

UNITED STATES DISTRICT COURT
IN THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Thrift Development Corporation,)
Plaintiff,)
)
)
)
)
v.)
)
American International Group, Inc.;)
Chartis Inc. and)
American Home Assurance Co.,)
Defendants.)
)
_____)

C/A No.: 8:12-cv-00861-BHH

ORDER

WHEREAS, plaintiff Thrift Development Corporation (“Named Plaintiff”) and the AIG Defendants¹ entered into a Release and Settlement Agreement dated June 17, 2015 (“Settlement Agreement”); and

WHEREAS, the Court entered a August 12, 2015 Order (the “Preliminary Approval Order”): preliminarily certifying the Settlement Class in this Action for settlement purposes under FED. R. CIV. P. 23(b)(3), ordering that notice be disseminated to the Settlement Class, scheduling a Fairness Hearing for December 16, 2015, and providing Class Members with an opportunity to opt-out of the Settlement Class or object to the proposed settlement; and

WHEREAS, the Court held a Fairness Hearing on December 16, 2015 to determine whether to grant final approval to the Settlement Agreement; and

¹ Unless otherwise specifically defined herein, the capitalized terms in this Order Approving Settlement have the same meaning as attributed to them in the Settlement Agreement.

WHEREAS, the Court is contemporaneously issuing a Judgment that, among other things, certifies the Settlement Class, approves the Settlement Agreement, and dismisses the Settlement Class Members' claims with prejudice as to the AIG Defendants;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Incorporation of Settlement Documents.** This Order Approving Settlement (the "Order") incorporates and makes a part hereof the Settlement Agreement, including all exhibits thereto. The Settlement Agreement and all exhibits thereto shall be referred to collectively as the "Settlement Agreement."

2. **Jurisdiction.** The Court has personal jurisdiction over all Settlement Class Members (as defined below) and has subject matter jurisdiction over this Action, including, without limitation, jurisdiction to approve the Settlement Agreement and the Plan of Allocation, grant final certification of the Settlement Class for settlement purposes, and dismiss the Action with prejudice.

3. **Final Settlement Class Certification.** The Settlement Class this Court preliminarily certified is hereby finally certified for settlement purposes under FED. R. CIV. P. 23(b)(3). The Settlement Class consists of: all policyholders that filed a workers compensation claim in South Carolina pursuant to a policy issued by any of the AIG Defendants and/or the AIG Affiliates with a policy effective date of June 27, 1999 or later, where subsequent to the claim: (i) any of the AIG Defendants and/or the AIG Affiliates received a third-party recovery that it was required to report to NCCI under the applicable NCCI reporting rules and South Carolina law; and (ii) the employer had one or more ex-mods that incorporated such claim but, as of March 26, 2012, did not account for the third-party recovery.

4. **Issue for Certification.** The issue that the Court is deciding on a class-wide basis is whether the terms of the proposed settlement are fair, reasonable, and adequate pursuant to FED. R. CIV. P. 23(e) and governing law construing that Rule. In making that determination, the Court also has considered, as discussed herein, whether proper notice of the proposed settlement was given under FED. R. CIV. P. 23(c)(2)(B) and Fed. R. Civ. P. 23(e)(1) to the Settlement Class and any other relevant persons so that the settlement's terms will have binding effect, as discussed in paragraph 10 below.

5. **Adequacy of Representation.** The Named Plaintiff and Class Counsel have fully and adequately represented the Settlement Class for purposes of entering into and implementing the settlement and have satisfied the requirements of FED. R. CIV. P. 23(a)(4).

6. **Notice.** The Court finds that the distribution of the Notice and the notice methodology were implemented in accordance with the terms of the Settlement Agreement and this Court's Preliminary Approval Order. The Court further finds that the Notice was simply written and readily understandable, and that the Notice and notice methodology: (a) constituted the best practicable notice; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the claims in the Action, their rights to object to the proposed settlement and to appear at the Fairness Hearing, and their right to exclude themselves from the Settlement Class; (c) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law.

7. **Final Settlement Approval.** The terms and provisions of the Settlement Agreement have been entered into in good faith and are hereby fully and finally approved as fair,

reasonable, and adequate as to, and in the best interests of, each of the Settling Parties and the Settlement Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law. The Settling Parties and their counsel are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

8. In granting final approval of the Settlement Agreement, the Court has considered the factors that courts in this District consider in evaluating class settlements. *See, e.g., Brunson v. Louisiana-Pac. Corp.*, 818 F. Supp. 2d 922, 926 (D.S.C. 2011). The Court finds that given the significant benefits that the Settlement Agreement provides to Settlement Class Members, the risks inherent in continued litigation, the considerable discovery that Plaintiff has completed in this case and the relatively advanced stage of the litigation, the risk, complexity, expense, and likely duration of the litigation absent settlement, the views of Class Counsel who have considerable experience in class actions and other complex litigation, and the positive reaction of the class—no Class Members objected to the Settlement or opted out of the Settlement Class—the Settlement Agreement is fair, reasonable, and adequate.

9. **Plan of Allocation.** The Plan of Allocation is approved as a fair and reasonable method to allocate the relevant settlement proceeds among Settlement Class Members. The Settling Parties, through the Administrator and Calculation Advisor, are directed to implement and administer the Plan of Allocation in accordance with its terms and provisions.

10. **Binding Effect.** The terms of the Settlement Agreement and of this Order and the accompanying Judgment shall be forever binding on the Settling Parties and all Settlement Class Members, as well as their heirs, executors, administrators, beneficiaries, predecessors,

successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns as to all Released Claims.

11. **Releases.** The Releases as set forth in Section VIII of the Settlement Agreement are expressly incorporated herein in all respects. The Releases shall be effective as of the Final Settlement Date.

12. **Permanent Injunction.** The Named Plaintiff and all Settlement Class Members (and their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), and assigns), are permanently enjoined from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration, or other proceeding against any or all of the AIG Releasees or AIG Defendants' Counsel or order in any jurisdiction entered against any or all of the AIG Releasees or AIG Defendants' Counsel that is based upon or arises out of any Released Claims. All persons or entities are permanently enjoined from organizing any Settlement Class Members for purposes of pursuing as a purported class action (including seeking to amend a pending complaint to include claims that are based upon or arise out of any Released Claims, or by seeking class certification in a pending action) any other lawsuit against any or all of the AIG Releasees or AIG Defendants' Counsel that is based upon or arises out of any Released Claims.

13. **Bar Order.** The Named Plaintiff and all Settlement Class Members (and their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) are permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any claim against any AIG Releasee, arising under state, federal, or common law, however styled (whether for indemnification or contribution or otherwise

denominated, including, without limitation, claims for breach of contract, breach of the implied covenant of good faith and fair dealing, or unjust enrichment), where the alleged injury or damage to such person or entity is based upon or arises out of any Released Claim, including, but not limited to, any claim that is based upon or arises out of the Action or the subject matter thereof, whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, including, without limitation, any such claim in which a person or entity seeks to recover from any of the AIG Releasees (i) any amounts such person or entity may become liable to pay to any or all of the Settling Parties and other Settlement Class Members, and/or (ii) any costs, expenses, or attorneys' fees from defending any claim by any or all of the Settling Parties and other Settlement Class Members. All such claims are hereby extinguished, discharged, satisfied, and unenforceable, subject to a hearing to be held by the Court, if necessary. The provisions of this paragraph 13 are intended to preclude any liability of any of the AIG Releasees to any person or entity for indemnification, contribution, or otherwise on any claim based upon or arising out of any Released Claim belonging to any or all of the Settling Parties and other Settlement Class Members. If any provision of this paragraph 13 is subsequently held to be unenforceable, such provision shall be substituted with such other provision as may be necessary to afford all of the AIG Releasees the fullest protection permitted by law from any claim that is based upon or arises out of any Released Claims.

14. **No Admissions.** Neither this Order and the accompanying Judgment nor the Settlement Agreement, nor any of the provisions of the Settlement Agreement or any negotiations leading to its execution, nor any other documents referred to in this Order or the accompanying Judgment, nor any action taken to carry out this Order and the Judgment is, may be construed as, offered as, received as, used as, or deemed to be evidence of any kind in this

Action, any other action, or any other judicial, administrative, regulatory, or other proceeding, or may be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to the AIG Defendants, the AIG Affiliates, and the Named Plaintiff, or of the appropriateness of class treatment for any group of entities situated similarly to the Class Members, or as a waiver by the AIG Defendants, the AIG Affiliates, or the Named Plaintiff of any applicable defense. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not under any circumstances be construed as, offered as, received as, used as, or deemed to be evidence of, an admission or concession as to the AIG Defendants', the AIG Affiliates', or the Named Plaintiff's denials or defenses and shall not be offered or received in evidence in the Action, any other action, or any other judicial, administrative, regulatory, or other proceeding against any Settling Party hereto for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Order, the accompanying Judgment, and the Settlement Agreement; *provided however*, that this Order, the accompanying Judgment, and the Settlement Agreement may be filed in any action against or by any AIG Releasees to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar, or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

15. **Enforcement of Settlement.** Nothing in this Order or the accompanying Judgment shall preclude any action to enforce the terms of the Settlement Agreement.

16. **Attorneys' Fees and Expenses.** The Court finds that an award of attorneys' fees and expenses for Class Counsel in the total amount of \$651,000 to be fair, reasonable and appropriate, and directs that such amount shall be paid from the Class Fund to Class Counsel

pursuant to the terms of the Settlement. Other than as set forth in the Settlement Agreement, the AIG Defendants shall have no responsibility or liability for any claims for attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other counsel of record representing the Named Plaintiff or Class Members in the Action, or incurred by the Named Plaintiff or Class Members, or any of them, in connection with or related in any manner to the Action, the settlement of the Action, the administration of the Settlement Agreement, and/or the Released Claims.

17. The Court finds the amount of attorneys' fees and expenses awarded herein to be fair, reasonable, and appropriate under both the lodestar-multiplier and percentage-of-the-recovery methods. The Court finds that the number of hours incurred by Class Counsel and Class Counsel's billing rates, as submitted, to be reasonable. The Court further finds that the costs and expenses of Class Counsel, as submitted, were reasonably necessary to prosecute this case and are properly reimbursable. The attorneys' fees awarded represent significantly less than Class Counsel's collective lodestar. The Court finds that the amount awarded is reasonable given, *inter alia*, the substantial benefits that Class Counsel achieved for the Settlement Class through their efforts, the novelty and difficulty of the issues involved in this case, the contingent nature of the attorneys' fees in this case, the fact that Class Counsel have foregone other opportunities to pursue this case, and the experience and skill of Class Counsel,.

18. **Service Award.** The Court finds that a service award for the Named Plaintiff in the amount of \$5,000 is fair, reasonable and appropriate, and directs that such amount be paid from the Class Fund to the Named Plaintiff pursuant to the terms of the Settlement Agreement.

19. **Modification of Settlement Agreement.** The parties are hereby authorized, without further approval from the Court, to agree to and adopt such amendments, modifications,

and expansions of the Settlement Agreement, provided that such amendments, modifications, and expansions of the Settlement Agreement are not materially inconsistent with this Order and the accompanying Judgment and do not materially limit the rights of Settlement Class Members under the Settlement Agreement.

20. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Order and the accompanying Judgment. Without in any way affecting the finality of this Order and the accompanying Judgment, this Court expressly retains exclusive and continuing jurisdiction as to all matters relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement, and of this Order and the accompanying Judgment, and for any other necessary purposes, including, without limitation:

- a. enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims, or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, this Order, or the Judgment (including, without limitation, whether a person or entity is or is not a Class Member, and whether claims or causes of action allegedly related to the Action are or are not barred by the Judgment or Releases);
- b. entering such additional orders as may be necessary or appropriate to protect or effectuate this Order and the Judgment approving the Settlement Agreement, dismissing all claims with prejudice, and permanently enjoining Settlement Class Members from initiating or pursuing any related proceedings, or to ensure the fair and orderly administration of this settlement; and

- c. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction.

21. **Dismissal of Action.** The claims by the Settling Parties and all other Settlement Class Members are hereby dismissed with prejudice as to against the AIG Defendants, without fees or costs to the AIG Defendants except as set forth in the Settlement Agreement.

22. **Entry of Judgment.** Because it is in the best interests of the Settlement Class Members that the settlement proceeds be disbursed as soon as possible and because the Settlement Agreement resolves all claims by the Settlement Class Members, the Court finds that there is no just reason to delay the Judgment regarding the Settlement Agreement. Accordingly, the Court expressly directs that the Judgment regarding the Settlement Agreement be entered as to all parties and all claims in the Action.

SO ORDERED this 6th day of January, 2016.

s/Bruce Howe Hendricks

HONORABLE BRUCE HOWE HENDRICKS
UNITED STATES DISTRICT COURT JUDGE

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