

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHARLES JACKSON GASCHE, JR., DENNIS J.
HARRIS, GENE L. PETERSON, WILLIAM A.
SCHOKNECHT and JOHN J. SKIBA, individually and
on behalf of a Class of all others similarly situated,
Plaintiffs,

v.

ASWORTH CORPORATION,
Defendant.

Case No. 04C 0776

Judge David H. Coar

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

TO ALL PERSONS WHO WERE ENTITLED, ARE NOW ENTITLED OR WILL BE ENTITLED TO RECEIVE ANNUITY PAYMENTS UNDER EITHER PRUDENTIAL INSURANCE COMPANY OF AMERICA GROUP ANNUITY CONTRACT GA-8896 OR GROUP ANNUITY CONTRACT GA-8857:

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT THAT WOULD PROVIDE MONEY IN AMOUNTS DESCRIBED BELOW TO THE SETTLEMENT CLASS IN EXCHANGE FOR A RELEASE OF CLAIMS AGAINST THE DEFENDANT IN THE ACTION. THIS NOTICE INCLUDES IMPORTANT INFORMATION REGARDING YOUR RIGHT TO EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS OR OBJECT TO THE PROPOSED SETTLEMENT. IF YOU DO NOT REQUEST EXCLUSION, YOU WILL BE COVERED BY AND BOUND BY THE SETTLEMENT OF THIS ACTION, AND WILL, IF YOU ARE A PARTICIPATING MEMBER OF THE SETTLEMENT CLASS, SHARE IN THE DISTRIBUTION OF MONEY IF THE SETTLEMENT IS APPROVED.

Purpose of Notice

This Notice has been sent to you because you are or may be a member of the class of persons whose rights are being determined in this action. A proposed Settlement of this litigation has been reached. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court, this Notice will inform you of the terms of the proposed Settlement of this class action litigation and of the hearing (the "Fairness Hearing") to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement. This Notice describes the rights you may have in connection with the Settlement and what steps you may take in relation to the Settlement and this class action litigation.

Summary of Class Action Litigation

Braniff Airways, Inc. ("Braniff"), after entering Chapter 11 bankruptcy protection, terminated both its defined benefit pension plan for pilots ("A Plan") and defined contribution pension plan for pilots ("B Plan"). Following Braniff's bankruptcy, Asworth (then known as Dalfort Corporation) succeeded Braniff. Pursuant to a bankruptcy court order, Asworth used the assets of the terminated A Plan, among other moneys, to purchase Group Annuity Contract GA-8896 ("GA-8896") from Prudential Insurance Company of America ("Prudential"), to provide retirement annuities to former A Plan participants. Pursuant to a bankruptcy court order, Asworth used assets of the terminated B Plan (after lump sum distributions were made to participants who opted for them), among other moneys, to purchase from Prudential Group Annuity Contract GA-8857 ("GA-8857"), to provide retirement annuities to former B Plan participants. Asworth has always been the contract holder of GA-8896 and GA-8857 (together, "the Annuity Contracts") and, until December 2001, had membership rights in those contracts.

On or about December 2001, Prudential, in connection with its reorganization from a mutual company to a shareholder-owned company, transferred to Asworth, in exchange for Asworth's membership rights in the Annuity Contracts, common stock of Prudential Financial, Inc., 274,847 shares of which were attributable to GA-8896 and 33,246 shares of which were attributable to GA-8857 (the Prudential Financial, Inc. common stock transferred to Asworth by Prudential, including any split of such Stock following the transfer, shall be referred to as "PRU Common Stock").

On certain dates since December 2001, Prudential Financial, Inc. has paid Asworth cash dividends on the PRU Common Stock (these dividends and any dividends that Prudential Financial, Inc. may pay Asworth in the future on the PRU Common

Stock shall be referred to as the “Dividends”). In addition, interest has accrued on the Dividends based on short-term Applicable Federal Rates compounding annually (this interest together with any interest that will accrue on the Dividends in the future for the benefit of Asworth shall be referred to as the “Interest”).

Asworth has held and continues to hold the PRU Common Stock in a segregated account with an unrelated brokerage firm and the Dividends and Interest in a segregated depository account maintained by an affiliated entity (the “Constructive Trust Arrangement”) pending the resolution of the claims of Asworth and others with respect to such items. In particular, on January 30, 2004, Charles Jackson Gasche, Jr., Dennis J. Harris, Gene L. Peterson, William A. Schoknecht and John J. Skiba (the “Class Representatives”) filed the above-captioned action (the “Action”) in the United States District Court for the Northern District of Illinois, claiming under state law and the Employee Retirement Income Security Act that Asworth had an obligation to pay over all of the items in the Constructive Trust Arrangement to a class of former Braniff pilots and their survivors who constitute the annuitants under GA-8896 and GA-8857. Asworth denied the Class Representatives’ claims and instead claimed that it was entitled to all of the items in the Constructive Trust Arrangement.

The Class Representatives’ lead counsel is Cohen, Weiss and Simon, LLP (“CWS”). CWS has been appointed by the Court, for settlement purposes, as Counsel for the Settlement Class. Asworth is represented by Latham & Watkins LLP.

Definition of the Class

You may be a member of the Settlement Class if you were entitled, are now entitled or will be entitled in the future to receive annuity payments under either GA-8896 or GA-8857. The Settlement Class includes the estates of deceased individuals, unless a survivor of the deceased is currently receiving annuity payments, in which case the survivor and not the estate is a member of the Settlement Class. The Settlement Class does not include an individual who may at some future date become entitled to receive annuity payments as the result of a death of a Class Member.

Summary of Proposed Settlement

Under the proposed Settlement, Asworth will within seven (7) days of an agreed upon Effective Date defined in the Settlement Agreement, pay Class Counsel, from the Constructive Trust Arrangement, the following, to be held by Class Counsel in trust for the Settlement Class: (1) sixty percent (60%) of the PRU Common Stock (the “PRU Common Stock Component”); (2) cash equal in amount to sixty percent (60%) of the Dividends (the “Dividend Component”); and (3) cash equal in amount to sixty percent (60%) of the Interest (the “Interest Component”). Class Counsel will use this payment to create a settlement fund (the “Settlement Fund”). Class Counsel shall be entitled to withdraw from the Settlement Fund an amount to be determined by the Court for their attorneys’ fees and expenses, which amount shall be no more than twenty-three percent (23%) of the value of the Settlement Fund. Class Counsel may also withdraw from the Settlement Fund only such amounts as are reasonable and necessary to pay the actual costs of administering the Settlement Agreement, in an amount of no more than three percent (3%) of the Settlement Fund or \$200,000, whichever is greater. Class Counsel shall then distribute the remainder of the Settlement Fund (the “Fund Balance”) to the members of the Settlement Class. In distributing the Fund Balance, Class Counsel shall distribute Eighty-Nine and Two-Tenths Percent (89.2%) of the Fund Balance (the “GA-8896 Portion”) to those participating members of the Settlement Class who were entitled, are now entitled or will be entitled to annuity payments under GA-8896 (the “GA-8896 Annuitants”) and shall distribute Ten and Eight-Tenths Percent (10.8%) of the Fund Balance (the “GA-8857 Portion”) to those participating members of the Settlement Class who were entitled, are now entitled or will be entitled to annuity payments under GA-8857 (the “GA-8857 Annuitants”). These percentages are based on the relative percentage of PRU Common Stock given to Asworth for its respective membership interests in each Annuity Contract pursuant to Prudential’s reorganization.

Each GA-8896 Annuitant shall share in the distribution of the GA-8896 Portion in a proportion equal to the ratio between his/her actual or estimated accrued benefit under the A Plan at the time of its termination and the sum total of the actual or estimated accrued benefits at the time of termination of the A Plan of all of the GA-8896 Annuitants. Each GA-8857 Annuitant shall share in the distribution of the GA-8857 Portion in a proportion equal to the ratio between the estimated value of his/her account in the B Plan at the time of its termination and the sum total of the estimated values of the accounts in the B Plan at the time of its termination of all GA-8857 Annuitants.

The following hypothetical example is intended for illustration purposes only: If PRU Common Stock were worth \$40 per share on the date that Asworth transfers certain of the items in the Constructive Trust Arrangement, the Constructive Trust Arrangement would have a value (not including Dividends and Interest) of approximately \$12.3 million, and the transfer from Asworth creating the Settlement Fund would be worth 60% of that value, or approximately \$7.4 million. Assuming attorneys’ fees and expenses of 23% and costs of administering the Settlement Fund of \$200,000 were withdrawn from the Settlement Fund, the Fund Balance would be worth approximately \$5.5 million. The GA-8896 Portion would be worth 89.2% of the Fund Balance, or approximately \$4.9 million, and the GA-8857 Portion would be worth 10.8%, or approximately \$594,000. If the total value of the actual or estimated accrued benefits under the A Plan at the time of its termination of all the GA-8896 Annuitants were \$2 million per month, and John Smith, a hypothetical GA-8896 Annuitant, had an estimated accrued benefit under the A Plan at the time of its termination of \$800 per month, or .04% of the total, he would receive a distribution, subject

to applicable tax withholdings, of .04% of \$4.9 million, or \$1,960. If the total of the estimated value of accounts in the B Plan at the time of its termination of all GA-8857 Annuitants was \$9.5 million, and the hypothetical John Smith was a GA-8857 Annuitant with a B Plan account at the time of its termination with an estimated value of \$25,000, or .26% of the total, he would receive a distribution, subject to applicable tax withholdings, of .26% of \$594,000, or \$1,544.

If a member of the Settlement Class has died prior to distribution of the Fund Balance, Class Counsel shall make the distribution otherwise payable to that deceased member to any one survivor of the deceased who is currently receiving annuity payments under GA-8896 or GA-8857 or, if no such survivor is currently receiving payments, to the estate of the deceased. In making distributions of the Settlement Fund to members of the Settlement Class, Class Counsel shall make such tax withholdings as are required by law.

In consideration for Asworth's transfer of certain items in the Constructive Trust Arrangement, the proposed Settlement provides for a broad release of claims and a waiver of rights against Asworth. Upon the Court's final approval of the Settlement, the Court will enter Final Judgment dismissing the Action and the claims asserted therein against Asworth with prejudice as to the members of the Settlement Class who do not file a proper and timely Request for Exclusion from the Class. Also, pursuant to the terms of the Settlement, the members of the Settlement Class who do not file a proper and timely Request for Exclusion are deemed to have waived the protection provided by any state statutes or codes with respect to unknown claims at the time of a general release, and the general release set forth in the Settlement will be effective to forever discharge claims arising from or relating to Asworth's receipt of the PRU Common Stock, the Dividends and the Interest as well as the creation of the Constructive Trust Arrangement by members of the Settlement Class whether known or unknown by those members.

This Notice is merely a summary of the proposed Settlement, and does not describe all of the details. For full details of the Settlement, you may wish to review the proposed Stipulation of Settlement, as well as Plaintiffs' Memorandum In Support Of The Settlement Agreement and accompanying declaration, copies of which are posted on the following website: www.CompleteClaimSolutions.com.

Reasons for Settlement

Although the Class Representatives believe in the merits of the claims asserted in this Action, Asworth has denied the validity of these claims. This Settlement was reached to eliminate the risks that every party bears in litigation and does not constitute an admission or concession of any kind on the part of any party. The parties who have reached this Settlement believe that it is fair and reasonable. The Court will hold the Fairness Hearing to approve or disapprove of the Settlement before it becomes final.

Hearing on Proposed Settlement

The Court will hold the Fairness Hearing on March 15, 2005 at 9:30 am. before the Honorable Judge David H. Coar, United States District Judge, in Courtroom No. 1478 of the United States Courthouse, which is located at 219 S. Dearborn Street, Chicago, Illinois 60604. The purpose of this hearing will be to determine: (1) whether the Settlement should be approved as lawful, fair, reasonable, and adequate; (2) whether a class should be certified for purposes of the Settlement; (3) whether the application by Class Counsel for an award of attorneys' fees should be approved; (4) and whether a judgment that dismisses each and every cause of action asserted in the Action against Asworth with prejudice to the Settlement Class should be rendered. The Court may adjourn or continue the hearing without further notice to you or other members of the Settlement Class.

Right to Object

If you object to any aspect of the Settlement, including the plan for distributing the funds or the application for attorneys' fees, you may file an objection with the Court. Such objection must be in writing and mailed, postmarked NO LATER THAN January 24, 2005, to the Clerk of the Court, United States District Court for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, IL 60604, with a copy mailed at the same time to Peter D. DeChiara, Esq., Cohen, Weiss and Simon LLP, 330 West 42nd Street, New York, NY 10036-6976, and Matthew W. Walch, Esq., Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800 Sears Tower, Chicago, Illinois 60606. Be sure to include the name of the case and the case number at the top of your objection. You have a right to appear through counsel. If you file a written objection you may, but need not, attend the Fairness Hearing. However, to make an oral presentation at the hearing you must have filed a written objection and your written objection must indicate that you plan to make such an oral presentation. If you do not file a written objection, you waive any right to appeal from any court ruling in connection with the Stipulation of Settlement or the award of attorneys' fees.

YOU DO NOT NEED TO TAKE ANY ACTION TO INDICATE APPROVAL FOR THE SETTLEMENT.

Request for Exclusion

If you meet the definition of a member of the Settlement Class, you will be deemed a member of the Settlement Class and bound by the Settlement, the orders or the Final Judgment to be entered in the Action unless you request to be excluded from the Settlement, *i.e.*, "opt out" of the Settlement Class, in accordance with the following instructions. You may "opt out" from

the Settlement of this Action by mailing a request in writing that is postmarked NO LATER THAN January 24, 2005. To request exclusion, you must put in writing your request to be excluded from the Settlement Class, sign and date it, include your full name, address and telephone number, and mail it to Class Counsel at the following address: Peter D. DeChiara, Esq., Cohen, Weiss and Simon LLP, 330 West 42nd Street, New York, NY 10036-6976. **IF YOU REQUEST EXCLUSION FROM THE SETTLEMENT CLASS, YOU WILL NOT BE BOUND BY THE SETTLEMENT, THE ORDERS OR THE FINAL JUDGMENT TO BE ENTERED IN THE ACTION, AND YOU WILL NOT BE ENTITLED TO RECEIVE ANY MONEY UNDER THE SETTLEMENT.**

In the event that more than twenty-five (25) potential members of the Settlement Class submit valid Requests for Exclusion, Asworth will have the right to terminate the Settlement. If the Settlement is terminated, no one will receive any money under the Settlement.

To Participate in the Settlement Class

You will receive no further notices concerning approval of this proposed Settlement Agreement. If the Court approves the Settlement and you do not “opt out,” you may receive a *pro rata* share of the Settlement Fund (less attorneys’ fees and expenses of administration of the Settlement Fund) following the Court’s final approval of the Settlement.

IF YOU WANT TO PARTICIPATE IN THE SETTLEMENT, YOU NEED TAKE NO ACTION AT THIS TIME.

Address Correction Requested

If this Notice has been sent to the wrong address, or if your address changes in the future, please send prompt written notification of your correct address to:

Gasche v. Asworth Settlement, c/o Complete Claim Solutions, Inc., P.O. Box 24663, West Palm Beach, FL 33416

Dated: December 22, 2004

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

**DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.
THE CLERK IS NOT ABLE TO PROVIDE ANY INFORMATION OR ADVICE REGARDING THIS NOTICE.**
