

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

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HILLSBOROUGH COUNTY, FL
CIVIL DIVISION

CASE MANAGEMENT ORDER NO. 2

I. SCOPE & APPLICABILITY OF THIS ORDER

This Court previously entered CMO No. 1 on March 12, 2008, to govern the *Engle* Progeny Cases pending in this Circuit. This Case Management Order No. 2 ("CMO #2") supplements CMO #1, but shall not be construed to modify or alter CMO No. 1 except as expressly set forth below.

II. MODIFICATIONS TO CMO NO. 1

The following provisions of CMO No. 1 are hereby modified and supplemented as follows:

IV. DOCKETING & FILING PROCEDURES

B. Case Captions

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 (Case No.: 08-CA-80000, Division D) and shall be placed by the Clerk in the Master Case File. The caption for such generic filings in the Master File shall bear the following caption:

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

IN RE: *ENGLE* PROGENY CASES
TOBACCO LITIGATION

Case No. 08-CV-80000
Division D

Pertains To: All Cases

If a pleading or filing, however, pertains to only a single individual case or case(s), then 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 THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

IN RE: *ENGLE* PROGENY CASES
TOBACCO LITIGATION

*Pertains To: Smith, et al., Case No. 08-CV-00000
Jones, et al., Case No. 08-CV-00000*

E. Service of Motions and Pleadings

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).

In addition to the requirements set forth in CMO No. 1 with regard to conferring with opposing counsel and providing Liaison Counsel notice of certain filings, 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 ten (10) 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 email, provided the motion or filing is received by opposing counsel no later than ten (10) 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 three (3) business days prior to a hearing on such motion or request for relief. Courtesy copies of all written submission must be delivered to the Court simultaneous with their filing.

VI. DISCOVERY OBLIGATIONS

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 served within sixty (60) days of the case being placed on the Active Pretrial Discovery Schedule (e.g., March 28, May 1, June 2, etc.), 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 Deficiency 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. 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 service 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.

III. PROTOCOL FOR PATHOLOGY AND PRESERVATION OF ORIGINAL EVIDENCE

As set forth in Section VI.G. of CMO #1 (p. 17) the parties agree that original evidence (such as pathology materials) shall be accessible to all parties. This section governs the procedures and protocols that shall apply to pathology materials in all *Engle* Progeny cases pending before this Court.

Plaintiffs and Defendants shall be permitted to obtain Plaintiffs' pathology materials, including all blocks, slides, re-cuts or other pathology materials, directly from any hospital, institution, laboratory, person or other entity in possession of such materials. These materials may be acquired pursuant to authorizations executed by Plaintiffs, through subpoena, or through Court order where necessary.

Neither Plaintiffs nor Defendants may conduct any destructive testing, perform any special staining, make any cuts or re-cuts, or otherwise alter the pathology materials in any way from the form they are produced by the hospital, institution, laboratory, person or other entity without prior written consent of the opposing parties in each individual case or Court approval.

Plaintiffs 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. 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 party first obtaining the pathology material may possess it for examination for a period not to exceed sixty (60) days, unless otherwise agreed to by the parties or ordered by the Court. On the sixtieth (60th) day, the party possessing the pathology material shall deliver it to Plaintiff's Counsel or Defendant's Counsel (whichever is appropriate) or their designee.

The opposing party shall then have sixty (60) days from the date of receipt of the pathology materials for its own examination of those materials for a period not to exceed sixty (60) days, unless otherwise agreed to by the parties or ordered by the Court. On the sixtieth (60th) day from the date of receipt, the second party possessing the pathology material shall return it to Plaintiff's Counsel or Defendant's Counsel (whichever is appropriate) or their designee for safekeeping until trial. This procedure shall repeat as necessary to allow all parties adequate trial preparation.

To the extent any party intends to rely on the examination or observations pertaining to the pathology materials at trial, or the results of any destructive testing if said testing is permitted in accordance with this CMO #2, that party shall disclose the witness and his testimony related to said pathology materials in accordance with Rule 1.280(b)(4)(A)(i) within thirty (30) days of the date the pathology materials were delivered to the opposing party.

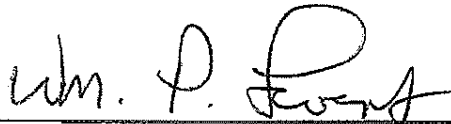
IV. AUTHORIZATIONS AND SUBPOENAS

As set forth in Section IV.A. of CMO #1 (p.10-12), Plaintiffs shall execute Authorizations for release of each Plaintiff's medical and other records. The parties have agreed

to modify the form of Authorizations that will be executed in accordance with Section IV.A. The new form of Authorizations to be executed as described in Section IV.A. is attached hereto as Exhibit A. In the interest of convenience, for any government issued specific authorizations, if Plaintiffs only sign and date the authorizations, Defendants shall be charged with completing the remaining necessary information.

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.

ORDERED on this 6 day of June, 2008, in Hillsborough County, Florida.



Judge William P. Levens
Circuit Judge, Thirteenth Judicial Circuit