

STATE OF NEW YORK
SUPREME COURT
COMMERCIAL DIVISION

COUNTY OF ALBANY

PATRICIA H. DUKER, on behalf of herself and all
others similarly situated,

Plaintiff,

-against-

MICRON TECHNOLOGY, INC. et al.,

Defendants.

(Docketed in Albany County under Index No. 6184-04)

DECISION
AND
ORDER

MR. JOSE JUAN, on behalf of himself and all others
similarly situated in New York,

Plaintiff,

-against-

MICRON TECHNOLOGY, INC., et al.,

Defendants.

(Docketed in Westchester County under Index No. 18298-04)

STEVEN AHN, and others similarly situated,

Plaintiff,

-against-

MICRON TECHNOLOGY, INC., et al.,

Defendants.

(Docketed in New York County under Index No. 60364C-04)

ROBERT GOODMAN, individually and on behalf of himself
and all others similarly situated,

Plaintiff,

-against-

MICRON TECHNOLOGY, INC., et al.,

Defendants.

(Docketed in New York County under Index No. 03182-05)

Index No. 6184-04
(RJI No. 01-05-082044)

(Judge Richard M. Platkin, Presiding)

APPEARANCES: Linnan & Fallon, LLP
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Hon. Richard M. Platkin, A.J.S.C.

This is a motion to consolidate the four above-captioned actions. All parties consent to consolidation. Plaintiffs, however, wish to have the matter venued in Albany County; defendants assert that the matter should proceed in New York County.

These lawsuits are all brought as class actions. Plaintiffs allege in their complaints that defendants, the manufacturers and distributors of Dynamic Random Access Memory (DRAM) computer chips, have engaged in an international conspiracy to inflate prices of DRAM chips and related technology through deceptive trade practices, antitrust violations and other wrongful conduct. Plaintiffs contend that they have been injured directly and indirectly through defendants' manipulations of the prices of products utilizing DRAM technology, as defendants' conduct has

allegedly resulted in an increase in the cost of many everyday items, such as cellular telephones and personal computers.

Across the country there are numerous similar suits pending in State and Federal courts. There is also an effort currently underway to settle these actions through mediation. As a result, there has been a stay of further proceedings in these New York actions pending the outcome not only of the mediation but also of applications currently *sub judice* for federal class certification. By letter Order of this Court (McCarthy, J.) dated December 22, 2006, this stay has been lifted *de facto* for the limited purpose of determining the present motion for consolidation of the New York State actions.

Consolidation is not only consented to by all parties to this litigation, it is entirely appropriate. Where common questions of law or fact are presented, consolidation is within the sound discretion of the Court (CPLR 602). Here, the allegations of the complaints in the four pending actions are essentially identical. The law to be applied is the same. Moreover, the complexity of the litigation being manifest, it would be improper for discovery to proceed under the supervision of multiple courts throughout the State of New York when consolidation would serve to streamline what is likely to be a time-consuming and costly process. Moreover, the potential for inconsistent results, the waste of scarce judicial resources and the added burden on the litigants that would result from failing to consolidate these actions all militate in favor of granting the instant motion (*see e.g. Amcan Holdings, Inc. v Torys LLP*, 32 AD3d 337 [1st Dept 2006]).

As to the question of venue, the operative rule is that a matter should proceed in the county where the first action was filed, absent a showing of special circumstances (*see e.g. Teitelbaum v PTR Co.*, 6 AD3d 254 [1st Dept 2004]; *Government Empls.. Ins. Co. v. Uniroyal Goodrich Tire Co.*, 242 AD2d 765 [3rd Dept. 1997]). None of the plaintiffs object to venue in Albany County, the

situs of the first filing. Defendants, on the other hand, cite several facts which, they contend, favor New York County as the venue for the consolidated actions. Neither individually nor collectively, however, do these concerns rise to the level of “special circumstances” as to warrant a departure from the general rule favoring venue in Albany County.

Defendants assert (at p 11 of their Memorandum of Law): “It is certainly true . . . that far more of the plaintiffs in the purported state-wide class would be located in New York County than in Albany County.” While this may be an accurate statement of demographic fact, it does not lead to the inference that the shared interests of the class of plaintiffs would be advanced by having venue laid in New York County or that such county would be a better situs for this litigation simply by virtue of its greater population. In any event, this does not rise to the level of a “special circumstance.”

Defendants further advance the conclusory allegation that “traveling to New York County is substantially less burdensome than traveling to Albany for witnesses located in San Jose, Taiwan, Korea or Germany” (*Id.*). Defendants do not provide any factual basis for this claim. In any event, any incremental travel burden for international and cross-county travelers associated with laying venue in Albany County rather than New York County is relatively modest and does not rise to the level of warranting a departure from the general rule favoring venue in the county where the first action was commenced.

Finally, defendants point out that they have “national counsel” with offices in New York County. Defendants also have able counsel with offices in Albany County. The instant motion, for example, has been litigated for defendants by attorneys with offices within walking distance of the courthouse. This additional contention of defendants thus hardly rises to the level of “special circumstances” warranting departure from the established rules regarding venue.

Pivotaly, special circumstances have been found to exist only where the facts of a particular case strongly militate in favor of conducting proceedings in a county other than the one in which the first action was filed. For example, if the occurrence giving rise to the litigation took place in another county, venue may properly best be laid there (*see e.g. Government Employees, supra*). Similarly, if the majority of witnesses reside in a county other than that in which the action was first brought, special circumstances dictating departure from the general rule have been found to exist (*see e.g. Messina v Upper Hudson Primary Care Consortium, Inc.*, 26 AD3d 698 [3d Dept 2006]).

No circumstances similar to those found in these cited cases exist in the present litigation. The sales of products containing DRAM occurred throughout the entire State; the defendants themselves are not physically located in New York, much less in any particular county in this State; and the witnesses likely to testify cannot be said to reside or have places of business in New York County. Thus, there is nothing in the record to warrant a deviation from the rule that the venue of these consolidated actions should be in the county where the first action was filed.

Accordingly, it is

ORDERED that plaintiffs' motion for consolidation of the four above-captioned actions is granted in all respects; and it is further

ORDERED that Albany County shall be the venue for the consolidated actions; and it is further

ORDERED that the *Juan, Ahn* and *Goodman* matters are transferred to Albany County; and it is further

ORDERED that plaintiff shall serve a copy of this Decision and Order on all parties to the *Juan, Ahn* and *Goodman* matters; and it is further

ORDERED that the stay previously imposed upon all the above matters shall continue until further Order of this Court.

This constitutes the Decision and Order of the Court. All papers including this Decision and Order are returned to counsel for plaintiff Duker. The signing of this Decision and Order shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that Rule respecting filing, entry and Notice of Entry.

Dated: Albany, New York
March 7, 2007

RICHARD M. PLATKIN
A.J.S.C.

Papers Considered:

Notice of Motion dated June 2, 2005;
Affirmation of James D. Linnan, Esq. dated June 2, 2005, with attached Exhibits A-D;
“Response” of David E. Kovel, Esq. dated July 8, 2005 on behalf of plaintiff Ahn;
Notice of Cross-motion dated July 18, 2005;
Affidavit of Alan J. Goldberg, Esq. sworn to July 20, 2005, with attached Exhibits A-D;
Defendant’s Memorandum of Law dated July 20, 2005.