

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

Dec 12, 2007

FILED
CLERK'S OFFICE

**IN RE: ENGLE PROGENY TOBACCO
PRODUCTS LIABILITY LITIGATION**

MDL No. 1887

ORDER DENYING TRANSFER

Before the entire Panel^{*}: Defendants R.J. Reynolds Tobacco Co., Philip Morris USA Inc., Lorillard Tobacco Co., and Brown & Williamson Tobacco Corp. have moved, pursuant to 28 U.S.C. § 1407, for coordinated or consolidated pretrial proceedings of the actions listed on Schedule A in the Middle District of Florida.¹ Six actions are presently pending in the Middle District of Florida and three actions are pending in the Southern District of Florida.² Plaintiffs in 27 related actions filed in the Middle District of Florida support the motion for transfer to that district. Plaintiffs in all actions before the Panel oppose the motion; in the event the Panel grants the motion over their objections, these plaintiffs would support the Southern District of Florida as the transferee forum. Plaintiff in a related action in the Southern District of Florida also opposes the motion.³

On the basis of the papers filed and hearing session held, we are not persuaded that Section 1407 centralization would serve the convenience of the parties and witnesses or further the just and efficient conduct of this litigation. Plaintiffs are individuals seeking to take advantage of certain jury findings from a now-decertified Florida state court class action involving cigarette smoking. Discovery on common factual issues occurred in the underlying state court action, which gave rise to the factual findings relied upon by the plaintiffs in the present actions. The proponents of centralization have failed to convince us that any remaining and unresolved common questions of fact among these actions are sufficiently complex and/or numerous to justify Section 1407 transfer at this time. Alternatives to transfer exist that may minimize whatever possibilities there might be of duplicative discovery and/or inconsistent pretrial rulings. *See, e.g., In re Eli Lilly and Co. (Cephalexin Monohydrate) Patent*

^{*} Judges Motz and Scirica took no part in the decision of this matter.

¹ In their notice of oral argument, counsel for the moving defendants also purported to speak on behalf of Philip Morris Inc.; Philip Morris Companies, Inc.; Altria Group Inc.; Lorillard Tobacco Co.; Lorillard, Inc.; and Publix Super Markets, Inc.

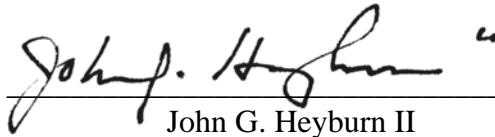
² Fifteen additional actions included on the motion have since been remanded to state court.

³ Plaintiff in another related action in Southern District of Florida also opposed the motion; her action has since been remanded to state court.

Litigation, 446 F.Supp. 242, 244 (J.P.M.L. 1978); *see also Manual for Complex Litigation, Fourth*, § 20.14 (2004).

IT IS THEREFORE ORDERED that the motion, pursuant to 28 U.S.C. § 1407, for transfer of these actions is denied.

PANEL ON MULTIDISTRICT LITIGATION

Handwritten signature of John G. Heyburn II in cursive script, positioned above a horizontal line.

John G. Heyburn II
Chairman

D. Lowell Jensen
Robert L. Miller, Jr.
David R. Hansen

J. Frederick Motz*
Kathryn H. Vratil
Anthony J. Scirica*

**IN RE: ENGLE PROGENY TOBACCO
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SCHEDULE A

Middle District of Florida

Sharon White v. Philip Morris USA, Inc., et al., C.A. No. 6:06-1161
Judith Piegza, et al. v. Philip Morris USA, Inc., et al., C.A. No. 6:06-1162
Patricia Moore v. Philip Morris USA, Inc., et al., C.A. No. 6:06-1163
Linda Jones v. Philip Morris USA, Inc., et al., C.A. No. 6:06-1164
Gloria Bell v. R.J. Reynolds Tobacco Co., et al., C.A. No. 6:07-1152
James L. Dunn, et al. v. Philip Morris, Inc., et al., C.A. No. 8:07-770

Southern District of Florida

Barbara Morales, et al. v. R.J. Reynolds Tobacco Co., et al., C.A. No. 0:07-60944
Patricia Neisen-Stone v. R.J. Reynolds Tobacco Co., C.A. No. 1:07-20910
John Glading, Jr., et al. v. R.J. Reynolds Tobacco Co., et al., C.A. No. 1:07-21843