

IN THE CIRCUIT COURT OF GREENE COUNTY, ALABAMA

AUBREY WAYNE TIDMORE, et al., )

PLAINTIFFS, )

v. )

STATE MUTUAL INSURANCE )  
COMPANY, et al., )

DEFENDANTS. )

CIVIL ACTION NUMBER:

CV 95-066

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CAROL BELL, et al., )

PLAINTIFFS, )

v. )

STATE MUTUAL INSURANCE )  
COMPANY, et al., )

DEFENDANTS. )

CIVIL ACTION NUMBER:

CV 96-040

**SETTLEMENT AGREEMENT**

WHEREAS, the above actions were brought against State Mutual Insurance Company ("State Mutual") on behalf of certain existing and lapsed policy owners of State Mutual; and

WHEREAS, these two Actions were consolidated by orders of the Circuit Court of Greene County, Alabama on February 27, 1996; and

WHEREAS, the Complaints in these Actions as amended allege and State Mutual denies the following:

WHEREAS, after a hearing on February 13, 1996, the Court signed an Order on February 21, 1996, certifying a Class of State Mutual policy owners who have, or had at the time of the policy's termination, an ownership interest in one or more of certain whole life insurance policies issued by State Mutual during the period from January 1978 through August 3, 1995 (the date of the filing of the original complaint); and

WHEREAS, on June 6, 1996, after mediation and extensive arm's length negotiations, counsel for Plaintiffs and State Mutual in these consolidated actions tentatively agreed to a settlement of the claims that have been, could have been or might be asserted in those actions, subject to further discussion on the details of a settlement, specific terms of injunctive relief and the preparation and approval of a definitive settlement agreement; and

WHEREAS, after further exhaustive and lengthy arm's length negotiations, counsel for Plaintiffs and State Mutual have agreed to additional terms and conditions for a settlement of the claims that have been, could have been or might be asserted in the actions, subject to certain conditions as set forth herein; and

WHEREAS, based upon their discovery, investigation and evaluation of the facts and law relating to the matters alleged in the complaints, counsel for Plaintiffs and the Class have agreed to settle the litigation, pursuant to the provisions of this Agreement, after considering such factors as (i) the substantial benefits to Plaintiffs and the Class under the terms of this Agreement, (ii) the uncertainty of being able to prove the allegations in the Complaint, (iii) the attendant risks of litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation, (iv) the uncertainty inherent in the various theories of damages, even if Plaintiffs could establish State Mutual's liability, (v) the desirability

of consummating this Agreement promptly, to provide effective relief to Plaintiffs and the Class, (vi) the financial condition of State Mutual and considering its size, its limited ability to engage in extended or widespread litigation brought by separate claimants; and (vii) the fact that State Mutual is a mutual insurance company of which members of the Class are owners by virtue of their policy ownership and, that the members of the Class as the actual owners of the Company have an interest in preserving the financial ability of State Mutual to pay its insurance claims; and

WHEREAS, State Mutual expressly denies any wrongdoing as alleged in the Complaints and does not concede any wrongdoing or liability in connection with any facts or claims that have been or could have been or might be alleged against it in this litigation, but considers it desirable for the actions to be settled and dismissed because this settlement will (i) provide substantial benefits to the Class Members, (ii) confer substantial benefits on State Mutual, including the avoidance of further expense and disruption of the management and operation of State Mutual's business due to the pendency and defense of the Actions, (iii) finally put Plaintiffs' claims and the underlying matters to rest, and (iv) avoid the substantial expense, burdens and uncertainties associated with continued litigation of those claims; and

WHEREAS, Class Counsel have conducted an extensive investigation about the matters at issue in this action, which investigation included pre-litigation fact-finding, informal interviews and formal discovery that included review of relevant documents, sworn depositions of witnesses and consultation with various experts, and based on their investigation and evaluation of the facts and law relating to the issues in this case, Class Counsel believe that the lawsuit should be settled upon the terms of this Settlement because it is fair, reasonable and

adequate and will be in the best interests of the Class for a number of reasons, including the substantial benefits to the Class under this Settlement; and

WHEREAS, this Settlement has been reviewed by Class Counsel's primary consultant and expert retained by Plaintiffs; and

WHEREAS, Plaintiffs and their counsel have concluded that this Settlement is fair, reasonable and adequate because it provides substantial benefits to the Class and is in the best interests of the Class;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by, between and among Plaintiffs (individually and in their respective capacities as representatives of the Class) and State Mutual, by and through its duly authorized counsel, that these actions and the matters raised by them are hereby settled, compromised, and concluded with a Final Order and Judgment approving the Settlement binding all parties on the following terms and conditions.

A. DEFINITIONS

1. As used in this Settlement, and the annexed Exhibits (which are an integral part of this Settlement and are incorporated in their entirety by reference), the following terms have the following meanings, unless a part or subpart of this Settlement or its exhibits otherwise provide:

i. "Action or Actions" means *Aubrey Wayne Tidmore, et al. v. State Mutual Insurance Company, et al.*, Civil Action Number CV-95-066 and *Carol Bell v. State Mutual Insurance Company, et al.*, Civil Action Number CV-96-040 in the Circuit Court of Greene County, Alabama, and any amendments thereto and consolidations thereof.

ii. "Administrator" means a third party agent or administrator whom State Mutual, with the approval of the Court and Class Counsel, shall retain to help implement the terms of the Settlement. Class Counsel and State Mutual have agreed to use Client Connections, Inc., subject to the Court's approval.

iii. "Adequately advise prospective policy owners that any projected dividends are not guaranteed" means using a new policy illustration which:

- (a) states that values illustrated are based on current dividend scales which are "Not Guaranteed" and which further states that future dividends may be higher or lower depending on changes in the Company's earnings;
- (b) states that more premiums may be due in future years;
- (c) are signed by the insured/owner and the agent and provided to the Company with the application.

iv. "Adequately Investigate" means:

- (a) Obtaining two credit and background checks including a credit and a criminal background check;
- (b) Inquiring of all state insurance departments, in which the agent has declared that he or she is currently or was previously licensed, as to any complaints on that agent; and
- (c) Obtaining and contacting two personal references.

v. "Adequate Training" means requiring all current and new agents to certify that they have read the Company's new Training Manual including the ethics self rater in the ethics section along with periodic updates on all State Mutual policies and procedures.

vi. "Attorneys' Fees" means the funds as may be awarded to Class Counsel to compensate them for their fees and expenses in connection with the Action.

vii. "Board" means the Board of Directors of State Mutual.

viii. "Class" and "Class Members" means all person(s) who since January 1, 1978 purchased State Mutual Insurance Company policies as described herein but who have cash surrendered, or lapsed the policies since January 1, 1992 and all person(s) who, since January 1, 1978, purchased and are now holders of whole life policies issued by State Mutual Insurance Company, described 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) policies, and to whom State Mutual Insurance Company allegedly represented that certain dividend scale projections in connection with these policies would be in effect throughout the life of the policies and/or may have suppressed the fact that the dividend scale projections could later change or be lowered and, as a result, the members of the Class were or may be in the future injured upon the subsequent lowering of said dividends.

Excluding, however, any person who was a named plaintiff in any separate lawsuit filed on or before August 3, 1995 which alleged fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale or issuance of any one or more State Mutual policies.

- ix. "Class Counsel" means Frank H. Tomlinson and Alexander W. Jones, Jr. of the Firm of Pritchard, McCall & Jones, L.L.C., Birmingham, Alabama.
- x. "Class Notice" or "Notice" means the Notice of Class Action, Proposed Settlement, Settlement Hearing and Right to Appear to be given to Class Members substantially in the form of the annexed Exhibit A.
- xi. "Class Period" means the period from January 1, 1978 through August 3, 1995, inclusive.
- xii. "Company" means State Mutual Insurance Company.
- xiii. "Complaint(s)" means the consolidated, amended Complaint in the action.
- xiv. "Contribution Principle" means the requirement that the total divisible surplus be distributed among the policies in the same proportion as the policies are considered to have contributed to the divisible surplus. The method used by the Company in applying the Contribution Principle is the Three Factor Fund Method. The three factors in the Three Factor Fund Method are (1) mortality experience, (2) net investment income, and (3) actual expenses.
- xv. "Defendant" means State Mutual Insurance Company.
- xvi. "Defendant's Counsel" means the law firm of Capell, Howard, Knabe & Cobbs, P.A., Montgomery, Alabama, Figures, Jackson & Harris of Mobile, Alabama, and Maynard, Cooper & Gale of Birmingham, Alabama.
- xvii. "Effective Programs to Monitor Agents Service" means the use of the Life Insurance Marketing and Research Association's Customer Assurance Program (LIMRA/CAP) or a similar program with the sale of each new policy.

xviii. "Effective Program to Determine Whether Agents Adequately Explained Variance in Future Dividends" means the use of the new type illustration as defined in (iii) above and the use of the LIMRA/CAP to confirm that agents advise policy owners that dividends are not guaranteed.

xvix. "Existing Policy Owner" means a person or entity that purchased one of the Policies described herein on or after January 1, 1978, which policy is still "in-force" on the date the settlement is final, including all appeals.

xx. "Final Order and Judgment" means the order approving the settlement and the judgment entered pursuant to that order, as described in Section I.

xxi. "Final Settlement Date" means the date on which the Final Order and Judgment approving this Settlement Agreement becomes final. For purposes of this Settlement:

(1) if no appeal has been taken from the Final Order and Judgment, Final Settlement Date means the date on which the time to appeal therefrom has expired; or

(2) if any appeal has been taken from the Final Order and Judgment, Final Settlement Date means the date on which all appeals therefrom, including petitions for rehearing or reargument, and petitions for certiorari or any other form of review, have been finally disposed of in a manner that affirms the Final Order and Judgment.

xxii. "Follow Up Mail Program" means the LIMRA/CAP or similar program.

xxiii. "Hearing Order" means the order entered by the Court concerning Notice, Settlement Hearing, and Administration in the form of the annexed Exhibit B, unless otherwise agreed by the parties.

xxiv. "In-Force" for the purpose of this Settlement, means a policy that has not lapsed or been cash surrendered.

xxv. "Lapsed Policy Owner" means a person or entity who since January 1, 1992, has cash surrendered or stopped paying due premiums on one of the Policies described herein and has either (1) received the Policy's cash value less any outstanding loan; (2) had the Policy placed on extended term insurance; or (3) had the Policy placed on reduced paid up insurance.

xxvi. "Litigation" means the above entitled consolidated actions pending in the Circuit Court of Greene County, Alabama.

xxvii. "Misrepresentation" means either an untrue statement of material fact or omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not materially misleading, made at or before or after the time of the sale, and/or any document or statement that did not make clear the fact that:

- a. the projected dividends to be received in the form of cash might be more or less than illustrated;
- b. the projected dividends to be used to directly reduce premiums might be more or less than illustrated and thus the future premiums might be higher or lower than illustrated;
- c. the projected dividends to be used to purchase paid up additions might be more or less than illustrated and thus the amount of paid up additional insurance and additional cash values might be more or less than illustrated;

d. the projected dividends if used to buy additional insurance might purchase more or less additional insurance than illustrated.

e. the projected dividends to be used to purchase paid up additions to be used in combination with future dividends to "vanish" premiums might be more or less than illustrated and thus might vanish premiums when illustrated, then might allow them to reappear or might vanish premiums in a longer or shorter time period than illustrated;

f. the projected cash values of the policies might not increase as illustrated when the dividends were accumulated at interest because the dividends might be higher or lower than illustrated.

g. any statement or document that represented that the policy itself would be "paid up" in a period of time shorter than its originally contemplated by the contract of insurance, i.e., Life Paid Up at 95 being "paid up" prior to premiums being paid through age 95; and/or

h. any other statement or documents that purported to say that performance of a policy was guaranteed.

xxviii. "Notice Date" means the date when the Class Notice is first mailed or published to Class Members.

xxix. "Plaintiffs" means Aubrey Wayne Tidmore, Steven W. Tidmore, Sara Bonds a minor, by and through her next friend and mother Regina Tidmore Bonds, Scottie Rayfield Johnson, a minor by and through his next friend and father Donald R. Johnson and Jackson B. Kelly as well as Carol Bell, Willie J. Scott, Jr., Mattie Green Mabin, Frances Thrash, Mattie

Richards, Ethel C. Robbins, Augustine C. Woodyard, and any other Class Members who may be added to the Complaint or any subsequent pleading as named Plaintiffs, in their individual and representative capacities.

xxx. "Policy or Policies" means one or more whole life insurance policies issued by State Mutual from January 1, 1978 through August 3, 1995 of the types described as: (a) Life Paid Up at 90 (LP90), (b) Life Paid Up at 95 (LP95), (c) Life Paid Up at 65 (LP65), and/or (d) Graded Premium Whole Life (GPWL).

xxxi. "Post Settlement Notice" means that pursuant to the Incidental Economic Relief section dealing with existing policy owners, State Mutual will, after the "Final Settlement Date" as defined herein on the first and subsequent anniversary of each policy, mail out a newly formatted annual policy statement substantially in the form of Exhibit C attached hereto. This annual policy statement will include, among other things:

- (a) the amount of the terminal dividend for each policy represented by Incidental Economic Relief that was generated pursuant to this Settlement;
- (b) the amount of additional paid up insurance purchased by the credit set forth herein;
- (c) the previous year's projected dividend;
- (d) the actual dividend declared and paid for that policy year; and
- (e) the next year's projected dividend.

xxxii. "Procedure to Adequately Confirm that the Policy Owner is Informed that the Cash Value Available Will Vary" means: (a) the signed illustration; (b) the use of the

LIMRA/CAP or similar program; and/or (c) the signed form "Understanding Policy Values and Premiums."

xxxiii. "Procedure to Adequately Verify the Actual Delivery of the Policy" is defined as: (a) obtaining of the signed delivery receipt signed by the policy owner and (b) the use of the LIMRA/CAP or similar program.

xxxiv. "Proof of State Mutual Agents Relationship to the Company as an Agent" is defined by the signed agent's certification on the Company's illustration.

xxxv. "Releasees" means State Mutual, its parents, subsidiaries, affiliates, predecessors, successors and assigns, and each of their respective past, present and future officers, directors, employees, agents, representatives, attorneys, heirs, administrators, executors, predecessors, successors and assigns, or any of them.

xxxvi. "Released Transactions" means the marketing, declaration or non declaration of dividends, solicitation, application, underwriting, acceptance, sale, purchase, operation, retention, administration, or replacement by means of surrender, partial surrender, loans, withdrawal and/or termination of the policies or any insurance policy sold in connection with, or relating in any way directly or indirectly to the sale or solicitation of, the policies and as described in the Release and Waiver Section of this Settlement.

Released Transactions include specifically, but are not limited to:

- a. The claim that State Mutual entered upon a course of conduct in 1978 and thereafter to represent that certain dividend scales as they applied to the four types of policies that are the subject of the litigation would be observed throughout the life

of the policies, i.e., Life Paid up at 90 (LP90), Life Paid Up at 95 (LP95), Life Paid Up at 65 (LP65), and Graded Premium Whole Life (GPWL);

b. The claim that State Mutual defrauded Class Members through its agents by not explaining that the projected dividends 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 that the policies would be "paid up" when they reached the projected "vanish" point, without revealing that more premiums would or could be due;

c. The claim that sales illustrations did not adequately explain and Class Members did not understand that projected dividends were not guaranteed and that they are entitled to certain benefits that they did not receive because of the difference between projected and actual annual dividends;

d. The claim that, because of reductions in the annual dividend scale, specifically for 1992, 1994 and 1995, they either (1) became obligated to pay more premiums over time than was originally represented to them; (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; (3) lost additional coverage because there were not enough dividends to buy the additional coverage that 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 policy's premiums to "vanish" as shown in their projection or that their "vanished" premiums have returned for a period of years because of the dividend reductions.

e. The 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 annual dividend being less than the projected dividend, damaged each and every one of them in some manner;

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

g. any or all acts, omissions, facts, matters, transactions, occurrences or oral or written statements or representations in connection with or directly or indirectly relating to the Settlement or the settlement of the Actions.

xxxvii. "Remailing" means that should any Class Notice be returned as undeliverable, State Mutual and/or its Administrator shall either:

(a) remail the Notice to any forwarding address provided on the returned Notice and/or

(b) use commercially reasonable efforts to locate and remail Notices to those whose Notices have been returned and received at least 21 days prior to the date of the Settlement Hearing.

(c) maintain adequate records to confirm these efforts.

xxxviii. "Settlement" or "Settlement Agreement" or "Agreement" means this document and all attached Exhibits.

xxxix. "Settlement Hearing" means the hearing at or after which the Court will finally decide whether to approve this Settlement as fair, reasonable and adequate.

xxxx. "Settling Parties" means Plaintiffs in their individual and representative capacities on behalf of the Class and State Mutual.

xxxxi. "Training Manual" means the Company's New Training Manual that contains the Company's new Ethic Self Rater.

xxxxii. "Terminal Dividend" means the amount of a special dividend that is paid as an additional death benefit only upon the death of the insured as discussed in section B herein.

2. All other capitalized terms used in this document shall have the meaning ascribed to them by this Settlement Agreement.

**B. SETTLEMENT RELIEF**

**EQUITABLE INJUNCTIVE RELIEF**

The equitable relief that the Plaintiffs and Class Counsel have insisted upon and that State Mutual has agreed to abide by as to its future practices is that 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 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;

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 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 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 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 annual dividends in the future, State Mutual will follow the "contribution principle" for the development of all dividend scales from 1997 forward for all policy issues described herein. As in the past, future dividends may increase or decrease from projections of current dividend scales.

### INCIDENTAL ECONOMIC RELIEF

#### Existing Policy Owners

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 insureds.

#### 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 known 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 payment will be made.

Total Settlement - Exclusive of Attorneys' Fees

The total proposed settlement to affected policy owners has an estimated maximum total projected value of \$7,724,942.00.

C. NOTICE TO THE CLASS

1. Class Notice

No later than 60 days before the Settlement Hearing, the Settling Parties will send individual Class Notices (Exhibit A) as approved by the Court to all Class Members by first-class mail, postage prepaid, to their last known address. Class Members also will be sent a cover letter as approved by the Court summarizing the Class Notice as well as a brochure in question-and-answer format as approved by the Court responding to anticipated questions attached hereto as Exhibit D. State Mutual will pay for the costs associated with the Class Notice. The Settling Parties agree that the Class Notice attached hereto as Exhibit A which will be sent to all Class Members is the best practicable notice and is reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Action, their benefits thereunder, and of their right to object to the Settlement.

2. Post Settlement Notice. After the Final Settlement Date, State Mutual will advise all In-Force Class Members on their annual dividend statement of the results of the class action. The annual dividend statement of each In-Force Policy will notify Class Members of the amount of their terminal dividend and the amount of the additional paid up coverage

purchased by the amount of the credit. The checks mailed to Lapsed Policy Owners will constitute their Post Settlement Notice.

A computer generated list of each policy owner's terminal dividend benefit and amount of additional paid up insurance generated by the credit herein will be provided to Class Counsel along with electronic bank evidence of check preparation and presentation for the Lapsed Policy Owner. State Mutual will also provide a list of Lapsed Policy Owners who could not be located.

3. Retention of Administrator. State Mutual may retain one or more Administrators to help implement the terms of the Settlement. The Administrator may assist with various administrative tasks, including without limitation, (i) mailing or arranging for the mailing of the Class Notice to Class Members, (ii) handling returned mail not delivered to Class Members and making any additional mailings provided for in the Settlement or requested by State Mutual; (iii) arranging for and staffing a toll-free number to assist State Mutual and/or the Settling Parties in responding to inquiries from Class Members and others, and/or (iv) answering written inquiries from Class Members. State Mutual will pay the Administrator's reasonable fees and expenses. Class Counsel will be given the opportunity to observe and monitor the performance of the Administrator and assist in responding to inquiries where appropriate. The Administrator will operate the Information Center from the date of the mailing of the Notice until the date of the Settlement Hearing, each day from 8:00 a.m. until 8:00 p.m. Eastern Time, Monday through Friday (excluding National Holidays).

**D. RIGHT OF COMMUNICATION WITH CLAIMANTS AND POLICY OWNERS**

State Mutual expressly reserves the right to communicate orally and in writing with, and to respond to inquiries from Class Members and other present or former policy owners and State Mutual may do so through its agents or other representatives, including (without limitation) the following:

1. State Mutual will use an Administrator, establish, at its own expense, an Information Center with a toll-free telephone number for responding to and recording inquiries from Class Members and policy owners about the Settlement and any issues related to the Action. State Mutual will be responsible for (i) staffing the Information Center with telephone representatives, (ii) educating the telephone representatives about the background of the Action and the Notice, and terms and chronology of the Settlement, (iii) training the telephone representatives to answer Class Members' and policy owners' inquiries, (iv) providing scripts and model questions and answers for the telephone representatives to use in answering those inquiries, (v) maintaining records of these efforts, and (vi) taking any other steps to promote accurate and efficient communications with Class Members. State Mutual may use the Administrator's services to perform any or all of these functions. Class Counsel or their designee may monitor the education and training process by reviewing drafts of telephone scripts before their use and by observing training sessions and may also monitor from time to time telephone representatives' conversations with Class Members. Any disputes concerning objections by Class Counsel with respect to telephone scripts that characterize any portion of the Settlement shall be amicably resolved before use and, if not so resolved, presented to the Court by joint motion for direction.

2. State Mutual's agents also may discuss the Settlement with present or former State Mutual policy owners and Class Members. State Mutual will educate its agents about the background of the Action and the Settlement to enable agents to provide accurate and appropriate answers to inquiries about the Settlement. Class Counsel or their designee may monitor this training by reviewing advance copies of written communications with agents about the Settlement and by observing any live, taped or broadcast presentations or special training programs on that topic. Any disputes concerning objections by Class Counsel with respect to communications with agents that tell them how to respond to policy owner inquiries about any portion of the Settlement shall be amicably resolved before use and, if not so resolved, presented to the Court by joint motion for direction.

E. RIGHT TO APPEAR

1. At the Settlement Hearing on \_\_\_\_\_ at \_\_\_\_ a.m., any Class Member who objects to the terms and conditions of the Settlement; to the fairness, reasonableness or adequacy of the Settlement; to the maintenance of the Action, for purposes of settlement, as a class action pursuant to Rule 23(b)(1)(A) and Rule 23(b)(2) of the *Alabama Rules of Civil Procedure*; to the procedures adopted by the Court for approval of the Settlement; to the binding effect of the Settlement on all Class Members; to the judgment to be entered; to any findings or orders of the Court; to the contents and methods of delivery of this Notice; to the award of fees and expenses requested by the Plaintiffs and Class Counsel; to the provisions in the Settlement that any injunctive relief or settlement proceeds determined to be due shall be paid to the Class Members; or to any other matter pertaining to this Settlement, may appear in person or by his or her attorney and present any evidence that may be proper and relevant.

PROVIDED, HOWEVER, THAT NO CLASS MEMBER (OTHER THAN PLAINTIFFS) SHALL BE HEARD, AND NO PAPERS, BRIEFS, PLEADINGS OR OTHER DOCUMENTS SUBMITTED BY SUCH CLASS MEMBER SHALL BE RECEIVED OR CONSIDERED BY THE COURT (UNLESS THE COURT IN ITS DISCRETION SHALL OTHERWISE DIRECT, UPON APPLICATION OF SUCH CLASS MEMBER AND FOR GOOD CAUSE SHOWN), UNLESS NO LATER THAN \_\_\_\_\_ THE CLASS MEMBER FILES WITH THE CLERK OF THE CIRCUIT COURT OF GREENE COUNTY, ALABAMA, THE FOLLOWING: (i) a notice of intention to appear in Case Number CV-95-066; (ii) a short, plain statement of such person's objections to any matter before the Court; (iii) a short, plain statement of the grounds of objection and any reasons for such persons desiring to appear and be heard, as well as a copy of all briefs, supporting papers, documents and writings which such Class Member desires the Court to consider; and (iv) the Class Member's name, address, telephone number and policy number.

The address of the Clerk of the Court is as follows:

HONORABLE JOHNNIE KNOTT, CLERK  
CIRCUIT COURT OF GREENE COUNTY  
RE: STATE MUTUAL INSURANCE COMPANY LITIGATION  
POST OFFICE BOX 307  
EUTAW, ALABAMA 35462

Any such written notice and objection, as well as any briefs, supporting papers or other documents thus filed by any Class Members shall also be served at the same time by such Class Member upon each of the following counsel:

Frank H. Tomlinson  
Alexander W. Jones, Jr.  
Counsel for Plaintiffs and the Class  
PRITCHARD, McCALL & JONES, L.L.C.  
800 Financial Center  
505 North 20th Street  
Birmingham, Alabama 35203-2605

Thomas S. Lawson, Jr.  
Counsel for Defendant State Mutual  
Insurance Company  
CAPELL, HOWARD, KNABE &  
COBBS, P.A.  
Post Office Box 2069  
Montgomery, Alabama 36102-2069

Class Members and their own attorneys at their expense may obtain access to the deposition transcripts and attached exhibits generated in these Actions by agreeing to abide by the Protective Order and signing and filing with the Clerk the Stipulation of Confidentiality which is annexed hereto as Exhibit E. These documents will be made available at the offices of Class Counsel in Birmingham, Alabama. Class Counsel will inform Defendant's Counsel promptly of any requests by Class Members or their attorneys for access to such documents.

2. If a Class Member hires an attorney to represent him or her, the attorney must (i) file a notice of appearance with the Clerk of Court, no later than 10 business days before the Settlement Hearing or as the Court otherwise may direct, and (ii) at the same time serve on Class Counsel and Defendant's Counsel a copy of the same, together with: (a) a short, plain statement of such person's objections to any matter before the Court; (b) a short, plain statement of the grounds of objection and any reasons for such persons desiring to appear and be heard, as well as a copy of all briefs, supporting papers, documents and writings which such Class Member desires the Court to consider; and (c) the Class Member's name, address, telephone number and policy number.

2. Any Class Member or attorney who fails to comply with the provisions of the preceding Section shall waive and forfeit any and all rights he or she may have to appear

separately and/or object, and shall be bound by all the terms of this Settlement and by all proceedings, orders and judgments in this action.

3. Unless the Court otherwise directs, no Class Member or attorney shall be entitled to object or to otherwise be heard with respect to the approval of the Settlement; the fairness, reasonableness and adequacy of the Settlement; the maintenance of the action as a class action pursuant to *Alabama Rules of Civil Procedure* 23(b)(1)(A) and 23(b)(2); the contents or method of delivery of the notice; any orders or findings entered by the Court; the procedures adopted by the Court for consideration or approval of the Settlement; the binding effect of the Settlement on the Class Members; any judgment to be entered; or the award of fees and expenses to Plaintiffs and Class Counsel; or any other matter pertaining to the approval or disapproval of the Settlement, except by serving and filing written objections as prescribed above. Any Class Member who fails to object in the manner prescribed above shall be deemed to have waived all such objections and any other objections relating to the subject matter of the litigation or the Settlement, and shall be barred forever from raising such objections or relitigating his or her individual claims in this or any other action or proceeding.

**F. RELEASE AND WAIVER, AND ORDER OF DISMISSAL**

1. **Release.** Effective as of the Final Settlement Date, Plaintiffs and all Class Members hereby expressly agree that they shall not now or hereafter institute, maintain or assert against the Releasees, either directly or indirectly, on their own behalf, on behalf of the Class or any other person, and do hereby release and discharge the Releasees from any and all causes of action, claims, damages, equitable, legal and administrative relief, interest, demands or rights, whether based on federal, state or local statute or ordinance, regulation, contract,

common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiffs or any Class Member against the Releasees in the Actions or in any other court action or before any administrative body (including any state insurance department or other regulatory commission), tribunal or arbitration panel on the basis of, connected with, arising out of, or related to, in whole or in part, the Released Transactions including without limitation:

a. any or all of the acts, omissions, facts, matters, transactions or occurrences that were directly or indirectly alleged, asserted, described, set forth or referred to in the Actions;

b. any or all of the acts, omissions, facts, matters, transactions, occurrences, or any oral or written statements or representations allegedly made in connection with or directly or indirectly relating to the Released Transactions, including without limitation any acts, omissions, facts, matters, transactions, occurrences, or oral or written statements or representations relating to:

- (1) the Vanishing Premium option;
- (2) the number of out-of-pocket payments that would need to be paid for a life insurance policy or the policies;
- (3) the ability to keep or not to keep the policies in-force based on a fixed number and/or amount of premium payments (less than the number and/or amount of payments required by the terms of the policies), and/or the amount that would be realized or paid under the policies based on a fixed number and/or amount of cash payments (less than the number and/or amount

of payments required by the term of the policies), whether in the form of (i) cash value and/or (ii) death, retirement or periodic payment benefits;

(4) any statement that a policy would be "paid up" by a payment of a number or amount of premiums less than called for in the policy contract.

(5) State Mutual entering upon a course of conduct in 1978 and thereafter to represent that certain dividend scales as they applied to the four types of policies that are the subject of this suit would be observed throughout the Life of the policies, i.e., Life Paid up at 90 (LP90), Life Paid up at 95 (LP95), Life Paid up at 65 (LP65), and Graded Premium Whole Life (GPWL);

(6) State Mutual defrauding them through its agents by not explaining that the projected dividends 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 that the policies would be "paid up" when they reached the projected "vanish" point, without revealing that more premiums would or could be due;

(7) sales illustrations not adequately explaining and Class Members not understanding that projected dividends were not guaranteed and that they are entitled to certain benefits that they did not receive because of the difference between projected and actual annual dividends; and

(8) That, because of the reduction in the annual dividend scale, specifically for 1992, 1994 and 1995, Class Members having have either (1) become obligated to pay more premiums over time than was originally

represented to them; (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; (3) lost additional coverage because there were not enough dividends to buy the additional coverage that they were originally shown; or (4) become obligated to pay more premiums than originally were represented because the reduced annual dividends did not allow the policy's premiums to "vanish" as shown in their projection or that their "vanished" premiums have returned for a period of years because of the annual dividend reductions.

(9) That, since 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 annual dividend being less than the projected dividend, damaged each and every one of them in some manner;

(10) that dividends were "guaranteed" or that a policy owner by the payment of a lump amount or lesser number of premiums than called for in the policy contract would never have to pay another premium.

(11) any or all acts, omissions, facts, matters, transactions, occurrences or oral or written statements or representations in connection with or directly or indirectly relating to the Settlement Agreement or the settlement of the Actions, except as provided in Section 6 below.

2. Nothing in this Release shall be deemed to alter a Class Member's contractual rights (except to the extent that such rights are altered or affected by the benefits awarded

under the Settlement) to make a claim for benefits that will become payable in the future pursuant to the express terms of the policy form issued by State Mutual; provided, however, that this provision shall not entitle a Class Member to assert claims which relate to the allegations contained in the Actions or to the matters described above.

3. Without in any way limiting the scope of the Release, this Release covers, without limitation, any and all claims for fees, expenses, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members, or by Plaintiffs or the Class Members, or any of them, in connection with or related in any manner to the Actions, the settlement of the Actions, the administration of such settlement and/or the Released Transactions except to the extent otherwise specified in the Settlement.

4. Plaintiffs and Class Members expressly understand that certain state laws provide that a general release does not extend to claims which a creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with State Mutual. To the extent that, notwithstanding the choice of law provisions in the Settlement, the laws of such states may be applicable, Plaintiffs and the Class Members hereby agree that the provisions of any such federal or state laws, rights, rules, or legal principles of any other jurisdiction which may be applicable herein, are hereby knowingly and voluntarily waived and relinquished by Plaintiffs and the Class Members, and Plaintiffs and the Class Members hereby agree and acknowledge that this is an essential term of this Release.

5. In connection with this Release, Plaintiffs and the Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected,

or facts in addition to or different from those which they now know or believe to be true with respect to the matters released herein. Nevertheless, it is the intention of Plaintiffs and the Class Members in executing this Release fully, finally and forever to settle and release all such matters, and all claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any Actions).

6. Nothing in this Release shall preclude any action to enforce the terms of the Settlement, including participation in any of the processes detailed therein.

7. Upon the execution of this Settlement, the Settling parties will file a Joint Motion for Approval of Settlement, in the form of Exhibit F attached hereto, which will submit the Settlement, the Notice and an amended Class definition to the Court for approval.

8. The Settling Parties will seek and obtain from the Court, as a condition of settlement, a Final Order and Judgment in a form to be agreed upon the parties. The Final Order and Judgment shall, among other things (i) approve the Settlement as fair, adequate and reasonable, (ii) enter a consent order terminating the litigation on the merits and (iii) incorporate the terms of the Release.

**G. ATTORNEYS' FEES, EXPENSES AND PAYMENTS TO CLASS REPRESENTATIVE**

1. Class Counsel will ask the Court to award them legal fees and expenses in the amount of \$1,000,000 to be paid by State Mutual. They will also ask the Court to award each of the twelve Plaintiffs as class representatives the sum of \$2,500 (a total of \$30,000) as reimbursement for their time and expenses in maintaining this action. These requests, along with supporting documents and records, will be filed with the Court and the award of such attorney's fees and amounts for class representatives will be determined by the Court. In

consideration for Class Counsel having agreed that they will not seek an award of attorney's fees and expenses in excess of \$1,000,000 and will not seek to have any fees or expenses paid from the benefits that State Mutual is to be enjoined to provide to the class, State Mutual has agreed not to oppose the request.

2. State Mutual will bear the following expenses reasonably incurred after the execution of this Settlement: notification, printing and mailing costs of the Notice of Class Action, Proposed Settlement, Settlement Hearing and Right to Appear, the Post-Settlement Notice; fees and disbursements to the Administrator and any other third-party contractors or administrators; and State Mutual's Attorneys' Fees.

3. Neither State Mutual nor its past, present and future officers, directors, employees, agents or representatives, nor any of their predecessors, successors, parents, subsidiaries, partners, affiliates, heirs, administrators, executors, attorneys, successors in interest or assigns, shall be liable or obligated to pay any fees, expenses, costs or disbursements to, or incur any expense on behalf of, any person, either directly or indirectly, in connection with this Action, this Settlement other than the amount or amounts expressly provided for in this Settlement.

#### H. ORDER OF NOTICE, SETTLEMENT HEARING AND ADMINISTRATION

1. Within 15 days after execution of the Settlement Agreement, the Settling Parties will submit the Settlement to the Court and apply for a Hearing Order, in the form annexed hereto as Exhibit B, unless otherwise agreed by the parties:

a. Providing for an amendment to the certification of the Class for settlement purposes only;

- b. Finding that the Settlement is sufficient to warrant sending the Notice to the Class;
- c. Scheduling the Settlement Hearing to be held on or between November 25, 1996, and December 6, 1996, or at such other date as the Court may direct, to consider the fairness, reasonableness and adequacy of the Settlement and whether it should be approved by the Court;
- d. Approving the Notice, and notice methodology described in the Settlement;
- e. Directing State Mutual or its designee(s) to cause the Notice to be mailed to all Class Members by first-class mail, postage prepaid, at their last known address no later than 60 days before the Settlement Hearing;
- f. Determining that the Notice is reasonable and the best practicable notice; is reasonably calculated, under the circumstances to apprise Class Members of the pendency of the Actions and of their right to object to the Settlement; constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and meets the requirements of due process and ARCP 23(e);
- g. Ruling that State Mutual, or the Administrator, need not mail additional rounds of notices to Class Members. However, the Administrator shall remail (as defined herein) any returned notices that provide a forwarding address and shall remail notice to Class Members for whom a more current address can be obtained by commercially reasonable efforts and are received by the Administrator at least 21 days prior to the date of the Settlement Hearing;

- h. Requiring State Mutual to file proof of the mailing of the Class Notice at or before the Settlement Hearing;
- i. Authorizing State Mutual, including its agents, sales representatives and any other retained personnel, to communicate with Class Members and other present or former policy owners about the Action and the terms of the Settlement subject to monitoring by Class Counsel, as further described above in Section D, and to engage in any other communications within the normal course of State Mutual's business;
- j. Preliminarily enjoining the Class Members from bringing or continuing to prosecute any action that would be covered by the Release pending the Final Hearing on the Settlement and Final Order and Judgment;
- k. Requiring each Class Member who wishes to object to the fairness, reasonableness or adequacy of the Settlement to serve on the Class Counsel, Defendant's Counsel and to file with the Clerk of Court, no later than 10 business days before the Settlement Hearing, or at such other time as the Court may direct, a statement of the objection, as well as the specific reasons, if any, for each objection, including any legal support the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of his or her objection, or be forever barred from separately objecting;
- l. Requiring any attorneys hired by any members of the Class at said Class Member's expense for the purpose of objecting to the proposed settlement (i) to file a notice of appearance with the Clerk of Court, no later than 10 business days before the Settlement Hearing or as the Court otherwise may direct, and (ii) to serve such Notice

on the Class Counsel and Defendant's Counsel. The notice of intention to appear in Case Number CV-95-066 shall contain; (i) a short, plain statement of such person's objections to any matter before the Court; (ii) a short, plain statement of the grounds of objection and any reasons for such persons desiring to appear and be heard, as well as a copy of all briefs, supporting papers, documents and writings which such Class Member desires the Court to consider; and (iii) the Class Member's name, address, telephone number and policy number.

m. Authorizing State Mutual to retain the Administrator to help administer the proposed settlement, including the notice provisions;

n. Directing Defendant's Counsel and Class Counsel to furnish each other with copies of any and all objections that might come into their possession;

o. Providing a means for those filing objections to obtain access at Class Counsel's office to depositions and deposition exhibits in these Actions at the expense of those filing objections, provided that such individuals subject themselves to the Protective Order entered by the Court on \_\_\_\_\_ and enter into a confidentiality stipulation annexed hereto as Exhibit E; and

p. Containing any additional provisions that might be necessary to implement and administer the terms of the Settlement.

**I. FINAL APPROVAL AND FINAL ORDER AND JUDGMENT**

1. After the Settlement Hearing, and upon the Court's approval of the Settlement, the Court shall enter a Final Order and Judgment:

- a. approving the Settlement as fair, reasonable, and adequate; directing the Settling Parties and their counsel to comply with and consummate the terms of the Settlement; and declaring the Settlement to be binding on all Class Members and preclusive in all pending and future lawsuit or other proceedings;
- b. certifying the Class as amended for settlement purposes;
- c. finding that the Notice, and the notice methodology implemented pursuant to the Settlement constitute reasonable and the best practicable notice; notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to object to the Settlement and to appear at the Settlement Hearing; constitute due, adequate and sufficient notice to all persons entitled to receive notice; and met the requirements of due process and ARCP 23(e);
- d. finding that the Post Settlement Notice methodology to be implemented pursuant to the Settlement adequately advise each Class Member of their benefits from the remedial relief program;
- e. finding that Class Counsel and the class representatives adequately represented the Class for purposes of entering into and implementing the Settlement;
- f. dismissing the claims on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement;
- g. incorporating the Release set forth in Section F of the Settlement, and forever discharging the Releasees from any claims or liabilities arising from or related to the Released Transactions;

h. barring and enjoining all Class Members from instituting, continuing, maintaining or asserting against the Releasees any actions or claims arising from or related to the Released Transactions; and

i. retaining jurisdiction to rule on any application by Class Counsel, to protect and effectuate the Final Order and Judgment, including the injunctive relief, and for any other necessary purpose.

J. TERMINATION OF THE SETTLEMENT AGREEMENT AND SETTLEMENT

1. The Settlement will terminate at the sole option and discretion of State Mutual or Plaintiffs if:

a. the Court, or any appellate court(s), rejects, modifies or denies approval of any portion of the Settlement that the terminating party in its (or their) sole judgment and discretion reasonably determines is material, including, without limitation, the terms of relief, the findings of the Court, the provisions relating to Notice, the definition of the Class and the terms of the Release;

b. the Court, or any appellate court(s), does not enter or completely affirm any portion of the Final Order and Judgment that the terminating party in its (or their) sole judgment and discretion believes is material. The terminating party must exercise the option to withdraw from and terminate the Settlement, as provided in Section J.1., no later than 10 days after receiving notice of the event prompting the termination; or

c. notwithstanding the preceding subsections (a) and (b), Plaintiffs may not terminate the Settlement solely because of the amount of Attorneys' Fees awarded by the Court or any appellate court(s). State Mutual, however, may elect to terminate the

Settlement if the amount of Attorneys' Fees awarded exceeds the amount provided for in Section G of this Agreement.

2. State Mutual also may unilaterally withdraw from and terminate the Settlement if prior to the Final Settlement Date, any state insurance regulator (i) objects either to any aspect or term of the Settlement or relief or (ii) requires any modification to the Settlement, including without limitation any constriction or extension of the scope of the contemplated relief, that State Mutual in its sole discretion deem reasonably material.

3. If an option to withdraw from and terminate the Settlement Agreement arises under Section J.1 and/or J.2, neither State Mutual nor Plaintiffs are required for any reason or under any circumstance to exercise that option.

4. If the Settlement is terminated pursuant to Sections J.1 and/or J.2, then:

a. this Settlement shall be null and void and shall have no force or effect, and no party to the Settlement shall be bound by any of its terms, except for the terms of this Section;

b. this Settlement, all of its provisions, and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of State Mutual, Plaintiffs or any Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Settlement;

c. neither this Settlement, nor the fact of its having been made, shall be admissible or entered into evidence for any purpose whatsoever;

d. any order or judgment entered after the date of this Settlement will be vacated and will be without any force or effect; and

e. Defendants will nevertheless continue to bear the costs set forth in Section C.4 above.

**K. GENERAL MATTERS AND RESERVATIONS**

1. The obligation, although not the ability, of the Settling Parties to conclude the Settlement is and will be contingent upon each of the following:

a. resolution, acceptable to State Mutual, of any regulatory issues presented by the Settlement, as described above in Section J.2. To this end, State Mutual agrees to seek any necessary regulatory approval not later than 45 days after the Settlement Hearing;

b. entry by the Court of (i) an Order approving the Settlement Agreement without modification except as set forth in Section J.1.(c) above or unless otherwise agreed to by the parties, and (ii) the Final Order and Judgment, from which the time to appeal has expired and which has remained unmodified after any appeal(s);

c. entry of the Final Order and Judgment including all appeals; and

d. any other conditions stated in the Settlement Agreement.

2. On the Final Settlement Date, Class Counsel will return to the Defendant's Counsel or, at the option of Defendant's Counsel, destroy all documents produced by State Mutual in these Actions as well as the transcripts of any deposition testimony provided by State Mutual or its current or former employees or agents and any exhibits to those depositions.

3. By execution hereof, State Mutual does not intend to release any claim against any insurer for any cost or expense hereunder, including attorneys' fees and costs.

4. Class Counsel represent that (i) they are authorized to enter into this Settlement on behalf of Plaintiffs and, by reason of the Court's Order dated February 21, 1996, and (ii) they are seeking to protect the interests of the entire Class.

5. Defendant's counsel represents that they are authorized to enter into this Settlement Agreement on behalf of State Mutual as approved by its Board of Directors and any other attorneys who have represented or now represent State Mutual in the Actions.

6. All terms of this Settlement and ancillary agreements shall be governed by and interpreted according to the substantive law of the State of Alabama, excluding its conflict of laws provisions.

7. Any action to enforce this Settlement shall be commenced and maintained only in the Circuit Court of Greene County, Alabama.

8. Whenever this Settlement requires or contemplates that one party shall or may give notice to the other, notice shall be provided as follows:

a. If to Defendant, then to:

Thomas S. Lawson, Jr.  
CAPELL, HOWARD, KNABE & COBBS, P.A.  
57 Adams Avenue  
Post Office Box 2069  
Montgomery, Alabama 36102-2069

b. If to Plaintiffs, then to:

F. Hilton-Green Tomlinson, Esq.  
PRITCHARD, MCCALL & JONES, L.L.C.  
800 Financial Center  
505 North 20th Street  
Birmingham, AL 35203-2605

9. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Section, "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the State of Alabama.

10. The Settling Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement.

11. All parties agree that this Settlement is clear and unambiguous and was drafted by counsel for the Settling Parties at arm's length, and that no parol or other evidence may be offered to explain, construe, contradict or clarify its terms, its intent or the circumstances under which it was made or executed.

12. In no event shall this Settlement, any of its provisions or any related negotiations, statements or proceedings be construed as, offered as, received as, used as or deemed to be evidence of any kind in the Actions, any other action, or in any judicial,

administrative, regulatory or other proceeding, except in a proceeding to enforce this Settlement. Without limiting the foregoing, neither this Settlement nor any related negotiations, statements or proceedings shall be construed as, offered as, received as, used as or deemed to be evidence, or an admission or concession by any person, including but not limited to, of any liability or wrongdoing whatsoever on the part of State Mutual, Plaintiffs or the Class, or as a waiver by State Mutual, Plaintiffs or the Class of any applicable defense, including without limitation any applicable statute of limitations.

13. State Mutual expressly denies any wrongdoing alleged in the Complaint and does not concede any wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against them in this litigation. Plaintiffs do not concede that any of the claims alleged in the Complaint lack merit.

14. The Settling Parties, their successors and assigns, and their attorneys agree to cooperate fully with one another in seeking court approval of this Settlement and to use their best efforts to effect the prompt consummation of this Settlement.

15. This Settlement sets forth the entire agreement among the Settling Parties with respect to its subject matter, and it may not be altered or modified except by written instrument executed by Class Counsel and Defendant's Counsel. The Settling Parties expressly acknowledge that no other agreements, arrangements or understandings not expressed in this Settlement exist among or between them.

16. This Settlement may be signed in counterparts, each of which shall constitute a duplicate original.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

F. Hilton Green Tomlinson  
F. HILTON-GREEN TOMLINSON

Alex W Jones Jr  
ALEXANDER W. JONES, JR.

ATTORNEYS FOR NAMED PLAINTIFFS AND THE  
CLASS

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Thomas S Lawson Jr  
THOMAS S. LAWSON, JR.

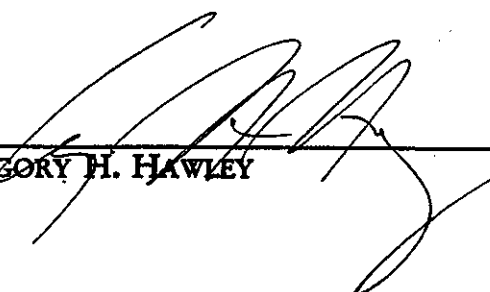
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Michael A. Figures  
MICHAEL A. FIGURES

OF COUNSEL:

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\_\_\_\_\_  
GREGORY H. HAWLEY

OF COUNSEL:

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(205) 254-1000

ATTORNEYS FOR DEFENDANT STATE MUTUAL  
INSURANCE COMPANY

STATE MUTUAL INSURANCE COMPANY

By:

  
\_\_\_\_\_  
ITS PRESIDENT: DELOS H. XANCEY, III

By:

  
\_\_\_\_\_  
ITS VICE PRESIDENT: A. BEN FORRESTER