

IN THE CIRCUIT COURT OF _____ COUNTY, ALABAMA

Plaintiff,
VS.

Defendant.

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CIVIL ACTION NO.:

CV-_____

**MOTION TO TRANSFER AND CONSOLIDATE
CASES FOR ALL PURPOSES**

_____ Company ("_____")
respectfully moves this Court, pursuant to Ala.R.Civ.P.. 42(a), to transfer and to
consolidate the following cases (the "Lawsuits") for all purposes with the above-
styled action:

[List all cases to be consolidated]¹

In support of this motion, _____ states the following:

1. The above-styled action and the Lawsuits have all been filed and are
now
pending in the _____ Court of _____ County, Alabama and arise out of
the same subject matter, to-wit, plaintiffs' allegations of tortuous conduct arising
out of the sale and/or servicing of life insurance policies issued by American
General.

1 In filing this motion, _____ does not waive, and specifically retains, its right
to arbitrate under any applicable arbitration agreement.

2. All of these actions undeniably involve common questions of law and fact.

Each action is based upon allegations of willful, reckless, and mistaken fraudulent representation and suppression and conspiracy arising out of the sale and/or servicing of life insurance policies by _____. All cases involve the same Plaintiffs' counsel. Many of the claims are identical such as the following "suppression" claims:

"The [year] policy was a flexible [universal] life policy not whole life or whole life type (permanent type), which did not have level, permanent premiums and death benefits;"

"The flexible [universal] life policy sold by [agent] was not a form of permanent life insurance, but was actually a form of term life insurance;"

"The cost of insurance over the years was and is increasing;"

"The Plaintiff would . . . have to deposit much more money into this policy than the premiums he/she was told he/she could pay per month, or the policy would lapse";

"This policy would eventually lapse if additional and higher premiums were not paid by Plaintiff;"

3. This action is the oldest case of the actions to be consolidated.² A consolidation of these Lawsuits with the above-styled action will avoid unnecessary duplication of discovery costs' expenses, and effort by the parties, the lawyers, and the Court.

4. All of the plaintiffs in each Lawsuit is represented by the same counsel, _____ (insurance

² The Thirteenth Judicial Circuit's Administrative Policy on Case Consolidation states that a motion to consolidate cases for all purposes shall be decided by the judge "on whose docket is pending the oldest case proposed for consolidation."

company) is represented by _____ in all of the lawsuits. The agent defendants in all of the lawsuits to be consolidated with the present action are represented by the same counsel, _____.

5. In light of the similarity of the claims and the undeniable common question of law and Act, a transfer and consolidation of the Lawsuits with the above-styled action would be in the best interests of judicial economy.

6. Rule 42(a) of the Alabama Rules of Civil Procedure grants the trial court discretion to consolidate actions involving common questions of law and fact. *See* Rule 42(a); *see also Owens-Corning Fiberglass Corp. v. James*, 646 So. 2d 669, 674 (Ala. 1994) (Rule 42(a) “specifically recognizes the propriety of consolidation, as well as a trial court’s discretion to order consolidation as necessary to reduce costs or delay.”). In addition, the trial court may make orders as may tend to avoid unnecessary costs or delay involved in litigation. *See* Rule 42(a). The purpose of the rules of civil procedure is to promote the efficient functioning of judicial administration and to secure the “just, speedy, and inexpensive” resolution of disputes. *See* Ala.R.Civ.P. 1.

7. Consolidation of these action is proper in light of the common questions of law and fact Ala.R.Civ.P. 42(a); *League v. Motes*, 330 So. 2d 434, 437 (Ala. 1976) (“Consolidation of cases does not require mutuality of parties but mutuality, in some degree, of issues and law. The instant case is a classic example of proper consolidation. Though the parties are different, the claims for relief arise from the same occurrence and involve the same issues . . . ”); *see also Owens-Corning*, 646 So. 2d at 669 (ordering consolidation of three separate lawsuits brought by three plaintiffs against the same defendant where common issues of law and fact were presented).

8. Attached hereto is an order from this Court granting a similar motion made by a life insurance defendant in another case, *Walter H. Rice III v. Metropolitan Life Ins. Co.*, In the Circuit Court of Mobile County, CV 96-1371. See Order, attached hereto as "Exhibit A." That case similarly involved multiple cases filed against the same insurance company with all plaintiffs represented by the same counsel. This Court granted the life insurance defendant's motion and consolidated those cases for discovery and pretrial purposes.

9. _____ is contemporaneously filing a notice of filing motion for transfer and consolidation in each of the Lawsuits.

10. Consolidation of the Lawsuits with this action will not result in prejudice to any plaintiff or defendant. Consolidation will be for all purposes. Following dispositive motions, the Court can determine at a later date whether the cases will be tried together or separately.

11. Co-defendant _____ consents to this motion

12. The co-defendants in the cases to be consolidated with this case consent to this motion.

WHEREFORE, _____ respectfully requests this Court to grant this motion and consolidate the Lawsuits with this action.

OF COUNSEL:

CERTIFICATE OF SERVICE

I certify that I have on this _____ day of _____, _____, served a copy of the foregoing by mailing same by U. S. Mail, first class postage prepaid and properly addressed, to the following:

(List counsel for all parties)

IN THE CIRCUIT COURT OF _____ COUNTY, ALABAMA

*
Plaintiff, *
*
VS. *
CIVIL ACTION NO.:
*

CV- _____ *
*
Defendant. *

ORDER

This matter came before the Court upon

Company's Motion to Transfer and
Consolidate the cases listed hereinbelow for discovery and other pre-trial purposes.
The Court, having read the briefs of the parties and having considered the
arguments of counsel in open court, finds that transfer and consolidation of these
cases for discovery and other pre-trial purposes is desirable to promote judicial
economy, expedite litigation and save time and money. Accordingly, it is ORDERED,
ADJUDGED and DECREED that the following cases shall be transferred and
consolidated into this action before this Court for discovery and other pre-trial
purposes:

**[Here List Styles of all Cases to be Consolidated
Including Civil Action Numbers]**

IT IS FURTHER ORDERED that when parties submit motions or other filings
pertaining to any of these cases, the document shall bear the instruction "TO BE

DECIDED BY JUDGE _____” in bold-face and all-capital type beneath the civil action number in the caption.

DONE this _____ day of _____, 2000.

CIRCUIT JUDGE