

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AN FOR
INDIAN RIVER, MARTIN, OKEECHOBEE AND SAINT LUCIE COUNTIES, FLORIDA

ADMINISTRATIVE ORDER 2009-07

RE: ENGLE PROGENY CASES- TOBACCO LITIGATION- Pertains To: All Cases

WHEREAS a large number of cases have been filed in this Circuit relating to certain tobacco related matters commonly known or referred to as *ENGLE PROGENY CASES* , and;

WHEREAS such cases are complex in nature and will demand significant time and attention by the judiciary of this Circuit, and;

WHEREAS the Florida Rules of Civil Procedure allow for the implementation of Case Management Orders to deal with highly complex and time consuming litigation, the following uniform Case Management Order No. 1 is hereby entered and incorporated into this Administrative Order to allow for the uniform administration and management of these *ENGLE PROGENY* related cases.

CASE MANAGEMENT ORDER NO. 1

I. SCOPE & APPLICABILITY OF THIS ORDER

A significant number of cases have been filed in this Circuit pursuant to the Florida Supreme Court's decision in *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006) (hereinafter referred to as "*Engle Progeny Cases*"). All such *Engle Progeny* cases pending in this Circuit have or will be transferred to the Honorable William L. Roby, Circuit Judge who will

preside over these cases unless reassigned by the Chief Judge. This Case Management Order (hereafter, "CMO No. 1"), and any subsequent Case Management Orders entered herein, shall apply to all *Engle* Progeny Cases and shall govern only pretrial proceedings, which includes all activity before commencement of voir dire. The fact that the *Engle* Progeny Cases are coordinated for pretrial purposes does not reflect a determination as to whether any of the *Engle* Progeny Cases shall be consolidated for trial purposes and does not have the effect of making any entity a party to any action in which it has not been named and served.

II. RULES AND PROCEDURES

The Florida Rules of Civil Procedure shall govern the proceedings in all *Engle* Progeny Cases, except as otherwise provided herein. The Court may fashion additional procedures as needed to further the efficient and expedient disposition of the *Engle* Progeny Cases coordinated pursuant to CMO No. 1.

III. LIAISON COUNSEL

Plaintiffs' counsel and Defendants' counsel shall each designate "Liaison Counsel" with whom the Court may communicate on administrative and scheduling matters relating to the *Engle* Progeny Cases. The Court may communicate with Liaison Counsel orally or in writing for the purpose of the prompt dissemination of information to the parties regarding administrative and scheduling matters only.

Effective on the date of entry of the CMO No. 1, the following individuals are designated as Liaison Counsel: **Tricia (CK) P. Hoffler, Esquire @ Gary, Williams, Finney, Lewis, Watson & Sperando, P.L., 221 E. Osceola Street, Stuart, Florida, 34994 Telephone (772) 283-8260 (Plaintiffs' Liaison Counsel) and Thomas E. Warner, Esquire @ Carlton Fields, CityPlace Tower, 525 Okeechobee Boulevard, Suite 1200, West Palm Beach, Florida, 33401, Telephone (561) 659-7070 (Defense Liaison Counsel).**

Liaison Counsel for each side shall establish a system for the prompt dissemination of information to all other counsel on their side and assist the Court in ensuring the efficient and expedient management of the *Engle* Progeny Cases. Subject to the rights of any party to present individual or divergent positions, Liaison Counsel are vested by the Court with the following responsibilities and duties:

- To maintain a current and accurate list of all *Engle* Progeny Cases and counsel and their respective contact information for each such action (“List of Coordinated Actions and Counsel”). Counsel for each party governed by the CMO No. 1 shall designate a single attorney in each law firm representing a party or parties to receive communications from Liaison Counsel, and such designated counsel shall be identified on the List of Coordinated Actions and Counsel. This list shall be amended as needed from time to time to reflect the final resolution of a case (where applicable), the commencement of a new case, the transfer of an existing case to or from this Circuit, a change in a party’s counsel, or a change in the designated attorney for the purposes of receiving communications from Liaison Counsel. Plaintiffs’ Liaison Counsel shall timely furnish all counsel of record a copy of the original list and each amended list, and Defense Liaison Counsel shall be responsible for disseminating the List of Coordinated Actions and Counsel to all other defense counsel herein;
- To receive and to disseminate to all respective counsel every notice, order, correspondence, or other communication from this Court, including the Clerk of the Court, in matters pertaining to the Master File and issues that are common to all of the *Engle* Progeny Cases;
- To coordinate with the Court and with all respective counsel regarding the timing and sequence of contested matters to ensure that matters of common interest to the coordinated litigants are raised in a manner that facilitates the most efficient disposition of such matters, guarding against the redundancy and inconvenience of repeat, duplicative, or premature filings;
- To coordinate the scheduling of regular status conferences and other hearings to be held with regard to common or generic issues or issues that pertain to more than one individual case with regard to the *Engle* Progeny Cases;
- To coordinate with the parties, Court, Clerk of Court, and other Florida courts in connection with *Engle* Progeny Cases tobacco litigation and to ensure the efficient and expedient management of such cases; and
- To perform such other duties as may be expressly authorized by further order of this Court.

Liaison Counsel are not authorized to, nor should they, accept service of pleadings or other papers on behalf of other parties other than those that he or she represents in specific cases or those pleadings or other papers that are being served on such person in their capacity as Liaison Counsel, as directed by CMO No. 1. Liaison Counsel will not have authority to bind their respective groups absent express authority provided by those groups of counsel and parties and will not be required to serve any pleadings or other papers on behalf of similarly-situated parties, except to the extent necessary to fulfill their obligations as set forth herein. No order shall be entered based upon communication between the Court and Liaison Counsel, without prior notice to all counsel of record and an opportunity for counsel to be heard. Further, the appointment of Liaison Counsel as outlined herein is only for the benefit of the Court in administrative and scheduling matters and shall not in any way supersede the requirement that the designated counsel for the parties in any individual case are required to confer with each other regarding any other matter.

Counsel in any *Engle* Progeny Case have a duty to cooperate with Liaison Counsel and to keep their respective Liaison Counsel apprised of any issues, circumstances, or events that are significant or relevant to the coordinated actions generally or to any other actions governed by CMO No. 1 and any information that would otherwise facilitate Liaison Counsel's fulfillment of their duties and responsibilities.

IV. DOCKETING & FILING PROCEDURES

A. Creation of Master File

The Clerk of Court for Martin County, Florida shall open a Master File and assign a separate case number to be utilized for all filings that are of common interest to more than one action governed by CMO No. 1. The Master File shall have the case number 09-9999-CA. All pretrial matters that are of common interest to the parties governed by the CMO No. 1 shall be

coordinated through, and all filings shall be placed in, the Master File. The clerk shall place a copy of this Order in the Master File.

B. Filing Procedures, Case Captions & Service

There will be three categories of filings: (1) filings that affect only a single action; (2) filings that pertain to "All Cases," and (3) filings that affect more than one, but fewer than all actions.

1. Single Action Filings

A pleading, motion, or paper affecting only an individual case shall be filed according to normal procedures in the county in which the action is pending.

2. "All Cases" Filings

A pleading, motion, or paper affecting "All Cases" shall be filed only in the Master File and shall not be docketed or filed in any individual cases. However, where the Court takes actions upon any issue pertaining to "All Cases," it may direct that a copy of its Order disposing of such issues be docketed in each individual action pending in the county where the individual action was originally filed in addition to the Master File. The caption for such pleading, as illustrated below, shall state: "*Pertains to: All Cases*", shall carry **only** the Master File case number (Case No.: 09-9999-CA), and shall be placed by the Clerk in the Master File.

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY, FLORIDA
CIVIL DIVISION

IN RE: *ENGLE* PROGENY CASES
TOBACCO LITIGATION

CASE NO. 09-9999-CA

Pertains To: All Cases

3. Multiple Action Filings

A pleading, motion, or paper affecting more than one but fewer than all cases shall be docketed and filed in each individual case identified in its "Pertains To" caption with a copy to the Master File. The caption for such filing should not include the Master File case number but instead should reference each individual case to which the filing pertains and include the first-appearing Plaintiff's last name and the individual case number(s), as illustrated below:

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR ST. LUCIE (OR INDIAN RIVER, MARTIN, OKEECHOBEE) COUNTY,
FLORIDA
CIVIL DIVISION

IN RE: *ENGLE* PROGENY CASES
TOBACCO LITIGATION

*Pertains To: Smith, et al., Case No. 2008-xxxx-
Jones, et al., Case No. 2008-xxxx*

4. Filing and Service

To facilitate these filing procedures, a party who files a pleading, motion, or paper affecting more than one case but fewer than all cases shall file the original as well as a copy for each individual case identified in the "Pertains To" caption and a copy for inclusion in the Master File. A party who files a pleading, motion or paper in a single case need only file one original for inclusion in the individual case file. Likewise, a party who files a pleading, motion, or paper bearing an "All Cases" designation need only file one original for inclusion in the Master File.

Upon filing any document bearing an individual "Pertains To" case number or numbers, the filing party shall serve copies of the filed document upon all counsel of record in the individual action(s) as provided for in the Florida Rules of Civil Procedure or as set forth in

Section IV.C. below. The filing party also shall serve a copy of the document upon each Liaison Counsel. The filing party shall have no obligation to serve a copy on any other counsel of record.

Upon filing any document bearing an "All Cases" designation, the filing party shall serve copies of the filed document upon all counsel identified in the most current version of the List of Coordination Actions and Counsel referenced above, including Liaison Counsel. Service shall be governed by the Florida Rules of Civil Procedure or as set forth in Section IV.C. below.

5. Joinder in Motions

The filing of a motion or document in the Master File and/or the appearance of counsel by motion or at a hearing shall not confer standing upon the party where it does not otherwise exist. However, each party, except those who specifically opt not to join, shall be deemed to have joined in any other party's motion where the granting of the motion would benefit it or all similarly-situated parties generally. Joinder in this manner shall not constitute a waiver of any party's defenses or objections. This provision is intended solely to extend the benefits of successful motions to similarly-situated parties, thus obviating the need for "me too" notices of joinder. This provision shall not be construed to limit a party's right to file its own motion, brief, or legal memorandum on the same subject matter as that of a motion previously filed by another party, but duplicative filings are discouraged. Should the party originally filing such motion that has been granted be later dismissed from a case or later dismiss his or her case, then the ruling stemming from the successful motion shall remain viable as to all remaining parties governed by CMO No. 1.

C. Electronic Service

The Court recognizes that the use of e-mail assists in handling the large volume of cases governed by the CMO No. 1. Liaison Counsel and all parties are strongly encouraged to use e-

mail for service of any pleadings and discovery responses, and the Court will recognize stipulations between the parties that require the service of all materials by e-mail. Any paper served by electronic mail shall be deemed served when sent, and the serving party shall not be required to utilize any other or additional means of service. However, electronic mail is not a substitute for proper service of process of a Summons and Complaint on Defendants pursuant to Fla. R. Civ. P. 1.070. Any paper served by electronic mail shall be treated as if it were served by U.S. Mail for computation of time in accordance with Fla. R. Civ. P. 1.090(e). Unless and until authorized by the Florida Supreme Court, no electronic filings shall be allowed in this Circuit.

D. Obligations of Counsel

All counsel have an obligation to cooperate with and assist Liaison Counsel in coordinating pretrial proceedings and court filings in accordance with CMO No. 1 and future Case Management Orders.

Prior to filing any contested motion, other than a motion for judgment on the pleadings, motion for summary judgment, motion for more definite statement, or motion to dismiss for failure to state a claim upon which relief can be granted, the moving party shall confer with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion, and shall file with the motion a statement (1) certifying that the moving party has conferred with opposing counsel and (2) stating whether counsel was able to agree on the resolution of the motion. If opposing counsel is unavailable for a conference before filing a motion, the moving party retains the duty to contact opposing counsel expeditiously after filing and to supplement the motion promptly with a statement certifying whether or to what extent the parties have resolved the issue(s) presented in the motion. If the interested parties agree to all or part of the relief sought in any motion, the caption of the motion shall include the word "unopposed," or

“stipulated” or otherwise succinctly inform the reader that, as to all or part of the requested relief, no opposition exists.

V. CASE MANAGEMENT CONFERENCES AND HEARINGS

The Court will hold a monthly Case Management Conference (“CMC”) with regard to the *Engle* Progeny Cases on dates and times to be announced by the Court or upon reasonable written request of any party.

Liaison counsel, or their designee, shall attend all CMCs, unless otherwise excused by the Court. Counsel for all parties are also invited and encouraged to attend and participate in such conferences. The Court strongly encourages coordination between the various Plaintiffs, between the various Defendants, and between those two sets of parties in advance of each CMC in order to further the orderly and efficient conduct of the CMCs and pretrial proceedings generally.

Liaison Counsel will work together to prepare an agenda of pending motions and other anticipated topics for discussion based upon the needs and request of their respective parties. An agenda will be distributed by respective Liaison Counsel to all parties and to the Court at least five (5) working days before the conference.

The first such Status Conference shall be held at 11:00 a.m. on July 24, 2009 at the Martin County Courthouse, courtroom to be determined. Subsequent monthly or bimonthly (every two months) status conference dates will be determined at the hearing on July 24th.

The purpose in establishing the monthly or bimonthly CMC is to avoid the unnecessary delay and waste of resources of the Court and the parties due to the difficulties inherent in attempting to coordinate the schedules of the Court and so many parties and counsel. All of the parties and counsel governed by CMO No. 1 are ordered to have an attorney available on each

reserved date established for each month to handle any such motions that might need to be heard, although relief may be granted from this requirement upon a showing of substantial hardship.

All motions and filings requesting relief shall be provided to opposing counsel, the Court, and, if applicable, Liaison Counsel, and filed with the Clerk no later than twelve (12) days prior to a hearing on such motion or request for relief. Service of such motion or request may be done by U.S. mail, overnight delivery, hand-delivery, facsimile transmission, or e-mail, provided the motion or filing is received by opposing counsel no later than twelve (12) days prior to the hearing. Any written response must be provided to opposing counsel, the Court, and, if applicable, Liaison Counsel, and filed with the Clerk no later than four (4) days prior to a hearing on such motion or request for relief. Copies of all hearing notices and the relevant motions and memorandum must be sent to the Court's Judicial Assistant at least four (4) days prior to the hearing date.

VI. LIMITED SEVERANCE

The first three multi-plaintiff *Engle* progeny cases to be tried in this Circuit shall be severed, and each "Smoker Plaintiff's" claims shall proceed individually. To facilitate the severance of multi-plaintiff actions, the parties shall comply with the following procedures within forty-five days of the date of this CMO #1:

1. To the extent that any of the first three cases to be tried are multi-plaintiff cases, Plaintiffs shall file an Amended Severed Complaint for each "Smoker Plaintiff" in a multi-plaintiff action other than the first-named Plaintiff. Each "Smoker Plaintiff's" claim may be joined, however, with a corresponding consortium claim as permitted by Florida law. The Amended Severed Complaint shall leave the case number blank. Each such complaint shall be accompanied by the appropriate filing fee.

2. The clerk's office will assign a new case number to the Amended Severed Complaint. The first-named Plaintiff shall retain the case number of the original multi-plaintiff complaint but shall file an amended complaint which sets forth the facts and claims relating to that particular plaintiff's case within 20 days after severance of the action.
3. Plaintiffs shall subsequently file a notice of severance in each of the three original multi-plaintiff case (if applicable) indicating that they have filed an Amended Severed Complaint for each Smoker Plaintiff other than the first-named Plaintiff. The notice of severance should identify the new case number assigned to each severed action. A copy of each such notice shall be served upon Liaison Counsel.
4. The filing of the Amended Severed Complaint shall relate back to the filing date of the pending complaint in each case for the purpose of demonstrating, if all other prerequisites are met, that the claims had been timely filed within one year of the issuance of the mandate in the *Engle* decision.
5. The issuance of a summons or service of process is not required with respect to the new Amended Severed Complaints if Defendants have already been served, but Plaintiffs shall notify Defendants of the filing of the new Amended Severed Complaints through service by U.S. Mail, facsimile, or electronic mail.
6. Defendants shall have twenty (20) days from the date of service of each Amended Severed Complaint within which to serve a response.

VII. RECORDS COLLECTION

Discovery propounded by the Plaintiffs and Defendants will be governed by the Florida Rules of Civil Procedure.

A. Authorizations

The Plaintiff or Personal Representative shall execute Authorization forms for the release of each Plaintiff's or Plaintiff's decedent's medical records and other documents as set forth below (to the extent any might apply to a particular Plaintiff). The required Authorization forms shall be signed by the Plaintiff and served on Defendants before or simultaneously with service of the Plaintiff's responses to Defendants' Initial Discovery. The form of the Authorizations is as agreed to between the parties. If the parties cannot agree, then the Court shall enter an order relating to the form of the release at the first CMC conference scheduled on July 24, 2009 or at any subsequent hearing if necessary. In particular, the executed Authorizations included with Plaintiff's Response shall be for release of the following information pertaining to the injured Plaintiff or Plaintiff's decedent:

- Medical and Prescription Information – a global medical authorization form shall be used for all of Plaintiff's or Plaintiff's decedent's medical providers. Authorizations for the collection of Plaintiff's medical records must be in compliance with the HIPAA Privacy Rule, 45 C.F.R. parts 160 and 164.
- Radiology films and related reports maintained by any of Plaintiff's or Plaintiff's decedent's medical service providers.
- Pathology materials, including but not limited to pathology reports, blocks, slides, recuts and all other pathology materials.
- Plaintiff's or Plaintiff's decedent's insurance information and patient account information.
- HIV/AIDS records of the Plaintiff or Plaintiff's decedent.
- Plaintiff's or Plaintiff's decedent's Social Security Statement of Earnings obtained from the U.S. Social Security Administration showing, among other information, the names of all employers and the quarters of years for each employer.
- Military records, veteran's affairs records, employment, and union records for each employer of each Plaintiff or Plaintiff's decedent.
- Plaintiff's or Plaintiff's decedent's educational information.
- Plaintiff's or Plaintiff's decedent's prison, parole, and substance abuse records.

- Worker's compensation and/or disability claim records filed by or on behalf of each Plaintiff or Plaintiff's decedent with any federal, state, or private organization.
- Plaintiff's or Plaintiff's decedent's federal and state tax returns for the preceding twenty years from the date of this CMO (or twenty years preceding death).

To the extent the individuals or entities who are or may be in possession of the Plaintiff's or Plaintiff's decedent's records require additional or more specific authorizations, Plaintiff shall sign and return to defense counsel the provider-required authorization within ten (10) days of service of a request by defense counsel. Further, in the event that providers refuse to produce documents on the basis that an executed authorization is stale or outdated, Plaintiff shall sign and return to defense counsel additional authorizations for such providers within ten (10) days of service of a request by defense counsel. Also, in the event that providers require facility-specific authorizations, subpoenas, or court orders to produce documents, records or radiology films that would otherwise be covered by an authorization, Plaintiff will cooperate with Defendants in good faith to execute facility-specific authorizations and to assist the Defendants' efforts to obtain the necessary subpoena or court order required to obtain such documents, records, or radiology films.

Because Medicaid will not accept authorizations to release records, but instead requires a subpoena, the parties have agreed that to facilitate the collection of records from Medicaid, Plaintiffs will waive the time limit requirements set forth in Fla. R. Civ. P. 1.351(b) for the issuance of a subpoena necessary to obtain Medicaid records only. This waiver is not meant to apply to the issuance of a subpoena to obtain any other records.

B. Psychiatric Records and Substance Abuse Records

Every injured smoker (or the personal representative on behalf of each deceased smoker), and each Plaintiff who seeks damages for mental anguish or emotional distress, will execute an

authorization for the release of psychologist, psychiatrist, psychotherapist or other mental health records, including substance abuse records.

As the records are received by the third party vendor, they will be Bates stamped and forwarded to Plaintiff's counsel. The third party vendor will send a facsimile or e-mail to counsel for the Plaintiff(s) and counsel for the Defendant(s) notifying them of the date that the records were mailed to Plaintiff's counsel in a particular case. Each Plaintiff's counsel shall have fifteen (15) days from the date the records are mailed to Plaintiff's counsel by the third party vendor within which to serve, by facsimile and/or e-mail to defense counsel and the third party vendor, written objections to providing the records to defense counsel based on the psychotherapist-patient privilege or any other reasonable ground, which shall be set forth specifically. If only a portion of the records is objectionable, the objection shall be tailored accordingly. Plaintiff's counsel also shall serve a privilege log that conforms to the dictates of Fla. R. Civ. P. 1.280(b)(5). If Plaintiff's counsel does not timely serve defense counsel and the third party vendor with written objections, the third party vendor shall provide defense counsel with the records twenty-one (21) days from the date the records were mailed to Plaintiff's counsel. Should logistical or other such problems at any time prevent Plaintiff's counsel from complying with the above responsibilities, Plaintiff's counsel shall notify Defendant(s) and the third party vendor by the most expedient means and the parties shall make every reasonable effort to resolve the problem without court intervention.

If written objections are served, the following procedures shall control for the resolution of all such objections:

1. The records will be held by the third party vendor until all objections are resolved.

2. The parties shall confer not later than seven (7) days after service of the objections in a good-faith effort to resolve the objections without court intervention. If such efforts fail, the Defendant(s) shall file not later than fourteen (14) days after service of the objections a copy of the objections and privilege log together with a brief statement of Defendant's contention why the records ought to be discoverable. Defense counsel may notice the matter for hearing. The Court and/or the parties may request that the third party vendor furnish a copy of the documents or records for in camera review.

3. If the Court enters an Order determining that the documents or records are not discoverable, a copy of the Order shall be provided to the third party vendor, who shall forward all copies of the non-discoverable documents or records to Plaintiff's counsel and the third party vendor shall retain no copies. If Defendants chose to appeal, a sealed version of the records shall be included in the court file for purposes of the appeal. If the Court enters an Order determining that the documents or records withheld are discoverable, a copy of the Order shall be provided to the third party vendor, who shall forward a copy of the documents or records withheld to defense counsel.

C. Protocol for Pathology and Preservation of Original Evidence

The parties agree that original evidence (such as pathology materials) shall be accessible to all parties. Defendants shall be permitted to acquire pathology materials, including slides and blocks, pursuant to Authorizations executed by Plaintiffs or through subpoena where necessary. Defendants who obtain these materials shall be responsible in the event of loss of or damage to these pathology materials while in their possession and/or the possession of anyone to whom they provide the pathology materials. The original pathology materials shall be provided to Counsel for Plaintiff in each individual case at a time agreed upon by the parties to that case. After the pathology materials are provided to Counsel for Plaintiffs, they shall be responsible in

the event of loss of or damage to these pathology materials while in his/her possession and/or the possession of anyone to whom they provide the pathology materials.

Nothing in this section shall prevent a Plaintiff from obtaining Plaintiff's or Plaintiff's Decedent's pathology materials first. If Plaintiff acquires the pathology materials first, those materials shall be provided to Counsel for Defendants in each individual case at a time agreed upon by the parties to that case.

Neither Plaintiffs nor Defendants shall alter any pathology materials in any way or conduct any destructive testing on any pathology materials without prior written consent of the opposing parties in each individual case or Court approval. Creating re-cuts is not considered destructive testing, but neither side shall create re-cuts or request that re-cuts be created without obtaining written approval from the other side or an order from the Court. The fact that a hospital or other institution creates re-cuts without being requested to do so shall not be used against any party.

D. Use of Authorizations

The Defendants are authorized to utilize the services of a third-party vendor designated by the Defendants to collect records. Such third-party vendor shall, to the extent applicable, be governed by the terms of this agreement, any future case management orders, the Florida Rules of Civil Procedure, and state and federal law with regard to such confidential and privileged medical and personal information.

E. Duty To Provide Records Collected Pursuant to Authorizations

Defendants or the third-party vendor(s) contracted to assist in gathering medical and other records, documents, and items on behalf of Defendants using the Authorizations provided by Plaintiff shall provide each affected Plaintiff with notice of the respective providers or entities

to whom such authorizations have been sent and regular updates as to the progress of records collection activities for each Plaintiff.

With regard to any records and/or documents obtained with Authorizations, the third-party vendor(s) shall provide all parties with Bates labeled copies of any records and/or documents collected. Copies of all records and/or documents obtained pursuant to the Authorizations shall be provided to the Plaintiffs at no cost.

With respect to any x-rays, scans, or other radiology films obtained through Authorizations, they shall be sent to Defendants with notice to Plaintiff, including specific identification of each x-ray, scan or other radiology film. Should Plaintiff desire copies of any x-rays, scan or other radiology film, Plaintiff shall reimburse Defendants for the cost of duplication, or if no copies are desired, Defendants shall make said evidence available for Plaintiff's review no later than 30 days after Plaintiff's request for same.

F. Documents Obtained Through Subpoenas

To the extent that either of the parties obtains documents or records through the filing of a Notice of Production from Non-party and/or issuance of a subpoena, then such party shall comply with the requirements of the Florida Rules of Civil Procedure with regard to notice of such discovery requests. Opposing counsel shall not unreasonably withhold consent with regard to the issuance of a commission for out-of-state subpoenas. Any such subpoenas for documents shall request that the recipient comply with the subpoena by turning over the documents to the third-party vendor. The third-party vendor shall disseminate all such documents in accordance with the procedures set forth above.

Documents obtained by Defendants pursuant to subpoena shall be furnished to Plaintiff within 15 days of receipt, without cost, and without the need for a request by Plaintiff. Documents obtained by Plaintiff pursuant to subpoena shall likewise be furnished to each

Defendant within 15 days of receipt, without cost, and without the need for a request by any Defendant.

G. Document Production from Defendants' Websites

Defendants Philip Morris USA, Inc., R.J. Reynolds Tobacco Company, and Lorillard Tobacco Company maintain document productions, including electronically stored information from prior smoking and health cases on the companies' document websites. Defendants believe these are the most efficient locations for Plaintiffs to begin to search for and obtain documents to be used in the *Engle* Progeny Cases. To that end, the parties agree that Defendants may direct a Plaintiff to their respective websites in response to discovery requests.

H. Authentication of Records

Unless objected to in a writing communicated to opposing counsel within thirty (30) days of receipt by party, copies of documents obtained through authorization or subpoena shall be subject to the following provisions:

- Copies of such records are the equivalent of originals;
- Such documents are authentic copies of the records found in the files of the producing entity; and
- All such documents shall be deemed to satisfy the foundation requirements under Rule 90.901, and all such documents shall be deemed to qualify as business records under Rule 90.803(6).

Notwithstanding such provision, all other objections to the admissibility of any document obtained through authorization or subpoena, including but not limited to relevance, secondary hearsay, or opinion evidence, shall be preserved. If the Rules of Procedure and/or Evidence are otherwise satisfied, records subject to this stipulation may be used at trial and/or as exhibits to pleadings.

VIII. REMAINING DISCOVERY

A. Depositions

To the extent possible, all depositions should be noticed at least ten (10) days in advance of the date when the deposition is scheduled to take place, and counsel shall use their best efforts to cooperate in scheduling depositions.

1. Out-of-State Depositions

Commissions for the taking of out-of-state depositions may be presented to the court *ex parte* at any time before the close of discovery. After receipt of the Commission, the requesting party shall serve all counsel by facsimile with a copy of the Commission. If no objections are received by the requesting party within five (5) calendar days of the date of the Commission, the requesting party may institute proceedings in the foreign state for the taking of the deposition. If the requesting party is timely notified of an objection by any other party, the Commission may not be utilized, and a Request for Hearing on the issuance of the subject Commission must be submitted before further proceedings are instituted in connection with the deposition.

2. Leave of Court

Nothing herein shall prevent a party from seeking leave to conduct depositions or discovery or from seeking to impose limitations on discovery beyond that contemplated herein. Upon leave of court for good cause shown, a deposition may be scheduled by either party in advance of a case being placed on the Active Pretrial discovery Schedule in order to preserve the testimony of a deponent who may be unavailable for trial due to illness or death, or for other reasons for good cause shown.

B. Examinations Pursuant to Fla. R. Civ. P. 1.360

Any physical or mental examination of a Plaintiff shall be conducted in accordance with Rule 1.360, Florida Rules of Civil Procedure.

C. Expert Witness Discovery

The parties will comply with the Florida Rules of Civil Procedure regarding expert witnesses. To the extent any party seeks to elicit opinion testimony from any treating physician that is not contained in the treating physician's medical records, that treating physician shall be considered an expert witness for purposes of Rule 1.280 and the disclosure requirements set forth therein.

IX. EXHIBIT LISTS

Within fifteen (15) days of a written request by opposing counsel, a party shall provide copies of any exhibit listed on that party's exhibit list and/or amendments thereto. The party requesting copies of the exhibits shall pay the reasonable costs for the duplication of said exhibits.

X. SCHEDULING OF CASES FOR DISCOVERY AND TRIAL

Given the number of Engle Progeny cases filed in this Circuit, the complex legal issues involved and the anticipated length of each trial, there will be an initial set of 10 cases (the "Initial Cases") which will be prepared for trial and tried on an expedited schedule in late 2009 and during 2010 so the court and the parties may obtain a ruling from the appellate court to provide guidance to the Court in its handling of the remaining Engle Progeny Cases. The Court's goal is to create an Active Pretrial Discovery Schedule for the first ten cases in which fact and expert discovery is completed in 240 days, at which point the Court will try one of the Initial Cases. All other cases shall be stayed until December 1, 2009 at which time additional priority cases numbers 11 through 37 may begin discovery as set forth below. After the first Initial Cases complete appellate review, the Court will enter additional case management or scheduling orders to guide the management of the remaining Engle Progeny Cases pending in this Circuit.

1. Priority of Cases

This Court has decided to prioritize the order of discovery and trial on the following basis:

(a) All cases now pending where the smoker is living and has reached his or her 65th birthday and all case now pending where the surviving spouse in the wrongful death case has reached his or her 65th birthday shall be given first priority, and within that group, if there is more than one case, based on the date the case was first filed with the filing date to be determined by the earliest filing even if that filing occurred before joinder into the class action. This is done in an effort to comply with the spirit of Florida Statutes, Section 415.1115.

(b) The balance of the cases will be prioritized based on the date the action was first filed, even if that filing occurred before joinder into the class action.

(c) Any case where a party requests to be moved on the priority list for good cause shown, with all parties being entitled to receive notice of such a request and notice of hearing regarding such request, at which time all parties may be heard and object.

(d) The court requests that liaison counsel prepare a list of plaintiffs and responding defendants based on the announced priority schedule. Where two or more cases were filed on the same date, priority will be given sequentially to those cases measured by the first letter of the deceased smoker's last name, and alphabetically thereafter.

(e) The first cases will proceed first and will follow the pretrial discovery schedule set forth in Section 2 below. The Court intends to try those cases in late 2009 and during 2010. The Court's ability to try these cases is, of course, subject to sufficient legislative funding of the judiciary that would allow the judges of this circuit to handle the priority liberty interest and family related cases that the courts are in generally required to give priority by statute and Supreme Court rules.

(f) The balance of the plaintiff's claims remaining will need to be disposed of during the succeeding years as legislative funding will allow.

The court will reserve specific three week trial periods which will later be specifically assigned to each case as it ripens for trial. The current chief judge, other circuit judges and perhaps judges outside the circuit as well as senior judges will be recruited as necessary to maintain this schedule. Nothing in this Order should be interpreted to preclude the use of Chapter 44 judges as agreed to between the parties.

The trial dates will be set as soon as possible for the first cases along with release dates for the follow up round of discovery for additional priority cases which the court anticipates will be December 1, 2009.

Once a Plaintiff's case has been designated as an Initial Case for Active Pretrial Discovery, he/she must complete the following tasks, collectively referred to herein as the "Pre-Activation Tasks": 1) provide responses to Defendants' Initial Discovery; 2) execute authorizations, as described in Section VII(A) above; 3) provide any and all submissions associated with the Plaintiff's claim on the Engle Trust Fund; 4) if the Plaintiff is part of a multi-plaintiff case, the Plaintiff must sever his/her case, as described in Section VI above; and 5) in wrongful death cases, an Estate must be opened (or re-opened) in this Circuit and the Plaintiff appointed as the Personal Representative authorized to bring said claims on behalf of the Estate. These Pre-Activation Tasks must be completed by November 3 for the first group of 3 cases and by December 1 for the second group of 3 cases.

2. Placement on the Active Pretrial Discovery Schedule

Once the Pre-Activation Tasks have been completed, a Plaintiff whose case has been selected as an Initial Case may be placed on the Active Pretrial Discovery Schedule set forth below:

EVENT	DEADLINE
Plaintiff may serve discovery on Defendants	At any time during the discovery period after the Plaintiff has completed the Pre-Activation Tasks and been placed on the Active Pretrial Discovery Schedule
Plaintiff may be deposed	Beginning 30 days after Plaintiff has been placed on the Active Pretrial Discovery Schedule
Plaintiff to serve fact witness list	60 days after Plaintiff has been placed on the Active Pretrial Discovery Schedule

Defendant(s) to serve fact witness list	90 days after Plaintiff has been placed on the Active Pretrial Discovery Schedule or 30 days after Plaintiff serves its fact witness list, whichever is later
Fact discovery to be substantially completed	150 days after Plaintiff has been placed on the Active Pretrial Discovery Schedule
Plaintiff to serve a list of experts the Plaintiff expects to call at trial along with expert summaries of reports pursuant to Fla. R. Civ. P. 1.280(b)(4)	150 days after Plaintiff has been placed on the Active Pretrial Discovery Schedule
Defendant(s) to serve a list of experts the Defendant(s) expects to call at trial, along with expert summaries or reports pursuant to Fla. R. Civ. P. 1.280(b)(4)	180 days after Plaintiff has been placed on the Active Pretrial Discovery Schedule, or 30 days after Plaintiff serves its expert disclosure, whichever is later
Plaintiff to serve a list of any rebuttal experts the Plaintiff intends to call at trial, along with the expert summaries or reports pursuant to Fla. R. Civ. P. 1.280(b)(4)	15 days after Defendant(s) serves its expert disclosure
Defendant(s) to serve a list of any sur-rebuttal experts the Defendant(s) intends to call at trial, along with expert summaries or reports pursuant to Fla. R. Civ. P. 1.280(b)(4)	15 days after Plaintiff serves its rebuttal expert disclosure
All fact and expert discovery to be completed.	240 days after Plaintiff has been placed on the Active Pretrial Discovery Schedule
All pretrial dispositive motions and <i>Frye</i> motions, other than motions in limine, to be filed	20 days after the close of discovery
Plaintiff shall furnish Defendants a final list of witnesses expected to testify, including rebuttal witnesses. Any witness not disclosed at this time will not be permitted to testify at trial.	No less than 30 days before the beginning of trial

Defendant(s) shall furnish Plaintiff a final list of witnesses expected to testify, including rebuttal witnesses. Any witness not disclosed at this time will not be permitted to testify at trial.	No less than 35 days before the beginning of trial
Parties to exchange catalog of trial exhibits, and make exhibits available for inspection by opposing counsel	30 days before trial
Parties to exchange deposition designations of witnesses whose testimony is expected to be presented by deposition, either by transcript or video	30 days before trial (Counter-designations and objections to designations 20 days before trial)
All motions in limine must be filed and served, along with the memos addressing unusual questions of law	25 days before trial (Responses to motions in limine must be filed and served at least 15 days before trial)
All hearings on motions, other than motions in limine, must be scheduled and heard	Not later than 20 days before trial
Parties to meet and prepare Joint Pretrial Stipulation	Not later than 20 days before trial
Joint Pretrial Stipulation to be filed	5 days before Pretrial Conference
Pretrial Conference	10 to 15 days before trial
Trial begins	45 days after close of discovery

All counsel subject to CMO No. 1 must adhere to the deadlines established by this Pretrial Discovery Schedule, which may be changed only upon written motion to the Court assigned to all of these cases for Good Cause shown.

3. Stay of Cases Not On the Active Pretrial Discovery Schedule

Defendants have served initial interrogatories and requests for production ("Initial Discovery") on Plaintiffs in most cases pending in this Circuit. Pursuant to an agreement between Defendants and many of the Plaintiffs' lawyers who have filed cases in this Circuit,

Plaintiffs have an indefinite extension of time to respond to said discovery and the cases are stayed until the conclusion of the appeal of the first Initial Case.

All counsel subject to CMO No. 1 must adhere to the deadlines established by the Active Pretrial Discovery Schedule, which may be changed only upon written motion to the Court for good cause shown.

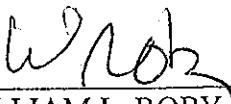
XI. PRIVILEGES

The Court recognizes that cooperation among counsel and the parties governed by CMO No. 1 is essential for the orderly and expeditious resolution of the *Engle* Progeny Cases, including the coordinated pretrial aspects of all such proceedings statewide. Therefore, the communication, transmission, or dissemination of post-*Engle* litigation-related information among and between Plaintiffs' counsel, among and between Defendants' counsel and/or their various clients, and/or among and between the Defendants themselves shall not be deemed a waiver of the attorney-client privilege, fact- and/or attorney work-product protection, or the protection afforded by any other legal privilege to which a party might otherwise be entitled. Such cooperative efforts shall not be used against any party and shall not be communicated to any jury.

XII. MODIFICATIONS OF CMO NO. 1

Any party may move for relief from the requirements of the CMO No. 1 or any subsequent case management order, upon demonstrating special circumstances warranting specialized or unique treatment. Any such request shall be filed and served on this Court with copies to all judges in this Circuit who are assigned *Engle* Progeny Cases and all counsel of record. The party or parties making such a request shall consult with opposing counsel and Liaison Counsel prior to filing a motion for such relief.

DONE AND ORDERED in quadruplicate on this 23 day of June 2009, in Stuart,
Martin County, Florida.



WILLIAM L. ROBY
CHIEF JUDGE

cc: All counsel of record