

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

A & M Gerber Chiropractic, LLC, v. GEICO General Insurance Co., Case No. 0:16-cv-62610-BLOOM/Valle

If you are a healthcare provider, who provided care to an injured patient insured by GEICO under the Florida No-Fault Law, commonly referred to as “PIP” insurance, and you thereafter directly billed GEICO for your services under assignment of that insurance and received a reduced payment indicated by the reason code “BA” (billed amount), then the Court has ruled that GEICO has improperly interpreted its own insurance policy. GEICO is appealing that ruling. Plaintiff is now requesting GEICO pay an expert fee and GEICO pay attorney’s fees to attorneys who, along with Plaintiff, won the ruling for the Class.

*A federal court authorized this Notice.
This is not a solicitation from a lawyer.
You are not being sued.*

If you are a Class Member, your legal rights are affected whether you act or don’t act.

PLEASE READ THIS SECOND NOTICE CAREFULLY

- You were given a prior notice about this case to advise you that the case had been filed and was awaiting a ruling by the Court. You were sent the notice because you were likely a Class Member.
- If you will recall, the title of the class action lawsuit is *A & M Gerber Chiropractic, LLC v. GEICO General Insurance Co.*, Case No. 0:16-cv-62610-BLOOM/Valle (the “Action”), and it has been pending in the United States District Court, Southern District of Florida. U.S. District Judge Beth Bloom presides over this class action. The person who brought this lawsuit, Plaintiff, is a healthcare provider, and the Court appointed Plaintiff to represent you as Class Representative and lawyers representing the Class as Class Counsel.
- **This second notice is provided simply to update you and inform you that** (1) the Court has entered a judgment for Plaintiff and Class Members, including you, (2) GEICO is appealing that ruling, (3) Plaintiff is requesting that Court-appointed attorneys for the Class (“Class Counsel”) be awarded attorney’s fees and requesting an expert fee to be entirely paid by GEICO, and (4) even though only GEICO would be required to pay those fees if approved by the Court, you may object to the request for fees by Plaintiff. The fees requested are stated in Paragraph 5 below.
- **You are not obligated to do anything with respect to this case.**
- **This second Notice simply summarizes the ruling in the case, the attorney’s and expert’s fee request, and the appeal, and informs you of your legal rights going forward. Please read it carefully.**

YOUR LEGAL RIGHTS AND OPTIONS

<p>Timely Object to the Request</p>	<p>Class Counsel have not been paid any fees or costs for working on this case. Plaintiff has requested attorney’s fees for Class Counsel which, along with Plaintiff, won a summary judgment for Plaintiff and the Class. <u>Plaintiff only requests attorney’s fees and an expert fee to be paid entirely by GEICO, not you or any Class Member.</u> Whether the request is granted or denied in whole or in part, no Class Member would be obligated to pay attorney’s or expert’s fees in this case. Nonetheless you may object to the attorney’s and expert’s fee request, but you are not required to do so. To be considered by the Court, your objection must be submitted no later than June 1, 2018, after which the Court will decide on the request. You may review the request at Class Counsel’s website, www.zpllp.com/am-gerber.</p>
<p>Communicate with Class Counsel or Other Counsel</p>	<p>If you are unsure about your rights or are unsure about how to pursue your rights, you are free to communicate with Class Counsel, Zebersky Payne, LLP at mlewenz@zpllp.com or ezebersky@zpllp.com or call at the number provided below to discuss these options. You may also consult your own attorney about pursuing a case outside of this one at your own expense.</p>

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

- 1. Why did I get this second Notice?
- 2. What is the current status of this case?

YOUR RIGHTS AND OBLIGATIONS.....

- 3. Do I have to do anything and how does this case potentially affect me?
- 4. Do I have a lawyer in the case?
- 5. Has Plaintiff requested the lawyers for the Class be paid?
- 6. Can I object to the attorney’s fee request?

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- 7. Are there more details about the case that I can receive?

BASIC INFORMATION

1. Why did I get this second Notice?

Criteria for Receipt of this Second Notice. If you are a healthcare provider, you received this second Notice because records indicate that you were sent a first Notice explaining the case.

This second notice is provided simply to update you and inform you that (1) the Court has entered a summary judgment in favor of Plaintiff and Class Members, including you, (2) GEICO is appealing that ruling, (3) Plaintiff is requesting that Court-appointed attorneys for the Class (“Class Counsel”) be awarded fees and requesting an expert fee, to be entirely paid by GEICO, and (4) even though only GEICO would be required to pay those fees if approved by the Court, you may object to the request for fees by Plaintiff. Class Counsel have not been paid any fees by anyone for their work on the case. The Court has not ruled on these requests. The appeal hasn’t been decided.

2. What’s the current status of the case?

On November 20, 2017, the Court entered an order granting summary judgment for Plaintiff and Class Members. This order, and other Court documents can be viewed at www.zpllp.com/am-gerber. If you recall, Plaintiff had received an assignment of benefits from one of Defendant’s insureds and made a claim on his GEICO policy, which had been amended by Endorsement FLPIP (01-13). Plaintiff filed a suit alleging that GEICO had incorrectly interpreted its PIP insurance policy when it paid Plaintiff.

The GEICO policy states it will pay 80% of the billed amount allowable under certain fee schedules such as Medicare, Part B. Below this statement, the insurance policy as amended by Endorsement FLPIP (01-13) states that “[a] charge submitted by a provider, for an amount less than the amount allowed above, shall be paid in the amount of the charge submitted.” Plaintiff interprets this statement to mean that if a provider submits a bill to GEICO for an amount less than the amount allowed under the identified fee schedules, then GEICO should pay the full amount billed. GEICO disagrees. GEICO interprets the policy to mean that it pays only 80% of the billed amount when the charge submitted by the provider is less than the fee schedule amount. When GEICO pays in this way, it indicates doing so by the code “BA.”

In its order granting summary judgment, the Court decided that the Plaintiff’s interpretation of this Policy was correct, and that GEICO’s interpretation was not. As a result of GEICO’s interpretation, it may have previously underpaid the proper amounts under its insurance policy every time it paid a claim while it utilized a “BA” code in its Explanation of Review (EOR). But that decision is being appealed by GEICO. The appellate court has yet to decide the case. Typically, these appellate decisions will take months. So, please be patient.

Note that the Court’s ruling was meant simply to resolve a controversy over interpretation of the GEICO PIP insurance Policy. It’s under appeal. But whether or not the Court’s ruling is upheld on appeal, it does not automatically entitle you to any money.

Whether or not the Court’s ruling is upheld on appeal, any monies you may wish to recover from GEICO based on the Court’s ruling must be pursued *outside of and separate from this case* in a separate request for benefits from GEICO.

Furthermore, on March 19, 2018, Plaintiff filed a request for attorney’s fees and an expert fee to be paid entirely by GEICO. GEICO opposes the request in all respects. The request is available at www.zpllp.com/am-gerber. The Court has not yet ruled on this request.

Class Counsel can explain all of the above information to you, if you have questions.

YOUR RIGHTS AND OBLIGATIONS

3. Do I have to do anything and how will this affect me?

No. You have the benefit of the Court's ruling and do not need to do anything further. If you are a Class Member, this ruling affects your rights and is *only* a determination that GEICO has wrongfully interpreted its own insurance policy. In order to pursue any claim for money or benefits, however, Florida law requires that you take certain actions *which are not fully described* in this Notice.

Whether upheld on appeal or not, the Court's ruling interpreting the policy does not automatically entitle you to benefits or money.

Note the appellate court may uphold the Court's ruling, or it may overturn it. Whatever the outcome, the decision will bind both you and GEICO in this case. You may however pursue a case for money on your own outside of and separate from this case in a separate request for benefits from GEICO.

For more information, you may contact Class Counsel identified in Paragraph 7 below.

4. Do I have a lawyer in this case?

Yes. Recall that the Court has appointed the following law firm of Zebersky Payne, LLP to represent you and other Class Members.

These attorneys are called Class Counsel. The first Notice advised you of their appointment by the Court and that an attorney's fee request would be made by Plaintiff for them if Plaintiff won. You were also advised that **You would not be charged for services performed by Class Counsel.** If you want to be represented by your own lawyer, you may hire one at your own expense.

5. Has Plaintiff requested the attorneys for the Class be paid?

Yes. On March 19, 2018, Plaintiff through Class Counsel filed a motion that asked the Court to award \$1,245,674.25 (inclusive of a 2.25 multiplier) plus interest in attorney's fees **to be paid only by GEICO.** Plaintiff also requested as a nontaxable cost, an expert fee of \$29,095.50, also **to be paid only by GEICO.** GEICO opposes the request in all respects. The request is available at www.zpllp.com/am-gerber. The Court has not yet ruled on this request.

The basis for these requests are Florida law and Section 627.428, Florida Statutes. If approved and awarded by the Court, **these fees would be paid directly by GEICO and not by any Class Member.** If you ultimately retain Class Counsel, or any other counsel, to pursue a claim for benefits or bad faith, you will need to enter into a contract with counsel and agree to pay them a reasonable fee.

6. Can I object to the attorney's fee request?

Yes. You can object to Plaintiff's entitlement to attorney's and expert's fees and/or the amounts requested.

To object to the request for fees, you (or your attorney acting on your behalf) must submit a valid objection.

To be valid, your objection must include (a) the case name and number—A & M Gerber Chiropractic, LLC v. GEICO General Insurance Co., Case No. 0:16-cv-62610-BLOOM/Valle; (b) a statement that you are a Class Member; (c) a statement that you had no-fault car insurance in Florida issued by GEICO; (d) your name, telephone number, and current mailing address, and, if you are represented by an attorney, your attorney's contact information; and (e) the detailed basis for your objection including a description of any evidence you are providing the Court with the objection.

Your objection must be mailed to the Clerk of the Court at the address identified below, postmarked no later than June 1, 2018:

**Clerk of the United States District Court
for the Southern District of Florida
U.S. Federal Building and Courthouse
299 East Broward Boulevard #108
Fort Lauderdale, FL 33301**

Your objection may not be considered if you fail to object within this timeframe and in this manner.

GETTING MORE INFORMATION

7. Are there more details about the case that I can receive?

Yes. This second Notice only summarizes the current status of the case. You can get a copy of the important documents by visiting Zebersky Payne, LLP's website—www.zpllp.com/am-gerber. You can also contact Class Counsel as follows:

Edward H. Zebersky
Michael Lewenz
Zebersky Payne, LLP
110 Southeast 6th Street
Suite 2150
Ft. Lauderdale, FL 33301
(877) 752-3965

You may also review legal documents that have been filed with the Clerk of the Court in this lawsuit. The address for the clerk is U.S. Federal Building and Courthouse, 299 East Broward Boulevard #108, Fort Lauderdale, FL 33301.

PLEASE DO NOT CALL THE JUDGE OR THE COURT CLERK TO ASK QUESTIONS ABOUT THIS LAWSUIT OR NOTICE. THE COURT WILL NOT RESPOND TO LETTERS OR TELEPHONE CALLS.

IF YOU WISH TO ADDRESS THE COURT, YOU MUST FILE AN APPROPRIATE PLEADING OR MOTION WITH THE CLERK OF THE COURT IN ACCORDANCE WITH THE COURT'S USUAL PROCEDURES.