

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

You may be a Class Member in a proposed class action settlement if you paid for automobile underinsured motorist insurance (“UIM”) or were injured in a car accident.

*A federal court authorized this Notice. This is not a solicitation from a lawyer.
This Notice relates to Helen Bhasker v. Financial Indemnity Company, Case No. 1:17-cv-00260-KWR-JHR.*

**PLEASE CAREFULLY READ THIS COURT-AUTHORIZED NOTICE.
ALL OF ITS TERMS MAY AFFECT YOUR RIGHTS.**

- A settlement has been reached in the case against Financial Indemnity Company (“Financial aka Kemper/Unitrin” or “Defendants”). Plaintiff alleged that Financial aka Kemper/Unitrin collected premiums for illusory, i.e., misleading, underinsured motorist automobile insurance coverage (“UIM”).
- This Settlement establishes a process for certain individuals involved in automobile accidents that may have been caused, in whole or in part, by an underinsured driver to submit claims and **potentially receive a money payment**. This is true even if you:
 - (1) are no longer insured with Financial aka Kemper/Unitrin;
 - (2) were not the named insured, but instead a passenger in, or an authorized driver of, a vehicle covered by Financial aka Kemper/Unitrin;
 - (3) previously made a claim; or
 - (4) have never made a claim.
- For every Class Member who submits a claim, the Settlement entitles eligible Class Members to payment of additional uninsured/underinsured motorists bodily injury (“UIM”) benefits or a return of 25% of the premiums that were collected for UM/UIM bodily injury benefits.
- Financial aka Kemper/Unitrin denies all allegations or wrongdoing, and liability.
- This Notice explains: 1) the terms of the Settlement; 2) who is a member of the Class; 3) how to request exclusion from the Settlement; 4) how to object to the Settlement; and 5) how to get more information about the Settlement.

Keep Reading

**FOR QUESTIONS CALL 1-888-518-2832 OR
VISIT BhaskerUIMClassSettlement.com.**

YOUR LEGAL RIGHTS AND OPTIONS

SUBMIT A CLAIM FORM	You can submit a Claim Form electing one of the payments described in this Notice. YOU MUST SUBMIT A CLAIM FORM TO RECEIVE A PAYMENT. If you submit a claim, you give up your rights to sue the Defendants over the claims released in the Settlement.	<u>September 12, 2023</u>
EXCLUDE YOURSELF	If you exclude yourself (“opt out”), you will not be included in the Settlement. You will receive no benefits, and you will keep any rights you currently have to sue the Defendants.	<u>June 13, 2023</u>
OBJECT	If you do not exclude yourself, and if you disagree with the Settlement, you can write to the Court to explain your objection.	<u>June 13, 2023</u>
DO NOTHING	You will not receive any payment, and you give up your right to sue Defendants about the claims in the case.	

These rights and options—**and the deadlines to exercise them**—are explained in this Notice.

Keep Reading

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BASIC INFORMATION

Why did I get this Notice?

You are receiving this Notice because of the allegedly misleading nature of UM/UIM bodily injury coverage where Financial aka Kemper/Unitrin collected premiums and applied an offset to completely or partially eliminate UIM benefits.

This Notice is to inform you about the lawsuit, the proposed Settlement, and your legal rights.

How do I know if I am a member of the Class?

You may be a member of the class action (a “Class Member”) against Financial aka Kemper/Unitrin if you were a New Mexico policyholder and insured by Financial aka Kemper/Unitrin and had UIM coverage between January 1, 2010, and February 6, 2023 (the “Class Period”).

The Class is defined as: all Persons (and their heirs, executors, administrators, successors, and assigns) who, during the Class Period, were insured under New Mexico automobile insurance policies issued by Financial aka Kemper/Unitrin which included UIM coverage. Excluded from the Class are: all present or former officers and/or directors of Financial aka Kemper/Unitrin, Class Counsel and their resident relatives, the Judge in the Action and her resident relatives, and Financial aka Kemper/Unitrin’s counsel of record in the Action and their resident relatives.

You received this Notice because Financial aka Kemper/Unitrin’s records indicate you may be a member of the Class.

What is this lawsuit about?

Plaintiff alleged that Financial aka Kemper/Unitrin, which includes Financial aka Kemper/Unitrin Indemnity Company, Unitrin Auto and Home Insurance Company, Unitrin Safeguard Insurance Company, Response Worldwide Insurance Company and Merastar Insurance Company, and any of their parent, subsidiary, or affiliated companies, breached its contracts (insurance policies) and violated the law by failing to pay certain amounts to Plaintiff and other New Mexico insureds who submitted claims for UIM benefits during the Class Period. Specifically, the Complaint filed in this Action alleges generally that Financial aka Kemper/Unitrin sold “illusory” or misleading UIM coverage in New Mexico automobile insurance policies by failing to explain the effect of an offset against UIM coverage of the tortfeasor’s liability coverage pursuant to *Schmick v. State Farm Mutual Automobile Insurance Company*, 1985-NMSC-073, 103 N.M. 216, 704 P.2d 1092. Financial aka Kemper/Unitrin maintains that it complied with the terms of the insurance policies and applicable law, has numerous merits and class defenses, and denies it acted wrongfully or unlawfully, and continues to deny all material allegations.

Why is this a class action? Why is there a proposed settlement?

A class action is a lawsuit in which one or more individuals (called “Class Representatives”) bring claims on behalf of other persons or entities. These persons or entities are referred to as a “Class” or “Class Members.” In a certified class action, the Court resolves certain issues, legal claims, and/or defenses for all Class Members in a single action, except for those persons or entities who ask in writing to be excluded from the Class.

This lawsuit is *Helen Bhasker v. Financial Indemnity Company*, Case No. 1:17-cv-00260-KWR-JHR. The judge is the Honorable Kea Riggs of the United States District Court for the District of New Mexico. The Court has not decided in favor of Plaintiff or Defendants. Instead, both sides have agreed to a settlement to avoid the costs and risks of trial and appeals. The Class Representative and her attorneys think the Settlement is best for the Class. The Court still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved.

What does the Settlement provide?

As a part of the Settlement, Financial aka Kemper/Unitrin has agreed to pay eligible Class Members as follows:

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- For Class Members whose claims involved wrongful death, Financial aka Kemper/Unitrin will “auto-pay” the *Schmick* offset, to the extent any offset was applied.
- Class Members other than those with claims involving wrongful death can make an election to recover either under a premium formula or under a claim formula, but not both.
- Class Members who elect payment under a premium formula will receive 25% of all UIM premiums paid by the Class Member during the pendency of their insurance coverage with Financial aka Kemper/Unitrin.
- Class Members who elect payment under a claim formula will have their UIM claim readjusted without application of the *Schmick* offset (i.e., the amount your UIM benefits were reduced by the amount of the at-fault driver’s liability coverage), to the extent any offset was applied. Depending on your damages, however, you may receive less than the full amount of the offset, or nothing, if you elect this option. If you elect this option, you may, upon request, be required to provide supporting documentation as to your claim. A Neutral Evaluator shall resolve any disagreements over value with respect to Class Members who elect payment under this option. The Neutral Evaluator’s decision will be final and non-appealable. The process for obtaining review by the Neutral Evaluator is set forth in the Settlement Agreement. If you already were paid UIM coverage with no *Schmick* offset, you are not eligible for payment under the claim formula.

In exchange, the Plaintiff and the members of the Class who do not exclude themselves from the Settlement agree to give up any claim they have for payment of additional UIM benefits. Alternatively, you may, if you wish, request to be excluded from the Settlement, which means you are not eligible for payment, and you maintain your right to sue Financial aka Kemper/Unitrin individually and separately for payment of interest and penalties. You may also object to the terms of the Settlement if you comply with the requirements set forth below.

Financial aka Kemper/Unitrin will separately pay for the costs of notifying Class Members and administering the Settlement, any service awards to the Settlement Class Representative, and any Court-approved award for attorneys’ fees and reimbursement for litigation expenses. (See “Do I have a lawyer in this case? How will they be paid?” below.)

More details about the Settlement are in the Settlement Agreement and other documents available at BhaskerUIMClassSettlement.com.

How can I get payment from the Settlement?

To receive payment from the Settlement, you MUST submit a Claim Form. How much you get will depend on the information you provide with your Claim Form.

The details are as follows:

Option 1: Class Members with Claims Involving Wrongful Death May Do Nothing and Stay in the Case.

If you do nothing and you are eligible for a payment, Financial aka Kemper/Unitrin will send you a Settlement Payment. If you are eligible for one, you will be bound by the terms of the Settlement and will release any claim against Financial aka Kemper/Unitrin.

Option 2: Class Members with Claims Not Involving Wrongful Death May Submit a Valid Claim Form and Stay in the Case.

If you submit a valid Claim Form and you are eligible for a payment, Financial aka Kemper/Unitrin will send you a Settlement Payment. If you are eligible for one, you will be bound by the terms of the Settlement and will release any claim against Financial aka Kemper/Unitrin.

How can I submit a Claim Form?

You can submit a Claim Form through the Settlement Website. To do this, visit BhaskerUIMClassSettlement.com, click “Submit a Claim Form” at the top of the homepage, and follow the instructions. You can also submit a hard copy of a Claim Form by filling out the form attached with this Notice. Additional copies of the Claim Form can be printed from the Settlement Website or requested by U.S. Mail from the Claims Administrator. Hard copy Claim Forms can be mailed to:

Bhasker v. Financial Indemnity Company
c/o Claims Administrator
P.O. Box 2119
Portland, OR 97208-2119

For your claim to be valid and timely, your Claim Form must be received by the Claims Administrator via the Settlement Website or postmarked by mail no later than **September 12, 2023**.

Who decides my Settlement claim and how do they do it?

The Claims Administrator will decide whether a Claim Form is complete and valid and includes all required documentation. The Claims Administrator may require additional information from any claimant. Failure to timely provide all required information will invalidate a claim and it will not be paid.

When would I get my payment from the Settlement?

Payments will not be sent until the Court grants final approval of the Settlement and any objections or appeals are resolved. Payments will be made no later than 90 days after the Effective Date, or within 30 days after a decision by the Neutral Evaluator in the event a claim is referred to the Neutral Evaluator. Updates will be provided on the Settlement Website, BhaskerUIMClassSettlement.com.

What am I giving up to get payment and stay in the Settlement?

If you remain in the Class and the Settlement is approved, you will give up your right to take legal action against Financial aka Kemper/Unitrin on your own for the claims described in the Settlement Agreement.

The Settlement Agreement describes the released claims in further detail and is available at BhaskerUIMClassSettlement.com. You will also be bound by any decisions by the Court relating to the Settlement.

As described in “How do I know if I am a member of the Class?” above, if you are a Class Member whose claim for UIM benefits was denied due to the *Schmick* offset, you can resubmit your claim for Financial aka Kemper/Unitrin to review again. If Financial aka Kemper/Unitrin determines that you are not entitled to more damages or an award of damages that is less than the limits of the UIM benefits stated on your declaration page, that determination can be appealed and reviewed by a third-party neutral. However, on appeal, the determination by the third-party neutral is final. If you do not want to be bound by this process and instead want to challenge Financial aka Kemper/Unitrin’s initial determination through separate legal action, you must exclude yourself from the Settlement, as explained in “How do I get out of the Settlement?” below.

How do I get out of the Settlement?

You have the right to not be part of the Settlement by excluding yourself, or “opting out” of, the Class. If you wish to exclude yourself, you must do so on or before **June 13, 2023**, as described below. You do not need to hire your own lawyer to request exclusion from the Class. If you exclude yourself from the Class, you give up your right to receive a Settlement Payment, or any other benefits as part of this Settlement, and you will not be bound by any judgments or orders of the Court, whether favorable or unfavorable. However, you will keep your right to sue Financial aka Kemper/Unitrin separately in another lawsuit if you choose to pursue one.

**FOR QUESTIONS CALL 1-888-518-2832 OR
VISIT BhaskerUIMClassSettlement.com.**

To exclude yourself from this lawsuit and/or preserve your right to bring a separate case, you must make a request to be excluded in writing and, with sufficient postage, mail the request to:

Bhasker v. Financial Indemnity Company
c/o Claims Administrator
P.O. Box 2119
Portland, OR 97208-2119

A request for exclusion must be postmarked on or before **June 13, 2023**.

Your request for exclusion must contain the following:

1. The name of the lawsuit;
2. Your full name;
3. Your current address;
4. A clear statement that you wish to be excluded from the Class, such as: "I request exclusion from the Class"; and
5. Your signature.

The Settlement Administrator will file your request for exclusion with the Court. If you are signing on behalf of a Class Member as a legal representative (such as an estate, trust, or incompetent person), please include your full name, contact information, and the basis for your authority. A request for exclusion must be exercised individually and not on behalf of a group.

IF YOU DO NOT EXCLUDE YOURSELF FROM THE CLASS BY THE POSTMARK DEADLINE OF JUNE 13, 2023, YOU WILL REMAIN PART OF THE CLASS AND WILL BE BOUND BY THE ORDERS OF THE COURT IN THIS LAWSUIT AND BY THE TERMS OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. IF YOU DO NOT WISH TO BE BOUND BY THE DECISIONS OR SETTLEMENT IN THIS CASE, YOU MUST REQUEST EXCLUSION FROM THE CLASS ACTION.

Do I have a lawyer in this case? How will they be paid?

The Court has appointed the following lawyers, known as Class Counsel, to represent the Class Members in connection with the Settlement.

Geoffrey Romero
4801 All Saints Rd. NW
Albuquerque, NM 87120
geoff@geoffromerolaw.com

Corbin Hildebrandt
2741 Indian School Rd. NE
Albuquerque, NM 87106
corbin@hildebrandtlawnm.com

Kedar Bhasker
2741 Indian School Rd. NE
Albuquerque, NM 87106
kedar@bhaskerlaw.com

You will not be charged for contacting these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

In connection with seeking approval of the Settlement, Class Counsel will ask the Court for payment of attorneys' fees and costs of no more than \$660,000 and \$53,500, respectively, and payment of New Mexico Gross Receipts Tax of 7.75% (\$51,150) to compensate them for their services in this litigation. Any payment to the lawyers will be subject to Court approval, and the Court may award less than the amount requested. Any attorneys' fees and expenses that the Court approves will be paid by Defendants.

Payment of these amounts has no impact and does not affect or reduce in any way the amount of money that will be paid to Class Members. If the Court grants Class Counsel's request, and in whatever amount the Court approves Class Counsel's request, the attorneys' fees and costs will be paid separately by Financial aka Kemper/Unitrin. You will not be personally responsible for any fees, costs, or expenses incurred by Class Counsel relating to the prosecution of this case.

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Class Counsel will also seek a Class Representative award to the Named Plaintiff in the amount of \$25,000, subject to Court approval. The Named Plaintiff, Helen Bhasker, is related to one of the Class Counsel, Kedar Bhasker. As the Named Plaintiff and the Class Representative, Ms. Bhasker understood and fulfilled her duties as a Class Representative without regard to her relationship to Kedar Bhasker, and in fact sublimated her personal interest for the benefit of the Class, rejecting personal settlement offers in excess of the Class Representative award being sought. Additionally, there are other Plaintiff's Class Counsel in this case that are not related to Ms. Bhasker. The Class Representative award is designed to reward the Named Plaintiff for securing the recovery awarded to members of the Class, and to acknowledge the time spent by the Named Plaintiff in participating in the case and prosecuting the claim for the benefit of the Class. If the Court grants the request for a Class Representative award, and in whatever amount the Court approves the request, the Class Representative award will be paid separately by Financial aka Kemper/Unitrin.

When Class Counsel's motion for attorneys' fees and expenses is filed, it will be posted at BhaskerUIMClassSettlement.com. You will have an opportunity to comment on or object to the motion.

How do I tell the Court that I don't like the Settlement?

If you do not exclude yourself from the Class pursuant to the procedures described in "How do I get out of the Settlement?" above, you can object to the Settlement or submit a request to intervene in the lawsuit to contest the Settlement by no later than **June 13, 2023**, filing a written notice of intent to object and/or intervene with the Clerk of the Court and sending a copy of the request to Class Counsel and Defense Counsel at the addresses set forth below.

Any request to object or intervene must contain: (a) a heading which refers to the lawsuit; (b) the name, address, telephone number, and signature of the Class Member filing the objection or intervention request; (c) a statement whether the objector or intervenor intends to appear at the Final Settlement Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, address, and phone number; (d) a detailed statement of the specific legal and factual bases for intervention and/or each and every objection, and, if through counsel, a legal memorandum in support of the objection or intervention; (e) a list of any witnesses, along with the expected testimony of each such witness, and photocopies of exhibits that the objector intends to introduce at the Final Settlement Hearing; (f) a detailed description of any and all evidence the objector may offer at the Final Settlement Hearing, if the objector intends to speak at the hearing; and (g) documentary proof of membership in the Settlement Class. Contact information for filing and sending your request to object/intervene is provided below:

Clerk of the Court Contact Information

Clerk of the Court
United States District Court for the District of New Mexico
Pete V. Domenici U.S. Courthouse
333 Lomas Blvd NW, Suite 270
Albuquerque, NM 87102

Class Counsel Contact Information

Geoffrey Romero
4801 All Saints Rd. NW
Albuquerque, NM 87120
geoff@geoffromerolaw.com

Corbin Hildebrandt
2741 Indian School Rd. NE
Albuquerque, NM 87106
(505) 998-6626
corbin@hildebrandtlawnm.com

Kedar Bhasker
2741 Indian School Rd. NE
Albuquerque, NM 87106
kedar@bhaskerlaw.com

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Defense Counsel Contact Information

Mark L. Hanover (*pro hac vice*)
DENTONS US LLP
233 South Wacker Dr., Suite 5900
Chicago, IL 60606
mark.hanover@dentons.com

Alicia M. Santos
O'BRIEN & PADILLA, P.C.
6000 Indian School Rd. NE, Suite 200
Albuquerque, NM 87110
asantos@obrienlawoffice.com

What is the difference between objecting and asking to be excluded?

Objecting means you are telling the Court that you disagree with something about the Settlement. You can only object if you intend to stay in the Class. Excluding yourself, on the other hand, is telling the Court you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

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

The Court will hold its Final Settlement Hearing on **July 13, 2023, at 10:30 a.m.**, by Zoom, at the United States Court, District of New Mexico.

The hearing may be moved to a different date or time without additional notice to you. You can check the Settlement Website, BhaskerUIMClassSettlement.com, call 1-888-518-2832, or email the Claims Administrator at info@BhaskerUIMClassSettlement.com to confirm the date of the hearing.

At the Final Settlement Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. If there are objections or comments, the Court will consider them at that time and may listen to people who have asked to speak at the hearing. The Court will decide whether to approve the Settlement at or after the hearing.

What happens at the Final Settlement Hearing? Do I need to attend?

You do not have to come to the Final Settlement Hearing, but you may attend at your own expense should you wish. Class Counsel will answer any questions the Court may have. If you submit a timely objection or comment regarding the Settlement, the Court will consider it—you do not have to come to the hearing. You may also hire your own lawyer at your own expense to attend the hearing on your behalf, but you are not required to do so. If you send an objection or comment on the Settlement, you may be able to speak at the Final Settlement Hearing, subject to the Court's discretion. You cannot speak at the Final Settlement Hearing if you exclude yourself from the Settlement.

If the Court approves the Settlement and no appeal is taken, the Claims Administrator will send payments to Class Members who submitted timely and valid claims no later than 90 days after the Effective Date, or within 30 days after a decision by the Neutral Evaluator in the event a claim is referred to the Neutral Evaluator. Financial aka Kemper/Unitrin will pay any Class Counsel's Fees and Expense Award and any service awards to the Class Representative.

If any appeal is taken, it is possible the Settlement could be disapproved on appeal. If the Court does not approve the Settlement, there will be no Settlement Payments to Class Members, Class Counsel, or the Class Representatives, and the case will proceed as if no Settlement had been attempted.

How do I get more information?

This Notice summarizes the Settlement. More details are contained in the Settlement Agreement.

Key documents and more information about the Settlement are on the Settlement Website: BhaskerUIMClassSettlement.com. You also may also contact the Claims Administrator by email at info@BhaskerUIMClassSettlement.com or by phone toll-free at 1-888-518-2832.

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PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THE SETTLEMENT OR THE CLAIM PROCESS.

What claim(s) against Financial aka Kemper/Unitrin are Class Members releasing?

As a part of the Settlement, Class Members agree to release Financial aka Kemper/Unitrin, as defined above, and not to sue Financial aka Kemper/Unitrin for any Released Claims. "Released Claims" means and includes any and all known and Unknown Claims, rights, demands, allegations, actions, suits, or causes of action of whatever kind or nature, whether ex contractu or ex delicto, debts, liens, liabilities, agreements, interests, penalties, costs, expenses, attorneys' fees, losses or damages (whether actual, consequential or treble) statutory, common law or equitable, including but not limited to claims for negligence, violations of the New Mexico Unfair Trade Practices Act, violations of the New Mexico Unfair Insurance Practices Act, breach of contract, breach of the covenant of good faith and fair dealing, bad faith or extra-contractual claims, injunctive and declaratory relief, and claims for punitive or exemplary damages, or prejudgment or post judgment interest, arising from or relating in any way to Financial aka Kemper/Unitrin's alleged failure to advise New Mexico insureds of the potential effect of the offset of a tortfeasor's liability coverage against a Class Member's UIM coverage during the Class Period under an automobile insurance policy issued by Financial aka Kemper/Unitrin based on any legal theory whatsoever to the fullest extent of the law and res judicata and/or claim preclusion protections. "Unknown Claims" means 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 this Settlement Agreement, as to any of the Released Claims.

PLEASE DO NOT TELEPHONE OR CONTACT FINANCIAL AKA KEMPER/UNITRIN, THE COURT OR THE CLERK OF THE COURT REGARDING THIS NOTICE.

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