seek Court approval for an attorneys’ fee and cost award not to exceed 25% of 170% of the UCR Reductions. The total UCR Reductions are presently estimated to be $163,385.34. Any fees and cost award will be paid separately by MAPFRE, and will not reduce or diminish the amounts paid to Class Members.

Class Counsel will also seek approval of a class representative fee of up to $3,500 for Plaintiff Dr. Schiff, which MAPFRE has agreed not to contest, for his time, effort and risk in prosecuting this Action. This payment is in addition to and will not reduce or diminish the amounts paid to Class Members.

1. **Settlement approval procedure.**

The Court will hold a Fairness Hearing on February 6, 2015 at 9:00 a.m., in the Courtroom of the Honorable Tanya L. Thorp, King County Superior Court Judge, in Seattle, Washington. The address of the Court is King County Superior Court, 516 3rd Ave, Seattle, Washington, Courtroom No. E-209. 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 MAPFRE. 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 the Superior Court Clerk’s Office, King County Courthouse, 516 3rd Ave., E609, Seattle, WA 98104-2386, and to Claims Dept./Claim Support Services – CG04, The Commerce Insurance Company, 11 Gore Rd., Webster, MA 01570-9966, not later than twenty (20) 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.

1. **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 MAPFRE, its affiliates, subsidiaries, and assigns, 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 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 Plaintiff or the Potential Class Members in this Action which relate in any way to the theory that, during the Class Period, MAPFRE violated Washington law by failing to pay all reasonable and necessary medical expenses under Washington State PIP insurance policies based solely on a reasonable fee geo-zip reduction using a computerized database of charges to adjust the claim (referred to as a “UCR 80” explanation code reduction) 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; punitive damages; 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. The “Released Claims” do not include personal injury claims, but only to the extent such claims do not encompass a claim that MAPFRE paid less than the full amount billed for reasonable and necessary medical treatment based on medical bill review based solely on a reasonable fee geo-zip reduction using a computerized database of charges to adjust the claim, referred to as a “UCR 80” explanation code reduction.

“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 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. For purposes of the Settlement, the Parties are also waiving any and all rights they may have under or pursuant to: (i) the provisions of Section 1542 of the Civil Code of the State of California and/or (ii) the provisions of any similar statutory, regulatory or common law of any state or of the United States. Section 1542 of Civil Code of the State of California provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the releases, which if known by him or her must have materially affected his or her settlement with the debtor.

The exact release language and the definition of Released Parties, Releasing Parties, Settled Class Claims and Unknown Class Claims in the Settlement Agreement are far more detailed, and you may want or need to consider them before making your decision about participating in the Settlement. Likewise, much more detail about all of the Settlement provisions and definitions of key terms (including capitalized terms in this Notice) are contained in the full Settlement Agreement.

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.

1. **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, a website has been set up at http://bjtlegal.com/MAPREReasonableFeeSettlement/, which contains this Notice, the Stipulation of Settlement and other information. You can also obtain copies of these materials by writing to Claims Dept./Claim Support Services – CG04, The Commerce Insurance Company, 11 Gore Rd., Webster, MA 01570-9966 or by calling 1-877-372-9836 ext 15269.

If you wish to communicate with Class Counsel, you may do so by phoning or writing to Class Counsel at the number and/or addresses listed on Page 3. Please do not contact MAPFRE with questions regarding this action or the Settlement.

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

Dated: October 29, 2014 Clerk, King County Superior Court