

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

THE ILLINOIS STATE CHAMBER OF COMMERCE,)
Plaintiff,)

v.)

JOHN FILAN, in his capacity as Director of the Governor's)
Office of Management and Budget; DENNIS R. RUTH,)
in his capacity as Chairman of the Illinois Industrial)
Commission; DEIRDRE K. MANNA, in her capacity as)
Acting Director of the Illinois Department of Insurance; and)
JUDY BAAR TOPINKA, in her capacity as Treasurer of the)
State of Illinois,)
Defendants.)

and)

MARYLAND CASUALTY CO., et al.,)
Plaintiffs in Intervention,)

AIU INSURANCE CO., et al.,)
Plaintiffs in Intervention,)

CONTINENTAL CASUALTY CO., et al.,)
Plaintiffs in Intervention,)

COUNTRY MUTUAL INSURANCE CO., et al.,)
Plaintiffs in Intervention,)

v.)

ILLINOIS CHAMBER OF COMMERCE, et al.,)
Defendants in Intervention,)

and)

JACK GORE d/b/a/ SABRA MANAGEMENT, on behalf of)
himself and all other persons and entities similarly situated,)
Plaintiff in Intervention,)

v.)

ST. PAUL TRAVELERS COMPANIES, INC, et al.,)
Defendants in Intervention.)

No. 04 CH 6750

Hon. Daniel A. Riley

**Order Granting Preliminary Approval of Class Action Settlement,
Class Certification, Appointment of Class Representative and Class Counsel,
Directing Class Notice and Setting Final Fairness Hearing**

Background Statement

A. The plaintiff, the Illinois State Chamber of Commerce, filed this suit on April 22, 2004. The Chamber is an employer who is required to pay the Workers' Compensation Commission Operations Fund Surcharge that was levied on employers who pay workers' compensation insurance. 215 ILCS 5/416. On or about January 18, 2005, Jack Gore, d/b/a Sabra Management, intervened as a plaintiff on behalf of a putative plaintiff class of employers required to pay the Surcharge and sought leave to file a class action complaint requesting certification of a plaintiff and defendant class. The putative class sought restitution of Surcharge monies paid.¹

B. The Chamber challenged the constitutionality of the Surcharge on a number of grounds. Its principal argument was that the Surcharge violated Article 9, section 2 of the Illinois Constitution, the Uniformity Clause, because the Surcharge was deliberately set at a rate intended to generate revenue in excess of the amount needed to fund the Illinois Workers' Compensation Commission, and that the use of the monies generated by the Surcharge for general revenue purposes violated the Uniformity Clause.

C. The defendants denied the Chamber's allegations and have argued that the Surcharge is constitutional.

D. In addition, numerous insurance companies intervened in the suit in 2005.

¹ A consolidated case, *American Country Mutual Insurance Co. v. Filan*, 05 CH 999, makes basically the same claims and seeks the same relief as the *Chamber of Commerce* case.

These insurance companies provided workers' compensation insurance to Illinois employers. Under Illinois law, the insurance companies are annually charged by the Director of the Department of Insurance and pay to the Director a Surcharge amount, which they are directed to collect from their insureds, 215 ILCS 5/416(b)(1). The intervening insurance companies have paid under protest the surcharge monies they have been charged since their intervention. The intervening insurance companies deny that they have any liability to the intervening plaintiff or plaintiff class, or any other party in this case.

E. In November 2004, the Circuit Court of Cook County ruled that the Surcharge was unconstitutional. It further required that Surcharge monies paid during the pendency of the suit be placed in a separate escrow account. The Illinois Supreme Court reversed the judgment in favor of the Chamber and remanded the case to the circuit court for further proceedings. *State Chamber of Commerce v. Filan*, 216 Ill. 2d 653 (2005).

F. Counsel for all the parties have reached an agreement on a class-wide settlement of this action. This settlement encompasses significant allocations of money for the benefit of all employers and to the Illinois Workers' Compensation Commission, as well as a claims process for partial refunds of Surcharge payments to the class. The settlement agreement provides payments of other funds to the Workers' Compensation Commission Operations Fund and the State General Revenue Fund.

G. Class Plaintiff has submitted a Motion for Preliminary Approval of Class Action Settlement, Settlement Class Certification, Appointment of Plaintiff Gore as Class Representative and Larry D. Drury as Class Counsel, Directing Class Notice and Setting Final Fairness Hearing.

H. Defendants and the insurance company intervenors do not oppose preliminary approval of the settlement, settlement class certification, appointment of Plaintiff Gore as class representative and Larry D. Drury as class counsel, directing class notice and setting a final fairness hearing.

THEREFORE, having considered the motion and supporting documents submitted as part of the settlement, the Court hereby **ORDERS** as follows:

1. **Settlement Class.** The Court finds: (a) that the members of the proposed class are so numerous—consisting of thousands of employers in the State who have paid the Surcharge—that the joinder of all such individuals as plaintiffs in this action would be impracticable; (b) that there are questions of law or fact common to the class, which common questions predominate over any questions affecting only individual members; (c) that the representative parties will fairly and adequately protect the interests of the class; and (d) that a class action is an appropriate method for the fair and efficient adjudication of the controversy. The Court further finds that the State imposes the Surcharge in a manner that applies generally to the proposed settlement class. Therefore, the Court finds that certification of the proposed settlement class is appropriate under 735 ILCS 5/2-802, and the following class of plaintiffs is hereby certified:

All employers who paid the Industrial Commission Operations Surcharge (also called the Workers' Compensation Commission Operations Surcharge) from July 1, 2003, to June 30, 2009.

2. **Class Representative.** Jack Gore d/b/a Sabra Management is appointed Class

Representative. Gore's claims and interest are typical of the claims and interests of the other class members, and he will adequately represent the claims and interests of the settlement class.

3. **Class counsel.** Larry D. Drury is appointed Class Counsel. Mr. Drury has been involved in this litigation since 2005 and has the knowledge and experience sufficient to represent the plaintiff class.

4. **Claims Administrator.** Robert Langendorfis appointed Claims Administrator.

5. **Preliminary Approval of Settlement Agreement, Release and Consent Decree.** The Court finds that the terms of the parties' Settlement Agreement, Release and Consent Decree are fair, reasonable and adequate to the Plaintiff Settlement Class. Specifically, the Court finds that the agreement, which designates Surcharge monies for purposes specifically related to the Workers' Compensation Commission, such as system and capital improvements, will benefit the Plaintiff Settlement Class and all parties who use the services of the Commission. The Court also finds that the claims process offers the opportunity for additional relief to the Plaintiff Settlement Class and for those former employers that no longer require the services of the Commission. The allocation of Surcharge monies for refunds to the Plaintiff Settlement Class and for Commission purposes, for retirement of a debt owed to the State's General Revenue Fund by the Commission's Rate Adjustment Fund, for relief from a potential liability to the Rate Adjustment Fund for which employers would be assessed, and for the state's General Revenue Fund represent a reasonable compromise of claims in light of the complexity and risk of further litigation. Therefore, the Court preliminarily approves the Settlement

Agreement, Release and Consent Decree executed by the parties.

6. **Notice of Settlement.** The Court hereby ORDERS that the state defendants shall provide notice to settlement class members by posting the notice, attached hereto as Exhibit A, on the Illinois Workers' Compensation Commission and Illinois Department of Insurance websites. The notice shall appear on the websites for a period commencing upon the entry of this order granting preliminary approval until 60 days following the second Publication Notice provided hereafter. The same notice shall be published once a week for two consecutive weeks, with one publication occurring on a weekend, beginning within two weeks after entry of this order granting preliminary approval. Publication Notice shall appear in the newspapers listed in paragraph 4.8.1 of the Settlement Agreement, Release and Consent Decree.

7. **Deadline for Submission of Claims, Objections and Exclusions by Members of the Settlement Class.** As stated in the notice to settlement class members, all claims must be submitted to the Claims Administrator on or before June 1, 2010. Objections and requests to be excluded from the settlement class must be filed with the Clerk of the Circuit Court of Cook County, with copies provided to Class Counsel and counsel for the state defendants on or before June 1, 2010.

8. **Final Fairness Hearing.** The Court ORDERS that a hearing for final approval of the Settlement Agreement and consent decree shall be held on June 16, 2010, at 11:00 a.m. Any interested person may appear at the final fairness hearing to show cause why the proposed Settlement Agreement, Release and Consent Decree should or should not be approved as fair, reasonable and adequate; provided, however, that no person shall be

heard or entitled to contest the terms of the Settlement Agreement, Release and Consent Decree unless that person has filed an objection with the Clerk of the Circuit Court of Cook County and served it upon counsel below by the deadline. Any class member who does not submit an objection in the manner provided above shall be deemed to have waived any objection to the class action settlement and shall forever be foreclosed from making any objection to the class certification and to the fairness, adequacy and reasonableness of the Settlement Agreement, Release and Consent Decree.

9. **Release of Protest Funds.** The Court ORDERS that the State Treasurer shall establish the Administration Fund as defined in the Settlement Agreement, Release and Consent Decree and transfer the amount of \$37,000 from the Protest Fund to the Administration Fund for the payment of publication costs as provided in paragraph 4.4.1(a).

Dated: _____

Class Counsel:

Larry D. Drury
Larry D. Drury Ltd.
205 W. Randolph St., Suite 1430
Chicago, IL 60606

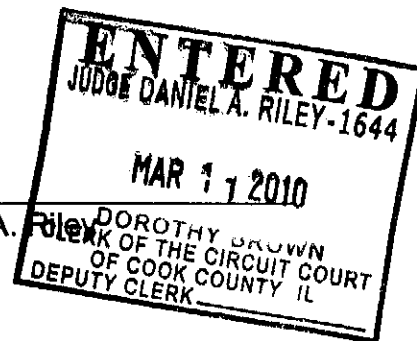
Counsel for State Defendants:

Lisa Madigan, Illinois Attorney General
Thomas A. Ioppolo, Assistant Attorney General
100 W. Randolph St., 13th Floor
Chicago, IL 60601

Claims Administrator:

Robert Langendorf
134 North LaSalle Street
Suite 1515
Chicago, IL 60602

Judge Daniel A. Riley



NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING

If you are an employer who has paid workers' compensation insurance in Illinois between July 1, 2003 and June 30, 2009, this class action lawsuit may affect your rights.

This Notice is being published by order of the Circuit Court of Cook County to inform you of the proposed settlement of a class action lawsuit brought by Jack Gore d/b/a Sabra Management ("Gore") as an intervenor in the case titled *Illinois State Chamber of Commerce v. Filan*, Case No. 04 CH 6750 (the "Gore Class Action"). The terms of that settlement are set forth in a proposed Settlement Agreement, Release and Consent Decree ("Consent Decree") entered into between the plaintiffs and the State Defendants (the Governor's Office of Management and Budget, the Illinois Department of Insurance, and the Illinois Workers' Compensation Commission) and numerous insurance companies which are also parties to the case. The Consent Decree concerns the Workers' Compensation Commission Operations Fund Surcharge ("Surcharge"), which is imposed by the State of Illinois on employers based upon the amount of workers' compensation insurance premiums they pay, primarily to fund the operations of the Illinois Workers' Compensation Commission.

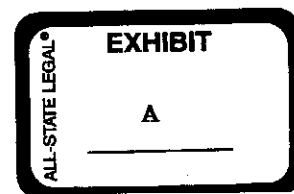
The parties to this lawsuit have reached a proposed settlement (including a settlement of the Gore Class Action) that, if approved by the Court, would provide certain rights and benefits to eligible employers that have paid the Surcharge from July 1, 2003, to June 30, 2009.

Who is included? You are a class member whose rights may be affected by the proposed Consent Decree if you are an employer who paid the Surcharge billed between July 1, 2003, and June 30, 2009. As required by law, employers were billed the Surcharge by their workers' compensation insurance company.

What does the proposed settlement provide? The Court is being asked to enter an order that, if approved, would provide certain rights and benefits (as more fully described in the Consent Decree) to employers who have paid the Surcharge. Under the settlement of the Gore Class Action, employers who can establish they paid the Surcharge during the relevant time period may submit a claim for a partial refund of Surcharge payments from the \$3,300,000 settlement fund. The amount refunded will depend on how much and when it was paid, as well as the number of claims made. If the settlement fund is insufficient to pay all claims made, each claim will be prorated. The State is also committing to devote a substantial portion of the Surcharge money collected both to upgrade the systems and operations of the Workers' Compensation Commission and to repay a debt to the Rate Adjustment Fund for which employers are responsible. Other Surcharge money will be deposited in the state's General Revenue Fund to meet other state financial obligations. Additional funds will be used for attorneys' fees and other administrative costs associated with the Consent Decree.

What are your rights?

You can remain a member of the class. You do not need to do anything to remain a Class Member. By remaining in the class, all of the Court's orders will apply to you and you will not be able to file your own lawsuit about any of the matters raised in the lawsuit. You will be bound by the terms of the Consent Decree.



You can exclude yourself. If you do not want to be a part of the settlement and you want to file a separate lawsuit about any of the matters involved in this case, you must exclude yourself from the Class by filing a request for exclusion with the Clerk of the Circuit Court of Cook County, 50 W. Washington St., Room 802, Chicago, IL 60602, with copies provided to Class Counsel and counsel for the State Defendants at the addresses provided below. The request must state your name, address and phone number, along with a signed statement that: "I/We hereby request that I/We be excluded from the proposed Gore Class Action settlement class in *Illinois State Chamber of Commerce v. Filan*, Case No. 04 CH 6750." Requests for exclusion must be postmarked by _____, 2010. If you do not send a request for exclusion by this date you will be included in the Class and bound by the terms of the Consent Decree.

You can object. If you do not exclude yourself from the Class, you may object to the Settlement by filing a written objection with the Clerk of the Circuit Court of Cook County, with copies provided to Class Counsel and counsel for the State Defendants at the addresses provided below. Objections must be postmarked by _____, 2010. Your objection must include your name, address and telephone number; the name and address of your lawyer, if any, who must file an appearance with the Clerk of the Circuit Court of Cook County and provide copies to Class Counsel and counsel for the State Defendants at their respective addresses below; a statement of all objections, including the factual and legal basis for your objection; and a statement whether you intend to appear at the hearing on final approval of the settlement. The Court will not consider any objections that are not mailed by _____, 2010, or that do not contain all of the required information.

Written requests to be excluded and objections must be mailed, via first class U.S. Mail, to Class Counsel and counsel for the State Defendants at the following addresses:

Class Counsel

Larry D. Drury
Larry D. Drury Ltd.
205 W. Randolph St., Suite 1430
Chicago, IL 60606

Counsel for the State Defendants

Thomas A. Ioppolo, Assistant Attorney General
Attorney General's Office
100 W. Randolph St., 13th Floor
Chicago, IL 60601

How to Receive Benefits. Eligible class members may request benefits by submitting a completed claim form, with any supporting documentation, to the Claims Administrator. The claim form may be obtained at <http://www.iwcc.il.gov> or by requesting one from the Claims Administrator by email to robert.langendorf@gmail.com.

Where to get more information. A copy of the Consent Decree, which includes all the terms of the settlement, and a claim form with instructions on how to submit a claim, can be found on the Illinois Workers' Compensation Commission website, <http://www.iwcc.il.gov>. The Consent Decree explains in more detail the terms of the settlement. If you have any questions for plaintiff's lawyers, you may write to Class Counsel at the address listed above.

When the final fairness hearing will be held to determine approval of the settlement. The Court will hold a hearing on _____, 2010, at _____ am/pm to consider whether to give final approval to the settlement, Class Counsel's request for attorney's fees and expenses of up to

\$350,000, and Gore's request for an incentive fee of \$3,000 to reimburse him for the risks he assumed and the value of his time expended on this lawsuit as Class Representative. The hearing will be held in Room 2508 of the Richard J. Daley Center, 50 W. Washington St., Chicago, Illinois.