



Minnesota v. Philip Morris

The Supreme Court denied a request for certiorari by the tobacco companies, allowing this order to stand in the State of Minnesota's suit to recover health care and other costs resulting from the use of tobacco products. The order covers creation of a central repository for discovery documents and allows plaintiff access to an internal tobacco industry database of research and litigation documents.

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT
FILE# C1-94-8565

Filed July 17, 1995

The State of Minnesota By Hubert H. Humphrey, III, Its Attorney General, and Blue Cross and Blue Shield of Minnesota,

Plaintiffs,

vs. Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown and Williamson Tobacco Corporation, B.A.T. Industries, P.L.C., Lorillard Tobacco Company, The American Tobacco Company, Liggett Group, Inc., The Council For Tobacco Research - U.S.A., Inc., and The Tobacco Institute,

Defendants.

ORDER

The above matter came on for a regularly scheduled general status conference before the Honorable Kenneth J. Fitzpatrick on July 11, 1995, pursuant to the Case Management Order dated March 29, 1995, Michael V. Ciresi, Esq., appeared and argued on behalf of Plaintiffs. Allen M. Katz, Esq., appeared and argued on behalf of Defendants Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown and Williamson Tobacco Corporation, Lorillard Tobacco Company, The American Tobacco Company, Liggett Group, Inc., The Council For Tobacco Research - U.S.A., Inc., and The Tobacco Institute. Additional counsel also appeared, but did

not argue, on behalf of the parties.

Based on the file, arguments, and representations of counsel

IT IS HEREBY ORDERED:

1. Pursuant to agreement of Plaintiffs and B.A.T. Industries, p.l.c., the time limits for jurisdictional discovery relating to the Motion of B.A.T. Industries, p.l.c., to Dismiss shall be tolled beginning June 21, 1995.

2. Special Master. Plaintiffs' request for a Special Master is DENIED at this time.

The court cautions the parties, however, that it may at any time, on its own motion, decide to appoint a Referee pursuant to Minn. R. Civ. P. 53, particularly if despite the court's admonishment the parties persist in bringing matters of a minute nature before the court.

3. Document Depositories.

A. One depository located within thirty (30) miles of the Minneapolis/St. Paul International Airport shall be established for timely and efficient control and management of discovery in this action. All documents produced by any party to this action shall be deposited therein. Within thirty (30) days of this order, the parties shall inform the court of their chosen site, along with mutually agreed upon vendors of security, maintenance, copying, imaging, and administrative/staff support.

B. The depository shall be open for inspection of documents from 8 a.m. to 8 p.m., Monday through Friday, at the request of any party on written notice of five business days, unless the parties agree or the Court orders expanded or reduced hours. Each person entering the warehouse shall be required to identify himself or herself, by law firm and party represented, and sign in on a registration log.

C. All parties with access to the depository shall be allowed to view the entire depository at any time during which the depository is open and to select any box or group of boxes for immediate review. The depository staff mutually selected by the parties or appointed by the Court shall have the sole authority to physically remove the requested boxes from the depository shelves for viewing by an authorized party and to replace the requested boxes back on the depository shelves after viewing by the authorized party.

D. The cost of placing documents requested for production into the depository shall be borne by the party producing the documents. The administrative costs and expenses of operating the depository shall be allocated among the parties on a pro-rata basis determined by use of the facility.

E. The cost of copying or imaging selected documents from the depository shall be borne by the party requesting the copying or imaging of the selected documents. The party selecting the documents shall choose the method of copying or imaging. The copying or imaging shall be performed by the vendor(s) selected by the parties or

appointed by the court. All documents duplicated or imaged for the requesting party shall be copied or imaged off of the actual documents in the depository and not from documents maintained at a different location, absent agreement of the parties or order of the Court.

F. Regardless of the manner of copying or imaging, the producing party shall be entitled to receive a record of which documents have been copied or imaged by the requesting party, or a duplicate set of the copies shall be provided to the producing party upon its request and at its expense.

G. Regardless of the manner of copying or imaging, a requesting party shall have the right to designate a reasonable number of documents each day for immediate copying and delivery. At the election for the producing party, this may be accomplished either by providing a convenience copier in the depository for use by the requesting party, or if copying is to be performed off- site, by making appropriate arrangements for the delivery of the requested documents by air courier or hand delivery within one business day.

H. All documents in the depository shall be Bates numbered in accordance with the Case Management Order and shall be placed in numbered boxes. Each box shall be labeled with a box number and the beginning and ending of Bates numbers of documents contained therein, with the labels clearly visible for viewing by walk-by inspection. In addition, the party operating the depository shall maintain a list in each box of each and every document contained within each box, as well as a master list maintained in the depository and distributed to all other parties of each and every document in each box. Such lists shall be updated as necessary.

I. The producing party shall notify all other parties in writing within 48 hours of the placement of documents in the depository. The identification of documents in such notice shall include the Bates numbers of the documents, the box numbers, and the documents requests to which the documents are responsive (in accordance with the Case Management Order).

J. The staff operating the depository shall maintain a written guide to the location of documents in the depository, for example, a guide to the location of documents by box and Bates numbers.

K. The staff operating the depository shall maintain at the depository copies of all privilege logs and written document responses from a party in this litigation.

L. Once placed in the depository, documents shall not be removed from the depository, renumbered, reboxed, or moved to a different location of the depository, absent agreement of the parties or order of the Court; provided, however, that:

(I) Documents may be removed from the depository for the purpose of making copies or images as requested by the reviewing party;

(ii) Documents may be reboxed or moved to a different location of the depository in order to keep documents in sequential Bates- numbered order as new documents are

placed in the depository; however, any reboxing or moving done pursuant to this subparagraph shall be accompanied by immediate (48 hours) and explicit notice to all other parties of new Bates numbers, new box numbers, and new locations. Where it is more convenient to do so, in lieu of reboxing to keep documents in sequential order, a party may place later-produced documents in a box supplemental to the original box. For example, if box 1 has a Bates-number range of 100 to 500 and later produced documents belong in that box, these documents may be placed in box 1A and placed next to box 1.

M. The depository shall have at least one telephone and one dedicated line for computers.

N. Computer versions of documents shall not be transmitted from the depository itself. The receiving party shall have the right, for any depository document for which it has received a copy pursuant to this order, to transmit the document via computer from any other location to any person authorized to receive the document.

O. The depository shall be reasonably heated and air conditioned and have restroom facilities on site.

P. The depository shall be equipped with tables and chairs to serve as a work space for persons reviewing documents. This work space shall be contiguous with (under the same roof as) the storage area for documents.

4. Document Indexes.

A. Existing Indexes: To the extent that any party has previously prepared or produced any index of documents relative to the subject matter of this action, said party shall immediately produce such existing index to the opposing party; provided, however, that if the producing party claims an existing index contains subjective information protected by the attorney-client or work product privileges, it shall submit such index to the court for in camera inspection and determination.

B. Indexing Upon Production. All parties shall, in conformance with the Case Management Order and this order, provide an index to the documents produced in discovery. Said index shall be provided along with the documents produced. Each such index shall contain at least the following standard information with respect to each document produced:

(I) Author(s) of document;

(ii) Recipient(s) of document, including those receiving copies;

(iii) Date of document;

(iv) Type of document (e.g., memo, letter, news release, pamphlet, etc);

(v) Title of document (e.g., title, subject, or "re" line, etc); and

(vi) Bates identification number.

5. Computer-Assisted Litigation Management Technology. The parties shall within ten (10) days of this order inform the court of their progress with respect to choice of computer-assisted litigation management technology, such as CLAD. Absent the parties' agreement, the court shall determine this matter for efficient management of this action.

DATED: July 14, 1995

Kenneth J. Fitzpatrick
CHIEF JUDGE

STATE OF MINNESOTA

COUNTY OF RAMSEY

THE STATE OF MINNESOTA,

BY HUBERT H. HUMPHREY, III,
ITS ATTORNEY GENERAL,

and

BLUE CROSS AND BLUE SHIELD OF MINNESOTA,

Plaintiffs,

vs.

PHILIP MORRIS INCORPORATED, R.J. REYNOLDS TOBACCO
COMPANY, BROWN & WILLIAMSON TOBACCO CORPORATION, B.A.T
INDUSTRIES P.L.C., LORILLARD TOBACCO COMPANY, THE
AMERICAN TOBACCO COMPANY, LIGGETT GROUP, INC., THE
COUNCIL FOR TOBACCO RESEARCH - U.S.A., INC., and THE TOBACCO
INSTITUTE, INC.

Defendants.

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

COURT FILE NO. C1-94-8565

CASE MANAGEMENT ORDER

I. GENERAL TERMS OF CASE MANAGEMENT

A. Purpose

The purpose of this Case Management Order is to secure the just, speedy, and inexpensive determination of this action in accordance with Rule 1 of the Minnesota Rules of Civil Procedure. Except as otherwise provided by this Case Management Order or any subsequent order, the Minnesota Rules of Civil Procedure and the General Rules of Practice for the District Courts shall govern this case. This Case Management Order may be modified by the Court sua sponte or upon motion of the parties for good cause shown.

B. Substantive Issues of Law

Nothing set forth in this Case Management Order shall be deemed to affect any substantive right, claim, or defense of any party to this matter or constitute any ruling or order on any question of law.

C. Cooperation of Counsel; Non-Waiver of Privilege

Counsel for the respective parties are directed to cooperate to the greatest extent possible to promote the expeditious and efficient handling of these proceedings. Among other things, such cooperation shall include, whenever feasible, the preparation and presentation of joint positions, claims, and defenses by the plaintiffs and defendants who are aligned on respective sides. To facilitate this cooperation, the exchange or disclosure of information or documents between or among co-counsel for plaintiffs, or between or among co-counsel for defendants, in the course of such joint preparation from August 17, 1994 forward shall not be construed as a waiver of any attorney-client, work-product, or other privilege or any other exemption from any disclosure requirement that may apply to the information or documents so exchanged or disclosed.

A Special Master may be appointed by the Court during the period of discovery.

D. Status Conferences

Except as otherwise ordered or agreed among the parties, general status conferences shall be held on the first Tuesday of every other month, commencing two (2) months following the May 2, 1995 hearing date. The conferences will commence at 9:30 A.M. Any party can request of the Court additional status conferences as needed. Counsel shall use their best efforts to prepare a status conference agenda to be filed five days prior to the conference date.

E. Hearing Dates

Motion hearing dates under Rule 115.02 of the General Rules of Practice for the District Courts shall be obtained directly from the clerk of the presiding judge after

consultation with Administrative Liaison Counsel for both plaintiffs and defendants.

F. Administrative Liaison Counsel

The plaintiffs and defendants shall each appoint two Administrative Liaison Counsel. Defendants shall appoint one Minnesota counsel and one national counsel to serve as Administrative Liaison Counsel. The Administrative Liaison Counsel or their designee(s) are vested by this Court with the responsibility:

1. To receive orders, notices, and correspondence from the Court and the District Court Administrator on any matter pertaining to this case, and notify all counsel for whom they serve as Administrative Liaison Counsel of all such orders, notices and correspondence from the Court; and
2. To perform such other duties as may be expressly authorized by further order of this Court or agreed to by counsel for all parties.

G. Pro Hac Vice Admission of Counsel

Attorneys who apply to this Court for pro hac vice admission in this case shall agree to abide by the Minnesota Rules of Professional Conduct and subject themselves to the jurisdiction of this Court for the pendency of this action. See Rule 5, General Rules of Practice for District Courts.

H. Document Preservation

The parties to this action shall be bound by the Amended Order for Preservation of Documents entered in the Castano case, a copy of which is attached hereto as Exhibit 1, as well as the following provisions regarding the preservation of documents. Both the attached Castano order and the following additional provisions shall be enforceable in this Court.

1. For these purposes, the phrase " . . . documents containing information that may be relevant to, or may lead to the discovery of information relevant to . . . any claim of the plaintiffs in this case, any defense urged by the defendants in this case . . . " found in paragraph 2(b) of the Castano order, shall be deemed to refer to the claims and defenses in the matter of The State of Minnesota, et al. v. Philip Morris, et al.
2. To the extent that it is a normal business practice of any party to transfer documents to microfilm, it will not be a violation of this Order to do so and to discard the originals on the express condition that no document is destroyed or doctored before it is fully and accurately transcribed to microfilm.
3. Medical records, x-rays, MRI films, CT scans and other such medical reports and diagnostic films, relating to individual patient care, obtained by the parties to this litigation from third-party health care providers may be discarded pursuant to existing retention policies in effect as of August 1, 1994, unless such documents are obtained for the purposes of this litigation.

4. Except to the extent that outside counsel acts as custodian for documents: (a) once in the possession or control of a party, but no longer in the party's possession or control, or (b) generated in connection with scientific research relating to smoking and health and in connection with outside counsel's participation in selecting or retaining scientists and/or generating, directing or supervising such scientific research for or on behalf of one or more of the parties, this Order shall not apply to the files of outside counsel.

5. Each party is responsible for complying with this Order (as defined in Exhibit 1 and the Case Management Order) as to documents in that party's actual or constructive care, custody and control; and is also responsible to take appropriate steps to seek the preservation of documents (as defined in Exhibit 1 and the Case Management Order) as to which a party at one time retained and stored in its possession but later decided to transfer its only copy to a corporate affiliate or a third party.

6. In addition to the obligation of the parties to retain documents as set forth in paragraph 2(b) of the Castano order, the obligations of Minn. R. Civ. P. Rule 26.05 and Minn. R. Prof. Cond. Rules 3.4 and 8.4 apply and provided further, that the parties will preserve periodic and final reports, final memoranda, patent applications, publications by the parties' scientists, and laboratory notes or notebooks concerning research which may have been conducted at any time after March 29, 1994, and which may hereafter be conducted on (a) smoking and health, including but not limited to epidemiological studies and animal studies; (b) the alleged "addictive" properties of nicotine; and (c) the development of an allegedly "safer cigarette."

I. Service Of Pleadings. Motions, And Briefs

All pleadings, motions, and briefs shall be served by hand-delivery on local counsel no later than 5 p.m. on the date the pleading, motion, or brief is due. In addition to the required filing of the originals with the clerk, all parties are encouraged to submit proposed findings, memoranda, and orders on 3 1/2 inch computer diskettes formatted for Wordperfect 5.1 for Dos.

II. INCREMENTAL CASE MANAGEMENT

The case shall be managed on an Incremental Case Management basis and proceed according to the following general provisions and schedule:

A. Motions on the Pleadings

All motions on the pleadings under Rule 12 of the Minnesota Rules of Civil Procedure -must have been filed with the Court on or before January 26, 1995.

B. Commencement of Discovery

Except as to expert discovery, which is addressed in Section m.F., written discovery on all claims and defenses remaining in the case following the Court's rulings on the Rule 12 motions shall commence thirty (30) days after the Court has ruled on all of

the Rule 12 motions. Other than as set forth in the Minnesota Rules of Civil Procedure or by order of this Court, there shall be no limitation as to the subject of discovery.

C. Form of Discovery

The parties shall be free to serve written discovery as soon as the discovery period begins. No depositions shall be scheduled except by agreement of the parties or by order of the Court. The parties shall meet and confer no later than six months after the commencement of written discovery to exchange proposals regarding the taking of fact depositions in this case, which proposals shall include the timing and scheduling of such depositions and all other issues regarding depositions in this case.

D. Dispositive Motions

Any motions for summary judgment or other motions that parties seek to file after discovery begins shall be filed no later than sixty (60) days after the conclusion of all discovery.

E. Trial

This matter shall be tried to a jury on all of the issues pled in the complaint which are so triable and shall be set for trial during the calendar year 1998. At a time no later than eight (8) months before the conclusion of discovery, the parties shall meet and confer to discuss pretrial matters and propose a pretrial management schedule to the Court, including a schedule for the exchange of witness lists, exhibit lists, the filing of motions in limine and dispositive motions and other such pretrial issues. At that time, the parties will propose a more specific trial date setting in 1998 to the Court for its consideration.

III. INCREMENTAL DISCOVERY MANAGEMENT

A. Joint Discovery

It shall be the general rule in this case that all discovery generic to issues of liability and damages shall be conducted jointly by the plaintiffs as a group and by the defendants as a group, including interrogatories, document requests, requests for admission, and depositions. If a party objects to an opposing party's conducting discovery independent of the other opposing parties, the parties shall meet and confer before applying to the Court for relief.

B. Discovery Relating to the Motion of B.A.T Industries p.l.c. to Dismiss the Complaint

1. In accordance with the Court's order of December 30, 1994, the Court's decision on the pending motion of B.A.T Industries p.l.c. to dismiss the Complaint for lack of personal jurisdiction is stayed pending discovery relating to the factual issues necessary to the Court's determination of the motion. All other discovery as against B.A.T Industries p.l.c. is stayed during the pendency of the motion.

2. The jurisdictional discovery set forth above shall be commenced and completed within 180 days from the date upon which the Court has ruled upon all of the Motions for Judgment on the Pleadings filed in accordance with paragraph 2 of the Court's order of December 30, 1994. Any discovery dispute which results in any delay in this jurisdictional discovery shall automatically toll the 180-day discovery period for an amount of time equal to the delay in resolving the dispute, absent a ruling of the Court that for good cause shown there shall be no tolling or that tolling shall be limited. Notwithstanding other provisions of this Case Management Order, all time periods as set forth in the Minnesota Rules of Civil Procedure shall apply to this discovery, unless otherwise agreed.

3. Within 30 days (30) days after the expiration of the jurisdictional discovery period, B.A.T Industries p.l.c. shall file a brief and any supporting papers in further support of its motion. Plaintiffs shall file a responsive brief and any supporting papers within 30 days following service of B.A.T Industries p.l.c.'s papers. B.A.T Industries p.l.c. shall file its reply brief and any supporting papers within 15 days following service of plaintiffs' responsive papers. The Court will schedule a hearing on the motion to take place on a date subsequent to the filing of all such papers.

4. Neither paragraphs 2 and 3 of the Court's order of December 30, 1994 nor the provisions of this Case Management Order relating to Motions for Judgment on the Pleadings shall apply to such motions that may be made by or against B.A.T Industries p.l.c. However, should B.A.T Industries p.l.c. interpose a responsive pleading, plaintiffs and B.A.T Industries p.l.c. agree to be bound by rulings made on "generic" issues (i.e., legal issues of uniform application regardless of a party's identity or status) presented in the Motions for Judgment on the Pleadings brought pursuant to the Court's order of December 30, 1994, while reserving their rights to seek adjudication of any unique issues presented by their respective pleadings.

C. Interrogatories

1. Number of Interrogatories: Plaintiffs shall answer no more than 40 interrogatories; Defendant's shall answer no more than 60 interrogatories, including subparts, with the exception of interrogatories seeking the following information:

(a) the identity of witnesses;

(b) the location, identity and foundation of documents; or

(c) the corporate structure, organization, and inter-relationships among the parties and affiliates.

2. Expansion of Interrogatory Limits: The limit on interrogatories may be expanded by the Court upon a showing of good cause or by agreement of the party from whom the discovery is sought to be obtained.

3. Contention Interrogatories: Contention interrogatories shall not be permitted in this case except by leave of the Court.

D. Document Production

1. Technology For Document Production:

The plaintiffs and defendants shall each appoint a technology liaison manager who will work in conjunction with a court appointed technology expert to determine the appropriate technology to be used for the production of documents. Regardless of the technology used, all parties, upon a representation that good cause exists, shall have reasonable access to the original paper copies of such documents so identified. If the producing party objects to providing such access to the original paper copies, the moving party shall present its showing of good cause to the court, ex parte and in camera.

2. Protective Order

The parties shall meet and confer on a Protective Order that shall govern the use of documents produced in this litigation. The Court shall resolve any remaining disputes before any party is obliged to produce documents.

3. Copies

Unless a party raises the objection of undue burden in which event the matter shall promptly be submitted to the Court (unless the parties otherwise resolve the issue), all copies of any particular document must be produced, including but not limited to drafts, blind copies, written copies, routing slips, copies of the front of folders and labels on the folders which contain the documents in the files of the parties. However, identical copies of a document which contain no distinguishing marginalia or other distinguishing feature need not be produced.

4. Document Numbering

Any party producing documents shall number all produced documents as provided herein. Copies of any produced documents shall be marked by the producing party with an identifying number using a Bates stamp, computerized label, or similar marking system that provides a unique identification number of the document. An explanation of the numbering system -- which shall allow identification of which party produced which documents -- shall be provided by the producing party. Documents produced by non-parties shall be numbered with a comparable identification system.

The identifying number assigned to the document shall be used to identify the document for all subsequent pretrial and discovery purposes, provided that once a document has been assigned a deposition exhibit number, it may be cited by such exhibit number.

5. Document Indexes

Each party shall produce an index of documents along with the production of its documents, to the extent that each party has an existing index of the documents. To

the extent that a party does not have an existing index at the time of production, such index shall be produced at the time it may be created. Such indexes shall include only objective information, such as author, recipient, date, and title of documents and shall not include any subjective information which may be arguably protected by the attorney-client or work product privileges.

6. Identity of Responsive Request

Each party shall produce documents to correspond to the appropriate categories in the request for production. If a document is responsive to more than one request, the producing party shall so indicate, unless unduly burdensome to do so.

7. Privileged Documents Any document withheld from production based upon a claim of privilege shall be identified in a privilege log which shall include, for each document:

- (a) Document production number;
- (b) Date;
- (c) Author;
- (d) Addressees and recipients of copies;
- (e) Type of document;
- (f) Subject matter of document;
- (g) Nature of claimed privilege (e.g. attorney-client; work product).

Such identification of privileged documents shall designate specifically the document request number(s) to which the privileged documents are responsive.

The privilege log shall include all documents withheld from production on grounds of privilege and otherwise responsive to a request for production, including but not limited to documents generated by in-house counsel. The privilege log shall also include documents generated by or in the possession of outside counsel but only to the extent that the request seeks documents over which outside counsel act as custodian which were once in the possession or control of a party but are no longer in the party's possession or control. At such time, however, that plaintiffs request documents generated by or in the possession of outside counsel which relate to research on smoking and health where outside counsel acted as an agent for or on behalf of one or more of the parties, to the extent that such documents are not available from the parties' own files, the parties agree to promptly meet and confer, discuss the scope of the request and seek early resolution of any dispute which might arise as to the production of such documents or the identification of such documents on the privilege log.

The privilege log need not list attorney-client or work product privileged documents

first created on or after August 17, 1994 for this case specifically unless ordered by the Court.

No non-privileged document shall be withheld from production solely on the ground that it is attached or appended to a privileged document.

8. Redaction of Documents

There shall be no redaction of documents except on the basis of privilege or pursuant to a Protective Order agreed upon by the parties or ordered by the Court. If redacted, the document must be marked as redacted in the location of the document where it is redacted. Each and every redaction shall be listed in the privilege log unless otherwise agreed to by counsel or ordered by the Court.

9. Representations Concerning Production of All Documents

Any document authored by an employee of a party and produced by the party during the course of this litigation is, in the form produced during discovery, genuine, authentic, and a record of regularly- conducted business activities within the hearsay exception set forth in Rule 803(6) of the Minnesota Rules of Evidence, unless the producing party asserts an objection to the foundation of the document within thirty days of the production of the document, or upon application to the Court for good cause shown.

10. Third-Party Documents

Any party requesting documents from a third party (not a party to this action) through a subpoena shall insure that all parties in this action are notified of and have access to such documents.

11. Inadvertent Production of Privileged Material

A party responding to any request for discovery information shall be responsible to make a reasonable and diligent effort to assert any claims of attorney-client privilege, work-product protection or other recognized privilege when responding to any request for discovery information. However, in the interest of expediting discovery in these proceedings and avoiding unnecessary costs: (a) inadvertent disclosure in this litigation of privileged information shall not constitute a waiver of any otherwise valid claim of privilege; and (b) failure to assert a privilege in this litigation as to one document or communication shall not be deemed to constitute a waiver of the privilege as to any other document or communication allegedly so protected, even involving the same subject matter. Unless there is a disagreement among the parties as to the existence of a privilege, such inadvertently produced documents shall be promptly returned to the producing party, together with all copies thereof. Nothing in this paragraph shall preclude any party from challenging a claim of privilege as to any document on any basis other than an inadvertent waiver of privilege.

12. Minnesota Government Data Practices Act, Minn. Stat Section 13.01 et.seq.

Defendants are not prohibited from obtaining information under the Minnesota Data Practices Act. Defendants shall notify plaintiffs after obtaining such information and provide plaintiffs a listing of documents obtained under the Act.

13. Scheduling of Responses to Document Requests Other Than Discovery Relating to the Motion of B.A.T Industries P.L.C. to Dismiss the Complaint

It is agreed in principle that certain categories of priority documents can be identified for an early production.

With respect to the remaining production of documents, the parties will meet and confer within two weeks after the service of a request for production of documents to discuss, for documents for which there is no objection to production, an estimate of the volume of documents which would be responsive and the timing of production. Within forty-five (45) days of service of any document request, the party from whom production is requested shall file and serve all written objections, including the basis for the objections, to the document request. Within this time frame, the parties shall also meet and confer and formulate a response plan. The response plan shall, at a minimum, address the following issues: (i) an estimate of the number of documents which will be produced; (ii) the logistics for production of the documents; (iii) a proposed place of production; (iv) the manner of numbering of the documents to be produced; and (v) dates for the production of documents and submission of an appropriate privilege log (as described herein in Paragraph III D.7).

E. Requests For Admissions

There shall be no limitation on the number of requests for admissions served in this case; provided, however, that nothing herein shall preclude a party from moving for an appropriate protective order.

F. Expert Discovery

The Court shall determine by subsequent order all matters pertaining to expert discovery. The parties shall meet and confer no later than December 1, 1995, to exchange proposals regarding expert discovery, which proposals shall include the manner and scope of expert discovery and the timing and sequence of expert discovery. A hearing before the Court shall be scheduled in early 1996 to resolve any differences between the parties regarding expert discovery.

Dated: March 29, 1995.

The Honorable Kenneth J. Fitzpatrick Judge of District Court

EXHIBIT A

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA

DIANNE CASTANO. et al.,
Plaintiffs,

VERSUS

THE AMERICAN TOBACCO CO., et al.,
Defendants.

CIVIL ACTION

NO. 94-1044

SECTION "B"

MAGISTRATE 5

AMENDED ORDER FOR PRESERVATION OF RECORDS

The Order for Preservation of Records, entered April 18, 1994, is hereby AMENDED to read as follows:

1. PRESERVATION. During the pendency of this litigation, and until a final order is entered by the Court closing this case, each of the parties herein and their respective officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from altering, interlining, destroying, permitting the destruction of, or in any other fashion changing any "document" in the actual or constructive care, custody, or control of such person, wherever such document is physically located. Such persons are also enjoined from changing the location of any such documents to a location outside of the jurisdiction of the United States.

2. SCOPE.

(a) "Document" shall mean any writing, drawing, film, videotape, chart, photograph, phonograph record, tape record, mechanical or electronic sound recording or transcript thereof, retrievable data (whether carded, taped, coded, electrostatically or electromagnetically recorded, or otherwise), or other data compilation from which information can be obtained, including (but not limited to) notices, memoranda, diaries, minutes, purchase records, purchase invoices, market data, correspondence, computer storage tapes, computer storage cards or discs, books, journals, ledgers, statements, reports, invoices, bills, vouchers, worksheets, jottings, notes, letters, abstracts, audits, charts, checks, diagrams, drafts, recordings, instructions, lists, logs, orders, recitals, telegram messages, telephone bills and logs, resumes, summaries, compilations, computations and other formal and informal writings or tangible preservations of information.

(b) This Order pertains only to documents containing information that may be relevant to, or may lead to the discovery of information relevant, (1) manufacturing methodology, testing, and/or composition and properties of tobacco, tobacco products, paper, filters, or any other materials contained in, relating, or used in the manufacturing, testing, and/or composition and properties of tobacco and tobacco

products; and (2) any claim of the plaintiffs in this case, any defense urged by the defendants in this case, and/or plaintiffs' request for class certification in this case. This order pertains only to documents which were written or generated from January 1, 1946 until March 29, 1994. Any document described or referred to in any discovery request made during this litigation and which otherwise is encompassed by this subparagraph (b) shall, from the time of the request, be treated for purpose of this order as containing such information unless and until the Court rules such information to be irrelevant. Nothing contained herein shall prevent a party from seeking to modify, expand, or restrict the scope of the documents described in this Paragraph 2(b) by consultation and agreement with opposing counsel or by application to the Court; and all parties reserve all of their rights in connection with any such requests.

(c) Counsel are directed to confer to resolve questions as to what documents are outside the scope of this Order or otherwise need not be preserved and as to an earlier date for permissible destruction of particular categories of documents. If counsel are unable to agree, any party may apply to the Court for clarification or relief from this Order upon reasonable notice. A party which, within 30 days after receiving written notice from another party that specified documents will be destroyed, lost, or otherwise altered pursuant to routine policies and programs, fails to indicate in writing its objection shall be deemed to have agreed to such destruction.

3. IMPLEMENTATION. Each party will, within 10 days after receiving this Order, designate an individual who shall be responsible for ensuring that the party carries out the requirements of this Order.

4. AGREEMENT OF COUNSEL. Without leave of Court, Liaison Counsel for plaintiffs and for defendants may agree in writing, at any time and from time to time, that certain documents or categories of documents need not be preserved in accordance with this Order. If any such agreement is reached, those documents or categories of documents automatically and without further order of the Courts shall no longer be encompassed by or subject to this Order.

New Orleans, Louisiana, this 5th day of July, 1994.

Judge, United States District Court

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