

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

LAURA ALLEN, on behalf of herself	:	
and all others similarly situated,	:	
	:	
Plaintiff,	:	
v.	:	No. 06-cv-2426
	:	
STEWART TITLE GUARANTY	:	
COMPANY,	:	
	:	
Defendant.	:	

GLADYS HEATH, on behalf of herself	:	
and all others similarly situated,	:	
	:	
Plaintiff,	:	
v.	:	No. 06-cv-4534
	:	
STEWART TITLE GUARANTY	:	
COMPANY,	:	
	:	
Defendant.	:	

MEMORANDUM

Presently pending in the above captioned case 06-CV-2426 is Plaintiff Allen’s Motion to Consolidate Cases. Also pending are Motions by both Plaintiffs Allen and Heath for Appointment of Interim Class Counsel. For the following reasons, the Motion for Consolidation will be granted, and the law firm of Chimicles & Tikellis LLP will be appointed as interim class counsel.

I. DISCUSSION

This matter involves two actions filed against Defendant Stewart Title Guaranty Company for allegedly overcharging consumers for title insurance. The proposed classes in each case differ slightly, both in the time frame, and in that the proposed class in Allen is all consumers who were allegedly overcharged for title insurance that they either obtained as a result of the original purchase of their homes, or as a result of refinancing their homes, whereas

the proposed class in Heath is restricted to those who refinanced. Despite that difference, both cases involve common questions of law and fact as to Defendant's conduct.

A. Consolidation

Federal Rule of Civil Procedure 42 states:

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 and delay.

The parties are all in agreement that consolidation is appropriate. Having read and considered the arguments and authorities raised in the parties' papers, the court agrees that consolidation is proper because the actions involve common questions of law and fact.

B. Appointment of Interim Class Counsel

Federal Rule of Civil Procedure 23 provides that a court "may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action." Fed. R. Civ. P. 23(g)(2)(A). Rule 23(g) provides the factors that the court should consider in appointing class counsel, specifically:

the work counsel has done in identifying or investigating potential claims in the action, counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action, counsel's knowledge of the applicable law, and the resources counsel will commit to representing the class. .

Fed. R. Civ. P. 23(g)(1)(C). The Rule further provides that "[i]f more than one adequate applicant seeks appointment as class counsel, the court must appoint the applicant best able to represent the interests of the class." Fed. R. Civ. P. 23(g)(2)(B). The court must consider the adequacy of the representative class members and the quality and experience of class counsel. See Berger v. Compaq Computer Corp, 257 F.3d 475, 479 (5th Cir. 2001). In addition, counsel must be free of conflicts of interest that may arise from their involvement in multiple lawsuits for the named representative or against the same Defendant. See Kayes v. Pacific Lumber Co.,

51 F.3d 1449, 1465 (9th Cir. 1995) (“The responsibility of class counsel to absent class members whose control over their attorneys is limited does not permit even the appearance of divided loyalties of counsel” citing Sullivan v. Chase Inv. Servs. of Boston, Inc., 79 F.R.D. 246, 258 (N.D. Cal. 1978)).

The two firms seeking to be appointed as interim class counsel are Chimicles & Tikellis LLP (hereinafter “Allen counsel”) and the firms of Donovan Searles, LLC, Quinn, Fordon & Wolf, Chtd., and Friedman Law Office, PLLC (hereinafter “Heath counsel”). It appears to the court that all counsel are qualified to handle the matter. However, the Allen counsel’s proposed class includes both individuals who obtained title insurance from Defendant’s in connection with the original purchase of a home, and those who obtained title insurance as part of a refinance of their home, whereas the Heath counsel’s proposed class only includes those individuals who obtained title insurance through refinance. Therefore, the Allen counsel will serve the larger class of potential plaintiffs. Additionally, the Heath counsel also represent a similar class of plaintiffs in Johnson v. Stewart Title Guaranty Company, a pending matter against the same Defendant on a similar claim in Pennsylvania state court. This multiple representation may result in competing interests between the two proposed classes, and as such, could create an appearance of conflict. The court will therefore appoint the Allen counsel as interim class counsel in the consolidated matter. An appropriate order follows.

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

LAURA ALLEN, on behalf of herself and all others similarly situated,	:	
	:	
	:	
Plaintiff,	:	
v.	:	No. 06-cv-2426
	:	
STEWART TITLE GUARANTY COMPANY,	:	
	:	
Defendant.	:	

GLADYS HEATH, on behalf of herself and all others similarly situated,	:	
	:	
	:	
Plaintiff,	:	
v.	:	No. 06-cv-4534
	:	
STEWART TITLE GUARANTY COMPANY,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 9th day of January, 2007, **IT IS HEREBY ORDERED** that the above listed actions are consolidated. The Clerk of Court is directed to consolidate these actions under civil action number 06-CV-2426. **IT IS FURTHER ORDERED** that the law firm of Chimicles & Tikellis LLP is appointed as interim class counsel¹ pursuant to Federal Rule of Civil Procedure 23(g)(2)(A).

BY THE COURT:

s/Clifford Scott Green

CLIFFORD SCOTT GREEN, S.J.

¹To the proposed class as defined in 06-CV-2426.