

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CONSTRUCTION CONSULTING GROUP, LTD.,

02 CH 7745
Judge McGann

v.

GERSTEN FINANCIAL & INSURANCE, INC.

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

TO: All individuals who, on or after November 15, 1998, received an advertising fax from GERSTEN FINANCIAL & INSURANCE, INC.

**PLEASE READ THIS NOTICE CAREFULLY.
THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU. IT IS A NOTICE OF A SETTLEMENT BEING
SENT TO YOU BY COURT ORDER.
YOU MAY BENEFIT FROM READING THIS NOTICE.**

**IF YOU WISH TO RECEIVE A PORTION OF THE CLASS SETTLEMENT
PROCEEDS, YOU MUST RETURN THE FORM AT THE END OF THIS NOTICE.**

WHAT THIS LAWSUIT IS ABOUT: Plaintiff filed this action in the Circuit Court of Cook County, Illinois. On behalf of a putative class, plaintiff alleged that the defendant violated the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”), and state law by sending unsolicited facsimile advertisements. Defendant denies plaintiff’s allegations, and has raised defenses to plaintiff’s claims. Defendant also claims that the TCPA is unconstitutional. Judge McGann disagreed, but there is no case from the Illinois Appellate or Supreme Courts or the U. S. Supreme Court addressing that issue.

Judge McGann granted preliminary approval of the settlement, subject to a fairness hearing which will take place on March 2, 2004 at 11:00 a.m., in Room 2508 of the Circuit Court of Cook County, Illinois, Daley Center, 50 W. Washington, Chicago, Illinois, 60602.

The Court ordered that you be sent this notice because you appear to be a member of the class as defined above. This notice explains the nature of the lawsuit and the terms of the settlement and informs you of your legal rights and obligations.

IN ORDER TO OBTAIN MONETARY BENEFITS OF THIS SETTLEMENT, YOU MUST FILL OUT AND RETURN THE PROOF OF CLAIM FORM AT THE END OF THIS NOTICE.

NO ADMISSION OF LIABILITY: By settling this lawsuit, Defendant is not admitting that it has done anything wrong. Defendant expressly denies that it has done anything wrong.

THE PROPOSED SETTLEMENT: Plaintiff and Defendant have agreed to the settlement described below. **IF YOU WISH TO RECEIVE A PORTION OF THE SETTLEMENT PROCEEDS, YOU MUST RETURN THE PROOF OF CLAIM FORM AT THE END OF THIS NOTICE BY February 24, 2004. If you do not wish to be bound by the settlement, you must opt-out. If you return your form and the settlement is finally approved, you will be sent a check for your portion of the settlement.**

Recovery to Class Members. Defendant agrees to pay into a Settlement Fund the total sum of \$590,000 (the “Settlement Fund”). Defendant has also agreed to pay an incentive award of \$2,000 to the named plaintiff and to pay the costs of notice and class administration. Attorney’s fees to Class Counsel in the amount discussed below will be paid from the Settlement Fund. After deduction of attorney’s fees Defendant shall pay from the Settlement Fund to each class member who: (i) does not opt-out; and (ii) **RETURNS THE PROOF OF CLAIM FORM AT THE END OF THIS NOTICE INDICATING THAT THEY WANT TO PARTICIPATE IN THE MONETARY BENEFITS OF THE SETTLEMENT BEFORE**

EXPIRATION OF THE DEADLINE: a pro-rata share of the Settlement Fund based upon the number of valid claims submitted by class members. No class member will receive more than one payment, which will not exceed \$500.00, regardless of the number of faxes received. In the event funds remain in the Settlement Fund after payment of all valid claims, the remainder shall be donated to a charitable organization.

Attorney's Fees. Plaintiff's counsel will request approval of the Court for attorneys' fees and costs of \$147,500 (25%). Defendant will not oppose or cause to be opposed an application by Plaintiff's counsel for attorneys' fees and costs of \$147,500. Plaintiff's counsel will not request additional fees and costs from Defendant or the class.

Release. Settlement Class members who do not opt out as described below (whether or not they submit claims) (the "Releasors"), will be deemed to have forever released Defendant and its attorneys, agents, employees, officers, directors, shareholders, affiliates, subsidiaries, divisions, parent companies, predecessors in interest, insurers, insurer's counsel, successors and assigns, and all persons, natural or corporate, in privity with anyone or more of them (the "Released Parties") of and from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, causes of action, contracts, agreements, extra contractual claims, damages, punitive damages, expenses, acts, costs, attorneys' fees and/or obligations of any kind which are or could be based on, arise from or relate in any way to any of the facts or other matters alleged or which could have been alleged in this litigation, including but not limited to: (1) violation of the TCPA; (2) the claims asserted or which could have been asserted in this litigation including any and all amended complaints; (3) violation of any and all other laws, whether statutory, regulatory or decisional, and whether federal or state based arising out of or related to Defendant's alleged unsolicited faxing advertisements to the Releasors without their consent whether said facsimiles are identical to, similar to, or different from the facsimile attached as an exhibit to the Plaintiff's Second Amended Complaint. **No claims based on agreements to purchase insurance through Defendant or the purchase of insurance through Defendant are released.**

CLASS COUNSEL'S OPINION OF THE VALUE OF THE SETTLEMENT: The \$592,000 is being paid by insurance. The available insurance is \$1 million per occurrence/ \$1.7 million aggregate. The Defendant's assets are limited, and there is no way in which the Defendant could pay \$500 for each of more than 300,000 faxes it is believed to have sent. Accordingly, the insurance policy is the only meaningful source of recovery in this case. The insurer has raised policy defenses and claims that it has no liability whatever.

The \$592,000 amount was negotiated in a mediation presided over by Hon. Thomas J. Rakowski, retired Judge of the Illinois Appellate Court. Class counsel believe that it is fair and reasonable given the circumstances set forth above and that the class members should accept the settlement.

In an individual action, a prevailing plaintiff may be able to recover \$500 in statutory damages under the TCPA (\$1500 if a willful violation is shown). Of course if an individual does not prevail, he will receive no payment. Also, if an individual proves a willful violation or punitive damages the individual may defeat Defendant's insurance coverage.

Under certain state laws prevailing Plaintiffs may recover greater or lesser amounts, as some states have adopted their own TCPA-like statutes. Those statutes may also contain defenses which do not exist under the TCPA and which defenses may prohibit any recovery whatsoever.

CORRECT NAME: If any of the persons to whom this notice is sent have died or are divorced or changed their name, you should send a letter to the settlement administrator explaining who you are and why the claim belongs to you and include any supporting documentation. The administrator is:

**GILARDI & CO, LLC
P.O. Box 8060
San Rafael, CA 94912-8060
1-800-264-1759**

FAIRNESS HEARING: 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. At the hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement, including

the amount of the award to Plaintiff's counsel of costs and attorney's fees. The hearing will take place on March 2, 2004 at 11:00 a.m., before Judge McGann in Room 2508 of the Richard J. Daley Center, 50 W. Washington, Chicago, Illinois, 60602. YOU ARE NOT OBLIGATED TO ATTEND THIS HEARING UNLESS YOU PLAN TO OBJECT TO THE SETTLEMENT.

YOUR OPTIONS

1. If you wish to receive a portion of the settlement proceeds, you must complete and return the proof of claim form at the end of this notice indicating that you wish to participate in the settlement. The proof of claim form must be post-marked or received at GILARDI & COMPANY, LLC, P.O. Box 8060, San Rafael, CA 94912-8060 **on or before February 24, 2004.** You will be represented by the attorneys for Plaintiff without additional charge. Or, if you prefer, you may enter your own appearance or ask the Court to allow you to participate in the settlement through your own attorney. If you wish to participate on your own or through your own attorney, an appearance must be filed with the Court by February 24, 2004. If you participate through your own attorney, it will be at your expense. Any party who returns a claim form or otherwise does not exclude his or herself from the settlement, as described below, will be bound by the settlement agreement and release of claims against the defendant, as approved by the Court.

2. You have the right to exclude yourself from both the class action and the settlement by filing a written request for exclusion with the Clerk of the Circuit Court of Cook County, Illinois, Daley Center, 50 W. Washington, Chicago, Illinois, 60602. The request for exclusion must be received by the Clerk of the Court on or before February 24, 2004, and must list your name, address, and the name and number of the case. You must also serve copies of the request for exclusion on each of the attorneys for the plaintiff and for the defendant, at the following addresses by the same date.

Daniel A. Edelman
Julie Clark
EDELMAN, COMBS & LATTURNER, LLC
120 S. LaSalle Street, 18th Floor
Chicago, Illinois 60603
(312) 739-4200
(800) 644-4673
Email: edcombs@aol.com
www.edcombs.com
(Attorneys for the plaintiff and the class)

Bart T. Murphy
WILDMAN, HARROLD, ALLEN & DIXON
2300 Cabot Drive, Ste. 455
Lisle, IL 60532-3639
(630) 955-0555
(Attorney for defendant)

3. If you object to the settlement, and wish to submit an objection rather than simply exclude yourself from the class action, you must submit your objection in writing to the Clerk of the Circuit Court of Cook County, Illinois, Daley Center, 50 W. Washington, Chicago, Illinois, 60602. The objection must be received by the Clerk of the Court on or before February 24, 2004, and must refer to the name and number of the case. You must also serve copies of your objection on each of the attorneys for the Plaintiff and for the Defendant listed above by the same date. Any objection must include your name and address, the name and number of the case, and a statement of the reasons why you believe that the Court should find that the proposed settlement is not in the best interests of the class. If you do file an objection and wish it to be considered, you must also appear at the hearing before Judge McGann on March 2, 2004 at 11:00 a.m. YOU ARE NOT REQUIRED TO ATTEND THIS HEARING UNLESS YOU PLAN TO OBJECT TO THE SETTLEMENT. Please note that it is not sufficient to simply state that you object. You must state reasons why the settlement should not be approved.

IMPORTANT: THE COURT REQUIRES THAT ANY REQUESTS FOR EXCLUSION OR OBJECTIONS BE RECEIVED BY THE CLERK BY FEBRUARY 24, 2004. IF YOU MAIL A REQUEST FOR EXCLUSION OR OBJECTION, YOU BEAR THE RISK OF THE REQUEST FOR EXCLUSION OR OBJECTION NOT BEING RECEIVED BY THE CLERK BY THE DEADLINE.

If you choose to exclude yourself from the class action and settlement you will not receive payment under this agreement. If you remain in the class action but do not return a proof of claim form by February 24, 2004, you will be bound by the settlement agreement and release but will not receive payment under this agreement. Only those class members who complete and return a valid proof of claim form post-marked on or before February 24, 2004 will receive payment under this agreement.

If the settlement is not approved, the case will proceed as if no settlement had been attempted. There can be no assurance that if the settlement is not approved, the class will recover more than is provided in the settlement, or indeed, anything.

This description of the case is general and does not cover all of the issues and proceedings thus far. In order to see the complete file, including a copy of the settlement agreement, you should visit the office of the Clerk of the Circuit Court of Cook County, Illinois, Daley Center, 50 W. Washington, Chicago, Illinois, 60602. The Clerk will make the files relating to this lawsuit available to you for inspection and copying at your own expense.

INQUIRIES: Any questions you or your attorney has concerning this notice should be directed to Edelman, Combs & Lattner at the address listed above. Please include the case name and number, your name and your current return address on any letters, not just the envelopes. Please do not contact the Court Clerk or the Defendant's attorneys; they are not in a position to give you any advice about this settlement.

PROOF OF CLAIM

CONSTRUCTION CONSULTING GROUP, LTD. VS. GERSTEN FINANCIAL & INSURANCE, INC., CASE NO: 02 CH 7745 (Circuit Court of Cook County, Illinois)

IMPORTANT: THIS CLAIM FORM MUST BE POSTMARKED OR RECEIVED ON OR BEFORE FEBRUARY 24, 2004, AND MAILED TO THE FOLLOWING ADDRESS:

**Gersten Financial Matter
c/o GILARDI & CO, LLC
P.O. Box 8060
San Rafael, CA 94912-8060**

Please print the following information:

NAME: _____

ADDRESS: _____

CITY/STATE: _____

ZIP CODE: _____

I certify that I received a facsimile ad from Gersten during the Class Period

(YOUR SIGNATURE)