

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
DEBORAH TANZER, :
 :
 :
 Plaintiff, :
 :
 : Index No: 114263/95
 -against- : (Gammerman, J.)
 : IAS Part 27
 : P.C. No. 10448
HEALTH INSURANCE PLAN OF :
 GREATER NEW YORK, :
 :
 :
 Defendant. :
-----X

**NOTICE OF PENDENCY OF CLASS ACTION
AND HEARING ON PROPOSED SETTLEMENT**

TO: ALL PERSONS WHO (I) WERE INSURED UNDER A BASIC DIRECT-PAY INSURANCE POLICY OFFERED BY HEALTH INSURANCE PLAN OF GREATER NEW YORK ("HIP") AND (II) UNDERWENT A MEDICAL PROCEDURE ON OR AFTER JUNE 7, 1993, WHILE SO INSURED, FOR WHICH ANESTHESIA SERVICES WERE REQUIRED AND (III) DID NOT SUBMIT CLAIMS FOR SUCH ANESTHESIA SERVICES TO HIP OR HAD THEIR CLAIMS DENIED BY HIP AND (IV) ARE CURRENTLY OBLIGATED TO A THIRD PARTY MEDICAL CARE PROVIDER FOR THE COST OF SUCH ANESTHESIA SERVICES OR HAVE PAID FOR SUCH ANESTHESIA SERVICES AND (V) HAVE NOT BEEN REIMBURSED BY A THIRD PARTY INSURER.

THIS NOTICE IS GIVEN TO INFORM YOU OF THIS CLASS ACTION WHICH IS PENDING, ON YOUR BEHALF, IN THIS COURT. THIS NOTICE IS ALSO GIVEN TO ADVISE YOU OF THE PROPOSED SETTLEMENT OF THIS CLASS ACTION. IF THE SETTLEMENT IS APPROVED BY THE COURT, CERTAIN BENEFITS WILL BE CONFERRED ON THE MEMBERS OF THE CLASS. THIS NOTICE CONCERNS YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.

THE STIPULATION OF SETTLEMENT (THE "STIPULATION") PROVIDES THAT HIP WILL PAY AUTHORIZED CLAIMS FOR ANESTHESIA

SERVICES FEES IN FULL (AS DEFINED AND DESCRIBED IN THE STIPULATION).

IF YOU ARE A MEMBER OF THE CLASS AND WISH TO RECOVER THESE BENEFITS YOU MUST SUBMIT AN EXECUTED PROOF OF CLAIM IN THE FORM ANNEXED HERETO BY AUGUST 21, 2000. IF YOU ARE A MEMBER OF THE CLASS AND DO NOT WISH TO BE PART OF THIS SETTLEMENT YOU MUST FILE A WRITTEN REQUEST TO BE EXCLUDED FROM THE CLASS BY MAY 6, 2000.

NOTHING IN THIS NOTICE SHOULD BE CONSTRUED AS AN EXPRESSION BY THE COURT ABOUT THE MERITS OF THIS LAWSUIT OR THE SETTLEMENT.

BACKGROUND AND DESCRIPTION OF THIS LITIGATION

On June 7, 1995, the Class Representative commenced this Litigation against HIP individually, and on behalf of all other subscribers to HIP's Basic Insurance Policy who had been denied coverage by HIP for anesthesia. The Class Representative asserted claims for breach of contract, violation of New York General Business Law § 349, fraud and misrepresentation and violation of New York Insurance Department regulations arising out of HIP's alleged wrongful failure to pay anesthesia benefits.

In lieu of answering, on July 28, 1995, HIP moved to dismiss the action on the grounds that HIP's Basic Insurance Policy excluded coverage for "anesthesia." The trial court denied the motion, finding that the "anesthesia" exclusion was ambiguous and could have excluded coverage for anesthetic substances as opposed to an anesthesiologist's services. (The trial court did grant HIP's motion to dismiss the claims for violations of the Insurance Department regulations on the grounds that there was no private right of action for enforcement of those regulations.) HIP appealed. Although the

intermediate appellate court dismissed the action, the New York Court of Appeals reinstated Plaintiff's claims for breach of contract, violation of New York General Business Law § 349, and fraud and misrepresentation.

By Order dated December 4, 1996, as modified by Order dated January 25, 1999, the trial court certified a class in this Litigation comprised of subscribers to the HIP Basic Direct-Pay Insurance Policy who had been denied coverage by HIP for Anesthesia Services. The trial court did not certify a class as to the fraud and/or misrepresentation claims.

In 1998 the Plaintiff and HIP filed competing partial summary judgment motions and HIP moved for an order decertifying the Class. In addition to modifying the certified class, the trial court's January 25, 1999 Order granted Plaintiff's motion for partial summary judgment on the Class' breach of contract claim.

In April 1999, the Plaintiff sought reargument of the January 25, 1999 Order to the extent that it modified the Class. The trial court granted reargument, but adhered to its January 25, 1999 Order and modification of the Class.

Appeals have been noticed from the trial court's December 4, 1996, January 25, 1999 and August 25, 1999 Orders. By agreement of the parties, the various appeal proceedings have been postponed in contemplation of a final settlement of this action.

HIP denies any intentional wrongdoing and liability in this matter.

THE PROPOSED SETTLEMENT

1. Under this Settlement, Class Members will be reimbursed by HIP in full for the cost of their Anesthesia Services (as defined and described in the Stipulation) if they can establish that they: (1) underwent a medical procedure, on or after June 7, 1993, for which Anesthesia Services were required, while insured under an HIP Basic Direct-Pay Insurance Policy; (2) did not submit claims for such Anesthesia Services to HIP or submitted claims for Anesthesia Services to HIP and said claims were denied; and (3) are currently obligated to a third party medical care provider for the cost of such Anesthesia Services or have paid for such Anesthesia Services and have not been reimbursed by a third party insurer.

2. Based on the discovery conducted to date and their overall investigation in pursuit of their claims, as well as substantial arms-length negotiations between counsel, and considering the benefits of the Settlement to the Class and the risks associated with further litigation (including the uncertainty of trial and the delay and uncertainty associated with any appeal), the plaintiff and Class Counsel have concluded that the Settlement is fair, reasonable, and adequate. Based upon these considerations, the plaintiff and Class Counsel have concluded that it is in the best interest of the plaintiff and the Class to settle the claims asserted in this lawsuit on the terms and conditions agreed upon in the Settlement.

3. The Settlement provides significant benefits to the Class and will eliminate the uncertainty, delay and expense of further litigation and it will finally put to

rest the claims of the plaintiff individually and on behalf of the Class that were or could have been asserted against HIP in this action.

4. The Settlement will become effective if the conditions of the Stipulation are met and if the Court enters a final judgment which approves the Settlement (the "Final Judgment") and the Final Judgment is affirmed, if there is any appeal, or is no longer subject to appeal.

5. If the Settlement is approved by the Court, the plaintiff and the Class Members shall be barred from asserting any claims which could have been raised by the plaintiff and the Class Members in this lawsuit arising out of or relating to the anesthesia exclusion of their HIP Basic Direct-Pay Insurance Policy against HIP, its present and former Directors, Officers, employees, parents, subsidiaries, insurers, affiliates and agents and shall be conclusively deemed to have released such claims.

6. If the Settlement is approved by the Court, HIP will not be released from any claim for breach of its obligations under the Stipulation.

7. The plaintiff and the Class have been represented in this Litigation by the following law firm:

Lester L. Levy, Esq.
Carl L. Stine, Esq.
Wolf Popper LLP
845 Third Avenue
New York, New York 10022
(212) 759-4600

8. Class Counsel will request from the Court an award of attorneys' fees and reimbursement of expenses. Class Counsel will request, and HIP shall not oppose,

that the Court award to them their reasonable attorneys' fees in connection with the Litigation, not to exceed \$475,000. Class Counsel will also request, and HIP shall not oppose, that the court award to them their reasonable and actual out-of-pocket expenses associated with their service to the Class in connection with the Litigation in an amount not to exceed \$30,000. **HIP will pay the amounts awarded by the Court for attorneys' fees and expenses associated with the Litigation and the Class Members will not have to pay any of these fees and expenses.**

YOUR CHOICES AS A CLASS MEMBER

If you are a member of the Class, as defined above, you have the following choices:

- A. If you wish to participate in the Settlement as a member of the Class, you do not need to appear at the hearing discussed below, however, you must submit an executed Proof of Claim in the form annexed hereto by August 21, 2000 to receive benefits under the Settlement. If the Settlement is approved by the Court, HIP will take the actions described above in Paragraph 1.
- B. You may, if you desire, file a signed, written request to be excluded from the Class. If you request to be excluded from the Class, you will not be entitled to the benefits of the Settlement as set forth above in Paragraph 1; you will not be bound by the Final Judgment for or against the Class; and you will retain any individual rights to claims you may have against HIP. Any member of the Class who wants to be excluded from the Class must do so in writing. Such Request for Exclusion shall clearly indicate that the sender requests to be excluded from the Class and shall state: (1) the name and index number of this Litigation; (2) the name and address of the person seeking exclusion; and (3) the Class Member's HIP subscriber number. Requests for Exclusion that do not include such information will not be effective. Any Class Member who does not submit a written Request for Exclusion shall be bound by all subsequent proceedings, orders and judgments in this Litigation. Any Request for Exclusion must be received no later than seventeen

(17) days prior to the Settlement Hearing and copies must be sent to the following:

Lester L. Levy, Esq.
Carl L. Stine, Esq.
Wolf Popper LLP
845 Third Avenue
New York, New York 10022
(212) 759-4600

Class Counsel

-and-

Joseph L. Forstadt, Esq.
Regan A. Shulman, Esq.
Steven L. Schultz, Esq.
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
(212) 806-5400

Counsel for HIP

- C. You may, if you desire, appear at the Settlement Hearing to support or object to the Settlement or to the application for attorneys' fees and reimbursement of expenses, if you have not requested to be excluded from the Class. To object, you must file a written notice of objection, together with a statement of your reasons, with the Court, including the name and index number of this Litigation, your name and address, and how you are a member of the Class. Any such objection should be directed to the Court as follows: Clerk of Court; Part 27, Supreme Court of the State of New York, County of New York, 60 Centre Street, New York, New York 10007. To be considered by the Court, all objections must be received on or before the seventeenth (17th) day before the Settlement Hearing and copies must also be sent at the same time to:

Lester L. Levy, Esq.
Carl L. Stine, Esq.
Wolf Popper LLP
845 Third Avenue
New York, New York 10022
(212) 759-4600

Class Counsel

-and-

Joseph L. Forstadt, Esq.
Regan A. Shulman, Esq.
Steven L. Schultz, Esq.
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
(212) 806-5400

Counsel for HIP

SETTLEMENT HEARING

1. On May 23, 2000 at 4:00 p.m., a hearing will be held in the Supreme Court of the State of New York, County of New York, Part 27, 60 Centre Street, New York, New York 10007, to determine whether the Settlement should be approved by the Court as fair, reasonable and adequate, and whether judgment should be entered thereon. The Court will also consider at this Hearing the request of Class Counsel for an award of attorneys' fees and reimbursement of expenses for the services they have rendered in this Litigation.

2. Your attendance at the Settlement Hearing is not required. You are represented by Class Counsel. You may, if you choose, enter an appearance through an attorney at your own expense.

3. The Settlement Hearing may be rescheduled by the Court without further notice to the Class .

EXAMINATION OF PAPERS

This is only a summary of the circumstances surrounding the lawsuit, the claims and defenses asserted, the Settlement, and the matters related to the lawsuit. For more detailed information you may review the Stipulation and related documents and other papers on file in the Litigation, which may be inspected during regular business hours at the office of the Clerk of the Court of the Supreme Court of the New York, County of New York, 60 Centre Street, New York, New York 10007. If you have any questions about this Notice, the Settlement or the Litigation generally, you should direct them to:

Carl L. Stine, Esq.
Wolf Popper LLP
845 Third Avenue
New York, New York 10022
(212) 759-4600

PLEASE DO NOT CALL THE COURT.

DATED: New York, New York
, 2000

BY ORDER OF THE SUPREME COURT
OF THE STATE OF NEW YORK