

1705

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

RELEASED FOR PUBLICATION

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE XYBERNAUT CORP. SECURITIES LITIGATION

**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.
LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR.,
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL**

TRANSFER ORDER

This litigation currently consists of nine actions listed on the attached Schedule A and pending in two districts as follows: six actions in the District of Delaware and three actions in the Eastern District of Virginia.¹ Before the Panel is a motion by plaintiffs in the three Eastern District of Virginia actions for centralization, pursuant to 28 U.S.C. § 1407, of all nine actions in the Eastern District of Virginia. No party opposes centralization.

On the basis of the papers filed and hearing session held, the Panel finds that these nine actions involve common questions of fact, and that centralization under Section 1407 in the Eastern District of Virginia will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. These actions share factual questions arising from alleged misrepresentations or omissions concerning the financial condition and accounting practices of Xybernaut Corp. (Xybernaut). Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to questions of class certification), and conserve the resources of the parties, their counsel and the judiciary.

We are persuaded that the Eastern District of Virginia is an appropriate transferee forum for this litigation. The Eastern District of Virginia i) is a likely source of relevant documents and witnesses inasmuch as Xybernaut's headquarters are located there; ii) contains Xybernaut's pending bankruptcy proceedings; and iii) has relatively favorable caseload statistics.

¹ The Panel has been notified that an additional action is pending in the District of Delaware. This action and any other related actions will be treated as potential tag-along actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

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IMAGED NOV 4 2005

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on the attached Schedule A and pending in the District of Delaware are transferred to the Eastern District of Virginia and, with the consent of that court, assigned to the Honorable Leonie M. Brinkema for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman

SCHEDULE A

MDL-1705 -- In re Xybernaut Corp. Securities Litigation

District of Delaware

Robert H. Aylor, Jr. v. Xybernaut Corp., et al., C.A. No. 1:05-222
Moshe Tal v. Xybernaut Corp., et al., C.A. No. 1:05-242
Michael Fehrenbacher v. Xybernaut Corp., et al., C.A. No. 1:05-256
Jeffrey M. Jaskol, et al. v. Xybernaut Corp., et al., C.A. No. 1:05-268
Joseph Daniel Wauhop v. Xybernaut Corp., et al., C.A. No. 1:05-310
Christina W. Donnelly, et al. v. Xybernaut Corp., et al., C.A. No. 1:05-334

Eastern District of Virginia

Don R. Heilman v. Xybernaut Corp., et al., C.A. No. 1:05-525
Simona Zuccarelli v. Xybernaut Corp., et al., C.A. No. 1:05-610
Dean Lawthers v. Xybernaut Corp., et al., C.A. No. 1:05-617