

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
BUSINESS LITIGATION SESSION 2
CIVIL ACTION No. 1684CV00488-BLS2

PHILIP HYMAN, on behalf of himself and
all others similarly situated,
Plaintiff,

v.

METROPOLITAN PROPERTY &
CASUALTY INSURANCE COMPANY,
INC. and CLAIMFOX, INC.,
Defendants.

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

To: **All Recipients of Invoices Sent On or After October 13, 2011 By ClaimFox, Inc. and/or Metropolitan Property & Casualty Insurance Company, Inc. Which Invoices Purported to Charge the Recipient (and/or its principal) for Costs Associated with Producing Documents Requested Via a Subpoena Issued Pursuant to the Massachusetts Rules of Civil Procedure or in Any Action Pending in a State or Federal Court in Massachusetts, Which Fees Were Not Expressly Authorized By a Court of Competent Jurisdiction**

NOTICE: A FINAL APPROVAL HEARING WILL BE HELD ON JULY 27, 2017 AT 2:00 PM AT SUFFOLK SUPERIOR COURT, 10TH FLOOR, COURTROOM 1017, THREE PEMBERTON SQUARE, BOSTON, MA 02108.

THIS NOTICE SERVES AS YOUR NOTICE OF CLASS ACTION SETTLEMENT. FOR ADDITIONAL DETAILS REGARDING THE LAWSUIT, INCLUDING COPIES OF THE COMPLAINT, THE LONG-FORM NOTICE, AND THE SETTLEMENT AGREEMENT, YOU MAY:

1. Visit Class Counsel's Websites: <http://foresstlamothe.com/class-notices>; and/or
2. Examine the court file during regular business hours of the Civil Clerk's Office, Suffolk County Superior Courthouse, 12th Floor, 3 Pemberton Square, Boston, Massachusetts.

INTRODUCTION

Plaintiff Philip Hyman ("Plaintiff") and Defendants Metropolitan Property & Casualty Insurance Company ("Met P&C") and ClaimFox, Inc. ("ClaimFox")(collectively, the "Defendants") (Plaintiff and Defendants collectively, the "Parties") have submitted a proposed settlement

(“Settlement”) in a class action lawsuit (“Action”) pending in Suffolk County Superior Court in Boston, Massachusetts. The caption for the Action appears above.

The terms of the proposed settlement are set forth in a written settlement agreement (“Settlement Agreement”) that contemplates certification of the settlement class for the Action (collectively, the “Settlement Class”). If the Court gives final approval to the Settlement Agreement, distributions will be issued in accordance with the terms of the Settlement Agreement without further action being required.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

OBJECT	You may submit a written objection to Class Counsel with reasons why you believe the Settlement Agreement should not be approved.	Deadline: May, 15 2017
OBJECT AND ATTEND THE “FINAL APPROVAL HEARING”	The Court will hold a “Final Approval Hearing” whether to grant final approval to the Settlement Agreement, whether to approve legal fees and expenses requested by Plaintiff, and whether to approve an incentive award to the Plaintiff for his services as class representative in connection with the Action. If you file a timely written objection, you may be entitled to speak and present evidence at the Final Approval Hearing. If you wish to be heard at the Final Approval Hearing, you must follow the procedures set forth herein.	Hearing Date: July 27, 2017 at 2:00 PM, at Suffolk Superior Court, 10th Floor, Courtroom 1017, Three Pemberton Square, Boston, MA 02108
IF YOU CHOOSE TO DO NOTHING	Upon Final Approval of the Settlement Agreement, funds will be distributed in accordance with the terms of the Settlement Agreement without the need for any action on your part.	

- The foregoing rights and options—and the deadlines to exercise them—are explained in more detail below.
- The Court overseeing the Action has preliminarily approved the Settlement Agreement and must decide whether to give final approval to the Settlement Agreement. The relief provided, and agreed upon, will be provided only if the Court gives Final Approval to the Settlement Agreement and, if there are any appeals, after the appeals are resolved in favor of the Settlement Agreement.

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BACKGROUND INFORMATION

1. What is this Notice?

This Notice explains the nature of the Action, the general terms of the proposed Settlement Agreement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can view a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), please see **Section 15** below.

2. *What is the Action about?*

The Action asserts that Defendants violated Massachusetts law by charging individuals and entities for the cost of producing documents requested *via* a subpoena issued under Mass. R. Civ. P. 45 or in any action pending in a state or federal court in Massachusetts without first obtaining Court permission to do so (“Class Claims”). Defendants have denied that they violated Massachusetts law or that they are liable to the Plaintiff or the members of the Settlement Class.

THE ISSUANCE OF THIS NOTICE IS NOT AN EXPRESSION OF THE COURT’S OPINION ON THE MERITS OR THE LACK OF MERITS OF THE CLAIMS IN THE ACTION.

For information about how to learn about what has happened in the Action to date, please see **Section 15** below.

3. *Why is this a class action?*

In a class action lawsuit, one or more people called a “Representative Plaintiff(s)” sues on behalf of other people who may have similar claims. The companies sued in this case are called the Defendants. The purpose of a class action is to bring forward all similar claims in one judicial proceeding. As part of the proposed Settlement Agreement, the Representative Plaintiff and the Defendants will be asking the Court to certify the Action as a class action solely for purposes of settlement.

4. *Why is there a Settlement?*

The Court has not decided that the Representative Plaintiff or Defendants should win. Instead, both sides have agreed to a Settlement Agreement, which permits them to avoid the cost of protracted litigation, and provides relief to the Settlement Class now rather than years from now, if at all.

5. *How do I know if I am part of the Settlement?*

You may be a member of the class if you are an individual or entity, including but not limited to, attorneys and law firms,¹ who on or after October 13, 2011 until an order of the Court granting Final Approval of this Settlement Agreement (“Final Approval”):

- A. were sent invoices from Met P&C or ClaimFox (directly and/or on behalf of a principal) in an attempt to collect from said person and/or business entity the purported charges associated with producing documents requested *via* a subpoena issued pursuant to the Massachusetts Rules of Civil Procedure or in any action pending in a state or federal court in Massachusetts, which fees were not expressly authorized by a court of competent jurisdiction (**Invoice-Only Class Members**”); and/or

¹ Rubin and Rudman LLP, defendants’ counsel herein, is specifically excluded from the Class.

- B. also made payment (partially or fully) of such an invoice to Met P&C or ClaimFox directly and/or to its principals in response to Met P&C's and/or ClaimFox's demand(s) for payment ("**Payment Sub-Class Member**").

If you are still not sure whether you are a Class Member, you can contact Plaintiff's Counsel or Defendants' Counsel for help. The address and phone numbers for Counsel are as follows:

Counsel for Plaintiff and the Class:

John R. Yasi, Esq.
Forrest, LaMothe, Mazow,
McCullough, Yasi & Yasi, P.C.
2 Salem Green, Suite 2
Salem, MA 01970
(877) 559-8890

Counsel for Defendants:

Michael D. Riseberg, Esq.
RUBIN AND RUDMAN LLP
50 Rowes Wharf
Boston, MA 02110
(617) 330-7180

THE PROPOSED SETTLEMENT

6. *What relief does the Settlement Provide?*

Monetary Relief. As part of the proposed Settlement, Defendants agree to pay a Settlement Amount equal to:

- A. \$5,000.00 to an agreed upon *cy pres* designee ("*cy pres designee*" or "Designated Charity") to satisfy the claims for the Invoice-Only Class Members, and
- B. The sum of the actual amount collected from each such Payment Sub-Class Member. Any payment amounts which, within an agreed-upon time, remain unclaimed by any Payment Sub-Class Member shall be distributed to a Designated Charity.

Equitable Relief. As part of the proposed Settlement, Defendants agree that any future requests for payment of costs or fees for the production of documents in response to a subpoena issued under the Massachusetts Rules of Civil Procedure or in any action pending in state or federal court in Massachusetts will comply with applicable Massachusetts and federal law, the rules of civil procedure, and any applicable standing orders or rules of court.

7. *Why is the Settlement Amount being paid to a cy pres designee?*

While all Class Members have claims, the value of the claims of the Invoice-Only Class is uncertain and likely less than the cost of distributing funds. There is also a risk that certain monies distributed to the Payment Sub-Class Members may be unclaimed. Therefore, rather than have those funds revert back to Defendants, the Parties have agreed to allow these funds to be distributed to a Designated Charity.

THE LAWYERS IN THE ACTION AND THE REPRESENTATIVE PLAINTIFF

8. *Do I have a lawyer in the Action?*

The Court has ordered that the law firm of Forrest, LaMothe, Mazow, McCullough, Yasi & Yasi, P.C. (“Class Counsel”) is to represent the interests of all Class Members. You will not be separately charged for the services of Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

9. *How will the lawyers be paid and how will the Representative Plaintiff receive compensation for bringing the Action?*

In accordance with the terms of the Settlement Agreement, Plaintiff will apply to the Court for an award of Costs and Fees of no more than One-Hundred Sixty-Two Thousand Five-Hundred Dollars and 00/100 Cents (\$162,500.00), which Defendants have agreed not to oppose including an agreement not to appeal or request for reconsideration if the application is denied or modified by the Court. This amount will also include a request of a stipend for the Class Representative. Consideration for the award, costs and attorneys’ fees shall be paid by Defendants separate and apart from the award issued to the Payment Sub-Class Members or the amount issued to the Designated Charity on behalf of the Invoice-Only Sub-Class. The Court will be asked to act on this application at the Final Approval hearing. The Court will ultimately make the final decision as to the amount to be paid to Class Counsel and to the Class Representative at the final approval hearing.

DISMISSAL OF THE ACTION AND RELEASE OF ALL CLAIMS

10. *What am I giving up to obtain relief under the Settlement?*

If the Court approves the proposed Settlement Agreement, you will be releasing your claims against Defendants for the practice described herein. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against Defendants arising from charges issued for the production of documents produced in response to a subpoena issued pursuant to Mass. R. Civ. P. 45 or in any action pending in state or federal court in Massachusetts without prior court approval, or any other claims that are the subject of the Action. For the full details of the lawsuit, the claims that have been asserted by Plaintiff, and the terms and conditions of the Settlement Agreement, you may refer to the papers on file with the Court or contact Plaintiff’s Counsel. You or your attorney may examine the Court’s files during regular business hours at the Civil Clerk’s Office, Suffolk County Superior Courthouse, 12th Floor, Three Pemberton Square, Boston, Massachusetts 01970.

HOW TO OBJECT TO THE SETTLEMENT

11. *How do I tell the Court that I do not like the Settlement?*

At the date, time, and location stated in **Section 13** below, the Court will hold a Final Approval Hearing to determine if the Settlement Agreement is fair, reasonable, and adequate, and to also consider Plaintiff’s application for an award of attorneys’ fees and costs as well as an incentive award to the Representative Plaintiff.

If you wish to present objections to the Settlement Agreement or the Fee and Expense Application at the Final Approval Hearing, you must do so in writing, mailed or faxed to:

Counsel for Plaintiff and the Class:

John R. Yasi, Esq.
Forrest, LaMothe, Mazow,
McCullough, Yasi & Yasi, P.C.
2 Salem Green, Suite 2
Salem, MA 01970
(877)559-8890
Fax: (617) 517-3271

Counsel for Defendants:

Michael D. Riseberg, Esq.
RUBIN AND RUDMAN LLP
50 Rowes Wharf
Boston, MA 02110
(617) 330-7180
Fax: (617) 330-7550

Any Objections must be mailed or faxed by **May 15, 2017** and must contain:

1. A heading which refers to the Action;
2. The name, address, telephone number and signature of the Class Member filing the objection;
3. A statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, BBO number, address and phone number;
4. A statement of the legal and factual bases for each objection, and if through counsel, a legal memorandum supporting each objection;
5. A description of any evidence the objector intends to offer at the Final Approval Hearing, if the objector intends to speak at the hearing; and
6. Documentary proof of membership in the Settlement Class.

The objection, to be effective, must be sent by the objector or a legally authorized representative only on an individual basis and not as part of a group, class or subclass.

Any Settlement Class Member who fails to timely file such a written statement of his/her or its intention to object shall be foreclosed from making any objection to this Settlement Agreement or to the Fee and Expense Application, except as permitted by the Court.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FINAL APPROVAL HEARING.

If you file and serve an Objection, you may appear at the Final Approval Hearing, either in person or through personal counsel hired at your expense, to object to the Settlement Agreement or the Fee and Expense Application. You are not required, however, to appear.

FINAL APPROVAL HEARING

12. What is the Final Approval Hearing?

The Court has preliminarily approved the Settlement Agreement and will hold a hearing to decide whether to give final approval to the Settlement Agreement and the Fee and Expense Application. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement Agreement should be approved as fair, reasonable, adequate, and in the best interest of the Settlement Class; to consider the Fee and Expense Application for attorneys' fees and expenses; and to consider the request for an incentive award to the Representative Plaintiff.

13. When and where is the Final Approval Hearing?

On **July 27, 2017 at 2:00 p.m.**, a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any Objections and arguments concerning the fairness of the proposed Settlement. The hearing will take place at: The Suffolk County Superior Court, 10th Floor, Courtroom 1017, 3 Pemberton Square, Boston, MA 02108.

The hearing may be postponed to a different date or time or location without notice. Please check with the Court or Plaintiff's Counsel for any updates about the Settlement generally or the Final Approval Hearing specifically. If the date or time of the Final Approval Hearing changes, the new date and/or time will be posted on the Court's Online Docket, which can be found at: <https://www.masscourts.org/eservices/home.page.3>.

14. May I speak at the hearing?

At that hearing, the Court will entertain any Objections concerning the Settlement and other issues as described herein.

You may attend, but you do not have to. You may speak at the Final Approval Hearing only if you have timely served and filed an Objection in accordance with the terms set forth herein.

GETTING MORE INFORMATION

15. How do I get more information?

For the full details of the lawsuit, including the claims and defenses that were asserted by the Parties, and the terms and conditions of the Settlement Agreement, you may examine the Action's files during regular business hours at the Civil Clerk's Office, Suffolk County Superior Courthouse, 12th Floor, 3 Pemberton Square, Boston, Massachusetts.

This description of the Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file, you should visit the Civil Clerk's Office, Suffolk County Superior Courthouse, 12th Floor, 3 Pemberton Square, Boston, Massachusetts or Class Counsel's Website.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.