

**BEFORE THE UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

IN RE: NATIONAL FOOTBALL)
LEAGUE PLAYERS' CONCUSSION) MDL DOCKET NO. 2323
INJURY LITIGATION)
_____)

INTERESTED PARTY RESPONSE OF PLAINTIFFS
RYAN STEWART, FULTON KUYKENDALL, DORSEY LEVENS
AND JAMAL LEWIS IN SUPPORT OF TRANSFER
AND CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407

I. INTRODUCTION

Pursuant to 28 U.S.C. § 1407 and the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiffs Ryan Stewart and Javonne Stewart (hereinafter "Stewart")¹, Plaintiffs Fulton Kuykendall and Sherry Kuykendall (hereinafter "Kuykendall")², Plaintiff Dorsey Levens (hereinafter "Levens")³ and Plaintiff Jamal Lewis (hereinafter "Lewis")⁴ respectfully submit this Interested Party Response in support of the transfer and centralization of all the National Football League Players' Concussion Injury actions into a single district for coordinated or consolidated pretrial proceedings. Plaintiffs Stewart, Kuykendall, Levens and

¹ Interested Party Plaintiffs Ryan Stewart and Javonne Stewart commenced an action on December 21, 2011 in the United States District Court for the Northern District of Georgia entitled *Ryan E. Stewart and Javonne Stewart v. National Football League and NFL Properties, LLC*, Case No.: 1:11-cv-04449-CAP.

² Interested Party Plaintiffs Fulton Kuykendall and Sherry Kuykendall commenced an action on December 21, 2011 in the United States District Court for the Northern District of Georgia entitled *Fulton Kuykendall and Sherry Kuykendall v. National Football League and NFL Properties, LLC*, Case No.: 1:11-cv-04450-WSD.

³ Interested Party Plaintiff Dorsey Levens commenced an action on December 21, 2011 in the United States District Court for the Northern District of Georgia entitled *Dorsey Levens v. National Football League and NFL Properties, LLC*, Case No.: 1:11-cv-04448-RWS.

⁴ Interested Party Plaintiff Jamal Lewis commenced an action on December 21, 2011 in the United States District Court for the Northern District of Georgia entitled *Jamal Lewis v. National Football League and NFL Properties, LLC*, Case No.: 1:11-cv-04451-AT.

Lewis agree that consolidation and coordination is appropriate, and respectfully submit that the most appropriate transferee Court is the United States District Court for the Eastern District of Pennsylvania, or alternatively, the United States District Court for the Northern District of Georgia.

II. AN MDL IS APPROPRIATE HERE WHERE THERE ARE COMMON QUESTIONS OF FACT

This Panel may transfer civil actions pending in different districts when they involve “one or more common questions of fact...upon [the Panel’s] determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407(a). To date, there are numerous cases pending in various judicial districts throughout the country. Several Interested Party Plaintiffs have made written submissions that MDL transfer and centralization are appropriate in light of the common questions of fact presented in the actions that have been filed, as well its purpose of eliminating duplicative discovery and repetitive and conflicting rules.

III. THE TRANSFEEE COURT SELECTION

In determining an appropriate transferee forum, the Panel balances a number of factors, including: the experience, skill and caseloads of the available judges; number of cases pending in the jurisdiction; convenience of the parties; location of the witnesses and evidence; and the minimization of cost and inconvenience to the parties. See, e.g., *In re: Regents of University of California*, 964 F.2d 1128, 1136 (Fed Cir. 1992); *In re: Wheat Farmers Antitrust Class Action Litig.*, 366 F.Supp. 1087, 1088 (J.P.M.L. 1973); *In re: Preferential Drugs Prods. Pricing Antitrust Litig.*, 429 F.Supp. 1027, 1029 (J.P.M.L. 1977); *In re: Tri-State Crematory Litig.*, 206 F.Supp. 1376, 1378 (J.P.M.L. 2002); Annotated Manual of Complex Litigation (Fourth) (2010), § 20.131 at 303-304. Of the factors the Panel considers when determining the transferee forum,

judicial experience and available resources weigh heavily in favor of transferring all NFL Players' Concussion Injury related cases to the Eastern District of Pennsylvania, or alternatively, the Northern District of Georgia.

Plaintiffs herein concur with the NFL's Motion as well as the *Easterling* Interested Party Response and joins in the request that the matters be transferred to Honorable Judge Anita Brody in the United States District Court for the Eastern District of Pennsylvania, who currently is assigned the *Easterling* action. As stated in the NFL's Motion, the Eastern District of Pennsylvania is a convenient forum for many Plaintiffs, Defendants, and potential witnesses in the related cases. The NFL is headquartered in New York, New York, and numerous Plaintiffs reside on the East Coast. See, *In re: Practice of Naturopathy Litig.*, 434 F.Supp. 1240, 1243 (J.P.M.L. 1977) (choosing the closest district in which an action is pending when documents and witnesses are located in a nearby district where none of the constituent actions is pending; *In re: Ace Ltd. Sec. Litig.*, 370 F.Supp. 2d 1353, 1355 (J.P.M.L. 2005) (consolidating and transferring three actions to the Eastern District of Pennsylvania because an action was already pending there and it is an "accessible metropolitan court that possesses the necessary resource and expertise"). In addition, Judge Brody is an experienced jurist in handling complex litigation, and has effectively managed multidistrict litigation actions in the past. *In re: Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, 626 F.Supp. 2d 1353, 1353-54 (J.P.M.L. 2009).

Likewise and alternatively, given the range of locations of parties and witnesses in these cases and potential tag-along cases, Atlanta, where the Northern District of Georgia is located, is a central location which permits the Panel to transfer these cases to an accessible metropolitan Court that is not overtaxed with other multi-district dockets. See, e.g., *In re Gator Corp. Software Trademark & Copyright Litigation*, MDL No. 1517, 259 F.Supp.2d 1378 (J.P.M.L.

2003) (transferred to the Northern District of Georgia due in part to its central location). There are currently six (6) separate filings pending in the Northern District of Georgia, with the first filed action pending before Judge Story and the most recent to include a multiple Plaintiff filing and a wrongful death filing.⁵ The Honorable Judge Richard W. Story in the Northern District of Georgia has the experience and is well-suited to handle this litigation. The Honorable Richard W. Story has been on the bench for over 25 years. From 1986 to 1997, he served as Chief Judge for the Northern Judicial Circuit, Superior Court of Georgia. In 1997, Judge Story was appointed to his current seat. Judge Story's experience handling complex litigation and product liability cases and his extensive experience in the administration of large numbers of cases make him a preferred choice to manage the coordination of this litigation. As to location, the Atlanta International Airport is one of the largest airports in the nation servicing all major metropolitan areas in the United States and offers several affordable and direct flights to and from cities nationwide. Also, not only is Atlanta a centrally located metropolitan City for all traveling parties, but additionally, Atlanta is home to the largest number of former players' association members in the United States. Therefore, the decision reached in this litigation will disproportionately affect the greatest number of former NFL players living in the Atlanta area.

IV. CONCLUSION

Accordingly, Interested Party Plaintiffs Stewart, Kuykendall, Levens and Lewis join moving party NFL's Motion for Transfer and Centralization and request that this Panel consider

⁵ On January 9, 2012, two (2) additional cases have been filed in the Northern District of Georgia, including: *Reginald Austin, et al. v. National Football League and NFL Properties, LLC*, Case No.: 1:12-cv-0075; and *Christine Dronett, Individually and as Surviving Spouse of Shane Dronett, Deceased v. National Football League and NFL Properties, LLC*, Case No.: 1:12-cv-0076 (Attached hereto as Exhibits "A" and "B", respectively). These Complaints raise the same issues as those previously filed in the Northern District of Georgia.

the Eastern District of Pennsylvania to the Honorable Anita Brody or the Northern District of Georgia to the Honorable Richard W. Story as appropriate Transferee Courts.

DATED: January 9, 2012

Respectfully submitted,

/s/ Michael L. McGlamry

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