



AlaFile E-Notice

35-CV-1995-000066.00

Judge: EDDIE HARDAWAY

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF GREENE COUNTY, ALABAMA

AUBREY WAYNE TIDMORE, ET AL VS STATE MUTUAL INSURANCE CO. ET AL
35-CV-1995-000066.00

The following matter was FILED on 1/4/2016 11:35:59 AM

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CIRCUIT COURT CLERK
GREENE COUNTY, ALABAMA
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IN THE CIRCUIT COURT OF
GREENE COUNTY, ALABAMA



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35-CV-1995-000066.00
CIRCUIT COURT OF
GREENE COUNTY, ALABAMA
MATTIE ATKINS, CLERK

AUBREY WAYNE TIDMORE, et al.,)
)
 Plaintiffs,)

v.)

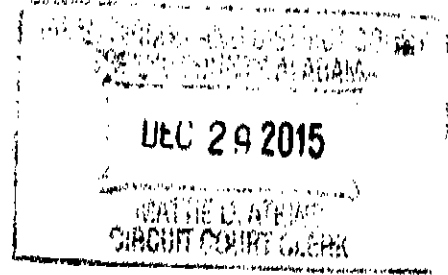
STATE MUTUAL INSURANCE)
COMPANY, et al.,)
)
 Defendants.)

CAROL BELL, et al.,)
)
 Plaintiffs,)

v.)

STATE MUTUAL INSURANCE)
COMPANY, et al.,)
)
 Defendants.)

CIVIL ACTION NO.: CV-95-066



CIVIL ACTION NO.: CV-96-040

Order Granting State Mutual's Verified Motion for Further Relief as to the Original Plaintiffs and the 2010 Consent Decree Policyholders and Preliminarily Approving the Consent Decree Between State Mutual and the Newly Added Policyholders/Parties

This cause came before the Court on State Mutual's November 22, 2015 Verified Motion for Further Relief and the Plaintiff class members December 1, 2015 Response in opposition to the Motion for Further Relief and objection to the issuance of injunctive relief requested by State Mutual.

The 2010 Consent Decree policyholders have been represented in these proceedings by Attorney James Stewart, who served as a Court-appointed Guardian Ad Litem for a group of Life Span policyholders who were added as necessary parties during the 2009-2010 round of litigation in this case. These policyholders have filed no opposition to the Motion for Further Relief.

On November 23, 2015, the Court heard State Mutual's request for a Temporary Restraining Order ("TRO") and granted a TRO in State Mutual's favor. Counsel for the Plaintiff class members did not attend the hearing. Mr. Stewart attended the hearing.

On December 2, 2015, the Court heard additional testimony and reviewed the evidence adduced at said hearing on State Mutual's request for a preliminary injunction. Counsel for the Plaintiff class members did not attend the hearing.

The December 2, 2015 hearing focused solely on preliminary injunctive relief against the original class members because the 2010 Consent Decree policyholders, represented by Attorney Steward, and the newly added policyholders, represented by Court-appointed Guardian Brenda Pompey, consented to an extension of the November 23, 2015 TRO until the Court's December 29, 2015 hearing on the merits of the Motion for Further Relief for the Plaintiff class members and the 2010 Consent Decree policyholders.

On December 29, 2015, State Mutual and Attorney Brenda Pompey, the Court-appointed Guardian Ad Litem for the Select Whole Life, LP-100, and a miscellaneous group of dividend participating State Mutual policyholders, referenced in the November 22, 2015 Motion for Further Relief, jointly moved the Court to preliminarily approve the Consent Decree that is attached as Exhibit A to their Joint Motion for Approval of the Consent Decree.

Based upon the findings of fact and conclusions of law below, the Court: (a) grants State Mutual's Motion for Further Relief as to the Plaintiff class members and the 2010 Consent Decree policyholders/newly added parties, and (b) preliminarily approves the settlement embodied in the Consent Decree drafted by State Mutual and the newly added policyholders/parties.

I. Procedural Matters

In granting the relief requested in the Motion for Further Relief and in preliminarily approving the Consent Decree, the Court makes the following findings of fact and conclusions of law:

1. State Mutual's Motion for Further Relief seeks declaratory and injunctive relief with respect to the Company's right to adjust dividends across-the-board on approximately 2,722 Select Whole Life Policies, 2,691 LP-100 Policies, and 659 other dividend participating policies issued by State Mutual that were not covered by the Court's June 15, 1998 Order and Final Judgment or by the March 1, 2010 Consent Decree. The 6,072 dividend participating policies referenced in the Motion for Further Relief are held by 5,645 distinct policyholders.
2. The Court granted State Mutual's request for a TRO following an evidentiary hearing on November 23, 2015.
3. The Court heard testimony and reviewed the additional evidence adduced at the December 2, 2015 hearing on State Mutual's request for a preliminary injunction. The hearing focused solely on preliminary injunctive relief against the Plaintiff class members because the 2010 Consent Decree policyholders and the newly added policyholders represented by Court-appointed Guardian Brenda Pompey consented to an extension of the November 23, 2015 TRO until the Court's December 29, 2015 hearing on the merits for the Plaintiff class members and 2010 Consent Decree policyholders.
4. During the December 2, 2015 hearing, the Court reviewed State Mutual's Motion for Further Relief pertaining to approximately 6,072 whole life dividend participating policies that were not included in the original 1998 class action or the 2010 Consent

Decree. The Court has also heard testimony from Douglas M. Price, State Mutual's Consulting Actuary, and Richard Burton, the company's Vice President and Corporate Compliance Officer. Their testimony was consistent with and supported the factual averments presented in the Motion for Further Relief.

5. After the December 2, 2015 hearing, the Court granted preliminary injunctive relief against the Plaintiff class members. The Court set December 29, 2015 as the date of the preliminary hearing for the newly added policyholders and for the hearing on the merits of the Motion for Further Relief for the Plaintiff class members and the 2010 Consent Decree policyholders.
6. Based upon the evidence established in the record to date, the 1998 Plaintiff class action members do not appear to be adversely impacted in any way by the relief requested by State Mutual in the Motion for Further Relief.
7. Based upon the evidence established in the record to date, the 2010 Consent Decree policyholders do not appear to be adversely impacted in any way by the relief requested by State Mutual in the Motion for Further Relief.
8. The Court has jurisdiction over the matters specified in the Motion for Further Relief. By Order and Final Judgment dated June 15, 1998, the Court reserved and maintained

“continuous jurisdiction over State Mutual and the class members with respect to all matters relating to the settlement or the consummation of the settlement; the validity of the settlement; the construction and enforcement of the settlement in any orders entered pursuant thereto; in any disputes which may arise between class members with respect to the persons entitled to receive the proceeds of any amounts payable to class members under the Settlement Agreement; and the entry and enforcement of this final judgment and the injunctions contained herein, including modification of this final judgment, jurisdiction to revoke this Order and Final Judgment in its entirety and reinstate all claims dismissed or claims, actions, causes of action and liabilities related pursuant to paragraph 5 hereof; to tax court costs, and all other matters pertaining to the settlement or its implementation and enforcement”. (Emphasis Added.)

9. The Court also retained jurisdiction in the 2010 Consent Decree “for the purpose of monitoring.....compliance with the injunctive relief against [the covered policyholders], and otherwise to enforce this decree”. See, March 1, 2010 Consent Decree, Paragraph 4, page 10.
10. The Motion for Further Relief before the Court involves certain dividend participating whole life policies/riders where the dividends were not lowered when the dividends on the LP95, LP90, LP65 and GPWL policies were lowered in 1998, or when the dividends were lowered on the Life Span policyholders covered under the 2010 Consent Decree.
11. Pursuant to the 1998 Court Order and the 2010 Consent Decree, State Mutual reserved unto itself the right to declare the amount of annual dividends in the future using its sound business judgment. Prior notices and explanations have been given to all dividend participating policyholders setting forth the non-guaranteed nature of the dividends and the company’s reservation of the rights to declare an amount of annual dividends in the future. State Mutual’s contractual and judicially recognized right in this regard is now the law of the case.
12. The testimony of Douglas M. Price supports a projected dividend cut on all remaining dividend participating whole life term policies. These cuts will track the Court-approved “Contribution Principal” to bring the dividends of the dividend payments to the newly added policyholders in line with the class action policies and the Life Span term policies covered in the 2010 Consent Decree. Actuarial Standard of Practice No. 15 supports using the same dividend factor between similar classes of policies and/or riders such as the ones referenced in the 1998 Order, the 2010 Consent Decree, and the pending Motion for Further Relief.

13. The Court finds that State Mutual's implementation of the same dividend calculation factor between similar class of policies and/or riders is appropriate from a contractual, equitable, and business judgment standpoint.
14. The Plaintiff class members and 2010 Consent Decree policyholders will suffer no economic harm by the uniform application of the "Contribution Principle" to all dividend participating life insurance policies. In fact, they may, in time, become beneficiaries of the uniform application of the "Contribution Principle".
15. Attorney Brenda Pompey, the Guardian Ad Litem for the policyholders added to the litigation by the TRO, received the required notice of the December 2, 2015 hearing and attended the hearing.
16. Since her appointment as Guardian Ad Litem on November 23, 2015, there has also been an extensive sharing of documents, policyholder information, and expert witness testimony between State Mutual and Attorney Pompey on a voluntary, expedited, and nearly daily basis. This is the same policyholder and expert witness information that would have been shared through a prolonged formal discovery process in the case.
17. Attorney Pompey has also retained Ms. Karen C. Simmons, a highly qualified CPA firm with an extensive background in life insurance products, to advise her on this matter. Attorney Pompey and Ms. Simmons have interviewed Mr. Doug Price about the actuarial issues in the case. Attorney Pompey has also conducted numerous phone conversations with State Mutual's legal counsel and administrative personnel in the discharge of her Guardianship duties. Finally, Attorney Pompey has talked to each and every policyholder who has contacted her with a question about the litigation.
18. Furthermore, the Court afforded the newly added policyholders an opportunity to retain,

at their own expense, private counsel of their choice to represent their legal interests in future proceedings in this case. The parties are not aware of any policyholder in this group who has chosen to do so.

19. A descriptive notice of the Motion for Further Relief and of their procedural Due Process right to be heard at the December 29, 2015 hearing on the preliminary injunction against them and the subsequent hearing on the merits of the Motion was mailed to the newly added policyholders, via First Class U.S. mail, commencing on December 4, 2015. In furtherance of the notice requirement, State Mutual established a website for the newly added policyholders with historical information about the case, including a reproduction of the Court's previous Orders in the case, and ongoing information about the Motion for Further Relief.
20. Attorney Pompey has conducted dozens of phone calls with policyholders affected by the Motion for Further Relief and has mailed to all the policyholders who contacted her directly detailed information about the case and their rights as policyholders. To date, none of the policyholders represented by Attorney Pompey has contested State Mutual's contractual and judicially recognized right to adjust the dividends on their policies.
21. State Mutual will hold its board meeting on December 30, 2015 to apply the "Contribution Principle" uniformly to all dividend participating policies. This action sets the Company's liabilities for 2016.

II. Consent Decree Terms and Conditions

22. State Mutual and the Guardian Ad Litem, after extensive communications and numerous telephonic meetings, have negotiated an amicable resolution to the matters in the pending motion relating to the newly added parties, and are desirous of implementing this

settlement in the form of a consent decree. These parties have agreed to the form and content of the attached Consent Decree and believe that the Court's entry of this decree will effectuate the due process mandates of the United States Constitution and the substantive laws of the State of Alabama and other jurisdictions where these the newly added parties reside.

23. In entering into the settlement embodied in the Consent Decree, the newly added parties and State Mutual expressly waive their rights to a further hearing on the Motion for Further Relief and agree to the findings set forth in the Consent Decree.
24. The newly added parties were properly served with adequate notice of the pending proceedings on State Mutual's Motion for Further Relief and their right to a meaningful hearing on the motion. The Guardian Ad Litem approved the form and content of the notice.
25. The Guardian Ad Litem was provided the names, addresses and contact information on all of the non-class member policyholders who were added as parties for the purpose of enforcing the Court's prior Orders, including its December 2, 2015 Order.
26. Attorney Pompey has 34 years of experience as a lawyer, has a background as an administrative law judge and mediator, and has plenty of experience practicing before the Court. Attorney Pompey has devoted significant time and resources to protecting and advancing the substantive rights of the newly added parties, including working on Christmas Eve, Christmas Day, and the Christmas weekend on this case.
27. The Guardian has conferred with all of the newly added parties who have contacted her directly with questions and comments about the pending Motion for Further Relief. Based upon these questions and comments, the Guardian negotiated a tangible benefits

package for all policyholders in the group she represents. These benefits are substantive and were achieved through the representational efforts of the Guardian. The Guardian believes that these benefits, when viewed against the inherent risks of continued litigation on State Mutual's pending Motion for Further Relief, serve the best interests of the newly added policyholders/parties.

28. State Mutual, while denying the Company had a legal duty to provide any benefits to the newly added parties, has agreed to do so as valuable consideration in the settlement embodied in this Consent Decree.
29. The settlement benefit package to the newly added parties shall include the following one-time benefits:
 - a. The entire block of policies in the dividend participating policyholder groups represented by the Guardian Ad Litem has \$238 million of Face Amount insurance;
 - b. State Mutual shall provide a one percent additional death benefit (with no cash value adjustment) to each policy at no cost to the policyholder;
 - c. The aggregate economic benefit to the newly added policyholder groups would be about \$2.38 million; and
 - d. The Company shall make the required adjustment to the Company's reserves for this customer appreciation package at the time the benefit to the affected policyholders is given final approval by the Court.
30. The parties further agreed that in consideration for the substantive benefits extended to the newly added parties in this Consent Decree, the temporary restraining order against them entered on November 23, 2015 and extended on December 2, 2015 shall be made a

permanent injunction.

31. While approximately 5,465 newly added parties were served with proper notice of the December 29, 2015 hearing on State Mutual's requested relief against them, less than 100 of these policyholders have contacted the Guardians Ad Litem with questions or comments regarding this litigation. None has filed any opposition to the requested relief. Additionally, none has asked the Court to opt out of the proceedings.
32. The Court finds that the Motion for Further Relief is not a re-litigation of State Mutual's right to cut the dividends, as codified in the June 15, 1998 Order and Final Judgment and in the March 1, 2010 Consent Decree. The Company enjoys that right without judicial review. What State Mutual sought in its Motion for Further Relief was the judicially recognized right to implement these cuts across-the-board for all policyholders who hold dividend participating policies and riders, as required by Actuarial Standard No. 15.
33. To the extent that there have been policyholder concerns and/or opposition to State Mutual's Motion for Further Relief, it centers on the mistaken belief that the Company has no legal right to reduce dividends on these policies and riders using its sound business judgment. The policies and marketing materials accompanying the policies at issue specifically state that these dividends are not guaranteed. Additionally, the major policyholder concerns and/or opposition centered around a fear that their policies were being terminated or the face value of their policies would not be honored upon surrender. These concerns are without merit, as State Mutual is not canceling any policies and will honor all paid policies.
34. In light of the clear facts in this case and the controlling case law concerning the Court's power to effectuate and to protect its jurisdiction and its decrees, the Court finds that

State Mutual would likely have prevailed on the merits of this case had this settlement not been reached by Attorney Pompey and State Mutual.

35. The Consent Decree provides the newly added policyholders/parties substantial and meaningful relief that they would not have otherwise been entitled to enjoy under their dividend participating policies and riders.
36. State Mutual will provide the benefits package described in the Consent Decree to the newly added parties after final approval of the Decree and as soon as it is administratively practical to do so.
37. The settling parties request the Court to set a hearing date in February of 2016 to consider final approval of the Consent Decree. Within 10 days from the date of this Order, State Mutual shall post a notice of this hearing date on the website maintained for the newly added parties, together with a copy of the Joint Motion for Approval of the Consent Decree, a copy of the Consent Decree itself, and a copy of this Order preliminarily approving the Consent Decree.
38. The settling parties have requested the Court shall retain jurisdiction over the newly added policyholders/parties for the limited purpose of monitoring the full implementation of the benefits package awarded them and compliance with the injunctive relief against them, and otherwise to enforce this decree.
39. State Mutual and the Guardians Ad Litem have agreed that Attorneys Brenda Pompey and James Stewart shall be entitled to reasonable fees and expenses in this case for the professional services rendered by them on behalf of their respective policyholder groups in connection with the Motion for Further Relief. The parties will make a good faith effort to agree on the amount of the attorney's fees and expenses due the Guardians. If

the parties cannot agree on the amount due the Guardians, the parties request the Court to determine this amount using the following factors to establish a reasonable fee:

- a. The time and labor required;
- b. The novelty and difficulty of the questions raised in the case regarding the newly added parties;
- c. The skill required to perform the legal services properly;
- d. The preclusion of other employment by the attorneys due to their acceptance of this case;
- e. The customary fee;
- f. Whether the fee is fixed or contingent;
- g. The time limitations imposed by the clients or circumstances;
- h. The amount of money involved;
- i. The experience, reputation and ability of the attorneys in this case;
- j. The "undesirability" of the case;
- k. The nature and length of the professional relationship with the clients; and
- l. The cost to represent the clients in similar cases.

40. State Mutual has agreed to pay the Court-ordered attorney's fees to the two Guardians within 10 days from the date of final approval of the Consent Decree.

III. Permanent Injunctive Relief Against the Plaintiff Class Members and the 2010 Consent Decree Policyholders.

41. Pursuant to Rule 65 of the Alabama Rules of Civil Procedure, the Court finds that State Mutual had clearly shown in (a) the Verified Motion for Further Relief, (b) the record of the TRO hearing, (c) the testimony adduced at the December 2, 2015 hearing, and the testimony adduced at the December 29, 2015 hearing that immediate and irreparable injury, loss, or damage would result to State Mutual in the absence of a permanent injunction. This irreparable injury, loss or damage is described in detail in the Court's December 2, 2015 Preliminary Injunction and in this Order.

42. Based upon the Court's review of the testimony and evidence, the Plaintiff class members and the 2010 Consent Decree policyholders do not appear to be adversely impacted in any way by the declaratory or injunctive relief requested by State Mutual in the Motion

for Further Relief. Furthermore, based upon the totality of evidence before the Court, the only parties that appeared to be adversely affected are the 5,465 newly added policyholders identified in the Motion for Further Relief. These policyholders/newly added parties are well represented by Attorney Brenda Pompey, who was appointed by the Court as Guardian Ad Litem for these policyholders in the November 23, 2015 TRO.

IV. Preliminary Approval of the Consent Decree

43. In the Court's December 2, 2015 Preliminary Injunction, the Court carefully considered all of the objections of class counsel on behalf of the class members and found that they were without merit. As stated above, the Court has jurisdiction over the matters specified in the Motion for Further Relief.
44. Having affirmed State Mutual's right to cut dividends for Plaintiff class members in accordance with the "Contribution Principle" set out in the June 15, 1998 Order and Final Judgment, the central question for preliminary and final approval of the Consent Decree is whether the newly added parties have offered or could offer the Court credible evidence and/or recognized legal authority as to why the across-the-board dividend cuts approved in the 1998 and 2010 Orders should not apply to them through the Court's issuance of a preliminary and permanent injunctions. As mentioned above, the Motion for Further Relief is not a re-litigation of State Mutual's right to cut the dividends, as codified in the June 15, 1998 Order and Final Judgment and March 1, 2010 Consent Decree. The Company enjoys that right without judicial review. What State Mutual sought in its Motion for Further Relief was a declaration of its judicially recognized right to implement these cuts across-the-board for all policyholders who hold dividend participating policies and riders, as required by Actuarial Standard No.15.

45. The newly added policyholders have not articulated any legally defensible argument as to why State Mutual should not apply Actuarial Standard No. 15 across-the-board to their policies since they provide the same or substantially similar benefits as the policies and riders of the original Plaintiff class members in this case.
46. The Court adopts the record of the November 23, 2015 and December 2, 2015 hearings in support of these findings, together with the record developed during the December 29, 2015 hearing.
47. The Consent Decree entered herein provides the newly added parties substantial and meaningful relief that they would not otherwise be entitled to enjoy under their dividend participating policies and riders.
48. The Court specifically finds that State Mutual, by stipulation of the Guardian and the evidence adduced at the November 23, 2015, December 2, 2015, and December 29, 2015, hearings, carried its burden of proof for the issuance of a permanent injunction against the newly added parties. The Company demonstrated: (a) that there is a substantial threat that, without the injunction State Mutual, would suffer irreparable injury; (b) that State Mutual has no adequate remedy at law; (c) that State Mutual has demonstrated its entitlement to the permanent injunction based upon the merits of the case; (d) that the hardship imposed on the new added parties by the issuance of the injunction will not unreasonably outweigh the benefits accruing to State Mutual; and (e) that granting the injunction will not disserve the public interest.

Based upon the above findings of fact, conclusions of law, and agreements between the parties, the Court **Orders, Adjudges and Decrees** as follows:

1. Any and all objections of the Plaintiff class members, the 2010 Consent Decree


policyholders, and/or the newly added non-class member policyholders to the across-the-board application of Actuarial Standard No. 15 regarding dividend cuts for their dividend participating policies and riders are hereby overruled.

2. The Plaintiff class members and 2010 Consent Decree policyholders are hereby permanently enjoined and prohibited from prosecuting, filing, maintaining, pursuing or participating as a litigant in any separate action asserting any claim arising from or relating to the subject matter of State Mutual's Motion for Further Relief and the lowering or reduction of the dividend on their policies/riders as defined in the original action and the 2010 Consent Decree.
3. The newly added policyholders are hereby preliminarily and permanently enjoined and prohibited from prosecuting, filing, maintaining, pursuing or participating as a litigant in any separate action asserting any claim arising from or relating to the subject matter of State Mutual's Motion for Further Relief and the lowering or reduction of the dividend on their policies/riders as defined in the Motion for Further Relief.
4. State Mutual shall provide the benefits package, as described in this Consent Decree, to the newly added parties after final approval of the Consent Decree and as soon as it is administratively practical to do so. The Company shall provide notice of this Consent Decree and the award of the benefits package to all of the newly added parties within fourteen (14) days of the Court's preliminary approval of this Consent Decree.
5. The Court sets a hearing date of February 19, 2016, at the ~~Green~~ County Courthouse in Eutaw, Alabama, to consider final approval of the Consent Decree. State Mutual shall post a notice of this hearing date on the website maintained for the newly added policyholders/parties, together with a copy of the Joint Motion for Approval, the Consent

Decree, and the Court's Order preliminarily approving the Consent Decree. In the hearing for final approval, the newly added policyholders/parties may appear in person or by counsel of their choosing to support or object to the Consent Decree. They may also seek to opt out of these proceedings.

6. Pending final approval of the Consent Decree, the Court shall retain jurisdiction over the newly added policyholders/parties for the limited purpose of (a) monitoring the full implementation of the benefits package awarded to them and (b) monitoring these policyholders' compliance with the injunctive relief against them, and otherwise to enforce this Decree.
7. The Court orders State Mutual to pay the agreed upon attorney's fees to the two Guardians within ten (10) days from the date of final approval of the Consent Decree.
8. Upon final approval, the Consent Decree shall constitute a Final Judgment with respect to the newly added policyholders/parties.

Done this 29th day of December 2015.



Hon. Eddie Hardaway, Jr.
CIRCUIT JUDGE