

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RODERICK W. RUSSELL, on Behalf of Himself  
and a Class of Persons Similarly Situated, and on  
Behalf of the ConsecoSaves Plan,

Plaintiff,

v.

CONSECO SERVICES LLC, ROLLIN M. DICK,  
GARY C. WENDT, STEPHEN C. HILBERT,  
WILLIAM J. SHEA, CHARLES B. CHOKEL,  
JOHN J. SABL, THOMAS J. KILIAN, RICHARD  
H. KREMER, EDWARD M. BERUBE,  
ELIZABETH C. GEORGAKOPOULOS, DAVID  
K. HERZOG, and JOHN DOES 1-30,

Defendants.

No. 1:02-CV-1639 LJM

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**Your legal rights may be affected if you are a member of the following class:**

ALL FORMER AND CURRENT PARTICIPANTS IN THE CONSECO SAVINGS PLAN, IN ALL ITS ITERATIONS, INCLUDING THE CONSECOSAVE PLAN, THE CONSECOSAVE PLUS PLAN AND THE CONSECO SAVINGS PLAN, INDIVIDUALLY OR COLLECTIVELY ("CONSECO SAVINGS PLAN" OR "PLAN") FOR WHOSE INDIVIDUAL ACCOUNTS THE PLAN PURCHASED AND/OR HELD SHARES OR INTERESTS IN THE CONSECO STOCK FUND AT ANY TIME DURING THE PERIOD FROM APRIL 28, 1999 THROUGH AND INCLUDING SEPTEMBER 3, 2003.

**A FEDERAL COURT AUTHORIZED THIS NOTICE.**

**THIS IS NOT A SOLICITATION FROM A LAWYER. YOU HAVE NOT BEEN SUED.**

- A Federal District Court has preliminarily approved a proposed Settlement of a Class Action lawsuit brought under the Employee Retirement Income Security Act (often referred to as ERISA). The Settlement ("Settlement" or "Settlement Agreement") provides for a Settlement payment to Class Members. The Settlement Agreement and the allocation terms of the Settlement payment are summarized below.
- The Court has scheduled a hearing regarding final approval of the Settlement and regarding Class Counsel's (identified in the answer to Question 13, below) motion for attorneys' fees and expenses and for additional compensation to the Named Plaintiff (defined in the answer to Question 1, below). That hearing before United States District Judge Larry J. McKinney has been scheduled for October 14, 2005, at 2:00 p.m. in Courtroom 202 of the United States District Court for the Southern District of Indiana, 105 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46201.
- Any objections to the Settlement or Class Counsel's motion for attorneys' fees and expenses and additional compensation to the Named Plaintiff must be served in writing on Class Counsel (identified in the answer to Question 13, below) and on Defendants' Attorneys (identified in the answer to Question 13, below). The procedure for objecting is described below in the answer to Question 13.
- This Notice contains summary information regarding the Settlement. The actual terms and conditions of the Settlement are set forth in the Settlement Agreement. Capitalized terms used in this Notice but not defined in this Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement and additional information regarding this lawsuit may be obtained from Class Counsel (identified in the answer to Question 13, below).

**PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY. IF YOU APPROVE OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING. IF YOU DISAPPROVE OF THE SETTLEMENT, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.**

<b>YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT</b>	
<p><b>YOU CAN DO NOTHING. NO ACTION IS NECESSARY TO RECEIVE PAYMENT.</b></p>	<p>If the Settlement is approved by the Court and you are a member of the Settlement Class, you will not need to do anything to receive your settlement payment. The portion, if any, of the Settlement Fund to be allocated to you will be calculated for you as part of the implementation of the Settlement. If you are entitled to any portion of the Settlement Fund, you will receive a statement in the mail identifying the amount of your settlement payment. Once the Settlement is approved, finalized and no longer subject to any appeals, and after various other conditions are met, you will receive your settlement payment in the mail or as a credit to your Conseco 401K account, or if you no longer maintain such an account, alternative measures will be taken for you to receive your payment.</p>
<p><b>YOU CAN OBJECT TO THE SETTLEMENT IF YOU DO NOT LIKE ANY OF THE TERMS. IF YOU WISH TO OBJECT, YOU MUST DO SO BY OCTOBER 7, 2005.</b></p>	<p>If you wish to object to any part of the Settlement, you may (as discussed below in the answer to Question 13) write to the Court, Class Counsel and Defendants' Attorneys and state why you object to the Settlement.</p>
<p><b>YOU MAY ATTEND THE HEARING WHICH WILL BE HELD ON OCTOBER 14, 2005.</b></p>	<p>If you submit a written objection to the Settlement, pursuant to the procedures identified in answers to Question 13, below, you may (but do not have to) attend the Court hearing regarding the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will only be allowed to speak at the Hearing if you file written comments before the Hearing.</p>

- These rights and options — **and the deadlines to exercise them** — are further explained in this Notice.
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Settlement payments will be made only if the Court approves the Settlement and if that approval is upheld in the event of any appeals.

Further information regarding the litigation and this Notice may be obtained by contacting Attorneys for the Plaintiff and the Class ("Class Counsel") identified below:

Edwin J. Mills, Esq.  
**STULL, STULL & BRODY**  
 6 East 45<sup>th</sup> Street – Suite 500  
 New York, NY 10017  
 (Phone) 212-687-7230  
 (Toll Free) 800-337-4983  
 (Fax) 212-490-2022

Lynn L. Sarko, Esq.  
 T. David Copley, Esq.  
**KELLER ROHRBACK L.L.P.**  
 1201 Third Avenue – Suite 3200  
 Seattle, WA 98101-3052  
 (Toll Free) 800-360-8904  
 (Fax) 206-623-3384

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## **SUMMARY OF SETTLEMENT**

This litigation is a purported Class Action in which Named Plaintiff alleges that the Defendants breached fiduciary duties owed to the Participants in the Conseco Savings Plan. Copies of the most recent Amended Complaint are available from Class Counsel, identified in the answer to Question 13, below. The Federal District Court dismissed this Action, and Named Plaintiff appealed that dismissal. This Settlement Agreement was reached by the Parties after the dismissal in the Federal District Court and before the appeal was heard.

### **Summary of Settlement Terms**

1. A Settlement Fund consisting of \$9.975 million is being established in the Action.
2. To this Settlement Fund, interest (if any has accrued) will be added and the following will be deducted: any taxes, expenses, approved attorneys' fees and costs, and compensation to the Named Plaintiff. The resulting Net Proceeds ("Net Proceeds") will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court.

### **Statement of Potential Outcome of the Action**

As with any litigated case, the Named Plaintiff and the purported class members face an uncertain outcome if the Action were to continue on appeal against the Defendants. This case was previously dismissed in the Federal District Court. The outcome on appeal is uncertain. It is not clear whether the Appellate Court would affirm or reverse the Federal District Court's holding. Continued litigation of the Action against Defendants could result in a greater or lesser judgment than the recovery under the Settlement Agreement.

Throughout this Action, the Named Plaintiff and the Defendants have disagreed on both liability and damages, and they do not agree on the amount that would be recoverable even if the Named Plaintiff and the purported class were to prevail at trial. Defendants have denied and continue to deny the Claims and contentions alleged by the Named Plaintiff. Defendants deny that they are liable to the Named Plaintiff and the purported class. Defendants deny that they breached any of their alleged fiduciary duties to the Plan and its Participants under ERISA. Defendants maintain that the Claims for losses which allegedly occurred during the Securities Settlement Period<sup>1</sup> were settled and released in the Prior Securities Litigation Settlement Agreement.<sup>2</sup> Defendants deny that the Settlement Class or the Plan suffered any damages for which the Defendants could be legally responsible. Despite their belief that they acted appropriately in all regards, Defendants have decided to fully and finally settle this Action on the terms and conditions set forth in the Settlement Agreement because of the uncertainty, risks, expenses and costs of continued litigation of this Action.

### **Statement of Attorneys' Fees and Costs Sought in the Action**

Class Counsel in the Action will apply to the Court for an order awarding attorneys' fees in an amount up to thirty (30%) percent of the Settlement Fund, plus reimbursement of any expenses incurred in this Action. Any amount awarded to Class Counsel will be paid from the proceeds of the Settlement Fund.

### **What Will the Named Plaintiff Get?**

The Named Plaintiff in this Action will share in the allocation of the Net Proceeds on the same basis and to the same extent as all other members of the Settlement Class, except that in addition, the Named Plaintiff may apply to the Court for additional compensation of up to \$20,000 for reimbursement of the non-taxable costs of litigation relating to his representation of the Settlement Class. Any compensation awarded to Named Plaintiff by the Court will be paid from the proceeds of the Settlement Fund.

<sup>1</sup> The Securities Settlement Period is the time period which coincides with the time period of the released claims in the Prior Securities Litigation Settlement Agreement and comprises the time period from April 28, 1999 through and including April 14, 2000.

<sup>2</sup> The Prior Securities Litigation Settlement Agreement is the settlement agreement which was negotiated in the case of In re Conseco, Inc. Securities Litigation, No. 1P00-C-00585-Y/S and executed on May 21, 2002. Further details of this settlement can be found in the Settlement Agreement.

## **Further Information**

Further information regarding the Action and this Notice may be obtained by contacting Class Counsel:

Edwin J. Mills, Esq.  
STULL, STULL & BRODY  
6 East 45<sup>th</sup> Street – Suite 500  
New York, NY 10017  
(Phone) 212-687-7230  
(Toll Free) 800-337-4983  
(Fax) 212-490-2022

or

Lynn L. Sarko, Esq.  
T. David Copley, Esq.  
KELLER ROHRBACK L.L.P.  
1201 Third Avenue – Suite 3200  
Seattle, WA 98101-3052  
(Toll Free) 800-360-8904  
(Fax) 206-623-3384

## **BASIC INFORMATION**

### **1. Why did I get this Notice package?**

You or someone in your family are or may have been a Participant in or beneficiary of the Plan.

The Court caused this Notice to be sent to you because, if you are a member of the purported Settlement Class, you have a right to know about the Settlement and about all of your options, before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Proceeds will be allocated among Settlement Class Members according to the Court approved Plan of Allocation. This Notice describes the Litigation, the Settlement, your legal rights, the available benefits, eligibility requirements for the benefits and the procedures for obtaining the benefits.

This case is currently pending in the United States District Court for the Southern District of Indiana. The party who sued is called “Named Plaintiff,” and the parties he sued are called “Defendants.” The Named Plaintiff in the Action is Roderick W. Russell. The Defendants are: Conseco Services, L.L.C., Rollin M. Dick, Gary C. Wendt, Stephen C. Hilbert, William J. Shea, Charles B. Chokel, John J. Sabl, Thomas J. Kilian, Richard H. Kremer, Edward M. Berube, Elizabeth C. Georgakopoulos, David K. Herzog. The legal Action that is the subject of this Notice and the Settlement is known as Roderick W. Russell, et al. v. Conseco Services, LLC., et al., No. 1:02 CV 1639.

### **2. What is the Action about?**

Under the Conseco Savings Plan, Participants were able to allocate their contribution to their individual Plan accounts among various investment funds. The investment funds included the Conseco Stock Fund, which invested primarily in Conseco common stock. Many Plan Participants chose to invest their contributions in the Conseco Stock Fund. In addition, Conseco Services, L.L.C. (“Conseco”) made matching contributions to Plan Participants’ individual accounts. Conseco’s matching contributions were invested in the Conseco Stock Fund.

### **The Named Plaintiff’s Allegations**

The Named Plaintiff’s Amended Complaint claims that the Defendants were fiduciaries of the Conseco Savings Plan and violated their fiduciary duties under ERISA to Plan Participants. Named Plaintiff also claims that the alleged breaches of fiduciary duty by the Defendants caused losses to the Conseco Savings Plan and Plan Participants.

## **The Defendants' Position**

The Defendants have denied all liability in this Action. Defendants deny that they are liable under ERISA to the Plan or Plan Participants or beneficiaries. Defendants maintain that to the extent that they were fiduciaries, they did not violate their fiduciary duties to the Plan and/or its Participants. Defendants maintain that the Claims for losses which allegedly occurred during the Securities Settlement Period were settled and released in the Prior Securities Litigation Settlement Agreement. Defendants deny that the Settlement Class or the Plan suffered any damages for which Defendants could be legally liable.

## **The Action Has Been Aggressively Litigated**

Class Counsel conducted an investigation of the allegations in the Action and of the losses suffered by the Plan. Through the investigation, Class Counsel obtained and reviewed many documents, including Plan governing documents and materials, the Securities Litigation Settlement Agreement, communications with Plan participants, SEC filings, press releases, public statements, news articles and other publications and other documents.

Class Counsel previously opposed a motion by the Defendants to dismiss the Action. The Federal District Court granted Defendants' motion and dismissed the Action.

Later, Class Counsel filed a brief in the Seventh Circuit Court of Appeals ("Seventh Circuit") seeking to reverse the Federal District Court's order. The Parties settled this Action before the Seventh Circuit ruled on Class Counsel's appeal.

## **Settlement Discussion**

This Settlement is the product of extensive negotiations between Class Counsel and the Defendants' Counsel.

### **3. Why is this case a Class Action?**

In a Class Action, a plaintiff called "Named Plaintiff" sues on behalf of people who have or might have similar claims. All of the individuals on whose behalf the Named Plaintiff is suing are "Class Members." The resolution of a Class Action resolves the issues for all Class Members. In its order setting the Fairness Hearing, the Federal District Court conditionally certified the Settlement Class in this Action.

### **4. Why is there a Settlement?**

By settling, the Parties avoided the cost, time and uncertainty of litigation. As with any lawsuit, the Named Plaintiff faced an uncertain outcome on appeal and later with any trial, specifically since the Federal District Court dismissed the Action. Continuation of the litigation could have resulted in a greater or smaller judgment than the recovery under this Settlement. If the Seventh Circuit upheld the District Court's decision, there was the possibility of no recovery in this Action. Based on these factors, Class Counsel in this case decided that the Settlement is in the best interest of all Settlement Class members.

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

The proceeds of this Settlement will be allocated to members of the Settlement Class and according to a Court approved Plan of Allocation.

You are a member of the Settlement Class if you fall within the definition of the Settlement Class approved by United States District Judge Larry J. McKinney (who is the judge presiding over this Action):

