IN THE CIRCUIT COURT OF GREENE COUNTY, ALABAMA

AUBREY WAYNE TIDMORE, et al.,	)	
	)	
Plaintiffs,	)	
	)	**CIVIL ACTION NO. CV-95-066**
v.	)	
	)	
STATE MUTUAL INSURANCE COMPANY, et al.,	)	
	)	
Defendants.	)	

CAROL BELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	**CIVIL ACTION NO. CV-96-040**
v.	)	
	)	
STATE MUTUAL INSURANCE COMPANY, et al.,	)	
	)	
Defendants,	)	

FINDINGS OF FACT AND CONCLUSION OF LAW

This matter came to be heard on a joint motion of the parties requesting that this Court conduct a Fairness Hearing with respect to, among other things, (a) whether a proposed settlement of this action on the terms and conditions set out in the Settlement Agreement executed September 13, 1996 ("Settlement Agreement"), attached to the Order preliminarily approving the settlement is fair, reasonable, and adequate and should be finally approved by this Court, and (b) whether this Court should enter a final judgment approving the settlement, dismissing this action, and enjoining and prohibiting the filing of further litigation with respect to or based on the "Released Claims" as defined in the Settlement Agreement.

After individual notice to class members, and an opportunity to submit objections, arguments, and evidence in support of or in opposition to the proposed settlement, the Fairness Hearing was held on June 11, 1998.

On September 13, 1996, this Court entered an Order Conditionally Approving Class Action Settlement, the full text of which is incorporated herein by reference. The findings and conclusions set forth in that Order are hereby reaffirmed, and made final.

Alabama Rule of Civil Procedure 23(e) requires judicial approval of all class action settlements, but does not provide any standards for the approval of a settlement. "Decisional law, however, provides [courts] *with a general* [emphasis added] measuring rod for considering settlements: in determining whether to approve a proposed settlement the cardinal rule is that the . . . Court must find that *the* settlement is fair, adequate and reasonable." In Re: Corrugated Container Antitrust Litigation, 643 F.2d 195, 207 (1981), citing Cotton v. Hinton, 559 F.2d 1326, 1330 (5th Cir. 1977).

"Determining the fairness of the settlement is left to the sound discretion of the trial court." See Bennett v. Behring Corp., 737 F.2d 982, 986 (11th Cir. 1984); Cotton, 559 F.2d at 1330. See also In re U. S. Oil and Gas Litigation, 967 F.2d 489, 493 (11th Cir. 1992); Holmes v. Continental Can Company, 706 F.2d 1144 (11th Cir. 1983); Young v. Katz, 447 F.2d 431, 433 (5th Cir. 1971).

The court in reviewing the fairness of a settlement is authorized to make a determination as to whether or not to approve the proposed settlement. See Cotton v. Hinton, 559 F.2d 1326 (5th Cir. 1977).

The Eleventh Circuit in Bennett, 737 F.2d at 986 (following the lead of the Fifth Circuit in Cotton, 559 F.2d at 1330-1331), established a six-factor analysis to guide the trial court's determination that a settlement is fair, adequate and reasonable. Similar factors were established in City of Detroit v. Grinnell Corp., 495 F.2d 448 (2nd Cir. 1974); and Bryan v. Pittsburgh Plate Glass Co., 494 F.2d 799 (3rd Cir. 1974), cert. denied, 419 U.S. 900 (1974).

In weighing these factors, the trial court does not have "the right or duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute." Cotton, 559 F.2d at 1330, citing City of Detroit v. Grinnell Corp., 495 F.2d at 456. Judicial evaluation of a proposed settlement of a class action thus involves a limited inquiry into whether the possible awards of litigation with its risks and costs are outweighed by the benefits of the settlement. See Grinnell, 495 F.2d at 462, citing Young v. Katz, 447 F.2d at 431; accord, Protective Committee for Independent Stockholders of TMT Trailer Ferry Inc. v. Anderson, 390 U.S. 414, 424-26 (1986).

Judicial evaluation is guided by public policy which strongly favors the pretrial settlement of class action lawsuits. See e.g., In re U. S. Oil and Gas Litigation, 967 F.2d at 493, citing Cotton, 559 F.2d at 1331. The Court's "judgment is informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement." Bennett, 737 F.2d at 986, citing United States v. City of Miami, 614 F.2d 1322, 1344 (5th Cir.

1980). This judicial policy favoring settlement is particularly important in the context of class actions. Cotton, 559 F.2d at 1331; Zimmerman v. Bell, 800 F.2d 386, 391 (4th Cir. 1986).

These factors and principles have been fully considered by the Court, and as further discussed herein, fully support the approval of this class action settlement.

I. FINDINGS OF FACT

1. Summary of the Proceedings and The Record. In reaching its findings and conclusions herein, the Court has given great weight to the affidavits and exhibits presented at the hearing of the following witnesses: Plaintiff/Class Representatives Aubrey Tidmore and Maggie Heard, et al., Ben Forrester, Bobby Morrow, Dale Alexander, Larry Warnock, Harlan Dyer, William McCartney, Ernest Cragg, and Ken Simon. The Court also received into evidence a multitude of other voluminous exhibits, depositions and documents filed by the parties at the hearing, all of which was given due consideration by the Court. No objections were made to the presentation of witnesses' testimony through the affidavits and exhibits. The Court is also familiar with the recent Alabama Supreme Court decision reversing and remanding this matter for further proceedings.

Several of the objectors appeared through counsel, and no objector was denied an opportunity to be heard in person. Objectors offered no witnesses or evidence. All of the written objections and related motions and filings, of the objectors, have been duly considered by the Court. Each of the objections (and all motions of objectors and intervenors not previously granted) is hereby overruled in accordance with this Court's approval of the settlement. Those rulings expressly made on specific motions at the Fairness Hearing are specifically incorporated herein by reference.

This Court has given due consideration to all of the evidence presented and all of the arguments made at the Fairness Hearing; all of the briefs and exhibits filed with the Court in support of, or in opposition to, the proposed settlement; the terms and conditions of the Settlement and its attachments and amendments; the affidavits, exhibits and memoranda filed with the Court in support of and in opposition to the proposed settlement; and the objections (and related motions) raised with respect to the proposed settlement.

This Court has presided over all facets of this civil action since it was filed, and is familiar with the legal and factual issues presented by this class litigation. Deeming it appropriate to do so, this Court has given due consideration to the totality of the circumstances and the entirety of the record of this class action.

Having given all parties and all members of the plaintiff class the best practicable notice of the Fairness Hearing and an opportunity to object, submit evidence, appear and be heard in person or by counsel, and the Court having been duly advised, the Court finds that it has before it more than sufficient information upon which to determine the fairness, reasonableness, adequacy, and constitutionality of the Settlement.

2. The Named Plaintiff/Class Representative. Named Plaintiff/Class Representatives Aubrey Wayne Tidmore and Maggie Heard ("class representatives" or "Tidmore") and the class members, between January, 1978 and August 3, 1995, had purchased from State Mutual Insurance Company ("State Mutual") life insurance policies.

On August 4, 1995, Aubrey Wayne Tidmore individually and on behalf of other class members filed this Class Action. The gist of the complaint was that State Mutual misrepresented the nature of dividends on certain types of their policies in connection with the premium dividend option. The complaint alleged that the misrepresentation indicated that the premium would no longer be due upon the expiration of a certain number of years at which time the policy would pay for itself by the use of the dividends illustrated at the time of the sale.

On September 22, 1995, Carol Bell and others filed an identical class action suit in Marengo County Circuit Court.

On February 12, 1996, Plaintiffs moved this Court to certify the class and on February 15, 1996, these two actions were consolidated in the Greene County Circuit Court. On February 21, 1996, this Court certified a non-opt-out class pursuant to Rule 23(b)(1)(A) and (b)(2).

The Court has considered the testimony of the class representatives at the certification hearing and their affidavits presented at the Fairness Hearing and finds that they are members of the class and have adequately represented the interests of the class.

3. The Alleged Conduct. The class action claims asserted by Tidmore and Bell arise out of the sale of a series of life insurance policies by State Mutual Insurance Company.

They claim that State Mutual entered upon a course of conduct in 1978 and thereafter to misrepresent that certain dividend scales as they applied to four types of policies would be observed throughout the life of the policies. These policies are described by the Plaintiffs as Life Paid Up at 90 (LP90), Life Paid Up at 95 (LP95), Life Paid Up at 65 (LP65), and Graded Premium Whole Life (GPWL).

The Plaintiffs further claim that State Mutual defrauded all the class members through their agents by making such misrepresentation and by not explaining that the projected dividends which were shown to the purchasers of these life insurance policies at the time of sale were not guaranteed and that the actual annual dividends might, in fact, be higher or lower depending on the dividends declared annually by State Mutual and/or by stating the policies would be "paid up" when they reached the projected "vanish" point, without revealing that more premiums would or could be due.

The Plaintiffs claim that the sales illustration shown to them did not adequately explain and the class members did not understand that projected dividends were not guaranteed. They claim

that they are entitled to certain benefits that they did not receive because of the difference between the projected and actual annual dividends.

The Plaintiffs claim that because of State Mutual's reductions in its annual dividend scales, specifically for 1992, 1994 and 1995, they either (1) became obligated to pay more premiums over time than was originally represented to them; or (2) lost additional coverage and cash value because the amount of actual dividends declared did not accrue paid up additions as were originally represented to them; or (3) lost additional coverage because there were not enough dividends to buy the additional coverage they were originally shown; or (4) became obligated to pay more premiums than originally were represented because the reduced annual dividends did not allow the policies' premiums to "vanish" as shown in their projections or that their "vanished" premiums have returned for a period of years because of the dividend reductions.

The Plaintiffs claim that since the size or the amount of the projected dividend versus the actual annual dividend affected all aspects of the use of the dividend in the performance of the policies, the actual dividend being less than the projected dividend, each and every one of them was damaged in some manner.

They claim that they understood that the dividends were guaranteed or that a policy owner by the payment of a lump amount or a lesser number of premiums than called for in the policy contract would never have to pay another premium.

State Mutual, for its part, expressly denied any wrongdoing as alleged in the complaints of the various plaintiffs and class members and does not concede any wrongdoing or liability in connection with any facts or claims that have been or could have been or might have been alleged against it in this litigation. State Mutual further contended that the illustrations indicated that the dividends were "not guaranteed", and that it is clear from the illustrations that dividends are used to fund future premiums and their non-guaranteed nature places the class members on notice that the illustration may not perform as shown at the point in sale if dividends are lowered. Without deciding the merits, and only for the purposes of determining the fairness of the settlement, the Court has assumed that State Mutual did engage in the company wide pattern and practice of misrepresentation in regard to the nature of these dividends and the "vanishing premiums" and whether those dividends which were represented at the time of sale would remain in place throughout the life of the policy and whether these dividends were guaranteed or not.

Based upon the record and the assumption that the allegations of a company misrepresentation pattern as to these dividends and their effects on future premiums and other policy features are true, the Court finds that the claims of the class members derived from a common course of conduct pursuant to a unitary scheme, that the named Plaintiffs were affected by such conduct and are adequate representatives of the class with claims typical of the class; and that Class Counsel are experienced and well qualified to act as Class Counsel, and have in all respects properly discharged their duties attendant to that role.

4. Findings Regarding The Class Certification. On February 21, 1996, this Court entered a class action certification pursuant to A.R.Civ.P. 23(b)(1)(A) and 23(b)(2). The certification hearing convened on February 13, 1996, at which hearing Mr. Tidmore and putative class representatives appeared and testified. The named plaintiff/class representatives presented sufficient evidence to the Court upon which to obtain preliminary certification of the class. Also called were two Vice Presidents of State Mutual - Ben Forrester and Bobby Morrow.

5. Conduct of Class Counsel in Vigorously Pursing the Claims on Behalf of the Class. Following the February 21, 1996 certification, the Court encouraged the parties to investigate the possibility of a settlement of the complex class action. The parties periodically reported to the Court on their progress toward a settlement agreement. The Court finds from all of the evidence presented to the Court that the settlement negotiations were conducted at arms-length, without collusion, and was the result of hard and intense bargaining by able counsel on both sides.

On June 2,1996 pursuant to a joint motion for referral to mediation, this Court sent the parties to mediation. As a result of that mediation, a settlement was eventually reached.

Settlement was effected more than 10 months after the commencement of this class action. Before executing the settlement agreement, Class Counsel had access to the information furnished by certain clients and Class Members. Additionally, Class Counsel had extensive access to formal and informal discovery prior to entering into the proposed Settlement. Formal and informal discovery included the production of documents by State Mutual. Subsequently, several depositions (and the production of more documents) occurred prior to the mediation of June 6, 1996. Even before then, by informal discovery, Harlan Dyer, employed as an actuarial expert by Class Counsel, was given access, under a protective agreement and order, to all non-privileged State Mutual records relating to the subject life insurance policies and related dividend information which he deemed pertinent, and spent hours collecting and reviewing actuarial information and studies, policy forms, rate filings, premium records, documents and reports of State Mutual, among other things; and interviewing State Mutual's chief actuary, A. Ben Forrester at length concerning the policies in question, the vanishing premium dividend option, the company's dividend scales and sales practices. They also had the opportunity to meet with and discuss the calculations made by the Company's outside actuarial expert, Larry Warnock.

The Court has reviewed the discovery filed with the Court and has reviewed the affidavit of expert Dyer, concerning among other things the availability and review of information, and review and approval of the final Settlement Agreement which is before this Court. Additionally, in his affidavit, Larry Warnock informed the Court of his role in calculating the value of the terminal dividend portion of this settlement.

Based upon all of the evidence before the Court, the Court finds that Class Counsel had before them sufficient information, documents and records, together with the benefit of the advice and expertise of actuarial expert Dyer to properly and fully evaluate the merits of the proposed litigation, and to determine whether the proposed Settlement was fair, reasonable and adequate.

The Court further finds that Class Counsel -- Frank H. Tomlinson and Alexander W. Jones, Jr. -- are both experienced trial counsel in complex litigation, including class action litigation, who have properly weighed and balanced the factual and legal issues, and that with an experienced actuary, they properly evaluated all settlement proposals and thereafter accepted and recommended to the Court the Settlement Agreement in the good faith exercise of competent and reasoned judgment. The Court expressly finds that the proposed Settlement was reached after meaningful and sufficient discovery, after arms-length negotiations, by capable and experienced Class Counsel. The Court further finds that after substantial discovery, both informal and formal, with the intent and purpose to effect a fair and reasonable, full and final settlement based on extensive hard-fought, arms-length negotiations, and finally, court ordered mediation, Class Counsel ultimately concluded in good faith that a settlement of the class action litigation on the terms set forth in the Settlement Agreement would be in the best interests of the Class as a whole. The Court expressly finds that the settlement was not the product of collusion. Compare Cotton v. Hinton, 559 F.2d at 1330; Bowling v. Pfizer, Inc., 143 F.R.D. 141 (S.D. Ohio 1992).

As Counsel for the class as a whole, Class Counsel was prohibited from preferring the interest of a particular class member. In other words, Class Counsel could not be bound by the fact that the objectors who appeared (pursuing their individual interests only) would have preferred a settlement which included opt-out rights. Although, in a sense, every class member is a "client" of Class Counsel, it is the interest of the class as a whole and not the interest of individual class members that Class Counsel must pursue. Clearly, Class Counsel have vigorously bargained for the best possible settlement and have ultimately obtained a settlement which this Court finds to be fair and reasonable to all members of the class. This Court finds that Class Counsel has, at all times, considered the best interest of the class as a whole and that their conduct in that regard falls well above the minimum standard of care of reasonably competent attorneys provided by Alabama law.

The Court also notes that many of the issues presented by this case are within areas of unsettled law. Attorney Ken Simon, appearing for Class Counsel, testified by affidavit that no attorney could predict what the outcome of a case might be if tried. In addition, Mr. Simon agreed that the law is very unsettled as to how many individual class members could pursue individual claims and obtain punitive damage awards.

6. The Proposed Settlement and Settlement Agreement. On June 6, 1996, after mediation, the parties reached a settlement in principle which was reduced to writing after further extensive negotiations and executed on September 13, 1996, and presented the same to the Court with their recommendation that the same be preliminarily approved. Thereafter, on September 13, 1996, this Court issued its Order with respect to the Proposed Settlement preliminarily approving the terms of the Settlement, and reaffirming the Rule 23(b)(1)(A) and 23(b)(2) certification of the class, the adequacy of the Class Representative Tidmore, et al. and Class Counsel, among other things.

The terms and conditions of the proposed Settlement are described fully in the Settlement Agreement (a summary of which was mailed to the Class Members as a part of the Class Notice

pursuant to this Court's September 13, 1996 Order), which Settlement Agreement is incorporated herein by the Court. In simplified terms, the Settlement provided extensive injunctive and equitable relief for the common benefit of the Class and Class Members, including the following:

State Mutual will be enjoined as follows:

Future Sales Practices

a. to provide adequate training on its products to its agents;
b. to adequately investigate individuals who apply to become State Mutual agents;
c. to adequately advise prospective policy owners that on dividend paying (participating) policies any projected dividends are "NOT GUARANTEED" and that future annual dividends may be higher or lower than those illustrated and that as a result, their policies' performance may vary from their illustrations in the following ways:

i) if their policy contains the vanishing premium option, it may not vanish and should not be described as "paid up" at the projected vanish date and more premiums may need to be paid or premiums may be required for a period of time after their vanish date, as shown in their illustration;

ii) if their policy calls for the accumulation of dividends, it may not accumulate the amount of dividends projected;

iii) if they elected to use the dividends to buy additional insurance, they may have more or less additional insurance than shown in the projection;

iv) if they elected to use the dividends to buy additional paid up insurance, they may have more or less additional paid up death benefits and cash values than shown in the projection;

v) if they elected to receive their dividends in cash, the actual cash dividends might be more or less than shown in the projection; or

vi) if they elected to use dividends to reduce premiums, the amounts of premiums due might be more or less than shown in the projection.

d. to establish an effective program to monitor the services provided by its agents and to determine their adequacy;

e. to establish an effective program to determine whether its agents adequately explained to the policy owner that dividends on participating policies are not guaranteed and that variances in future dividends will affect the amount of cash value available to the policy owner for future use;

f. to establish a procedure to adequately verify the actual policy delivery by the agent and receipt by the policy owner of State Mutual policies;

g. to establish a procedure to adequately confirm that each policy owner is informed that the amount of cash value available to pay any future premiums will depend both on the policy owner's other use of the cash values and on the annual dividends that may or may not be declared in the future by State Mutual;

h. to require that its independent agents explain to prospective policy owners that they are licensed agents of State Mutual with respect to the sale of its policies;

i. to develop its own training manuals which are specific to State Mutual products and State Mutual sales practices and which include an entire section devoted to Ethics, emphasizing the importance of Ethics to life insurance agents and State Mutual's commitment to ethical practices;

j. to require that its agents take continuing education courses as set by their state of residence;

k. to immediately adopt the disclosure concepts of the model National Association of Insurance Commissioners (NAIC) Sales Illustrations, insofar as the same are not prohibited by any laws or regulations applicable to State Mutual;

l. to require that State Mutual's actuary review and approve the annual dividend scale set by State Mutual and, approve their use in State Mutual's illustrations, review the disclosures made as to the non-guaranteed nature of dividends in comparison to the NAIC model;

m. to implement a follow up mail program to the sale of participating insurance policies with a questionnaire to the policy owner intended to determine whether the policy owner understands the dividend and cash value aspects of the policy which he or she has purchased, including the fact that the dividends illustrated are not guaranteed and may change in the future;

n. to mail an annual dividend notice to the policy owner of participating policies showing the amount of the actual current dividend and the previous year's projected dividend; and

o. to mail notice to the policy owner if any dividend scale is changed.

Future Dividend Practices

While State Mutual reserves the right to declare the amount of annual dividends in the future, State Mutual will be enjoined to follow the "contribution principle" for the development of all dividend scales from 1998 forward for all policy issues described herein. As in the past, future dividends may increase or decrease from the projections of current dividend scales.

Incidental Economic Relief

State Mutual will provide incidental economic relief to Class Members who are existing policy owners by being enjoined as follows:

a. to insure that each existing policy receives $15.00 in the form of a credit to be used to purchase paid up additional insurance using a net single premium cost basis. The aggregate amount of these credits is projected to be $806,155.00

b. to institute a remedial relief program in the form of a terminal dividend calculated on the following basis: State Mutual will estimate the annual difference between (1) dividends based on original dividend scales in effect at the time of policy issue and (2) dividends actually paid on historical dividend scales. A percentage (not greater than 100%) of the estimated difference through the date of the filing of the class action will be accumulated at six percent (6%), and this amount will be the amount of a terminal dividend to be paid at the death of the insured. The amount of benefit will vary, based on the plan of insurance, issue age, the policy face amount, and issue year. The terminal dividend will only be payable at death and will only be payable if the policy was in-force as of the date of the filing of the lawsuit and is in force by payment of premiums due through the date of death. No terminal dividend benefit will be payable for any policies that lapsed or were surrendered prior to the date of the filing of the lawsuit unless such policies are reinstated as of the date of lapse or cash surrender under the company's current reinstatement rules. The terminal dividend has no surrender value and is payable only upon the death of the insured. The maximum aggregate total terminal dividend for all Class Members is projected to be as much as $6,745,402.00 provided all policies remain in force with their due premiums paid until the death of the insured.

Lapsed or Cash Surrendered Policies

State Mutual will provide incidental economic relief to Class Members who have lapsed or cash surrendered policies by being enjoined as follows:

To allocate, for each lapsed or cash surrendered policy (since January 1, 1992), to the Lapsed Policy Owners $15.00 cash per policy. This payment will be made to the last known address of the Lapsed Policy Owner, except for instances where the notice was undelivered and subsequent efforts to locate the Lapsed Policy Owner were unsuccessful. In such event, the

proceeds may become payable under the unclaimed property law of the state of the Lapsed Policy Owner's last know address. The aggregate amount of these funds is projected to be $173,385.00. Lapsed Policy Owners may reinstate by payment of all back premiums plus interest at six percent (6%) and meeting the company's reinstatement requirements including proof of good health. In the case reinstatement is selected by the Lapsed Policy Owner, the $15.00 will be credited to the policy and used to purchase paid up additional insurance. No cash payments will be made.

Settlement Value

According to the affidavit of State Mutual's actuarial expert, Larry Warnock, the maximum pecuniary value of the terminal dividend was $6,745,402.00. Immediate statutory reserves on the terminal dividend would be $2,789,719.00. Adding to Mr. Forrester's affidavit as to the $15.00 benefits to the lapsed and enforce policyholders of $173,385 and $806,155 respectively, The Court finds that the value of the September 13, 1996 settlement may be as large as $7,724,942.00. This testimony was supported and confirmed by Class Counsel's actuarial expert Harlan Dyer.

The Court finds that Class Counsel's actuarial expert, Harlan Dyer, who testified by affidavit at the Fairness Hearing in support of his expert opinion as to the monetary value of the Settlement, was fully qualified and competent to testify as an actuarial expert, and was credible. The Court finds that Dyer's conclusions as to the total monetary value of the original Settlement being as high as $7,724,942.00 were set forth is a well-reasoned and accurate opinion and projection of these values, and that Dyer's projected total value agrees with the amount calculated by State Mutual's actuarial expert, Larry Warnock, who opined as an actuarial expert as to the monetary value of settlement as it related to the terminal dividend. His opinion also agreed with that of the Company's in-house actuary, Ben Forrester.

The Court further finds that Larry Warnock was qualified as an actuarial expert and competent to testify as to the matters presented to the Court by his affidavit, and was credible with regard to the matters of his expertise and factual knowledge. The Court finds that his opinion as to the monetary value of the terminal dividend is accurate and reliable and reinforces the valuation provided by Mr. Dyer.

Based upon its consideration of all of the evidence, the Court finds that the pecuniary value of the Settlement, and its cost to State Mutual may be as high as $7,742,942.00 in addition to other substantial injunctive and equitable relief which provides additional valuable but non-measurable benefits to the Class. The Court adopts the factual averments of Mr. Dyer and Mr. Forrester concerning the value of the September 13, 1996 settlement as the findings of this Court. The specific benefits and values are fully set forth and explained in Mr. Warnock's 1998 affidavit which has been affirmed by the affidavits of Mr. Dyer and Mr. Forrester and those values are adopted by the Court and incorporated herein by reference.

The Court's September 13, 1996 Order With Respect To The Proposed Settlement preliminarily approved the Settlement set forth in the Settlement Agreement and ordered notice

to Class Members. By its terms, the Settlement Agreement is conditioned upon and subject to (among other things) the final approval of this Court, and final binding affirmance without modification in the event of appeal. In this Court's order preliminarily approving the proposed Settlement, the Court further provided that if the Settlement was not approved and affirmed without modification in the event of appeal), it shall be terminated and shall become void (except as to certain obligations to pay notice and expert expenses). The September 13, 1996, Order approved the proposed Settlement, on a preliminary basis, subject to further consideration at a Fairness Hearing to be held by the Court.

7. The Notice. Prior to the hearing, pursuant to the Order, a court-approved notice was delivered by first class mail, postage prepaid, to the last known address of each named insured class member. The court-approved notice advised Class Members, among other things, of the pendency of this class action, the background facts and the terms and conditions of the Settlement, and the hearing to be held before the Court with respect to whether the Court should approve the settlement and dismiss this action ("Fairness Hearing"). The notice advised Class Members that they had a right to object to the settlement, to submit evidence and documents in opposition to the settlement to obtain and renew documents, and to appear and be heard at the Fairness Hearing. A proof of distribution of the notice was filed with, considered and accepted by the Court.

All interests of class members have been presented to and considered by the Court in one fashion or another. Based upon the evidence before it, including the sworn proof of distribution, the Court finds that the court-approved personal notice delivered to Class Members regarding the class action and the proposed settlement was the best practicable notice under the circumstances, was fully consistent with Rule 23(c)(2) of the *Alabama Rules of Civil Procedure*, and constituted due and sufficient notice of the Settlement and all other matters addressed in the notice and its exhibits, including the pendency of this action, the maintenance of this action as a class action, the terms of the settlement, the binding effect of the settlement on all Class Members, the release and dismissal of all claims, the mandatory no-opt-out provisions of the Class certification and settlement, the right to object to the settlement and to submit documents and evidence regarding the settlement and to appear at the Fairness Hearing and to be heard in person or by counsel. The Court finds that this notice clearly provided absent class members a fair and adequate opportunity to object to the Settlement, and notice that the Settlement would finally adjudicate and foreclose all claims related to these State Mutual policies. See Simer v. Rios, 661 F.2d 655 (7th Cir. 1981).

The form of the notice provided to Class Members was reviewed, understood and approved by the Court in advance. The Court finds that the notice itself was relatively simple and was clearly understandable and sufficient to convey the principal features of the benefits to the Class Members. Even those who could not read at all clearly had reason to avail themselves of the assistance of counsel or other knowledgeable persons to advise and assist them in protecting their rights. The notice clearly conveyed its nature as a court-ordered notification regarding important matters. The Court finds that the notice was the best practicable notice under the circumstances and constituted due and sufficient notice to afford due process. See Eisen v. Carlisle and Jacqueline, 417 U.S. 156, 94 S.Ct. 2140 (1974).

To satisfy the requirements of Due Process and the notice standards of A.R.Civ.P. Rule 23(e), class notice "need only properly identify the plaintiff and generally describe the terms of the settlement so as to alert members with adverse view points to investigate and to come forward and be heard."' Battle v. Liberty National Life Ins. Co., 770 F. Supp. 1499, 1522 (N.D. Ala. 1991), quoting Mendoza v. United States, 623 F.2d 1338, 1352 (9th Cir. 1980), cert. denied, 452 U.S. 912 (1991). The Court finds that the notice given in this case clearly meets and exceeds these requirements.

The Court has reviewed the affidavit of Dale Alexander of Client Connections, Inc., the Court appointed Administrator who has certified that the copies of the Notice were sent to Class Members in accordance with the Settlement Agreement and the Court's instructions in its Order of September 13, 1996, and subsequent Orders.

The Court finds that the notice given to Class Members, provided more than sufficient information to the Class Members and constituted due and sufficient notice and afforded due process to the Class Members.

8. The Fairness Hearing. The Fairness Hearing originally scheduled for November 27, 1996, was postponed numerous times due to issues pending before the Supreme Court of Alabama, and after a final determination by the Court, the Fairness Hearing was heard on June 11, 1998. No objector was refused the opportunity to testify.

By the time of the Fairness Hearing, all Class Members had a full and fair opportunity to submit objections, affidavits, and other written materials in support of or in opposition to the proposed settlement. The objectors were given the opportunity to cross-examine all of the witnesses whose testimony was presented by affidavit presented in support of the Settlement and had access to copies of all written documents received by Class Counsel from State Mutual which Class Counsel had relied upon in connection with the proposed settlement.

By June of 1996, State Mutual had filed and served Class Counsel virtually all of its evidence and written materials that were used in formatting the proposed settlement. The class notice advised all Class Members and objectors on how to gain access to those materials including the depositions taken of State Mutual personnel. This gave objectors two years in which to request and analyze that evidence prior to the Fairness Hearing.

This Court has given due consideration to the totality of the record in this case, including the written submissions of the parties and the objectors; all depositions and documentary and other written evidence; and all affidavits and exhibits filed with the Court at the Fairness Hearing. For purposes of this Fairness Hearing, the Court has given due consideration to all exhibits, written materials and affidavits submitted to the Court. No objections to the Court's consideration of the affidavits and exhibits were made in lieu of live testimony. The Court finds that the Fairness Hearing constituted a full and fair opportunity for objectors to appear, be heard, and submit evidence and briefs in support of their positions.

9. The Fairness of the Proposed Settlement Adequacy of Representation. After independent review of the proposed settlement, the evidence presented, and the entire record of this civil action, this Court has concluded and hereby finds that the proposed settlement of this Class action, pursuant to the terms and conditions of the Stipulation, is fair and reasonable, and is unquestionably adequate. The Court finds that the proposed Settlement is in the best interests of the class as a whole and the class members, and should be approved. For purposes of this finding, the Court has assumed as true the allegations of the named plaintiff and objectors concerning State Mutual's conduct.

At the time of its preliminary order on September 13, 1996, this Court after careful consideration was of the opinion that the proposed Settlement, was fair, reasonable and adequate, in the best interests of the members of the Plaintiff class, and should be preliminarily approved, subject to further review by the Court based on further development of the issues, including objections, testimony and evidence to be taken in connection with a fairness or settlement hearing. This Court is authorized to make a determination as to whether to approve the proposed settlement. See Cotton v. Hinton, 559 F.2d 1326 (5th Cir. 1977).

The Court finds that Class Counsel and counsel for State Mutual have ably supported the proposed settlement, its fairness, reasonableness and adequacy and have insisted that the settlement as proposed in the Settlement Agreement is in the best interests of the class and should be finally approved by this Court. Based upon the entire record, the Court finds that Named Plaintiff and Class Counsel have each adequately and fairly represented the class, and have protected the best interests of the class as a whole and the class members. The Court further finds that Class Counsel, with the intent and purpose to effect a fair, reasonable and adequate settlement, and based on extensive arms-length negotiations, ultimately concluded that a settlement of the litigation on the terms set forth in the Settlement Agreement would be in the best interests of the class, and that not to accept the Settlement (subject, of course, to the ultimate satisfaction and approval of this Court) would serve only to generate a potential punitive windfall for the first few class members who might get to trial and obtain a successful verdict, to the detriment of remaining class members who would potentially be deprived of not only of any recovery, but perhaps deprived of all coverage under any State Mutual insurance policy due to receivership or rehabilitation. The Court further finds that the decision by Class Counsel to agree to and support the proposed settlement was well- reasoned, valid and in the best interests of the Class Members.

This Court finds that this settlement will provide substantial, fair, reasonable and adequate relief for the claims of the class; including both the predominant injunctive and equitable relief and adequate incidental monetary relief. The Court further finds that the injunctive and equitable provisions, coupled with the supplementary monetary provisions, will constitute sufficient punishment and deterrence to State Mutual from engaging, now and in the future, in conduct of the type made the subject of this class action, particularly in light of the broad and sweeping injunctive relief which effectively places State Mutual under the continuing oversight of this Court,

and subjects State Mutual to future contempt citations should State Mutual violate or attempt to violate this Court's broad injunction.

The Court therefore finds that the proposed settlement is due to be approved on the terms and conditions set forth in the settlement agreement.

The Court expressly finds that the cost of this settlement, when coupled with the substantial and far-reaching permanent injunctive and equitable provisions, constitutes the maximum punishment permissible under the Due Process Clause of the United States Constitution and sufficient deterrence of future similar practices. The Court finds that the overall settlement will be sufficient to punish State Mutual for the entirety of the effects of the alleged conduct involved therein. This is of particular significance to the class members, since this portion of the Court's order protects the class members from the greed of those who would attempt a personal award of all constitutionally permissible punitive damages in a single individual case, to the detriment of the class members who are insured under approximately 69,000 insurance policies issued by State Mutual.

The Court finds that Class Counsel has reached a settlement which is fair in light of the fact that State Mutual is a mutual company with limited resources. The Class Counsel had the unenviable task of trying to balance a settlement in favor of the class and at the same time not destroy State Mutual for the class members who are the owners of State Mutual. Insisting on a more punitive settlement would have jeopardized the class members' investment in State Mutual and left the class members with virtually nothing.

10. Additional Findings Regarding Fairness of Settlement As noted above, the Settlement has been found by the Court to be fair and reasonable even assuming the allegations of the complaint (and the allegations of the various objectors) concerning the alleged conduct to be true. The following additional findings clearly indicate that the Settlement is also fair, reasonable and adequate when judged against the factors utilized by other courts to determine the fairness of a proposed settlement.

Based on the entire record before this Court, as more fully set forth herein, the Court has given due consideration to the following factors utilized by other Courts, including but not limited to:

(1) the likelihood of success at trial (including the likelihood of establishing damages and the likelihood of establishing liability on the part of State Mutual);

(2) the range of possible recovery in the event of a trial;

(3) the point on or below the range of possible recovery at which a settlement is fair, reasonable and adequate;

(4) the complexity, expense and duration of the litigation;

(5) the substance and amount of opposition to the settlement;

(6) the stage of the proceedings at which the settlement was achieved; and

(7) the financial ability of State Mutual to withstand a greater judgment in this case and potential for a judgment or series of judgments in amounts likely to trigger the Due Process consideration (as recognized in Green Oil and other similar cases) relating to the imposition of punitive damages.

See Bennett v. Behring Corporation, 737 F.2d 982, 986 (11th Cir. 1984) (adopting a 6-factor analysis); and The City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2nd Cir. 1974) (9 relevant factors); and Bryan v. Pittsburgh Plate Glass Co., 494 F.2d 799 (3rd Cir. 1974); cert denied, 419 U.S. 900 (1974).

The Court has independently evaluated, to the extent possible at this juncture of the litigation, the strengths and weaknesses of class members' claims, the strengths and weaknesses of State Mutual's defenses, the range of reasonableness of the settlement benefits in light of the best possible recovery, and the other factors identified in the foregoing authorities. The Court has weighed all the attendant risks of litigations (including the litigation and settlement value of the claims of each class member and the aggregate litigation and settlement value of the class action). The Court has also considered the opinions of the expert witnesses and of Class Counsel, the Class Representative and counsel for the objectors. This Court hereby finds that the proposed settlement is fair and reasonable and is wholly adequate in terms of both its equitable and legal compensation and its deterrent effect, and is in the best interests of the class and Class Members and protects the class as a whole.

A. Findings Regarding the Risk of Establishing Liability and Damages and Likelihood of Success at Trial. In determining the fairness of the settlement, the Court must consider the likelihood of success by either party if the case were to proceed to trial. It is not a function of this Court to make ultimate findings on the merits of this case in deciding whether to approve the class action settlement. Although courts must closely analyze the facts and the law relevant to the settlement, this Court need not try the case to determine the fairness of the settlement. Judicial evaluation of a proposed settlement of a class action involves a limited inquiry, not into the merits, but into whether the possible rewards of litigation with its risks and costs are outweighed by the benefits of a certain settlement. See, City of Detroit v. Grinnell Corp., 495 F.2d at 462 ("The court is only called upon to consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable"), citing Young v. Katz, 447 F.2d 431, 433 (5th Cir. 1971).

While the claims asserted in this action have potential merit, the Court finds that the complexities and uncertainties characteristic of this type of litigation, and the sharply contested

issues of fact, liability, and damages exist which with respect to the contentions made on behalf of the class, create substantial risk for the class, and that the proposed settlement resolved these uncertainties for all parties to the litigation.

For instance, without deciding the merits, the Court acknowledges that State Mutual has argued that the claims of all or most class members suffer significant legal infirmities and are subject to substantial defenses (in addition to questionable factual basis for liability), including but not limited to: whether claims are barred by the statute of limitations or laches; whether the clear written disclosures on the face of the policies and sales projections preclude any claim of fraud or nondisclosure either as a matter of fact or as a matter of law; what was said in each individual sale and whether individual agents adequately advised Class Members that dividends were not guaranteed, whether individual class members claims were ripe, *i.e.* had they reached the vanish point or had their policies "unvanished".

Based on the evidence and legal authorities submitted by State Mutual, there is a substantial risk that a large number of the claims of individual class members would be barred by the statute of limitations. The submitted evidence suggests that there are substantial risks to recovery based on the statute of limitations defense. See, e.g., Fabre v. State Farm Mut. Auto. Ins. Co., 624 So.2d 167 (Ala. 1993) (receipt of written documents clearly disclosing facts from which an alleged fraud could have been discovered begins the running of the statute of limitations on a tort action); See also Ramp Operations Inc. v. Alliance Ins. Co., 805 F.2d 1552, 1554-58 (11th Cir. 1986); Kelly v. Connecticut Mutual Life Ins. Co, 628 So.2d 454, 458 (Ala. 1993) ("fraud is discoverable as a matter of law for purposes of the statute of limitations when one receives documents that put one on such notice that the fraud reasonably should be discovered."); McGowan v. Chrysler Corp. 631 So.2d 842 (Ala. 1993); Kanter v. Church's Fried Chicken, Inc., 582 So.2d 449, 453 (Ala. 1991); Gray v. Liberty National Life Ins. Co., 623 So.2d 1156 (Ala. 1993). Similar statute of limitations risks would exist under the laws of other states- to the extent that any class member claims that the law of another state might apply, based upon the authorities cited in briefs to the Court.

Other risks result from the questionable factual basis for liability. Whether there was any duty of disclosure beyond the disclosures contained in the written policies themselves and the projections distributed with them; and other substantial factual and legal issues which tend to create a risk of establishing liability against State Mutual.

The Court finds and holds, without making any ultimate findings or conclusions regarding the merits of these defenses and obstacles, that there is substantial uncertainty as to the likelihood of success at trial by either party. The Court finds that all of these uncertainties are best resolved by a fair, reasonable and adequate settlement and that such a settlement is in the best interests of the class members.

B. Findings Regarding the Risk of Maintaining the Class Action Through the Trial. The Court finds that there are great risks in maintaining the class action through the trial of this case,

including the risk of inconsistent adjudications by this and other courts; the complexity of attempting to manage the class action but for the settlement; the risk that, if the position of objectors were successful, State Mutual could be placed in rehabilitation or receivership by virtue of successful claims of non-class members before final judgment was reached; and the likely duration and complexity of the pretrial proceedings and the trial itself.

C. Findings Regarding the Range of Reasonableness of the Settlement in Light of the Best Possible Recovery. The Court finds that the range of possible recovery value in this action is between zero (if State Mutual's position is sustained) and $22,000,000 at best. However, the Court also notes that there is a maximum point at which courts would order a remitter or at which State Mutual would be placed in receivership or rehabilitation, which is much lower.

The Court finds that the bulk of any award in the higher end of the range would almost certainly be punitive in nature, and the Court further finds that any recovery in excess of $10,000,000 would certainly run the risk of being remitted by the trial court or the Alabama Supreme Court to that amount or lower, pursuant to the Due Process Clause of the United States Constitution, Green Oil Co. v. Hornsby, 539 So.2d 218 (Ala. 1989), and similar authorities in other jurisdictions. In addition, any amount in excess of the incidental economic benefits provided by the Settlement would almost certainly cause State Mutual to be placed in receivership or rehabilitation proceedings under the applicable insurance laws.

Moreover, there is authority to the effect that potential recovery of damages which are punitive in nature should not be considered in judging the reasonableness of the amount of a class action settlement. See, e.g., City of Detroit v. Grinnell Corp., 495 F.2d 448 (2nd Cir. 1974). The nature of punitive damages supports this view, in that no plaintiff has a right to punitive damages; punitive damages under the law of Alabama and various other jurisdictions where available are solely within the discretion of the jury; and punitive damages are designed not to compensate the victim, but to serve societal goals of punishment and deterrence.

The Court finds that the substantial equitable relief granted, and especially the injunctive relief halting the alleged fraudulent practices now and in the future weighs heavily in favor of approval of this non-opt out class settlement. The CAP program and new disclosure on the projections weighs heavily in favor of approving the proposed settlement. The Court finds that even if it is assumed that the proposed settlement might represent less than the total recovery which could be awarded by a jury, there is no assurance that a larger recovery would be upheld by the appellate courts. The proposed settlement represents a significant overall combination of legal and equitable benefits which the plaintiff class otherwise could never enjoy in the event State Mutual were to prevail, or if State Mutual were to go into receivership, rehabilitation or bankruptcy. See, Alliance To End Repression v. City of Chicago, 561 F. Supp. 537, 548 (N. D. Ill. 1982) (settlements, by definition, are compromises which "need not satisfy every concern of [the] plaintiff class, but may fall anywhere within a broad range of upper and lower limits."); Flinn v. FMC Corporation, 528 F.2d 1169,1173-74 (4th Cir. 1975); (nor does the fact that the

settlement "'may only amount to a fraction of the potential recovery' will not *per se* render the settlement inadequate or unfair.")

The Court finds that by any measure the more than $7,724,942.00 in maximum pecuniary value of the legal and equitable recovery under the proposed settlement represents a substantial benefit and award to the class members and falls well within the range of reasonable and probable recovery in the event of litigation.

Based upon the totality of the record, the Court finds that the settlement has a total cost and value of not less than $3,500,000.00, which is well within the reasonable range of recovery for this action, even if one were to disregard the substantial risks of this litigation. The Court further finds that a succession of individual suits (if successful) could, and in all probability would, result in a determination "that as a practical matter would be dispositive of the interests of other [class] members . . . or substantially impede their ability to protect their interests" (Ala. R. Civ. P. 23(b)(1)(B)), particularly in light of the fact that each individual suit would no doubt attempt to punish State Mutual for the entirety of the "pattern and practice" involved in the alleged sales practices, thereby potentially eliminating punitive damage claims (and perhaps the viability of all other claims) for all but a few class-members if the cases were tried separately.

The Court expressly finds that the proposed settlement provides the maximum permissible amount of punishment contemplated by the Due Process Clause of the United States Constitution, Green Oil Co. v. Hornsby, 539 So.2d 218 (Ala. 1989), and similar authorities in other jurisdictions. Moreover, in light of all the attendant risks of this litigation, the Court finds that the substantial equitable and monetary relief afforded by this settlement is fair, reasonable, and adequate. The Court therefore overrules all objections to the proposed settlement, and finds that this settlement is fair, reasonable and adequate, and that approval of this settlement is in the best interests of the class as a whole.

D. Findings Regarding The Complexity, Expense And Likely Duration Of The Litigation. The Court finds that this litigation involves asserted liability to a class of some 69,000 named insured policy owners. The Court finds that this litigation is extremely complex, and that both the expense and likely duration of the litigation (but for the settlement) would be great.

The alternative to settling class members' claims is to expend countless hours and dollars litigating this case, and to drain the assets of all parties and the resources of the Court system for years. This class action constitutes complex litigation, and the voluminous pleadings, evidentiary filings and briefs which have already been filed in this Court (and in the Supreme Court) demonstrate that, absent settlement, even the legal issues alone would be difficult and expensive to resolve. The Court file itself is demonstrative of the substantial resources that have already been committed by Class Counsel, by State Mutual and its attorneys, and by this Court. In addition to the resources of the parties, the continuation of this complex case would likewise deplete the judicial resources of this Circuit. There can be no question that further pursuit of this class action would constitute a severe drain on the resources of both the parties and the Court system. See e.g.,

In re U.S. Oil and Gas Litigation, 967 F.2d 489, 493 (11th Cir. 1992); ("Public policy strongly favors the pretrial settlement of class action *lawsuits*. *See* Cotton v Hinton, 559 F.2d 1326, 1331 (5th Cir. 1977). Complex litigation -- like the instant case -- can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.")

E. Findings Regarding The Reaction of The Class and The Substance and Amount of Opposition to The Settlement. In determining whether the settlement is fair, reasonable and adequate, the Court considered the substance and amount of opposition to the settlement. The reaction of the vast majority of the class to the settlement is clearly not antagonistic. The court-approved printed notice was mailed to the insured under more than 69,000 current and past policies. At most less than 4% of the Class Members inquired at the toll free information center for further information. Only 17 filed any type of objections, even given the Court's decision to accept late objections.

Thus, the amount of opposition is not substantial when compared to the size of the class. However, a settlement can be fair even where (unlike here) there is a large number of objectors. Bennett v. Behring Corporation, 737 F.2d 982, 988 (11th Cir. 1984); Pettway v. American Cast Iron Pipe Co., 576 F.2d 1157, 1217 (5th Cir. 1978); Cotton, supra.

No class member has provided a sound, objective reason for denying approval of the settlement, nor suggested any other reasonable form of settlement which would adequately address the interests of all class members. The Court finds that the objectors have made their position quite clear: they want to be excluded from the class action so that they can pursue their own individual interests in seeking to recover for themselves the maximum punitive damage award for the entire pattern of alleged conduct, even though at best such a scenario might result in a substantial recovery to some but not to all. This Court is of the opinion and finds that to permit opt-outs is not in the best interest of the Class.

In general, other grounds of objection resulted from a misconstruction of the proposed settlement agreement. Moreover, the differing allocations to certain class members under the Settlement are rationally based on legitimate considerations. Moreover, there is no rule that a settlement must benefit all class members equally. See Holmes v. Continental Can Co, 706 F.2d 1144, 1148 (11th Cir. 1984), citing Kincade v. General Tire and Rubber Co., 635 F.2d 501, 506 n. 5 (5th Cir. 1981). Even if the complaining class members show that there is some degree of difference in the settlement agreement, that showing may be rebutted by a factual showing that the differences are rationally based on legitimate considerations. Holmes, 706 F.2d at 1148.

Some of the class members objected to having to continue doing business with State Mutual in order to receive any benefits of this settlement. The Court finds that while some benefits are available only if certain class members or objectors continue to do business with State Mutual, the benefits to all class members are substantial and the fairness to all segments of the class member population override the inconvenience of those few objectors who do not wish to continue to do

business with State Mutual. The option to receive the benefits afforded by this settlement is itself a benefit, whether the option is exercised or not.

In addition to having considered the objectors' objections to the proposed settlement, and the arguments by some objectors that they should be permitted to opt out of this class action, this Court has independently evaluated the terms of the proposed settlement of this class action, and has independently compared the benefits which members of the class will receive under the terms of the Stipulation with the likely rewards of litigation in order to-determine whether the settlement of this action pursuant to the Stipulation is fair, reasonable and adequate and is in the best interests of the members of the Plaintiff Class, notwithstanding the fact that only three out of the 69,000 class members objected at the hearing.

F. Findings Regarding The Stage of the Proceedings and the Amount of Discovery Completed. Settlement was effected more than ten (10) months after the commencement of this class action. The Court finds that counsel for the plaintiff class and the actuarial expert employed by Class Counsel had extensive access to information, documents and other discovery (both formal and informal), prior to entering into the proposed settlement.

The Court has reviewed the discovery filed with the Court and has reviewed the affidavits of expert Dyer, concerning the availability and review of information. Additionally, State Mutual's outside actuary, Larry Warnock, informed the Court by affidavit of his role in reviewing various sources of financial and actuarial information from State Mutual and in calculating the value of the terminal dividend benefits to the class and the methodology of those calculations. The Court finds that Class Counsel conducted a substantial factual investigation, and had before them sufficient evidence upon which to base their agreement to the proposed settlement. The Court further finds that, based upon a review and evaluation of that information, including the documents and filings with the Insurance Department, the information furnished by officers of State Mutual, access to State Mutual's records and interviews with State Mutual's chief actuary and outside actuary, Class Counsel had more than adequate information to properly evaluate, with the assistance of the actuarial expert and State Mutual executives, the proposed settlement, and that Class Counsel were adequately informed, and had before them sufficient information and evidence upon which to base their evaluation of and agreement to the proposed settlement, and based thereon, reached a proposed settlement which Class Counsel felt to be fair, reasonable, adequate and in the best interests of the class. Certainly the record now before the Court is sufficient to form a basis for Class Counsel's current recommendation that the settlement be approved.

In the process of encouraging and checking on settlement progress, the Court finds that the settlement discussions and negotiations were conducted between Class Counsel and counsel for State Mutual at arms length over a several month period of time during which counsel remained adversarial, and that such negotiations were free from fraud or collusion. Indeed, when the parties reached an impasse, mediation was requested and granted by the Court.

The Court further finds that this class action was certified originally for purposes of trial - not settlement. Based upon the entirety of the record, the Court finds that there was no collusion in connection with this settlement.

G. Findings Regarding the Ability of Defendants to Withstand A Greater Judgment. The Court finds that State Mutual Life Insurance Company's statutory net worth at the date the Settlement was entered into was approximately $22,000,000.00, according to the December 31, 1995 statutory statement filed by State Mutual with the Department of Insurance.

With some 69,000 named insured in the class, even an award of $500 each would far exceed State Mutual's statutory net worth. Moreover, if one were to assume a succession of large individual punitive damage judgments, such a scenario would not only exhaust the availability of funds from which class members and later individual suits could be compensated, but would also eliminate the insurance coverage State Mutual provides to its holders of life insurance policies, annuities, and all other State Mutual insurance policies. The owners of the company, *i. e.*, the class members, would possibly lose their investment in the company.

Without adjudicating the merits, the Court further finds that there is a substantial risk that a succession of individual "pattern and practice" punitive damage suits on these claims, if even a few were successful, could have the effect of placing State Mutual in receivership or rehabilitation proceedings long before its total assets are depleted. The Court further finds for the purposes of settlement that, pursuant to the Due Process Clause of the United States Constitution and the principles set forth in Green Oil Co. v. Hornsby, 539 So.2d 218 (Ala. 1989), and similar authorities in other jurisdictions, if individual damage suits were successful, there is a virtual certainty that before each of the class members insured under the approximately 69,000 life insurance policies at issue had an opportunity to bring a suit against State Mutual to a final judgment, State Mutual would be ruled to have been punished to the maximum amount constitutionally permissible for the alleged common conduct, and therefore immune from any further liability for punitive damages. The Court finds that if some class members pursuing their individual lawsuits were able to obtain substantial verdicts against State Mutual for punitive damages, at some point the balance of the later class members would be unable to obtain any punitive damages, even if State Mutual had funds to pay those claims. The Court must observe that if only 22 of the class members pursuing individual claims received $1,000,000 in compensatory and punitive damages, the total net worth and assets of State Mutual as of December 31, 1995, would be exhausted, and at some earlier time the Due Process "curtain" would have fallen (and probably receivership or rehabilitation proceedings instituted).

11. Findings Regarding No Opt-out Provisions of the Settlement. The Court hereby finds that the predominant relief provided for in this settlement (and the predominant relief justified and desirable for the class as a whole wherein a mutual company is involved) is equitable relief for purposes of Rule 23(b)(2). The Court finds that while much of the equitable relief has a punitive effect, particularly in that the equitable relief extends to persons whose claims might otherwise be barred by various legal defenses, it remains equitable for purposes of Rule 23(b)(2). The Court

finds that, assuming the allegations of the complaint to be true, State Mutual has acted on grounds generally applicable to the class, thereby making appropriate final equitable and injunctive relief with respect to the class as a whole, and that the nature of the interest of the class members and the nature of the settlement make this action appropriate for certification pursuant to A.R.CIV.P. 23(b)(2). Cf. First Alabama Bank of Montgomery, N.A. v. Martin, 425 So.2d 415 (Ala. 1982), cert denied, 461 U.S. 938 (1983); Penson v. Terminal Transport Company, 634 F.2d 989 (5th Cir. 1981); Kincade v. General Tire & Rubber Co., 635 F.2d 501, 502-08 (5th Cir. 1981); Robinson v. Lorillard Corp., 444 F.2d 791 (4th Cir. 1971); Robertson v. National Basketball Association, 556 F.2d 682 (2nd Cir. 1977); Nottingham Partners v. Dana, 564 A.2d 1089 (Del. 1989); Nottingham Partners v. TransLux Corp., 925 F.2d 29 (1st Cir. 1991).

The Court finds that this action satisfies the requirements of Rule 23(b)(1)(A), 23(b)(1)(B) and 23(b)(2). The Court hereby reaffirms all findings and conclusions made in its order of February 21, 1996.

This Court is of the opinion and finds that to permit opt-outs is not required under the circumstances of this case; is not in the best interests of the Class; and would create a risk of a race to the courthouse by those permitted to opt-out in an effort to obtain for themselves alone the entirety of the constitutionally permissible punitive recovery in one or a few individual actions, and would result in the Settlement being destroyed, thereby depriving all class members of the substantial benefits offered by the Settlement.

The Court finds that the settlement is fair, reasonable and adequate, and that the provisions precluding opt-outs by class members are also fair, reasonable and adequate considering the totality of the record and of the circumstances of this case. The Court expressly finds that settlement of this class action on a no-opt-out basis is valid in all respects and is in the best interests of the class as a whole.

12. Findings Regarding The Scope Of the Release. As is customary, the Settlement contains a release of class members' claims. Compare Nottingham Partners v. TransLux Corp., 925 F.2d 29 (1st Cir. 1991); Grimes v. Vitalink Communications Corp., 17 F.3d 1553 (3rd Cir. 1994).

The Court finds that the release is intended to cover, and does in fact cover, any frauds or other claims which arose out of transactions involving the sale of these State Mutual policies (as defined in the Settlement Agreement and Release).

The Plaintiffs further claim that State Mutual defrauded all the class members through their agents by not explaining that the projected dividends which were shown to the purchasers of these life insurance policies at the time of sale were not guaranteed and that the actual annual dividends might, in fact, be higher or lower depending on the dividends declared annually by State Mutual and/or by stating the policies would be "paid up" when they reached the projected "vanish" point, without revealing that more premiums would or could be due.

The Plaintiffs claim that the sales illustration shown to them did not adequately explain and the class members did not understand that projected dividends were not guaranteed. They claim that they are entitled to certain benefits that they did not receive because of the difference between the projected and actual annual dividends.

The Plaintiffs claim that because of State Mutual's reductions in its annual dividend scales, specifically for 1992, 1994 and 1995, they either (1) became obligated to pay more premiums over time than was originally represented to them; or (2) lost additional coverage and cash value because the amount of actual dividends declared did not accrue paid up additions as were originally represented to them; or (3) lost additional coverage because there were not enough dividends to buy the additional coverage they were originally shown; or (4) became obligated to pay more premiums than originally were represented because the reduced annual dividends did not allow the policies' premiums to "vanish" as shown in their projections or that their "vanished" premiums have returned for a period of years because of the dividend reductions.

The Plaintiffs claim that, since the size or the amount of the projected dividend versus the actual annual dividend affected all aspects of the use of the dividend in the performance of the policies, the actual dividend being less than the projected dividend, each and every one of them was damaged in some manner.

They claim that they understood that the dividends were guaranteed or that a policy owner by the payment of a lump amount or a lesser number of premiums than called for in the policy contract would never have to pay another premium.

State Mutual, for its part, expressly denied any wrongdoing as alleged in the complaints of the various plaintiffs and class members and does not concede any wrongdoing or liability in connection with any facts or claims that have been or could have been or might have been alleged against it in this litigation. State Mutual further contended that the illustrations indicated that the dividends were "not guaranteed" and that it is clear from the illustrations that dividends are used to fund future premiums and their non-guaranteed nature puts the class members on notice that the illustration may not perform as shown at the point in sale if dividends are lowered. Without deciding the merits, and only for the purposes of determining the fairness of the settlement, the Court has assumed that State Mutual did engage in the company wide pattern and practice of misrepresentation in regard to the nature of these dividends and the "vanishing premiums" and whether or not those dividends which were represented at the time of sale would remain in place throughout the life of the policy and whether or not these dividends were guaranteed or not.

The Court retains jurisdiction to enforce the permanent injunction against assertion of Released Transactions provided for in the proposed Settlement Order and which will be issued by this Court in conjunction with its approval, so that any further disputes regarding the scope of the release can be resolved by an appropriate motion for relief from the permanent injunction or from the release at such time as this Order is adjudicated on appeal (or the time for appeal has expired).

While the release is broad, the broad and substantial relief afforded by this settlement, including the substantial equitable relief and the monetary amounts being paid by State Mutual to or for the benefit of the Class Members, would not be available if it did not effect a final and complete resolution of any claim of Class Members relating in any way to the alleged conduct or to any transaction involving the sale of these types of State Mutual policies. The release is due to be enforced as written and agreed to by the parties in the Settlement Agreement, and as herein set forth.

13. Findings Regarding Contacts Between Class Claims And State Of Alabama. The Court finds that this litigation has significant contacts, and a significant aggregation of contacts, with the State of Alabama. State Mutual's home office is in Rome, Georgia, twenty-five (25) miles from the Alabama border. As of August 3, 1995, a total of approximately 69,000 policies were in force or in the grace period, of which approximately 13% of the named insured had an Alabama address as of the date the class notice was mailed. This is the third highest concentration of these policies which were primarily sold in the Southeastern states, with Georgia having 34% and South Carolina having 15%.

II. CONCLUSIONS OF LAW

Based upon all of the evidence before the Court and with due regard for the foregoing findings of fact and the application of the controlling legal principles, and based on this Court's familiarity with and consideration of the entire record of this proceeding, the Court has reached the following conclusions of law:

1. Maintenance of this suit as class action for purposes of settlement of the claims asserted in this action for the benefits of Class Members is appropriate and satisfies all requirements under Rule 23(a), Rule 23(b)(1)(A), Rule 23(b)(1)(B), Rule 23(b)(2), Rule 23(c), and Rule 23(e). The standards for class certification are more easily satisfied for purposes of settlement of a class action. See, City of Detroit v. Grinnell Corp., 495 F.2d 448 (2nd Cir. 1974); Bowling v. Pfizer, Inc., 143 F.R.D. 141 (E.D. Ohio 1992).

2. This action satisfies all four prerequisites to class certification set forth in Rule 23(a) of the *Alabama Rules of Civil Procedure*, namely numerosity, commonality, typicality, and adequacy of representation.

3. The class certified by this Court is sufficiently numerous that joinder of all members would be impractical and perhaps impossible. The instant class consists of thousands of present and former policy owners who own approximately 69,000 life insurance policies issued by State Mutual, which is clearly a sufficient number to meet the numerosity requirements of Rule 23(a)(1). Aubrey Wayne Tidmore, *et al.* are members of the class certified by the court. Their affidavits presented at the Fairness Hearing demonstrated to the Court that they were adequate

representatives with claims typical of the class. Although the courts have held that "the test for typicality, like commonality, is not demanding," the commonality and typicality requirements are satisfied in this case under any standard. See e.g., Forbush v. J. C. Penney, 994 F.2d 1101, 1006 (5th Cir. 1993); Schipes v. Trinity Industries, 987 F.2d 311, 316 (5th Cir. 1993), cert. denied 114 S.Ct. 548 (1993). The Plaintiffs' claims arise from the same alleged corporate scheme and pattern and practice of events that give rise to the claims of all other class members, are allegedly based upon the same general corporate motive as the activities complained of by other class members, and are based upon the same general legal theory of a pattern and practice of "company-wide" fraud. Based on the applicable legal authorities, including those cited in the briefs submitted by Class Counsel and State Mutual, the Court concludes that typicality and commonality requirements are satisfied. The Court further finds and concludes that the settlement itself shows that the interests of all Class Members have been fully considered in a fair and reasonable overall settlement. See Jennings Oil Company v. Mobil Oil Corp., 80 F.R.D. 124, 128-29 (S.D.N.Y. 1978).

4. The Court concludes that the Named Plaintiffs and their attorneys have adequately represented the Class. The Court specifically concludes that the Class Representatives have common interests with the unnamed members of the Class; that the Class Representatives have vigorously prosecuted the interests of the Class through qualified counsel; and that the requirement of adequate representation has been fully and completely satisfied in this case. See, Gonzales v. Cassidy, 474 F.2d 67, 72 (5th Cir. 1973); In re Corrugated Antitrust Litigation, 643 F.2d at 212.

5. The Court has previously found, and hereby reaffirms the conclusion, that this action is appropriate for certification pursuant to Rule 23(b)(2) of the Alabama Rules of Civil Procedure. The Court concludes that, assuming the allegations of the complaint to be true, State Mutual acted or refused to act on grounds generally applicable to the class, thereby making the final injunctive relief and corresponding declaratory relief appropriate with respect to the class as a whole. The Court concludes that the fact that the complaint sought certain monetary relief initially, and the class settlement provides incidental monetary relief in addition to the class-wide injunctive and equitable relief and releases monetary claims, does not preclude certification pursuant to Rule 23(b)(2). See e.g., First Alabama Bank of Montgomery, N.A. v. Martin, 425 So.2d 415 (Ala. 1982), cert denied, 461 U.S. 938 (1983); Penson v. Terminal Transport Company, 634 F.2d 989 (5th Cir. 1981); Nottingham Partners v. Dana, 564 A.2d 1089 (Del. 1989); Kincade v. General Tire & Rubber Co., 635 F.2d 501, 502-08 (5th Cir. 1981); Nottingham Partners v. TransLux Corp., 925 F.2d 29, 31-32 (1st Cir. 1991); Robinson v. Lorillard Corp., 444 F.2d 791 (4th Cir. 1971). As the Court has previously found, and hereby reaffirms, injunctive and other equitable relief is the predominant relief justified under the circumstances of this case, and the predominant relief afforded by the settlement. Therefore, the Court concludes that final certification and approval of this settlement pursuant to Rule 23(b)(2) is appropriate.

6. The Court concludes that this action is also appropriate for certification pursuant to Rule 23(b)(1) for purposes of settlement, and that the requirements of Rule 23(b)(1)(A) and 23(b)(1)(B) are satisfied on the facts of this case. The Court incorporates by reference and makes

final the findings and conclusions previously set forth in the Court's Order of February 21, 1996, and further concludes that this action is certified under Rule 23(b)(1)(B). Based upon those findings and conclusions, which are hereby reaffirmed and made final by the Court, the Court concludes that certification of this class action settlement pursuant to Rule 23(b)(1)(A) and Rule 23(b)(1)(B) is appropriate.

7. The Court concludes that because this class action meets the requirements of Rule 23(b)(1) and 23(b)(2), certification pursuant to Rule 23(b)(3) would be inappropriate. The Court concludes that the *res judicata* effect given to judgments rendered in class actions under 23(b)(1) and 23(b)(2) is superior; that certification under Rule 23(b)(3) would not be in the best interests of the class as a whole or the Class Members; that certification pursuant to Rule 23(b)(3) would endanger the legal interests of the class as a whole; and accordingly, that certification pursuant to Rule 23(b)(3) is inappropriate. See e.g., Wetzel v. Liberty Mutual Insurance Company, 508 F.2d 239, 252 (3rd Cir. 1974), cert denied, 421 U.S.1011 (1975).

8. The Court concludes that the right to opt-out is not required by Rule 23, the United States Constitution or the Alabama Constitution for purposes of this class action settlement. To the extent opt-out is available at all in a class action certified under Rule 23(b)(2), the granting or denial of opt-out is discretionary with the Court. See e g., Penson v. Terminal Transport Company, 634 F.2d 989 (5th Cir. 1981). In the exercise of its discretion, this Court concludes that an opt-out under the circumstances presented by the entirety of this record would be detrimental to the interests of the class members and the class as a whole. This conclusion is bolstered by the inherent conflicts that would ensue between class members in individual punitive damage suits if opt-outs were permitted, as demonstrated, at the Fairness Hearing.

9. The Court expressly concludes that the granting of opt-out rights in this class action is not required and is neither appropriate nor desirable. This Court would reach the same conclusion whether the Court proceeded under Rule 23(b)(1) alone, Rule 23(b)(2) alone, or, as the Court has done, under both Rule 23(b)(1) and Rule 23(b)(2). The Court has given due consideration to the authorities cited by the objectors, and the Court concludes that this class is sufficiently cohesive, that there is a sufficient jural relationship between and among the members of the class, and that the claims of the class members are sufficiently homogenous that opt-out is unnecessary and inappropriate.

10. The Court concludes that any grant of opt-out privileges to any class members would be inconsistent with the resolution of the claims of the class as a whole pursuant to Rule 23(b)(2) and Rule 23(b)(1). If opt-out were permitted, a few class members who opt-out, if successful in their individual lawsuits, could receive an early trial and would no doubt attempt to recover punitive damages for the entire pattern and practice of conduct here, to the detriment of remaining class members. Indeed, as the Court previously concluded, and hereby reaffirms, such a scenario poses a substantial threat to the interests of the class as a whole if the merit of the claims is what plaintiff and the objectors contend, in that there is the potential for complete destruction and all

chances of punitive or other recovery to the remaining class members, as well as a potential for loss of insurance coverage any class members may have with State Mutual.

11. The Court concludes than the denial of opt-out privileges does not violate either the Due Process or jury trial guarantees of the Alabama Constitution or the United States Constitution, or violate Rule 23 of the *Alabama Rules of Civil Procedure*. As a matter of law, the Court concludes that no plaintiff has a right to punitive damages. Moreover, Rule 23(b)(1) and Rule 23(b)(2) have often been applied by the Courts of virtually every state and federal courts. Constitutional challenges to class action litigation or settlement pursuant to Rule 23(b)(1) and Rule 23(b)(2) have repeatedly been rejected. See: Adams v. Robertson, 676 So.2d 1265 (Ala. 1995); Williams v. Burlington Northern, Inc., 832 F.2d 100, 103-04 (7th Cir. 1987); Elliott v. Weinberger, 564 F.2d 1219, 1229 n. 14 (9th Cir. 1977); Nottingham Partners v. Dana, supra; Nottingham Partners v. TransLux Corp., supra; Wetzel v. Liberty Mutual Insurance Co., supra; Kincade v. General Tire &: Rubber Co., supra; Robertson v. National Basketball Association, 556 F.2d 682, 685-86 (2nd Cir. 1977); see also, Penson v. Terminal Transport Co., 634 F.2d 989 (5th Cir. 1981). Class action settlements permissibly may preclude the opportunity for jury trial just as Rule 56 and Rule 12 of the Alabama and Federal Rules of Civil Procedure, and other procedural mechanisms, may result in the preclusion of a jury trial, without violating the state or Federal Constitutions.

12. The Court concludes that the form and method of notice given to Class Members in connection with the proposed class action settlement satisfies all legal requirements of Rule 23 and all constitutional requirements of Due Process. Such notice constitutes the best notice practicable under the circumstances, and is sufficient to effect individual notice to all Class Members who can reasonably be identified through reasonable effort. See e.g., Eisen v. Carlisle and Jacquelin, 417 U.S. 156, 177 (1974). The class notice at issue here was fully sufficient to satisfy those requirements. The class notice properly identified the plaintiff class and sufficiently described the terms of the settlement so as to alert members with adverse viewpoints to investigate and to come forward, object and be heard.

13. The Court concludes that State Mutual, class representatives and Class Counsel had no obligation to inform unnamed class members or objectors of the settlement negotiations. See e.g, Bowling v. Pfizer, Inc., 143 F.R.D. 141, 154-56 (S.D. Ohio 1992).

14. The Court concludes that a class action settlement may release not only the claims alleged in the complaint and before the Court, but also claims which could have been alleged by reason of, or in connection with, any matter or scheme or facts set forth or referred to in the complaint. Even where a court does not have the power to adjudicate a claim, it may still approve release of that claim as a condition of the settlement of an action before it. See, e.g., In re Corrugated Container Antitrust Litigation, 643 F.2d 195, 221 (5th Cir. 1981); Nottingham Partners v. Trans-Lux Corp., 925 F.2d 29 (1st Cir. 1991); Huguley v. General Motors Corp., 999 F.2d 142, 145 (6th Cir. 1993). Grimes v. Vitalink Communications Corp., 17 F.3d. 1553 (3rd Cir.1994).

15. The Court concludes that there is no requirement that out-of-state plaintiff class members/objectors have "minimum contacts" with the State of Alabama in order to be bound by the class action settlement at issue here. See, e.g., Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 808 (1985). See also, Hansberry v. Lee, 311 U.S. 32, 40-41 (1940). There is no constitutional requirement that out-of-state plaintiff class members be given the opportunity to opt out of a 23(b)(2) class action. Shutts, 472 U.S. at 812, n. 3.

16. The Court concludes the State of Alabama has significant contacts and a significant aggregation of contacts with the claims asserted by each member of the class, and the State of Alabama has compelling state interest in this action, thereby making application of Alabama law to this class action neither arbitrary nor unfair. See e.g., Phillips Petroleum Company v. Shutts, 472 U.S. 797, 821-22 (1985). However, even if the substantive laws of other states were applied, this Court's conclusions would not change.

17. The Court concludes that the proposed settlement is a reasonable compromise of the claims of the class and its members, is fair, reasonable and adequate. The Court finds that approval of this settlement is in the best interest of the class. The Court concludes that this settlement achieves a definite and certain result for the benefit of Class Members which is preferable to continuing litigation in which Class Members must necessarily confront and overcome many obstacles, the prospect of an uncertain result, and the prospect of any claim for punitive damages being cut off after an award to the first few litigants, and other uncertainties.

18. The Court concludes that the proposed settlement is and must be considered fair, reasonable and adequate in all respects, and in the best interest of the class as a whole and of Class Members. Considering the nature of the litigation and all of the prevailing circumstances, the Court would detrimentally jeopardize a substantial recovery if the Court denied approval. The Court concludes that the settlement is due to be and is hereby approved, and that the injunctions provided for thereby are due to be issued in order to protect the interests of the class as a whole, effectuate the settlement, and protect the jurisdiction of this Court over the subject matter of the action and the settlement.

19. The Court concludes that the settlement was reached by the parties after many months of arms-length negotiations, that the overall fairness of the settlement demonstrates the absence of collusion and the adequacy of representation, and that the settlement represents a fair and valid compromise between the competing positions of the plaintiff and the plaintiff class, on the one hand, and the defendant and released parties on the other.

20. The Court concludes that the named parties and their counsel have successfully brought this difficult and complex litigation to a fair and reasonable conclusion, on terms and conditions which this Court concludes are fair and reasonable to the class and State Mutual alike, having due regard for the risks, hazards and expense which continued litigation would entail. The Court concludes that by reaching the settlement at this stage of the litigation, the parties have commendably tried to reduce the costs connected with this litigation, and that the parties have

further reduced the cost through efforts at informal discovery which the courts have long commended. See: Cotton v. Hinton, 559 F.2d 1326, 1332 (5th Cir. 1977).

21. The Court concludes that Class Counsel have accurately and ably evaluated the legal, factual and remedial issues and obstacles involved in this extremely complex litigation, and thereby reached a proposed settlement which this Court could have approved as being fair, reasonable and adequate without modification, but which was substantially improved for the protection of class members by way of modifications proposed by the Court and accepted by Class Counsel and other parties.

22. Based on the findings and conclusions set out herein above, and in this Court's September 13, 1996 Order and Judgement Conditionally Approving the Class Action Settlement, this Court will enter a final judgment in the form of the Order and Final Judgment attached hereto immediately.

23. All objections and motions of objectors not previously ruled upon are hereby overruled.

24. Class Counsel's petition for an award of attorneys' fees will be addressed in a separate order.

DONE AND ORDERED this 15th day of June, 1998.

CIRCUIT JUDGE