

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DEBORAH HILLGAMYER,

Plaintiff,

v.

RELIASTAR LIFE INSURANCE COMPANY,
and SECURITY LIFE OF DENVER
INSURANCE COMPANY,

Defendants.

OPINION AND ORDER

11-cv-729-wmc

Plaintiff Deborah Hillgamyer, on behalf of herself individually and other similarly situated, brings this action alleging defendant insurers ReliaStar Life Insurance Company and Security Life of Denver Insurance Company have a policy of not paying the full amount of interest as required under Illinois law. Before the court is plaintiff's unopposed motion for preliminary approval of class action settlement. (Dkt. #83.) In prior orders (dkt. ##86, 90) and in a telephonic conference with the parties on October 3, 2013, the court raised issues concerning Hillgamyer's adequacy as the class representative in light of the proposed settlement of her individual bad faith claim and the scope of the release language in the settlement agreement. The parties have now presented a revised settlement agreement containing release language limited to the specific class claim at issue here. (Dkt. #92.) Accordingly, the court is satisfied that Hillgamyer is an adequate class representative and will grant plaintiff's unopposed motion for preliminary approval of a class action settlement. As part of this order, the court also sets a fairness hearing for January 23, 2014, at 1:00 p.m.

BACKGROUND

A. Overview of Plaintiff's Claims and Procedural Posture

Plaintiff Deborah Hillgamyer filed her complaint against defendant insurers ReliaStar Life Insurance Company and its sister company, Security Life of Denver (hereinafter referred to jointly as "ReliaStar") in September 2011. In October 2011, defendants timely removed this action on diversity jurisdiction grounds. The amended complaint, filed May 8, 2012, asserts an individual bad faith claim on as well as a putative class claim. The class claim alleges that defendants (1) failed to notify beneficiaries of policies issued in Illinois of their statutory right to 9% interest if the death benefits were paid more than 15 days after proof of loss was provided to defendants; and (2) had a common practice of not paying 9% interest when due. (Am. Compl. (dkt. #17) (citing 215 Ill. Comp. Stat. 5/224(1)(l) (2011).)

The court previously denied defendants' motion to dismiss. (Dkt. #78.) During the course of this case, the parties engaged in extensive discovery, including depositions of numerous corporate officers, and production and review of over 25,000 pages of documents. Plaintiff filed a motion for class certification, which defendants opposed. While plaintiff's motion for class certification was pending, the parties reached a settlement agreement on July 28, 2013.

B. Overview of Settlement Agreement

For settlement purposes, the parties seek to certify the following class:

All beneficiaries to life insurance policies issued within the State of Illinois by ReliaStar Life Insurance Company, or

Security Life of Denver Insurance Company, who received less than 9% interest in conjunction with the payment of death benefits, relating to a death that occurred between May 8, 2002 and August 22, 2011.

(Pl.'s Br. (dkt. #84) p.14.)¹

The settlement agreement provides that defendants will pay \$775,000 plus all settlement administrative fees and expenses in exchange for the dismissal of this action and a release of all *class* claims related to the denial of interest.² This fund will cover attorneys' fees and costs, with the remaining amount going to class members (the "net settlement amount").

Each settlement class member who submits a timely claim form -- either by mail or online -- will received a pro rata share of the net settlement amount, based on: (1) the amount of time between the death and when payment was issued by the defendant; and (2) the difference between the amount of interest paid and 9%.

Class members will receive notice via a postcard and via a summary notice to be published in the Chicago Tribune and USA Today. Both forms of notices will direct the parties to a website established for this class settlement. Each class member will have an opportunity to exclude himself or herself from the settlement. Class members will also have an opportunity to object to the settlement.

¹ The class excludes beneficiaries of industrial, group or annuities and pure endowments and also excludes employees, officers, directors, and immediate family members of defendants and any judge or judicial officer presiding over this case. (Pl.'s Br. (dkt. #84).)

² Hillgamyer has also settled her own individual bad faith claim under Wisconsin law for \$175,000.

If the total value of the claims is less than the amount available in the net settlement amount, claimants will receive an additional pro rata share of the net settlement amount. There is no reversion to defendants, except if checks remain uncashed for 60 days, then the money goes into a fund which defendants may use to cover the cost of the settlement administration.

ORDER

I. Preliminary Settlement Approval

1. Based upon the court's review of plaintiff's unopposed motion for preliminary approval of settlement agreement (dkt. #83), as well as all corresponding exhibits and papers submitted in connection with the motion, preliminary approval of the settlement is GRANTED.

2. The court concludes that at this preliminary stage, the proposed settlement "is within the range of possible approval." *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998).

3. The court finds that the proposed settlement appears to be the result of extensive, arm's-length negotiations.

4. While the court is satisfied that the settlement is facially reasonable, it intends to scrutinize plaintiff counsel's application for attorneys' fees when the time

comes for final approval of the settlement. Specifically, the court may use counsel's hourly billing records and rates as a factor in determining an appropriate fee award.

II. Certification of the Rule 23 Class

5. For settlement purposes only, the court certifies the following class under Fed.

R. Civ. P. 23(e):

All beneficiaries to life insurance policies issued within the State of Illinois by ReliaStar Life Insurance Company, or Security Life of Denver Insurance Company, who received less than 9% interest in conjunction with the payment of death benefits, relating to a death that occurred between May 8, 2002 and August 22, 2011.

6. The class meets all of the requirements for settlement class certification under Fed. R. Civ. P. 23(a) because:

- a) there are at least 300 individuals in the class (Pl.'s Br. in Supp. of Class Cert. (dkt. #62) 16), and it would be impracticable to join that many individual plaintiffs;
 - b) the class members share common issues of fact and law, concerning the definition of "due proof of loss," and whether defendant breached their respective insurance contract by failing to pay interest as required under Illinois law;
 - c) the named plaintiff's claim arises from the same factual and legal circumstances as the class members;
 - d) class counsel are qualified, experienced, and able to conduct the litigation;
- and

e) the named plaintiff's interest is not antagonistic to the class members' interests.³

7. The Rule 23 Class satisfies Fed. R. Civ. P. 23(b)(3) for purposes of a settlement class because common factual allegations and a common legal theory predominate over any factual or legal variations among class members. Class adjudication of this case is superior to individual adjudication because it will conserve judicial resources and is more efficient for class members, particularly those who lack the resources to bring their claims individually.

III. Appointment of Plaintiff's Counsel as Class Counsel and the Named Plaintiff as Class Representative.

8. The court appoints Atterbury, Kammer & Haag as class counsel, finding all of the requirements of Fed. R. Civ. P. 23(g) met.

9. Class counsel did substantial work identifying, investigating, prosecuting, and settling the class members' claims.

10. The work that class counsel has performed in litigating and settling this case demonstrates their commitment to the class and to representing the class's interests.

11. The court appoints plaintiff Deborah Hillgamyer as the class representative.

³ As described above, the parties' modification to the release language in the settlement agreement assuages the court's concerns about Hillgamyer's adequacy of representation.

IV. Class Notice and Settlement Procedure

12. The court approves the Proposed Settlement Notices (dkt. ##85-1, 85-2, 84-4).
- 4). The court directs the distribution of the Notices.

13. Pursuant to Fed. R. Civ. P. 23(c)(2)(B), a notice must provide:

the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language: the nature of the action; the definition of the class certified; the class claims, issues, or defenses; that a class member may enter an appearance through counsel if the member so desires; that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and the binding effect of a class judgment on class members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

14. The Notices satisfy each of these requirements and adequately put the Rule 23 class members on notice of the proposed settlement.

15. The court approves the proposed claim form (dkt. #85-3).

16. The court also approves the appointment of BMC Group / Analytics, Inc. as the settlement administrator.

17. The court approves the following settlement procedure and timeline:

- a) no later than November 24, 2013, class counsel shall arrange for the mailing of the postcard notices to the class members;
- b) no later than December 9, 2013, class counsel for the publishing of the summary notice in USA Today and the Chicago Tribune;

- c) the notices shall provide that class members will have until January 9, 2014, to submit claim forms, exclude themselves from the settlement or otherwise object;
- d) no later than January 2, 2014, class counsel shall file a petition for attorneys' fees and costs; and
- e) the court will hold a fairness hearing on January 23, 2014, at 1:00 p.m.

Entered this 11th day of October, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge