

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA
CASE No. 2:05-CV-00293-MEF

**AS A PHARMACY OR PHARMACY CHAIN YOU MAY BE
ENTITLED TO BENEFITS UNDER A CLASS ACTION SETTLEMENT.**

READ THIS NOTICE CAREFULLY.

The United States District Court for the Middle District of Alabama authorized this notice.

*This is not a solicitation from a lawyer. **You are not being sued.***

YOU MAY RECEIVE A CASH BENEFIT FROM THIS SETTLEMENT.

- A class action lawsuit by two Alabama pharmacies against TDI Managed Care Services, Inc. d/b/a Eckerd Health Systems (“EHS”) has been settled for \$2.8 million.
- Plaintiffs allege that EHS failed to comply with contractual terms for the updating of the average wholesale price (“AWP”) used to calculate reimbursement for brand drugs that pharmacies dispensed to members of prescription benefit plans administered by EHS. Plaintiffs sought as damages the reimbursement difference that would have resulted had EHS updated AWP in the manner that Plaintiffs allege was required during the relevant time period. EHS contends that it complied with all contractual requirements and denies that any pharmacies are entitled to recover any damages. Despite their differences, plaintiffs and EHS have entered into a Settlement Agreement to compromise the claims that plaintiffs have asserted against EHS.
- Under the proposed Settlement Agreement, approximately 17,500 pharmacies and pharmacy chains will share *net* settlement proceeds of approximately \$1.7 million. **Only pharmacies and chains that return the enclosed Claim Verification Form will receive cash benefits from this settlement.** If you are a member of a pharmacy services administrative organization (“P.S.A.O.”), please see **question 7**, below.
- The payment you receive will, in most instances, be approximately 30% of your calculated reimbursement difference. “Reimbursement difference” is explained in **Question 6**, below. Your reimbursement difference is closely related to the size of your store or chain and the volume of business that you have historically done with customers whose prescription drug claims are processed by EHS.
- **You must return your attached Claim Verification Form by August 31, 2009** if you wish to receive any benefit from this settlement. You will receive the same percentage of your reimbursement difference as all other class members unless your calculated damages are less than or equal to \$15, in which case you will receive a cash distribution of \$5.
- **If you receive more than one copy of this Notice, DO NOT DESTROY THE ADDITIONAL COPIES. You may be eligible for more than one distribution. See question 8, below.**
- Because a class has already been certified in this lawsuit and an opportunity to opt out of the class has previously been provided to you and to other members of the class, you do not have the right

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to opt out of the class certified for this settlement. If you object to any aspect of the proposed settlement you may, if you wish, submit a written objection as described below.

- The following chart describes your rights and options at this time. **Please read this notice carefully:**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION SETTLEMENT:	
IF YOU WANT TO RECEIVE A CASH SETTLEMENT PAYMENT, YOU MUST RETURN THE ATTACHED CLAIM VERIFICATION FORM BY AUGUST 31, 2009.	If you wish to receive the cash settlement payment described in this Notice, <u>you must fill out and return the attached Claim Verification Form by August 31, 2009.</u> If your address is different than the address on the Claim Form, be sure to change your address where indicated. Checks will be mailed within a reasonable time period, not to exceed ninety (90) days after the settlement has been approved by the Court and becomes final (see question 15, below).
IF YOU WANT TO OBJECT TO THE SETTLEMENT, YOU MUST DO SO BEFORE AUGUST 31, 2009.	You have the right to object to the settlement. You must do this in writing, as long as you do it by August 31, 2009. <u>If you object and the settlement is nonetheless approved, you will still receive any payment you are otherwise entitled to. If your objection is sustained by the Court, and the entire settlement is set aside, then the litigation will go forward as though no settlement had been reached.</u> For instructions concerning objections, see question 14, below . You do not have the right to opt out of the class that has been certified in this case.
IF YOU WANT TO ATTEND A HEARING ON THE FAIRNESS OF THE SETTLEMENT, YOU MAY DO SO ON NOVEMBER 6, 2009, AT 9:00 A.M.	A Fairness Hearing will be held before the Court on November 6, 2009, at 9:00 a.m. in the United States District Court for the Middle District of Alabama, Northern Division, in the United States Courthouse, One Church Street, Courtroom 2A, Montgomery, Alabama, at which time the federal court judge will make a final decision as to whether the settlement is fair to all class members. If you wish, you may attend the hearing and, if you so request in writing in advance of the hearing, you may object to the settlement at that time, see question 15, below .
IF YOU DO NOTHING	If you do nothing, you will remain a member of the class and your claims against EHS will be released, but you will not receive any cash distribution to which you might be entitled (see question 11, below).

BASIC INFORMATION

1. Why did I get this notice?

According to records maintained by EHS, your pharmacy or pharmacy chain was a party to a contract with EHS covering the dispensing of prescription drugs to individuals covered by EHS prescription benefit plans. This notice concerns the settlement of a class action lawsuit that challenges the manner in which EHS calculated the reimbursement amounts paid to its network pharmacies for brand name drugs.

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(See question 2, below). The case has been settled, and the Court has ordered that you be sent this Notice, because you have a right to know your options before the Court decides whether to approve the settlement. This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Middle District of Alabama, and the case is named *Eufaula Drugs, Inc. and Scott-Cook, Inc. v. TDI Managed Care Services, Inc. and Eckerd Health Systems*, Case No. 2:05-cv-00293-MEF. The judge in this case is Chief United States District Court Judge Mark E. Fuller, whose chambers are in Montgomery, Alabama.

2. What is a class action?

In a class action, one or more plaintiffs, called “**Class Representatives**” (in this case, Eufaula Drugs and Scott-Cook, independent Alabama pharmacies), sue on behalf of all pharmacies that have similar claims. All these other pharmacies are “**Class Members**.” One court resolves the issues for all Class Members, except those who previously voluntarily excluded themselves (“opted out”) from the class.

3. What is this lawsuit about?

The Amended and Restated Class Action Complaint in this lawsuit alleges a single “breach of contract” claim. The Amended Complaint alleges that EHS entered into standardized contracts with pharmacies throughout the United States, and that these contracts required EHS to reimburse brand drugs dispensed by the contracting pharmacies pursuant to a formula based on AWP. The standard EHS contract defined AWP as “[t]he current average wholesale price of a Covered Drug listed in First Databank’s Bluebook or other nationally recognized price source designated by EHS.”

The Amended Complaint alleges that EHS did not adhere to the terms of these contracts, which plaintiffs allege required EHS to reimburse pharmacies according to the current AWP on the date that they dispensed a brand name prescription drug. Instead, plaintiffs allege, EHS delayed implementation of AWP price increases on name brand prescription drugs, resulting in under-reimbursement on certain brand name prescription drugs during that interval. The Amended Complaint alleges that EHS had the ability to update AWP on a daily basis, but did not do so.

EHS denies that it has done anything wrong or violated any contract by the manner in which it computed and administered pharmacy reimbursements on brand drugs. Nothing in this notice should be interpreted as a finding or an admission of any kind by EHS that the claimed breach of contract alleged in the Amended Complaint has any merit whatsoever. EHS has at all times denied, and continues to deny, all allegations whatsoever of any wrongdoing, negligence, fault, or liability, and asserts that its actions have been lawful and proper in all respects and in compliance with the parties’ contractual agreements. In agreeing to settle this matter, EHS in no way acknowledges any wrongdoing, negligence, fault or liability to the named plaintiffs or class members. EHS has raised a number of affirmative defenses to the claims asserted in the action and asserts its intention, absent a settlement, to continue to seek decertification of the class, to dispute that a class should be certified for trial, and otherwise to continue with a vigorous defense and proceed to further litigation of this matter.

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4. Who in the Class is affected by this Settlement?

The parties believe you are a member of the Class based upon the records of EHS, and that you have not excluded your pharmacy from this class action. The federal court has certified a class described as follows:

All pharmacies and/or other similar entities, who entered into a contract which provided for reimbursement of prescriptions according to a formula which included the Average Wholesale Price (“AWP”) with Defendant and/or its predecessors in interest, their successors in interest, and/or their subsidiaries and/or their related entities from February 14, 1999 to October 23, 2003, inclusive.

5. Why is there a settlement?

The Court did not decide in favor of either side. Instead, both sides agreed to a compromise settlement. That way, they avoid the cost of a trial and a possible appeal, and the pharmacies affected will get a cash payment in an amount that is less than the full damages alleged in this case, i.e., a compromise amount.

Under the settlement, you have the right to return a Claim Verification Form if your calculated reimbursement difference is greater than \$0.00 (see Question 6 below). If you have not received a Claim Verification Form with this notice it means that your reimbursement difference is \$0.00 or less and, therefore, that you are not entitled to receive any cash benefit under this settlement. If you have received a Claim Verification Form and return it before the deadline you will receive a cash benefit; if you do not, you will not receive a cash benefit. Whether or not you have received or return a Claim Verification Form, your right to proceed against EHS for the claims asserted in this case (described in question 2 above) will be released, and you will not be able to assert such claims against EHS.

6. What are the settlement terms?

The case was settled for \$2,800,000. The parties believe that after reimbursement of out-of-pocket litigation expenses, class representative incentive fees and attorneys’ fee (see **Question 13**, below), approximately \$1.7 million will remain for distribution to the class.

If you have received a Claim Verification Form, it means that the parties believe that your reimbursement difference is greater than \$0.00. Your “reimbursement difference” was determined by experts who conducted a review of all transactions between February 14, 1999 and October 23, 2003 that involved brand name drugs that were processed by EHS for your pharmacy or pharmacy chain. All such claims were re-calculated with the AWP on the date that would have been used if EHS had originally used daily AWP updates as opposed to weekly AWP updates. The difference between the re-calculated amount and the amount actually paid is the reimbursement difference. How much you will receive in this case depends on the amount of your reimbursement difference.

The exact amount available for distribution to each Class Member will depend on several factors, including the amount of expenses and attorneys’ fees awarded by the Court, the amount of requested Class Representative Awards that are authorized by the Court, and the amount necessary to fully fund \$5 distributions for all class members whose reimbursement difference is \$15 or less. In general, the parties believe that the amounts distributed to Class Members having a reimbursement difference greater than

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\$15 will be approximately 30% of their calculated damage amount. Thus, a Class Member having a reimbursement difference of \$200 will most likely be entitled to receive a check of approximately \$60.

Under the Court-approved Plan of Distribution, Class Members must return a Claim Verification Form by August 30, 2009 in order to receive a cash payment under this settlement. Any Class Member that has a reimbursement difference of \$15 or less will receive a fixed payment of \$5 if it returns a signed Claim Verification Form before the deadline. Any Class Member with a reimbursement difference that is greater than \$15 will receive a fixed, pro-rata share of the net settlement proceeds remaining after payment of counsel fees and expenses and class representative incentive fees (**see question 13, below**) and payments to class members with reimbursement differences of \$15 or less.

7. Am I still eligible for a distribution if I am a member of a P.S.A.O.?

Yes. Individual P.S.A.O. member pharmacies may return Claim Verification Forms like all other pharmacies. Class Members that are entitled to receive cash payments under the settlement will receive claim forms for all claims resulting in a reimbursement difference, whether the pharmacy submitted the claim directly to EHS or pursuant to a contract between EHS and a P.S.A.O. in which the pharmacy was a member, and all cash payments due to pharmacies under this settlement will be made directly to such pharmacies.

8. I received more than one copy of this Notice. What does that mean?

If you received more than one Notice, you may be entitled to more than one cash distribution. “Reimbursement differences” in this case were done by pharmacy identification number and/or chain number. If you dealt with EHS as an independent pharmacy for several years, but later joined a P.S.A.O., you may receive two Notices.

You should check each Notice carefully, because each Notice may contain a Claim Verification Form that must be returned to receive benefits. You are entitled to return each Claim Verification Form you receive, and each will result in a separate cash distribution.

9. Do the Class Representatives and their attorneys recommend this settlement?

Yes. The settlement was worked out in formal and informal mediation proceedings after nearly four years of litigation. For complex reasons pertaining to the actual law governing both the contract claim and the procedures surrounding class actions, both Class Representatives and their attorneys believe this is the best settlement available, and that it is preferable to the expense, duration and uncertainty that a trial and any subsequent appeals present which would further delay the recovery, if any, to pharmacies.

10. What must I do to get my share of the settlement?

If you have received a Claim Verification Form and are entitled to a cash distribution under the settlement, you must fill out and return the enclosed Claim Verification Form on or before August 31, 2009. Be sure to include your correct current address where indicated. If there are no unexpected delays, checks will be mailed within ninety days after the Fairness Hearing.

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11. What happens if I do nothing?

If you do nothing, you will receive no settlement check, because settlement checks will **only** be sent to pharmacies that return a Claim Verification Form. But, your claims against EHS will nonetheless be released.

12. Do I need a lawyer in this case?

The Court has appointed the law firms of McCallum, Methvin & Terrell, P.C. and Farris, Riley & Pitt, LLC, both of Birmingham, Alabama, to represent you and other Class Members. Together, the lawyers are called Class Counsel. If you want to be represented by your own separate lawyer, you may hire one at your own expense, but you do not need to do so.

13. How will the lawyers be paid?

The lawyers will ask the Court to award them reimbursement of their fees in an amount equal to 33 1/3% of the \$2.8 million settlement amount plus out of pocket litigation expenses not to exceed \$100,000. Class Counsel are required to file their Petition for Attorney's Fees and Reimbursement of Expenses on or before the date of this notice. Class Counsel intend to demonstrate in their Petition for Attorney's Fees and Reimbursement of Expenses that they have spent substantial time litigating this matter, that they have conducted comprehensive discovery (including conducting over twenty (20) depositions and reviewing thousands of pages of discovery) and that they have engaged in extensive motion practice in this action. A copy of Class Counsel's Petition for Attorney's Fees and Reimbursement of Expenses can be obtained from the Court's file (**see Question 16, below**) or by contacting Class Counsel at the address provided in **Question 14, below**. The Court will also decide whether to grant the plaintiffs' request that each named plaintiff (Eufaula Drugs and Scott-Cook) be awarded \$15,000 for their time and effort in prosecuting this case to its conclusion, which will also reduce the \$2.8 million settlement amount.

14. How do I object to the Court if I don't like the Settlement?

You may object to any aspect of this case, any order heretofore entered by the Court, or any term of the Settlement Agreement. Such objection must be in writing and must provide evidence of your membership in the Class. The procedures for submitting written objections are set forth below. **A written objection (and any support for it) must be received by the Court and by the following attorneys no later than August 31, 2009 (the "Objection Deadline"):**

CLASS COUNSEL	DEFENSE COUNSEL	COURT
Robert G. Methvin, Jr. McCallum, Methvin & Terrell, P.C. 2201 Arlington Avenue South Birmingham, AL 35205	Kevin M. McGinty Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center Boston, MA 02111	Ms. Debra P. Hackett Clerk of Court U.S. District Court P.O. Box 711 Montgomery, AL 36101-0711

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If you hire an attorney in connection with making an objection, that attorney must file with the Court and serve on the counsel identified above a notice of appearance. **The notice of appearance must be received by the Court and the attorneys identified above, no later than the Objection Deadline.** If you do hire your own attorney, you will be responsible for payment of all fees and expenses that the attorney incurs on your behalf. Even if you hire your own attorney, you must still personally sign any objection filed on your behalf to the Settlement.

Any objection to the Settlement must contain a caption or title that identifies it as “Objection to Class Settlement in Eufaula Drugs, Inc., et al. v. TDI Managed Care Services, Inc., et al. (Civil Action No. 2:05-cv-00293-MEF).” Any objection must also contain the following information: (a) the objecting party’s full name, NCPDP number, address, and telephone number and the original signature of an individual objecting party or of an authorized officer of an objecting party, (b) a copy of the objecting party’s EHS Pharmacy Network Agreement(s), or the date the objecting party entered into a EHS Pharmacy Network Agreement, or other information sufficient to identify the objecting party’s EHS Pharmacy Network Agreement; and (c) a certification that the objecting party is in fact a member of the Settlement Class. Furthermore, any written objection must state the specific reason(s), if any, for the objection, including any legal support you wish to bring to the Court’s attention, and any evidence you wish to introduce and/or witnesses you intend to call in support of the objection.

If (and only if) you make a written objection to the Settlement as set out above, may you choose to speak — either in person or through an attorney hired at your own expense — at the Final Fairness Hearing (**see Question 15, below**) the Court has set to consider whether to give final approval to the Stipulation. You are not required to attend the hearing. Lack of attendance at the Final Fairness Hearing will not prevent the Court from considering your objection. If you (or your attorney) intend to speak at the Final Fairness Hearing, you must file with the Court and serve on the attorneys identified above a notice of intent to appear. **Again, the notice of intent to appear must be received by the Court, and by the attorneys identified above, no later than the Objection Deadline.**

If you do not file an objection as described in this Notice Package, you will be deemed to have waived any and all objections to the Settlement, to have consented to the Court’s certification of and jurisdiction over the Settlement Class, and to have released the Claims as defined in the Settlement Agreement (which is reproduced from the Settlement Agreement in Appendix A hereto).

15. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 9:00 a.m. on November 6, 2009, at the Courtroom of Chief United States District Court Judge Mark E. Fuller, Frank M. Johnson U.S. Courthouse Complex, Courtroom 2-A, One Church Street, Montgomery, Alabama 36104. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. **You are not required to attend the hearing, but may do so if you wish.** If there are objections that have been submitted in writing in advance of the hearing (as specified in the answer to Question 14 above), the Court will consider them. Judge Fuller will listen to people who have made a prior written request to speak at the hearing (also as specified in the answer to Question 14 above). Judge Fuller will also decide whether to pay Class Counsel the amount they are requesting for attorneys’ fees and reimbursement of litigation expenses, as well as class representative awards. After the hearing, the Court will decide whether to approve the settlement.

If you plan to attend the hearing, you should call the U.S. District Court for the Middle District of Alabama two or three days ahead of time to find out if the hearing has been rescheduled.

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16. How do I get more information?

This Notice is just a summary, and you are entitled, if you wish, to read the entire Settlement Agreement and any pleadings filed in the case. The Settlement Agreement and the complete pleadings filed in this lawsuit can be inspected or copied during normal business hours at the Clerk of Court's Office, U.S. District Court, Frank M. Johnson U.S. Courthouse Complex, One Church Street, Montgomery, AL 36104. For convenient reference, certain pleadings can be reviewed online at the following website: <https://ecf.almd.uscourts.gov/cgi-bin/login.pl>. To view these pleadings, you may need to register with the Administrative Office of U.S. Courts Pacer Service Center and may be charged a fee.

You may also call 1-866-492-5765 toll free to get a copy of the agreement and other information.

Please **do not** contact the Court or Clerk of Court with any questions regarding this case.

BY ORDER OF THE COURT:

CLERK, UNITED STATES DISTRICT COURT

/s/ Debra P. Hackett

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