IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ESTATE OF MYRA FIELDS, by TYZA FRENCH, Administrator, Plaintiff,	:	
v.	:	CIVIL ACTION
PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY and ADS ALLIANCE DATA SYSTEMS, INC. Defendants and Third Party Plaintiffs,	:	
v.	:	99-CV-4261
IJUNANYA S. FIELDS, MICHAEL J. FIELDS, and TYZA L. FRENCH Third Party Defendants.	:	

M E M O R A N D U M

BUCKWALTER, J. July 10, 2001

Presently before the Court is a complex group of motions, responses, and replies as follows: 1) the Estate of Myra Fields' (the "Estate") Motion for Partial Summary Judgment; 2) Ijunanya S. Fields ("Ijunanya Fields") and Tyza L. French's ("French") (collectively "Third Party Defendants")[1] Motion for Partial Summary Judgment; 3) the Estate's Cross-Motion for Partial Summary Judgment; 4) Provident Life and Accident Insurance Company ("Provident")

[1] The third named third party defendant in the caption above, Michael J. Fields, is Myra Fields' former husband. In an October 24, 2000 Order, the Court "precluded [Michael Fields] from making any claims or defenses in this action regarding his alleged relation to Myra Fields and his claims to the life insurance proceeds at issue." For purposes of this Memorandum, the Court does not contemplate Michael Fields when using the term "Third Party Defendants" and is only referring to French and Ijunanya Fields.

and ADS Alliance Data Systems, Inc.'s ("ADS") (collectively "Defendants") Motion for Summary Judgment; and 5) Defendants' Motion to Consolidate.

For the reasons set forth below, the Court will: 1) grant the Estates' Motion for Partial Summary Judgment; 2) grant Third Party Defendants' Motion for Partial Summary Judgment; 3) deny the Estate's Cross-Motion for Partial Summary Judgment; 4) deny Defendants' Motion for Summary Judgment; and 5) grant Defendants' Motion to Consolidate.

I. FACTUAL BACKGROUND

Myra Fields ("Decedent") died on September 29, 1998, survived by her children Ijunanya Fields and Tyza L. French. At the time of her death, Decedent was an employee at ADS which made available to its employees life insurance benefits from Provident. Decedent had obtained a life insurance policy from Provident through ADS but never designated a beneficiary.

After Decedent died, French, Ijunanya Fields and Michael Fields, Decedent's former husband, filed claims for the insurance proceeds. Defendants informed French that Decedent's policy dictated that the policy proceeds would be directed to Decedent's estate because Decedent had not designated a beneficiary. French hired a lawyer and began the process of opening an estate and functioned as the anticipated executor. Unbeknownst to French, prior to Decedent joining ADS, ADS had decided to amend the policy. The amendment dictated that if a participant died without naming a beneficiary, then proceeds would be directed to a progression of the participant's family members. Here, this progression would result in French and Ijunanya Fields receiving the proceeds. Also unknown to French until discovery began in this case, ADS circulated a Summary Plan Description ("SPD") to its employees reflecting the amendments

sometime in the middle of September 1998, just before Decedent's death. At that time, however, the policy itself was not yet amended. Once the parties became aware of the discrepancy between the unamended plan and the not yet adopted new version, the proper beneficiary became unclear.

On August 24, 1999, the Estate brought this action pursuant to 29 U.S.C. § 1001 et. seq., Employee Retirement Income Security Act ("ERISA"), against Defendants seeking to recover 1) the proceeds of Decedent's life insurance benefits and 2) statutory damages pursuant to 29 U.S.C. §§ 1132(a)(1)(A) and 1132(c) (the "Estate litigation"). On April 10, 2000, Defendants filed an Answer to the Estate's Complaint with Counterclaim for Interpleader Pursuant to 28 U.S.C. § 1335. On the same day, Defendants filed a Joinder Complaint Seeking Interpleader designating Ijunanya Fields and French as Third Party Defendants. Subsequently, on December 22, 1999, the Court dismissed the Estate's claim for statutory damages as to Provident. What remained was the Estate's claim for the proceeds against Provident and ADS and the Estate's claim for statutory damages against ADS.

Finally, on October 27, 2000, Third Party Defendants filed a separate action in the Court of Common Pleas, Philadelphia County, which was later removed to this Court (the "French litigation"). In that case, Third Party Defendants assert Defendants made negligent and intentional misrepresentations concerning Decedent's life insurance policy. The French litigation and the Estate litigation are the two cases which Defendants seek to consolidate. That motion as well as the several motions for summary judgment are now before the Court.

II. STANDARD OF REVIEW

A motion for summary judgment shall be granted where all of the evidence demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Id.

If the moving party establishes the absence of the genuine issue of material fact, the burden shifts to the nonmoving party to "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

When considering a motion for summary judgment, a court must view all inferences in a light most favorable to the nonmoving party. See Diebold, 369 U.S. at 655. The nonmoving party, however, cannot "rely merely upon bare assertions, conclusory allegations or suspicions" to support its claim. Fireman's Ins. Co. v. DeFresne, 676 F.2d 965, 969 (3d Cir. 1982). To the contrary, a mere scintilla of evidence in support of the nonmoving party's position will not suffice; there must be evidence on which a jury could reasonably find for the nonmovant. Liberty Lobby, 477 U.S. at 252. Therefore, it is plain that "Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477

U.S. 317, 322 (1986). In such a situation, "[t]he moving party is 'entitled to a judgment as a matter of law' because the non-moving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id. at 323 (quoting Fed. R. Civ. P. 56(c)).

III. DISCUSSION

A. The Proper Beneficiary

All of the motions currently before the Court directly or indirectly ask the Court to determine the proper beneficiary of Decedent's life insurance policy. That insurance policy is an Employee Welfare Plan within the meaning of ERISA. A federal common law of rights and obligations has been developed by federal courts to resolve disputes arising from ERISA regulated plans. See Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 56 (1987). When interpreting plans under ERISA, courts should follow federal common law rules of contract interpretation. See Cury v. Colonial Life Ins. Co. of America, 737 F. Supp. 847, 853 (E.D. Pa. 1990). In addition to case law construing insurance policies, courts may rely upon traditional principals of contract interpretation to resolve issues. Id.

Here, the Court is confronted with the task of choosing between two arguably applicable but mutually exclusive provisions of Decedent's life insurance policy. The first provision (the "original provision") was incorporated in ADS's group life insurance policy (the "group policy").[2] The second provision was one ADS had agreed upon before Decedent's death

[2] The original provision provides:
You may name anyone as your beneficiary. You must file the name or names at the office of the Policyholder on a form . . . . Any amount for which a beneficiary is not named will be paid to your estate. See Third Party Defs.' Mot. for Partial Summ. J. Appendix Exhibit S.

but did not formally adopt until after Decedent died. The second provision also was incorporated in the SPD which ADS made available to its employees just prior to Decedent's death (the "SPD version").[3] The original provision provides that benefits are payable to the estate of an employee who dies without having designated a beneficiary. On the other hand, the SPD version provides that under those circumstances benefits are payable to a progression of a decedent's relatives, which in this case would result in the benefits being paid to Third Party Defendants.

The Estate argues the Court should give effect to the original provision because ADS did not amend the group policy by merely agreeing to adopt a new provision and by incorporating the new provision in the SPD. Third Party Defendants argue ADS did successfully amend the group policy by taking those steps and even if the Court finds otherwise, the SPD version should be given effect because common law suggests an SPD controls when an SPD conflicts with the group policy it is intended to summarize. The Court agrees with the Estate's argument that ADS did not successfully amend the group policy. The Court also finds, and the parties agree, there is a conflict between the original plan and the SPD.

In turn, the key analysis is whether the common law principal Third Party Defendants proffer is applicable in this case. Several circuits have held a participant or beneficiary is eligible for benefits in accordance with an SPD if the language of the SPD conflicts

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[3] The SPD read in pertinent part:

> [B]enefits will be paid to the beneficiary you selected. If you die without naming a beneficiary, benefits will be paid in the following order.
>
> - To your spouse
> - To your child(ren) (if you do not have a spouse)
> - To your parents (if you do not have a spouse or child(ren))
> - To your siblings (if your parents are no longer living)
> - To your estate

See Third Party Defs.' Mot. for Partial Summ. J. Appendix Exhibit E.

with the language of the underlying plan.[4] The Third Circuit has seldom accepted that proposition and instead has held a participant or beneficiary is eligible for benefits in accordance with a misleading SPD where a party can show the traditional elements of equitable estoppel and "extraordinary circumstances." See Gridley v. Cleveland Pneumatic Co., 924 F.2d 1310, 1319 (3d Cir. 1991) ("Our precedents indicate that an ERISA reporting or disclosure violation, such as the distribution of an inaccurate summary plan description, cannot provide a basis for equitable estoppel, at least in the absence of 'extraordinary circumstances.'"); see also International Union v. Skinner Engine Co., 188 F.3d 130, 152 (3d Cir. 1999), citing Kurz v. Philadelphia Elec. Co., 96 F.3d 1544, 1553 (3d Cir. 1996) (explaining the element of extraordinary circumstances is generally established by a showing of either affirmative acts of fraud, similarly inequitable conduct by an employer, misrepresentations that arise over an extended course of dealings, or the vulnerability of plaintiffs).

The Court notes the contexts in which the Third Circuit has previously addressed this issue differ from the context here. First, the Third Circuit cases typically involved participants or beneficiaries suing an employer. Here, the parties on opposing sides of the issue are two potential beneficiaries. Second, the Third Circuit cases were typically concerned with employer liability and the extent of that liability. Here, employer liability is conceded and there is no dispute over the value of the benefits at stake.

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[4] See Fallo v. Piccadilly Cafeterias, Inc., 141 F.3d 580, 583-84 (5th Cir. 1998) citing Sprague v. General Motors Corp., 133 F.3d 388, 400 (6th Cir. 1998); Chiles v. Ceridian Corp., 95 F.3d 1505, 1515 (10th Cir. 1996); Jensen v. Sipco, Inc., 38 F.3d 945, 952 (8th Cir. 1994); Fuller v. FMC Corp., 4 F.3d 255, 261-62 (4th Cir. 1993); Senkier v. Hartford Life & Accident Ins. Co., 948 F.2d 1050, 1051 (7th Cir. 1991). See also Edwards v. State Farm Mut. Auto Ins. Co., 851 F.2d 134, 137 (6th Cir. 1988).

With this background, and with the understanding that ERISA's primary policy goal is to protect participants and beneficiaries, the heightened standard applied by the Third Circuit in those other cases is unnecessary in this case. First, the Court is comfortable assuming it is in Decedent's best interest to have her assets transferred to her children as inexpensively as possible. Regardless of which party initially receives the proceeds, Third Party Defendants will be the eventual beneficiaries. Allowing the proceeds to flow through Decedent's estate before reaching Third Party Defendants would result in a loss of a portion of the proceeds to taxes, whereas no tax loss would occur if the proceeds are given directly to Third Party Defendants. Accordingly, passing the proceeds directly to Third Party Defendants is in Decedent's and Third Party Defendants' best interests.

Second, requiring Third Party Defendants to show reliance seems fundamentally unfair since Decedent is the only person who could testify about her degree of reliance on the SPD and she is unable to do so. Finally, evidence of extraordinary circumstances is not probative here because Defendants' culpability and degree of liability are not in question.[5] The Court believes, therefore, Third Party Defendants should be eligible for benefits in accordance with ADS's misleading SPD even if they cannot show reliance upon the SPD or special circumstances. The Court will order Defendants to pay the proceeds accordingly and the Estate and Third Party Defendants are precluded from seeking any further recovery of any portion of Decedent's life insurance policy.

[5] Even though Defendants' conduct is not at issue in this part of the Court's analysis, the Court notes this case does have elements of extraordinary circumstances. ADS did misrepresent policy coverage in the SPD, both ADS and Provident communicated with the Estate and Third Party Defendants in a confusing and less than forthright manner, and Decedent and Third Party Defendants are vulnerable in light of their inability to show reliance.

B. The Estate's Claim for Statutory Damages

In its complaint, the Estate seeks statutory damages from Provident and ADS under 29 U.S.C. §§ 1132(a)(1)(A) and 1132(c). The Court's December 23, 1999 Order dismissed this claim against Provident because Provident was not a plan administrator as defined by ERISA. The Estate's instant motion for summary judgment, therefore, is based only on its claim against ADS. Here the issue is simply whether ADS's conduct warrants an award of damages pursuant to the statute. Section 1132(a)(1)(A) provides that a civil action may be brought by a participant or beneficiary for the relief provided in § 1132(c). Section 1132(c) generally holds an administrator liable for a failure to timely provide a participant or beneficiary with information requested concerning an ERISA plan.[6] Application of § 1132(c) is in the Court's discretion and allows for damages up to $100 a day from the date of the administrator's failure to provide the requested ERISA plan information.

The Estate argues it began requesting information from ADS as early as October 27, 1998, and did not receive complete answers until ADS filed its Self-Executing Disclosures on February 24, 2000.[7] Specifically, the Estate offers a letter it sent to ADS on October 27, 1998, which requested: 1) a copy of the applicable insurance policy; 2) written confirmation of the

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[6] 29 U.S.C. § 1132(c) provides:

Any administrator (A) who fails to meet the requirements of paragraph (1) or (4) of section 1166 of this title or section 1021(e)(1) of this title with respect to a participant or beneficiary, or (B) who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

[7] As the Estate explains, the Estate was not officially established until May 2, 1999, so French, acting as the anticipated administrator of the Estate, made the requests through an attorney who now represents the Estate.

benefits available; 3) all application forms concerning Decedent's application for insurance coverage; 4) the release which would be required by Provident; and 5) an explanation of the term "amended death certificate." See Estate's Mot. for Partial Summ. J. Exhibit I. After receiving no response from ADS, the Estate made an almost identical request on November 12, 1998. See id. Exhibit J. On December 22, 1998, the Estate received a copy of the group policy, satisfying one of its initial five requests. See id. Exhibit H. Nearly eight months later, the Estate received an explanation of the term "amended death certificate" via a telephone message on August 19, 1999. See id. at Section II. B. Finally, on February 24, 2000, ADS filed Self-Executing Disclosures in which they set forth the amount of the insurance policy and the other information originally sought by the Estate. See id. The Estate also claims it was not provided with a clear explanation of the amendment to the group policy until it received the Self-Executing Disclosures. The Estate concludes ADS was 455 days late in providing information ADS was asked and required to produce. The Estate requests the Court award damages consistent with that conclusion at the maximum rate available under the statute.

ADS admits it initially misinformed French – through the attorney that currently represents the Estate – with an October 21, 1998 letter which indicated Decedent's policy proceeds would be directed to her estate. See Defs.' Mot. for Summ. J. at 18. ADS argues, however, it corrected the mistake within three weeks by another letter which indicated the proceeds would be transferred in accordance with a "preference beneficiary affidavit." See id. ADS further argues Provident's uncertainty which led to the confusion was "eminently reasonable" and that any financial prejudice the Estate or Third Party Defendants experienced

resulted from Decedent's failure to designate a beneficiary under her life insurance policy, her failure to write a will, and the disputes over entitlement.

The Court finds ADS's argument unconvincing and believes their actions and inaction constitute a technical violation of § 1132(c). Plainly stated, the requests made as far back as October 27, 1998, were proper requests and were not fully answered in a timely manner. This finding that there was a technical violation, however, is not the end of the analysis. The Court must also determine whether it should impose the penalties provided by § 1132(c). When conducting that part of the analysis, the Court may consider the harm suffered by the Estate, whether the Estate's claim is colorable, and ADS's conduct. See In re Unisys Corp. Long-Term Disability Plan, No. 938, 1994 U.S. Dist. LEXIS 11368, at *8-9 (E.D. Pa. Aug. 15, 1994). However, since § 1132(c) is punitive in nature, ADS's conduct is the Court's primary focus for assessing damages. See Porcellini v. Strassheim Printing Co., Inc., 578 F. Supp 605, 613-14 (E.D. Pa. 1983).

As an initial matter, the Court believes the Estate's claim is colorable and ADS's conduct prejudiced the Estate considerably. Turning to ADS's conduct, the Court believes indifference and irresponsibility, as opposed to intentional misconduct or bad faith, led to the violations of § 1132(c). In drawing this distinction, the Court is not suggesting ADS is not liable under the statute, it is merely pointing out why it believes less than the maximum penalty is warranted in this case. If the Court believed ADS committed intentional misconduct or displayed bad faith, then it would be inclined to impose the maximum penalty. The Court will award damages of ten dollars ($10) per day from November 27, 1998, which is the time ADS was obligated to respond, to February 24, 2000, which is the time ADS finally fulfilled its statutory

duties. Using the computation system outlined by Rule 6 of the Federal Rules of Civil Procedure, the Court will award the Estate four thousand five hundred forty dollars ($4,540) in the attached Order.

C. Consolidation

As set forth in Section I *supra*, there are currently two separate actions before the Court which share common parties: the Estate litigation (99-CV-4261) and the French litigation (00-CV-5763). Defendants have motioned to consolidate them. Federal Rule of Civil Procedure 42(a) provides:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.

Fed. R. Civ. P. 42(a).

Consolidation is at the discretion of the trial court and should be permitted where the consolidation of separate actions presenting common questions of law or fact will promote convenience and economy in judicial administration. See Graphic Arts Int'l Union v. Haddon Craftsmen, Inc., 489 F. Supp. 1088, 1091 n. 1 (E.D. Pa. 1979); see also In re TMI Litigation, 193 F.3d 613, 724 (3d Cir. 1999) ("The purpose of consolidation is to streamline and economize pretrial proceedings so as to avoid duplication of effort, and to prevent conflicting outcomes in cases involving similar legal and factual issues.") (internal quotation omitted).

The Estate argues consolidation of the two cases would only serve to delay disposition of the Estate litigation because it is ready for trial and the French litigation is in its infancy. The Court disagrees. It is true the Estate litigation is close to trial and the French litigation is in its preliminary stages. However, the Court believes the discovery and trial

preparation necessary for the French litigation will overlap significantly with the work already completed for the Estate litigation. Additionally, the Court notes considerable time – more than eight months – has passed since the French litigation was filed. The efficiency achieved by consolidation will far outweigh any inconvenience that may result therefrom. The Court will Order the cases consolidated.

D. Defendants' Motion for Summary Judgment with Respect to Interpleader

The only issue Defendants raise in their Motion for Summary Judgment not addressed in other sections of this Memorandum is whether Defendants shall be discharged from the Estate's action pursuant to its Counterclaim for Interpleader Pursuant to 28 U.S.C. § 1335. The purpose of interpleader, as stated by the Third Circuit, is "to relieve an obligor from the vexation of multiple claims in connection with a debt which he admittedly owes to someone." Francis I. duPont & Co. v. Sheen, 324 F.2d 3, 4 (3d Cir. 1963), quoted in Bechtel Power Corp. v. Baltimore Contractors, Inc., 579 F. Supp. 648, 652 (E.D. Pa. 1984). Here, there is no concern Defendants will be exposed to multiple claims which are based on Decedent's life insurance policy since the Court will order Defendants to pay the proceeds to Third Party Defendants and will dismiss the Estate's claim for the proceeds with prejudice.[8] Furthermore, dismissing Defendants at this juncture would defeat the Court's decision to consolidate this action with the French litigation and to grant the Estate and Third Party Defendants leave to petition for attorneys' fees and costs. See *infra* Section III. E. Believing interpleader to be unnecessary and unwarranted, the Court will deny Defendants' motion with respect to their claim for interpleader.

[8] As mentioned *supra*, the Court also previously precluded Michael Fields from making any claims to Decedent's life insurance proceeds.

E. Attorneys' Fees and Costs

The Estate and Third Party Defendants have requested leave to petition for attorneys' fees and Defendants have motioned for attorneys' fees and costs. The Court will grant the Estate and Third Party Defendants leave to petition for attorneys' fees and costs. This should not be viewed, however, as any indication that the court will award any attorneys' fees or costs. As to Defendants, the Court will deny their motion for attorneys' fees and costs.

"In interpleader actions, the court has discretion to award the stakeholder reasonable attorney's fees out of the fund." Home Corp. v. H. Francis deLone, Jr., et al., No. 96-7672, 1997 U.S. Dist. LEXIS 5483, at *1 (E.D. Pa. Apr. 23, 1997). As Defendants remark, fees and costs are available when the stakeholder (1) is disinterested, (2) concedes its liability, (3) deposits the disputed fund in court, and (4) seeks discharge. See Smith-Barney, Harris, Upham & Co. v. Connelly, 887 F. Supp. 337, 346 (D. Mass. 1994) citing United Bank of Denver, Nat'l Ass'n v. Oxford Properties, Inc., 683 F. Supp. 755, 756 (D. Colo. 1988). However, even when the stakeholder satisfies all of these requirements, an award is not a matter of right. Home Corp., 1997 U.S. Dist. LEXIS 5483, at *21. Here, a balancing of the equities leads the Court to conclude Defendants' motion must be denied. While Defendants have offered to post the proceeds of Decedent's life insurance policy plus interest, they are far from innocent bystanders in this litigation. As the Court explained *supra*, it believes Defendants' indifference and irresponsibility led to poor and untimely communication with the other parties in this case. Accordingly, the Court does not believe it would be fair to pay Defendants for fees and costs from the policy proceeds when Defendants themselves contributed to the need for this litigation and prejudiced the other parties.

IV. CONCLUSION

For the reasons stated above, the Court will grant the Estate's Motion for Partial Summary Judgment, grant Third Party Defendants' Motion for Partial Summary Judgment, deny the Estates's Cross-Motion for Partial Summary Judgment, deny Defendants' Motion for Summary Judgment, and grant Defendants' Motion to Consolidate.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ESTATE OF MYRA FIELDS, by TYZA FRENCH, Administrator, Plaintiff,	:	
v.	:	CIVIL ACTION
PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY and ADS ALLIANCE DATA SYSTEMS, INC. Defendants and Third Party Plaintiffs,	:	
v.	:	99-CV-4261
IJUNANYA S. FIELDS, MICHAEL J. FIELDS, and TYZA L. FRENCH Third Party Defendants.	:	

O R D E R

AND NOW, this 10th day of July, 2001, upon consideration of the Estate of Myra Fields' Motion for Partial Summary Judgment (Docket No. 40), Ijunanya S. Fields and Tyza L. French's Motion for Partial Summary Judgment (Docket No. 41), the Estate of Myra Fields' Cross-Motion for Partial Summary Judgment (Docket No. 43), Provident Life and Accident Insurance Company and ADS Alliance Data Systems, Inc.'s Motion for Summary Judgment (Docket No. 42), and Provident Life and Accident Insurance Company and ADS Alliance Data Systems, Inc.'s Motion to Consolidate (Docket No. 45), *et cetera*, it is **ORDERED** as follows:

1. The Estate of Myra Field's Motion for Partial Summary Judgment (Docket No. 40) is **GRANTED**;

2. Ijunanya S. Fields and Tyza L. French's Motion for Partial Summary Judgment (Docket No. 41) is **GRANTED**;

3. The Estate of Myra Fields' Cross-Motion for Partial Summary Judgment (Docket No. 43) is **DENIED** and Count I of the Estate of Myra Fields' Complaint is **DISMISSED** with prejudice;

4. Provident Life and Accident Insurance Company and ADS Alliance Data Systems, Inc.'s Motion for Summary Judgment (Docket No. 42) is **DENIED**; and,

5. Provident Life and Accident Insurance Company and ADS Alliance Data Systems, Inc.'s Motion to Consolidate (Docket No. 45) is **GRANTED**.

More specifically, it is **ORDERED**:

1. Provident Life and Accident Insurance Company and ADS Alliance Data Systems, Inc. must pay statutory damages to the Estate of Myra Fields in the amount of four thousand five hundred forty dollars ($4,540);

2. Provident Life and Accident Insurance Company and ADS Alliance Data Systems, Inc. must pay the proceeds of Myra Field's life insurance policy in the amount of one hundred eighty thousand dollars ($180,000) plus interest to Ijunanya S. Fields and Tyza L. French;

3. Case numbers 99-CV-4261 and 00-CV-5763 are consolidated;

4. Leave is **GRANTED** to the Estate of Myra Fields and to Ijunanya S. Fields and Tyza L. French to petition for attorneys' fees and costs;

5. The AMENDED Scheduling Order is as follows:

A) All discovery in this case is to be completed by August 31, 2001;

B) All dispositive motions are due five (5) days after the discovery period;

C) **TRIAL** is scheduled for Monday, October 15, 2001 at 10:00 a.m. in Courtroom 14A.

D) At least seven (7) days prior to trial, all parties will file their respective pretrial memorandums, which shall include all items set forth in paragraph 8 of the Pretrial and Trial Procedures Before Judge Ronald L. Buckwalter; a copy of the pretrial memorandums shall be sent to opposing counsel and unrepresented parties; unless otherwise ordered, counsel need not submit a pretrial memorandum if a dispositive motion is filed until after the Court's ruling on the motion; if necessary, pretrial memorandums are due 7 days after the Court's ruling on the motion;

E) If requested by counsel, the court will hold a pretrial conference, but no such conference will ordinarily be scheduled in the absence of a request.

BY THE COURT:

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RONALD L. BUCKWALTER, J.