

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

IN RE: *ENGLE* PROGENY CASES  
TOBACCO LITIGATION

Case No.: 08-CA-80000

DIVISION D

*Pertains To: All 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*"). Pursuant to Fla. R. Civ. P. 1.270(a) and Administrative Order S-2007-155, Section 4, all pending *Engle Progeny Cases* are hereby coordinated for pretrial proceedings and governed by the provisions of this Case Management Order (hereafter, "CMO No. 1").

This CMO No. 1 (and any subsequent Case Management Orders entered herein) shall apply to all such pending *Engle Progeny Cases* and shall govern only pretrial proceedings, which includes all activity before commencement of voir dire. Except as provided herein, there have been no prior determinations as to whether any of the *Engle Progeny Cases* shall be consolidated for trial purposes, and the fact that the *Engle Progeny Cases* are coordinated for pretrial purposes does not have the effect of making any entity a part 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

HILLSBOROUGH COUNTY, FLORIDA  
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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: Brenda Fulmer of Alley, Clark, Griewe & Fulmer (Plaintiffs' Liaison Counsel) and Troy Fuhrman of Hill Ward Henderson (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 Coordination Actions and Counsel"). Within thirty (30) days after the date of entry of the CMO No. 1, Plaintiffs' Liaison Counsel shall furnish the Court, Defense Liaison Counsel, and all Plaintiffs' counsel with the 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 Case Management 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 its 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 to 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 (1) 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 (2) any such information that would otherwise facilitate Liaison Counsel's fulfillment of their duties and responsibilities as enumerated herein.

#### IV. DOCKETING & FILING PROCEDURES

##### A. Creation of Master File

The Clerk shall open a Master File and assign a separate case number to be utilized for all filings that pertain to more than one of the *Engle* Progeny Cases. The Master File shall have the case number indicated above. 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.

##### B. Case Captions

All *Engle* Progeny Cases filed in this Circuit and subject to pretrial coordination pursuant to CMO No. 1 shall bear the following case style unless otherwise ordered by the Court:

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**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION**

IN RE: *ENGLE* PROGENY CASES  
TOBACCO LITIGATION

Case No.: 08-CA-80000  
DIVISION D

*Pertains To: Jones, 2007-CA-XXXX [or All Cases]*

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When a pleading or filing applies or potentially applies generally to all cases covered by CMO No. 1, the caption shall state: "*Pertains To: All Cases*" and shall carry only the Master File

case number. Otherwise, the filing attorney shall also indicate the individual case to which the filing pertains and include the first-appearing Plaintiff's last name and the individual case number, as illustrated above. If a filing pertains to more than one individual case covered by the CMO No. 1, but less than all of the coordinated *Engle* Progeny Cases, each case to which the filing applies shall be designated in the caption, as illustrated above.

**C. Motion Practice and Filing Procedures**

A motion or request for relief bearing an individual "Pertains To" case number or numbers shall be filed by the Clerk in the original individual case or cases only. Upon filing any document bearing an individual "Pertains To" case number, the filing party shall serve copies of the filed document upon all counsel of record in the individual action as provided for in the Florida Rules of Civil Procedure. If a motion or request for relief pertains to more than one of the *Engle* Progeny Cases coordinated herein (whether filed as a single motion or as separate motions in individual cases), but does not pertain to all of the *Engle* Progeny Cases, the party filing the motion shall have the obligation to notify its respective Liaison Counsel of such duplicative motions or requests for relief so that Liaison Counsel can assist the Court in disposing of such motions or requests in an efficient and expedient manner.

An original document bearing an "All Cases" designation shall be filed in the Master File only. A copy shall not be docketed in each individual action. 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. Service shall be governed by the Florida Rules of Civil Procedure. However, where the Court takes action upon any issue pertaining to "All Cases," it may require that a copy of its Order disposing of such issues be docketed in each individual action in addition to the Master File.

Discovery requests and responses shall not be filed in any of the individual cases or the Master File, except to the extent that they pertain to motions, requests for relief, or other matters for which Court involvement is required. 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 notices of joinder and thereby reducing litigation costs. 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 such filings if merely duplicative are discouraged as they run contrary to the intent of the CMO No. 1 and the efficiency, expediency, and reduced litigation costs and other benefits of pretrial coordination. Should the party originally filing such motion that has been granted be later dismissed from a case(s) 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 the CMO No. 1.

**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 the CMO No. 1 and future case management orders. Further, as indicated above, counsel filing any motion or request for relief that is essentially the same as a motion or request filed in another individual case has the obligation to notify its respective Liaison Counsel of such filing.

In addition, prior to filing any contested motion, the moving party shall confer with

counsel for the opposing party, at least twenty-four (24) hours in advance of filing any motion, 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, (2) and stating whether counsel agree on the resolution of the motion. A certification to the effect that opposing counsel was unavailable for a conference before filing a motion is insufficient to satisfy the parties' obligations to confer. 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.

Further, counsel shall furnish notice of the anticipated filing to their respective Liaison Counsel at least 24 hours before actually filing the contested motion in order to facilitate each Liaison Counsel's role in moderating the timing and sequence of contested matters and ensuring the efficient and expedient management of the coordinated cases. Liaison Counsel may not prevent a filing, but shall have the right to be heard on any filing he or she believes is contrary to the efficient and expedient prosecution of pretrial proceedings for the cases governed by the CMO No. 1.

**E. 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).

#### **V. CASE MANAGEMENT CONFERENCES AND HEARINGS**

The Court will hold monthly Case Management Conferences (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. 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 anticipated topics for discussion based upon the needs and requests of their respective parties. An agenda and, if necessary, Joint Report of Counsel will be distributed by respective Liaison Counsel to all parties and to the Court at least five (5) working days before the conference.

In addition to regularly-scheduled CMC with regard to all of the *Engle* Progeny Cases, the Court shall also establish one motion docket each month (to be announced in advance at each CMC), and which may coincide with the monthly CMC. This special set motion docket shall be available for any motions pertaining to individual cases, motions and matters of general applicability to the *Engle* Progeny Cases that are urgent and cannot otherwise wait until the next scheduled CMC reserved for such generic matters, or routine or ministerial matters for which it would be inefficient to wait until the next scheduled CMC. However, no motion or matter shall be brought to the Court on this reserved motion docket if they are not served on the opposing

parties by hand or electronic mail at least five (5) business days prior to the hearing, or if such matters or motions would otherwise be inappropriate to be heard on the Uniform Motion Calendar.

The purpose in establishing the monthly CMCs and motion docket 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 of the two (2) reserved dates 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.

Parties that seek to have a motion heard are still required to otherwise comply with the terms of CMO No. 1 with regard to the filing of such motions and shall also file a notice of hearing in the individual action.

Liaison Counsel will have the responsibility of coordinating with the Court and notifying their respective counsel in advance of the motion docket each month (and any changes) for the purposes of scheduling hearings for *Engle* Progeny Cases governed by CMO No. 1. Liaison Counsel will not have responsibility to attend such motion docket hearings or otherwise be involved in case-specific matters. The fact that this special motion docket has been set aside does not prevent the parties from coordinating a different date and time with the Court for any hearing, either on the Court's regular calendar or on the Uniform Motion Calendar, in an individual case or that otherwise is inappropriate for the regularly-scheduled CMC.

The Court expressly reserves the right to grant (in whole or in part) or deny any motion – other than motions for summary judgment or other motions for which a hearing is mandated by Rule, Statute, or case law – based solely on the written motion, written responses, and any

written arguments properly submitted by counsel. The decision as to whether a motion will require a hearing shall be based on factors that may include a statement by either party expressing their position as to whether and why a live hearing should (or should not) be granted.

## VI. DISCOVERY OBLIGATIONS

### A. Plaintiff's Verified Worksheet Permitted as Alternative to Initial Interrogatories

The Plaintiffs have proposed the use of a Verified Worksheet as an alternative to traditional Written Interrogatories under Rule 1.280. Having reviewed the proposed form of a Verified Worksheet and determining that it is an appropriate substitute for standard initial interrogatories, all tobacco Plaintiffs may elect to serve upon each Defendant a completed Plaintiff's Verified Worksheet (attached as Exhibit A), including production of documents and authorizations for release of records (attached as Exhibit B), in lieu of Interrogatories. Such verified worksheets, including the production responses provided for therein, shall have the same weight and effect as if they were traditional discovery responses and may be used for such purposes as permitted under the Florida Rules of Civil Procedure 1.340, FRCP.

In the event that any Defendant seeks additional Written Interrogatories or Requests for Production beyond that provided for in the Verified Worksheet and production of documents referenced therein, they may seek leave of court to obtain such additional interrogatories or production of documents, which leave shall be liberally granted. Defendants may also propound Requests for Admission (Fla. R. Civ. Pro. 1.370) without seeking leave of court.

Each Verified Worksheet shall include the execution of six (6) Authorization forms for the release of each Plaintiff's medical records as well as other Authorization forms for

documents and items other than medical records (to the extent any might apply to a particular Plaintiff), the form of which is attached as Exhibit "B". The required Authorization forms shall be signed by the Plaintiff and served on Defendants along with the Plaintiff's Verified Worksheet form and other required document production. In particular, the Plaintiff's Verified Worksheet response must include executed Authorization Forms, as set forth in Exhibit "B", for release of the following information pertaining to the injured Plaintiff or Plaintiff's decedent:

- Medical and Prescription Information - One 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.
- 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 (or twenty years preceding death), if in the possession, custody, or control of Plaintiff; otherwise provide executed authorizations for the release of such tax returns.

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 twenty (20) 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 twenty (20) days of service of a request by defense counsel. Also, in the event that providers require facility-specific authorizations, subpoena, or court order 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 cooperate with the Defendants to assist the Defendants' efforts to obtain the necessary subpoena or court order required to obtain such documents, records, or radiology films.

**B. Psychiatric 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, substance abuse, or other mental health 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 email 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 received by Plaintiff's counsel 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 received by 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 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 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 from defense counsel.

4. Any unauthorized disclosure of documents or records by the third party vendor, whether intentional or inadvertent, may (after an evidentiary hearing and in addition to any other violation it might constitute) be deemed a violation of this order subjecting the third party vendor and any other parties involved in such unauthorized disclosure to penalties for contempt of Court. All records and documents obtained by use of authorization forms shall be deemed identified and authenticated, without the need for a records custodian to testify as to identification or authentication, unless there is a good faith basis asserted by the objecting party. Any such objection must be raised and filed within thirty (30) days after receipt of the records.

**C. Discovery from Defendants**

Although Plaintiffs have indicated that no discovery is immediately required from Defendants given the effect of the *res judicata* findings under *Engle*, if Plaintiffs in the future should determine that discovery is necessary from Defendants, Plaintiffs shall file a proposed Verified Worksheet form to be utilized in lieu of interrogatories or requests for production of documents. The attached form of a Verified Worksheet shall be used, unless the Defendants have any objections, and raise such objections within 10 days of the date this Order is signed. Any such objections will be addressed at the next CMC on March 28, 2008. No written discovery (except expert discovery as permitted under the Florida Rules of Civil Procedure) other than the Verified Worksheet and Requests for Admission shall be propounded by Plaintiffs to Defendants without leave of Court.

One or more of the Defendants maintains document productions, including electronically stored information, from prior smoking and health cases on the companies' document websites, which Defendants believe are the most efficient locations for Plaintiffs to begin to search for and

to obtain documents to be used in *Engle Progeny Cases*. To the extent that any Verified Defendants' Worksheet or other permissible written discovery requires production of documents, then the parties agree that the Defendants may direct a Plaintiff to their respective web sites in response to discovery requests, but Defendants shall provide assistance in locating the responsive documents on such web sites, including but not limited to providing specific, responsive ranges of either any utilized numbering or organizational system or Bates numbers. Further, if in such Defendant's responses to Interrogatories or Verified Worksheets, such Defendant relies upon documents that are contained on their website, the authenticity of such documents shall be governed by Section J hereinafter.

**D. Failure to Provide Verified Worksheet or Answers to Interrogatories**

If a party fails to serve Answers to Interrogatories and Production of requested Documents, or a completed Verified Worksheet (including documents and authorizations required to be produced therewith as applicable) (the "Deficient Party") within the time limits set forth herein, the party entitled to receive the Verified Worksheet (the "Receiving Party") may file a Notice of Failure to Comply, which shall be served upon all counsel of record in that case. The Deficient Party shall be given fifteen (15) days after service to cure the alleged failure to serve a completed Verified Worksheet or Answers to Interrogatories or otherwise seek relief from the Court. If the Deficient Party fails to serve a completed Verified Worksheet or Answers to Interrogatories or move for relief within fifteen (15) days after service of a Notice of Failure to Comply, then the Receiving Party may file a motion to compel compliance and seek relief from the Court. Liaison Counsel should be provided with a copy of any motion to compel compliance for failure to serve a completed Verified Worksheet or Answers to Interrogatories.

**E. Deficient Verified Worksheets**

Any objections by the Receiving Party that a particular Verified Worksheet fails to meet

the requirements set forth herein shall be made within sixty (60) days of receipt of the Verified Worksheet by the Receiving Party, or they are waived. Any Receiving Parties (if more than one) are required to coordinate any such objections in order to avoid unnecessary duplication and waste of the parties' and Court's resources. If the Receiving Party contends that a particular Verified Worksheet is inadequate, counsel for the Deficient Party shall be served with a Notice of Verified Worksheet Deficiency, which specifies with particularity the alleged deficiencies in the Verified Worksheet, within sixty (60) days of service of the Verified Worksheet on the last Receiving Party. Liaison Counsel for the Deficient Party shall also be served with the Notice of Verified Worksheet Deficiency.

Each Deficient Party will then have thirty (30) days after receipt of the Notice of Verified Worksheet Deficiency within which to cure such alleged deficiencies. If the deficiencies are not cured, then the Receiving Party shall file a single motion to compel in any individual case and otherwise comply with the requirements herein with regard to consultation with opposing counsel, notification of Liaison Counsel for the Deficient Party, and the scheduling of any hearing.

**F. Timely Use of Authorizations**

The Defendants have objected to Plaintiffs' proposal that all authorizations to obtain records furnished by Plaintiffs to Defendants must be used within thirty days. The court sustains the defense objection and the Defendants are free to use such signed authorizations for the release of information in such time and manner as to them seems appropriate. Nevertheless, if an authorization is given and any Defendant fails to timely use the authorization to obtain the desired information and records, such failure shall not be the basis for continuing any trial or for relief from the provisions of any Scheduling Order entered herein.

The Defendants are authorized to utilize the services of a third-party vendor designated by the Defendants to collect records. However, 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.

**G. Protocol for Pathology and Preservation of Original Evidence**

The parties agree that original evidence (such as pathology materials) shall be accessible to all parties. Further orders regarding the handling and preservation of such materials may be required for the benefit of all parties in *Engle Progeny Cases*, but such matters should be deferred at this time as they are beyond the scope of this initial case management order. Until such time as this Court may enter additional CMOs or case-specific orders relating to original evidence (such as pathology materials), no destructive testing shall be performed on original medical evidence without prior agreement of opposing counsel or, if such agreement cannot be obtained, by order of the Court.

**H. Duty To Provide Records Collected Pursuant to Authorizations and Through Other Means**

With regard to any records, documents, and items obtained with Authorizations, Defendants or the third-party vendor(s) shall simultaneously provide all parties with sequentially-numbered copies of any documents, records or other items collected, such that Plaintiffs and Defendants will have equal access to the records, documents, and other items gathered through the Authorizations signed by Plaintiffs in connection with their Plaintiff's Verified Worksheet responses.

Defendants shall provide copies of all records, documents and other items obtained pursuant to the Authorizations to the Plaintiffs at no cost.

Should any such documents be obtained directly by Defendants, they shall serve upon Plaintiff's counsel complete and legible copies of all such documents within 15 days of receipt, without cost to Plaintiff, 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 to any Defendant, and without the need for a request by any Defendant.

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 with the Plaintiff's Verified Worksheet shall provide each affected Plaintiff with simultaneous notice of the respective providers or entities to whom such authorizations have been sent and regular updates to all parties as to the progress of records collection activities for each Plaintiff. To the extent that either of the parties obtains documents or records through the filing of Notice of Non-Party Production and/or issuance of a subpoena because a provider will not accept an authorization, then such party shall comply with the requirements of 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 record collection agency. The third-party vendor shall disseminate all such documents in accordance with the procedures set forth above.

**I. Avoidance of unfair surprise by the use of records.**

All parties are precluded from proceeding with any deposition if all of the pertinent medical records, documents, and items gathered (through use of Authorizations, subpoenas, or otherwise) by that date and in the possession of opposing counsel have not been

provided to opposing counsel at least seventy-two (72) hours in advance of the deposition. However, any party may waive this requirement in writing and proceed with the deposition.

**J. Authentication of Records**

Unless objected to within thirty (30) days of receipt by a party, all copies of records produced by any party in connection with service of Response to a Request to Produce or Verified Worksheet responses; records obtained through authorization or subpoena, including but not limited to medical records, employment records, military records, and educational records; and any documents produced by Defendants through the websites developed and controlled by Defendants either for litigation purposes or as a result of the Master Settlement Agreement (assuming a Defendant has directed a Plaintiff to such specific document on its website) shall be subject to the following provisions:

- Copies of such records are the equivalent of originals;
- Such records will be admissible at trial as authentic copies of the records found in the files of the producing entity; and
- The foundation requirements for hearsay exception purposes are satisfied to the extent necessary to avoid the necessity of a records custodian's deposition.

Notwithstanding such provision, objections to other non-foundation issues such as relevance, secondary hearsay, or opinion evidence shall be preserved. If the Florida Rules of Civil Procedure and/or Evidence are otherwise satisfied, records subject to these provisions may be used at the trial and/or as exhibits to pleadings.

**VII. REMAINING DISCOVERY**

**A. Depositions**

To the extent possible, all depositions should be noticed 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. The Plaintiffs seek, and Defendants oppose, a restriction of the length of depositions. Rule 30(d) of the Federal Rules of Civil Procedure limits a deposition to "one day of seven hours," unless "otherwise authorized by the court or stipulated by the parties." Fed.R.Civ.P. 30(d)(2). The federal rule further provides that the "court must allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination." Fed.R.Civ.P. 30(d)(2). The advisory committee's notes to the 2000 amendment to the rule provide that the limitation contemplates reasonable breaks during the day, "and that the only time to be counted is the time occupied by actual deposition." Fed.R.Civ.P. 30 advisory committee's note (2000). The notes also provide that the deposition of each person designated by an organization under Rule 30(b)(6) counts as a separate, seven-hour deposition, and that the party seeking a court order to extend the examination, or otherwise alter the limitations, "is expected to show good cause to justify such an order." Fed.R.Civ.P. 30(d)(2). The notes also provide examples of the factors that might be considered by parties considering seeking to extend the time for a deposition and by courts asked to order an extension (e.g., use of an interpreter or deposition of an expert). The notes further state, and litigants should take note, that "[i]t is expected that in most instances, the parties and the witness will make reasonable accommodations to avoid the need for resort to the court."

While Florida law does not impose such specific limitation and the Defendants want only the Florida Rules of Civil Procedure to apply (which require any Plaintiff seeking a time limitation to move for a protective order), this court understands that most of the Plaintiffs are elderly and/or infirm. On balance and after considering the parties' disparate positions on this issue, the court hereby limits all non-expert depositions to one day of seven hours, unless otherwise authorized by the court or stipulated by the parties.

### **1. Attendance**

Unless otherwise ordered by the Court, depositions may be attended by counsel of record, members and employees of their firms, attorneys specially engaged by a party for purposes of the deposition, the parties or representatives of a party, and counsel for the deponent. However, unnecessary attendance by counsel is discouraged. Counsel who have only a marginal interest in a proposed deposition or who expect their interests to be adequately represented by other counsel should elect not to attend. Further, the Court encourages the parties, to the extent possible, to attend depositions telephonically or through the use of teleconferencing. However, counsel for parties is always permitted to attend the deposition in person. All persons present with the deponent shall be identified in the deposition and shall not by word, sign, or otherwise coach or suggest answers to the deponent. In conducting depositions, the parties shall use their best efforts to avoid duplicative examination of the witness and shall cooperate in the allocation of the seven (7) hours.

### **2. Additional Guidelines for Videotaped, Telephonic, Teleconferencing and Videoconferencing Depositions**

By so indicating in its Notice of Taking Deposition, a party, at its expense, may record the deposition by videotape consistent with the Florida Rules of Civil Procedure. The parties are encouraged, to the extent possible, to permit parties and counsel to attend and participate in depositions either telephonically or through the use of teleconferencing or videoconferencing. However, counsel for the parties is always permitted to attend depositions in person. A party or counsel choosing to attend a deposition either telephonically or through the use of teleconferencing or videoconferencing shall do so at its own expense, and it shall be the responsibility of any attorney seeking to attend any deposition by telephone, teleconference, or videoconference, to (1) ascertain whether the logistics will permit same, and (2) to notify all

counsel of their intent to appear by telephone, teleconference, or videoconference, at least ten days before the deposition.

The attorney taking a deposition which one or more of the opposing counsel will be attending by any of the foregoing alternative methods shall, at least three (3) days before the deposition, provide opposing counsel and the deponent with a list of all documents about which he or she, in good faith, expects to examine the deponent during the deposition, and shall provide copies of such documents at least 24 hours before the scheduled start of such deposition. However, counsel who is defending a deposition may waive this requirement in writing and proceed with the deposition. Each party shall bear its own costs for copies of deposition transcripts, videotapes or the use of realtime at a deposition.

**3. Depositions of Plaintiff and Plaintiff's Witnesses**

Counsel for the Plaintiff shall coordinate the scheduling of each Plaintiff's deposition with Defendants' lead counsel for the case. Unless otherwise agreed to by the parties, there shall be no more than two depositions per day, whether Plaintiffs or Defendant representatives.

**4. Depositions of Defendants and Defendants' Witnesses**

Counsel for the Defendants shall coordinate the scheduling of each deposition of Defendant or Defendants' witnesses with lead counsel for the case. Where the deposition of the same Defendant representative is sought, and that Defendant is a Defendant in multiple cases that are subject to this CMO No. 1, that witness shall be deposed only once. An additional deposition of the same defense witness, including a witness designated pursuant to Fla. R. Civ. P. 1.310(b)(6), for any case within the scope of this CMO No. 1 shall be permitted only upon leave

of Court for good cause shown. The scheduling of such depositions should be coordinated through Liaison Counsel to ensure proper notice to all affected parties.

#### **5. Use of Sworn Testimony at Trial**

Any sworn testimony taken in any *Engle* Progeny Case subject to this CMO No. 1, including sworn expert testimony, shall be deemed by this CMO No. 1 to have been taken in these proceedings and may be used by any party herein, in any manner appropriate under Florida law, as though the sworn testimony had actually been taken in that *Engle* Progeny Case. This court is aware of the holding in Jones v. R.J. Reynolds Tobacco Co., 830 So.2d 854 (Fla. 2d DCA 2002), and the Defendants' objection to use of a deposition in one case in another. All parties are encouraged to avoid duplicative discovery and to use their best efforts to agree upon, utilize, and cross-notice depositions taken in other *Engle* Progeny Cases whenever possible rather than again deposing these witnesses. In the event that counsel for any party has a case-specific objection to the overlapping usage of a deposition as provided for herein, that party may file a motion and set it for hearing before the Pretrial Conference, seeking protection or some limitation of the use of such objected-to deposition.

#### **6. 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.

#### **7. 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 filing a Notice of Activation for 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. All Defendants are limited to one Rule 1.360 examination per subject area per Plaintiff. The party retaining the examiner is solely responsible for providing any medical records or documents to the examiner in advance of the examination. Disputes relating to Rule 1.360 examinations shall be addressed by the Court upon motion of any party.

The report of such an examination shall be provided to Plaintiff's counsel within forty-five (45) days of the examination and the report shall contain detailed statements regarding the examiner's findings, including all tests made, diagnosis, and conclusions. Should the examiner change, alter or amend the opinions set forth in his or her report prior to the discovery deadline established by the Scheduling Order, the examiner shall both prepare a supplemental report and immediately and simultaneously provide the supplemental report to Plaintiff and Defendants.

Counsel for the Plaintiff (or another representative) may be present at the CME; however,

counsel for Defendants (or any other representative) shall not be present at the CME. Only if retained and provided by the Plaintiff, a court reporter and/or videographer may be present at the CME and Plaintiff has no obligation to provide copies of a videotaped CME to Defendants. Under existing Florida, such transcripts and/or videotapes are Plaintiff's privileged work-product. No one other than the examiner and videographer may be present during the testing portion of the CME; however, counsel for the Plaintiff (or another representative) may be present during the interview portion of any CME for that Plaintiff.

Since the CME is not a deposition, a Plaintiff need provide only general background information and general medical history and an examiner shall not conduct extensive oral or written examination of the Plaintiff; however, a non-extensive oral inquiry by the examiner is appropriate. Any written questionnaires sought to be completed by a Plaintiff shall be furnished to Plaintiff's counsel ten (10) days in advance of the examination, who shall insure that the doctor's questionnaire is fully and truthfully completed and brought to or hand delivered to the doctor at or prior to the examination.

## **VIII. EXPERT WITNESS DISCOVERY**

### **A. Applicability**

These provisions relate to disclosure of, discovery from, and testimony by "retained experts" or "expert witnesses" under Rule 1.390, Florida Rules of Civil Procedure, who are expected to provide such evidence at a trial or in support of or in opposition to a potentially dispositive motion in these proceedings. *Unless otherwise addressed herein*, or addressed in another court order, or agreed to among applicable counsel, these provisions are generally not intended to apply to examining or treating physicians consulted by a Plaintiff independent of, and not for the purpose of, providing testimony relating to a pending or potential *Engle* progeny claim. Defendants are

cautioned to avoid any *ex parte* communication with any of Plaintiff's examining or treating physicians.

**B. Definitions**

The following definitions shall apply to this provision and this CMO in general:

1. "Generic opinions" means opinion testimony on general subjects, including medical and scientific "general causation" issues, issues relating to Defendants' conduct, and testimony relating to historical events with regard to the tobacco industry and Defendants' conduct.
2. "Case-specific Opinions" means opinion testimony concerning a particular Plaintiff's medical history, medical condition, use of tobacco products, the relationship of the Plaintiff's smoking to the Plaintiff's condition, or other Plaintiff-specific matters.
3. "Trial-Perpetuation Deposition" means a deposition taken by a party of an expert retained or specially employed by that party, intended primarily for presentation at trial by that party (or other similarly situated parties) in lieu of (or potentially in lieu of) the expert testifying *ore tenus* at a single trial or in multiple trials.
4. "Discovery deposition" means a deposition taken by a party of an expert retained or specially employed by another party, intended primarily to prepare for cross-examination either at trial or during a trial-perpetuation deposition.

**C. Disclosure of Retained Expert Testimony**

In advance of trial, and at the times and in the sequence to be set by the Scheduling Order or by stipulation in the individual *Engle* Progeny Cases governed by the CMO No. 1, each party shall disclose to the other parties the identity of each person who may be used at trial, or utilized in connection with consideration of dispositive motions, as a retained expert; the scope of employment in the pending case and the compensation for such service; the expert's general litigation experience, including the percentage of work performed for Plaintiffs and Defendants; the identity of other cases, within a reasonable time period, in which the expert has testified by deposition or at trial; an approximation of the expert's involvement as an expert witness, which may be based on number of hours, percentage of hours, or percentage of earned income derived from serving as an

expert witness, including his or her earnings as an expert witness (in accordance with Florida case law). The disclosure shall also indicate whether such retained expert will present only generic opinions, only case-specific opinions, or both generic and case-specific opinions, and whether such retained expert's testimony will be presented only by means of a previously conducted trial-perpetuation deposition or may be presented *ore tenus* at trial. Further, such disclosure shall describe the nature of the retained expert's testimony to be offered.

**AT LEAST FIVE (5) DAYS PRIOR TO THE DEPOSITION OF ANY EXAMINING AND TREATING PHYSICIAN OR HEALTH CARE PROVIDER, COUNSEL FOR PLAINTIFFS MUST DISCLOSE TO DEFENDANT'S COUNSEL ALL "EXPERT OPINIONS" HELD BY OR SOUGHT TO BE ELICITED FROM SAID TREATING PHYSICIANS.** All other written discovery related to expert witnesses shall be governed by the Florida Rules of Civil Procedure and law of the State of Florida.

**D. Discovery Depositions of Retained Experts**

Discovery depositions of retained experts will be permitted only after the disclosures as required above have been served according to the Scheduling Order. Unless agreed to by the parties, direct and cross-examination will not be permitted that the extent that it is duplicative of testimony given in previous depositions or trial testimony elicited in connection with *Engle* Progeny Cases governed by this CMO No. 1, except to the extent that there are changes or additions to the previous testimony, or due to the existence of newly-published materials, opinions, research, or other new matters since such prior depositions or trial testimony. The general guidelines regarding depositions set forth in above are equally applicable to retained expert depositions, as well as the Florida Rules of Civil Procedure and the Hillsborough County Bar Association's Standards of Professional Courtesy, incorporated by this circuit through Administrative Order S-29-97-104, which endorses and adopts the Hillsborough County Bar Association's Peer Review Program.

**E. Trial-Perpetuation Depositions of Retained Experts**

To reduce the burden on retained experts and eliminate potential problems that may arise as a result of scheduling conflicts, health considerations, or similar problems, any party may notice a trial-perpetuation deposition of any of its retained experts for potential use at subsequent trials governed by this CMO No. 1 in lieu of such expert testifying *ore tenus* at future trials in any individual case. The party noticing the deposition shall arrange with the witness and with opposing counsel for a mutually convenient date on which the trial-perpetuation deposition is to commence, with due regard for the opportunity of other parties to take an initial or supplemental discovery deposition as permitted above. Any party may make arrangements with the Court for the Court or an appointed Special Master to preside over the deposition (or otherwise be available) to control the conduct of the deposition and to rule on such objections as leading questions, non-responsive answers, and claims of privilege. The parties may agree to take the trial-perpetuation deposition in topical segments or by subject matter, *e.g.*, direct, cross, and redirect on a single topic before moving to the next subject.

**IX. WITNESS AND 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**

**A. Grouping of Plaintiffs' Cases for Active Pretrial Discovery Schedule and Entry of Scheduling Order**

Given the number of cases filed in this Circuit, discovery will be staggered so that it shall proceed in an orderly and manageable fashion through the use of a grouping of cases.

Accordingly, before March 31, 2008, counsel for Plaintiffs shall designate 20 Plaintiffs who have provided a completed Verified Worksheet or responses to Defendants' Initial Discovery as set forth below, to be placed on the Active Pretrial Discovery Schedule set forth below. At that time, Plaintiff's Liaison Counsel shall be responsible for filing a Notice of Placement on Active Pretrial Discovery Schedule with a list of cases that have been activated in the Master File, and Plaintiff's counsel shall file a copy of that Notice in each individual case.

Beginning May 1, 2008, counsel for Plaintiffs may designate **up to** another 15 Plaintiffs who have provided responses to Defendants' Initial Discovery as set forth below, to be placed on the Active Pretrial Discovery Schedule, with the same procedure as outlined above with regard to the filing of a Notice of Placement on Active Pretrial Discovery Schedule. At the time of activation, a Scheduling Order (the form of which is attached as Exhibit "C") shall be entered by the Court for that action. The Scheduling Order shall include deadlines for the completion of the remaining fact discovery, expert witness discovery, the filing of dispositive motions and motions in limine, projected trial docket setting, and shall set a date for a future scheduling conference to establish dates for the pretrial conference and trial. All counsel subject to CMO No. 1 must adhere to the deadlines established by the Scheduling Order, which may be changed only upon written motion to the Court for good cause shown or stipulation of the parties.

The 15 Plaintiffs to be selected by the Plaintiffs each month for activation and placement on the Active Pretrial Discovery Schedule and eligible for trial settings shall be selected amongst Plaintiffs' counsel who have cases pending in Hillsborough County and subject to CMO No. 1 on a *pro rata* basis or in another equitable manner. Plaintiffs' Liaison Counsel shall be responsible for notifying the Court each month of the 15 Plaintiffs who have been selected by the Plaintiffs for activation and placement on the Active Pretrial Discovery Schedule and eligible for trial settings.

Plaintiffs shall not be subject to dismissal of cases subject to this CMO No. 1 due to a failure to prosecute, where such cases have not yet been activated by the Plaintiffs for placement on the Active Pretrial Discovery Schedule.

**B. Placement On Active Pretrial Discovery Schedule**

A case cannot be placed on the Active Pretrial Discovery Schedule until the Plaintiff serves a Verified Worksheet on Defendants (including Authorizations and product of documents) or has previously responded to the Defendants' Initial Discovery requests, as provided for herein. Notwithstanding the foregoing, no Plaintiff may be placed on the Active Pretrial Discovery Schedule until Plaintiff has amended his or her complaint in compliance with this Court's January 18, 2008 Order on Defendants' Motion for More Definite Statement in *Waldron v. R.J. Reynolds Tobacco Co., et al.*, Case No. 07-CA-14497.

**C. Modification of Discovery Staging Schedule**

The Court recognizes that the foregoing discovery staging schedule may need to be adjusted based on actual performance once the plan is implemented. Accordingly, the Court has scheduled a status conference for June 18, 2008, to evaluate the discovery staging schedule and determine whether modifications may be needed.

**D. Trial Procedures and Settings [SEVERENCE AND CONSOLIDATION]**

As a general rule, before being placed on the Active Pretrial Discovery Schedule, every case in which multiple Plaintiffs have been grouped together and filed in a single lawsuit, except for mutually smoking spouses, consortium and familial death claims, will have to be severed pursuant to Rule 1.250, Fla.R.Civ.P., and filed as amended complaints (which shall relate back to the date of filing of the original multi-plaintiff complaints) for each Plaintiff – other than the lead

Plaintiff – with payment of filing fees for each amended complaint filed on behalf of a severed Plaintiff. The lead Plaintiff shall retain the originally assigned case number.

As a general rule there will be separate trials for each smoker, with the court reserving the right to revisit this issue based upon experience with these cases over time. However, as a pilot project and to test the theory that consolidated trials can be manageable and afford due process to the affected Defendants, ONE INITIAL CONSOLIDATED TRIAL will be allowed. This need not be the first case set for trial. By the next Case Management Conference on Friday, March 28, 2008, at 1:30pm, Plaintiffs' liaison counsel will submit a report to the court and to Defendants' liaison counsel identifying and describing the specific Plaintiffs (as well as their category, eg., disease involved), the claims involved, and the appropriateness of combining the identified Plaintiffs. The Defendants' liaison counsel will file his written response and any objections within 15 days of receiving the Plaintiffs' submission. The court will schedule a hearing, if necessary, for final selection of the Plaintiffs for this pilot project, consolidated trial.

## **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 designated as an "All Cases" filing and shall be served and docketed accordingly, including consultation with opposing counsel and Liaison Counsel prior to filing.

ORDERED on March 12, 2008, in Hillsborough County, Florida.

A handwritten signature in black ink, appearing to read "Wm. P. Levens", written over a horizontal line.

**William P. Levens**  
**CIRCUIT JUDGE**