

DARCY GUIDRY, ET AL : 14TH JUDICIAL DISTRICT COURT
VS. : PARISH OF CALCASIEU
AMERICAN PUBLIC LIFE INS. CO., : STATE OF LOUISIANA
ET AL :
FILED: ~~JUL 10 2008~~ : *Marcell Belmer*
DEPUTY CLERK

ORDER OF PRELIMINARY APPROVAL OF CLASS SETTLEMENT

On considering Plaintiffs' Motion for Preliminary Approval of Proposed Settlement, the evidence submitted to the Court by Plaintiffs in support of their motion, the record of these proceedings, the recommendation of Class Counsel, and the requirements of law, the Court finds, upon preliminary review, that: (1) this Court has jurisdiction over the subject matter and the parties; (2) the proposed settlement is the result of arm's-length negotiations between the parties and is not the result of collusion; (3) the proposed settlement bears a probable, reasonable relationship to the claims alleged by the Plaintiffs and the risks of litigation; and (4) the proposed settlement is within the range of possible judicial approval. Accordingly:

IT IS HEREBY ORDERED THAT:

1. Except as otherwise expressly provided herein, all capitalized terms used in this Order of Preliminary Approval of Proposed Settlement shall have the meanings and/or definitions given them in the Settlement Agreement entered into between Darcy Guidry, Sally Guidry, Genita Domingue, Raymond Domingue, and Earl Wayman Tarpley, on their own behalf and on behalf of the class they represent, and Defendants, American Public Life Insurance Company ("APL") and American Fidelity Assurance Company ("AFA") (collectively, the "Parties").
2. For settlement purposes only, and pursuant to La. Code of Civil Procedure 591(B)(1), (B)(2), (B)(3) and (B)(4), the Court conditionally certifies a settlement class composed of all persons within the United States, other than persons whose policies were issued to them when they resided in the state of Oklahoma, who have purchased supplemental cancer insurance policies having one or more "actual charges" benefits from American Public Life Insurance Company and/or American Fidelity Assurance Company and either: (a) has made one or more claims under such policy where (i) there was a difference between the billed charge and the amount paid and (ii) the term "actual charge" was not defined in the policy or by statute, but excluding claims made after September 1, 2005 with respect to policies issued to persons while residing in Texas and claims made after May 3, 2006 with respect to policies issued to persons while residing in Georgia; or (b) is currently a policyholder of the following "actual charges" cancer policies: American Fidelity policy forms - C-3, C-4, C-5 and C-489; and American Public Life policy forms - APL1, APLD, APLIC1, APLIC2, APLIC3, BDCPA policies issued on 4/28/1987 and later, C440, GCPW, and SCSD1 policies issued on 4/28/1987 and later.

3. For settlement purposes only, and pursuant to La. Code of Civil Procedure 591 (B)(1), (B)(2), (B)(3) and (B)(4), the Court conditionally finds that the prerequisites of articles 591 and 592 of the Louisiana Code of Civil Procedure are satisfied and that, subject to final approval, the Settlement Class may be certified for settlement purposes only. Further, for purposes of the Settlement Class only, it is determined that (1) the putative Settlement Class members are so numerous that joinder of all members is impracticable; (2) there are a number of questions of law and fact common to the Settlement Class which predominate over any individual questions affecting only individual class members; (3) a class action is superior to other available methods for the fair and efficient resolution of the controversy in that, among other reasons, it will avoid the need for costly individual adjudications of Settlement Class members' claims, and, in the present circumstances, there will be no further litigation of the issues and no trial of the litigation as to APL and AFA; (4) the claims and defenses of the Plaintiffs are typical of the claims and defenses of the class; (5) the Plaintiffs have and will fairly and adequately protect the interests of the class; (6) the Settlement Class is defined objectively in terms of ascertainable criteria, such that the Court may determine the constituency of the class for the purposes of the conclusiveness of any judgment that may be rendered in this matter; and (7) the interests of the individual Settlement Class members in controlling the prosecution of separate actions is outweighed by the interests of the class as a whole in bringing this matter to a successful conclusion via the proposed settlement. The Court recognizes that the Released Parties have preserved all of their defenses and objections against and rights to oppose certification of the class for litigation purposes, if the proposed settlement does not become final in accordance with the Settlement Agreement or the Settlement Agreement is terminated for any reason.


4. Plaintiffs Darcy Guidry, Sally Guidry, Genita Domingue, Raymond Domingue, and Earl Wayman Tarpley are certified as representatives of the Settlement Class and Arthur M. Murray, Stephen B. Murray, Thomas A. Filo, Richard E. Wilson, Claude P. Devall, and Korey A. Nelson as Class Counsel, on the condition that the certification and designations shall be automatically vacated, for purposes of this Settlement Agreement, if the Settlement Agreement is terminated or is disapproved in whole or in part by the Court, any appellate court, or any of the Parties;

5. The Settlement Agreement and the settlement set forth therein, and all exhibits thereto, are preliminarily approved by the Court as being fair, reasonable, and adequate, entered into in good faith, free of collusion, and within the range of possible judicial approval.

6. Any certification by the Court of the Settlement Class is for settlement purposes only and shall not constitute, nor be construed as, an admission on the part of the Released Parties that class certification is appropriate pursuant to articles 591, et seq., of the Louisiana Code of Civil Procedure or any similar class action statute or rule. If the Settlement Agreement is not finally approved,

terminated or fails to be implemented for any reason, the conditional certification of the Settlement Class shall be null and void *ab initio*.

7. Unless otherwise expressly agreed in writing by the Settlement Class, the Plaintiffs, Class Counsel and counsel for APL and AFA, in the event that the Settlement Agreement does not become effective as required by its terms for any reason, all orders entered by this Court pursuant to the Settlement Agreement (the "Settlement Class Order") shall become null and void, and the parties shall be restored to their respective positions *status quo ante*. In such event, all Settlement Class Orders shall have no force and effect, and may not be used or referred to for any purpose whatsoever.

8. A hearing on the certification of the Settlement Class for settlement purposes only under articles 591, et seq. of the Louisiana Code of Civil Procedure, and to determine whether the proposed settlement is fair, reasonable and adequate, and whether it should be approved by the Court, shall commence on the 25th day of September 2008 at 10:00 a.m. at the Calcasieu Parish Judicial Center, 1001 Lakeshore Dr., Lake Charles, Louisiana. 

9. Subject to the Court's consideration of additional evidence regarding Class Notice at the final approval hearing, and based on the documents submitted to the Court in connection with preliminary approval, the Class Notice fully complies with the requirements of La. Code of Civil Procedure 594(A)(2) and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of the settlement of this lawsuit;

10. In further aid of the Court's jurisdiction to implement and enforce the proposed settlement, all members of the Settlement Class shall be preliminarily enjoined and barred from commencing or prosecuting any action asserting any of the Released Claims, either directly, representatively, derivatively or in any other capacity, whether by a complaint, counterclaim, reconventional demand, defense or otherwise, in any local, state or federal court, or in any agency or other authority or forum wherever located. Any person or entity who knowingly violates such injunction shall pay attorneys' fees and costs incurred by APL and AFA. Nothing in this paragraph shall be construed to prevent a member of the Settlement Class from presenting objections to the Court regarding the Settlement Agreement in accordance with this Order.

11. Any member of the Settlement Class who submits a request for exclusion that conforms to the terms of this Order may be excluded from the Settlement Class, except as to the declaratory relief set forth in paragraph 37 and its corresponding subparagraphs in the Settlement Agreement:

A. All requests for exclusion from the Settlement Class must be postmarked (or mailed by overnight delivery) no later than September 18, 2008.

B. A request for exclusion from the Settlement Class must be in writing and state the

name, address and phone number of the person(s) seeking exclusion. Each request must also contain a duly authorized and signed statement that: "I hereby request that I be excluded from the proposed Settlement Class in the *Guidry* Action." A request for exclusion that does not include all of the foregoing information, that is sent to an address other than the one designated in the Class Notice, or that is not sent within the time specified shall be invalid and the person(s) serving such a request shall be a member(s) of the Settlement Class, and shall be bound as a class member of such class. Class Counsel shall forward copies of all requests for exclusion to counsel for APL and AFA no later than seven (7) days after the deadline for class members to submit such requests. Class Counsel shall notify counsel for APL and AFA in writing of the number of requests for exclusion at least seven (7) days prior to the final approval hearing.

C. All Settlement Class members who properly file a timely written request to opt-out of the settlement shall be excluded from the Settlement Class, shall have no rights as members of the Settlement Class pursuant to the Settlement Agreement and shall receive no payments pursuant to such Agreement.

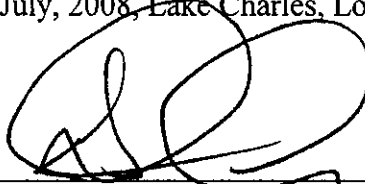
12. Any member of the Settlement Class who objects to the settlement may appear in person or through counsel, at his or her own expense, at the final approval hearing to present any evidence or argument that may be proper and relevant. No Settlement Class member shall be heard, and no papers, briefs, pleadings or other documents submitted by any such class member shall be received and considered by the Court, unless submitted on or before September 18, 2008. Such class member shall both file with the Court and mail to Class Counsel and counsel for APL and AFA a written objection that includes: (1) a notice of intention to appear; (2) proof of membership in the Settlement Class; and (3) the specific grounds for the objection and any reasons why such class member desires to appear and be heard, as well as all documents or writings that such class member desires the Court to consider. Any member of the Settlement Class who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and forever be barred from making any such objections in this action or in any other action or proceeding.

13. Within ten (10) business days from the entry of this Order, the Parties shall submit an escrow agreement, signed by the Parties and the escrow agent for Court approval.


14. Patrick A. Juneau is appointed as Special Master pursuant to La. R.S. 13:4165 to assist the Court, in cooperation and coordination with Class Counsel, to: (1) establish proposed allocations for each Settlement Class Member; (2) prepare a proposed plan for distribution of the proposed allocations; (3) submit to the Court a report on the proposed allocations and proposed plan for distribution, along with recommendations for the Court's consideration in proceeding with the allocation and distribution process following the Effective Date; (4) engage such staff, deputies and

experts as reasonably necessary; and (5) conduct such hearings as may be necessary and appropriate to carry out his duties.

Thus done and signed this 9th day of July, 2008, Lake Charles, Louisiana.



G. MICHAEL CANADA,
JUDGE, 14TH JUDICIAL DISTRICT COURT

A TRUE COPY
Lake Charles, Louisiana

Deputy Clerk of Court JUL 10 2008
Calcasieu Parish, Louisiana