



AlaFile E-Notice

35-CV-1995-000066.00

Judge: EDDIE HARDAWAY

To: DONALD V WATKINS
dvw@donaldwatkins.com

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 12/29/2015 6:51:53 AM

D001 STATE MUTUAL INSURANCE CO. % THOMAS CARDEN
MOTION TO PRELIMINARILY APPROVE CONSENT DECREE
[Filer: WATKINS DONALD VARNADO]

Notice Date: 12/29/2015 6:51:53 AM

MATTIE ATKINS
CIRCUIT COURT CLERK
GREENE COUNTY, ALABAMA
400 MORROW AVENUE
EUTAW, AL 35462

205-372-3598
mattie.atkins@alacourt.gov

STATE OF ALABAMA

Unified Judicial System

Revised 3/5/08

Case



ELECTRONICALLY FILED
12/29/2015 6:51 AM
35-CV-1995-000066.00
CIRCUIT COURT OF
GREENE COUNTY, ALABAMA
MATTIE ATKINS, CLERK

35-GREENE

 District Court
 Circuit Court

CV19

 AUBREY WAYNE TIDMORE, ET AL VS STATE
MUTUAL INSURANCE CO. ET AL
CIVIL MOTION COVER SHEET
 Name of Filing Party: D001 - STATE MUTUAL INSURANCE CO. %
THOMAS GARDEN

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

 Oral Arguments Requested

DONALD V WATKINS

 2170 HIGHLAND AVE S SUITE 100
BIRMINGHAM, AL 35205

Attorney Bar No.: WAT022

TYPE OF MOTION**Motions Requiring Fee****Motions Not Requiring Fee**

- Default Judgment (\$50.00)
Joinder in Other Party's Dispositive Motion (i.e. Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative Summary Judgment(\$50.00)
Renewed Dispositive Motion(Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56(\$50.00)
- Motion to Intervene (\$297.00)
- Other _____
pursuant to Rule _____ (\$50.00)

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other Motion to Preliminarily Approve Consent
pursuant to Rule 19 and 23 (Subject to Filing Fee)

*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.

 Local Court Costs \$ 0.00

Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees)

Date:

12/29/2015 6:48:25 AM

Signature of Attorney or Party:

/s/ DONALD V WATKINS

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



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

AUBREY WAYNE TIDMORE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.: CV-95-066
)	
STATE MUTUAL INSURANCE COMPANY, et al.,)	
)	
Defendants.)	
)	
CAROL BELL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.: CV-96-040
)	
STATE MUTUAL INSURANCE COMPANY, et al.,)	
)	
Defendants.)	

Joint Motion for Preliminary Approval of Consent Decree

I. Procedural Background

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 Verified Motion for Further Relief jointly move the Court to preliminarily approve the Consent Decree attached hereto as Exhibit A. As grounds for this motion, the settling parties state as follows:

1. On November 22, 2015, defendant State Mutual filed a Verified Motion for Further Relief seeking 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 Temporary Restraining Order ("TRO") following a hearing on November 23, 2015.
3. The Court heard testimony and reviewed the 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 original 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 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 the subject matter presented in the Verified Motion.
5. After the December 2, 2015 hearing, the Court granted preliminary injunctive relief against the original class members. The Court set December 29, 2015 as the date of the preliminary hearing for the newly added 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 by the relief requested by State Mutual

in the Motion for Further Relief.

7. 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.)

8. 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.
9. 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.
10. Pursuant to the 1998 Court Order and 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.

11. The testimony of Douglas Price, State Mutual's Consulting Actuary, 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.
12. The parties agree that State Mutual's implementation of the same dividend factor between similar class of policies and/or riders is appropriate from a contractual, equitable, and business judgment standpoint.
13. 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".
14. 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.
15. Since Attorney Pompey's 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.

16. 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.
17. 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.
18. 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.
19. 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.

20. 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

21. 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.
22. 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.
23. 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.

24. 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.
25. 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 and Christmas Day on this case.
26. 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.
27. 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.
28. 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.

29. 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.

30. 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.

31. The parties agree that this phase of the litigation 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.

32. 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.
33. 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, State Mutual would likely have prevailed on the merits of the Motion for Further Relief had this settlement not been reached by Attorney Pompey and State Mutual.
34. 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.
35. 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.
36. The settling parties request the Court to set a hearing date in February of 2016 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 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 the Court's Order preliminarily approving the Consent Decree.

37. The parties request the Court shall retain jurisdiction over the newly added policyholders/parties after final approval of the Consent Decree 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 the Consent Decree.
38. 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.
39. State Mutual has agreed to pay the Court-ordered attorney's fees to the two Guardians within ten (10) days from the date of the Court's final approval of the Consent Decree.

III. Request for Preliminary and Final Approval of the Consent Decree

Based upon the foregoing, State Mutual and Guardian Ad Litem Brenda Pompey request the Court to preliminarily approve the attached Consent Decree. The settling parties also request the Court to give final approval to the Consent Decree after the affected policyholders have received notice of the settlement and have had an opportunity to be heard in support or in opposition to the Consent Decree.

Respectfully submitted this the 29th day of December 2015.

s/ Donald V. Watkins

Attorney Bar Number: WAT022
 Attorney for Defendant
 Donald V. Watkins, P.C.
 2170 Highland Avenue S.
 Suite 100
 Birmingham, AL 35205
 Phone: 205-558-4665
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And

s/Brenda Pompey

Attorney Bar Number: MON010
 Guardian Ad Litem for the 2015 Newly
 Added Policyholders
 Pompey and Pompey
 Attorneys at Law
 P.O. Box 189
 Camden, AL 36726
 Phone: 334-682-9032
 Email: pandppc@frontiernet.net

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been served upon the following counsel of record by e-filing, by emailing to their email addresses for the Guardians Ad Litem, and/or by placing a copy of same in the United States mail, properly addressed and postage

prepaid this the 29th day of December 2015.

Frank H. Tomlinson, Esq.
Attorney at Law
Red Mountain Law Group
2100 1st Avenue N.
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Birmingham, AL 35203
Class Counsel for Plaintiffs

Alexander W. Jones, Jr., Esq.
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Class Counsel for Plaintiffs

Vanessa A. Searight, Esq.
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Court-Appointed Guardian Ad Litem for 2010 Consent Decree
Policyholders/Sub-Class Members

James Stewart, Esq.
Attorney at Law
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Court-Approved Co-Guardian Ad Litem for 2101 Consent Decree
Policyholders/Sub-Class Members

s/Donald V. Watkins
Counsel for Defendant

EXHIBIT A

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

AUBREY WAYNE TIDMORE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.: CV-95-066
)	
STATE MUTUAL INSURANCE COMPANY, et al.,)	
)	
Defendants.)	
)	
CAROL BELL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.: CV-96-040
)	
STATE MUTUAL INSURANCE COMPANY, et al.,)	
)	
Defendants.)	

CONSENT DECREE

I. Procedural Background

On November 22, 2015, defendant State Mutual filed a Verified Motion for Further Relief seeking 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 March 1, 2010 Consent Decree. The 6,072 policies referenced in this case are held by 5,645 distinct policyholders

On November 23, 2015, the Court received testimony and evidence regarding that part of

State Mutual's Motion pertaining to dividend participating policies at issue during the Court's hearing on State Mutual's request for a Temporary Restraining Order ("TRO"). The Court granted State Mutual's request for a TRO following a hearing on November 23, 2015.

Counsel for the policyholders governed by the 2010 Consent Decree attended the hearing on the TRO. Counsel subsequently consented to continue the Temporary Restraining Order ("TRO") issued on November 23, 2015 until the Court's December 29, 2015 hearing on the merits of State Mutual's Motion for Further Relief.

On December 1, 2015, counsel for the Plaintiff class members filed a detailed Response to the Motion for Further Relief and an opposition to the injunctive relief requested by State Mutual.

On December 2, 2015, the Court heard additional testimony and reviewed the evidence adduced at the December 2, 2015 hearing on the State Mutual's request for a preliminary injunction. Counsel for the original plaintiffs did not attend the hearing. 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 the 2010 Consent Decree policyholders.

During the December 2, 2015 hearing, the Court reviewed State Mutual's Motion 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.

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

Based upon the Court's review of the testimony and evidence, the 1998 class action members did 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.

II. The Court's December 2, 2015, Findings of Fact and Preliminary Injunctive Relief

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 for several reasons. First, 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.)

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.

Second, the Motion for Further Relief involves dividend participating whole life policies/riders where the dividends were not lowered when the dividends on the LP95, LP90, LP65, and GPWL were lowered pursuant to the 1998 Order and Final Judgment, and when the Life Span policies/riders were lowered pursuant to the 2010 Consent Decree.

Third, State Mutual, pursuant to 1998 Court Order and 2010 Consent Decree, 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 State Mutual 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.

By virtue of the Court's 1998 Order and 2010 Consent Decree, State Mutual's contractual and adjudicated right to cut dividends on all dividend participating policies is now the law of the case.

Fourth, the Court has found that the testimony of Douglas M. Price supports a projected dividend cut on all remaining dividend participating policies. These cuts track the Court-approved "Contribution Principal" to bring the dividends of these policies/riders in line with the class action policies and the Life Span term policies. 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 Motion for Further Relief.

Fifth, the Court has found that State Mutual's implementation of the same dividend factor between similar class of policies and/or riders is appropriate from a contractual, equitable, and business judgment standpoint.

Sixth, the Court has found that neither the original class members nor the 2010 Consent Decree policyholders will suffer any economic harm by the uniform application of the "Contribution Principle" to all dividend participating life insurance policies. They may, over time, become beneficiaries of the uniform application of the "Contribution Principle".

After rejecting the objections of the plaintiff class members, the Court considered the factors necessary to support preliminary injunctive relief against the Plaintiff class and found, *inter alia*, that:

- a. Class counsel received the required notice of State Mutual's request for a permanent injunction and they have been afforded a meaningful opportunity to be heard in opposition to the requested injunctive relief;
- b. Class counsel represents a national class of policyholders that has already been defined and certified by the Court, as specified in paragraph 1 of the Motion;
- c. Able and experienced attorneys who were designated by the Court as original class counsel represent the class members. These attorneys have lodged substantive and procedural objections on behalf of the class members;
- d. Class counsel – Alex Jones and Frank H. Tomlinson - adequately represent the interests of the class members in the current proceedings that are primarily aimed at protecting the

economic benefits to the class that are derived from the implementation of the Court's 1998 Order and Judgment;

- e. The Court-appointed Guardians Ad Litem for the policyholders covered by the 2010 Consent Decree received the required notice of these proceedings and consented to an extension of the TRO until the Court's December 29, 2015 hearing. The Court notes that the 5,465 policyholders adversely impacted by the Motion for Further relief are the ones represented by Attorney Pompey as a result of either (i) stand-alone policies, or (ii) riders on other dividend participating policies. As such, the relief sought by State Mutual at the December 29, 2015 hearing does not adversely affect any 2010 Consent Decree policyholder who is not currently being represented presently by Attorney Pompey;
- f. Nevertheless, the Court ordered that State Mutual pay Mr. James Stewart's reasonable attorney's fees since November 22, 2015 for monitoring the potential impact of the Motion for Further Relief on his policyholder group, and State Mutual agreed to do so;
- g. The 2010 Consent Decree policyholders have enjoyed able legal representation in the form of two Court-appointed Co-Guardians Ad Litem – Attorneys Vanessa Searight and James Stewart. Each Guardian is an experienced and respected attorney in Alabama. It should be noted that these Guardians Ad Litem negotiated and won Court approval of a fair and reasonable settlement for their group of Life Span policyholders. This settlement is embodied in the Court's March 1, 2010 Consent Decree;
- h. 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. Attorney Pompey consented to an extension of the TRO until the Court's December 29, 2015 hearing, at which time the hearing on the preliminary

injunction for this group of policyholders was scheduled to be held; and

- i. Attorney Brenda Pompey provided her policyholders/parties with able and experienced representation.

In light of the foregoing, the Court issued the December 2, 2015 preliminary injunctive relief. Based upon the evidence adduced in the prior hearings and at the December 29, 2015 hearing, the Court made this injunctive relief permanent as against the Plaintiff class members and the 2010 Consent Decree policyholders.

III. Attorney Pompey's Guardianship Representation Since Her Court Appointment

Since her appointment as Guardian Ad Litem on November 23, 2015, there has 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.

Additionally, Attorney Pompey has 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. Douglas 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.

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. None has chosen to do so.

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 for Further Relief 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 previous Orders in the case and ongoing information about the Motion for Further Relief.

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, as well as 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.

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.

IV. Consent Decree Terms and Conditions

State Mutual and the Guardians 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 this 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.

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 merits of the Motion for Further Relief and agree to the following findings relating to this Consent Decree:

1. 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.
2. 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.
3. The Guardian Ad Litem is an able and experienced counsel in complex litigation. In fact, 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.
4. The Guardian has conferred with all of the newly added parties who have contacted them 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 parties.

5. 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.
6. 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.

7. 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.

Independent Findings By The Court

In addition to the findings agreed upon by State Mutual and the Guardians Ad Litem, the Court makes the following independent findings:

1. 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 50 of these policyholders have contacted the Guardians Ad Litem with questions or comments regarding this litigation. None has filed any opposition of record to the requested relief. Additionally, none has requested the Court for permission to opt out of the proceedings.
2. 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. This phase of the litigation 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.
3. 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. While understandable, this argument is erroneous as a matter of law

and has no basis in fact or law. The policies and marketing materials accompanying the policies at issue specifically state that these dividends are not guaranteed.

4. 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 class members in this case.
5. 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, State Mutual would likely have prevailed on the merits of this case had this settlement not been reached by Attorney Pompey and State Mutual. The Company carried its burden of proof for declaratory and injunctive relief during the hearings dealing with the requested relief against the class members, the 2010 Consent Decree policyholders, and the TRO against the newly added parties.
6. 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.
7. 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.
8. 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 finding and agreements between the parties, the Court **Orders,**

Adjudges and Decrees as follows:

1. Any and all objections of 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 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.
3. 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 days of the Court's preliminary approval of this Consent Decree.
4. 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.

5. 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 policyholder groups in connection with the Motion for Further Relief. The parties are directed 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 Court will 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.
6. The Court finds orders State Mutual to pay the agreed upon attorney's fees to the two Guardians within 10 days from the date of final approval of the Consent Decree.
7. Upon final approval, as evidenced by the Court's signature below, the Consent Decree shall constitute a Final Judgment with respect to the newly added policyholders/parties.

Done this __ day of _____, 2016.

Hon. Eddie Hardaway, Jr.
CIRCUIT JUDGE