



AlaFile E-Notice

35-CV-1995-000066.00

Judge: EDDIE HARDAWAY

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF GREENE COUNTY, ALABAMA

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

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

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

v.)

CIVIL ACTION NO.: CV-95-066

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

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

v.)

CIVIL ACTION NO.: CV-96-040

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

TEMPORARY RESTRAINING ORDER

THIS MATTER comes before the Court on November 23, 2015, on a Motion for Further Relief (the "Motion") that was filed by Defendant State Mutual Insurance Company that contains a request for a temporary restraining order. The Court reviewed State Mutual's Motion pertaining to approximately 6,000 whole life dividend participating policies that were not included in the original 1998 class action or the 2010 Consent Decree.. The Court has also reviewed the Affidavit of Douglas M. Price (the "Price Affidavit") in support of the Motion.

Pursuant to Rule 65 of the Alabama Rules of Civil Procedure, State Mutual has clearly shown in its verified Motion and the Price Affidavit that immediate and irreparable injury, loss, or damage will result to the State Mutual before the adverse party or that party's attorney can be

heard in opposition. This irreparable injury, loss or damage is described in detail in the Court's finding below.

Furthermore, Counsel for State Mutual has certified to the Court in writing his efforts to give the notice of the Motion to Class Counsel and the Guardians Ad Litem for the group of policyholders who are covered by the 2010 Consent Decree and the reasons supporting the claim that further notice should not be required. The Certification was filed on November 22, 2015. With respect to the Motion, the relief requested by State Mutual is primarily directed to a group of about 6,000 policyholders who are not class members or policyholders covered by the Consent Decree. The policyholders that are the subject of the Motion will be represented by a Court appointed Guardian Ad Litem, as set forth in this Order.

Based upon the Court's review of the Motion and Price Affidavit, the 1998 class action members and the policyholders covered by the 2010 Consent Decree entered in this case do not appear, at this juncture, to be adversely impacted by the relief requested in the Motion.

Based upon the findings of fact and conclusions of laws set forth below, the Court grants State Mutual's request for a Temporary Restraining Order:

1. The 1998 class action members are plaintiffs represented by attorney Alexander W. Jones, Jr., Esq. of the Pritchard, McCall & Jones, LLC law firm in Birmingham, and the policyholders in the 2010 Consent Decree were represented by attorneys Vanessa A. Searight, Esq., Bessemer, Alabama and James Stewart, Esq., Bessemer, Alabama.
2. Counsel of record for the Movant, Donald V. Watkins, Esq., confirmed to the Court in writing his efforts to notify both original class counsel, Alex W. Jones, Jr. and the Guardians Ad Litem who were appointed for the group of policyholders who are covered by the 2010 Consent Decree, Vanessa A. Searight and James Stewart about the Motion

and his efforts to have the Motion heard by the Court at the earliest possible time.

3. State Mutual has requested the Court to appoint additional Guardian Ad Litem to represent the interest of the policyholders that are the subject of the Motion.
4. The Court has jurisdiction over this Motion, 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”. (Emphasis Added.)
5. The Motion before the Court involves certain dividend participating whole life 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. The Motion also involves those Life Span policyholders covered under the 2010 Consent Decree.
6. State Mutual, pursuant to 1998 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 have 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.

7. The Price Affidavit supports a projected dividend cut on all remaining dividend participating whole life term policies which said cuts track the "Contribution Principal" to bring the dividends of these policies/riders in line with the class action policies and the Life Span term policies in compliance with Actuarial Standard of Practice No. 15, which supports using the same dividend factor between similar classes of policies and/or riders.
8. The Court has considered the factors necessary to support injunctive relief against the plaintiff class and finds that: (a) the class had the required notice of the request for a temporary restraining order; (b) the class is represented by able class counsel whose firm was designated original class counsel; (c) the policyholders covered by the 2010 Consent Decree had the required notice of these proceedings; (d) the 2010 Consent Decree group of policyholders has able representation in the form of the two Guardians Ad Litem; (e) the law and facts presented by the verified Motion established that, in the absence of immediate injunctive relief against the 1998 class members and 2010 Consent Decree group as well as the proposed additional 6,000 policyholders, State Mutual would suffer irreparable harms and jeopardize the company's solvency; (f) State Mutual has no adequate remedy at law; (g) State Mutual has at least a reasonable chance of success on the ultimate merits of its case; and (h) that hardships imposed on the 1998 class members, the 2010 Consent Decree policyholders, and newly added group of dividend participating policyholders by the Temporary Restraining Order would not unreasonably outweigh the benefit accruing to State Mutual.

9. There are approximately 6,000 additional dividend participating whole life policies that were not covered by the Court's two previous orders. It is appropriate that the Court bifurcate the hearing on State Mutual's motion by addressing and adjudicating first the issues relating to the class members and those subject to the 2010 Consent Decree, and reserving all other issues on the requested permanent injunctive relief pending a determination of the rights of the newly added dividend participating whole life policyholders during a hearing on the merits of the Motion as these policyholders may be adversely impacted by the issues raised in the Motion.
10. The Court recognizes that State Mutual's exercise of its dividend declaration rights must be applied uniformly. The Court also finds that State Mutual must act to declare its dividend before December 31, 2015, in order to establish the company's liabilities for 2016.
11. The Court has determined that State Mutual met its burden of proof to support the issuance of a temporary restraining order against the non-class member dividend participating whole life 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. Using its equitable powers to protect its 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 (Ala. Sup. Ct.1997), the Court's temporary restraining order effectively authorizes State Mutual to make its dividend declaration on or before December 31, 2015 across-the-board on all whole life participating insurance products, whether they are riders or free-standing policies.

12. The Court shall appoint a Guardian Ad Litem to represent the interest of the newly added policyholders whose policies are the subject of the Motion for Further Relief for the purpose of establishing notice to this group of policyholders of the pendency of the Motion, as it applies to them, and to afford these policyholders a meaningful opportunity to be heard on the Motion. The Court will require State Mutual to pay the reasonable attorney's fees and cost of the appointed Guardian Ad Litem. The Court recognizes that members of this group may retain their individual counsel to respond to the motion as they see fit.
13. The Court finds that it is appropriate to bifurcate the proceeding on the Motion for several reasons. First, the relief sought does not appear, at this juncture, to adversely impact the economic interests or rights of the class members and policyholders covered by the 2010 Consent Decree. Second, State Mutual's right to cut dividend on the policies held by the class members and policyholders covered by the 2010 Consent Decree has already been established by prior Orders of the Court. It is now the law of the case. As such, the Court will set an early hearing on the merits on the Motion for the class members and policyholders covered by the 2010 Consent Decree in the first phase of the bifurcated proceeding.
14. The class members and policyholders covered by the 2010 Consent Decree may agree to an extension of this Temporary Restraining Order until the hearing on the requested Preliminary injunction and/or on the hearing on the merits of the Motion for Further Relief as it relates to their rights.
15. In the bifurcated proceedings, the Court will set a separate hearing on State Mutual's request for preliminary injunction and for a hearing on the merits at a later date for the

newly added policyholders represented by the Guardian Ad Litem appointed in this Order. This will afford the Guardian Ad Litem for the newly added policyholders adequate time to prepare for these hearings.

ACCORDINGLY, IT IS THEREFORE ORDERED, ADJUDGED and DECREED

as follows:

1. The Court declares that State Mutual retained the right to declare the amount of annual dividends on the policies at issue in the Motion for Further Relief and that State Mutual has in the past and may continue to follow the Contribution Principal authorized in the June 15, 1995 Order and Final Judgment for the development of all dividend scales for all policy issues and their related policies/riders which may increase or decrease for the projections of current dividends scales.
2. The Court's June 15, 1995 Order and Final Judgment is expressly modified to approve State Mutual's use of its prudent business judgment when declaring dividends for the remaining whole life participating policies/riders at issue in the Motion for Further Relief.
3. Class members holding additional whole life dividend participating policies/riders are 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 dividends on such additional whole life dividend participating policies.
4. Non-class member policyholders covered by the 2010 Consent Decree who are holding whole life dividend participating policies/riders are 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 dividends on such additional whole life dividend participating policies.

5. Non-class members holding whole life dividend participating policies/riders that were not subject to the Court's 1998 Order and the 2010 Consent Decree are temporarily restrained, 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 such whole life dividend participating policies.
6. The Court affirms the permanent injunction in the 1998 Order and 2010 Consent Decree that permanently enjoined and prohibited policyholders 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 those Orders and the lowering or reduction of the dividends on the dividend participating policies covered by Orders.
7. Attorney Brenda Pompay of Pompay + Pompy is appointed as a Guardian Ad Litem for the purpose of representing the interest of any and all non-class members who are holding whole life dividend participating policies that were not subject to the Court's 1998 Order and the 2010 Consent Decree and who are hereby added as necessary parties to this litigation for purposes of enforcing State Mutual's right under the Court's 1998 Order and Final Judgment and 2010 Consent Decree. State Mutual shall be responsible for the payment of reasonable attorney's fees and costs for the newly appointed Guardian Ad Litem. State Mutual's Court-ordered payment of such reasonable attorney's fees and costs for the Guardian Ad Litem shall be deemed by the Court to constitute adequate

security for this Temporary Restraining Order within the meaning of Rule 65(c) since the policyholders that appear to be the parties adversely affected by the relief sought in the Motion for Further Relief are the policyholders represented by the Guardian Ad Litem.

8. The Court directs the newly appointed Guardian Ad Litem and counsel for State Mutual to meet and confer immediately for the purpose of developing and giving a mutually agreed upon notice to the non-class member necessary parties who hold the additional whole life dividend participating policies. The notice shall inform these added necessary parties of the following: (a) the pendency of State Mutual's Motion for Further Relief, together with a summary of the relief sought; (b) the Court's issuance of a Temporary Restraining Order against them, together with a copy of this Order; (c) their right to a meaningful opportunity to be heard on the relief requested in State Mutual, including the right to retain independent counsel, the right to conduct discovery, the right to present witnesses at the hearing on the preliminary and permanent injunction hearings. The notice shall be mailed to the added necessary parties/non-class member policyholders by first-class mail no less than seven days from the date of the preliminary hearing set forth below. State Mutual shall bear all costs associated with mailing the notice.

9. The Court sets the preliminary injunction hearing for 2 December, 2015 at 9:00 ^{A.M.} at Sumter County Courthouse, Livingston, ALABAMA the ~~Green Court~~ Courthouse, 400 Morrow Avenue, ~~Eutaw~~, Alabama 35462, for the non-class member policyholders added as necessary parties, as well as any class members and 2010 Consent Decree policyholders that may hold dividend participating life insurance policies in the category of policies that are the subject matter of this Motion. The Guardian Ad Litem for the newly added policyholders and State Mutual may extend the Temporary Restraining Order granted herein by mutual consent if said extension is

necessary to effectuate the notice provision required in paragraph 8. Should an extension be necessary, these parties shall notify the Court of this need and the Court will enter a formal order extending the Temporary Restraining Order and continuing the hearing date for the preliminary injunction for these parties.

10. The Court sets 29th December, 2015, at 9:00 A.M. at the Green County Courthouse, 400 Morrow Avenue, Eutaw, Alabama 35462, for the hearing on the merits on the Motion for Further Relief for the class members and policyholders covered by the 2010 Consent Decree that do not hold dividend participating life insurance policies in the category of policies that are the subject matter of this Motion. Thereafter, further proceedings on the State Mutual's Motion will be limited to those parties who hold dividend participating life insurance policies in the category of policies that are the subject matter of this Motion.

Done this 23rd day of November, 2015, at 1:55 p.m.

Eddie Hardaway, Jr.
 Hon. Eddie Hardaway, Jr.
CIRCUIT JUDGE