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CV 1995 000066.00
EDDIE HARDAWAY

IN THE CIRCUIT COURT OF GREENE COUNTY
AUBREY WAYNE TIDMORE, ET AL VS STATE MUTUAL INSURANCE CO. ET AL

TO: GILLIS HENRY L
3121 ZELDA COURT
P.O. DRAWER 5058
MONTGOMERY AL 36103

ATTORNEY FORD001: STATE MUTU

NOTICE DATE: 03/01/2010

CLERK: ETTA B EDWARDS
P O BOX 307
EUTAW AL 35462
(205) 372-3598

OPERATOR: VAP
PREPARED: 03/01/2010

IN THE CIRCUIT COURT OF
GREENE COUNTY, ALABAMA

AUBREY WAYNE TIDMORE, et al.,)

Plaintiffs,)

v.)

STATE MUTUAL INSURANCE)
COMPANY, et al.,)

Defendants.)

CAROL BELL, et al.,)

Plaintiffs,)

v.)

STATE MUTUAL INSURANCE)
COMPANY, et al.,)

Defendants.)

CIVIL ACTION NO.: CV-95-066

CIVIL ACTION NO.: CV-96-040

MAR - 1 2010

CONSENT DECREE

On October 12, 2009, defendant State Mutual filed a Motion for Further Relief seeking declaratory and injunctive relief with respect to the Company's right to adjust dividends across-the-board on approximately 5,500 Life Span Term Policies/Riders issued by State Mutual. The original plaintiffs' class filed responses in oppositions to the requested relief.

On December 11, 2009, the Court received testimony and evidence regarding that part of State Mutual's Motion pertaining to approximately 2,272 riders on policies governed by the Class Action Order dated June 15, 1998. Following the hearing, the Court entered a December 29, 2009 Amended Order that found, inter alia:

1. The Court had jurisdiction over this matter, the court having, by order and final judgment

dated June 15, 1998, reserved and maintained “continuous jurisdiction over State Mutual and the class members with respect to all matters relating to the settlement or the consummation of the settlement; the validity of the settlement; the construction and enforcement of the settlement in any orders entered pursuant thereto; in any disputes which may arise between class members with respect to the persons entitled to receive the proceeds of any amounts payable to class members under the Settlement Agreement; and the entry and enforcement of this final judgment and the injunctions contained herein, including modification of this final judgment, jurisdiction to revoke this Order and Final Judgment in its entirety and reinstate all claims dismissed or claims, actions, causes of action and liabilities related pursuant to paragraph 5 hereof; to tax court costs, and all other matters pertaining to the settlement or its implementation and enforcement”.

2. The matters before the Court involved certain Life Span term policies/riders where the dividends were not lowered at the same time that the dividends on the LP95, LP90, LP65 and GPWL policies were lowered, all of which policies and riders are covered in the subject matter of original class action lawsuit.
3. State Mutual, pursuant to Court order, reserved unto itself the right to declare the amount of annual dividends in the future using its sound business judgment. Prior notices and explanations had been given to the class setting forth the non-guaranteed nature of the dividends and the Company’s reservation of the rights to declare an amount of annual dividends in the future.
4. The uncontested testimony and evidence at the December 11, 2009, hearing supported a projected dividend cut on all Life Span term policies. The proposed dividend cut tracks the court’s previously approved “contribution principal” to bring the dividends of these

policies/riders in line with the class action policies and in compliance with Actuarial Standard of Practice No. 15, which supports using the same dividend factor for virtually identical classes of policies and/or riders.

5. The Court considered the factors necessary to support injunctive relief against the plaintiff class and further found that: (a) the class had ample notice of these proceedings; (b) the class was represented by able class counsel whose firm was designated original class counsel; (c) class counsel filed a thoughtful response in opposition to the motion; (d) the law and uncontested facts adduced at the hearing established that, in the absence of permanent injunctive relief against the class, State Mutual would suffer irreparable harms which could likely jeopardize the company's solvency; and (e) State Mutual has no adequate remedy at law.
6. The Court bifurcated the hearing on State Mutual's motion by first addressing and adjudicating the issues relating to the 2,272 class members and reserved a ruling on the requested preliminary and permanent injunctive relief pending a determination of the rights of the non-party stand-alone policyholders as they are impacted by the legal issues raised in the motion. State Mutual's request for a temporary restraining order against the non-party policyholders was granted.
7. The Court recognized that State Mutual's exercise of its dividend declaration rights must be applied uniformly within a particular line or block of business or policies. The Court also finds that State Mutual had to declare its dividend before December 31, 2009 in order to establish the company's liabilities for 2010.
8. The Court determined that State Mutual met its burden of proof for the issuance of a temporary restraining order (without notice) against the non-class member stand-alone

policyholders, enjoining them from instituting, prosecuting or maintaining any legal proceedings in any court relating to the issues before the Court in the Motion For Further Relief. Actuarial Standard of Practice No. 15 mandates that State Mutual use the same dividend factor for virtually identical classes of policies and/or riders. The Court order facilitated the implementation of this actuarial standard for all policies and riders within this class of Life Span term insurance products. Using its equitable powers to protect the Court's prior decrees and injunctions, as recognized in *Ex Parte State Mutual Insurance Company (re: Aubry Wayne Tidmore, et al, v. State Mutual Insurance Company, et al)*; *State Mutual Insurance Company v. Betty J. Payne et. al.*, 715 So.2d, 207, December 17, 1997), the Court's December 29, 2009, temporary restraining order effectively authorizes State Mutual to make its dividend declaration across-the-board with the Life Span term insurance products, whether they are riders or free-standing policies.

9. The Court appointed Vanessa Searight as Guardian Ad Litem to represent the interests of the newly added non-class members during the pendency of State Mutual's Motion for Further Relief, as it applies to them, and to afford them a meaningful opportunity to be heard on the motion. (Ms. Searight subsequently chose Mr. James Stewart to assist her in the discharge of her duties to the newly added parties, which the Court approved.) The Court recognized that the newly added parties could retain their individual counsel to respond to the motion as they see fit.

State Mutual and the Guardians Ad Litem, after extensive communications and face-to-face meetings, have negotiated an amicable resolution to the matters in the pending motion relating to the newly added parties, and are desirous of implementing this settlement in the form of a consent decree. These parties have agreed to the form and content of this consent decree and

believe that the Court's entry of this decree will effectuate the due process mandates of the United States Constitution and the substantive laws of the State of Alabama and other jurisdictions where these the newly added parties reside.

In entering into the settlement embodied in the consent decree, the newly added parties and State Mutual expressly waive their rights to a further hearing on the Motion for Further Relief and agree to the following findings relating to this consent decree:

1. The newly added parties were properly served with adequate notice of the pending proceedings on State Mutual's Motion for Further Relief and their right to a meaningful hearing on the motion. The form and content of the notice was expressly approved by the Guardians Ad Litem.
2. The Guardians were provided the names, addresses and contact information on all of the non-class members added as parties for the purpose of enforcing the Court's prior orders, including its December 29, 2009 Amended Order.
3. The Guardians are able and experienced counsel in complex litigation, and have devoted significant time and resources to protecting and advancing the substantive rights of the newly added parties.
4. The Guardians have conferred with all of the newly added parties who have contacted them directly with questions and comments about the pending Motion for Further Relief. Based upon these questions and comments, the Guardians negotiated a tangible benefits package for all policyholders in the group they represent. These benefits are substantive and were achieved through the representational efforts of the Guardians. The Guardians believe that these benefits, when viewed against the inherent risks of continued litigation on State Mutual's pending motion, serve the best interests of the newly added parties.

5. State Mutual, while denying the Company had a legal duty to provide any benefits to the newly added parties, has agreed to do so as valuable consideration in the settlement embodied in this consent decree. To fully implement the award of these benefits, the Company will have to reserve up to \$1.5 million for this customer appreciation package.
6. The settlement benefit package to the newly added parties shall include the following benefits:
 - a. A settlement benefit payable at death equal to 10% of the guaranteed base amount of Life Span term insurance in force on the date of death.
 - b. Policyholders may exercise their one time right of conversion of their Lifespan Term Policy to a whole life policy with a face amount equal to or lesser than their current coverage, but not less than the minimum issue amount of coverage, without presenting evidence of insurability until age 70.
 - c. Each policyholder may purchase, on an annual basis, without proof of insurability, an additional amount of non-guaranteed One Year Term insurance equal to any deficiency in coverage up to the initial face amount at the company's then current One Year Term Rate for the insured's attained age to maintain their initial level of coverage. In the event the insured elects to reduce the amount of insurance coverage in any subsequent year by purchasing a lesser amount of the One Year Term insurance so that the total coverage is less than the initial coverage amount, this reduced amount of insurance coverage shall be the maximum coverage available from that point forward and at no time may the insured increase the coverage after it is reduced.

- d. Each policyholder may elect to receive their annual dividend in cash and have only the guaranteed amount of reducing term insurance as their coverage.
7. The parties agreed that in consideration for the substantive benefits extended to the newly added parties in this consent decree, the temporary restraining order against them entered on December 29, 2009 and extended on January 7, 2010 shall be made a permanent injunction.

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

1. While all of the more than 3,000 newly added parties were served with proper notice of the March 1, 2009 hearing on State Mutual's requested relief against them, less than 40 of these policyholders have contacted the Guardians Ad Litem with questions or comments regarding this litigation. Even fewer voiced any opposition to the requested relief.
2. Having affirmed State Mutual's right to cut dividends for plaintiff class members in accordance with the factors set out in the June 15, 1998 Final Judgment, the central question for the March 1 hearing was whether the newly added parties could offer the Court credible evidence and/or recognized legal authority as to why the across-the-board dividend cuts approved in the December 29 Order for Life Span Term policies and riders should not apply to them through the Court's issuance of a preliminary and permanent injunction. This phase of the bifurcated proceedings is not a re-litigation of State Mutual's right to cut the dividends, as codified in the June 15, 1998 Final Judgment. The Company enjoys that right without judicial review. What State Mutual sought in its motion was the judicially recognized right to implement these cuts across-the-board for all person who

hold Life Span Term policies and riders, as required by Actuarial Standard No.15.

3. The gravamen of policyholder opposition to State Mutual's motion centers on mistaken belief that the Company has no legal right to reduce dividends on Life Span Term policies and riders using its sound business judgment. While understandable, this argument is erroneous and has no basis in fact. The marketing materials accompanying the policies at issue specifically state that these dividends are not guaranteed.

In addition, beginning with the first anniversary of each Life Span Term policy and/or rider, the insured was sent an annual statement which illustrates the guaranteed decreasing term insurance death benefit portion of the coverage as well as the non-guaranteed annual renewable term benefit portion of the coverage that is purchased by dividends. This statement shows the amount of the non-guaranteed coverage and the amount of the dividend which is used to purchase it. Finally, the annual statement each year clearly states that dividends are "not guaranteed".

4. The objectors have not articulated any legally defensible argument as to why State Mutual should not apply Actuarial Standard No. 15 across-the-board to their policies since they provide the same or substantially similar benefits as the policies and riders of the original class members in this case.
5. State Mutual, because of the clear facts in this case and the controlling case law concerning the court's power to effectuate and to protect its jurisdiction and its decrees, would likely have prevailed on the merits of this case had this settlement not been reached by the Guardians and State Mutual. The company carried its burden of proof for injunctive relief during phase one of the bifurcated hearings dealing with the requested relief against the class members and the temporary restraining order against the newly

added parties.

6. The Court adopts the record of the December 11, 2009 hearing in support of these findings, together with the record developed during the March 1, 2010 hearing.
7. The consent decree entered herein provides the newly added parties substantial and meaningful relief that they would not otherwise be entitled to enjoy under their Life Span Term policies and riders.
8. The Court specifically finds that State Mutual, by stipulation of the Guardians and the evidence adduced at the December 11, 2009 and March 1, 2010 hearings, carried its burden of proof for the issuance of a permanent injunction against the newly added parties. The Company demonstrated: (a) that there is a substantial threat that, without the injunction State Mutual, would suffer irreparable injury; (b) that State Mutual has no adequate remedy at law; (c) that State Mutual has demonstrated its entitlement to the permanent injunction based upon the merits of the case; (d) that the hardship imposed on the new added parties by the issuance of the injunction will not unreasonably outweigh the benefits accruing to State Mutual; and (e) that granting the injunction will not disserve the public interest.

Based upon the above finding and agreements between the parties, the Court **Orders, Adjudges and Decrees** as follows:

1. The objections of newly added non-class member policyholders to the across-the-board application of Actuarial Standard No. 15 regarding dividend cuts for Life Span Term policies and riders are hereby overruled.
2. The newly added non-class members holding Life Span term policies/riders are hereby permanently enjoined and prohibited from prosecuting, filing, maintaining,

- pursuing or participating as a litigant in any separate action asserting any claim arising from or relating to the subject matter of State Mutual's Motion for Further Relief and the lowering or reduction of the dividend on the Life Span term policies/riders as defined in the original action.
3. State Mutual shall provide the benefits package, as described in this decree, to the newly added parties as soon as it is administratively practical to do so. The Company shall provide notice of this consent decree and the award of the benefits package to all of the newly added parties within 21 days of the entry of this consent decree.
 4. The Court shall retain jurisdiction over the newly added parties for the limited purpose of monitoring the full implementation of the benefits package awarded them and compliance with the injunctive relief against them, and otherwise to enforce this decree.
 5. State Mutual and the Guardians Ad Litem have agreed that the Guardians are entitled to reasonable fees and expenses in this case totaling \$500,000. In determining this amount, the parties used the following factors to establish a reasonable fee:
 - a. The time and labor required;
 - b. The novelty and difficulty of the questions raised in the case regarding the newly added parties;
 - c. The skill required to perform the legal services properly;
 - d. The preclusion of other employment by the attorneys due to their acceptance of this case;
 - e. The customary fee;
 - f. Whether the fee is fixed or contingent;
 - g. The time limitations imposed by the clients or circumstances;
 - h. The amount of money involved;
 - i. The experience, reputation and ability of the attorneys in this case;
 - j. The "undesirability" of the case;
 - k. The nature and length of the professional relationship with the clients; and
 - l. The cost to represent the clients in similar cases.
 6. The Court finds the agreed upon attorney's fees to be reasonable under the above-

referenced factors and orders State Mutual to pay the \$500,000 in attorney's fees to the Guardians within 10 days from the entry of this Order. This \$500,000 payment shall consist of one lump sum payment of \$250,000 to Vanessa Searight and one lump sum payment of \$250,000 to James Stewart.

7. This consent decree constitutes a final judgment with respect to the newly added parties.

Done this 1st day of March, 2010.



CIRCUIT JUDGE